Series
Reports
15
HUMAN RIGHTS
IN SERBIA 2010

LEGAL PROVISIONS AND PRACTICE COMPARED TO INTERNATIONAL HUMAN RIGHTS STANDARDS

Belgrade Centre for Human Rights
Belgrade, 2011
The publication of the Report was financially supported with means from the Stability Pact for South Eastern Europe sponsored by Germany

Objavljivanje ovog Izveštaja pomogao je Pakt stabilnosti za Jugoistočnu Evropu finansiran od Nemačke
Contents

Abbreviations .......................................................... 15
Preface ........................................................................ 19
Introduction ............................................................... 21
Summary ...................................................................... 31
  Human Rights in Legislation ....................................... 31
  Human Rights in Practice ............................................. 35
I LEGAL PROVISIONS RELATED TO HUMAN RIGHTS .... 41
1. Human Rights in the Legal System of Serbia ............. 41
  1.1. Introduction .......................................................... 41
  1.2. Constitutional Provisions on Human Rights .......... 42
  1.3. International Human Rights and Serbia ............... 42
2. Right to Effective Legal Remedy for Human Rights Violations ....................................................... 45
  2.1. Ordinary Legal Remedies .................................... 45
  2.2. Constitutional Appeal .......................................... 46
  2.3. Enforcement of Decisions by International Bodies .. 51
3. Restrictions and Derogation ...................................... 51
  3.1. Restrictions of Human Rights ............................... 52
  3.2. Derogation in “Time of Public Emergency” .......... 54
    3.2.1. General ......................................................... 54
    3.2.2. State of War .................................................. 55
    3.2.3. State of Emergency ....................................... 55
4. Individual Rights .................................................... 56
  4.1. Prohibition of Discrimination ............................... 56
    4.1.1. General ........................................................ 57
    4.1.2. Anti-Discrimination Act .................................. 58
    4.1.3. Act on Prevention of Discrimination against Persons with Disabilities .......................... 61
4.1.4. Gender Equality ............................................................................. 62

4.2. Right to Life ...................................................................................... 66
  4.2.1. General ......................................................................................... 67
  4.2.2. Arbitrary Deprivation of Life ....................................................... 68
  4.2.3. Protection of Life of Detainees and Prisoners .............................. 69
  4.2.4. Obligation of the State to Protect Lives from
         Risks to Life .................................................................................. 70
         4.2.4.1. Health Risks ........................................................................ 70
         4.2.4.2. Life in a Healthy Environment ............................................. 70
  4.2.5. Abortion ....................................................................................... 74

4.3. Prohibition of Torture, Inhuman or Degrading Treatment or
     Punishment ......................................................................................... 74
  4.3.1. General ....................................................................................... 75
  4.3.2. Criminal Law .............................................................................. 76
  4.3.3. Criminal Proceedings and Penalty Enforcement .......................... 79
  4.3.4. Use of Force by Police ............................................................... 81

4.4. Prohibition of Slavery and Forced Labour .......................................... 84
  4.4.1. General ....................................................................................... 85
  4.4.2. Trafficking in Human Beings and Smuggling of People .............. 86
         4.4.2.1. Trafficking in Human Beings .............................................. 86
         4.4.2.2. Trafficking in Human Organs ............................................ 88
         4.4.2.3. Smuggling of People .......................................................... 89
  4.4.3. Forced Labour ............................................................................ 90

4.5. Right to Liberty and Security of Person;
     Treatment of Persons Deprived of Their Liberty .................................. 91
  4.5.1. Right to Liberty and Security of Person ......................................... 93
         4.5.1.1. Prohibition of Arbitrary Arrest and Detention ....................... 93
         4.5.1.2. Right to Be Informed of Reasons for Arrest and Charges ...... 96
         4.5.1.3. Right to Be Brought Promptly Before a Judge and to a
                  Trial within a Reasonable Time .............................................. 96
         4.5.1.4. Right to Appeal to Court against Deprivation of Liberty ....... 98
         4.5.1.5. Right to Compensation for Unlawful Deprivation of
                  Liberty ..................................................................................... 98
         4.5.1.6. Right to Security of Person .................................................. 98
  4.5.2. Treatment of Persons Deprived of Their Liberty ......................... 99
         4.5.2.1. Humane Treatment and Respect for Dignity ......................... 99
         4.5.2.2. Segregation of Accused and Convicted Persons, Juveniles
                  and Adults. .............................................................................. 99

4.6. Right to a Fair Trial .......................................................................... 100
  4.6.1. Judicial System ............................................................................ 102
4.6.2. Independence and Impartiality of Courts .......................... 104
  4.6.2.1. Election of Judges ........................................ 104
  4.6.2.2. Judicial Tenure ......................................... 109
  4.6.2.3. Termination of Judicial Tenure ........................... 109
  4.6.2.4. Principle of Non-Transferability .......................... 110
  4.6.2.5. Recusal .................................................. 110
  4.6.2.6. Supervision and Protection ................................ 110
  4.6.2.7. Incompatibility .......................................... 111
  4.6.2.8. Right to Case Assignment on a Random Basis .......... 111
  4.6.2.9. Judicial Training ........................................ 112

4.6.3. Fairness ..................................................... 113

4.6.4. Trial within Reasonable Time ................................. 115

4.6.5. Public Character of Hearings and Judgments ............... 117

4.6.6. Guarantees to Defendants in Criminal Cases .............. 118
  4.6.6.1. Presumption of Innocence ................................ 120
  4.6.6.2. Prompt Notification of Charges, in Language Understood
            by the Defendant .......................................... 121
  4.6.6.3. Sufficient Time and Facilities for Preparation of Defence
            and Right to Communicate with Legal Counsel ............. 121
  4.6.6.4. Prohibition of Trials *in absentia* and the Right to Defence 121
  4.6.6.5. Right to Call and Examine Witnesses ................... 123
  4.6.6.6. Right to an Interpreter .................................. 125
  4.6.6.7. Prohibition of Self-Incrimination ....................... 125
  4.6.6.8. Right to Appeal ......................................... 126
  4.6.6.9. Right to Compensation ................................... 126
  4.6.6.10. *Ne bis in idem* ....................................... 127

4.6.7. Constitutional Judiciary ...................................... 127

4.7. Protection of Privacy, Family, Home and Correspondence .... 128
  4.7.1. General ................................................... 129
  4.7.2. Personal Data – Access and Collection .................... 129
    4.7.2.1. General Regulations ................................... 129
    4.7.2.2. Opening of State Security Files ....................... 134
    4.7.2.3. Powers of the State Security Services ............... 135
  4.7.3. Home ..................................................... 136
  4.7.4. Correspondence ............................................ 137
  4.7.5. Family and Domestic Relations ............................ 141
  4.7.6. Sexual Autonomy .......................................... 142

4.8. Freedom of Thought, Conscience and Religion .................. 142
  4.8.1. General ................................................... 143
  4.8.2. Separation of Church and State ............................ 145
  4.8.3. Religious Organisation and Equality of Religious
          Communities ................................................. 146
4.8.4. Religious Instruction ............................................. 148
4.8.5. Conscientious Objection ........................................ 148
4.8.6. Restitution of Property of Religious Organisations .......... 149
4.9. Freedom of Expression ............................................ 150
  4.9.1. General ..................................................... 151
  4.9.2. Public Information Act ....................................... 152
  4.9.3. Establishment and Operation of Electronic Media .......... 154
    4.9.3.1. Broadcasting Act ...................................... 155
    4.9.3.2. Broadcasting Licences and the Broadcasting Licence
              Issuance Procedure ...................................... 155
  4.9.4. Criminal Law ................................................ 157
  4.9.5. Prohibition of Propaganda for War and Advocacy of
          National, Racial or Religious Hatred ......................... 159
  4.9.6. Free Access to Information of Public Importance ........ 161
    4.9.6.1. Classified Information Act ............................ 163
4.10. Freedom of Peaceful Assembly ................................. 165
  4.10.1. Limitations of the Freedom of Assembly .................. 166
    4.10.1.1. Assembly Venues ..................................... 167
    4.10.1.2. Notification of Gatherings ........................... 168
    4.10.1.3. State’s Obligation to Protect a Peaceful Assembly .... 169
  4.10.2. Prohibition of Public Assembly ............................ 170
  4.10.3. Prevention of Violence and Unbecoming Behaviour
          at Sports Events ........................................... 171
4.11. Freedom of Association ........................................ 172
  4.11.1. General .................................................. 173
  4.11.2. Registration and Dissolution of Associations ............ 174
  4.11.3. Restrictions .............................................. 175
  4.11.4. Association of Aliens .................................... 176
  4.11.5. Restrictions on Association of Civil Servants ........... 177
4.12. Peaceful Enjoyment of Property ............................... 178
  4.12.1. General .................................................. 178
  4.12.2. Expropriation ............................................. 179
  4.12.3. Restitution of Unlawfully Taken Property and
          Indemnification of Former Owner ............................ 181
  4.12.4. Specially Protected Tenancy ................................ 182
4.13. Minority Rights ................................................. 183
  4.13.1. General .................................................. 183
  4.13.2. Constitutional Protection .................................. 185
  4.13.3. Prohibition of Incitement to Racial, Ethnic, Religious or
          Other Inequality, Hatred or Intolerance .................... 189
4.13.4. Expression of Ethnic Affiliation ................. 189
4.13.5. Preservation of the Identity of Minorities .......... 190
4.13.7. Administration of Public Affairs and National Councils .... 191
4.13.8. Encouraging the Spirit of Tolerance and Intercultural Dialogue ........................................ 195
4.13.9. Use of Language .................................. 195
4.14. Political Rights .................................... 197
4.14.1. General ........................................ 197
4.14.2. Participation in the Conduct of Public Affairs ....... 198
4.14.3. Political Parties .................................. 201
  4.14.3.1. Financing of Political Parties ...................... 202
4.14.4. The Right to Vote and to Stand for Elections ........ 203
4.14.5. Electoral Procedure ................................ 204
  4.14.5.1. Bodies Administering the Election Process ....... 204
  4.14.5.2. Determination of the Election Results ............. 205
  4.14.5.3. Blank Resignations ................................ 206
  4.14.5.4. Cessation of Terms in Office ...................... 206
  4.14.5.5. Legal Protection ................................ 207
4.15. Special Protection of the Family and the Child .......... 208
  4.15.1. Protection of the Family .......................... 209
  4.15.2. Marriage ........................................ 210
  4.15.3. Special Protection of the Child ...................... 211
    4.15.3.1. General ....................................... 211
    4.15.3.2. Protection of Children from Abuse and Neglect .... 216
    4.15.3.3. Draft Act on the Protector of the Rights of the Child ...... 217
    4.15.3.4. Protection of Minors in Criminal Law and Procedure .... 218
    4.15.3.5. Birth and Name of the Child ..................... 219
4.16. Right to Citizenship ................................ 220
  4.16.1. General ........................................ 220
  4.16.2. Acquisition of Serbian Citizenship .................. 221
4.17. Freedom of Movement ................................ 222
  4.17.1. General ........................................ 223
  4.17.2. Right to Asylum .................................. 226
    4.17.2.1. Rights of Asylum Seekers, Refugees and Beneficiaries of Subsidiary Protection .... 227
    4.17.2.2. Right to Family Reunion ......................... 228
    4.17.2.3. Restriction of Movement ......................... 228
Human Rights in Serbia 2010

4.17.2.4. Temporary Protection .............................................. 229
4.17.2.5. UNHCR and NGOs ................................................ 229

4.17.3. Restrictions ............................................................... 229
4.17.4. Readmission Agreement .............................................. 231

4.18. Economic, Social and Cultural Rights ................................ 232
4.18.1. General ................................................................. 232
4.18.2. Ratification of the Revised European Social Charter ........... 232
4.18.3. Right to Work ............................................................ 234
  4.18.3.1. Right to Assistance in Employment and in the Event of Unemployment ................................................. 235
  4.18.3.2. Non-Discrimination .............................................. 236
  4.18.3.3. Harassment at Work ............................................. 238
  4.18.3.4. Workers’ Rights Concerning Termination of Employment ................................................................. 239
  4.18.3.5. Employment Related Lawsuits ................................ 241

4.18.4. Right to Just and Favourable Conditions of Work ............. 241
  4.18.4.1. Fair Wages and Equal Remuneration for Work .......... 243
  4.18.4.2. Occupational Safety ............................................. 244
  4.18.4.3. Right to Rest, Leisure and Limited Working Hours ...... 246

4.18.5. Trade Union Freedoms ................................................ 247
  4.18.5.1. Freedom to Form Trade Unions ................................ 248
  4.18.5.2. Protection of Workers’ Representatives ................. 250
  4.18.5.3. Right to Strike .................................................... 250
  4.18.5.4. General Collective Agreement ................................ 253

4.18.6. Right to Social Security ............................................. 253
4.18.7. Protection Accorded to Family ...................................... 257
4.18.8. Right to an Adequate Standard of Living ....................... 260
  4.18.8.1. Right to Housing .................................................. 261
  4.18.8.2. Right to Adequate Nutrition ................................... 263

4.18.9. Right to Highest Attainable Standard of Physical and Mental Health ................................................................. 264
  4.18.9.1. General ............................................................. 264
  4.18.9.2. Medical Insurance ............................................... 264
  4.18.9.3. Health Protection ................................................ 265
  4.18.9.4. Rights of Patients ................................................. 266

4.18.10. Right to Education .................................................. 267
  4.18.10.1. Higher Education ............................................... 270
4.18.11. Rights of Persons with Disabilities ................................ 272
  4.18.11.1. Right to Work ..................................................... 272
  4.18.11.2. Right to Social Security ...................................... 273
  4.18.11.3. Right to Education ............................................. 274
II HUMAN RIGHTS IN PRACTICE – SELECTED TOPICS . . . 275

1. Introduction .................................................. 275
   1.1. National Media as a Source of Data ...................... 275
   1.2. Other Sources .......................................... 277

2. Selected Topics ............................................. 278
   2.1. Functioning of Institutions .............................. 278
       2.1.1. Political Institutions .............................. 278
             2.1.1.1. Work of the National Assembly and Local
                    Assemblies ...................................... 278
             2.1.1.2. Political Parties ............................. 280
             2.1.1.3. Incompatibility of Offices .................... 281
             2.1.1.4. Elections .................................... 282
       2.1.2. Judiciary ............................................ 283
             2.1.2.1. General Assessment ........................... 283
             2.1.2.2. Reappointment Procedure and Criteria ......... 284
             2.1.2.3. New Court Network in Practice ................. 285
             2.1.2.4. Number of Judges ............................ 286
             2.1.2.5. Status of Non-Reappointed Judges ............ 286
             2.1.2.6. Efficiency of the Judiciary .................... 287
             2.1.2.7. Dismissal of Judges .......................... 288
             2.1.2.8. Political Involvement of Judges ............... 289
             2.1.2.9. High Judicial Council’s Attitude Towards Independent
                        Regulatory Authorities ......................... 289
       2.1.3. Independent Regulatory Institutions ................ 291
             2.1.3.1. Information of Public Importance and Personal Data
                        Protection Commissioner ............................ 292
             2.1.3.2. Protector of Citizens of the Republic of Serbia .. 294
             2.1.3.3. State Audit Institution .......................... 296
             2.1.3.4. Anti-Corruption Agency ........................ 297
             2.1.3.5. Commissioner for Equality ...................... 300

2.2. Prohibition of Discrimination and Protection of Minorities . . . 302
   2.2.1. General ............................................... 302
   2.2.2. Status of Women ...................................... 303
   2.2.3. Status of LGBT Persons .............................. 304
   2.2.4. Elderly ............................................... 306
   2.2.5. Status of National Minorities ......................... 306
           2.2.5.1. Election of National Minority Councils ........... 306
           2.2.5.2. Bosniak National Minority Council Elections .... 310
   2.2.6. Status of Roma ...................................... 312
2.3. Pride Parade

2.3.1. Preparation for the Pride

2.3.2. Threats Against the Organisers and Participants

2.3.3. Counter-Protests

2.3.4. Holding of the Pride Parade

2.3.5. Proceedings Against the Rioters During the Pride Parade

2.3.6. Protests for the Release of Persons Detained During the Pride Parade

2.3.7. Extreme Right Organisations

2.4. Life in a Healthy Environment

2.4.1. Assessment of the State of Environment in Serbia

2.4.2. Particularly Polluted Regions

2.4.2.1. Bor

2.4.2.2. Pančevi

2.4.2.3. Obrenovac

2.4.3. Illegal Garbage Dumps

2.5. Prohibition of Torture and Inhuman or Degrading Treatment or Punishment

2.5.1. Situation in Penitentiaries

2.5.2. Serbian Government Strategy to Reduce the Overcrowdedness of the Penitentiaries in the 2010–2015 Period

2.6. Prohibition of Slavery, Status akin to Slavery and Smuggling of Humans

2.7. Right to Privacy

2.7.1. Personal Data Protection

2.7.2. Cases of Unauthorised Access to and Abuse of Personal Data

2.7.3. Control of BIA’s Work

2.7.4. Declassification of State Security Files

2.8. Freedom of Expression

2.8.1. Freedom of the Media and Their Material Status

2.8.2. Allocation of Frequencies, Privatisation, Ownership

2.8.3. Threats Against and Attacks on Journalists

2.8.4. Trials of and Pressures on Journalists

2.8.5. Unprofessional Conduct by the Journalists and the Media

2.9. Trials of Soccer Fan Groups and Individuals

2.10. Status and Protection of Children

2.10.1. Violation of the Child Rights

2.10.1.1. Poverty and Labour Exploitation of Children
### Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.10.1.2. Children Without Parental Care</td>
<td>349</td>
</tr>
<tr>
<td>2.10.1.3. Placement in Institutions</td>
<td>349</td>
</tr>
<tr>
<td>2.10.2. Sexual Exploitation and Abuse of Children</td>
<td>350</td>
</tr>
<tr>
<td>2.10.3. Internet Risks to Children</td>
<td>351</td>
</tr>
<tr>
<td>2.10.4. Child Pornography</td>
<td>352</td>
</tr>
<tr>
<td>2.10.5. Peer Violence</td>
<td>352</td>
</tr>
<tr>
<td><strong>2.11. Economic, Social and Cultural Rights</strong></td>
<td>353</td>
</tr>
<tr>
<td>2.11.1. Economic Crisis and End of Recession</td>
<td>353</td>
</tr>
<tr>
<td>2.11.2. Unemployment and Problems in Employment</td>
<td>354</td>
</tr>
<tr>
<td>2.11.3. Poverty and Living Standards</td>
<td>355</td>
</tr>
<tr>
<td>2.11.4. The Impact of Privatisation on the Enjoyment of Economic and Social Rights</td>
<td>356</td>
</tr>
<tr>
<td>2.11.4.1. General Overview of Privatisation Problems in Serbia</td>
<td>356</td>
</tr>
<tr>
<td>2.11.4.2. Criminal Prosecution for Privatisation-Related Offences</td>
<td>357</td>
</tr>
<tr>
<td>2.11.4.3. Strikes Over Privatisation and the Non-Fulfilment of Contract Obligations</td>
<td>358</td>
</tr>
<tr>
<td>2.11.5. Right to Strike</td>
<td>359</td>
</tr>
<tr>
<td>2.11.6. Non-Payment of Social and Health Insurance Contributions</td>
<td>360</td>
</tr>
<tr>
<td>2.11.7. Protection of Patients and Corruption in Health</td>
<td>360</td>
</tr>
<tr>
<td>2.11.8. Right to Education</td>
<td>361</td>
</tr>
<tr>
<td><strong>2.12. Decisions against Serbia by International Human Rights Bodies</strong></td>
<td>362</td>
</tr>
<tr>
<td>2.12.1. United Nations Treaty Bodies</td>
<td>362</td>
</tr>
<tr>
<td>2.12.1.1. UN Human Rights Committee View in the Case of Novaković v. Serbia</td>
<td>362</td>
</tr>
<tr>
<td>2.12.2. European Court of Human Rights Judgements Against Serbia</td>
<td>363</td>
</tr>
<tr>
<td>2.12.2.1. Čižková v. Serbia</td>
<td>363</td>
</tr>
<tr>
<td>2.12.2.2. Dimitrijević and Jakovljević v. Serbia</td>
<td>364</td>
</tr>
<tr>
<td>2.12.2.3. Dermanović v. Serbia</td>
<td>364</td>
</tr>
<tr>
<td>2.12.2.4. Krivošej v. Serbia</td>
<td>365</td>
</tr>
<tr>
<td>2.12.2.5. Kin-Stib and Majkić v. Serbia</td>
<td>367</td>
</tr>
<tr>
<td>2.12.2.6. Motion Pictures Guarantors LTD v. Serbia</td>
<td>368</td>
</tr>
<tr>
<td>2.12.2.7. Jovančić v. Serbia</td>
<td>369</td>
</tr>
<tr>
<td>2.12.2.8. Rakić and Others v. Serbia</td>
<td>369</td>
</tr>
<tr>
<td>2.12.2.9. Milanović v. Serbia</td>
<td>370</td>
</tr>
<tr>
<td><strong>2.13. Confrontation with the Past</strong></td>
<td>371</td>
</tr>
<tr>
<td>2.13.1. International Criminal Tribunal for the Former Yugoslavia</td>
<td>377</td>
</tr>
<tr>
<td>2.13.1.1. Introduction</td>
<td>377</td>
</tr>
<tr>
<td>2.13.1.2. Serbia’s Cooperation with the ICTY</td>
<td>379</td>
</tr>
</tbody>
</table>
2.13.1.3. ICTY Judgements in 2010 ........................................ 380
  Popović et al (IT–05–88) ........................................ 380
  Veselin Šljivančanin (IT–95–13/1) ................................ 383
  Haradinaj et al (IT–04–84) ....................................... 384

Contempt Cases ......................................................... 385
  Vojislav Šešelj (IT–03–67-R77.2) ............................... 385
  Zuhdija Tabaković (IT–98–32/1-R77.1) ....................... 386

2.13.2. War Crimes Trials in Serbia ................................. 386
  2.13.2.1. Introduction .............................................. 386
  2.13.2.2. War Crime Judgements Delivered in 2010 .......... 387

Second-Instance Decisions ........................................ 387

First-Instance Judgments .......................................... 392

Indictments Filed in 2010 ........................................ 397

  2.14.1. Legislation and Treatment of Asylum Seekers in Practice .... 399
  2.14.2. Implementation of the Readmission Agreement ........ 402

2.15. Fight against Organised Crime – Legislation and Practice .... 404
  2.15.1. Seizure and Confiscation of Proceeds from Crime Act .... 404
  2.15.2. Practical Application of the Seizure and Confiscation of
          Proceeds from Crime Act ...................................... 405

Appendix I
  The Most Important Human Rights Treaties Binding on Serbia .... 407

Appendix II
  Legislation Concerning Human Rights in Serbia ............... 413
Abbreviations

AI – Amnesty International
AEAD – Act on the Election of Assembly Deputies
ANCP – Act on Non-Contentious Procedure
Anti-Violence Act – Act on Preventing Violence and Unbecoming Behaviour at Sports Events
APV – Autonomous Province of Vojvodina
BIA – Security Information Agency
BiH – Bosnia and Herzegovina
CeSID – Centre for Free and Democratic Elections
CC – Criminal Code of Serbia
CCS – Constitutional Court of Serbia
CESCR – Committee for Economic, Social and Cultural Rights
CoE – Council of Europe
Constitution of Serbia – Constitution of the Republic of Serbia
CRC – Centre for the Rights of the Child
CPA – Civil Procedure Act
CPT – CoE Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CPC – Criminal Procedure Code
CSCE – Conference for Security and Cooperation in Europe
DEVD – Decision on the Election of AP Vojvodina Assembly Deputies
DS – Democratic Party
DSS – Democratic Party of Serbia
ECmHR – European Commission of Human Rights
ECTHR – European Court of Human Rights
EIONET – European Environment Information and Observation Network
ESC – European Social Charter (Revised)
EU – European Union
EULEX – European Union Rule of Law Mission

European Court – European Court of Human Rights
EC – European Community
FA – Family Act
FNRJ – Federal People’s Republic of Yugoslavia
FRY – Federal Republic of Yugoslavia
GDP – Gross Domestic Product
GLIC – Gay Lesbian Information Centre
GSA – Gay Straight Alliance
HLC – Humanitarian Law Center
HRW – Human Rights Watch
IAS – Internal Affairs Secretariat
ICCCPR – International Covenant on Civil and Political Rights
ICESCR – International Covenant on Economic, Social and Cultural Rights
ICTY – International Criminal Tribunal for the Former Yugoslavia
ILO – International Labour Organisation
IJAS – Independent Journalists’ Association of Serbia
IMF – International Monetary Fund
JAS – Journalists’ Association of Serbia
JNA – Yugoslav People’s Army
JS – United Serbia
KLA – Kosovo Liberation Army
KOREKOM – Coalition for the Establishment of a Regional Commission for investigating and disclosing the facts about war crimes and other serious human rights violations in the territory of the former Yugoslavia
LA – Labour Act
LDP – Liberal Democratic Party
LEA – Local Elections Act
LGBT – Lesbian Gay Bisexual Transgender
Abbreviations

LSV – League of Social-Democrats of Vojvodina
MIA – Ministry of Internal Affairs
NATO – North Atlantic Treaty Organization
NGO – Non-governmental organisation
ODIHR – Office for Democratic Institutions and Human Rights
OSCE – Organisation for Security and Cooperation in Europe
PSEA – Penal Sanctions Enforcement Act
PUPS – Party of United Pensioners
RATEL – Republican Telecommunications Agency
REC – Republican Electoral Commission
RBA – Republican Broadcasting Agency
RS – Republic of Serbia
RTS – Radio Television of Serbia
RZZO – Republican Health Insurance Bureau
SAI – State Audit Institution
SaM – Serbia and Montenegro
SCPCA – Seizure and Confiscation of Proceeds from Crime Act
Serbia – Republic of Serbia
SFRY – Socialist Federal Republic of Yugoslavia
Sl. glasnik – Official Gazette of the Republic of Serbia
Sl. list – Official Gazette (of the FRY and later, SaM)
SPS – Socialist Party of Serbia
SPC – State Prosecutors Council
SRS – Serbian Radical Party
UN – United Nations
UNHCR – United Nations High Commissioner for Refugees
UNMIK – United Nations Interim Administration Mission in Kosovo
Venice Commission – European Commission for Democracy through Law of the Council of Europe
VBA – Military Security Agency
VOA – Military Intelligence Agency
VSS – Supreme Court of Serbia
WHO – World Health Organization
YUCOM – Lawyers Committee for Human Rights
Preface

The Belgrade Centre for Human Rights has been publishing its synthetic and comprehensive report on the state of human rights in the country since 1998. The purpose of this Report is to present and review the constitutional and legal provisions related to human rights in Serbia. The Report analyses the degree to which the national legislation is in conformity with the standards in the two most important universal international treaties adopted by the United Nations and ratified by the state – the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, and its conformity with treaties adopted under the auspices of the Council of Europe, notably the European Convention on Human Rights and Fundamental Freedoms. Serbia is also bound by the numerous other international treaties it ratified and the Report analyses the ones relevant to the protection of human rights.

The Report is divided into two sections.

Section I analyses and elaborates in detail the legal provisions related to human rights. It analyses the constitutional provisions, the most relevant valid laws and specific by-laws that may impact on the full enjoyment of human rights. The relevant provisions in the national laws are compared with Articles in the UN Covenants and the European Convention on Human Rights and interpretations provided by the UN Committees and the European Court of Human Rights in their practice.

Section II of the Report is devoted to the actual enjoyment, restrictions or violations of human rights guaranteed by international treaties and the Constitution and laws of Serbia. The section entitled Human Rights in Practice – Selected Topics, apart from texts on the degree in which specific human rights are respected in practice, includes thematic wholes covering a number of human rights relevant to these themes and specific topics chosen for their strong political implications and effects on the state of human rights in the country.

The BCHR’s associates have systematically monitored media and reports of international and local NGOs, but have presented only data indicating abuse of specific rights. The Report does not offer final assessments; rather, it presents data published by the media and in human rights reports.

The publication of this Report was supported by the Embassy of the Federal Republic of Germany, which has co-funded it for several years now. We take this opportunity to thank it for supporting our efforts to contribute to the improvement of human rights reporting.
The Report was composed by the following associates of the Belgrade Centre for Human Rights: Jelena Aćimović, Nevena Dičić, Dina Dobrković, Bojan Gavrilović, Nikola Grujić, Andelka Marković, Žarko Marković, Damir Milutinović, Nevena Nikolić, Ivan Protić, Duška Tomanović, Sonja Tošković and Jovana Zorić. They were amply assisted also by Una Protić.
Introduction

**Criticisms of the 2006 Constitution of Serbia** were frequently voiced by political and professional circles again in 2010. They most often called for the rationalisation of the governance apparatus and elimination of elements perceived as archaic and in contravention of Serbia’s ambitions to join the European Union. Notably, a number of suggestions were made to cut down the number of deputies, as the 250-man strong parliament is considered disproportionately big considering the size of the country and its population. There were also criticisms of the election system giving the political party leaderships excessive powers and degrading the role of the people’s deputies and their links with the electorate. Namely, political parties can fully revise the election results after the elections by awarding seats to the candidates on the election lists as they see fit and not following the order of the candidates on the election lists. Toleration of so-called “blank resignations”, which the elected candidates deposit with their party leaderships and which the latter can activate at any time, received the brunt of criticism both in Serbia and the international community. This practice is facilitated by a constitutional provision allowing the elected deputies to place their mandates at their parties’ disposal.

The Preamble to the Constitution, which considers that “the Province of Kosovo and Metohija is an integral part of the territory of Serbia,... and that from such a status ... follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations” was incorporated in the Constitution as a concession to the nationalist right and extreme right forces. It has, however, lent an aura of rigidity to Serbia’s policies, exposing the state authorities to sweeping attacks and hindering its dialogue with the international community. Moreover, the rightist parties, which had at the time imposed this text, have in the meantime either lost the support of the voters, such as the Democratic Party of Serbia (DSS), or have split up, like the Serbian Radical Party, into a stronger and more moderate wing, which set up the Serbian Progressive Party (SNS), and the weaker wing, which kept the party name and continued pursuing its ultra-nationalist and anti-European policies.

Although the deadlines for aligning the legislation with the Constitution have expired, not all the necessary legal amendments have been adopted yet. Even those passed with delay have been criticised as rash and imprudent.

All the **Constitutional Court of the Republic of Serbia** judges were at long last appointed in 2010 and the Court is now operating at full capacity. It remains to be seen whether it will be able to quickly deal with its backlog and face new challenges. One such challenge appeared due to the difficulties that arose during
the ambitious judiciary reform. The authors of the reform had perceived it as a thorough reorganisation of the judiciary, entailing the establishment of new courts with different subject-matter and territorial jurisdictions, as well as an opportunity to review the staffing of the courts and prosecution offices. They presented the general reappointment of the judges and prosecutors not as a procedure entailing a review of the qualities of the incumbent judges and prosecutors and, consequently, dismissals of some of them, but as an entirely new reappointment procedure, in which every judge and prosecutor had the opportunity to apply for the office s/he desired. The procedure was entrusted to the High Judicial Council (HJC), which publicised its decisions in late 2009. The HJC decisions caused furore and led to the widespread opinion that the HJC had not properly applied the defined criteria and thus left numerous qualified judges jobless, while it awarded tenure to some judges lacking the required qualifications and with poor performance records. The greatest formal shortcoming of the HJC decisions was that they merely stated which candidates were successful or unsuccessful but lacked individual reasonings. Ambiguities over which legal remedy the unsuccessful candidates had at their disposal led them to file constitutional appeals with the Constitutional Court. The Court in 2010 managed to review only several appeals.

The Government attempted to overcome the impasse by submitting to the National Assembly for adoption amendments to the judiciary laws and allowing the unsuccessful candidates to file complaints with the High Judicial Council (the composition of which will partly change) with the aim of putting off the reviews of constitutional appeals for a while. It is too early to assess whether this solution will dampen the negative effects of the judiciary reform. Legal professionals are dissatisfied with the solution. It also remains to be seen whether it will satisfy the European Commission, which criticised the hitherto reform results and let Serbia know that its EU candidacy would not make headway unless the situation in the judiciary improved.

The first elections for the National Minority Councils in Serbia were held on 6 June and 54.5% of the 436,334 voters entered in the separate minority voter registers cast their votes. Sixteen minority communities elected their Councils in direct elections, while three minority communities, the Croats, Slovenes and Macedonians, elected their representatives via electoral assemblies. Only the National Minority Council of Bosniaks had not been constituted by the end of the year. The Human and Minority Rights Ministry does not recognise the Bosniak Council constituted on 7 July by the Bosniak Cultural Community headed by Mufti Muamer Zukorlić, with the support of the Bosniak Revival, claiming that this body must be established by a two-thirds majority vote. As the Bosniak National Minority Council did not begin work by 9 December, within six months from the day the election results were declared, the Ministry said that a new round of elections for the Bosniak National Minority Council would be called.
The territory of the Autonomous Province of Kosovo and Metohija has been under international administration since 1999 pursuant to UN Security Council Resolution 1244 (1999) and the 1999 Kumanovo Agreement agreed on by the Federal Republic of Yugoslavia, which was still led by Slobodan Milošević. Apart from the administration established by international organisations, primarily the United Nations and the European Union, Kosovo is run by authorities established by Kosovo Albanians since 1999. Their parliament unilaterally declared the independence of Kosovo on 17 February 2008. By the end of 2010, 72 states recognised Kosovo and established diplomatic relations with it.

Kosovo’s first parliamentary elections since the declaration of independence were held on 12 December. The turnout was 47.8%. Most votes went to Hashim Thaçi’s Democratic Party of Kosovo. Of the eight Serb parties that ran in the elections, most votes went to the Independent Liberal Party. Serbs have 10 guaranteed seats in the 120-seat Kosovo Assembly. The final election results were not declared by the end of the year because elections were to be repeated in five municipalities on 9 January 2011 due to irregularities. The December elections, too, were accompanied by heated discussions about whether Kosovo Serbs should take part in elections organised by the Kosovo authorities, which Serbia does not recognise. The Serbs in northern Kosovo and those living south of the Ibar River, mostly in smaller or bigger enclaves, are having increasingly divergent opinions on this issue.

In keeping with the tendency to gradually withdraw UN authorities from Kosovo and cede international presence primarily to the European Union, the European Union Rule of Law Mission (EULEX) was established in Kosovo to assist and support the Kosovo authorities in the rule of law. After their initial opposition to EULEX, the Serbian authorities agreed to cooperate with it, but still abide by the policy that the United Nations Interim Administration Mission in Kosovo (UNMIK) is the only authority that may represent Kosovo. Serbia’s representatives continued boycotting all events at which Kosovo was represented by the new Government in Priština and agreed to enter into international arrangements with UNMIK alone. In addition, there are parallel local self-governments in Kosovo, those established pursuant to Serbian laws and elected at elections organised and funded by Belgrade and those set up by the Kosovo authorities and elected at local elections organised by Priština. The new authorities of the self-proclaimed Republic of Kosovo de facto do not control the northern part of Kosovo around Kosovska Mitrovica; on the other hand, Serbian state authorities, comprising also a separate Ministry for Kosovo and Metohija, have difficulties in establishing presence in the rest of Kosovo.

Efforts to challenge the independence of Kosovo before the International Court of Justice continued in 2010. The ICJ on 22 July adopted an advisory opinion that the unilateral declaration of Kosovo’s independence did not violate international law. Official Serbia, which had considered the UN General Assembly decision to ask the ICJ for an advisory opinion as a major foreign policy success, was dissatisfied with the opinion and tried to dampen its effects. It claimed that the ICJ
limited itself only to formal issues, notably, whether a group of representatives of an ethnic group was violating international law by adopting a declaration on the independence of the territory it inhabited and that the final political decision had to be taken by the UN General Assembly. Serbia’s National Assembly on 28 July adopted a resolution to that effect, in which it “affirms its current policy of the preservation of the sovereignty and territorial integrity of the Republic of Serbia conducted on the basis of all previous parliamentary decisions regarding Kosovo-Metohija and orders the government to resort to all available diplomatic and political means at the disposal of sovereign states, UN members, to implement activities to achieve this goal”. The Assembly also confirmed that “that the Republic of Serbia will never, either explicitly or implicitly, recognise the unilaterally declared independence of Kosovo-Metohija” and expressed the conviction that “it is necessary to reach a lasting, sustainable and mutually acceptable solution to the issue of Kosovo-Metohija through peaceful negotiation, in line with the Serbian Constitution, which will enable a historic reconciliation between the Serbian and Albanian people, as well as peace and stability in the region.” The Assembly also voiced “its support to the government in the process of submitting a resolution to the UN General Assembly, the adoption of which will open a path for reaching a compromise solution for Kosovo-Metohija through negotiation”. The Government rapidly drafted the resolution that would neutralise the effects of the advisory opinion. However, under obvious pressure from the EU, it was forced to abandon the text and draft a new resolution together with the EU, which the UN General Assembly adopted by acclamation on 9 September. The draft resolution submitted by Serbia said that “that unilateral secession is not an acceptable manner of acquiring statehood and solving territorial disputes”. This sentence was unacceptable for the USA and the EU member states that had recognised Kosovo. The prior calls to relaunch the talks on Kosovo’s status were also deleted from the text. The resolution called for negotiations between Belgrade and Priština and welcomed the EU’s readiness to facilitate the dialogue between Serbia and Kosovo which will be “a factor of peace, security and stability in the region.” The General Assembly “received with respect” the ICJ’s advisory opinion in the Resolution, thus ending the debate in the UN bodies on the Court decision. Serbian officials stopped criticising the advisory opinion, as did nearly all the media.

The report submitted by Council of Europe Parliamentary Assembly Rapporteur Swiss Senator Dick Marty to the relevant Parliamentary Assembly Committee in early December provoked a lot of attention and agitation. Mr. Marty claimed that some Kosovo Liberation Army (KLA) members had during the clashes in Kosovo transferred their prisoners, mostly Serbs but ethnic Albanians as well, to northern Albania, where they extracted their organs, which they sold to rich clients on the black market. Such claims had already been reported and rumours; suspicions of such operations were also voiced by former ICTY Prosecutor Carla Del Ponte in her memoirs. In his report, Marty made a number of references to Kosovo Prime Min-
ister and likely presidential candidate Hashim Thaçi. He claims Thaçi headed the so-called KLA Drenica Group, which was involved in trafficking in organs, drugs and weapons. Marty’s report has been included in the agenda of the CoE Parliamentary Assembly session scheduled for late January 2011. As opposed to some media, the Serbian President and Government refrained from using this report to attack the Kosovo Albanians, while the Serbian investigation authorities expressed readiness to cede the investigation to the international authorities in Kosovo. Marty, however, was fiercely criticised in Kosovo and Albania.

Serbia in 2010 continued declaring EU accession its chief foreign policy goal. The Stabilisation and Association Agreement with the EU did not, however, come into force in 2010 due to the opposition or procrastination of some EU member states, which cited bilateral reasons or Serbia’s failure to hand over the two remaining war crime fugitives, Ratko Mladić and Goran Hadžić, to the International Criminal Tribunal for the Former Yugoslavia (ICTY). The EU Council of Ministers on 14 June called on the EU member-states’ parliaments to ratify the SAA. Ten out of the 27 EU member states ratified it by mid-December 2010. On 25 October, the Council decided to forward Serbia’s accession candidacy to the European Commission for consideration. The Serbian Government was sent a questionnaire to fill which will be used to assess Serbia’s readiness for the status of candidate. The questionnaire includes 2,483 questions classified in 33 chapters. The answers are to be submitted by 1 February 2011. The EC is expected to render its opinion on Serbia’s candidacy application in the latter half of 2011.

Serbia considerably improved its relations with the neighbouring countries, the former SFRY republics, in 2010. The main tone to such relations in the region was set by the newly elected Croatian President Ivo Josipović and Serbian President Boris Tadić, who met in a friendly atmosphere on a number of occasions. Particularly symbolic were their visits to Vukovar and other sites of large-scale civilian deaths in the conflicts during the early 1990s. The presidential visits, however, did not result in Croatia and Serbia withdrawing the genocide charges and counter-charges they had filed against each other with the International Court of Justice.

Serbia’s relations with Bosnia-Herzegovina, Montenegro and Macedonia have also improved. Serbia in 2010 signed with Croatia and Montenegro bilateral treaties on the extradition of their nationals suspected of grave organised crime and corruption. Such an agreement cannot be signed with Bosnia-Herzegovina until it amends the relevant provisions of its Constitution. Arrests ensued immediately after the Agreements were signed.

Better regional relations were considerably facilitated by the National Assembly Declaration on Srebrenica of 30 March. In it, the Assembly “most severely condemns the crime committed against the Bosniak population in Srebrenica in July 1995 in the manner established by the ruling of the International Court of Justice, as well as all the social and political processes and incidents that led to the creation of awareness that the realisation of personal national goals can be achieved by the
use of armed force and physical violence against members of other nations and religions, extending on the occasion condolences and apologies to the families of the victims that everything possible had not been done to prevent the tragedy”. The Assembly also extended “full support to the work of the state authorities charged with prosecuting war criminals and successful completion of the cooperation with the International Criminal Tribunal for the Former Yugoslavia, in which the detection and arrest of Ratko Mladić for the purpose of standing trial before the International Criminal Tribunal for the Former Yugoslavia is particularly significant”. The Assembly also called on “all the former conflicting sides in Bosnia and Herzegovina, as well as in the other states of the former Yugoslavia, to continue the process of reconciliation and strengthening of the conditions for common life based on national equality and full observance of human and minority rights and freedoms so that the committed crimes are never repeated”. The Assembly expressed the expectation that the highest authorities of other states in the territory of the former Yugoslavia would also condemn the crimes committed against the members of the Serbian people in this manner and extend condolences and apologies to the families of the Serbian victims.

The Declaration was adopted amid fierce resistance of the nationalist right parties. As a concession, the parliamentary majority avoided qualifying the crime in Srebrenica as genocide and pledged to adopt another Declaration condemning crimes against Serbs and the citizens of Serbia. This Declaration was adopted by the National Assembly on 14 October. It “most strongly condemns the crimes committed against the Serbian people and citizens of Serbia during the course of armed conflicts in the Republic of Croatia, Bosnia and Herzegovina and Kosovo and Metohija, and urges parliaments of other countries, particularly countries in the territory of former Yugoslavia, to condemn those crimes and provide full support to their national authorities and international community institutions in the prosecution of the perpetrators, and, while equally appreciating the value of every human life, express respect for the Serbian victims”. The Declaration also expresses “regret at and solidarity with the victims of NATO bombing” in 1999.

The Assembly extended full support to all state authorities and institutions charged with “keeping the memory of the victims alive, to constantly remind the global public of the horrible atrocities and crimes committed against the Serbian people and citizens of Serbia during the 1990s” and appealed on “international institutions to ensure that the Serbian victims are treated equally with the victims of other nations, and that the perpetrators of committed crimes are equally held accountable”. Notwithstanding signals that Serbia and Croatia ought to withdraw their genocide charges and countercharges, the Serbian parliament extended “full support to the legal team representing the Republic of Serbia in the proceedings against the Republic of Croatia before the International Court of Justice”.

Although war crime indictees Ratko Mladić and Goran Hadžić are still at large, Serbia’s relations with the International Criminal Tribunal for the Former
Yugoslavia are mostly qualified as positive. The ICTY Chief Prosecutor visited Belgrade on several occasions in 2010. He said that Serbia was fulfilling all its other obligations to the ICTY. This assessment is linked to the increasingly strong authority of the Belgrade Higher Court War Crimes Department and the war crimes prosecution office, which have been performing their duties successfully and cooperating well with their counterparts in the neighbouring countries. Surveys, like the one conducted by the BCHR, however, indicate that most of Serbia’s citizens are still mistrustful of the ICTY and perceive it as a partial political institution prejudiced against Serbs and Serbia.

The authorities in 2010 invested major efforts to ensure the success of the Belgrade Pride Parade, which had to be cancelled in 2009. This event, however, demonstrated the proportions of homophobia in Serbia and the ability of extreme right organisations to provoke serious riots and bring the state’s authority into question. The event was formally held on 10 October, but the participants, organisations advocating LGBT rights and eminent figures and ministers supporting them, together with the representatives of the international community, were confined to a small venue in the heart of Belgrade and guarded by strong police forces. More than 6,000 hooligans, many of whom came to Belgrade from the interior, provoked riots that left 124 policemen and 17 rioters injured and incurred major material damage. Apart from homophobia, the rioters displayed a strong political streak. They also attacked the headquarters of the Democratic Party and the Socialist Party of Serbia, both members of the ruling coalition, and the pro-European and anti-nationalist Liberal Democratic Party, as well as the Radio Television Serbia building. The ultranationalist circles’ wrath against the media company B92 was demonstrated also by the demolition of a mammography van which was donated by the B92 and carried its label. The police took in over 200 rioters and arrested Mladen Obradović, the leader of an extreme right movement. The prosecution office ordered that he be remanded in custody and he was still behind bars at the end of the reporting period.

Similar forces sprang into action again two days later, when a group of fans rioted and interrupted a Serbia-Italy soccer game in Genoa. Although the trials of the rioters in Serbia and Italy had not begun by the end of the year, many of them have prior records for attacking foreign embassies in Belgrade and the common opinion is that their ventures abroad would not have been possible without assistance from organised criminals. Some, including the Serbian President, even believe that organised resistance by forces aiming to inhibit Serbia’s EU accession is at issue.

All these events had again drawn attention to the aggressiveness of registered and unregistered extreme right organisations, linked with various other interest groups, including, notably, organised crime groups, as corroborated by the collusion between such organisations with sports clubs and their fans and, in the heart of Belgrade, on 17 September 2009, when a young French national, who had come to root for his soccer team, was brutally killed. The police investigation established that the
main suspects were members of fan groups, expressing also strong nationalist and racist views alongside their sports emotions. The trial of the perpetrators was dragging on and had not been finished by end of 2010.

The Constitutional Court in 2010 reviewed the motion by the prosecution office to prohibit specific fan groups and sub-groups. It declared that it did not have jurisdiction to ban them, because they were not registered although they de facto existed.

As in all transition countries, systemic corruption plagued Serbia in 2010 as well. The common belief is that the fight against this social evil was neither decisive nor consistent. The Anti-Corruption Council continued operating as a strange hybrid of a governmental and non-governmental institution. It was founded back in 2001 by the government as its advisory body rallying eminent figures, but the authorities never provided it either with real powers or support. Some ministers were even openly dismissive of it, qualifying it as a congregation of incompetents. The Anti-Corruption Agency was established pursuant to a separate law at long last, in 2009. Its Board also comprises independent figures but the Agency has greater powers and administrative support. The Agency faced difficulties as soon as it became operational in 2010. Its attempt to prevent conflicts of interest of MPs simultaneously heading local self-governments was officially thwarted by the National Assembly on 28 July, when it passed amendments to the Anti-Corruption Agency Act. Under the original provisions, elected officials had to notify the Agency of the offices and jobs they were performing and they would have to choose which office they would remain in if the Agency established that they were in conflict of interest. The local and national parliament deputies elected at direct elections were, however, exempted from this obligation by the July amendments. The Agency challenged the constitutionality of the July amendments and the Constitutional Court asked the National Assembly to declare its view on the issue.

Both the above illustration and the attempts to interpret the obligation of independent authorities – such as the Protector of Citizens and the Information of Public Importance and Personal Data Protection Commissioner – to report to the National Assembly as the parliament’s right to control their work and dismiss them, demonstrate the extent to which Serbia still has difficulties accepting the existence of independent regulatory authorities.

On 15 December, the National Assembly adopted a decision abolishing compulsory military conscription in Serbia. Compulsory military service will terminate once the recruits drafted in 2010 complete their service. As of 1 January 2011, military service will be voluntary. The Serbian Army will be professionalised and the reserve forces, comprising men, who had already served their military service, will be activated in extraordinary situations. The abolition of compulsory military service marked the end of a 150-year-long institution that left a strong imprint on the national psyche. Conservative politicians and publicists perceive this decision as yet another example of decadence and loss of national identity.
Niš Bishop Irinej became the new Serbian Orthodox Church (SPC) Patriarch on 22 January. He was selected by “apostolic lot”, by a draw i.e. without a vote, among the three candidates, who had won the most votes at the Holy Assembly of Bishops session. Metropolitan of Montenegro and the Littoral Amfilohije and Bač Bishop Irinej were the other two candidates. Patriarch Irinej is perceived as a moderate and more open to inter-faith dialogue compared to some other bishops. The most vociferous opponent of such relations and EU accession is former Raška Prizren Bishop Artemije, who ran the SPC Diocese in Kosovo. He was first retired and then defrocked on 16 December. Apart from canonical sins, he is also charged with tolerating corruption and embezzlement committed by his subordinates. Some monks and priests and specific extreme nationalist secular groups sided with Artemije in the clash weighing down on the SPC the whole year.

The general attitude towards non-governmental organisations remained ambivalent. Many media and a considerable share of the public, as well as leaders of nationalist parties and movements, still harbour the prejudices created during the Milošević regime against non-governmental organisations advocating the promotion of human rights, confrontation with the past and reconciliation between nations. They are perceived as nationally dubious, even subversive, and insinuated to be under foreign influence. According to numerous critics, the general official stand on NGOs and civil society is evidenced also by the state budget allocation for NGOs, under budget line 481 titled “subsidies to non-governmental organisations”. In 2010, a lion’s share of those subsidies went to the SPC, while the Red Cross of Serbia ranked second and was allocated half of the funds designated for the SPC. The other beneficiaries make up a strange conglomerate of cultural-artistic societies, sports and youth organisations, associations of veterans (and their descendants) and even political parties. As beneficiaries of state funds are not obliged to submit reports to the authorities on how they spend the subsidies, there are suspicions that some funds are allocated to individuals and even extremist groups. The number of extreme right and nationalist associations is still on the rise and their leaders are persistently trying to draw attention to themselves and their ideologies. Some of the associations are not even registered, which has rendered difficult any action against them and even the attempts to ban them have been fruitless.

The general impression persists that trade unions and professional associations are still not fully playing the social role they should.

Serbia was still rocked by the economic crisis in 2010. Although some politicians expected that its effects on Serbia would be milder, the recession further undermined the economic situation and led to a visible fall in living standards. A disproportionately high share of the population is living below the poverty line and the social inequities have become increasingly pronounced. One of the visible effects of the crisis was the increasing dissatisfaction among the workers, many of whom had lost their jobs and stand little chance of finding new ones. The effects of mishandled privatisations of state and socially owned companies, which often ended up
in the hands of incompetent or corrupt owners, continued to be extremely dramatic. The owners either did not know how to manage the companies or bought them at low prices not to develop their business operations, but to sell off the buildings and production facilities, without fulfilling their obligations to the workers. The workers of many privatised companies realised that the new owners had not been paying their compulsory pension and health insurance. Their dissatisfaction turned against the state, taking forms causing major general damage, such as blockades of railways and roads. It transpired that the Government usually did not have the right answers to the social tensions and again began looking for a way out by renationalising the privatised companies, which has impeded economic reforms and rendered difficult Serbia’s adjustment to the conditions it needs to fulfil to join the EU.

The International Monetary Fund delegation again visited Serbia in October and November to review the Stand-By Arrangement the IMF approved Serbia with its partners. They agreed to tighten the fiscal policy to reduce external pressures on the foreign exchange rate and limit inflationary expectations. The IMF wants Serbia to cut its state deficit to 4% GDP and contain the pressures the increase in public spending has had on price growth. The IMF is not willing to succumb to the trade unions, which insist that the Pension and Disability Insurance Act include a provision guaranteeing that the pensions will not fall below 60% of the average wage. Although the authorities violated their previous agreement with the IMF by withdrawing the law from the parliament pipeline, the IMF mission was unable to modify the IMF Board of Directors decision on the necessity of adopting this law notwithstanding unionist pressures and called on the authorities to resubmit it for adoption unamended. The authorities failed to clearly voice their view on the IMF demand even after the latter left Serbia.
Summary

Human Rights in Legislation

1. The National Assembly in 2010 continued with its deplorable practice of adopting laws under an emergency procedure. This precluded serious expert public debates of some extremely important laws and thus the opportunity for their improvement. Not all of the adopted laws are of high quality and some of their provisions are in contravention of or not aligned with other laws and subsidiary legislation. This is one of the reasons why initiatives for the review of the constitutionality and legality of some laws are frequently launched before the Constitutional Court of Serbia as soon as they are adopted.

2. The Constitutional Court in 2010 reviewed the constitutionality of several laws relevant to human rights: the Act Amending the Public Information Act, the Act on Churches and Religious Communities and the Family Act. The Court declared unconstitutional six articles of the Act Amending the Public Information Act, thus repealing the provisions in contravention of European and international standards. It also held a public debate on the constitutionality of the Act on Churches and Religious Communities but had not rendered a decision on the challenged provisions by the end of the reporting period. The Constitutional Court rejected the Belgrade Centre for Human Rights initiative to review the constitutionality of the provision in the Family Act under which a longer-lasting extramarital union is a union only between persons of different sexes, which, in the view of the BCHR, is discriminatory.

3. In 2010, the Assembly adopted slightly over 30 new laws and amended sixty or so existing laws. It, however, failed to adopt several significant laws, which would help improve the legislative framework for the protection of human rights, notably, a new criminal code, civil procedure act, law on enforcement of judgements and a notaries public act.

The Assembly also ratified a number of international treaties, including the following of relevance to human rights: ILO Convention No. 183 on Maternity Protection, the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the CoE Framework Convention on the Value of Cultural Heritage for Society, 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 on the Preservation of Intangible Cultural Heritage, the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology

4. The 2006 Constitution introduced into Serbia’s legal order the institute of constitutional appeal as a specific legal remedy, but the Constitutional Court began reviewing the appeals only after it adopted its Rules of Procedure in February 2008. The European Court of Human Rights considers the constitutional appeal an effective legal remedy since August 2008, when the Constitutional Court published its first decisions on the merits on the constitutional appeals. The Constitutional Court has commendably been increasingly invoking relevant ECtHR case law in its decisions. It, however, faces a huge backlog. According to October 2010 data, the cases pending before it included around 7,000 constitutional appeals (of which as many as one-third were filed over the right to a trial within a reasonable time), around 600 normative control cases and 110 challenged laws. The Constitutional Court ruled on 671 constitutional appeals (most of which it dismissed) and on the merits of 148 cases from January to October 2010.

5. The fact that around 2,000 constitutional appeals over violations of the right to a trial within a reasonable time have been filed with the Constitutional Court gives rise to concern. The Serbian legislation lacks an effective legal remedy against unjustifiably long trials and violations of the right to a trial within a reasonable time laid down in Article 6(1) of the European Convention of Human Rights, an issue the BCHR has been alerting to for years. The European Court of Human Rights rendered judgements in nine cases against Serbia in 2010 and in most of them found that Serbia violated the applicants’ right to a fair trial; in two of its judgements, the ECtHR established violations of the right to a trial within a reasonable time.

6. In late 2010, the Justice Ministry proposed and the National Assembly adopted amendments to five judiciary laws (Act on Judges, the Public Prosecution Act, the High Judicial Council Act, the State Prosecutors Council Act and the Act on Organisation of Courts). Under the new provisions, the reappointment of the judges and prosecutors will be reviewed because the High Judicial Council in its permanent composition will review the appointments to permanent tenure made by the High Judicial Council in its transitional composition. This solution again raises the issue of permanent tenure of judicial offices, launched during the first general reappointment procedure, because the adopted amendments clearly violate the right to permanent tenure. It is unconstitutional to review decisions awarding the judges tenure, as well as the right to permanent tenure, in the general reappointment procedure. The amendments violate the Constitution and generally accepted rules of international law, because they violate the right to an effective legal remedy, the principle prohibiting the retroactive application of the law, and the ne bis in idem rule given that they allow the High Judicial Council and State Prosecutors Council to decide on cases which they had already decided on. The adoption of the amendments
Summary

to the judiciary laws has again brought into question the whole judicial reform, launched the previous year and criticised both by Serbian and foreign experts.

7. Although the Act on a Single Voter Register was passed back in 2009, the State Administration and Local Self-Government Ministry failed to establish the central voter register in the form of an electronic database by the end of 2010, as stipulated by the Act. Alignment of the election laws with European standards calls for the urgent adoption of a law on the State Election Commission, which is to comprise experts, not individuals who represent and are accountable to political parties. Although the act has been drafted, it has not undergone a public debate, let alone been submitted to for adoption yet.

8. The provision in the Constitution allowing the submitter of an election list (election lists are for the most part submitted by political parties) to award seats after the declaration of the election results to candidates on the list at its own discretion rather than in the order on the election list introduces indirect elections through the back door and is not in conformity with European standards.

The abolition of imperative mandates of the Assembly deputies (“blank resignations”) could be achieved by amending the disputed provision in the Constitution allowing the deputies to place their mandates fully at the disposal of their political parties or by the adoption of a new Act on the Election of Assembly Deputies. The fact that neither was submitted to parliament for adoption in 2010 demonstrates the lack of will to ensure the respect of the citizens’ sovereign will through the election system.

9. The Anti-Corruption Agency is charged with controlling political party financial reports. The current legislative framework does not allow for a comprehensive and adequate oversight of party financing. The Agency does not have enough powers with respect to investigating and sanctioning abuses of party financing, particularly during election campaigns. A working group comprising representatives of the Justice Ministry and the Anti-Corruption Agency drafted an Act on Financing of Political Activities quite some time ago, but this law was not submitted to parliament for adoption by the end of the reporting period.

10. Anti-discrimination legislation is for the most part aligned with international standards. The Anti-Discrimination Act came into force back in 2009, but it was not until 2010 that the Assembly appointed the Commissioner for Equality, an independent regulatory authority introduced by the Act. In addition to this general anti-discrimination law, the Assembly also passed laws providing protection to specific vulnerable groups that are the most discriminated against, such as, e.g. persons with disabilities, women, et al.

11. The valid provisions in Serbian law prohibiting the concentration of media ownership are unsatisfactory. This is why the public, notably media associations, have been insisting on the adoption of a separate law on the prohibition of concentration of media ownership and on transparent media ownership. Such a law was drafted a few years ago and underwent a public debate but was never submitted
for adoption, although the media associations have persistently insisted on the need to adopt separate anti-monopoly legislation preventing the predominant or prevailing influence on public opinion, encouraging competition, ensuring the free circulation of information, thoughts and ideas allowing everyone to exercise the right to freedom of expression and the right to receive and impart information.

12. The Assembly passed the Act on the Prevention of Harassment at Work in 2010. Under this law, an employer is obligated to inform the workers in writing of the provisions of the law, ensure conditions prerequisite for a safe and healthy working environment, organise work in a manner precluding harassment, and protect the workers from harassment. The law holds the employer liable for sustained damages and lays down the procedure for protection from harassment at work, including measures to prevent harassment until the procedure is completed. It also allows for court protection of the injured party, who is entitled to initiate a labour dispute.

13. The enforcement of the Classified Information Act, passed by the National Assembly in December 2009, began on 1 January 2010. However, a number of by-laws are to be adopted for the Act to be applied, as it does not regulate specific crucial issues (such as the manner and procedure of labelling information or documents as classified) or specify the criteria for determining the classification levels. The Government was to have regulated these issues by enacting decrees within six months from the day the Act came into force, but had failed to do so by the end of 2010. Many public authorities failed to align their organisation with the Act within the one-year deadline laid down in the law. The Act also obliges heads of public authorities to review all information and documents classified pursuant to prior regulations within two years. Many have, however, not even begun this momentous task and many documents are still labelled as classified without justification.

14. The freedom of assembly, guaranteed by the 2006 Constitution of Serbia, still lacks an adequate legislative framework, given that the Act on the Assembly of Citizens of Serbia, passed nearly two decades ago, is still in force. Its obsolete provisions, which are not in conformity with the Constitution, remained unchanged although the Constitution was passed four years ago. The Human and Minority Rights Ministry in 2010 set up a working group to formulate recommendations on how to improve the legislation regulating the right to freedom of assembly, but the job was not completed by the end of the year.

15. The position of persons, whose status had remained unresolved after the break-up of the SFRY, particularly of internally displaced Roma, is still abject. There is still no law regulating the recognition of the legal subjectivity of “legally invisible” persons, although the Constitution guarantees everyone the right to legal capacity.

16. The right to popular initiative is not adequately realised and is hardly ever exercised in the National Assembly or the local self-governments. This is why a new law needs to be passed to ensure court protection of the right to popular ini-
Summary

An efficient initiative review procedure to be conducted by the competent representative bodies, extension of the deadline within which the signatures have to be collected, restriction of the number of signatures needed to launch a popular initiative in the local assemblies and allow for the online signing of initiatives. A group of experts drafted a model law on popular initiatives, but it was not submitted to parliament for adoption by the end of 2010.

Serbia did not make serious headway in addressing the issue of free legal aid in 2010 either. The Government, however, adopted the Strategy on the Development of a Free Legal Aid System in the Republic of Serbia for the 2011–2013 Period. Within this period, the authorities are to establish a Strategy Implementation Council, pass the necessary legislation and set up a nationwide register of free legal aid providers. The Strategy also provides for the basic and advanced professional training of free legal aid providers and the establishment of bodies providing free legal aid at the local self-government level.

Serbia last year ratified the revised European Social Charter, the main Council of Europe document for the protection of social and economic rights. Serbia ratified 88 of the 98 paragraphs, joining the group of states that accepted the greatest number of obligations in the Charter. Serbia put reservations on the provision whereby it excluded professional military staff from the right to collective action, including the right to strike, which is not in contravention of European standards. It, unfortunately, failed to sign up to the system of collective complaints, a monitoring mechanism envisaged by the Charter and a major advantage of the European social and economic rights protection system.

A new Preschool Education Act was adopted in 2010. Under the Act, the preschool education system is based on the principles of prohibition of discrimination (access), respect of the opinions of the child and the family, interaction with the families, schools and other relevant institutions, respect of diversity and the individual approach to the child. It commendably gives priority to the enrolment of children from vulnerable groups in preschool institutions established by the Republic, an Autonomous Province or a local self-government. Preschool education activities are treated as activities of particular relevance and the preschool institutions must ensure minimum work process in case of a strike.

Human Rights in Practice

The new National Assembly Rules of Procedure, adopted in 2010, increased the efficiency of the highest legislative body to an extent, but the deputies are still wasting precious time at the sessions in discussions that are not in the interest of the citizens and aimed at improving the legislation and which serve exclusively for the promotion of party interests. The most blatant illustration was the session in March, when the Assembly Declaration on Srebrenica was on the agenda. The parties (mostly the nationalist right) used the parliament dais to promote their ideas.
and send their messages out to their voters rather than express genuine compassion for the victims of this crime. The Declaration was adopted by a slim majority, by only one vote more than the required 50%.

2. Criticisms of the judicial reform, launched by the general reappointment of judges in 2009, continued in 2010 as well. The Judges’ Association of Serbia alerted to its deficiencies throughout the year, but the High Judicial Council and Justice Ministry did not heed the persistent demands of this professional association to shed light on the reappointment procedure and disclose the criteria applied during the procedure. It was evident that the procedure did not involve the vetting of the judges and that their reappointment was largely under the influence of politics. What is, however, the most disconcerting is that the authorities decided to adopt amendments to the judiciary laws in December 2010, which essentially sent the general judicial reappointment back to square one.

The judicial reform has also so far failed to improve the efficiency of the judicial authorities and the relevant services. This can partly be attributed to the new court network, which is not organised well yet, wherefore the judges and other court staff travel to the court units in the abolished courts, which is both financially and time consuming. In the first half of 2010, citizens had to spend days waiting in line for documents issued by the courts, because the moving of the administration and court files was poorly planned.

Furthermore, the High Judicial Council initially underestimated the number of judges Serbia needed, which resulted in a drastic increase in the judges’ annual caseloads. Having realised its mistake, the HJC rendered a decision increasing the number of judges, but did not advertise the new vacancies by the end of the year. The difficulties are compounded by the fact that all courts in Serbia, save the Supreme Court of Cassation, are still headed by acting presidents. The appointment of court presidents was launched in 2010 but suspended without a clear explanation.

3. The enforcement of final court judgements is one of the direst problems of Serbia’s judiciary. At an average, 650 days pass from the moment a court in Serbia renders a judgement until it is executed. Court electronic data show that nearly 1.6 million of the 1.9 million cases in Belgrade, alone, regard the enforcement of court judgements.

4. The executive and legislative authorities increased pressures on independent regulatory authorities in 2010. Apart from indirect pressures on the so-called “fourth branch of government“ preventing them from exercising their legally vested powers and reflected in the failure to provide them with adequate offices, the funds necessary for all their activities and engaging the adequate number of staff, the government and parliament in 2010 resorted also to direct pressures on the independent institutions, by adopting new laws or amending the laws regulating their work or laws directly related to areas in which these institutions should be performing oversight.
Notwithstanding frequent obstructions, some independent regulatory authorities, such as the Protector of Citizens, the Information of Public Importance and Personal Data Protection Commissioner and the Anti-Corruption Agency, were extremely active and invested major efforts in winning and preserving the support of the public at large.

5. The Anti-Discrimination Act and other laws relevant to the prohibition of discrimination are still not applied fully in practice. Discrimination is prominent in various walks of life in Serbia – at work and in recruitment, health, education, social protection, politics, etc. Roma, the poor, persons with disabilities, the elderly and the LGBT population were again the most frequent victims of discrimination.

6. The elections of the national councils of national minorities were doubtlessly the most significant event with respect to minority rights protection. The elections marked a positive step in the realisation of national minority rights, but the numerous irregularities and abuses accompanying the elections give rise to concern. They were alerted to by the Protector of Citizens, Information of Public Importance and Personal Data Protection Commissioner and the Commissioner for Equality, NGOs and the citizens themselves and led to the filing of numerous criminal reports.

The Bosniak national minority council was the only one not established after the elections, held on 6 June 2010, because the Human and Minority Rights Ministry amended the rules of procedure regarding the constitution of this council that led to an unjustified difference in requirements that had to be fulfilled by the Bosniak council and those that had to be fulfilled by all other minority councils and whereby it violated the principle of equality of election rights.

7. The Roma are by far the most vulnerable category of the population in Serbia. Their plight was deeply exacerbated by the country’s economic difficulties, undermining the effects of specific measures taken to improve their status. The problems Roma have been facing for decades now, such as the lack of personal documents, poor housing conditions, poor health care, discrimination in various areas and the ineffective investigation of ethnically motivated attacks, have not gone away. The measures taken to address them have mostly failed to improve the status of the Roma or have yielded merely partial results.

Forced evictions of Roma continued in Belgrade in 2010. The authorities drove smaller groups, usually several Roma families at a time, out of their homes. Although essentially based on the law and the city’s legitimate interest to tear down illegal buildings, these forced evictions of Roma families from the illegal settlements in Belgrade are often conducted in an inhuman and discriminating manner. The year 2010 unfortunately also witnessed a series of ethnically motivated attacks on Roma, including those against whole Roma settlements, such as the one that took place in the Banat village of Jabuka in June 2010.
8. The Pride Parade was finally held in Belgrade in October 2010. Although all relevant political factors, including Serbian President Boris Tadić, supported the holding of the Parade, its organisers and potential participants began receiving threats weeks before it actually took place. The Parade was held as planned, on 10 October, and attended by around one thousand people. Although no incidents broke out at the parade site, the situation on the streets of Belgrade was horrible. Numerous opponents of the Parade rallied in the surrounding streets, venting their violence and attacking the police safeguarding the Parade participants. The police estimated that there were around 6,000 rioters, a number that should elicit the concern of the authorities and prompt it to react much more fiercely than it has to date. Violence on Belgrade’s streets was condemned both by the senior state officials and the public at large, but, unfortunately, there were quite a few who blamed the Parade organisers and participants for the violence, claiming that the Parade should have not been allowed in the first place.

9. The Environmental Protection and Spatial Planning Ministry in 2010 launched an intensive campaign entitled *Let’s Clean Serbia Up*, aimed at raising awareness of the importance of preserving a healthy environment. A large number of citizens volunteered in the action *Spring-Cleaning Serbia* and cleaned up over two-thirds of the illegal garbage dumps in Serbia. Public awareness of the need to protect the environment has been rising, but there is still no will for proper waste management. The fact that new illegal garbage dumps sprang up on 20% of the cleaned-up land testifies that Serbia has a long way to go to reach the acceptable environmental and sustainable development standards. There are 400 registered environmental hot spots in Serbia. The Big Bač Canal is the most polluted waterway in Europe and the areas around Bor and Pančevo rank among regions most jeopardised by pollution. Although the necessary laws are in place, proper waste management is not on the priority list of either the citizens or the state. Recycling is insufficient and the current waste disposal practices of the population preclude the recycling of the waste.

10. As far as the prohibition of torture is concerned, it can be concluded that there is no systematic ill-treatment in Serbia and that the penal system has been changing for the better in the last few years, including in 2010. On the other hand, there are also some negative tendencies threatening to undermine the functioning of the prison system, above all the increasing overcrowdedness. The number of persons deprived of liberty has been constantly on the rise and now stands at nearly 12,000. The Justice Ministry estimates that the number of inmates may rise to 14,000 in 2012. The overcrowdedness has caused numerous difficulties and inevitably affected the inmates’ rights. The number of inmates in need of treatment for addiction (above all drug abuse) has been growing as well, but most penitentiaries lack the adequate conditions to provide such treatment.

The rising number of inmates has not been accompanied by an increase in penitentiary staff or the improvement of the structure of that staff. Most penitentia-
Summary

Riés are housed in old buildings; some of them are in the centre of town and cannot be expanded or reconstructed for lack of space.

11. Judging by reports by the media, NGOs and international organisations, Serbia has made some headway in tackling trafficking in humans. They, however, still note the need to improve the implementation of the laws and the cooperation between the courts, prosecutors and police. Serbia is still considered both a source and transit country for men, women, and girls subjected to trafficking, specifically forced prostitution and forced labour.

12. The year 2010 saw a rise in the number of violations of the freedom of expression, freedom of information and the professional code of conduct, of pressures and attacks on media and journalists, compounded by deteriorating financial and other problems of the media. Serbia’s poorer track record was also noted in the 2010 Press Freedom Index, on which Serbia slid 23 places over 2009. The financial problems of the media and journalists further aggravated during the year. The non-transparency of ownership was identified as a serious problem; it has amply been used to manipulate the media and exert prohibited influence on them. Journalists were attacked, threatened and sued in 2010 as well. On the other hand, many media in Serbia do not abide by the professional standards laid down in the national Press Code of Conduct, the Public Information Act and other regulations. The presumption of innocence, the right to privacy, the protection of minors from pornographic and other unsuitable content and the prohibition of discrimination were violated the most.

13. Violence is on the rise in Serbia. It breaks out in the streets, sports fields, in the homes and in schools. The police have not always succeeded in identifying and arresting the perpetrators of crimes with elements of violence. The prosecutors have been slow to react and the court proceedings last unjustifiably long. Violence in several cases ended in deaths; the perpetrators, members of soccer fan groups, were identified and their trials opened but are taking a very long time. Violence against children is increasing, as corroborated by the data on the number of crimes involving sexual exploitation and abuse of minors, paedophilia, sexual intercourse with children and other crimes targeting children.

14. Although the legislative framework for the protection of children is satisfactory, the rights of the child are often violated in practice. The rights of children belonging to specific vulnerable groups (poor children, children with physical or mental disabilities, children without parental care, children of the street, working children, et al.) are particularly jeopardised. The Roma children among them are the most endangered. Neglect, physical and sexual abuse and various forms of exploitation of children still feature prominently. Poverty and inadequate social care are two of the many reasons putting children in Serbia at risk. Peer violence is frequent as well. The inclusion of children with special needs in the mainstream education system, which began in 2010, has not yielded satisfactory results yet, probably because the stakeholders (teachers, parents, students in mainstream schools, children with special needs) have not been sufficiently prepared for or trained in inclusive education.
15. Long-term unemployment is still a chronic problem, affecting the younger workforce the most (given that the under 30 category accounts for one-third of the unemployed active population), older people who have lost their jobs but have not fulfilled the pension eligibility requirements, and women. The difficulties Roma have in finding a job have to be particularly highlighted. The high unemployment rate in this category of the population can primarily be attributed to their generally low education levels; only 11% of the Roma have secondary school degrees.

16. A number of privatisations in Serbia proved successful. But many drove the workers of the privatised companies to the brink of poverty and led to the total devastation of the companies and numerous abuses. A considerable number of privatisation contracts have been terminated, most often because the new owners failed to abide by the contract obligations, particularly to implement the investment and social plans. The agony Serbia’s workers have been suffering for 20 years now is merely prolonged by maintaining the status quo even in companies, in which it is more or less obvious that the fulfilment of the social programme and investment plans is unrealistic. Privatisation frauds are frequent and prompted a number of criminal proceedings in 2010. A string of strikes was staged by workers dissatisfied with the privatisation process.

17. The number of applications against the Republic of Serbia filed with the European Court of Human Rights is continuously rising. A total of 3,200 applications were filed with the Court from the day the ECHR was ratified until June 2010, or 3% of all applications against all States Parties to the Convention. As many as 95% of the applications against Serbia are dismissed, without being submitted to the respondent State. The Court has to date rendered 49 judgements against Serbia, 9 of which were delivered during 2010. The UN Human Rights Committee in 2010 reached one decision finding Serbia in violation of human rights.

18. Serbia again failed to fulfil its obligation and arrest the two ICTY indictees still at large, Ratko Mladić and Goran Hadžić. The topmost state authorities made some symbolic gestures to demonstrate their commitment to confrontation with the past. The National Assembly on 31 March passed the Declaration Condemning the Crime in Srebrenica. Serbia’s President Boris Tadić in July attended the 15th anniversary of the crime against the Bosniak population in Srebrenica, and the 19th anniversary of the fall of Vukovar and the killing of over two hundred Croatian prisoners at the Ovčara farm in November and December.
I
LEGAL PROVISIONS RELATED TO HUMAN RIGHTS

1. Human Rights in the Legal System of Serbia

1.1. Introduction

The present report reviews the legislation of Serbia with respect to the civil and political rights guaranteed by international treaties binding on Serbia, in particular the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocols and standards established by the jurisprudence of the UN Human Rights Committee and the European Court of Human Rights (ECtHR). Where relevant, the report also reviews Serbia’s legislation with respect to standards established by the International Covenant on Economic, Social and Cultural Rights (ICESCR), specific International Labour Organisation (ILO) treaties and other international treaties dealing with specific human rights, such as the UN Convention against Torture and the Convention on the Rights of the Child.

The Report deals with the entire Serbian legislation relevant to each of the rights reviewed, going beyond the actual text of the law to include judicial interpretation where it exists. The following elements are used to evaluate the conformity of the legislation with international standards:

– Whether a particular right is guaranteed;
– If so, how it is formulated in national legislation and to what extent the formulation differs from that contained in the ICCPR and ECHR;
– Whether the right is defined in national legislation and whether its interpretation by the state authorities carries the same meaning and scope as the ICCPR and ECHR;
– Whether the restrictions on rights envisaged by Serbian law are in accordance with the restrictions allowed by ICCPR and ECHR; and,
– Whether national legislation provides effective legal remedies the protection of a right.

The 2010 Report reviews legislation that was in force in 2010 but also comments laws that are adopted this year and will come into force in 2011.
1.2. Constitutional Provisions on Human Rights

The Constitution of Serbia contains a broad catalogue of human rights, but, probably because of the speed with which it was adopted or for other reasons, some human rights provisions in the new Constitution are deficient or ambiguous. The Constitution, however, leaves room for correcting some shortcomings in provisions on human rights in practice. Under Article 18 (3), provisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards regarding human and minority rights, as well as the practice of international institutions supervising their implementation. This implies that the views of the e.g. ECtHR or UN Human Rights Committee must be taken into account when interpreting human rights provisions. It may be presumed that an interpretation taking into account views of international human rights protection bodies (which is the obligation of those interpreting these provisions under the Constitution) will be to the benefit of promoting human rights.

1.3. International Human Rights and Serbia

Serbia is bound by all international human rights treaties ratified by the former SFRY, FRY and SaM. Under the Constitution of Serbia, the generally accepted rules of international law and ratified international treaties shall be an integral part of the national legal system and applied directly (Art. 16 (2)). In addition, Article 18 prescribes the direct application of human and minority rights guaranteed by the generally accepted rules of international law and ratified international treaties.

The Constitution, however, includes a disputable provision that places international treaties above laws but below the Constitution in the hierarchy of legislation as it stipulates the compliance of the ratified international treaties with the Constitution (Art. 16 (2) and Art. 194 (4)). Therefore, international treaties that had

---

1 More on the procedure under which the Constitution was adopted in Report 2006, III.1.
2 The human rights provisions in the new Constitution are analysed within the sections on individual human rights.
3 See R. Žarevac, “Issue of Trust and Practice”, European Forum No. 10 (Vreme, No. 825, 26 October 2006).
4 In the view of the Human Rights Committee, all states that emerged from the former Yugoslavia would in any case be bound by ICCPR since, once a human rights treaty is ratified, the rights enshrined in it belong to the persons in the jurisdiction of a state party irrespective of whether it subsequently dissolved into more states. See para. 4, General Comment No. 26 on issues relating to the continuity of obligations under the ICCPR, Committee on Human Rights, UN doc. CCPR/C/21/Rev.1/Add.8, 8 December 1997.
previously been in force can now not be applied unless they are in accordance with the new Constitution. A state cannot withdraw from the obligations it had accepted under an international treaty by amending national legislation, even the Constitution. The question therefore arises of what the practical effects will be if a ratified international treaty actually is not in accordance with the Constitution. As per international treaties Serbia is yet to accede to, they cannot be ratified unless they are in compliance with the Constitution.

It should be noted, however, that the Constitution stipulates the compliance of only “ratified international treaties” with the Constitution, but does not set these conditions for generally accepted rules of international law, which it explicitly qualifies as part of Serbia’s legal order.

*Universal International Treaties.* – The former Yugoslavia ratified all the major universal human rights treaties, including the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, International Convention on the Elimination of Discrimination against Women, Convention on the Rights of the Child, Convention on the Prevention and Punishment of the Crime of Genocide, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 2009, Serbia ratified the UN Convention on the Rights of Persons with Disabilities. 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 (see Appendix I). State bodies and courts in Serbia have, however, paid little attention to international human rights guarantees although it has been observed that judges have in the recent years begun to invoke ECHR provisions in the reasoning of their judgments.

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.6

6 The FRY recognised the competence of the Committee against Torture to receive and consider individual communications and communications by states parties under Articles 22 and 21, respectively, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. SaM ratified the Optional Protocol to the Convention against Torture, establishing an efficient system of monitoring prison and detention units, in December 2005. On 22 June 2001, the FRY ratified both the Optional Protocol to the International Covenant on Civil and Political Rights – thereby making it possible for individuals to submit communications to the Human Rights Committee – and the Second Optional Protocol to the Convention abolishing the death penalty. On 7 June 2001, the FRY made the declaration recognising the competence of the Committee on the Elimination of Racial Discrimination to receive and consider individual and collective complaints alleging violations of the rights guaranteed by the Convention on the Elimination of All Forms of Racial Discrimination. The FRY in 2002 ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women whereby it accepted the Committee’s competence to monitor the implementation of the Convention, receive and review communications submitted by or on behalf of indi-
As far as reporting to UN Committees is concerned, the UN Committee for the Rights of the Child reviewed two of Serbia’s reports on the implementation of two Optional Protocols to the Convention on the Rights of the Child and issued its concluding observations in June 2010.\(^7\) Serbia is scheduled to submit its Periodic Report on the Convention on the Rights of the Child in 2012. Serbia submitted its Periodic Report to the Human Rights Committee in 2009, with a year’s delay. The Committee this year forwarded Serbia a list of issues it is particularly interested in and which the state replied to in order to facilitate the comprehensive review of its report by the Committee.\(^8\) Serbia’s report is to be reviewed in 2011. The Committee on the Elimination of Racial Discrimination is scheduled to review in early 2011 Serbia’s Initial Report submitted last year. The Committee against Torture forwarded a list of questions to Serbia in 2010 which are to serve as guidelines for the next report to this body, due in 2012. The state reports to the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women were being drafted at the end of the reporting period. Serbia is to submit its Initial Report to the Committee on the Rights of Persons with Disabilities in 2011 as well.

_Council of Europe Conventions._ – On 26 December 2003, SaM ratified the ECHR and the 14 Protocols thereto. Several reservations to the Convention were initially entered. Some were withdrawn in the meantime, but the ones regarding public hearings of administrative disputes and certain provisions of the law on misdemeanours, are still in effect. When it entered the reservations, the state said that it would withdraw them as soon as the relevant provisions in national laws were harmonised with European standards. Given that a new Administrative Disputes Act was adopted back in 2009 and that the provisions on the work of misdemeanour courts came into force in January 2010,\(^9\) these reservations are now meaningless as they regard articles which are no longer valid. However, Serbia has failed to withdraw the reservations although a year has passed since the new laws rendering them superfluous have taken effect.

The Framework Convention for the Protection of National Minorities was ratified back in 1998 by the then FRY.\(^10\) The SaM Parliament on 26 December 2003 also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.\(^11\) The Assembly of Serbia and Montenegro ratified the European Charter for Regional and Minority Languages on 21 December individuals or groups of individuals regarding violations of rights guaranteed by the Convention. The Optional Protocol to the Convention on the Rights of Persons with Disabilities, allowing for submission of individual applications to the Committee for the Rights of Persons with Disabilities, was also ratified in 2009.

\(^7\) UN doc. CRC/C/OPAC/SRB/CO/1 and CRC/C/OPSC/SRB/CO/1.
\(^8\) UN doc. CCPR/C/SRB/Q/2.
\(^9\) See Article 88, Act on Organization of Courts, _Sl. glasnik RS_, 116/08.
\(^10\) _Sl. list SRJ (Međunarodni ugovori)_ , 6/98.
\(^11\) _Sl. list SCG (Međunarodni ugovori)_ , 9/03.
ber 2005. Serbia ratified the Revised European Social Charter, the CoE Convention on Action against Trafficking in Human Beings, the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, \(^\text{15}\)

Conventions adopted in 2010. – The National Assembly in 2010 ratified a large number of international treaties, but most of them are not relevant to human rights. Among the multilateral treaties ratified in 2010 regarding human rights to a greater or lesser extent are the ILO Maternity Protection Resolution (No. 183), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) and the Convention on the Preservation of Intangible Cultural Heritage, The European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes 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. \(^\text{22}\)

2. Right to Effective Legal Remedy for Human Rights Violations

2.1. Ordinary Legal Remedies

The right to an effective legal remedy is protected by Articles 22 and 36 of the new Constitution of Serbia. Article 22 regulates the right to judicial protection:

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 elimination of the consequences of such a violation.

12 Sl. list SCG (Međunarodni ugovori), 18/05.
13 Sl. glasnik, 42/09.
14 Sl. glasnik RS, 19/09.
15 Ibid.
16 Sl. glasnik RS (Međunarodni ugovori), 1/10.
17 Ibid.
18 Ibid.
19 Ibid.
20 Ibid.
21 Sl. glasnik RS (Međunarodni ugovori), 13/10.
22 Sl. glasnik RS (Međunarodni ugovori), 12/10.
The citizens shall have the right to address international institutions to protect their freedoms and rights guaranteed by the Constitution.

Article 36 envisages equal protection of rights and the right to a legal remedy:

Equal protection of rights in proceedings before courts, other state bodies and organisations exercising public powers and provincial or local self-government bodies shall be guaranteed.

Everyone shall have the right to appeal or to another legal remedy against any decision on his/her rights, duties or lawful interests.

On the other hand, the Constitution introduces the institute of constitutional appeal in Serbia’s legal system. These provisions allow the Constitutional Court to always have the final say on individual human rights violations.

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. In the latter case, only if the public prosecutor establishes no grounds for criminal prosecution may the injured party undertake prosecution (Art. 61, the CPC); this provision may and practically 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.

2.2. Constitutional Appeal

The 2006 Constitution of the Republic of Serbia introduces this remedy in Serbia’s legal order for the first time. A constitutional appeal may be filed with the Constitutional Court 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 of the Constitution). The Constitutional Court Act also allows for the filing of a constitutional appeal in the event the appellant’s right to a fair trial is violated or in the event the law excludes the right to the judicial protection of his/her human and minority rights and freedoms (Article 82, Act on the Constitutional Court). Although neither Article 170 of the Constitution nor Article 82 of the Act on the Constitutional Court explicitly require that the legal remedy, which must be exhausted before a constitutional appeal is filed, must be effective, this criterion is well established in ECtHR’s case-law, which is also relevant to national legislation. This provision provides for the filing of a constitutional appeal after the exhaustion of all other effective legal remedies and thus for centralised decisions on human rights violations, with the

---

23 Sl. list SRJ, 70/01 and 68/02; Sl. glasnik RS, 58/04, 85/05, 115/05, 46/06, 49/07, 122/08, 20/09, 72/09 and 76/10.

24 The Constitutional Court adopted a position on when legal remedies in administrative, misdemeanor and judicial proceedings may be deemed exhausted. The position is available at http://
Constitutional Court as the final instance the appellants must turn to before they complain to international bodies.

The constitutional appeal thereby fulfils the formal requirements of a genuine effective legal remedy and it must be exhausted before submission of an application to the ECtHR.

Article 170 of the Constitution does not mention protection of rights guaranteed under international treaties by constitutional appeal; this is in contravention of Article 18 (2) of the Constitution, under which the Constitution shall guarantee and directly apply human and minority rights enshrined in international law. This deficiency was not eliminated by the Act on the Constitutional Court25 adopted in November 2007. The Constitutional Court eliminated it by a systemic interpretation of Article 170 in conjunction with Article 18 of the Constitution, confirming that the rights incorporated in the constitutional and legal system by international treaties have the same rank as constitutional rights and enjoy the protection of the Constitutional Court.26 The corpus of human rights enjoying constitutional and legal protection has thus been expanded to include other specific, above all economic and social rights, not guaranteed in the text of the Constitution, such as the rights to water, food and adequate housing.

Under Article 83 of the Act on the Constitutional Court, a constitutional appeal may be filed by any person who believes that his/her human or minority rights and freedoms guaranteed by the Constitution have been violated or denied by an individual enactment or action of a state authority or an organisation vested with public authority. All natural or legal domestic or foreign persons who are holders of the constitutionally guaranteed human rights and freedoms have the active legitimation to file a constitutional appeal.27 It should, however, be noted that a constitutional appeal is not an actio popularis, and 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 or her written consent. The Constitutional Court has not yet taken a position on whether indirect or potential victims of human rights violations are entitled to file a constitutional appeal.28

---

25 Sl. glasnik RS, 109/07.
26 See the Constitutional Court position on the constitutional appeal review proceedings, available in Serbian at http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/Ставови_Уставног_суда_у_поступку_испитивања_и_одлучивања.doc.
27 See the Constitutional Court position on active legitimation regarding the filing of constitutional appeals, available in Serbian at http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/Ставови_Уставног_суда_у_поступку_испитивања_и_одлучивања.doc.
28 See the article by Constitutional Court President Dr. Bosa Nenadić “Constitutional Appeal as a Legal Remedy for the Protection of Human Rights and Fundamental Freedoms in the Republic
a constitutional appeal must include the appellant’s personal identification number, wherefore persons without a personal identification number cannot lodge a constitutional appeal. The Constitutional Court issued a position interpreting this provision whereby it eliminated this type of discrimination.29

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 (Article 84(1), Act on the Constitutional Court). 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 she files the constitutional appeal, within 15 days from the day the justified reasons ended (Article 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 (Article 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.30

The Constitutional Court has broad powers in the event it upholds the constitutional appeal. They are defined in Article 89(2) of the Act on the Constitutional Court 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.

The Amendments to the CPC adopted last August allow a retrial in the event the Constitutional Court finds that the rights of the convict had been violated in criminal proceedings and that the violation affected lawful and proper adjudication.31

The December 2009 amendments to the CPA introduced a provision under which civil proceedings may be repeated in the event the Constitutional Court finds during the review of the constitutional appeal that the initial proceedings violated


31 Article 109, Act Amending the CPC, Sl. glasnik RS, 72/09. Article 414 CPC.
or denied the defendant of a constitutionally guaranteed human or minority right or freedom.\(^{32}\)

In its reviews of appeals against excessively long trials, the Constitutional Court plays a preventive role as it may order a review of the case or its completion within the shortest possible period.\(^{33}\) In its hitherto practice, however, the Constitutional Court had not set the courts it has referred cases back to any deadlines by which they are to take specific actions or complete the cases.

Pursuant to Article 89(3) of the Act on the Constitutional Court, a Constitutional Court decision upholding the constitutional appeal shall constitute legal grounds for the filing of a damage claim. Under Article 90, this claim shall be filed with the Damages Commission. In the event the Damages Commission fails to respond to the claim within 30 days or fails to reach agreement with the claimant on the amount of compensation, the claimant, who had filed the constitutional appeal, shall exercise this right by filing a damage claim with the competent court. This provision may result in the violation of the right to a trial within a reasonable time given that the party is referred back to the regular judicial proceedings.

A constitutional appeal cannot be filed against human rights violations caused by general statutes (laws, decrees et al) even if they \textit{per se} directly violate the human rights enshrined in the Constitution. Such statutes can be contested only by motions for the review of their constitutionality or legality, which the Constitutional Court needs not uphold (Art. 168, Constitution). The Constitution introduces the possibility of abstract control of constitutionality initiated by a motion for the review of the constitutionality of a law before it comes into effect; such an initiative must be launched by at least a one-third of the national deputies (Art. 169). These various procedures for abstractly controlling the constitutionality of legal statutes cannot \textit{per se} be considered effective legal remedies for specific and individual human rights violations. However, the constitutionality of a general enactment during the constitutional appeal review proceedings may be reviewed only if there is reasonable doubt about the constitutionality of the general enactment on the basis of which the disputed individual enactment was adopted. In such cases, the Constitutional Court will stay its review of the constitutional appeal and launch proceedings to review the constitutionality and legality of the general enactment.\(^{34}\)

In the event an individual enactment or action violates or denies the rights of more than one person and only one or some of them filed a constitutional appeal,

\(^{32}\) Article 41, Act Amending the CPA, \textit{Sl. glasnik RS}, 111/09. Art. 422, CPA.

\(^{33}\) See the Constitutional Court position on the reversal of the negative effects and compensation of damages in the constitutional appeal review proceedings available at http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/Ставови_Уставног_суда_у_поступку_испитивања_и_одлучивања.doc.

\(^{34}\) See the Constitutional Court position on the review of the constitutionality of a general enactment in the constitutional appeal review proceedings, available at http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/Ставови_Уставног_суда_у_поступку_испитивања_и_одлучивања.doc.
the Court decision shall apply to all persons in the same legal situation (Article 87, Act on the Constitutional Court)

The Court began reviewing constitutional appeals when its Rules of Procedure adopted on 28 February 2008 35 and rendered its first decisions on constitutional appeals in 2008. The Court ruled on 1089 constitutional appeals in 2009 and on 671 such appeals by October 2010. Although many were dismissed, the number of appeals decided on the merits is not negligible: 315 in 2009 and 148 by October 2010.

In Vinčić and Others v. Serbia, 36 the ECtHR in December 2009. took the view that given the power of the Constitutional Court and its case-law and the competence of the Commission for Compensation, “the Court is of the opinion that a constitutional appeal should, in principle, be considered as an effective domestic remedy”. This means that this legal remedy will hereinafter have to be exhausted before filing an application with the ECtHR. Applicants are, of course, still free to claim that this legal remedy had not proven effective in their case, but will nevertheless have to prove that this was indeed the case every single time. The fact that the Constitutional Court has been increasingly invoking ECtHR case law is also encouraging.37

It needs to be noted that 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. Therefore, in case of applications submitted prior to that date, failure to file constitutional appeals with the Constitutional Court shall not be considered failure to exhaust all domestic legal remedies before seeking redress before the ECtHR.

Finally, the Constitutional Court risks being overburdened by a huge number of cases. It had 7000 constitutional appeals (one third of which were filed over violations of the right to a trial within a reasonable time38), another 600 constitutionality review cases and 110 disputed laws pending in October 2010.39 This is why the legislator is contemplating amending the Act on the Constitutional Court to delegate reviews of appeals over violations of the right to a trial within a reasonable time to the regular courts and annul the provision stipulating that the Constitutional Court must take its decisions on all issues at plenary sessions of all 15 judges.

35 Sl. glasnik RS, 24/08 and 27/08.
36 Vinčić and Others v. Serbia, ECtHR, App. Nos. 4698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and 45249/07.
38 Interview with Constitutional Court President Bosa Nenadić, Politika, 3 October 2010. Issue No. 34808, p. 7.
2.3. **Enforcement of Decisions by International Bodies**

The role of international bodies as a corrective factor and guide for national authorities must be adequately acknowledged in Serbia’s main procedural laws. This concept has already been recognised by the Civil Procedure Act (CPA),\(^{40}\) under which a party may file a motion for a retrial before the national court in the event the ECtHR rendered a judgment against Serbia on an identical or similar legal dispute after the national court had rendered its final decision (Art. 422 (1.10)).

The provision in the CPC is more comprehensive than the corresponding provision in the CPA as it allows for a retrial after a decision was rendered by “an international court”.\(^{41}\) The CPC, however, also mentions only “court”, whereby it leaves the recommendations of UN committees beyond the scope of this provision.

The Administrative Disputes Act (ADA) adopted in late 2009 includes a provision allowing for submitting a motion for a rehearing in the event a subsequent judgment of the European Court for Human Rights on the same matter may affect the lawfulness of the completed court proceeding (Art. 56 (7)). The ADA therefore adopted a more restrictive approach which exists also in the CPA, which allows for a rehearing only in the event the ECtHR reached a decision on the matter, but not in the event such a decision was rendered by another international body.

The non-implementation of decisions taken by some other international bodies (Committee against Torture, Human Rights Committee) corroborates the necessity of amending a whole set of (not only procedural) laws in order to ensure the effective and full implementation of the decisions taken by international bodies, but nothing has been done to that end yet.

3. **Restrictions and Derogation**

**Article 4, ICCPR:**

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from Articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18 may be made under this provision.

---

\(^{40}\) Sl. glasnik RS, 125/04 and 111/09.

\(^{41}\) Art. 109, Act Amending the CPC, Sl. glasnik RS, 72/09, Art. 414 CPC.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A future communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 15, ECHR:

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (para. 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

3.1. Restrictions of Human Rights

The Constitution prescribes that guaranteed human and minority rights may be restricted only if such restrictions are allowed by the Constitution but only to the extent necessary in a democratic society to fulfil the purpose for which such restriction is permitted. It must, however, be borne in mind that the Constitution does not use the wording in the ECHR that the restriction must have a legitimate aim; it states that rights may be derogated for any purpose allowed by the Constitution. Under the Constitution, 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 relationship between the restriction and its purpose, as well as to take into account whether there is a way to fulfil this purpose by a lesser restriction of the right, while the restrictions should never infringe the essence of the guaranteed right (Art. 20), but the Constitution does not explicitly state that the aim of the restriction must be legitimate.42 This shortcoming can be partly overcome by a general interpretation

42 In its Opinion on the Constitution of Serbia, the Venice Commission commented Article 20 of the Constitution related to restrictions of human and minority rights (paras. 28–30 of the Opinion). Apart from criticising this provision for not requiring the existence of a legitimate aim for the restrictions to be allowed, the Commission also opined that the excessively complicated drafting of these Articles risked leading to many issues of interpretation. See European Com-
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 in human and minority rights, as well as the practice of international institutions which supervise their implementation”. Given the ECtHR’s case law, a legitimate aim would have to be prerequisite for the acceptability of restricting human rights.

Pursuant to Article 18 (2) of the Constitution, the manner of exercising certain freedoms and human rights may be prescribed by law in two cases: 1) when so explicitly envisaged by the Constitution and 2) when necessary to ensure the exercise of a specific right owing to its nature.

In the first case, the Constitution admits that certain rights cannot be exercised directly and that the Constitution itself can explicitly indicate when the exercise of those rights shall be regulated by law. This does not necessarily imply 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.

In the second case, however, 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 the substance of that right.

Article 20 of the Constitution lists when rights enshrined in the Constitution may be restricted by law. First of all, the restriction must be allowed under the Constitution. The Constitution allows for specific restrictions of human rights in the specific provisions on those rights. For instance, the Constitution contains a provision according to which the freedom of peaceful assembly may be restricted by law “if so necessary to protect public health, morals, rights of others or the security of the Republic of Serbia” (Art. 54), and that freedom of movement may be restricted “if so required by criminal proceedings, to protect public order and peace, prevent spreading of contagious diseases or for the defence of the Republic of Serbia” (Art. 39).

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. Standards for evaluating proportionality are in keeping with the jurisprudence of the European Court of Human Rights.43


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 comprises only a general provision prescribing that the achieved level of human and minority rights may not be reduced.

Articles 43 and 46 of the Constitution on the freedom of thought, conscience and religion and freedom of expression introduce a category unknown in international practice as grounds for derogation. It allows for restrictions of these rights if it is *inter alia* necessary to protect the “morals of a democratic society”. It remains unclear what the authors meant by this phrase. International human rights protection documents (such as the ECHR) allow for restrictions necessary in a democratic society to, *inter alia*, protect public morals. It seems the two requirements have been merged in the new Constitution, resulting in a new concept “morals of a democratic society”. Its effects on the exercise of human rights guaranteed by the two Articles of the Constitution are yet to be seen.

3.2. Derogation in “Time of Public Emergency”

3.2.1. General

The Constitution allows for derogations from human and minority rights guaranteed under the Constitution but only to the extent necessary upon the declaration of a state of war or state of emergency (Art. 202 (1)). The wording used is milder than the one in the ECHR, which allows for derogation only in “to the extent strictly required by the exigencies of the situation”. It remains unclear why some other rights were left out of the list of non-derogable rights (Art. 202 (4)).

The Constitution envisages two preconditions for derogations from human and minority rights – declaration of the state of war or emergency (formal condition) and the necessity of the derogation in the given circumstances (material condition). As opposed to the stricter requirements in the Human Rights Charter, the Constitution does not list threat to the survival of the state as a prerequisite for derogating from human rights. However, 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, though only with respect to states of emergency and not in case a state of war is declared.

Legal Provision Related to Human Rights

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)).

The Constitution lists the rights that may never be derogated from (Art. 202 (4)). The list of these rights is in keeping with the ICCPR and the ECHR.

3.2.2. State of War

Under the Constitution, a state of war is declared by the National Assembly, which may then prescribe measures derogating from human and minority rights guaranteed by the Constitution (Art. 201 (1 and 3)). If the Assembly is unable to convene, the decisions on the declaration of a state of war and human and minority rights derogations shall be taken together by the President of the Republic, the National Assembly Speaker and the Prime Minister (Art. 201 (2 and 4)). The Assembly shall confirm all measures taken during the state of war as soon as it convenes (Art. 201 (5)), which is in keeping with OSCE standards in this field. The Constitution, however, does not prescribe what happens if the Assembly does not confirm the measures. It would be logical to presume that the effectiveness of the unconfirmed measures shall cease after the Assembly session. The Charter on Human and Minority Rights had explicitly envisaged such a provision and the authors of the new Constitution should have included it rather than unnecessarily leaving this issue open to interpretation.

3.2.3. State of Emergency

The National Assembly shall declare a state of emergency when the “survival of the state or its citizens is threatened by a public danger” and it may then prescribe measures derogating from constitutionally guaranteed human and minority rights (Art. 200 (1 and 4)). The decision on the declaration of a state of emergency shall be in effect 90 days at most and may be extended by another 90 days (Art. 200 (2)).

If the National Assembly cannot convene, the decision to declare a state of emergency shall be reached jointly by the President of the Republic, the National Assembly Speaker and the Prime Minister, while the decisions on measures derogating from human and minority rights are in such cases passed by the Government and co-signed by the President of the Republic (Art. 200 (5 and 6)). Such decisions

45 For more details on decrees that placed restrictions on certain rights and freedoms during the state of war in the FRY in 1999, see Report 1999, I.3.2.4.
47 A state of emergency was declared in Serbia in 2003, after the assassination of Prime Minister Zoran Đinđić, pursuant to the Decision on the Declaration of the State of Emergency (Sl. glasnik RS, 21/03) of the Acting Serbian President and at the proposal of the Government. More in Report 2003, IV.1 and Report 2004, I.3.2.3.
must be submitted to the Assembly for confirmation within 48 hours, i.e. as soon as the Assembly can convene. In case the National Assembly has not confirmed the decision to declare a state of emergency, the Constitution explicitly sets out that such a decision shall cease to have effect when the first National Assembly session held after the declaration of the state of emergency ends and that the effect of measures derogating from human and minority rights shall cease 24 hours from the opening of the first session held after the declaration of the state of emergency (Art. 200 (8 and 9)).

Measures derogating from human and minority rights may be applied a maximum of 90 days, after which they may be “extended under the same terms” (Art. 200 (7)).

4. Individual Rights

4.1. Prohibition of Discrimination

Article 2 (1), ICCPR:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26, ICCPR:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 14, ECHR:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 1, Protocol No. 12 to the ECHR:

(1) The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(2) No one shall be discriminated against by any public authority on any ground such as those mentioned in para. 1.
4.1.1. General

Apart from the ICCPR, the ICESCR, the ECHR and Protocol 12 thereto, Serbia is also bound by the following international documents prohibiting discrimination: the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination against Women, Convention on the Rights of Persons with Disabilities, ILO Convention No. 111 concerning Discrimination (Employment and Occupation)\(^{48}\) and the UNESCO Convention against Discrimination in Education.\(^{49}\)

In the case *Sejdić and Finci v. Bosnia-Herzegovina*\(^{50}\) which it reviewed in 2009, the ECtHR had for the first time found a violation of Article 1 of Protocol No. 12 which lays down the general prohibition of discrimination. The Court found that the ineligibility of Bosnia-Herzegovina citizens who were not members of the three so-called constituent nations (Bosniacs, Croats and Serbs) to stand for election to the BiH Presidency was discriminatory. In its hitherto case law on prohibition of discrimination under Article 14, the ECtHR found that discrimination constituted different treatment of persons in similar situations without an objective or reasonable justification. In its judgement in *Sejdić and Finci v. Bosnia-Herzegovina*, the Court emphasised that discrimination was to be interpreted in the same manner also within the context of Article 1 of Protocol No. 12 despite the different scopes of the provisions.

The Constitution of Serbia regulates the prohibition of discrimination in Article 21:

> Everyone shall be equal before the Constitution and the law.

> Everyone shall have the right to equal legal protection, without any discrimination.

> Any direct or indirect discrimination on any grounds, notably on grounds of race, colour, sex, ethnic affiliation, social background, birth, religion, political or other convictions, financial standing, culture, language, age or mental or physical disability, shall be prohibited.

> Special measures which the Republic of Serbia may introduce to achieve full equality of persons or a group of persons, who essentially do not enjoy a status equal to that of other citizens, shall not be deemed discrimination.

Although the Constitution commendably envisages affirmative action, i.e. the introduction of measures aimed at achieving the equality of groups who do not enjoy a status equal to that of other citizens, it unjustifiably failed to allow for the application of special measures in para. 4 only until their purpose is attained. The Constitution lacks the temporal restriction of affirmative action measures, a criterion which is absolutely necessary for assessing the proportionality of these measures. Hopefully, this shortcoming will be overcome in court practice.

\(^{48}\) *Sl. list FNRJ (Dodatak),* 3/61.

\(^{49}\) *Sl. list SFRJ (Dodatak),* 4/64.

\(^{50}\) ECtHR, App. Nos. 27996/06 and 34836/06 (2009).
The formulation of the nature of discrimination in the Constitution resembles those in international instruments. Under the Constitution, “Any direct or indirect discrimination on any grounds... shall be prohibited”, i.e. the Constitution, like the ICCPR and ECHR, provides for the prohibition of discrimination on grounds not explicitly listed in the Article as well.

Discrimination is a criminal offence under the Criminal Code (Arts. 128 and 387). Many other laws also include anti-discriminatory provisions e.g. the Act on Churches and Religious Communities (Art. 2), the Labour Act (Arts. 18–23), the Employment and Unemployment Insurance Act (Art. 8), Act on the Basis of the Education System, the Health Protection Act, etc. The change to the Criminal Code from October 2009 include amendments to Article 387 which prohibits racial and other forms of discrimination. The changes were motivated above all by the social situation and the political will to deal with extremist neo-Fascist groups, which had significantly gained in strength in the previous period.

The two new paragraphs incriminate the promotion of and incitement to hatred, violence and discrimination (para. 4) and public threats of crime against persons or groups of persons because of their personal attributes (para. 5). Distinction on grounds of religion was added to the list that already incriminated distinction on grounds of race, colour, nationality, ethnicity or other personal features. Religious affiliation had unduly been missing in the original article.

4.1.2. Anti-Discrimination Act

The Anti-Discrimination Act, adopted at long last in 2009 after years of debate, marks a crucial step for combating the widespread discrimination plaguing Serbia’s society. Its adoption was also the last legal requirement Serbia had to fulfil for the countries in the Schengen area to abolish visas for Serbia’s citizens. The successful implementation of this law will be relevant for assessing Serbia’s progress towards EU accession.

The Anti-Discrimination Act is a general anti-discrimination law which leaves room for special regulation of specific areas where discrimination occurs the most frequently. There is a Gender Equality Act and a law protecting the rights of persons with disabilities, and its provisions apply with respect to discrimination of
persons with special needs. The Anti-Discrimination Act commendably amends the provisions of the Act on the Prevention of Discrimination against Persons with Disabilities on judicial protection, which had been criticised for not providing effective access to justice.\textsuperscript{61}

The Act establishes the general prohibition of discrimination by defining the principle of equality in Article 4:

Everyone shall be equal and enjoy an equal position and equal legal protection regardless of their personal features.

Everyone is obliged to respect the principle of equality, i.e. prohibition of discrimination.

The Act prohibits a broad scope of forms of discrimination. Key prohibitions include direct and indirect discrimination, disrespect of the principle of equal rights and obligations, conspiracy to exercise discrimination, hate speech, harassment or degrading treatment. The law prohibits calling a person to account because he or she reported discrimination (victimisation), which introduces a new form of protection for victims and those reporting discrimination. Aggravated discrimination is discrimination on more than one grounds, repetitive or continuous discrimination, etc. Affirmative action measures shall not be considered discrimination (Article 14).

The Act lists specific forms of discrimination to ensure that the most frequent forms of discrimination are recognised and that their victims are provided protection: the conduct of public authorities (Art. 15), at work and with respect to work (Art. 16), the provision and use of public services (Art. 17), the education system (Art. 19), religion (Art. 18), sex (Art. 20), sexual orientation (Art. 21), age (Arts. 22 and 23), nationality (Art. 24), trade union or political affiliation (Art. 25), disability (Art. 26), and health (Art. 27). The Act leaves room for its application to situations which were not explicitly listed (Art. 4). The laws of other countries frequently involve such enumeration of specific forms of discrimination and this Act meets the standards of effective protection against discrimination because it sets out clear guidelines and leaves no room for doubt about whether its provisions may be applied in particular situations.

The Act provides for two modes of protection for citizens whose rights have been violated. They may file a lawsuit, in which case the proceedings shall be expedited pursuant to the civil proceedings regulations, and specific provisions in the Act, or they may file a complaint to the Commissioner for the Protection of Equality, a new body established by this Act to ensure more efficient protection. These models of protection must be complementary in their purpose to facilitate access to justice.

The Commissioner for the Protection of Equality shall be established as an autonomous state authority and shall be independent in discharging the duties estab-
lished by the law (Art. 1 (2)). The funds needed for the work of the Commissioner’s service, the amount of which shall be proposed by the Commissioner, shall be provided from the Serbian state budget. The Commissioner shall be elected by the National Assembly at the proposal of its Committee for Constitutional Issues. The candidate must be a professional with minimum ten years of experience and of high moral standing.62 The Commissioner submits reports on the protection of equality to the National Assembly of the Republic of Serbia, and is also charged with public information related issues and the protection of civil rights.

