

# HUMAN RIGHTS IN SERBIA

2013





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*Reports*

HUMAN RIGHTS IN SERBIA 2013  
LAW, PRACTICE AND INTERNATIONAL  
HUMAN RIGHTS STANDARDS

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# HUMAN RIGHTS IN SERBIA 2013

LAW, PRACTICE AND INTERNATIONAL  
HUMAN RIGHTS STANDARDS

Belgrade Centre for Human Rights  
Belgrade, 2014



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## CONTENT

Abbreviations . . . . .	13
Preface . . . . .	17
Research Methodology . . . . .	18
Introduction . . . . .	21
SUMMARY AND RECOMMENDATIONS . . . . .	28
1. Serbia and Its International Obligations . . . . .	28
Recommendations . . . . .	28
2. Constitutionality, Legality and Effectiveness of Legal Remedies . . . . .	29
Recommendations . . . . .	29
3. Independent Human Rights Protection Authorities . . . . .	30
Recommendations . . . . .	31
4. Right to Life . . . . .	31
Recommendations . . . . .	33
5. Prohibition of Ill-Treatment and Status of Persons Deprived of Liberty . . . . .	33
Recommendations . . . . .	35
6. Prohibition of Slavery and Forced Labour . . . . .	35
Recommendations . . . . .	37
7. Right to Liberty and Security of Person . . . . .	37
Recommendations . . . . .	38
8. Judicial Reform . . . . .	39
Recommendations . . . . .	41
9. Right to Privacy and Confidentiality of Correspondence . . . . .	42
Recommendations . . . . .	43
10. Personal Data Protection and Protection of Privacy . . . . .	44
Recommendations . . . . .	45
11. Freedom of Expression . . . . .	46
Recommendations . . . . .	47
12. Freedom of Association . . . . .	48
Recommendations . . . . .	49

13.	Freedom of Peaceful Assembly .....	50
	Recommendations .....	51
14.	Status of Asylum Seekers in Serbia .....	51
	Recommendations .....	52
15.	Right to Work .....	53
	Recommendations .....	55
16.	Right to Just and Favourable Conditions of Work .....	55
	Recommendations .....	56
17.	Right to Social Security .....	57
	Recommendations .....	58
18.	National Minorities and Minority Rights .....	58
	Recommendations .....	60
19.	Status of Roma .....	61
	Recommendations .....	62
20.	Status of Persons with Disabilities .....	63
	Recommendations .....	64
21.	LGBT Population .....	65
	Recommendations .....	66
22.	Gender Equality and Special Protection of Women .....	66
	Recommendations .....	67
 I GENERAL CONDITIONS FOR THE ENJOYMENT OF HUMAN RIGHTS .....		 69
1.	International Treaties and Serbia .....	69
1.1.	Correlation between National and International Law .....	69
1.2.	International Human Rights Treaties and Serbia .....	70
1.3.	Fulfilment of Obligations Arising from Membership of International Organisations and Accession to International Treaties .....	71
1.4.	Serbia before the European Court of Human Rights in 2013 ...	73
1.4.1.	Statistics .....	73
1.4.2.	Impact of ECtHR Case Law on the Jurisprudence of Serbia's Courts with General Jurisdiction .....	73
1.4.3.	Noteworthy 2013 ECtHR Judgments against Serbia .....	74
2.	Constitution of the Republic of Serbia and Provisions on Human Rights, Human Rights Restrictions and Derogations .....	78
2.1.	General .....	78
2.2.	Restrictions of Human Rights .....	79
2.3.	Derogation of Human Rights .....	80



3.	Constitutionality and Legality. . . . .	81
3.1.	Constitutional Court of Serbia – Composition, Election of Judges and Jurisdiction . . . . .	81
3.2.	Reviews of Constitutionality and Legality before the Constitutional Court of Serbia . . . . .	83
4.	Effectiveness of Legal Remedies for the Protection of Human Rights Provided by the Serbian Legal System . . . . .	84
4.1.	General . . . . .	84
4.2.	Ordinary and Extraordinary Legal Remedies in Serbia’s Legal System. . . . .	85
4.3.	Constitutional Appeals and Effectiveness of Constitutional Appeals . . . . .	87
5.	Prohibition of Discrimination, War Propaganda and Advocacy of National, Racial or Religious Hatred . . . . .	90
5.1.	Prohibition of Discrimination . . . . .	90
5.2.	Prohibition of Propaganda for War, Advocacy of National, Racial or Religious Hatred and Hate Crime. . . . .	92
6.	Independent Human Rights Protection Authorities . . . . .	95
6.1.	General . . . . .	95
6.2.	Working Conditions of Independent Authorities . . . . .	96
6.3.	Legislative and Executive Authorities’ Reactions to Initiatives and Proposals of Independent Authorities . . . . .	97
II	INDIVIDUAL RIGHTS. . . . .	101
1.	Right to Life . . . . .	101
1.1.	General . . . . .	101
1.2.	State’s Obligation to Refrain from the Deprivation of Life . . . . .	102
1.3.	State’s Positive Obligation to Take Measures to Protect Life . . . . .	106
1.4.	Obligation to Conduct Effective Investigations into Deaths Not Due to Natural Causes or Deaths of Persons Deprived of Liberty . . . . .	109
1.5.	Judgment of the Constitutional Court of Serbia in the Case of Jakovljević and Milovanović . . . . .	111
2.	Prohibition of Ill-Treatment and Status of Persons Deprived of Liberty. . . . .	112
2.1.	General . . . . .	112

2.2.	Use of Force by State Agents . . . . .	117
2.3.	Judgments Based on Evidence Obtained under Duress . . . . .	121
2.4.	Living Conditions in Penitentiaries and Detention Units. . . . .	122
3.	Prohibition of Slavery and Forced Labour . . . . .	124
3.1.	General . . . . .	124
3.2.	Trafficking in Human Beings . . . . .	124
3.3.	Trafficking in Human Organs . . . . .	129
3.4.	Smuggling of People . . . . .	130
3.5.	Forced Labour . . . . .	131
4.	Right to Liberty and Security of Person . . . . .	132
4.1.	Prohibition of Arbitrary Arrest and Detention . . . . .	132
4.2.	Deprivation of Liberty under the Criminal Procedure Code in Force as of 1 October 2013. . . . .	134
4.3.	Excessive Resort to Pre-Trial Detention of Criminal Defendants . . . . .	136
4.4.	Strategy for the Development of the Penal Sanctions Enforcement System in the Republic of Serbia until 2020 . . . . .	137
4.5.	Deprivation of Liberty under the Act on the Protection of People with Mental Disorders. . . . .	137
5.	Right to a Fair Trial. . . . .	139
5.1.	General . . . . .	139
5.2.	Judicial System . . . . .	141
5.3.	Independence and Impartiality of Courts . . . . .	143
5.3.1.	Election and Appointment of Judges. . . . .	143
5.3.2.	Termination of Judicial Office and Disciplinary Proceedings . . . . .	146
5.3.3.	Guarantees of Judicial Independence (Recusal, Case Assignment, Non-Transferability). . . . .	148
5.3.4.	Pressures on the Judiciary . . . . .	149
5.3.5.	Incompatibility . . . . .	149
5.3.6.	Judicial Training. . . . .	150
5.4.	Fairness . . . . .	151
5.4.1.	Trial within a Reasonable Time. . . . .	151
5.4.2.	E-Justice . . . . .	153
5.4.3.	Public Character of Hearings and Judgments . . . . .	154
5.4.4.	Equality before the Law. . . . .	155
5.5.	Guarantees to Defendants in Criminal Cases . . . . .	155

5.5.1.	Presumption of Innocence . . . . .	155
5.5.2.	Prompt Notification of Charges, in a Language Understood by the Defendant . . . . .	156
5.5.3.	Prohibition of Trials in Absentia and the Right to Defence . . .	157
5.5.4.	Prohibition of Self-Incrimination . . . . .	159
5.5.5.	Status of Witnesses . . . . .	159
6.	Right to Privacy and Confidentiality of Correspondence . . . . .	160
6.1.	General . . . . .	160
6.2.	Families and Family Life . . . . .	162
6.3.	Abortion. . . . .	165
6.4.	Confidentiality of Correspondence . . . . .	166
7.	Personal Data Protection and Protection of Privacy . . . . .	172
7.1.	General . . . . .	172
7.2.	Other Provisions Relevant to Personal Data Protection . . . . .	175
7.3.	Commissioner for Information of Public Importance and Personal Data Protection . . . . .	177
8.	Freedom of Thought, Conscience and Religion . . . . .	179
8.1.	General . . . . .	179
8.2.	Legislative Framework, Status of Religious Communities and Exercise of the Right to Freedom of Thought, Conscience and Religion . . . . .	180
8.3.	Religious Communities . . . . .	183
9.	Freedom of Expression . . . . .	184
9.1.	General . . . . .	184
9.2.	Media Law Reform . . . . .	185
9.2.1.	Public Information and Media Act . . . . .	185
9.2.2.	Public Service Media and Electronic Media . . . . .	188
9.3.	Status of Media and Media Professionals . . . . .	190
9.3.1.	Financial Status of the Media and Media Professionals . . . . .	192
9.3.2.	Trials of and Assaults and Pressures on the Media . . . . .	193
9.4.	Conduct by Media and Media Professionals . . . . .	194
10.	Freedom of Peaceful Assembly . . . . .	196
10.1.	General . . . . .	196
10.2.	Public Assembly Act . . . . .	198

10.2.1. Assembly Venues . . . . .	199
10.2.2. Assembly Notification . . . . .	201
10.3. Restrictions of the Freedom of Assembly . . . . .	205
10.4. Legal Remedies . . . . .	208
10.5. Responsibilities of the Organisers and Penalties . . . . .	210
10.6. The Role of the Police . . . . .	211
10.7. Constitutional Court Case Law on the Right to Freedom of Assembly . . . . .	211
11. Freedom of Association . . . . .	213
11.1. General . . . . .	213
11.2. Associations of Citizens (Non-Government Organisations). . . . .	214
11.3. Restriction and Prohibition of the Work of Associations . . . . .	216
11.4. Association of Aliens . . . . .	220
11.5. Associations of Civil Servants and Security Forces . . . . .	221
11.6. Status of Civic Associations and Individuals Involved in the Protection of Human Rights . . . . .	221
12. Political Life . . . . .	223
12.1. General . . . . .	223
12.2. Electoral Rights . . . . .	224
12.3. Electoral Procedures . . . . .	224
12.4. Party Participation in Executive Government . . . . .	226
12.5. Influence of Parties on Authorities . . . . .	226
12.6. Relations within the Ruling Coalition and the Opposition. . . . .	227
12.7. Elections in 2013 . . . . .	229
12.8. Financing of Political Parties . . . . .	230
13. Right to Asylum . . . . .	232
13.1. General . . . . .	232
13.2. Access to the Territory of the Republic of Serbia and to the Asylum Procedure . . . . .	234
13.2.1. First-Instance Procedure . . . . .	235
13.2.2. Appeals Procedure . . . . .	236
13.2.3. Application of the Safe Third Country Concept and Violations of the Prohibition of Refoulement. . . . .	237
13.2.4. Statistics and General Assessment . . . . .	240
13.3. Rights and Obligations of Asylum Seekers, Refugees and People Granted Subsidiary Protection . . . . .	240