The Commissioner is charged with receiving complaints by citizens who believe they were victims of discriminatory conduct and acting on them unless the same matter is reviewed by a court or a final decision on the matter has already been rendered by a court (Article 36(1)). Furthermore, the Commissioner shall not act on a complaint in the event s/he believes it is obviously unfounded, in the event the same matter had already been reviewed by the Commissioner and no new evidence has been presented, and in the event s/he is of the view that action on it would be meaningless due to the length of time that passed since the commission of the violation (Article 36(2)). The Commissioner shall render an opinion on whether a right was violated and, in the event s/he finds that it was, shall issue a recommendation on how to eliminate the violation. In the event the person whom the recommendation regards does not act on the recommendation even after a warning, the Commissioner is entitled to notify the public of his/her failure to act. Before taking any procedural actions, the Commissioner shall first propose reconciliation to the parties.

Cases of discrimination may be reviewed either by the court of general jurisdiction over the territory in which the defendant resides or is headquartered or by the court within whose territorial jurisdiction the plaintiff resides or is headquartered (Art. 42), which represents an exception to the rules of civil procedure and facilitates the victims’ access to protection. A lawsuit may be filed by the injured party, the Commissioner or a human rights organisation. Particularly significant is the provision allowing for the proceedings to be initiated by a third party, such as a human rights association, which will definitely result in an increase in the number of initiated proceedings. The only limitation to this possibility pertains to situations where only one person was subject to discrimination. In such cases, a lawsuit may be filed by the Commissioner or a human rights organisation only with the consent of the injured party. In the first verdict on discrimination under the Criminal Code, which was upheld by the Supreme Court of Serbia,63 the courts approved the use of so-called “situational testing”, wherein a lawsuit may be filed by a person who knowingly exposed himself to discriminatory conduct in order to directly verify the application of rules prohibiting discrimination in a concrete situation.

62 More on the election of the Commissioner in II.2.1.3.5.
63 For more information on the first verdict on discrimination under the Criminal Code, see Report 2007, II.2.7.7.
The Anti-Discrimination Act now provides legal grounds for “situational testing” (Art. 46), and the person who intends to make use of this opportunity must notify the Commissioner of his/her intention, unless the circumstances prevent him/her from doing so.

The plaintiff may demand: prohibition of the commission of an action that may amount to discrimination; prohibition of the further commission of such an action; a court decision establishing that the defendant acted in a discriminatory manner; commission of an action eliminating the effects of discrimination; compensation of pecuniary and non-pecuniary damages and the publication of specific court judgments (Art. 43). The plaintiff may require a provisional measure during or after the proceedings to eliminate the danger of violence or major irreparable damage. For a court to approve such a measure, the plaintiff must prove probable that such a measure is necessary to eliminate the danger of violence or major irreparable damage (Art. 44). In the event the plaintiff proves probable that the defendant committed an act of discrimination, the burden of proof shall rest on the defendant (Art. 45). This provision, which also deviates from the civil procedure regulations inasmuch as it transfers the burden of proof from the plaintiff to the defendant, aims at facilitating the status of the victim. The exception also applies to the Act on the Prevention of Discrimination against Persons with Disabilities.

The Human and Minority Rights Ministry shall monitor the enforcement of the Act.

It can be concluded that a good legislative framework for fighting discrimination has been set in Serbia by the adoption of this Act, applauded also by experts, who had no objections to its provisions. What will prove crucial is the extent and manner in which the legal opportunities provided by the Act will be applied in fighting against discrimination.

4.1.3. Act on Prevention of Discrimination against Persons with Disabilities

The Serbian Assembly in April 2006 adopted the Act on the Prevention of Discrimination against Persons with Disabilities. The Act inter alia obliges state bodies to provide persons with disabilities access to public services and facilities and prohibits discrimination in specific areas, such as employment, health and education (Arts. 11–31). It includes significant provisions obliging state and local self-government bodies to undertake special measures to encourage equality of persons with disabilities (Arts. 32–38). Although the Act defines these measures only in the most general terms (as they need to be defined in much greater detail in each specific case), it entitles persons with disabilities to sue the competent institutions that have failed to introduce such measures.

More on rights of persons with disabilities in I.4.18.11.

Sl. glasnik RS, 33/06.
The plaintiffs are entitled to ask the court to prohibit an act that may result in discrimination, to prohibit the further commission or repetition of an act of discrimination, to order the defendant to take action to eliminate the effects of discriminatory treatment, to establish that the defendant treated the plaintiff in a discriminatory manner and to order the compensation of pecuniary and non-pecuniary damages (Arts. 42 and 43).

The shortcomings of this Act have been rectified with the adoption of the general Anti-Discrimination Act which in Article 26 draws on the principle of respect for the equal rights and freedoms of persons with disabilities and the implementation of a separate act with appropriate changes to the procedural deficiencies in the judicial protection procedure.

4.1.4. Gender Equality

On the basis of the Constitution and international obligations, including certain obligations stemming from the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Beijing Declaration and the Platform for Action, Serbia in 2009 adopted a Gender Equality Act. Apart from democratization and respect for human rights, the Act was also adopted to counter the significant inequalities between men and women registered in everyday life. The main purpose of the Act is to create prerequisites for conducting equal opportunity policies, allowing both sexes to equally exercise their rights, and taking special measures to prevent and eliminate gender discrimination. The Act defines the prohibition of discrimination on grounds of sex and the equal right of both sexes in the fields of employment, social and health protection, family relations, political and public life, education, culture, sports and judicial protection. The Act commendably states that public authorities must lead an active policy of equal opportunities in order to prevent discrimination (Art. 3). The Act obliges employers to keep records and documents on staff gender breakdown (Art. 12), plan measures for mitigating or eliminating gender under-representation and report on procedures undertaken to rectify the situation (Art. 13). The implementation of the Act is expected to advance the status of women and their representation and enable the efficient protection of their rights.

Article 20 of the Anti-Discrimination Act prohibits discrimination based on sex or sex change. Violence, exploitation, expression of hatred, humiliation, blackmail and harassment on grounds of sex are also prohibited, as are public advo-

---

66 Sl. list SFRJ (Međunarodni ugovori), 11/81.
67 Documents adopted at the Fourth World Conference on Women in 1996. The then Federal Republic of Yugoslavia was not a member of the UN at the time. In 2002 however, all international obligations made in that period were accepted, including the Beijing Declaration and the Platform for Action, by a statement of the then Serbia and Montenegro Minister of Internal Affairs.
68 Sl. glasnik RS, 104/09.
cacy, condoning or compliance with prejudice, customs and other patterns of social behaviour based on gender hierarchy or domination including stereotyped gender roles.

Apart from the Gender Equality and Anti-Discrimination Acts, the Labour Act, too, prohibits putting a job-seeker or worker in a less favourable situation because of his or her gender. This Act comprises anti-discrimination norms generally prohibiting the discrimination of employed persons and job-seekers, specifies the most frequent cases of discrimination at work and envisages affirmative action measures. A job-seeker or employee may launch proceedings for the compensation of damages in the specified cases of discrimination in accordance with the law (Article 23, LA).

The Labour Act anti-discrimination provisions were passed within the process of aligning Serbian law with the EU acquis. They also incorporate the provisions envisaged by the 1968 ILO Convention No. 111 concerning discrimination (employment and occupation).

The Labour Act also includes provisions protecting employed women during pregnancy. A pregnant employee may not perform jobs, which the competent authority established as injurious to her health or that of her child, particularly jobs entailing heavy lifting, harmful radiation or exposure to high temperatures (Article 89). This protective provision is broader than the one in the 2001 Labour Act, because the prohibition now covers the entire period of pregnancy.

Serbia this year also ratified the ILO Convention No. 183 on Maternity Protection under which states are to adopt measures supporting parenting, above all provisions ensuring that the financial remuneration during maternity leave suffices to preserve the health of the woman and her child, payment of the full wages during pregnancy leave, adopt appropriate measures eliminating the risk of maternity being a source of labour-related discrimination and laying on the employer the burden of proving that the grounds for dismissal have nothing to do with the worker’s pregnancy, delivery or nursing, etc.

After years-long efforts, Serbia on 26 May 2010 adopted the Act on the Prevention of Harassment at Work. This law actually prohibits abuse at work, referred to in professional literature as mobbing. The provisions of the Act also apply to sexual harassment (Article 3). The main feature mobbing, sexual harassment and discrimination have in common is that they all violate dignity at work (violation of the rights of a person). As opposed to discrimination and sexual harassment, mobbing entails psychological abuse, whereas sexual harassment constitutes the viola-

---

69 Sl. glasnik RS (Međunarodni ugovori), 1/10.
70 Women on pregnancy leave currently receive 65% of their monthly wages in Serbia, while women on pregnancy leave in Belgrade receive their full wages (65% is paid by the Health Insurance Fund and the remaining 35% is covered from the City of Belgrade budget).
71 Sl. glasnik RS, 36/10.
tion of dignity in the sphere of sexual life and discrimination constitutes a violation of dignity due to inborn or acquired traits not relevant to job performance. By including sexual harassment in the law on mobbing, the legislator has provided employed women with the opportunity to invoke the protective norms in the Act in case of sexual harassment and obtain faster and more efficient protection than that provided by the Labour Act.72

The Act on Health and Safety at Work73 prohibits the use of data collected in medical examinations to discriminate against workers. Under this Act, personal data collected during a worker’s medical examination shall be confidential and under the supervision of the occupational health service performing such examinations. The report on the medical examination of a worker is forwarded to his/her employer in a manner ensuring that the principle of confidentiality of personal data is not violated. This provision may prove to be particularly relevant to the protection of women from specific characteristic forms of prohibited conduct, such as discrimination in promotion caused by a woman’s family status.

State administration authorities are still in the habit of applying the prior practices, stereotyping gender relations and interfering in their workers’ private lives (such as their marital status, family planning, etc). A female worker is entitled to complain to the labour inspection about a violation of her right to privacy and if she assesses that the inspection is not reacting to her complaint, she is entitled to seek the assistance of the Protector of Citizens. However, the right to address the Protector of Citizens cannot be considered sufficient protection. The new law on mobbing should have provided more effective protection with respect to the privacy of employees at their workplaces.74

The Act on the Election of Assembly Deputies75 improves the status of women inasmuch as it lays down the number of women candidates on each election list. Under the Act, one out of every four candidates on the list must belong to the less represented gender on the list i.e. the election list must comprise at least 30% of the candidates of the less represented gender altogether. A list not fulfilling these requirements will be considered deficient and will be rejected by the Republican Election Commission if the nominator does not eliminate the shortcomings. There are, however, no mechanisms ensuring the equal representation of women at the leading political posts in the government, ministries, diplomatic and consular missions, etc.

The National Strategy for Improving the Position of Women and Advancing Gender Equality adopted by the Government of Serbia on 13 February 2009 is the

---

72 The Labour Act also comprises provisions prohibiting sexual harassment, but court proceedings on such cases have been inefficient and long and courts have to date heard only a few sexual harassment at work cases.
73 Sl. glasnik RS, 101/05.
75 Sl. glasnik RS, 35/00, 57/03, 72/03, 75/03, 18/04, 101/05, 85/05 and 104/09.
first national strategic document on gender equality. The Strategy defines the goals, measures and activities to be taken by the Government in the 2009–2015 period to improve the status of women in all spheres of public and private life and they are based on contemporary international and European gender equality standards. A year and a half passed since the Strategy was adopted and the Gender Equality Directorate has to date adopted an Action Plan. The goals of the Action Plan for the Implementation of the National Strategy entail the improvement of the women’s economic status, their greater involvement in decision making and the elimination of gender stereotypes. No practical steps seem to have been taken to that end yet.

**Position of Transgender Persons.** – The legislator failed to go a step beyond the constitutionally established obligations in the Gender Equality Act. There is still no legal protection for gender identity in Serbia as Serbian laws and regulations continue to recognise only two sexes, male and female, and do not take into account the rights of unrepresented sexual identities (transsexuals, intersexuals). Article 20 of the Anti-Discrimination Act prohibits discrimination on grounds of sex change, but this norm is nothing more than a mere declaration, because the rest of the legislation is silent on this issue or comprises explicit provisions unfavourable to transgender persons. Persons, who have undergone a sex change, are unsuccessful in their attempts to legally regulate their new personal situations created by their change of sex (to obtain new personal documents with their new names and specifying their sex after the operation, et al) because this issue is not regulated at all in Serbia. In some cases, the municipal officials charged with keeping the birth and other registers agree to change the person’s sex in the registers in the form of a “corrigendum” but this is not possible in every case, in the event the person who changed sex had been married and/or had a child before the sex change, because the consequences the “corrigendum” may have on the legal family relations are unforeseeable. Due to their unregulated status, persons who have changed sex face a number of situations in which they cannot exercise specific rights purely because they have changed sex. In the case *Christine Goodwin v. United Kingdom*, the ECtHR found the UK in breach of Article 8 of the ECHR because it did not enable the legal recognition of the applicant’s change of sex.

The Serbian legislation comprises another disputable provision referring explicitly to transgender persons. Under Article 61(1(12)) of the Health Insurance

---

76 Transsexuals are individuals whose gender characteristics and identity do not match, resulting in the desire and intention to change their sex through either full or partial body modifications (including physical and/or hormonal therapy and operations) in order to express their self-identified gender and/or sexual-identity and sense of self.

77 Intersexuals are individuals born with both male and female physical characteristics.

78 Serbia’s legislation is not an exception in this respect. CoE Human Rights Commissioner Thomas Hammarberg noted the problem at the European level as well. See http://commissioner.cws.coe.int/tiki-view_blog_post.php?postld=74.

Act\textsuperscript{80} “diagnostics and treatment of a sexual dysfunction or sexual inadequacy, including impotence, health services, medications and medical technical aids related to change of sex and reversal of prior voluntary surgical sterilisation” (italics added) are excluded from the health care provided through the mandatory health insurance. Therefore, persons suffering from a sex or gender identity disorder have to bear the entire cost of treatment, which can be so high that they effectively preclude them from accessing the health care they need. Such exclusion can hardly be justified given that a person suffering from a sex identity disorder has a medical problem and is not just being whimsical.

4.2. Right to Life

Article 6, ICCPR:
1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this Article shall authorise any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 1, Second Optional Protocol to the ICCPR:
1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Article 2, ECHR:
1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

\textsuperscript{80} Sl. glasnik RS, 107/05 and 109/05.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
   (a) in defence of any person from unlawful violence;
   (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
   (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Protocol No. 6 to the ECHR:

Article 1
The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.

Article 2
A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3
No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Protocol No. 13 to the ECHR:

Article 1
The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2
No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 3
No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

4.2.1. General

The right to life is guaranteed by all main international and regional human rights instruments applicable in Serbia. This right should not be interpreted narrowly.\(^81\) State bodies and authorities have the positive obligation to adopt and undertake all measures leading to the effective assurance and exercise of the right to life, both in terms of procedural obligations, efficient investigations into the circumstances of

\(^{81}\) General Comment No. 6, para. 1.
killings, and taking all reasonable steps to protect the persons under their jurisdiction from a risk they knew existed.82

The Constitution prescribes that human life is inviolable (Art. 24 (1)) and finally prohibits capital punishment (para. 2), which was abolished in criminal law back in 2002.83

International documents do not allow derogations of the right to life (Art. 4 ICCPR and Art. 15 ECHR). The ECHR envisages the following exception: deaths resulting from lawful acts of war. The new Constitution prohibits measures derogating from the right to life during a state or war or emergency (Art. 202), whereby it amends the shortcoming of the old Constitution, which did not even list non-derogable rights.

Offences against the right to life are defined in the Criminal Code,84 and are prosecuted by the state prosecutor ex officio. Those are above all offences against life or body (Arts. 113–127), crimes against humanity and other human rights protected by international law such as genocide (Art. 370), crimes against humanity (Art. 371), war crime against the civilian population (Art. 372), illegal killing or wounding of enemy combatants (Art. 378) and incitement to a war of aggression (Art. 386). The Criminal Code also comprises groups of crimes which may pose a risk to human lives, such as crimes against human health, general safety, traffic safety, environment, etc.

In Article 119, the CC defines as punishable incitement to suicide and assisting a person to commit suicide, which carry a prison sentence ranging between 3 months and 10 years. The CC (Art. 117) does not decriminalise euthanasia (even passive); it defines it as a separate crime, milder than murder.

The 2006 Constitution of Serbia explicitly prohibits cloning of human beings (Art. 24 (3)). The CC envisages the crime of “illegal medical experiments and testing of medications” and specifies that “whoever performs cloning of humans or conducts experiments with that goal shall be sentenced to imprisonment ranging from three months to five years” (Art. 252 (2)).

4.2.2. Arbitrary Deprivation of Life

The ICCPR and ECHR oblige states to protect the lives of people from arbitrary i.e. intentional deprivation of life and to take special measures to prevent arbitrary killing by state security forces.85 However, not every use of force by the

83 Art. 16 (8) of the Act on International Legal Aid in Criminal Matters requires the fulfilment of the following condition by the state seeking extradition: that it “provide guarantees that the death penalty envisaged for the crime for which the extradition is requested shall not be pronounced or carried out”, which is in keeping with the obligations Serbia assumed when it ratified the European Convention on Extradition (Sl. list SRJ (Međunarodni ugovori), 10/01).
84 Sl. glasnik RS, 85/05, 88/05, 107/05, 72/09 and 111/09.
85 General Comment No. 6, note 1, para. 3.
police, which ends in death, is considered a violation of the right to life. Use of force in self-defence, when it is absolutely necessary, during arrest or preventing escape or quelling a riot or insurrection cannot be considered intentional or arbitrary deprivation of life as long as it fulfils the criteria of absolute necessity i.e. proportionality. According to Human Rights Committee and ECtHR case law, unintentional killing by state forces may constitute a violation of the right to life if the use of force at the time of murder was unjustified or inconsistent with the procedure prescribed by national legislation. The Committee requires that state legislation must strictly control and limit the circumstances in which a person may be deprived of his life by state agents. However, in view of the fact that national legislation itself may be arbitrary and provide excessive powers to state agents, the Committee found that even situations in which the domestic law criteria were fulfilled constituted violations of the right to life.

The Act on Police prescribes that law enforcement officers may use force “only if they cannot otherwise accomplish the law enforcement purpose; in such instances, force may be applied with restraint and commensurate with the danger threatening legally protected assets and property, i.e. with the gravity of the act they are preventing or subduing” (Art. 84 (2)). Police may use firearms only when they cannot accomplish their tasks by the application of other means of coercion and only if the use of firearms is absolutely necessary to achieve one of the goals listed in Article 100. It is not simple to protect certain people or facilities in real life and at the same time meet the test of “strict proportionality” wherefore the implementation of this Act ought to be monitored.

### 4.2.3. Protection of Life of Detainees and Prisoners

A state has a special obligation to take all necessary and available measures to protect the lives of all persons deprived of liberty or serving a jail sentence. Failure to provide medical assistance, withholding of food, torture or failure to prevent the suicide of persons deprived of their liberty or inadequate investigation in case of their death may constitute a violation of the right to life.

86 See McCann and Others v. the United Kingdom, ECmHR, App. No. 18984/91 (1995); Abyeva and Others v. Russia, App. No. 27065/05 (2010); Suarez de Guerrero v. Colombia, Communication No. 45/79, UN doc. CCPR/C/OP/1 (1985).


89 Sl. Glasnik RS, 101/05.


91 See Keenan v. United Kingdom, ECmHR, App. No. 27229/95 (1999); Angelova v. Bulgaria, ECHR, App. No. 38361/97 (2002); Tahsin Acar v. Turkey, ECHR, App. No. 26307/04 (2004); Dermit Barbato v. Uruguay, Communication No. 84/81, para. 9.2.
In that respect, the Constitution of Serbia prescribes that persons deprived of liberty must be treated humanely and that their dignity of person shall be respected. It further prohibits any violence against or extortion of statements from persons deprived of liberty.\textsuperscript{92} The Penal Sanctions Enforcement Act\textsuperscript{93} (in effect since 1 January 2006, hereinafter PSEA) lays down the conditions in which coercion may be applied against convicts (Arts. 128–132). Convicts are entitled to the same degree of health protection as free health insurants (Art. 101).

Subsidiary legislation must be urgently enacted to enable the practical enforcement of this Act. The Regulation on measures for Maintaining Order and Security in Penitentiaries is the only by-law adopted to date.\textsuperscript{94}

\textbf{4.2.4. Obligation of the State to Protect Lives from Risks to Life}

\textbf{4.2.4.1. Health Risks. –} States have an obligation to take active measures to prevent malnutrition, promote medical care and other social welfare activities aimed at reducing the mortality rate and extending life expectancy.\textsuperscript{95} The new Constitution of Serbia provides special protection to families, mothers, single parents and children (Art. 66 (1)) and prescribes that health care of children, pregnant women, mothers on maternity leave, single parents of children under 7 and the elderly shall be provided from public revenues unless it is provided in some other manner in accordance with the law (Art. 68 (2)).\textsuperscript{96}

\textbf{4.2.4.2. Life in a Healthy Environment. –} Article 74 of the Constitution guarantees everyone the right to a healthy environment and the right to timely and full information about the state of environment. It stipulates that everyone, especially the Republic of Serbia and the autonomous provinces, shall be accountable for the protection of environment and that everyone shall be obliged to preserve and improve the environment.

The legislative framework for environmental protection in Serbia constituted following laws: the Act on Environmental Protection,\textsuperscript{97} the Environmental Impact Assessment Act,\textsuperscript{98} the Strategic Environmental Impact Assessment Act,\textsuperscript{99} the Integrated Pollution Prevention and Control Act,\textsuperscript{100} the Waste Management Act, the Act on Packaging and Packaging Waste, the Act on Protection from Noise, the Air Protection Act, the Nature Protection Act, the Act on the Protection and Sustainable

\textsuperscript{92} See I.4.3.
\textsuperscript{93} \textit{Sl. glasnik RS}, 85/05 and 72/09.
\textsuperscript{94} \textit{Sl. glasnik RS}, 105/06. Vidi I.4.3.
\textsuperscript{95} See General Comment No. 6.
\textsuperscript{96} See I.4.18.
\textsuperscript{97} \textit{Sl. glasnik RS}, 135/04, 36/09 and 72/09.
\textsuperscript{98} \textit{Sl. glasnik RS}, 135/04 and 36/09.
\textsuperscript{99} \textit{Sl. glasnik RS}, 135/04 and 88/10.
\textsuperscript{100} \textit{Ibid.}
Use of the Fishery Fund, the Act on Chemicals, the Act on Protection from Ionising Radiation and Nuclear Safety, the Act on Protection from Non Ionising Radiation, the Act on Biocidal Products, the Act on the Republic of Serbia Development Fund\textsuperscript{101} and the Act on the Environmental Protection Fund.\textsuperscript{102}

The Act on Environmental Protection governs the realisation of man’s right to life and development in a healthy environment and a balance between economic development and the environment (Art. 1). The Act charges the competent Environment Ministry with informing the public and adopting a decree on the introduction of special measures in the event of immediate danger or excessive pollution levels (Art. 42 (1)). In the event pollution is limited to the territory of a municipality, the municipal body shall have the same obligation (para. 2). In case of an accident and the assessment that its effects may directly or indirectly endanger human health and the environment, a state of danger must be declared, necessary measures must be undertaken and the public informed thereof (Art. 62).

Under the Act, a system for monitoring the state of the environment shall be established and the Republic of Serbia, the autonomous provinces and local governments shall be obliged to ensure “continuous control and monitoring of the state of the environment” (Art. 69), while the Serbian Government shall be charged with adopting a two-year monitoring programme.\textsuperscript{103} These bodies, as well as authorised organisations and other organisations, are obliged to regularly, timely, fully and objectively notify the public of the state of the environment, of warning measures and of pollution that may pose a hazard to the lives and health of people (Art. 78 (1)).

The Act on the Environmental Protection Fund establishes an integral environmental management and protection system. Under this law, the fines paid by polluters will be put into the Fund to ensure the full implementation of the “polluter pays” principle. The Fund submits its reports only to the competent ministry, which may raise questions about the transparency of its work and the adequate monitoring of its work by the Assembly.

Amendments to the Act on Environmental Protection lay down stricter penalties for polluters (Arts. 64–70). The highest penalty remains 3 million dinars, but the minimum fine paid for an economic offence in Art. 116 has been raised from 150,000 to 1,500,000 dinars; this is expected to significantly affect the penal policy of the courts, which are prone to pronouncing mild sanctions.\textsuperscript{104}

Article 16 of the Act demonstrates the legislator prescribe stricter rules for mitigating and remediating damages from environmental degradation; protection and prevention measures no longer suffice and the Act stipulates full mitigation and remediation as well. The Act also sets out stricter measures with respect to soil and

\textsuperscript{101} Sl. glasnik RS, 36/09 and 88/10.
\textsuperscript{102} Sl. glasnik RS, 72/09.
\textsuperscript{103} See Directions of Environmental Protection in Serbia, BCHR, 2009.
\textsuperscript{104} Ibid.
water protection. It amends and prescribes in greater detail the manner in which operators are to handle hazardous matter (Arts. 29–35).

The Environmental Impact Assessment Act regulates the procedures for assessing the impact of projects that may have significant effects on the environment, the content of environmental impact assessment studies, the participation of stakeholders, organisations and the public, notification of other countries of projects that may impact on their environment, monitoring and other issues relevant to environmental impact assessment. The Act was substantially changed by the latest amendments. Article 15 cuts down the deadline within which the environmental impact assessments have to be approved, thereby rendering the whole process more efficient and transparent. The competent authority now has a ten-day deadline from the day the request for approval was submitted to set up a technical commission to assess the environmental impact study.

The Strategic Environmental Impact Assessment Act regulates the conditions, methods and procedures for assessing the impact of plans and programmes on the environment and the improvement of sustainable development. Strategic impact assessment is a procedure used for assessing the environmental, economic and social impacts of the proposed documents by which strategically important decisions are taken. The primary purpose of such an assessment is to foresee and pre-empt any damage to the environment that may be sustained due to the implementation of policies, development plans and programmes. The procedure provides for the involvement of the public and authorities charged with environmental protection in deciding on a policy proposed by a specific sector, on a plan or development programme for a specific area.

The Integrated Pollution Prevention and Control Act lays down the conditions and procedures for issuing integrated licences for activities and facilities that may negatively affect human health, the environment or material goods, types of activities and facilities, monitoring and other issues that may be relevant for pollution control and prevention. The Act lays down the procedure for issuing integrated licences both for the existing and future facilities and the monitoring procedure. Under the Act, not one new facility may launch operation without an integrated licence and all existing facilities must obtain such licences by 2015 at the latest (Art. 34).

The Act on Environmental Protection guarantees the public’s right to access registries and information systems containing information and data related to environmental protection under specific conditions (Arts. 78 (2) and 79–80). The Access to Information Act also binds public authorities to make publicly accessible information related to the state of the environment. Under the Act, the public shall always have a justified interest to know information regarding a threat to i.e. protection of public health and the environment (Art. 4); such information must be made accessible within 48 hours (Art. 16). The Act Ratifying the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) was adopted in May 2009.105

105 Sl. glasnik RS (Međunarodni ugovori), 38/09.
To ensure that the public is promptly and adequately informed of environmental issues, Serbia needs to adopt bylaws integrating the provisions of the following EU directives in the national legal order: Directive 2003/4/EC on public access to environmental information, Directive 91/692/EEC on standardising and rationalising reports on the implementation of certain directives relating to the environment and the Directive establishing the European Environment Agency and the European Environment Information and Observation Network (EIONET).

The Waste Management Act[106] defines the rights and obligations of all stakeholders in the waste management chain, from waste producers to recyclers.

In the Chapter VII the Act regulates in detail the management of different groups of waste. It commendably prescribes the obligations and responsibilities of electric and electronic equipment manufacturers, who will have to pay a fee for electric and electronic waste management when marketing their equipment. These funds are to cover the costs of collecting, processing and using such waste. Manufacturers are duty-bound to ensure that minimum hazardous matter is used in the manufacture of all marketed equipment. Manufacturers are also duty-bound to manufacture equipment that can be disassembled and recycled and that will pose neither a threat to nor damage human health and the environment even as waste (Art. 50).

The Act stipulates the adoption of national, regional and local waste management plans (Arts. 11–13).

The Air Protection Act lays down air quality protection measures and measures for reducing the emission of health damaging matter by precise monitoring of air pollution. Air quality will be measured by zones (parts of the territory with more than 250,000 residents). The Act precisely lays down polluting matter with respect to which the quality of the air is assessed (Art. 8). The competent authority must notify the public via the radio, TV, dailies, internet or in another appropriate manner whenever a specific concentration of legally prescribed polluting matter is exceeded (Art. 18). Fines for violating this law mirror the amendments to the Act on Environmental Protection, with the minimum fine for an economic offence set at 1,500,000 (Art. 79).

Under the Kyoto Protocol, ratified by the National Assembly in 2007,[107] Serbia, like other developing countries, is not under a commitment to achieve a quantified greenhouse gas (GHG) emission reduction.[108]

Apart from the Aarhus Convention, the National Assembly in 2009 ratified two other important conventions: the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International

---

106 Sl. glasnik RS, 36/09 and 88/10.
107 Act Ratifying the Kyoto Protocol to the UN Framework Convention on Climate Change, Sl. glasnik RS (Međunarodni ugovori), 88/07.
108 More on the Kyoto Protocol in Report 2008, 1.4.2.4.2.
Trade and Amendments to Annex B of the Kyoto Protocol to the Framework Convention on Climate Change.

The CC devotes a separate chapter to crimes against the environment and envisages new crimes such as: failure to take environmental protection measures (Art. 261), illegal construction and operation of facilities and installations polluting the environment (Art. 262), damaging of environmental protection facilities and installations (Art. 263) and damaging the environment (Art. 264).

4.2.5. Abortion

Neither the ICCPR nor the ECHR define the beginning of life. ECtHR confirmed that an embryo/foetus may have the status of a human being in terms of protection of human dignity, but not the status of an individual enjoying protection under Article 2 of the ECHR.

Abortion is regulated by the Act on Abortion in Medical Facilities. Under the Act, abortion may be performed only at the request of the woman and with her written consent. A simple request by the pregnant woman is sufficient up to the tenth week (Art. 6) and in exceptional circumstances listed in the law thereafter, even after the twentieth week of pregnancy.

The CC (Art. 120) incriminates illegal termination of pregnancy or abortion committed, initiated or assisted in contravention of regulations.

4.3. Prohibition of Torture, Inhuman or Degrading Treatment or Punishment

Article 7, ICCPR:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

109 Sl. glasnik RS (Međunarodni ugovori), 38/09.
110 Ibid.
111 The word “everyone” in Article 2 ECHR allows interpretations that the life of the foetus is also protected, but the European Commission of Human Rights determined that no intention of State Parties to the Convention to protect the right to life of the foetus could be established from the context of Article 2 (see X. v. United Kingdom, ECmHR, App. No. 8416/78 (1980)). The EChTR also found in the case Vo v. France, ECtHR, App. No. 53924/00 (2004), that the issue of when life begins was within the jurisdiction of the states as there is no consensus in Europe on the scientific and legal definition of the beginning of life. This was repeated in the case Evans v. United Kingdom, ECHR, App. No. 6339/05 (2007) and in the case A., B. and C. v. Ireland, ECHR, App. No. 25579/05 (2010).
112 Sl. glasnik RS, 16/95 and 101/05.
113 Under the Constitution of Serbia, everyone shall have the freedom to decide whether to have children or not and the state shall encourage parents to have children and help them therefor (Art. 63).
Article 3, ECHR:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

4.3.1. General

In addition to the obligation to prohibit torture in accordance with Article 7 of the ICCPR and Article 3 of the ECHR, Serbia is also bound by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: Convention against Torture). By ratifying the Convention, the former SFRY also recognised the competence of the Committee against Torture to receive and consider communications from state parties (Art. 21 (1)) and from or on behalf of individuals (Art. 22 (1)). In December 2002, the UN General Assembly adopted an Optional Protocol to the Convention against Torture, which established a system of supervising places where persons deprived of liberty are or may be. SaM ratified the Protocol in December 2005, and it came into force on 22 June 2006. Under the Protocol, each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment – the national preventive mechanism (Art. 3). Serbia still has not established one or more preventive mechanisms, although, pursuant to Art. 17, it was to have done so within a year from the day the Protocol came into force.

Within the CoE, Serbia is obliged by the ECHR and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Furthermore, Serbia ratified the Statute of the International Criminal Court, which defines crimes against humanity and war crimes as comprising also torture and inhuman treatment (Arts. 7 and 8).

The Constitution of Serbia explicitly prohibits torture in Article 25:

Physical and mental integrity shall be inviolable.

Nobody may be subjected to torture, inhuman or degrading treatment or punishment, or to medical or other experiments without their free consent.

The Constitution devotes another article to guarantees of the prohibition of torture during criminal proceedings and other cases of deprivation of liberty (Art. 28). Under the Constitution, prohibition of torture may not be derogated from even during a state of war or a state of emergency (Art. 202 (4)).

The CoE Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), attaches particular importance to the rights of persons deprived of their liberty: the right to inform a person of their choice about

114 Sl. list SCG (Međunarodni ugovori), 16/05.
115 Sl. list SRJ (Međunarodni ugovori), 5/01.
the deprivation of freedom without delay, the right to be interrogated in the presence of an attorney of his/her own choice, and the right to be examined by a doctor of his/her own choice. The Constitution of Serbia recognises the first two rights in Articles 27 (2) and 29 (1), but does not incorporate the right of access to a doctor. The CPC, however, guarantees the right of a person deprived of liberty to be examined by a doctor of his or her own choice at his or her request and, if such a doctor is not available, by a doctor chosen by the authority that deprived the person of liberty i.e. the investigating judge (Art. 5 (3.3)). This right is not guaranteed by the Act on Police, under which a person may be deprived of liberty without a written order of a court or an authority conducting administrative proceedings.

The Constitution guarantees the right to effective court protection in the event of violation of the right to inviolability of physical and psychological integrity, and the right to reverse the consequences of such violations, which also implies the right to compensation in cases of torture or similar treatment, notwithstanding who had inflicted the maltreatment (Art. 22).

4.3.2. Criminal Law

The Convention against Torture binds states to criminalise acts of torture, attempts to commit torture and any other act by any person, which constitutes complicity in an act of torture, and to prescribe appropriate penalties commensurate to the gravity of the offence (Art. 4).

Article 137 of the Criminal Code incriminates ill-treatment and torture. This crime was introduced in the Serbian legislation in 2006. According to para. 1 of the Article:

“Whoever ill-treats or treats another person in a humiliating and degrading manner shall be punished by a fine or imprisonment not exceeding one year.”

According to para 2:

“Whoever inflicts severe pain or suffering to a person by applying force, threat or another inadmissible method for the purpose of obtaining from him or a third person a confession, statement or other information, of intimidating or illegally punishing that person or a third person or for any reason based on discrimination of any kind shall be punished by imprisonment ranging from six months to five years. “

The legislator obviously intended to incriminate torture in para 2 and other forms of cruel, inhuman or degrading treatment or punishment in para 1. Therefore, the definition of torture resembles the one in the Convention against Torture,117

117 The 1984 Convention against Torture defines torture in the following manner: “(F)or the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffer-
but significantly differs from it on one point. As opposed to the Convention against Torture, under which torture is committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, the Criminal Code does not insist on any links between such acts and public officials. Therefore, any person can be charged with this crime, even if s/he committed it independently of any act or failure to act of a public official. Torture committed by a public official warrants a stricter penalty (eight-year imprisonment is the maximum penalty). The result of this definition of torture and other forms of ill-treatment is that cases of torture are rare in Serbian case law and that public officials are as a rule never charged with torture. For offences that qualify as torture or other forms of ill-treatment under the Convention against Torture and the case law of the ECHR, the Committee against Torture and the Human Rights Committee, public officials are as a rule charged with the following crimes: grave bodily injury (Art. 121) or light bodily injury (Art. 122) in conjunction with the crime of abuse of office (Art. 359). Ill-treatment can also be sanctioned by invoking Article 361 on the dereliction of duty and this Article can primarily be invoked against public officials working in institutions holding in custody persons deprived of liberty. In the event the ill-treatment in such institutions was caused by the denial of or inadequate health care, the doctor can be charged with the failure to provide medical assistance (Article 253) or with medical malpractice (Art. 251). Other health workers can also be charged with medical malpractice.

The Criminal Code also incriminates torture by the crime of extortion of a confession or statement (Art. 136). This crime is defined in the following manner:

“(1) A public official who uses force or threat or another inadmissible method or means for the purpose of extorting a confession or a statement from an accused, witness, expert witness or another person, shall be punished by imprisonment ranging between three months and five years.

(2) If the extortion of a confession or statement is accompanied by grave violence or if the extortion resulted in particularly serious consequences for the accused in criminal proceedings, the perpetrator shall be punished by imprisonment ranging from two to ten years.”

It is immediately clear that this crime can be committed by acts that can simultaneously be qualified as torture and ill-treatment. Extortion of a confession or statement can, indeed, also be committed by acts not qualifying as ill-treatment either under the Serbian Criminal Code or the case law of the ECHR, the Human Rights Committee or the Committee against Torture (e.g. by giving a promise to or deceiving the person or by applying other inadmissible means). In the event force or threat is applied, the act can always be qualified in two ways: as extortion of a confession or statement or as ill-treatment and torture. If the person sustained bodily

---

[Sl. list SRJ (Međunarodni ugovori), 9/91.]
injury, it can, as mentioned, be qualified as a grave or light bodily injury in conjunction with abuse of post – this is the most frequent qualification of the crime in Serbian case law. In view of all of the foregoing, the question arises which charges will be brought against a person who had committed a crime that has all the elements of torture as defined in the Convention against Torture. Prosecution for a crime warranting the strictest penalty would appear to be the most appropriate solution.

Perpetrators of torture can also be charged with the crime of unlawful deprivation of liberty (Article 132). The simple form of this crime is committed by any person who unlawfully detains another person, keeps that person in custody or otherwise unlawfully deprives him or her of or restricts his or her freedom of movement. The qualified form of the crime is committed by a public official or in the event the unlawful deprivation of liberty lasted more than 30 days or was committed in a cruel manner or seriously impaired the health of or had other grave effects on the person (para 3). In the event the qualified form of this crime was committed by a public official or by a person at the order or with the consent of a public official, it can be qualified as torture or another form of ill-treatment in the meaning of the Convention against Torture.

As already mentioned, the Convention against Torture not only prohibits torture committed by a public official or another person acting in an official capacity, but all forms of maltreatment committed at the explicit order or with the consent of a public official as well. An explicit order by a public official is penalised in local criminal law as deliberate incitement (Art. 34), while a public official who consented to the infliction of torture may be accountable for the following criminal offences: abuse of official position (Art. 359), dereliction of duty (Art. 361), failure to report a criminal offence or the perpetrator of a criminal offence carrying a prison term of minimum five years (Art. 332).

It can be concluded that Serbia incriminates all forms of torture in accordance with Article 4 of the Convention against Torture, but the question is whether the penalties are proportionate to the gravity of the crime as stipulated by the Article. As mentioned, up to one year imprisonment is envisaged for the crime of ill-treatment, while imprisonment ranging from six months to five years is envisaged for torture. If the crime was perpetrated by a public official, s/he may be sentenced to between three months and three years of imprisonment for ill-treatment and to between one and eight years of imprisonment for torture. The simple form of the crime of extortion of a confession or statement warrants between three months and five years of imprisonment and the qualified form warrants between two and ten years of imprisonment. Infliction of a grave bodily injury warrants between six months and five years of imprisonment. The perpetrator is sentenced to between one and eight years in jail in the event the injury impaired the health of the person and put his or her life at risk or destroyed or permanently or substantially impaired or weakened a vital body part or organ or resulted in permanent incapacity to work, permanently or gravely impaired his or her health or maimed him or her. In the
event the grave physical injury resulted in the death of the victim, the perpetrator shall be punished to between two and twelve years in jail. The abuse of post that led to the grave violation of another person’s rights warrants imprisonment lasting between six months and five years. Therefore, if an act of torture is qualified as the crime of grave bodily injury in conjunction with the crime of abuse of post, which is the least favourable qualification for the perpetrator, the perpetrator can be sentenced to maximum 13 years in jail. However, the fact that very mild sentences can be pronounced against perpetrators of grave forms of torture corroborates the assessment that the penalties envisaged for torture are not proportionate to the gravity of the crime.

The Committee against Torture has already noted this deficiency in its recommendations. Although the penal policy is stricter after last year’s amendments to the Criminal Code which raised the penalties for a large number of crimes, including those in Chapter XIV entitled Criminal Offences against the Rights and Freedoms of Man and Citizen, the sanctions for extortion of confession (Art. 136) and ill-treatment and torture (Art. 137) remained unchanged although both of these crimes fall under this Chapter.

### 4.3.3. Criminal Proceedings and Penalty Enforcement

The Criminal Procedure Code includes provisions on the respect for the personality of a suspect and the indictee. Any violence against a person deprived of liberty or whose liberty has been restricted is prohibited and punishable, as is any extortion of a confession or another statement from the indictee or another person taking part in the proceedings (Art. 12). The CPC prohibits resort to force, threats, deceit, promises, coercion, attrition or other methods aimed at obtaining a statement or a confession which may be used as evidence against the accused or for the achievement of any other goals (Art. 89 (8)).

Also, the CPC prohibits any medical intervention or administration of anything to a suspect, indictee or witness that would affect their consciousness or will while they are giving a statement (Art. 131 (4)). However, the law allows the physical examination of the suspect or indictee even without his/her consent if this is necessary to establish facts relevant to the criminal proceedings. Such legal provisions do not give rise to concern from the viewpoint of prohibition of torture, inhuman or degrading treatment, as they amount to ordering a medical examination, which per se does not constitute the lowest degree of maltreatment and which a doctor performs in accordance with the rules of the medical profession. Also, pursuant to Article 131 (2) of the CPC, blood sampling and other medical action necessary for the analysis and determination of other facts relevant to criminal proceedings may be carried out without the consent of the examined person unless such actions

---

118 CAT, Concluding Observations, UN doc. CAT/C/SRB/CO/1.
119 Act Amending the Criminal Code, Sl. glasnik RS, 72/09, adopted on 31 August 2009 and in effect since September 2009.
would incur damage to the person’s health. Blood sampling is prescribed here primarily to determine the alcohol levels of drivers; as a diagnostic measure, it does not constitute an experiment in terms of Article 7 of the ICCPR. Attention should nevertheless be drawn to the much too vague concept of “other medical actions”.

The Criminal Procedure Code prescribes that court decisions may not be based on evidence when the content of or manner in which it was collected was in contravention of the provisions of the Constitution or a ratified international treaty, or expressly prohibited by the CPC or another law (Art. 18).

The CPC contains special provisions on respect for the personality of detainees. Article 148 prohibits offending the personality and dignity of a detainee during detention and prescribes the application of only such restrictions against the detainee which are necessary to prevent his or her escape and to ensure the unhindered conduct of criminal proceedings (Art. 148). The detainee may be visited by his/her attorney, close relations and at the request of the detainee, a doctor and other persons, or diplomatic and consular representatives with the consent of the judge. A detainee may correspond with persons outside the prison under the supervision of the judge unless such correspondence would be detrimental to the proceedings (Art. 150). Supervision of the detention facilities and treatment of detainees must be conducted at least once a week.

The PSEA eliminates most of the shortcomings of the until recently valid legislation that had given uncontrolled discretionary powers to the minister, warden and public officials, excluded the possibility of judicial supervision of violations of the rights of convicts, failed to prescribe any penalties for public officials violating the law, mandatory periodic supervision and reporting. Under the PSEA, a penal sanction shall be enforced in a manner guaranteeing the respect of the dignity of the person it is enforced against; the PSEA prescribes explicit prohibition and punishment of treatment by which a person against whom the sanction is enforced is subjected to any form of torture, abuse, humiliation or experiments, as well as punishment of disproportionate use of force in the enforcement of the sanction (Art. 6). The Act envisages the prohibition of discrimination of prisoners and entitles them to protection of their fundamental rights guaranteed by the Constitution, ratified international documents, generally accepted rules of international law and this Act (italics added, Arts. 7 and 8).

The Regulation on Measures for Maintaining Order and Security in Penitentiaries does not explicitly prohibit maltreatment, limiting itself to a provision which requires that the human dignity of the prisoners be respected and their state of health be taken into consideration during the application of measures for maintaining order and security (Art. 7 (1). The Regulation stipulates a medical check-up of a prisoner subjected to coercive measures (which shall be carried out one more time within the following 24 hours). A report on use of coercion shall be submitted to the prison warden (Art. 12 (2)).
With regard to prohibition of torture, inhuman or degrading treatment or punishment, the state has an obligation of non-refoulement of a person to a state where s/he may be exposed to ill-treatment. This prohibition pertains both to deportation and extradition. It arises from the ICCPR\(^{121}\) and is explicitly prescribed by Article 3 of the Convention against Torture.\(^ {122}\) A similar provision is found in Article 33 of the Convention Relating to the Status of Refugees.\(^ {123}\)

As the extradition of indicted and convicted persons is implemented in accordance with provisions of international multilateral and bilateral agreements, authorities are obliged to respect the above rule when concluding such agreements. In the absence of an international agreement or an agreement not regulating certain issues, the local extradition procedure is implemented in accordance with the provisions of the Act on International Legal Aid in Criminal Matters.\(^ {124}\) The Act on International Legal Aid in Criminal Matters does not include such a provision, which is definitely a serious omission by the legislator, but it does not bring into question the state’s obligation not to hand over persons to other states where they may be subjected to torture.

The Criminal Code prescribes the possibility of pronouncing a security measure of expelling an alien from Serbia alongside every sanction pronounced against a foreigner in a criminal proceeding, but its duration is restricted to a maximum of ten years (Art. 88). This measure shall not be ordered against an offender enjoying protection pursuant to the ratified international agreements (Art. 88 (4)).

### 4.3.4. Use of Force by Police

Art. 12 (2) of the Act on Police\(^ {125}\) obliges the police to “prohibit torture and inhuman and degrading treatment” in the discharge of police duties. Art. 13 (2) stipulates that the police shall act professionally, responsibly and humanely and respect the human dignity, reputation and honour of all persons and their other rights and freedoms in the performance of their duties. Under Art. 31 (5), “the authorised officer shall in the exercise of police powers act in accordance with the law and other regulations and respect standards set in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the European Code of Police Ethics and other international documents relating to the police”.

Means of coercion may be used only if the law enforcement task cannot be accomplished otherwise. In such cases, they have to be applied with due restraint

---

121 The HR Committee underscores this obligation in its General Comment No. 20, para. 9.
122 The Convention against Torture binds the obligation on a state only in the event of a threat that the person will be exposed to torture, but not if there is a threat she/he will be exposed to milder forms of maltreatment.
123 Sl. list FNRJ (Dodatak), 7/60.
124 Sl. glasnik RS, 20/09.
125 Sl. glasnik RS, 101/05.
and be commensurate to the danger threatening a legally protected good and value, i.e. the gravity of the crime being prevented or suppressed (Art. 84 (2)). A report on every use of means of coercion shall be submitted to the superior police officer (immediate supervisor) within a maximum of 24 hours from the time the means of coercion were used (Art. 86). The supervisor is duty-bound to assess whether the use of the means of coercion was justified and appropriate in each individual case. In the event the officer used firearms or the means of coercion caused grave bodily injuries or death or in the event the means of coercion were applied against more than three persons, the police director or chief of the regional police directorate, 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, Regulation on the Technical Features and Manner of Use of Means of Coercion\textsuperscript{126}).

Under the old Regulation on the Circumstances and Manner of Use of Means of Coercion,\textsuperscript{127} the Inspector General’s Service (now the Internal Control Sector) was obliged to issue notice of such situations (death, grave bodily injuries, material damage or civil disquiet) and, if it deemed necessary, it then proceeded to establish together with the immediate supervisor whether the use of means of coercion was justified (Art. 35 (2)). It should be noted that the prior Regulation had regulated the procedure for assessing whether the use of means of coercion was justified and appropriate in much greater detail than the new Regulation. It had also set deadlines within which the competent supervisors had to undertake specific actions to establish all circumstances relevant to the justification and appropriateness of the use of means of coercion. Under the new Regulation, a binding directive shall be issued specifying the methods of reporting the use of means of coercion and of assessing whether their use was justified and appropriate.

The Code of Police Ethics,\textsuperscript{128} based on the European Code of Police Ethics, prescribes that that no Ministry employee is allowed to order, commit, incite or tolerate torture or other brutal or inhuman treatment degrading the personality of a person (Art. 34) and obliges a police officer who witnessed one of the proscribed actions to report them to his superior, Internal Control Sector and external civilian control bodies.

The underdeveloped system of monitoring police custody sites undoubtedly hinders more efficient prevention and punishment of torture committed by the police. This problem was noted in the recommendations of the UN Committee against Torture, which concluded at its November 2008 session that the state should ensure that an independent oversight mechanism for alleged unlawful acts committed by

\textsuperscript{126} Sl. glasnik RS, 19/07 and 112/08.
\textsuperscript{127} Sl. glasnik RS, 133/04.
\textsuperscript{128} Sl. glasnik RS, 92/06.
Legal Provision Related to Human Rights

all agents of the State is set up,\(^\text{129}\) and by the European Committee for the Prevention of Torture,\(^\text{130}\) which was even more specific in its recommendations and advised that the authorities “take steps to develop a system for independent monitoring of police detention facilities. To be fully effective, monitoring visits should be both frequent and unannounced. Further, the monitoring bodies should be empowered to interview detained persons in private and examine all issues related to their treatment”.\(^\text{131}\) In its response to the European Committee for the Prevention of Torture, Serbia stated that the Ministry of Justice in early 2008 submitted a petition to the National Assembly to set up a board to conduct parliamentary oversight of the Penal Sanctions Enforcement Administration and that its experience would be used to establish another similar oversight mechanism for police detention facilities.\(^\text{132}\) Neither body had been set up by the end of the reporting period.

The Internal Control Sector, which oversees the lawfulness of police work, “particularly with regard to the respect and protection of human rights during the fulfilment of police tasks and exercise of police powers”, was established pursuant to Art. 172 (1) of the Act on Police. The complaints procedure also allows for oversight of police work. Under Art. 180 of the Act on Police, “everyone shall be entitled to file a complaint to the Ministry against a police officer if s/he believes the officer violated his or her rights or freedoms by unlawful or improper action”. Every complaint against a police employee and all the circumstances regarding it must first be reviewed by the head of the unit in which the implicated officer is employed, or by a person authorised by the head of unit. The head of unit shall make a record of the complaints procedure, which must be concluded within 15 days from the day of receipt of the complaint. In the event the complainant disagrees with the views of the head of unit or the complaint gives rise to suspicion that a crime prosecuted \textit{ex officio} was committed, the whole case file shall be forwarded to a commission which shall conduct the complaints procedure. The Ministry Commission comprises three members – the Head of the Internal Control Sector or a person authorised by him/her, a representative of the police authorised by the Minister and a civilian representative nominated by professional associations and NGOs and appointed and dismissed by the Minister. Apart from the Ministry Commission, each of the 27 police directorates have commissions comprising one police, one Internal Control Sector and one civilian representatives. The complaints procedure is regu-


lated in greater detail in the Complaints Procedure Regulation. It is still too early to assess the effectiveness of this form of police oversight as it was established relatively recently, but the manner in which commission members are appointed gives rise to doubts over its independence from the police. Namely, according to the Regulation, the civilian representative in the commission has fewer powers than the other two members with respect to accessing documents and the opportunity to talk to persons who may have information of relevance to the complaints procedure (Art. 11 of the Regulation). Furthermore, this member is appointed and dismissed by the Minister of the Interior. Independence, transparency and effectiveness in investigating allegations of police misconduct are necessary prerequisites for human rights protection, but the valid legal provisions do not appear to ensure them to a satisfactory degree.

4.4. Prohibition of Slavery and Forced Labour

Article 8, ICCPR:

1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;
   (b) Para. 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
   (c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:
      (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
      (ii) Any service of a military character and, in countries where conscientious objection is recognised, any national service required by law of conscientious objectors;
      (iii) Any service exacted in cases of emergency or calamity threatening the life or well being of the community;
      (iv) Any work or service that forms part of normal civil obligations.

133 Sl. glasnik RS, 54/06.
135 Ibid., para. 76.
Article 4, ECHR:
1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term ‘forced or compulsory labour’ shall not include:
   (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
   (b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;
   (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
   (d) any work or service which forms part of normal civic obligations.

Article 1, Protocol No. 4 to the ECHR:
No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

4.4.1. General
With regard to the prohibition of slavery and forced labour, Serbia is bound both by the ICCPR and many other international treaties on prohibition of slavery and other forms of servitude. By ratifying these treaties, the state assumed the following obligations:

136 The Slavery Convention (Sl. novine Kraljevine Jugoslavije, 234/29), ILO Convention No. 29 Concerning Forced Labour (Sl. novine Kraljevine Jugoslavije, 297/32), Convention on the Suppression of Trade in Adult Women (Sl. list FNRJ, 41/50), Convention for the Suppression on the Trafficking in Persons and of the Exploitation of the Prostitution of Others (Sl. list FNRJ, 2/51), Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (Sl. list FNRJ (Dodatak), 7/58), International Covenant on Economic, Social and Cultural Rights (Sl. list SFRJ, 7/71), Convention on the Elimination of All Forms of Discrimination against Women (Sl. list SFRJ (Međunarodni ugovori), 11/81), Convention on the High Seas (Sl. list SFRJ (Dodatak), 1/86), Convention against Transnational Organized Crime and additional protocols (Sl. list SRJ (Međunarodni ugovori), 6/01), Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Sl. list SRJ (Međunarodni ugovori), 7/02 and 18/05), the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Sl. list SRJ (Međunarodni ugovori), 7/02, ILO Convention No. 105 Regarding the Abolition of Forced Labour (Sl. list SRJ (Međunarodni ugovori), 13/02), Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Sl. list SRJ (Međunarodni ugovori), 13/02), the ILO Convention No. 182 on the Worst Forms of Child Labour (Sl. list SRJ (Međunarodni ugovori), 2/03), the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Sl. glasnik RS (Međunarodni ugovori), 19/09), CoE Convention on Action against Trafficking in Human Beings (Sl. glasnik RS (Međunarodni ugovori), 19/09). The CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Sl. glasnik RS (Međunarodni ugovori), 01/10), Convention for the Protection of Human Rights and Dignity of the Human Being with
responsibility to protect certain rights, together with the obligation to suppress and punish all forms of slavery, practices akin to slavery, transport of persons in the position of slavery, trafficking in human beings and forced labour.

4.4.2. Trafficking in Human Beings and Smuggling of People

Article 4 (2) of the ICCPR prohibits the derogation of rights listed in Article 8 (1 and 2), because they pertain to the overall situation of the human being, whereas the other rights listed in this article pertain to labour that is not voluntary, but is neither permanent nor constant. Keeping someone enslaved has recently become a topical issue, since it occurs massively in the form of trafficking in human beings. Contemporary international standards on combating human trafficking are incorporated in the United Nations Convention against Transnational Organized Crime and its two Protocols.137

4.4.2.1. Trafficking in Human Beings – Significant headway was made in adopting regulations on combating trafficking in human beings over the previous years.138 The positive trend continued in 2010 as the National Assembly ratified another two international documents on trafficking in humans – the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, otherwise known as the Convention on Human Rights and Biomedicine.

The Serbian Constitution explicitly prohibits slavery, keeping persons in conditions akin to slavery and all forms of trafficking in persons (Art. 26 (1 and 2)). This explicit ban on human trafficking by the highest state legislation is a significant step forward in the protection of fundamental human rights and freedoms.


Amendments to the Criminal Code adopted in 2009139 increased prison sentences for the crime of trafficking in humans (Art. 388 (1)) and the legal minimum in the event the crime was committed against a minor (Art. 388 (3)) or resulted in grave bodily injuries (Art. 388 (4)). The new provision stipulates minimum ten-year imprisonment in the event the crime was committed by an organised crime group...
Legal Provision Related to Human Rights

(Art. 388 (7)). The amendment also prescribes that the victim’s consent to exploitation shall be considered irrelevant in the event of a crime committed in any of the above listed ways (Art. 388 (10)).

The provision was amended also by a paragraph envisaging six-month to five-year imprisonment for offenders who took advantage of the victim’s status or enabled another person to take advantage of the victim’s status for the purpose of exploitation, if the offender knew or could have known that the person was a victim of human trafficking, while an offender, who knew or could have known that the victim was a minor, shall be sentenced to between one and eight years in prison (Art. 388 (7)). The relevant provision has thus been improved considerably and mirrors international standards to a greater extent.

The criminal offence of trafficking in children for adoption purposes (Art. 389) has been amended and renamed to the criminal offence of trafficking in minors for adoption purposes, which should imply that the scope of rights protected by the amendment has been expanded to all persons under 18 years of age. Para 1 of Article 389, however, states that the crime regards victims under sixteen years of age, which may lead to ambiguities in practice in case the victim is between 16 and 18 years of age. Therefore, although the amendment to this provision commendably prescribes minimum five-year imprisonment for this crime in the event it was committed by an organised crime group, BCHR is of the view that it still deviates from the international standard under which everyone under 18 is considered a child.

The amendments to the Criminal Code increase the penalty for the crime of mediation in prostitution (Art. 184) to between six months and five years of imprisonment and a fine, thus rectifying and improving the previous provision, under which the offender faced a fine or maximum three years of imprisonment.

It is important to highlight the headway made with the aim of punishing traffickers and those consciously taking advantage of the status of a victim of human trafficking but it also needs to be underlined that persons involved in prostitution still face 30-day prison sentences under the valid Act on Public Law and Order.140 The law thus envisages punishment of both persons committing the crime and persons who may be victims of human trafficking and – given that sexual exploitation is one of the most common forms of exploitation – are forced to engage in prostitution, which is absurd.

After two and a half years of work on a plan for combating human trafficking, the Government in 2006 adopted the Strategy for Combating Human Trafficking in the Republic of Serbia.141 The Strategy is operationalised by the 2009–2011 National Action Plan which the Government adopted at its session in 2009.142

140 Art 14 (1), Sl. glasnik RS, 51/92, 53/93, 67/93, 48/94, 85/05 and 101/05.
141 Sl. glasnik RS, 111/06. See Report 2005, I.4.4.3. and Report 2006, I.4.4.2.1.
The National Assembly in October 2008 passed the Aliens Act which states in Art. 28 that a victim of transborder human trafficking shall be approved temporary residence without needing to provide specific evidence (required of other aliens seeking temporary residence in para. 1 of the Article), if such approval is in the interest of criminal proceedings instituted over human trafficking. The Act does not specify whether the victims shall enjoy these benefits if criminal proceedings have not been instituted or if the victim does not wish to or is unable to participate in them. This provision provides less protection than the 2004 Instructions, adopted on the basis of the prior Act on Movement and Residence of Aliens.

Para. 5 of Article 28 of the Aliens Act prescribes that the alien in para. 5 of the Article shall be provided with adequate accommodation, nutrition and basic living conditions if necessary. The legislator has obviously made a mistake in this provision given that the cited paragraph does not mention aliens or any other persons. It can be interpreted so as to mean that accommodation and nutrition will be provided to a foreign victim of human trafficking, mentioned in para. 4, not para. 5 of the Article. A literal interpretation of the provision would, however, preclude the fulfilment of the state’s obligations to provide accommodation, food and basic living conditions.

Serbia’s legislation, including the new Aliens Act, does not comprise provisions regulating the safe return of a victim of transborder human trafficking to his/her country of origin nor specifying who would be charged with the task.

Relevant international organisations have noted the headway Serbia made with respect to the content of the regulations in their reports but underlined that the implementation of the law was a challenge to the effective suppression of trafficking in humans in Serbia.

4.4.2.2. Trafficking in Human Organs. – The Criminal Code lists the removal of a body organ as one of the purposes of the crime of human trafficking (Art. 388 (1)). The Transplantation of Organs Act adopted in 2009, inter alia incriminates coercing a person to consent to donate his or her or another person’s organ for transplantation while s/he is alive or upon death and the extraction of his/her organs (the offender will be sentenced to between two and ten years of imprisonment) (Art. 78).

143 Sl. glasnik RS, 97/08.
144 The Serbian Minister of the Interior adopted Instructions on conditions for approving temporary residence to foreign nationals – victims of human trafficking. Under the Instructions, a human trafficking victim may be approved up to three-month temporary residence for humanitarian reasons to provide the victim protection and assistance in recovery and enable her/his return to her/his state of origin or of prior residence; 6-month temporary residence may be approved to foreign victims of human trafficking who agreed to cooperate with the authorities in uncovering the crimes and their perpetrators and one-year temporary residence permits may be issued to victims actively participating in the court proceedings in the capacity of witness or injured party or if so required to ensure their personal safety (See Report 2004, I.4.4.3.).
145 See II.2.6.
146 Sl. glasnik RS, 72/09.
The same sentence shall be pronounced against a person donating or offering to do-
inate his or her or another person’s organ for transplantation for a fee and against a
person soliciting, transporting, transferring, handing over, selling, purchasing organs,
mediating in the sale of organs or mediating in any other manner in the transplanta-
tion of organs or participating in an organ transplantation procedure which is the
subject of a commercial transaction (Art. 79). This sentence also awaits a person
found to have transplanted the organ or participated in the transplantation of an organ
to a person, who had not consented to organ transplantation in writing, a person who
had extracted an organ from a deceased person i.e. participated in extracting an organ
from a deceased person whose brain death had not been diagnosed and declared, a
person who had extracted an organ or participated in the procedure of extracting an
organ from a person who had prohibited organ donation upon death while s/he was
alive (Art. 80). With the qualification of these acts as crimes and the list of related
misdemeanour offences (Arts. 81–83), the legislation on transplantation of organs is
now complete, modern and in conformity with relevant international standards.147

4.4.2.3. Smuggling of People. – The CC prohibits human smuggling (Art.
350 (2)), prescribing that anyone who for the purpose of financial gain enables any
person without Serbian citizenship to illegally enter, transit or stay in Serbia, shall
be sentenced to imprisonment. The penalty, which ranged from three-month to six-
year imprisonment, has been amended and the crime now warrants between six
months and five years of imprisonment. Endangering the life or health of an illegal
migrant is prescribed as an aggravating circumstance and is punishable by between
1 and 10 years’ imprisonment (Art. 350 (3)). Amendments to the Criminal Code
also stipulate that the offender shall be sentenced to between 3 and 12 years of
imprisonment in the event the crime was committed by an organised crime group.
Notwithstanding the latest amendments, this provision, however, still does not af-
ford adequate protection to the smuggled persons – inhuman or humiliating treat-
ment and exploitation of smuggled migrants are not a qualified form of the crime,
which is not in accordance with the standard set in Protocol 2 (Art. 6 (3)).

147 The CoE Convention on Human Rights and Biomedicine (Art. 21) and its Additional Protocol
on Transplantation of Organs and Tissues of Human Origin (Arts. 21 and 22) and Recommenda-
tion 1611 (2003) of the CoE Parliamentary Assembly on Trafficking in Organs (Arts.
12 and 14 (iii e)) insist on the prohibition of using the human body and organs for the purpose
of financial gain, of advertising the need for, or availability of, organs or tissues, with a view
to offering or seeking financial gain or comparable advantage, on the amendments of national
criminal law to ensure that those responsible for organ trafficking are adequately punished,
including sanctions for medical staff involved in transplanting organs obtained through illegal
trafficking, brokers, intermediaries, hospital/nursing staff and medical laboratory technicians
involved in the illegal transplant procedure, as well as medical staff who encourage and provide
information on “transplant tourism” and who are involved in follow-up care of patients who
have purchased organs if they fail to alert the health authorities of the situation (See http://
assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta03/EREC1611.htm, http://conven-
Html/186.htm).
The CC does not hold migrants criminally responsible for becoming victims of human smuggling, for possession of forged travel and identification documents for the purpose of smuggling or for staying in the given state without fulfilling the legal residence requirements, whereby the Code departs from the standard set in Protocol 2 (Art. 5).

4.4.3. Forced Labour

Forced or compulsory labour encompasses every work done under threat or punishment.\textsuperscript{148} According to Article 6 (1) of the ICESCR, persons who do not work may be deprived of material compensation for work, but they must not be forced to work, meaning that there is the right, but not the obligation to work.

The Constitution explicitly bans forced labour in Article 26 (3)). This article expands the protection of rights set by international standards by envisaging that sexual or economic exploitation of vulnerable persons shall be deemed forced labour. Article 26 (4) of the Constitution lists which forms of labour shall not be deemed forced labour; this provision is compatible with Article 8 (3c) of the ICCPR.

Article 8 (3b) of the ICCPR prescribes that prohibition of forced or compulsory labour cannot be interpreted as prohibition of execution of forced labour sanctions pronounced by the competent court. Under Article 181 of the CPC, an inmate may perform specific jobs in the prison compound, but only on a voluntary basis and at his or her own request and shall for that work receive financial compensation set by the prison warden.

In terms of convict labour, the European Court of Human Rights, in the case of \textit{De Wilde, Ooms, Versyp v. Belgium}\textsuperscript{149} ruled that convict labour that did not contain elements of rehabilitation was not in accordance with Article 4 (2) of the ECHR. In the provisions on work obligation of convicts, the PSEA (Arts. 86–100), emphasises the rehabilitation element of work performed by convicts.

Relevant provisions of national legislation have in that respect been harmonised with international standards.

The Constitution does not stipulate a general military obligation. The Serbian Army Act\textsuperscript{150} in its chapter on military service sets out that Serbian citizens shall join the Army on the basis of an authorised body decision on referral to the Army in accordance with compulsory military service or on the basis of a decision of enrolment in military service i.e. a military school (Art. 32). The obligation in the Serbian Army Act is not considered compulsory labour,\textsuperscript{151} only if it is

\textsuperscript{148} Article 2 (2) of the Convention No. 29 of the ILO, has defined forced labour as “any labour or service required from a person under threat of punishment and for which this person did not volunteer” (see also \textit{Van der Mussele v. Belgium}, ECmHR, App. No. 8919/80 (1983); \textit{Siliadin v. France}, ECHR, App. No. 73316/01 (2005)).

\textsuperscript{149} ECtHR, App. No. 2832/66 (1971).

\textsuperscript{150} \textit{Sl. glasnik RS}, 116/07 and 88/09.

\textsuperscript{151} Military service is not considered forced labour even when it lasts for a long time and there is no possibility for it to be shortened (See case \textit{W., X., Y. and Z. v. United Kingdom}, ECmHR, App. No. 3325/67 (1967)).
purely military in character (Art. 2 (2.a) Convention ILO No. 29 on compulsory labour).152

The Act on Defence153 prescribes the work obligation of citizens during a state of war and a state of emergency (Art. 50 (1)). Under the Act, the work obligation cannot be imposed on persons listed in the Act as particularly vulnerable, such as the parent of a child under 15 years of age whose spouse is performing military service, a woman during pregnancy, childbirth and maternity, a person unfit for work (Art. 55 (3)), which is in keeping with international standards. However, the Act on Defence does not prescribe the duration of the work obligation of individuals.

The ICCPR does not absolutely prohibit derogation of Article 8 (3). In keeping with this is Article 26 (4) of the Constitution, which specifies situations that shall not be considered forced labour, including labour or service of military staff and labour or services during a state of war or emergency in accordance with measures set during the declaration of war or state of emergency.

However, the failure to precisely set the duration of the compulsory work obligation in the Act on Defence allows for arbitrary determination of the duration of compulsory work obligation during a state of war or emergency, which is a deviation from international standards. This Act should be harmonised with the ILO Convention No. 29 on Forced Labour, which in its Article 12 (1) describes the maximum period of 60 days over a 12-month period as time during which a person can be obliged to perform compulsory labour.154

In terms of the usual civic obligations, free legal aid is prescribed by national legislation in Article 17 (2) of the Federal Act on Attorneys,155 which is in keeping with the standard set in Article 8 (3c (iv)) of the ICCPR.156

4.5. Right to Liberty and Security of Person; Treatment of Persons Deprived of Their Liberty

Article 9, ICCPR:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

152 Compulsory military service has been abolished and the Army of Serbia will be fully professionalised.
153 Sl. glasnik RS, 116/07, 88/09 and 104/09.
154 In para. 2 of that Article, the Convention indirectly indicates that labour defined in Article 1 shall be considered as an exception from the prohibition of forced labour, since it prescribes that each worker shall be issued a certificate on the period during which s/he was subjected to compulsory labour.
155 Sl. list SRJ, 24/98, 26/98, 69/00, 11/02 and 72/02.
156 The obligation to provide free legal aid, as a part of attorney practice, is not considered forced labour (Van der Mussele v. Belgium, ECmHR, App. No. 8919/80 (1983)); neither is legal assistance with low remuneration (X. and Y. v. Germany, ECmHR, App. No. 7641/76 (1976)).
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been a victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 5, ECHR:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

   (a) the lawful detention of a person after conviction by a competent court;

   (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

   (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

   (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

   (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;

   (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language that he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of para. 1 (c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

### 4.5.1. Right to Liberty and Security of Person

After postponing the enforcement of the Criminal Procedure Code (CPC), adopted in 2006 and envisaging the introduction of the so-called prosecutorial investigation model, time and again, this law was finally scrapped in September 2009, when the National Assembly adopted the Act Amending the CPC passed in 2001. The legislator thus abandoned the prosecutorial investigation model, at least for the time being, wherefore there have been no major changes that would have reflected on the realisation of the right to liberty and security of person. The working group established by the Justice Ministry presented the draft Criminal Procedure Code in the latter half of 2010. The draft also introduces the prosecutorial investigation model. The draft was not submitted to parliament for adoption until the end of the year, wherefore the 2001 Criminal Procedure Code, which was slightly amended in October 2010, will remain in force for the time being.

#### 4.5.1.1. Prohibition of Arbitrary Arrest and Detention

The intent of the ICCPR Article 9 is to provide procedural guarantees against arbitrary arrest and detention. State parties have an obligation to define precisely when arrest is lawful, and to provide for judicial review to determine whether or not this is the case. The Human Rights Committee has interpreted the article as also guaranteeing the right to personal safety, under which states are obliged to take “reasonable and appropriate” measures to protect every individual from injury by others.

The Constitution of Serbia guarantees all persons the right to personal liberty and security (Art. 27 (1)). In addition to its immediate responsibility for the actions of its bodies, the state is also obliged to ensure that natural persons do not violate rights guaranteed by the ICCPR by their actions. With regard to the right to liberty and security of person, the state is obliged to prohibit and adequately investigate and punish every instance of illegal deprivation of liberty, including such deprivation perpetrated by persons who are obviously not state agents. In that respect, the Criminal Code comprises the criminal offences of unlawful deprivation of liberty (Art. 132), abduction (Art. 134) and trafficking in humans (Arts. 388 and 389).

The ICCPR requirement that arrest and detention be lawful and its prohibition of arbitrariness do not only relate to criminal proceedings but also to all cases

---

157 Sl. glasnik RS, 46/06, 49/07 and 122/08.
158 Sl. glasnik RS, 72/09.
159 Act Amending the Criminal Procedure Code, Sl. glasnik RS, 76/10.
in which a person’s freedom is restricted, e.g. due to mental illness, vagrancy, alcohol or drug addiction, and the like.

The Constitution of Serbia allows for the deprivation of liberty “only on the grounds and in a procedure stipulated by the law” (Art. 27 (1)).

The CPC lays down that only a competent court may order detention only in cases prescribed by the law if the purpose of detention cannot be achieved by other means (Arts. 141–143). The decision on detention is taken by an investigating judge or a judicial panel upon the questioning of the accused, unless it was impossible to serve the accused with the summons for questioning because the accused was inaccessible or had failed to report a change in address or if there is danger of delay. The decision on detention is served to the person concerned at the time of deprivation of liberty or within 12 hours from the moment of deprivation of liberty or appearance before the investigating judge. The detained person may appeal this decision. Appeal does not stay enforcement (Art. 143 (3)). The appeal must be reviewed within 48 hours. The duration of detention must be restricted to the shortest possible time.

The CPC allows the police and prosecutor to detain a suspect but only in exceptional cases (Art. 229). The suspect against whom this measure is applied enjoys the full scope of rights belonging to defendants, especially the right to legal counsel. An Interior Ministry body or prosecutor must immediately or within maximum 2 hours issue and serve the decision on detention. Duration of detention is limited to 48 hours maximum from the moment a person is deprived of liberty i.e. responded to the summons. The investigating judge must be informed about this immediately and has the possibility to request that the detained person be brought to him promptly (Art. 229 (4)). The detained person may lodge a complaint against the decision on detention. The complaint does not stay enforcement of detention. The investigating judge must decide on this complaint within 4 hours. Nevertheless, the most important guarantee in this situation is the impossibility of interrogation without the presence of counsel. Namely, questioning shall be postponed until the arrival of counsel, up to eight hours maximum. If the presence of counsel has not been ensured by then, police shall either release the detainee immediately or bring him/her before the competent investigating judge.

A person, who had failed to respond to a police summons to provide information, may be brought in by force only if the summons included a warning to that effect (Art. 226, CPC). Collecting information from one person may last four hours at most (Art. 226 (3)). If, in the course of collecting information, the police authority assesses that the summoned person may be considered a suspect, the authority is duty-bound to immediately notify him or her of the crime s/he is suspected of, the grounds of suspicion, the right to retain counsel and other rights granted suspects under the CPC (Art. 226 (8)).

Practice has shown that police officers have contradictory opinions as to whether or not the time spent collecting information before the person acquired the
status of suspect (maximum 4 hours) is included in the 48-hour detention period in such situations (when the police decide that the person they are questioning is a suspect). This was noted also by the European Committee for the Prevention of Torture during its visit to Serbia.\textsuperscript{162} Given that Art. 229 (1) of the CPC stipulates that detention for the purpose of collecting information or interrogating a suspect (including a person who had acquired the status of suspect in the course of collecting information) may last a maximum of 48 hours from the hour the person was deprived of liberty i.e. responded to the summons, BCHR is of the view that the duration of detention of a person whom the police decided was a suspect during questioning ought to be reckoned from the moment s/he responded to the summons, i.e. that the 48-hour deadline within which that person must be brought before an investigating judge has to be reckoned from that moment. This ambiguity, however, rarely causes problems in practice because suspects are usually brought before investigating judges within the prescribed 48-hour deadline (which the CPT, too, concluded in its most recent report on Serbia).

Under Article 53 of the Act on Police, a person disrupting or endangering public order may be detained if it is otherwise impossible to re-establish public order or eliminate the danger. Such detention shall last 24 hours at most. The detained person may appeal the detention order with the competent court.

Article 166 of the Act on Misdemeanours\textsuperscript{163} sets out that an accused may be detained by a court order in a misdemeanour procedure in the following cases:

1. In the event his/her identity or permanent i.e. temporary residence cannot be established and there is reasonable suspicion s/he will abscond;
2. In the event s/he can avoid responsibility for a misdemeanour warranting imprisonment by leaving the country;
3. In the event s/he was caught in the commission of the misdemeanour and detention is required to prevent the further commission of the misdemeanour.

However, detention cannot be ordered by a body of the state administration conducting the proceeding, but only by the court.\textsuperscript{164} The new Act, too, however, has provisions on detention that are not in keeping with international standards. Article 168 prescribes “compulsory detention of inebriated persons, drivers of motor vehicles with minimum 1.2 g/kg of alcohol in the blood or under the influence of opiates, as well as of persons who refuse to undergo alcohol or drug tests.” The general standard is that deprivation of liberty must always be justified as necessary and that justification needs to be assessed by the court in each specific case.


\textsuperscript{163} Sl. glasnik RS, 101/05, 116/08 and 111/09.

\textsuperscript{164} A state administration authority may ask the court to order this measure (Art. 166 (2)).
The Road Traffic Safety Act,\textsuperscript{165} which came into force in December 2009, includes a provision nearly identical to the one in Article 168 of the Act on Misdemeanours. Article 283 of the Road Traffic Safety Act sets out that a driver “established to be driving under the influence, under the intense influence or under the full influence of alcohol and/or under the influence of psychoactive substances” may be held in detention at the order of a police officer until s/he sobers up, for a maximum of 12 hours. A police officer may also put in detention a driver under the influence of alcohol, who has been established to have a lower concentration of alcohol in the event s/he expressed the intent to or if there is a danger that s/he will continue driving although the police pulled him or her off the road (Art. 283 (2)) and a driver who refused to take an alcohol or drug test (Art. 283 (3)). Neither this Article nor the circumstances in Article 168 of the Act on Misdemeanours provide for a court review of whether the deprivation of liberty was justifiable. Article 284 sets out that a driver caught committing a violation and expressing the intent to or continuing to commit the violation, shall be brought before the competent misdemeanour authority; in the event s/he cannot immediately be brought before the authority, the police unit with jurisdiction over the territory may keep the person in detention for a maximum 24 hours.

\textbf{4.5.1.2. Right to Be Informed of Reasons for Arrest and Charges.} – Para. 2 of the ICCPR Article 9 states that a person who is arrested shall be informed, at “the time of his arrest”, of the reasons for his arrest and “promptly” informed of the charges against him. Under Article 27 (2) of the Constitution, “All persons 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”.

With regard to the right of an arrested person to be informed promptly of the charges against him, the provisions of the CPC are in accordance with international standards given that the accused i.e. suspect is entitled to be notified in detail and in a language s/he understands and promptly, at the first hearing at the latest, of the offence s/he is charged with, the nature of and grounds for the charges and evidence collected against him or her (Art. 4 (1.1)). A suspect must be given the opportunity to read the criminal report, the crime scene report, the findings and opinions of court experts and the motion for investigation immediately before the first hearing and at his/her own request (Art. 89 (3)). A person deprived of liberty may institute proceedings before the court, i.e. file an appeal with the court, which is duty bound to urgently rule on the lawfulness of the deprivation of liberty (Art. 5 (3.4)). This provision satisfies the requirements in ICCPR and ECHR.

\textbf{4.5.1.3. Right to Be Brought Promptly Before a Judge and to a Trial within a Reasonable Time.} – This right applies only in criminal prosecution cases and guarantees that an arrested person will be brought promptly before “a judge or other

\textsuperscript{165} Sl. glasnik RS, 41/09 and 53/10.
officer authorised by law to exercise judicial power” and that he will be tried within a reasonable time or be released. Though it is hard to determine what “promptly” means, it would seem that this period should not exceed four days even in exceptional circumstances and should be much shorter in normal circumstances.166 “Other officer authorised by law to exercise judicial power” means an impartial organ which is also independent, primarily with respect to executive bodies and the prosecutor, and which is empowered to either release the arrested person or order him remanded to custody.167

Under Serbian law, custody may be ordered by an investigating judge or a judicial panel, at the request of the prosecutor, wherefore it may be considered that the standard requiring that the decision be taken by a judge “or other officer authorised by law to exercise judicial power” has been met.168

During the pre-trial proceedings, authorised police officers may deprive a person of liberty if there are reasons for ordering his or her custody, but nevertheless have the obligation to promptly bring this person before an investigating judge, save in extraordinary circumstances, when a police officer may retain in detention a person deprived of liberty or a suspect to collect information or interrogate him or her for a maximum of 48 hours from the hour the person was deprived of liberty i.e. responded to the summons (Arts. 227 (1) and 229 (1)). If more than eight hours have passed before the person was brought before the investigating judge, this delay must be explained to the judge and the investigating judge shall make an official record thereof. The record shall contain the statement of the person deprived of liberty about the time and place of arrest (Art. 227 (3)).

The Constitution prescribes that detention pending indictment may last for maximum three months on the basis of a decision by competent first instance court and that it may be extended by a decision of a superior court by another three months. The period starts running on the day of arrest and the suspect shall be released if charges have not been raised by the end of this period (Art. 31 (1)). The length of custody in regular proceedings is regulated in more detail by the CPC (Arts. 142 and 144), while the period of custody pending indictment in summary proceedings is limited to eight days without the possibility of extension, and after the indictment has been filed general rules apply.

A person taken into custody has the right to stand trial within a reasonable period of time or otherwise be released. The duration of detention pending indictment is limited in the following way: on the basis of a decision of an investigating judge detention may last for a maximum of one month, and on the basis of a deci-

sion by a judicial panel it may be extended another two months at most. A decision by an immediately higher court (in cases of criminal offences carrying minimum 5 years in prison) may extend this period for another three months at most. If no indictment is issued by the expiry of these deadlines, the detained person shall be released (Art.144 (4), CPC).

4.5.1.4. Right to Appeal to Court against Deprivation of Liberty. – This right is envisaged in cases when a person has been ordered custody by a non-judicial body. The Human Rights Committee took the stand that judicial control must be provided immediately, not after the decision by the second-instance administrative body.

The Constitution of Serbia guarantees the rights of all persons deprived of liberty to address the court, which is to urgently review the lawfulness of the deprivation of liberty and order his or her release if the person was unlawfully deprived of liberty (Art. 27 (3)).

The Act on Non-Contentious Procedure (ANCP) provides for committing a person to a high security psychiatric institution. It is applied to persons whose freedom of movement and communication with the outside world need to be restricted due to the nature of their illness (Art. 45 (1)).

As concerns the proceedings in this non-contentious matter, the courts may issue a decision ordering that a person against whom the proceedings are conducted for deprivation of civil capacity be placed in an appropriate medical institution temporarily but no longer than three months, if in the doctor’s opinion this would be necessary in order to determine his/her mental state, unless extended placement may adversely affect the person’s health (Art. 38 (3)). A complaint against such a court decision may be filed by the person against whom the proceedings are being conducted, as well as by his/her guardian or temporary representative within three days of receipt of a copy of the decision (Art. 39 (1 and 2)).

4.5.1.5. Right to Compensation for Unlawful Deprivation of Liberty. – A person unlawfully deprived of liberty has the right to rehabilitation, compensation of damages from the state, as well as other rights prescribed by law (Chapter XXIV, CPC). The right to compensation of damages and rehabilitation is explicitly guaranteed also by the new Constitution (Art. 35).

4.5.1.6. Right to Security of Person. – In addition to responsibility for persons who are deprived of liberty in any manner and thus within the immediate competence of the state bodies, the state is also obliged to protect persons at liberty whose security is under serious threat. In that respect, it needs to investigate the

171 Sl. glasnik SRS, 25/82 and 48/88, Sl. glasnik RS, 46/95 and 18/05.
threats and undertake all measures required by the “objective need” i.e. “gravity of the case”\textsuperscript{172} In keeping with this requirement, the CC includes the crime of endangerment of security (Art. 138).

4.5.2. Treatment of Persons Deprived of Their Liberty

Article 10, ICCPR:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

4.5.2.1. Humane Treatment and Respect for Dignity. – All restrictions that are not inherent in the very nature of the deprivation of liberty and of life in a restricted environment are prohibited. Article 10 of the ICCPR complements Article 7, which prohibits torture, cruel or inhuman or degrading treatment or punishment\textsuperscript{173}

Under the Constitution, persons deprived of liberty must be treated humanely and with respect of their dignity of person. Any violence against and extortion of statements are prohibited (Art. 28). In criminal proceedings, it is prohibited and punishable to “use violence against a person deprived of liberty and person whose liberty has been restricted, as well as to extort a confession or another statement from the defendant or another person taking part in the proceedings” (Art. 5 (4), CPC). It is prohibited to offend the person and dignity of the detained defendant.

In a separate section on court protection, the PSEA guarantees the prisoner the right to seek protection in an administrative dispute against a final decision limiting or violating his/her right. The complaint is adjudicated by the competent court within 15 days. The complaint has suspensive effect, with the exception of cases explicitly envisaged by the Act (Arts. 165 and 166).

4.5.2.2. Segregation of Accused and Convicted Persons, Juveniles and Adults. – In its Article 10 (2), the ICCPR prescribes that accused persons must be segregated from convicted persons “save in exceptional circumstances”, while juveniles must always be separated from adults “and brought as speedily as possible for adjudication”.

\textsuperscript{172} See HRC, Jimenez Vaca v. Colombia, UN doc. CCPR/C/74/D/859/1999.

\textsuperscript{173} See I.4.3.
The CPC lays down that accused persons shall be held in a special prison ward, organised as a closed ward, and separated from the convicts (Art. 237 (1)), which is in accordance with international standards. The PSEA, however, contains the general rule that accused and convicted persons are held “in the same conditions” unless otherwise prescribed by the CPC; this is not in accordance with Article 10 (2.a.) of the ICCPR, which states that accused persons “shall be subject to separate treatment appropriate to their status as unconvicted persons”.

4.6. Right to a Fair Trial

Article 14, ICCPR:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
(c) To be tried without undue delay;
(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
(g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 6, ECHR:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

   (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

   (b) to have adequate time and facilities for the preparation of his defence;

   (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

   (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

   (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7, ECHR:

1. No one shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission that, at the time when it was committed, was criminal according to the general principles of law recognised by civilized nations.

Protocol No. 7 to the ECHR:

Article 2
1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.
2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

Article 3
When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 4
1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention.

4.6.1. Judicial System

The new network of courts and prosecution offices have been established on 1 January 2010, when all the provisions of the following judicial laws adopted in late December 2008 come into force: the Act on Organisation of Courts, the Act on Seats and Jurisdictions of Courts and Public Prosecution Offices, the Act on Judges, the High Judicial Council Act, the State Prosecutors Council Act and the Public Prosecution Act. The Act on Misdemeanours has also been partly amended.174

The new network of courts consists of courts of general jurisdiction and specialised courts. Courts of general jurisdiction comprise basic, higher and appellate

174 All the laws were published in Sl. glasnik RS, 116/08.
courts and the Supreme Court of Cassation, as the highest court in the state. Specialised courts comprise commercial courts, the Commercial Appellate Court, misdemeanour courts, the Higher Misdemeanour Court and the Administrative Court (Art. 11, Act on Organisation of Courts). Under the Act on Seats and Jurisdictions of Court and Public Prosecution Offices, there are 34 basic courts, 26 higher courts, four appellate courts (in Belgrade, Niš, Novi Sad and Kragujevac), 16 commercial courts, an Administrative Court (with three departments, in Niš, Novi Sad and Kragujevac) and the Supreme Court of Cassation.

Basic courts essentially took over the jurisdiction of the municipal courts. The jurisdiction of the new higher courts, however, differs from that of the erstwhile district courts. As opposed to district courts, higher courts do not hear appeals of basic courts, with the exception of appeals of specific decisions taken in proceedings. For instance, higher courts review appeals of basic court decisions on measures ensuring the presence of the defendants in court, of decisions in civil disputes, of verdicts in small claims, enforcement and non-litigation disputes. Higher courts also conduct proceedings related to the extradition of indicted and convicted persons, enforce criminal judgments of foreign courts, recognise and enforce foreign court and arbitration-related decisions not in the jurisdiction of other courts, rule on conflict of jurisdictions between basic courts within their territorial jurisdiction and perform other tasks set forth by the law (Art. 23).175

The Act on Organisation of Courts defines the appellate court as a second-instance court. It shall rule on appeals of higher court decisions, basic court criminal judgments not within the jurisdiction of higher courts, basic court judgments in civil disputes unless such appeals are reviewed by higher courts. The Appellate Court shall also rule on conflict of jurisdictions of lower courts within its territorial jurisdiction in matters not within the jurisdiction of a higher court, on the transfer of jurisdictions of basic and higher courts in the event they are prevented from or cannot act on a legal matter, and shall perform other tasks set forth by the law (Art. 24).

This Act regulates more precisely the jurisdiction of the Supreme Court of Cassation. This court have contentious and non-contentious jurisdiction (Arts. 30 and 31). 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 conflict of jurisdictions between courts unless such decisions are within the jurisdiction of another court, and on transfer of jurisdiction to another court to facilitate proceedings or for other important reasons (Art. 30). Within its non-contentious jurisdiction, the Court shall take legal positions to ensure uniform application of the law, 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).

175 Act on Organisation of Courts, Sl. glasnik RS, 116/08 and Act Amending the Act on Organisation of Courts, Sl. glasnik RS, 104/09.
Organised crime, war crime and high technology crime proceedings are conducted before special departments of the Belgrade Higher Court, while appeals of its decisions shall be reviewed by the Appellate Court in Belgrade.

4.6.2. Independence and Impartiality of Courts

Article 4 of the Constitution comprises provisions on the separation of powers and independence of the judiciary. The Act on Organisation of Courts includes a provision explicitly prohibiting any use of public office, media or any public appearance to affect the outcome of court proceedings or any other influence on the court (Art. 6). Judicial independence, however, does not depend so much on legal provisions; it hinges much more on court practice.176

4.6.2.1. Election of Judges. – The decision on the appointment of judges on permanent tenure in courts with general and specialised jurisdiction was published on 16 December 2009.

The Constitution establishes two bodies charged with appointing judges and deputy public prosecutors, the High Judicial Council and the State Council of Prosecutors.177 The High Judicial Council has great powers with respect to the election of judges. Judges are elected to their first three-year terms in office by the National Assembly at the proposal of the High Judicial Council, while their appointment on permanent tenure shall be decided on by the High Judicial Council (Art. 147, Constitution). The High Judicial Council has 11 members. They comprise the President of the Supreme Court of Cassation, the Justice Minister and the chair of the Assembly committee charged with the judiciary, who shall be members ex officio, and eight members elected by the National Assembly. The eight members shall comprise six judges with permanent tenures and two eminent legal professionals with at least 15 years of professional experience, a solicitor and a law school professor (Art. 153). With the exception of ex officio members, the other HJC members are appointed to five-year terms of office.

As the Venice Commission observed in its Opinion on the Constitution of Serbia, the judicial appointment process is “doubly under the control of the National Assembly: the proposals are made by the High Judicial Council elected by the National Assembly and the decisions are then made by the National Assembly itself”.178

The Constitution did not explicitly envisage the general reappointment of judges. It retained the principle of permanent judicial tenure, but introduced the rule that judge shall first be elected on three-year tenures and then appointed on perma-

176 See II. 2.1.2.
177 Public Prosecutors are elected by the National Assembly at the proposal of the Government.
The Constitutional Act on the Implementation of the Constitution, however, provided for the general reappointment of all judges.

The European Commission voiced serious criticisms about the judiciary reform in its Serbia 2010 Progress Report. Given that the successful reform of the judiciary is prerequisite for EU accession and forms part of the Copenhagen criteria, the authorities had to abide by the EC remarks and warning that the deficiencies in the reappointment procedure for judges and prosecutors put the principle of the independence of the judiciary at risk. Similar criticisms had also been made in 2010 by a number of international organisations, such as the Council of Europe, the European Judges and Public Prosecutors for Democracy and Fundamental Freedoms (MEDEL), the European Association of Judges and the World Association of Judges.

With the aim of rectifying the deficiencies of the general reappointment procedure, the Justice Ministry in late 2010 submitted and the National Assembly adopted amendments to a number of judiciary laws at the end of the year, notably to the Act on Judges, the Public Prosecution Act, the High Judicial Council Act, the State Prosecutors Council Act and the Act on Organisation of Courts. Although the Justice Ministry representatives said that the amendments were aligned with the Venice Commission and European Commission views and recommendations, it needs to be noted that the Ministry representatives did not have an official meeting with the Venice Commission and that the issue was not discussed by the only body authorised to discuss it, the Venice Commission Plenary Session. The Venice Commission did, however, exchange opinions on the above issues with the Justice Ministry representatives on the margins of a Venice Commission meeting in December 2010 on the basis of a report composed by a CoE expert at the request of the Serbian authorities.

The authorities presented the amendments as a way to facilitate the review of the general reappointment procedure and eliminate the deficiencies regarding the transparency of the procedure and the effective legal protection the judges and prosecutors had been deprived of.

179  Sl. glasnik RS, 98/06.
181  Most questions, 28 of them, in the EC Questionnaire regarding the EU accession political criteria refer to the judiciary.
183  Sl. glasnik RS, 101/10.
184  Ibid.
185  Ibid.
186  Ibid.
187  Ibid.
188  Venice Commission decisions are available at www.venice.coe.int.
The adopted amendments, however, essentially change the legal framework and definitely repeal the reform with respect to the non-reappointed judges and prosecutors (Art. 5), but also with respect to the reappointed ones, given that the relatively unclear legal provisions lead to the conclusion that their reappointment will also be reviewed. According to the adopted amendments, the High Judicial Council in its full composition will review the permanent judgesship appointment decisions and the nominations of first-time judges by the High Judicial Council in its transitional composition to establish whether there are grounds for suspicion that a specific judge does not possess the required competence, qualification or worthiness or whether there are grounds to suspect a violation of the reappointment procedure with respect to a particular judge (Art. 6). The issue of permanent judgeship raised during the first general reappointment procedure thus remains open because the amendments clearly violate the right to permanent judicial tenure. It is unconstitutional for a body that rendered the judicial reappointment decisions to review them unless they were previously disputed by another competent authority or court.

The Judges’ Association of Serbia is of the view that the proposed amendments to the judicial laws violate the Constitution and the generally accepted rules of international law, given that they inter alia violate the right to an effective legal remedy, the principle prohibiting the retroactive application of the law, and the ne bis in idem rule because they allow the High Judicial Council and State Prosecutors Council to decide on cases which they have already decided on.  

The latest amendments provide the unappointed judges and prosecutors with the possibility to file complaints with the High Judicial Council in its permanent composition. The question, however, arises whether replacing an appeal to the Constitutional Court by a complaint to the High Judicial Council is justified. This amendment was made to overcome the bottleneck in the work of the Constitutional Court of Serbia, which is unable to quickly rule on the appeals by the unsuccessful judges in a short period of time, although it clearly demonstrated its view on the deficiencies of the reform in its initial decisions on the appeals.  

The High Judicial Council in its permanent composition will review the decisions to terminate the tenures of the non-reappointed judges taken by the High Judicial Council in its transitional composition. The HJC in its permanent composition will be established once the HJC members from among the ranks of judges are appointed. The unsuccessful judges will have the opportunity to review their case and documentation during the review procedure and orally declare their arguments (Art. 5).

According to the amendments to the High Judicial Council and the State Prosecutors Council Acts, candidates for the two bodies in their permanent composition can be nominated both by the plenary sessions of the courts and prosecution

190 See II.2.1.2.
offices and by specific numbers of judges and prosecutors. This provision will allow for a more direct involvement of judges and prosecutors in the work of the HJC and SPC and their nomination of a candidate they personally know and trust. Another novel provision is that only the judge or prosecutor, who won the greatest number of votes of his/her peers, will be nominated to the National Assembly wherefore the votes of the judges and prosecutors will be crucial. The members of the two bodies are to be elected within a maximum of 60 days from the day the amendments come into effect. The amendments came into force the day after they were published in the Official Gazette.

The Act on Organisation of Courts was amended to take into account the reality because the High Judicial Council is still unable to assume all the powers initially delegated to it by this Act. The Justice Ministry will continue exercising the HJC’s powers regarding the distribution and monitoring of budget allocations for courts.191

This outcome, which the international and domestic professionals had been alerting to since the reform started, could have been pre-empted during the preparations for the reform and later, during the general judicial reappointment procedure. At the time, it would have sufficed to align the reform procedure with the opinions and recommendations of the relevant international and national organisations regarding the judicial appointment criteria and the general reappointment procedure and to respect the fundamental principles, such as, for instance, the one on the permanence of judicial tenure.

Judicial election/appointment criteria. – Pursuant to the Act on Judges, the High Judicial Council passed a Decision Establishing Criteria and Standards for Assessing the Qualification, Competence and Worthiness for the Election of Judges and Court Presidents.192 The Decision comprises five parts: the election of new judges, the appointment of judges already holding judgeships, the appointment of judges appointed on permanent tenure for the first time, judicial promotion and appointment of court presidents. As the judges had earlier been appointed on permanent tenures, the reappointment of judges already in office opened the issue of the constitutionality of these criteria. The Constitutional Court rejected the initiative of the Judges’ Association of Serbia to review the constitutionality and legality of the provisions in the Act on Judges on the termination of judgeship and appointment of judges.193

The Constitutional Court assessed that appointment/election to a judgeship is not an acquired subjective right, but a right acquired and lost in the manner and under the conditions set out in the valid Constitution and laws adopted pursuant to the Constitution. Therefore, there can be no guarantees in terms of acquired rights when

191 Until 1, September 2011.
192 Sl. glasnik RS, 49/09.
193 See Report 2009, I.4.6.2.1 for a comment on judicial reappointment and irregularities.
an absolutely new network and organisation of courts and, partly, new jurisdictions of courts, are at issue.

As per the assertion by the Judges’ Association of Serbia that the courts established after general judicial election/appointment would be neither independent nor impartial and that they would not hold public and fair trials within a reasonable time just because the judges would first have to undergo general election/appointment, the Court found that this allegation could be tested only after the newly-formed courts and newly-elected/appointed judges rendered their first decisions. The Court found that the provision, under which the High Judicial Council shall decide on the number of judges and lay judges with the prior consent of the Justice Minister, did not bring into question the functional and personal independence of the courts or the High Judicial Council. Given that the state of Serbia as a whole must ensure that its judicial system is efficient and effective, the issue of the number of judges must reflect the real needs assessed by the High Judicial Council and the Justice Ministry together.

At the request of the Justice Ministry, the Venice Commission issued its opinion on the Draft Criteria and Standards for the Election of Judges and Court Presidents and on the Rules of Procedure on Criteria and Standards for the Evaluation of the Qualification, Competence and Worthiness of Candidates for Bearers of Public Prosecutor’s Function. As expected, the Commission criticised the paragraphs on the election/appointment of existing judges the most.

The question naturally arises about why judges, whose qualification, competence and worthiness were brought into question, had not been given the opportunity to challenge the High Judicial Council’s assessments before the Council took its final decision. The Draft Criteria submitted to the Venice Commission stated that the candidate had to have the opportunity to declare himself or herself about the evidence disputing the presumption of his or her worthiness, competence or qualification. This provision was not included in the final text of the Criteria which the HJC was guided by, “it was simply deleted”. Moreover, the lack of such a provision is in contravention of the constitutional norm in Article 32, under which “(E)veryone shall have the right to a public hearing before an independent and impartial tribunal established by the law within reasonable time which shall pronounce judgment on their rights and obligations, grounds for suspicion resulting in initiated procedure and accusations brought against them”.

The Venice Commission recommended careful application of quantitatively measurable criteria. “It does not necessarily follow that because a judge has been overruled on a number of occasions that the judge has not acted in a competent or professional manner. It is however reasonable that a judge who had an unduly high

---

195 See Vesna Rakić Vodinelić, “Address at the Judges’ Association Convention”, Peščanik, 28 December, accessible at http://www.pescanik.net/content/view/4236/90/.
number of cases overruled might have his or her competence called into question. Nevertheless, any final decision would have to be made on the basis of an actual assessment of the cases concerned and not on the basis of a simple counting of the numbers of cases which had been overruled.” The Commission further stated that as far as the number of completed cases is concerned, “(I)t cannot be ruled out that some judges may be given more difficult cases than others as a result of which their workload appears to be less than that of their colleagues.”

The chief criticism by the Venice Commission regards the issue of effective remedy, which was unfortunately not resolved by the end of the general (re)appointment procedure. “Given the exceptional nature of the re-appointment procedure, every currently serving judge who has permanent tenure (whether or not they apply for re-election) should only see his or her tenure terminated by a reasoned decision, which is appealable to a court of law.”

4.6.2.2. Judicial Tenure. – Under the Constitution, judges are first elected to three-year terms in office and then appointed on permanent tenures. Article 52 of the Act on Judges states that appointment on permanent tenure after a three-year judgeship shall be conducted in accordance with a specific procedure for assessing the work and quality of each judge, wherefore the three-year tenure essentially constitutes a probationary period.

This solution may bring into question the independence of judges who have not yet been bestowed permanent tenures. The Venice Commission, which was asked by the Serbian Justice Minister to give an assessment of the chapter on the judiciary in the Draft Constitution, criticised the provision and underlined that additional safeguards for the independence of judges appointed to definite terms in office needed to be provided to if the authors of the Constitution decided to preserve probationary appointments. Notwithstanding the negative opinion of the Venice Commission, this solution was included in the Constitution. The permanence of judicial tenure was against put at risk by the amendments to the judiciary laws in late 2010.

4.6.2.3. Termination of Judicial Tenure. – Under the Constitution, the tenure of a judge shall terminate at his or her own request, on meeting legal conditions for retirement, by dismissal or non-appointment on permanent tenure (Arts. 148 (1) and 57, Act on Judges). The decision on the termination of judgeship 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 protection of judges from the legislative branch. The Act on Judges gives

a more precise list of grounds for dismissal than its predecessor. A judge shall be dismissed in the event s/he has been convicted to a prison sentence of minimum 6 months or a punishable offence rendering him/her unworthy of judgeship, if s/he has discharged his/her 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 evaluating 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 immediately higher court, the President of the Supreme Court of Cassation, the authorities charged with evaluating the work of judges or the Disciplinary Commission. The High Judicial Council shall establish whether there are reasons for dismissal (Art. 64). The Act initially also allowed the Justice Minister to initiate the dismissal procedure, but the Constitutional Court found that this provision was not in accordance with the Constitution, because it was in contravention of the constitutional provisions on the division of power into executive, legislative and judicial and on the autonomy and independence of courts.

4.6.2.4. Principle of Non-Transferability. – The Constitution guarantees the so-called principle of non-transferability of judges (Art. 150, Constitution; Arts. 2 (2) and 18, Judges Act).

A judge may be assigned or seconded to another court only if s/he agrees to the transfer. Exceptionally, the consent of the judge shall not be required if the court s/he has been appointed to or most of its jurisdiction has ceased to exist.

4.6.2.5. Recusal. – Judicial impartiality is guaranteed by Serbian law in provisions specifying a number of reasons when a judge may be recused from a proceeding. These reasons focus on conflict of interest or regard his/her prior involvement in the case. Recusal may be sought by the judge or the parties in the proceeding. The court president decides on the motion for recusal.

4.6.2.6. Supervision and Protection. – Disciplinary accountability of judges is regulated by Chapter VII of the Act on Judges. A disciplinary offence denotes negligent performance of judicial duties or conduct inappropriate for a judge. Disciplinary offences are listed in Article 89 of the Act on Judges. Some of them include: violation of the principle of impartiality; failure to seek recusal in cases where there are grounds for recusal; unjustified delays in drafting decisions; frequent tardiness for scheduled hearings; undue dilatoriness, etc. Disciplinary sanctions for the offences include: public caution, a maximum 50% wage cut not exceeding one year, three-year prohibition of promotion. Upon establishing a judge’s accountability for a grave disciplinary offence, the Disciplinary Commission shall launch a procedure to dismiss the judge.
Disciplinary authorities include the Disciplinary Prosecutor and his or her deputies and the Disciplinary Commission, which are appointed by the High Judicial Council. After conducting disciplinary proceedings, the Disciplinary Commission may reject the Disciplinary Prosecutor’s motion or uphold it and pronounce a disciplinary sanction. 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 grounded, it shall undertake measures to protect the judge’s right.

4.6.2.7. Incompatibility. – Judges are forbidden involvement in political activities. Other offices, activities or private interests incompatible with judgeship shall be stipulated by the law (Art. 152, Constitution). Although the prohibition of membership in political parties for judges may be qualified as positive, the formulation “involvement in political activities” is much too general and leaves ample room for interpretation and, thus, abuse.

Under the Act on Judges, a judge may not hold office in legislative or executive bodies, public services or provincial or municipal authorities. A judge may not be a member of a political party nor act politically in any other way; engage in any paid public or private work or provide legal services or advice for a fee. A judge may be a member of the Republican, provincial or municipal election commission. Other functions, engagements and activities contrary to the dignity and independence of a judge or damaging the reputation of the court shall also be incompatible with judgeship. The High Judicial Council shall determine which actions are contrary to the dignity and independence of a judge or damaging the reputation of the court pursuant to the Ethics Code. In cases specified by the law, a judge may engage in educational or scientific activities in judicial training institutions during working hours (Art. 30).

4.6.2.8. Right to Case Assignment on a Random Basis. – In keeping with the Recommendation of the CoE Committee of Ministers, the Act on Judges prescribes the assignment 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 prescribes 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 assign 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...

Council of Europe Committee of Ministers Recommendation on the independence, efficiency and role of judges, No. R (94) 12.
has been pronounced against him or her for committing a disciplinary offence of undue dilatoriness (Art. 25 (2)).

The new Court Rules of Procedure, which came into effect on 1 January 2010, regulate in greater detail the assignment of cases to ensure the uniform and equitable distribution of the workload among the judges. The uniform and equitable assignment of cases is particularly important with respect to basic courts with units in small towns and should ensure that cases are assigned to all judges in the basic court, including the judges in its court units.

4.6.2.9. Judicial Training. – The Act on the Judicial Academy\(^200\) introduces an absolutely novel institute in the Serbian judiciary. Under the Act, future judges and prosecutors shall have to undergo additional training after internship and the Bar Exam. The Act regulates initial and continual training of judges, public prosecutors and deputy public prosecutors, judicial and prosecutorial assistants and court and prosecutorial staff (Art. 1). The aim of the establishment of the Academy is to contribute to the professional, independent, impartial and efficient discharge of judicial and prosecutorial duties and the professional and efficient discharge of court and prosecutorial staff duties (Art. 2).

For a candidate to attend the Judicial Academy, s/he has to fulfil the following requirements: to have passed the Bar Exam, to fulfil the general state employment requirements and to have passed the initial training entrance exam (Art. 28). Once the candidate passes the entrance exam, s/he must work in a court or prosecutorial office another two years and acquire specific professional and practical knowledge, after which s/he may take the final exam.

Initial training is to prepare the candidates for the posts of judge or prosecutor and the two-year training is to enable them to discharge their judicial or prosecutorial duties autonomously, professionally and efficiently. Under the Act, the High Judicial Council and State Council of Prosecutors shall determine the number of initial trainees on the basis of the assessment of judicial vacancies in misdemeanour and basic courts i.e. vacant deputy prosecutor posts in the basic public prosecution offices in the year following the year in which the trainees will complete initial training; this number will then be increased by 30%. This provision is to help ensure that the number of candidates for judicial and prosecutorial office is adequate to the number of vacancies. It remains to be seen how many such vacancies will appear in the years to come given that the reform has resulted in the considerable rejuvenation of the judiciary.

After completing initial training, the trainees shall take the final exam, which shall test only the practical knowledge and skills they acquired during initial training. The High Judicial Council and the State Council of Prosecutors shall be obliged to nominate the candidates, who had completed the initial training at the Academy,

\(^{200}\) Sl. glasnik RS, 104/09.
for judgeships in the misdemeanour or basic courts i.e. the posts of deputy prosecutors based on the success they achieved during initial training (Art. 40).

A problem regarding the whole Judicial Academy concept may arise from the fact that this law introduces an entirely new system of judicial education and performance evaluation without first addressing the problems of the present Bar Examination system. For a law graduate to pass the Bar Exam, s/he must first work as a trainee, then pass the Bar Exam and is only then entitled to apply for a specific judicial or prosecutorial vacancy.

Given that the Bar Exam has not been abolished, from the viewpoint of law, the Academy now appears merely as confirmation of the knowledge the candidate previously acquired during schooling but may actually constitute a way to restrict the future number of judges. Including the Bar Exam in the Judicial Academy curriculum would definitely be a way to improve the system.

Moreover, a five-member commission of the Judicial Academy, before which the candidates take the entrance exams and which decides on who will be enrolled in the Judicial Academy, shall in fact be conducting the preliminary selection of the future judges and prosecutors, although the Act allows for the election to a prosecutorial or judicial post of candidates who had not attended the Academy in the event none of the Academy graduates applied for it, which is an extremely hypothetical possibility.

Under the Act on the Judicial Academy, continual training aims to assist elected judges and prosecutors in the continual improvement of their theoretical and practical knowledge and skills to ensure their professional and efficient discharge of judicial and prosecutorial duties. Such training shall be voluntary, except in cases when the High Judicial Council and the State Prosecutorial Council decide it is mandatory (Art. 43).201

The Academy has a broad scope of activities. In addition to training, it is also charged with establishing and maintaining cooperation with national, foreign and international institutions, organisations and associations, publishing, research and analysis, cooperation with scientific institutions, case-law collection and analysis (Art. 5).

4.6.3. Fairness

Fairness entails different guarantees, notably the right of access to court, that a trial must be oral and adversary in nature, that a judgment be delivered within reasonable time, the right to be heard by an independent and impartial court and the right to a public hearing.

In case of change in specialisation, major changes in regulations, introduction of new work methods, to eliminate shortcomings in the work of judges and deputy public prosecutors identified in their work, and for judges and deputy public prosecutors elected for the first time to judicial i.e. prosecutorial posts who had not undergone the initial training programme.
The right of access to a court is not explicitly envisaged either by ECHR or ICCPR, but is incorporated in the provisions guaranteeing the right to a fair trial.202 The Constitution guarantees everyone the right to equal protection of his rights in the proceedings before a court of law, other state bodies, agencies exercising public powers and provincial or local self-government authorities, and the right to appeal or to apply another legal remedy against a decision concerning his right, obligation or lawful interest (Art. 36). However, a mere declaration of the right of access to a court is insufficient; this right must be effective as well. For instance, when a person needs legal assistance to actually exercise the right of access to a court, the state is obliged to provide such assistance.203 An additional problem concerning the right of access to a court regards the issue of immunity of certain individuals, which may on occasion lead to the violation of the right of access to a court.204

The right of access to a court may be rendered difficult or even impossible if it is conditioned by excessively high court taxes. Given the continuous decline in living standards in Serbia and the economic difficulties of the general population, the court taxes are extremely high and greatly jeopardise the right of access to a court.205

Serbia did not make substantial progress in addressing the issue of free legal aid in 2010 either.206 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.207 This was not the first attempt to address this issue. Under the Strategy, the two-year period will be used to establish a Strategy Implementation Council, create a legislative framework, set up a nationwide directory of free legal aid service providers, institute advanced and other professional training in free legal aid and establish free legal aid bodies within the local self-governments.

Respect of the right to access a court must be ensured in a civil proceeding, by restricting the arbitrariness of courts and judges to discontinue proceedings. The CPA no longer allows the court to order the discontinuance of the proceedings if the ruling on the claim depends on whether an economic offence or a criminal offence prosecuted ex officio was committed, on who the perpetrator is and whether

205 The court taxes fixed in Serbia are not high in comparison with those in other countries in the region.
207 Sl. glasnik RS, 74/10.
he is responsible. In practice, the courts as a rule discontinued civil suits if criminal proceedings on the same factual grounds were conducted simultaneously. The discontinuances would last several years, preventing efficient completion of the civil proceedings.

One of the most important requirements for a fair trial is that the court must hear both opposing parties. Under the CPC, the defendant has the right “to respond to all the facts and evidence against him, and to present evidence and facts in his favour” (Art. 2, Act Amending the CPC).

A properly composed indictment must be served upon the accused without delay; a remanded accused must be served the indictment within 24 hours upon detention (Art. 270, CPC). The provision in Article 372 of the CPC similarly prescribes that a copy of the appeal must be delivered on the opposing party to respond. Disrespect of these provisions constitutes a grave violation of due process.

The Act on Misdemeanours also envisages the principle of adversariness (Art. 81).

In the Civil Procedure Act, this principle is laid down in Article 5, which says that the court shall give each party the opportunity to declare itself on the claims, proposals and allegations of the other party. Only exceptionally, in cases specified by the law, is the court authorised to rule on a claim if the other party was not provided with the opportunity to declare itself on the claim. This above all pertains to decisions on temporary measures where the principle of urgency has precedence over the principle of adversariness.

4.6.4. Trial within Reasonable Time

Delivering a judgment within reasonable time is one of the key elements of the right to a fair trial. Assessment of whether a proceeding was completed within a reasonable time takes into account the complexity of the case, the conduct of the defendant i.e. party in the proceeding (whether the party in the proceeding caused the delay) and the interest of the submitter that the proceeding is completed as soon as possible.208 Expedition is especially expected in criminal proceedings, but also in civil proceedings on child custody, employment disputes, disputes regarding physical injury and, in general, in cases where speed is of the essence, as, for instance, if a person infected by HIV by blood transfusion has instituted proceedings seeking compensation of damages.209

Under the Constitution, everyone shall have the right to a public hearing within 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 brought about the initiated procedure and accusations brought against them (Art. 32 (1)).

Under the CPC, an accused person has the right to be brought before a court as soon as possible and to a trial without any undue delay (Art. 16, CPC). Article 16 of the CPC, Article 10 of the CPA and Article 83 of the Act on Misdemeanours prescribe that the court is obliged to strive to conduct a trial without undue delay and prevent any abuse of the rights belonging to parties in the proceedings. This principle is elaborated in a number of CPC provisions. The Act on Judges obliges judges to notify the court president on the duration of the proceedings and reasons why first-instance proceedings took more than one year.

All procedural laws in Serbia envisage instructive deadlines binding on both the judges and court administration.

A number of provisions of the Act Amending the Criminal Procedure Code210 aim at increasing the efficiency of the courts and shortening the duration of trials. A second-instance court reviewing an appeal of a first-instance judgment will now be obliged to hold a hearing and adjudicate the case itself in the event it had already overturned a first-instance judgment and ordered a retrial by the first-instance court (Art. 103). This provision will not only shorten the duration of trials, but increase the degree of accountability of second-instance courts as well.

The courts now have greater powers regarding the imposition of sanctions for disrupting the main hearing and regulate in greater detail the adjournment and discontinuation of main hearings (Art. 78).

Given that the Civil Procedure Act was passed in 2004, before the new Constitution was adopted and the new network of courts established, the need arose to conform it to the new system. The chief purpose of the amendments211 is to prevent intentional protraction of proceedings, which was usually achieved by filing motions for recusal or transferring cases to other courts. In specific cases, the judge may now himself rule on the admissibility of such motions (Art. 15).

The authorities will continue amending the legislation on civil procedure to expedite the proceedings. The legislators need to apply great caution and ensure that the new legal provisions do not violate other rights, e.g. the right to effective legal remedy.

The Family Act adopted in Serbia in 2005 also envisages urgent reviews of disputes regarding a child or parents exercising parental rights (Art. 204).

The Peaceful Resolution of Labour Disputes Act212 and the Act on Mediation213 regulating peaceful settlement of other forms of disputes could also help address problems regarding trials within reasonable time. The purpose of these laws is to enable parties to resolve their disputes in an informal procedure, without going to court and costing less money and much less time. The parties themselves agree

210 Sl. glasnik RS, 72/09.
211 Sl. glasnik RS, 111/09.
212 Sl. glasnik RS, 125/04 and 104/09.
213 Sl. glasnik RS, 18/05.
on the settlement in negotiations mediated by a third, neutral person. The legislators
drafted the law with the intention of reducing the number of cases taken to court to
help increase judicial efficiency. Although these laws have been applied for several
years now, they have failed to produce visible results in practice and lead to a cut in
the number of cases taken to court.

4.6.5. 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 cases in which the public may be excluded from all or
part of court proceedings in accordance with the law only to protect the interests of
national security, public order and morals in a democratic society, the interests of
minors or privacy of the parties to the proceedings. The question therefore arises
whether the valid laws are in this respect in compliance with the Constitution, as
some envisage the exclusion of the public from court proceedings *inter alia* to en-
sure the non-disclosure of a secret. This lapse can actually be ascribed to the authors
of the Constitution, given that the Constitution is the supreme piece of legislation,
but does not specify that the public cannot be excluded from court proceedings to
ensure e.g. the non-disclosure of a secret.\(^{214}\)

Civil and criminal proceedings are guided by the general rule that hearings
and trials are public and may be attended by adults (Art. 291, CPC; Art. 307, CPA
and Art. 88, Act on Misdemeanours). Under the CPC, a court may *ex officio* or at
the proposal of the parties exclude the public from the main hearing in order to
protect morals, public law and order, national security, minors or the privacy of par-
ties to the proceedings or when, in the view of the court, the presence of the public
might prejudice the interests of justice given the specific circumstances (Art. 76 Act
Amending the Criminal Procedure Code). These grounds are generally in keeping
with international standards. The public is always excluded from a trial of a minor
(Art. 75, Juvenile Justice Act);\(^{215}\) this provision is not in contravention of interna-
tional standards. The Act on Misdemeanours excludes the public from trials if that
is necessary in public interest or to protect morals and from trials of minors (Art.
296). Exclusion of the public from a 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 envisages that the public may be excluded from civil proceedings
“during the entire hearing or part of it if necessary to preserve an official, business
or personal secret, or if that is in the interest of public order or morality” (Art. 308,
(1) CPA). The public may also be excluded if the usual security measures are insuf-
ficient to ensure order in the court (Art. 308 (2), CPA).


\(^{215}\) *Sl. glasnik RS*, 85/05.
In accordance with Article 6 (1) of the ECHR, the CPC and CPA prescribe that a judgment must always be delivered publicly, notwithstanding whether the public was excluded from the proceeding (Art. 357 (4), CPC and Art. 340 (3), CPA). The Constitution does not provide for the public pronouncement of sentences at all, which is an incomprehensible omission given the fact the ECHR envisages absolutely no exceptions in this respect.\footnote{Apart from the Convention, which does not envisage exceptions to public pronouncement of judgments, ECtHR case law needs to be taken into account with regard to exceptions to the rule on public sentencing. In several cases, the Court underlined that the circumstances of the case are crucial and that in each case, the form of publicity given to the judgment must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 (1) – the ensurance of a fair trial (See Sutter v. Switzerland, ECmHR, App. No. 8209/78 (1984), para. 33; for trials of minors, see B. and P. v. United Kingdom, ECtHR, App. Nos. 36337/97 and 35974/97 (2001)). If there were no exceptions to the obligation of public sentencing, the purpose of Article 6 would not be fulfilled in those cases where the public was excluded from the court hearings.}
The CPC and CPA prescribe that the panel decision whether to state the reasons for the judgment publicly depends on whether the public had been excluded from the proceeding; if the public had been excluded, the panel will decide whether to exclude the public from the pronouncement of the reasons for the judgment (Art. 357 (4), CPC and Art. 340 (3), CPA).

The CPC specifies another exception to the rule of the defendant’s right to a public trial. In cases of minor criminal offences (for which a fine is principal punishment and the maximum penalty is 3 years’ imprisonment), a judge may render a decision without holding a trial upon the request of the state prosecutor (Art. 449, CPC). The accused may appeal the decision and in the event his complaint is upheld, a public trial shall be scheduled. This norm is in keeping with the CoE 1983 Recommendation Concerning the Simplification of Criminal Justice.\footnote{See Compatibility of Yugoslav Law and Practice with the Requirements of the ECHR, CoE, October 2002, p. 139.}

The Act on Administrative Proceedings\footnote{Sl. glasnik RS, 111/09.} eliminates the inconsistency between Serbian law and the right to a public hearing envisaged by Article 6 (1) of the ECHR which had existed in the prior Act on Administrative Proceedings. Under the old law, hearings in administrative proceedings were public in exceptional cases. This was the reason why Serbia and Montenegro made a reservation with regards to this provision upon ratification of the ECHR. The new Act on Administrative Proceedings sets public hearings as a rule and lists grounds for excluding the public, which are in accordance with the ECHR (Art. 35), wherefore the reservation should be withdrawn because it is now meaningless.

\section{4.6.6. Guarantees to Defendants in Criminal Cases}

The ECtHR has in its practice set certain criteria by which it can be determined whether a charge is “criminal”.\footnote{These criteria were first set in the case of Engel et al v. The Netherlands, ECmHR, App. No. 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72 (1974), and were later confirmed in case law,} First, Article 6 of the ECHR shall apply
automatically if the charge is classified as “criminal” by national law. However, this does not mean the state can avoid obligations under Article 6 by simply deciding that its national law will not qualify certain offences as criminal.\(^\text{220}\) Determination of a charge as criminal also depends on the nature of the offence and the severity of the penalty.\(^\text{221}\)

There are three forms of punishable offences in Serbian law: criminal offences, misdemeanours and economic offences.

While there is no doubt that criminal offences constitute criminal charges in terms of international standards, misdemeanours are a special institute in Serbian legislation, partly punitive and partly administrative in nature. Due to the non-conformity with international standards, state (at that time SaM) made a reservation with regard to the implementation of their Acts on Misdemeanours during ratification of the ECHR. This reservation has not been withdrawn yet although it has been rendered meaningless now that the new judicial network has been established and that the misdemeanour courts are an integral part of the regular court system.

The Act on Organisation of Courts eliminates the shortcomings regarding misdemeanour courts in the old legislation. The status of misdemeanour courts has been totally altered.\(^\text{222}\) Misdemeanour authorities used to have a specific status. They had the features of both regular courts and administrative authorities. Misdemeanour judges used to be appointed by the Government. The judicial re-election procedure also covered misdemeanour judges, who now enjoy the same status as other judges. Specific misdemeanours will still be ruled by administrative bodies. It is justified to give the administrative body jurisdiction over offences falling within the field of administration, while courts ought to have competence for offences that are criminal rather than administrative in character. The problem, however, lies in the fact that the Act prescribes that the administrative bodies shall have jurisdiction over misdemeanours warranting only fines. As the purpose of fining perpetrators of misdemeanours is to penalise them and not to compensate pecuniary damages and the range of fines in the Act is similar to that in the Criminal Code, according to ECtHR criteria, at least some of the misdemeanours warranting only fines should be qualified as criminal rather than administrative felonies and ought to be under the jurisdiction of courts.

The same problems exist in terms of economic offences. Economic offences are violations of regulations regarding economic and financial affairs that may cause

\(^{220}\) Ibid., para. 81.

\(^{221}\) For a norm to be considered to belong to criminal law, it must have general effect and the penalty prescribed must have both a punitive and correctional purpose. See Compatibility of Yugoslav Law and Practice with the Requirements of the ECHR, CoE, October 2002, p. 130, and Nuala Mole and Catharina Harby, Right to a Fair Trial, CoE, Belgrade, 2003, pp. 30–35, V. Dimitrijević, “What International Human Rights Tribunals Teach Us”, Reč, 2004, p. 85 ff.

\(^{222}\) Misdemeanour courts and the Higher Misdemeanour Court were established under the Act on Organisation of Courts applied as of 1 January 2010.
serious consequences. Although these offences are by nature punishable offences, they are tried by commercial and not criminal courts, under the Act on Economic Offences223 and not the CPC. The Act on Economic Offences envisages the application of specific CPC provisions; however, they cannot provide full protection under Article 6 of ECHR.

4.6.6.1. Presumption of Innocence. – The legal consequences of the presumption of innocence are that the defendant does not need to prove s/he is not guilty and that the court is obliged to act in favour of the accused if his/her guilt has not been proven beyond all doubt. The Constitution and the CPC are in keeping with international standards. Both prescribe that everyone shall be presumed innocent until proven guilty by a final decision of a competent court (Art. 34 (3), Constitution and Art. 3 (1), CPC).

In keeping with European standards,224 the CPC obliges not only the court to respect the presumption of innocence; no state authorities, media, citizens’ associations, public figures or other persons may violate the rights of the accused by their public statements (Art. 3 (2), CPC).

The 2009 amendments to the Criminal Code225 introduce a provision qualifying the following as criminal offences: public comments of court proceedings and obstruction of justice by making statements regarding court proceedings with the intent of violating the presumption of innocence and the independence of the court, calls for the non-enforcement of court decisions and prevention of holders of judicial posts from discharging their duties (Art. 336a). Despite denials by executive authorities, the lack of clarity of this provision gives rise to doubts about whether it threatens independent journalism. 7

While media associations have called for the amendment or deletion of this provision,226 prosecution and Justice Ministry representatives underline that this provision is not directed against journalists and that it aims to safeguard the presumption of innocence and suppress attempts by the executive to interfere in court proceedings. Their explanation is to an extent corroborated by the fact that the provision specifies that this criminal offence is committed by a person “making statements” not by those relaying, using or quoting them. However, given the climate in which Serbian journalists have been working, it should be reformulated to take into account media freedoms and independence. There is no doubt that persons violating the presumption of innocence must be punished, but, given the continuous insecu-

223 Sl. list SFRJ, 4/77, 36/77, 14/85, 10/86, 74/87, 57/89 and 3/90, Sl. list SRJ, 27/92, 16/93, 31/93, 41/93, 50/93, 24/94, 28/96 and 64/01, Sl. glasnik RS, 101/05.
225 Sl. glasnik RS, 72/09.
rity of journalists in Serbia, this provision has to be clarified to leave no room for abuse or dilemmas.

4.6.6.2. Prompt Notification of Charges, in Language Understood by the Defendant. – Under Article 33 of 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.

According to Article 4 (1) of the CPC, which regulates this right in detail, the accused must be informed of the criminal offence she/he is being charged with and the evidence on which the charges are based already at the first hearing. Moreover, if the police assess during questioning that a person they are questioning may be a suspect, they are obliged to inform him or her thereof, of the crime s/he is suspected of having committed and the grounds for the suspicion (Art. 226 (8)).

The indictment shall be “served to an accused at liberty without delay and within 24 hours to a defendant in custody” (Art. 270 (1)). The indictment must include, *inter alia*, a description of the committed criminal offence and the circumstances of the offence in greater detail and the proposed evidence to be presented at the main hearing (Art. 266 (5)).

Notice of indictment is also guaranteed in misdemeanour proceedings (Arts. 85 (2) and 86, Serbian Act on Misdemeanours).

4.6.6.3. Sufficient Time and Facilities for Preparation of Defence and Right to Communicate with Legal Counsel. – Affording a defendant sufficient time to prepare his defence is one of the basic principles of the CPC (Art. 285 (3)). However, the minimum time periods it envisages are too short – “sufficient time” in regular proceedings (...) at least eight days” i.e. at least fifteen days for serious crimes (Art. 285 (3)), “sufficient time, at least eight days” in summary proceedings – (Art. 442 (3)). This has not appeared as a problem in practice, because the trials are scheduled at longer intervals because judges have a large number of cases to cope with. If the prosecutor has filed another indictment during the hearing, the judicial panel is obliged to leave sufficient time for the defendant and his counsel to prepare an adequate defence (Art. 341 (2)).

In second-instance proceedings Article 373 of the CPC lays down that a copy of the appeal shall be delivered to the opposing party which shall have eight days to respond to it.

The above guarantees exist also in the Act on Misdemeanours (Arts. 85 (1, 3, 4), 108 and 109).

4.6.6.4. Prohibition of Trials in absentia and the Right to Defence. – Under the Constitution, any person accused of a crime and available to the court shall be entitled to attend his or her own trial and may not be sentenced unless s/he has been given the opportunity to a hearing and defence (Art. 33 (4)).
Pursuant to the CPC, a trial in absentia is allowed only exceptionally, in cases when the defendant is absent though his own fault, e.g. if the defendant is a fugitive or otherwise inaccessible to government agencies and there are compelling reasons for trying him despite his absence (Arts. 304 (1) and 445). Furthermore, the defendant tried in absentia must have a defence counsel from the moment the decision is taken to try him in his absence (Art. 71 (3)). It is strictly prohibited to conduct in absentia trials of juveniles (Art. 48 (1), Juvenile Justice Act). At the request of the person convicted in absentia or his defence counsel, a new trial may be scheduled (Art. 413 (1), CPC). These provisions of Serbian law are in keeping with international standards. The impression is, however, that this institute is applied much too frequently, even when not all avenues for ensuring the presence of the accused have been exhausted although international standards adopt a restrictive approach to trials in absentia.

The Constitution guarantees the right to defence (Art. 33), which is more closely regulated by the CPC. The essence of the constitutionally guaranteed right to defence lies in providing the accused with the possibility of receiving appropriate legal aid throughout the proceeding. The right of an accused to defend himself or herself is not an absolute right. The defendant may undertake his own defence only in cases when the law does not make defence counsel mandatory. In any case, the court should inform him/her of his/her right to have a counsel (Arts. 13 and 89 (3), CPC).

The court is obliged to assign an accused a defence counsel in two cases: when counsel is mandatory and the defendant has not retained his own attorney and when the defendant pleads indigence. The law stipulates cases in which defence counsel is mandatory: when the defendant is deaf, mute or both, incapable of defending himself, or is tried for a criminal offence warranting over 10-year imprisonment, the defendant must have a counsel at the first questioning; this also applies to a defendant tried in absentia, as soon as the decision is taken to conduct trial in absentia; if the defendant is taken into custody he must have a defence counsel appointed by court as soon as he is remanded in custody and as long as he is custody. (Art. 71 (1–3), CPC). The accused may take on another counsel instead of the one assigned ex officio (Art. 73 (1), CPC). Moreover, a court president may dismiss an assigned legal counsel who is not fulfilling his/her duties. As per indigence, the Constitution explicitly guarantees the right to free legal aid to the accused who cannot afford a lawyer, when the interests of justice so require and pursuant to the law (Art. 33 (3)).

228 This is in keeping with the case law of the ECtHR, which found that the authorities are not only obliged to provide a defence counsel, but that the legal aid counsel must be effective as well and that the authorities intervene if a failure by legal aid counsel to provide effective representation is manifest. See Kamasinski v. Austria, ECmHR, App. No. 9783/82 (1989) and Artico v. Italy, ECmHR, App. No. 6694/74 (1980).
The CPC envisages that an accused, who cannot bear the costs of defence, shall at his request be assigned a defence counsel in the event he is charged with a criminal offence carrying a minimum three-year sentence or when the interests of justice so require (Art. 72).

The CPC extends to the defendant the right to engage defence counsel. Thus, the defendant, who has been called by the police for questioning (Art. 226 (7)), has the right to be informed about his rights, including the right to legal counsel.

After passing the decision to initiate the investigation or immediately after the filing of the indictment, as well as beforehand, if the suspect has been questioned pursuant to regulations on questioning of defendants, the defence counsel has the right to review records and collected evidence (Art. 74 (1)). The CPC allows the defence counsel to read the filed criminal report i.e. notification of the crime immediately before the first interrogation (Art. 74 (2)).

At the defendant’s request, the defendant will be allowed to read the criminal report against him i.e. notification of the crime immediately before the first questioning (Art. 89 (3)).

Supervision of discussions conducted between the suspect/defendant and his defence counsel is especially regulated. The defence counsel has the right to a confidential conversation with the suspect deprived of liberty even before he has been interrogated, as well as with the defendant held in custody. Oversight of this conversation before the first interrogation and during the investigation is allowed only by observation, but not by listening (Art. 75 (2), CPC).

These provisions are in keeping with the ECHR standards since they regulate quite well the right of defence counsel to access all material evidence and prosecutor’s unconditional obligation to disclose all evidence to the defence, as well as contacts between the accused and the counsel.229

The Act on Misdemeanours guarantees the right to defence in Article 85. Defence may be presented in written form (Art. 177) if the court or administrative body conducting the misdemeanour proceeding finds immediate oral interrogation is unnecessary in view of the importance of the misdemeanour and the information it already possesses. The court may decide to hold the hearing in the absence of a duly summoned defendant if he has already been questioned and the court finds his presence is unnecessary (Art. 208). The right to defence counsel is guaranteed by the provisions in Articles 109 and 167 of the Serbian Act on Misdemeanours.

4.6.6.5. Right to Call and Examine Witnesses. – The accused must be allowed to call and examine witnesses s/he considers relevant to his/her defence. Also the accused must be allowed to question the prosecution’s witnesses. The CPC allows the defendant to make motions to call new witnesses and expert witnesses and to

present new evidence during the entire proceeding (Arts. 286 and 333 (2), CPC and Art. 211, Act on Misdemeanours). The amendments to the CPC allow the parties to the proceedings, the judicial panel chairman and members to question the witnesses and court experts. Unless the parties agree otherwise, the witness or court expert shall be questioned in the following order: by the party that called him or her, by the opposing party, by the panel chairman and members, by the injured party or his/her legal representative, the co-defendant and finally by the court experts. In the event the court orders the presentation of evidence not proposed by the parties, the witness or court expert shall be questioned first by the panel chairman and members, then by the prosecutor, the defendant and his/her counsel, by the injured party or his/her legal representative and finally by the court experts. The party that called the witness or court expert may subsequently ask additional questions. These provisions thus introduce cross-examination and provide the parties with much greater opportunities to question the witnesses and court experts (Art. 331, CPC and Art. 88, Act Amending the CPC).

If a witness is questioned outside the courthouse, the parties to the proceedings and the injured parties shall be notified of the time and place of the questioning (Art. 334, CPC). As per the questioning of witnesses during the preparations for the main hearing, the CPC stipulates that parties shall have the right to be notified of the time and place of questioning provided such notification is possible given the “urgency of the proceedings” (Art. 288 (3), CPC and Art. 211, Act on Misdemeanours).

The CPC also lists instances in which the main hearing may be limited only to the reading of records on the statements by witnesses, co-defendants or parties already convicted for the crime (Art. 309).

The right to call and examine witnesses is not an absolute right. International standards allow restrictions of this right by permitting specific persons e.g. family members not to testify. Such exceptions are envisaged also by the CPC. Article 97 of the CPC prohibits testimonies of persons whose statements would violate confidentiality, unless the competent body waives the duty, nor the defence counsel of the accused whose testimony would violate the client-attorney privilege. Moreover, the CPC prohibits calling to the witness stand minors unable to understand the importance of their right not to testify or of persons unable to testify because of their state of health or age.

Some of the defendant’s relations are exempted from the duty to testify (Art. 98 (1)). The CPC also prescribes that witnesses may refuse to answer certain questions if their answers are likely to expose them or relatives to a certain degree of kinship to severe humiliation, considerable material loss or criminal prosecution (Art. 100).

Persons giving a statement in court are obliged to tell the truth. Perjury is a criminal offence (Art. 206, CC).
The CPC includes witness protection measures. The court may issue a decision approving special protection measures for a witness if circumstances indicate that the life, physical integrity, health, freedom or any considerable assets of the witness or persons close to the witness would be seriously threatened by public testimony, especially in proceedings concerning organised crime, corruption or other extremely grave criminal offences. The special witness protection measures comprise questioning the witness under circumstances and in a manner not revealing his or her identity and measures ensuring the physical safety of the witness during the proceedings (Art. 109, CPC and Art. 109 a-f, Act Amending the CPC).

If there are circumstances that clearly indicate that the life, health, physical integrity, freedom or any considerable assets of a witness in a criminal proceeding punishable by imprisonment of ten years or any stricter penalty, or persons close to him, would be seriously threatened due to his testimony and answers to some questions, the court may decide to grant this person the status of a protected witness and order a special method of examination of this witness in the criminal proceedings in order to prevent the disclosure of his identity during the proceedings.

Apart from the protection afforded by the CPC, the Act on the Protection of Participants in Criminal Proceedings also envisages witness protection measures under specific conditions.

4.6.6.6. Right to an Interpreter. – Under Article 32 (2) of the Constitution, everyone who does not understand the language officially used in court shall have the right to free interpretation, as will deaf, mute or blind persons.

Pursuant to the CPC, parties, witnesses and others parties to the proceedings have the right to use their own language and for that purpose interpretation shall be provided (Art. 9). The court must inform such persons of their right to interpretation and they may waive that right if they understand and speak the language in which the proceedings are held (Art. 9 (3)).

When “denying the defendant, his counsel... contrary to their request the right to use their own language during trial and to follow the course of the trial in their language” constitutes a grave violation of procedure (Art. 368 (1.3), CPC and Art. 251, Act on Misdemeanours).

4.6.6.7. Prohibition of Self-Incrimination. – Under the Constitution, a person accused of or standing trial for a crime is not obliged to make statements incriminating himself or herself or persons close to him or her or to confess guilt (Art. 33 (7)).

The defendant has the right to remain silent and shall be warned that anything s/he says may be used against him or her before the first questioning. The accused may not be forced to testify against himself or herself or confess guilt (Art. 3, Act

230 Sl. glasnik RS, 85/05.
Defendants also have the right not to enter a plea in response to the indictment and not to state their defence (Art. 89, CPC and Art. 176, Act on Misdemeanours). If the defendant has not been duly informed about his rights, the court judgment cannot be based on his statement (Art. 89 (10), CPC).

The CPC prohibits the use of force, threat, deceit, promise, extortion, exhaustion and similar means during the interrogation of an accused (Art. 103). Also, the judgment cannot be based on the statement of the accused that has been obtained in contravention of this prohibition (Art. 89 (11)).

One of the key novelties introduced by the Act Amending the Criminal Procedure Code is the plea bargain agreement and the rule under which a witness collaborator will still stand accused of a crime even after having been granted the status (Art. 282 a-e). The witness collaborator will be included in the judgment, but will be handed down half the prison sentence or may even be relieved from the sentence. Plea bargains may be struck between the prosecutor and a person accused of a crime warranting 12 years of imprisonment or less.

4.6.6.8. Right to Appeal. – Under Article 36 (2) of the Constitution, all persons shall have the right of appeal or to another legal remedy against a decision on their rights, obligations or legally vested interests.

The two-instance principle is an absolute rule – an appeal of a decision of a lower court is always allowed, and in some cases may be pursued to the third instance (Art. 105, Act Amending the CPC).

In addition to the right of appeal as a regular remedy, a convicted person also has recourse to filing motions for a retrial (Chapter XXV, CPC). The Amendments to the CPC abolished two extraordinary legal remedies – extraordinary commutation of the sentence and the motion for assessing the legality of final decisions, thus ensuring greater certainty in the legal system.

4.6.6.9. Right to Compensation. – Under Article 35 (1) of the Constitution, a person groundlessly or unlawfully convicted for a punishable offence shall have the right to rehabilitation and compensation of damages by the state and other rights stipulated by the law.

The CPC lays down when these rights may be exercised and how (Chapter XXXIV, CPC). Hence, compensation shall be awarded a person who has been wrongly convicted or has been found guilty but not convicted and subsequently new proceedings were dismissed by an extraordinary legal remedy or the person was acquitted by court or if the charges have been dismissed. However, the convicted person shall not have the right to compensation if the proceedings were dismissed or a decision was rendered to dismiss the charges because the injured party in the capacity of prosecutor abandoned the case, or if the injured party withdrew charges

231 See I.4.3.
232 Sl. glasnik RS, 72/09.
after a settlement with the defendant, or because the accused has been exempted from criminal prosecution by an act of amnesty or pardon, or if in the new proceedings the decision was rendered to dismiss the charges due to lack of jurisdiction of the court if the authorised prosecutor initiated proceedings before a competent court or if the defendant wilfully brought about the judgment by false confession or in another manner, unless under duress (Art. 556).

This right is also envisaged by the Act on Misdemeanours (Arts. 280–284).

4.6.6.10. Ne bis in idem. – International standards (Art. 14 (7), ICCPR and Art. 4 (1), Protocol No. 7 to the ECHR) envisage that “nobody... can be tried again nor can he be punished again... for an offence for which he had already been legally acquitted or convicted”. The ECHR, unlike the ICCPR, allows departure from this rule – procedure can be re-opened if “there is evidence about new or newly discovered facts or if in earlier procedure there has been a serious violation that could affect its outcome” (Art. 4 (2), Protocol No. 7 to the ECHR).

The Constitution also includes the ne bis in idem principle in Article 34 (4), according to which no one may be prosecuted or sentenced for a crime for which s/he has been acquitted or convicted by a final judgment, for which the charges have been irrevocably dismissed or criminal proceedings discontinued, nor may a court decision be modified to the detriment of the accused in proceedings instituted by an extraordinary legal remedy.

The CPC comprises the norm according to which “nobody shall be prosecuted and punished for a criminal offence for which he had already been acquitted or convicted by final judgment, or when criminal proceedings have been terminated by a final decision or the charges have been dropped by final judgment” (Art. 6 (1)). Besides, it is prohibited to render decisions that are less favourable for the defendant in the proceedings upon filing the relevant legal remedy (Art. 6 (2)). The Act on Misdemeanours in Article 8 envisages that no-one may be punished in a misdemeanour proceeding two or more times for the same misdemeanour offence and that a person found irrevocably guilty of an offence having the trait of a misdemeanour in a criminal or commercial court trial may not be punished for a misdemeanour.

4.6.7. Constitutional Judiciary

The Act on the Constitutional Court was adopted in late November 2007. 233 The procedure for the election/appointment of the Constitutional Court judges is extremely complicated. Under the procedure, the President of the Republic and the National Assembly each first nominate their ten candidates for the seats on the Constitutional Court. Then each body chooses five from amongst the other body’s list and the ten candidates are then elected by parliament to seats in the Constitutional Court. The remaining five judges are appointed at a session of the Supreme Court.

233 Sl. glasnik RS, 109/07.
of Cassation from amongst the candidates jointly nominated by the High Judicial Council and the State Prosecutors Council (Art. 172, Constitution).

Under Article 172 (1) of the Constitution, the Constitutional Court have fifteen judges appointed to nine-year terms in office. Constitutional Court 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)). Under the Constitution, at least one judge appointed from each of the three lists of candidates must be from the territory of the autonomous provinces (Art. 172 (4)).

The Constitution and the Constitutional Act obviously failed to lay down clear and efficient rules on the appointment of the Constitutional Court judges or proper guarantees of the Court’s independence. The opportunity to rectify some of the constitutional inconsistencies in the Act on the Constitutional Court was unfortunately missed. The part of the Act regulating the appointment of judges, the duration and termination of tenures mostly merely reiterates the sparse and vague provisions in the Constitution. The legislator missed the opportunity to simplify the work of the Court by not insisting that the Court take all decisions at plenary sessions and allowing the judges to adjudicate in panels.

A Constitutional Court judge shall be dismissed in the event s/he has become a member of a political party, violated the prohibition of conflict of interests, permanently lost the ability to work, been convicted to a sentence of imprisonment or convicted for an offence rendering him or her unfit for discharging the duty of a Constitutional Court judge (Art. 15 (1), Act on the Constitutional Court). 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 (Art. 15 (2 and 3)). 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)). Public and professional activities shall not entail “unremunerated activity in cultural and artistic, humanitarian, sports or other associations” (Art. 16 (2)).

4.7. Protection of Privacy, Family, Home and Correspondence

Article 17, ICCPR:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 8, ECHR:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4.7.1. General

The right to privacy is commonly perceived as serving to ensure protection from undesired publicity but the right to privacy is more broadly identified with personal autonomy of an individual, or his general freedom to choose his own lifestyle without interference by the state or other persons. In this respect, the right to privacy is discussed in case of free determination of personal preferences of an individual. The European Court of Human Rights accepts the wider interpretation of the concept of privacy and considers that the content of this right cannot be predetermined in an exhaustive manner. According to ECTHR case law, privacy encompasses, *inter alia*, the physical and the moral integrity of a person, sexual orientation, relationships with other people, including both business and professional relationships.

The Constitution does not protect the right to privacy as such but it does guarantee the inviolability of physical and mental integrity (Art. 25 (1)), of home (Art. 40), of letters and other means of communication (Art. 41).

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 exercising public powers. The Constitution does not explicitly restrict this right by invoking the right to privacy, but it does envisage that it shall be exercised “in compliance with the law”, which means that the provisions of the Personal Data Protection Act must be respected. It would, however, be better had the authors of the Constitution explicitly provided for the protection of the right to privacy in this context.

4.7.2. Personal Data – Access and Collection

4.7.2.1. General Regulations. – The collection, storage and use of personal data and the possibility of an individual to access data are protected by Article 8 of the ECHR.

The CoE Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, which Serbia has also ratified, is the first

---

237 Sl. list SRJ (Međunarodni ugovori), 1/92 and Sl. list SCG, 11/05.
binding international instrument on the protection of personal data. 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 Serbian Assembly in November 2008 ratified the Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data regarding Supervisory Authorities and Transborder Data Flows.\textsuperscript{238} The Protocol provides for the establishment of supervisory authorities in the contracting states and regulates in detail the transborder flow of data to recipients not within the jurisdiction of the parties to the Convention.

The Constitution includes a general provision guaranteeing the protection of personal data and prescribing that the collecting, keeping, processing and use of personal data shall be regulated by the law (Art. 42 (1 and 2)).

The Constitution 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, (Art. 42 (3)).

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 (4)).

The Serbian Personal Data Protection Act has been in effect since 1, January 2009.\textsuperscript{239} Under the Act, personal data shall mean any information about a natural person, regardless of its form or format or at whose order, in whose behalf or for whose account it is stored. Information about a natural person shall constitute personal data regardless of the time of creation, place of storage or any other features of the information (Art. 3(1(1)).

The Act elaborates in detail the conditions for collecting and processing personal data. The purpose of collecting data must be specified in advance and clearly. Citizens are entitled to be informed of, have insight in and a copy of collected data. The Act distinguishes between processing of personal data with the consent of the data subject and in accordance with an authority’s legal mandate. Processing of a person’s personal data with his/her consent is allowed only in the event the data subject is clearly notified of the purpose of data processing, in the event the data are used for a precisely specified purpose and with the prior consent of the data subject. A data subject may revoke his or her consent to the processing of data. Article 12 of the Act specifies that data may be exceptionally processed without the consent of the data subject when a vital interest of the data subject or another person prevails (para 1). Para 2 of the Article lays down that processing data without the consent of the subject shall be permitted also “for the purpose of fulfilling obligations speci-
fied in a law, in an enactment adopted in accordance with the law or a contract concluded between the subject and the controller, and for the purpose of preparing the conclusion of a contract”. Under para 3, processing data without the consent of the data subject shall also be allowed in other instances laid down in the law or another regulation passed in accordance with the law, where there is a prevailing interest of the data subject, controller or user. Given that the Constitution lays down that the collection, storage, processing and use of personal data shall be regulated by a law, the provision providing for the regulation of the data processing without the subject’s consent by subsidiary legislation is not in compliance with the Constitution, which prompted the Information of Public Importance and Personal Data Protection Commissioner in February 2010 to file an initiative with the Constitutional Court to review the constitutionality of this provision.

The other method of data processing – in accordance with an authority’s a legal mandate – described in Article 13 – is problematic, because the Article sets extremely broad grounds for processing personal data without the consent of the data subject. 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 a criminal offence, economic or financial interests of the state, protection of health and morals, protection of rights and freedoms and other public interests, and in other cases with the written consent of the data subject. The very protection of personal data may be rendered meaningless by such broad grounds. Given that this Article, too, mentions “another regulation”, the Commissioner also disputed this provision in his initiative for the review of constitutionality. The Commissioner for the same reason also challenged in his initiative the constitutionality of Article 14 of the Act defining the parties from which the data may be collected.

The Act entitles the citizens to be notified of, have insight in and a copy of the collected data. The restrictions of the above right in the new Act relate to the abuse of or threats to the public or personal interests of the data subject (Art. 23). After having insight in the data, the data subject is entitled to require their amendment, updating or deletion, or that they no longer be processed if the purpose or manner of processing is unspecified or illicit, or if the data being collected are not commensurate to the purpose or incorrect (Art. 22). Before starting the processing and/or establishing the data filing system, the controller is obliged to notify the Commissioner of the intention to establish the data filing system unless the purpose of the processing, type of data and type of users with access to the data are specified in a separate regulation (Art. 49).

240 For the purpose of this Act, a controller is a person or an authority processing the data, while the user is the person or authority authorised to use the data.

The Act expanded the remit of the Access to Information Commissioner, who became the Access to Information and Personal Data Protection Commissioner as of January 2009. The Access to Information and Personal Data Protection Commissioner shall also be entitled to oversee automatically processed personal data (Art. 4, Personal Data Protection Act). The Commissioner monitors the process of personal data processing, is entitled to take decisions in appeal proceedings and exercise other duties related to the collection, keeping and protection of personal data (Art. 44). The chief provision that will enable the successful monitoring of personal data protection is the one entitling the Commissioner to have insight in data being collected and the documents, enactments and offices of persons authorised to collect data (Art. 45). Restrictions of the Commissioner’s monitoring powers in Art. 45 (3–4) 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, disclosure, investigation of or persecution for a crime were abolished by the Classified Information Act and the Commissioner is now entitled to conduct full oversight.242

To achieve adequate personal data protection in the Republic of Serbia in accordance with EU law, the national legislation must primarily be fully in accordance with the provisions in Directive 95/46/EC.243 This is why the Access to Information and Personal Data Protection Commissioner submitted a Draft National Strategy for Implementing Personal Data Protection to the Government of Serbia.244 The document was drafted in cooperation with EU Commission experts and underwent a three-month expert and public debate. The Draft Strategy lays down the principles and objectives of personal data protection in Serbia and envisages the adoption of an action plan to ensure their full implementation, the chief requirements of the Directive. The Government in August at long last adopted the Strategy on Personal Data Protection245 which differs only slightly from the Draft Strategy submitted by the Commissioner.246 It will be very important to monitor whether, how and when the Strategy will actually be implemented.

It should also be noted that the Government was obliged to adopt a decree specifying special protection measures regarding the processing of particularly sensitive data within six months from the day the Act came into effect, i.e. by last

243 Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data, 95/46/EC, 24 October 1995.
245 Sl. glasnik RS, 58/10.
April. This decree has not been adopted yet, however, wherefore no special protection of particularly sensitive data exists in practice.\textsuperscript{247}

Apart from the Personal Data Protection Act and its subsidiary legislation, other regulations also comprise provisions relevant to the protection of personal data.

The Act on Police allows the police to collect, process and use personal data and in general envisages the application of the principle of proportionality (Art. 75).\textsuperscript{248}

The Classified Information Act entitles persons insight in security check data collected pursuant to the Act (Art. 81) but limits this right by specifying that a person shall not be entitled insight in data “disclosing the methods and procedures used during the collection of the data or identifying the sources of data obtained during the security check”. Although the need to protect specific methods and sources used by the state authorities during security checks is understandable, the formulation essentially limits the right of insight to a great extent.

The Electronic Communications Act\textsuperscript{249} obliges the provider of public telephone directory services to, \textit{inter alia}, notify the subscriber free of charge that his or her personal data shall be included in the public telephone directory, of the availability of personal data via the telephone information services, and the possibility of third persons searching his/her personal data. The subscriber is entitled to refuse to have his or her personal data entered in the directory, and has the right to check or seek the rectification of data or have them deleted from the public directory in a simple manner and free of charge (Art. 120).

The Labour Act\textsuperscript{250} for the first time regulates the processing of and access to employee personal data that are kept by the employer. The Act prohibits employers from requiring of the job applicant to provide data which are not directly relevant to the job s/he has applied for.

The Tax Procedure and Tax Administration Act\textsuperscript{251} guarantees the tax payers the right to privacy and prescribes that all information about a tax payer is confidential, apart from strictly prescribed exceptions.\textsuperscript{252}

\begin{footnotes}
\item[248] More on police collection of data and right to access data held by the police in \textit{Report 2005}, I.4.7.2.1.
\item[249] \textit{Sl. glasnik RS}, 45/10. More on the Act in I.4.7.4.
\item[250] \textit{Sl. glasnik RS}, 24/05, 61/05 and 54/09.
\item[251] \textit{Sl. glasnik RS}, 80/02, 84/02, 23/03, 55/04, 61/05, 85/05, 62/06, 63/06, 61/07, 20/09, 72/09 and 53/10.
\end{footnotes}
The State Administration Act\textsuperscript{253} does not include separate provisions on the rights of citizens to access data; it only prescribes that state administration bodies are obliged to enable the \textit{public} insight in its work and refers to the Access to Information Act (Art. 11).\textsuperscript{254} However, the latter law regulates only access to information of public importance (i.e. information which the “public has a justified interest to know”) but does not mention the rights of individuals to have insight in information regarding them personally. The Act on Administrative Proceedings allows a party or interested person access to cases regarding them. On the other hand, the Act protects the privacy of individuals by envisaging that an authority will not disclose the requested information if such disclosure would violate the privacy of the person the information regards, but it does envisage exceptions.\textsuperscript{255}

Other laws and regulations, e.g. those on health, the banking sector, education, advertising, also include provisions relevant to the protection of personal data. The Strategy on Personal Data Protection, \textit{inter alia}, envisages that all these regulations be reviewed and aligned with the Personal Data Protection Act and that new regulations be adopted in fields of relevance to personal data protection where there are none (e.g. video surveillance, use of biometric data, etc).

The Criminal Code incriminates unauthorised collection, attainment, release and abuse of personal data collected, processed and used in accordance with the law (Art. 146). The Code allows for the release of data in criminal records to competent judicial bodies and other state authorities and listed entities if there is a justified and reasoned lawful interest therefor. Article 102 in general prohibits but does not penalise asking citizens to provide evidence that they have or have not been convicted (Article 102). The CC also envisages punishment for the invasion of privacy, incriminating unauthorised photographing (Art. 144), publication of another’s personal papers, as well as of portraits, photographs, film or audio recordings of a personal nature (Art. 145), unauthorised wiretapping and audio recording (Art. 143), violation of the privacy of correspondence (Art. 142), and disclosure of privileged information (Art. 141).

\textbf{4.7.2.2. Opening of State Security Files.} – A sensitive issue of particular significance from the viewpoint of the right to privacy regards the opening of state security service files. Two specific issues come to the fore – the right of an individual to review his/her file and the protection of privacy of those persons of whom records were kept from any abuse. The Government of Serbia had passed

\begin{footnotesize}
\begin{itemize}
\item [253] Sl. glasnik RS, 79/05 and 101/07.
\item [254] Sl. glasnik RS, 120/04, 54/07, 104/09 and 36/10.
\item [255] The exceptions include: if the person gave his/her consent, if a person of public interest is at issue (this above all pertains to holders of state or political offices), if the information is relevant in terms of the office the person is discharging, and if a person gave rise to the request for disclosure of information by his conduct (Art. 14).
\end{itemize}
\end{footnotesize}
two decrees in May 2001 on opening of state security files, but they were declared unconstitutional by the Constitutional Court.\textsuperscript{256}

Under the Classified Information Act\textsuperscript{257} all state authorities shall review all their documents and assess which shall remain classified and which shall not.\textsuperscript{258} This provision allows for opening state security files. The Act allows authorised persons in possession of classified information or the Government to decide that specific documents remain classified but specifies that a decision on what will remain classified shall be taken for each individual document.\textsuperscript{259} In late 2010, the Serbian Renewal Movement (SPO) submitted to the Assembly a draft law on the opening of secret files. Under the draft, every citizen of Serbia would be entitled to seek insight in his or her file from an independent commission that would be established under this law. The SPO proposed the opening of all political files regardless of their time of creation. This draft law, however, was not upheld by the majority in the parliament and is unlikely to be adopted in the imminent future.

Given that a number of such files have already been deposited in the Archives of Serbia, the provisions of the future law on archives, specifically how it will govern access to archived information, will also be extremely important.\textsuperscript{260}

4.7.2.3. Powers of the State Security Services. – The powers of security services with respect to the collection of data are laid down in the Act on the Security Information Agency and the Act on the Military Security Agency and the Military Intelligence Agency. Both laws oblige the security service members and persons overseeing their work to maintain the confidentiality of the obtained information i.e. specific obtained information in case of BIA. The Act on the Security and Information Agency does not give citizens the right to obtain information on the measures for the collection of data which the Agency has carried out against them, nor does it provide the right to review the collected data. The Act does not set up precise rules in respect of the authorisation required to collect data, nor does it specify instances in which the Agency can use special operational measures and means.\textsuperscript{261} The Act on the Military Security Agency and the Military Intelligence Agency lays down the obligation of these agencies to provide information on collected personal data and data of public importance in accordance with the regulations on personal data protection, free access to information of public importance, confidential information

\textsuperscript{256} See Report 2008, I.4.7.2.
\textsuperscript{257} Sl. glasnik RS, 104/09. More on this Act and the deadlines for completing the task duty in I.4.9.6.1.
\textsuperscript{258} Classified Information Act, Art. 22.
\textsuperscript{259} Ibid., Art. 20.
\textsuperscript{260} The adoption of a new law on archives has been pending for a long time. Culture Minister Nebojša Bradić said in early 2010 that such a law would be adopted by the end of the year (B92 News, 23 January), but no such law was submitted to parliament for adoption until the end of the reporting period.
\textsuperscript{261} More on the powers of BIA in Report 2005, I 4.7.2.3.
and that Act, but also specifies which data this obligation does not apply to. The latter Act allows military security services to apply special procedures and measures to secretly collect data.

4.7.3. Home

In terms of the ECHR, the home encompasses all places of residence. The ECtHR expanded the concept of home to include certain business premises.262 The term “home” is broadly constructed in jurisprudence as any enclosed space which serves as a dwelling either permanently or occasionally. Any premises legally owned by an individual, regardless of where he actually resides, are also considered a home.

The Constitution prescribes that the home is inviolate, and that the home or other premises of others may be entered and searched against their will if so authorised by a written court order. The search must be conducted in the presence of two witnesses. Exceptionally, the home or other premises of another may be entered and searched without a court order if it is necessary to apprehend a perpetrator of a crime or to eliminate a direct and grave threat to people and property (Art. 40).

The search of an apartment in order to apprehend the perpetrator of a criminal offence or to find evidence of an offence or objects of relevance to the criminal proceedings under way is allowed (Art. 77 CPC). The CPC envisages greater restrictions on the search of attorney’s offices. These premises may be searched only in relation to a specific proceeding, file or document (Art. 77 (2)). The search must be ordered by the court by a reasoned warrant in writing. The ECtHR maintains that searching of a lawyer’s office must be strictly proportionate to the aim of suppressing crime and protecting the rights of others and that the professional secrecy in the reviewed material may not be violated.263 The person whom the search warrant regards may request the presence of a legal counsel or defence counsel.

Entry into a home and search in the absence of witnesses is allowed only under strictly defined circumstances. However, the provision allowing entry and search without a warrant or witnesses if “someone is calling for help” (Art. 81 (1)).

The person in possession of the apartment, who is present during the search, is entitled to lodge a complaint against the conduct of the internal affairs bodies (Art. 81 (2)). Internal affairs bodies are obliged to submit a report to the investigating judge about search undertaken without the appropriate court order (Art. 81 (5)).

The Criminal Code incriminates the violation of the home: violation of the inviolability of the home (Art. 139) and illegal search (Art. 140).

---

263 Ibid.
4.7.4. Correspondence

In terms of Article 8 of the ECHR, the concept of correspondence encompasses both written correspondence and telephone conversations, telex, telegraphic and other forms of electronic communication.

The Constitution guarantees that the confidentiality of letters and other means of communication shall be inviolable and allows for derogation from this right only for a specified period of time if such derogation is necessary to conduct criminal proceedings or protect the security of the state and if it has been ordered by the court (Art. 41).

Under the CPC, the investigating judge may prohibit correspondence of a detainee, otherwise allowed under judicial supervision, if it can be prejudicial to the proceedings. The detainee may appeal the investigating judge’s decision but the appeal shall not stay its enforcement. The prohibition does not apply to the detainee’s letters exchanged with his/her defence counsel, international tribunals, international human rights organisations, the Protector of Citizens and the national legislative, judicial and executive authorities.

The Penal Sanctions Enforcement Act allows no restrictions on the right of correspondence of persons serving prison sentences at their own expense (Art. 75(1)). A prison warden or the Director of the Penal Sanctions Enforcement Directorate may, however, ask the first-instance court with jurisdiction over the prison to order the surveillance of written correspondence in a maximum or high security prison or a high security ward for a specific period of time if so required to maintain law and order, safety and security, prevent the commission of a crime or protect an injured party (Art. 75(2)). The court may prohibit correspondence for the same reasons. The PSEA does not specify how long the surveillance or prohibition of correspondence may last or the periods at which the justification of these measures have to be reviewed. If there is cause to believe that impermissible matter is sent or received via a letter, the convict’s correspondence shall be opened and checked in his or her presence. A convict is entitled to free correspondence with his or her counsel, the Protector of Citizens or other state authorities and international human rights organisations. The Act, however, does not mention national human rights organisations in this context, only international ones.

---

267 Sl. glasnik RS, 85/05 and 72/09.
The investigating judge may issue a reasoned order allowing for the secret surveillance and recording of telephone and other conversations and communication by other technical means of persons reasonably suspected of committing a grave crime listed in Article 504a of the CPC, or exceptionally, if there is cause to believe that such a crime is about to be committed, on condition that evidence thereof cannot be collected in another manner or in the event the collection of such evidence would be considerably hampered, i.e. on condition that the crime cannot be disclosed, prevented or proven in any other way, or if that would cause disproportionate difficulties or grave danger. The application of these measures shall terminate as soon as the reasons for their application cease to exist. The application of these measures may last six months at most and may be extended twice by another three months for important reasons (Art. 504e CPC). The enforcement of this order is entrusted to the police, the BIA or the Military Security Agency (Art. 504ž).

Amendments to the Act on the Organisation and Competence of State Bodies in War Crimes Proceedings stipulate that, at the reasoned motion of the war crimes prosecutor, the court may order the surveillance and recording of telephone and other conversations or communication by other technical means and the optical recording of persons suspected of being accessories after the fact to a crime in Article 333 of the Criminal Code by themselves or together with other persons, if the committed crime was related to crimes in Arts 370–386 of the CC and gross violations of international humanitarian law committed in the former Yugoslavia as of 1 January 1991 and specified in the ICTY Statute. These measures may be in effect for a maximum of six months and may be extended for a three-month period twice, at the reasoned motion of the prosecutor (Art. 13a).

Under the Act on the Military Security Agency and the Military Intelligence Agency, military security services may secretly collect data in specific circumstances (Art. 10). However, a written and reasoned order by the Supreme Court of Cassation shall be required for secret recording and documenting of conversations inside or outside by use of technology and surveillance of the content of letters and other means of communication (Art. 14). In exceptional circumstances (Art. 15 (1)), these measures may be undertaken with the prior consent of the competent judge but must be terminated if an order thereto by the Supreme Court of Cassation is not obtained within 24 hours (Art. 15 (2 and 3)).

269 These crimes comprise organised crime, crimes of corruption and other extremely grave crimes, such as murder, aggravated murder, abduction, robbery, extortion, counterfeiting of money, money laundering, illicit manufacture and trafficking in narcotic drugs, crimes against the constitutional order or security of the Republic of Serbia, illicit manufacture, carrying, holding and trafficking in weapons and explosive matter, illegal border crossing and smuggling of humans, trafficking in humans, trafficking of minors for adoption purposes, international terrorism, hostage-taking and funding of terrorism.

270 Sl. glasnik RS, 101/07.

271 Articles 232 and 233 of the CPC shall apply to the selection and enforcement of these measures, unless this Act specifies otherwise.
However, the Act on the Military Security Agency and the Military Intelligence Agency also provides the VBA Director or a person s/he designated with a problematic mandate – to order the application of special secret data collection procedures and measures without previously obtaining a court order. Namely, the VBA Director or a person s/he designated may, *inter alia*, order secret electronic surveillance of communication and information systems for the purpose of collecting data on telecommunication traffic and the location of the users, without insight in their content. (Art. 12(1(6)), Act on the Military Security Agency and the Military Intelligence Agency). Given that Article 41 of the Constitution lays down that the confidentiality of letters and other means of communication shall be inviolable and that derogation is permitted only pursuant to a court order, this mandate is obviously not in compliance with the Constitution. According to ECtHR case-law, means of communication should not only entail the content of communication, but also data on who is communicating with whom, at what time and where from.272

In July 2010, the BCHR filed an initiative for the review of the constitutionality of the articles of the Act on the Military Security Agency and the Military Intelligence Agency regulating this issue.

The laws regulating the work of the BIA and the police do not give the Director or a person s/he designated the mandate provided for by the Act on the Military Security Agency and the Military Intelligence Agency. The problem is that the police and the BIA base their practice of collecting such data without a court order on the interpretation of the concept of a communication, according to which a communication does not comprise call listings, the user’s location and other elements of a communication, wherefore, according to this interpretation, such data do not enjoy protection under Article 41(2) of the Constitution.273 As already noted, such an understanding of the concept of a communication is not in compliance with the ECtHR case-law.

Pursuant to the Act on the Security Information Agency, the Agency Director may in the interest of Serbia’s security issue an order based on a prior court decision and request measures that deviate from the principle of inviolability of the privacy of correspondence and other means of communication against specific natural or legal persons (Art. 13).274 The Act prescribes the following procedure for taking measures restricting someone’s privacy: the Agency Director’s motion to undertake measures must be approved by the President of the Supreme Court of Cassation, or another authorised judge, within 72 hours from submission. The approved measures may be enforced for a maximum of six months, and may be extended for another six months at most pursuant to a new motion (Art. 14). The Agency Director may

---


273 See the motion for the review of constitutionality filed by the Protector of Citizens and the Commissioner on www.ombudsman.rs/index.php/lang.../zakonske-i-druge-inicijative.

decide to order privacy restriction measures, even without a decision by the Supreme Court of Cassation, when they are necessary for reasons of urgency, but with the prior written consent of the President of the Supreme Court of Cassation i.e. the authorised judge. The Director must, however, file a written motion for such measures within the following 24 hours.  

The Electronic Communications Act adopted in 2010 prohibits interception of electronic communication in a manner disclosing the content of communication without the consent of the user or a court decision issued for a specific period of time if such interception is necessary for the conduct of criminal proceedings or the protection of the security of the Republic of Serbia in a manner laid down in the law (Art. 126). The Act also prohibits retention of data revealing the content of communication (Art. 129). Unfortunately, like many other laws adopted in the past few years, this law, too, was adopted without a prior public debate and the final draft was unavailable to the public practically until the Assembly began debating it.

Under the Act, the operator is obliged to store the so-called retained data, i.e. data regarding: 1) the monitoring and identification of the source of a communication, 2) the identification of the destination of a communication, 3) determination of the beginning, duration and end of a communication, 4) identification of the type of communication, 5) identification of the users’ terminal equipment and 6) identification of the mobile terminal equipment location (Arts. 128 and 129). Access to retained data without the consent of the user is allowed only for the purpose of conducting an investigation or criminal proceedings or disclosure of a crime in accordance with the law regulating the criminal procedure or for the purpose of protecting the national and public security of the Republic of Serbia in accordance with the laws regulating the work of the security services of the Republic of Serbia (Art. 128). This provision fuelled the greatest controversies in the public and dominated the Assembly debate that preceded the adoption of the Act. The problem is that the Act increases the powers of the Military Security and Intelligence Agencies, given that the law regulating the work of these two agencies allows access to data without the consent of the user for the above reasons even without a court order, which is in contravention of Article 41 of the Constitution, guaranteeing the confidentiality of communication and allowing derogations from it only for a specific period of time and pursuant to a court order. Article 13(1) of the Act on the Military Security Agency and the Military Intelligence Agency allows access to data pursuant to an order issued by the Agency Director or a person s/he designates.

At the initiative of a group of non-governmental organisations, the Protector of Citizens and the Access to Information of Public Importance and Personal Data Protection Commissioner in late September 2010 launched the proceedings for the review of the constitutionality of specific provisions in the above mentioned laws,

---

275 Ibid.
276 Sl. glasnik RS, 44/10.
277 Sl. glasnik RS, 88/09.
specifically paragraphs 1 and 5 of Article 128 of the Electronic Communications Act, referring to other laws allowing “competent authorities” to take decisions on accessing retained data in accordance with the CPC, the laws on the police and security services and Articles 13 and 16 of the Act on the Military Security Agency and the Military Intelligence Agency.

4.7.5. Family and Domestic Relations

According to the ECtHR, family life is interpreted in terms of the actual existence of close personal ties. 278 It comprises a series of relationships, such as marriage, children, parent-child relationships, 279 and unmarried couples living with their children. 280 Even the possibility of establishing a family life may be sufficient to invoke protection under Article 8. 281 Other relationships that have been found to be protected by Article 8 include relationships between brothers and sisters, uncles/aunts and nieces/nephews, 282 parents and adopted children, grandparents and grandchildren. 283 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. 284

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, 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. Article 12 of the ECHR also gives the right to marry and have a family only to “men and women.”

280 See Johnston v. Ireland, ECmHR, App. No. 9697/82 (1986).
281 See Keegan v. Ireland, ECmHR, App. No. 16969/90 (1994).
282 See Boyle v. United Kingdom, ECmHR, App. No. 16580/90 (1994).
The provisions of the Family Act are in accordance with international standards in terms of the right to privacy. The new Act introduces major improvements in that respect. The Act for the first time envisages that everyone has the right to the respect of family life (Art. 2 (1)). It also guarantees the right of the child to maintain a personal relationship with the parent she/he is not living with, unless there are reasons for partly or fully depriving that parent of parental rights or in case of domestic violence (Art. 61). The child also has the right to maintain personal relationships with other relatives she/he is particularly close to (Art. 61 (5)). Provisions regarding the child’s education take into account also the interests of the parents. The Act envisages the right of parents to provide their child with education in keeping with their ethical and religious convictions (Art. 71).

The Criminal Code penalises whoever relates or disseminates information of a person’s family circumstances that may harm his or her honour or reputation (Art. 172).

4.7.6. Sexual Autonomy

Sexual autonomy is also covered by Article 8 of the ECHR. According to the case law of the European Court of Human Rights, any restriction of sexual autonomy must be prescribed by law, necessary and proportionate. A restriction is easy to justify when it concerns the abuse of minors, and relatively difficult to justify when it concerns consensual intercourse between adults.

The right to express one’s sexual orientation is not explicitly granted in the legal system of Serbia, including the new Constitution; the authors of the latter have also failed to explicitly list sexual orientation as grounds on which discrimination is prohibited. The Labour Act and the Anti-Discrimination Act expressly prohibit discrimination on grounds of sexual orientation.

4.8. Freedom of Thought, Conscience and Religion

Article 18, ICCPR:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.


286 See MK v. Austria, ECmHR, App. No. 28867/95 (1997).


288 See I.4.1.2.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one’s religion or beliefs may be subject only to such restrictions as are prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.

**Article 9, ECHR:**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

**4.8.1. General**

Article 11 of the Constitution of Serbia states that Serbia is a secular state and prohibits the establishment of a state religion. The principle of separating the state from the church is dual and implies both the autonomy of religious communities vis-à-vis the state institutions and the state authorities’ independence from religious communities. Article 43 regulates the issue of individual religious freedoms and freedom of thought and explicitly guarantees the right to change one’s religion or belief. Under the Constitution, no one is obliged to declare his or her religion or beliefs. The Constitution also guarantees the right to manifest one’s religion in religious worship, observance, practice and teaching and to manifest religious beliefs in private or public.

The Constitution correctly provides for restrictions only of the freedom to manifest religious beliefs and does not allow for the restriction of the freedom of religion. Restrictions must be determined by law and may be imposed only if they are necessary in a democratic society to protect the lives and health of people, other rights enshrined in the Constitution, public safety and public order or to prevent incitement to racial, ethnic or religious hatred. Limitations are allowed also for the protection of the “morals of democratic society”. If correctly interpreted, this phrase ought to indicate a higher degree of acceptance of diverse moral beliefs in a heterogeneous society.

The Constitution explicitly guarantees parents the right to freely decide on their children’s religious education and upbringing. Article 44 governs collective religious freedoms, i.e. the freedom of religious organisation, while Article 45 guarantees the right to conscientious objection.
For the realisation of the freedom of thought, conscience and religion two laws are relevant: the Act on Churches and Religious Communities\textsuperscript{289} and the Act on Restitution of Property to Churches and Religious Communities.\textsuperscript{290} The Regulation on the Register of Churches and Religious Communities\textsuperscript{291} is the most relevant piece of subsidiary legislation. The Anti-Discrimination Act, which was adopted in March 2009 also prohibits religious discrimination. Under Article 18, religious discrimination shall occur when the principle of freedom of expressing one’s religious beliefs is breached, i.e. in the event a person or a group are denied the right to adopt, maintain, express or change their religious beliefs, or the right to privately or publicly express or act in accordance with their beliefs.

Four motions and one initiative challenging a large number of provisions of the Act on Churches and Religious Communities have been filed with the Constitutional Court of Serbia. The motions were submitted by the Belgrade Christian Baptist Church and Protestant Evangelist Church, the Leskovac-based Protestant Evangelist Church Spiritual Centre and the Belgrade Centre for Tolerance and Inter-Religious Relations. The initiative was filed back in 2008 by the Coalition for a Secular State, rallying 11 non-governmental organisations. They are of the view that the provisions of the Act on Churches and Religious Communities violate the constitutionally declared separation of the church and the state and that the Act discriminates against minority religious communities because it recognises five traditional churches and two religious communities. They also dispute the provisions regulating the registration procedure and the rights of religious officials. The Protector of Citizens also warned that the Regulation on the Register of Churches and Religious Communities was problematic, both in terms of its conformity with the Constitution and its conformity with the Act on Churches and Religious Communities.\textsuperscript{292}

Four years after the disputed Act was adopted, the Constitutional Court finally opened a public hearing on this matter in October 2010.\textsuperscript{293} Constitutional Court President Bosa Nenadić noted that some motions and the initiative led to “the conclusion that the entire Act is disputed” and added that a public hearing was necessary because the case involved important constitutional and legal issues relevant to the realisation of human rights and freedoms. The Constitutional Court did not render a decision on the matter until the end of the year.

\begin{itemize}
\item \textsuperscript{289} Sl. glasnik RS, 36/06.
\item \textsuperscript{290} Sl. glasnik RS, 46/06.
\item \textsuperscript{291} Sl. glasnik RS, 64/06.
\item \textsuperscript{293} The public hearing was attended by Bač Bishop Irinej on behalf of the Serbian Orthodox Church, Islamic Community Secretary Eldin Ašćerić and representative of the Jewish Community Isak Asijel, while the competent state authorities were represented by former Ministers of Religion Bogoljub Sijaković and Milan Radulović, representatives of the Ministry of Justice, the Protector of Citizens and the Information of Public Importance and Data Protection Commissioner, as well as experts in legal and religious issues.
\end{itemize}
4.8.2. Separation of Church and State

The Act on Churches and Religious Communities provides the religious communities with an extremely high degree of autonomy but a number of its provisions undermine the principle of secularity. Under Article 7 (2) of the Act, the state is obliged to assist in the enforcement of final decisions and convictions of competent ecclesiastical bodies. As the obligation to assist enforcement is automatic, i.e. the decision need not be upheld by state courts, this provision allows state bodies to help enforce decisions that may also violate the public order or specific human rights instead of to neutralise such decisions.\(^{294}\) Court proceedings held in accordance with the regulations of most religious communities do not comply with the international standards on a fair trial in Article 6 of the ECHR or in Article 14 of the ICCPR.\(^ {295}\) Human rights and public order can be violated in the field of material law as well.\(^ {296}\) The scope of Article 7 (2) remains ambiguous as the law does not specify which ecclesiastical court decisions need to be enforced by the state. Finally, the law does not set out a procedure under which the religious communities are to seek the assistance of state bodies in the enforcement of their court decisions nor how the state bodies are to provide such assistance.

Many other provisions, however, bring into question the principle of separation of the state and the church. Under Article 9 (3), for instance, churches and religious communities are entitled to change and abolish their organisational units, bodies and institutions that have the status of a legal person. This Article, however, does not explicitly oblige them to notify the state bodies of such changes in terms of registration. As para 2 of the Article establishes the obligation of a religious community to register an organisational unit which is to have the status of a legal person under autonomous regulations, the correct interpretation of this provision would imply that this obligation also applies to every change in the status of the organisational units. However, according to the text in Article 9, the organisational units of religious communities acquire legal personality on the basis of autonomous regulations of the religious communities, which is impossible as the state bodies are the ones that must assess whether the requirements for acquiring legal personality have been fulfilled.

Provisions conferring upon priests extremely broad immunity in the fulfilment of their duties are also disputable (Art. 8 (4)).

\(^{294}\) In its judgment in the case *Pellegrini v. Italy* (App. No. 30882/96), the ECtHR found that states ensuring the enforcement of decisions of religious community bodies are obliged to review the decisions and the procedures in which such decisions were reached.

\(^{295}\) Under Serbian Orthodox Church (SPC) procedural law, diocesan tribunals may pass convictions in the absence of the accused. Their lawyers are not entitled to appear before the tribunal. Under church criminal law, the burden of innocence rests on the accused i.e. there is no presumption of innocence (more in 1933 SPC *Tribunal Procedures* and 1961 SPC *Criminal Regulations*). Some religious communities, for instance, allow polygamy, prohibit participation of women in public life or divorce, etc.
4.8.3. Religious Organisation and Equality of Religious Communities

Article 44 of the Constitution guarantees the equality of all religious communities, the freedom of religious organisation and collective manifestation of religion. The Constitution also guarantees the autonomy of religious communities. Under Article 44 (3), the Constitutional Court may ban a religious community only if its actions violate the right to life, the right to physical and mental health, the rights of the child, the right to personal and family integrity, right to property, public safety and order or if it incites and foments religious, ethnic or racial intolerance. The provision appears to narrow down the possibility of banning the work of religious organisations, as the Constitution does not provide for the prohibition of religious organisations violating human rights and freedoms enshrined in the Constitution and international documents. For instance, it would be impossible to ban a religious organisation violating the freedom of expression of its believers or denying another community the freedom of religious association.

The Act on Churches and Religious Communities is largely not in compliance with constitutional provisions and international standards on the freedom of religious association and equality of religious communities. Although Article 6 guarantees the equality of all religious communities before the law, it, however, differently treats four types of religious communities. The first group comprises the traditional churches and religious communities granted that status under various laws passed in the Kingdom of Serbia (Kingdom of Serbs, Croats and Slovenes, later Kingdom of Yugoslavia): the Serbian Orthodox Church, the Roman Catholic Church, the Slovak Lutheran Church, Reformed Church, Evangelical Christian Church and the Islamic and Jewish communities. The second group comprises confessional communities, the legal status of which was regulated by application submitted in accordance with the federal Act on the Legal Status of Religious Communities and the republican Act on Legal Status of Religious Communities. The third group includes new religious organisations. The fourth group, which the Act does not mention but establishes implicitly, comprises all those unregistered religious communities which are in an extremely unfavourable position because it is unclear whether such communities are allowed to perform any religious activities, although it is fully clear that they cannot possess property or enjoy the benefits other religious organisations can. Any interpretation that would deprive these organisations of the right to perform religious activities would be in contravention of the Constitution and international practice.

297 Sl. list FNRJ, 22/53, Sl. List SFRJ, 10/65.
298 Sl. glasnik SRS, 44/77, 12/78, 45/85 and 12/80.
Traditional churches and religious communities enjoy a privileged status. To re-register, they need only to submit an application including the name of the church or religious community, its seat, the name and office of the person authorised to act for and on behalf of the church or religious community, while other religious organisations, including confessional communities, also need to submit the decision founding the organisation with the names, ID numbers and signatures of at least 0.001% of Serbia’s citizens of age with permanent residence in Serbia according to the latest official census or foreign nationals with permanent residence in Serbia (Art. 18 (2.1)). The Regulation on the Register of Churches and Religious Communities specifies that a religious organisation shall be registered if it has 100 founders and that the threshold shall be further harmonised with the legal provisions (Art. 7 (3)). BCHR is of the view that the threshold is much too high and considerably deviates from the 0.001% of adult nationals permanently residing in Serbia (for comparison’s sake, there are around 6.5 million citizens who have the right to vote) or of foreign nationals with permanent residence in Serbia; the threshold is also difficult to reconcile with the provision in the Constitution under which no one may be forced to declare his or her religious beliefs. Moreover, all religious organisations apart from traditional ones must also submit their statutes or other written documents describing their organisational and management structure, rights and obligations of their members, procedures for founding and dissolving the organisational units, a list of organisational units with the status of legal person and other relevant data. The obligation to submit an outline of religious teachings, religious rites, religious goals and basic activities is particularly problematic as the Act allows administrative authorities to assess the quality of religious teaching and goals, which is absolutely impermissible from the viewpoint of the freedom of thought and religion. Under Article 20 (4) of the Act, a religious community’s application may be rejected if the state finds that its religious teaching or goals are inadequate. The provision not allowing the registration of religious organisations the name of which includes the name or part of the name expressing the identity of a church, religious community or religious organisation that has been registered earlier or has filed a request for entry into the Register (Art. 19) is also disputable in terms of the equality of religious communities. The Act also obliges communities to submit data on their regular sources of income. A religious organisation acquires the status of a legal person by entry in the register.

The provisions in Article 22 (4) in conjunction with Article 20 (4) of the Act empowering the Ministry of Religions (administrative authority) to delete an organisation from the register if it assesses that its goals, teaching, rites or activities are in contravention of the Constitution or public order or threaten the lives, health, rights and freedoms of others, the rights of the child, the right to personal and family integrity and the right to property without the prior decision thereto of the Constitutional Court (as stipulated by Art. 44 (3) of the Constitution) are not in compliance with the Constitution or international standards.
The equality of religious institutions is also violated by the provisions giving state bodies broad discretion in deciding on various forms of cooperation between the state and religious communities. For instance, Article 29 (2) allows for the payment of health and pension insurance of priests from the republican budget; Article 28 allows the state to financially aid churches and church communities, while Article 30 allows for granting churches and religious communities tax deductions; Article 32 allows for budget allocations for the construction of churches. The Act does not set out any criteria for the use of these benefits and practice has shown they are used in a discriminatory fashion and solely to the advantage of traditional churches and religious communities. Article 55 of the VAT Act entitles only traditional churches and religious communities to VAT refunds. Article 20 of the Act on Primary Schools and Article 24 of the Act on Secondary Schools allow only traditional churches and religious communities to hold religious instruction in public schools. These provisions seriously violate the principle of equality of religious communities.

4.8.4. Religious Instruction

Under the ICCPR, freedom of religion includes the right to manifest religion or belief in worship, observance, practice and teaching. The Serbian Constitution explicitly guarantees the right to religious instruction and the right of parents to provide their children with religious and moral education in accordance with their convictions (Art. 43 (3 and 5)).

The Act Amending the Act on Primary Schools and the Act Amending the Act on Secondary Schools govern religious education and teaching of an alternative subject in Serbian schools.

Pupils are not forced to attend religious instruction. They are entitled to choose between religious instruction and civic education. The decision on attendance of religious or alternative subject classes in primary schools is taken by the pupils’ parents or, if applicable, legal guardians. In secondary schools, the pupils choose the subject themselves, with the obligation to notify their parents or legal guardians of their decision. Classes in these subjects are held in all eight grades of primary school and all four grades of secondary school.

Amendments to the Acts on Primary and Secondary Schools (Art. 20 (2) and Art. 24 (2)) contain the provision stating that religious instruction in schools shall be organised only for the traditional churches and religious communities.

4.8.5. Conscientious Objection

Conscientious objection is not explicitly mentioned in international instruments, but it originates from the freedom of thought, conscience and religion. The right to conscientious objection is contained in and recognised by the recommend-
Legal Provision Related to Human Rights

dations and resolutions of the Parliamentary Assembly and the CoE Committee of Ministers.\textsuperscript{302}

The right to conscientious objection is explicitly guaranteed as a fundamental human right by Article 45 of the Constitution of Serbia. The Constitution, however, does not guarantee conscientious objectors the right to serve civilian service instead of military service, but only the right to serve military service without arms.

The National Assembly in late October 2009 adopted the Civilian Service Act,\textsuperscript{303} the first law to systematically regulate civilian service of military duty by conscientious objectors. The adoption of the Act finally eliminated legal uncertainty in this field. The Act on the Army of Serbia, passed in late 2007. The Yugoslav Army Act essentially did not consistently address the issue and the Decree on Military Duty actually constituted grounds for civilian service.\textsuperscript{304}

Article 2 of the Civilian Service Act defines civilian service as service “by which a military conscript substitutes serving military duty under or without arms and which is served in state bodies, organisations, institutions, units and legal persons determined by a Minister of Defence decision, as well as service in reserve forces”.

Civilian service lasted nine months (Art. 17), i.e. three months longer than military service under arms, which was unjustified.

The Civilian Service Act will become irrelevant at the end of 2010 given that compulsory military service has been abolished and that the Army of Serbia will be fully professionalised.

4.8.6. Restitution of Property of Religious Organisations\textsuperscript{305}

The Serbian Assembly adopted the Act on the Restitution of Property to Churches and Religious Organisations\textsuperscript{306} in April 2006. The Act regulates the restitution of the property in Serbia to the churches and religious organisations and their foundations and societies that had been taken away from them in accordance with the agrarian reform, nationalisation, sequestration and other regulations passed and adopted since 1945 and any other legislation and for which they had not received compensation reflecting the market value of such property. Although the equal treat-


\textsuperscript{303} Sl. glasnik RS, 88/09.

\textsuperscript{304} Sl. list SRJ, 36/94 and 7/98; Sl. list SCG, 37/03 and 4/05 and Sl. glasnik RS, 6/07 and 86/07.

\textsuperscript{305} This section will focus only on issues relevant to the freedom of religion. More on restitution in I.4.12.3.

\textsuperscript{306} Sl. glasnik RS, 46/06.
ment of all churches and religious communities is listed as a fundamental principle in Article 2 of the Act, the application of this Act to the Jewish Community will be very problematic in view of the fact that its property was taken away from it before or during the W.W.II. occupation of Yugoslavia, a period not included in the time-frame set by the Act.

The right to restitution is afforded churches and religious communities, i.e. their legal successors in accordance with the valid enactments of churches and religious communities. If this provision is interpreted in accordance with the Act on Churches and Religious Communities, then this right is limited only to registered churches and religious communities in view of the fact that only they have the status of legal persons i.e. may exercise the right to property. The interpretation of this provision leads to the conclusion that if a religious organisation fails to re-register pursuant to the provisions in the Act on Churches and Religious Communities, its property will primarily be restituted to its legal successors, i.e. the natural and legal persons listed in their statutes as their legal successors. As the constituent enactments of religious communities rarely contain such provisions, it appears that the state will practically have no obligation to restitute property to a religious community that has lost the status of a legal person.

The Act provides for the restitution of real estate and movable property of cultural, historical or artistic relevance that had been in the possession of the churches and religious communities at the time it was taken away. The Act does not explicitly list the restitution of temples, as the vast majority were never nationalised, although there were some cases in which monastery property, synagogues, et al. had been taken over by the state.

A procedure for assessing the constitutionality of the Act has been launched before the Constitutional Court. The Constitutional Court asked the National Assembly for its opinion on the issue in September.

No information on whether the Assembly submitted its opinion was available by the end of the year.

4.9. Freedom of Expression

Article 19, ICCPR:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in para. 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health and morals.

Article 10, ECHR:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

4.9.1. General

Serbian legislation guarantees the right to hold opinions and freedom of expression. The right to freedom of expression of opinion is guaranteed by the Constitution (Art. 46).

Freedom of expression may be restricted by law 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, which is found neither in international standards nor elaborated in Serbian legislation. These provisions are in keeping with the ICCPR, although they mention public security rather than public order. An additional reason for restriction – preservation of independence and impartiality of courts – has been taken from the ECHR.

All the highest legal enactments in Serbia include separate provisions on freedom of the press and other media. Freedom of the press is guaranteed; publication of newspapers is possible without prior authorisation and subject to registration (Art. 50 Constitution). Television and radio stations shall be established in accordance with law (Art. 50 (2)). Censorship of the press and other media is prohibited (Art. 50 (3)). The competent court may prevent the dissemination of information only if that is “necessary in a democratic society to prevent incitement to the violent overthrow of the constitutional order or the violation of the territorial integrity of the Republic of Serbia, to prevent propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (Art. 50 (3)). The right to correction is guaranteed by the Constitution (Art. 50 (4)), which leaves its detailed regulation to the law.
The Ministry of Culture was still drafting a strategy on the reform of the media sector at the end of the reporting period. The strategy will be based on the recommendations European experts made in a media study, which were analysed and commented at a series of round tables rallying media and other professionals. The relevant legislation is expected to undergo changes once the implementation of the future media strategy begins.

4.9.2. Public Information Act

This Act governs the right to public information, as the right to the freedom to express one’s opinion. This right particularly encompasses the freedom to express opinion, the freedom to gather, publish and disseminate ideas, information and opinions, the freedom to print and distribute newspapers, the freedom to produce and broadcast radio and television programmes, the freedom to receive ideas, information and opinions, as well as the freedom to establish legal entities engaged in public information (Art. 1). The Act forbids censorship and indirect ways of restricting the freedom of expression, promotes information about issues of public interest, protects the interests of national and ethnic minorities and persons with special needs, forbids monopoly in the field of establishing and maintaining public information services and narrows the field of privacy for the holders of state and public functions (Arts. 2–10).

The first self-regulatory body within the media sector – the Press Council – was established in 2010. The Council, rallying representatives of media and press associations, is charged with monitoring the print media’s abidance by the press code of conduct and reviewing complaints filed by individuals and institutions against specific print media content. It is also tasked with organising training in the implementation of the code of conduct and boosting the reputation of the media. The Council is charged with mediating between the injured parties and the editorial offices and issuing public warnings in case ethical standards are breached (Blic, 27 May). Three members of the Complaints Review Commission shall represent the public. The Council decisions are to ensure the more consistent application of professional standards and indirectly the Public Information Act, and consequently lead to fewer trials against media for violating this Act.

Act Amending the Public Information Act. – The adoption of the Act Amending the Public Information Act in 2009 provoked quite a furore. Public apprehension deepened because the adoption of the amendments was not transparent, i.e. this law, too, was submitted to parliament for adoption under an urgent procedure and without prior public debate. The Act Amending the Public Information

307 Sl. glasnik RS, 43/03, 61/05 and 71/09.
309 ANEM, Legal Monitoring of the Media Scene in Serbia, January/February 2010 Report.
310 Sl. glasnik RS, 71/09.
Act introduced provisions whose conformity with the Constitution and international standards is questionable. The situation prompted the Protector of Citizens to file an initiative with the Constitutional Court to review the legality of the law. The Constitutional Court reviewed the initiative at its session on 22 July 2010 and concluded that most of the challenged provisions were not in conformity with the Constitution. The Court decision was not legally effective until it was published in the Official Gazette, albeit with a four month delay, on 29 November. Due to this administrative delay, the media were for four months at risk of punishment pursuant with the unconstitutional provisions notwithstanding the Constitutional Court decision.

The first provision in the Act was disputable as it laid down that only a domestic legal person may found a media outlet (although the initial provision under which a media outlet may be founded by any domestic or foreign legal or natural person has not been scrapped). The provision thus did not allow domestic natural persons or any foreign persons, legal or natural, to found a media outlet. There was no justification for such distinction. The unconstitutionality of the provision allowing only domestic legal persons to found media and its incompliance with the ECHR and ICCPR was established by the above-mentioned Constitutional Court decision.

The Constitutional Court found that the provisions under which an outlet shall be charged with an economic offence for not registering in the Register was not in compliance with the Constitution because they violated the principle of a single legal system and the principle of equality. It also found that the provision stipulating the temporary suspension of the work of the defaulting outlet gave the entry into the Register the character of a licence, which is in contravention of Article 50 of the Constitution, Article 10 of the ECHR and Article 19 of the ICCPR. The Court took a similar position with respect to Article 7 of the Act, under which the minister charged with public information shall enact a by-law regulating the maintenance of the Register in detail, defining the deadline within which the regulation is to be enacted and the obligations of founders of print media outlets to apply for entry in the Register. It established that the provision allowed for the regulation of the guaranteed freedom of the media by a by-law, although this issue is exclusively in the jurisdiction of the legislature in the meaning of Article 18 of the Constitution.

The initiative to review the constitutionality of the amendments also challenged Article 2, under which the founder of a media outlet may not transfer or in another way dispose of the right to a media outlet or the right to publish a media outlet whereby it thus unduly restricts the right to free enjoyment of property by a person that owns the legal person—founder of the media outlet. The Constitutional

312 Unconstitutional legal restriction of the constitutional freedom to establish a media outlet, Sl. glasnik RS, 89/10.
313 Press associations were repeatedly warning of the potential ramifications on the media as long as the disputed provisions were officially in force.
Court, however, took the view that the provisions on the registration of media outlets and on the disposal of the right to an outlet or its lease are not in contravention of the Constitution or international standards.

The Act sets much higher fines for violations of the law. There are concerns that some of the new provisions, such as the severity of penalties for violating professional norms, may lead to self-censorship or have the effect of infringing on media freedom.314

The Act introduces particularly high fines for media which violate the presumption of innocence.315 No-one disputes that the presumption of innocence must be respected, but one cannot but wonder whether such high fines are justified. Moreover, the Act entrusts Commercial Courts with establishing whether there was a violation of the presumption of innocence.316

The Act also envisages fines in the event the content of a media outlet that might affect minors is not clearly and visibly labelled, i.e. if the minor is made identifiable in the published information which might violate his or her right or interest. However, whereas the Act envisages that the founder of the media, the responsible person and the chief editor will be penalised for violations of the presumption of innocence, it provides for sanctioning only the founder of the media found in violation of the rights of minors.

The Constitutional Court established that the provisions of the Act Amending the Public Information Act on fines for offences and misdemeanours listed in the Act were unconstitutional,317 and they were repealed by the publication of the Court decision in the Official Gazette.

4.9.3. Establishment and Operation of Electronic Media

The Broadcasting Act,318 governs broadcasting activities, establishes the Republic Agency for Broadcasting and public broadcasting institutions, stipulates the conditions and procedure for issuing licences for broadcasting radio and television programmes and regulates other relevant issues regarding the broadcasting sector (Art. 1). Telecommunications have to date been regulated by the Telecommunications Act,319 under which the Republican Telecommunications Agency (RATEL) was

315 The Criminal Code was amended in 2009 to include a new criminal offence – public commenting of court proceedings, see Report 2006, I.4.6.6.1.
318 Sl. glasnik RS, 42/02, 97/04 and 76/05.
319 Sl. glasnik RS, 44/03, 36/06 and 50/09.
established. The Telecommunications Act ceased to be effective when the Electronic Communications Act\(^\text{320}\) was adopted in 2010. The Republican Electronic Communications Agency established under the new Act replaced the erstwhile RATEL.\(^\text{321}\)

**4.9.3.1. Broadcasting Act.** – The Act provides for the establishing of a Republican Broadcasting Agency (hereinafter: Agency) as an independent and self-governed organisation performing a public office and having the status of a legal person. The decision-making body is the Council and the Agency is represented by the Council Chairperson. The Agency has a number of competencies, from formulating the broadcasting development strategy to issuing broadcasting licences, monitoring the implementation of the Act and deciding on submissions and requests of broadcasters and other persons.\(^\text{322}\) Amendments to the Broadcasting Act adopted in 2009\(^\text{323}\) expand the powers of the National Assembly Culture and Information Committee, which may adversely impact the independence of the RBA Council and, indirectly, the status of media in Serbia. Under the amendments, the authorised nominators of candidates for seats in the Council must agree on a maximum of 2 candidates; if they cannot, the Assembly Culture and Information Committee shall cut the list down to two candidates. Moreover, the Act deletes the provision in the original law, under which the list signed by a greater number of NGOs was to be considered valid in the event NGO nominators submitted more than one nominee list. This allows any registered association to nominate candidates and obstruct an agreement on the candidates and, consequently, the Assembly Committee to take the final decision on the NGO candidate list. Moreover, under the valid provisions of the Act, as many as 3 of the 9 Council members are nominated by the parliamentary Culture and Information Committee, whereby political parties practically have major influence on the composition of the Council. On the other hand, media associations may nominate only one member and with the consent of professional associations of film and drama artists and composers at that.

**4.9.3.2. Broadcasting Licences and the Broadcasting Licence Issuance Procedure.** – The applicant must first obtain a radio station licence, which is issued by the telecommunications regulatory body (Republican Electronic Communications Agency– RATEL) in accordance with a separate law on telecommunications and the Radio Frequency Allocation Plan adopted by the competent telecommunications ministry at RATEL’s proposal. The body is duty bound to issue the licence if it is in keeping with the Act and the Plan (Art. 39 Broadcasting Act).

Only a domestic natural or legal person, registered or residing in Serbia may become a licence holder. A domestic legal person, whose founders are foreign legal persons registered in countries, the internal regulations of which do not allow or

\(^{320}\) Sl. glasnik RS, 45/10.

\(^{321}\) The new Electronic Communications Agency is still referred to as RATEL.

\(^{322}\) A detailed analysis is available in Report 2004, I.4.9.3.

\(^{323}\) Sl. glasnik RS, 41/09.
where it is impossible to determine the origin of the founding capital, may not take part in the public broadcasting licence tender. A foreign legal or natural person may have a share of a maximum 49% in the overall founding capital of the broadcasting licence holder unless otherwise envisaged by ratified international agreements. A foreign natural or legal person may not possess a share in the capital of a public broadcasting service (Art. 41).

Political parties, as well as organisations and legal persons established by them, may not become licence holders; the same applies to companies, institutions and other legal persons established by the Republic of Serbia, with the exception of the public broadcasting services (Art. 42).

Licences are issued by way of a public tender. The Act stipulates the reasons why a licence may be revoked before its validity expires. In such a case, the Agency conducts a procedure in which the broadcaster must be given an opportunity to state his case and be present at the session debating the revocation of the licence, after which a reasoned decision shall be taken. The broadcaster has the right to appeal the decision, as well as the right to initiate a judicial review and administrative proceedings against the Agency decision on the appeal (Art. 62).

The public broadcasting services in the Republic shall comprise the Broadcasting Institution of Serbia (former Serbian Radio and Television) and provincial broadcasting institutions. Public broadcasting services shall produce and broadcast programmes of general interest.

The Act also contains provisions prohibiting media concentration, provisions on advertising and sponsorship, adapted to the intention to preserve independence, impartiality and diversity of the media scene. It should be noted that professional associations have for years been insisting on the adoption of a law prohibiting media concentration and on the transparency of media ownership. The law was drafted several years ago and underwent a public debate but has not been adopted yet. It is highly unlikely Serbia will soon get such a law which would significantly contribute to the transparency of media ownership. As highlighted in a joint statement by several media associations, the pluralism of ideas is not evident in Serbia notwithstanding the large number of print media, because all the media outlets are

---

324 A broadcasting licence is revoked if: a broadcaster notifies the Agency in writing it no longer intends to broadcast its programme; if it is established that a broadcaster presented untrue data in the application for the public tender; if a broadcaster has not commenced programme broadcasts within the prescribed deadline; if a broadcaster has not conducted a technical inspection of the radio station within the prescribed timeframe; if a broadcaster has unduly ceased broadcasts for more than 30 (thirty) consecutive days or for 60 (sixty) days intermittently in one calendar year; if a broadcaster has violated the provisions on prohibited concentration of media ownership envisaged by this Law; if the broadcaster has not paid the broadcasting licence fee despite a prior written warning.

325 Media concentration, in other words the prevailing influence on public opinion, shall arise when the broadcaster violates the principle of pluralism of thought by way of participating in the founding capital of another broadcaster, press and publishing company or a news agency.
Legal Provision Related to Human Rights

in the hands of several owners or the state. Moreover, advertising agencies exercise considerable control over the media. This is why anti-monopoly legislation is necessary, to prevent the exercise of prevailing or predominant influence on public opinion, encourage competition, enable the free circulation of information, thoughts and ideas to ensure that everyone may exercise the right to freedom of expression and the right to receive and disseminate information.326

4.9.4. Criminal Law

The crimes of libel and defamation warrant only fines as of 1 January 2006 (Arts. 170 and 171, CC). However, the Criminal Code envisages imprisonment as a sanction for the criminal offence of “disclosing information about someone’s personal and family circumstances”. The Human Rights Committee and the European Court of Human Rights are of the view that permitted restriction of any human right is to be construed as undertaking only those measures that are absolutely necessary to achieve the legitimate aim – in such a way that the same aim is not achievable in a less restrictive way. It is deemed that a prison sentence or criminal liability in general are not necessary for the protection of honour and reputation, and that apart from the right to correction and other extra-judicial procedures it is enough to ensure civil liability in the form of indemnity in a corresponding amount.327

Serbian criminal law does not discriminate between the injured parties, whereas the ECtHR’s case law distinguishes between a private citizen, public servant and a politician. The politicians have to withstand a lot more criticism, even insults. Graver forms of libel/slander are defined in Serbian legislation as acts committed via the media and where “the stated or spread false statement is of such importance that it could have incurred graver consequences to the injured party” (Art. 170 (2), CC).328 The European Court holds firmly that politicians and other people in public office need to withstand much more criticism than the others,329 particu-

326 See the Joint Conclusions on Media Ownership Transparency, Prohibited Concentration and the State’s Role in Print Media of the following media associations ANEM, IJAS, JAS, IJAV and Local Press, available at http://www.anem.org.rs/sr/aktivnostiAnema/AktivnostiAnema/story/11350/Zajedni%C4%8Dki+zaklju%C4%8Denjeno+koncentraciji+i+ulozi+dr%C5%A1ave+u+pisanj+medijima+.html.

327 See Conclusion of the Report by Special Rapporteur of the UN Committee for Human Rights on the Freedom of Expression, UN doc. E/CN.4/2000/63, para. 205; for the view that criminal responsibility for slander does not represent a proportionate measure to protect reputation, see the ECtHR judgment in Dalban v. Romania, 1999; for the amount of reparation see Tolstoy Miloslavsky v. United Kingdom, ECtHR, App. No. 18139/91 (1995).

328 National courts interpreted this provision in favour of the injured parties – public office holders, arguing that their reputation had suffered graver consequences precisely because they are known by a large number of people. See Report 2000, II.2.8.1.

larly with regard to issues affecting their financial integrity. The ECtHR affirmed the view in its judgment in the case Lepojić v. Serbia. In late November 2008, the Supreme Court Criminal Division adopted a legal interpretation introducing into the local legislation some elements of the ECtHR case law related to the freedom of expression. The Court states that “the margins of acceptable criticism are broader with respect to public figures vis-à-vis ordinary citizens. As opposed to ordinary citizens who do not bear the attribute of public, public figures are inevitably and consciously exposed to close scrutiny of their every action and of every word they utter both on part of the journalists and the public in general, wherefore they must exhibit a greater degree of tolerance.”

Exclusion of liability for acts against honour and reputation is also provided for in Serbian laws, inter alia, in the case of serious criticism, scientific or literary work and works of art, in journalism, etc., if it can be determined from the manner of expression that it had not been done with the intent of contempt. Contrary to this, the European Court of Human Rights articulated a clear view that freedom of expression also includes the right to disclose information and opinions that are insulting and shocking, if it is the matter of public interest, and that freedom of the press includes the right to exaggerate and be provocative to a certain extent.

National law also excludes liability if the accused proved the authenticity of his claims or if there had been sufficient grounds for him/her to believe in their authenticity. However, the burden of proof set in such a manner deviates from the guaranteed presumption of innocence and is not in accordance with international standards.

The Serbian Criminal Code penalises both “stating” and “spreading false rumours”. In the case of Thoma v. Luxemburg, the ECtHR found that a journalist must not be held responsible for quoting or conveying the text.

Protection of journalists. – The 2009 amendments to the Criminal Code enhanced the protection of journalists by including professions relevant to public information in jobs of public importance. Therefore, threats against journalists or with respect to journalism are now prosecuted ex officio, not only privately.

331 ECtHR, App. No. 13909/05 (2007).
332 The Supreme Court of Serbia Criminal Division statement of 18 December 2008.
334 See Lingens v. Austria, ECmHR, App. No. 9815/82 (1986). The responsible person is, however, obligated to submit facts corroborating the claim if the accusations are levelled against a specific individual. See the case Cumpana and Mazare v. Romania, ECHR, App. No. 33348/96 (2004).
336 See also ANEM, Legal Monitoring of the Media Scene in Serbia, January/February 2010 Report, p. 4.
4.9.5. Prohibition of Propaganda for War and Advocacy of National, Racial or Religious Hatred

Article 20, ICCPR:

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Serbian law contains provisions meeting the requirements of this ICCPR article (prosecution for incitement of national, racial or religious hatred), but the Constitution does not include a separate provision explicitly prohibiting propaganda for war, which would have placed special emphasis on the importance of the prohibition. The Constitution merely mentions propaganda for war as grounds for restricting the freedom of expression. Article 49 of the Constitution prohibits incitement to national, racial or religious hatred. In practice, however, criminal prosecution of incitement to national, racial hatred or propaganda for war is very rare.

The Anti-Discrimination Act prohibits hate speech, defining it as “ideas, information and views inciting discrimination, hatred or violence against persons or groups of persons on grounds of their personal features by written and displayed messages or symbols or in another way in the media and other publications, at gatherings and other public venues,” (Art. 11).

Article 317 of the CC explicitly bans incitement to national, racial and religious hate, dissension or intolerance. The provision in para. 1, however, falls considerably short of the standards called for by the ICCPR since it prohibits incitement of hatred only with regard to the “nations and ethnic communities living” in Serbia, while the ICCPR forbids “any” incitement of hatred, i.e. against any group irrespective of where that group lives.

Article 174 of the Criminal Code incriminates ridicule of a person on grounds of race, skin colour, religion, nationality, ethnic origin or another personal feature. The amended Article no longer protects only groups as such, like it used to, but now also prohibits ridicule of individuals because they belong to a group.

Article 375 of the Serbian CC defines the criminal offence of inciting genocide and other war crimes, the commission of which usually entails aggravated forms of activities prohibited by Article 20 of the ICCPR.

Article 386 of the CC provides for a prison sentence of minimum 2 and maximum 12 years for incitement to and instigation of a war of aggression. The same article also incriminates the order to wage a war of aggression. This offence warrants imprisonment between 10 and 40 years.

Criminal protection from hate speech is considerably improved by the 2009 amendments of Article 387 of the CC; para 3 incriminates propagation of racial hatred or incitement to racial discrimination. The new para. 4 includes a provision prohibiting ideas or theories advocating or inciting hate, discrimination or violence.
on grounds of race, skin colour, religious affiliation, nationality, ethnic origin or an-
other personal feature in any way. Another new paragraph, para. 5, prohibits threats 
of crime against a person or group of persons because of their race, skin colour, 
religion, nationality, ethnic origin or another personal feature. This offence warrants 
minimum 4-year imprisonment.

The Public Information Act also regulates hate speech. It is forbidden to 
publish ideas, information and opinions that incite to discrimination, hatred or vio-
ence against persons or groups of persons on the grounds of their race, religion, 
nationality, ethnic group, gender or sexual preference, notwithstanding whether this 
criminal offence has been committed by such publication (Art. 38). Liability is ex-
cluded if such information is a part of a scientific or journalistic work and (1) was 
published without intent to incite to discrimination, hatred or violence, as a part of 
an objective journalistic report or (2) intends to critically review such occurrences 
(Art. 40). Under the Act, charges may be filed both by the persons the incriminated 
information applies to and human rights organisations. Prohibition of hate speech in 
the Public Information Act is in the same section of the law as the prohibition of the 
violations of the presumption of innocence and the prohibition of the violation of the 
rights of minors. The Act initially did not envisage fines for violations of any of the 
provisions, but the 2009 amendments to the Act set extremely high fines for viola-
tions of the presumption of innocence and the rights of minors.337 It is, however, 
unclear why the legislator decided to treat differently incitement to discrimination, 
hate or violence and not lay down the penalties for this offence as well.

The Broadcasting Act provides for the jurisdiction of the Republican Broad-
casting Agency to prevent broadcasting of programmes that incite to discrimination, 
hatred or violence against certain individuals or groups of individuals on the grounds 
of their sex, religion, race, nationality or ethnicity (Art. 8 (2.3)), and only the public 
broadcasting services have the obligation “to prevent any form of racial, religious, 
national, ethnic or other intolerance or hatred, or hatred with regard to sexual orient-
tation” in the production and broadcasting of their programmes (Art. 79).

Article 20 in the Act on Preventing Violence and Unbecoming Behaviour at 
Sports Events (Anti-Violence Act)338, which ceased to be effective when the 2009 
amendments to the Criminal Code were adopted339, listed as an act of crime an 
action by a person “who has instigated national, racial and religious hatred or in-
tolerance at a sports event by his/her behaviour or slogans, thus provoking violence 
or a physical clash with the participants in the sports event”. The Article evidently 
does not incriminate the very act of instigating national, racial and ethnic hatred or intolerance except when it leads to violence or physical clashes with participants in a sports event. It should have, however, declared instigation of national, racial or 
religious hatred or intolerance an act of crime per se, as it may not necessarily be

337 See I.4.9.2.
338 Sl. glasnik RS, 67/03.
339 Sl. glasnik RS, 72/09.
covered by the CC given that the CC incriminates such conduct only if it is directed at nations or ethnic communities living in Serbia. Such conduct at sports events in Serbia is, however, frequently aimed also against national, racial or religious groups not living in Serbia. The Criminal Code was amended in 2009 by a provision incriminating violent conduct at sports events or public gatherings and Article 20 of the Anti-Violence Act was abrogated. The provision to a large extent overlaps with the one in the Anti-Violence Act but is somewhat expanded by the prohibition of “national, racial, religious or other hatred or intolerance based on discriminatory grounds” (italics added). It is also broader in scope as it does not pertain only to sports events but to public gatherings in general (Art. 5, Act Amending the CC\(^{340}\)). However, this provision, too, requires that the incriminated conduct results in violence against or physical confrontation with the participants, wherefore the chief shortcoming of the provision in the Anti-Violence Act (art. 20) has not been eliminated.

The new Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia\(^{341}\) prohibits members and followers of neo-Nazi and Fascist organisations and associations to organise events, display symbols or act in any other way that propagates neo-Nazi and Fascist ideas. The Act prohibits all public appearances, both organised and spontaneous, which incite, encourage or spread hate against persons belonging to any nation, national minority, church or religious community and propagation or justification of ideas, actions or conduct for which persons have been convicted for war crimes. The Act lays down fines for natural persons participating in such events and for the associations and their responsible persons spreading or inciting hate and intolerance (Arts. 7 and 8). Under the Act, a procedure may be initiated to delete from the Register a registered organisation or association acting in violation of the Act (Art. 2 (2)).

With the adoption of the Act Ratifying the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems,\(^{342}\) use of computer systems to promote ideas or theories advocating, promoting or inciting hatred, discrimination or violence against individuals or groups on grounds of race, skin colour, descent or national or ethnic origin and religion is now prohibited in Serbia.

**4.9.6. Free Access to Information of Public Importance**

The Constitution of the Republic of Serbia regulates the freedom of access to information under a title “Right to Information”. Article 51 (1) of the Constitution guarantees persons within the state’s jurisdiction the right to receive true, full and prompt information on issues of public importance and envisages the corresponding duty of the media to enable the exercise of this right. The formulation of the

\(^{340}\) Sl. glasnik RS, 111/09.

\(^{341}\) Sl. glasnik RS, 41/09.

\(^{342}\) Sl. glasnik RS, 19/09.
provision is “left hanging” as it corresponds neither to the freedom of expression, from which the freedom of access to information derives (Art. 46 (1), Constitution), nor to the right to participation in the administration of public affairs (Art. 53), as this *sui generis* right may be qualified as the expression of participative democracy. The freedom of access to information in the true sense of the word is regulated by para. 2 of Article 51, although this definition of the bodies from which information may be sought is much more restrictive than the one in the Act on Free Access to Information of Public Importance of the Republic of Serbia, which governs this matter in greater detail.

Under Article 1 (2) of the Act on Free Access to Information of Public Importance, the Access to Information Commissioner shall be established as an independent and autonomous state authority in order to implement the right of access to information of public importance.

The National Assembly in 2009 adopted the Act Amending the Act on Free Access to Information of Public Importance, which introduces specific improvements in the Act. Notably, it maximally cuts down the deadlines for accessing the sought information and provides for access to information in the form in which it was requested. Under the amendments, the enforcement of the law shall be monitored by the Ministry for State Administration and Local Self-Government, not the Ministry of Culture. The legislator however missed the chance to improve all the provisions of the law because the National Assembly did not uphold the amendment submitted by the Protector of Citizens and envisaging protection of so-called whistle-blowers, state administration employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities. Not only is it in the interest of society to provide support to whistle-blowers and thus help combat corruption; the state also has an international obligation to provide such persons with protection under Article 9 of the CoE Civil Law Convention on Corruption, which Serbia ratified, and in accordance with the recommendation by GRECO (CoE’s anti-corruption body). The adopted Act does include a provision on the protection of whistle-blowers, but does not provide them with adequate protection, because it lays down that an employee shall first report his/her suspicions to the responsible person in the authority. This practically means that the employee will sometimes have to first report an irregularity to the very person s/he suspect of committing it, which renders meaningless the whole idea of the need to protect whistle-blowers.

---

343 Sl. glasnik RS, 120/04, 54/07, 104/09 and 36/10.
344 More on the institute of the Protector of Citizens in II.2.1.3.2.
345 Sl. glasnik RS, 104/09.
4.9.6.1. Classified Information Act. – The National Assembly adopted the Classified Information Act\textsuperscript{348} in December 2009, which has been applied as of 1 January 2010. The Act comprises numerous provisions (has over 100 Articles) governing the system of defining and protecting classified information and represents a kind of compromise between the security services and civic society. However, a number of subsidiary regulations need to be adopted by the Government and public authorities for the Act to be implemented as it does not regulate a number of crucial issues, such as the manner and procedure for classifying data or documents as confidential, nor does it specify the criteria for establishing the degree of confidentiality in detail. The Government was to have passed the subsidiary legislation regulating these issues within six months from the day the Act came into effect, but it had failed to do so by the end of the reporting period. The public authorities have been given a year to bring their subsidiary legislation in line with the provisions of the new Act.

The Act introduces a single system defining and protecting classified information of interest to national and public security, defence, internal and external affairs of the Republic of Serbia, the protection of foreign classified information, access to classified information, termination of its confidentiality, the mandates of the authorities, monitoring of its implementation, and responsibility for the failure to fulfil the obligations laid down in the Act (Art. 1). Information shall be classified if it is of interest to the Republic of Serbia and its disclosure to an unauthorised person would incur damage, if the necessity of protecting the interest of the Republic of Serbia prevails over the interest for free access to information of public importance (Art. 8). The Act does away with the hitherto vague classification of secrets as state, official and military secrets and provides for four classification levels – top secret, secret, confidential and restricted (Art. 14). Article 15 envisages the same classification levels for classified international documents. The period during which information must remain classified depends on the classification level and ranges between two and thirty years (Art. 19). The Act also provides for periodic assessments of whether information should remain classified (Art. 22). The Government may extend the period during which information must remain classified for security reasons or if its disclosure would threaten public interests, human rights or assumed international obligations (Art. 20). The Act introduces the principle under which information qualified as a secret to cover up a criminal offence or another unlawful act shall not be considered classified (Art. 3); this principle facilitates the position of the so-called whistle-blowers and provides protection from corruption and malversations in state institutions and public companies. The Act lays down the general and special measures for the protection of classified information and the manner in which it is kept.

Information may be defined as classified by authorised persons, notably the National Assembly Speaker, the President of the Republic, the Prime Minister, the

\textsuperscript{348} Sl. glasnik RS, 104/09.
head of a public authority, an elected, appointed or named official of a public author-
ity authorised to classify confidential information by the law or a regulation passed in
accordance with the law, or authorised thereto by the head of the public authority
or person employed in the public authority and authorised in writing thereto by the
head of the authority (Art. 9). This provision appears to give excessive powers to
heads of public authorities and may easily lead to abuse. It would have been better
had the scope of persons authorised to declare information confidential been fully
specified by the law and the subsidiary legislation, without allowing heads of public
authorities to expand it by their decisions.

Only the Speaker of the National Assembly, the President of the Republic
and the Prime Minister may access classified information without a security clear-
ance certificate (Art. 37). Other state authorities elected by the Assembly and their
heads, Constitutional Court and other judges may access information at all classi-
fication levels they need to discharge their duties upon receipt of the certificate; in
most cases, they need not undergo security checks (Art. 38).

The certificate, i.e. clearance to access classified information, shall be issued
by the Office of the National Security and Classified Information Protection Coun-
cil (hereinafter: Council Office). The Council Office has in the meantime been es-

tablished as a professional service of the Serbian Government and is provided with
specific powers related to the implementation and control of the enforcement of the
Act. Some of the powers awarded it totally disregard the principle of subordination
of state authorities. When the Council Office reviews requests for access to classi-
fied information, situations may arise where a hierarchically lower state authority
may refuse to divulge information to a higher authority or an authority duty-bound
to control it. Council Office decisions to refuse access to classified information may
be appealed with the Justice Minister (Art. 71). The Justice Ministry shall oversee
the enforcement of the Act (Art. 97).

A natural or legal person may access confidential information after passing
a security check. Security checks of persons seeking access to information at lower
classification levels shall be conducted by the Ministry of the Interior, while the
Security Information Agency shall conduct security checks of persons seeking ac-

tess to information at higher classification levels (54). Security checks shall be con-
ducted on the basis of security questionnaires, the texts of which are incorporated
in the Act. Insight in security check data may be granted in accordance with the
law regulating personal data protection, with the exception of data that might reveal
methods and procedures used to collect data or identify sources of data in the secu-

rity check (Art. 81).