13.3.1. Accommodation .....	241
13.3.2 Integration .....	242
13.4. Unaccompanied Minor Asylum Seekers. ....	242
14. Right to Work .....	243
14.1. General .....	243
14.2. Employment Rates in Serbia. ....	244
14.3. Labour Legislation .....	245
14.4. Right to Assistance in Employment and in the Event of Unemployment .....	246
14.5. Workers' Rights Concerning Termination of Employment .....	249
14.6. Oversight of the Respect of the Right to Work and Work-Related Rights .....	252
15. Right to Just and Favourable Conditions of Work .....	254
15.1. Fair Wages and Equal Remuneration for Work .....	254
15.2. Right to Rest, Leisure and Limited Working Hours. ....	256
15.3. Occupational Safety .....	257
15.4. Freedom to associate in trade unions .....	260
15.5. Right to Strike .....	261
16. Right to Social Security .....	262
16.1. General .....	262
16.2. Protection Accorded to Family .....	265
III STATUS OF MINORITIES .....	269
1. National Minorities and Minority Rights .....	269
1.1. General .....	269
1.2. Ethnic Breakdown of the Population of the Republic of Serbia .	271
1.3. Prohibition of Discrimination against Persons Belonging to National Minorities .....	272
1.4. Equal Participation in Public Affairs and Political Life. ....	275
1.5. Right to Preservation of Identity. ....	277
1.5.1. Right to Nurture Culture and Tradition .....	277
1.5.2. Freedom to Express One's National Affiliation .....	279
1.5.3. Use of Languages. ....	280
1.5.4. The Right to Full and Impartial Information in National Minority Languages .....	284

1.6. National Councils of National Minorities. ....	285
1.7. Prohibition of Forced Assimilation. ....	289
1.8. Protection of the Rights of Persons Belonging to National Minorities before Independent Regulatory Authorities .....	290
2. Status of Roma .....	292
2.1. General .....	292
2.2. Discrimination against Roma .....	293
2.3. Education of Roma Children .....	294
2.4. Some Incidents of Ethnically Motivated Violence against and Assaults on Roma. ....	295
3. Status of Persons with Disabilities .....	298
3.1. General .....	298
3.2. Social Services .....	298
3.3. Health Care .....	299
3.4. Deinstitutionalisation. ....	300
3.5. Employment .....	302
3.6. Education. ....	303
3.7. Accessibility .....	305
4. LGBT Population .....	307
4.1. General .....	307
4.2. Rights of Same-Sex Partners .....	308
4.3. Freedom of Assembly and Freedom of Expression .....	308
4.4. Violence. ....	310
4.5. Court Proceedings. ....	311
4.6. Discrimination in the Education System .....	312
4.7. Discrimination against Transsexuals. ....	313
5. Gender Equality and Special Protection of Women. ....	314
5.1. General .....	314
5.2. Special Protection of Women and Maternity .....	316
5.3. Institutional Gender Equality Protection Mechanisms. ....	317
5.4. Participation of Women in Political and Public Life .....	318
Appendix I – The Most Important Human Rights Treaties Binding on Serbia .....	321
Appendix II – Legislation in Serbia Concerning Human Rights and Mentioned in the Report .....	325

## Abbreviations

2011-2012 Report – BCHR Annual Reports on Human Rights in Serbia

AEAD – Act on the Election of Assembly Deputies

ANEM – Association of Independent Electronic Media

APC – Asylum Protection Center

APV – Autonomous Province of Vojvodina

BCHR – Belgrade Centre for Human Rights

BIA – Security Intelligence Agency

CaT – UN Committee against Torture

CC – Criminal Code

CC decision– Constitutional Court decision

CCA – Constitutional Court Act

CESCR – Committee for Economic, Social and Cultural Rights

CoE – Council of Europe

CPA – Civil Procedure Act

CPC – Criminal Procedure Code

CPT – CoE Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

DEVĐ – Decision on the Election of AP Vojvodina Assembly Deputies

doc. UN – UN document

DS – Democratic Party

DSS – Democratic Party of Serbia

EC – European Commission

ECHR – European Convention on Human Rights

ECtHR-ECHR – European Court of Human Rights

ECmHR – European Commission of Human Rights

ESC – European Social Charter (Revised)

EU – European Union

FNRJ – Federal People's Republic of Yugoslavia

- FREN – Foundation for the Advancement of Economics  
GSA – Gay Straight Alliance  
Hague Tribunal/ICTY – International Criminal Tribunal for the Former Yugoslavia  
HCA – Health Care Act  
HIA – Health Insurance Act  
HJC – High Judicial Council  
HLC – Humanitarian Law Center  
ICCPR – International Covenant on Civil and Political Rights  
ICESCR – International Covenant on Economic, Social and Cultural Rights  
IJAS/NUNS – Independent Journalists’ Association of Serbia  
IJAV – Independent Journalists Association of Vojvodina  
ILO – International Labor Organization  
IMF – International Monetary Fund  
January-June 2013 Report – Periodic Report on the Right to Asylum in 2013  
JAS/UNS – Journalists’ Association of Serbia  
June-October 2013 Report – Periodic Reports on the Right to Asylum in 2013  
LA – Labour Act  
LDP – Liberal Democratic Party  
LEA – Local Elections Act  
LGBT – Lesbian Gay Bisexual Transgender  
Media Strategy – 2011 Strategy for the Development of the Public Information System in the Republic of Serbia until 2016  
MIA – Ministry of Internal Affairs  
NALED – National Alliance for Local Economic Development  
NCPA – Non-Contentious Procedure Act  
NES – National Employment Service  
NGO – non-government organisation  
NPM – National Preventive Mechanism  
NSBNM – National Council of the Bosniak National Minority  
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 of Serbia  
RATEL – Republican Telecommunications Agency  
RBA – Republican Broadcasting Agency  
RHIF – Republican Health Insurance Fund  
RS – Republic of Serbia  
RTV – Radio Television Vojvodina  
RTS – Radio Television of Serbia  
SAI – State Audit Institution  
SaM – Serbia and Montenegro  
Sl. glasnik – Official Gazette (of the SRS and, subsequently, the RS)  
Sl. list – Official Herald (of the SFRY and, subsequently, SAM)  
SNS – Serbian Progressive Party  
SOC – Serbian Orthodox Church  
SORS – Statistical Office of the Republic of Serbia  
SPC – State Prosecutorial Council  
SPS – Socialist Party of Serbia  
SRJ/FRY – Federal Republic of Yugoslavia  
SRS – Socialist Republic of Serbia  
UN – United Nations  
UNESCO – United Nations Educational, Scientific and Cultural Organization  
UNHCR – United Nations High Commissioner for Refugees  
URS – United Regions of Serbia  
VBA – Military Security Agency  
Venice Commission – European Commission for Democracy through Law of the Council of Europe  
VOA – Military Intelligence Agency  
YUCOM – Lawyers’ Committee for Human Rights