The Act also includes penalties for non-abidance by its provisions. Whereas
the disclosure of classified information is strictly penalised (it is considered a crime
warranting a prison sentence of up to 15 years), the penalties for the unjustified
declaration of information as classified are mild and range from 5 to 50 thousand dinars.

The Act also declares as ineffective provisions on military secrets in the Act on Defence349 and paras. 2–4 of Article 45 of the Personal Data Protection Act which restricted the Commissioner’s right to access data.

The Act obliges heads of public authorities to review the declaration of documents as classified information under the prior regulations within two years from the day the Act takes effect (Article 105).

A lot of currently classified information should not be classified at all. Such information includes some normative acts, even those regulating the declaration of information as classified. For instance, the Ministry of Internal Affairs until a few months ago applied the 1976 Rulebook on Official and State Secrets and Declassification, which had been declared top secret. The same Ministry had also declared secret its Rulebook on the Systematisation and Internal Organisation of the MIA, the Rulebook on Wages of MIA Employees and its rulebooks regulating the employment and advanced professional training of MIA employees.

The adoption of the Act has pushed forward on the agenda the amendment of other regulations, including those on opening state security files.

4.10. Freedom of Peaceful Assembly

Article 21, ICCPR:

The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests 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.

Article 11, ECHR:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

349 Article 123 of the Act on Defence, Sl. glasnik RS, 116/07; Arts. 67–86 of the Act on Defence, Sl. list SRJ, 43/94, 11/95, 28/96, 44/99 and 3/02.
4.10.1. Limitations of the Freedom of Assembly

Under Article 54 of the Constitution, “(C)itizens may assemble freely.” The exercise of this right is regulated in greater detail by the Act on Assembly of Citizens, adopted in the early 1990s. Many of its provisions are obsolete and not in accordance with international standards, and some are also in contravention of the 2006 Constitution. The Human and Minority Rights Ministry set up a working group in 2010 to formulate recommendations on how to improve the legislation regulating the right of peaceful assembly. The working group presented its views on how to improve the legislation on the freedom of assembly at a conference held on 25 November, but no further headway was made by the end of the year. The Venice Commission and the OSCE/ODIHR in 2010 issued a Joint Opinion on the Public Assembly Act and recommendations on how to improve it.

The Constitution mentions free “peaceful” assembly, the formulation also used in international treaties. The valid Act on Assembly of Citizens uses the term “public gathering”.

The constitutional provisions on limitations of the freedom of peaceful assembly are for the most part in conformity with international standards. In Article 54 (4), the Constitution provides that the freedom of assembly may be restricted by law and “if it is necessary for the protection of public health, morals, rights of others or the security of the Republic of Serbia.” The allowed grounds for restriction prescribed by the Constitution substantially correspond to the grounds laid down in by the ICCPR and the ECHR, although the Constitution does not list specific grounds such as “public order” (ICCPR) or “the prevention of disorder or crime” (ECHR). The Constitution prescribes that the restriction must be “necessary in a democratic society” (Art. 20), which is in accordance with the ICCPR and the ECHR.

Although the Act allows “any natural or legal person” to submit notice of a public gathering, the scope of this provision is limited by the constitutional formulation of the right to freedom of assembly. Namely, the Constitution guarantees the freedom of peaceful assembly only to “citizens” but not to everyone. The ECHR, notably Article 16, allows states to restrict political activity of aliens; this, however, does not per se justify restrictions on the right of aliens to peaceful assembly if their goals are not political in nature. The ICCPR does not contain a similar provision. Thus, the Constitution, which guarantees a right to peaceful assembly only to “citizens”, is partly in conflict with international standards. The Venice Commission also qualified this restriction as “problematic in view of Article 11 ECHR which does not restrict freedom of assembly to nationals”. The Commission, inter alia,

---

350 Sl. glasnik RS, 51/92, 53/93, 67/93, 48/94 and 29/01.
notes that most constitutions in Europe do not restrict the right of free assembly to nationals anymore and observes that “(I)f the text stays as it is, some effort in applying the ‘interpretation clauses’ in Articles 18 (3) and 19 will be necessary in order to reach a result in conformity with the ECHR”.\textsuperscript{353}

The ECHR allows for lawful restrictions of the right to free assembly of members of the armed forces, of the police or of the administration of the State (Art. 11 (2)), while the ICCPR allows restrictions of this right with respect to the members of police and army forces only under the general conditions that apply to all others as well. Pursuant to the Act on Police, police officers may not attend party or other political gatherings in uniform, unless they are on duty (Art. 134 (3)).

\subsection*{4.10.1.1. Assembly Venues.} – Under the Constitution, the state authorities have to be notified in accordance with the law of an assembly only in the event it is to be held outdoors, while assemblies held indoors are not subject to approval or notification (Art. 54(2 and 3)).

The Serbian Act states that public gatherings may be held at a venue or along a specified route (Art. 3 (1)). This is in accordance with the practice of the European Court of Human Rights.\textsuperscript{354} The Act unnecessarily limits public processions by laying down that a public procession along a public traffic route must be continuous (Art. 3(2)).

The Serbian Act defines a public gathering as “convening and holding a meeting or other gathering at an \textit{appropriate venue}” (Art. 2 (1), (italics added) and goes on to define appropriate venue (Art. 2, paras. 2 and 3), but the right to freedom of assembly is limited by this provision as well, because it stipulates that an assembly at the appropriate venue \textit{inter alia} does not “lead to the disruption of public traffic”. This restriction cannot be subsumed under any of the grounds allowed by international standards and the “disruption of public traffic” as grounds for restricting the right to public assembly. Restriction is not mentioned in the Constitution of Serbia, wherefore the constitutionality of this legal provision is also brought into question. The Act does allow the holding of a gathering at a venue “used for public traffic in the event temporary alteration of traffic can be ensured by additional measures,” but sets further restrictions regarding the time when the assembly may be held. Although a prohibition of an assembly at a specific time may be justified in specific cases, each specific case needs to be indi-

\textsuperscript{352} “Guarantees for inalienable human and minority rights in the Constitution have the purpose of preserving human dignity and exercising full freedom and equality of each individual in a just, open, and democratic society based on the principle of the rule of law.”


\textsuperscript{354} See \textit{Christians against Racism and Fascism v. United Kingdom}, ECmHR, App. No. 8440/78 (1980).
vidually weighed. General limitations, like the ones in the valid legislation, are much too restrictive. Moreover, organisers of gatherings “disrupting public traffic” are required to cover the costs incurred by the alteration of traffic and the additional public utility services. The ODIHR Guidelines on Freedom of Peaceful Assembly suggest that the costs of providing adequate security and safety (including traffic and crowd management) should be fully covered by the public authorities, because levying charges could create a significant deterrent for those wishing to enjoy their right to freedom of assembly, and may actually be prohibitive for many organisers.355

The statute envisages prior designation by municipal or city authorities of “appropriate” locations for public assembly (Art. 5). This provision is too restrictive and creates potential for abuse as it allows for banning gatherings at any unlisted venue, even when they do not constitute a threat to any of the interests cited in the Constitution.356

The Serbian Act on Assembly of Citizens provides that a public gathering cannot be held in the vicinity of the Federal (State Union) or Serbian Assembly buildings, immediately prior to or during the sessions (Art. 2 (4)). One may bring into question the justification of this general prohibition because the existence of constitutional grounds for restricting the right must be established in each particular case. Bearing in mind that the Act gives the competent bodies to which the gathering is reported (police) the discretion to determine what is considered a venue “in the vicinity” of the Assembly and what is considered “immediately prior to the session” and in respect of Serbian Constitution definitions of regular parliament sessions as the periods during which sessions are being held (two regular sessions lasting several months each with the possibility of convoking emergency sessions), one may reach the legitimate conclusion that the freedom of public assembly can be completely denied in particular cases.

The same objection applies to the possibility of denying the freedom of assembly pursuant to the Act on Strikes.357 This Act allows strikers to assemble only on their company’s premises or grounds (Art. 5 (3)) and, consequently, prevents them from staging public demonstrations.358

4.10.1.2. Notification of Gatherings. – Under the Serbian legislation, organisers of gatherings need not obtain consent, but are required to submit notice of it, which is, in principle, in keeping with international standards.

356 See, for instance, the Decision on Venues for Assemblies of Citizens, Sl. glasnik grada Beograd, 13/97.
357 Sl. list SRJ, 29/96.
358 See Report 2004, I.4.10.1. More on Serbian legislation related to the right to strike in I.4.18.5.3.
Organisers of public gatherings are duty-bound to notify the police at least 48 hours in advance of the gathering (Art. 6 (1), Act on Assembly of Citizens). Under the Act, a gathering to be held at a venue reserved for public traffic requiring rerouting of traffic has to be reported five days in advance (Art. 6 (2)). Under international standards, the organisers should not have to submit notice of an assembly too much in advance. International standards do not, however, define what an adequate notification period is. The periods laid down in Serbian law can be qualified as not being excessively long. One should, however, also bear in mind the time frames in which the authority charged with prohibiting a gathering has to act and the time frames in which a decision prohibiting a gathering and a decision on the appeal against the prohibition must be rendered.

The Act also states that police will disperse a gathering that is being held without prior notification of the authorities and “take measures to restore public order and peace” (Art. 14). ECtHR case law needs to be taken into account with respect to this issue. The Court found that prohibition of an assembly is not always justified just because the legal requirement to give prior notice has not been fulfilled as specific gatherings by their very nature do not leave enough time for prior notification.

### 4.10.1.3. State’s Obligation to Protect a Peaceful Assembly

According to international standards, the state is not only obliged to refrain from undue restrictions of the freedom of peaceful assembly; it also has positive obligations comprising the protection of peaceful demonstrations from threats of violence by third parties. The right to assembly of one group may not be restricted because another group does not support the views promoted at the gathering. According to ECtHR case law, “(I)llegal would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority.” The Serbian legislation is silent on this issue, although the problems caused by it in practice so far corroborate that the competent authorities must be explicitly bound to provide protection to peaceful protesters and enable them to hold the gathering which third parties are trying or threatening to prevent by employing violence.

---

359 In their Joint Opinion No 487/2008 on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic (p. 5), the Venice Commission and the OSCE/ODIHR took the view that a 12-day notification period was too long, but also noted there are no clearly established standards as to the length of the notification period.

360 See below, I.4.10.2.


364 See *Report 2009, II.2.9.*
4.10.2. Prohibition of Public Assembly

The Serbian Act makes it possible for the police to ban a public assembly for lawful reasons (threat to public health, morals or to the safety of human life and property, as well as disruption of public traffic\(^{365}\) (Art. 11 (1)). The organisers must be informed of the ban at least 12 hours before the gathering is scheduled to start. An appeal against the decision is possible but does not stay its execution, and the final decision may be challenged by instituting administrative proceedings.

The police authorities may temporarily prohibit a public assembly if it is aimed at a forcible overthrow of the constitutional order, violation of the territorial integrity of Serbia, violation of human rights, or incitement of racial, religious or ethnic intolerance and hate (Art. 9 (1)). The organisers must be notified of the ban at least 12 hours before the gathering is due to start. The difference between such a provisional ban and the permanent ban envisaged by Article 11 is that the former may be declared permanent only by a court decision. If the police authorities seek to impose a permanent ban, they must file a request to that effect with the competent district court within 12 hours, and the court has 24 hours from the receipt of the request to hand down its decision. The organiser may appeal to the Serbian Supreme Court within 24 hours of receiving the court’s decision, and the Supreme Court must rule within 24 hours of receiving the appeal (Art. 10).

It is unclear why the law provides better legal protection by prescribing time periods and the involvement of courts in the case of the provisional ban envisaged by Article 9, while in the case of a permanent ban under Article 11 the organiser is directed to institute administrative proceedings. The preferable solution would be to apply the better legal protection under Article 9 in both cases, especially since the law does not oblige the police authorities to take into account proportionality when imposing permanent bans, which gives them broad discretionary powers.

Given that in the event of both the provisional ban in Article 9 and the permanent ban in Article 11 the organiser is notified of the ban 12 hours before the gathering is to begin at the latest, it is difficult to imagine that, if the organiser appeals, a decision reversing the ban and allowing the gathering can be taken early enough for the organiser to hold the gathering at the scheduled time especially if the organiser’s appeal is heard by a higher instance, a court. This may practically render a specific gathering meaningless and lead to it not being held at all although the court reversed the ban, which raises the question of the existence of an effective legal remedy. Any legal remedy resulting in an ex post facto decision allowing a gathering may be considered ineffective.\(^{366}\)

Practice has shown that another problem may appear with respect to the existence of an effective legal remedy – the failure to act of the authority charged with prohibiting a gathering. Namely, when the Pride Parade was announced in 2009,

\(^{365}\) The same grounds were laid down in the 1990 Constitution.

\(^{366}\) See Baczkowski and Others v. Poland, ECtHR, App. No. 1543/06 (2007).
the competent authority (MIA) did not issue a formal decision on its prohibition but merely recommended to the organisers to “dislocate” to another venue, whereby it de facto banned it.\footnote{See Report 2009, II.2.9.} The organisers were thus deprived of the chance to resort to the legal remedies that would have been at their disposal had the gathering been formally prohibited.\footnote{See Katarina Manojlović Andrić, Procedures and an Effective Legal Remedy for the Protection of the Right of Peaceful Assembly (Procedure i delotvoran pravni lek za zaštitu prava na mirno okupljanje), http://www.bgcentar.org.rs/index.php?option=com_content&view=article&id=526:katarina-manojlovi-andri-sudija-ustavnog-suda&catid=83.} Such an act by the competent authorities is essentially the consequence of a legal lacuna in the Act. Namely, the competent authority is only allowed to issue a decision prohibiting a gathering, but the law does not lay down how the authority should act in the event it is of the view that the gathering need not necessarily be prohibited, but that a modification of an element would achieve the purpose allowing the competent authority under the law to decide to prohibit the gathering (e.g. change of the time or venue of the gathering, prohibiting specific groups from participating in the gathering rather than prohibiting the whole gathering, etc). The law thus does not allow for the application of the principle of proportionality and the application of measures restricting the right to the least possible extent if there are grounds for its restriction.

\section*{4.10.3. Prevention of Violence and Unbecoming Behaviour at Sports Events}

Under the Act on Preventing Violence and Unbecoming Behaviour at Sports Events,\footnote{Sl. glasnik RS, 67/03, 90/07 and 111/09.} regulations on the assembly of citizens shall accordingly apply to the organisation of sports events (Art. 5). The Act sets out “the measures for preventing violence and unbecoming behaviour at sports events, the obligations of the organiser and the powers of the competent authorities to apply these measures” (Art. 1). The punitive provisions in Chapter III lay down criminal and misdemeanour penalties and protection measures in case the Act is violated.

The 2009 amendments to the Criminal Code specifically incriminate violent behaviour at a sports event or public gathering (Art. 344a, CC).\footnote{The criminal offence was first introduced by the August 2009 amendments to the Criminal Code, Sl. glasnik RS, 72/09, and the text of the Article was amended in the December 2009 amendments to the Criminal Code, Sl. glasnik RS, 111/09.} Perpetrators will be charged with the aggravated form of this criminal offence in the event it is committed by a group or its commission leads to unrest resulting in grave bodily injuries or damage to property of greater value.

Alongside the crime in Article 344a, the Criminal Code has also been amended to include the protection measure in Article 22 of the Act on Preventing Violence and Unbecoming Behaviour at Sports Events and banning attendance at specific
sports events. This protection measure (laid down in Art. 89b, CC) may be pronounced against a criminal offender if necessary to protect general safety and must be pronounced against the perpetrator of the crime in Article 344a of the Criminal Code. Under the Criminal Code, the measure shall be pronounced for a period between one and five years and the perpetrator shall be obliged “to personally report to the nearest local police directorate or station just before the beginning of a specific sports event and to remain there until the sports event ends”. The Act on Misdemeanours has also been amended to include this protection measure, which may be pronounced for a period between one and three years.\textsuperscript{371} Under Article 23 (2) of the Act on Preventing Violence and Unbecoming Behaviour at Sports Events, this protection measure must be pronounced against persons who committed the offences listed in para. 1 of the Article.

Under the Act on Preventing Violence and Unbecoming Behaviour at Sports Events, special measures shall be taken during high risk sports events (Arts. 10–18). At such events, police officers are authorised to order all necessary measures to prevent violence and the unbecoming conduct of the spectators, notably, to prevent a person whose behaviour leads to the conclusion that s/he is prone to violent and improper conduct from arriving at the venue of the event, to prohibit his or her entry into the venue i.e. remove such a person from the sports facility (Art. 17 (1.3)).

4.11. Freedom of Association

Article 22, ICCPR:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protections of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests 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. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this Article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

Article 11, ECHR:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

\textsuperscript{371} Act Amending the Act on Misdemeanours, \textit{Sl. glasnik RS}, 111/09.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

4.11.1. General

Article 55 of the Constitution of Serbia guarantees the freedom of political, trade union and all other forms of association. The Constitution also guarantees the right not to join any association. It thus affords protection from forcible association, in accordance with the ECtHR view that states must guarantee everyone the right not to associate with others i.e. not to join an association.372

The National Assembly in 2009 adopted two new crucial laws governing this field. The Act on Associations,373 regulating the establishment and activities of civil associations and the Act on Political Parties,374 which deals with political parties. The Act on Associations regulates the founding, legal status, registration and deletion from the register, the membership, bodies, changes in status, dissolution and other issues of relevance to the work of associations and the status and activities of foreign associations. The Act at long last governs the status of foreign associations. Until this law was adopted, Serbia lacked legislation regulating the work of foreign associations.

The Act primarily concerns non-governmental organisations but its provisions shall also apply to other associations, the activities of which are regulated by specific laws (political and trade union organisations, religious organisations, etc), with respect to issues not governed by the specific laws.

The Act allows associations to engage in economic and other profit-making activities under specific conditions but prohibits them from distributing the profits to their members and founders. Under the Act, funds to support or co-fund programmes of associations of public interest shall be secured in the state budget. These funds shall be granted to associations by way of public competitions. Autonomous provinces and local governments may also set aside funds for associations implementing programmes of public interest.

Under the Act, a natural or legal person making a donation or gift to an association may be exempted from paying a tax pursuant to the law governing the

373 Sl. glasnik RS, 51/09.
374 Sl. glasnik RS, 36/09.
relevant tax (Art. 36 (2)). The tax laws, however, still have not been amended to allow for these forms of tax exemption.\textsuperscript{375}

4.11.2. Registration and Dissolution of Associations

The Constitution of Serbia does not require obtaining prior consent for founding an association, which is established merely by entry in a register kept by the state in accordance with the law (Art. 55 (2)).

The Act on Associations explicitly states that registration shall be voluntary but only registered associations shall enjoy the status of a legal person (Art. 4). Associations will thus be able to independently engage in legal transactions, bid for state, provincial and local government budget funds, etc. An association shall be deemed founded even if it has not been entered in the register. In such cases, though, it shall be liable to regulations on civil partnership.

The Register of Associations shall be kept by the Serbian Business Registers Agency. The Registrar shall dismiss an application for registration in the event the proposed name of the association name is identical to or not adequately distinguishable from that of another association that has been entered or has properly applied for entry in the Register or is misleading, and in the event the Constitutional Court reached a decision prohibiting the work of the association. The association shall be entered in the Register within 30 days from the day it filed the application; an association shall be deemed registered in the event a decision on registration was not taken within the deadline (Arts. 30–32).

Under the Act, an association may be established by at least three founders. The Act introduces a novel provision, allowing also older minors (persons over 14 years of age) to found associations (Art. 10), but only with the certified written consent of their legal representatives, a proviso pre-empting abuse of children in this area.

Political parties shall be entered in the register of political parties kept by the Ministry for State Administration and Local Self-Government.\textsuperscript{376} Political parties may associate with other parties in broader political alliances. They may also merge with other parties in which case the new party shall gain legal personality, while the individual parties that had merged will have lost their legal personalities (Arts. 33 and 34 of the Act on Political Parties).

Trade union organisations are registered with the ministry charged with labour\textsuperscript{377} (Arts. 217 and 238, Labour Act and Art. 4, Rules on Entry of Trade Union Organisations in Register\textsuperscript{378}).

\textsuperscript{375} More on financing of political parties in I.4.14.3.1.
\textsuperscript{376} More on the establishment of political parties in I.4.14.3.
\textsuperscript{377} More on freedom of association in trade unions in I.4.18.4.1.
\textsuperscript{378} Sl. glasnik RS, 6/97, 33/97, 49/00, 18/01 and 64/04.
An association struck out of the register shall lose the status of a legal person. An association shall be deleted from the register in the event: a) the number of members declined below the number of founders required for its establishment; b) the period for which the association was established expired; c) a decision terminating its work was rendered; d) there was a change in status resulting in the termination of the association; e) it failed to conduct activities laid down in its statute for over two years i.e. failed to hold a session of its assembly within double the timeframe set out in the statute; f) its work was prohibited; g) of bankruptcy (Art. 49).

Decisions prohibiting the work of associations shall be taken by the Constitutional Court, which may ban the work of both associations entered in the Register of Associations and unregistered associations. The procedure to prohibit an association may be initiated by the Government, state prosecutor, ministry charged with administrative affairs, ministry charged with the field within which the association pursues its objectives or the Registrar. A decision prohibiting an association shall be rendered in the event it is established that the association is a secret or paramilitary association or an association pursuing prohibited objectives.

Under the Act on Political Parties, a political party shall cease to exist upon deletion from the register. A party shall be deleted from the register in the event it decides to terminate its operations, merges with one or more other political parties, its work is prohibited by the Constitutional Court or it fails to apply for re-registration within the deadline (under Article 30, parties are duty bound to apply for re-registration every eight years) (Arts. 35 and 36).

Decisions on banning political parties are taken by the Constitutional Court, at the proposal of the Government, state prosecutor or the Ministry (Arts. 37 and 38, Act on Political Parties). The work of a political party shall be prohibited in the event its activities, the activities of the alliance it is part of or the party it merged with are aimed at fulfilling objectives prohibited in Article 4 (2) of the Act.

4.11.3. Restrictions

The Constitution of the Republic of Serbia prohibits the founding and activities of secret and paramilitary associations. It also allows for prohibiting associations the activities of which are directed at the violent overthrow of the constitutional order, violation of guaranteed human and minority rights or incitement to racial, ethnic or religious hatred. The decision to ban an association may be reached only by the Constitutional Court (Art. 55 (4), Constitution).

The Act on Associations prohibits the work of secret and paramilitary associations. Both the Act on Associations and Act on Political Parties list the objectives an association or a political party may not be guided by in its work. These grounds for prohibiting their work correspond to those listed in the Constitution. The Act on Associations and Act on Political Parties also introduce new grounds for prohibit-
ing the work of an association or political party – objectives and activities aimed at violating the territorial integrity of the Republic of Serbia.

Apart from the restrictions laid down in the Act on Associations and Act on Political Parties, the Anti-Discrimination Act also prohibits forming of an association the goal of which is to exercise discrimination, i.e. actions by organisations and groups aimed at violating the rights and freedoms guaranteed by the Constitution, international or domestic law or at inciting ethnic, racial, religious and other kinds of hate, dissent or intolerance (Art. 10).

The National Assembly in 2009 also adopted the Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia, which bans all activities by Neo-Nazi or Fascist organisations and associations violating the constitutional rights and freedoms of citizens. The Act defines these organisations as those reaffirming neo-Nazi and Fascist ideas in their programmes and statutes. Propagation of ideas and activities of these organisations by a registered association shall be grounds for deleting it from the Register. These grounds may be subsumed in the grounds laid down in the Constitution. A fine shall be imposed against an association, the member of which propagates neo-Nazi or Fascist ideas by his/her actions.

4.11.4. Association of Aliens

The Act on Associations is the first Serbian law to regulate activities of foreign associations in Serbia (in Chapter VIII). Until the adoption of the Act, foreign associations operated on the basis of a “certificate” issued by the Ministry of Foreign Affairs, i.e. practically in a legal vacuum. Under the Act, the branch office of a foreign association is entitled to operate freely in Serbia in the event its activities are in accordance with valid legal regulations.

A foreign association shall denote an association with headquarters in another state and established under the regulations of that state, as well as an international association or another foreign or international non-governmental organisation on condition that the members of the association or organisation associated to pursue a common or general interest or objective not directed at profit making.

For a foreign association to operate in Serbia, it must establish its branch office, which shall be entered in a separate register of foreign associations. This register shall also be kept by the Serbian Business Registers Agency.

The branch office of a foreign association shall be deleted from the register in the event either the foreign association or the branch office halts its operations or the work of the branch office is prohibited pursuant to a Constitutional Court decision.

Like in the case of domestic associations, the decision prohibiting the work of the branch office of a foreign association shall be rendered by the Constitutional Court. The procedure for prohibiting a branch office of a foreign organisation may
be initiated by the Government, state prosecutor, ministry charged with administra-
tive affairs, ministry charged with the field within which the association pursues its
objectives or the registrar of foreign associations. The Constitutional Court shall
prohibit the work of a representative office in the event its objectives or activities
are in contravention of the Constitution, Act on Associations, international treaties
entered by Serbia or other regulations.

4.11.5. Restrictions on Association of Civil Servants

The ICCPR and ECHR allow states to impose restrictions on the right to
association of members of the armed forces and police and, in the case of the Conven-
tion, on the administration of the state too (Art. 22 (2), ICCPR and Art. 11 (2),
ECHR). Under the Constitution of Serbia, judges, public prosecutors and army and
police staff are prohibited from political association.

Because it excludes a significant proportion of the population from political
affairs, prohibiting civil servants and judges and prosecutors from membership in a
political party is debatable and constitutes a serious restriction on the freedoms of
association and expression. In its report on human rights in Yugoslavia in 1998, the
Belgrade Centre for Human Rights was of the opinion that the broad general prohi-
bition was not in accordance with the ICCPR and ECHR. In Rekvény v. Hungary,379
however, the European Court of Human Rights in 1999 found that prohibiting po-
lice officers from belonging to political parties and taking part in political activities
was not in contravention of Article 10 (freedom of expression) and Article 11 (fre-
dom of association) of the ECHR. In view of this judgement, it may be said that the
relevant legal provisions in principle impose permissible restrictions.

For its part, the European Commission of Human Rights has found that pro-
hibiting members of the armed forces, police and state administration from organis-
ing in trade unions is in accordance with the ECHR.380 The Commission considered
that states should have a large measure of freedom in judging what measures are
required to defend their national security.381

The Act on Police allows trade union, professional and other forms of organi-
sation and activity of police employees. The Act prohibits party organisation and
political activity in the Ministry and does not allow police staff to attend party and
other political gatherings in uniform unless they are on duty (Art. 134).

Article 49 of the Serbian Act on the Public Prosecutor’s Office382 and Article
27 of the Act on Judges envisage that a judge, a public prosecutor and his deputy
may not be members of a political party. However, judges, public prosecutors and
deputies are expressly recognised the right to associate in their judicial capacity in

382 Sl. glasnik RS, 116/08, 104/09 and 101/10.
order to protect their interests and in order to take measures to protect and maintain their independence (public prosecutors and deputies) or their independence and autonomy (judges).

The aim of these restrictions of the right of judges, prosecutors and deputies to belong to political organisations is legitimate – to ensure an impartial and independent judiciary and, furthermore, to protect the public order. Hence, and like the prohibition of political organising of members of the armed forces and police, it may be considered necessary in a democratic society.

4.12. Peaceful Enjoyment of Property

Article 1, Protocol No. 1 to the ECHR:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties.

4.12.1. General

The right to property guaranteed by Article 1 of Protocol 1 to the ECHR is comprised of three different rules. The first rule, expressed in the first sentence of Article 1 (1), is general in nature and outlines the principle of peaceful enjoyment of property. The second rule, formulated in the second sentence of the same paragraph, regulates the deprivation of property and subjects it to certain conditions. The third rule, in para. 2, recognises the right of state parties to control the use of property based on public interest. According to ECtHR case law, the second and third rules should be interpreted in light of the general principle expressed in the first rule.383

In its case-law, the ECtHR has held that a balance between public interest and the rights of individuals must be found in every case of interference in the right to peaceful enjoyment of property. The need to balance these interests, stated in Article 1 of Protocol No.1, is characteristic of the Convention as a whole. The extent of state interference (expropriation or restrictions on the use of property) must be justified by the circumstances of the particular case and conditional to fair compensation. The question of monetary compensation does not arise only with respect to expropriation and may be sought also in the case of restrictions on the use of property.384 This is confirmed by the 2008 judgement against Serbia, delivered on 25


February 2009. In the case of Kostić v. Serbia, the applicants complained about the lack of response by the state concerning an illegally constructed building which severely limited their peaceful enjoyment of property. The court obliged Serbia to execute the 11 September 1998 Voždovac municipality decision in an appropriate manner within 6 months from the binding judgement, and to pay the applicants 4,000 euros in non-pecuniary damages. Injured parties were paid the damages, but the building was not torn down. This case highlights the problem of enforcing the judgements of the European Court of Human Rights. Voždovac municipal authorities justify the non-enforcement of the judgement by the fact that an application for the legalisation of the building was submitted in 2003. By their interpretation of both the new and the old Act on Planning and Construction, a building cannot be torn down until the completion of a legalisation procedure. It should be borne in mind that the municipality waited several years and did not itself tear down the illegal building before the case made it to Strasbourg, and that the legalisation of illegally constructed buildings has been possible before domestic courts since 1997, well before the 2003 Act on Planning and Construction. In addition, the ECtHR dismissed the legalisation process as grounds for delaying demolition.

Article 58 of the Constitution of Serbia guarantees the right to property. The Constitution is mostly in compliance with international standards, especially with respect to seizure of property, which, as it explicitly prescribes, shall be allowed only in public interest and if the owners are fairly compensated for the property. However, the provision allowing for the restriction of the right to enjoy property does not include a provision on the proportionality of such a restriction, which is in contravention of Serbia’s international obligations. Under the Constitution, the seizure or restriction of property to collect taxes and other levies or fines shall be permitted only in accordance with the law.

4.12.2. Expropriation

Serbian legislation fulfils the requirement to achieve a balance between public and private interests and to prevent violations of the rights to property by setting the following two prerequisites: that expropriation is in public interest and that fair compensation is granted for expropriated property.

The Expropriation Act regulates the restriction and deprivation of the right to real estate constituting the most serious forms of interference in the peaceful enjoyment of property. Under the law, the Serbian government shall determine the existence of public interest by a decision. These individual decisions may be contested in an administrative dispute.

The Act does not bind the Serbian government to take into account the interests of the owner of the real estate or to examine whether his or her interest to

---

386 Politika, 30 November, www.politika.co.rs.
387 Sl. glasnik RS, 53/95 and 20/09.
keep the property and continue his or her activities overrides general interest (Art. 20). The manner in which the Serbian government has decided on the existence of public interest has in practice proved that it really did not take individual interest into consideration.

The administration of the municipality where the real estate in question is located shall conduct the proceedings pursuant to the expropriation proposal and render the appropriate order (Art. 29 (1)). Appeal of such orders shall be heard by the Serbian Ministry of Finance (Art. 29 (5)).

Under the Act, the beneficiary of an expropriation may take possession before the finalisation of a decision on compensation for the property (i.e. before a contract on compensation is concluded) if the Ministry of Finance considers this necessary because of the urgency of the matter or construction work (Art. 35 (1)). The language of this provision is too general and imprecise to meet European standards. Under the ECHR, the law must, inter alia, provide protection from arbitrary decision-making by state bodies.388

The Expropriation Act does not provide for any time limit within which the previous owner of the expropriated real estate may file a request for annulment of an effective expropriation order.

Along with the condition that expropriation be performed in public interest, fair compensation is another prerequisite that must be fulfilled to avoid violation of the right to property. The Expropriation Act stipulates that fair compensation may not be lower than the market value of the real estate. The court shall decide on the compensation if the parties involved are unable to agree on an amount. Due to the length of the proceedings, the awarded compensation often does not reflect the market value of the real estate, because it is set by court experts who are not always able to follow increases in prices.

The Act Amending the Expropriation Act was adopted in 2009. The government considers this law to be a transitional and temporary solution and expects that it will be changed by the adoption of laws which regulate public property and restitution.389

The new Act expands the scope of beneficiaries of expropriation (Art. 3) to include not only the state, autonomous provinces, cities, municipalities, social and state funds and public companies, but also commercial entities that have established public companies and commercial entities with majority state capital founded by the state, autonomous provinces, cities, the city of Belgrade, or the municipalities.

The Act also expands the number of cases in which public interest (Art. 2) and compensation for expropriation may be established.

4.12.3. Restitution of Unlawfully Taken Property and Indemnification of Former Owners

Although property denationalisation and the indemnification of former owners is an important component of transition, the issue has not yet been dealt with comprehensively. The absence of an appropriate legal framework in this field has a negative impact primarily on the privatisation process, since foreign investors are reluctant to place significant investments into the local economy due to the lack of legal certainty and safeguards with regard to the intangibility of property. The restitution of land to its previous owners or their heirs is allowed under the Act on Recognition of Rights to and Restitution of Land Transformed into Socially Owned Property by Inclusion in the Farmland Fund or by Confiscation due to the Non-Fulfilment of Obligations Arising from the Obligatory Sale of Farm Produce. Restitution is in kind: the former owners or their heirs are given back their land or are given land of the same size and quality. The Act prescribes financial compensation at the market rate if restitution is impossible. Only land that was socially owned at the time the Act was adopted may be restituted.

The overdue law on property restitution and indemnification still had not been passed in Serbia by the end of 2010, although a symbolic step towards denationalisation was made in 2005 by the adoption of the Act on Registration of Appropriated Property. The Act regulates the reporting and registry of property appropriated in the Republic of Serbia pursuant to regulations and legislation on nationalisation, agrarian reform, confiscation, sequestration, expropriation and other regulations since 9 March 1945 without compensation of its market value or fair compensation. The deadline for reporting such property expired on 30 June 2006.

Remarks on undue delays of legal regulation of restitution reinforces the fact that the 2006 Act on the Restitution of Property to Churches and Church Communities put religious communities in a more favourable position than other, notably legal, persons, whose property was confiscated.

The Act on Planning and Construction adopted in 2009 converts land-use rights into property rights of building land (Art. 103). Land-use rights will without compensation be converted to property rights for the state, local government, autonomous provinces, legal persons established by these authorities and all persons who own the facilities, previous owners of the facilities and their legal heirs who had acquired land-use rights under the 2003 Planning and Construction Act (Arts. 100–102).

390 Sl. glasnik RS, 18/91, 20/92 and 42/98.
392 Sl. glasnik RS, 45/05.
393 Sl. glasnik RS, 46/06.
394 More on inequalities between religious organisations in I.4.8.
395 Sl. glasnik RS, 72/09 and 81/09.
Companies that participated in privatisation or acquired land on various grounds in the past will be charged market rates for the transfer of land-use rights to property rights. Half of the revenues will be allocated to local governments to invest further in infrastructure and the rest will be put into the Restitution Fund, from which the previous construction land owners will be compensated (Art. 107).

This Act allows for the legalisation of all buildings built, reconstructed, or annexed without construction permits before the Act came into effect (Art. 185). These facilities will be demolished if their owners do not launch the legalisation procedure within six months from the day the Act comes into effect (Art. 186).

4.12.4. Specially Protected Tenancy

Specially protected tenancy is a specific form of the right to housing created in the former Yugoslavia that applied both to socially and privately owned apartments. The Serbian Housing Act regulates for the most part the manner in which the institute will gradually disappear from the Serbian legal system.

After the socially owned apartments were bought by their tenants and became private property (in accordance with two housing laws passed in the early nineties entitling the holders of specially protected tenancy to buy the apartments at favourable prices), specially protected tenancy in Serbia has applied only in cases of privately owned apartments appropriated in an administrative procedure by 1973 and was transformed into the right of rent but specific administrative restrictions were set, notably with respect to rent amounts and termination of tenancy. The position created in Serbian case-law is that the special protected tenancy on privately owned apartments cannot be awarded to persons born after 1973 notwithstanding the fact that they have lived in the joint household with the last holder of the specially protected tenancy right. This institute will therefore naturally “die out”. The question remains whether there will be violations of the right to the peaceful enjoyment of property of a person, who was born after 1973 and has lived his or her entire life in the apartment but received an eviction order after the death of the holder of the special protected tenancy right because he or she was unable to transfer this right to him or her self.

Due to the unresolved issue of restitution, the Housing Act residents of privately owned apartments in a subordinate position vis-à-vis the holders of tenancy rights to socially-owned apartments, who have had the possibility of buying the apartments they lived in at a discounts and fully disposing of them. In the 1945–1990

---

396 An estimated 1 million illegal buildings exist in Serbia, 450,000 of which are in Belgrade.
397 Sl. glasnik RS, 50/92, 76/92, 84/92, 33/93, 53/93, 67/93, 46/94, 48/94, 49/95, 16/97, 46/98 and 26/01.
399 Specially protected tenancy for these housing units were established by laws valid at the time: the 1945 Act on the Disposition of Apartments and Business Premises, the 1959 FNRY Act on Housing Relations, and the 1973 Serbian Act on Housing Relations.
period, residents of privately owned apartments were considered to have solved the housing problem and were unable to apply for socially-owned apartments.

According to the records of the Association of Users of Privately Owned Apartments, there are approximately ten thousand private apartments in Serbia the residents of which have specially protected tenancy.\(^{400}\)

### 4.13. Minority Rights

**Article 27, ICCPR:**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

#### 4.13.1. General

Serbia ratified the most significant universal and regional instruments guaranteeing, directly or indirectly, minority rights and freedoms\(^{401}\) including the Framework Convention for the Protection of National Minorities.

The Constitution of Serbia provides for extensive protection of minorities. Serbia does not have a separate law on minority protection, wherefore the protection of minorities is still governed by the Act on the Protection of Rights and Freedoms of National Minorities \(^{402}\) (hereinafter: Minority Protection Act) adopted in 2002 at the level of the then federal state, while individual laws provide for the protection of specific minority rights. A number of laws relevant to the realisation of minority rights were enacted in 2009, notably the Anti-Discrimination Act\(^{403}\), the Act on the National Councils of National Minorities\(^{404}\), the Act on the Basis of the Education System\(^{405}\), the Culture Act\(^{406}\), the Act Establishing the Jurisdiction of the Autonomous Province of Vojvodina\(^{407}\), the Act Amending the Information Act\(^{408}\), the Act on Political Parties\(^{409}\), the Act on Textbooks and Educational Tools\(^{410}\), the Official

---


\(^{401}\) The FRY acceded to some agreements by succession (as the ex-SFRY was a party to them); others were acceded to by the State Union of Serbia and Montenegro.

\(^{402}\) *Sl. list SRJ*, 11/02.

\(^{403}\) *Sl. glasnik RS*, 22/09.

\(^{404}\) *Sl. glasnik RS*, 72/09.

\(^{405}\) *Ibid.*


\(^{407}\) *Sl. glasnik RS*, 99/09.

\(^{408}\) *Sl. glasnik RS*, 71/09.

\(^{409}\) *Sl. glasnik RS*, 36/09.

\(^{410}\) *Sl. glasnik RS*, 72/09.
Birth, Death and Marriage Registries Act,\textsuperscript{411} the 2011 Population, Household and Housing Census Act\textsuperscript{412} and the Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia,\textsuperscript{413}

The Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter Advisory Committee) adopted the latest, Second Opinion on Serbia in March 2009. The Serbian Government Comments on the Second Opinion were issued in October 2009.\textsuperscript{414} The two chief legislative shortcomings highlighted by the Advisory Committee were eliminated soon after the Opinion was published by the adoption of the Anti-Discrimination Act and the Act on the National Councils of National Minorities. The Advisory Committee noted considerable discrepancies in the implementation of minority rights between the Province of Vojvodina, where regulations and relevant practice relating to minority language use and education are more advanced, and other parts of the country where minorities are living in substantial numbers such as Sandžak, South Serbia and East Serbia. In its Comment,\textsuperscript{415} the Government stressed that “the laws governing the method of accomplishment of certain rights guaranteed in the Constitution are in force in the entire territory of the Republic of Serbia and that, in this sense, there is no difference in the legal position of national minorities at the normative level in some geographic regions of the country”. The Government stated that the existing differences “should neither be taken nor interpreted as the differences between the Autonomous Province of Vojvodina and other regions, which do not enjoy the political territorial autonomy but as the differences existing between certain units of the local self-government”. “Such differences, which are most frequently the failure to introduce certain minority languages in the official use, or the failure to have certain forms of the official use or education in the languages of the national minorities, are not, according to the opinion of the authorities of the Republic of Serbia, dramatic nor of essential importance,” the Government concludes.

Laws governing the realisation of specific constitutionally guaranteed rights, indeed, apply to the whole territory of Serbia as the Government states in its Comment. One should not, however, disregard the fact that Article 79 (2) of the Constitution entitles Vojvodina to establish additional or supplementary minority rights and that the law allows it to delegate its competences concerning culture, education and public information to national councils.\textsuperscript{416} The Vojvodina authorities have actually applied these provisions to a much greater extent than the republican authorities, to the satisfaction of persons belonging to national minorities. Under the Act

\textsuperscript{411} Sl. glasnik RS, 20/09.
\textsuperscript{412} Sl. glasnik RS, 104/09.
\textsuperscript{413} Sl. glasnik RS, 41/09.
\textsuperscript{414} http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_Com_Serbia_en.pdf.
\textsuperscript{415} Comment on para. 13 of the Advisory Committee Second Opinion on Serbia.
\textsuperscript{416} Act Establishing the Jurisdiction of the Autonomous Province of Vojvodina, Sl. glasnik RS, 99/09, Art. 74 (5).
Establishing the Jurisdiction of the Autonomous Province of Vojvodina, the Vojvodina authorities are entitled to adopt an executive regulation and thus temporarily regulate the enforcement of a law governing a field within the competence of Vojvodina or legally defined as an issue of relevance to Vojvodina in the event the competent republican authority fails to enact a regulation for the enforcement of that law within the deadline set in that law (Art. 9 (3)). Given the frequent failure of republican authorities to enact regulations necessary for the enforcement of specific laws on time, this competence may prove extremely useful and ensure faster enforcement of specific laws in Vojvodina than in other parts of Serbia. It needs to be highlighted that the Vojvodina authorities have in the past devoted greater attention to the implementation and protection of human and minority rights than the republican authorities. For instance, the Provincial Ombudsperson417 was established back in 2002, much earlier than the institute of the Protector of Citizens was introduced at the state level (the Protector of Citizens Act was adopted in 2005). Even purely symbolic gestures, such as the possibility afforded minority deputies in the Vojvodina Assembly to use their native languages (a possibility never afforded their colleagues in the National Assembly of the Republic of Serbia) corroborate that the provincial authorities have been devoting greater attention to issues relevant to the rights of national minorities.

4.13.2. Constitutional Protection

The 2006 Constitution was adopted “considering the state tradition of the Serbian people and equality of all citizens and ethnic communities in Serbia” (Preamble), and defines Serbia as the “state of the Serbian people and all citizens who live in it, based on ... human and minority rights and freedoms...” (Art. 1).

Serbia is, hence, defined first and foremost as the state of the Serbian people. Thus, the ethnic and not the civil definition of Serbia as a state of primarily the Serbian people and, secondarily, all other peoples has prevailed. Although the Venice Commission took a neutral view on this definition in the Constitution,418 one should bear in mind the fact that comparison of constitutional law practice has shown that such appropriation of the state by the majority nation has frequently impacted on the state bodies’ attitude towards minority problems in practice.

There are no definitions of an ethnic minority in the Constitution. The Minority Protection Act defines a national minority in the following manner in Art. 2 (1):

“a group of citizens of (...)sufficiently representative, although in a minority position on the territory (...), belonging to a group of residents having a long term and

417 Decision on the Provincial Ombudsperson, Sl. list APV, 23/02, 5/20 and 16/05.
firm bond with the territory and possessing some distinctive features, such as language, culture, national or ethnic belonging, origin or religion, upon which it differs from the majority of the population, and whose members should show their concern over preservation of their common identity, including culture, tradition, language or religion.”

Within the meaning of this Act, national minorities shall comprise also “(...) all groups of citizens who consider or define themselves as peoples, national and ethnic communities, national and ethnic groups, nations and nationalities, and who fulfil the conditions specified in paragraph 1 of this Article” (Art. 2 (2)). Judging by this definition, only citizens of Serbia, but not immigrants or non-citizens, may be considered persons belonging to national minorities. In both its Opinions, the Advisory Committee noted that limiting the scope of the term national minority to citizens only may have a negative impact for example on the protection of those Roma or other persons whose citizenship status, following the break-up of Yugoslavia and conflict in Kosovo, has not been regularised and who, in the absence of personal documentation, have had difficulties in obtaining confirmation of their citizenship. The Advisory Committee therefore called on the Serbian authorities to remove the citizenship criterion from the general provision on the scope of application of the Minority Protection Act and limit its use to those provisions to which it is relevant, such as electoral rights at the national level.419 In its 2006 Report on Non-Citizens and Minority Rights, the Venice Commission underlines that “that the universal character of human rights, of which minority rights form part and parcel, does not exclude the legitimate existence of certain conditions placed on the access to specific minority rights. Citizenship should therefore not be regarded as an element of the definition of the term “minority”, but it is more appropriate for the States to regard it as a condition of access to certain minority rights”.420 In its Comment on the Advisory Committee Opinion, the Government of Serbia highlights that the Framework Convention does not contain a definition of a national minority but leaves it to the member states to define it, whereby the definition of the concept of a national minority in the Minority Protection Act cannot be in contravention of the provisions in the Framework Convention. The Serbian authorities agree with the Advisory Committee’s view that the citizenship criterion may have negative impact on the protection of persons whose citizenship status was not regularised after the disintegration of the SFRY, but are of the view that this problem can be resolved in other ways as well, “primarily by more liberal solutions in respect of obtaining the citizenship by persons who had had the citizenship of the former SFRY”. The Serbian authorities are of the view that “leaving out citizenship from the definition of a national minority would beyond reasonable doubt open the possibility that other,

419 Para. 37 of the Advisory Committee Second Opinion on Serbia.
not only vulnerable categories of the population the Committee points out to with all reasons, might be included in the protection of minorities for which in the Republic of Serbia there is neither any need nor economic capabilities (the immigrant labour from Asian countries, asylum seekers, etc.). Given that Article 2 of the Minority Protection Act defines as national minorities only groups of citizens with a long term and firm bond with the territory of the Federal Republic of Yugoslavia (now Serbia), which migrant workers from Asian countries and asylum seekers definitely do not have, the Government’s apprehensions are manifestly groundless and only the persons mentioned by the Advisory Committee – those persons whose citizenship status has not been regularised after the disintegration of the SFRY, mostly Roma, may fall under the legal regime protecting national minorities. This is why eliminating the citizenship criterion from the definition of a national minority cannot produce any negative effects, but it may improve the status of undoubtedly vulnerable groups of the population to an extent.

As regards persons whose citizenship status has not been regularised after the disintegration of the SFRY, especially internally displaced Roma, it should be noted that Serbia still lacks a law governing the recognition of “legally invisible” persons before the law. Article 37 of the Constitution guarantees that everyone shall have the right to legal capacity, which is in keeping with Article 6 of the 1948 UN Universal Declaration of Human Rights, under which everyone has the right to recognition everywhere as a person before the law, and Article 16 of the ICCPR, which guarantees that everyone shall have the right to recognition everywhere as a person before the law. In practice, however, thousands of people, mostly Roma, are not recognised as persons before the law and are, thus, unable to exercise many human rights. State authorities, mostly authorities charged with keeping birth, death and marriage registers and, on occasion, courts, usually refuse to recognise the legal personality of “legally invisible persons”, justifying their decisions by positive law grounds, although there have been instances of some state authorities fulfilling requests for the recognition of a person before the law. There is obviously a need to improve the legal regulation of these procedures to ensure adequate protection of the above constitutionally guaranteed right. The Centre for Advanced Legal Studies to that end drafted in 2008 a Model Act on the Recognition of Persons before the Law, which lays down provisions that should ensure the recognition of a person before the law in a simple and effective procedure that would not be burdened by numerous formal legal requirements, both with respect to the very fact of birth, i.e. data on the birth of a person, and with respect to proving birth. Unfortunately, the Model Act has never been submitted in the form of a bill to the parliament for

---

421 Government of Serbia Comment on para. 35 of the Advisory Committee Second Opinion on Serbia.


423 Ibid.
adoption; nor did it prompt the Government of Serbia to draft a law addressing the problems of “legally invisible persons”.

The articles in the section Constitutional Principles stipulate that the Republic of Serbia shall protect the rights of national minorities and guarantee special protection to national minorities so that they can realise full equality and preserve their identity (Art. 14). Alongside rights guaranteed to all citizens, the Constitution guarantees persons belonging to minorities “additional individual and collective rights” in a separate, third section of Chapter II.

The AP of Vojvodina Statute\(^424\) comprises more detailed provisions on the protection of minorities than the Constitution. Apart from guaranteeing national equality in Article 6, the Statute defines multilingualism, multiculturalism and multi-confessionalism as “a universal value of particular interest to the AP of Vojvodina” (Art. 7) and establishes the duty of all provincial authorities and organisations “to foster and facilitate protection and development of multilingualism and the cultural heritage of national communities traditionally living in the AP of Vojvodina, as well as to support mutual respect and familiarisation with different languages, cultures and religions in the AP of Vojvodina, within the scope of their rights and duties”. The Statute guarantees special protection of all rights guaranteed national minorities and persons belonging to national minorities by the enactments of the Republic of Serbia (Art. 22). It also entitles the AP of Vojvodina to establish additional or supplementary rights i.e. establish a higher level of protection of rights of persons belonging to national communities constituting a numerical minority in the total population of the AP of Vojvodina (Art. 23 (3)). Moreover, the Statute lays down that the AP of Vojvodina shall monitor the realisation of human and minority (individual and collective) rights and ensure their realisation and protection when such protection is not afforded at the republican or local level (Art. 23 (3)).

Apart from the general prohibition of discrimination (Art. 21), the Constitution includes a separate provision in Article 76 (2) and bans discrimination on the grounds of belonging to a national minority. It expressly allows for affirmative action measures i.e. the introduction of special regulations and interim economic, social, cultural and political measures for the achievement of the full equality of persons belonging to national minorities and the majority nation. However, these measures may be undertaken only “if they are aimed at eliminating extremely unfavourable living conditions which particularly affect them” (italics added). The application of this provision needs to be monitored in view of the risk that it may be interpreted too narrowly. The Anti-Discrimination Act adopted in 2009 is to ensure the protection of equality guaranteed by the Constitution. The AP Vojvodina Statute (Art. 20) and the Act on the Basis of the Education System (Art. 44) also prohibit discrimination and envisage positive discrimination measures.

\(^{424}\) Sl. list AP Vojvodine, 17/09.
4.13.3. Prohibition of Incitement to Racial, Ethnic, Religious or Other Inequality, Hatred or Intolerance

The Constitution expressly prohibits the incitement to racial, ethnic, religious or other inequality, hatred or intolerance (Art. 49). Serbian criminal legislation treats as criminal offences and prescribes penalties for violations of minority rights, discrimination, and incitement to or fomenting of racial, ethnic or other forms of hatred in a number of provisions. The Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia prohibits instigation to, incitement or dissemination of hate or intolerance of persons belonging to any nationality, national minority, church or religious community, and prohibits propagation or justification of ideas, actions or conduct for which persons have been convicted of war crimes (Art. 4).425

4.13.4. Expression of Ethnic Affiliation

The Constitution of Serbia guarantees the freedom of expression of ethnic affiliation (Art. 47). The Minority Protection Act comprises a corresponding but more detailed provision; Article 5 (1) stipulates that no one shall suffer damage or injury due to his/her affiliation or expression of national background or due to associating theretofore.426 Collection of ethnicity related data must be legally protected and the persons, whose data are gathered, must be informed that the imparting of such data is voluntary.427 Article 16 of the Personal Data Protection Act428 defines data related to ethnic affiliation, race, language and religion as “particularly sensitive data”. Such data may be processed only with the written consent of the data subject; the consent shall specify the designation of the data being processed, the purpose of the processing, and the manner of use (Art. 17). A violation of the freedom of expression of national or ethnic belonging shall carry a fine or maximum one-year imprisonment; in the event it is committed by a public official in the performance of duty, it shall carry a prison sentence of maximum three years (Art. 130, CC).

The National Assembly upheld an amendment submitted by the national minority deputies during the debate on the Draft 2011 Population, Household and Housing Census Act429 under which the answers to questions on ethnic or linguistic affiliation in the census questionnaire will be open-ended. The Act does not explicitly lay down that the answers to question on religious affiliation will be open-ended, but it guarantees the right of the persons covered by the census not to reply to this question (Art. 17). The Advisory Committee noted the recommendation of

425 More in I.4.9.5.
426 The Framework Convention deals with this issue identically (Art. 3 (1)).
427 Advisory Committee Opinion on SaM, n. 4, para. 27.
428 Sl. glasnik RS, 97/08.
429 Sl. glasnik RS, 104/09.
the Serbian Statistical Office that census committees in multi-ethnic areas include, as census-takers, persons belonging to those national minorities living in the area concerned.\footnote{See Advisory Committee Second Opinion on Serbia, 2009, para. 46.}

4.13.5. Preservation of the Identity of Minorities

The Constitution guarantees a large number of rights of relevance to the preservation of the identity of minorities, including the right to the expression, preservation, fostering, development and public expression of national, ethnic, cultural, religious specificities; the rights to use their symbols in public and their languages and scripts, including in specific administrative proceedings; the right to education in their own languages in public institutions and institutions of autonomous provinces; the right to full, timely and objective information in their languages and to establish their own media, in accordance with the law, etc (Art. 79 (1)). The Act on Churches and Religious Communities, which regulates the status of traditional churches and religious communities in Serbia, also regulates the status of minority churches and religious communities. Although this Act in principle guarantees the equality of religious confessions in the territory of Serbia, a number of its provisions essentially violate the declared equality by unequally treating religious communities.\footnote{This law was criticised both by domestic and international organisations. More in I.4.8.}

The Constitution explicitly allows autonomous provinces to guarantee additional rights to national minorities (Art. 79 (2)). Article 80 (1) allows persons belonging to national minorities to establish educational and cultural associations funded on a voluntary basis with a view to preserving and developing national and cultural specificities. Under Article 13 (2) of the Framework Convention, the exercise of this right does not entail any financial obligation for the states. Under the Minority Protection Act, the state is to provide such assistance in accordance with its funding abilities. Under this Act, the state is to ensure public service broadcasts of cultural content in the languages of national minorities. State museums, archives and institutions charged with the protection of cultural heritage are obliged to ensure the exhibition and protection of the cultural and historical heritage of minorities in their territory and involve representatives of minority national councils in decisions on the manner of presenting minority cultural and historical heritage (Art. 12). Under the Culture Act,\footnote{Sl. glasnik RS, 72/09.} national councils of national minorities shall be charged with the implementation of national minority culture policies and shall participate in the decision making process or themselves decide on specific issues related to their cultures, establish cultural institutions and other legal persons dealing with culture in accordance with the law (Art. 5).
4.13.6. Prohibition of Assimilation and Forced Change of the Ethnic Structure of the Population

The 2006 Constitution contains a provision that was not included in either the old Constitution or laws – Article 78 (3) prohibits forced assimilation and measures that may result in the artificial change of the ethnic composition of the population living in areas in which national minorities have been living traditionally and in large numbers. This provision is extremely important, especially in view of the recent past. The Constitution is in keeping with CoE Recommendation 1201, as Article 80 (3) guarantees persons belonging to national minorities the right to free and unimpeded contacts and cooperation with their ethnic kin living outside Serbia.

4.13.7. Administration of Public Affairs and National Councils

Although the Constitution twice entitles all citizens to participate in the administration of public affairs and hold public office (Arts. 53 and 77 (1)), it nevertheless prescribes that the ethnic breakdown of the population and adequate representation of persons belonging to national minorities shall be taken into consideration during the recruitment of persons for offices in state bodies, public services, provincial and local self-government bodies (Art. 77 (2)). Under the Minority Protection Act, the ethnic composition of the population and knowledge of the language spoken in the territory in which the body or service is situated shall be taken account when recruiting staff for public services. Apart from provisions on the proportional representation of persons belonging to national communities in the provincial authorities and organisations, the Vojvodina Statute also lays down the obligation of the Vojvodina government to undertake special measures and activities pursuant to a Vojvodina Assembly decision to ensure their proportional representation in specific authorities or organisations (Art. 24). There are no comprehensive records on the representation of national minorities in the state administration and it is practically impossible to establish whether the Constitution and other regulations adopted to increase such representation are respected in practice.433

Collective minority rights mean that persons belonging to national minorities are entitled to decide on specific issues regarding their culture, education, informing and use of language and script either directly or via their elected representatives. The new Constitution guarantees persons belonging to national minorities the right to elect their national councils in keeping with the law in order to realise their right to self-governance in culture, education, informing and official use of language and script (Art. 75 (3)). National councils, as institutions of cultural autonomy with specific public and legal powers, were first introduced by the Minority Protection Act434 but their powers and election were regulated in greater detail only in August

434 Although highlighting the importance of introducing national councils in the SaM legal system, the Advisory Committee maintains it is important they are not perceived as the sole and ex-
2009, when the Act on National Councils of National Minorities (hereinafter: National Councils Act) was adopted.435

Under the National Councils Act, a national council shall represent a national minority in the fields of education, culture, information in the language of the national minority and the official use of the language and script of the national minority, and it shall participate in the decision making process or decide on issues in these fields and establish institutions, undertakings and other organisations in these fields (Art. 2 (2)). A national council may establish institutions, associations, foundations, undertakings in the fields of culture, education, information and official use of language and script and other fields of relevance to the preservation of the identity of a national minority (Art. 10 (6)). A national council may initiate proceedings before the Constitutional Court, Protector of Citizens, provincial and local ombudspersons and other competent authorities in the event it assesses that the rights and freedoms of persons belonging to national minorities and guaranteed by the Constitution or law have been violated (Art. 120 (12)). A national council may initiate proceedings before these authorities also on behalf a person belong to a minority with his/her written consent (Art. 10 (13)). Apart from competences laid down in the National Councils Act, a national council may also decide on other matters entrusted to it by law, an enactment of the autonomous province or a local self-government unit. The Culture Act, the Act on the Basis of the Education System and the Vojvodina Statute specify the matters national councils may decide on or be consulted about and the competences that may be transferred to national councils.

The Public Information Act and the Broadcasting Act need to be amended to ensure the full realisation of the constitutionally guaranteed right of national minorities to self-government in the fields of education, culture, informing in the languages of national minorities and the official use of national minority languages, given that these two laws are not fully in conformity with the provisions of the National Councils Act. Article 14a of the Public Information Act is particularly problematic as it prohibits founders of media to transfer their rights (the rights to establish and operate a media outlet) to other persons, and thus to national councils. This interest, shared by both the national councils and founders of media in minority languages, was recognised by the authors of the National Councils Act, which allows for such transfers in Article 11 (3).

Under the Act, national councils shall participate in the procedure for selecting projects and programmes in the fields of culture, education, informing and the official use of languages and scripts of national minorities by way of a public tender. The projects and programmes will be funded from the budgetary fund for national minorities, which will be managed by the Human and Minority Rights Ministry

435 Sl. glasnik RS, 72/09.
Legal Provision Related to Human Rights

(Art. 119). A Fund Encouraging the Social, Economic, Cultural and Overall Development of National Minorities was established back in 2002, under Article 20 of the Minority Protection Act, but it was never established and its competences were never defined,\textsuperscript{436} which gives rise to apprehension that the same fate may befall the budgetary fund envisaged by the National Councils Act, the operations of which are to be regulated by secondary legislation enacted by the Human and Minority Rights Ministry.

A national council may cooperate with international and regional organisations, the state authorities, organisations and institutions in ethnic kin states and the national councils and similar national minority bodies in other states. Representatives of a national council may also take part in negotiations or shall be consulted in negotiations regarding bilateral agreements with ethnic kin states with respect to provisions directly regarding rights of national minorities (Art. 27).

Elections of national council members will be held every four years. The Act provides for direct and indirect elections via electoral assemblies. Under the Act, a separate voter register shall be kept for every national minority; citizens fulfilling the general requirements for acquiring the right to vote may register in them. The national council of a national minority shall be elected directly when the number of persons belonging to the national minority and registered in the voter register exceeds 40% of the number of citizens who declared themselves as persons belonging to that minority at the last census. National councils of minorities that have not fulfilled this requirement shall be elected at electoral assemblies (Art. 29). The status of elector shall be granted a member of a national minority who has collected 100 signatures or been appointed elector by a national minority organisation or association (Art. 102). The first elections for the National Councils were held in June 2010.\textsuperscript{437}

The Government enacted a new Decree on the Council of National Minorities of the Republic of Serbia in July 2009.\textsuperscript{438} The Council has not held a session since its constituent session on 30 October 2009 at which it adopted its Rules of Procedure. The Council is chaired by the Prime Minister, and comprises the ministers charged with human and minority rights, state administration and local self-government, internal affairs, culture, education, youth and sports, religion, justice, and the chairmen of the national councils. Although the 2002 Minority Protection Act foresaw the establishment of the Council, it was actually established by a Gov-

\textsuperscript{436} In its Comments on the Advisory Committee Second Opinion on Serbia, 2009, the Serbian Government justified the fact that the State Fund for the National Minorities has not been made operational yet by “objective circumstances” – primarily the long-term process of adoption of the Law on National Councils, and the lack of regulations governing the competence of the Fund. It notified the Advisory Committee of the intention to establish the Fund. See Serbian Government Comment on para. 91 of the Advisory Committee Second Opinion on Serbia, 2009.

\textsuperscript{437} More in II.2.2.5.1.

\textsuperscript{438} Sl. glasnik RS, 50/09.
government decree in 2004, but it had hardly ever met. The Council shall confirm the symbols and holidays of national minorities, review draft laws and other regulations relevant to the realisation of minority rights and render opinions on them to the Government, monitor and review the realisation of minority rights and interethnic relations in Serbia, propose measures to improve the equality of minorities and review measures to that end proposed by other authorities and bodies, monitor cooperation between national councils and competent state, provincial and self-government authorities, review the national councils’ working conditions and the realisation of international obligations with respect to the realisation of rights of persons belonging to national minorities in Serbia and international cooperation of national councils.

Under the Culture Act, two of the 19 National Culture Council members shall be from amongst the ranks of representatives of national minorities. These two members shall be nominated by the national councils (Art. 16 (2.7)). Representation of national minority representatives in the National Education Council is much weaker, unduly so given the number of persons belonging to national minorities in Serbia and the importance of education in the preservation of the identity of minorities. Under the Act on the Basis of the Education System, only one of the 43 members of the National Education Council shall be from amongst the ranks of national minority representatives (Art. 13 (2.10)).

The Act on Political Parties defines a national minority party as a party “whose activities, defined by its Articles of Association, programme and statute, are particularly directed at presenting and advocating the interests of a national minority and the protection and promotion of the rights of the persons belonging to that particular national minority in accordance with the Constitution, law and international standards” (Art. 3). A national minority party may be established by 1000 adult able-bodied citizens (Art. 9), i.e. it needs a tenth of the signatures required for registering political parties which are not national minority parties. The so-called election threshold does not apply to national minority parties and they are awarded seats even if they did not win 5% of votes cast.

Under the Local Self-Government Act, councils for interethnic relations shall be established in ethnically mixed local self-government units and these autonomous bodies shall comprise representatives of the Serbian nation and national minorities (Art. 98). The councils shall review issues related to the realisation, protection and advancement of national equality and shall be entitled to initiate proce-

439 Sl. glasnik RS, 104/04.
440 Sl. glasnik RS, 36/09.
441 Sl. glasnik RS, 129/07.
442 Ethnically mixed local self-government units are those units in which persons belonging to a national minority account for over 5% of the total population or all national minorities together account for over 10% of the total population according to the last census (Art. 98 (2)), Local Self-Government Act).
procedures before the Constitutional Court for assessing the constitutionality or legality of a decision or another general enactment of a local government assembly in the event it deems that the decision or enactment directly violates the rights of persons belonging to the Serbian nation or national minorities represented in the council for interethnic relations. It is also entitled to initiate proceedings for assessing the conformity of a local government assembly decision or another general enactment with the statute of the local self-government unit before the Supreme Court of Serbia (now the Supreme Court of Cassation). The 2002 Local Self-Government Act also envisaged the establishment of councils for interethnic relations but many local governments fulfilling the conditions for the establishment of such councils failed to do so. The councils that were established faced problems in work, partly because the law did not govern the scope and work of the councils or the procedure for electing the council members, and gave local governments a margin of appreciation to decide on these matters. The OSCE Mission to Serbia commissioned a group of experts to draft a model decision on the establishment of councils for interethnic relations and a model guidebook for the municipal councils for interethnic relations to assist the local government assemblies in regulating these issues in a manner that will ensure that the councils perform their legal duties and thus facilitate the realisation of minority rights. The models are not only to ease the work of local self-government units and provide them with guidelines on how to work, but are also to help conform the legal regulation of the scope, election and work of the councils given the current vast diversity of regulations.


Serbia committed itself to encouraging the spirit of tolerance and intercultural dialogue and taking efficient measures to promote mutual trust, understanding and cooperation amongst all people living in Serbia. Serbia has thus vowed to take positive measures to spread tolerance. In its Opinion on Serbia (para. 103), the Advisory Committee assessed that, as opposed to the authorities of AP of Vojvodina, central authorities did not demonstrate a continuous commitment to actions that would promote interethnic confidence.

4.13.9. Use of Language

Article 10 of the Constitution sets out that the Serbian language and Cyrillic script shall be officially in use in the Republic of Serbia while the official use of other languages and scripts shall be regulated by law based on the Constitution. Article 79 of the Constitution specifies the right of persons belonging to national

443 Sl. glasnik RS, 9/02.
444 See Advisory Committee Second Opinion on Serbia, para. 253.
445 The Model Decision and Guidebook are available in Serbian at http://www.centarzaregionalizam.org.rs/prilozi/Model_odluke_odluke_o_medjunacionalnim_odnosima.pdf.
minorities to preserve their specificities, which entail the right to use their own languages and scripts.

The official use of languages and scripts is regulated by the Act on the Official Use of Languages and Scripts. Under Article 11 of the Act, “municipalities inhabited by persons belonging to nationalities shall establish when languages of nationalities shall also be officially in use in their territories”. The Article further specifies that the municipalities and autonomous provinces shall lay down in their statutes which languages shall be officially used in the municipalities i.e. the provincial bodies. The official use of languages and scripts in the Autonomous Province of Vojvodina, inhabited by the greatest number of minorities, is regulated also by the Decision on the detailed regulation of specific issues related to the official use of languages and scripts of national minorities in the AP of Vojvodina.

Article 26 of the AP of Vojvodina Statute sets out that the Serbian Language and Cyrillic Script and the Hungarian, Slovak, Croatian, Romanian and Ruthenian languages and scripts shall be officially used in the AP Vojvodina authorities and organisations.

Under Article 76 of the Act Establishing the Jurisdiction of the Autonomous Province of Vojvodina, the province shall via its authorities regulate in detail the official use of national minority languages and scripts in the territory of the autonomous province and conduct inspectorial supervision in accordance with the law governing the official use of languages and scripts, as duties entrusted to it.

The Official Journal of the Autonomous Province of Vojvodina is published in all languages and scripts in official use in accordance with the Vojvodina Statute (Serbian, Hungarian, Slovak, Romanian and Ruthenian).

Municipal and city statutes lay down the languages and scripts in official use in the territory of the respective municipality or city. They may specify the official use of a language or script only in a specific settlement as well.

In Vojvodina, the Serbian language and Cyrillic script are officially in use in all its municipalities and the cities of Novi Sad, Pančevo, Sombor, Sremska Mitrovica, Subotica and Zrenjanin. The Latin alphabet is officially used in 22 municipalities. Only Serbian and the Cyrillic Script are in use in nine municipalities, while 33 municipalities officially use also one or more languages and scripts of national minorities (Hungarian is officially used in 27, Slovak in 11, Romanian in 8 and Ruthenian in 6 municipalities). The Croatian language and script are officially in use in Subotica, while the Czech language and script are officially used in the municipality of Bela Crkva. The municipalities of Beočin, Vršac, Kikinda, Stara Pazova, Apatin

446  Sl. glasnik RS, 45/91, 53/93, 67/93, 67/93, 48/94 and 101/05.
447  Sl. list APV, 8/03, 9/03 and 18/09.
448  Sl. list APV, 17/91.
449  Sl. glasnik RS, 99/09.
and in towns Sremska Mitrovica, Sombor and Pančevo statutes prescribe the use of specific minority languages and scripts in specific settlements.450

Apart from languages officially used in the territory of AP Vojvodina, Albanian, Bosniak and Bulgarian are in official use in several other Serbian municipalities.

The new Official Birth, Death and Marriage Registries Act451 allows for entering the name of a person belonging to a national minority into the birth, death and marriage registries in the language and script of the national minority regardless of whether the minority language is officially used in the local self-government unit whose authority is entering the data (Art. 17). The name shall simultaneously be entered in the registry also in the Serbian language and the Cyrillic script.

Under the Act on the Basis of the Education System, persons belonging to national minorities shall be schooled in their native languages, and, exceptionally bilingually or in the Serbian language (Art. 9 (2)).

The Criminal Code incriminates violation of the right to use one’s own language and script in Article 129.452

4.14. Political Rights

Article 25, ICCPR:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 3, Protocol No. 1 to the ECHR:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.


The Constitution proclaims the sovereignty of the people, and that suffrage is universal and equal (Arts. 2 and 52). Every able-bodied citizen of age shall be enti-

451 Sl. glasnik RS, 20/09.
452 Sl. glasnik RS, 85/2005, 88/05, 107/05, 72/09 and 111/09.
tled to vote and to be elected (Art. 52 (1)). In addition, 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).

4.14.2. Participation in the Conduct of Public Affairs

The Constitution provides concrete principal guarantees of direct democracy and prescribes the popular initiative for adoption of legislation and for amending the Constitution. In Serbia, the right to propose a law, other regulation or general act belongs to 30,000 voters (Art. 107). The proposal to change the Serbian Constitution may be submitted by at least 150,000 voters.

The Constitution recognises the institute of referendum as a form of direct democracy. The Constitution lays down which issues may not be decided at referenda: obligations deriving from international treaties, laws relating to human and minority rights and freedoms, tax and other finance-related laws, the budget and annual statements of accounts, introduction of a state of emergency, amnesty and National Assembly powers related to elections (Art. 108 (2)).

Referenda and popular initiatives are regulated in detail by the restrictive Referendum and Popular Initiative Act. The Act stipulates that thirty thousand signatures need to be collected within seven days for a popular initiative, but does not provide strong guarantees that the Assembly will discuss such an initiative. The Act also does not list all the types of referenda mentioned in the Constitution of Serbia. The State Administration and Local Self-Government Ministry drafted a new law on referenda and popular initiatives, which was commented by the Venice Commission. A public debate about the draft is expected to be scheduled soon.

A group of experts drafted a Model Popular Initiative Act regulating the right of Serbia’s citizens entered in the single voter register to propose the adoption or amendment of laws and other general enactments. Under the Model Act, minimum 30,000 signatures will be needed to submit an initiative for the adoption of a general enactment adopted by the National Assembly, minimum 15,000 signatures will be needed to submit an initiative for the adoption of a general enactment.

---

453 Sl. glasnik RS, Nos. 48/94 and 11/98.
455 More detail about the Model Act is available at www.narodnainicijativa.rs. Numerous individuals and organisations, including the Belgrade Centre for Human Rights, signed the petition for a new law on popular initiatives and referenda. They are of the view that the right to popular initiative is insufficiently respected in Serbia and that a new law regulating this field should be adopted as soon as possible. In their opinion, the new law ought to provide judicial protection of the right to submit a popular initiative, particularly in the event it is ignored, an efficient procedure for reviewing popular initiatives by the competent bodies, extension of the period within which the signatures must be collected, a limit on the number of signatures needed to submit a civil initiative to a local government assembly and the electronic collection of signatures supporting the popular initiative.
adopted by the assembly of an autonomous province and maximum five percent of the citizens residing in a particular city or municipality may submit an initiative for the adoption of a general enactment adopted by the city or municipal assembly. The signatures have to be collected within 120 days.

4.14.2.1. Restrictions on Performing a Public Office. – In addition to the right to vote, the ICCPR and the ECHR acknowledge the rights of citizens to be elected. ICCPR also acknowledges the rights of citizens to participate in the conduct of public affairs and to have access, on general terms of equality, to public service in their country. These rights may be restricted. The ICCPR insists the restrictions cannot be unreasonable, while the ECtHR found that the right of a citizen to be elected may be subjected to qualification requirements as long as they are not discriminatory.

The National Assembly on 30 May 2003 adopted the Responsibility for Human Rights Violations Act, with the aim of temporarily preventing persons who had consciously violated human rights in the previous undemocratic regimes from discharging a specific public office. Due to political disputes, however, the lustration commission charged with implementing the vetting procedure never began working. A group of deputies submitted amendments to the Act, under which it would also apply to violations of the 2003 Human and Minority Rights Charter and the 2006 Serbian Constitution. The amendments also extend the application of the law from 10 to 20 years from the day it came into force.

Impartiality of officials in discharge of public office and preventing use of public office for private gain or benefit is regulated by the Act on the Anti-Corruption Agency. The Anti-Corruption Agency shall govern the establishment, legal status, competencies, organisation and operation of the Anti-Corruption Agency, which shall be charged with the enforcement of the Act, and rules regarding the prevention of conflict of interests in discharge of public duties and reporting on property by persons holding public office.

The Agency shall initiate proceedings, pronounce measures for violations of the Act, decide on conflict of interests and perform duties in accordance with the law regulating the financing of political parties. The Agency shall also keep a reg-

458 Sl. glasnik RS, 58/03 and 61/03.
459 The draft, submitted on 9 November 2010, is available in Serbian at http://www.parlament.gov.rs/content/lat/akta/predzakoni.asp.
460 Sl. glasnik RS, 97/08 and 53/10.
461 More on the Anti-Corruption Agency in II.2.1.3.4.
ister of officials i.e. political entities\textsuperscript{463} and their property and incomes (Art. 5), the list of legal persons in which the officials own over 20\% of the stake or shares, a catalogue of gifts\textsuperscript{464} and of political party final accounts with reports pursuant to the law regulating the financing of political parties (Art. 68).\textsuperscript{465}

Property Register data shall be public and accessible on the Agency website (Art. 47). The Agency shall implement an annual plan of checking property statements, whether they were submitted on time and whether the data in them are accurate and comprehensive (Art. 48).

Article 51 of the Act lays down the measures pronounced against officials who violate the Act. The measures comprise caution and public announcement of the recommendation for dismissal. In the event an official does not abide by the caution within the deadline set in the caution, the measure of public announcement of the recommendation for dismissal or the measure of public announcement of the decision establishing a violation of the Act shall be pronounced against him or her and the Agency shall submit an initiative for the dismissal of the official to the authority that elected, appointed or named him or her. The competent authority is duty-bound to notify the Agency of the measures taken with respect to the measure of public announcement of the recommendation for dismissal or the initiative within 60 days from the day the measure was published (Art. 51). The Act also stipulates reimbursement of the material gain acquired by the discharge of another public office, job or activity in contravention of the Act (Art. 55).

The Act incriminates the failure to report property and the provision of false information about property (Art. 72) and envisages between six months and five years of imprisonment for officials who fail to report their property with the intent of concealing information or who provide the Agency with false information about their property. The term in office (i.e. employment) of an official convicted of the crime shall be terminated and the official shall be prohibited from discharging a public office for a period of ten years from the day the judgment becomes final.

Officials violating the Act may also be held liable for offences and be fined. The fines laid down by the Act remained relatively low even after the adoption of the amendments to the Act in 2010, and they range from 50,000 to 150,000 dinars. A fine ranging from 200,000 to two million dinars may be imposed also on the legal person or entrepreneur employing or doing business with an official dismissed from public office without the consent of the Agency.

\textsuperscript{463} Pursuant to the Act, the Agency Director adopted a Rulebook on the Register of Officials and Register of Property (\textit{Sl. glasnik RS}, 110/09) detailing the procedure for keeping the two Registers and data in them, access to the data in the Registers, the form and procedure for notifying the Agency of an official’s assumption and termination of office, and the property and income declaration form, its content and submission procedure.

\textsuperscript{464} Pursuant to the Act, the Agency Director adopted a Rulebook on Gifts to Officials (\textit{Sl. glasnik RS}, 81/10), regulating the acceptance, reporting and registration of gifts presented to officials.

\textsuperscript{465} The Act Amending the Act on Financing of Political Parties also envisages this change (\textit{Sl. glasnik RS}, 97/08).
The decision to partly suspend the ban on officials holding more than one public office raises concerns.466 The provision in the Act stipulating that an official holding more than one public office had to declare which office s/he would stay in within 90 days from the day the Act came into force was amended. An official may now hold a public office to which s/he was elected by the citizens and simultaneously a public office s/he is obliged to exercise under the law or other regulations.

In its legislative expertise of the draft Anti-Corruption Agency Act, the CoE Directorate General of Human Rights and Legal Affairs stated that specific provisions needed to be amended or systemic changes made, because the Act did not ensure sufficient independence and autonomy of the Agency; it, inter alia, did not specify restrictions applying to civil servants transferring to the private sector.467

4.14.3. Political Parties

The Act on Political Parties468 governs the establishment and the legal position of political parties, their entry and deletion from the Register, the termination of political parties and other issues of relevance to the activities of political parties (Art. 1). Within the meaning of the Act, a political party shall denote 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). The Act defines a political party of a national minority as a party the activities of which are directed at representing and advocating the interests of a national minority, at protecting and advancing the rights of persons belonging to that national minority. A party of a national minority enjoys specific rights: it needs fewer signatures to register, is entitled to use the name of the party in the minority language and to seats in parliament even if it won less than 5% of all cast votes.

A political party shall acquire the status of a legal person by entry into the Register of Political Parties and may begin work on that day (Art. 5). A political party may be established by at least 10,000 adult able-bodied citizens of Serbia (Art. 8), while a political party of a national minority may be established by at least 1,000 adult able-bodied citizens of Serbia (Art. 9). The Act explicitly prohibits political party activities aimed at changing the constitutional order by force and violating the territorial sovereignty of the Republic of Serbia, guaranteed human or minority rights or causing and inciting racial, ethnic or religious hate (Art. 4). The Act regulates the entry of a party in the Register of Political Parties and the maintenance of the Register.


468 Sl. glasnik RS, 36/09.
Membership in a political party is free and voluntary for all adult able-bodied citizens of Serbia, 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).

The procedure to ban a political party shall be initiated at the proposal of the Government, the Republican Public Prosecutor or the ministry charged with administrative affairs. The Constitutional Court shall decide on the prohibition of a political party (Arts. 37 and 38).

4.14.3.1. Financing of Political Parties. – Funding of political parties is regulated by the Act on Financing of Political Parties. Parties are prohibited from receiving assistance not only from other states, but also from all foreign legal and natural persons, anonymous donors, trade unions, religious communities, organisers of games of chance, public institutions and companies, companies and firms with state capital shares, private firms that have contracted the performance of public services with state bodies and public agencies for the duration of the contractual relationship, humanitarian organisations, importers and exporters, producers and retailers of excised goods and legal entities and entrepreneurs that have not paid their due taxes. These provisions are aimed at preventing influence on political developments. However this measure is excessively restrictive and therefore not in keeping with the interest it is protecting, wherefore it cannot be deemed necessary in a democratic society.

The Act foresees annual allocation of a proportion of the budget to parties, and additional financing of their campaigns in election years (Arts. 4, 9 and 10). The parties which have deputies or councillors (Art. 4 (1)) are entitled to finance their regular work from the budget. The Act lays down a fixed percentage of the budget to be allocated annually for funding the work of political parties.

As for the election campaign expenses, the Act introduces restrictions on campaign spending in order to prevent disadvantage to parties with smaller funds at their disposal. Twenty percent of the allocated funds are divided equally amongst the submitters of the proclaimed election lists and 80% in proportion with the number of won seats. The funds the parties themselves raised to cover election campaign costs are limited and may not exceed 20% of the budgetary allocation for this purpose (Art. 11 (2)).

470 Sl. glasnik RS, 72/03, 75/03 and 97/08. More on financing of political parties in Serbia in Miodrag Milosavljević, Financing of political parties: between norm and practice, (Finansiranje političkih partija: između norme i prakse), CeSID, Belgrade, 2008.
471 This provision suits proportional elections, but not majority system elections such as the presidential elections. In the latter case, the winner receives the remaining 80% of the unallocated funds.
The Anti-Corruption Agency is charged with checking the financial reports of the political parties. The existing legislation does not provide the Anti-Corruption Agency with sufficient investigative and sanctioning powers to monitor party funding effectively, in particular during election campaigns. A working group comprising members of the Justice Ministry and the Anti-Corruption Agency drafted a new Political Party Funding Act quite a while ago, but it has not been submitted to parliament for adoption yet.

4.14.4. The Right to Vote and to Stand for Elections

The electoral right primarily comprises a person’s right to vote and be elected. In Serbia, these rights may be exercised by persons who are 1) SaM citizens with residence in Serbia; 2) are at least eighteen years of age and are able bodied (Art. 10 Act on the Election of Assembly Deputies (AEAD); Art. 6 Local Elections Act (LEA); Art. 2 Act on the Election of the President of the Republic; Art. 3 Decision on the Election of AP Vojvodina Assembly Deputies (DEVD)).

The Act on the Election of Assembly Deputies allows the voting of hospitalised, bed-ridden (feeble or otherwise incapacitated) or imprisoned persons and of persons residing abroad (Arts. 72a, 72b and 73a).

Besides provisions regulating the active and passive right to vote, election laws in Serbia also prescribe the electoral right of citizens comprising also the right of citizens to run and be nominated for public office, to decide on proposed candidates and election lists, to pose questions to the candidates in public, to be timely, truthfully and objectively informed about programmes and activities of the sponsors of election lists and about the candidates on these lists, as well as to exercise other rights laid down by election laws (Art. 9 AEAD).

Whether or not a person may vote and be elected to a public office depends on whether he or she is entered in the voter registers. Persons fully or partly deprived of legal capacity are not entered in the Single Voter Register. This is not in keeping with the view that the comprehensive and automatic restriction of the right to vote of persons placed under partial guardianship constitutes a violation of the ECHR. The Act on a Single Voter Register introduces a single nationwide

473 Sl. glasnik RS, 35/00, 57/03 and 18/04.
474 Sl. glasnik RS, 129/07 and 34/10.
475 Sl. glasnik RS, 111/07.
477 Sl. glasnik RS, 104/09. The Act came into effect eight days upon publication but shall be applied only two years after it came into force. Only the provisions in Article 26 on checking the
voter register, 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. This Act is expected to enable the establishment of an accurate, updated single register of all voters in Serbia before the next regular parliamentary elections.\(^{478}\)

Municipal and city administrations shall be charged with updating parts of the voter register covering their territories. The Act provides for the electronic exchange of data between competent authorities keeping official records of citizens and comprising data of relevance to keeping the voter register and the state authorities charged with keeping and updating the register. An adequate IT system needs to be established to implement this law; this implies the design, development and implementation of software systems, creation of technical conditions for the application of the solutions by relevant local self-government authorities and training of the users in the relevant local self-government authorities.\(^{479}\)

Changes in the voter register shall be made *ex officio* or at the request of citizens. From the moment the election list is published, the submitter of the election list or a person authorised by the submitter shall also be entitled to have insight in and submit a request for amending the voter register pursuant to the procedure governing these rights of citizens, which is relevant for monitoring the regularity of the elections.

### 4.14.5. Electoral Procedure

#### 4.14.5.1. Bodies Administering the Election Process

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 legality 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)\(^{480}\) and polling committees. The republican commission is also empowered in the first instance to review complaints against decisions,

---


479 The state will have to earmark significant funds in the state budget to make this happen. No decisions have, however, yet been taken on how much the local self-government units and the National Investment Plan will have to contribute. If even one unit fails to provide the necessary funds, the solutions introduced by the Act may be rendered totally meaningless.

480 The Republican Election Commission and the election boards are the authorities charged with implementing republican parliamentary elections, while the local government unit election commissions and election boards are charged with implementing local elections (See Arts. 28–38, AEAD and Arts. 11–17, LEA). All three – the Republican Electoral Commission, the local
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 seen as membership on the basis of the political balance in the respective municipality, and resulted in those commissions taking decisions along political lines.

New regulations on the Republican Election Commission need to be adopted to ensure greater democratism of the election procedure, which will not be susceptible to political and other influences, and to align the election legislation with European standards. As opposed to the current Republican Election Commission, the members of which are appointed by the ruling parties, the Draft State Election Commission Act\textsuperscript{481} envisages the constitution of a nine-member professional Commission comprising independent experts elected to seven-year terms of office. University graduates with at least nine years of experience in organising and monitoring elections, who are not members of any political party, are eligible for the office. At least five of the nine Commission members must be law graduates. The Commission members are prohibited from participating in party activities and election campaigns, holding another public office or engaging in another professional activity, apart from professorship at a Serbian college.\textsuperscript{482}

\textbf{4.14.5.2. Determination of the Election Results.} – The competent election board determines the election results. The election board determines the overall number of votes received by each election list (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, establishes the number of mandates belonging to each election list, on the basis of D’Hondt system. The distribution of mandates is shared only by the election lists that have won at least 5% of votes of the overall number of voters who have voted in the electoral district.\textsuperscript{483} Half of the deputies in the Vojvodina Assembly are

\begin{footnotesize}
\begin{itemize}
\item 483 The election threshold of 5% does not apply to national minority political parties (Art. 81, AEAD; Art. 40, LEA and Art. 74, DEVD).
\end{itemize}
\end{footnotesize}
Elected under a proportional and half under the majority election system (Art. 5 (3), DEVD).

Election laws contain various solutions with regard to the distribution of seats that have been won by the individual election lists. Different solutions with regard to the distribution of seats result in the different ways of exercising the passive right to vote at various election levels. At parliamentary elections, the submitters of the election lists may distribute the won seat to the candidates of their own choosing (Art. 84 (1), AEAD). According to the OSCE, the transparency of the system is restricted by the rule in the Local Elections Act allowing parties and coalitions to arbitrarily decide which of their candidates on the list will be deputies; rather, the order of the candidates should be determined beforehand.

4.14.5.3. Blank Resignations. – The Constitutional Court of Serbia ruled as unconstitutional the provisions of the Local Elections Act introducing the institute of “blank” resignations (Arts. 47 and 43). It held that, like any other public office, the office of a city or municipal councillor may always be terminated at the will of its holder, but that this will has to correspond to the real will of the councillor and has to be freely expressed. In situations in which the submitter of an election list independently decides if and when s/he will “activate” a blank resignation signed in advance, the resignation does not constitute an act of free will by the councillor. The political parties’ legal possibility of disposing of the councillors’ mandates as they see fit provides them with the opportunity to subdue the local government, assume the role of the electorate and usurp sovereignty from the citizens in contravention of the Constitution. The disputed provisions also allowed the submitter of an election list to arbitrarily distribute the won seats to the candidates on the list and not according to the order of the candidates on the list. In the view of the Court, this provision introduced a form of indirect elections at the local level, where the submitters of the election lists appeared as “middlemen” between the voters and their representatives after the vote.

4.14.5.4. Cessation of Terms in Office. – The Constitutional Court of the Republic of Serbia, acting at its own initiative, declared unconstitutional the provisions in the AEAD, under which the term of office of a deputy shall also cease if the political party or another organisation on whose election list s/he was elected is deleted from the register. In the opinion of the Constitutional Court, the right to stand

487 Sl. glasnik RS, 57/03.
for elections is an individual right exercised by citizens under the Constitution itself (Art. 42 of the then Serbian Constitution) and cannot be conditioned by membership in a political party, wherefore a deputy elected on a party list cannot lose his or her seat in Parliament if s/he is no longer a member of that party. This Constitutional Court decision provoked much criticism that it encouraged horse trading as some non-parliamentary parties gained seats in parliament after it was passed. The 2006 Constitution introduces a mechanism aimed at avoiding the application of this Constitutional Court decision. It allows a deputy to irrevocably place his or her mandate at the disposal of the political party at the proposal of which s/he was elected a people’s deputy in accordance with the law (Art. 102 (2)).

4.14.5.5. Legal Protection. – According to the European Court of Human Rights, electoral and political rights are not “civil rights” in the sense of the right to a fair trial in Article 6 of the European Convention, and guarantees of a fair trial are not applied to the procedures following the revision of legality of the conduct of elections.

Election laws provide for a basic legal remedy that ensures legal protection in the electoral process – the complaint that each voter or participant in the election may lodge with the competent election commission. The AEAD lays down that a complaint shall be filed with the Republican Electoral Commission for “a violation of the electoral right during the elections or irregularities in the procedure of nomination or election” (italics added) (Arts. 95 and 52, LEA). Legal protection is linked to the period in which the elections are being held and solely applies to the protection of the right to vote in this process. It does not include the protection of the right to vote outside the election process, e.g. the protection of the passive right to vote in case of the early termination of mandates.

The 24-hour deadline for submitting complaints on an election board decision is reckoned from the moment the decision is reached (Art. 95, AEAD and Art. 52, LEA). Such a short deadline gives rise to concern as the right of complaint may easily be lost in the event the complainant is not informed of the decision on time.

Neither law, however, lays down the rules according to which election boards are to deal with complaints. This results in lack of uniformity with regard to establishing the facts, use of evidence and, in particular, observance of the adversarial principle, which is in contravention of the rule of law and creates legal insecurity.

The electoral statutes provide also for the possibility of appeal against the decisions of the competent electoral commissions by which a complaint has been

488 See Report 2005, I.4.14.5.4 for a more detailed explanation of the Constitutional Court decision.
491 Provisions of the Election of Parliamentary Deputies Act are accordingly applied to the presidential election procedure (Art. 1, Act on the Election of the President of the Republic).
rejected or disallowed: to district courts in the case of local elections (Art. 54, LEA) and to the Supreme Court in the case of parliamentary and presidential elections (Art. 97, AEAD). Appeals to the highest court instances of the regular judicial system are lodged through competent electoral commissions. The laws prescribe that procedures before courts are urgent – decisions are taken within 48 hours since the receipt of an appeal (Art. 97 (5), AEAD and Art. 54 (4), LEA). The AEAD prescribes that the Supreme Court shall decide on the appeal by applying provisions of the law regulating administrative proceedings (Art. 97 (4)).

Under the Constitutional Court Act, motions to review election disputes may be filed with the Constitutional Court within fifteen days from the day the challenged election dispute ended. The whole part of the Act devoted to the decision making on these matters is unclear and inapplicable in the present political circumstances given that the Act foresees that “(T)he Constitutional Court shall annul the whole election procedure or part of the procedure, which shall be precisely specified, in the event an election procedure irregularity that significantly affected the election results has been proven” (Art. 77). This provision may lead to additional legal uncertainty of the election process. It is very difficult to imagine the Constitutional Court annulling elections and the whole election procedure being repeated.

4.15. Special Protection of the Family and the Child

Article 23, ICCPR:

1. The family is the natural and fundamental grouping of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognised.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24, ICCPR:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

492 Sl. glasnik RS, 109/07.
Legal Provision Related to Human Rights

Article 12, ECHR:

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 5, Protocol No. 7 to the ECHR:

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

4.15.1. Protection of the Family

The Constitution of Serbia affords special protection to families, mothers, single parents and children (Art. 66 (1)), which is regulated in detail by laws, notably the Family Act. Under the Constitution, mothers shall be provided with special support and protection before and after childbirth (Art. 66 (2)).

Under the Family Act (FA), the family enjoys special protection of the state and everyone is entitled to the respect of his/her family life. These principles are elaborated in detail by a number of provisions. The Act also regulates marriage and marital relations, extra-marital relations, the parent-child relationships, adoption, foster care, guardianship, child support, property relations in the family, protection from domestic violence, proceedings related to family relationships and personal names (Art. 1).

The Family Act does not define family. This approach is not in keeping with the interpretations of the Convention on the Rights of the Child by the Committee on the Rights of the Child and has led to a number of problems in practice.

The Act devotes special attention to protection from domestic violence. Under Article 197, domestic violence entails conduct of a family member endangering the physical integrity, mental health or tranquillity of another family member. The Act details the actions and conduct especially qualified as domestic violence and lists those considered family within the meaning of paragraph 1 of this Article.

Violence protection measures are set by the competent court which may pronounce one or more measures temporarily prohibiting or restricting personal relationships between family members (Art. 198 (1)).

Marriage, the family and family relations are also protected by the Criminal Code, which incriminates both violations of family duties, such as the non-payment of child support (Art. 195) and desertion or leaving of a family member who is unable to care for himself in dire circumstances (Art. 196).

493 Sl. glasnik RS, 18/05.
495 Sl. glasnik RS, 85/05, 88/05, 107/05, 72/09 and 111/09. Chapter XII, Offences Relating to Marriage and Family, Arts. 187–197.

209
The crime of domestic violence (Art. 194) includes insolent and ruthless behaviour, as well as endangering the tranquillity of a family member, which is definitely a commendable provision. However, the maximum penalty of one-year imprisonment was definitely not a good solution particularly in view of the rise in domestic violence in Serbia in the past few years, and the 2009 amendments to the Criminal Code\textsuperscript{496} increased the penalties to three years’ imprisonment. The aggravated form of the crime, committed if weapons or dangerous tools have been used or if grave bodily harm or serious health damage has occurred, as well as if the act was committed against a minor, or if it has resulted in death of a family member (paras. 2, 3 and 4), now also carries heavier penalties. Perpetrators of domestic violence are, however, in practice usually sentenced to penalties bordering on the legal minimum and it remains to be seen whether increasing the legal minimum will impact on the courts’ penal policy.

The Criminal Code is compatible with the FA and incriminates violations of the protective measures pronounced against the perpetrator of domestic violence by the court in accordance with the FA. The Criminal Code provision, envisaging fines or maximum six-month imprisonment for violations of protective measures, was amended in 2009 and offenders shall now be sentenced to between three months and three years in prison. The amendments also allow the court to simultaneously fine the perpetrator and sentence him/her to prison. The new provisions may lead to suppressing domestic violence and fewer violations of the protective measures.

Amendments to the Criminal Code allow replacement of a prison sentence under one year by house arrest. Given that this form of enforcing a penalty is in contravention of the purpose of punishing a perpetrator of domestic violence, the legislator explicitly states that this provision shall not apply to perpetrators of crimes against marriage or family who live with the victims.

\textbf{4.15.2. Marriage}

The Constitution guarantees the right of all to decide freely on entering or dissolving a marriage, the equality of spouses during a marriage and when contracting or dissolving it. It equates extramarital unions and marriage in keeping with the law and guarantees the equality of children born in and out of wedlock (Art. 62 (1, 3–5)).

The Constitution and the FA stipulate that the future spouses need to be of different sex and prescribe marriage of people of the same sex as a reason for the absolute nullity of a marriage (Art. 62 (2), Constitution and Art. 3 (1), FA). ECtHR case law and its judgements on marriages of homosexuals and transsexuals are not uniform.\textsuperscript{497} However, although it has not once ruled that homosexuals had the right

\textsuperscript{496} Sl. glasnik RS, 72/09.
to marry, the Court has been interpreting Article 12 provisions with increasing flex-
ibility, tending to allow marriages of transsexuals.\textsuperscript{498}

The BCHR in 2005 filed a motion with the Constitutional Court of Serbia to
review the constitutionality of Article 4 (1) of the FA, which defines extramarital
unions only as longer-lasting unions of persons of different sexes. This definition of
an extramarital union places same-sex partners in such unions at a much greater dis-
advantage because they do not have access to many of the rights guaranteed extramarital partners, including the rights to alimony, joint property and protection from
domestic violence. Same-sex partners have thus become victims of discrimination.
In the case \textit{Karner v. Austria},\textsuperscript{499} the ECtHR took the view that partners of the same
sex must be enabled enjoyment of specific spousal rights. The Constitutional Court
of Serbia this year rejected the BCHR initiative, but concluded that the concept of
an extramarital union derives from the concept of marriage, which is defined as a
union of persons of different sexes. It thus found that the provision under which
an extramarital union is also defined as a union of persons of different sexes is not
unconstitutional.\textsuperscript{500}

Although the CC does not explicitly mention spousal rape, it is included in
the crimes against marriage and family judging by the descriptions of crimes in
Article 194. Spousal rape should have been explicitly defined or highlighted in the
provisions on domestic violence.\textsuperscript{501}

\textbf{4.15.3. Special Protection of the Child}

\textbf{4.15.3.1. General.} – The Family Act lacks both the definition of a child and
provisions on the status of children. Under the Constitution, adulthood is attained at
the age of 18 (Art. 37).

Serbia (SFRY at the time) ratified the Convention on the Rights of the Child
of 1990 (Act on Ratification of the UN Convention on the Rights of the Child).\textsuperscript{502}

\begin{footnotes}
\item[500] See the Statement issued after the 31\textsuperscript{st} session of the Constitutional Court, held on 22 July
nik–ustavno–suda.
\item[501] More on FA provisions related to marriage, divorce, the spouses’ property relations and pro-
cedings related to family and marital relations in \textit{Report 2005}, 1.4.15.2.
\item[502] \textit{Sl. list SFRJ (Međunarodni ugovori)}, 15/90 and 4/96 (withdrawing reservations made at the
signing) and \textit{Sl. list SRJ}, 2/97. Implementing the obligation undertaken by the ratification of
the Convention, the FRY authorities in 1994 submitted to the Committee for the Rights of
the Period 1990–1993}. The Committee on the Rights of the Child asked the FRY Government
another 32 questions, which the Government responded to in writing, refusing to address them
orally according to the usual procedure. The following report was due in 1998. It was submit-
ted in 2007.
\end{footnotes}

The Family Act regulates the parent-child relationships, notably the family status of the child, determination of paternity and maternity (Arts. 42–59) and elaborates the rights of children under parental care (Arts. 59–66). The rights of the child are elaborated in Chapter 3 of the Act, independently of parental rights and duties detailed in other provisions. The rights of the child comprise: right to know who his/her parents are, the right to live with his/her parents, the right to personal relationships, the rights to development and education and right to opinion. These provisions allow the child to take an active part in proceedings on his/her rights (Art. 65 (4)). Parental rights are defined through their obligations to the child and they have the right and duty to care for the personality, rights and interests of their child.

The Family Act expands the volume of the rights of the child. It entitles the child to institute proceedings to protect his/her rights and with respect to parental custody (Art. 261). In addition to the child, such proceedings may also be initiated by the child’s parents, public prosecutor or guardianship authority. All the rights of the child that are recognised by the Family Act are protected (para. 2). Also, Article 263 helpfully allows all child, health and educational institutions, social care institutions, judicial bodies, associations and citizens to notify the public prosecutor of reasons for the protection of the rights of the child (para. 3).


A problem still appearing in practice and highlighted in the Committee’s Concluding Observations regards discrimination against children belonging to vulnerable groups (Roma children, children with special needs, children of returnees, children belonging to minorities, children without birth certificates). These children face discrimination, especially with respect to access to education and health care.

503 Sl. list SRJ (Međunarodni ugovori), 7/02.
504 Sl. glasnik RS (Međunarodni ugovori), 1/10.
505 More on FA provisions on the exercise of parental rights and supervision, on the protection of children without parental care, on the property of the child and the child’s right to enter into legal transactions in Report 2005, I.4.15.3.2.
The National Assembly adopted a general Anti-Discrimination Act in 2009 and its implementation is expected to improve the status of children as well. The Act specifically prohibits discrimination against children in Article 22. The Act on the Basis of the Education System also prohibits discrimination (Arts. 3 and 44). The latter law lays the foundations for developing inclusive education (Art. 6) but does not eliminate special schools, which shall from now on be attended only by children with grave disabilities and disorders who cannot attend mainstream schools. The 2010 Preschool Education Act also prohibits discrimination against children (Art. 3(4)). Under the provision, all activities endangering, discriminating against or segregating a child or a group of children on any grounds shall be prohibited in accordance with the Act. Under Article 4(2(1)), all forms of preschool education shall be equally available to all children without discrimination or segregation on grounds of sex, social, cultural, ethnic, religious or other affiliation, place of permanent or temporary residence, financial status or health, developmental difficulties or disorders or special needs, or on other grounds in keeping with the law. The Act also includes provisions on the inclusion of children with developmental difficulties in mainstream groups (Art. 34). All of the above mentioned three laws explicitly prohibit distinction on grounds of health, developmental difficulties and disabilities. The legislator commendably decided to explicitly prohibit discrimination against children with special needs, whose education is an outstanding problem in Serbia. It remains to be seen how the improvement of legislation prohibiting discrimination will affect the actual exercise of rights by vulnerable groups of children. It is still too early to assess the effects of these laws, as they were adopted recently.

The Committee was also especially concerned by the fact that corporal punishment in the family remained lawful, wherefore a large number of domestic violence cases went unreported and the provisions on domestic violence, which the Committee welcomed, were not being applied. The Committee has constantly interpreted the Convention on the Rights of the Child as requiring of member states to prohibit all forms of corporal punishment of children. The CoE Parliamentary Assembly in 2004 took the view that “any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity” and that “the fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults”. The Parliamentary Assembly also noted that both the European Commission of Human Rights and the European Court of Human Rights have emphasised that banning all corporal punishment does not breach the right to private or family life or religious

---

507 Sl. glasnik RS, 72/09.
508 Sl. glasnik RS, 18/10.
509 For a detailed overview of the fulfilment of the Committee recommendations in 2009 see the Centre for the Rights of the Child Report available in Serbian at www.cpd.org.rs.
freedom. Article 3(4) of the Preschool Education Act prohibits all kinds of violence, abuse or neglect. The Act on the Basis of the Education System devotes a whole article (Article 45) to the prohibition of violence, abuse and neglect in much greater detail than the provision in the Preschool Education Act. Article 45 of the Act on the Basis of the Education System explicitly prohibits corporal punishment of children in schools; the Preschool Education Act does not explicitly mention this prohibition, although it could be subsumed under the above generally formulated prohibition of violence, abuse and neglect. Given the importance of this ban, it would be good if the Preschool Education Act included a more precise provision, like the one in Article 45 of the Law on the Basis of the Education System. A serious shortcoming the Serbian legislation in general is that it still does not proscribe corporal punishment of children in the family. The Labour and Social Policy Minister established a working group to draft amendments to the Family Act and explicitly ban corporal punishment of children in the family. The working group submitted the proposed amendments to the Council for the Rights of the Child in late December 2009, but these amendments were not adopted even by the end of 2010.


The CC incriminates a number of sexual offences and envisages harsher sentences in the event such crimes were committed against children (Arts. 178, 179, 181, 184). The CC also defines specific sexual offences which afford particular protection to children: sexual intercourse with a child (Art. 180), procuring and enabling sexual intercourse (Art. 183), showing, obtaining and possession of pornographic material and use of minors in pornography (185). The 2009 amendments to the CC incriminate two new offences with the aim of protecting children from sexual exploitation: inducing a minor into being present during a sexual activity (Art. 185a) and use of the computer network or other forms of technical communication to commit sexual offences against a minor (Art. 185b).

The UN Committee for the Rights of the Child in 2010 reviewed Serbia’s Initial Reports on the implementation of two Optional Protocols to the Convention on the Rights of the Child and issued its Concluding Observations, in which it recommended specific practical measures to improve the implementation of the obligations in the Protocols. With respect to legislation, the Committee reminded Serbia that its legislation must satisfy its obligations in the Optional Protocol with

512 See Report 2006, I.4.15.3.1.
513 UN doc. CRC/C/OPSC/SRB/CO/1 and CRC/C/OPAC/SRB/CO/1.
regard to the sale of children, prostitution of children and child pornography above all in view of the fact that sale of children is a concept similar to trafficking in persons, which is incriminated by Article 388 of the CC, but also has some specific attributes the legislation does not take into account. The CC incriminates the trafficking in minors for adoption purposes in a separate Article (Article 389), but the very title of the article (Trafficking in Minors for Adoption Purposes) indicates that the offence covers just trafficking for adoption purposes and not the other potential goals of trafficking in minors laid down in the Optional Protocol (sale of organs, sexual exploitation, forced labour) as well. The Committee also recommended that Serbia take all the necessary measures to ensure that the definition of improperly inducing consent in cases of adoption is incorporated into the penal legislation. It should be mentioned in this context that the Strategy for Combating Trafficking in Humans in the Republic of Serbia also does not classify children as a separate category and that the Strategy measures and activities apply to both adult and child victims of trafficking in humans. The Government of Serbia, however, in March 2010 adopted the Action Plan for the Implementation of the National Strategy for the Prevention and Protection of Children from Violence (2010–2012), which envisages the drafting and adoption of a National Strategy for Combating Trafficking in Children.

The Optional Protocol on Participation of Children in Armed Conflicts, which Serbia also ratified, guarantees the protection of children in international and non-international armed conflicts and prohibits compulsory recruitment of persons with child status.

Under Serbian law, military duty comprises several successive stages. The first stage entails recruitment, the second the duty to perform military service (which may be substituted by civilian service, although persons serving civilian service are also treated as military conscripts), while the third stage comprises reserve force duties.

The Act on Military, Work and Material Obligations stipulates that a person shall be recruited in the calendar year in which he turns 18 (Art. 14), which means that some persons are recruited before they come of age. The minimum age at which a person may be drafted is satisfactory, as a military conscript cannot be drafted or sign up for military duty before the calendar year in which he turns 19, i.e. minors cannot be physically integrated in the armed forces. It would have been even better had the legislator decided not to permit registration in the military records of persons before they come of age.

514 *Službeni glasnik RS*, 111/06.
516 Since Article 38 of the Convention on the Rights of the Child sets the minimal age limit for participation in the armed conflicts at 15 years of age, the Protocol demands that states parties should raise the age limit given in this article of the Convention related to voluntary recruitment, leaving to the states to set this limit themselves.
517 *Sl. glasnik RS*, 88/09 and 95/10.
The prior legislation allowed the recruitment for the armed forces of persons in the calendar year in which they turn 17 at their own request or in case of a state of war and at the order the President of the state. This provision was elaborated in the declaration Serbia submitted on ratification of the Optional Protocol. As the legislation was amended in the meantime, the Committee for the Rights of the Child recommended in its Observations on the Initial Report on the implementation of this Protocol that Serbia proceed to amend the declaration made upon ratification of the Protocol, in order to reflect the new legislation.

Moreover, although the Committee noted that there were no armed groups distinct from the armed forces of the state, it expressed concern that there was no explicit provision criminalising the recruitment of children by such groups and recommended that an explicit provision to that effect be included in the Criminal Code.

4.15.3.2. Protection of Children from Abuse and Neglect. – The Government of Serbia in August 2005 adopted the General Protocol for Protection of Children from Abuse and Neglect with the aim of facilitating the reporting and registration of all forms of child abuse and neglect.\textsuperscript{518} The General Protocol incorporates the definition of child abuse adopted by the World Health Organisation in 1999.\textsuperscript{519} According to the general definition,

Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power.

The concepts in the definition are further elaborated in the Protocol, also in accordance with the definitions endorsed by the WHO.

Combating child abuse and neglect necessitates effective cooperation amongst various authorities. The General Protocol is merely a fundamental, basic document and it envisages that the five relevant ministries (charged with education and sports, justice, internal affairs and labour and social policy) shall each enact protocols regulating in detail issues related to child abuse and neglect within their jurisdictions. The normative system was finally completed in 2009, when the Justice Ministry, too, enacted such a protocol.\textsuperscript{520}

The Government of the Republic of Serbia adopted the National Strategy for Preventing and Protecting Children from Violence. The Strategy lays down measures for achieving the two main strategic goals: development of a safe environment (right of all children to be protected from all forms of violence) and establishment

\textsuperscript{518} The General Protocol is available in Serbian at http://www.inkluzija.org/biblioteka/Opstiprotocolzastitudeceodzlostavljanjaizanemarivanja.pdf.
\textsuperscript{520} Centre for the Rights of the Child Report, www.cpd.org.rs.
of a national system for preventing and protecting children from all forms of abuse, neglect and exploitation.

The 2009 amendments to the Criminal Code\textsuperscript{521} improve the criminal legal protection of children by laying down stricter sentences for a large number of criminal offences, such as for abduction of a child in Article 191 of the CC, for sexual intercourse with a child in Article 180 of the CC and for showing pornographic material and child pornography in Article 185, etc. The offence in Article 185 has been expanded to include the procurement and possession of pornographic material. The amendments introduce two new criminal offences in the group of offences against sexual freedoms that aim to protect minors (inducing and coercing a minor to attend a rape or intercourse with a minor or a similar sexual act and use of computer networks or other technological means of communication for the commission of sexual offences against minors).

The amendments to the Criminal Code raise the age limit in the provision incriminating trafficking in children from 14 to 16, but children between 16 and 18 years of age still are not covered by this criminal offence.

4.15.3.3. Draft Act on the Protector of the Rights of the Child. – The Government of Serbia on 14 December 2007 submitted to the Assembly the Draft Act on the Protector of the Rights of the Child. Under the Draft, the main duty of this independent state authority will be to protect and work on promoting and spreading knowledge about the rights of the child (Art. 1). The Protector shall be entitled to submit legislative initiatives and launch proceedings for reviewing the constitutionality and legality of general enactments (Arts. 7 and 8) and shall be elected by the National Assembly (Art. 18).

The Protector shall be entitled to access facilities and have insight in the care of children living or accommodated with natural or legal persons and shall have access to facilities in which children deprived of liberty are residing (Art. 10). The Protector shall also be entitled to access all information related to the rights and protection of children notwithstanding the degree of its confidentiality (Art. 11).

Under the Draft, the Protector shall be accountable for the consistent application of the provisions in the Convention on the Rights of the Child entitling children to the right to free expression.

The Act was not adopted by the end of 2010. The Committee on the Rights of the Child recommendation – that Serbia adopt the Law on the Ombudsman for the Rights of the Child or that the Deputy Ombudsman for children be appointed at the national level – was, however, fulfilled in 2008, when Tamara Lukšić Orlandić

\textsuperscript{521} \textit{Sl. glasnik RS}, 72/09.
was appointed Deputy Protector of Citizens for the rights of the child within the Of-
fice of the Protector of Citizens.

4.15.3.4. Protection of Minors in Criminal Law and Procedure. – A Juvenile
Justice Act enacted in 2005\textsuperscript{522} came into force on 1 January 2006. The Act com-
prises criminal law provisions on underage perpetrators of crime and legal protec-
tion of minors, i.e. substantive and procedural criminal law, including the relevant
implementing bodies, criminal proceedings and enforcement of criminal sanctions
against these offenders.

The Act envisages the following disciplinary measures: warning and guid-
ance, court admonition, increased supervision, increased supervision by parents,
adoptive parents or guardians, increased supervision in the foster family, increased
supervision by the social welfare agency, increased supervision with daily attend-
ance in a juvenile rehabilitation and educational institution, remand to a rehabilita-
tion or correctional institution, or a special institution for treatment (Art. 11).

The NGO report on the rights of the child submitted to the Committee for
the Rights of the Child\textsuperscript{523} noted the problem arising with respect to specific disci-
plinary measures, especially those institutional in character – their duration is rela-
tively indeterminate given that the law specifies only the minimum and maximum
duration of such measures.

Detention of a juvenile is an exceptional measure (Arts. 67–68, Juvenile
Justice Act), to prevent escape, commission of a criminal offence, destruction of
evidence or influencing of witnesses or accomplices.\textsuperscript{524} The detained minor must
be separated from the adult prisoners on remand, but the juvenile judge can rule
that the minor can be held in custody with adult prisoners on remand in case of
prolonged isolation and if there is a possibility to place the minor with an adult that
will not have a harmful influence on the minor (Art. 68, Juvenile Justice Act). How-
ever, this provision is not in keeping with the ICCPR, which does not allow excep-
tions with regard to isolation of detained minors from adults in detention facilities
(Art. 10, ICCPR).\textsuperscript{525}

Under Article 66 of the Juvenile Justice Act, the juvenile judge may remand
a juvenile during the preliminary proceedings to a home, rehabilitation or similar
institution, under supervision of a social care agency or placement in a foster fam-
ily, if this is necessary to separate the juvenile from his current environment. The
Alternative Report notes that the juvenile courts have rarely made use of this legal
provision and still tend to place juveniles in detention much too often.\textsuperscript{526}

\textsuperscript{522} Sl. glasnik RS, 85/05.
\textsuperscript{523} See Report 2008, I.4.15.3.1.
\textsuperscript{524} See Report 2006, I.4.15.3.3.
\textsuperscript{525} More on the provisions in this Act in Report 2005, I.4.15.3.3.
Under Article 166 of the Juvenile Justice Act, the Justice Ministry and Supreme Court of Serbia\textsuperscript{527} shall establish a Council to monitor and advance the work of authorities criminally prosecuting juveniles and enforcing juvenile criminal penalties. The Council was at long last set up in 2009, although Article 166 stipulates that the Council shall be established and its Rules of Procedure adopted within six months from the day the Act comes into force. The Act was adopted back in 2005.\textsuperscript{528}

The Act on Misdemeanours also comprises provisions on juvenile offenders (Chapter VIII). A juvenile offender under 14 may not be subjected to misdemeanour proceedings (Art. 63). If the misdemeanour was committed due to lack of obligatory supervision by the parents, adoptive parents or guardians, the latter will be punished as if they themselves had committed the misdemeanour (Art. 64 (1)). Disciplinary measures are the only sanctions that may be pronounced against a younger juvenile who perpetrated a misdemeanour (Art. 65). Both disciplinary measures and other penalties may be pronounced against older juveniles (Art. 65).

4.15.3.5. Birth and Name of the Child. – To ensure that every child is registered immediately after birth, the Official Birth, Death and Marriage Registries Act prescribes oral or written notification of the Registry Office in the place of the child’s birth. The birth of a child must be reported within 15 days. If the parents are unknown, the birth is recorded by the Registry Office of the district in which the child was found and on the basis of a decision of the competent child welfare agency.

The 2009 Official Birth, Death and Marriage Registries Act does not comprise an explicit provision allowing the registration of a child, whose parents have not been registered in the official registries. This problem has been preventing these children from exercising a whole range of rights. If there is good will, the registration of such children will be possible by invoking the provision allowing for the registration of children of unknown parents (which is what parents not registered in the official registries essentially are in terms of the law) and assigning them the personal identification numbers prerequisite for realising numerous other rights. It would, however, be much better not to leave the matter to the interpretation of the authorities but to explicitly and clearly resolve the problem of registering such children.

A child over 15 years of age and capable of reasoning is entitled insight in official registries data regarding him or her.

Having a name (first and last names) is the right of every individual. The name of a child is chosen by both parents and is entered into the Register of Births

\textsuperscript{527} The Supreme Court of Cassation took over the duties of the Supreme Court of Serbia in the new judicial network that has been operating since the beginning of 2010, but not all laws have been amended to reflect the change.

\textsuperscript{528} \textit{Sl. glasnik RS}, 89/09.
within two months of birth. Under the Serbian FA, a child may not be assigned a name that is derogatory, offends morality or is in contravention of the customs and opinions of the community. In the event that the parents do not agree on a name within the set time period, the child is named by the child welfare agency. A child bears the last name of one or both parents. In Serbia, children of the same parents may not bear different last names. The parents may change the name of a child over ten only with the child’s consent (Arts. 342, 344 (1, 3 and 4), 345 and 346).

4.16. Right to Citizenship

Article 15, Universal Declaration of Human Rights:
Everyone has the right to a nationality.
No one shall be arbitrarily deprived of his nor denied the right to change his nationality.

Article 24 (3), ICCPR:
Every child has the right to acquire a nationality.

4.16.1. General

The Universal Declaration of Human Rights states the right of every individual to have a nationality and prohibits arbitrarily depriving a person of nationality or of the right to change it (Art. 15). Though the ICCPR does not refer specifically to this right, its Article 24, which treats the status of children, guarantees in para. 3 the right of every child to acquire a nationality. The provision only obliges states to enable new-born children to acquire a nationality, not necessarily to grant citizenship to every child. National legislation regulates the manner and procedure for acquiring nationality and it must not discriminate against new-born children on whatever grounds.

The European Convention on Nationality adopted within the CoE, sets the basic principles, rules and recommendations concerning citizenship. Serbia does not have a law on personal names; provisions on personal names are included in Chapter XI of the Family. The main principles of the European Convention on Nationality are that each state party shall determine under its own law who are its nationals and that this right, if consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality, shall be accepted by other states (Art. 3). Under the Convention, everyone has the right to a nationality, statelessness shall be avoided, no one shall be arbitrarily deprived of his or her nationality and neither marriage nor dissolution of a marriage between a national of a state party and an alien shall automatically affect the nationality of the other spouse (Art. 4). The rules of a state party on nationality shall not contain distinctions or include any practice which amounts to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin; a state is also prohibited from discriminatory treatment.
has not signed the Convention yet, although the Convention was mentioned by the proposers of the laws in their explanations of the Serbian Citizenship Act adopted in December 2004,\textsuperscript{532} and of the Act Amending the Serbian Citizenship Act\textsuperscript{533} adopted on 24 September 2007.

The Constitution does not guarantee the right to citizenship, an attitude which is commonplace and generally accepted. The Constitution guarantees the right to citizenship of the Republic of Serbia only to a child born in the Republic of Serbia, unless s/he fulfils the conditions for acquiring the citizenship of another state (Art. 38 (3)). Under Article 38 (2), a citizen of the Republic of Serbia “may not be expelled or deprived of citizenship or the right to change it”.

Acquisition and termination of Serbian citizenship are regulated by the Serbian Citizenship Act.

The Serbian Assembly in September 2007 adopted the Act Amending the Serbian Citizenship Act\textsuperscript{534} to address the effects of Montenegro’s independence and the dissolution of SaM.\textsuperscript{535}

\textbf{4.16.2. Acquisition of Serbian Citizenship}

The Serbian Citizenship Act prescribes the prerequisites, requirements, registry and procedures for acquiring and terminating Serbian citizenship. The Citizenship Act also regulates the continuity of citizenship of citizens of Serbia, facilitates the acquisition of Serbian citizenship by specific categories of people, and allows for dual and even multiple citizenship in many more instances than had previously been envisaged by the law. The Act allows for the registry of citizenship only in birth registries notwithstanding the manner in which it was acquired, and addresses avoidance of statelessness. Generally, it can be concluded that the Act incorporates the principles of the European Convention on Nationality, which is particularly striking in certain provisions that had been absent from previous citizenship legislation.

The Citizenship Act prescribes that citizenship may be acquired by: origin, birth, naturalisation and international agreements (Art. 6).\textsuperscript{536}

Article 23 of the Serbian Citizenship was amended by Article 8 of the 2007 Act Amending the Citizenship Act. Para 1 of the original Article provided that citizenship would be granted to Serbs or persons belonging to other nations or ethnic

\textsuperscript{532} Sl. glasnik RS, 135/04.
\textsuperscript{533} Sl. glasnik RS, 90/07.
\textsuperscript{534} Ibid.
\textsuperscript{535} See Report 2009, I.4.17.4.
\textsuperscript{536} More on specific provisions on acquisition of Serbian citizenship in Reports 2004, 2005, I.4.16.2.
communities in the territory of Serbia, who are not its permanent residents, if they are of age, able-bodied and submit a written statement acknowledging they consider Serbia their own state. Under the amendments, Serbs without permanent residence in the territory of the Republic of Serbia are entitled to acquire citizenship under the above conditions and need not be released from foreign citizenship, while persons belonging to other nations or ethnic communities in the territory of the Republic of Serbia may be granted Serbian citizenship under the same conditions (para. 3). Para 2 of the Article has remained the same: it provides for the acquisition of Serbian citizenship under the same conditions to persons born in another former SFRY republic, who had the citizenship of that republic or were citizens of another state created in the territory of the former SFRY and are residing in the territory of Serbia as refugees, expelled or displaced persons or have fled abroad.

Article 23 of the Citizenship Act will also apply to Montenegrin nationals whose Montenegrin citizenship shall not terminate as acquisition of citizenship on these grounds shall no longer require release from hitherto citizenship. A person will therefore be able to hold both Serbian and Montenegrin citizenships in the future.537

Under Article 27 of the Serbian Citizenship Act, citizenship can be terminated by: release from citizenship, renunciation, acquisition of citizenship of the other member state, by international agreement.538 The 2007 Act Amending the Citizenship Act scrapped the acquisition of the other member-state’s citizenship (Art. 10 (1)) as grounds for termination of citizenship and thus Article 35 setting out when citizenship can be terminated on these grounds (Art. 13).

The Ministry of Internal Affairs shall be charged with the procedure of conferring and terminating citizenship and the applications will be reviewed urgently (Art. 38).539

4.17. Freedom of Movement

Article 12, ICCPR:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

537 Official talks on dual citizenship and the Dual Citizenship Agreement between Serbia and Montenegro officially began in late September 2008, but the two parties failed to reach agreement by the end of 2010. Of the former SFRY countries, Serbia has a Dual Citizenship Agreement with Bosnia-Herzegovina, concluded in 2002 by the then FRY.


539 The provision on the emergency adoption procedure is in conformity with Article 10 of the European Convention on Nationality, which requires that all citizenship applications are processed within a reasonable time.
3. The above-mentioned rights shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

**Article 2, Protocol No. 4 to the ECHR:**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in para. 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

**Article 3**

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the state of which he is a national.

**Article 4**

Collective expulsion of aliens is prohibited.

**Article 1, Protocol No. 7 to the ECHR:**

1. An alien lawfully resident in the territory of a State shall not be expelled there from except in pursuance of a decision reached in accordance with law and shall be allowed:

   (a) to submit reasons against his expulsion,

   (b) to have his case reviewed, and

   (c) be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under para. 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

4.17.1. General

Under the Constitution, everyone shall have the right to free movement and residence in the Republic of Serbia and the right to leave it and return to it (Art. 39 (1)). Unlike Article 12 (1) of the ICCPR and Article 2 (1) of the Protocol 4 to the
ECHR on freedom of movement and free choice of residence, the Constitution does not require that persons protected by this provision are lawfully within the territory of Serbia.

The Constitution leaves the detailed regulation of the entry and residence of aliens in the Republic of Serbia to the law. The Serbian Assembly adopted the Aliens Act in late October 2008,\textsuperscript{540} the enforcement of which began on 1 April 2009.

Authors fully respected both the Schengen Agreement and the Convention implementing the Schengen Agreement, thus laying legal grounds for cooperation amongst internal affairs authorities.

The Aliens Act regulates the conditions for the entry, movement and residence of aliens in the Republic of Serbia, and the powers and duties of the state administration thereto (Art. 1). The Act shall not apply to aliens granted asylum in Serbia unless otherwise specified by the law, to aliens enjoying privileges and immunity under international law insofar as they are exempted from specific provisions of the Aliens Act by virtue of such privileges and immunities, and aliens with the status of refugees. Provisions of the 1954 Convention on the Status of Stateless Persons\textsuperscript{541} shall apply to persons without citizenship in the event they are more favourable than those of the Aliens Act (Art. 2).

An alien may enter and stay in Serbia under the conditions set forth by the Act with a valid travel document in which a visa or residence permit has been entered unless otherwise specified by the law or an international agreement (Art. 4). The movement or residence of an alien in a specific part of Serbia shall be prohibited or limited if so required to protect public order or security of Serbia and its citizens or pursuant to international agreements (Art. 5).

Article 10 of the Act lists which types of entry of foreign nationals into Serbia shall be deemed unlawful. Article 11 lists when an alien shall be denied entry into Serbia. Apart from the lack of a valid travel document and visa, if a visa is necessary (Art. 11 (1.1)), the Article lists seven other grounds for denying an alien entry into the country, \textit{inter alia}, if there are reasonable grounds to suspect that the alien will not stay in Serbia for the declared purposes (Art. 11 (1.8)), and the border police have full discretion to determine whether there is reasonable suspicion about the purpose of the alien’s stay in Serbia.

The Aliens Act further states that an alien may leave Serbia freely, but lists conditions under which the border police may temporarily prohibit an alien from departing the country (Art. 13).

Article 28 lists the conditions an alien needs to fulfil to be issued a temporary residence permit. Foreign citizens, who are victims of human trafficking, need not fulfil these conditions in the event their temporary residence is in the interest of conducting criminal proceedings and there are no obstacles in terms of Article 11

\textsuperscript{540} Sl. glasnik RS, 97/08.
\textsuperscript{541} Sl. list FNRJ (\textit{Međunarodni i drugi sporazumi}), 9/59.
Legal Provision Related to Human Rights

(1.6 and 1.8). If an alien does not have enough money to support himself or herself, s/he shall be provided with adequate accommodation, nutrition and basic living conditions (Art. 28 (5)).

The Act lists grounds for denying an alien further residence in or entry into Serbia (Art. 35) and grounds for terminating residence (Art. 36).

Article 37 sets out the conditions under which an alien may be approved permanent residence in Serbia, specifying that the detailed requirements shall be laid down by the minister charged with internal affairs (Art. 37 (9)). Article 39 lists the grounds on which a permanent residence request may be denied.

The Constitution provides that foreign citizens may be expelled only by a decision of a competent body, in a procedure stipulated by the law and allowing for appeal of the decision, but only when there is no threat of persecution on grounds of race, sex, religion, national affiliation, citizenship, membership in a particular social group, political opinions, or of serious violations of rights guaranteed by the Constitution (Art. 39 (3)).

Article 47 of the Aliens Act prescribes somewhat lesser protection of aliens facing expulsion from Serbia as it does not comprise the last grounds listed in the Constitution – serious violations of rights guaranteed by the Constitution. The Article further states that the prohibition of expulsion shall not pertain to aliens reasonably suspected of endangering Serbia's security or convicted of a grave crime by a final decision and thereby constituting a threat to public order. Notwithstanding this provision, however, an alien may not be expelled to a territory where there is a risk that s/he may be subjected to torture, inhuman or humiliating treatment or punishment, which is an international standard incorporated in Article 47(3).

Article 58 of the Aliens Act sets out that the competent authorities conducting the expulsion proceedings shall take into account the specific situation of an alien falling within the category of persons with special needs, such as minors, persons fully or partly deprived of working ability, children separated from their parents or guardians, persons with disabilities, the elderly, pregnant women, single parents and their underage children, or persons who had been exposed to torture, rape or other grave forms of psychological, physical or sexual violence. Under the Act, when undertaking official actions with respect to these persons, the competent authorities are duty bound to act in accordance with regulations on the status of persons with special needs and with international agreements.

Expulsion of an alien is a security measure also envisaged by Serbian criminal law (Art. 79 (1.8). CC). Expulsion of a foreigner from the country may be pronounced if an offender is under pronouncement of penalty or probation (Art. 80 (5). CC). When deciding on the measure, the court is to take into consideration the time and gravity of the offence, its motives, manner of commission and other circumstances for declaring an alien a persona non grata in Serbia (Art. 88 (2) CC). This measure may be pronounced for a period between one and ten years (Art. 88 (1) CC).
This security measure may not be pronounced against an offender enjoying protection in accordance with ratified international agreements (Art. 88 (4) CC).

4.17.2. Right to Asylum

Serbia ratified a number of international treaties directly or indirectly related to the issue of asylum, notably the 1951 UN Convention on the Status of Refugees and the 1967 Protocol thereto, the ICCPR, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the ECHR, the European Convention for the Prevention of Torture, Inhumane or Degrading Treatment or Punishment and the UN Convention on the Rights of the Child.

Under the Constitution, any foreign national with reasonable fear of persecution based on his race, gender, language, religion, national origin or association with some other group or political opinions, shall have the right to asylum in the Republic of Serbia (Art. 57 (1)).

The Asylum Act 542 came into force in April 2008. Although the adoption of the Act is a positive step towards improving the protection of asylum seekers, refugees and persons granted humanitarian protection (dubbed subsidiary protection in the Act) and the Act contains numerous guarantees protecting the rights of these persons, this law, like many others adopted in Serbia in the recent years, was put in the parliament pipeline without having undergone a proper public debate, which may be one of the reasons why some of its provisions are not fully in accordance with international standards.

According to the constitutional terminology, asylum is a concept comprising the provision of refuge (entailing refugee protection) and the provision of subsidiary protection. The Act, however, occasionally uses the word asylum where it is obviously referring only to refuge. For instance, Article 31 lists the reasons why asylum may be denied; however, only refuge but not subsidiary protection ought to be denied on those grounds given that subsidiary protection must be absolute when it entails protection from torture and inhuman or humiliating treatment or punishment.

Under the Act, the state may, *inter alia*, dismiss an asylum application by invoking the concepts of a safe third country and a safe country of origin, if the asylum seeker has the citizenship of a third state, if there is a possibility of him/her moving to a safe part of his/her country or if a third state has already granted him/her asylum (Art. 33). It is crucial that the state is in all these cases reassured that the protection the asylum seeker can enjoy in another state is truly effective; in any case, the state has to offer the individual the opportunity to refute the allegations about the safety of that other state in his or her case. The Asylum Act, however, does not always make such provisions.

An asylum application shall be dismissed if the asylum-seeker had earlier sought asylum in “another state abiding by the Geneva Convention” and been reject-

542 Sl. glasnik RS, 109/07.
ed and “the circumstances on which the application was based have not changed” in
the meantime (Art. 33 (1.5)). The danger in this provision lies in the possibility of
returning the asylum seeker to the state in which s/he may be persecuted. The state
ought to examine the assertions of every single asylum seeker and establish whether
their applications are founded or not, not just dismiss applications off-handedly.

The Act has a problematic provision under which the concept of a safe third
country is based on the state’s unilateral decision to invoke the jurisdiction of a
third state to decide on asylum applications instead of a bilateral agreement or with
the explicit consent of the state to receive his/her asylum application.

The decision to grant asylum is reached by special bodies established under
the Asylum Act, notably, the Asylum Office as the first-instance body and the Asy-
lum Commission as the second-instance body reviewing appeals of Asylum Office
decisions. The Asylum Office shall be part of the MIA (Art. 19), while the Asylum
Commission shall comprise members appointed by the Government (Art. 20).

Appeals of the Asylum Office decisions may be filed within 15 days, which is
better than the much too short eight-day period initially foreseen by the draft (even
15 days may not be enough given the asylum-seekers’ circumstances and the insuf-
ficient capacities of organisations providing them with legal aid). The Act, however,
does not provide for the suspensive effect of appeals. This shortcoming may have
extremely serious consequences.

Another deficiency of the Act is its failure to stipulate that the regime of ad-
ministrative silence shall not apply to the procedure for granting asylum and
that the first-instance procedure shall last until a first-instance decision is reached. The
Act ought to be amended by including a provision setting the deadline within which
decisions on asylum applications have to be reached.

Article 30 of the Act states that an asylum application shall be rejected as
unfounded if the seeker failed to provide true information. It should be borne in
mind that one cannot always expect full cooperation from an asylum seeker, not
necessarily because s/he has evil intentions but, rather, because of the adverse cir-
cumstances such persons are often living in, wherefore failure to provide true infor-
mation should not constitute grounds for refusing to provide protection.

4.17.2.1. Rights of Asylum Seekers, Refugees and Beneficiaries of Subsidi-
ary Protection. – These rights are regulated in Chapter VI of the Act and include
the right to residence, accommodation, fundamental living conditions, health care,
education. These provisions, too, suffer from shortcomings, the most significant of
which is that specific rights are guaranteed to persons granted the right to refuge but
not to beneficiaries of subsidiary protection. Article 42, for instance, guarantees the

543 Under Article 208 (2) of the Administrative Procedure Act “in the event an authority whose
decision may be appealed fails to reach a decision and notify the party thereof within the
prescribed deadline, the party shall have the right to appeal as if its application had been
rejected”.
right to protection of intellectual property, freedom of religion and specific rights in the area of the right to a free trial only to persons granted the right to refuge. The Act also ought to include a provision prohibiting the discrimination of asylum seekers and persons granted asylum vis-à-vis nationals of Serbia. It, however, guarantees non-discriminatory treatment only with respect to the mentioned rights in Article 42544 and, as mentioned, only to persons granted the right to refuge but not to asylum seekers and persons granted subsidiary protection vis-à-vis nationals of Serbia.

The state Asylum Centre is charged with accommodating asylum seekers.

4.17.2.2. Right to Family Reunion. – The right to family reunion is not regulated uniformly with regards to all categories of persons provided with protection as it should be. This right is envisaged for persons granted refuge (Art. 48) while persons granted subsidiary protection shall be entitled to this right “in accordance with regulations on the movement and residence of aliens” (Art. 49).545 Persons granted temporary protection shall have this right only in “justified cases” (Art. 50).

There is also a problem with the definition of “family member”. Under the Act, a family member shall signify an asylum seeker’s “underage child, adopted child or step-child who are unmarried, spouse in the event that the marriage was concluded prior to arrival in the Republic of Serbia, and the parent and adoptive parent legally obliged to support him or her” (Art. 2). Exceptionally, the law allows other persons to also be considered family members, especially if they had been supported by the person granted asylum. The whole concept of “family member” ought, however, to be interpreted more broadly and definitely include close relatives who had been the members of the household of the person granted asylum (especially if s/he had supported them), not only in exceptional circumstances. Excluding spouses of asylum seekers who married upon arrival in Serbia from the concept of “family member” is unjustified because the time when the marriage was concluded ought not to be relevant.

4.17.2.3. Restriction of Movement. – Given that the right to freedom of movement is a fundamental human right, the state must guarantee this right to all persons in its jurisdiction, and only the exceptions envisaged by international standards are allowed.546 This right must be granted both to asylum seekers, those granted asylum

544 The Convention relating to the Status of Refugees, for instance, demands of states not to limit the right to work of refugees living in the country for over three years (Art. 17 (2), Convention).

545 Article 9 of the Act foresees that “persons granted asylum shall be entitled to family reunion in accordance with the provisions of this Act” (italics added) i.e. that provisions on family reunion in the Asylum Act pertain both to those granted the right to refuge and those granted subsidiary protection.

546 The ICCPR, for instance, allows for restrictions of this right only if they are “...provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant” (Art. 12 (3)) while Protocol 4 to the ECHR allows such restrictions them
and all other persons. Therefore, movement of asylum seekers may be restricted only exceptionally.

The grounds for restricting movement in Article 51 are mostly in accordance with international standards, but the restrictive measures ought to be limited until the preliminary hearing in the event they are applied to establish the elements of the asylum application and ought not to be extended to the application review period. In any case, detention ought to be ordered only exceptionally, not as a rule.

4.17.2.4. Temporary Protection. – Apart from the right to asylum encompassing the right to refuge and the right to subsidiary protection, the Act also envisages temporary protection which is granted in case of a massive influx of persons from a state “in which their lives, security or freedom are threatened by all-round violence, foreign aggression, internal armed conflicts, large-scale human rights violations or other circumstances seriously undermining the public order” (Art. 36 (1)), when it is impossible to conduct a procedure for granting asylum with respect to every individual. Decisions on temporary protection shall be reached by the Government.

4.17.2.5. UNHCR and NGOs. – Under Article 10 (2) of the Asylum Act, “an asylum seeker may avail himself or herself of the free legal aid and representation provided by the UNHCR and non-governmental organisations the goals and activities of which are directed at providing legal aid to refugees”.

The Act commendably entitles asylum seekers to legal aid of NGOs. However, although the Act envisages right to access UNHCR and NGOs in Article 10 (2), in Article 12 it guarantees them only the right to contact authorised UNHCR officers, but not NGOs, during all stages of the procedure. Similarly, Article 25 (2) stipulates that an alien shall prior to submitting his or her application for asylum be notified of his/her rights, including the right to access the UNHCR, but the Act does not oblige the authorities to notify him or her of the right to access NGOs. Nor does the Act include the obligation to notify the asylum seekers of data on NGOs involved in the protection of refugees, which would no doubt help improve the efficiency of the aid these organisations can provide.

The Act fails to explicitly prescribe that asylum seekers may have access to the UNHCR and NGOs as soon as they request it and that their contacts may not be hindered.

4.17.3. Restrictions

Restrictions of the freedom of movement in the Constitution of Serbia are formulated in accordance with international standards. They prescribe that restrictions may be imposed only by law and if necessary to attain a legitimate goal – for
the purpose of conducting criminal proceedings, protecting public law and order, preventing the spreading of contagious diseases or defending the Republic of Serbia. The grounds for restrictions are less numerous and more narrowly defined than those in the ICCPR and ECHR.

Possession of a travel document is the main prerequisite for exercising the freedom of movement outside one’s own country. The Serbian Assembly in late September 2007 passed a new Act on Travel Documents,\textsuperscript{547} which came into effect in April 2008 (Art. 57). Under Article 3 of the Act, all nationals of Serbia shall be entitled to travel documents under the conditions laid down in the Act and they may possess only one travel document of the same kind.

Under Article 40 of the Act, the competent body shall issue a reasoned decision rejecting the application i.e. shall not issue a travel document in the following cases: if an investigation has been opened or charges raised against the applicant and at the request of the competent court or public prosecution office; if the applicant has been sentenced to an unconditional prison sentence exceeding three months i.e. until s/he has served the sentence; if the applicant is prohibited from travelling pursuant to recognised international treaties; if the applicant’s movement is prohibited pursuant to valid regulations enforced to prevent the spreading of contagious diseases or epidemics; if the applicant has not obtained approval for travel abroad for reasons related to the defence of the country or if there is another legal obstacle envisaged by the law regulating the military obligation in case a state of war or emergency has been declared. An application for a travel certificate (a travel document issued to a national of Serbia abroad and lacking a passport to allow his/her return to Serbia) may not be rejected (Art. 35).

In particularly justified cases (e.g. the law quotes in example the death of a family member, medical treatment abroad, pressing official business), a passport of limited validity may be granted at the request of the person whose application had been rejected or whose passport has been seized (with the exception of persons whose passports were seized because they no longer have Serbian citizenship) with the prior consent of the court i.e. public prosecutor which had demanded that the applicant not be issued a travel document (Art. 41).

The Act on the Army of Serbia adopted in December 2007 obliges professional members of the Army of Serbia to report their travels abroad to their superiors. Under the Act, the Defence Minister shall regulate the conditions under which professional army members and conscripts serving the army may travel abroad (Art. 49). Under the Act, professional members of the Army of Serbia comprise both professional Army of Serbia staff and the civilians employed in the Army (Art. 8 (1)).\textsuperscript{548}

\textsuperscript{547} Sl. glasnik RS, 90/07, 116/08, 104/09 and 76/10.
\textsuperscript{548} See Report 2006, I.4.17.3 for provisions in the Act on the Army of Yugoslavia.
4.17.4. Readmission Agreement

In September 2007, Serbia and the European Community (i.e. EU member-states with the exception of Denmark) signed an Agreement on the Readmission of Persons Residing without Authorisation in the Territory of the other High Contracting Party.549

Under the Agreement, Serbia shall readmit, upon application by a Member State and without further formalities other than those provided for in the Agreement, any person who does not fulfil the conditions in force for entry to, presence in, or residence on, the territory of the Requesting Member State (Art. 2 (1)). Serbia would be obliged to receive its nationals in any case but the Agreement facilitates the procedure.

Under the Agreement, Serbia is above all obliged to readmit its own nationals. The citizenship of the person need not be established with certainty but “proved, or (...) assumed on the basis of prima facie evidence furnished, that such a person is a national of Serbia” Serbia shall also readmit persons who have renounced the nationality of Serbia since entering the territory of a Member State, unless such persons have at least been promised naturalisation by that Member State (Art. 2 (3)). Apart from its nationals, Serbia shall also readmit their minor unmarried children regardless of their place of birth or their nationality, and their spouses, holding another nationality provided they have the right to enter and stay or receive the right to enter and stay in the territory of Serbia, unless they have an independent right of residence in the Requesting Member State (Art. 2 (2)). The Agreement specifies instances in which Serbia is obliged to take in a person possessing the nationality of a third state in addition to Serbian nationality, as well as a citizen of a third state and a stateless person.550

EU Member States shall readmit any person illegally in the territory of Serbia. The conditions that need to be fulfilled for readmission in the EU correspond to those that need to be fulfilled for Serbia to readmit persons illegally in the EU (Art. 4 (1–3) and Art. 5 (1–2)).

Under the Agreement, Serbia and EU Member States have assumed also the obligation to restrict the transit of third-country nationals or stateless persons to cases where such persons cannot be returned to the State of destination directly and at the request of the other Party to the Agreement if the onward journey in possible other States of transit and the readmission by the State of destination is assured (Art. 13 (1–2)). Article 13 (3), however, lists the conditions under which they may refuse transit.551

549 Sl. glasnik RS (Međunarodni ugovori), 103/07.
551 Transit may be refused if the person runs the real risk of being subjected to torture or to inhuman or degrading treatment or punishment or the death penalty or of persecution because of his race, religion, nationality, membership of a particular social group or political conviction, if the
This Agreement explicitly sets out that it shall be without prejudice to the rights, obligations and responsibilities arising from International Law and, in particular, from: the Convention on the Status of Refugees and the Protocol on the Status of Refugees, the international conventions determining the State responsible for examining applications for asylum lodged, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention of against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, international conventions on extradition, multilateral international conventions and agreements on the readmission of foreign nationals (Art. 17).

A number of bilateral readmission treaties have been signed in the meantime.

4.18. Economic, Social and Cultural Rights

4.18.1. General

In addition to the ICESCR, Serbia is also a signatory of numerous conventions of specialised UN agencies and specific regional organisations on these rights, and, as of 2009, the European Social Charter (Revised), the main Council of Europe document on economic and social rights.

Economic, social and cultural rights are guaranteed by the Constitution and regulated in detail by laws and subsidiary legislation. Although formally constitutional, these rights are regulated in detail by laws, not only in terms of their realisation but content as well, which gives legislative bodies ample room to restrict or expand them. These rights are thus within the legislative jurisdiction whereby they practically cease to be fundamental constitutional guarantees.

4.18.2. Ratification of the Revised European Social Charter

In 2009, Serbia ratified the Revised European Social Charter (hereinafter: ESC), the fundamental Council of Europe document ensuring social and economic rights and finally approved the signature it put on the ESC back in 2005. Serbia accepted 88 of the 98 paragraphs, thus joining the states that accepted most of the obligations in the ESC. Serbia accepted all nine “hard articles” of the ESC in their entirety, but failed to accept specific obligations regarding the right to just working conditions in Article 2 of the ESC, the right to collective bargaining in Article 6, the right to appropriate facilities for vocational training in Article 10, the right to social, 

person shall be subject to criminal sanctions in the Requested State or in another State of transit and on grounds of public health, domestic security, public order or other national interests of the Requested State.

552 Act Ratifying the European Social Charter (Revised), Sl. glasnik RS, 42/09. See also: Declaration contained in a Note Verbale from the Ministry of Foreign Affairs of Serbia, dated 11 June 2009, deposited with the instrument of ratification on 14 September 2009.
legal and economic protection of children and young people in Article 17 and the rights of migrant workers and their families to protection and assistance in Article 19 of the ESC.

With respect to the right to just and safe and healthy working conditions, Serbia did not accept the obligation to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours (for the same remuneration) or additional paid holidays for workers engaged in such occupations. Serbia also did not accept the provision obliging the signatories to cut or abolish tuition fees or other forms of payment for professional training and higher technical and university education, to grant financial assistance for attending professional training (e.g. through subsidised student loans), to include in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer and ensure the efficiency of apprenticeship and other training arrangements through adequate supervision and in consultation with the employers’ and workers’ organisations. Serbia also did not accept the provisions on encouraging migrant workers and their families to learn the Serbian language and the obligation to promote and provide Serbian language lessons to the children of migrant workers.

Serbia’s non-acceptance of the ESC provisions on the right of workers with family responsibilities to equal opportunities and equal treatment at work and employment is problematic from the viewpoint of advancing safe, healthy and just working conditions, family safety and the protection of the rights of the child. Serbia did not accept the obligation to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, to take account of their needs in terms of conditions of employment and social security, and to develop services, public or private, in particular child day care services and other childcare arrangements. Serbia also refused to commit itself at the international level to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child and to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment. Refusal to assume these obligations is incomprehensible, given that Serbia has already introduced many of these rights in its laws. Serbia also failed to ratify the Charter articles on the right to housing, including the construction of social housing, combating homelessness and the promotion of adequate housing standards. These rights are not guaranteed by the Serbian Constitution either.

Apart from not accepting specific obligations, Serbia also deposited a reservation to Art. 6(4) of the ESC, excluding professional army staff from the right

553 According to the case law of the European Committee for Social Rights, higher professional education (Bachelor’s, Master’s and Doctoral studies) falls under vocational training in Article 10 of the ESC. See e.g. Conclusions 2008, vol. 1, Doc. ID, c–2008–1en.
of workers and employers to collective action in cases of conflicts of interest, including the right to strike. Such a reservation is not in contravention of the ESC principles.

Finally, Serbia did not accept the system of collective complaints, a form of monitoring envisaged by the ESC. This constitutes a major shortcoming given that Serbia thus does not provide its citizens with the possibility of resorting to one of the chief features of the European system of protecting social and economic rights – the possibility to file collective complaints against specific violations of economic and social rights.

4.18.3. Right to Work

Article 6, ICESCR:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 1, ESC:

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1 to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

2 to protect effectively the right of the worker to earn his living in an occupation freely entered upon;

3 to establish or maintain free employment services for all workers;

4 to provide or promote appropriate vocational guidance, training and rehabilitation.

According to the practice of the Committee for Economic, Social and Cultural Rights, the right to work does not imply the right of a person to be provided with a job s/he wants, but the state’s obligation to take necessary measures to achieve full employment.554 The right to work implies the right to employment, the right to the freedom of choice of work, i.e. prohibition of forced labour555 and the prohibition of arbitrary dismissal.

554 General Comment No. 18, UN doc. E/C.12/GC/18.
555 See I.4.4.3.
Serbia is a member of the ILO and a signatory of many conventions under ILO auspices, including the Employment Policy Convention (No. 122)\textsuperscript{556} and Convention No. 111 Concerning Discrimination in Employment and Occupation.\textsuperscript{557}

The Constitution guarantees the right to work and free choice of occupation in Article 60. Under the Constitution, everyone shall have the right to fair and favourable working conditions and equal access to all jobs. 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.\textsuperscript{558}

Labour law is regulated by laws, primarily by the Labour Act\textsuperscript{559} and the Employment and Unemployment Insurance Act.\textsuperscript{560} The provisions of the Labour Act are general in character and apply to all employees and employers, unless otherwise specified by a separate law. Serbia in 2010 at long last adopted the Act on Volunteering,\textsuperscript{561} which regulates the rights and obligations of persons providing services or performing activities to everyone’s benefit or the benefit of another person free of charge. The category of volunteering, legally distinct from other forms of free service provision, such as internship and traineeship, was thus finally introduced in Serbia’s legal system.

The General Collective Agreement regulates relations between employers and workers in greater detail. Serbia had lacked a General Collective Agreement for three years until the one now valid came into force in 2008.\textsuperscript{562}

4.18.3.1. Right to Assistance in Employment and in the Event of Unemployment. – Employment is regulated in greater detail by the Employment and Unemployment Insurance Act. Assistance in finding employment to interested jobless workers is provided free of charge by the National Employment Service and recruitment agencies. Job seekers can also look for employment through private recruitment agencies. The costs of the recruitment agency services are fully borne by the employers. The National Employment Service is duty-bound to publish a job vacancy within 24 hours from the moment it learns of the vacancy.

Article 33 of the Act stipulates that a job seeker is duty-bound after 12 months to accept a job requiring lower qualifications but within the same profession and taking into account the job seeker’s prior work experience and circumstances in the labour market. This is definitely a better solution than the repealed one under which a job seeker was forced to accept any job offered to him or her after nine

\textsuperscript{556} Sl. list FNRJ (Međunarodni ugovori i drugi sporazumi), 34/71.
\textsuperscript{557} Sl. list FNRJ (Međunarodni ugovori i drugi sporazumi), 3/61.
\textsuperscript{558} 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, para. 1.
\textsuperscript{559} Sl. glasnik RS, 24/05, 61/05 and 54/09.
\textsuperscript{560} Sl. glasnik RS, 36/09 and 88/10.
\textsuperscript{561} Sl. glasnik RS, 36/10.
\textsuperscript{562} Sl. glasnik RS, 50/08, 104/08 – Aneks I and 8/09 – Aneks II.
months notwithstanding his or her degree and occupation or s/he would be deleted from the National Employment Service register. This provision is in keeping with the practice of international bodies monitoring economic and social rights.

Amendments to the Act in 2010 moved the headquarters of the National Employment Service from Belgrade to Kragujevac.563

The Employment and Unemployment Insurance Act regulates the work of the National Employment Service, employment agencies and the Employment Council. The Act specifies the rights and duties of unemployed persons and employers, governs the active employment policy, unemployment insurance and other issues of relevance to employment, increasing employment and prevention of long-term unemployment. The Ministry shall oversee the enforcement of the Act and regulations on its enforcement, and the work of the National Employment Service and agencies.

According to Article 1 of the ESC, the very existence of unemployment does not constitute a violation of the Charter but the efforts made by states must be adequate in the light of the economic situation and the level of unemployment.564 High unemployment and the lack of secure employment are causes that induce workers to seek employment in the informal sector of the economy. In its General Comment 18, the CESCR underlined that states parties must take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection. These measures would compel employers to respect labour legislation and declare their employees, thus enabling the latter to enjoy all the rights of workers.565 The Labour Act provisions on employment contracts need to be amended to that effect. One of the possible solutions would be to oblige the employers to register the employment contract with the competent National Employment Service unit or the competent municipal administration authorities before the worker starts the job and to keep the employment contracts and the mandatory social insurance registration forms in their offices.566

4.18.3.2. Non-Discrimination. – The CESCR is of the view that states parties have a fundamental and directly applicable obligation under the ICESCR to ensure that there is no direct, indirect or systemic discrimination in employment and to ensure equal protection regarding employment of persons of all ages, from primary school age to age of retirement.567 Labour-related discrimination is prohibited both

565 See para. 10 of General Comment 18.
566 Draft amendments to Articles 32 and 33 of the Labour Act proposed by the Centre for Democracy, more at http://www.politickiforum.org/tribina_stampa.php?naredba=stampa_teksta&id=646.
567 More on the prohibition of discrimination in employment in CESCR’s General Comment No. 20 Non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 10 June 2009, and para. 32 of General Comment No. 18.
by ratified ILO conventions and the ESC. The ESC explicitly provides for the right
to equal opportunities and equal treatment in matters of employment and occupation
without discrimination on the grounds of sex (Art. 20) and the right of workers with
family responsibilities to equal opportunities and equal treatment (Art. 27). Serbia
did not accept the latter obligation in the ESC.

Apart from the general prohibition of discrimination, the Serbian Constitu-
tion in Article 60 (3) prescribes that everyone shall have access to a job under equal
conditions. If interpreted widely, this provision may be perceived as reaffirming
equality.

The Anti-Discrimination Act prohibits discrimination in general, while Article
17 specifically prohibits labour-related discrimination, notably violations of
equal opportunities for employment or the exercise of all labour-related rights under
equal conditions. Protection against discrimination shall be enjoyed by all employed
persons i.e. all persons taking part in work on any grounds. The Act highlights that
distinction, exclusion or preference due to the features of a specific job where a per-
son’s personal trait is a real and decisive factor for performing the job and measures
undertaken to protect specific categories, such as women, pregnant women, women
back from maternity leave, parents, minors, persons with disabilities and others
shall not constitute discrimination if the purpose to be achieved is justified.

Article 18 of the Labour Act prohibits direct and indirect discrimination. The
Act defines direct discrimination as any conduct placing a person looking for a job
or an employed person in a position more disadvantageous than that of other per-
sons in the same or similar situation and indirect discrimination as any apparently
neutral provision, criterion or practice putting or threatening to put a job-seeker or
worker in a more disadvantageous position than that of others because of a specific
feature, status, orientation or conviction (Art. 19). The LA explicitly prohibits dis-
crimination in promotion at work (Art. 20(1(4))).

The Labour Act explicitly lists fields in which discriminatory conduct is
prohibited – when setting employment and recruitment conditions, with respect to
working conditions, all employment-related rights, education, training, promotions
and dismissals. Article 20 further stipulates that discriminatory provisions of em-
ployment contracts shall be null and void. Under Article 22, distinction, exclusion
or preference shall not constitute discrimination if it is necessary for the perform-
ance of a specific job. Para. 2 of the Article explicitly provides for an exception
to the rule prohibiting discrimination, in case of affirmative action with respect to
specific categories. In the event these provisions are violated, the injured party may
file a lawsuit to seek redress. The Labour Act and another law lay down the
conditions for employing foreign nationals and stateless persons. Article 18 of the
ESC is relevant in that respect given that it guarantees the right to engage in a gain-

568 More on prohibition of discrimination in general in I.4.1; on discrimination of persons with
disabilities in I.4.1.3.
569 Aliens Act, Sl. glasnik RS, 97/08.
ful occupation in the territory of other Parties, while Article 19 guarantees rights of migrant workers and their families. Article 19 of the ESC is not binding on Serbia, given that it did not accept the obligations laid down in this Article.

The provisions on discrimination in the Labour Act need to be amended with respect to the burden of proving discrimination and protection of dignity at work i.e. protection from harassment at work. The burden of proof should be transferred to the person charged with discrimination, like in the Anti-Discrimination Act. This cannot be achieved by a simple interpretation of the provisions in these two laws and by applying the general principle that a law adopted at a later date prevails over the one adopted at an earlier date. The problem lies in the fact that the Labour Act is a special law vis-à-vis the general Anti-Discrimination Act and therefore prevails over the latter.

The Employment and Unemployment Insurance Act also incorporates the principles of prohibition of discrimination, impartiality in recruitment, gender equality and affirmative actions with respect to difficult-to-employ jobless persons (Art. 5).

4.18.3.3. Harassment at Work. – In 2010. National Assembly adopted the Act on Prevention of Harassment at Work. The Act comprises provisions prohibiting harassment at work and related to work, measures for preventing harassment and improving relations at work and defines the procedure for protecting persons exposed to harassment at work and related to work. It lays down misdemeanour penalties for violations of the law and regulates oversight of the enforcement of the law. Within the meaning of the draft, harassment shall denote any active or passive conduct towards a worker or a group of workers of an employer, which is repetitive, aims to constitute or constitutes a violation of the dignity, reputation, personal and professional integrity, health, status of the worker and causes fear or creates a hostile, degrading or offensive environment, deteriorates working conditions or results in the isolation of the employee or incites him or her to break off or terminate the employment contract at his own initiative, as well as complicity in harassment i.e. encouragement or inducement of others to engage in harassment.

The Act also regulates in-house protection from harassment (initiation of the procedure for protection from harassment with the employer, mediation procedure, and initiation of the procedure for establishing the responsibility of the harasser if the mediation procedure fails and there are grounds to suspect harassment) and court protection in civil proceedings. Civil proceedings on harassment shall be expedited (the defendant is given a shorter deadline to respond to the charges) and the burden of proof shall rest on the employer if the employee-plaintiff proved harassment probable.

570 Right to dignity at work is guaranteed by Article 26 of the ESC. See the Serbian Government National Programme for EU Integration, October 2008, p. 490; see also Digest of the Case Law of the European Committee of Social Rights, pp. 21 and 157.

571 Sl. glasnik, 36/10.
Under the Act on Prevention of Harassment at Work, the employer shall notify employees within sixty days from the day the law comes into effect about the prohibition of harassment, obligations regarding the prevention of harassment, how to recognise and protect oneself from harassment in accordance with the law, and shall notify future employees in writing of the prohibition of harassment and the rights and the obligations and responsibilities of employees and employers arising from the prohibition of harassment. Violations of the law shall be fined between 5,000 and 800,000 dinars and the labour inspectorate shall oversee the enforcement of the law.

4.18.3.4. Workers’ Rights Concerning Termination of Employment. – Apart from the general protection of workers in case of termination of employment (Art. 24), which comprises the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service; the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief and the right to appeal to an impartial body of a worker who considers that his employment has been terminated without a valid reason, the ESC also envisages the right of workers to the protection of their claims in the event of the insolvency of their employer (Art. 25).

The safety of jobs in Serbia has been further endangered by the privatisation process. The Labour Act devotes a number of provisions to the termination of employment against the will of the employee due to redundancies arising from technological, economic or organisational changes in a company and on the rights of employees whose employers have gone bankrupt. In the former case, the employer has to adopt a redundancy programme, which will notably specify: the reasons why there is no need for the jobs, the number of and other data on the redundant workers, possibility of their retraining or advanced training, transfer to another employer or reassignment to another job, funds for regulating the social and economic status of the redundant workers and the deadline within which their employment contracts will be terminated. The employer shall pay the redundancies to the workers prior to the termination of their employment contracts. The Act lays down the minimum redundancy payments. Once a worker’s employment contract is terminated on grounds of redundancy, the employer may not hire anyone else to do that job within the next six months. In the event the employer needs to re-open the job before the six months expire, the worker declared redundant shall have precedence over the other candidates.

The 2009 Bankruptcy Act additionally ensures the payment of the workers’ claims against their bankrupt company by transferring them from the second to
the first rank of creditors (Art. 54). It also increases the amount of debt to be paid to the workers in bankruptcy proceedings by including in it the interest rates from the date of maturity to the day the bankruptcy proceedings are opened. The provisions also provide for the coverage of the unpaid private pension and disability insurance borne by the employer.

Article 179 of the Labour Act regulates in detail the termination of employment against the will of the employee. Employment may be terminated against the employee’s will for a just cause relating to his/her working ability (if the worker does not perform or does not have the necessary knowledge or ability to perform the assigned duties), his/her conduct (if the worker violates the duties laid down in the employment contract, violates work discipline, his/her conduct precludes his/her further work for the employer, commits a criminal offence at work or related to work, fails to return to work within 15 days from the day of expiry of the period of unpaid leave or dormancy of employment or abuses the right to sick leave). Termination of employment may also ensue if the employer’s needs or circumstances change (if a particular job becomes redundant or the volume of work is reduced due to technological, economic or organisational changes). The Labour Act also allows for termination of employment if the worker refuses reassignment to another appropriate job for work organisation or process reasons, transfer to another work location or to an appropriate job with another employer. Under the Act, an appropriate job means a job requiring the same type and degree of qualifications laid down in the employment contract. In addition, employment may be terminated against the employee’s will in the event s/he disagrees with an annex to the provisions in the employment contract regarding remuneration. A worker who assents to the annex to the contract is still entitled to contest the legality of the contract in civil proceedings (Art. 172(4)). There is no reason why this right cannot be exercised by a worker whose employment contract was terminated because s/he refused to sign the relevant annex to the employment contract, although the Act does not explicitly provide for such a right.

An employer may not dismiss a worker without prior notice. Furthermore, the employer may not dismiss a worker if s/he can offer him or her another job or re-training. Article 183(4), prohibits discrimination in dismissal, including a prohibition of dismissal on the grounds of political opinion, which is in accordance with the case-law of the Committee.574 Articles 104–107 regulate in detail the dismissal proceedings. An unlawfully dismissed worker enjoys judicial protection and the right to compensation of damages.

With the aim of providing special protection to specific groups, the Labour Act comprises provisions banning the dismissal of employees during pregnancy, maternity or child care leave, and the protection of the representatives of employees during their terms in office and in the subsequent year, if the representative of the

employees has acted in keeping with the law, general enactments and the employment contract. This is in keeping with both with the Committee’s principle of free trade unionist activities and ILO Convention 135 on workers’ representatives.575

4.18.3.5. Employment Related Lawsuits. – A worker is entitled to complain against a violation or denial of his or her employment right to the labour inspection (Art. 268, LA), launch proceedings before the competent court (Art. 195, LA) or ask for the arbitration of the disputed issues together with the employer (Art. 194, LA). Provisions of the Peaceful Resolution of Labour Disputes Act apply to individual and collective labour disputes.576 Serbia also needs to adopt as soon as possible a law on labour inspection in order to improve protection at work and the prevention of abuse of employment contracts, particularly the concealment of the existence of such contracts.

4.18.4. Right to Just and Favourable Conditions of Work

Article 7, ICESCR:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 2, ESC:

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

2 to provide for public holidays with pay;

3 to provide for a minimum of four weeks’ annual holiday with pay;

575 See I.4.18.5.
576 Sl. glasnik RS, 125/04 and 104/09.
4 to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

5 to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;

6 to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

7 to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Article 3, ESC – The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers’ and workers’ organisations:

1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;

2. to issue safety and health regulations;

3. to provide for the enforcement of such regulations by measures of supervision;

4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

Article 4 ESC – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

3. to recognise the right of men and women workers to equal pay for work of equal value;

4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards. The exercise of these rights shall be achieved by free-
ly concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

(Sl. glasnik RS, 42/09)

4.18.4.1. Fair Wages and Equal Remuneration for Work. – According to the CESC’s case-law, the obligation to provide fair wages above all implies establishment of a system for fixing minimum wages. Fairness in this context implies fixing wages in keeping with the real social value of each specific job. When it deliberated the ensuring of a “decent living” of the workers and their families, the Committee established that this provision needed to be interpreted in keeping with the whole Covenant, with special emphasis on Article 11 that addresses adequate living standards. Therefore, a decent living in this context means enjoyment of the rights that depend on wages, such as the right to housing, food, clothing, even to education, medical treatment and culture. As far as equal remuneration is concerned, it may be viewed in the context of equal wages for the same jobs. The Committee has so far viewed the principle of equal remuneration for a job of equal value mostly from the viewpoint of prohibition of discrimination. According to the test drafted by the Committee of Independent Experts supervising the implementation of the European Social Charter, minimum wage may not be lower than 60% of the national average in any economic sector.578 Fair remuneration shall also mean an increased rate of remuneration for overtime work. An increased rate of remuneration for overtime work need not be guaranteed to the members of the company management579 or the senior officials in the state administration.580

Serbia is a signatory of the ILO Minimum Wage Fixing Convention (No. 131) and the ILO Equal Remuneration Convention (No. 100). Serbia 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 fair remuneration for their work (Art. 60 (4)), although it does not include a provision explicitly prescribing equal remuneration for work of equal value.

The Labour Act prescribes that an appropriate wage shall be fixed in keeping with the law, a general enactment or an employment contract and that an employee shall be guaranteed equal wage 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, working capacity, responsibility and physical and intellectual work.

578 See D. Harris, European Social Charter, 1984, p. 4951.
580 Conclusions X–2, Ireland, p. 62.
With a view to ensuring financial and social security of employees, the Labour Act envisages the right of employees to minimum wages (the so-called right to guaranteed wages under previous regulations). Conditions for fixing the minimum wage are regulated by the General Collective Agreement. Under its provisions, the determination of the minimum wage shall take into account the existential and social needs of the workers and their families, the value of the consumer basket, the overall level of economic development, the current level of remuneration and how it compares to remuneration offered by other employers in the same branch, the growth of living costs, the share of wages in the operating costs and the achieved financial and business results. The minimum wage shall be fixed by a decision of the Social Economic Council of Serbia (Art. 112, Labour Act).

Under the Labour Act, overtime work shall be paid at a rate at least 26% higher than the wage base. The same rate is paid for work in shifts or at night, in the event the employment contract does not specify remuneration for such work. The Act also lays down a 0.4% progressive annual increase in wages for every year of service (Art. 54, LA).

The 2009 Amendments to the Labour Act introduce the possibility of the employer ordering the employee to take a leave of absence exceeding 45 days with adequate compensation of wage which shall not be lower than 60% of the average wage in the past three months in the event the undertaking halts work or reduces the volume of work; such compensation may not be lower than the minimum wage determined in accordance with the Act.

4.18.4.2. Occupational Safety. – Serbia has ratified all chief ILO conventions on occupational safety and compensation for work-related accidents or professional diseases, health care and occupational health services. The ESC specifically guarantees the right to safe and healthy working conditions in Article 3.

The National Assembly in 2009 ratified two ILO conventions on occupational safety, notably Convention No. 187 on a Promotional Framework for Occupational Safety and Health and Convention No. 167 on Safety and Health in Construction. Convention No. 187 binds all members to formulate a national policy to promote improvement of occupational safety and health (Art. 3), to establish, maintain, progressively develop and periodically review a national system for occupational safety and health in consultation with the most representative organisations of employers and workers (Art. 4), and to implement, monitor, evaluate and periodically review a national programme on occupational safety and health in consultation with the most representative organisations of employers and workers (Art. 5). ILO Convention No. 167 regulates in great detail various issues related to all activities in

581 Sl. glasnik RS, 54/09.
582 More in Digest of the Case Law of the European Committee of Social Rights, pp. 35–43.
583 Sl. glasnik RS (Međunarodni ugovori), 42/09.
584 Ibid.
construction and binds members to enact legal regulations ensuring the enforcement of the Convention provisions. The ratification and effective implementation of this Convention is very important given the many accidents experienced by construction workers in Serbia.  

Workers must be compensated if the risks in inherently dangerous or unhealthy occupations cannot be eliminated or reduced sufficiently. Article 2 (4) of the ESC mentions two ways in which the workers can be compensated – a reduction of working hours or additional paid holidays. The Committee monitoring the implementation of the Charter does not consider early retirement to be “a relevant and appropriate measure to achieve the aims of Article 2 (4)”. This provision is not binding on Serbia given that it did not accept the obligations arising from Article 2(4) of the ESC. Serbian legislation nevertheless envisages cutting down the working hours of employees in high risk jobs by a maximum of 10 hours per week, but does not provide for additional paid leave.

Article 60 (4) of the Constitution guarantees everyone the right to occupational safety and health and the right to protection at work. Para 5 of the Article guarantees special protection at work to women, the young and persons with disabilities.

Under the Labour Act, an employee has the right to health and safety at work. The Act introduces in Article 80 (2) the obligation of the employee to abide by safety and health protection regulations so as not to endanger his/her own health and safety and those of other employees and people.

Regulations and Directives regulate specific norms and standards regarding safety at work.

Inspectorial supervision of the implementation of the laws and other safety regulations, measures, norms and technical measures, company enactments and collective agreements shall be performed by the labour inspectors in the ministry charged with labour affairs (Art. 60, Serbian Safety at Work Act). The Act also prescribes penalties for violating the provisions of the Act and the norms, standards, regulations and directives.  

The Act on Companies prescribes that a company cannot be founded or conduct business activities if its premises do not fulfil technical, safety, environmental and other requirements. The non-fulfilment of health and safety at work requirements may in specific cases constitute an act of crime (Art. 280, CC).


---

587 Chapter XI Health and Safety at Work Act. Sl. glasnik RS, 101/05.
588 Sl. glasnik RS, 125/04.
589 Sl. glasnik RS, 32/09.
4.18.4.3. Right to Rest, Leisure and Limited Working Hours. – According to Committee practice, the right to rest, leisure and limited working hours is primarily interpreted as a state’s obligation to ensure such schedules of working hours which leave employees time to rest. On the other hand, the provision is interpreted also as the state’s obligation to initiate legislature ensuring the employees the right to different types of paid leave. The Committee has so far mostly relied on the practice of the ILO and the agreements signed under ILO’s auspices. The principles of just, safe and healthy working conditions are laid down in Articles 2, 3 and 4 of the ESC.

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 vacations. The Labour Act stipulates a five-day working week (Art. 55) and a 40-hour full-time working week (Art. 50). However, in the event the employer reschedules the working hours, an employee may work up to 60 hours a week (Art. 57(3)). The rescheduling of working hours shall not be reckoned as overtime work (Art. 58). This provision is in accordance with the Committee case law, which considers that a working week exceeding 60 hours under certain conditions is unreasonable.\(^{590}\)

A workday lasts eight hours as a rule, but the law allows up to four hours of overtime per day. The employer may organise work in various ways under conditions prescribed by the law. To ensure effective oversight of the respect of this legal provision, which has proven extremely disputable in practice, employers ought to be obliged to keep records of the hours their employees work every day, which would be signed by the employees and the employer or the person s/he authorised at the end of the month or wage calculation period.\(^{591}\)

Employees have the legal right to a break during working hours and the right to daily, weekly and annual rests, as well as to paid and unpaid leave in keeping with the law. Employees may not be deprived of these rights. The Labour Act provisions on paid leave are in keeping with minimal European and UN standards. According to European standards, a worker is also entitled to paid leave during public holidays (Art. 2.2 ESC) and work performed on a public holiday should be paid at least double the usual rate.\(^{592}\) Under Article 108 of the Labour Act, an employee shall be entitled to an increase in pay for work during a public holiday amounting to a minimum 110% of the wage base.

\(^{590}\) Conclusions XIV–2, The Netherlands, pp. 535–536.
\(^{591}\) Amendment to Article 50 of the Labour Act proposed by the Centre for Democracy, more at http://www.politickiforum.org/tribina_stampa.php?naredba=stampa_teksta&id=646.
\(^{592}\) Conclusions XVIII–1, Croatia, p. 116.
The CESCR considers that, save in exceptional cases, periods of on-call duty during which the employee has not been required to perform work for the employer, although they do not constitute effective working time, cannot be regarded as a rest period.593

4.18.5. Trade Union Freedoms

Article 8, ICESCR:

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

593 See Digest of the Case Law of the European Committee of Social Rights, p. 28.
Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:
4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

(\textit{Sl. glasnik RS}, 42/09)

4.18.5.1. Freedom to Form Trade Unions. – Freedom to form trade unions is the only trade union right guaranteed by all four general human rights protection instruments Serbia has ratified – ICCPR (Art. 22), ECHR (Art. 11) and ICESCR (Art. 8) and ESC (Art. 5 and 6). The right to form trade unions is in general believed to imply the right to found a trade union and the right to join in a trade union of one’s own free will, the right to establish associations, national and international associations of trade unions, and the right of trade unions to function independently, without state interference. The formulation in Article 8 (1) of the ICESCR “undertake to ensure” should not be interpreted in the spirit of the progressive realisation of the freedom of organisation in trade unions. Article 8 of the ICESCR is an immediate obligation as the freedom of association is guaranteed also by other human rights protection instruments whose provisions require immediacy. The Committee for Economic, Social and Cultural Rights has taken the same view.\textsuperscript{594} Freedom of organisation in trade unions does not boil down to a state’s negative obligation – not to prevent realisation of the freedom by its actions; it also implies the obligation of the state to encourage and assist the founding and functioning of trade union organisations and to prevent anti-trade union activities.\textsuperscript{595}

Serbia is a signatory of the following ILO Conventions: Right of Association (Agriculture) (No. 11),\textsuperscript{596} Freedom of Association and Protection of the Right to Organise (No. 87), Right to Organise and Collective Bargaining (No. 98),\textsuperscript{597} and on Workers’ Representatives (No. 135). Serbia never signed the ILO Rural Workers’

\textsuperscript{596} \textit{Sl. novine Kraljevine Jugoslavije}, 44-XVI/30.
\textsuperscript{597} \textit{Sl. list FNRJ (Dodatak)}, 11/58.
Organisations Convention (No. 141), the Labour Relations (Public Service) Convention (No. 151) or the Collective Bargaining Convention (No. 154).

Article 55 of the Constitution guarantees the freedom to associate in trade unions. Under para. 2 of the Article, persons establishing trade unions need not obtain prior consent and trade unions shall be set up by entry in a register kept by the competent state authority in accordance with the law. Only the Constitutional Court may prohibit the work of an association, including a trade union, in instances explicitly enumerated in para. 4 of the Article. The realisation of the freedom of organisation in trade unions is regulated in greater detail by the Labour Act, laws regulating associations of citizens and bylaws. Article 6 of the Labour Act defines a trade union as an autonomous, democratic and independent organisation of employees which they associate in of their own free will to represent, advocate, promote and protect their professional, labour, economic, social, cultural and other individual and collective interests. Article 206 guarantees the employees freedom of organisation in trade unions.

Under the Labour Act, trade unions do not need approval for registration in the register kept by the ministry charged with labour affairs. This provision is not in contravention of the practice of the Committee for Economic, Social and Cultural Rights, ECHR or other human rights protection bodies as long as the registration requirements and procedure do not significantly hinder the registration of trade unions. This particularly pertains to the minimal number of members a trade union needs in order to register, and state influence during the establishing of a trade union.598 The practice of the ILO Committee on Freedom of Association (CFA) is of particular relevance to this issue.599 In Serbia, the trade union registration procedure is regulated by the Rules on Entry of Trade Union Organisations in the Register.600

Article 4 of the ILO Convention No. 87 on 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 CFA, this is the most extreme form of interference in the independent operations of trade unions by public authorities. Under Article 7 of the Rules on Entry of Trade Union Organisations in the Register, a trade union organisation shall be deleted from the register, inter alia, pursuant to a legally binding decision prohibiting the work of the trade union (Art. 7 (2) of the Rules). Prior provisions, under which municipal administration authorities charged with internal affairs passed decisions prohibiting the work of trade unions, were abolished when the Act on Associations was adopted.601 Under the new Act, only the Constitutional Court may reach a decision prohibiting the work of any association (Art. 50 (1)).

600 Sl. glasnik RS, 6/97, 33/97, 49/00, 18/01 and 64/04.
601 Sl. glasnik RS, 51/09.
The freedom of association in trade unions of police and other civil servants is not explicitly addressed by the Constitution. Under Article 55 (5) of the Constitution, specific categories of civil servants (judges and prosecutors, police and army staff and the Ombudsman) are prohibited from membership in political organisations. As the Constitution does not include a provision prohibiting their association in trade unions, it should be interpreted so as to imply that these categories of employees are constitutionally guaranteed the right to association in trade unions.

4.18.5.2. Protection of Workers’ Representatives. – The ILO in 1971 adopted Convention 135 on Workers’ Representatives. The need for giving this category of employees a special status arises from the sensitivity of their position.

The Labour Act in Article 188 prohibits the employer from terminating an employment contract or placing a workers’ representative at a disadvantage in another manner while the employee is holding the position of workers’ representative and over the following year if the workers’ representative is acting in keeping with the law, general enactments and the employment contract. The Act defines workers’ representatives as: members of staff councils and staff representatives in the employer’s executive or supervisory boards, chairmen of trade union branches in the company and appointed and elected trade union representatives. The employer may nevertheless in keeping with the law dismiss a workers’ representative who refuses to sign an amended employment contract. Under the Act, authorised trade union representatives have the right to paid leave to perform the trade union duties in keeping with the collective agreement or agreement between the employer and trade union(s); the leave shall be proportionate to the number of trade union members in the company (Art. 211, Labour Act). An authorised trade union representative may be fully relieved of his duties under the employment contract while holding the function by a collective agreement or another agreement.

4.18.5.3. Right to Strike. – The right to strike is guaranteed by Article 8 (1.d) of the ICESCR, Article 6 (4) of the European Social Charter, but not explicitly by the ICCPR or ECHR. 602

The right to strike is guaranteed by Article 61 of the Constitution. Workers shall have a right to strike 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. According to the case law of the European Committee of

602 Unlike the Human Rights Committee which decided, in a controversial opinion, that the right to strike was not included in the right to freedom of association guaranteed by the ICCPR (J. B. et al v. Canada, Communication No. 118/1982), the European Court of Human Rights recognised the importance of the right to strike for the promotion of the freedom of trade union association, but its scope and importance remain to be elaborated in ECHR case law (Schmidt and Dahlstrom v. Sweden, ECmHR, App. No. 5589/72 (1974)). The ILO Committee on Freedom of Association also took the view that the right to strike, which is not explicitly mentioned in ILO Convention No. 87, constituted a legitimate and indispensable means for unions to protect the interests of employees (Com. No. 118/82, para. 2.3).
Social Rights, any limitation must serve a legitimate purpose and be necessary in a
democratic society for the protection of the rights and freedoms of others or for the
protection of public interest, national security, public health or morals.\(^{603}\) The issue
of politically motivated strikes and support strikes is disputable. According to ILO
CFA jurisprudence, these types of strikes do not fall under the definition of strike
under ILO Convention No. 87 on Freedom of Association and Protection of the
Right to Organise.\(^{604}\) However, the right to strike does not only imply halting work
solely to address economic or social problems caused by unfavourable working
conditions or similar issues that may be resolved by collective employer-employee
negotiations. According to ILO practice, the right to strike also implies the right of
employees to halt work demanding new solutions to be found to improve the eco-


those implemented by an employer in the following spheres: power generation industry, water supply industry, transport, information, PTT services, public utilities, staple foods production, health and veterinary protection, education, social care of children and social welfare, as well as activities of general interest to the defence and security of the state and affairs necessary for the implementation of the state’s international obligations. The list is much too extensive and is not in conformity with international standards. The same view was taken by the Committee on Economic, Social and Cultural Rights in its Concluding Observations on the realisation of social, economic and cultural rights in Serbia and Montenegro. The ILO Committee reached a similar conclusion on the freedom of association in the case regarding a strike in JAT (Yugoslav Airlines).

Fields in which work stoppage could jeopardise people’s life and health or cause major damage are: the chemical industry, ferrous and non-ferrous metallurgy (Art. 9 (2–4)). In these branches, the right to strike may be exercised if special conditions are met, which means to “ensure the minimum process of work which ensures the safety of people and property or is an indispensable condition for life and work of citizens or another enterprise or a legal or natural person performing an economic or other activity or service” (Art. 10 (1)). The minimum process of work is set by the director, and for public services and public enterprises by the founder, in the manner established by the general employment act, under the collective agreement; the director and the founder have the obligation to take into account opinions, remarks and proposals of trade unions (Art. 10 (3 and 4)).

The obligation to ensure minimum services in specific fields is in keeping with the practice of the European Committee and the CESCR. Although no one questions the need for a special regime for strikes in services that are indispensable for the normal functioning of the country, it should be ensured through other means. The necessity of a minimum of the work process in vital installations is acceptable only in some services. The rules setting the minimum work process should be very restrictive but with regard to the employer, not the work force. The Strike Act’s definition of the minimum is so broad that it brings into question the possibility of a strike or its effectiveness. Moreover, vague formulations such as “compliance with international obligations” make it possible completely to ban industrial action in some cases, for example in companies that are exclusively export-oriented. Thus the established regimen of strikes to an extent contradicts the very right to strike.

611 The Committee reviewed the Report at the time Serbia was still a member of the State Union of Serbia and Montenegro, see: Concluding Observations, UN doc. E/C.12/1/Add.108, 23 June 2005.
Article 8 (2) of ICESCR allows countries to restrict by law the right to strike of members of the armed forces, the police or of the state administration. The Constitution does not explicitly deny civil servants the right to strike. As it includes a provision allowing for restrictions of the right to strike by law in specific areas of activity and as this provision must be interpreted in conjunction with Article 18 (2) of the Constitution, under which laws may not affect the essence of constitutionally guaranteed rights, it can be concluded that employees in state administration and members of the police in Serbia have the right to strike.

The Strike Act in Article 18 stipulates termination of employment of an Army, state and police employee if it is established that s/he organised a strike or took part in one.

4.18.5.4. General Collective Agreement. – The main goal of collective bargaining between the representatives of the workers and the representatives of the employers is to find the best solutions regarding the rights, duties and responsibilities of both the workers and the employers. Workers may not be offered fewer rights or less favourable working conditions in individual labour contracts than those afforded by collective agreements.

Representatives of two representative trade unions (UGS Nezavisnost and the Alliance of Independent Trade Unions of Serbia) and the Union of Employers signed a General Collective Agreement in 2008. The competent minister signed the agreement expanding it to apply to all employees and employers in Serbia. Provisions on meals, holiday bonuses, transportation, night shifts and other allowances for employees provided for by the Labour Act were temporarily suspended by the Socio-Economic Council due to the impact of the global economic crisis on Serbia’s economy.

4.18.6. Right to Social Security

Article 9, ICESCR:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 12, ESC:

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
   a. equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;
   b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

Article 13 – The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 14 – The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services

(Sl. glasnik RS, 42/09)

The right to social security comprises the rights to social insurance and to social welfare. In its General Comment No. 19, the CESCR clarifies that the right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member, unaffordable access
to health care and insufficient family support, particularly for children and adult dependents. Therefore, according to the CESCR, the social protection system must cover at least the following fundamental nine branches of social security: health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, survivors and orphans.614

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 have the right to social protection, the provision of which shall be based on the principles of social justice, humanity and respect for human dignity. In its Opinion on the Constitution of Serbia, the Venice Commission commented that social protection is not granted generally but only to citizens and families by the Constitution.615

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 benefits. 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 security comprises pension, disability, health and unemployment insurance. The issues are regulated by a number of laws.

Social insurance against old age and disability is regulated by the Pension and Disability Insurance Act.616

Compulsory insurance encompasses all employees, individual entrepreneurs and farmers. This insurance ensures the rights of the insurants in old age, or in the event of disability, death or corporal injury caused by a work-related accident or occupational disease.

The law also allows voluntary insurance for persons who are not covered by the compulsory insurance schemes, in the manner prescribed by a separate law (Art. 16, Pension and Disability Insurance Act). At the same time, by voluntary insurance, the ensured persons may secure a wider scope or other form of rights for themselves and their families, other than those prescribed by the Act. The 2005 Act on Voluntary Pension Funds and Pension Plans617 largely clarified the Pension and Disability Insurance Act provisions related to voluntary insurance. It resolved the dilemma whether an employer-pension fund agreement (so-called pension plan) may be concluded on behalf of third parties i.e. employees.

Retirement contributions to the pension plan cannot be subtracted from employee salaries without their consent and participation in a pension plan cannot be

614 General Comment No. 19, UN doc. E/C.12/GC/19, 4 February 2008.
616 Sl. glasnik RS, 34/03, 64/04, 84/04, 85/05, 5/09, 107/09 and 101/10.
617 Sl. glasnik RS, 85/05.
a prerequisite for employment or for membership in a trade union or another form of staff association.

Insurance against old age implies the right to an old-age pension. An insured person becomes eligible for an old-age pension when s/he has cumulatively fulfilled the requirements in terms of age and years of service. The Act Amending the Serbian Pension and Disability Insurance Act passed in December 2010 prescribes that the insured person becomes eligible for an old-age pension at the age of 65 (for men) and 60 (for women) and at least 20 years of service. The right to an old age pension is acquired after 40 years of service (for men) and 38 years of service (for women) who are at least 58 years old or after 45 years of service. The age limit has thus been moved and the duration of insurance has been increased compared to the one in the 2005 Act Amending the Pension and Disability Insurance Act. Article 69 lays down that these provisions will be gradually introduced from 2011 to 2022.

Insurance against disability implies the right to a disability pension. The cause of the disability has no significance in the determination of the disability itself but does have an effect on eligibility for certain rights and their scope.

A disabled person has the right to a disability pension and other rights on the basis of his remaining ability to work, the right to retraining or acquiring additional qualifications, the right to be assigned to an appropriate full-time job, and the right to financial benefits. In order to provide at least minimum means of living for those who have only a few years of employment and/or received very low wages when they worked, the Act on Pension and Disability Insurance prescribes the lowest old age and disability pensions.

In the event of death of a person covered by the compulsory insurance scheme, a recipient of an old age or disability pension or of a person who was employed for at least five years or met the disability pension requirements, his/her family shall acquire the right to a family pension (Arts. 27–36, Pension and Disability Insurance Act).

The Pension and Disability Insurance Act also envisages the right to financial compensation for physical damages incurred to the employee by a work-related injury or an occupational disease. The concept of work-related injury is defined quite broadly and is in conformity with international standards. This right may be exercised by an employee also in the event it has resulted in the disability of the employee.

Unemployment insurance is governed by the Employment and Unemployment Insurance Act. The European Commission assessed the adoption of the Act

---

618 Sl. glasnik RS, 101/10.
619 Sl. glasnik RS, 85/05.
620 See I.4.18.11.2.
as a step towards establishing an efficient and flexible legal framework in order to achieve the highest possible level of employment.621

The right exercised in the event of unemployment is the right to financial compensation on condition the person was insured for at least 12 consecutive months or over a period of 18 months, with unemployment intervals shorter than 30 days (Art. 66, Employment and Unemployment Insurance Act).

In contrast to social insurance, funds that come from the contributions employed persons pay from their incomes, social benefits entail the expenditure from public funds derived from the state public revenues. The area of social welfare is regulated by the Act on Social Security and Provision of Social Welfare.

Social security rights include the right to welfare benefits, outside assistance and care allowances, job training allowances, home care, day care, placement in an institution or another family, social welfare services, preparatory work for placement of beneficiaries in a welfare institution or another family, and one-off assistance.

The Social Care Centre, with branch offices in municipalities, is charged with the realisation of social protection rights.

The Ministry of Labour and Social Policy in December 2009 presented the Draft Social Protection Act drawn up by its working group. The bill governs the system of social protection – social rights and services and forms of service provision, the rights and obligations of beneficiaries, the system for overseeing the work of social care institutions. The bill furthermore provides for the independent monitoring of service provision and other issues of relevance to social protection. Until the end of 2010, this law was not adopted.

4.18.7. Protection Accorded to Family

Article 10, ICESCR:

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be pro-

tected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 16, ESC:

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17, ESC:

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

b) to protect children and young persons against negligence, violence or exploitation;

c) to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family’s support;

2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

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) and Worst Forms of Child Labour (No. 182).

The ESC provides for special protection of children and young people in Article 7, above all with respect to employment of persons under 18 years of age and conditions under which they may perform specific work, the obligation to continue their education and regular medical control. Article 8 protects the right of employed women to protection of maternity by defining the legal minimum requirements of employers towards pregnant women (duration of paid leave, dismissal conditions,
Article 16 defines the states parties’ obligation to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing and other appropriate means aiming primarily at the protection of newly married and single parent families. Article 17 obliges states parties 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.

Article 66 of the Constitution guarantees special protection to the family and the child, mothers and single parents. In para. 2, it guarantees support and protection to mothers before and after childbirth and, in para. 3, it guarantees special protection to children without parental care and children with physical or mental 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. However, Serbia should have first denounced the relevant ILO conventions and then opted for such legislative solutions to conform the national regulations to community law.

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 up to the age of seven or a severely handicapped child may work overtime or at night only if they make a written request to this effect (Art. 68 (3), Labour Act).

Maternity leave is a fundamental right of working women.

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, while his/her labour rights and duties will remain dormant during this period. (Art. 100 (2), Labour Act).

The law guarantees to an extent a woman’s job during pregnancy, maternity leave and additional leave (and to a man exercising the right to ordinary and additional child care leave). The Labour Act provides for extensive protection of employees on the basis of exercising the above-mentioned rights (Art. 187 (1)).

622 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 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.
only exception regards employees with limited contracts if their employment contract expires while they are exercising the rights.

The Labour Act sets 15 as the minimum employment age (Art. 24) and affords special protection to employees under 18 years of age. In order to protect their health, minors and young adults may not be hired to perform specific jobs.

Under the Act on Financial Support to Families with Children, parental benefits shall be paid only for the first four children to mothers who are citizens of Serbia, have residence in Serbia and state health insurance. Financial assistance is not provided for the successive children. Exceptionally, a mother of three children, who gives birth to twins or more than two children, shall exercise the right to parental benefits for each of the children with the consent of the ministry charged with social issues.

Together with the other health laws, the National Assembly in 2009 also adopted the Act on Infertility Treatment by Biomedically Assisted Fertilisation Procedures governing the conditions and ways of treating male and female infertility. The Act defines the principle under which the medical justifiability of biomedically assisted fertilisation shall be applied in the event infertility treatment by other procedures is impossible or has considerably lesser chance of success unless biomedically assisted treatment leads to unacceptable risks to the health, life and safety of the mother or child.

Specific provisions in the bill, however, are not in conformity with modern trends, given that contemporary families do not always comprise the mother, father and children, but single mothers and fathers as well. The Act on Infertility Treatment allows artificial insemination of women who are not in a union with a man but lays down special criteria (Art. 26 (3)). A single woman shall exceptionally be entitled to fertility treatment with the consent of the ministers charged with health and family relations if there are justified reasons for such treatment. This provision discriminates against women who want children but do not have male partners.

4.18.8. Right to an Adequate Standard of Living

Article 11, ICSECR:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

623 Sl. glasnik RS, 16/02, 115/05 and 107/09.
624 Sl. glasnik RS, 72/09.
(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

4.18.8.1. Right to Housing. – Numerous international documents guarantee the right to adequate housing, as an aspect of the right to an adequate standard of living. This right is enshrined notably in the Universal Declaration of Human Rights (Art. 25 (1)), the Convention on the Rights of the Child (Art. 27), the Convention on the Elimination of All Forms of Discrimination against Women (Art. 14). The most comprehensive provision is the one in Article 11 of the ICESCR. In Article 2 (1) the ICESCR stipulates that a States party shall undertake to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. This obligation pertains to all economic, social and cultural rights, including the right to housing. Serbia did not accept the obligations in Article 31 of the ESC.

According to the Committee for Economic, Social and Cultural Rights, the right to housing is of central importance for the enjoyment of all economic, social and cultural rights. The Committee established that the right to housing should not be interpreted narrowly, that it should not imply merely the provision of any kind or shelter or “a roof over one’s head”. This right should be viewed as an individual’s right to “live somewhere in security, peace and dignity”. The right to housing implies the legal security of tenure (ownership and tenancy rights, right to rent, etc.). Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Moreover, the right to housing also entails availability of services, materials, facilities and infrastructure essential for health, security, comfort and nutrition (energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage, etc), affordability of both attainment and maintenance (rent, public utility costs, etc), habitability, accessibility to disadvantaged groups, especially children, the disabled and the ill (lifts, ramps, etc), location which allows access to employment options, and cultural and social life, as well as cultural adequacy (the way housing is constructed, the building materials used and the policies supporting these must appropriately enable the

625 General Comment No. 4, UN doc. E/192/23, para. 1.
626 Ibid., para. 7.
627 Ibid.
expression of cultural identity and diversity of housing). The latter is extremely relevant in Serbia given the large-scale relocation to new settlements of Roma, who had lived in inadequate and unhygienic circumstances.

In its Comment on Article 11 of the ICESCR, the CESCR took the view that forced evictions are *prima facie* incompatible with the ICESCR and that they may be justified only in exceptional circumstances in accordance with relevant principles of international law. The fact that the ICESCR issued a General Comment focusing on forced evictions corroborates the relevance of the issue. The Commission on Human Rights also focused on forced evictions and took the stand that “the practice of forced eviction constitutes a gross violation of human rights”.

States parties to the ICESCR are to use “all appropriate means”, including adoption of regulations, to promote all rights protected by the Covenant. As regards protection from forced evictions, such legislation should include measures which provide the greatest possible security of tenure to occupiers of houses and land, conform to the Covenant and are designed to control strictly the circumstances under which evictions may be carried out. In addition, given that particularly vulnerable groups, above all women, children, the elderly, ethnic and other minorities, all suffer disproportionately from the practice of forced eviction, Governments have an additional obligation to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

In Serbia, minimum housing standards are not fixed. This creates insurmountable problems in statistically establishing the number of substandard dwellings. The Social Housing Act systemically governs state support to households unable to acquire housing under market conditions due to social, economic or other reasons. The fulfilment of housing needs is no longer regulated solely by the market. Under the Act, persons without housing i.e. persons without housing of adequate standard shall be provided assistance in addressing their housing problems. The Act sets the main criteria for establishing priority in social housing: current housing status, income level, health, a disability, number of household members and property status of the applicant. The Act in addition lists vulnerability (children and young people, refugees, persons with disabilities, Roma, etc) as a criterion. The right to housing of vulnerable groups, especially refugees, IDPs and Roma, living

628 Ibid., para. 8.2.
629 Ibid., para. 18.
631 General Comment No. 7, para. 9.
632 The Housing Act defines a dwelling as “A dwelling within the meaning of the present Act is one or more rooms intended and suitable for habitation which, as a rule, makes up a single unit with a separate entrance” (Art. 3). The definition in official statistics is: “a built unit consisting of one or more rooms with ancillary rooms (kitchen, pantry, entranceway, bathroom and similar, or without ancillary rooms and with one or more entrances” (italics added).
633 Sl. glasnik RS, 72/09.
in unhygienic and unsuitable housing, is a burning issue. Retired persons were the only vulnerable category of the population for which Special Regulations on Housing Requirements had been adopted before the Social Housing Act was adopted in 2009.634

The Social Housing Act does not define a dwelling but it does define social housing. Solidarity housing may only be leased, but the Act prohibits its purchase, permanent ownership transfer or subletting.

The Act envisages the adoption of a 10-year state National Social Housing Strategy within 180 days from the day the Act comes into force. Under the Act, action plans and programmes for the enforcement of the Act shall be adopted within one year from the day the Act is enacted, wherefore it will not be possible to assess the application of the Act before 2011. The Act entrusts the drafting of the social housing programmes to the Government of Serbia, i.e. the ministry charged with housing issues and stipulates that the Government shall establish a Republican Housing Agency to ensure the sustainable development of social housing and the fulfilment of the goals set in the National Social Housing Strategy. Non-profit housing organisations i.e. local housing organisations shall be established at the local level to manage social housing and its construction. The Act regulates in detail the competences and work of these bodies. Their work shall be overseen by the ministry charged with housing issues, which shall keep a register of non-profit housing organisations.

4.18.8.2. Right to Adequate Nutrition. – Certain members of the Committee for Economic, Social and Cultural Rights have emphasised that Article 11 of the Covenant contains two different and thereby two independent provisions on the right to nutrition. The first is expressed in para. 1 of the Article as “right to adequate food” and the second in para. 2 as “the right to protection (freedom) from hunger”. The first right implies progressive realisation as it requires a specific quantity and quality of food, while the other right is “not to die of hunger”, wherefore some interpret it as a fundamental right and therefore immediately applicable,635 all the more as the realisation of this right is prerequisite for the realisation of the very right to live.636

The Act on the Safety of Foodstuffs and Objects in General Use637 prescribes standards that must be respected in the turnover of foodstuffs. Food safety entails hygienic safety and the safety of food components. Adequate supervision is prescribed by the Act on Supervision of the Safety of Foodstuffs and Objects in General Use638 and is performed by the Serbian Health Ministry sanitary inspectors.

634 Rulebook on the Resolution of Housing Needs of Pension Beneficiaries, Sl. glasnik RS, 56/06.
637 Sl. list SRJ, 242/94, 28/96, 37/02 and 41/09.
638 Sl. glasnik SRS, 48/77, 29/99 and Sl. glasnik RS, 44/91, 53/93, 67/93, 48/94 and 41/09.
Human Rights in Serbia 2010

4.18.9. Right to Highest Attainable Standard of Physical and Mental Health

Article 12, ICESCR:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
   (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
   (b) The improvement of all aspects of environmental and industrial hygiene;
   (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
   (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

4.18.9.1. General. – The right to physical and mental health implies freedoms and obligations: freedom from physical and mental torture and injury, freedom of decision on therapy, prohibition of experimentation for health purposes, etc. On the other hand, there is the obligation to establish a health care system within which health care beneficiaries may be set obligations with the purpose of providing equal health care to all citizens. The right to physical and mental health also comprises access to health care services without discrimination.

The right to health protection is guaranteed by the Constitution, which entitles children, pregnant women, mothers on maternity leave, single parents of children under seven and the elderly free medical aid even if they are not beneficiaries of compulsory health insurance. The Constitution obliges the state to assist the development of health and physical culture but does not specify how. It also obliges the state to establish health insurance funds.

The matter is regulated by the Medical Insurance Act and the Health Protection Act.

4.18.9.2. Medical Insurance. – The Medical Insurance Act regulates compulsory and voluntary health insurance. The Republican Health Insurance Bureau is charged with managing and ensuring compulsory health insurance, while voluntary health insurance may be provided by private insurance and special medical insurance investment funds whose organisation and activities will be regulated by a separate law. In late 2008, the Assembly passed the Act on Freezing and Writing Off

640 Ibid., para. 12.
641 Sl. glasnik RS, 107/05 and 109/05.
642 Sl. glasnik RS, 107/05, 72/09, 88/10 and 99/10.
Overdue Compulsory Health Insurance Contributions, which allows for freezing the obligation to pay overdue compulsory health insurance contributions and for writing off debts arising from the non-payment of due compulsory health insurance contributions. These debts shall be frozen until 2012.

4.18.9.3. Health Protection. – Health protection comprises curative, preventive, and rehabilitative care. It is funded from the medical insurance funds, the state budget and by beneficiaries in cases specified by the law (participation). The right to health protection provided by compulsory medical insurance comprises: prevention and early diagnosis of illnesses, check-ups and treatment of women with regard to family planning, during pregnancy, delivery and maternity; check-ups and treatment in case of illness or injury, dentistry check-ups and treatment, medical rehabilitation in case of illness or injury, medications and medical equipment and technical aids. Health protection in the above cases may be fully covered from insurance funds or with the participation of the insured person. The Act enumerates all the cases in which the insurant must participate in the medical costs and sets the amounts in percents (Art. 45, Medical Insurance Act). Specific categories are exempted from paying the participation (war military and civilian invalids, other persons with disabilities, blood donors, et al).

A set of so-called health laws was adopted in 2009. These laws govern specific health care procedures and establish the obligations to preserve public health. Under the Public Health Act, in addition to health institutions, educational institutions, companies, associations, churches and religious communities, citizens and local self-government units shall actively partake in ensuring public health. The Act improves the possibilities for national health policy planning and introduces the obligation to design the public health policy and strategy by monitoring the population’s health and identifying health problems at the national level (Art. 5). It also introduces the obligation to adopt special public health programmes and define and implement tax and economic policy measures encouraging healthy lifestyles.

The Blood Transfusion Act governs the procedure, conditions, oversight and organisation of blood transfusion, which comprises the collection, testing and processing of blood and blood components. Under the Act, adults under 65 years of age may donate blood and blood components if the competent physician establishes that there are no medical reasons that may cause damage to the health of the blood donor or recipient. Blood donation shall be voluntary, free of charge and anonymous (Art. 17). A person who wants to donate blood must be notified of possible reactions during the procedure, the blood test volume and protection of personal data (Art. 18). A blood donor must be notified that s/he may decide not to

643 Sl. glasnik RS, 102/08 and 31/09.
644 The new Act introduces extensive restrictions with respect to dental services.
645 Sl. glasnik RS, 72/09.
646 Ibid.
donate blood before the procedure or at any time during the procedure (Art. 20). The Act lays down the manner for prescribing measures ensuring that the collection, testing, processing, storage and distribution of blood and blood components allows for the traceability of the blood and blood components from the blood donor to the recipient and vice versa, which minimises the risk of spreading contagious diseases (Art. 32).

The Transplantation of Organs Act governs issues concerning the organisation and procedure of transplanting organs or parts of organs. The Act stipulates that the transplantation procedure may be conducted only if it is medically justified i.e. if it is the best type of treatment (Art. 5). It is prohibited to offer or give any kind of compensation to the organ donor. The Act prohibits trade in organs (Art. 27). In the event that there is not an appropriate organ recipient on the state waiting list for an organ of a deceased donor in Serbia, the organ may be offered to an appropriate international organisation or institution or another state with which Serbia has established cooperation in exchange of organs for treatment purposes. Under the Act, data regarding the organ donor and recipient shall be an official secret to be kept by all persons participating in the transplantation procedure and by all persons with access to such data (Art. 31). Extraction of an organ from a live donor is permissible on condition that the live donor consented to the donation in writing and of his or her free will (Art. 41). An organ may be extracted from a deceased person only after the diagnosis and establishment of the donor’s brain death on the basis of medical criteria in accordance with the law. Under the Act, donation of organs shall be voluntary and free of charge and only the necessary costs shall be charged.

The National Assembly also adopted the Cell and Tissue Transplantation Act governing the procurement, donation, testing, processing, preservation, storage and distribution of human cells and tissues for human application. The Act provides for the establishment of cell and tissue banks.

4.18.9.4. Rights of Patients. – The Health Protection Act devotes special attention to the protection of patients’ rights. The patient has the fundamental right to access health care in keeping with the financial possibilities of the health care system (Art. 26, Health Protection Act). All patients have the right to all types of information notwithstanding their state of health, medical service or manner in which they are using it and to all information available on the basis of research and technological innovations, as well as the right to timely information needed for a decision on whether to consent or not to a proposed medical measure (Arts. 27 and 28, Health Protection Act). The Act also envisages an exception from the obligation to inform the patient of the diagnosis if that would endanger the patient’s health, but in that case, a relative of the patient must be informed of the diagnosis. A patient has the right to free choice of medical team i.e. doctor and to free choice of medical proce-

647 Ibid.
648 Ibid.
dure, including the right to refuse treatment. As a rule, no medical measures may be taken with respect to a patient without his consent. Exceptions pertain to the immediate need for medical measures in circumstances in which the patient is unable to give his/her consent (including the impossibility of obtaining the timely consent of the patient’s guardian or legal representative) as well as medical treatment of a person with a mental disorder. The Act allows the patient to himself decide who will reach decisions on medical measures in case he is incapable of taking the decision (so-called advance care directives). A patient shall enjoy the protection of personal data and privacy s/he imparted to the health workers or that were obtained during diagnostic check-ups or treatment. Experimenting on patients without their explicit consent is also forbidden. A patient also has the right to compensation of damages caused by medical negligence. This right cannot be ruled out or restricted in advance.

The Health Protection Act establishes protectors of patient rights who will be charged with reviewing patient complaints within the health institutions (Art. 39, Health Protection Act). A protector of patient rights will be independent in his/her work and must decide on a complaint within eight days. If the patient is dissatisfied with the decision, s/he may complain to the health inspectorate.

4.18.10. Right to Education

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. This provision falls short of the right to education standard that had been set by the 1990 Constitution, under which the right to free education was exercised at all levels of mainstream education.

Under the Act on the Basis of the Education System 649 two bodies are established: the National Education Council, charged with preschool, primary and secondary general education and fine arts education, and the Vocational and Adult Education Council, charged with secondary vocational, specialist, master craftsman education, adult and professional training. The composition of the National Education Council has remained disputable given that it still envisages that one Council member shall be appointed from amongst the ranks of the Serbian Orthodox Church and another from amongst the ranks of all other “traditional religious communities and churches”. The Act envisages that only one of the 43 National Education Council members shall be appointed from amongst the ranks of all national minorities. The Act introduces licensing of preschool and school teachers and professional school staff (pedagogues and psychologists) (Art. 122). Primary education shall last eight years.
The Act on Primary Schools allows private persons to found primary schools.

The Act on Textbooks and Other Educational Tools was also passed in 2009. It governs the preparation, selection and publication of primary and secondary school textbooks. Primary school textbooks may be published only if they are licensed by the ministry charged with education (Art. 6). Decisions on issuing or withdrawing licences are in the ministry’s discretion. The National Education Council shall be tasked with drafting the plan of a textbook that needs to be published.

School boards, as the school management authorities, comprise representatives of schools, parents and local self-government (Art. 188(1) of the Primary School Act and Art. 89(2) of the Secondary School Act). These provisions provide for partnership and joint decision-making by groups with a natural interest in involving themselves in education. The school boards are inter alia entrusted with the appointment of the school principals with the prior consent of the teachers’ councils.651

Education laws comprise provisions protecting groups and individuals from discrimination and protection from physical punishment and verbal abuse of students. In this way the laws underline the provisions of the Convention on the Rights of the Child related to non-discrimination, protection from abuse and school discipline in terms of the way it can be exercised (Arts. 2, 19 (1) and 28 (2), Convention on the Rights of the Child).652 These prohibitions are supported by appropriate protection mechanisms and their breach constitutes the grounds for dismissal of teachers or associates from the teaching process (Art. 73 (1), Act on Primary Schools and Art. 80 (1), Act on Secondary Schools). These are also the grounds for dismissal of school principals who do not take appropriate action in cases of improper conduct of teachers (Art. 88 (3), Act on Secondary Schools), and sanctions have also been prescribed for the school, which is obliged to pay a fine for the offence if it fails to take action against such conduct (Art. 109 (11 and 12), Act on Primary Schools and Act. 140 (1 and 2), Act on Secondary Schools).

650 Ibid.
651 When there is a reference to the right to education we usually think about children as beneficiaries of education or about parents who have the right to bring up their children in accordance with their religious and philosophical beliefs (Art. 2, Protocol No. 1 to the ECHR). Teachers are most often and easily forgotten in the process. Although they are not the only ones concerned by the life and organisation of the school, the issue of electing school principals is primarily of their concern and interest. This is particularly important since the Act Amending the Act on Secondary Schools envisages that Parental Councils are to deal with issues related to school life (Art. 90a). Election of the school principal is of greater relevance to the life of a school as a collective; therefore this power should be fully granted to the Teachers’ Council. School would then become a truly democratised and depoliticised institution.

The laws separate the management and professional and pedagogical supervision in schools. Salaries, allowances and other income of school staff, as well as the funds for joint consumption, are centralised and streamlined through the Ministry of Education. Also, the laws explicitly allow schools to generate their own income from donations, sponsorships, contracts and other legal affairs. The municipal or city authorities fund the advanced professional development of teachers and associates, investment and regular maintenance, equipment, material costs and depreciation in keeping with the law, transport of students living more than 4 km away from the school, if there is no other school in their vicinity. Transport is provided for students with developmental disabilities regardless of the distance between their house and school. Act on Primary Schools have introduced a provision pursuant to which “the municipality or city in the territory of which the parent of the student has residence shall keep records of children categorised and enrolled in an appropriate school and shall cover the costs of transport, food and accommodation of students if there are no appropriate schools in that particular municipality” (Art. 85 (9)). The problem, however, remains how this obligation will be met by poorer municipalities, which cannot allocate the necessary funds from their budgets. Although stipulated by law, this obligation has not been met in poor municipalities (usually rural communities), where the problem of long distances between schools and homes is the most acute. The Act does not provide for organising special school buses, not even in municipalities with a small and dispersed population. For these settlements, as well as for settlements with a very small number of children of primary school age, the legislator envisages establishing of so-called branch schools, with combined classes. The Act contains the category “combined class” for lower primary school grades (grades 1–4), in which children in two grades study together (in this case the class has 20 pupils) or children in three or four grades study together (in classes of 15 pupils each). The quality of work in combined classes, located in old and poorly equipped buildings (frequently without toilet facilities and running water, a library, kitchen, proper classrooms and similar rooms), is rather low and has a demotivating effect on pupils.

The Act does not envisage penal provisions for municipal authorities, nor for the Ministry of Education, should they fail to ensure that students are able to attend school under conditions stipulated by this Act, but it does envisage sanctions for parents.

The new Act Establishing the Jurisdiction of the Autonomous Province of Vojvodina\(^653\) lays down Vojvodina’s competences in education, allowing its authorities to establish preschools, primary and secondary schools and be charged with their work, perform inspectorial supervision and other affairs regarding the operations of these institutions.

\(^{653}\) Sl. glasnik RS, 99/09.
A new Preschool Education Act was adopted in 2010. The Act regulates the education of children in public institutions from the age of six months until they start school. Under the Act, the preschool education system is based on the principles of prohibition of discrimination (access), respect of the opinion of the child and family, partnership with the families, schools and other relevant institutions, respect of the child’s individual features and individual approach to the child (Art. 4). Preschool institutions may be established by the Republic, an Autonomous Province, local self-government units, private legal and natural persons (Art. 8), foreign states and foreign legal and natural persons (Art. 11).

Children from vulnerable groups shall have priority of enrolment in preschool institutions established by the Republic, an Autonomous Province or local self-government units. The Act also allows the enrolment of children from vulnerable groups in preschool institutions under the same conditions as the citizens of Serbia in case they lack the personal documents required for enrolment (Art. 14). This is particularly important in the context of Roma children, many of whom do not have birth or citizenship certificates.

The Act lays down the maximum number of children in mainstream kindergarten groups (there are five age groups), and special kindergarten groups (kindergarten groups for hospitalised children and developmental groups for children with intellectual disabilities) (Art. 30). The Act upholds the inclusive education principle and lays down particular conditions in which children with intellectual disabilities may be enrolled in mainstream kindergarten groups (Art. 34).

The Act treats preschool education as an essential activity and lays down the kindergartens’ obligation to ensure minimum services during a strike (Art. 47).

4.18.10.1. Higher Education. – As opposed to the 1990 Constitution, Article 72 of the new Constitution explicitly guarantees the autonomy of the universities, colleges and scientific institutions. Under para. 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. 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 of 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 Act explicitly prescribes the equality of higher education institutions notwithstanding their ownership i.e. who their founders are (Art. 4, para. 1, item 9). In several provisions,
the Act especially insists on prohibition of discrimination. The most explicit prohibition of discrimination is found in Article 8 (1), under which:

All persons with secondary education, notwithstanding their race, colour of skin, gender, sexual orientation, ethnic, national or social origin, language, religion, political or other convictions, status acquired by birth, existence of a sensory or motor disability or financial status shall have the right to high education.

Although the Act can be criticised on some minor points and there are doubts that there is readiness to implement it rapidly and efficiently, it can be generally assessed as good from the viewpoint of human rights.

University circles in Serbia had for several years been discussing whether the status of persons who had acquired bachelor’s degrees under regulations valid before this Act came into effect ought to be equated with the status of persons acquiring master’s degrees under the Act. Ever since the adoption of the Act, students rallied in the two biggest student organisations, the Student Union of Serbia and the Student Alliance, have been insisting that all former graduates and those now graduating from college be given the status of master without any strings attached.656 The National Assembly gave an authentic interpretation of Article 127 (1 and 2) of the Act in November 2007 and equated bachelors and masters i.e. the degrees of those who had graduated before and those acquiring university degrees in accordance with the Bologna Declaration. The Belgrade University said the same day that the degrees would not be automatically equated but that their holders would have equal rights with respect to employment and labour-related rights, continuing their studies and specialisation, including doctoral studies, as well as equal opportunities to take the bar and other professional exams.657 The Conference of Universities of Serbia Assembly in late December 2007 decided that bachelors could not automatically be conferred the title of master because the new title was not their acquired right and that each higher educational institution would decide whether its bachelors needed to pass additional exams to be granted the title of Master.658

The National Assembly passed the Act Amending the Higher Education Act and thus changed the criteria which the students have to fulfil to exercise their right to free higher education.659 The Act was further amended in 2010.660 The new provisions primarily regard the establishment and accreditation of tertiary education institutions and the operating requirements they have to fulfil.

Under the Act Establishing the Jurisdiction of the Autonomous Province of Vojvodina, Vojvodina shall nominate a member of the National Higher Education

---

659 Sl. glasnik RS, 97/08.
660 Act Amending the Higher Education Act, Sl. glasnik RS, 44/10.
Council and shall be charged with establishing and licensing tertiary educational institutions. Vojvodina authorities shall be competent for pupil and student standards and the informal education of adults in organisations and institutions outside the school system.

4.18.11. Rights of Persons with Disabilities

The corpus of legislation protecting the rights of persons with disabilities in Serbia has increased over the past few years. In addition to the Act on the Prevention of Discrimination against Persons with Disabilities adopted in 2006, the National Assembly in 2009 adopted several documents relevant to the protection and advancement of their rights. The employment and professional rehabilitation of persons with disabilities is now regulated by law and crucial international documents in this field have been ratified.

By adopting the Act Ratifying the Convention on the Rights of Persons with Disabilities Serbia now has a legal framework ensuring the full equality and active participation of persons with disabilities in social life and their effective enjoyment of human rights and fundamental freedoms. The Convention on the Rights of Persons with Disabilities was adopted by the UN General Assembly in December 2006. It does not create new rights for persons with disabilities, but promotes the concept of non-discrimination, and lays particular stress on the need to ensure persons with disabilities access to infrastructure, public transport and information. The fulfilment of these obligations requires investments. Given that the state has assumed the obligations, it ought to provide enough funds for their fulfilment. Otherwise, its sincere commitment to fulfil the international obligations it assumed may be brought into question.

The Convention and Optional Protocol envisage a mechanism for overseeing the enforcement of its provisions by the Committee on the Protection of Persons with Disabilities. The Committee shall receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by the State Parties of the provisions of the Convention. Ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto constitutes grounds for developing the rights of persons with disabilities and the clear obligation of the state to ensure the full protection of these rights.

4.18.11.1. Right to Work. — The Constitution of Serbia does not include provisions obliging the state to organise special and professional training for partly disabled persons. The Employment and Unemployment Insurance Act also lacks provisions specifically regarding persons with disabilities.

---

661 Sl. glasnik RS, 33/06. More on the Act in I.4.1.3.
662 Sl. glasnik RS (Međunarodni ugovori), 42/09.
663 Serbia ratified the Optional Protocol as well, Sl. glasnik RS (Međunarodni ugovori), 42/09.
664 Sl. glasnik RS, 36/09 and 88/10.
The Act on the Professional Rehabilitation and Employment of Persons with Disabilities adopted in 2009 eliminates the hitherto shortcomings in legislation on the employment and training of persons with disabilities. The motive to adopt this Act was to regulate employment of persons with disabilities by a contemporary comprehensive law in conformity with European legislation, international standards and conventions regulating the field. The enforcement of the Act will ensure comprehensive institutional support to the employment and active participation of persons with disabilities in social life. The Act provides a legal framework and prerequisites ensuring that persons with disabilities are able to express and develop their work and creative potentials through full social integration, to be economically independent and active members of society. The Act essentially strives to redefine and change relationships between persons with disabilities and the work environment, to create preconditions allowing persons with disabilities to demonstrate their abilities and realise one of their elementary human rights – the right to work and employment. The Act provides for special protection of persons with disabilities in employment and at work, prohibits discrimination against persons during job recruitment and at work, provides for their professional rehabilitation and training, and envisages the establishment and work of a budgetary fund for the professional training and employment of persons with disabilities.

The Act aims to achieve greater participation of persons with disabilities in the open labour market by introducing a quota, under which every company with more than 20 employees is obliged to hire one person with disabilities, a company with over 50 employees to hire two persons with disabilities, while companies with more employees have to hire 2 persons with disabilities per every 50 employees (Art. 24). An employer who defaults on this obligation shall pay fines into the state budget. The enforcement of these provisions has been postponed for one year from the day the Act came into force, wherefore the effects of these legal provisions cannot be assessed until 2011.

4.18.11.2. Right to Social Security. – The right to social security implies the right to a disability pension, social aid and accommodation in social welfare institutions.

The right to a disability pension is acquired by an insurant, who has become totally incapacitated for work due to health changes caused by a work-related injury, occupational disease, injury outside of work or a disease that cannot be cured by treatment or medical rehabilitation (Art. 21). The Pension and Disability Insurance Act includes provisions on the right to financial compensation for physical injuries sustained at work and occupational diseases (Art. 37 (2)) and the right to recognition of additional length of service for persons with a minimum 70% physical disability, army and civilian invalids in groups I to VI, blind persons and persons

---

665 Sl. glasnik RS, 36/09.
suffering from dystrophy or related diseases (Art. 58). The Act has a major flaw as it does not mention re-qualification or reassignment to another job of an employee who has suffered significant decrease of the ability to work due to a work-related injury or occupational disease, i.e. an injury or disease unrelated to work.

The procedure for establishing the inability to work, the degree of invalidity and percentage of physical disability is laid down in the Regulation on the Republican Pension and Disability Insurance Fund Expert Board of Review\textsuperscript{667} and the Regulation on Establishing Physical Disabilities.\textsuperscript{668}

Realisation of the right to accommodation in a social welfare institution in Serbia is especially problematic. There are no adequate alternatives to institutional placement of mentally disabled persons who are unable to lead an independent life (protected tenancy/housing rights may be exercised only by persons whose ability to live alone is intact or slightly diminished; there are no communes, the foster home system does not function due to the absence of a favourable legal framework, et al.). There are no legal provisions stipulating the placement of such a person in a social welfare institution closest to his family’s home in the event she/he has a family. Beneficiaries are often deprived of fundamental human rights. Most beneficiaries are incapable of working and are placed under guardianship. There is no legal framework which would prevent such practice.

\textit{4.18.11.3. Right to Education.} – Under the Act on the Basis of the Education System, education shall be equally accessible to children, students and adults and no distinction shall be made on grounds of their health, developmental difficulties or disabilities (Art. 3 (1.5)). The Act partly abandons the decades-long “special education” concept. Although special schools will continue to operate, the Act introduces the inclusive approach to education, prohibiting discrimination on any grounds. Persons with developmental difficulties or disabilities are entitled to education respecting their educational needs in the mainstream education system and shall be afforded additional individual or group assistance either in mainstream schools or in special preschool groups or schools (Art. 6 (3)). Education of persons using sign language, a special alphabet or other technological aids may be conducted in sign language or with the help of sign language tools (Art. 9 (4)).