## Preface

The Belgrade Centre for Human Rights' associates have been regularly monitoring the legislative activities with the aim of analysing the conformity of the Serbian laws with international standards. In-depth analyses of the laws adopted before 2013 were provided in the prior Reports and are referred to in this Report where appropriate. This Report analyses in greater detail the laws and legal amendments adopted in 2013.

The authors of the Report also aimed to analyse all the collected information about the events and actions affecting the state of human rights in the country and to highlight the problems and difficulties citizens have been encountering in exercising their human rights. They also drew attention to the state's failure to implement strategies and plans geared at promoting human rights and the implementation of laws, instances of discrimination, the status of specific categories of the population, which are at a disadvantage vis-à-vis the majority, and many other circumstances affecting the full enjoyment of human rights and having simultaneously strong political implications and effects on the state of human rights in the country.

The following associates of the Belgrade Centre for Human Rights took part in the preparation of this Report: Milan Antonijević, Nevena Dičić Kostić, Andrea Čolak, Nikola Kovačević, Radoš Keravica, Anđelka Marković, Žarko Marković, Nevena Nikolić, Lena Petrović, Vesna Petrović, Dušan Pokuševski, Dragan Popović, Ivan Protić, Una Protić, Imola Soros, Duška Tomanović, Sonja Tošković and Jovana Zorić.

The Report does not offer final assessments; rather, it presents data published by the media and in human rights reports.

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

The translation and printing of this Report was supported by the donations of the Belgrade Centre for Human Rights staff given that no-one funded its preparation or costs of translation into English. I take this opportunity to thank them for supporting the efforts of the Belgrade Centre for Human Rights to contribute to the improvement of human rights and human rights reporting.

Editor

Vesna Petrović

## Research Methodology

The methodology applied in the preparation of this Report is based on the analysis of the regulations in effect in the given year. A number of laws affecting the scope in which human rights are exercised had been analysed in detail in the previous BCHR annual reports and the readers are referred to them where necessary. This year's Report analyses the regulations in force in 2013 and some of the relevant draft laws that had not been adopted by the end of the year. The draft laws were analysed to alert the expert public to their shortcomings and with the intention of indirectly influencing their improvement during the adoption procedure in the National Assembly of the Republic of Serbia.

BCHR's associates have regularly monitored the reports, press releases and recommendations of the independent human rights authorities – the Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection and the Commissioner for the Protection of Equality – given that their recommendations aim to improve the legislation and help introduce good practices to ensure the full enjoyment of the constitutionally guaranteed human rights.

In order to review the state of human rights in as accurately as possible, BCHR's associates also perused all other available sources indicating the situation in practice and monitored and analysed court case law related to human rights protection. The information in the Report is based on BCHR's research, the information of public importance it obtained upon request from the public authorities, on the reports and press releases of Serbian and international NGOs and all other information that came into the possession of BCHR's associates during the implementation of projects and programmes.

The BCHR associates, who prepared the Report, monitored the following print media in 2013: *Politika*, *Danas*, *Blic*, *Večernje novosti* and *Kurir* (dailies) and *Vreme*, *Novi magazin* and *NiN* (weeklies). They also followed the reports on the *Tanjug*, *BETA* and *Fonet* wires, the *B92* website, press releases and posts on the websites of media associations and the *ANEM* Legal Monitoring of the Serbian Media Scene bulletins.

A total of 8,395 media reports, or 5% more than in 2012 (7,950) were read during the preparation of this Report. Like in 2012, most of them dealt with political rights and democracy (28.63%, vis-à-vis 28.86% in 2012), which can be attributed to local elections, reshuffles in many local governments, talks on Kosovo and Metohija and the continuous and fierce clashes between the ruling and opposition parties. Reports on the right to a fair trial again ranked second (23.05% in 2013 compared to 22.11% in 2012); many of them regarded the government campaign

against corruption, which was politically tainted on occasion, and the investigations of the controversial privatisations in Serbia.

Reports on violence ranked third in 2013, their number increasing by around 55% (from 7.68% in 2012, when they ranked sixth to 11.94% in 2013). Such a surge in reports (from 2.85% in 2011) cannot only be attributed to a rise in violence, but also to the fact the outlets readily report on this topic to attract audiences and readership. Many of these reports violate professional ethical standards.

Reports on economic and social rights came next (9.40% in 2013, as opposed to 9.30% in 2012, when they ranked third). The further deterioration of the economic situation was not accompanied by an increase in economic reporting, probably because some economic data have become less accessible and, perhaps, because this subject does not attract new readers and audiences.