\textsuperscript{667} Sl. glasnik RS, 59/08 and 75/08.
\textsuperscript{668} Sl. glasnik RS, 105/03 and 120/08.
II
HUMAN RIGHTS IN PRACTICE –
SELECTED TOPICS

1. Introduction

1.1. National Media as a Source of Data

The Business Registers Agency data show that 20 dailies were registered in Serbia in 2010. Two of them are no longer published, six are regional, two focus on sports and one on economy. BCHR associates monitored the following papers for the 2010 Report: the dailies Politika, Večernje novosti, Blic, Danas and Kurir and the weeklies Vreme and NIN. The authors of the report also monitored the Beta, Tanjug and Fonet wires and the B92 website news.

A total of 8,850 articles on human rights were read in preparation of the 2010 Report, 11% less than during the preparation of the 2009 Report (when 10,019 articles were read). The decline in the number of press reports on human rights began in 2008, when 11,979 articles on human rights were selected.669

The greatest number of selected articles regarded political rights (14.12%), accounting for 20% more of the press reports on human rights than in 2009 (11.83%). The increased interest can probably be attributed to the publication of the State Audit Institution report on the irregularities in the work of the Government and its bodies, and the corruption scandals in which state employees are presumably involved in one way or another. Organised crime accounted for the second most reported on topic (these texts were included for the first time in this Report). Articles on Kosovo and Metohija, which accounted for most of the articles in 2009, were the third most frequent topic in 2010; they were followed by reports on the right to a fair trial (9.31%, or around 10% less than in 2009). It should, however, be borne in

669 The fewer articles on human rights cannot be ascribed to the improved human rights situation, but, rather, to the constant decline of reports on Kosovo and the ICTY. Articles on Kosovo and Metohija accounted for 9.4% of the selected press reports in 2010 (12.09% in 2009). Reports on the ICTY accounted for 5.61% of the selected articles in 2010 (8.88% in 2009). It needs to be highlighted that the number of articles on Kosovo and the ICTY has been constantly falling since 2007 (when they accounted for 28.65% and 16.45% of the selected articles respectively). This decline by two-thirds over 2007 is the consequence of lesser media interest in Kosovo and Metohija and the ICTY.
mind that articles on organised crime were categorised under articles on the right to a fair trial in the 2009 Report.

Reports on violations of the right to life ranked fifth, accounting for 8.82% of the selected texts. The decline over 2009 (11.63%) is due to the fewer war crimes and malpractice trials and a somewhat lower number of environmental accidents. Articles on social and economic rights ranked sixth, accounting for 8.72% of the selected articles. The decline over 2009, when they accounted for 10.96% of the selected reports, is not due to an improvement of social and economic rights, the respect of which has continued to decline, but by the readers’ and, thus, media exhaustion with this issue. This lack of interest also led to fewer reports on the freedom of expression, which accounted for 8.28% of the texts (as opposed to 9.67% in 2009).

Reports on the protection of the child and the family ranked eighth, accounting for 7.93% of the selected texts. The rise over 2009 (when they accounted for 6.80% of the articles) indicates that the crisis enveloping the country has negatively affected this area as well. As mentioned, the number of articles on the ICTY slumped to 5.61%, and this topic ranked ninth.

Articles on minority rights took tenth place with 5.50%, although their share more than tripled over 2009 (1.56%). Greater media interest in this issue was roused by the problems surrounding the election of the Bosniak national minority council and the disagreements between Islamic Community in Serbia Mufti Muamer Zukorlić and the state. Reports on discrimination ranked eleventh, plunging in comparison to 2009 (5.07% in 2010 over 9.50% in 2009) and indicating that the Serbian society is primarily responsive to extreme instances of discrimination, such as the killing of French national Brice Taton in 2009, but that it is considerably inured to everyday and less drastic forms of discrimination.

In terms of frequency, reports on discrimination were followed by articles on the prohibition of torture, which accounted for 2.33% of the selected articles in 2010 (2.85% in 2009), the protection of privacy, which accounted for 1.13% of the selected reports in 2010 (1.84% in 2009) and on trafficking in humans, accounting for 0.30% of the 2010 press reports (1.03% in 2009).

The human rights situation in 2010 was similar to the one in 2009 judging by the media reports monitored by BCHR associates. It deteriorated with respect to minority rights, political rights and the protection of the child and the family. Violence in all areas, particularly domestic violence and violence against children, have increasingly been grabbing media attention. One of the reasons is because such articles arouse interest among the readers; another lies in the fact that the incidence of such forms of violence has increased, a phenomenon the state authorities need to address seriously. The fact that the number of reports on social and economic rights, the freedom of expression and the right to a fair trial have declined does not imply that the situation in these areas has improved over the past years. The fewer and fewer media reports on human rights violations can probably be attributed not only
to the readers’ exhaustion with those topics, but also to the increasingly successful control of the media by the informal power centres, bolstered by the economic crisis.

The authorities reacted more frequently to human rights violations in 2010, thanks, *inter alia*, to the fact that they had an improved legislative framework at their disposal. Specific steps aimed at identifying and punishing the offenders were, however, by and large scarce and slow. The prosecution offices and courts remained chronically slow and inefficient. The situation was further exacerbated by the media, which continued slipping into general tabloidisation. Their reactions to discrimination improved but insufficiently and inadequately; their respect of the presumption of innocence improved albeit slightly.

BCHR’s associates were unable to use all the available information in the Report for lack of space and singled out the information and articles best illustrating human rights violations in practice.

1.2. Other Sources

Apart from press reports, the BCHR associates also perused data issued by the state institutions, official statistical data and, in particular, the reports and statements of the independent authorities (Protector of Citizens (Ombudsman), the Information of Public Importance and Personal Data Protection Commissioner, the State Audit Institution, the Anti-Corruption Agency and the Commissioner for Equality). They also used the reports and data of international non-governmental organisations with offices in Belgrade (UNDP, UNHCR, OSCE, et al).

Analyses, reports and statements by local and foreign NGOs, notably the Humanitarian Law Centre (HLC), the Helsinki Committee for Human Rights in Serbia (HC), the Lawyers Committee for Human Rights (YUCOM), the Youth Initiative for Human Rights (YIHR), the Child Rights Centre, the Centre for the Development of Civil Society, the Democratic Centre, Transparency Serbia, CeSID, Civic Initiatives, Group 484, the Center for Civilian Military Relations (now called the Belgrade Center for Security Policy, Praxis, the Centre for Peace and Democracy, the Victimology Society of Serbia) and by many others the BCHR has been regularly following have greatly contributed to this Report. Reports by international NGOs (e.g. Human Rights Watch, Amnesty International, Reporters Without Borders, Freedom House) were monitored in 2010 as well and the data published by these organisations were also incorporated in this Report.

BCHR associates also regularly followed the reports and recommendations of UN committees monitoring the implementation of universal human rights treaties and used the materials of the UN Human Rights Council, the Council of Europe (CoE), the European Union (EU) and the Organization for Security and Cooperation in Europe (OSCE).
2. Selected Topics

2.1. Functioning of Institutions

2.1.1. Political Institutions

2.1.1.1. Work of the National Assembly and Local Assemblies. – In February 2010, more than three years after the adoption of the Constitution of the Republic of Serbia, the National Assembly passed the National Assembly Act. This Act, inter alia, for the first time establishes the budgetary independence of the parliament; its work will now be financed from the budget of the Republic of Serbia; the funds needed for its work used to be granted by Government decisions. The Serbian Assembly will have its own account and distribute its funds independently while the execution of the Assembly budget will be controlled by an internal auditor. The Act provides for a string of other innovations, from ceremonial to procedural. In particular the establishment of an Assembly Collegium, a body which is convened by the Speaker of the Assembly for the purpose of coordinating and consulting on the work of the parliament and comprises the Speaker of the National Assembly, the Deputy Speakers and the heads of the party caucuses. The Collegium will assist the Assembly Speaker in representing the National Assembly, in calling the sessions and setting the daily agenda and in coordinating the work of the working groups. The Assembly shall have standing working bodies – committees, and it may also set up ad hoc working bodies such as inquiry committees and commissions. The Assembly deputies upheld LDP’s amendment to delete the article envisaging that “a deputy may freely dispose of his or her mandate in accordance with the Constitution and the law governing the election of deputies” whereby the Assembly avoided regulating the contested issue of blank resignations by this law, and reference to the contested Article 102 of the Constitution of the Republic of Serbia, which allows deputies to irrevocably place their mandates at the disposal of their political parties under the conditions specified by the law or a new law on the election of deputies.

The National Assembly also adopted new National Assembly Rules of Procedure, providing for a decrease in the number of the standing parliamentary committees from 30 to 19. This provision will, however, enter into force only after the next parliamentary elections. In accordance with the new Rules of Procedure, committees will have 17 members each (up until now the number of members in committees varied from 11 to 25 members) with the exception of the Committee for Security Services Oversight, which will have 9 members. The current Administra-

670 Sl. glasnik RS, 9/10.
673 Sl. glasnik RS, 52/10.
vative Committee will be replaced by the Committee for Administrative-Budgetary and Mandate-Immunity Issues after the election of the new parliament. A special standing body – the Child Rights Working Group – will be formed. It will be chaired by the Speaker of the National Assembly.674

Direct democracy mechanisms, notably the citizens’ right to file applications and petitions, are barely developed. The Referendum and Public Initiative Act was passed back in 1994 and amended only once, in 1998. The Assembly agenda has never included a draft law submitted by an NGO or a group of citizens, only drafts submitted by the Government. The Petitions and Proposals Committee had not held one session from 2007 until 2010. In 2010, it met four times.675

Certain provisions of the Rules of Procedure concerning control of the work of independent regulatory authorities have met with criticism of the media and the leading officials of these institutions (Blic, 6 August, p. 3; NIN, 12 August, p. 8). This Act introduces a new reason for the dismissal of officials of independent regulatory bodies: in case an annual report of an independent regulatory authority is not adopted at a plenary session of the National Assembly, the competent committee may initiate proceedings for the determination of the responsibility of its representatives. This introduces plenary voting on a document which should essentially be “noted” (which would ensure the independence and cement the role of the “fourth branch of government”) and thus offers the ruling majority the opportunity not to vote for a report on government oversight when it is not to its liking (Blic, 6 August, p. 3). According to some legal experts, the introduction of control mechanisms through subsidiary legislation rather than a law may be abused to satisfy the interests of the ruling majority. (NIN, 12 August, p. 8).676

The entrenched practice of passing laws under an emergency procedure and in the absence of an appropriate public debate continued in 2010. Promises made in 2009 – that the adoption of the new National Assembly Act and the new Rules of Procedure would do away with the offensive language and inappropriate conduct by the deputies – did not materialise (Danas, 8 April, p. 2; Blic 8 April, p. 8; Večernje novosti 10 April, p. 3).677

Similar inflammatory speech and even more pronounced rudeness of public officials, including physical altercations between deputies, were observed in local assemblies in numerous municipalities in Serbia (Politika, 13 June, p. 5; 9 July, p. 1 and 14 June, p. 7).

675 The Committee decided to hold some of its sessions outside Belgrade and held one session in Niš. The Petitions and Proposals Committee also met with the independent regulatory authorities appointed by the National Assembly. In 2010, it met with the Protector of Citizens and the Anti-Corruption Agency Director to discuss how to improve the Committee’s cooperation with these independent authorities.

677 Ibid.
2.1.1.2. Political Parties. – The procedure for the re-registration of the existing political organisations and the registration of new political organisations was completed in January 2010. A total of 501 political parties were deleted from the register as they failed to submit the required documentation by the legally set deadline. According to the Public Administration and Local Self-Government Ministry data, 75 parties were registered, including 42 parties representing national minorities.

The majority of registered parties submitted their financial statements to the Anti-Corruption Agency, and all parliamentary parties, with the exception of the League of Social Democrats of Vojvodina and the Alliance of Vojvodina Hungarians, observed the 15 April deadline previously set by the Committee on Financial Issues. One of the shortcomings of the law is that it is very difficult to initiate proceedings against the defaulting parties as there is no prescribed deadline for their submission. Notwithstanding, the Agency in 2010 filed eight misdemeanour reports against political parties that had not submitted financial statements on funds spent during local elections in Bor and Žabalj. (Politika, 27 November, p. 6; Danas, 16 April, p. 3)

The draft Act on Financing of Political Activities provoked dissatisfaction amongst the smaller parties with seats in the Assembly, because the adoption of this Act would mean that, as of the next elections, the parties, which had not won at least 1% of votes (0.3% in the case of national minority parties), will have to repay the state the money allocated for campaigning or the state will recover it from the funds in the “election guarantee”, which is paid by the party when it submits its candidacy. The draft also lays down a new procedure for distributing budgetary funds to cover the regular work of the parties. Previously, 30% of the total budgetary funds intended for that purpose were distributed evenly among all parliamentary parties and the remaining 70% proportionately, depending on the number of seats they have in parliament. The draft envisages the allocation of all the funds to the “political entities” that made it into parliament proportionately to the number of votes they won (NIN, 30 September, p. 23). Numerous NGOs also criticised the draft Act.

The Constitutional Court’s declaration of the provisions in the Local Elections Act introducing the institution of “blank” resignations as unconstitutional may give the political public the impetus to formally repeal blank resignations at the state level as well. This can be achieved by amending the disputed Article 102

678 The list of deleted political parties is available at: http://www.drzavnauprava.gov.rs/pages/article.php?id=1812.
of the Constitution of the Republic of Serbia which introduces the possibility of a deputy placing his or her mandate at the disposal of his or her political party under conditions prescribed by the law or a new act on the election of deputies (NIN, 14 October, p. 8). Unfortunately, the adoption of such a law has not been announced yet (Politika, 18 October, p. 6).

Two former deputies, who entered the parliament on the G17 plus ticket, have turned to the European Court of Human Rights, and two others are planning on doing so following the exhaustion of available domestic remedies, because they were stripped their mandates at the demand of that party (Večernje novosti, 26 March, p. 6).

2.1.1.3. Incompatibility of Offices. – The amendment of the Anti-Corruption Agency Act in late July affording all state and Vojvodina deputies the possibility of simultaneously performing more than one public office until the end of their mandate, has seriously disrupted the work of the Agency and democratic oversight of government. The parliamentary deputies may now hold on to offices in the legislative and executive branches of government (which constitutes a direct conflict of interest) in the transitional period of up to as many as two years. It is well-known that there are a large number of public officials simultaneously holding two or more public offices, especially in Vojvodina where most mayors are also deputies in the provincial assembly. The adoption of the controversial amendment was preceded by go-aheads i.e. autonomous interpretations of the Anti-Corruption Agency Act, from the Ministry of Justice (notably to the deputy Dragan Marković) and the Vojvodina Assembly Committee for Mandate-Immunity Issues (to the Vojvodina provincial officials) that they were entitled to simultaneously hold two or more offices until the end of their mandates. (Politika, 16 April, p. 1; Blic, 30 March, p. 4).

The Act, which came into force on 1 January, originally laid down that officials holding more than one office had to choose by 1 April which office they would continue exercising and report thereof to the Anti-Corruption Agency, but some of them complained to the Constitutional Court, which temporarily suspended the provision. Under the amendments to the Act, which the Agency had agreed with the Ministry of Justice, the officials who had not opted for one of the offices by the set deadline, were to notify the Agency by 1 September of the offices they held and it would then notify them whether they were in conflict of interest. The Agency then initiated a review of the constitutionality of the amendment, claiming it allowed officials to hold on to two offices, which is in contravention of the constitutional provisions on the principles of the rule of law, separation of powers, prohibition of discrimination and the prohibition of conflict of interests. At its session on 28 October, the Constitutional Court instructed the Serbian Assembly to submit within 30 days an opinion on the initiative for the review of the constitutionality of specific articles of the Anti-Corruption Agency Act allowing officials to hold two or more offices in different branches of government. Once the Assembly forwards its opin-
ion to the Constitutional Court, it will hold a session in camera, render a decision and publish it.683

In the April-November period, the Anti-Corruption Agency issued over 100 decisions instructing officials to resign from their other office within 30 days, 10 decisions terminating their other office by force of law and pursuant to an Agency decision. The Government relieved of duty two state secretaries who were also municipal councillors, one of whom was even a deputy in the Vojvodina Assembly. Fifteen warning measures were also issued (Politika, 27 November, p. A6).

2.1.1.4. Elections. – Several municipalities held early local elections in 2010 following the introduction of receivership in late 2009 due to the months-long blockades of the local assembles or mismanagement of municipal funds involving local officials (Danas, 10 January, p. 2). The election campaigns were becoming increasingly undemocratic in character as they gained in momentum, as some parties resorted to various methods of vote-buying and machinations. The elections in Ođaci held on 24 January were won by the For a European Ođaci – Boris Tadić (Democratic Party (DS) – Liberal Democratic Party (LDP) – Serbian Renewal Movement (SPO) – Democratic League of Vojvodina Hungarians (DZVM) – Christian Democratic Party of Serbia (DHSS)) which won ten seats. The Serbian Progressive Party (SNS) won seven, and the coalition Socialist Party of Serbia (SPS) – Party of United Pensioners of Serbia (PUPS) – United Serbia (JS) – Ivica Dačić and the Serbian Radical Party won three seats each. The political stage in Ođaci thus reflects the situation at the republican and provincial levels. (Politika, 26 January, p. 5).

Early elections in Negotin were held on 7 March where victory was declared by the DS-SPO coalition which won 24% of the votes, SPS – PUPS – JS 20% and LDP 18% (Politika, 8 March, p. 9).

The early elections in Aranđelovac, held on 25 April, were accompanied by accusations, mostly voiced by the local political party officials, of “dirty campaigning” and “vote-buying”. Some claimed that their adversaries were even offering voters “packages” of various goods in an attempt to muster as many votes as possible (Danas, 2 April, p. 3). The SNS won most of the seats at these elections, but not enough to form the local government. The Aranđelovac local government was ultimately established by the same parties which are in power at the republican level.

In Bor, where the elections were held on 20 June, a surprisingly good result was achieved by the coalition United Regions of Serbia – Social Democratic Party of Serbia, which won almost a quarter of the votes. The Serbian Progressive Party (SNS) alleged that a number of fake letters on SNS letterhead were sent out to the voters asking them to pay 1860 dinars to cover its campaign expenses. (Politika, 22 June, p. 6). The SNS filed criminal reports against the director of the Bor Post

Office, the Minister of Internal Affairs and the Director of PTT Serbia for abuse of office. Parties were alleged to have applied another vote-buying tactic – they are said to have paid their own activists and sympathisers to register their place of residence in the municipality where elections were being held just to vote. (Danas, 11 June, p. 3)

A single voter register, which will allow everyone the chance to check online whether s/he is entered in the voter register and where his/her polling station is, and to choose where s/he will vote in the event s/he is not near his or her designated polling station (which will obviate the need for voters to travel to their polling stations and for organising bus and train transportation for them) was to have been established by the end of 2010. The single voter register is expected to be up and running by the next parliamentary elections. The task of setting it up has been entrusted to the State Administration and Local Self-Government Ministry.

2.1.2. Judiciary

2.1.2.1. General Assessment. – The complexities of the judicial reform were evident and expected ever since its launch in 2006, when the National Judicial Reform Strategy was adopted. It was, however, almost impossible to imagine that the judicial reappointment procedure would go back to square one in late 2010. The set of judiciary laws was amended, essentially relaunching the general reappointment procedure, under pressure from national and international legal experts and international organisations, particularly the European Union. Although the agents of the reform tried to be nuanced and moderate in their statements, it was obvious that the Justice Ministry and High Judicial Council accepted the fact that mistakes had been made in the reappointment of judges and prosecutors and that every single decision had to be reviewed. The outcome could have been pre-empted by abidance by standards guaranteeing the candidates whose competence and worthiness were challenged the opportunity to dispute the allegations and by an adequate appeals procedure allowing for a rapid review of HJC decisions and transparency. Had that occurred, there would have been fewer grounds for criticising the implemented reforms, one year would not have been wasted unnecessarily and the reputation of the agents of the reform would not have been undermined.

The judiciary reform was one of the most complex reforms launched in Serbia in the past ten years and it was imperative to implement it as perfectly as possible, notwithstanding the expected obstacles. All reports by relevant international organisations clearly highlight that the reform was a major endeavour given Serbia’s fragile democracy and weak institutions. Particularly relevant in that respect

is the CoE recommendation that the “that the judicial system needs to have the opportunity to “digest” the recent and current changes”, 687 because “(I)f there are too many changes in a too short period of time, the good functioning of the judiciary will be at risk and the necessary improvements hindered”. This recommendation confirms that reform is necessary, but also that time will be needed for it to yield tangible results.

A lot of time will be needed to rectify the consequences of the irresponsible conduct by the competent authorities during the appointment of judges and prosecutors. It remains to be seen how much time will be needed to build the public trust in the judiciary system. Public opinion survey results688 indicate that the citizens were aware that the reform was necessary and had great expectations of its results; around 60 percent of the respondents said they thought the situation in the judiciary would substantially improve after the reform. The survey also showed that the length of proceedings and the general inefficiency of the judicial system undermined public trust in the judiciary the most. The reappointment procedure was an opportunity to restore the trust of the citizens, lost back in the 1990s, an opportunity that was missed.

2.1.2.2. Reappointment Procedure and Criteria. – The reform was criticised the most because of the judicial reappointment procedure, which was qualified as absolutely non-transparent. Namely, the non-reappointed judges and prosecutors were given no explanation why they were not awarded tenure, which gave legitimacy to the views that hundreds of judges and prosecutors were corrupt and unworthy of performing such important judicial offices. This is why it was crucial to precisely explain why some of the candidates were not reappointed, because the reasons why they were not awarded tenure varied: many judges were nearing the retirement age, others wanted to stay on in the judiciary only if they were promoted, while only some of the candidates were found to be unworthy of the office. The judicial reform also raised the issue of vetting, but it soon transpired that vetting could not be conducted in the current social and political circumstances, because, unfortunately, the general reappointment procedure was primarily conducted to cut down the number of holders of judicial office, not rid it of the unworthy.

The judiciary reform was further undermined by accusations voiced by former Secretary and Adviser in the Serbian President’s Cabinet Vladimir Cvijan, who resigned in March689 over his alleged disappointment with the judicial reapp-
pointment procedure. Cvijan soon joined the Serbian Progressive Party (SNS) and accused the High Judicial Council and Justice Ministry of corruption and of being part of the judiciary mafia. At a news conference, the SNS played an audio recording of a conversation between HJC Chairwoman Nata Mesarović and Cvijan and said that a copy of the recording had been forwarded to the prosecution. The excerpt played at the press conference did not corroborate the serious accusations, only that the two had, indeed, met, although Mesarović earlier denied that she had met with Cvijan. It is important to note that Cvijan and senior SNS official Aleksandar Vučić refused to explain how they got hold of the recording. Although Article 143 of the Criminal Procedure Code incriminating unauthorised wiretapping and recording was violated, there was no court epilogue to this case. Given that wiretapping the President of the Supreme Court of Cassation and Chairwoman of the High Judicial Council simultaneously constitutes an attack on these institutions, the authorities have to establish how it had occurred. It has so far been ascertained that there was no illegal equipment or wiretapping device in the room in which the meeting took place (Politika, 27 June, p. 7). Media reports that Cvijan was being investigated have not been confirmed (Blic, 23 April, p. 2).

A number of judges filed criminal reports against the High Judicial Council with the Special Organised Crime Prosecution Office or the Belgrade First Basic Prosecution Office (Politika, 25 June, p. 1), claiming that performance records allegedly created by the Justice Ministry, not the official court staff performance reports, were referred to in the reappointment procedure. The judges alleged that this constituted a violation of the Court Rules of Procedure and the HJC Binding Instructions on Tabular Periodic Reports on the Courts’ and Judges’ Workloads and on Entry of Data in the Tables of 21 June 2005. For instance, judges on maternity leave were registered as having fulfilled 0% of their norm. The prosecution office started gathering the necessary data so that it could take a decision on the filed reports (Politika, 27 June, p. A9).

Given that the problems the judiciary has been grappling with for decades have permeated the system so deeply, it is highly unlikely that the new general reappointment procedure will improve its image, particularly as it is still unclear which criteria will be applied in the new procedure. Regardless of how complex the reform process is and how high the goals and hopes have been set, many of the errors would have been avoided by a more thorough analysis of the situation in the judiciary, better staffing decisions and abidance by the laws and the Constitution.

2.1.2.3. New Court Network in Practice. – It is still too early to assess the operation of the new court network, particularly of the basic courts with court units. Criticisms, have, however, been voiced about the work of the basic courts, the links between the courts and their units and the costs the new network has incurred to both the citizens and the state. The year 2010 demonstrated that the right of access to a court has been significantly hindered by the changes in the court network. Fur-
thermore, the new system had to be implemented within a very short period of time, some buildings were not ready, appliances were insufficient, etc.\textsuperscript{690}

In addition, the abolished courts continued operating as court units trying civil cases. The judges and court staff now have to travel to these units and waste precious time they would otherwise spend adjudicating cases. The information system, which is to link the courts and court units, is not fully operational yet. The case filing system also suffers from shortcomings and is unable to provide precise information even on the caseloads of the individual judges.

There are no aggregate data on the travel expenses of judges, lay jurors, court staff and citizens or on the family separation allowances paid to and the rent covered for around 200 judges and prosecutors who had to resettle in other towns. Every court and prosecution office submits the amount that needs to be paid out to them to the Justice Ministry, but no one in the Ministry has processed the data yet to establish the cost-effectiveness of the new network (\textit{Večernje novosti}, 4 April, p. 7). On the other hand, the Justice Ministry officials claim that the salary and allowance expenses were cut by 150 million dinars and the other current expenses by 26 million dinars a month since the new judiciary network was established (\textit{Politika}, 9 June, p. 10).

The move to the new courts caused major upheavals in practice and should have been planned and controlled more thoroughly to avoid congestion. In the first half of 2010, citizens still had to spend hours, even days waiting their turn to get something done in court.\textsuperscript{691}

\textbf{2.1.2.4. Number of Judges.} – The High Judicial Council initially decided to cut the number of judges down by 25\%.\textsuperscript{692} Its main argument was that Serbia would need fewer judges once the new court network was established and the new laws adopted. As not all the initially advertised vacancies were filled during the general reappointment procedure in 2009, the HJC readvertised the remaining 81 vacancies in early 2010 and awarded tenure to quite a few judges, who had been unsuccessful in the first round. The HJC, however, soon realised its initial estimate of the number of judges Serbia needed was wrong and decided to increase the number of judgeships by 104.\textsuperscript{693} These vacancies were not advertised in 2010. Furthermore, with the exception of the Supreme Court of Cassation, all other courts are still headed by Acting Presidents. The appointment of court presidents was launched but suspended without a clear explanation.

\textbf{2.1.2.5. Status of Non-Reappointed Judges.} – After the general reappointment of judges and deputy public prosecutors – conducted by the High Judicial Council

\begin{itemize}
\item \textsuperscript{690} Support to the Reform of the Judiciary in Serbia in the Light of Council of Europe Standards, published on 19 August 2010, p. 67.
\item \textsuperscript{691} “Courts in Serbia Blocked”, 21 February, www.vesti-online.com.
\item \textsuperscript{692} Decision on the Number of Judges in Courts, \textit{Sl. glasnik RS}, 43/09 and 91/09.
\item \textsuperscript{693} Decision Amending the Decision on the Number of Judges in Courts, No. 112–01– 445/2010– 01.
\end{itemize}
and the State Prosecutors’ Council – and appealed by the unsuccessful candidates with the Constitutional Court, the latter on 25 March 2010 adopted positions confirming that the unsuccessful candidates were entitled to file constitutional appeals with it. Under the Act on Judges (Art. 101), judges not reappointed pursuant to this Act are entitled to compensation of salary for six months equalling the salary they had at the moment of termination of their duties. In July, the Justice Ministry decided to extend the payments of the salaries until the Constitutional Court ruled on the appeals. In the meantime, the latest amendments to the judiciary laws discontinued reviews of the constitutional appeals, treating them as ordinary complaints to be reviewed by the High Judicial Council in its permanent composition.

Before the adoption of the amendments transferring the reviews of complaints to the High Judicial Council, the Constitutional Court reviewed and rendered decisions on two constitutional appeals filed by unsuccessful candidates for judgeships, ordering the HJC to review their applications. The HJC again rendered a decision not to reappoint Zoran Saveljić from Niš. In its review of the first appeal, the Constitutional Court missed the opportunity to impose its ruling as a model judgement for all other appeals, like the European Court of Human Rights has been doing whenever it establishes violations that are systemic in character. Had it followed suit, the Constitutional Court could have suspended the review of all other appeals to give the HJC time to correct the identified shortcoming, thus relieving its own caseload of so-called repetitive applications. By its failure to opt for this avenue, highlighted by judge Marija Draškić in her dissenting opinion, the Court made it obvious that the review of all the decisions would last a very long time and provided an argument to the agents of the reform to radically amend the laws and revert the reappointment procedure back to the beginning.

2.1.2.6. Efficiency of the Judiciary. – The judicial authorities are criticised the most over extremely lengthy court proceedings, a problem repeatedly highlighted by the BCHR in its annual reports. The conduct of the counsels and the parties to the proceedings have exacerbated the alarming situation, as has the failure of the judges to apply procedural means to expedite the proceedings and compel the parties to appear at the scheduled hearings; the judges, instead, by and large schedule new hearings, usually in a few months’ time.

Overly long proceedings have effectively resulted in the expiry of the statute of limitations in some cases. For instance, the statute of limitations on the motion to prosecute Marko Milošević (son of late Serbian President Slobodan Milošević) filed

---

694 The following laws have been amended: Acts on Judges and Public Prosecution Offices, the High Judicial Council and State Prosecutors Council Acts, and the Act on Organisation of Courts.
695 See I.4.6.2.1.
697 More on such decisions at www.echr.coe.int.
by three members of the Otpor Movement in 2000 absolutely expired in 2010. Apart from citing expiry of the statute of limitations as the reason for discontinuing the proceedings, the court in its judgement ordered the state to compensate Milošević’s defence costs. By pure coincidence, Bogoljub Arsenijević Maki was arrested the same day this judgement was rendered and immediately pardoned by the Serbian President. Arsenijević was arrested pursuant to a Valjevo Higher Court warrant for failing to appear in court for his retrial. He had been indicted for obstructing a public official discharging security duties at a rally against Milošević’s regime in 1999 (Blic, 14 September, p. 16). The then District Court convicted him to three years’ imprisonment, but the Supreme Court quashed the judgement and ordered a retrial.

The enforcement of final court judgements is one of the gravest problems faced by the Serbian judiciary in terms of efficiency. At an average, 650 days pass from the day a court renders a final judgement and the day it is enforced. Belgrade court electronic data show that nearly 1.6 million of the 1.9 million cases regard the enforcement of court judgements, but there are merely 40 bailiffs to 1.6 million cases in Belgrade; there used to be only 10 bailiffs for all of Belgrade (Blic, 23 August, p. 4).

The case of General Vladimir Trifunović, the former commander of the JNA Varaždin Corps, is an excellent illustration of how long proceedings in Serbian courts take. The criminal proceedings against him were discontinued by a Belgrade Higher Court decision on 18 March 2010 after 15 years, after the Supreme Court of Cassation had overturned the judgement convicting him to seven years’ imprisonment for surrendering the Varaždin army barracks (whereby he saved the lives of around 250 troops) during the conflicts in Croatia in 1991 (Večernje novosti, 18 March, p. 14). Trifunović was also convicted by a final judgement in Croatia to 14 years’ imprisonment for war crimes against the civilian population and use of excessive force. He was in 2010 accused also of war crimes against the civilian population during the JNA intervention in Slovenia in 1991.

2.1.2.7. Dismissal of Judges. – The Justice Ministry filed an initiative with the High Judicial Council to dismiss a Belgrade Basic Court judge over the case of journalist Brankica Stanković, who was publicly threatened with death because of her reports on proceedings against violent soccer fan groups. The judge, who chaired the judicial panel that dismissed the indictment against six defendants, qualified the crime of death threat and endangering safety as the crime of insult, which Brankica Stanković could privately prosecute. The Appellate Court subsequently quashed the first-instance decision and ordered the court to review the case.

698 Momčilo Veljković, Radojko Luković and Nebojša Sokolović sued Milošević and other persons over a fight in the heart of Požarevac on 2 May, 2000.
699 More in II.2.9.
Justice Ministry’s reaction violated the principle of separation of powers. The HJC or professional associations should alert to similar errors in the future.

2.1.2.8. Political Involvement of Judges. – When the judicial reappointment procedure was completed, the Serbian Progressive Party publicly announced that over half of the non-reappointed judges joined its ranks, but introduced only four of them at a news conference (Danas, 14–15 August, p. 3). Although it subsequently turned out that a much smaller number of former judges had actually joined the SNS, the ones who have include the former Presidents of the Leskovac District Court and Lebane Municipal Court and the former Deputy President of the Valjevo District Court. Given that Article 30 of the Act on Judges and Article 152 of the Constitution lay down that judgeship is incompatible with political party membership, these former judges cannot work as judges anymore, even if their appeals i.e. complaints are upheld. Expectations are that they also lost the right to the compensation of salary they were receiving, but information to that effect has not been published yet.

2.1.2.9. High Judicial Council’s Attitude Towards Independent Regulatory Authorities. – The High Judicial Council repeatedly demonstrated its lack of understanding of the importance of democratic oversight and the institutions exercising it.

The involvement of the Security Information Agency (BIA) is one of the issues that arose with respect to the judicial reappointment procedure. The Justice Minister first said that data received from the prosecution offices and collected by the police and the BIA were used during the procedure.701 Both the Minister and the BIA Director denied this later. However, at a parliamentary Security and Defence Committee session on 13 January, when a deputy asked him whether the BIA had been involved in the judicial reappointment procedure and forwarded data on the candidates to the Justice Ministry, the BIA Director said that the BIA had acted in accordance with the law and that he was not in the position to unambiguously confirm that the BIA submitted any such data (Blic, 14 January, p. 2). He later said that he was acting in accordance with a Government decree,702 allowing the BIA to perform security checks also of court job applicants. The Decree lays down that security checks and protection shall also extend to holders of the topmost prosecutorial and judicial offices.

Articles 41 and 42 of the Constitution guarantee the confidentiality of communication and the protection of personal data, and lay down that the collection, keeping, processing and use of such data shall be regulated by a law. It would, therefore, be anti-constitutional to regulate these issues by a Government decree or

702 The Decree on the Security and Protection Activities Conducted Directly by the Ministry of Internal Affairs, the Security-Information Agency, the Military Security Agency and the Military Police, Art. 3, Sl. glasnik RS, 12/09.
other subsidiary legislation. The Constitution explicitly 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 state security in a manner stipulated by a law (Blic, 22 January, p. 6).

The Protector of Citizens acted on the numerous complaints filed with his office and visited the BIA. He subsequently said that the BIA had not taken any part in the judicial reappointment and dismissal procedure (Blic, 3 February, p. 3). After the visit, he concluded that BIA had not taken part in the judicial reappointment and dismissal procedure by any act, action, or other measures within its remit.703 Former head of the erstwhile State Security Goran Petrović criticised a number of aspects of the procedure applied during the visit and highlighted the inadequacy of the taken measures (Danas, 8 March, p. 8). The Information of Public Importance and Personal Data Protection Commissioner performed oversight of the High Judicial Council, after receiving complaints from the Judges’ Association of Serbia and a number of individuals about the HJC’s failure to provide access to information on the judicial reappointment procedure and the processing of personal data during the procedure. Acting on suspicions that the HJC processed personal data received from the BIA in contravention of the Constitution and the law, the Commissioner conducted an inspection of the HJC and concluded that there was no evidence in the HJC documentation to confirm those suspicions.704

The Commissioner also rendered a decision on the Judges’ Association of Serbia complaint against the HJC for denying it access to information regarding the general judicial reappointment procedure and required of the HJC to place the sought information at the Association’s disposal. The HJC responded that it “had never received a request from the Judges’ Association of Serbia” although a copy of the Judges’ Association request bearing a filing stamp confirming receipt of the request was submitted to the Commissioner.705 In his explanation, the Protector underlined “that the very fact the Judges’ Association had to file the complaint because there was no reply to their request is worrying in itself”.706

The HJC clashed with the Protector of Citizens after the latter sent it recommendations regarding over 100 complaints by non-reappointed judges and the National Minority Council of Macedonians (regarding the non-appointment of any ethnic Macedonian judges in the area in which this national minority accounts for most of the population). The Protector established that mistakes were made during the re-appointment procedure and that the candidates who had held judgeships in

---

Human Rights in Practice – Selected Topics

the past were denied the possibility to challenge the reasons for their non-reappointment, that they were not provided with explanations why they were not reappointed and not instructed on the available legal remedies. The Protector also criticised the HJC’s failure to fully implement the binding enactments of the Information of Public Importance and Personal Data Protection Commissioner and lack of sufficiently effective and thought-out measures for achieving the proportionate representation of persons belonging to national minorities in courts in areas inhabited by national minorities.707

The HJC failed to eliminate the deficiencies noted by the Protector; nor did it abide by the legal obligation to notify the Protector of the steps it took to implement the recommendation to eliminate the deficiencies, i.e. of the reasons why it failed to act in accordance with it. In its statement, it assessed the Protector’s reaction as “belated, superfluous and unnecessary” (Blic, 5 August, p. 9).

The media also reported on the HJC’s Chairwoman’s reactions to talk about her monthly income. She said that her salary was her own business although the salaries of civil servants and public officials are information of public importance and thus accessible to the public, whereby she demonstrated her lack of awareness of fundamental democratic principles. She at the same time warned that all hell would break loose if she started talking. Such statements may bring into question the transparency of her work and that of the HJC.708

2.1.3. Independent Regulatory Institutions

The executive and legislative branches of government in 2010 applied stronger pressure on independent regulatory authorities than in the previous period. Besides the tested practice of indirect pressure on institutions of the so-called “fourth branch of government”, aimed at hindering their work, such as not providing them with adequate office space, the necessary financial means for all their activities and for the engagement of an adequate number of employees, the government and National Assembly during the past year also applied direct pressure on independent institutions by passing new laws and amending the existing laws regulating the work of these bodies and laws directly affecting the areas where these institutions are supposed to exercise control.

This became evident when the National Assembly Rules of Procedure709 were adopted. Section 17 in Chapter IX lays down the procedure for supervising the work of state institutions, organisations and authorities. Under the Rules, the National Assembly may during its plenary session, at the suggestion of the competent committee, decide not to accept the report of state institutions, organisations or

709 Sl. glasnik RS, 52/10. The Rules of Procedure were adopted on 28 July 2010.
authorities and to initiate a procedure to establish the accountability of their senior officials (Art 237(5.5)); the decision to initiate the procedure is taken by a simple majority (Art 238(2)). Given that the independent regulatory authorities often criticise and indicate the shortcomings in the work of public authorities, it is difficult to expect of the deputies to maintain the level of objectivity and personal integrity (especially in the imperative mandate system) which will lead to the National Assembly’s adoption of reports by the independent regulatory authorities criticising the ruling majority.

Specific independent regulatory authorities were very active in 2010 despite the frequent obstructions and invested great efforts in winning and preserving the support of the public at large, which is prerequisite for applying pressure on the government.

2.1.3.1. Information of Public Importance and Personal Data Protection Commissioner. – Back in 2009, the Information of Public Importance and Personal Data Protection Commissioner called for the amendment of Article 45(2) of the Personal Data Protection Act, allowing for the restriction of the Commissioner’s access to information “if such access would seriously compromise the interests of national or public security, the country’s defence or the prevention, disclosure, investigation or prosecution of crimes, as long as the reasons for the restriction last, in accordance with the law”. However, his initiative was not accepted. Restrictions of the Commissioner’s supervisory role were abolished by the transitional and final provisions of the Classified Information Act. In February 2010, the Commissioner filed an initiative with the Constitutional Court for the review of the constitutionality of Articles 12, 13 and 14 of the Personal Data Protection Act, but the Court did not rule on the initiative by the end of 2010.

In co-operation with the EU Commission, the Commissioner drafted the national personal data protection strategy and submitted the draft to the Government for adoption in September 2009. The Government adopted the Strategy with nearly a year’s delay, in August 2010. Already in late November 2010, however, the Commissioner said he would be forced to yet again urgently appeal on the Government to adopt an adequate action plan for the implementation of the Strategy as well (Danas, 29 November, p. 3).

710 Sl. glasnik RS, 97/08.
711 Sl. glasnik RS, 104/09. The Commissioner and the Protector of Citizens had to intervene with amendments to this draft law as well, because it was submitted to parliament for adoption without a prior public debate, although it contained provisions which would have ultimately denied them access to classified information that they should naturally have. Article 38 merely gave them the right to be approved access to such information. See: http://www.srbija.gov.rs/vesti/dokumenti_pregled.php?id=101854.
In 2010, the Government also failed to issue a decree on measures for the protection of particularly sensitive personal data, although it was obligated to do so within six months from the day the Personal Data Protection Act came into force (Article 60 of the Act).\textsuperscript{715} Fourteen months since the Act came into effect, on 23 March 2010, the National Assembly at long last appointed the second Deputy Access to Information and Personal Data Protection Commissioner.\textsuperscript{716}

The adoption of the Electronic Communications Act\textsuperscript{717} stirred a broad public debate since the provisions in paragraphs 1 and 5 of Article 128 allow the police and security services to gain access to data on citizens’ electronic communications (not their content) without a court order. The Access to Information and Personal Data Protection Commissioner in late September 2010 filed an initiative with the Constitutional Court to review the constitutionality of these provisions and the provisions in Article 13(1), in relation to Article 12 (1(6)) and Article 16(2) of the Act on the Military Security Agency and the Military Intelligence Agency.\textsuperscript{718}

During 2010, the executive branch grossly breached its obligations in the field of personal data protection and also during the administration of the elections for the national councils of national minorities.\textsuperscript{719} Namely, at the very start of the year, the Commissioner called on the competent authorities to take the necessary measures to avoid the violation of rights during the registration of citizens in separate registers of voters for the national minority councils.\textsuperscript{720} The Human and Minority Rights Ministry, charged with conducting and monitoring the elections, issued instructions on the registration procedure, allowing third parties to apply on behalf of the voters for registration in the separate voter registers without any prior identity checks or special consent from the voters. The political parties were thus able to use their activists to collect the personal data of citizens and forge their signatures on the applications for registration. The Commissioner filed 13 criminal reports over these abuses in August 2010 (\textit{Blic}, 3, 8 and 19 August, pp. 3, 3 and 4).

By the end of November, the Access to Information and Personal Data Protection Commissioner filed 14 motions for misdemeanour proceedings against the Ministers of Finance, Health, Trade and Services, Environment and Spatial Planning, Agriculture, Forestry and Water Management, Mining and Energy, Infrastructure, Science and Technological Development, Education, Youth and Sports, Telecommunications and Information Society, Defence, Labour and Social Policy and Culture. Their ministries had failed to fulfil the legal obligation and establish records of filing systems of personal data they process and forward them to the

\textsuperscript{716} Decision on the Appointment of the Deputy Access to Information and Personal Data Protection Commissioner, http://www.parlament.rs/content/lat/akta/akta_detalji.asp?Id=473&t=0#.
\textsuperscript{717} \textit{Sl. glasnik RS}, 44/10.
\textsuperscript{718} See: http://poverenik.rs/sr/zaopstenja/954--30092010.
\textsuperscript{719} See more in II.2.2.5.
The Act on Free Access to Information of Public Importance was amended in May 2010. The amendments entitle the Commissioner to enforce by coercion his decisions on authorities not acting in compliance with the decisions, i.e. to ensure their administrative enforcement through the imposition of a fine issued pursuant to the general administrative procedure (Article 28(2)). The amendments also lay down the obligation of the Government to take measures within its remit to ensure the enforcement of the Commissioner’s decisions in the event the Commissioner cannot ensure their administrative enforcement even after the successive imposition of fines (Article 28(3)). The amendments ensued after the Commissioner had for years been persistently indicating that the existing legal instrument did not offer mechanisms for the coercive enforcement of his final decrees. The pressures exerted by the Commissioner ultimately led to his meeting with the Prime Minister and the Public Administration and Local Self-Government Minister in March 2010, at which they decided to take concrete steps towards ensuring the enforcement of the Commissioner’s decisions. A month after this meeting and after it inspected the implementation of the Act on Free Access to Information of Public Importance in more than 200 bodies vested with public authority, during which it established that 140 of them did not apply the Act, the Public Administration and Local Self-Government Ministry filed motions for misdemeanour proceedings against 41 mayors, 92 social centre directors and 7 heads of republican authorities.

2.1.3.2. Protector of Citizens of the Republic of Serbia. – The Protector of Citizens and Information of Public Importance and Personal Data Protection Commissioner continued their successful cooperation in 2010, particularly in the area of legislative initiatives. Since the Constitution entitles the Protector of Citizens to propose laws for adoption, he in 2010 proposed a number of amendments to draft laws that were upheld by the Government or the National Assembly. He also filed several motions for reviewing the constitutionality of various laws.

The Protector of Citizens first submitted an amendment to the draft National Assembly Act in February 2010. His aim was to regulate the power of the topmost legislative authority in Serbia to review reports by independent regulatory authorities. He proposed that the National Assembly “take note of the reports” after reviewing them without debating whether it would adopt them or not. The Assembly, however, did not uphold his amendment. As mentioned at the beginning of this section, the National Assembly a few months later adopted the new National

722 Sl. glasnik RS, 36/10.
Assembly Rules of Procedure comprising an even more appalling solution, under which not only will the National Assembly debate and vote on a report by an independent regulatory authority, but may also, depending on the outcome of the debate, initiate a procedure to establish the responsibility of a senior official in the state authority, organisation or body in the event the report is not adopted.

The head of the For a European Serbia caucus said that the parliamentary majority decided not to include the Protector’s amendment, under which data kept by the operator would be accessed only with a court order, because the Protector did not submit the amendments in the prescribed manner by registering it in the Parliament’s registry office and merely handed it to the doorman (Večernje novosti, 10 June, p. 3).

Alongside the criminal reports filed by the Information of Public Importance and Personal Data Protection Commissioner regarding the national minority council elections, the Protector of Citizens in December 2010 also established that the Human and Minority Rights Minister made a number of errors violating the legitimacy and autonomy of the constituted national councils, by allowing breaches of the right to personal data protection during the registration of voters in the separate voter registers. The Protector of Citizens at the same time recommended to the Ministry to annul the rules of procedure on the national council constituent sessions and the Instructions on the Separate National Minority Voter Register Entry Procedure because of the abuses, and to initiate amendments to the Act on National Councils of National Minorities to safeguard the councils from the state’s undue influence on their work.

The Protector of Citizens in 2010 reviewed a large number of complaints and publicly reacted to human rights violations on a number of occasions. His office established excellent cooperation with the municipal ombudsmen, held a number of meetings with the Assembly deputies, members of several Assembly Committees, the state authorities and institutions and NGO representatives. The Protector of Citizens in February conducted the first inspection of the BIA to check whether the Agency respected human and minority rights standards during the performance of its duties (Blic, 19 February, p. 5). His Report on the Preventive Control published on the website comprises a number of opinions and recommendations to the BIA, the Assembly, the President of the Supreme Court of Cassation, investigating judges and the Republican Telecommunications Agency, and specific proposals regarding BIA measures that may jeopardise human rights. The Protector of Citizens opened a branch office in southern Serbia in 2010.

---

726 See: http://www.ombudsman.rs/attachments/970_novi.pdf.
727 Sl. glasnik RS, 72/09.
When Foreign Minister Vuk Jeremić refused to reconsider the decision that Serbia should not send a representative at the Nobel Peace Prize ceremony, the Protector of Citizens, Saša Janković, decided to travel himself to Oslo to attend the awarding of the Peace Prize to Chinese dissident Liu Xiaobo.731

2.1.3.3. State Audit Institution. – The attitude of the legislative and executive authorities towards the State Audit Institution (SAI) may be characterised as ambivalent, founded more on a system of reluctant concessions than on prompt action to enable the SAI to work without hindrance. At the beginning of 2010, the parliamentary majority in the National Assembly refused to include in the agenda the SAI’s audit of the 2008 budget,732 although the opposition had insisted on it.733

The State Audit Institution in early 2010 filed 19 misdemeanour reports against 11 former or current ministers, 4 former or current chiefs of administrations or directorates, 3 former or current secretaries and one state secretary in ministries, for violations of the law identified during the audit of the 2008 budget.734 Proceedings on these misdemeanour reports opened in May 2010 (Večernje novosti, 10 April, p. 3).

The only information on the progress of these proceedings made public regarded the cases against the Environment and Spatial Planning Minister, whose trial was scheduled for the 30 July 2010 (Večernje novosti, 27 July, p. 5), and Trade and Services Minister, whom the Belgrade Misdemeanour Court found not guilty. The SAI appealed the ruling with the Higher Misdemeanour Court in June 2010 (Danas, 22 June, p. 9).

The National Assembly on 26 May 2010 adopted the Act Amending the State Audit Institution Act. The Chairman of the SAI Council said in March 2010 that these amendments were necessary because the EU conditioned its financial aid to Serbia by them. The European Union also suggested that SAI audit at least three public companies.735 The Amendments to the Act also resulted in the increase in the salaries of the SAI Council Chairman and members and the auditors, after the Chairman repeatedly complained in public about the difficulties the SAI had in recruiting the necessary staff to audit public companies, local authorities and funds.736 On the other hand, the SAI’s initiative to extend the statute of limitations in misdemeanour proceedings from one to three years was not upheld by the Assembly.

731 The Protector of Citizens said he had gone to Oslo to demonstrate that Serbia did not put politics above human rights and that he had decided to do so because the Nobel Peace Prize was awarded to a citizen who was peacefully advocating human rights in his country. See http://www.ombudsman.rs/index.php/lang-sr_YU/aktivnosti/informacije/1199–2010–12–10–15–50–13.
733 See: http://www.vesti-online.com/Vesti/Srbija/33601/Poslanici-nece-raspravu-o-trosenju-budzeta
736 Ibid.
Justice and Administration Committee (NIN, 18 March, p. 20). The supreme state auditor for the public company sector was named only in September 2010. The SAI only audited the 2009 financial reports of three public companies due to lack of staff (Blic, 1 October, p. 4). The companies selected by the SAI were: “Shelters of Serbia”, “Electricity Networks of Serbia” and “Transnafta”. The audit reports of these public companies will be published in early 2011.

In March 2010 the SAI began auditing seven ministries: finance, education, labour and social policy, agriculture, infrastructure, science, youth and sports, which captures 75% of the total state budget expenditure. The report on Serbia’s 2009 final budget account was submitted to the National Assembly and presented to the public on 16 December 2010, and it also encompassed, besides the above-mentioned ministries, the National Bank of Serbia and the Treasury. The state institutions evidently continued to ignore their legal obligations notwithstanding the findings of the audit report published at the end of 2009, since the latest report identified practically identical anomalies in the distribution of funds collected from Serbian taxpayers. The abuses that the SAI Council Chairman highlighted regarded the conclusion of temporary service contracts, the (non)implementation of public procurement procedures and abuses in the accounting of the public debt. During the presentation of the audit report, SAI Council Chairman said that the defaulting institutions were given a 45-deadline to eliminate these irregularities and notify the SAI of the undertaken measures.

2.1.3.4. Anti-Corruption Agency. – The Anti-Corruption Agency Act came into force on 1 January 2010. Corruption is a major problem in Serbia as corroborated by the fact that its Corruption Perception Index stood at 3.5 for the second year in a row. Forty-nine percent of Serbia’s citizens think that the level of corruption has increased in the past three years and 67.4% do not trust anyone when the fight against corruption is at issue. Although Government representatives and the top officials keep on reiterating that tackling corruption is one of the Government’s priorities, this promise is not materialised in practice.

According to data on the Anti-Corruption Agency website, 14,643 officials submitted their statements on their property and income by the legal deadline, 1 February 2010, while 1,300 submitted the statements with a delay, failed to provide

---

738 Ibid.
741 Sl. glasnik RS, 97/08 and 53/10.
all the information or used the old forms. However, this was not the final number as the Agency was still reminding the institutions of their officials’ obligation to file the statements. An indirect consequence of the delays in submitting the property statements was that it was difficult to estimate how many officials were under the obligation to report their assets. The Agency Director estimated their number around 18,000. He said that 2,500 property statements of the officials were already on the Agency website and that all 17,000 reports would be processed and posted online by mid-2011. (Večernje novosti, 8 December, p. 3).

The Agency published the Register of officials’ property and income on its website with an approximately five-month delay. Shortly afterwards it transpired that the “assets cards” submitted by the officials were full of errors and incomplete information, leading some ministers to blame the Agency for publishing wrong information about their property and income (Danas, 25 June, p. 1).

The Anti-Corruption Agency Act shortened the list of people whose property and income officials are to report; it now includes the spouse or partner and minors living in the official’s household (Art. 43(2)). This has caused public suspicion that the real state of affairs differed significantly from the reported one, that the officials took advantage of this provision and did not report property “registered” in the name of persons who are not members of their immediate family. On the other hand, the Agency representatives said that the reported information would be subjected to control, including, inter alia, on the basis of citizens’ reports (supported by adequate evidence) and that criminal proceedings would be launched against persons who intentionally concealed information about their property or gave false information (Politika, 12 June, p. A6).

The Agency in December 2010 began checking the accuracy of the property statements by checking the allegations in reports submitted by five citizens. It simultaneously began checking the accuracy of the statements in cooperation with the tax authorities.

The main conflict with far-reaching consequences broke out between the representatives of political parties and the Agency over the prohibition of conflict of interests. Under the 2008 Anti-Corruption Agency Act, officials holding more than two public offices had until 1 April 2010 to declare which of them they would keep. Only ten or so of the 1,813 officials, who had by that date notified the Agency that they held more than one office, also declared which office they would keep, while the others asked the Agency to issue them consent to continue exercising more than one public office (Dnevnik, 9 April, p. 3). Six days after the deadline expired, the Agency passed a binding interpretation of Articles 28 and 82 of the Anti-Corruption Agency Act. According to its reading of the Articles, over one thousand (approximately 1,803) officials were in violation of the law and the Agency said it would

745 Ibid.
launch proceedings and pronounce measures against them (Danasi, 9 April, p. 1). The deputies of the Vojvodina Assembly opposed the Agency’s legal position, saying it was not binding and invoked the interpretation of the relevant legal provisions by the Justice Ministry at the request of an official who was simultaneously a mayor and an Assembly deputy (Politika, 16 April, p. A1). By issuing this interpretation, according to which the provision in Article 28 cannot apply to situations that had come into existence before the Act came into force, the executive government again demonstrated that momentary political opportunism overrode the principles of the rule of law and brought the Agency’s authority into question (Dnevnik, 22 April, p. 3).

The Agency’s work was also affected by the Constitutional Court decision to suspend the enforcement of individual enactments and actions based on the provisions in Article 82 of the Anti-Corruption Agency Act, because they violated the equality of the legal status “of all persons holding public office” and risked to result in irreparable harmful consequences. The Constitutional Court issued its ruling after it reviewed the motion to review the constitutionality of the provision in Article 82 submitted by three Vojvodina Assembly deputies, whose requests to exercise more than one office had been rejected by the Agency (Dnevnik, 21 May, p. 3). The Court said that this matter also raised the issue of the constitutionality of the disputed provision in conjunction with Article 21 of the Constitution, which states that everyone shall be equal before the Constitution and the law and prohibits discrimination. The Constitutional Court asked the National Assembly to reply to the initiative for the review of the constitutionality of the disputed provision.747

It may be concluded that the initiation of the procedure before the Constitutional Court was solely in the interest of individuals who did not want to let go of their offices. Particularly in view of the fact that the Constitutional Court decision748 was not rendered until November 2010 and that the Assembly in the meantime passed amendments to the Act. The text of the amendments to the Act, jointly drafted by the Agency and the Justice Ministry and given the form of a draft law by the Government (one cannot but wonder whether the Government’s intentions were sincere) were rendered meaningless in the parliament procedure by an amendment submitted by one of the two independent deputies and upheld by the ruling majority (Politika, 29 July, p. A5). The amendment changed Article 82 and allowed persons holding one public office also to hold a public office they were directly elected to, as


748 The Constitutional Court decided to discontinue the review of the constitutionality of Article 82, given that its provisions were repealed by the adoption of the Act Amending the Anti-Corruption Agency Act and that the submitters of the motion for its review had in the meantime abandoned the motion. The Court simultaneously lifted the suspension of the enforcement of individual enactments and actions based on the provision in Article 82 (See, http://www.ustavni.sud.rs/page/view/149–101336/saopstenje-sa–50-redovne-sednice-ustavnog-suda-odrzane–18-novembra–2010-godine-knjom-prepsedavala-dr-bosa-nenadic-predsednik-ustavnog-suda).
well as the public office they are obliged to perform under the law or another legal regulation (Art. 29(3) of the Act Amending the Anti-Corruption Agency Act).\textsuperscript{749}

The Agency filed a motion for the review of the constitutionality of this provision in September 2010.\textsuperscript{750} The Constitutional Court in October asked the National Assembly to respond to the initiative.\textsuperscript{751} On the other hand, the Chairman of the Legislative Committee said in November that the Assembly would declare its view on the initiative after it received the Government’s opinion on the challenged provision and underlined that the Committee would “endeavour to render its view as soon as possible” (\textit{Dnevnik}, 19 November, p. 3). In the absence of the Assembly’s reply, the Court President included the motion for the review of the constitutionality of the provision in the agenda of the session held on 22 December but the Court did not render a decision on it because the proposal of the judge rapporteur failed to win the necessary majority.\textsuperscript{752}

The Anti-Corruption Agency in 2010 passed the Rulebook on the Register of Public Officials and the Property Register, the Rulebook on Gifts,\textsuperscript{753} and Guidelines for the Design of Integrity Plans.\textsuperscript{754} The Agency also launched an initiative for the adoption of a new law on party financing and submitted it to the Government, because the regulation of this issue is one of the key EU accession prerequisites. The Agency filed eight misdemeanour reports pursuant to its remit (\textit{Večernje novosti}, 27 November, p. 5).

\textbf{2.1.3.5. Commissioner for Equality.} – The Anti-Discrimination Act\textsuperscript{755} was passed in late March 2009. The Act established the institute of Commissioner for Equality, another independent regulatory authority which provides protection in a \textit{sui generis} administrative procedure to persons whose rights have been jeopardised by acts of discrimination (Arts. 28–40). Under Article 61 of the Act, the National Assembly was obliged to appoint a Commissioner for Equality within 60 days from the day Articles 28–40 came into effect. The deadline expired on 1 January 2010.

The events surrounding the appointment of the Commissioner for Equality shook public trust in the independence and legitimacy of the institution from the very start. Namely, the vote on the Commissioner was organised twice and the parliamentary majority demonstrated that it was not prepared to respect the opinion of

\textsuperscript{749} Sl. glasnik RS, 53/10.
\textsuperscript{755} Sl. glasnik RS, 22/09.
the civil society on who should be appointed Commissioner for Equality. The first time round, the Committee for Constitutional Issues reviewed two candidacies, after the third candidate, a special adviser to the Human and Minority Rights Minister who had formally been nominated by the For a European Serbia caucus, notified the Committee Chairwoman that he was withdrawing his candidacy. The independent candidate failed to win any votes of the Committee members; whereas the candidate nominated by the Liberal Democratic Party caucus and supported by more than 163 NGOs, won one vote, while 9 Committee members abstained from voting for him (Blic, 20 February, p. 2). Although the Committee on this occasion organised a public hearing of the candidates, the reasons for such a vote on the NGO-backed candidate were purely formal – the Committee was unable to establish whether the candidate had 10 years of experience in advocating and protecting human rights. Consequently, the first round ended in a failure – the Committee did not uphold the nomination of either candidate as neither won the majority of votes.

LDP’s candidate Goran Miletić, whose candidacy was supported by 213 civil society organisations, again ran in the second round. His nomination was submitted within the deadline set by the Chairwoman of the Committee on Constitutional Issues. The ruling coalition nominated its candidate in the latter half of March, after the deadline for the appointment of the Commissioner for Equality (Danas, 19 March, p. 4). The second round ended with the appointment of the other candidate, Niš Law College Dean Nevena Petrušić, who also enjoyed the support of nearly 100 NGOs. Some media reported that the Dean had exerted pressures on the Law College professors who had filed requests for access to information of public importance regarding irregularities in her work.

Nevena Petrušić resigned from the post of Dean when she was appointed Commissioner for Equality. But, she stayed on as professor of five subjects after the Anti-Corruption Agency issued an opinion that she was not breaking the Anti-Corruption Agency Act by simultaneously performing professional (scientific and educational) activities at her college (Danas, 28 July, p. 5).

757 See, http://www.parlament.rs/content/lat/aktivnosti/skupstinske_detalji.asp?Id=2191&t=A.
758 Certificates confirming the work experience of the candidate supported by the NGOs are posted on the website of the Anti-Discrimination Coalition. See, http://www.stopdiskriminaciji.org/arkha/vlast-pokazala-bahatost-i-potpuno-ignorisala-citav-civilni-sektor.
759 The Anti-Discrimination Coalition warned that while she was Dean, the appointed candidate had on a number of occasions violated the Act on Free Access to Information of Public Importance. See: http://www.stopdiskriminaciji.org/arkha/saopstenje-koalicije-protiv-diskriminacije-i-inicijative-mladih-za-ljudska-prava.
Under Article 28(5) of the Anti-Discrimination Act, the Commissioner for Equality shall not be allowed to perform any other public or political office or professional activity, *in accordance with the law* (italics ours). The Commissioner interpreted the provision in the following manner: the Anti-Corruption Agency Act is a *lex specialis* on conflict of interest matters and she did not commit any violations given that this Act allows the simultaneous performance of a public office and scientific-research and educational activities. On the other hand, the representatives of the civil society organisations rallied in the Anti-Discrimination Coalition maintained that the prohibition of professional activity in the Anti-Discrimination Act constitutes legal grounds *per se* and that this norm does not refer to the application of the provisions in the Anti-Corruption Agency Act.\textsuperscript{762}

The state authorities’ attitude towards the Commissioner for Equality did not differ from its treatment of other independent regulatory authorities. The Commissioner was not allocated an office to work from throughout 2010 and was allocated a budget of 39,336,000 dinars.\textsuperscript{763} The Commissioner received 30 complaints in the first three months (*Dnevnik*, 28 August, p. 14). Many more complaints were filed by the end of the year, but the Commissioner’s office lacks both staff and funding and the review of the complaints is progressing very slowly. The Commissioner nevertheless reacted to situations she assessed as jeopardising the equality of the citizens. She was involved in the procedure establishing whether any irregularities or human rights violations were committed during the constitution of the national minority councils. She in August forwarded to the Human and Minority Rights Ministry her opinion that the equality of citizens had been violated during the constitution of the Bosniak national minority council as the Rules of Procedure on the constituent session of this national council stipulated the verification of at least two-thirds of the mandates, which the Rules of Procedure on the constituent sessions of the other national councils did not require (*Večernje novosti*, 15 August, p. 5). The Human and Minority Rights Minister subsequently confirmed that this, indeed, was the case\textsuperscript{764} and had the discriminatory provision in the Rules of Procedure amended but the Minister never suffered any political consequences for the violation.

2.2. **Prohibition of Discrimination and Protection of Minorities**

2.2.1. **General**

Discrimination remained a serious problem. Although the implementation of the Anti-Discrimination Act and some other good relevant laws has begun, their mechanisms are still rarely applied in practice, most probably because the potential victims of discrimination are unaware of their existence or because they doubt that the state institutions will protect their rights.

\textsuperscript{762} *Ibid.*
\textsuperscript{764} See http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=08&dd=18&nav_category=206&nav_id=452578.
Nevena Petrušić was appointed Commissioner for Equality in 2010. Like in the case of the other independent authorities, the state, however, has been slow in providing her office with the prerequisites it needs to operate at full capacity.\footnote{More on the election of the Commissioner for Equality and the prerequisites needed for her office to operate in II.2.1.3.5.} Her office received 22 individual complaints by late August but as many as one-third of them did not concern discrimination. The public at large obviously is not fully aware of the remit of the Commissioner for Equality. Most of the filed complaints regarded discrimination in employment on grounds of ethnic or political affiliation. (Večernje novosti, 24 August, p. 2).

The BCHR asked all basic courts in Serbia whether any proceedings over alleged violations of the Act have been instituted before them and whether any judgments have been rendered in such proceedings. The replies it received show that the mechanism for protecting victims of discrimination provided by this law are still applied extremely rarely. The BCHR established that only ten or so lawsuits over violations of the Act have been filed to date in the courts in Serbia.\footnote{The BCHR will continue monitoring the degree of court protection of victims of discrimination in 2011 as well.} The number of lawsuits filed over discrimination obviously does not reflect the situation on the ground and the extent of discrimination in society. This is why the Anti-Discrimination Act needs to be publicly promoted and the victims and potential victims informed about their rights and the protection mechanisms at their disposal.

Discrimination exists in various walks of life in Serbia – at work and in recruitment, in health, social care, politics, etc. Roma, the poor, persons with disabilities, the elderly and the LGBT population are exposed to discrimination the most.

\subsection*{2.2.2. Status of Women}

Stereotyped roles of men and women are still deeply rooted in Serbian society, even among youths, as a survey conducted among Belgrade high-school students in 2010 shows. Their responses demonstrate that most young men and women expect women to be patriarchal, submissive and humble. Although there has been some headway in their perceptions of the female and male household chores, one-third of the young men and one-fifth of the young women still think that women should be doing them chores and raising the children, that a “real man” should not be doing any housework. What is the most concerning is that they by and large accept the stereotype that a woman herself is to blame if she is exposed to violence because of her e.g. provocative clothing or “audacious” conduct (Blic, 29 October, p. B2).

From the economic point of view, women are worse off than man. In Serbia, women own only 29.7\% of the real estate and 30.5\% of the private companies, which also affects their loan eligibility. Women account for 44\% of the employed workforce in Serbia. Only 20.8\% of the women head companies and a mere 14.3\% chair company management boards (Politika, 19 July, p. 1).
Women hardly ever report discrimination in recruitment although it is a public secret that many employers ask job candidates impermissible questions invading their privacy, including questions on their family plans, and that many young women are not hired if they say they are planning on having children. Only a few women complained to the Protector of Citizens that their employment contracts were not extended because they got pregnant, but not one reported that she was not offered a job because she is a woman. It is very difficult to prove gender-based discrimination during the selection of company team members because it can easily be “camouflaged” given that every company management is entitled to choose its own team. Labour Inspectorate Director Radovan Ristanović says that women extremely rarely file reports over gender-based discrimination against potential employers (Politika, 27 January, p. 1; Blic, 17 January, p. 8).

Not only do women have greater difficulties finding a job. Even the employed ones are worse off than their male colleagues. Salaries paid to men are often higher than those paid their female colleagues holding the same position. According to a survey of a local website advertising job vacancies (www.poslovi.infostud.com), men earn 8.5% more than women performing the same jobs. One out of five respondents said that there were men in their companies earning more than women on the same jobs but that this was not the rule. As many as 41% of the respondents were of the view that men were being accorded more privileges (Blic, 14 January, p. 9 and 8 March, p. 9; Danas, 14 January, p. 10 and 19 January, p. 4).

The number of women holding political office has been on the rise since 2000 but they are still seriously underrepresented in politics. Women account for 18.5% of the ministers, 22.7% of the state secretaries in the current Government and hold 22.4% of the seats in National Assembly. There are more women among assistant ministers – 42.6%. At the local level, 21.2% of the municipal assembly seats are occupied by women, but only 4.2% of the mayors are female. The situation is quite different in the judiciary – as many as 70.8% of the judges are women; on the other hand, men account for most of the prosecutors (Politika, 19 July, p. 1 and 1 October, p. 8).

Women account for as many as 46.8% of the staff in defence institutions, but only 2.6% are in the Army and in uniform. Most women in this sector are employed on administrative and analytical jobs; hardly any hold senior managerial or command posts. (Politika, 1 April, p. 7 and 1 October, p. 8).

2.2.3. Status of LGBT Persons

After two unsuccessful attempts, the Pride Parade was finally held in Belgrade in 2010. The fact that Parade was held and that its participants passed without injury can be attributed solely to strong police presence, not because the popular views on the organisation of the event had changed for the better. Prejudice against LGBT persons in Serbia is still strong, as is the hate speech against them. Hate speech

767 More on the Pride Parade in II.2.3.
particularly intensified with regard to the Pride Parade. Serbian Orthodox Church Metropolitan of Montenegro and the Littoral Amfilohije was among those spreading hate speech against the LGBT population in 2010. He voiced gross insults and spread hate against them, qualifying them as “sodomitic scum”, the “plague, sodomitic blight”, which prompted the NGO Labris to file a complaint against him with the Commissioner for Equality. Inappropriate statements about homosexuals were voiced also by politicians in the run up to the Pride Parade, but after it as well, at a Belgrade City Assembly session in late October (B92 News, 29 October).

Nine organisations advocating LGBT rights called on the Health Minister to react to a case of gross discrimination of LGBT persons in September. A Miroljub Petrović had for over a year run a “Homosexuality Treatment Centre” although homosexuality was struck off the list of diseases a long time ago. The Health Ministry reacted only after the NGOs’ protest letter and said that the Centre did not have an operating licence and that Petrović was not licensed to practice medicine. (B92 News, 16 September; Danas, 18–19 September, p. 4).

The Gay Straight Alliance in 2010 published its second public opinion survey on perceptions of homosexuality in Serbia. The opinions of the respondents were established by comparing their views on specific affirmative or negative statements on homosexuality. The survey authors concluded that the views on the negative statements evidenced a negligible rise in homophobia over 2008, when the previous survey was conducted. The share of those who think homosexuality is an illness fell by several percent, but it is still extremely high (67%). One of the most disconcerting results is that as many as one half of Serbia’s citizens would never reconcile with the fact that someone close to them is a homosexual and that as many as 17% of the parents would violently react to the fact that their child is a homosexual. However, the number of those upholding the affirmative statements (e.g. that everyone is entitled to his/her own sexual orientation, that gay parades and homosexual marriages should be permitted) is on the rise. Notwithstanding, the percentage of respondents sharply opposing these views is still high. The simultaneous increase in the number of those who have negative perceptions of homosexuality and in the number of those with positive perceptions led the authors of the survey to conclude that public opinion has polarised on homosexuality to an extent, but that negative perceptions still prevail.

768 The fact that many media publish articles referring to the LGBT population as sick individuals gives rise to concern. Even the Diners Club International magazine promoting credit cards published an article in which anthropologist Jovica Stanoević voiced such views. See: DC Magazin, Issue No. 35, December, 2010, pp. 40–43.


Opposition to violence against homosexuals dominates. The share of those supporting or justifying violence does not exceed 20% by all survey indicators. The share of those, who are personally prepared to employ violence against homosexuals, varies between 2 and 5 percent, with the exception of the above mentioned case of parents and how they would react to news that their child is a homosexual.

The survey also covered members of the LGBT population, who qualified their recent visibility and personalisation in the public sphere as the chief quality that would lead to the realisation of their rights. Although they think that there is greater social acceptability of persons of a different sexual orientation, they, however, say that Serbia still has a long way to go to reach the necessary standards regarding the level of institutional guarantees of their human rights.

As members of the LGBT population choose whom they interact with, discrimination in inter-personal relations is very rare. However, they are exposed to a considerable degree of discrimination in areas in which they cannot choose their company, e.g. at work. The fact that they tend to withdraw in such cases although they are aware that the Anti-Discrimination Act is in force is concerning because it shows that not even LGBT members are invoking this law, at least not yet.

Some respondents had been personally exposed to violence because they belong to the LGBT population. Those, who have not been, said they knew many examples of violence against their friends and acquaintances of a different sexual orientation. In addition, most of those, who had not been victim of physical violence, had been exposed to verbal violence, name-calling, threats, etc.

2.2.4. Elderly

Ageism – discrimination based on age – is quite widespread but is rarely talked about or reported. The Red Cross of Serbia in June published the results of a survey on the abuse of the elderly conducted on a sample of 250 people over 65 years of age. The survey results indicate that as many as 32% of the respondents had been exposed to some form of violence, usually verbal abuse. Apart from verbal abuse, the respondents complained of neglect, and even physical and economic violence. Experts say that abuse, discrimination and ill-treatment of old people are rarely reported. The survey confirms their view – as many as 56% of the respondents said they knew an elderly person who had been exposed to ill-treatment. These cases, however, rarely make the spotlight and there is not much information about them. (B92 News, 15 June).

2.2.5. Status of National Minorities

2.2.5.1. Election of National Minority Councils. – The first elections of the national minority councils following the adoption of the Act on National Councils of National Minorities in August 2009 were held on 6 June 2010. The Act is
the first law in Serbian legislation to regulate in detail the election and powers of
national minority councils, bodies established to ensure the realisation of the minor-
ity rights to self-government in the areas of culture, education, information and the
official use of language and script. Under the Act, national minority councils may be
elected in two ways – directly or via an electoral assembly. Separate voter registers
are kept for every national minority and the names of citizens fulfilling the general
suffrage requirements may be entered in them. The national minority council is elect-
ed directly once the percentage of registered voters of that minority exceeds 40% of
the percentage of citizens who declared themselves as belonging to that minority at
the last census. In the event the percentage of registered voters of a specific minority
is below 40%, its council is elected by the electoral assembly. The 40% threshold
was exceeded by 16 national minorities, notably by the Albanian, Ashkali, Bosniak,
Bulgarian, Bunyevtsi, Czech, Egyptian, German, Greek, Hungarian, Roma, Rumani-
an, Ruthenian, Slovak, Ukrainian and Vlach national minorities, by 11 March 2010,
the day the elections were called. Persons belonging to the Croatian, Macedonian and
Slovene national minorities elected their national councils via electoral assemblies.
Eighteen of the nineteen minority national councils were established after the elec-
tions. Only the Bosniak national minority council was not constituted by the end of
the year (see the text below for more details on the problems in the establishment of
this council). The national minority council elections are definitely a step forward in
the realisation of minority rights, but the numerous irregularities and abuse that ac-
companied them give rise to concern. The irregularities and violations of civic rights
during the entry of voters in the separate voter registers were noted by the Protec-
tor of Citizens, the Information of Public Importance and Personal Data Protection
Commissioner, the Commissioner for Equality, NGOs and the citizens themselves. A
number of criminal reports were filed over the violations. All this, of course, cast a
shadow on the regularity of the elections.

The risk of abuse and violations of civic rights during the voter registration
procedure became obvious back in late 2009, when the entry of minority voters
in the separate voter registers began. The Human and Minority Rights Ministry,
charged with organising the registration of voters and the elections, first enacted a
Rulebook on Separate National Minority Voter Registers, under which a voter
shall be entered in a separate voter register on the basis of a written application
personally signed by the applicant and submitted directly or by post to the relevant
municipal body in which the voter resides. It then on 7 December 2009 enacted
Instructions on the Separate National Minority Voter Register Entry Procedure,
under which the application for registration may be submitted by a third party, not
necessarily the voter, but not requiring any additional documentation from that par-

773 The status of elector shall be granted a member of a national minority who has collected 100
signatures or been appointed elector by a national minority organisation or association.
774 Sl. glasnik RS, 91/09.
775 Instructions on the Separate National Minority Voter Register Entry Procedure, Human and
ty (not even a photocopy of the ID of the person to be entered in the voter register). This allowed for the entry in voter registers of citizens against their will – by forging their signatures. City and municipal administrations receiving the applications soon noticed that the Ministry Instructions might lead to serious abuse. The Niš city administration sent a memo to the Ministry in late 2009 alerting it to the shortcomings in the procedure and their potential consequences. Another memo voicing the same concerns was sent to the Ministry by the Subotica city administration in April 2010. In their written submissions to the Information of Public Importance and Personal Data Protection Commissioner during his inspection prompted by allegations of irregularities during the entry of voters in the separate voter registers, city and municipal administrations stated that the irregularities in the procedure were the consequence of the Ministry Instructions allowing a third party to apply for the registration of a voter without his/her authorisation and not requiring of the third party to submit a copy of the person’s ID which would, at least to an extent, guarantee that the application was submitted with his/her consent. Acting on a motion of the Požarevac Higher Public Prosecution Office, which had received a criminal report against several persons, the Ministry of Internal Affairs checked whether the entry of voters in the Vlach national minority voter register was conducted on the basis of forged applications in the Petrovac and Veliko Gradište municipalities. The police interviewed 101 citizens entered in the Vlach national minority voter register; as many as 86 of them denied that they had signed the application. Of course, it can be concluded with certainty that the entry of citizens in the separate voter registers against their will, by forging their signatures, was widespread and that the number of those whose names were entered in the registers although they never applied for registration is not small. Unfortunately, the adoption of the Instructions allowing such abuse can hardly be attributed to the mere ignorance or negligence of the competent Ministry, particularly in view of the fact that it had repeatedly and on time been warned of the potential adverse effects by several authorities.

Entry of citizens in the separate voter registers against their will was not the only violation of their civic rights. Soon after the procedure was launched, reports appeared alleging that unauthorised entities – primarily political parties and the national councils themselves – were collecting and keeping data on the ethnic affiliation of citizens. These reports prompted several warnings by the Information of Public Importance and Personal Data Protection Commissioner that only the competent state authorities were authorised to collect personal data, including data on ethnic affiliation, and that the processing of such data, their collection and establishing of voter records by anyone else for any purpose was illegal. He determined that the national councils of the Bosniak and German minorities were collecting personal data and ordered that such data be deleted. He established that the Bosniak national minority council had an internal database with the personal data of as many as 32,458 citizens. The German national minority council was ordered to delete the

776 See the statements by the Information of Public Importance and Personal Data Protection Commissioner of 5 January, 17 February and 26 March at, www.poverenik.org.rs.
personal data of 26 persons belonging to this national minority. It can, of course, be assumed that these two national councils were not the only entities unlawfully collecting and keeping personal data.

The Information of Public Importance and Personal Data Protection Commissioner filed 14 criminal reports over violations of the law during the entry of voters in separate voter registers.

A total of 458,601 voters were ultimately entered in the separate voter registers, 436,334 of them in voter registers of national minorities electing their councils at direct elections. The turnout at the elections was 54.5% (237,792 voters). Seventy-seven candidate lists were submitted for the direct elections.Only one list was submitted for election of the Czech national minority council, while persons belonging to the other 15 national minorities had the option of choosing between two or more election lists. Political parties, not only minority ones, were extremely interested in these elections and engaged their infrastructures in collecting applications for the separate voter registers and, equally important, practically put forward their own election lists. The political parties, of course, engaged their infrastructures in the campaigning as well.

The official results were published on 9 June and the Human and Minority Rights Ministry proceeded to schedule the constituent sessions of the councils elected directly and the electoral assemblies for the elections of the Croatian, Macedonian and Slovene national minorities, in accordance with its remit laid down in the Act on National Councils of National Minorities. The constituent sessions were held in accordance with the Rules of Procedure on constituent sessions enacted by the Human and Minority Rights Ministry, although it is not explicitly authorised to adopt such Rules under the Act. The Rules of Procedure stipulated that at least the absolute majority (50%+1) of the elected council members had to attend the constituent session. The only exception were the Rules of Procedure for the constitution of the Bosniak national minority council, where two-thirds of the elected members were required to attend the constituent session; this requirement was laid down on the eve of the constituent session. The council was not, however, constituted because over one-third of the elected members boycotted the constituent session.

On 25 August, upon receipt of official memos from the Information of Public Importance and Personal Data Protection Commissioner, the Commissioner for Equality and the Ministry of Internal Affairs and individual complaints, and taking

---

777 The list of proclaimed election lists is available at http://izbori.ljudskaprava.gov.rs/sr/neposrednizbori/proglasene_izborne_liste.html.

778 The names of the election lists comprising political party members by and large associated the names of the lists of those parties at the previous parliamentary elections. For instance, most lists including Democratic Party candidates usually kept the “European Serbia” syntagm in their names (the DS election list at the last parliamentary elections was called “For a European Serbia – Boris Tadić”).

779 Problems that arose with respect to the constitution of the Bosniak National Council are elaborated later on in this section.
into account information in the public domain, the Protector of Citizens himself initi-
tiated the control over the lawfulness and regularity of the work of the Human and
Minority Rights Ministry regarding entry in the separate national minority voter reg-
isters and the constitution of the national councils. He established that the Ministry
had made a number of errors conducive to the violation of the right to personal data
protection and jeopardised the autonomy of the national councils, the representative
bodies of national minorities. The Protector of Citizens, notably, established that
the Instructions on the Separate National Minority Voter Register Entry Procedure
enacted by the Human and Minority Rights Ministry suffered from the following
deficiencies: inconsistence, incoherence and unclarity, which facilitated abuses dur-
ing the separate voter register entry procedure and violations of the citizens’ rights
to the protection of particularly sensitive personal data (their entry in separate voter
registers against their will and the unlawful processing – copying and keeping of
personal data, including data the law defines as particularly sensitive). The Protec-
tor of Citizens found that the Human and Minority Rights Minister jeopardised the
autonomy of the national councils because he had enacted rules of procedures on
the constituent sessions of the national councils and regulated their work although
the Act did not provide him with the authority to do so. This is why the Protector
of Citizens recommended to the Human and Minority Rights Ministry that it draft
amendments to Act on National Councils of National Minorities to improve the reg-
ulation of the constitution of the councils and entry in the separate voter registers.
The Protector of Citizens also called on the Human and Minority Rights Minister to
repeal the Rules of Procedure on the constituent sessions he had enacted although
the law did not explicitly authorise him to pass them.780

2.2.5.2. Bosniak National Minority Council Elections. – As mentioned, the
Bosniak National Minority Council is the only council that was not constituted after
the 6 June elections.

Persons belonging to the Bosniak national minority had the option of voting
for three submitted lists at direct elections: Bosniak Revival, comprising candidates
close to the Sandžak Democratic Party headed by Labour and Social Policy Minis-
ter Rasim Ljajić, the Bosniak List, supported by the Party of Democratic Action led
by Minister without Portfolio Sulejman Ugljanin, and the Bosniak Cultural Com-
munity list, headed by the Islamic Community in Serbia Mufti Muamer Zukorlić.
The Bosniak Cultural Community won 17, the Bosniak List 13 and Bosniak Re-
vival won 5 seats.

The constituent session was called for 7 July. When it heard that two Bosniak
Revival council members would side with the Bosniak Cultural Community mem-
ers and thus form a majority, the Human and Minority Rights Ministry amended
the initial Rules of Procedure on the constituent session just one day before the
session, laying down that the constituent session had to be attended by at least two-

780 See the Protector of Citizens’ recommendation of 6 December 2010, at www.zastitnik.rs.
thirds of the council members rather than the absolute majority (50%+1) which sufficed for the constitution of other national minority councils. In result, 16 members of the Bosniak Revival and Bosniak List boycotted the constituent session and prevented the establishment of the national council. The other 19 council members held the constituent session and elected the national council leadership, but the Human and Minority Rights Ministry does not recognise the formed council.

In its reply to the Protector of Citizens during the control procedure he had initiated, the Human and Minority Rights Ministry said that it had amended the Rules of Procedure because it “assessed that there was a risk that the constituent session of the Bosniak national minority would overstep the bounds of law and that the mandates would be verified in contravention of the electoral will of the Bosniak national minority, i.e. that the representation of the three election lists would not adequately reflect the number of votes they won.” The Commissioner for Equality said that the Human and Minority Rights Ministry had unjustifiably laid down different requirements for the constitution of the councils by amending the Rules of Procedure on the constituent session of the Bosniak national minority council and violated the principle of equality of citizens in exercising their election rights in the national council election procedure (Bllic, 15 August, p. 3; Politika, 15 August, p. A5). The amendment of the Rules of Procedure was apparently not motivated either by the protection of electoral will nor the intention to discriminate against Bosniaks on ethnic grounds, but merely by the wish of the Government of the Republic of Serbia, i.e. the ruling parties, particularly those whose candidates ran for the Bosniak national minority council, to prevent the constitution of a council they would not have control over.

The unsuccessful constituent session was followed by several rounds of talks between the Human and Minority Rights Ministry and the representatives of the three lists under the auspices of the OSCE Mission to Serbia, but none of them yielded results and the Bosniak national minority council was not established by the end of 2010. In the meantime, tensions in Sandžak grew and several incidents broke out; all this was accompanied by disconcertingly radicalised speech. Muamer Zukorlić said several times that Bosniaks were discriminated against in Serbia and invited foreign observers to come and monitor the situation in Sandžak.

The relations between the Government and the Islamic Community in Serbia, headed by Zukorlić, were exacerbated also by the Government decision of 29 July to dissolve the Religious Instruction Commission. One member of this Commission was Bosniak Cultural Community representative Mevlud Dudić, who was voted in chairman of the Bosniak national council at the unsuccessful constituent session.

782 See, e.g. http://srb.time.mk/read/476e5ea3f0/6ba8e457e3/index.html.
The new Commission appointed by the Government has only one representative of the Moslems – Adem Zilkić, the Reis-l-ulema of the Islamic Community of Serbia, close to Sulejman Ugljanin’s Party of Democratic Action, and a fierce rival of the Islamic Community in Serbia headed by Mufti Zukorlić.784 Muamer Zukorlić qualified the Government decision as punishment motivated by Dudić’s appointment to chair the Bosniak national minority council (Politika, 20 August, p. A7).

Human and Minority Rights Minister Svetozar Čiplić in late 2010 announced fresh elections of the Bosniak national minority council.785 Representatives of the Bosniak Cultural Community list reiterated that they would not take part in these elections because they considered the national council constituted. The Act on National Councils of National Minorities does not envisage the repeat of elections; guided by the wish to economise the procedure, the authors of the law explicitly laid down in Article 36 that elections of all national councils shall be held at the same time. It seems that the best way forward would be to reschedule the constituent session and apply the Rules of Procedure that had applied to the constitution of all other councils. This is, however, extremely unlikely because the Human and Minority Rights Ministry, i.e. the Serbian Government, is obviously not for the constitution of a national council in which the majority would be in the hands of members opposing the two Government Ministers, Rasim Ljajić and Sulejman Ugljanin.

2.2.6. Status of Roma

Although various state institutions and non-state entities continued implementing measures to improve the status of Roma in 2010, these measures did not result in a visible improvement of the living conditions of this national minority, which is still one of the most vulnerable categories of the population in Serbia. It goes without saying that the deplorable economic situation has undermined the effects of the undertaken measures and further exacerbated the lives of the poor, which most of the Roma in Serbia definitely are. The problems Roma have faced for decades now – such as the lack of personal documents, poor living conditions and health care, discrimination in various walks of life, and ineffective investigations of ethnically motivated attacks on them – persist, while the measures taken to eliminate them have failed to affect a large share of the Roma population or have yielded merely partial results.

Serbia still lacks a law regulating the issue of “legally invisible” persons, most of whom are Roma. Specific measures have, however, been taken to allow persons lacking a personal document to exercise the rights they had been denied until recently.

784 More on the conflict between the Islamic Community in Serbia and the Islamic Community of Serbia in Report 2008, II.2.6.3.1.
One of the most important measures was the adoption of a Rulebook on the Manner and Procedure for Exercising Rights Related to Mandatory Health Insurance that increased Roma access to health care: Roma living in the illegal settlements can now obtain health cards even if they do not have registered temporary residence and all they need to do is give a personal statement on their temporary place of residence, whereas other citizens have to submit proof of residence. Decade Watch, an international initiative of Roma rights activists published its third report monitoring the implementation of the Decade of Roma Inclusion 2005–2015 by the participating countries. The Report, *inter alia*, measures the index of headway in Roma integration in the 2005–2009 period and concludes that Serbia made evident headway in increasing access to health care. In its analysis of the impact of health policy measures on access to health care, the Serbian Government, too, concluded that the Health Ministry policy on Roma health care demonstrated the efficiency and effectiveness of the undertaken measures and recommended they continue.

Discrimination of Roma in education is still widespread and is, *inter alia*, reflected in the unjustified placement of Roma children in schools for children with developmental difficulties. According to a research of schools and classes for children with developmental difficulties, conducted by the Open Society Institute and published in 2010, Roma children are disproportionately overrepresented in such schools and classes. Roma children accounted for between 30 and 38 percent of the pupils in special education schools in the 2007/08 and 2008/09 school-years and for 38% of the pupils in special education classes in mainstream schools. Furthermore, as many as 71% of the Roma special secondary school graduates were unable to find employment after graduation. The research also showed that around two-thirds of these schools had two or more children from the same family, pointing to the disturbing issue of attendance of special education as a family legacy. Both the parents and their children opt for these schools not only because of the financial benefits that come along with them, but because they perceive them as safer as well. The parents are also aware that the likelihood of their children finishing

---

786 Sl. glasnik RS, 46/10.
school is greater if they follow the curricula for children with developmental difficulties but are also aware that their children will have less chance of finding a job after graduating from a special school. The survey conducted within the research demonstrated that both the children and the parents liked these schools and that they were satisfied both with the schools and the teachers. Most Roma pupils in special schools, 61%, were initially enrolled in mainstream schools but were transferred to the special schools, usually because they had poor grades, failed a grade or because of their aggressive conduct in reaction to discrimination. The research concludes that the situation in special schools reflects all the main problems of the education system: insufficient and unclear legislation; no consequences for improper implementation; lack of will in mainstream schools to support Roma children and families; widespread discrimination; curricula more oriented to the past than the future; and inadequate enrolment procedures.

Housing remains a burning issue among the Roma, particularly those internally displaced from Kosovo. The 2009 Social Housing Act has not yet led to a considerable improvement of housing conditions of the socially vulnerable categories of the population, including the Roma. Furthermore, the authorities have not yet adopted a Social Housing National Strategy and an Action Plan for its implementation or established the Republican Housing Agency, as required under the Act.

Forced evictions of Roma from their homes continued in 2010. As opposed to 2009, when the authorities evicted the residents of large “informal” Roma settlements, smaller groups, usually several families at a time, were forced out of their homes in 2010. This is why these evictions did not draw as much media attention as the ones in 2009, but they did not go unobserved by local and international NGOs. In its report on Serbia submitted to the UN Committee on the Elimination of Racial Discrimination in late 2010, Amnesty International devoted the most attention precisely to the violation of human rights of Roma evicted by force in Belgrade. It criticised the Serbian Government and the Belgrade city authorities over several issues, finding them in breach of the rights laid down in the International Covenant on Economic, Social and Cultural Rights. Firstly, AI notes that evictions had resulted in homelessness and denial of human rights, which is in contravention of the ICESCR. It further noted that the evictions were carried out without adequate notice

791 Sl. glasnik RS, 72/09.
792 See more in I.4.18.9.1.
793 More on the forced evictions of Roma in 2009 in Report 2009, II.2.3.2.3.
795 In its General Comments, the UN Committee on Economic, Social and Cultural Rights back in 1997 underlined that “[e]victions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.” CESC General Comment 7, The right to adequate housing (art. 11.1. of the ICESCR): forced evictions, 16th session, 20 May 1997, http://www.unhchr.ch/tbs/doc.nsf/0/95971e476284596802564c3005d8d50?OpenDocument.
and genuine and informed consultations or arrangements with the evictees, and were accompanied by the destruction of their movable property without compensation. It also noted that the evictees did not have recourse to legal remedies to challenge the eviction orders. AI also listed the human rights violations following the evictions. AI is right to underline the fact that the state violated the right to freedom of movement and residence, because around 240 people living under the Belgrade bridge Gazela without registered residence in Belgrade were returned to the south of Serbia, their last registered place of residence, after they were evicted in 2009. Such treatment by the state is in violation of Article 12 of the International Pact on Civil and Political Rights, under which “(E)veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” The people moved back to southern Serbia, of course, did not enjoy any better living conditions there than they had in Belgrade. In addition, their status in the south of the country is equally poor if not worse than it used to be in Belgrade, due to the disastrous economic situation in that part of the country.

Serbian media also reported on the inhuman treatment of Roma evicted by force in Belgrade. When a group of over 30 Roma, 16 of whom were children, were evicted from a house in Vojvodanska Street in Belgrade in October, the authorities initially failed to provide them with any, even temporary accommodation and they ended up on the street. They first protested in front the Belgrade city assembly, and when it became too cold, the women and children were referred to a shelter in Zvečanska Street, while the men were left to fend for themselves. The Roma women, who had spent the night in the Zvečanska Street shelter, said that the staff there treated them inhumanly, would not let them use the toilets and would not help the vomiting children. The plight of these people began when the Belgrade Construction Land and Construction Directorate, which had allowed the Roma to temporarily live in the house in Vojvodanska Street, issued an eviction order, giving them 24 hours to move out. The authorities ultimately provided them with alternative accommodation after several days. The authorities in April tore down the illegally built barracks by Roma families in the Belgrade municipality of Čukarica. Thirty-eight families, over 200 people altogether, more than 60 of them children, had been living in the barracks in dismal conditions. Their eviction and the demolition of the barracks, too, were conducted in an inappropriate manner. They were not allowed to take their belongings out of the barracks, and the ones without registered residence in Belgrade were sent back to their last registered place of residence (Surdulica in this case), just like the Roma evicted from the unhygienic settlements in New Belgrade in 2009 (Blic, 21 April, p. 3). The media also reported on several other forced evictions of Roma, conducted in a similar manner.

Although essentially based on the law and the city’s legitimate interest to tear down illegal buildings, it can be concluded that the forced evictions of Roma

families from the illegal settlements in Belgrade are often conducted in an inhu-
man and discriminating manner. As mentioned, the evictees are often not allowed
to take their belongings out of their homes and the little property these extremely
poor people had is destroyed. As the example of Roma evicted from the house in
Vojvodanska Street illustrates, these evictions are not always accompanied by any
plans to provide short-term shelter for even the most vulnerable groups (above all,
the children and their mothers). Roma are not the only residents of Belgrade living
in illegal buildings, but they are evicted to a greater extent than the others, which
definitely gives rise to the impression that laws are applied more consistently to
them and that they are thus discriminated against. Moreover, the practice of pro-
viding temporary accommodation in Belgrade only for Roma with registered resi-
dence in the city and returning the others to the towns where they last registered as
residents indeed violates their right to the freedom of movement and residence and
cannot be justified by any reasonable arguments, all the more as they have neither a
place to live in nor a job in those towns and live in equally destitute circumstances
as they did in Belgrade. There is no reasonable explanation why someone without a
home or a job anywhere in the territory of Serbia can be registered as a resident in
the south of Serbia but not in Belgrade.

The eviction of Roma from the illegal settlements in Belgrade was not the
only measure taken by the Belgrade city authorities that was criticised by human
rights organisations. The Belgrade-based Minority Rights Centre and the European
Roma Rights Centre in October launched an initiative for the review of the consti-
tutionality and legality of the Decision on the Eligibility for and Disposal of Apart-
ments Built within the 1,100 Apartments in Belgrade Construction Project. The
Decision lays down the requirements for first-time apartment buyers and the crite-
ria socially vulnerable persons have to fulfil to be rented an apartment. The CMR
and ERRC are of the view that the Decision is discriminatory because the criteria,
inter alia, comprise the length of service and the relevance of the applicants’ jobs,
whereby it puts at a disadvantage the unemployed, people who are working but
are not registered as employed and people with a low education level. Roma, who
have for years been doing the most difficult manual job but were never formally
employed because their employers avoided paying taxes and pension and social
insurance contributions for them, are thus practically ineligible. Furthermore, the
relevance of a job is determined by the applicants’ education; the maximum 100
points are awarded to applicants with university diplomas, while those who have
not completed primary school are given zero points. The fact that as many as 61.9%
of the Roma dropped out of primary school clearly illustrates how this scoring af-

---

797 Official Gazette of the City of Belgrade, 20/03, 09/04, 11/05, 04/07, 29/07, 06/10 and 16/10.
798 Earlier surveys indicate that as many as 34.6% of the Roma are working but are not formally
registered as employed, see “Ethnic Breakdown of the Republic of Serbia and the City of Bel-
grade – the Roma Ethnic Community through Statistics”, the IT and Statistical Institute, City
Administration, City of Belgrade, 2005, p. 5.
Finally, although the Decision includes the household size among the criteria, this criterion was formulated in such a way that it actually does not take into account the number of members of the families applying for an apartment. The maximum number of points under this criterion is awarded to families with at least five members but the criterion in no way draws a distinction between a family with five and, say, a family with fifteen members, which is definitely to the detriment of the extremely large households with many more than five family members, such as many Roma families.

Unfortunately, Roma were in 2010 again victims of ethnically motivated attacks, including those targeting entire Roma settlements and motivated by revenge for a crime committed by a Roma against a non-Roma. Such an attack occurred in the Banat village of Jabuka in June 2010, when a group of villagers organised protests that turned into violence and the dissemination of hatred and intolerance against the Roma after a Roma minor was suspected of killing a non-Roma boy. The villagers stoned the homes of the Roma living in the village and demolished the property of the local Methodist church. The Roma stayed in their homes for over a month in fear of more violence and the police had to boost presence in the village round the clock.

2.3. Pride Parade

2.3.1. Preparation for the Pride

After two unsuccessful attempts to hold a Pride Parade in Belgrade, first in 2001 and then in 2009, organisations advocating LGBT rights said that they would again attempt to organise such an event in 2010. The signals that they would this time succeed came from politicians, particularly after the criticisms they had been exposed to after the last-minute cancellation of the 2009 Pride Parade. The 2010 Pride Parade Organisation Committee started meeting the representatives of the government and political parties early in 2010 to muster maximum support from the relevant political protagonists and so increase the likelihood of the Pride Parade actually being held this year. It simultaneously launched a campaign across Serbia and collected signatures in support of the Pride Parade. All the parliamentary par-

---

799 Ibid.
800 According to surveys, 43.7% of the Roma families have between 6 and 10 members, while 7.9% have 11 or more family members; see Second Progress Report on the Implementation of the Poverty Reduction Strategy in Serbia, Government of the Republic of Serbia, p. 20, http://www.prsp.gov.rs/download/Second_Progress_Report_on_the_Implementation_of_the_Poverty_Reduction_Strategy_in_Serbia_2_8_2007.pdf.
801 See Report 2009, II.2.3.2.3.
ties apart from the DSS, New Serbia and United Serbia accepted the invitations for a meeting the Gay Straight Alliance had been sending out to representatives of political parties since March (Politika, 11 June, p. 7). After meeting the representatives of LGBT organisations, the SRS deputy said that the SRS would not support the organisation of the Parade but that this did not mean it advocated any form of violence against the participants (Kurir, 30 March, p. 2).

The representatives of the LGBT organisations asked for a meeting with Serbia’s President Boris Tadić in late March. They met in late June and President Tadić voiced his support to the holding of the Pride Parade in Belgrade (Politika, 11 June, p. 7 and 1 July, p. 8; Blic, 1 July, p. 3). The holding of the Pride Parade was also supported by the members of the National Assembly Defence and Security Committee (Večernje novosti, 22 July, p. 15; Kurir, 22 July, p. 5). Apart from the NGOs, the holding of the Pride Parade was backed by many public figures, foreign diplomats and representatives of international organisations in Serbia.

The Human and Minority Rights Minister said in August that he “believes the Pride Parade will be successfully organised this year, because the threats and risks to it are much smaller”. The organisers finally announced in early September that the Pride Parade would be held on 10 October, adding that the social climate was much more auspicious this year and that they enjoyed the support of Serbia’s President Boris Tadić, Minister of Internal Affairs Ivica Dačić, National Assembly Speaker Slavica Đukić Dejanović and most parliamentary parties (Večernje novosti, 8 September, p. 5; Politika, 10 July, p. 8). Marko Karadžić, the then State Secretary in the Human and Minority Rights Ministry, had been voicing unequivocal support for the event since the very start.

The organisers ironed out all the technical details regarding the organisation of the Pride Parade on time with the police and city authorities to ensure the safety of the participants and pre-empt any problems (Kurir, 1 October, p. 2; Danas, 11–12 September, p. IX). A Coordination Body comprising the representatives of the Human and Minority Rights Ministry, the MIA, the Justice Ministry, the Protector of Citizens, the prosecution office and the Assembly Defence and Security Committee was established. As the media reported on the eve of the Pride Parade, around 5000 policemen were to be deployed to safeguard the participants in the event. The police estimated that some 300–500 people would take part in the Parade. Members of the Anti-Terrorist Unit, Special Anti-Terrorist Unit and Gendarmerie took part in safeguarding the Parade participants (Danas, 1 October, p. 4).

Most politicians in the governing parties were at least declaratively supporting the holding of the Parade. However, rather than backing it as an event promoting equality and human rights, quite a few of them said they supported it because the holding of the Parade was something Serbia was expected to do on its path to the EU, whereby they were sending a wrong message to the man in the street. The politicians’ support did not essentially reflect their positive views on the Parade. They
limited their statements mostly to the condemnation of any violence and warnings that the state would prevent violence against any group.

Some government officials, however, explicitly condemned the Pride Parade, prompting the Commissioner for Equality Nevena Petrušić to warn senior civil servants and parliamentary deputies to refrain from such statements, as they incited hate and intolerance.804

Explicit condemnation of the Parade came from the leadership of the Serbian Orthodox Church as well (Kurir, 9 October, p. 2), above all the Metropolitan of Montenegro and the Littoral Amfilohije (Blic, 9 October, p. 4). The Holy Synod stated that it was firmly opposed to the organisation of the Parade, but warned that any violence was unacceptable in the view of the Church (Politika, 9 October, p. 7). The other traditional churches and religious communities said that they would not publicly comment the Pride Parade (Danas, 8 September, p. 5).

Some media published reports inciting tensions before the Parade. On the eve of the Parade, for instance, the Belgrade daily Kurir published an article with the following subtitle: “Astrologists: Blood Will Flow” in which the author kept on invoking the “astrological situation” to corroborate the assertion that violence would break out during the Parade (Kurir, 9 October, p. 2).

2.3.2. Threats Against the Organisers and Participants

Threats were voiced against the Pride Parade organisers and potential participants, as they were trying to muster broad social support for the event. Members of the nationalist forum Stormfront, a US white supremacy organisation supporting violence, published on their website the names of the persons who had signed the petition in support of the Parade, which had been posted on the Pride Parade website.805

One of the first to react after the date of the Parade was officially announced was the leader of the Obraz movement, Mladen Obradović, who told the media that the Parade would lead to “consequences no one will be able to control” and that “the organisers of the Pride Parade will be directly responsible for everything that happens”, whereby he indirectly called for violence and shifted the responsibility from the perpetrators to the organisers.806

Graffiti with threats against the participants in the Parade and homosexuals in general were written all over Belgrade before the Parade (Kurir, 2 October, p. 5), and groups with large numbers of members were formed on the social network Facebook calling on their members to prevent the holding of the Parade and em-

805 www.parada.rs.
ploy violence in case it did take place (*Kurir*, 25 September, p. 4). The self-styled commander of the organisation Holy Emperor Lazar Guard Hadži Andrej Milić was arrested in September for the threats he voiced against the Parade participants and representatives of the government via Facebook and in a flyer published on the Guard’s website and e-mailed to the President, the Ministers and the Assembly Speaker (*Danas*, 2–3 October, p. 5; *Politika*, 22 September p. 9; *Kurir*, 22 September, p. 11; *Večernje novosti*, 2 October, p. 12). Several days before the Pride Parade, the Belgrade Higher Prosecution Office filed an indictment against Obraz member Aleksandar Đurđević for issuing death threats on Facebook against the Parade participants (*Večernje novosti*, 21 October, p. 14).

At a session of the parliamentary Defence and Security Committee a few days after the Parade, Ivica Dačić said that the MIA identified 56 people who had threatened the organisers of the Parade via Facebook (*Danas*, 15 October, p. 4).

The organisation Serbian People’s Movement (SNP) “Naši 1389” called on the media to sell them photographs of the participants in the Parade, which they said they would put on the “Protect Your Child” website, denying that they were inciting to lynch (*Kurir*, 9 October, p. 2).

### 2.3.3. Counter-Protests

The organisation Serb Assembly Dveri said it would stage a protest of “family people” the day before the Parade, on 9 October, at 13:00 at the Belgrade College of Philosophy square against the decision to allow the holding of a Pride Parade in Belgrade (*Danas*, 1 October, p. 4). Several hundred citizens rallied at the square and they were joined by several thousand citizens during the procession (*Politika*, 10 October, p. 5). They demanded that the Government ban the Pride Parade, which they qualified as shameful and immoral (*Večernje novosti*, 10 October, p. 5).

### 2.3.4. Holding of the Pride Parade

The Pride Parade was held on the announced date, on 10 October, and attended by around one thousand participants. No incidents broke out at the Parade venue (*Blic*, 11 October, p. 5). The participants were addressed, *inter alia*, by the Protector of Citizens Saša Janković, Human and Minority Rights Minister Svetozar Ćiplić, Head of the EU Delegation in Serbia Vincent Degert and Head of the OSCE Mission to Serbia Dimitrios Kypreos. The following representatives of the government and political parties also attended the Pride Parade: Assistant Human and Minority Rights Minister Petar Antić, Marko Karadžić of the League of Socialists of Vojvodina and former State Secretary in the Human and Minority Rights Ministry, Milica Delević, Director of the EU Integration Office, Liberal Democratic Party President Čedomir Jovanović, LDP and DS deputies, as well as foreign diplomats, public figures and representatives of non-governmental organisations (*Politika*, 11 October, p. 4).
Given that the organisers and authorities feared the most for the safety of the participants during their arrival to and departure from the site of the Parade, all the participants had to pass through several police check-points around the venue. Only the people who had signed up in advance and were on the list of participants were allowed to approach the site. When the Parade ended, the police drove all the participants away from the inner city centre. One participant, a Swiss national, was beaten up by a group of hooligans in the Belgrade suburb of Zvezdara. A Serbian citizen was hit on the head during the assault. The other participants in the Parade were driven off to safe locations and were not injured (Kurir, 11 October, p. 2).

Although the Parade was held in peace, large numbers of its opponents simultaneously rallied at a number of locations in the centre of Belgrade. They were violent and stoned the police, but the police managed to prevent them from coming close to the venue and the participants. The police estimated that there were around 6,000 demonstrators, and Minister Dačić qualified them as members of nationalist and extremist groups (Danas, 15 October, p. 4). The hooligans, opponents of the Parade, were apparently well organised and, apart from the police, they also attacked the headquarters of several parties (DS, LDP, SPS), foreign embassies, the National Assembly building, the RTS, wrecking buses, parked cars, shops, and even damaging a mobile mammography van along the way. They fired gunshots at the DS headquarters and set fire to it. Some 150 people were injured during the riots, 130 of them policemen. The damage they incurred to the city was estimated at over one million euros. According to Justice Ministry data, around 250 hooligans were brought in and around 100 of them were taken into custody, including the leader of the organisation Obraz who had been arrested before the Parade began (Blic, 11 October, pp. 4–7 and 12 October, p. B5; Večernje novosti, 11 October, p. 4; Politika, 11 October, p. 1).

The first clashes between the Parade opponents and the police broke out at various locations around 8:30 in the morning. The violent rampage across the city, attacks on the police and their intervention went on for a full seven hours. The police acted with restraint. Minister of the Interior Ivica Dačić said that the police had not exercised all the powers at their disposal because they wanted to avoid bloodshed (Danas, 15 October, p. 4). At a Defence and Security Committee session, Minister Dačić said that the MIA and intelligence services had been alerted to what would be happening on 10 October and said that they had done their job well (Danas, 15 October, p. 4). The Parade organisers shared his opinion (Politika, 11 October, p. 4), as did the European Commission, which assessed in its annual Progress Report\(^7\) that the response of the police was adequate and that a large number of perpetrators were arrested. The Independent Police Trade Union, however, stated that it was dissatisfied with the way the police were commanded during the riots and the Parade

---

security estimates and called for a thorough investigation into these deficiencies within the MIA (Politika, 12 October, p. 5).

Although the violence in the Belgrade streets perpetrated by the anti-Parade rioters was condemned both by the state leadership and the public at large, there were, as usual, some that blamed the Parade organisers and participants for “provoking” the hooligans, (Večernje novosti, 11 October, p. 2) trying to substantiate their view that the Parade should not have been allowed in the first place.

Representatives of the international community – CoE Secretary General Thorbjorn Jagland and European Parliament Rapporteur on Serbia Jelko Kacin – also voiced their concern and condemned the violence on Belgrade streets (Politika, 11 October, p. 8). The EU nevertheless welcomed the holding of the Parade and assessed that the Serbian authorities adequately supported the event and undertook measures to safeguard it (Politika, 12 October, p. 1).

The Parade organisers said they were satisfied with the turnout of over 1000 people at the Parade and the security the state provided the participants, assessing that the problems faced by the LGBT population, notably violence and discrimination, would become more visible now that the Parade has been held (Politika, 11 October, p. 4), but they also called for the adequate prosecution of the people responsible for the violence in the Belgrade streets during the Parade (Danas, 14 October, p. 5).

2.3.5. Proceedings Against the Rioters During the Pride Parade

Two hundred forty nine people were taken in by the police during the riots and the following night; 54 of them were under age. One hundred and thirty-one adults were placed into custody.

The Belgrade Higher Public Prosecution Office filed a motion for the investigation of Obraz leader Mladen Obradović, suspected of organising the attacks on facilities in Belgrade. The Prosecution Office opined that the lists the police found in Obradović’s apartment with the venues that were attacked and the names of the perpetrators were proof that he was the organiser (Blic, 12 October, p. 5). The Belgrade police also arrested one of Obradović’s chief associates, Aleksandar Živković, who headed one of the groups during the riots (Blic, 13 October, p. 4; Danas, 13 October, p. 4). A total of 124 people were brought before the Belgrade Higher Court for participating in the riots during the Pride Parade; 118 were kept in custody. Some have been indicted while others are still under investigation. Eight persons were brought before the Belgrade First Basic Court and criminal proceedings have been instituted against all of them (B92 News, 10 November).

The whole twelve-member leadership of Obraz was taken into custody in the first four days after the Parade. On 13 October, the police thoroughly searched the Obraz offices and placed into custody four suspects, including Obraz City Committee Secretary Damir Grbić and head of the so-called Zemun group Mladen Mi- losavac (Večernje novosti, 14 October, p. 13). Krsto Milovanović, another Obraz
leader, was arrested the following day (Večernje novosti, 16 October, p. 14; Blic, 17 October, p. 15). The police established that Mladen Obradović coordinated at least six groups, each comprising ten or so members, during the riots that accompanied the holding of the Pride Parade (Večernje novosti, 14 October, p. 13).

The Belgrade First Basic Prosecution Office filed the first indictment against the perpetrators ten days after the riots and the First Basic Court in Belgrade rendered its verdict against the two defendants in November. Milan Vacić (19) and Milan Rus (19) were sentenced to six months in jail or two-year suspended sentences for preventing a public official from discharging his official duties during the Pride Parade (B92 News, 12 November).

2.3.6. Protests for the Release of Persons Detained During the Pride Parade

The parents of the arrested rioters rallied in front of the main Belgrade courthouse on 12 October to protest against their detention (Kurir, 13 October, p. 5). Vladan Glišić, the editor of Dveri, said that the organisations that had organised the Family Stroll would stage a new protest unless the persons arrested during the riots surrounding the Pride Parade were set free (Danas, 14 October, p. 5).

The Protest against Repression of Arrested Patriots, organised by the Initiative of Mothers against Police Repression and SNP Naši 1389, was held on 24 October although the police prohibited this gathering. Tens of “Naši 1389” sympathisers rallied at the event, which passed without an incident (Kurir, 25 October, p. 7).

The police were notified of two separate rallies on 30 October, one entitled Protest in Support of the Arrested Patriots and the other Preservation of Orthodoxy from Ecumenism and Unification with the Roman Catholic Church. The police banned both because, “they were to be held at venues not designated for public assembly” (Politika, 30 October, p. 9). The police brought in defrocked Serbian Orthodox Church monk Antonije Davidović for attending the prohibited gathering and let him go after two and a half hours, without bringing him before a misdemeanour judge (Kurir, 31 October, p. 2).

2.3.7. Extreme Right Organisations

The Pride Parade was ultimately held under strong police presence and the Parade participants were adequately protected. However, although the police managed to keep them safe from the hooligans who were threatening them, the Parade was accompanied by extremely violent riots of the Parade opponents elsewhere in the heart of Belgrade. Their actions that day left no doubt about how well orchestrated they were, and the general conviction that the hooligans were linked with extreme right organisations again brought to the fore the activities of such organisa-

---

808 See Ivan Kuzminović’s text “Cross, Priest and Motorola”, http://www.pescanik.net/content/view/5755/1104/.
tions in Serbia. Justice Ministry State Secretary Slobodan Homen said he thought that the prohibition of such groups and prevention of their activities “is the only right thing to do”.

Extreme right groups have regularly participated in large public gatherings in the past few years. The members of these groups promote hate speech, neo-Nazism and Fascism. Around 4,000 extremist fans and rightists have been registered to date in various misdemeanour and criminal reports (*Kurir*, 25 July p. 4).

When they were bringing in “Obraz” leader Mladen Obradović, the police found a list of some thirty people running the organisation’s branch offices across Serbia, who had been tasked with leading the riots during the Pride Parade in Belgrade. An MIA source said that Obradović obviously was not at the top of the pyramid running this and other rightist organisations, which are under the control of some persons, organisations and institutions operating in the shadows; the source also said that the police had information on Obradović’s contacts with specific political figures, but none indicating that any political party had been behind the riots that accompanied the Pride Parade, which were obviously carefully planned (*Blic*, 12 October, p. 4). The prosecution office said it would launch an investigation into who funded Obraz and similar organisations in order to reveal who is running these violent organisations from the shadows. Obraz is also suspected of links with several foreign rightist organisations, wherefore the investigation will focus on whether it is receiving funding from abroad as well (*Blic*, 13 October, p. 4).

Several initiatives for the prohibition of specific extremist organisations were launched before the Constitutional Court of Serbia in the past few years. In the initiative to prohibit the Obraz movement, the prosecution office stated that it “noted that the organisation Obraz caused numerous incidents in which its members (...) violated constitutionally guaranteed rights in various ways. The members of this organisation incite violence, which constitutes “anti-constitutional activity comprising threats to safety and security and the constitutional order”. It further noted that “a brief overview of the specific incidents resulting in the breach of various civil rights guaranteed by the Constitution of the Republic of Serbia demonstrates that the principles round which the members of the Obraz organisation rally are in contravention of the fundamental principles guaranteeing the freedom of speech and association” (*Politika*, 13 October, p. 9).

The Constitutional Court in 2010 held a preparatory session on the prohibition of the work of specific soccer fan groups,809 but has not discussed the initiative to prohibit rightist organisations yet. It should, however, be borne in mind that most extremist organisations are not even registered. A formally registered organisation prohibited by the Constitutional Court is formally deleted from the register and

809 The fans’ violent conduct this year climaxed at an Italy-Serbia soccer match in Genoa, which was to have been held just two days after the Pride Parade. The match was, however, called off due to the rampage of the fans from Serbia. The media extensively reported on the event in the latter half of October.
loses the status of legal person, which may cause some difficulties to its members, but cannot prevent them from maintaining informal links and advocating their ideas the same way they have to date. Furthermore, they can always register as a new organisation. The prohibition of organisations is not extremely effective per se and the authorities need to find other ways to clamp down on such societal phenomena. The hitherto practice of dismissing or simply ignoring criminal reports against perpetrators of violence, of protracting their trials indefinitely, definitely is not the way to suppress such conduct.

2.4. Life in a Healthy Environment

2.4.1. Assessment of the State of Environment in Serbia

Serbia ranked 29th among 163 countries in the world on the Environmental Performance Index which measures how close the countries are to the established environmental goals. The countries were ranked by the relevant features reflecting the environment in a country on the basis of measurable criteria, including the environmental burden of disease, air pollution, water, biodiversity and habitat, forestry, fisheries, agriculture and climate change.

The events in 2010, however, demonstrated that Serbia needed to address many issues to meet the acceptable environmental protection and sustainable development standards. There are 440 registered environmental hot spots in Serbia. The Big Bač Canal is the most polluted waterway in Europe and the areas around Bor and Pančevo rank among regions most jeopardised by pollution. Around 400,000 cubic metres of silt contaminated with heavy metals (chrome, copper, nickel) and other polluting matter have accumulated in the most polluted section of the Big Bač Canal (Vreme, 16 September, p. 41).

2.4.2. Particularly Polluted Regions

2.4.2.1. Bor. – Available data show that there are 11,000 tons of waste per capita in Bor. The concentration of sulphur dioxide in the air is the highest in Europe, exceeding the permissible limit tens of times. Like in the other Serbian towns, poverty prevents Bor’s citizens from focusing on environmental protection so as not to endanger the work of the plants and drive the investors away. This is why the competent ministry must embrace a policy precluding the disregard of environmental standards and offering special concessions to those abiding by these standards.

810 Serbia and Montenegro were assessed together.
811 See http://epi.yale.edu. The team comprised experts from Yale and Columbia, in cooperation with the World Economic Form and the European Commission’s Joint Research Centre.
813 “Big Bač Canal is an Environmental Hot Spot” www.beta.co.rs/zeleasrbija, 2 December.
because it has to be borne in mind that the remediation of the Bor mines would cost tens of millions of euros.

2.4.2.2. Pančevo. – Although still polluted, the city of Pančevo is slowly losing the attribute of being Serbia’s direst environmental problem. Public pressures, particularly pressures exerted by the residents of Pančevo, and more decisive reactions by both the state authorities and the courts have prompted the three largest Pančevo plants to invest more in cleaner technologies. The Petroleum Industry of Serbia has to date invested 64 million euros and is to invest another 52.5 million euros in environmental protection. The petrochemical plant Petrohemija has invested 13 million and is to invest another 8.5 million euros in environmental protection. A number of trials over economic crimes initiated mostly by the Republican Environmental Inspectorate, several criminal trials of responsible officers, and a civil class action by Pančevo residents against the plants in the so-called South Industrial Zone are currently under way before the Pančevo Basic Court. Only a few former and present workers of Petrohemija have succeeded in winning compensation in court for the health damages they sustained (Vreme, 8 April, p. 36).

Lack of relevant medical research indicating any links between polluting matters and the incidence of diseases is a problem that has not been resolved for years. The Pančevo Public Health Institute conducted a study on the impact of soot on human health, but it is not very relevant to the current situation given that the petroleum and petrochemical industries do not emit soot. The data of the Pančevo Municipal Anti-Cancer Society indicating that the incidence of tumours is evidently on the rise in the South Banat District, are, however, devastating.

2.4.2.3. Obrenovac. – Apart from major sources of pollution in Belgrade (in which the industry creates around 15,000 tons of waste a year) the air and soil near the country’s capital is also heavily polluted by the ash from the thermal electric power plant Nikola Tesla in Obrenovac. The ash cannot be processed because of the high percentage of arsenic in it.

2.4.3. Illegal Garbage Dumps

There are 4,400 registered illegal garbage dumps in Serbia. Although the relevant legislation has been adopted, proper waste management is neither on the citizens’ nor on the state’s list of priorities. Recycling is in its early days and the way the citizens are now disposing of their garbage precludes its recycling. The lack of knowledge about waste management and of will to properly dispose of waste is starkly illustrated by the fact that new illegal dumps sprang up on 20% of

816 Serbia is one of the few countries in Europe that does not have developed community waste management practices.
the land cleaned up during a clean-up campaign conducted by the Environmental Protection Ministry, during which nearly two-thirds (56.21%) of the wild dumps in Serbia were cleaned up.

2.5. Prohibition of Torture and Inhuman or Degrading Treatment or Punishment

2.5.1. Situation in Penitentiaries

The penal sanctions enforcement system has been undergoing considerable changes in the past few years. They, notably, comprise the continuous improvement of the legislation, which is almost fully harmonised with the Council of Europe standards, greater access to prisons afforded civil society organisations that have begun visiting the penitentiaries regularly, which undoubtedly facilitates the disclosure and prevention of ill-treatment and has led to fewer instances of the intentional physical abuse of persons deprived of liberty. There are, on the other hand, some negative tendencies threatening to jeopardise the functioning of the prison system. Namely, the increasing overcrowdedness of the penitentiaries has caused numerous problems and inevitably jeopardised the rights of persons deprived of liberty. It has also led to an increase in the number of inmates in need of addiction treatment (above all for drugs) that most penitentiaries are now unable to provide.

Nearly 12,000 people were incarcerated in Serbian prisons in late 2010, or around 1,000 more than in late 2009 (there were 10,795 inmates on 31 December 2009). If the prison accommodation standards in national legislation (the Penal Sanctions Enforcement Act (PSEA) and subsidiary regulations) and international instruments (European Prison Rules) were strictly applied, the Serbian penitentiaries would hold a maximum of 7000 inmates at one time. The problem of overcrowdedness has been increasingly plaguing the prison system for several years now, due to the constant rise in the number of inmates. There were between 5,000 and 6,000 inmates in 2003, over 8,000 of them by the end of 2005 and, as mentioned, the prison population now stands at nearly 12,000. The Justice Ministry estimates that it may exceed 14,000 in 2012. The rise in the number of inmates has not, however, been accompanied by an increase in prison staff. Moreover, the breakdown of the prison staff is inappropriate and gives rise to concern. Namely, the reintegration units are seriously understaffed, as are the prison security units. A disproportionately large share of the staff is tasked with administrative jobs and

---

817 The BCHR has monitored the treatment of persons deprived of liberty held in penitentiaries since 2009 and published its first annual report in 2010. The BCHR associates visited 22 penitentiaries by the end of 2010 and interviewed the convicts and the staff in each of them. The following section gives a summary of the chief observations about the situation in these institutions. Detailed descriptions of the situation in each of the visited penitentiaries are available in the annual report Treatment of Persons Deprived of Liberty 1, posted on BCHR’s website www.bgcentar.org.rs.
the number of employees directly working with inmates is much lower than it should be.\footnote{818}{See http://www.novosti.rs/vesti/naslovna/aktuelno.69.html/308093-Bitka-za-svez-vazduh-u-zatvorima.}

Most of the convicts are serving short prison sentences. Of the 9,023 convicts who started serving their sentences in 2009, 2,070 of them (23\%) were sentenced to 3 months’ imprisonment or less, while as many as 5,678 (63\%) were sentenced to one year imprisonment or less. The purpose of punishing a number of these felons would be achieved also by sentencing them to community work rather than imprisonment; this would relieve the prison capacities, even if negligibly. The courts unfortunately rarely sentence perpetrators to community work, although, truth be told, most cities and towns, particularly smaller ones, do not have community service jobs which the convicted felons could be doing.

An analysis of the inmate categories shows that the numbers of remand prisoners and misdemeanour convicts have been growing the fastest.\footnote{819}{Statistical data on the number of persons deprived of liberty are available on the webpage of the Penal Sanctions Enforcement Directorate, www.uizs.mpravde.gov.rs.} The rise in the number of remand prisoners, who account for nearly one-fourth of the prison population, can largely be explained by two facts. First, courts remand people in custody as a rule, not in the last resort, to ensure the smooth conduct of criminal proceedings. There have been instances, not only a few of them, of judges remanding in custody persons they have neither seen nor heard. Second, trials in Serbia often last an unreasonably long time and there have been instances of defendants spending four or five years in custody.

Overcrowdedness is the direst in the prison remand wards given their limited capacities and the constant rise in the number of remand prisoners, wherefore it is impossible to provide each remand prisoner with four square metres of living space, as stipulated by the PSEA. Many have only two square metres of living space or even less. A large number of prisons cannot provide beds for all the remand prisoners and some of them have to sleep on mattresses lain on the floor.\footnote{820}{The Protector of Citizens on 30 December 2010 issued a recommendation asking several penitentiaries and the Penal Sanctions Enforcement Directorate to provide enough beds for persons deprived of liberty. The recommendation is available at http://www.ombudsman.rs/index.php/lang-sr/misljenja-preporuke-i-stavovi/1232-2010-12-31-11-16-15.} Some penitentiaries are unable to separate juvenile and adult remand prisoners.\footnote{821}{The Protector of Citizens on 30 December 2010 issued a recommendation asking two penitentiaries and the Penal Sanctions Enforcement Directorate to put juvenile remand prisoners in cells with adult remand prisoners only with the consent of the juvenile judge, as laid down in the national law. See the recommendation at http://www.ombudsman.rs/index.php/lang-sr/misljenja-preporuke-i-stavovi/1231-2010-12-31-10-47-54.} The lack of room and staff in most prisons preclude them from ensuring that the remand prisoners spend at least an hour a day in open air, as laid down in the European Prison Rules and European Committee for the Prevention of Torture (CPT) standards. Only a few penitentiaries are able to provide their remand prisoners with two hours a
day outdoors, as stipulated by the Serbian legislation. Moreover, remand prisoners rarely have the opportunity to engage in any purposeful activities. The legal provisions allowing remand prisoners to work are not applied in practice. All these facts lead to the conclusion that remand prisoners are the most vulnerable category of persons deprived of liberty.

Most prison buildings are old. Some penitentiaries are headquartered in the centre of town and cannot be expanded or reconstructed for lack of space. Lack of space also limits, and in some prisons, precludes the inmates’ exercise and recreational activities. Furthermore, since it is impossible to engage greater numbers of inmates on jobs, most of them spend their days bored, without any opportunity to engage in a meaningful activity. Convicts in many prisons, particularly in high security wards, spend very little time, usually less than an hour and sometimes only fifteen minutes a day, outdoors, due to the overcrowdedness.

If CPT standards, European Prison Rules and particularly ECtHR case law, laying down the fundamental standards regarding the treatment of persons deprived of liberty, were taken into account, one could qualify the conditions in several prisons in Serbia as inhuman or degrading, regardless of the treatment of the inmates by the prison staff. These penitentiaries include, notably, the Belgrade District Prison, with over 1,600 inmates in late 2010, nearly all of them remand prisoners, the Belgrade Special Prison Hospital, some pavilions in the Požarevac Correctional Institution, at least one Niš Correctional Institution ward, the Kruševac District Prison and the remand cells in some district prisons. Unfortunately, the poorest conditions are in the penitentiaries housing the greatest numbers of inmates.

The Justice Ministry, more precisely, its Penal Sanctions Enforcement Directorate, is still charged with the health care of the inmates, which is not commendable given that it jeopardises the independence of the health staff. Moreover, prison medical workers are paid lower salaries than the staff of medical institutions within the remit of the Health Ministry and have few, if any, opportunities to attend additional training or for promotion. This is why hardly any health workers are interested in working in penitentiaries; some prisons have continuously open vacancies for doctors. In a little over a year, nine specialist doctors and over 30 nurses quit their jobs in the Special Prison Hospital, the only specialised health institution within the Penal Sanctions Enforcement Directorate.822

The understaffed security units are extremely overloaded. Many guards work long overtime hours and thus suffer from exhaustion and stress, which definitely is not conducive to the normal functioning of the penitentiaries. Moreover, the number of guards in some prisons is so small that there are wards in which one guard alone watches over 100 even 150 inmates at a time. This poses grave security problems, particularly in penitentiaries in which large numbers of inmates share cells, because the understaffed guards cannot adequately react to inter-prisoner violence and thus prevent abuse of weaker and more vulnerable inmates.

2.5.2. Serbian Government Strategy to Reduce the Overcrowdedness of the Penitentiaries in the 2010–2015 Period

The Serbian Government on 22 July adopted its Strategy to Reduce the Overcrowdedness of the Penitentiaries in the 2010–2015 Period. The Strategy, the implementation of which necessitates the adoption of an action plan, is to 1) improve the status of convicts, remand prisoners and other persons deprived of liberty and the realisation of their rights; 2) humanise the penal sanctions enforcement system and ensure a more comprehensive implementation of the relevant international standards; 3) ensure feedback on the effectiveness of the application of criminal law provisions related to the enforcement of penal sanctions with the aim of improving the courts’ penal policies and fundamental criminal law and political commitments; 4) increase the effectiveness of the Penal Sanctions Enforcement Directorate, the Justice Ministry administration authority charged with implementing, organising and supervising the enforcement of penal sanctions; 5) reduce and redistribute budgetary funds allocated for the enforcement of penal sanctions; 6) enhance the security of all members of society.

The activities to be undertaken during the implementation of the Strategy will focus on: 1) alternative sanctions and measures; 2) conditional release and parole; 3) introduction of the penal judge institute; 4) parole and probation services; 5) increase of the prison accommodation capacities and improvement of conditions in the penitentiaries; 6) raising the professional capacities of the Directorate staff; 7) pardons; 8) establishment of a single information system.

The Strategy, inter alia, envisages the broader application of alternative sanctions and measures by expanding grounds for bail and improving the electronic monitoring system, which is to enable the application of the measure restricting the movements of a felon to his or her home or town in lieu of remand in custody.

The Strategy envisages home confinement as an independent penal sanction, an increase in the number of community service hours the convict may work, the introduction of simplified forms of criminal proceedings in which alternative sanctions are pronounced. The new Criminal Procedure Code, drafted at the time this report went into print, envisages the introduction of penal judges, who will have considerable powers in enforcing criminal sanctions and be, inter alia, charged with monitoring the implementation of home confinement.

The Strategy also lays down the measures facilitating the implementation of conditional release and parole measures. The penal judges are to play an important role in the implementation of these measures and will be entrusted with reviewing conditional release motions and paroling prisoners ex officio.

The Strategy envisages the adoption of a law regulating the enforcement of various alternative sanctions and measures within the remit of the probation service. The probation service will be charged with various duties assisting the courts in taking decisions on accused and convicted persons.

The Strategy also envisages an increase in prison capacities. In the short term, a maximum security correctional institution accommodating 450 convicts will open at Belgrade (Padinska Skela). In the medium term, the existing capacities will be reconstructed and, in the long term, new penitentiaries will be built.\(^{824}\)

The Strategy envisages raising the professional capacities of the Penal Sanctions Enforcement Directorate, the pardon of specific categories of convicts, which is to help reduce the overcrowdedness in the penitentiaries, and the introduction of a single information system linking up the police, the judiciary and the Penal Sanctions Enforcement Directorate.

The measures outlined in the Strategy can be qualified as good and reasonable and sure to address overcrowdedness. It remains to be seen how seriously the Government and judiciary authorities will embark on their implementation. The problem of overcrowdedness will not be eliminated unless other measures, such as those targeting the general prevention of crime and drug addiction, also yield results.

2.6. Prohibition of Slavery, Status akin to Slavery and Smuggling of Humans

The fight against trafficking in humans improved to an extent in 2010 judging by reports published by the media, NGOs and international organisations. The implementation of laws, however, is still qualified as problematic.

In its Serbia 2010 Progress Report\(^ {825}\), the European Commission noted that Serbia was moderately advanced in fighting trafficking in human beings. It noted headway in the adoption of procedures to identify victims and in regional and international cooperation and positively assessed the efforts invested by the police. Its authors, however, strongly recommended that cooperation between the police, prosecution and courts be improved and said that more had to be done to improve comprehensive assistance to the victims and their reintegration. The Report warned that overall funding for NGOs active in the field of prevention and support to victims and for the government’s protection agency remained unsatisfactory and that NGOs continued to rely heavily on international donor funds.

According to the annual report of the State Department Office to Monitor and Combat Trafficking in Persons,\(^ {826}\) Serbia is a source, transit, and destination country for men, women, and girls subjected to trafficking in persons, specifically forced

\(^{824}\) See http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=12&dd=06&nav_id=477351.


prostitution and forced labour. The Report stated that children, mostly Roma, continued to be exploited in the commercial sex trade, subjected to involuntary servitude while in forced marriage, or forced to engage in street begging and that Serbian nationals continued to comprise the majority of identified victims. It commended the legislative framework and highlighted increased efforts to prevent trafficking, but it also identified numerous deficiencies in the implementation of the law. Serbia was again categorised as a Tier 2 country, i.e. among countries that have worked on suppressing human trafficking but need to invest additional efforts and adopt new measures to that aim.

A number of arrests of suspected human traffickers were made in 2010, mostly near Belgrade, in Vojvodina and in southern Serbia (Beta, 30. September and 25. October; Tanjug, 14 September, 23 and 25. November). The victims of the apprehended perpetrators had been exposed to sexual and labour exploitation and forced to beg. In several of these cases, the parents or relatives of the exploited children had been aware that their children were being exploited and consented with it.

A married couple from Indija drew the most media attention; they had forced their two daughters and two sons, aged between 7 and 15, to beg and their daughters also to prostitute themselves. Apart from the parents, the police also arrested two men who had been sexually exploiting the girls. The police found one of them in possession of pornographic material with the girls (Danas, 2 September, p. 4; Blic, 2 September, p. 16 and 3 September).

Widespread consternation ensued after the media reported that an internist doctor in Negotin had repeatedly sexually exploited four girls aged between 13 and 17 and addicted to heroin, in late 2008 and early 2009 (Politika, 26 February, p. 9). At the time, the girls went to the house of Ilija R., who acted as their pimp together with Miloš B. The two men were convicted in 2009 to a total of 11 years and 10 months in jail for turning the girls into heroin addicts and then for pimping them. The authorities never officially stated who had paid the two men for the girls’ sexual services or whether proceedings had been launched against them (Blic, 26 February, p. 16 and 27 February, p. 16).

Four men from Novi Sad, between 18 and 26 years old, were arrested in October on suspicion of forcing a 14-year-old girl to prostitute herself; they kept her locked up in the house, beat her up and drugged her. The girl managed to escape

827 Problems regarding the adequate punishment of traffickers in humans are highlighted as one of the main challenges Serbia faces. Its authors underline that Serbia has to vigorously prosecute, convict, and punish complicit officials who facilitate trafficking. The Report states that Serbia must increase and sustain funding for NGOs providing victims with comprehensive assistance and rehabilitation, increase personnel and resources allocated to the government’s victim protection agency and increase training for social workers, police and other front-line responders. It emphasises as a problem the lack of specialised shelters for children and a shelter for men – victims of trafficking in humans. Another problem singled out in the Report is the government’s refusal to cooperate directly with the Republic of Kosovo government, which hampers Serbia’s efforts to investigate and prosecute some trans-national trafficking.
and report them. As the police suspected that the mother knew what the suspects had been doing, the girl was placed in the Child Shelter in Novi Sad (Blíc, 23 October, p. 17; Večernje novosti, 24 October, p. 6).

A woman from Zaječar and a man from Jagodina were taken into custody in February. The man was suspected of selling a thirteen-year-old girl, his relative, to the woman to marry her son (Blíc, 5 February, p. 14).

The police in March filed a criminal report against a bar owner at Smederevo in which five girls, 8th grade pupils, were working as waitresses and dancers. The owner is alleged to have convinced the girls to dress themselves provocatively and dance, to take off their clothes during their performance, while the older customers touched them or later took them to an auxiliary room. There is no evidence that the girls provided sexual services to the customers as well, but the prosecution office does not rule this possibility out (Večernje novosti, 25 March, p. 12; Politika, 26 March, p. 9; Blíc, 26 March, p. 16 and 27 March, p. 16). 828

 Allegations and indications of trafficking in human organs both in Serbia and the neighbouring countries received a lot of media attention in September, November and December. When a group of citizens in the vicinity of Niš said in September that they would resort to selling their organs and blood to feed their families (Večernje novosti, 29 September, p. 5), the Labour and Social Policy Minister said that “Serbia is not so poor that its citizens have to sell their organs to survive”. 829 The representatives of the group of citizens then underlined that “the state can prohibit the establishment of an agency selling organs but that no one can prevent them from selling their blood or organs abroad” 830.

A simple Internet search shows that there is a supply of human organs and a demand for them both in Serbia and the region. Many ads with the contact details of people offering or looking for a specific human organ have been posted on the web.

2.7. Right to Privacy

2.7.1. Personal Data Protection

The adoption of the Personal Data Protection Act was a major step forward in Serbia’s endeavours to align its legislation and practice with international personal data protection standards. The authorities also adopted some, albeit not all the by-laws needed for the enforcement of the Act. Moreover, the practical enforcement of the regulations needs to be improved and both the citizens and the officials deal-

828 More on sexual exploitation of children in II.2.10.2.
829 See B92, 30 September.
830 This episode is indirect proof that poverty has reached a critical point in some parts of the country. It is also direct proof that the citizens are aware that there is a black market of human organs.
ing with personal data need to be apprised of what the protection of personal data actually entails.

According to the data obtained by the Commissioner charged with personal data protection during 2010, the first year in which the Act was applied, and quoted in the Government Personal Data Protection Strategy published in 2010, as many as 350,000 entities both in the private and public sectors are involved in processing personal data. They, inter alia, include various state authorities, institutions providing social care, education, public utility companies, banks, agencies conducting video surveillance of public places, business and residential facilities, etc. The number of records and databases comprising personal data is estimated at over one million, but much of these personal data is processed in the absence of explicit legal grounds or the consent of the persons they concern; nor are there regulations on the purpose and volume of data being processed although the processing of particularly sensitive data is often at issue.831 Personal data controllers are obligated to keep personal data records and forward the personal data filing systems to the Commissioner, who is charged with establishing and managing the Central Register of Personal Data Filing Systems. The Central Register is to enable a person to gain simple and comprehensive insight in all of his or her personal data that are being processed. However, although the Commissioner set up the Register of Personal Data Filing Systems in May, only a few controllers fulfilled the obligation to forward their personal data filing systems to the Commissioner. The Commissioner filed misdemeanour reports against 14 ministers, who had failed to fulfil the obligation to conform and keep records of personal data filing systems with the relevant decree and forward the records to the Commissioner to enter in the Central Register (E-novine, 1 December).832

2.7.2. Cases of Unauthorised Access to and Abuse of Personal Data

Media often violate privacy protection standards laid down both in the Personal Data Protection Act and the Serbian Press Code of Conduct. Three such violations at the end of the year833 prompted the Commissioner to appeal to the media to observe the elementary standards of privacy and personal data protection in their report.834

Health data definitely fall within particularly sensitive personal data. A single health information system has to date been introduced in over 50 of around

---

831 See the Personal Data Protection Strategy, Sl. glasnik RS, 58/10.
833 A number of media published a lot of information and misinformation about the health problems of a well-known RTS news presenter. The other incident regarded the publication of the private cell phone numbers of people blamed for the non-construction of a sports arena in Niš on the social network Facebook. The third incident concerned the publication of a prior juvenile criminal record of a son of a trade union representative.
300 health institutions in Serbia but the incident that occurred at the beginning of
the year, when two nurses accessed the electronic health records of a patient and
learned her personal data demonstrates that the system suffers from deficiencies
(\textit{Danas}, 12 February, p. 4).

The alleged abuse of personal data of thousands of citizens in the run up to
the local elections in Bor drew a lot of public attention and prompted the Serbian
Progressive Party (SNS) to file a complaint with the Commissioner. It claimed that
the Bor residents’ personal data were abused to send them forged money orders on
behalf of the “Serbian Progressive Party campaign”. The Commissioner began the
review of the complaint and said that the circumstances, \textit{inter alia}, indicated that
“robust, grave and multiple violations of the Personal Data Protection Act had, in-
deed, occurred” and that the crime of unauthorised collection of personal data had
been committed.\textsuperscript{835}

Problems regarding the protection of personal data also appeared with re-
gard to the elections of the national minority councils.\textsuperscript{836}

\textbf{2.7.3. Control of BIA’s Work}

Protector of Citizens Saša Janković in early 2010 paid a control visit to the
Security Information Agency to acquaint himself with how the Agency operated
and check whether its operations affecting guaranteed human rights and freedoms
were lawful and appropriate. The Protector’s control involved interviews of the BIA
management and staff, access to specific offices and direct insight in the BIA docu-
mentation. The Protector reviewed six randomly selected cases from the 2003–2009
period and ensuring insight in cases in which a measure was ordered or approved
by the Supreme Court of Serbia, an investigating judge or the BIA Director.\textsuperscript{837} The
Protector of Citizens concluded that the BIA abided by the regulations when it dero-
gated constitutionally guaranteed human rights and freedoms, but noted that the
laws and subsidiary legislation and the procedures applied in BIA’s work had to be
improved to ensure greater protection and respect of human rights and freedoms
that may be derogated by the BIA operations.\textsuperscript{838}


\textsuperscript{836} More in II.2.2.5.1.

\textsuperscript{837} The Protector analysed 6 cases regarding the secret surveillance of communications and elec-
tronic surveillance of the area without a formal decision but with the prior consent of the Su-
preme Court of Serbia President; the secret surveillance of communications and electronic sur-
veillance of the area pursuant to a decision by the President of the Supreme Court of Serbia
or the judge designated by the Court President; the secret surveillance of communications and
electronic surveillance of the area at the order of an investigating judge; and the collection of
data on established and attempted telephone communications and the callers’ locations.

\textsuperscript{838} The Report of the Protector of Citizens on his visit to BIA, including his findings and recom-
2.7.4. Declassification of State Security Files

The sensitive issue of declassifying the files of the state security services is particularly relevant with respect to the right to privacy, notably its following two aspects: the right of an individual to have insight in his/her file and the protection of the privacy of persons on whom files have been kept from abuse. The Government of Serbia in May 2001 passed two decrees on the declassification of state security files, which were subsequently declared unconstitutional by the Constitutional Court.839

The Classified Information Act obliges all state authorities to check their documents and decide which will remain classified and which will be declassified.840 This provision provides for the declassification of state security files. The Act allows authorised persons in possession of classified information or the Government to keep the specific documents classified, but also stipulates that the authorities shall review every single classified document to decide which of them will be declassified.841 The future law on archives and how it regulates access to archived data will also be extremely important in this respect.842

A group of four deputies submitted a Draft Act on the Declassification of the Files of the State Security Agencies in the Republic of Serbia to the parliament for adoption in 2010.843 Although this important law is long overdue, it would be wrong to adopt it under an emergency procedure, like the Assembly has been prone to do. Quite the opposite, the draft has to undergo a public debate and the experts have to be consulted if its provisions are to be expedient and if the protection of human rights is to be adequately protected. In addition, the funds needed to implement the law need to be estimated and secured in advance to ensure that it does not remain a dead letter, or even worse, that its implementation does not lead to fresh violations of human rights, particularly the right to privacy.844

Under the Draft Act, a File Commission shall be established to ensure the exercise of the right of access to information in the files. The Commission shall comprise seven members elected by the Assembly. The Government of Serbia, the Supreme Court of Cassation and the Archives of Serbia will each nominate one Commission member. Two candidates shall be nominated by human rights organisations and two by associations performing democratic and civilian oversight of the

840  Classified Information Act, Art. 22.
841  Ibid., Art. 20.
842  Although Serbian Minister Nebojša Bradić said that such a law would be adopted during the year (B92 News, 23 January), no draft was submitted to the Assembly for adoption by the end of the year.
843  The draft is available at http://www.parlament.gov.rs/content/cir/akta/akta_detalji.asp?Id=1342 &t=P#.
defence sector. Under the Draft Act, the nominees of the latter organisations must include persons who had been victims of the state security agencies or their legal heirs. The authors did not explain how the status of “victim” would be determined nor did they specify the requirements the organisations have to fulfil, stipulating only that they have to be registered with the Business Registers Agency and apply for registration as an authorised nominator with the competent Assembly committee within 15 days from the day the law comes into effect.

Under the Draft, access to the files will be provided to all natural persons, or, in case they are deceased, their close relatives and legal heirs, and to legal persons and their legal successors and all other entities, which may be holders of rights and obligations, and on which the security services collected the data in the files. Third parties may be entitled access only exceptionally. The Draft Act lays down the file access procedure and entitles the applicant to take his or her file or a part of it and order the destruction of any duplicates or copies of his/her file. This right does not extend to present and former security service employees and associates; they are only entitled to a certified copy of their files or parts of them.

2.8. Freedom of Expression

2.8.1. Freedom of the Media and Their Material Status

Although the general constitutional and legal framework for the protection of freedom of expression is in place, as the European Commission, too, noted, the situation on the ground cannot be qualified as good. On the contrary, 2010 saw a continued rise in violations of the freedom of expression and the freedom of information, in pressures and attacks on media and journalists, increasing financial and other problems of the media and violations of professional standards.

The Reporters without Borders 2010 Press Freedom Index notes Serbia’s poor track record regarding the freedom of expression, ranking it 85th on the list of 178 countries; Serbia slid 23 places over 2009, when it ranked 62nd (Politika, 21 October, p. 8). The organisation Freedom House similarly assessed the situation, concluding in its report that the media in Serbia are partially free and ranking Serbia 79th on the list of 119 countries (Danas, 4 May, p. 7). In its resolution on Serbia, the European Parliament, too, mentioned the media, condemning attacks on and threats directed against Serbian journalists and calling on the authorities to fully investigate them and bring the perpetrators to justice.

The attempt to restrict media freedoms by the amendments to the Public Information Act passed in 2009 met with fierce criticisms of media experts and asso-

citations. An initiative was filed with the Constitutional Court to review the constitutionality of the amendments. The Constitutional Court in July 2010 declared five of the seven 2009 amendments unconstitutional.847

The material status of the media and the journalists continued deteriorating throughout the year. In the first half of the year, the sale of daily press fell by 15%, advertising revenues dropped by 90 million euros; over 400 media workers were dismissed in the first quarter of the year (*Danas*, 22 June, p. 8F). Forty-three percent of the media workers are paid salaries below the state average; 47% of them do not even get that pittance regularly (*Danas*, 29 March, p. 4). These hardships have prompted strikes in the media, even hunger strikes like the one in the Novi Sad daily *Dnevnik* (*Danas*, 3 August, p. 16) or the one staged by the employees of *RTV Priština* (*Večernje novosti*, 26 May, p 4).

The EU in June granted 1.8 million euros to 25 media companies in Serbia in an attempt to alleviate their financial difficulties (*Danas*, 19–20 June, p. 1). In the meantime, a study, which was to have been taken as a starting point for the future national media strategy, was drawn up by European media experts. The debate on the study lasted several months and the Culture Minister vowed that the media strategy would be adopted by the fall. But it was not. The joint conclusions agreed on by the Association of Independent Electronic Media (ANEM), IJAS, JAS, the Independent Journalists’ Association of Vojvodina (NDNV) and Local Press prior to the public debate on the media strategy entail several crucial demands, such as: the transparency of media ownership, prohibition of concentration of media ownership, the full privatisation of all media in public ownership save the public service broadcasters in public ownership pursuant to the law and a level playing field for all the media in the market.848

2.8.2. Allocation of Frequencies, Privatisation, Ownership

By late March 2010, the Business Registers Agency had registered 868 media outlets, including 99 TV stations, 190 radio stations and 20 dailies (*Večernje novosti*, 24 March, p. 10). The deadline for the registration of media outlets expired on 11 January 2010, but there are still electronic media operating without a licence. In late December, the RBA, RATEL and ANEM said that 46 unlicensed radio stations were broadcasting their programmes; 161 stations have gone off the air since September 2008, when the authorities started shutting down illegal broadcasters. The RBA had by December 2010 filed 146 criminal reports against illegal broadcasters (*Beta*, 20 December).

The privatisation process generated additional problems for a large number of outlets. Over 50 media outlets were privatised in the past six years and another 51 media are yet to be privatised (*Danas*, 13 January, p. 5). The privatisation of local electronic media, suspended in 2008 due to different definitions of media found-
ers in the Local Self-Government Act and the Act on the City of Belgrade, on the one hand, and the Public Information Act, on the other, was further complicated by the Act on the National Councils of National Minorities, allowing the these bodies to found media outlets. Thirty-nine electronic media in minority languages were awaiting privatisation in early 2010 (Danas, 13 January, p. 5). The privatisation process, itself, caused numerous problems in many media. Data show that nearly 20% of the privatisation contracts have been broken off, that many media shut down after they were privatised, that the salaries of the staff of privatised media are lower and lower and the working conditions poorer and poorer and that the new owners are not paying the mandatory contributions for the workers (Večernje novosti, 10 February, p. 8),

Lack of transparency of media ownership is another major problem, allowing for manipulations of and impermissible influence on the media. The most blatant illustration was the months-long debate on ownership over the daily Večernje novosti, accompanied by nervous reactions of the alleged owners, public figures and politicians849 (Politika, 17 March, p. 8, 23 June, p. 5; Danas, 23 March, p. 4; Večernje novosti, 22 March, p. 5, 17 June, p. 2, 23 June, p. 2, 26 June, p. 5; Vreme, 1 July, p. 8; NIN, 24 June, p. 25). In late November, Milan Beko, owner of a large number of companies, publicly admitted that he owned 62% of the shares in Večernje novosti through three of his companies registered abroad, and that he bought the shares with the German media concern WAZ gave him. He thus admitted to breaking the law on the takeover of stock companies for several years (Danash, 22 November, p. 8).

2.8.3. Threats Against and Attacks on Journalists

No light was shed on the murders of journalists Milan Pantić, Dada Vujasinović or Slavko Ćuruvija in 2010 either.850 After JAS President Ljiljana Smajlović said that she was in possession of a document (obtained from diplomatic sources) containing the seven-year old testimony by JSO member Nenad Ilić that Zemun Clan members Mile Luković and Miloš Simović had killed Ćuruvija, Organised Crime Prosecutor Miljko Radovanović said that the criminal proceedings on Ćuruvija’s assassination were still ongoing and that the prosecution was investigating Ilić’s statement (Politika, 27 June, p. 7). Former State Security chief Goran Petrović named the late Luka Pejović, Miroslav Kurak and Zoran Ristović as Ćuruvija’s potential assassins (Politika, 25 June, p. 10). A Zemun Clan member arrested in Croatia in early July told the Deputy Special Prosecutor that he knew who had killed Ćuruvija (Politika, 3 July, p. 1), but no information on the course of the investigation has been disclosed since. The dilemmas remained unresolved by the end of the reporting period. A street in Belgrade was named after Slavko Ćuruvija at the insistence of the press associations (Večernje novosti, 6 October, p. 19).

849 A large number of media followed this story. Only several are mentioned here in the Report.
850 More in Report 2009, II.2.4.
Not much progress was made in finding the killers of Dada Vujasinović either. Her parents accused the state security services of killing her (Kurir, 9 April, p. 2). Some media in June published excerpts from the diary kept by ICTY indictee Ratko Mladić, in which he mentioned that Mićo Stanišić, Goran Vuković and Dušan Malović were responsible for her death (Danas, 3 June, p. 4, Politika, 2 June, p. 1). The Higher Prosecution Office decided to reopen the Dada Vujasinović case in August. (Večernje novosti, 16 August, p. 13).

Attacks on journalists continued in 2010 as well. Like in the previous years, most of the perpetrators went unpunished. Reports in the monitored media indicate that there were many more assaults on journalists than in 2009. Media workers were mostly attacked by politicians, policemen and local businessmen dissatisfied with their reporting. Some even tried to prevent them from doing their jobs. Infrastructure Minister Milutin Mrkonjić slapped Kurir’s correspondent in the Assembly. He first said he had only patted him and ultimately apologised to him (Kurir, 3 February, p. 3). Three cameras and the archives of TV Galaksija in Čačak were stolen in March. A reporter and cameraman of Sremska TV were assaulted in Indija the same month (Danas, 22 March, p. 4). SRS councillor in the Kuršumlija municipal assembly verbally and physically attacked the correspondent of B92 and Beta and the correspondent of Radio Free Europe (Kurir, 8 August, p. 2). During the Pride Parade in Belgrade in October, the police beat up a Danas reporter although he identified himself as a journalist (Danas, 11 October, p. 4).

Threats directed at journalists and newsrooms were voiced in 2010 as well. An Aleksandrovac municipal official threatened the journalists of a local TV station in January (Blic, 10 January, p. 10). The same month, priest Bogdan Simanić, a co-owner of Glas Podrinje, threatened to kill the Šabac correspondent of Večernje novosti and the police filed a criminal report against him (Večernje novosti, 1 February, p. 12). Požarevac police threatened the local Blic correspondent in February (Blic, 28 February, p. 14). The owner of a printing office in Novi Sad, in which a number of weeklies is printed, was threatened in March (Politika, 9 March, p. 10). Death threats were also voiced against a journalist of the Šabac Glas Podrinja (Politika, 15 May, p. 7), the Užice correspondent of Večernje novosti (Večernje novosti, 1 June, p. 14) and a Radio Leskovac journalist (Blic, 17 July, p. 17).851

Unfortunately, French Foreign Minister Bernard Kouchner joined the campaign of denigrating and offending the press in March, when he told a Voice of America Kosovo correspondent, whose question disgruntled him, that he was insane and advised him to seek treatment in a psychiatric institution (Danas, 3 March, p. 2).

The cases of Brankica Stanković, author of the show Insider on TV B92852 and Vreme columnist Teofil Pančić were two of the few that saw their day in court.

851 The dailies regularly reported on the attacks on and threats against journalists, but only some of the most striking ones are mentioned in this Report.
852 More on this case in II.2.9.
In July, two young men in a city bus started hitting Pančić with iron bars, inflicting him light injuries on the right hand and stomach and a skull contusion, but none of the passengers, only the driver, tried to help him (Danas, Politika, Večernje novosti and Kurir, 26 July, pp. 1, 1, 10 and 4). Danilo Žuža (19) and Miloš Mladenović (18) confessed to hitting Pančić, saying that they had been revolted by his columns (Kurir, 5 August, p. 2). After the investigation, the prosecution modified the initial indictment, charging the two with endangering safety and violent conduct, and indicted them only for violent conduct (Večernje novosti, 4 September, p. 14). The Belgrade First Basic Court on 21 September found Žuža and Mladenović guilty, convicted them to three months in jail, issued a three-year restraining order forbidding them to approach Pančić and simultaneously released them from custody. (Vreme, 23 September, p. 5 and Blic, 23 September, p. 15).

Former policeman Ljubinko Todorović, who in 2005 inflicted grave physical injuries on Večernje novosti correspondent Vladimir Mitrić, was sentenced to six months’ imprisonment in September, after a retrial in Sremska Mitrovica (Večernje novosti, 9 September, p. 5). The Čačak court in November fined priest Vladimir Zlatić 40,000 dinars for threatening to kill journalist Zoran Marjanović in 2009 (Beta, 1 November).

### 2.8.4. Trials of and Pressures on Journalists

The Independent Journalists’ Association of Serbia voiced its concern over the great increase in trials against journalists in 2010 (Danas, 17 June, p. 4). The Association of Local Media Local Press said that 23 lawsuits had been filed against its journalists in the past two years and that the journalists lost 20 of them and that there were many lawsuits against journalists still pending in 2010. Media workers are sued by mayors, directors, councillors, party officials, priests. The greatest number of lawsuits have been filed against the Kragujevac-based Svetlost, the Vranjske and Čačanske novine (Politika, 9 July, p. 8).

The Čačak Higher Court in April rendered a legally-binding judgement against the Chief Editor of Čačanske novine Stojan Marković and fined him 180,000 dinars for the defamation New Serbia leader Velimir Ilić. Ilić sued Marković for two articles published in 2009 in which Ilić was not even mentioned by name. The court explanation said that the plaintiff was “particularly hurt by the publication of the articles while he was in hospital, in a grave state of health, and that they dealt him a hard blow because they were read by his friends, family, relatives, doctors, party members, wherefore the plaintiff had the subjective experience that his honour was insulted and his usual psychological state was disturbed…” (Politika, 8 April, p. 8).

In late March, the Vranje Higher Court ordered the Chief Editor of Vranjske Vukašin Obрадовић to publish a letter and label it as a correction. In December 2009, Vranjske asked the Director of the Vranje Pharmacies to provide answers to questions that were to be included in an article titled “Salicyl instead of Glucose”.

341
She replied to the questions late and her answers, in which she did not deny the allegations, were not quoted in the article, but published in the following issue as a reaction, but the plaintiff was dissatisfied. The court threatened to fine the Chief Editor 150,000 dinars if he failed to republish the letter as a correction (Danas, 31 March, p. 4).

Vreme journalist Miloš Vasić was in July served with the court judgement ordering him to pay 350,000 dinars to lawyer Biljana Kajganić for the mental anguish he caused her by publishing the transcript of the wiretapped conversations between herself and her client Dejan Milenković Bagzi (one of the men accused of assassinating late Serbian Prime Minister Zoran Đinđić) although two lawsuits against Vasić for publishing the transcripts were dismissed at the time (Vreme, 24 June, p. 12).

The Niš Higher Court in August overturned a lower court judgement finding Narodne novine and journalist Dragana Kocić guilty of defaming the former head of the Army Legal Property Affairs Directorate Žarko Šurbatović and ordering them to pay him one million dinars in compensation (Tanjug, 4 August).\(^{853}\) The First Basic Court in Belgrade the same month ordered Blic to pay 150,000 dinars for the defamation of Belgrader Đorđije Stanković (Blic, 6 August, p. 16). The court in September ordered the Belgrade TV station Studio B to pay 150,000 dinars to lawyer Miodrag Žigić for the mental anguish it caused him by airing his statement to this station on the traffic accident he caused under the influence of alcohol five years ago. He sued Studio B because his statement was used in a traffic safety campaign, in which his face was blurred but his voice was not distorted (Blic, 15 September, p. 8). The Novi Sad Appellate Court in October upheld the first instance judgement ordering the newspaper Zrenjanin and its Chief Editor to pay a fine and the court expenses of the family, which had sued the paper for publishing information about them revealed during police and court investigations (Danas, 9 October, p. 14).

In mid-December, the Belgrade Higher Court rendered a first-instance verdict against the daily Press and ordered it to pay two million dinars to singer Švetlana Ražnatović and her children for defamation and the mental anguish it caused them by publishing excerpts from an interview the former police minister Bogdanović gave the weekly NIN (Fonet, 17 December).

Various forms of pressure were exerted on journalists in 2010. Furthermore, the politicians attempted to directly influence their reporting and the outlets’ editorial policies. The company JAT in February stopped distributing Kurir in its planes after the daily wrote a critical article about its work (Kurir, 25 February, p. 6), and the family of tennis player Novak Đoković managed to persuade the RTS not to let journalist Nebojša Višković comment the Serbia-US Davis Cup match (Kurir, 4 March, p. 22). The Novi Pazar city administration in April refused to pay its 4 million dinar debt to TV Jedinstvo, because it was dissatisfied with its reporting (Tanjug, 21 April). The same month, the Čačak city administration prevented jour-

\(^{853}\) More in Report 2009, II.2.8.3.
nalists from covering a city assembly session for the same reason (JAS statement, 27 April). Environment and Spatial Planning Minister Oliver Dulić in June accused the daily Danas of publishing incorrect data on his property. It transpired that the Minister himself was to blame for the errors in the data he had forwarded to the Anti-Corruption Agency (Danas, 23, 24 and 26 June, pp. 1, 3 and 1).

The chief Mufti of the Islamic Community in Serbia Muamer Zukorlić called for the boycott of Blic, which carried a doctored photograph of him with Christian emblems in June. He said he would sue the daily for a symbolic 100 million euros and qualified the publication of the photograph as further proof of increasing Islamophobia (Blic, 19, 21, 27 and 29 June, pp. 26, 8, 8 and 9). The BIA accused Politika of unprofessionalism in July for writing about the potential involvement of secret police agents in the assassination of Prime Minister Zoran Đinđić (Politika, 4 July, p. 5). The Zrenjanin police called the editor of Republika Nebojša Popov in for questioning and searched the paper’s offices because of its reports on the problems in the company Jugohemija (Politika, 13 July, p. 7).

2.8.5. Unprofessional Conduct by the Journalists and the Media

A large number of outlets in Serbia do not abide by the ethical and professional standards laid down in the Press Code of Conduct, the Public Information Act and other regulations. They most often violate the presumption of innocence, protection of privacy, protection of minors from pornographic and other unsuitable content and the prohibition of discrimination.

The media violated the presumption of innocence in their reports on the police campaign dubbed Crab in which a number of doctors and pharmacists were arrested and charged with accepting bribes. Some media reported on the intentional poisoning of patients by excessive doses of cytostatics. The allegations proved to be untrue, although they were sparked by a statement made by Minister of the Interior Ivica Dačić (Politika and Danas, 15 July, pp. 7 and 4 and Danas 21 July, p. 5). In its report on a double murder in Niš, the daily Press qualified the suspect as the murderer before the court rendered its judgement (Press, 1 November, p. 3). To single out just a few events blatantly illustrating media violations of privacy and personal data protection: in their reports on the murder of singer Ksenija Pajčin, some media disclosed her personal data, relativised the crime and discriminated against women (Danas, 29 March, p. 4); specific media published detailed information about the health problems of RTS news presenter Maja Žeželj (Tanjug, 3 November).

The year behind us was not devoid of discrimination and hate speech either. Insults were voiced against Roma on TV Pink (Minority Rights Centre statement, 24 May), against Jews on the RTS (Politika, 10 April, p. 9) and against Albanians in the paper Tabloid (Beta, 13 January). Media associations reacted to the unprofessional conduct of some outlets, e.g. when Press which published the photograph of a two-year-old girl who survived a massacre of her family (Beta, 8 February) and
when the tabloid *Alo* published pornographic content (*Beta*, 14 December). The Republican Broadcasting Agency called a meeting of the broadcasters to discuss the broadcasting of lewd and offensive content, and highlighted specific shows such as *Farm* on *TV Pink*, the show *Crazy House* on *TV Košava*, the shows *Cash Can and Evening with Ivan Ivanović* on *TV Prva* and the *Sports Heart Rhythm* on *Radio B92* (*Danas*, 24 May, p. 7). The Agency also initiated proceedings against *TV Pink* for violating the Public Information Act, the Press Code of Conduct and the Broadcasting Act (*Večernje novosti*, 26 May, p. 5) and filed a number of misdemeanour reports against *TV Pink* for broadcasting *Farm*, against *TV Košava* for the show *Crazy House* and the RTS for airing beer commercials at times when advertising of alcohol is prohibited (*Politika*, 22 June, p. 5).

By end October, the RBA had registered over 1,000 violations of the Advertising Act and filed reports against the offending media outlets, but not one judgement was rendered until mid-November (*Večernje novosti*, 12 November, p. 8). Even if the courts rule on these cases and find the media in violation of the Advertising Act, it remains to be seen how effective the judgements will be. Namely, the maximum fine for airing content harmful to children and minors is one million dinars while one second of advertising in prime time costs up to 20,000 dinars (*NIN*, 3 June, p. 41). In other words, a station can cover the maximum fine by only 50 seconds of advertising in prime time.

The appearance of Miloš Radosavljević aka Kimi, the leader of Partizan’s fans in a live talk show on violence on the First Serbian TV Station (formerly *Fox TV*) stands out as a stark illustration of unprofessional conduct. Radosavljević was convicted in the first instance to 16 months’ imprisonment for threatening *B92* journalist Brankica Stanković. The show host did not introduce him as a convicted felon but as someone well informed about violence and let him comment his own judgement live (*Politika*, 15 October, p. 7).

Mention should also be made about the nervous reactions of some journalists at the very mention of re-examining their unprofessional conduct during the wars in the former Yugoslavia in the 1991–1995. The IJAS filed criminal reports against a number of reporters in Serbia for instigating genocide and war crimes. The reports prompted several *Večernje novosti* journalists to file a criminal report against the IJAS Executive Board in March (*Večernje novosti*, 20 March, p. 8). War Crimes Prosecutor Vladimir Vukčević said that the proceedings were in the investigation stage and that there were no grounds for a decision to launch criminal proceedings against them for war mongering (*Kurir*, 24 March, p. 2). He said *Večernje novosti* and the JAS had not replied to the prosecution’s requests to submit the required material and that *TV Vojvodina* replied that its archives had been destroyed (*Danas*, 16 April, p. 4). *Večernje novosti* Director and Chief Editor Manojlo Vukotić said he would not submit the required material because *Novosti* had been found guilty in advance (*Večernje novosti*, 17 April, p. 5 and *Danas*, 17 April, p. 5). No new information on the course of these proceedings had been published by the end of the reporting period.
2.9. *Trials of Soccer Fan Groups and Individuals*

The soccer fan groups and the violence and riots they have been provoking on the streets and in the sports arenas were amply reported on by many newspapers in the past few years.\textsuperscript{854} Despite constant indications of the increase in the number of hooligans involved in the fights and riots, the authorities appear unwilling to finally clamp down on them although they are publicly vowing that they will prevent such conduct which is clearly jeopardising the lives and property of the citizens.

On 16 October 2009, the then Acting Republican Public Prosecutor Slobodan Radovanović filed a motion with the Constitutional Court to prohibit fourteen extremist fan subgroups of the Partizan, Red Star and Rad clubs.\textsuperscript{855} He proposed their deletion from the register “because of their activities directed at the violent overthrow of the constitutional order, violation of guaranteed human and minority rights or incitement of racial, national and religious hatred” and said that their deletion should be followed by banning the most extremist members of the group from attending sports events, underlining that the goal of his motion was not only to suppress violence at sports events, but on the streets and in the cities of Serbia as well.\textsuperscript{856}

After more than a year, at its session on 9 December 2010, the Constitutional Court put off taking a decision on the prohibition of the extremist fan sub-groups, because it did not uphold the conclusion by the judge rapporteur, who said in his report that the Court had the jurisdiction to render a decision on the prohibition “of subgroups within and outside a civil association” of the Partizan, Red Star and Rad clubs. At the session, which lasted for hours, judge rapporteur Dragiša Slijepčević elaborated his view that the Constitutional Court “has the jurisdiction to prohibit an association when its activities are directed at the violent overthrow of the constitutional order, violation of guaranteed human and minority rights or incitement of racial, ethnic and religious hate” (*Politika*, 10 December, p. A9). The Republican Public Prosecution Office said that the Constitutional Court decision\textsuperscript{857} to adjourn the session on the initiative to prohibit the fan groups gave rise to doubts that it was stalling the proceedings.

Trials of some fans who had committed crimes were opened in 2010. The Belgrade Higher Court opened the trial of the Partizan soccer club fans who had

\textsuperscript{854} See: Introduction.

\textsuperscript{855} Radovanović sought the prohibition of the following sub-groups entered in the Register of Associations, Social and Political Organisations – “Alcatraz”, “Belgrade Boys”, “Padinska Skela Madmen”, “Ultra Boys”, “Ultras”, “Anti Roma”, “South Family”, “Head Hunters”, “Irriducibili-NBG”, “Shadows”, “Extreme Boys”, “Guardians of Honour”, “Brain Damage”. He also sought the prohibition of the fan sub-group United Force 1987, which is not registered within an association, but is organised on territorial grounds, by place of residence.

\textsuperscript{856} See: www.politika.rs/rubrike/Drustvo/Tuzilac-trazi-zabranu-navijakih-grupa-Zvezde-Partizana-i-Rada.lt.html.

beat to death French fan Brice Taton in the heart of Belgrade in September 2009.\textsuperscript{858} Two of the fourteen accused are still at large; the twelve defendants denied involvement in killing Taton. Lack of any information on what the police have been doing to catch the two accused at large, Đorđe Prelić, accused of organising the attack on the French fans, and Dejan Puzigača, however, gives rise to concern. The fourteen men are charged with complicity in the commission of aggravated murder of French national Brice Taton at Obilić Square in Belgrade on 17 September in a state of sanity and full awareness of the crime they were committing and displaying ruthless violence. A problem that appeared during the trial was that the witnesses, including the protected witness, changed their statements on the witness stand; the friends of the defendants regularly attended the hearings and chanted their support although the French Ambassador and the family of the murdered Taton were also in the courtroom.\textsuperscript{859} The first instance judgement is to be rendered in early 2011 but there is already no doubt that it will be appealed and that the proceedings will continue.

The Belgrade Higher Court in 2010 also opened a trial of Nikola Kostić and Miloš Ristić, accused of forcing underage D. M, to take off his Red Star shawl, attacking him and then stabbing and inflicting grave physical injuries to his father Zoran Milenković (\textit{Politika}, 6 February, p. 9).

Long trials are one of the most frequent criticisms levelled against the Serbian judiciary and trials of violent fans are no exception. The overly long duration of the trials is corroborated by the fact that no final judgement has yet been rendered against Red Star fan Uroš Mišić, who was convicted at a retrial before the Higher Court in Belgrade to ten years’ imprisonment for attempted aggravated murder of gendarme Nebojša Trajković during a Red Star-Hajduk soccer match in 2007.\textsuperscript{860} The Court established that Mišić tried to shove a lit fan torch into Trajković’s mouth, that he knew Trajković was a gendarme and was aware of the potential consequences of his act.\textsuperscript{861} Both the prosecutor and Mišić’s counsel appealed the Higher Court judgement with the Belgrade Appellate Court. The latter scheduled a public session for December 2010, but then adjourned the trial for February 2011. Under the CPC, the Appellate Court may overturn a judgement only once, wherefore it can be expected to reach a final decision at the next hearing – either to uphold or modify Mišić’s conviction, or open a main hearing and render a judgement itself.\textsuperscript{862}

The Belgrade Appellate Court in November quashed the first instance eight-year imprisonment sentences rendered against Red Star fans Velibor Dunjić and Uroš Avramović and the 17-month sentence of imprisonment of Marko Ljubičić, who had

\textsuperscript{858} See Report 2009, II 2.9.
\textsuperscript{860} See Report 2009, II 2.9.
\textsuperscript{861} “Uroš Mišić Convicted to 10 Years in Jail”, 28 April, www.B92.net.
\textsuperscript{862} “Mišić Trial Put off”, 25 November, www.rts.rs.
been found guilty of attempted murder of Andrej Ćogurić at the Calypso café in April 2008, and ordered their retrial. The prosecutors said that a number of criminal reports have been filed against Dunjić, one of the leaders of the Red Star soccer fan group, for violent conduct, assaulting an official, drug trafficking and theft, and that proceedings were being conducted against him. (Blic, 24 November, p. 15).

The Belgrade First Basic Prosecution Office in February charged six Partizan soccer fans with endangering the safety of the author of the B92 show Insider, Brankica Stanković (Danas, 17 February, p. 11). The Belgrade First Basic Court dismissed the charges, explaining that they had not endangered her security but insulted her and advised Stanković to file a private lawsuit. After the court decision was taken, judge Jelena Milinković commented that the accused “should not have been remanded in custody in the first place” (Politika, 23 April, p. 10). This prompted the Justice Ministry to file an initiative for a review of the work of the judicial panel (Blic, 24 April, p. 14). In early May, the First Basic Prosecution Office abandoned the prosecution of five other Partizan fans for the same crime (Večernje novosti, 5 May, p. 13). The police in May arrested a Partizan fan group leader Miloš Radosavljević aka Kimi, also accused of endangering Stanković’s safety (Večernje novosti, 12 May, p. 12). He was convicted to 16 months’ imprisonment for the crime by the first instance court in August (Politika, 5 August, p. 5). The judge who had convicted him, Vladana Vukčević Jovanović, received anonymous threats after the trial. (Kurir, 20 August, p. 11).

The First Basic Court in March 2010 convicted Belgrader Stefan Hadži-Antonović to one year in jail for voicing threats against Brankica Stanković on Facebook (Politika, 5 March, p. 9); its judgement was upheld by the Appellate Court in September (Blic, 17 September, p. 17).

Journalists are often targeted by soccer fan groups over media reports of the links between the fan groups and criminal circles. The soccer club managements have, unfortunately, not yet shown the readiness to distance themselves from the actions of their fans. Moreover, the attacks on the journalists jeopardise media freedoms and indirectly stifle investigative journalism.

2.10. Status and Protection of Children

2.10.1. Violation of the Child Rights

Although the legal framework for the protection of children is satisfactory, the rights of the child are still frequently violated in practice. Children belonging to specific social groups – poor children, children with intellectual or physical disabilities, children without parental care, children of the street, working children –
are particularly susceptible to violations of their rights. Roma children are the most vulnerable within these categories. Neglect of children, their physical and sexual abuse, as well as various forms of child exploitation are still pronounced. According to the Deputy Protector of Citizens charged with the rights of the child, Ms. Tamara Lukšić Orlandić, the rights of the child are the most often violated in divorce proceedings, because the judges often neglect that children over 10 must be asked which parent they would like to live with, whether they agree to their last name being changed, that children must be asked whether they agree to adoption or placement in a foster family (\textit{Politika}, 11 June, p. 7).

Most of the complaints of violations of child rights filed with the Protector of Citizens regard social welfare and the inclusion of children with special needs in mainstream education. A lot of complaints were filed over peer violence and the discrimination of Roma pupils by their teachers (\textit{Politika}, 11 June, p. 7).

2.10.1.1. Poverty and Labour Exploitation of Children. – Many children in Serbia today live below the poverty line. Although there are fewer poor families today than in 2003, the poverty of children has declined the least. Moreover, the number of poor people is again on the rise and children under 14 are the most vulnerable to poverty. According to the Statistical Office of the Republic of Serbia, there are 9.5% socially vulnerable children in Serbia. What is even more concerning is that the most vulnerable children are not even covered by statistics – hundreds of children, primarily Roma, are living in unhygienic settlements and extremely adverse circumstances (\textit{Večernje novosti}, 20 January, p. 38).

Another major problem is the exploitation of children for begging. According to the children begging across Belgrade, they all work for their masters, each of whom covers a particular section of the city. The children who do not bring in a set sum of money at the end of the day are subjected to corporal punishment. The police say that most children are forced to beg by their parents or relatives (\textit{Blic}, 23 August, p. 16).

In 2010, media drew attention to two children, three and five years old, who were dancing for the Guća Trumpet Festival visitors, while the adults accompanying them were collecting money from the onlookers. The police filed a criminal report against their parents for the neglect and abuse of minors. Although child abuse was obviously at issue here, such performances are common at fairs and festivities in Serbia and are treated as part of the local folklore. This is all the more reason why the social care centres and police must try to prevent and suppress such practices (\textit{Blic}, 21 August, p. 16 and 22 August, p. 14).

Children are not only forced to beg, but are exploited for labour as well. Experts say that Roma children and children in foster care are the victims of such abuse the most (\textit{Politika}, 26 September, p. 8). UNICEF data show that 4% of the children are working and that most of them are not paid for their work or for work

\footnote{http://www.ombudsman.rs/index.php/lang-sr/oblasti-rada/prava-deteta.}
within the family business, while as many as 22 per cent of children above 15 are working for money (it should be noted that the Serbian legislation allows the employment of children over 15). Twice as many children in rural areas work (some 6 percent), and the poorest and Roma children are exploited the most (eight and seven percent respectively) (Politika, 26 September, p. 8).

2.10.1.2. Children Without Parental Care. – According to Serbian maternity ward data, tens of mothers abandon their babies every year. Most of them are very young, single and their parents will not let them bring the illegitimate child back home. More and more mothers have been abandoning their children because of poverty as well. The staff of the Belgrade orphanage in Zvečanska Street, however, say that the number of abandoned children has been on the decline, i.e. that fewer and fewer new-borns are accommodated in this orphanage, probably because new-born infants are immediately adopted or placed in foster families (Kurir, 18 February, p. 8). Statistics also show that the number of abandoned children is falling – for instance, 21 children were abandoned in the Belgrade maternity ward “Narodni front” in 2003, while only 9 were left behind there in 2009 (Večernje novosti, 26 March, p. 13).

There are some 3,500 foster families looking after around 4,700 children in Serbia. The steady increase in the number of foster families is an encouraging sign. The number of children placed in institutions has been falling and the number of children placed in foster care has been rising in the past few years. The number of children placed in social care institutions has decreased by two-thirds since foster care has taken root (Politika, 5 February, p. 8; Kurir, 18 February, p. 8). Children, who had been placed in social care institutions and children whose parents have neglected or abused their parental rights, are also placed in foster care. This form of protection is temporary and the relevant authorities use the period to find the child in foster care a permanent home. They endeavour to return the child back to his/her parents if possible, or arrange his/her adoption. Parents of children in foster care often complain to the Protector of Citizens that their children’s right to maintain contacts with them is breached (Danas, 2 August, p. 2).

While some babies are abandoned as soon as they are born, there are around 400 families on the adoption waiting list in Serbia. The chief problem is finding families willing to take in children with disabilities, as most prospective adoptive parents do not want to care for such children. Quite a few potential adoptive parents set other demands as well, e.g. that the child is of Serbian nationality (Večernje novosti, 27 March, p. 10).

2.10.1.3. Placement in Institutions. – The Belgrade Child and Youth Care Institute looks after homeless children, underage offenders referred there by the court and foreign minors without parental care. The Institute also takes in children, who are victims of violence or human trafficking, and children without parental care. Placement of these various categories of children in one institution, where they in-
evitably have contact with each other, is not a good solution, because it raises the
risks of incidents between the children and their negative influence on each other.
Moreover, the Institute lacks the capacity to look after that many children (Politika,
31 October, p. 8).

The issue of mentally challenged children, even those with minor disabili-
ties, is an extremely grave problem. The vast majority of these children have been
abandoned by their families. Even the doctors often suggest to the parents to have
those children institutionalised as soon as they are born, and even recommend that
they do not even see them to avoid bonding with them. These children are placed
in institutions where they usually stay all their lives – they never go back to their
families, which often do not even visit them. The Stamnica Home for Children and
Persons with Developmental Difficulties, for instance, has over 400 wards. Three
children were placed in foster care last year, which marks an improvement, albeit a
minimal one (Politika, 4 June, p. 7). It should be borne in mind that families do not
always institutionalise such children because they are not willing to care for them.
Caring for such children requires ample professional support, which many towns
in Serbia lack. According to the Initiative for Inclusion VelikiMali, the status of
mothers looking after children with developmental difficulties is deplorable. Most
of them are unemployed or have to leave their jobs to care for their children. The
mothers, who had been unemployed at the time they had a child with developmental
difficulties, cannot find a job, because they are the ones caring for the child every
day in the absence of adequate social support. These mothers are not, however, en-
titled to unemployment benefits.

2.10.2. Sexual Exploitation and Abuse of Children

The sexual exploitation and abuse of children were frequently reported on
by the media in 2010. The media also reported about a large number of rapes of
minors. Many of the rapists have police records or are psychiatric patients and the
vast majority of them are repeat offenders. The courts have in the past been prone
to sentencing them to extremely mild penalties, mostly to penalties below the legal
minimum. The legal amendments adopted last September increased the penalties for
rape and did away with the possibility of convicting a rapist to a sentence below the
legal minimum (NIN, 1 July, p. 34; Večernje novosti, 1 July, p. 13).

Media reports of a case in Stari Ledinci, when an eight-year-old girl was
raped and killed, caused the most shock. Her neighbour Mladen Ogulinac was sus-
ppected of the crime. The readers were even more embittered when they learned that
Ogulinac had already been suspected of rape some 15 years ago and that he was
sentenced to ten months in jail for attempted rape in 1989 (Danas, 28 June, p. 4;

867 More on the institutional placement of children with developmental difficulties in the Veliki-
IV.pdf.
This case revived ideas of punishing rapists by chemical castration.

Media also reported on the sexual exploitation of underage girls with special needs in Kacabače (Politika, 1 June, p. 11) and Pećinci (Večernje novosti, 2 October, p. 14). Cases of paedophilia were also extensively reported on by the media. The police arrested scores of offenders reasonably suspected of raping or having sexual intercourse with children in 2010.\textsuperscript{869} The media also extensively reported on other rapes of minors and the sexual abuse of minors, including on a number of cases on the sale of children or their prostitution and the possession and exchange of child pornographic material.\textsuperscript{870}

If one were to assess the situation in this field on the basis of the media reports alone, one would have to conclude that such crimes against children are on the rise. One should, however, bear in mind that sensationalist reporting has prevailed in Serbia and that the editors tend to frontpage reports on the most horrific crimes, including those on all forms of violence against children, to attract as many readers as possible. Nevertheless, one cannot but conclude that this increase in the number of articles on this topic still indicates a disconcerting rise in crimes against children.

### 2.10.3. Internet Risks to Children

New technologies have created new risks to children. The paedophiles are now using the Internet and the social network Facebook to contact children, their potential victims. According to the head of the Cyber Technology Crime Department, teenagers are the most vulnerable group as they do not think twice before plunging into cyber adventures (Politika, 30 July, p. 8). The Niš police in early 2010 arrested a man who had gotten a fourteen-year-old girl’s cell phone by telling her he was a sixteen-year-old girl, and then sent her lewd and threatening text messages. The police filed a criminal report against him from endangering her safety. The police at the time stated that offenders were increasingly misrepresenting themselves on the Internet and in that way contacting potential victims, most often children between 10 and 13 years of age (Blic, 11 March, p. 14 and 17 March, p. 17; Politika, 15 March, p. 8).

False profiles are just one of the many dangers lurking on the social networks. The users often put themselves in danger by giving everyone access to their personal data, from their first and last names to their photographs. The children say they know about the risks and that they are cautious, but they actually think they are capable of assessing whether someone really poses a threat, i.e. they are cautious, but in words only (B92 News, 14 November).

According to a Telecommunications and Information Society Ministry survey, over 60\% of the respondents have Internet ‘friends’ whom they have not met

\textsuperscript{869} The number of articles on this topic is huge and the BCHR was unable to include all the cases in this Report, but all of them are filed in the BCHR archives.

\textsuperscript{870} More on media reports on the forced prostitution of children in II.2.6.
personally, while 35% of them shared their photographs with people they do not know in person. Around 30 percent of them have had one negative experience on the Internet or know a person who did (B92 News, 9 and 14 February).

To alert the children and parents to the dangers lurking on the Internet, the Ministry launched a “Click Safely” campaign within which it set up an Internet website (www.kliknibezebedno.rs), with instructions on safe conduct on the Internet.

2.10.4. Child Pornography

Media this year reported several cases of possession and exchange of child pornographic material. Laszlo Budai (25) from Kikinda and Nikola Milić (34) from Belgrade were arrested in March on suspicion of possessing and exchanging child porn video recordings. They were arrested after a campaign the Serbian police conducted in cooperation with the German police, in which they established that a number of people in Serbia were distributing video material with child pornography to individuals in Germany. The police found 262 recordings with explicit scenes of the worst sexual abuse of children in Budai’s computer (Danas, 25 March, p. 5; Večernje novosti, 25 March, p. 13; Blic, 25 March, p. 16 and 26 March, p. 16). The Belgrade Higher Prosecution Office filed an indictment against Budai and Milić in early April (Blic, 2 April, p. 16).

Stevan Josimović (61) and Jasminko Stepić (60) were arrested in May for possessing and exchanging child pornographic material via their cell phones. Stepić was accused of showing, obtaining and possessing pornographic material and using a minor for pornography. Josimović was convicted to eight years in jail in October for having sexual intercourse with an underage child and for exchanging child pornographic photos with others (Politika, 8 October, p. 9; Večernje novosti, 8 October, p. 14; Blic, 8 October, p. 17; Kurir, 8 October, p. 11, and 12 October, p. 10).

2.10.5. Peer Violence

Peer violence is still frequent and has not been eradicated by the introduction of video surveillance in schools and school policemen. The effects of the UNICEF School without Violence programme, the implementation of which began in 2005, were measured in a survey of 40 randomly selected schools in 2010. The conclusion was that the safety of the children had increased and that the incidence of grave forms of violence and violence in the lower grades had declined in the schools covered by the programme. Moreover, the pupils are much more willing to report violence and help their peers in such situations. However, 60% of the pupils do nothing when they witness violence and 20% turn to no one for help when they themselves are victims of violence. One-third of the pupils claim that the problems were not resolved when the teachers intervened, while 16% of them, who had turned to a teacher for help, said that the teacher had not done anything (Politika, 10 March, p. 9).

Lots still has to be done to prevent violence in all the schools, including the 200 involved in the School without Violence programme. They account for only
12.5% of all schools in Serbia and, as the above-mentioned survey shows, the programme was only partially successful.

A survey conducted within the School without Violence programme in primary schools showed that verbal violence was the most frequent form of peer violence and that it is not taken seriously enough although it may gravely affect the children. As many as one out of two children were victims of this form of violence (Blic, 6 February, p. B4). The survey also showed that one out of ten primary school female pupils were touched by boy in a way which made her feel extremely uncomfortable but that such cases are rarely mentioned, among other things, because the girls are ashamed to ask for help. (Blic, 8 February, p. 10).

According to a survey on violence in secondary schools, published in early 2010, around 11% of the students had personally been exposed to abuse, around 80% witnessed fights, and over 50% intimidation. Most students, 77%, do not dare report violence in fear of retribution. The survey showed that the teachers also employed physical and verbal violence against the students. However, some of the results are encouraging – 68% of the students would help a person exposed to violence and over 80% believe that the school would take measures to protect them from violence (Blic, 23 January, p. 11; Danas, 23–24 January, p. 4).

2.11. Economic, Social and Cultural Rights

2.11.1. Economic Crisis and End of Recession

Serbia’s economy started gradually bottoming out of the crisis in 2010. The GDP grew by 1% in the first quarter and the year-on-year GDP growth was estimated at 1.5% in December. This growth can, however, be primarily attributed to the low base in 2009, when the GDP declined by 3% over 2008. The representatives of the International Monetary Fund (IMF) qualified Serbia’s economic recovery as “moderate” but based on healthy foundations and highlighted the problems in structural reforms, fiscal policy, inflation and increasing unemployment despite GDP growth. These problems also led to a visible fall in living standards, reflected also in the decline of the GVA in specific economic sectors, notably in retail and the catering trade. Inflation reached 10.3% in 2010, exceeding the projected 6%.

Human Rights in Serbia 2010

The IMF estimated that the GDP would grow by 3.5% in 2011, a rate that will allow for higher employment and higher living standards.876

2.11.2. Unemployment and Problems in Employment

Serbia entered 2010 with 730,372 unemployed workers, i.e. a 16.6% unemployment rate.877 The latest 2010 data show that the unemployment rate reached 19.2% in November although the number of people registered as unemployed had fallen over December 2009, and stood at 722,142. Long-term unemployment is still a chronic problem, given that as many as 64% of the jobless have been looking for a job for more than 12 months.878 According to the Labour Force Survey regularly conducted by the Statistical Office of the Republic of Serbia (SORS), the overall employment rate was constantly falling since April 2008, while the overall unemployment rate was steadily rising in the same period879

Unemployment has especially affected the younger workforce, particularly the 25–34 age category, which accounts for 29.6% of the jobless, and the 35–44 age group, which accounts for 21.3% of the unemployed.880 Job-seekers under 30 years of age account for one-third of the unemployed in the active population. This is particularly exacerbated by the employers’ demand for a qualified and experienced workforce, wherefore it is very difficult to find a first job.881 The internship and trainee programmes are barely developed compared to the trends in Europe and North America. The National Employment Service in 2010 launched the First Chance programme, subsidising by a maximum 20,000 dinars the salaries of first-time workers under 30 hired as trainees in the private sector.882 The programme was initially to have covered 16,000 young workers, but only 10,000 were actually subsidised.883 No explanation was given for the disparity between the projected and actual numbers of subsidised first-job holders.

Women are still at a disadvantage compared to men when it comes to finding a job, although the disparity between male and female employment fell from

877  See Report 2009, II.2.10.3.
878  “Fewer Jobless in November” (www.b92.net, 11 December).
3% in 2009 to 1.5% in 2010. The announced restructuring of the public sector is expected to lead to a drastic rise in the unemployment of women, who account for most of the public sector staff.

Job-seekers with secondary school degrees have the greatest difficulties finding a job. College graduates account for 12.6% of the jobless (compared to 11.6% in the same period last year).

Roma employment is disastrous. Only 19.3% of Roma with secondary school degrees are employed (it should be borne in mind that only 11.6% of the Roma have completed secondary schools). The results of the programmes, implemented by the Government of Serbia, the Autonomous Province of Vojvodina and local self-governments and involving subsidising salaries and other forms of benefits to companies hiring Roma, are far from satisfactory.

Although the share of informal employment has dropped by one percentage point over October 2009, it is still very high – it stood at 19.6% in October 2010, exacerbating the working conditions, security of jobs and wages and the enjoyment of employment-related benefits. Estimates are that around 800,000 people are employed in the grey economy and that it accounts for as many as 30% of the GDP, i.e. eight billion euros (Večernje novosti, 24 June, p. 7). The grey economy employs primarily unqualified workers, as well as workers with secondary or junior college degrees. When asked why the grey economy accounts for such a large share of Serbia’s economy, the employers mostly cite the poor and inefficient work of the Labour Inspectorate and the high taxes and contributions forcing them into the grey economy in order to make a profit. Serbia has a total of 305 labour inspectors and their number is to be cut by 39 in 2011. According to the former Director of the Republican Labour Inspectorate, only 20% of the reports the inspectors file have an epilogue in court. He says the courts dismiss most of the cases because the statute of limitations on them expired or sentence the employers to the minimum legal penalties.

2.11.3. Poverty and Living Standards

In 2010, the number of people living below the poverty line was on the rise for the first time since 2000 (Večernje novosti, 5 May, p. 4). The state officials’ estimates of the number varied from 650,000 to 720,000. According to the SORS,
the average net wage in Serbia stood at 34,444 dinars in November 2010, the average available monthly budget per household amounted to 49,760 dinars and the consumer basket cost 42,766 dinars in the third quarter.\textsuperscript{891} Regular incomes (salaries and pensions) account for most of the money receipts, while the shares of consumer credits and savings (1.9\% and 3.4\% respectively) are almost negligible. Salaries of Serbia’s citizens are the lowest in Europe and the region, averaging 320 euros (\textit{Večernje novosti}, 16 May, p. 6). On the other hand, the prices of fuel, public utilities, food and beverages are not much lower than elsewhere in Europe. Although these statistical data could lead to the conclusion that Serbia’s citizens have very limited chances of putting money on the side, savings have increased 45 times over the past 10 years.\textsuperscript{892}

Media in 2010 reported on several deaths due to hunger and freezing. A married couple, G. M. (81) and T. M. (75) near Kruševac died of hunger and cold on 17 December 2010 (\textit{Večernje Novosti}, 19 December, p. 4). A resident of Vladičin Han V. P. (44) and his mother Z. P. (70) died of hunger in October (\textit{Večernje novosti}, 28 October, p. 9). Most of these people were pensioners or persons without an income or welfare.

\subsection*{2.11.4. The Impact of Privatisation on the Enjoyment of Economic and Social Rights}

A total of 1,683 former socially– or state-owned companies had been privatised in Serbia by the end of 2010 and privatisation was under way in another 1,642 companies.\textsuperscript{893} Although a consensus on the necessity of completing their privatisation has finally been reached in Serbia, there are still major differences in opinion about which companies should be privatised and how and about the impact of privatisation on the society and the economic situation in the country.

\subsection*{2.11.4.1. General Overview of Privatisation Problems in Serbia.} – A number of Serbian companies have been successfully privatised, bringing in a lot of money to the state budget (nearly 20 billion euros from 2002 until 27 September 2010).\textsuperscript{894} A large number of privatisations, however, drove the workers of the privatised companies to the brink of poverty and led to the total devastation of the companies and numerous abuses. In result, 589 contracts on the sale of company capital and assets were broken off\textsuperscript{895} (one fourth of them sales contracts). Most contracts (222) were terminated because the buyers failed to pay the sales price. Two hundred sixteen contracts were broken off because the new owners failed to imple-

\begin{itemize}
  \item[892] “Savings in Serbia Quadrupled”, \textit{B92}, 3 February.
  \item[893] See the Privatisation Agency website, http://www.priv.rs/Agencija+za+privatizaciju/1/Naslovnina.shtml.
  \item[894] Privatisation Agency memo to the BCHR, No. CI–0810/10 of 6 October 2010.
  \item[895] \textit{Ibid.}.
\end{itemize}
ment the social programme and maintain the continuity of business operations. Seventy-nine contracts were terminated because the new owners failed to fulfil the investment-related obligations and 22 because they disposed of the company assets in contravention of the contract. Most of the sales contracts were broken off in 2009 and 2010. The Privatisation Agency was monitoring the enforcement of the contracts in another 700 privatised companies in October. Forty-two employees are supervising the enforcement of the contracts and they performed 8,525 field checks from 2003 until November 2010. In the June 2003-November 2010 period, the Anti-Corruption Council received 413 complaints alleging abuse in the privatisation process. Twenty-one complaints were filed with the Council in 2010. Trade unions and minority shareholders account for most of the complainants. Most complaints filed until 2005 alleged that the price of the companies had been lowered during the evaluation of the value of the company capital and that the price of shares was set too low. The complaints filed since 2005 mostly regard the non-implementation of the social and investment programmes and the improper supervision of the enforcement of the contracts. The BCHR did not analyse the content of the complaints in the reporting period, but it obtained access to them and will conduct an analysis of them in the next reporting period.

Doubts about the goals of the privatisation of Serbian companies are compounded by the relatively small number of companies in the liquidation process (only 203). It would be realistic to expect that at least twice as many companies were ripe for liquidation in view of the country’s economic difficulties and the number of terminated privatisation contracts over the non-fulfilment of the contract obligations, particularly the investment and social programmes. In the short term, their liquidation would facilitate the coverage of at least part of their debts to their workers; in the long term, it would facilitate the mobility of the workforce and job-seeking activities. The agony Serbia’s workers have been suffering for 20 years now is merely prolonged by maintaining the status quo even in companies, in which it is more or less obvious that the fulfilment of the social programme and investment plans is unrealistic.

2.11.4.2. Criminal Prosecution for Privatisation-Related Offences. – The police in 2010 launched several campaigns resulting in the arrests of people suspected of privatisation fraud. A seven-member group was arrested in August on suspicion

896 Ibid.
897 Ibid.
899 Ibid.
900 Privatisation Agency memo to the BCHR, No. CI–0810/10 of 6 October 2010.
901 Anti-Corruption Council memo to the BCHR, No. 72 of 12 October 2010.
902 Ibid.
903 Ibid.
that it sold 200 hectares of socially-owned arable land in the villages of Ratari, Selevac and Azanja, including the Vlaškodol Lake, together with its dam, transformer station and irrigation system, in contravention of the law on cooperatives and without the consent of the Privatisation Agency, thus damaging the state budget by over one million euros. (*Blic*, 19 August, p. 16). The police in August also arrested the former director of Meridian Bank and owner of the privatised fishery farm Bački Jarak on suspicion that he sold off 60% of the farm property in contravention of the privatisation contract and without the consent of the Privatisation Agency, whereby he damaged the Serbian state budget by 2.5 million euros.\(^905\) Seven people were arrested in November on suspicion that they damaged the Mladenovac-based company Cobest by 86.7 million dinars and its minority shareholders by 22.5 million dinars.\(^906\) One of the most well-known buyers of numerous companies, including Srbolek, Jugoremedija and the Niš publisher Prosveta (the privatisation of all three was annulled), was arrested in November on suspicion of fraud and damaging the Shareholding Fund by around 5 million euros (*Blic*, 9 November, p. 14). The police in December arrested five people, including three former Privatisation Agency officials, on suspicion of selling expropriated land of Hotel Nacional that was undergoing privatisation for a quarter of the market price to Imel Group and without the consent of the Privatisation Agency.\(^907\)

**2.11.4.3. Strikes Over Privatisation and the Non-Fulfilment of Contract Obligations** – A series of strikes motivated by the non-fulfilment of the rudimentary rights of workers broke out in 2010. Some were characterised by the unusual brutality of the company managements but hardly any prompted the state to decisively stand up to protect the workers.

Workers of the privatised company Navip went on strike in January, demanding that the company pay their pension and health insurance contributions it had not been paying since 2006. During the strike, the director of Navip prohibited the workers, who were holding their strike on the factory grounds, from bringing their food in. The state’s reaction was tepid and only the Protector of Citizens reacted.\(^908\) No data are available on whether at least a misdemeanour report has been filed against the Navip management for its non-payment of the workers’ contributions.

Workers of the privatised publishing company Prosveta also went on strike in 2010. Prosveta is the oldest publisher in Serbia and the legal successor of Geca Kon, the leading Yugoslav publisher between the two world wars. The workers demanded that the owner pay their overdue salaries and contributions and regular payment of their wages in the future.\(^909\) The buyer of Prosveta was given an additional month to fulfil his obligations (*Blic*, 5 February, p. 2) and the deadline was extended twice,  

\(^{905}\) “Tomislav Đorđević Arrested” *B92*, 6 August.  
\(^{906}\) “Arrested over Privatisation Fraud”, *Tanjug*, 23 November.  
\(^{907}\) “Five Arrested over Privatisation Fraud “, *Studio B*, 9 December.  
\(^{908}\) “Strike in Navip Continues”, *B92*, 28 January.  
\(^{909}\) “Strike in Prosveta”, *B92*, 21 January.
according to the Anti-Corruption Council Report.\footnote{Report on the Privatisation of the Publishing Company Prosveta, Anti-Corruption Council, 27 July.} The Council also said that the buyer had concluded several contracts to the detriment of the company. After 240 days of strike, the Privatisation Agency finally broke off the contract with the buyer of Prosveta after he failed to pay the second instalment and to fulfil his obligations to the workers. He in the meantime sold off a number of the company’s facilities in the heart of Belgrade (\textit{Blic}, 17 September, p. 3).

The workers of the company Knjaz Miloš, which underwent a controversial marathon privatisation in 2004, went on strike in April after another 106 workers were declared redundant and dismissed.\footnote{“Knjaz Miloš Workers on Strike”, \textit{B92}, 14 April.} Before the latest lay-off, the private owners had already declared redundant and dismissed 1200 workers, leaving only 900 on staff. The strike ended with an agreement not to lay off the workers, which was mediated by the Agency for the Peaceful Settlement of Labour Disputes.\footnote{Statement by the President of the Alliance of Autonomous Trade Unions of Serbia Agriculture Chapter, 23 April.}

Workers of Srbolek, a pharmaceutical company bought by the same person that had bought Jugoremedija, staged several strikes in 2010, demanding the payment of the April, May and June salaries, the overdue 2009 transportation allowances, the 2008 and 2009 travel expenses and that the work of the company be restored to normal.\footnote{“Strike in Srbolek Suspended”, \textit{B92}, 21 August.} The Commodity Reserves Directorate inspected the company warehouses in August and established that the owner illegally sold considerable quantities of Serbia’s commodity reserves stored in Srbolek’s warehouses.\footnote{\textit{Ibid.}} Srbolek’s owner was soon arrested and the privatisation of the Niš publishing company Prosveta, which he had also bought, was declared null and void because he failed to implement the investment plan and disposed of the company property in contravention of the contracted obligations.\footnote{“Prosveta Privatisation Contract Terminated”, \textit{B92}, 31 August.}

2.11.5. Right to Strike

The Constitutional Court at long last declared unconstitutional the Decree which had further restricted the right of the police to strike.\footnote{“Constitutional Court: Police Have Right to Strike”, \textit{B92}, 1 October. The Decision was not accessible in the Court Case Law Database at the end of the reporting period.} The Court established that the police’s right to strike was regulated by the Police Act and the constitutional provisions on the right to strike and that the Government of Serbia had exceeded its powers by laying down additional requirements in the Decree.

Most of the strikes in 2010 broke out over the non-payment of overdue salaries and contributions. There are no data on the number of misdemeanour re-
ports filed against defaulting employers or on how many such reports have been reviewed.

2.11.6. Non-Payment of Social and Health Insurance Contributions

Regular payment of mandatory insurance contributions for the workers was a chronic problem until 2010. The employers were given until 31 May to pay their dues and submit the relevant forms in proof. As of June 2010, workers can check online whether their employers are regularly paying their pension and disability insurance contributions.917 Online checks of health insurance contribution payments had been introduced earlier.

The employers, who customarily claim that the excessive taxes and contributions are the greatest obstacle to Serbia’s economic development, nevertheless found various ways to avoid paying the contributions. A number of companies in 2010 officially declared lower salaries of their staff, whereby they significantly undermined their loan eligibility. They paid them the rest of the wages through temporary service and freelance contracts, bonuses or prizes, thus avoiding the payment of the health insurance contributions.918

The Tax Administration in July filed a criminal report against the Director of the Pirot-based factory Prvi maj on suspicion that he, inter alia, evaded paying contributions amounting to 21.5 million dinars. The BCHR failed to obtain any information whether any other criminal or misdemeanour reports were filed against defaulting company managers.

2.11.7. Protection of Patients and Corruption in Health

The number of articles in the daily and weekly press on medical malpractice and negligence, the poor conditions in the health institutions, the long waiting lists of patients who have to wait months for their operations, would lead to the conclusion that patient rights are still inadequately protected. The situation in the health care sector has for years been qualified as alarming, although both the Health Ministry and the Health Minister are persistently claiming that it is steadily improving.919

The lack of funding for health care has impacted the most on cancer patients in need of radiation therapy. These therapies are suspended or put off because the cancer wards in Serbia lack the equipment and professional staff. There are only 13 radiation machines to around 7 million citizens in Serbia, although, under world standards, there should be one such machine per 250,000 citizens (Blic, 12 August, p. 8).

The police in 2010 arrested and filed criminal reports against a large number of doctors suspected of taking bribes. A doctor in the Niš Clinical Centre was ar-

918 “Salaries Cut because of Contributions”, B92, 19 August.
919 The Minister’s statement is available at: www.rtv.rs/sr_lat/drustvo/zdravstvena-zastita-pacijenti-zadovoljniji_214003.html.
rested in March on suspicion of accepting a 100 euro bribe to ensure that a patient got the better radiotherapy for malignant tumours.\textsuperscript{920} The Director of the Oncology Institute and six other people (doctors, pharmaceutical company managers and distributors) were arrested in June on suspicion of buying more cytostatics than necessary and favouring specific companies.\textsuperscript{921} A surgeon of the Clinical Centre of Serbia was in July arrested for accepting a 500 euro bribe (Press, 23 July, p. 9). A group of doctors was arrested in September for accepting bribes to render patients diagnoses making them eligible for disability pensions.\textsuperscript{922} Two doctors of the military hospital in Petrovaradin were arrested in June and September for accepting bribes (Blic, 11 September, p. 16). Another five doctors of the Niš Clinical Centre and two representatives of the pharmaceutical company Mek were arrested in November for abuse of office.\textsuperscript{923}

The numerous arrests of doctors in 2010 appear to reflect the situation in the Serbian health system well. According to a Medium Gallup survey, most of the bribes given by the respondents in the February-May 2010 period had gone to doctors.\textsuperscript{924} The survey, however, shows that health slipped from first to third place on the list of most corrupt professions over 2009.\textsuperscript{925}

\textbf{2.11.8. Right to Education}

Serbian universities charge the highest tuition fees in the region. Indeed, some college tuition fees can compare with those charged by prestigious world colleges. Although none of the Serbian universities have been ranked among the top one thousand universities in the world on the so-called Shanghai List, this does not prevent them from charging tuition fees exceeding those paid by national and EU students in many European countries. The Belgrade University charges 1,000 euros per annum on average, but many colleges charge 1,500 euros a year (Blic, 13 June, p. 8). As opposed, for instance, to the average tuition fees of around 1,700 euros in the United Kingdom (with 11 universities ranking among the top 100 on the Shanghai List); 1,500 euros in The Netherlands (with 2 universities in the top 100); 800 euros in Austria (with 7 universities in the top 500); 750 euros in Italy (with 22 Italian universities in the top 500); 800 euros in Spain (with ten universities in the top 500) or 500 euros in Belgium (with one university in the top 100).

Notwithstanding, the state again in 2010 failed to offer to subsidise student loans, a common practice in a large number of European countries. The loans the state decided to subsidise are primarily used for buying products ranked as luxury

\textsuperscript{920} “Niš Clinical Centre Doctor Arrested”, B92, 30 March.
\textsuperscript{921} “Oncology Institute Director Arrested”, B92, 30 June.
\textsuperscript{922} “Sombor: Doctor Suspected of Taking Bribe Arrested”, Večernje novosti, 29 September.
\textsuperscript{923} “Niš Clinical Centre Doctors Arrested”, Jažna Srbija, 4 November.
\textsuperscript{924} “Corruption Ranks (Only) Fourth among Serbia’s Problems, Vesti on-line, 24 May.
\textsuperscript{925} Ibid.
Human Rights in Serbia 2010

goods if they are produced in Serbia (household appliances, construction material, tourist travels), while the effective interest rates on five-year student loans range from 22 to as many as 30 per cent.

2.12. Decisions against Serbia by International Human Rights Bodies

2.12.1. United Nations Treaty Bodies

Although Serbia accepted the jurisdiction of UN human rights treaty bodies (Committees) to receive and review individual communications by persons who believe that their rights protected by universal human rights treaties have been violated, Serbia’s citizens tend to apply the protection mechanism established under the European system rather than the UN committees. The only UN committee to render a decision against Serbia in 2010 was the UN Human Rights Committee.

2.12.1.1. UN Human Rights Committee View in the Case of Novaković v. Serbia. The communication was submitted in November 2006 by Marija and Dragana Novaković, the mother and sister of the deceased Zoran Novaković. He was admitted to the Clinic for Maxillofacial Surgery in Belgrade on 24 March 2003 with a swollen jaw, caused by a tooth infection. Five days later he was transferred to the Clinic for Infectious Diseases, where he passed away on 30 March 2003, from a festering mouth, neck and chest inflammation and subsequent complications. The tooth which had caused the infection was not extracted, the basic medical tests and a microbiological analysis were never carried out, and the surgical treatment he received was wholly inappropriate.

They asked the Ministry of Health to re-examine the circumstances in which their son/brother died. In October 2003 they submitted a complaint to the Municipal Prosecutor’s office in Belgrade, which began an investigation against unknown perpetrators, and only in April 2006 did it submit a motion for a criminal investigation against the nine doctors suspected of having committed grave acts against Mr Novaković’s health. Criminal proceedings against one of the suspects began in July 2006.

The authors claimed that the state of Serbia failed to protect the life of Mr Novaković and thus violated Article 6 of the Covenant. They stated that the doctors had to be aware of the danger to Zoran Novaković’s life, as it is clear from the reports issued after his death that the doctors had committed gross negligence. As the doctors were employed in a state hospital, in this case their gross negligence triggered state responsibility as well. They also complained that the investigation of the circumstances of his death was neither timely nor efficient, as required by Article 6 of the Covenant. They specifically invoked a violation of their right to an effective

remedy under Article 2(3), read in conjunction with Article 6, as they did not have any available means of legally complaining about the inexpediency and inefficiency of the investigation.

The Committee noted that the first suspect was not interrogated and the criminal procedure was not initiated until 40 months after the victim’s death, that an indictment against the suspects was not raised until nearly five years after his death, and that the first instance trial had not started as of June 2009. However, although the medical reports were available in 2003, the full forensic expertise was not conducted until August 2005. The reports of the Belgrade Institute of Forensic Medicine on both the initial examination and subsequent expert examinations included strong indications that standard medical procedures were not followed and this raised the question of possible medical malpractice and/or offences against health.

The Committee considered that the facts above constituted a breach of the State party’s obligation to properly investigate the victim’s death and take appropriate measures against those responsible for it, and they therefore revealed a violation of Article 2(3) in conjunction with Article 6 of the Covenant.

In accordance with Article 2, paragraph 3(a) of the Covenant, the State party is under an obligation to provide the authors of the communication with an effective remedy. The State party is obligated to take appropriate actions to ensure that the criminal proceedings against suspects for causing Mr Novaković’s death are promptly concluded and, that if the court convicts them, they are punished and also to provide the authors with appropriate compensation. The Committee also noted that Serbia was under an obligation to prevent similar violations in the future and required to be informed within 180 days of any measures undertaken with the aim of giving effect to its Views and the publication of the Views.

2.12.2. European Court of Human Rights Judgements Against Serbia

The number of applications filed with the European Court of Human Rights against the Republic of Serbia is constantly increasing; 3,200 applications (i.e. 3% of the total number of application filed with the Court against all its Member States) against Serbia were filed from the day the Convention came into effect until June 2010. As many as 95% of applications are dismissed without being submitted to the respondent State.927 The Court has to date rendered 49 judgements against Serbia, 9 of which were delivered during 2010.

2.12.2.1. Čížková v. Serbia928. – Drahomíra Čížková, a Czech citizen, was involved in a major traffic accident in Serbia on 27 August 1982, when her car was destroyed and she and her family suffered serious injuries. In 1985, she filed a

compensation claim against a Serbian insurance company with the Municipal Court in Novi Sad. The proceedings lasted until October 2002 when the parties informed the court that they were willing to consider a friendly settlement, but as they were unable to reach a settlement, the applicant requested in February 2004 that the proceedings be resumed. The Municipal Court ruled partly in favour of the applicant in June 2007.

She complained that her right to a fair trial within a reasonable time was violated, as the proceedings lasted twenty three years altogether. Although the dispute had been in the ECtHR’s competence *ratione temporis* for just over three years and before a national court of the same level, the Court held, as in many previous similar cases, that this dispute lasted for an excessively long period, and found Serbia in breach of Article 6(1) of the Convention.

The Court considered that there were no grounds for the applicant’s 50,000 euro claim for non-pecuniary damages and only awarded her 1,200 euros.

2.12.2.2. *Dimitrijević and Jakovljević v. Serbia.* 929 – In January 2005, the Municipal Court in Niš dissolved the marriage of Suzana Jakovljević and MD, the father of her daughter, Aleksandra Dimitrijević; it awarded custody of the child to the mother, determined the father’s access rights, ordered him to pay monthly child maintenance and held that each party should bear its own costs. However it failed to properly serve this judgement on the applicants so that they only managed to file an appeal against it on 27 April 2007. The District Court quashed the lower court’s judgement insofar as it concerned the child maintenance sought and ordered a retrial. Subsequently, the Municipal Court ruled partly in favour of the applicants in December 2007, ordering MD to pay monthly child maintenance and the applicants’ costs. This judgement was upheld by the District Court on appeal in February 2008.

The applicants complained under article 6(1) that the child maintenance suit was excessively long, wherefore their right to a fair trial within a reasonable time was violated. The Court noted again the requirement of exceptional diligence in all matters relating to children, which stems from both the Convention and domestic law, and accordingly found a breach of Article 6(1) of the Convention.

The Court awarded the applicants one thousand three hundred euros for non-pecuniary damages suffered instead of the 23,000 euros they sought for pecuniary and non-pecuniary damages.

2.12.2.3. *Đermanović v. Serbia.* 930 – The application was filed by Mr. Dušan Đermanović, who claimed violations of his rights under Articles 3 and 5 of the Convention due to the length and conditions of detention and the inadequate medical care he received during that time regarding his hepatitis C infection contracted in detention.

---

As regards Article 3 which guarantees the prohibition of torture, in considering the admissibility of the application, the Court stated that the supervision by the president of the relevant District Court of the enforcement of a detention measure (Article 245 of the Penal Sanctions Enforcement Act) did not consider this legislation to satisfy the effectiveness requirement concerning detention conditions or medical treatment in detention facilities.

The Court examined whether the competent authorities secured the necessary medical help; in the first place whether they provided medical supervision required for the timely diagnosis and adequate treatment, and in this respect it found no evidence of any failings on the part of the authorities, on the contrary, the applicant’s infection was discovered through counselling offered in the facility. In respect of the applicant’s claim that he was not provided with prompt treatment, the Court noted that in the seven months between the hepatitis C diagnosis and release, the applicant had undergone a liver biopsy, blood tests and specialist tests and that, although it is regrettable that an infectious diseases specialist only examined him after two months, the applicant himself significantly contributed to the delay in treatment by going on a hunger strike in the hospital and refusing to allow himself to be examined. The Court found in this case that the authorities had acted sufficiently diligently and accordingly concluded there was no violation of Article 3.

The applicant spent two years and two months in pre-trial detention, his detention was regularly extended because of the perceived risk of flight, as during 2003 he had been unavailable to the authorities and an international arrest warrant had to be issued. The applicant disagreed with this; he claimed that the authorities had his temporary address and that he turned himself when he learned that a warrant for his arrest had been issued. In its review of the allegation of a violation of Article 5(3), the Court noted that although the risk of flight might be considered acceptable justification for placing the applicant in custody initially, but that when it came to deciding whether to extend detention, the competent authorities had to take into account other important facts to determine whether this threat continued to exist or if it was too slight to justify detention pending trial. The authorities were also found to have failed to consider other means of ensuring his presence at trial. Finally, the Court found that the applicant’s applications for release were rejected even following the deterioration of his health so that he spent three quarters of his sentence in detention. The Court therefore did not consider that the authorities had extended the detention on “sufficient” grounds and thus qualified the continued deprivation of liberty for more than two years as unjustified. It accordingly found a breach of Article 5(3).

The applicant was awarded 1,500 euros for pecuniary and 1,500 euros for non-pecuniary damage suffered.

2.12.2.4. Krivošej v. Serbia.\textsuperscript{931} – The applicant, Ms Ana Krivošej, is of Russian origin and lives in Niš, where the Municipal Court, following the dissolution of

\textsuperscript{931} ECtHR, App. No. 42559/08, (2010).

365
her marriage to NC awarded her the right to see their child OC every first and third weekend of each month and during a part of the child’s holidays as well. However, as she was refused access to her child, the Municipal Court in Niš issued an enforcement order and fined NC for failing to comply with the court order. Following this, the applicant’s case file could not be found until 2008. The Court ordered the enforcement of the earlier fine and warned of the possibility of further fines as well as the possibility of coercive enforcement should NC fail to conform with the order within an additional period of three days. In December 2008, the Social Care Centre in Niš informed the court that the applicant had had no contact with OC since September 2007, and that NC and OC had moved to Belgrade, without informing the applicant of their new address. The case was then transferred to the Fourth Municipal Court in Belgrade, which was informed of NC’s correct address only in October 2009, when it ordered the enforcement of the October 2008 judgement.

The European Court found a violation of the applicant’s right to a fair trial under Article 6(1), protecting the implementation of final, binding judicial decisions which cannot remain inoperative to the detriment of one party in States that accept the rule of law. The Court noted that it was for the State to take all necessary steps to enforce a final judgement and in so doing secure the effective participation of its entire apparatus in order to meet the requirements of this Article of the Convention. The Court observed that the final access order has remained unenforced and that having adopted it, domestic courts were under an obligation to proceed ex officio. It noted that the proceedings in question have been within the Court’s competence ratione temporis for almost five years as Serbia ratified the Convention on 3 March 2004, during which time the domestic courts fined NC only once and never collected this fine, and took no substantive steps between October 2004 and October 2008. Furthermore, it observed that the case-file was misplaced, for which the State was responsible even if the relevant bailiff’s employment was terminated. In addition to the authorities taking more than two years to determine NC’s new address in Belgrade, they failed to make use of any coercive measures against NC although he concealed his address and failed to cooperate with the court.

As regards the applicant’s claim of a violation of Article 8 of the Convention and her right to respect for her family life, the Court stated that the mutual enjoyment by a parent and child of each other’s company constituted a fundamental element of “family life” within the meaning of Article 8, and that it further included a right of parents that steps be taken to reunite them with their children, this including in particular an obligation on national authorities to facilitate such reunions. This obligation means that national authorities must take all reasonable steps to facilitate the execution of a court judgement relating to children. In this case, the Court found that the Serbian authorities failed to do everything in their power reasonably expected of them, and that they had not taken into consideration the legitimate interests of the applicant and her child to develop and sustain a bond between them, and accordingly found Serbia in breach of Article 8.
The Court rejected the applicant’s claims that the authorities’ actions were discriminatory on the basis of her Russian origin and indigence violating her rights under Article 14.

The applicant claimed twenty thousand euros in respect of the non-pecuniary damage she sustained by the violations of Articles 6 and 8, but the Court awarded her seven thousand three hundred euros for non-pecuniary damage suffered. The Court specifically stated that the decision of the Municipal Court in Niš, as amended in 2003, had to be enforced.

2.12.2.5. Kin-Stib and Majkić v. Serbia.932 – The first applicant is the company Kin-Stib based in the Democratic Republic of Congo, which concluded a contract in 1989 on the joint venture in the opening of a casino with the Intercontinental Hotel Belgrade, which was owned by the socially-owned company Generalexport (Genex, later Generaleksport and International CG). The casino was in operation from 1990 to 1993 and the hotel’s building was sold to NBGP Properties.

The Foreign Trade Arbitration Court of the Yugoslav Chamber of Commerce issued a ruling in 1996, binding Genex to pay as compensation a sum just under two million dollars with tax for the first applicant’s inability to operate the casino from April 1995 to April 1996, to return possession of the casino to the applicant, and to enable him to effectively manage its operation for the next five years. The Commercial Court in Belgrade in 1996 ordered the enforcement of the arbitration decision for the first time, but it was not enforced in its entirety until 2008 when the proceedings were stayed until the Privatisation Agency concluded the process of restructuring Genex. In the 2001–2005 period, the domestic courts ordered that the applicants be paid compensation for lost earnings, but this compensation was never paid.