Reports on freedom of expression ranked fifth (8.95% in 2013, compared to 8.33% in 2012) while the number of reports on confrontation with the past fell by a quarter over 2012 (from 8.42% to 6.45%) and took sixth place. The continuous fall in the share of these reports is due to lesser pressures on Serbia to cooperate with the ICTY, which was practically completed when it transferred the last war crimes fugitive to The Hague, fewer war crime trials in Serbia and the slow process of rehabilitating political convicts.

Like in 2012, reports about discrimination ranked seventh (2.96% in 2013, 3.24% in 2012). Next came reports about minority rights (2.50% in 2012 vis-à-vis 2.12% in 2013), the status of independent bodies (1.20% in 2013, compared to 2.50% in 2012), freedom of movement and including asylum seekers (1.10% in 2013, 1.20% in 2012), the work of the Constitutional Court (0.87% in 2013, 1.48% in 2012), human trafficking (0.83% in 2013, 0.98% in 2012), judicial reform (0.81% in 2013, 1.54% in 2012), and the status of religious communities (0.71% in 2013, 1.31% in 2012).

The percentages of reports dealing with the following issues increased but they still accounted for the fewest rights-related reports: Serbia before international bodies, including about applications submitted to the ECtHR against Serbia (0.44% in 2013, compared to 0.30% in 2012), restitution of property (0.40% in 2012, vis-à-vis 0.32% in 2012), on NGOs (0.29% in 2013, 0.17% in 2012) and the criminal law reform (0.28% in 2013, compared to 0.18% in 2012).

The human rights situation in Serbia did not change significantly in 2013 although the number of reports perused during the preparation of the Report increased slightly, by 5% over 2012. The fact that 50% of the reports regarded human rights areas under strong influence of politics – political rights and the right to a fair trial – and the way these issues had been dealt with lead to the conclusion that the Serbian media were increasingly acting as the mouthpieces of political groups and economic power centres rather than safeguarding public interests and democratic values. The conclusion about the rapid tabloidisation of the Serbian media is corroborated by

the fact that one out of eight reports on violence are in breach of the professional ethical standards.

The number of reports on human rights in the narrower sense – on discrimination, minority rights, human trafficking, rights of religious communities, confrontation with the past, freedom of movement across borders, the work of the Constitutional Court, independent authorities and judicial reform – fell in 2013. They accounted for around 16% of all the perused texts.

Reports on social and economic rights and freedom of information, predominantly on the problems in these fields, accounted for a significant share of all the texts, over 18%.

A thorough analysis of these data demonstrates that the human rights situation in Serbia deteriorated in 2013 over 2012, particularly as regards the freedom of expression, social and economic rights, views on rule of law principles and discrimination.

## Introduction

The social, political and economic framework within which human rights were realised in Serbia in 2013 and the promises made by the ruling coalition before and after it won the 2012 elections lead to the conclusion that not all the conditions are yet in place for the full respect and exercise of human rights and that many of the public promises rung untrue. When it took office, the Government set the following priorities: to resolve relations with Kosovo, join the EU, fight against corruption and depoliticise the state administration and public companies, implement radical economic reforms, attract investments and cut down unemployment.

Serbia made headway in the EU accession process in 2013. The Stabilisation and Association Agreement (SAA) between the EU and Serbia came into force in September 2013 after all the EU member states ratified it, and the association process turned into the accession process. The coming into force of the SAA led to the establishment of bodies monitoring its enforcement and comprising representatives of both the EU and Serbia. The Stabilisation and Association Council between Serbia and the EU (SA Council) held its first session in October and the EU-Serbia Stabilisation and Association Parliamentary Committee, comprising 15 MPs of the European Parliament and 15 deputies of the Serbian National Assembly, was set up in November 2013. The Stabilisation and Association Committee, consisting of European and Serbian Government experts, was also established. The Serbian Assembly in December 2013 adopted the Resolution on the Role of the National Assembly and the Principles of Serbia's EU Accession Negotiations. Finally, the first EU-Serbia intergovernmental conference was held in Brussels on 21 January 2014. These events have been extremely important for Serbia, not only because they brought Serbia one step closer to EU membership, but, more importantly, because the negotiating framework requires the implementation of the much needed comprehensive reforms in all walks of life. The accession talks provide opportunities for improving the legal framework and, above all, for implementing standards on human rights that are part of the European *acquis*. Furthermore, Serbia was clearly told that it had to comprehensively normalise its relations with Kosovo before it became a member of the EU.

Normalisation of relations with Kosovo was prerequisite for the opening of the accession talks with Serbia and it will be one of the key criteria against which Serbia's headway will be measured. This is also corroborated by the fact that Serbia's accession talks opened with Chapter 35 on other issues and, in Serbia's case, involving Kosovo and that the Serbian and EU teams completed the screening of this Chapter in Brussels on 22 January 2014. Screening entails the EU's monitoring of what has been done and what yet needs to be done in the Belgrade-Priština

dialogue, but does not replace the Priština-Belgrade talks, which had begun during the previous Cabinet, which had encountered difficulties in resolving a number of technical issues. The opposition had claimed that the talks led to the recognition of Kosovo's independence and were a betrayal of national interests. The political changes that ensued after the 2012 elections brought to power a new coalition spearheaded by the Serbian Progressive Party (SNS), which has publicly advocated nationalist views given that its leaders used to be senior officials of Vojislav Šešelj's Serbian Radical Party (SRS). Precisely this fact and the new Government's pragmatic policy on Serbia's relations with Kosovo and the EU has facilitated the new Government's headway in relations with Priština and led to the conclusion of the Brussels Agreement between Priština and Belgrade with the mediation of the EU in April 2013. However, the much more difficult and important task of implementing the Brussels Agreement remained outstanding and encountered numerous difficulties and delays that became apparent during the Kosovo elections in the autumn of 2013. The Serbian Government, however, did not officially publish the Brussels Agreement and its Implementation Plan adopted in May or the agreements forged during the talks; their texts were publicly disclosed mostly in the statements of the members of the negotiating teams or by the print media. Such lack of transparency cannot but cause suspicions in the public and may lead to tensions between the Serb and Albanian communities. The negotiations enjoyed the unreserved support of the EU and the USA, which focused mostly on the outcome of the talks and did not pay much attention to the developments in Serbia and Kosovo directly impacting the realisation of human rights and improvement of democracy.