The second applicant was Milorad Majkić, a national of Serbia who became the owner of a part of the first applicant consisting of all its rights and pecuniary interests derived from the joint venture agreement and the first applicant’s “Director and President” concerning Generalexport. The applicants claimed that their rights to a fair trial and peaceful enjoyment of possessions were violated by the partial enforcement of the arbitration award in their favour.

The Court observed that the claim established in the arbitration award undoubtedly fell within the meaning of “possession” in Article 1 of Protocol No 1. The Court further noted that apart from the Commercial Court in 1996 ordering the enforcement of the arbitration award in its entirety, that the debtors had paid by May 1998 the compensation ordered, and that the Commercial Court in 2006 ordered the maximum amount of fines legally possible for the enforcement of the remaining obligations under the arbitration award, there were no new attempts at enforcing the arbitration award, that is, there were no legal possibilities for securing the enforcement. The Court accordingly concluded that the competent authorities in Serbia did not undertake all measures required to enforce the award in its entirety.

and thereby violated the right to peaceful enjoyment of possessions protected by the Convention.

The Court noted that on the basis of the unenforced arbitration award the applicant was supposed to be enabled to come into possession of the casino and operate it for a period of five years, which would not now be possible without interfering with third parties’ rights. As this concerned socially-owned companies, Court ordered the Government to secure the enforcement of the domestic courts’ judgements ordering compensation within a period of three months, from its own resources. Within the same period, the Court ordered the State of Serbia to pay the applicants an amount of eight thousand euros as compensation for non-pecuniary damages and to pay the first applicant thirty thousand euros as compensation for costs and expenses incurred domestically and in relation to the application to Strasbourg.

2.12.2.6. Motion Pictures Guarantors LTD v. Serbia.933 – During the morning of a scheduled hearing before the Commercial Court in Belgrade, the taxi of the applicant’s lawyer representing the company Motion Pictures Guarantors LTD taking him to the Court broke down and he arrived on foot a few minutes late. The applicant subsequently received the Commercial Court’s decision stating that the proceedings had to be terminated because neither party had duly appeared in court. Following this the applicant requested procedural reinstatement (restoration of proceedings to status quo ante), explaining the lawyer’s delay and suggesting that the taxi driver and respondent’s lawyer (who came on time) be heard. This request was rejected by the Commercial Court in the absence of an oral hearing; it stated that procedural reinstatement was only available in cases of force majeure and that the delay was the fault of the lawyer who had failed to adequately manage his time. The applicant appealed both decisions before the High Commercial Court, which rejected both appeals, once again in the absence of an oral hearing, upholding the lower court’s reasoning that the applicant had failed to provide evidence of the taxi’s breakdown and noting that this could not be proved by witness testimony but by documentary evidence.

The Court noted the entitlement to a public hearing in Art 6(1) implied a right to an oral and adversarial hearing at least at one instance. This is a fundamental principle, however, it is not absolute. It need not be applied in cases where this right is unequivocally waived, if no issues of public interest arise in it that would make a hearing necessary, or if it is not necessary because of any exceptional circumstances, or no factual or legal issues arise that cannot be adequately resolved on the basis of the case-file and written observations. It may also not be necessary at a second or third instance if such a hearing was held at first instance.

The Court found that under domestic case-law, vehicle breakdown could, under the right circumstances, constitute a reason for granting procedural reinstatement.

ment – that specific traffic conditions as well as circumstances regarding the break-
down had to be ascertained, which implies hearing the taxi driver in person in court.
In spite of the applicant’s proposal of an oral hearing, such a hearing was not held
either at the first instance, with it being in the Commercial Court’s absolute discre-
tion as to whether to hold one, whilst the High Commercial Court could not have
done so in view of the applicable domestic legislation. The ECtHR found that in
this case there were no exceptional elements to justify the failure to hold a public,
adversarial hearing and thus held that Art 6(1) had been violated and did not find it
necessary to examine claims regarding fairness separately.

The applicant was awarded one thousand euros for costs and expenses of
proceedings incurred.

2.12.2.7. Jovančić v. Serbia. The judgement in this case was given by
a Committee of three judges in accordance with Protocol 14 to the Convention as
it was about a case which concerned the “interpretation or application of the Con-
vention or the Protocols thereto, [and was] already the subject of well-established
case-law of the Court”. The applicant was a detainee in the Niš Penitentiary and
complained that his right to respect for privacy of correspondence was violated by
the prison authorities’ practice of opening, reading and registering all mail between
the detainee and European Court of Human Rights, as well as correspondence with
various other domestic bodies.

The Court held that in view of the identical circumstances to those consid-
ered in the case of Stojanović v. Serbia, there was no reason to depart from its
earlier reasoning in that case, and therefore rejected the Government’s objections to
the admissibility of the application and found a breach of Article 8 of the Conven-
tion.

The applicant obtained the right to be compensated one hundred euros in
respect of costs and expenses.

2.12.2.8. Rakić and Others v. Serbia. – The application was filed by thirty
police officers who lived and worked in Kosovo. On two occasions, in 2000 and
2003, the Serbian government adopted decisions doubling the salaries of all of its
employees in Kosovo, but the applicants’ salaries were increased considerably less.
In 2006 and 2007, they filed separate civil claims before the First Municipal Court

935 More on changes brought in by the entry into force of Protocol 14 at: http://www.bgcentar.
org.rs/images/stories/Datoteke/novine%20koje%20donosi%20ratifikacija%20i%20poetak%20
primene%20protokola%20uz%20evropsku%20konvenciju%20zatitu%20judskih.pdf.
937 ECtHR, Apps. Nos. 47460/07; 49257/07; 49265/07; 1028/08; 11746/08; 14387/08; 15094/08;
16159/08; 18876/08; 18882/08; 18997/08; 22997/08; 23007/08; 23100/08; 23102/08; 26892/08;
26908/08; 29305/08; 29306/08; 29323/08; 29389/08; 30792/08; 30795/08; 31202/08; 31968/08;
32120/08; 32537/08; 32661/08; 32666/08; 36079/08, (2010).
in Belgrade, which were rejected at second instance before the District Court. However, some of the applicants’ colleagues were successful before the latter, despite the fact that the cases were based on the same facts and identical law.

The Government provided the relevant case-law of the Supreme Court, which ruled against the plaintiffs, although with somewhat different reasoning to that employed by the District Court, in particular holding that the latter decision had not been directly applicable. The Civil Division of the Supreme Court held a meeting on how to resolve the issue of how to rule in all such cases, however the meeting was adjourned pending the outcome of a case before the Constitutional Court concerning an abstract constitutional review of the government 2003 decision. In April 2010 the Constitutional Court found the impugned decision was unconstitutional. In 18 cases the plaintiffs then lodged their appeals with the Constitutional Court but these were still pending. None of the applicants lodged appeals on points of law or attempted to obtain constitutional redress.

The Court noted that although some divergences in interpretation could be expected in networked court systems, that in this case, the confusion stemmed from the same jurisdiction of the District Court in Belgrade involving plaintiffs in identical situations. The Court found that it appeared that even the Supreme Court’s case-law had not effectively become consistent until the latter part of 2008 at best, far too late for some of the applicants to attempt to lodge their appeals on points of law. Therefore it could not reasonably be argued that although their claims had never been considered by the Supreme Court, they had been substantively determined consistently with that court’s case-law. The Court thus considered that this uncertainty amounted to depriving the applicants of a fair hearing before the District Court in Belgrade, consequently finding a violation of Art 6(1).

Each of the applicants was awarded three thousand euros for non-pecuniary damage suffered and two hundred and fifty euros for costs and expenses of proceedings incurred.

2.12.2.9. Milanović v. Serbia.938 – The leader of the Vaishnava Hindu religious community in Serbia Mr Života Milanović from Jagodina, filed an application claiming violations of his rights under Article 2 of the Convention (right to life), 3 (prohibition of torture) and Article 14 (prohibition of discrimination) in conjunction with Article 3, and Article 13 (right to an effective legal remedy). He suffered various injuries during attacks on him in 2001, 2005, 2006 and 2007, which he claims were caused by religious intolerance. He further claimed that the investigation and attempts at prevention of further attacks were unsatisfactorily performed by the authorities, and that the competent authorities discriminated against him on account of his religion.

The Court underlined the state’s obligation under Article 3 to take all measures to prevent private persons from subjecting others to ill-treatment within its

jurisdiction and reiterated that Article 3 in conjunction with Article 1 implies the state’s obligation to conduct an efficient, official investigation capable of leading to the identification and punishment of the offenders when an individual raises an arguable claim that he has been the victim of ill-treatment and therefore of a breach of rights guaranteed by this Article. The Court found that although the injuries sustained by the applicant were indeed serious enough to constitute ill-treatment within the meaning of Article 3, that the perpetrators had yet to be identified and that the applicant does not appear to have been properly informed about the investigation or had the opportunity to see and possibly identify the perpetrators. The police also considered his injuries may have been self-inflicted, although this was pure conjecture. The Court criticised the cooperation between the police and public prosecution and the fact that the focus of the investigation did not encompass Serbia more broadly as the suspected far-right organizations operated throughout the country. Indeed, it found that the applicant’s statement indicating that one of his attackers may have a member of one such organisation was apparently not followed up at all. Nothing was done to prevent such attacks by way of offering the applicant protection, even around the time of major religious holidays when it should have been obvious that these attacks were systematic. An adequate investigation was not conducted and despite the real, immediate and foreseeable risk, the authorities did not take reasonable and effective steps to prevent ill-treatment. The Court, therefore, found Serbia in breach of Article 3.

Regarding the complaints about discrimination, the Court considered that the authorities were under the obligation when investigating violent attacks to take all reasonable steps to discover whether religious hatred or prejudice could have been the motives. The Court considered it unacceptable that the authorities allowed the investigation to last so long without adequately attempting to identify or prosecute the perpetrators despite knowing that the attacks were most probably motivated by religious hatred. The Court found that views expressed by the police implied that the police doubted whether the applicant was a genuine victim although there was no evidence justifying such doubts. It concluded that the several leads the police did explore regarding the motivation of attacks as the applicant suggested were no more than a pro forma investigation and accordingly it found a violation of Article 14 in conjunction with Article 3.

The Court did not find it necessary to examine the claims under the other articles of the Convention. The applicant was awarded ten thousand euros as compensation for non-pecuniary damage suffered, and one thousand two hundred euros for costs and expenses incurred.

2.13. Confrontation with the Past

The search for Ratko Mladić continued to be the transitional justice topic commanding the most attention of the state authorities, the media and the international community alike in 2010. Representatives of the Government and competent
state authorities continuously stressed that they were doing their utmost to arrest Mladić, but he remained at large although over 15 years have passed since the ICTY indicted him for genocide, crimes against humanity and violating the laws or customs of war. The Government in late October raised the prize for information leading to Mladić’s arrest, from one to ten million euros, to demonstrate its commitment to apprehend Mladić. In his latest address to the UN Security Council on 6 December, ICTY Chief Prosecutor Serge Brammertz said that Serbia needed to apply a more pro-active approach to arresting the fugitives and that, in addition to the search activities, it had to have a rigorous approach to dealing with individuals or networks harbouring him. Only a few days later, the Belgrade First Basic Court acquitted ten men accused of hiding Mladić between 2002 and 2006, slightly over four years after indicting them. In the reasoning of the judgement, the presiding judge said that the statute of limitations expired with respect to some of the crimes they had been charged with and that the prosecution had failed to prove that they were guilty on the other counts. The prosecution, which had previously disputed the impartiality of the judges on the panel and called for their recusal, said it would both appeal the verdict and ask the High Judicial Council to review the judicial panel’s adjudication of this case. It qualified as unusual the panel’s decision to continue with the proceedings for a full year although it had been of the view that the statute of limitations for specific crimes had expired back in 2008 and 2009.

The judicial panel concluded that there was no doubt that Mladić’s friend Stanko Ristić had rented an apartment in New Belgrade and paid the bills for it, but it found no evidence that Mladić had ever lived in that apartment, nor that he was occasionally driven by Vojislav Ivanović, as the indictment stated. In an interview to the Belgrade weekly Vreme in October, the War Crimes Prosecutor Vladimir Vukčević, who heads the Action Team searching for Mladić, said that the Team knew back in 2006 where Mladić was and that his “arrest had been purely a technical issue”. Vukčević went on to qualify the arrest of Stanko Ristić, who had been hiding Mladić, by the then head of the Security Intelligence Agency Rade Bulatović as “a disastrous move that allowed Mladić to escape”. Vukčević added that the chance to arrest the fugitive was missed at the time “because it was obstructed by those who could obstruct it, who had a clear plan to let Mladić get away”. The authorities have not had any hard evidence which would have enabled them to locate Mladić since.

940 More in II.2.13.1.2.
942 Ibid.
943 Ibid.
In face of the failure to arrest the two remaining ICTY indictees, Ratko Mladić and Goran Hadžić, the topmost state authorities made some symbolic gestures to demonstrate their commitment to confrontation with the past. On 31 March, the National Assembly adopted the Declaration Condemning the Crime in Srebrenica.\textsuperscript{945} The Declaration, \textit{inter alia}, states:

The National Assembly of the Republic of Serbia most severely condemns the crime committed against the Bosnian population in Srebrenica in July 1995 in the manner established by the ruling of the International Court of Justice, as well as all the social and political processes and incidents that led to the creation of awareness that the realisation of personal national goals can be achieved through the use of armed force and physical violence against members of other nations and religions, extending on the occasion condolences and apologies to the families of the victims that everything possible had not been done to prevent the tragedy.

The Declaration further states that the National Assembly extends full support to the work of the state authorities charged with prosecuting war criminals and the successful completion of the cooperation with the International Criminal Tribunal for the Former Yugoslavia, “in which the detection and arrest of Ratko Mladić for the purpose of standing trial before the International Criminal Tribunal for the Former Yugoslavia is particularly significant”. The Declaration calls on

(a)ll the former conflicting sides in Bosnia and Herzegovina, as well as in the other states of the former Yugoslavia, to continue the process of reconciliation and strengthening of the conditions for common life based on national equality and full observance of human and minority rights and freedoms so that the committed crimes are never repeated.

It expresses the expectation that “the highest authorities of other states in the territory of the former Yugoslavia will also condemn the crimes committed against the members of the Serbian people in this manner, as well as extend condolences and apologies to the families of the Serbian victims.” The Declaration was voted in by 127 of the 250 Assembly deputies, notably the deputies of the DS-led For a European Serbia list, the G17+, the Socialist Party of Serbia, United Serbia, Party of United Pensioners of Serbia, and the national minority parties. Deputies of the Democratic Party of Serbia and New Serbia voted against. The deputies of the Serbian Radical Party, the Serbian Progressive Party and the Liberal Democratic Party did not vote. A sharp debate preceded the vote on the Declaration, during which the SRS deputies underlined that, in their view, Ratko Mladić was “a hero of the Serbian people”. The SNS deputies said that their failure to support the Declaration did not mean that they did not condemn the crime in Srebrenica, while the DSS deputies said that the Declaration relativised crime by highlighting only one crime and not mentioning others committed during the conflicts in the former SFRY. LDP

\textsuperscript{945} \textit{Sl. glasnik RS}, 20/10. See: http://www.parlament.gov.rs/content/eng/index.asp.
deputies were of the view that the Declaration should include the term “genocide” because that is how it was qualified both by the ICTY and the ICJ.\textsuperscript{946} The National Assembly adopted another Declaration on 14 October, this one condemning crimes against Serbs and the citizens of Serbia.\textsuperscript{947} It, \textit{inter alia}, calls on the “parliaments of other countries, particularly countries in the territory of former Yugoslavia, to condemn those crimes and provide full support to their national authorities and international community institutions in the prosecution of perpetrators, and, while equally appreciating the value of every human life, express respect for the Serbian victims”. This Declaration was upheld by 133 deputies.

Serbia’s President Boris Tadić attended the 15\textsuperscript{th} anniversary of the Srebrenica massacre in July and the 19\textsuperscript{th} anniversary of the fall of Vukovar and the killing of over 200 Croatian prisoners at the Ovčara farm by the Serb forces in November. During his visits to Srebrenica and Vukovar, he expressed regret over these crimes and underlined his commitment to their punishment. These gestures by Tadić, particularly the visit to Vukovar and his apology to the Croats for the crimes Serbs committed against the Croatian population, provoked criticism among the opposition parties in Serbia, notably the DSS and SRS.\textsuperscript{948} Tadić’s apology was, however, received mostly well in Croatia. According to a survey commissioned by the Belgrade Centre for Human Rights and conducted by the agency Ipsos Strategic Puls, as many as 73\% of the respondents, citizens of Croatia, positively assessed Tadić’s apology while only 13\% had a negative opinion of it. However, only 40\% of the respondents thought that his apology came from the heart.\textsuperscript{949}

In late 2010, on 20 December, Croatia filed its response to the ICJ to the countersuit Serbia filed against Croatia in 2009 alleging violations of the Convention on the Prevention and Punishment of the Crime of Genocide during the Storm Operation in 1995.\textsuperscript{950} Serbia filed the countersuit in response to Croatia’s genocide charges filed against it in 1999. The ICJ declared it had jurisdiction to deliberate Croatia’s genocide suit against Serbia in late 2008.\textsuperscript{951} The Presidents of the two countries, Ivo Josipović and Boris Tadić, said on several occasions that they were personally prepared to contribute to the withdrawal of the charges, a decision that must be taken by the two countries’ governments. During his visit to Zagreb in May 2010, Serbian Prime Minister Mirko Cvetković stated that Serbia was willing to

\textsuperscript{946} More in http://www.blic.rs/Vesti/Politika/183008/Skupstina-usvojila-Deklaraciju-o-osudi-zlocriua-u-Srebrenici and http://www.slobodanaevropa.org/content/srebrenica_srpski_parlament_rezolucija/1997489.html. The transcript of the National Assembly debate was published on the website of the Youth Initiative for Human Rights http://rs.yihr.org/rs/article/149/.

\textsuperscript{947} Declaration of the National Assembly of the Republic of Serbia condemning crimes perpetrated against the Serbian people and citizens of Serbia, \textit{Sl. glasnik RS}, 74/10.


\textsuperscript{949} The survey results are available at BCHR’s website, www.bgcentar.org.rs.

\textsuperscript{950} See http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=12&dd=24&nav_category=64&nav_id=481746.

withdraw the counter-charges only if the two countries agreed to withdraw both lawsuits at the same time, but his Croatian counterpart said that the decision on the withdrawal of the charges against Serbia could be taken only by the Croatian Government which still had not discussed this issue. The issue did not make the agenda of the Croatian Government by the end of 2010, and Croatia’s representative before the ICJ Mirjan Damaška said in late 2010 that “Croatia must first respond to Serbia’s genocide counter-charges and only afterwards discuss a political solution”. Some time before that, he said that he did not “think a settlement is likely, at least not until Croatia responds to Serbia’s countersuit”. After Croatia filed its reply to the counter-charges, the coordinator of Serbia’s legal team before the ICJ Saša Obradović said that this move did not rule out the possibility of an out of court settlement. Serbia has been given until 4 November 2011 to respond to Croatian application and the Court is expected to begin reviewing the case in early 2013.

War crime trials continued before the Belgrade Higher Court War Crimes Department in 2010. The court rendered final judgements finding 22 perpetrators guilty of war crimes in 2010. The War Crimes Prosecution Office filed seven new indictments against 18 people during the year. A total of 38 people have been found irrevocably guilty of war crimes by the Serbian war crimes courts in the 2000–2010 period.

The cooperation between the Serbian and Croatian judicial authorities has remained very good and continued yielding concrete results. The two countries signed the Extradition Treaty on 29 June, which immediately came into force. The two countries, however, committed themselves to extraditing only their nationals or stateless persons residing in their territories who are charged with organised crime and corruption, but not those suspected of war crimes and crimes against humanity. The Extradition Treaty Serbia signed with Montenegro on 29 October came into force immediately. Serbia and Montenegro bound themselves to extradite their nationals charged with organised crime, corruption, crimes against humanity and other goods protected by international law, money laundering and other grave crimes warranting five or more years of imprisonment.

Cooperation with the Bosnia-Herzegovina judicial authorities has recently been significantly burdened by the disagreements between the Serbian War Crimes Prosecution Office and the Bosnian judiciary and political leaders over the crimi-
nal prosecution of the former Bosnian Moslem leader Ejup Ganić, whom Serbia is investigating in connection with the attack on the Yugoslav People’s Army (JNA) forces in Dobrovoljačka Street in Sarajevo in 1992, and Ilija Jurišić, who is indicted for the attack on the JNA column in Tuzla in 1992. Jurišić was in custody until late 2010, when the War Crimes Panel of the Belgrade Appellate Court overturned the first-instance judgment convicting Jurišić to 12 years in jail, ordered a retrial and let Jurišić out of custody. Jurišić left Serbia and returned to Bosnia-Herzegovina.958

As the ICTY trials are taking longer than planned, the UN Security Council (UNSC) again extended the terms of office of the Tribunal judges.959 On 22 December, the UNSC decided to establish an International Residual Mechanism for Criminal Tribunals (ICTY and ICTR) to finish the remaining tasks of the Tribunals for Rwanda and the Former Yugoslavia, and maintain their respective legacies.960

The Residual Mechanism will have jurisdiction to try indictees currently at large and persons accused of contempt of court. It will have two Trial Chambers (one to try ICTY indictees and the other to try ICTR indictees), one (joint) Appeals Chamber, a prosecutor who will prosecute indictees of both Tribunals and a Secretary who will perform the tasks of Secretary for both Tribunals. Representatives of 14 UNSC member-states voted for the establishment of the Residual Mechanism. The representative of the Russian Federation abstained from voting, saying that the “Tribunals had had every opportunity to complete their work by the dates already agreed. The resolution must represent the Council’s last decision on the matter and the Tribunals’ work must be fully wound up by 2014.961 The ICTR branch of the International Residual Mechanism will start operating on 1 July 2012 and the ICTY branch will commence its operations on 1 July 2013.

Of the trials before the ICTY, the media in Serbia in 2010 devoted the most attention to the trial against SRS President Vojislav Šešelj, the recordings of which are aired on RTS, and the trial against wartime Bosnian Serb President Radovan Karadžić. The ICTY Appeals Chamber decision to overturn the acquittal of former Kosovo Prime Minister and KLA leader Ramush Haradinaj and order a partial retrial drew a lot of attention and applause from the Serbian public and media. The Serbian media occasionally reported also on the trial of former Croatian army officers Ante Gotovina, Mladen Markač and Ivan Čermak, but very rarely on trials of other Serb indictees, although some of them had once held senior state offices in Serbia. Interestingly, the media devoted hardly any attention to the Vujadin Popović et al case, until the Trial Chamber rendered its judgement this year. The Trial Chamber heard the greatest number of witnesses and the most evidence at this trial of indictees accused of genocide in Srebrenica before the ICTY. War crime trials before the Belgrade Higher Court received even lesser coverage, although some of them, like

958 More in II.2.13.2.
959 More in II.2.13.1.
961 Ibid.
Zvornik 2, deal with crimes that resulted in the deaths of hundreds of victims. Media usually reported on these trials only when the judgements were rendered. Hardly any covered the testimonies and the trials were not broadcast on TV.

Serbian media in late 2010 focussed on the report by CoE Rapporteur Dick Marty on trafficking in human organs in Kosovo, of which he accused groups of Albanians within the KLA. The report states that there are numerous indications that after the withdrawal of the Serbian forces in 1999, some Albanian forces within the KLA held captive Serbs and Kosovo Albanians in northern Albania, subjected them to cruel treatment, extracted their organs and sold them, while the victims disappeared. The report also states that the international forces in Kosovo never launched a proper investigation into these events although they had information about them.

There are still no effective institutional mechanisms by which victims can claim damages for the violations of their rights during armed conflicts either at the national or international level. Serbian courts continued with the practice of directing injured parties in criminal proceedings to file civil damage claims.

Croatian and Serbian Presidents Ivo Josipović and Boris Tadić in 2010 extended their support to the Coalition for the Establishment of a Regional Commission for investigating and disclosing the facts about war crimes and other serious human rights violations in the territory of the former Yugoslavia (KOREKOM), founded in late 2008 and rallying civil society organisations, victims’ associations and individuals across the former Yugoslavia. The Coalition drafted the statute of the Regional Commission, which it plans to submit in 2011 to the governments of the states created after the disintegration of the SFRY. They propose that these states sign an international treaty establishing the Commission and that their parliaments ratify the treaty.

### 2.13.1. International Criminal Tribunal for the Former Yugoslavia

#### 2.13.1.1. Introduction

The International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague was established by UN Security Council Resolution (UNSCR) 827 of 21 May 1993 to try persons responsible for serious violations of international humanitarian law committed on the territory of the former SFRY since 1991. The Tribunal’s activities are defined by its Statute, an integral part of UNSCR 827 and the judicial procedure is defined by the Rules of Procedure and Evidence adopted by the ICTY judges. The Tribunal has three organisationally

---


963 www.korekom.org.


965 For basic data on the ICTY and chronology, see I. Bandović (ed.), *The Activity of ICTY and National War Crimes Judiciary*, Belgrade Centre for Human Rights, 2005.
independent bodies: the Chambers, the Office of the Prosecutor (OTP) and the Registry (Art. 11 Statute). The ICTY and national courts have concurrent jurisdiction to prosecute war crimes, crimes against humanity and genocide, although the ICTY has primacy and may take cases over from national courts (Art. 9, Statute). Article 7 of the Statute provides for individual criminal responsibility and command responsibility. Given that the ICTY has no coercive mechanism, all states are required to co-operate with it, primarily by apprehending persons indicted by the Tribunal and collecting evidence (Art. 29, Statute). Serbia’s co-operation with the ICTY and its procedures are regulated by the Act on Co-operation with the ICTY.

UNSC Resolutions 1503 and 1534 of August 2003 and March 2004 respectively envisaged that the ICTY finish all its work in 2010. The so-called completion strategy was drawn up in accordance with this deadline, under which all indictments had to be filed by end 2004 and only against the most senior perpetrators, who are suspected of being the most responsible for crimes committed in the former Yugoslavia. Under the strategy, the Tribunal will refer a certain number of cases pursuant to Rule 11bis to a court in a state on whose territory the crime was committed, a state in which the indictee was arrested or another state willing and adequately prepared to accept such a case on condition that the indictee is guaranteed a fair trial and cannot be sentenced to death. The Tribunal and the Office of the Prosecutor are actively helping in building the capacities of national courts to conduct war crime trials.

Given that the ICTY was unable to finish work within the deadline set in the two UNSC resolutions, the UNSC repeatedly extended the terms of office of the judges, the last time on 29 June 2010, when it unanimously adopted Resolution 1931, by which it extended the terms of the five permanent judges of the Appeals Chamber until 31 December 2012 and the terms of the eight permanent and ten ad litem judges in the Trial Chamber until 31 December 2011, or until the completion of the trial they were adjudicating if it is concluded before that date.

In his most recent statement to the UNSC on 6 December 2010, ICTY President Patrick Robinson assessed that the Đorđević, Gotovina et al., Perišić trials and the Haradinaj partial retrial would be completed in 2011, that the Prlić et al, Šešelj, Stanišić and Simatović, Stanišić and Župljanin and Tolimir trials would be completed in 2012 and that the trial of Radovan Karadžić ought to be completed in late 2013. According to Robinson, all appeals were still scheduled to be completed

---

966 The Act on Co-operation of Serbia and Montenegro with the International Tribunal for Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (Sl. list SRJ, 18/02 and Sl. list SCG, 16/03). More on the Act in Report 2005, IV.2.5.1.


by the end of 2014, although the recent, unavoidable delays in the Karadžić case suggested that this date would have to be re-assessed.

Robinson reported to the UNSC that the Tribunal was taking all measures possible to expedite the trials without sacrificing due process. He said he was troubled by reports from judges that they felt extreme pressure to expedite the work of the Tribunal and recalled that they were entitled to work in an environment free from all external pressures so that their independence is not compromised. Robinson mentioned numerous factors beyond the control of the Tribunal, such as witness intimidation, the failure of witnesses to appear, the illness of accused, the death of defence counsel, the discovery of new evidence and staff attrition.

Both in his address to the UNSC and previously to the UN General Assembly, the ICTY President highlighted the need to establish a fund providing compensation of damages to victims of grave human rights violations in the former SFRY.

Eighteen indictees were on trial before the Trial Chamber and the Appeals Chamber was reviewing appeals of 12 accused in late 2010. Two indictees, Ratko Mladić and Goran Hadžić, are still on the run. The ICTY completed trials of 126 of the 161 indictees by the end of 2010.

2.13.1.2. Serbia’s Cooperation with the ICTY. – In both his addresses to the UNSC in 2010, on 18 June and 6 December, ICTY Prosecutor Serge Brammertz underlined that cooperation with Serbia on the ongoing trials was proceeding well. He said that Serbia continued facilitating ICTY requests for access to documents, archives and that witness-related issues being were handled satisfactorily. Ratko Mladić’s wartime notebooks and recordings of specific telephone conversations he had during the war and confiscated in February 2010 were forwarded to the Tribunal. Brammertz described this material as “valuable and voluminous” and said the prosecutors would seek its introduction as evidence in several trials.

On the other hand, he noted, as far as the arrest and handover of the remaining indictees was at issue, cooperation has not yielded tangible results. Brammertz told the UNSC in June that the operational services in Serbia continued their efforts to search for Ratko Mladić and Goran Hadžić, but also said that he and his team were of the view that Serbia’s operational strategies needed to be reviewed and that they recently asked Serbian authorities to step up search efforts by broadening their investigations, intensifying search operations and increasing their operational capacity.


Brammertz also asked the EU for further support in securing cooperation of states created after the disintegration of the SFRY with the ICTY. He said that the EU’s support had not only been extremely effective in the past, but would remain essential in the future as well. In his address to the UNSC in December, Brammertz underlined that the failure to arrest Mladić and Hadžić was one of the foremost concerns of his team. He said Serbia had to bridge the gap between its stated commitment to the arrests and the effectiveness of its operations on the ground and recalled that time was passing, but that they were not seeing any results. He said he was assured during his last visit to Serbia that the authorities were working on the implementation of the ICTY recommendations but that much was left to be done and that progress had to be faster. Brammertz concluded that Serbia needed to adopt a more pro-active approach to arresting the fugitives. Such an approach should entail a comprehensive strategy integrating all relevant actors and covering all possible angles for exerting positive pressure towards the arrests. Brammertz, for instance, stressed that apart from search activities, the authorities had to take a rigorous approach to dealing with individuals or networks supporting the fugitives and had to clearly signal that those who harbour the fugitives will be punished.

2.13.1.3. ICTY Judgements in 2010.972 In 2010, the ICTY Trial Chamber rendered one judgement declaring seven indictees guilty and its Appeals Chamber rendered two decisions. The ICTY also rendered two judgements for contempt of court.


Former Deputy Chief of Security of the Bosnian Serb Army Drina Corps Vučadin Popović and former Chief of Security of the Bosnian Serb Army (VRS) Main Staff Ljubiša Beara were convicted to life imprisonment because the Chamber established that they committed the crimes of genocide, crimes against humanity and violated the laws or customs of war. Drago Nikolić, the former Chief of Security of the Bosnian Serb Army Drina Corps Zvornik Brigade, was sentenced to 35 years in jail for crimes against humanity and violations of the laws or customs of war. Ljubomir Borovčanin, the former Deputy Commander of the Bosnian Serb Special Police Brigade, was found guilty of crimes against humanity and violations of the laws or customs of war and sentenced to 17 years in jail. Radivoje Miletić, the former Chief of Operations and Training of the VRS Main Staff, was sentenced to 19 years’ imprisonment for crimes against humanity. Vinko Pandurević, the former Commander of the Zvornik Brigade of the VRS Drina Corps, was found guilty of crimes against humanity and violations of the laws or customs of war and sentenced to 13 years in prison. Milan Gvero, the former Assistant Commander for Morale, Legal and Religious Affairs of the VRS Main Staff, was sentenced to five years in jail for crimes against humanity.

This is the fourth ICTY judgement for crimes committed by the Bosnian Serb forces in July 1995, after the fall of Srebrenica and Žepa, special areas under UN protection. Following the conviction of General Krstić, this is also the second ICTY judgement qualifying as genocide the 1995 crimes against the Bosniak population of Srebrenica.

The Prosecutor had indicted the seven men for crimes committed during a campaign of terror and violence against the Bosniak population in the Srebrenica and Žepa protected areas in July and August 2005. According to the indictment, each of them participated in a joint criminal enterprise the aim of which was to kill all able-bodied Bosniak males and expel the remaining Bosniak population from the territory of Srebrenica and Žepa to ensure the control of these areas by the Bosnian Serbs. The plan was to have been executed by criminal means, inter alia, by extermination, murder, persecutions, forced displacement and deportation.

The Trial Chamber found that the gravest crime in Europe since WWII was committed in the territory of Srebrenica and Žepa in the summer of 1995. The judgement said that

genocide, extermination, murder and persecution were executed with systematic and cold brutality and qualified as particularly brutal the separation of men from their families. The trauma faced by the surviving victims after the brutalities they experienced in Srebrenica has been termed the Srebrenica syndrome.

The Trial Chamber considered the particular vulnerability of the victims of this crime as an aggravating factor to sentencing. The Trial Chamber weighed the elements confirming the existence of a joint criminal enterprise, in which not only the indictees in this case took part, also by taking into account the causes of the armed conflicts in Bosnia-Herzegovina, the establishment of the Bosnian Serb Army, the situation in Srebrenica and Žepa at the outset of and during the war, the creation of UN protected areas, the organisation of the Bosnian Serb military and police forces around the protected areas, the humanitarian situation in the protected areas and the Bosnian Serb authorities’ restrictions on the entry of humanitarian convoys, particularly Directive 7 specifying how the Srebrenica and Žepa population would be treated once these towns were seized.

The Trial Chamber concluded that Vujadin Popović, who held a senior position in the Bosnian Serb Army Drina Crops, directly abused his powers by participating in the joint criminal enterprise. Popović played a key role in the organisation and implementation of the genocide and also took part in monitoring the killings and visits to the execution sites, wherefore he directly participated in the whole criminal operation. Popović also failed to express any compassion for the victims notwithstanding their age and the Chamber considered the particular enthusiasm with which he approached the crimes as an aggravating circumstance.

Popović was found guilty of genocide, extermination, murder and persecutions, crimes against humanity, and the violation of the laws or customs of war and sentenced to life in prison.
The Trial Chamber established that Ljubiša Beara, who was the Chief of Security of the Bosnian Serb Army Main Staff, was a central figure in the organisation and implementation of the genocide in Srebrenica. Beara used his office to issue instructions to subordinate troops with the aim of conducting the joint criminal enterprise of killing the captive Bosniak males. Beara displayed the same diligence in implementing the criminal plan during the meetings at which the sites of the planned executions were selected. He was found guilty of genocide, extermination, murder and persecutions, crimes against humanity, and violations of the laws or customs of war and sentenced to life in prison.

The Trial Chamber found that Drago Nikolić played an important role in the organisation and implementation of the imprisonment and execution of Bosniak men. Although he held the most junior office of all the indictees in the military hierarchy (he was Chief of Security of the Bosnian Serb Army Drina Corps Zvornik Brigade), Nikolić amply used his post to partake in the joint criminal enterprise and thus gravely violated the Geneva Conventions and military service regulations. He was convicted of aiding and abetting genocide, extermination, murder and persecutions, crimes against humanity, and violations of the laws or customs of war and convicted to 35 years’ imprisonment.

As regards former Deputy Commander of the Bosnian Serb Special Police Brigade Ljubomir Borovčanin, the Trial Chamber concluded that he was part of the joint criminal enterprise aimed at driving the Bosniak population out of Srebrenica. The Chamber also found that as the commander of a 200-men unit, he involved himself in the operations immediately after the fall of Srebrenica, but that he was not present during the executions. Borovčanin, however, was present at the execution sites immediately after the executions and had to have known that the crimes had been committed and that they would be committed at a large scale. He was found guilty of aiding and abetting extermination, persecutions, forcible transfer and murder, crimes against humanity, and violations of the laws or customs of war and sentenced to 17 years in jail.

In the view of the Trial Chamber, Radivoje Miletić played a key role in the plan to drive the Bosniak population out of Srebrenica. In his capacity of Chief of Operations and Training of the VRS Main Staff, he took part both in forwarding information to Bosnian Serb President Radovan Karadžić, and in conveying the orders of the top military-civilian Bosnian Serb leadership to the subordinate commanders. The Trial Chamber concluded that Miletić had played the main role in the drafting of Directive 7, according to which the attack on Srebrenica and Žepa was conducted. He also took part in the implementation of all elements of the Directive, including the restriction of humanitarian aid to enclaves, termination of all communication between the enclaves and the outside world, participation in the imprisonment of the Bosniak population and search for the Bosniak survivors after the fall of the enclaves. He was found guilty of murder, persecutions and cruel treatment as crimes against humanity and sentenced to 19 years in prison.
The Trial Chamber found that Milan Gvero was aware of the joint criminal enterprise to drive the Bosniak population of out Srebrenica and Žepa by force and prevent by all means an international intervention to protect the population in the enclaves. Gvero, one of the leading military officers of the Bosnian Serb Army, directly conveyed information to General Ratko Mladić. The Trial Chamber also established that Gvero had ad hoc jurisdiction during the joint criminal enterprise to forcibly remove Bosniaks out of Srebrenica and Žepa and that he participated in all stages of the plan. He was found guilty of persecution and inhumane acts, crimes against humanity, and sentenced to five years’ imprisonment.

The Trial Chamber found that Vinko Pandurević was not part of the joint criminal enterprise to drive the Bosniak population out of Srebrenica and Žepa. However, as commander of the Zvornik Brigade, he took part in the military operation “Krivaja–95”, aimed at seizing Srebrenica and Žepa. The Trial Chamber concluded that Pandurević had not directly participated in the killings after the enclaves were seized, but that he had failed to prevent the wounded prisoners from being taken from the Milići hospital and killed. He was found guilty of aiding and abetting murder, persecutions and cruel treatment, crimes against humanity, and violations of the laws or customs of war and convicted to 13 years in jail.

The trial of the seven indictees opened on 21 August 2006 and closed on 10 June 2010. A total of 315 witnesses were heard and over 5000 pieces, nearly 90,000 pages of evidence, were presented. This was the largest case tried by the ICTY in terms of the number of witnesses and quantity of evidence.

Veselin Šljivančanin (IT–95–13/1). – In its review of the judgement, the Appeals Chamber on 8 December vacated the sentence of 17 years’ imprisonment pronounced against former JNA Officer Veselin Šljivančanin on 5 May 2009 and sentenced him to 10 years in jail. His conviction was reviewed after new evidence in the form of a testimony was presented to the Chamber. The Appeals Chamber found it sufficed to acquit Šljivančanin of charges of aiding and abetting the murder of at least 194 prisoners at Ovčara near Vukovar in 1991. His responsibility for aiding and abetting torture was not disputed. This is the first time the ICTY modified its prior judgement in this way.

Šljivančanin had been tried together with Mile Mrkšić, a former JNA Colonel, who was sentenced to 20 years in jail for aiding and abetting murder, torture and cruel treatment committed by the imposition of inhumane conditions of detention in the hangar at Ovčara near Vukovar on 20 and 21 November 1991, when at least 194 Croatian POWs were killed.

The Trial Chamber had found Šljivančanin guilty of aiding and abetting torture because he had failed to issue adequate instructions to JNA guards at Ovčara and ensure that the JNA guards at Ovčara under his control take measures to prevent the members of the Territorial Defence (TO) and paramilitary forces from torturing the prisoners. With respect to his responsibility for aiding and abetting murder, the
Appeals Chamber took a different view from the Trial Chamber. It concluded the Trial Chamber erred when it acquitted Šljivančanin on the count of aiding and abetting the murder of at least 194 prisoners at Ovčara. The Chamber concluded that the only “reasonable inference was that upon learning of the order to withdraw the JNA troops from Mrkšić.... Šljivančanin realised that the TO and paramilitary forces would likely kill the POWs and that if he failed to act, his omission would assist in the murder of the prisoners”. Based on new evidence, the testimony of former JNA Lieutenant Colonel Miodrag Panić, obtained during the review proceedings, the Appeals Chamber concluded that Šljivančanin had not learned from Mrkšić that the JNA troops would withdraw from Ovčara and that he could not be held responsible for aiding and abetting the murder of the prisoners by his omission to act.

_Haradinaj et al (IT–04–84)_. – The ICTY Appeals Chamber on 19 July 2010 quashed the judgement acquitting Ramush Haradinaj and Idriz Balaj of crimes against humanity and violations of the laws or customs of war in the Dukagjin Operational Zone, comprising the municipalities of Peć, Dečani, Đakovica and parts of the Istok and Klina municipalities in the March-September 1998 period, and sentencing the third indictee, Lahi Brahimaj, to six years in jail for cruel treatment of prisoners, and ordered their retrial. Haradinaj and Balaj will be retried on 6 of the 37 counts in the indictment, i.e. for violating the laws or customs of war (murder, torture, cruel treatment and unlawful detention) in the KLA camp in Jablanica, near Dečani. Brahimaj will be retried on three counts in the indictment, for violating the laws or customs of war (murder, torture and cruel treatment) also in the Jablanica camp. This is the first time the ICTY quashed a judgement and ordered a retrial.

In its judgement of 3 March 2008, the Trial Chamber found that the evidence presented by the Prosecution was insufficient to corroborate accusations of the existence of a joint criminal enterprise and alleged joint criminal objective of the indictees and found Haradinaj, Balaj and Brahimaj not guilty of these crimes. The Trial Chamber established that the Prosecution proved that KLA members committed crimes but that it had failed to prove beyond reasonable doubt that the other two indictees were involved in or responsible for them, with the exception of two instances (in which it established Brahimaj’s culpability). As he was reading the judgement, judge Alphons Orie said that the Chamber encountered “significant difficulties” in securing the testimony of a large number of witnesses and that the Chamber gained a strong impression that the trial was being held in an atmosphere where the witnesses felt unsafe.

The Prosecution appealed the judgement, arguing that the Trial Chamber erred when it refused its requests for additional time to exhaust all reasonable steps to secure the testimony of two crucial witnesses, who refused to testify before the Tribunal fearing for their lives.

The Appeals Chamber quashed the Trial Chamber judgement acquitting Haradinaj and Balaj of participation in a joint criminal enterprise resulting in the violations of the laws or customs of war (murder, cruel treatment, unlawful detention,
torture and other inhuman treatment) in the KLA camp in Jablanica at Dečani. It also quashed the Chamber judgement acquitting Brahimaj of participation in a joint criminal enterprise resulting in the violations of the laws or customs of war (murder, torture and cruel treatment) in the Jablanica camp. The Appeals Chamber did not uphold the Prosecution’s motion to overturn the part of the judgement acquitting Brahimaj on the charges of violating the laws or customs of war (aiding and abetting murder) and rape, murder and cruel treatment. The Appeals Chamber also rejected Brahimaj’s appeal, seeking the quashing of the judgement sentencing him to six years in jail for cruel treatment and torture and upheld his conviction for those crimes.

Most members of the Chamber concluded that the Trial Chamber failed to take sufficient steps to counter the witness intimidation that permeated the trial and, in particular, to facilitate the Prosecution’s requests to secure the testimony of the two witnesses expected to provide testimonies on the central aspects of the case. The retrial was ordered precisely to ensure that these two witnesses testify.

The Trial Chamber ordered the detention on remand of all three indictees in the ICTY Detention Unit.

Contempt Cases

Vojislav Šešelj (IT–03–67-R77.2). – The ICTY Appeals Chamber on 19 May upheld the Trial Chamber judgement of July 2009 finding Vojislav Šešelj guilty of contempt of court and sentencing him to 15 months in jail for disclosing the names and other personal information about protected witnesses in a book he authored.

Šešelj, the President of the Serbian Radical Party, is standing trial for war crimes committed in Bosnia-Herzegovina, Croatia and Serbia (parts of Vojvodina, notably Srem) in the 1991–1994 period.

The Trial Chamber on 21 January 2009 filed an order in lieu of an indictment charging Šešelj with knowingly and wilfully interfering with the administration of justice by disclosing confidential information in violation of orders granting protective measures in respect of three witnesses testifying at his trial. Šešelj admitted he was the author of the book that was published after the witnesses gained the status of protected witnesses. He, however, entered a plea of not guilty the first time he appeared in court. The Trial Chamber said it reached the judgement to ensure that everyone is deterred from such conduct, bearing in mind the potential harmful impact the revelation of the protected witnesses’ identity may have on their trust in the Tribunal’s ability to guarantee the effectiveness of the protective measures.

973 Pursuant to Rule 77 (D) of the ICTY Rules of Procedure and Evidence, if the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may direct the Prosecutor to prosecute the matter or issue an order in lieu of an indictment and either direct amicus curiae to prosecute the matter or prosecute the matter itself.
The Appeals Chamber upheld the first-instance judgement in its entirety and ordered Šešelić to remove the book, his initial notice of appeal and his initial appellant’s brief from his website.

Zuhdija Tabaković (IT–98–32/1-R77.1), in the trial Lukić et al (IT–98–32/1). – The ICTY Trial Chamber on 18 March 2010 found Zuhdija Tabaković in contempt of court and sentenced him to a single three-month term of imprisonment for accepting a bribe to sign a false statement in the proceedings against Milan and Sredoje Lukić. He admitted that he had accepted a 1000-euro bribe as a witness for the defence and signed a false statement, which Milan Lukić’s defence counsel was to have used at the trial. He was given the money by Jelena Rašić, the case manager for Milan Lukić’s defence at the time. He also admitted to having contacted persons X and Y on behalf of Milan Lukić’s defence, who also signed the false statement. The Trial Chamber said this crime would normally warrant stricter punishment but that, given that the accused recognised the gravity of his crime and showed genuine remorse and in view of his extremely dire financial situation, it decided that three-month imprisonment was appropriate punishment. Tabaković did not appeal the judgement.

2.13.2. War Crime Trials in Serbia

2.13.2.1. Introduction. – The War Crimes Department of the Belgrade Higher Court, which replaced the erstwhile Belgrade District Court War Crimes Chamber, has been adjudicating war crimes and gross violations of international law in the first instance since 1 January 2010. Appeals, which used to be heard by the Supreme Court of Serbia, are now reviewed by the Belgrade Appellate Court Special War Crimes Department. Criminal prosecution of these cases is conducted by the War Crimes Prosecution Office, defined as a public prosecution office with special jurisdiction in the whole territory of Serbia charged with prosecuting war crimes both in the first and second instances.

The War Crimes Prosecution Office indicted 133 persons since it was founded in 2003. Thirty-three of them were convicted and nine were acquitted by a final judgement by the end of 2010. Another fourteen were convicted and four were acquitted in the first instance. Nine trials of 58 defendants altogether were under way at the end of 2010. The Prosecution Office filed indictments against 20 people in 2010. Many more were being investigated during the year. Two investigations conducted by the War Crimes Prosecution Office attracted a lot of public attention in 2010.

The War Crime Prosecution Office investigation against former Bosnia-Herzegovina Presidency President Ejup Ganić, suspected of ordering the attack on a JNA column in Dobroboljačka Street in Sarajevo in 1992 that left over 60 people

974 Public Prosecution Act, Sl. glasnik RS, 116/08, Art. 13(2).
975 Ibid, Art. 30 (3).
dead, drew much attention both in Serbia and in Bosnia-Herzegovina in July, when the UK reviewed the motion for Ganić’s extradition filed by Serbia after his arrest five months earlier in accordance with the warrant issued against him. The City of Westminster Magistrate’s Court refused to extradite Ganić, because it found that the proceedings against him in Serbia were instituted and conducted for political purposes. The Court reached this conclusion after it was inter alia told that the ICTY Prosecution and Bosnia-Herzegovina Prosecution Office had already investigated Ganić’s involvement in the crimes the Serbian War Crimes Prosecution Office was investigating and that both concluded that there were no grounds for his criminal prosecution and that the Serbian War Crimes Prosecution Office did not have any new evidence warranting criminal prosecution.976

Another War Crimes Prosecution Office investigation – into allegations of illicit trafficking in human organs in Kosovo and northern Albania – again provoked much attention, this time beyond Serbia as well, when Council of Europe Special Rapporteur Dick Marty in December published a report confirming the allegations of the War Crimes Prosecution Office, which has claimed that some members of the KLA, headed by current Kosovo Prime Minister Hashim Thaçi, organised prisons in northern Albania where they extracted the organs of the prisoners, mostly Serbs captured after the FRY troops withdrew from Kosovo in 1999, and sold them, following which the prisoners disappeared.977

Pursuant to the Seizure and Confiscation of Proceeds from Crime Act, the War Crimes Prosecution Office was in 2010 also conducting financial investigations against over 50 people, accused of crimes in Croatia, Bosnia-Herzegovina and Kosovo.

2.13.2.2. War Crime Judgements Delivered in 2010. – The special war crimes court was active in 2010. It rendered several judgements in the first and second instances and filed a number of indictments.

Second Instance Decisions

Mitrović et al (Suva Reka, Kosovo). – The Belgrade Appellate Court on 12 October upheld the Belgrade District Court War Crimes Chamber judgement of 23 April 2009, acquitting former commander of the Special Police Units (PJP) 37th detachment Radoslav Mitrović, former Suva Reka Assistant Chief of Police Nenad Jovanović and Suva Reka reserve policeman Zoran Petković of war crimes against the civilian population due to lack of evidence and convicting of the crime two Suva Reka policemen, Slađan Čukarić and Miroslav Petković, to 20 and 15 years’ imprisonment respectively, and state Security Service officer Milorad Nišavić to

13 years’ imprisonment. The first-instance judgement was quashed only in the part regarding the former Suva Reka Chief of Police Radoje Repanović due to gross violations of the criminal procedure, and he has been retried by the Belgrade Higher Court War Crimes Department.978

The convicted men were found to have killed 50 Albanian civilians, between 1 and 100 years of age, in Suva Reka (Prizren municipality) on 26 March 1999. The bodies of five victims were buried at the Suva Reka cemetery while the remains of the other victims were first buried in a mass grave at an army shooting range at the villages of Ljubižde and Koruša (municipality of Prizren). Their bodies were disinterred a few days later and transported in refrigerator trucks to Batajnica at Belgrade, where they were reburied.

The Prosecution Office faced grave problems during the trial, because only a few witnesses were willing to testify about the crime. Most of the witnesses, Serbian residents of Suva Reka, said that they had not heard about the killing of their 50 fellow townsmen until it was mentioned at Slobodan Milošević’s trial before the ICTY.

Jurišić (Tuzla Column, Bosnia-Herzegovina). – The Belgrade Appellate Court on 11 October overturned the first-instance conviction rendered against Ilija Jurišić by the Belgrade District Court on 28 September 2009 and ordered his retrial. The first-instance court had found Jurišić guilty of using unlawful means of combat and sentenced him to 12 years in jail.

Jurišić, formerly a senior Bosnia-Herzegovina MIA officer, who was on duty in the Tuzla police operational headquarters on 15 May 1992, was accused of obeying his superior’s order and ordering the armed Croatian-Bosniak units to attack the JNA 92nd Motorised Brigade that was peacefully withdrawing from Tuzla under an alleged ceasefire agreement between the Bosnian and Yugoslav authorities. At least 50 JNA soldiers were killed and at least 44 were wounded in the attack.

Before ordering a retrial, the Appellate Court opened a hearing and heard new witnesses whom the first-instance court had refused to hear although the defence called them as witnesses, and concluded that their testimonies brought into question the evidence presented at the first-instance trial and on which the first-instance judgement was based. This is why it ordered the new Belgrade Higher Court War Crimes Department to clarify the contradictions and issues relevant for the rendering of a lawful and correct judgement. It simultaneously ordered Jurišić’s release from custody and he returned to Tuzla. Although the defendant’s presence can no longer be ensured, the Prosecution Office did not oppose the decision to release him from custody and Jurišić’s counsel said that he would respond to court summons and appear at his trial.979

978 See Repanović (Suva Reka, Kosovo).
979 See http://www.slobodnaevropa.org/content/Ukinuta_presuda_Jurisicu_nalozeno_novo_sudjelenje/2187106.html.
Proceedings against Jurišić have attracted a lot of attention both in Bosnia-Herzegovina and in Serbia and led to the deterioration in the two states’ political relations after he was arrested in Belgrade in May 2007.\textsuperscript{980} The grounds of the accusations and the fairness of his trial were brought into question from the very start and the Humanitarian Law Centre (HLC), which monitored the trial, said in its press release on the quashing of the first-instance judgement that the first-instance court had made numerous errors, above all, by refusing to hear the witnesses who had knowledge of Jurišić’s activities and powers. The HLC underlined that both the indictment and the first-instance judgement were based on non-existent evidence, an agreement on the peaceful withdrawal of JNA troops from Bosnia-Herzegovina allegedly concluded between Bosnia-Herzegovina and the FRY in Skopje on 27 April 1992.\textsuperscript{981} During the proceedings, the Serbian Defence Ministry sent a memo to the Court notifying it that it did not have a copy of the agreement, because it was destroyed during the 1999 air strikes. The War Crimes Prosecution Office is proving the existence of the agreement by citing the Military Security Agency report according to which the agreement was signed by Bosnian President Alija Izetbegović and the then JNA Chief of Staff Blagoje Adžić in the presence of the then Deputy Vice President of the SFRY Presidency Branko Kostić. The HLC is, however, of the view that the state institutions are issuing false statements to corroborate the prosecution’s allegations and recalls that the then UN Secretary General Boutros Boutros Ghali wrote in his report of 30 May 1992 that the meeting between the representatives of Bosnia-Herzegovina and the FRY held in Skopje had not resulted in an agreement.\textsuperscript{982} In its decision on Ganić’s extradition to Serbia, the City of Westminster Magistrates’ Court said that the Deputy War Crimes Prosecutor Milan Petrović, who prosecuted Ilija Jurišić, acknowledged during cross-examination before the Court that no such agreement between BiH and the FRY had been reached.\textsuperscript{983} Serbian War Crimes Prosecutor Vladimir Vukčević, however, claims that Petrović had not said that the agreement had not been reached, but that there was not a written copy of the agreement, because it was destroyed during the air strikes.\textsuperscript{984}

Jurišić’s retrial had not been scheduled by the end of 2010.

\textit{Popović and Stojanović (Bytyqi Brothers’ Murder, Petrovo Selo, Serbia).} – The Belgrade Appellate Court on 1 November overturned the judgement rendered on 22 September 2009 by the then Belgrade District Court War Crimes Chamber acquitting Sreten Popović and Miloš Stojanović of charges of war crimes against prisoners of wars and ordered their retrial.

\textsuperscript{980} See Report 2009. II.2.13.2.2.
\textsuperscript{982} Ibid.
Popović and Stojanović, members of the Operational Search Group operating within the PJP in July 1999, are accused of unlawfully depriving of liberty Yili, Agron and Mehmet Bytyqi as they were leaving the prison in Prokuplje, where they had served sentences for illegally crossing into Yugoslavia, and of transferring them to a police camp in Petrovo Selo, where they were taken over and killed by as yet unidentified members of the Special Anti-Terrorist Unit. The trial opened in November 2006 and the War Crimes Prosecution Office opened an investigation against several more people suspected of involvement in this crime during the main hearing, including former Chief of Police Vlastimir Đorđević, suspected of ordering the crime. However, only Popović and Stojanović were indicted for killing the Bytyqi brothers by the end of 2010.

The Appellate Court ordered a retrial, because “the verdict did not cite the reasons concerning the decisive facts and not all the facts have been established”. It was clear during the main hearing that it would be difficult to establish the facts, because the policemen who were in Petrovo Selo at the time the crime was committed and testified in court would not reveal who committed it, although it was evident that they knew who had pulled the trigger.985

Sireta (Ovčara, Croatia). – The Appellate Court in Belgrade on 20 September 2010 modified the 20-year imprisonment sentence the Belgrade District Court handed down to Damir Sireta for crimes against POWs at the Ovčara farm near Vukovar and convicted him to 15 years in jail. The Appellate Court was of the view that the first-instance court had not attached adequate importance to the extenuating circumstances and had not weighed the aggravating circumstances well.

Sireta had been a member of the Vukovar Territorial Defence and was tried separately from the other defendants accused of killing 200 POWs at Ovčara because he was at large at the time the first indictment was filed. He was arrested in Norway, where he was living, in late 2006 and extradited to Serbia in May 2008, although Croatia, too, had sought his extradition because he was convicted there to 12 years’ imprisonment in absentia for killing a prisoner in Vukovar in 1991.

Vujović et al (Ovčara, Croatia). – The Belgrade Appellate Court on 14 September 2010 upheld the verdict of the Belgrade District Court War Crimes Chamber finding 13 people guilty and acquitting five people for the murder of 200 POWs at the Ovčara farm near Vukovar in November 1991. It modified the convictions against two defendants; Nada Kalaba’s nine-year prison sentence was increased to 11 years’ imprisonment, while Ivan Atanasijević’s 20-year prison sentence was reduced to 15 years’ imprisonment. The Court upheld the convictions of the other defendants: Miroljub Vujović, Stanko Vujanović, Predrag Milojević, Đorđe Šošić, Miroslav Danković and Saša Radak were each sentenced to 20, Milan Vojnović to 15, Jovica Perić to 13, Milan Lančužanin to 6, and Predrag Dragović and Goran

985 See Report 2009, II.2.13.2.2.
Mugoša to 5 years in jail each. The Appellate Court also upheld the acquittals of Marko Ljuboja, Slobodan Katić, Predrag Madžarac, Vujo Zlatar and Milorad Pejić.

The indictees were members of the Vukovar Territorial Defence and the Leva supoderica volunteer unit (comprising SRS volunteers) under the command of the then JNA. The trial revealed that they took 200 POWs out of the Vukovar hospital in the night of 20/21 November 1991, and first beat them up, physically injured them and treated them with cruelty, violating their human dignity. They then killed some of the prisoners at Ovčara and executed most of them nearby.

The defendants’ attorneys claimed during the appeal proceedings that the victims could not have the status of POWs and accordingly the protection guaranteed by the Geneva Conventions given that Croatia was still not an internationally recognised state at the time and that the armed conflict could not be defined as an international one, which is prerequisite for applying international humanitarian law rules regarding POWs. The Court dismissed the argument and invoked the ICTY judgement in the Blaškić case, according to which a person captured during a conflict that is not international in character may have the status of POW if the parties to the conflict so agree, which was the case in the conflict in Croatia. Interestingly, this is the first time a court in Serbia directly cited in its judgement a legal interpretation in an ICTY ruling.

The trial began back in March 2004. The War Crimes Chamber in December 2005 rendered a first-instance judgement convicting 9 of the initial 16 indictees to maximum 20-year imprisonment terms and acquitting only two of them. The Supreme Court quashed the judgement in October 2006 and ordered a retrial. In March 2007, the Supreme Court also overturned the judgement against Saša Radak, convicted to 20 years’ imprisonment for the same crime, and ordered his retrial. The two indictments were then consolidated and subsequently amended by charges against Milorad Pejić, indicted in April 2008 for the Ovčara crime. The retrial opened in March 2007 and the Chamber rendered the first-instance judgement on 12 March 2009.

Đukić et al (Podujevo, Kosovo). – The Belgrade Appellate Court War Crimes Department on 15 June upheld the judgement against three former members of the Scorpions unit, accused of war crimes against the civilian population in Podujevo in 1999. It overturned the part of the judgement regarding defendant Željko Đukić, who had been sentenced to 20 years’ imprisonment, because his conviction was based only on the testimony of a protected witness, which is in contravention of the Criminal Procedure Code, and ordered his retrial. Dragan Medić and Dragan Borojević were each convicted to 20 and Miodrag Šolaja to 15 years’ imprisonment after the court established that they opened fire from their automatic weapons at a group of 19 Albanian civilians, women and children in the yard of the Gashi home, killing 14 of them (seven of whom were minors) and wounding the other five, aged between 6 and 14. The youngest victim was 2 and the oldest 69 years old.
The trial opened on 8 September 2008. Another member of the Scorpions, Saša Cvjetan, had been sentenced to 20 years in jail by the Belgrade District Court in 2005 for the same crime. Former chief of police Vlastimir Đorđević was indicted for this crime by the ICTY.

Malić (Stari Majdan, Bosnia and Herzegovina). – The Belgrade Appellate Court War Crimes Department on 21 May upheld the Belgrade District Court judgement of 7 December 2009 convicting Nenad Malić to 13 years in jail for war crimes against the civilian population at Stari Majdan (Sanski Most municipality, Bosnia-Herzegovina). Malić was indicted for the same crime by the Cantonal Court in Bihać (Bosnia-Herzegovina) in absentia back in 2002. At the request of that court, the BiH Ministry of Justice ceded the case to the Serbian judiciary and asked it to criminally prosecute Malić. The evidence convinced the Belgrade court that Malić, who had been a member of the Bosnian Serb Army 6th Krajina Brigade, had killed two Moslem civilians and attempted to murder another civilian in Stari Majdan in the evening of 21 December 1992 in a state of diminished capacity.

The trial opened on 18 September 2009.

First-Instance Judgements

Repanović (Suva Reka, Kosovo). – The Belgrade Higher Court War Crimes Department on 15 December convicted former Suva Reka Chief of Police Radojko Repanović to 20 years in prison for war crimes against the civilian population. The judicial panel concluded that Repanović singled out a group of 10 or so active and reserve police officers in Suva Reka on 26 March 1999 and ordered them to attack the so-called Berisha settlement and kill civilians. After they killed around 50 civilians, he selected another group of policemen and ordered them to load the bodies onto a truck together with the Civilian Defence members and drive them away.

Repanović was convicted at a retrial ordered by the Belgrade Appellate Court on 12 October 2010 after it reviewed the appeals of the judgement against seven defendants found guilty of this crime on 23 April 2009 and quashed the verdict against Repanović over gross violations of the criminal procedure code. The Appellate Court was of the view that the grounds invoked for sentencing Repanović in the judgement were unclear and controversial to a considerable extent.

Grujić and Popović (Zvornik, Bosnia and Herzegovina). – The Belgrade Higher Court judicial panel on 22 November rendered its judgement against Branko Grujić and Branko Popović, accused of war crimes against the civilian population in the territory of the Zvornik Municipality in 1992. Grujić, the former head of the Interim Government of the Serb Municipality of Zvornik and commander of the municipal War Headquarters, was sentenced to six years in jail, while Branko Popović,

986 See Report 2009, II.2.13.2.2.
the former commander of the Territorial Defence Headquarters, was sentenced to 15 years’ imprisonment.

The investigation into the crimes in the Zvornik Municipality was launched by the ICTY Prosecution Office, which ceded it to the Serbian War Crimes Prosecution Office in 2004. The latter in 2005 filed an indictment against seven people, including Grujić and Popović. A new indictment was filed against the two in 2008; it, too, regards crimes in Zvornik and its vicinity, and was consolidated with the first indictment; Grujić and Popović are tried separately from the other defendants.987

Grujić and Popović are accused of ordering and using death threats to drive 1,822 Bosniak civilians out of the Kozluk and Skočić villages; these people were shipped to Hungary via Serbia. The two men are also accused of singling 174 male civilians, aged between 18 and 60, out of a column of refugees from the village Divič, together with the Yellow Wasp paramilitaries and the Pivarski detachment members, and holding the men captive in a building in Zvornik. Two unidentified members of the Territorial Defence then took 11 captives out of the building and they were never seen alive again. Bodies of six of the victims were found in the secondary mass grave Ramin grob.

They transferred the other 163 people to the Čelopek Culture Hall, where they kept them in inhuman conditions, tortured and abused them and where at least 27 of them were killed. Both defendants are accused of holding prisoners in inhuman conditions. Popović is also charged with not taking any measures to prevent the members of the Territorial Defence from beating, physically injuring, maiming and killing the prisoners although, by virtue of his post, he was obliged to do so and could have taken steps to ensure the human treatment of the prisoners in the specific circumstances. Popović is also accused of ordering the unlawful detention of Bosniaks, who were held in inhuman conditions at two other sites (a cattle slaughtering facility at the Ekonomija farm and in a factory known as Ciglana). These prisoners were also abused and two of them were killed. Popović is charged with knowing about these crimes and doing nothing to prevent them although, by virtue of his post, he was obliged to and could have done so. Therefore, Popović is accused of torture and murder by his omission to act, which constitutes a form of culpability identical in character to so-called command responsibility, an institute that had not been applied before courts in Serbia until this case. The first-instance court accepted this form of responsibility and found Popović guilty of omission to prevent the crimes.

Popović is also accused of the unlawful detention and inhuman treatment of civilians in the Zvornik Misdemeanour Courthouse and the Novi izvor building. According to the indictment, he singled out 10 prisoners held there, had them transferred to Black Mount near Zvornik and killed. He is also accused of beating up and holding captive a woman for allegedly spreading rumours about the abuse of Bosniaks in the Čelopek Culture Hall.

987 More on the proceedings against the other indictees in Report 2009, II.2.13.2.2.
In 2008, Grujić and Popović were also accused of taking around 700 civilians hostage, holding them captive in the Karakaj Technical School Centre and treating them inhumanly, after the deportation of Bosniaks from several villages around Zvornik had been agreed. These hostages were later killed. Bodies of 352 of them found in mass graves around Zvornik have been identified.

After a five-year trial, the judicial panel ruled that Grujić and Popović were guilty of taking hostages and inhumanly treating them on two occasions, the first time when they took prisoner 174 Bosniaks from the Divič village, and the second time, when they took prisoner around 700 Bosniaks from the Zvornik villages, and of driving out by force 1,649 Bosniaks from the Kozluk village. The panel found Popović also guilty of inhuman treatment of prisoners in the Zvornik Misdemeanour Courthouse and Novi izvor building and for aiding and abetting the murder of one of them, for aiding and abetting the murder of 27 and wounding of scores of civilians in the Čelopek Culture Hall, for aiding and abetting the murder of at least 352 civilians and the physical abuse of the people held captive in the Karakaj Technical School Centre.

The Prosecution Office said it would appeal the sentences, because they did not reflect the “responsibility of the accused given the number of victims, the proportions and the brutality of the crimes”. The families of the victims also think that the rendered convictions are too mild.

The Serbian war crimes authorities indicted 14 people for crimes in Zvornik by the end of 2010. The number of victims and the nature of the crimes clearly indicate that many more people had been involved in the commission of the crime. Some of them are in Serbia and within the reach of the prosecution authorities.

Darko Radivoj (Tenja, Croatia). – Darko Radivoj, a former militia member within the Tenja Territorial Defence, was sentenced to 10 years in jail by the Belgrade Higher Court War Crimes Department on 17 November 2010. The court found that on 20 November 1991, he took a wounded prisoner, a member of the Croatian Army, Marjan Pleteš, out of the infirmary and killed him from an automatic rifle near the Ćelije village cemetery. The judgement states that Radivoj killed Pleteš “just because he is a Croat” and considered as aggravating circumstances Radivoj’s conduct after the crime, because he left Pleteš’s body lying on the ground and said “F... his Ustasha mother”.

The Osijek Military Court had convicted Radivoj to 12 years in jail for the crime of terrorism, under Article 236 of the Croatian Criminal Code, but the enforcement of the penalty was discontinued pursuant to the Croatian General Pardon Act.

Vujanović (Vukovar, Croatia). – The Belgrade Higher Court War Crimes Department on 1 November 2010 convicted Stanko Vujanović to 9 years’ imprisonment...
ment for a war crime against the civilian population. It established that Vujanović killed Ivan Sever and Adam Luketić in the Sever family home in Vukovar. Together with another as yet unidentified man in uniform, Vujanović, a member of the Vukovar Territorial Defence operating within the former JNA at the time, entered the Sever family home. He threatened the two men with a gun and forced them to leave the house. Vujanović then ordered his accomplice to stand at the basement door and not let the three women out. He then killed the two men in the garage. When the wife of Ivan Sever heard the shots and tried to get out of the basement, Vujanović’s accomplice threw a hand grenade, leaving two women, Ruža Luketić and Marija Kotleba, dead and causing serious injuries to Blaženka Sever (she lost an eye, broke her wrist, elbow and collar bone, lost her index finger, and suffered injuries to her arm nerves and hearing).

As Vujanović had already been convicted by a final decision to the maximum 20-year imprisonment sentence for killing Croatian POWs at the Ovčara farm, the judicial panel sentenced Vujanović to a single 20-year term of imprisonment.

**Kesar (Prijedor, Bosnia and Herzegovina).** – The Belgrade Higher Court War Crimes Department on 1 October 2010 convicted former officer of the Bosnian Serb MIA Duško Kesar to 15 years in jail for war crimes against POWs. In the night of 30/31 March 1992 in Prijedor, Kesar and three other Bosnian Serb reserve policemen first threw explosive devices at the home of the Rizvić family, and, after realising that the family survived the attack, they killed Faruk and Refika Rizvić and Faila Mahmuljin. The victims were gravely beaten by blunt objects and sustained multiple skull fractures and brain tissue destruction. The defendants slit Faruk Rizvić’s throat and let him bleed to death. The killers earlier agreed “to go and kill Moslems”.

Kesar was tried in Serbia because he was out of the reach of the Bosnia-Herzegovina, notably the Bosnian Serb, authorities. The Bosnian Serb Supreme Court in 2006 rendered a final judgement finding guilty his three accomplices: Drago Radaković and Draško Krndija were sentenced to 20 years in jail each and Radoslav Knezević to 10 years’ imprisonment.990

**Đukić (Podujevo, Kosovo).** – Former Scorpion unit member Željko Đukić was sentenced to 20 years in jail at a retrial before the Belgrade High Court War Crimes Department on 22 September 2010. The court found that he took part in the killing of 14 and wounding of 5 civilians in Podujevo on 28 March 1999. He was in the group of Scorpion members who fired shots at a group of 19 civilians, women and children, in the yard of a house in Podujevo, killing 14 of them, seven of whom were children, and gravely wounding five of them.

Before that, on 15 June 2010, the Belgrade Appellate Court rendered a final judgement in this case, sentencing Dragan Medić and Dragan Borojević to 20 years

and Miodrag Šolaja to 15 years’ imprisonment. It quashed the part of the verdict convicting Đukić to 20 years in prison because it was based only on a statement by a protected witness, which is in contravention of the Criminal Procedure Code.

Saša Cvjetan, another Scorpion member, was convicted by the Belgrade District Court to 20 years’ imprisonment for the same crime in 2005.

Španović (Stara Gradiška, Croatia). – The Belgrade Higher Court War Crimes Department on 25 June convicted Milan Španović, a former member of the Serb Autonomous Area (SAO) Krajina Territorial Defence to five years’ imprisonment for a war crime against the civilian population. The court found that he tortured Croatian civilians, physically injured them and caused them grave suffering, physical and mental anguish, in the Stara Gradiška prison between October 1991 and January 1992. His treatment of the civilians was motivated by revenge because his brother had been killed during the armed conflicts in Croatia.

The Požega County Prosecution Office, which had instituted the proceedings against Španović, ceded them to the Serbian War Crimes Prosecution Office pursuant to the Agreement on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide between the Serbian War Crimes Prosecution Office and the Croatian State Prosecution Office.

Lazić et al (Medak, Croatia). – The Belgrade Higher Court War Crimes Department judicial panel on 23 June 2010 sentenced Milorad Lazić and Nikola Konjević to three years’ imprisonment each, Mirko Marunić to two years’ imprisonment and acquitted Perica Đaković, for war crimes against POWs.

The court found that Lazić, Konjević and Marunić tortured Mirko Medunić, a Croatian police officer who had surrendered to them between 3 and 9 September 1991 in the Medak police station (Gospić municipality). Whilst interrogating him, they took turns hitting him with their hands, legs, bats, a wooden pale, slashed and stabbed him with a knife, causing him huge pain and loss of consciousness a number of times.

The three- and two-year imprisonment sentences are below the legal minimum for this crime warranting minimum five years’ imprisonment. Under the law, a penalty below the legal minimum may be pronounced if the court establishes particular extenuating circumstances indicating that the purpose of punishment can be achieved by a milder penalty as well. In the reasoning of the judgement, the presiding judge, Vinka Beraha-Nikićević listed as alleviating circumstances the fact that Lazić had no prior record, that Konjević was a family man without prior convictions, and that Marunić’s family and financial circumstances were dire. She said that the court considered aggravating circumstances with respect to Lazić and Marunić (Lazić displayed exceptional ruthlessness and brutality during the commission of the crime, while Marunić had a prior record for wood poaching and inflicting light bodily injuries), but the panel nevertheless sentenced them to penalties below the legal minimum.
The Humanitarian Law Centre, which followed the trial, qualified the sentence as indecent and humiliating to the victims, one of those judgements likely to discourage Croatian victims from taking part in the war crimes trials in Serbia. Indeed, the penalties are absolutely inappropriate given all the established facts and notwithstanding the circumstances the court qualified as extenuating.

Lazić, Konjević and the acquitted Đaković were each sentenced to eight years’ imprisonment and Marunić and Nikola Vujnović each to 6 years’ imprisonment for this crime by the Gospić County Court back in 1996. Vujnović was charged with the crime before the Belgrade Higher Court War Crimes Department as well, but the Prosecution Office abandoned his prosecution after it concluded that his involvement in the commission of the crime was negligible.

_Bulat and Vranešević (Banski Kovačevac, Croatia)._ – Pane Bulat and Rade Vranešević, former Republic of Serb Krajina Army troops, were sentenced to 15 and 12 years’ imprisonment respectively for a war crime against the civilian population by the Belgrade Higher Court on 15 March. The Court found that the two had killed six Croatian civilians between 63 and 81 years of age, five of them women, in the yard of a house in Banski Kovačevac (Karlovac municipality) in March 1992. At Bulat’s orders, the Republic of Serb Krajina troops threw their bodies into a well, which they then blew up.

This case, too, was ceded to the Serbian War Crimes Prosecution Office by the Croatian State Prosecution Office. The trial opened on 2 September 2008.

**Indictments Filed in 2010**


Koviljko Lovre, Mlađen Marjanović, Vinka Marjanović, Slobodan Koprivica, Milorad Koprivica and Nikola Tepić are charged with hiding Župljanin and sheltering him in their homes, apartments and summer cottages or helping him remain at large directly or through third parties. They are also indicted for financially assisting him, helping him obtain false identity documents, notifying him of the measures the prosecution authorities were undertaking and helping him communicate by letters and written messages.

_Miladinović et al (Ćuška, Kosovo)._ – An indictment against nine people accused of war crimes against the civilian population was raised in September. The
nine men were members of the unit known as the Jackals and operating within the Peć military-territorial department or members of the Territorial Defence. They are accused of killing 43 civilians in the Peć village of Ćuška, confiscating the villagers’ property (over 125,000 DM, jewellery, a number of cars and two trucks), burning down more than 40 houses and over 40 other buildings and forcibly expelling over 400 civilians, notably women, children and old people, from the village.

Marić (Rastovac, Croatia). – The War Crimes Prosecution Office on 12 August filed charges against Veljko Marić, a member of the Croatian armed formations. He is accused of entering the home of the Slijepčević family in the village of Rastovac (Grubišno Polje Municipality) in 1991 and killing Petar Slijepčević in front of his wife. Marić is remanded in custody in Belgrade.

Vukšić et al (Beli Manastir, Croatia). – Charges were filed on 23 June 2010 against four former Beli Manastir policemen accused of war crimes against POWs. They are charged with the unlawful detention, torture and inhuman treatment, intimidation and terrorising of the local population and killing at least six people in the Beli Manastir municipality in 1991.

The criminal proceedings against the four men were initially opened before the Osijek County Court and the case was ceded to the Serbian War Crimes Prosecution Office in 2008.

Budisavljević et al (Lički Osik, Croatia). – Four former SAO Krajina policemen were on 28 June charged before the Belgrade Higher Court War Crimes Department for war crimes against the civilian population in Lički Osik (Gospić Municipality). They are accused of killing the five-member Rakić family.

Bogdanović et al (Zvornik, Bosnia and Herzegovina). – On 30 April, the War Crimes Prosecution Office indicted five people, notably Sima Bogdanović and his son Damir from Ruma, Zoran Stojanović from Loznica, Tomislav Gavrić from Šabac, and Đorđe Šević from Ruma. They are charged with committing war crimes against the civilian population in the Zvornik municipality in 1992 as members of a paramilitary group organised by the main defendant Bogdanović, aka Sima Chetnik.

They are accused of: demolishing the mosque in the Skočić village, from which the Moslem population had already been expelled and in which only the Roma residents were still living; seizing the belongings of the Roma population in the village; beating up and inhumanly treating the local Roma, inter alia by forcing them to have oral sex with each other, forcing close and distant relations to have sex with each other (e.g. grandfather and grandson); killing a man in Skočić; raping several women, including underage girls, under threat of shooting them; cutting off a victim’s penis (Bogdanović is charged with this crime); imprisoning a group of Roma from Skočić and shooting or slaying 22 of them to death in the village of Malešić and throwing them into a pit (one of the killed victims was pregnant and another was raped before she was murdered); wounding an eight-year-old boy –
when he asked to join his mother, they replied “you’ll go to your mother now” and then shot him, stabbed him and threw him into the pit; holding prisoner for several months three women, two of whom were under age (and whom they previously raped in Skočić), forcing them to work and raping them and letting numerous other paramilitaries rape them, beating them up and humiliating them in various ways (Stojanović took one of the victims back to Serbia with him after the war and she did not manage to run away until 2007).

Pursuant to the Seizure and Confiscation of Proceeds from Crime Act, the War Crimes Prosecutor ordered a financial investigation against five of the indictees in this case, as the evidence collected proves that they own property the value of which is disproportionately higher than their legal incomes; they have been charged with plunder in the Zvornik area.

Janković (Zvornik, Bosnia and Herzegovina). – Darko Janković, aka Pufta, was on 26 April accused of war crimes against POWs in the Zvornik area in 1992. Janković, who was a member of a paramilitary unit known as the Pivarski detachment at the time, is charged with complicity in the murder of at least 13 Moslem civilians and the torture and inhuman treatment of civilians held prisoner in the Čelopek Culture Hall, the Ekonomija farm and the site known as Ciglana.

Three paramilitary troops have already been sentenced by final binding decisions for these crimes993 During their trial, numerous witnesses testified that a person by the nickname of Pufta also took part in the commission of the crimes. The identity of the man remained unknown for a long time. When the prosecution authorities established that Darko Janković was the perpetrator in question, they issued an arrest warrant and he was remanded in custody on 3 January 2010.


2.14.1. Legislation and Treatment of Asylum Seekers in Practice

Serbia is on the route used by huge numbers of illegal migrants from African countries, Afghanistan and the Middle East, passing through Turkey, Greece, Bulgaria and Romania towards Hungary and other EU states. According to the European Commission Serbia Progress Report, 3,400 people entered Serbia illegally with that goal in 2010 alone (Blic, 9 November, p. 6). As the number of illegal migrants passing through Serbia is expected to increase, the competent institutions and NGOs need to improve their capacities and coordination.

Subsidiary protection has to date been approved to five people (coming from Iraq, Somalia and Ethiopia), three of whom have already left Serbia. The number of asylum seekers has increased ten times since the Asylum Act came into force in

993 See Report 2009, II.2.2.13.2.
2008 – some 550 people applied for asylum in 2010. A total of 500 people sought asylum in Serbia from 15 January to 15 December 2010.994

Most illegal migrants pass through Serbia with the aim of seeking asylum in an EU country. This is why many of them, who express the intention to apply for asylum in Serbia, only do so to give themselves time to recuperate and prepare for their onward journey – they are provided with accommodation and are entitled to an ID, with which they can collect the money transferred through Western Union, et al. Submission of a formal application for asylum in Serbia does not preclude them from seeking asylum in EU countries. If the continuation of their journey is brought into question for other reasons, e.g. if they risk charges for illegal entry, these persons as a rule leave Serbia before formally applying for asylum or before a first-instance decision on their application is taken.995

The initial applications are to be reviewed by the Asylum Office, but these tasks have been entrusted to the MIA Border Police Directorate Asylum Department pending the new systematisation of MIA jobs. The Asylum Department is seriously understaffed and every Refugee Status Determination Officer has a caseload of 30–40 applications. The number of staff is to increase significantly under the new systematisation of jobs, particularly as the number of asylum seekers is expected to increase considerably.

The review of applications in the first instance is to an extent burdened by the lack of interpreters for languages spoken by most asylum seekers, e.g. there are no interpreters who know Pashto. Furthermore, no funds are allocated from the Serbian budget and all the costs of the procedure are borne by the UNHCR. Free legal and psychological assistance to the asylum seekers is provided by the NGO Asylum Protection Centre,996 the costs of which are covered by the UNHCR. Serbia commendably adopted an interpretation which is in the spirit of the Convention on the Status of Refugees and the Asylum Act and the MIA no longer levies the legally set administrative taxes on asylum seekers. None of the asylum seekers have so far applied for family reunion, although this institute exists in Serbia’s legislation.

The people, who express the intention to apply for asylum in Serbia, are accommodated in the Asylum Centre in Banja Koviljača, operating within the Com-

994 Of them 311 (62.2%) were from Afghanistan, 28 (5.6%) from Iraq, 16 (3.2%) from Pakistan, 73 (14.6%) from Palestine, 1 (0.2%) from Germany, 1 (0.2%) from Croatia, 1 (0.2%) from Russia, 1 (0.2%) from Turkey, 3 (0.6%) from Algeria, 6 (1.2%) from Iran, 7 (1.4%) from Morocco, 1 (0.2%) from Cuba, 8 (1.6%) from the Democratic Republic of Congo, 3 (0.6%) from Bosnia-Herzegovina, 2 (0.4%) from Mongolia, 4 (0.8%) from Georgia, 23 (4.6%) from Somalia, 5 (1%) from The Netherlands, 1 (0.2%) from Ecuador, 1 (0.2%) from Bangladesh, 2 (0.4%) from Yemen, 1 (0.2%) from Uzbekistan and 1 (0.2%) from Togo. Data obtained from the UNHCR office in Serbia.

995 Of the 500 registered asylum seekers in the January 15-December 15 2010 period, 369 (240 of them Afghans) disappeared. Data obtained from the UNHCR office in Serbia.

996 http://www.apc-cza.org/.
The Commissariat for Refugees. The living conditions in the Centre are adequate, but it cannot accommodate more than 85 people, depending on the breakdown of the asylum seekers (number of men and women, families, et al.) 997. A total of 702 people stayed between one day and five or six months from the day the Asylum Act came into effect until December 2010. Underage asylum-seekers unaccompanied by their parents are accommodated in a separate ward within the Belgrade orphanage Vasa Stajić.

The legally guaranteed right to education is not ensured by the Serbian competent authorities in practice but within a project funded by the UNHCR and implemented by the Danish Refugee Council. Under the project, a teacher comes to the Asylum Centre three times a week for three hours. Asylum seekers not staying at the Asylum Centre exercise their right to financial assistance via the competent social care centres. The asylum seekers also have access to the psychological assistance provided by the psychologists of the NGO Asylum Protection Centre.998

The increase in the number of asylum seekers in Serbia necessitates in the construction of new centres for their accommodation. The UNHCR was prepared to fund the construction of a new reception centre but was unable to agree on the location of the Centre. The sites offered by the MIA, at Bajmok and Srpska Crnja, are very far from Belgrade and relatively far from urban centres, which would considerably raise the costs of application reviews and would not facilitate the integration of persons approved protection.

There is no doubt that there will be problems in integrating persons approved protection pursuant to the Asylum Act as their numbers grow, because the law merely includes a general provision that the Republic of Serbia will ensure integration in accordance with its capacities but does not define the obligations of the competent state authorities.999

997 For instance, on 20 December 2010, 77 of the 109 asylum seekers in Serbia were staying at the Centre in Banja Koviljača, 7 were staying the Centre for Minors in Belgrade, 2 were in private accommodation in Subotica, while 23 people were waiting for accommodation in the Centre in Banja Koviljača (Data obtained from the UNHCR office in Serbia). On that day, there were no asylum seekers in the Shelter for Aliens in Padinska Skela, where the Asylum Office refers asylum seekers whose freedom of movement is restricted for the purpose of establishing their identity, ensuring their presence at the asylum review procedure, in the event that there are reasonable grounds to suspect that they sought asylum to avoid deportation, or in the event significant facts on which the application is based cannot be established in the absence of the asylum-seeker, or in order to protect the security of the state and its legal order in accordance with the law. According to the MIA Asylum Office, this measure was not ordered at all by December 2010.

998 Data in the draft report of NGOs Forced Migration Challenges in Serbia, to be published by Group 484 within the project “European-Serbian Cooperation on Forced Migration” in 2011.

2.14.2. Implementation of the Readmission Agreement

Serbia in 2007 signed an Agreement between the Republic of Serbia and the European Community on the Readmission of Persons Residing without Authorisation (i.e. the EU member-states with the exception of Denmark). Under the Agreement, Serbia shall readmit, upon application by a Member State and without further formalities other than those provided for in the Agreement, any person who does not, or who no longer, fulfils the conditions in force for entry to, presence in, or residence on, the territory of the Requesting Member State.


The Government of Serbia in 2008 established a Council for the Integration of Returnees, an expert advisory government body comprising officials of ministries competent for issues relevant to the integration of returnees. The Strategy for the Reintegration of Returnees under the Readmission Agreement and the Action Plan for the Implementation of the Strategy in 2009 and 2010 were adopted in 2009. The subsequently established Strategy Implementation Team is an expert coordination body which is to ensure the achievement of the strategic goals and notify the Council thereof. However, the authorities failed to adopt the relevant financial plan for the implementation of the Strategy.1005

The Serbian Commissariat for Refugees plays the key role in the implementation of these documents. Its remit includes the primary and urgent accommodation of the returnees, their identification and transport to the Emergency Reception Centre, and informing the returnees of the agencies and organisations they can turn to for help. The Commissariat operates a Readmission Office at the Belgrade airport, the Emergency Reception Centres in Belgrade, Bela Palanka, Zaječar and Šabac,

1000 Sl. glasnik RS, 19/10.
1001 Ibid.
1002 Ibid.
and has refugee commissioners in all Serbian municipalities. The Readmission Office receives the returnees when they arrive in Serbia. The returnees fill in a questionnaire and their data are entered in the database of returnees.\footnote{Data in the draft report of NGOs Forced Migration Challenges in Serbia, to be published by Group 484 within the project “European-Serbian Cooperation on Forced Migration” in 2011.}

There are no precise data on the total number of Serbian nationals whose residence status in EU member-states is not regulated.

According to MIA data, 28,000 readmission applications were received in the 2003–2009 period. From 1 January to 31 August 2010, 670 returnees were registered at the Belgrade airport, while the number of returnees who entered at the other border crossings was negligible. The Serbian Commissariat for Refugees estimates that around 40,000 people have been readmitted from the EU member-states and that several tens of thousand are yet to return.\footnote{Ibid.} Due to the lack of relevant statistics on the number and breakdown of the returnees, the state authorities have been unable to plan a reintegration policy and its adequate implementation.

Most of the returnees belong to the particularly vulnerable groups facing a high risk of poverty – over 70% of them are Roma, unqualified workers,\footnote{More in II.2.2.6.} and returnees originating from Kosovo;\footnote{See the Praxis report on readmission related activities in 2009, available at http://www.praxis.org.rs/index.php?option=com_docman&task=doc_view&gid=169.} children and ill returnees are particularly vulnerable.\footnote{Data in the draft report of NGOs Forced Migration Challenges in Serbia, to be published by Group 484 within the project “European-Serbian Cooperation on Forced Migration” in 2011.}

NGOs providing assistance to returnees are of the view that the Republic of Serbia is unable to adequately look after the returnees and their families.\footnote{A similar assessment was made also by the European Commission in the EC 2010 Serbia Progress Report, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf, p. 46.} Access to documents, health and social care, access to education and the labour market and housing are just a few of the many problems they encounter. Most of them lack the necessary documents to regulate their status in Serbia, and the few who finished school abroad have problems certifying their diplomas. Surveys demonstrate that they have the greatest difficulties to find housing and jobs. The reception centres in Obrenovac, Šabac, Bela Palanka and Zaječar provide the returnees with the basic living conditions for a fortnight, after which their status is reviewed by the authorities. Many returnees do not have registered residence and live in improvised settlements, abandoned cars, or build their homes, most of which are illegal and frequently lack even water and electricity, or are homeless.\footnote{D. Vuković, “Readmission and Migration Management,” 2009 Yearbook, No. 3, Belgrade College of Political Sciences, 2009, pp. 557–558.}
Some children of returnees either do not speak Serbian at all or speak it poorly, and have trouble following class, which is why some of them are put back a grade. Surveys in the Belgrade municipality of Palilula show that 62.9% of the respondents had sent their children to school while they lived abroad, but that only 38.7% continued their schooling upon arrival in Serbia.\textsuperscript{1013}

2.15. Fight against Organised Crime – Legislation and Practice

2.15.1. Seizure and Confiscation of Proceeds from Crime Act

The Seizure and Confiscation of Proceeds from Crime Act (SCPCA)\textsuperscript{1014}, adopted in October 2008, came into force on 1 March 2009. This Act allows the police and judiciary authorities to more efficiently combat various forms of organised crime and prevent criminal groups from holding on to the financial proceeds from crime, the main motive for the establishment and activities of criminal groups. Apart from the main forms of organised crime, the provisions of this Act also apply to the crimes of showing pornographic material and use of minors in pornography, economic crimes, illicit manufacture, possession and trafficking in narcotic drugs, crimes against public law and order, against official duty, against humanity and other goods protected by international law.

The provisions of this Act apply in the event the financial proceeds from crime or the value of the object of crime exceeds 1.5 million dinars. The relatively high limit is justified given the relatively high costs of the proceedings, but may be an impediment in specific segments of the fight against organised crime, such as pornography and trafficking in humans, where the protection of the victims should not be linked to the value of the object of crime.

Under the Act, a prosecutor may launch proceedings for the seizure of the property of a person if there is an obvious disproportion between his or her legally acquired property and legally earned income and reasonable doubt that the person possesses considerable property earned through crime (Art. 15). The Act commendably lays the burden of proof on the person against whom the proceedings were instituted and the property is seized if the person is unable to prove its origin. The provisions of this law also apply during proceedings against persons at large and to deceased persons.

The proceeds from crime may be confiscated permanently or temporarily. The public prosecutor may file a motion for the temporary seizure of proceeds from crime if there is a risk that their subsequent seizure may be hindered or precluded (Art. 21). The temporary seizure of property shall remain in effect until a decision on the motion for its permanent confiscation is taken (Art. 27), which guarantees that the property will not be alienated during the proceedings. The public prosecutor

\textsuperscript{1013} D. Vuković, \textit{op. cit.}

\textsuperscript{1014} \textit{Sl. glasnik RS}, 99/08.
shall file a motion for the permanent confiscation of proceeds derived from crime once the indictment becomes legally effective and within a maximum of one year from the day a final judgement against the perpetrator is rendered (Art. 28). The prosecutor’s motion is reviewed by the judicial panel trying the perpetrator i.e. the presiding judge.

The confiscated property is administered by the Seized Property Management Directorate operating within the Justice Ministry (Art. 8(1)).

2.15.2. Practical Application of the Seizure and Confiscation of Proceeds from Crime Act

Until the end of 2009, around 200 million euros worth of assets were temporarily or permanently seized from the day the Seizure and Confiscation of Proceeds from Crime Act came into effect (Danas, 3 September, p. 5). The management of the seized assets was entrusted to the Seized Property Management Directorate within the Justice Ministry, which is charged with conducting the proceedings related to the proceeds from crime pursuant to the Seizure and Confiscation of Proceeds from Crime Act.1015 The Directorate ceded management of part of the seized assets to other state institutions, the Ministry of Internal Affairs or local self-government units, while the rest of the temporarily seized property was rented out to natural and legal persons for 15,000 euros a month. The European Commission, too, recognised the state’s efforts to tackle organised crime in its Serbia 2010 Progress Report.1016

The authorities in 2009 permanently confiscated property that had belonged to the leaders of the Zemun Clan, the house of Milorad Ulemek, convicted by a final decision for assassinating Prime Minister Zoran Djindjic, as well as the apartments and cars of drug bosses whose convictions are legally binding. The Directorate has come into possession of over 50 houses, apartments and apartment buildings in the 18 months that the Seizure and Confiscation of Proceeds from Crime Act has been applied (Blic, 3, September p. 17).

In 2010, the Seizure and Confiscation of Proceeds from Crime Act was applied mostly against perpetrators of organised crime and economic crimes.1017 Most of the seized property had belonged to Darko Šarić (and his family); Šarić is suspected of organising an international criminal group involved in drug trafficking.1018 The partly disputable Article 42(1) of the Seizure and Confiscation of Proceeds from Crime Act was applied in Šarić’s case and his movable property of

1015 Sl. glasnik RS, 97/08.
huge value\textsuperscript{1019} was auctioned off before the completion of his trial. The move was criticised in the EC Serbia 2010 Progress Report\textsuperscript{1020} and was one of the reasons why Šarić sued Serbia.\textsuperscript{1021}

Pursuant to the Seizure and Confiscation of Proceeds from Crime Act, the War Crimes Prosecution Office for the first time initiated a financial investigation of war crime suspects or convicts, notably against 22 members of the paramilitary unit Scorpions and the Jackals unit. The Prosecution Office stated that it launched a financial investigation in the Scorpion case because Scorpion commander Slobodan Medić abused his post, trafficked petrol and thus gained illegal proceeds for himself and his associates. It had transpired during the trial that the unit was set up by the Petroleum Industry of the Republic of Serb Krajina to safeguard the oil fields in Đeletovac in the 1992–1996 period. The Jackal unit indictees are charged with searching, looting and setting fire to ethnic Albanian homes and taking the money, jewellery, vehicles and other valuable belongings of their victims (\textit{Danas}, 17 August, p. 5).

\begin{flushright}
\textsuperscript{1019} “Sale of Šarić’s Property”, 8 June, www.rts.rs.
\textsuperscript{1021} “Šarić Suing State!”, 13 September, www.rts.rs.
\end{flushright}
Appendix I

The Most Important Human Rights Treaties Binding on Serbia


- Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature and committed through computer systems, *Sl. glasnik RS*, 19/09.

- Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data regarding Supervisory Authorities and Transborder Data Flows, *Sl. glasnik RS (Međunarodni ugovori)*, 98/08.


- Agreement on Amending and Accessing the Central Europe Free Trade Agreement – CEFTA 2006.


- Convention against Discrimination in Education (UNESCO), *Sl. list SFRJ (Dodatok)*, 4/64.

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SFRJ (Međunarodni ugovori)*, 9/91.

- Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, 6/01.

- Convention Concerning Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *Sl. list SFRJ (Dodatok)*, 13/64.
– Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, *Sl. list SRJ (Međunarodni ugovori)*, 1/92 and *Sl. list SCG*, 11/05.


– Convention on the High Seas, *Sl. list SFRJ (Dodatak)*, 1/86.

– Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, *Sl. list SRJ (Međunarodni ugovori)*, 7/02 and 18/05.

– Convention on the Nationality of Married Women, *Sl. list FNRJ (Dodatak)*, 7/58.

– Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, *Sl. list SFRJ (Međunarodni ugovori)*, 50/70.


– Convention on the Political Rights of Women, *Sl. list FNRJ (Dodatak)*, 7/54.


– Convention Relating to the Status of Refugees, *Sl. list FNRJ (Dodatak)*, 7/60.

– Convention Relating to the Status of Stateless Persons and Final Act of the UN Conference Relating to the Status of Stateless Persons, *Sl. list FNRJ (Dodatak)*, 9/59 and 7/60 and *Sl. list SFRJ (Dodatak)*, 2/64.

– Convention on the Rights of the Child, *Sl. list SFRJ (Međunarodni ugovori)*, 15/90 and *Sl. list SRJ (Međunarodni ugovori)*, 4/96 and 2/97.


Appendix I – The Most Important Human Rights Treaties Binding on Serbia

- Criminal Law Convention on Corruption, *Sl. list SCG (Međunarodni ugovori)*, 18/05.
- European Convention on the International Validity of Criminal Judgments, with appendices, *Sl. list SCG (Međunarodni ugovori)*, 18/05.
- European Convention on Extradition with additional protocols, *Sl. list SRJ (Međunarodni ugovori)*, 10/01.
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Sl. list SCG (Međunarodni ugovori)*, 9/03.
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, *Sl. list SRJ (Međunarodni ugovori)*, 1/02.
- European Charter on Regional and Minority Languages, *Sl. list SCG (Međunarodni ugovori)*, 18/05.
- ILO Convention No. 3 Concerning Maternity Protection, *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 11 Concerning Right of Association (Agriculture), *Sl. novine of the Kingdom of Yugoslavia*, 44-XVI/30.
- ILO Convention No. 14 Concerning Weekly Rest (Industry), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 16 Concerning Medical Examination of Young Persons (Sea), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 17 Concerning Workmen’s Compensation (Accidents), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 18 Concerning Workmen’s Compensation (Occupational Diseases), *Sl. novine Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 19 Concerning Equality of Treatment (Accident Compensation), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 29 Concerning Forced Labour, *Sl. novine of the Kingdom of Yugoslavia*, 297/32.
- ILO Convention No. 81 Concerning Labour Inspection, *Sl. list FNRJ (Addendum)*, 5/56.
- ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, *Sl. list FNRJ (Dodatak)*, 8/58.
- ILO Convention No. 89 Concerning Night Work of Women (revised), *Sl. list FNRJ (Dodatak)*, 12/56.
- ILO Convention No. 90 Concerning Night Work of Young Persons in Industry (Revised) *Sl. list FNRJ (Dodatak)*, 12/56.
- ILO Convention No. 91 Concerning Paid Vacations for Seafarers (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 7/67.
- ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, *Sl. list FNRJ (Dodatak)*, 11/58.
- ILO Convention No. 100 Concerning Equal Remuneration, *Sl. list FNRJ (Međunarodni ugovori)*, 11/52.
- ILO Convention No. 103 Concerning Maternity Protection (Revised), *Sl. list FNRJ (Dodatak)*, 9/55.
- ILO Convention No. 105 Concerning Abolition of Forced Labour, *Sl. list SRJ (Međunarodni ugovori)*, 13/02.
- ILO Convention No. 106 Concerning Weekly Rest (Commerce and Offices), *Sl. list FNRJ (Dodatak)*, 12/58.
- ILO Convention No. 109 Concerning Wages, Hours of Work and Manning (Sea), (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 10/65.
- ILO Convention No. 121 Concerning Employment Injury Benefits, *Sl. list SFRJ (Međunarodni ugovori)*, 27/70.
- ILO Convention No. 122 Concerning Employment Policy, *Sl. list SFRJ*, 34/71.
- ILO Convention No. 129 Concerning Labour Inspection (Agriculture), *Sl. list SFRJ (Međunarodni ugovori)*, 22/75.
- ILO Convention No. 131 Concerning Minimum Wage Fixing, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 132 Concerning Holidays with Pay Convention (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 52/73.
- ILO Convention No. 135 Concerning Workers’ Representatives, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 138 Concerning Minimum Age for employment, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 140 Concerning Paid Educational Leave, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 144 Concerning Tripartite Consultation (International Labour Standards), *Sl. list SCG (Međunarodni ugovori)*, 1/05.
- ILO Convention No. 155 Concerning Occupational Safety and Health, *Sl. list SFRJ (Međunarodni ugovori)*, 7/87.
- ILO Convention No. 156 Concerning Workers with Family Responsibilities, *Sl. list SFRJ (Međunarodni ugovori)*, 7/87.
- ILO Convention No. 161 Concerning Occupational Health Services Convention, *Sl. list SFRJ (Međunarodni ugovori)*, 14/89.
- ILO Convention No. 182 Concerning the Worst Forms of Child Labour, *Sl. list SRJ (Međunarodni ugovori)*, 2/03.
- ILO Convention No. 183 of the Maternity Protection, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- International Covenant on Civil and Political Rights, *Sl. list SFRJ*, 7/71.
- International Criminal Court Statute, *Sl. list SRJ (Međunarodni ugovori)*, 5/01.
- Kyoto Protocol to the UN Framework Convention on Climate Change, *Sl. glasnik RS*, 88/07.
- Optional Protocol to the International Covenant on Civil and Political Rights, *Sl. list SRJ (Međunarodni ugovori)*, 4/01.
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SRJ (Međunarodni ugovori)*, 13/02.
– Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SCG (Međunarodni ugovori)*, 16/05.


– Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.


– Second Optional Protocol to the International Covenant on Civil and Political Rights, *Sl. list SRJ (Međunarodni ugovori)*, 4/01.


– Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *Sl. list FNRJ (Dodatak)*, 7/58.

– UN Convention Against Corruption, *Sl. list SCG (Međunarodni ugovori)*, 18/05.


412
Appendix II

Legislation Concerning Human Rights in Serbia

– Act on Abortion in Medical Facilities, *Sl. glasnik RS*, 16/95.
– Act on Administrative Disputes, *Sl. glasnik RS*, 111/09.
– Act on Associations, *Sl. glasnik RS*, 51/09.
– Act on Attorneys, *Sl. list SRJ*, 24/98, 26/98, 69/00, 11/02 and 72/02.
– Act on Broadcasting, *Sl. glasnik RS*, 42/02, 97/04, 76/05 62/06, 85/06 and 41/09.
– Act on Companies, *Sl. glasnik RS*, 125/04.
– Act on Cooperation of the FRY with the ICTY, *Sl. list SRJ*, 18/02.
– Act on Churches and Religious Communities, *Sl. glasnik RS*, 36/06.
– Act on Environmental Protection, *Sl. list RS*, 135/04 and 36/09. 72/09.
– Act on the Environmental Protection Fund, *Sl. glasnik RS*, 72/09.
– Act on Expropriation, *Sl. glasnik SRS*, 40/84, 53/87, 22/89 and *Sl. glasnik RS*, 6/90, 15/90, 53/95, 23/01 and 20/09.
– Act on Financing of Political Parties, *Sl. glasnik RS*, 72/03, 75/03 and 97/08.
– Act on Free Access to Information of Public Importance, *Sl. glasnik RS*, 120/04, 54/07, 104/09 and 36/10.
– Act on Freezing and Writing Off Overdue Compulsory Health Insurance Contributions, *Sl. glasnik RS*, 102/08 and 31/09.
– Act on Health and Safety at Work, *Sl. glasnik RS*, 101/05.
– Act on International Legal Aid in Criminal Matters, *Sl. glasnik RS*, 20/09.
– Act on the Judicial Academy, *Sl. glasnik RS*, 104/09.
– Act on Mediation, *Sl. glasnik RS*, 18/05.
– Act on Misdemeanours, *Sl. glasnik RS*, 101/05, 116/08 and 111/09.
– Act on Movement and Residence of Aliens, *Sl. list SFRJ*, 56/80, 53/85, 30/89, 26/90, 53/91 and *Sl. list SRJ*, 16/93, 31/93, 41/93, 53/93, 24/94, 28/96 and 68/02.
– Act on Organisation of Courts, *Sl. glasnik RS*, 63/01, 42/02, 17/03, 27/03, 29/04, 101/05 and 46/06.
– Act on Peaceful Settlement of Labour Disputes, *Sl. glasnik RS*, 125/04 and 104/09.
– Act on Police, *Sl. glasnik RS*, 101/05.
Appendix II – Legislation Concerning Human Rights in Serbia

- Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia, *Sl. glasnik RS*, 41/09.
- Act on Public Law and Order, *Sl. glasnik RS*, 51/92, 53/93, 67/93, 48/94, 85/05 and 101/05.
- Act on Recognition of Rights to and Restitution of Land Transformed into Socially Owned Property by Inclusion in the Farmland Fund or by Confiscation due to the Non-fulfilment of Obligations Arising from the Obligatory Sale of Farm Produce, *Sl. glasnik RS*, 18/91, 20/92 and 42/98.
- Act on Registration of Appropriated Property, *Sl. glasnik RS*, 45/05.
- Act on the Restitution of Property to Churches and Religious Communities, *Sl. glasnik RS*, 46/06.
- Act on Seats and Jurisdictions of Courts, *Sl. glasnik RS*, 116/08 and 104/09.
- Act on Secondary Schools, *Sl. glasnik RS*, 50/92, 53/93, 67/93, 48/94, 24/96, 23/02, 25/02, 62/03, 64/04, 64/03 and 72/09.
– Act on Textbooks and Educational Tools, *Sl. glasnik RS*, 72/09.
– Act on Travel Documents, *Sl. glasnik RS*, 90/07, 116/08, 104/09 and 76/10.
– Act on Voluntary Pension Funds and Pension Plans, *Sl. glasnik RS*, 85/05.
– Air Protection Act, *Sl. glasnik RS*, 36/09.
– Aliens Act, *Sl. glasnik RS*, 97/08.
– AP of Vojvodina Statute, *Sl. list APV*, 17/09.
– Civilian Service Act, *Sl. glasnik RS*, 88/09.
– Civil Procedure Act, *Sl. glasnik RS*, 125/04 and 111/09.
– Classified Information Act, *Sl. glasnik RS*, 104/09.
– Constitution of the Republic of Serbia, *Sl. glasnik RS*, 83/06.
– Criminal Code, *Sl. glasnik RS*, 85/05, 88/05, 107/05, 72/09 and 111/09.
– Criminal Procedure Code, *Sl. glasnik RS*, 58/04, 85/05, 115/05, 46/06, 49/07, 122/08, 20/09, 72/09 and 76/10.
– Culture Act, *Sl. glasnik RS*, 72/09.
– Declaration Condemning the Crime in Srebrenica, *Sl. glasnik RS*, 20/10
Appendix II – Legislation Concerning Human Rights in Serbia

- Decision on the Provincial Ombudsman, *Sl. list APV*, 23/02, 5/04 and 16/05.
- Decree on Military Service *Sl. list SRJ*, 36/94 and 7/98; *Sl. list SCG*, 37/03 and 4/05; *Sl. glasnik RS*, 6/07 and 86/07.
- Directive on Updating Election Rolls, *Sl. glasnik RS*, 42/00 and 118/03.
- Election Act, *Sl. glasnik RS*, 35/00, 57/03 72/03, 75/03, 18/04, 101/05, 85/05 and 104/09.
- Elections of the President of the Republic Act, *Sl. glasnik RS*, 111/07.
- Family Law, *Sl. glasnik RS*, 18/05.
- Gender Equality Act, *Sl. glasnik RS*, 104/09.
- Health Protection Act, *Sl. glasnik RS*, 107/05.
- Higher Education Act, *Sl. glasnik RS*, 76/05, 97/08 and 44/10.
- Housing Act, *Sl. glasnik RS*, 50/92, 76/92, 84/82, 33/93, 53/83, 67/93, 46/94, 47/94, 48/94, 44/95, 49/95, 16/97, 46/98 and 26/01.
- Liquidation Act, *Sl. glasnik RS*, 84/04.
- Medical Insurance Act, *Sl. glasnik RS*, 107/05 and 109/05.
- Official Birth, Death and Marriage Registries Act, *Sl. glasnik RS*, 20/09.
- Penal Sanctions Enforcement Act, *Sl. glasnik RS*, 85/05 and 72/09.
- Personal Data Protection Act, *Sl. glasnik RS*, 97/08.
- Planning and Construction Act, *Sl. glasnik RS*, 47/03.
- Public Health Act, *Sl. glasnik RS*, 72/09.
- Public Information Act, *Sl. glasnik RS*, 43/03, 61/05 and 71/09.
- Public Prosecution Act, *Sl. glasnik RS*, 116/08 and 104/09.
– Responsibility for Human Rights Violations Act, *Sl. glasnik RS*, 58/03 and 61/03.
– Regulation on the Content and Keeping of the Register of Churches and Religious Communities, *Sl. glasnik RS*, 64/06.
– Rules on Entry of Trade Union Organisations in Register, *Sl. glasnik RS*, 6/97, 33/97, 49/00, 18/01 and 64/04.
– Social Housing Act, *Sl. glasnik RS*, 72/09.
– State Administration Act, *Sl. glasnik RS*, 79/05 and 101/07.
– Tax Procedure and Tax Administration Act, *Sl. glasnik RS*, 80/02, 84/02, 23/03, 70/03, 55/04, 61/05, 61/07, 20/09 and 53/10.
– Telecommunications Act, *Sl. glasnik RS*, 44/03 and 36/06.

ISBN 978-86-7202-127-1

1. Ljudska prava u Srbiji 2010 [eng]
a) Права човека – Србија – 2010

COBISS.SR-ID 182221580