The Constitution of the Republic of Serbia has generated numerous problems in practice since its adoption in 2006 and the need to amend it was often mentioned in 2013. Legal experts qualified as problematic the constitutional provisions on the correlation between national and international law, individual provisions on human rights they consider confusing or contradictory, provisions on the status and role of the judiciary and its independence and the status of the independent regulatory authorities. However, any amendments to the Constitution require broad consent among the political entities, as they have to be adopted by a two-thirds qualified majority in the National Assembly.

The issue of amending the Constitution became particularly topical after the Constitutional Court of Serbia declared unconstitutional specific provisions of the Statute of the Autonomous Province of Vojvodina. Back in 2009, the Democratic Party of Serbia – Vojislav Koštunica and New Serbia parliamentary caucuses filed a motion and the Association for the Protection of the Serbian Cyrillic Script “Ćirilica”, the SRS and a resident of Subotica filed an initiative with the Constitutional Court to review the constitutionality of the Vojvodina Statute. The Court held a public hearing in May 2013 and rendered its decision in December 2013 finding individual provisions of the Vojvodina Statute not in compliance with the Constitution of Serbia and giving the Serbian Government and Vojvodina Assembly



six months to align them with the Constitution. The Statute shall be implemented in its entirety until the expiry of the deadline to ensure the normal functioning of the Province. Vojvodina Assembly Speaker Istvan Pastor said he expected the Vojvodina deputies to vote in a new Statute or amendments to the existing one in the following six months. However, the funding of the Province remained outstanding at the end of the year, although the Vojvodina authorities insisted that the Province be allocated 7% from the state budget, as stipulated by the Constitution.

Despite announcements that 2013 would be a year of reforms and improvements of the legal framework in which human rights are exercised and respected, the year behind us was not characterised by major and key reforms in the sectors in greatest need of such reforms. The full realisation of minimal human rights standards requires consistent abidance by the separation of powers principle, which entails an independent and impartial judiciary, strong institutions, political pluralism, free, democratic and fair elections and, last but not the least, objective and independent media.

Various factors underlie the delays in implementing the promised reforms. The fact that the representatives of the ruling parties started discussing a Government reshuffle in the spring of 2013 – although its purpose was not clearly explained to the public since all the ruling parties sang the Government praises – was definitely one of them. The representatives of the ruling parties gave extremely disparate and confusing statements in the next few months preceding the reshuffle, which included splitting the Ministry of Economy and Finance into two ministries and minor changes in the purviews of the ministries. The reshuffled Government comprises 18 Ministries and three Ministers without Portfolio. The United Regions of Serbia stepped out of the Government, while the other ruling parties stayed in it and several Ministers were replaced. The reshuffle, however, did not bring political stability or put in place the conditions for the implementation of the necessary reforms. On the contrary, disputes between the leading figures in the ruling coalition on major issues, such as the speed and depth of the reforms, particularly in economy, became apparent. This eventually led to the decision to hold early parliamentary elections in March 2014. The impression is that First Deputy Prime Minister Aleksandar Vučić, who undoubtedly boasts the greatest political influence in Serbia and, more importantly, enjoys the support of the international community, has decided to call early elections to secure his party a four-year term in office as it is highly likely that the SNS will win the majority allowing it to lead the future government. Such a victory would enable it to further weaken the opposition and bring on board some other political parties, with which it will be able to share responsibility for the moves it will have to draw in the upcoming period.

Implementing any reform in a continuous pre-election climate that prevailed in 2013 was difficult, wherefore many of the 2012 campaign promises were not fulfilled. The oversized state administration was not reduced, while many senior officials in the administration were dismissed for political reasons. The civil service

was not depoliticised. On the contrary, participacy increased as party cadres were appointed to the key executive and management positions in public companies. Expectations of the necessary and inevitable professionalisation of the state administration have not materialised. Party membership remained an essential job requirement, as it has been for years. Citizens, convinced that they cannot find a job through normal recruitment channels, have increasingly been joining the ruling parties, hoping that they will be able to find employment that way. Such practices have had a deterrent effect on experts, who are reluctant to engage themselves in the public administration and contribute to the work of the state authorities and public companies with their expertise and experience. For instance, no one the public recognised as a potentially good candidate applied for the posts of director of some cultural institutions. It may be concluded that the professionalisation of the state administration is far from completion.

The implementation of the judicial reform was slow although the new National Judicial Reform Strategy and the Action Plan for its implementation were adopted in mid-2013. The new court network was to start operating in 2014. The number of Basic Courts has almost doubled, which is expected to improve access to justice. The number of courts is, however, just one factor affecting access to justice. The courts and prosecutor's offices have to improve their efficiency, process cases faster, improve the quality of their performance and be absolutely independent in their work if they are to win public confidence in their work. Confidence building is a long-lasting process, particularly if one bears in mind the public opinion polls, which have for years continuously showed that the public believes that the judiciary is greatly influenced by politics. The judicial reform in Serbia, which had been launched a few years ago, was poorly implemented and lacked clear criteria for the election and appointment of judges and prosecutors. The attempt to reverse its consequences was unsatisfactory, because, although the judges and prosecutors, who had not been reappointed, were reinstated in accordance with a Constitutional Court decision, no individual reviews of the competence, qualifications and worthiness of each candidate had been conducted, nor were precise election/appointment criteria in place. Therefore, the main object of the reform, entailing regular reviews of judicial performance through professional appraisals and the building of their capacities, competences and qualifications, was not fulfilled. The courts are grappling with huge backlogs and long-lasting proceedings, which has exacerbated public distrust of courts and prosecutor's offices and led to numerous applications to the European Court of Human Rights against Serbia.

The media, mostly tabloids, have continued reporting on forthcoming arrests, disclosing details of investigations and violating the presumption of innocence. The tabloidisation of media has undermined rule of law, weakened the institutions, discredited individuals in the long term and brought into question the honesty of the ruling coalition's professed intentions to stifle corruption. Media have been publishing unconfirmed information, much of which is untrue or half-true. Many of the

investigations and arrests have not led to guilty convictions, which jeopardises the fight against corruption in the long term. Few anti-corruptive investigations have targeted those who took bribes or got rich illegally, but the tabloids have constantly been announcing investigations against the representatives of the former government. Needless to say, all those who broke the law and got rich illegally have to be prosecuted, but the state needs to ensure that the fight against corruption is not selective and that it is comprehensive. The fight against organised crime resulted in several major campaigns in 2013 and the arrests of a number of criminals, mostly narcotic drug manufacturers and traffickers.

Media often used the fight against corruption and organised crime to discredit individuals and published investigation details, which should be available only to the prosecutors and the police. This corroborates the conclusion that 2013 was characterised by the tabloidisation of the media and often publishing details about people's private lives. Non-abidance by the media codes of conduct and increasing control of media by individuals in power, resulting in widespread self-censorship, pose a threat to any democratic society and directly jeopardise a number of human rights. This situation gives rise to concern. Media independence is affected not only by political pressures but by commercial pressures as well – most of them face financial difficulties forcing them to succumb to the interests of the advertisers. The implementation of the Media Strategy and the adoption of a set of media laws did not materialise by the end of 2013 as expected and it is highly unlikely that these laws will be adopted soon given that early parliamentary elections have been scheduled for March 2014.

The role of the media will be crucial in the election campaign and the state, i.e. the parties in power, are unlikely to cede the influence they have on the editorial policies of the media, particularly those owned by the state. Media reports directly affect the voters, wherefore the entire election process needs to be under careful scrutiny to ensure impartiality and equal representation of all parties in the media during the campaign. The control of the election process is critical also because of the incidents that marked the local elections in various cities and municipalities during 2013 (Zaječar, Kosjerić, Kostolac, Odžaci, Vrbas and the Belgrade municipalities of Zemun and Voždovac), which, judging by everything, neither the police nor the prosecutors paid adequate attention to. Namely, various participants in these elections and the media covering them reported that political parties, particularly the ruling SNS, tried to woo the mostly impoverished voters by giving them money, food and other presents in the days preceding the elections, intimidated them in various ways, destroyed their opponents' campaign material and, last but not the least, employed physical violence against their opponents and journalists. The police and competent prosecutor's offices have failed to adequately inform the public about whether they had launched any inquiries into the allegations of various irregularities accompanying the local elections and what the results of those inquiries were. In any case, there is no doubt that the regularity of elections held in the past two years

has been seriously brought into question, for the first time since 2000. This is why the March 2014 campaign and voting will need to be monitored very carefully.

The National Assembly has commendably introduced the practice of having Government representatives submit reports to it and attend its sessions, which is, however, far from genuine parliamentary oversight of the Government. The Assembly debates did not improve much during the 2013. The opposition, however, played a constructive role in the adoption of laws and even the strongest opposition party, the Democratic Party, voted for most of the laws that were adopted, rather than against them. This positive trend ended the years-long tradition of the opposition to vote against the laws as a rule, either by inertia or in the belief that the opposition parties' role was to vote against any bill proposed by the Government or the ruling parties. On the other hand, the ruling parties' deputies always voted for all the bills but continued demonstrating their absolute party loyalty and lack of independence by hardly ever criticising any Government moves during the debates. The new convocation of the parliament did away with the prior good practice of ceding chairmanship of the most important parliamentary committees to the representatives of opposition parties. The Assembly deputies can also be criticised for failing to take a proactive approach to Constitutional Court decisions finding laws in contravention of the Constitution and waiting for the Government to propose the amendments aligning them with the Constitution rather than initiating the amendments themselves.

The economic reforms, which are, as a rule, the most painful reforms in all transition countries, were not implemented at all. The authorities' vows that Serbia would be deluged by foreign investments in 2013 did not materialise, and reports came out that some investors even decided against the investment projects they were planning or had already contracted. Long-term economic sustainability hinges on the inflow of investments and 2013 should have been the year in which the tax administration reforms were to have been implemented, the construction permit procedure was to have been simplified, and the red tape slowing down and hindering investments in Serbia was to have been cut. The trickle of negligible investments forced the authorities to continue borrowing without control to fill the state budget. Consequently, the economic situation did not improve in 2013 and the unemployment rate was still concerningly high, while the share of the impoverished population grew because the price hikes and higher living costs have not been accompanied by higher wages. The ruling parties have been promising economic recovery and better living standards, but the deadlines by which these promises are to be fulfilled are constantly put off and are mostly linked to the months and years ensuing after the early parliamentary elections. The Government has not published a clear plan of the measures that have to be taken to step up economic growth or the economic policy that is to bring such growth about.

The Government has showed reluctance to confront the serious challenges that will arise during the implementation of the radical financial and economic re-

forms. The draft Labour Act, directly infringing on some of the workers' privileges and strengthening the status of the employers, met with the fiercest public criticism. Aleksandar Vučić and Prime Minister Ivica Dačić succumbed to the pressures of some trade unions and agreed to revive the talks with the trade unions on the amendments to the labour law, which led the Minister of Economy to resign after only five months in office.

The latest arrangement with the IMF was frozen in February 2012 and a new one was not concluded in 2013 although an IMF mission visited Serbia during the year. Finance Minister Lazar Krstić said in late 2013 that the IMF would visit Serbia in early 2014 to discuss a new arrangement, although, in his opinion, Serbia should conclude a precautionary arrangement rather than one entailing borrowing.

## SUMMARY AND RECOMMENDATIONS

### *1. Serbia and Its International Obligations*

All major universal human rights treaties are binding on Serbia. When it joined the Council of Europe in 2003, Serbia undertook the obligation to ratify the European Convention on Human Rights and align its legislation with it and the case law of the European Court of Human Rights.. As a member of the United Nations, Serbia has specific obligations to its authorities and bodies charged with monitoring and supervising its fulfilment of obligations arising from its membership and ratified international human rights treaties. Serbia has, however, often failed to fulfil its reporting requirements on time and some of the reports it submitted to the UN treaty bodies were incomplete.

The European Court of Human Rights (ECtHR) dealt with 3,878 applications concerning Serbia in 2013, of which 3,685 were declared inadmissible or struck out. It delivered 24 judgments (concerning 193 applications), 21 of which found at least one violation of the European Convention on Human Rights. With 12,569 pending applications at the end of 2013, Serbia was fourth on the list of countries against which applications had been filed with the ECtHR, preceded by Russia, Italy and Ukraine.

### *Recommendations*

1. Regularly report to UN Committees on the implementation of ratified international treaties.
2. Introduce the practice of regularly keeping all records requisite for fulfilling the reporting obligations to the UN treaty bodies.
3. Implement the UN bodies' decisions on individual applications.
4. Organise regular consultations through the national mechanism for monitoring the recommendations of the Human Rights Council issued during the review of Serbia's Universal Periodic Review in January 2013.
5. Fulfil the UPR recommendations in the upcoming three years, whilst taking into account civil society objections and proposals.
6. Raise the human capacities of the Sector for the Representation of the Republic of Serbia before the European Court of Human Rights.
7. Urgently conduct a transparent procedure and shortlist the candidates for the position of ECtHR judge in respect of Serbia, ensuring that they boast the requisite experience and reputation.

## *2. Constitutionality, Legality and Effectiveness of Legal Remedies*

The Constitutional Court shall rule on the compliance of laws and other general enactments with the Constitution, generally accepted rules of international law and ratified international treaties and on the compliance of the ratified international treaties with the Constitution. The Constitutional Court Act governs the relations between the Constitutional Court and the legislator: the Court may notify the National Assembly of the situation and problems regarding the realisation of constitutionality and legality, render its opinions and indicate the necessity to adopt new or amend existing laws. The Constitutional Court shall forward to the National Assembly its decisions finding laws or other general enactments it passed in contravention of the Constitution, generally accepted rules of international law, ratified international treaties or other laws. The Constitutional Court, however, still cannot order the legislator to adopt regulations ensuring respect of a constitutional right. The fact that the legislator has disregarded most of the Constitutional Court's recommendations and failed to amend the disputed provisions gives rise to concern.

The issue of the Constitutional Court's transparency was raised in 2013. The former President of the Constitutional Court criticised the Court's 2011 Conclusion on Transparency, prescribes that the Court's regular sessions would be open to the public only when it was reviewing cases regarding enactments or constitutional law issues of broader social significance. This Conclusion did not ensure sufficient transparency of the Court's work or contribute to improving its democratic responsibility.

Constitutional appeals may be filed against individual enactments or actions by state bodies or organisations exercising public authority and violating or denying human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have been exhausted or do not exist. The appellants may seek the protection of all human rights enshrined in the Constitution or another international instrument binding on the Republic of Serbia. All natural or legal domestic or foreign persons who are holders of the constitutionally guaranteed human rights and freedoms are entitled to file a constitutional appeal.

In its reviews of appeals against excessively long trials, the Constitutional Court has played a preventive role as it is entitled to order a review of the case or its completion within the shortest possible period. Although the Constitutional Court has been ordering the courts to speed up adjudication of such cases, it has not set them deadlines by which they have to complete the proceedings.

### *Recommendations*

1. Urgently amend the laws found not to be in compliance with the Constitution by the Constitutional Court.
2. Clearly define the position of the Constitutional Court of Serbia and the procedure in which its judges are elected during the alignment of the Constitution with international standards.



3. Introduce the practice under which the Constitutional Court will in its decisions on appeals regarding excessively long proceedings set deadlines by which the courts must complete the proceedings.
4. Align the law and practices to ensure that the Administrative Procedure Act provisions, under which appeals shall not stay enforcement, do not undermine the effectiveness of legal remedies.
5. Ensure that the legislature reacts to and reviews impugned provisions of individual laws when the Constitutional Court alerts to problems regarding the realisation of constitutionality and legality.
6. Define the rules on the transparency of the Constitutional Court's work to allow the public to decide which issues are of general social significance.
7. Amend the procedural laws to allow for retrials of cases on the motion of parties that can invoke a decision of a UN Committee in their favour.

### *3. Independent Human Rights Protection Authorities*

All independent authorities have faced a number of difficulties since they were established (primarily lack of office space and staff that would enable them to operate at full steam). They still face some obstacles. For instance, there is still no clear mechanism stipulating the enforcement of the National Assembly's conclusions and recommendations after its reviews of the independent authorities' reports. Some very important bills, such as the amendments to the Protector of Citizens Act and the Free Access to Information of Public Importance Act were withdrawn from the parliamentary procedure by the new Government that took office after the 2012 elections and were not adopted in 2013 either.

On the other hand, the members of the public have recognised the independent authorities as their partners, as the increasing number of complaints to and use of mechanisms at the disposal of the independent authorities corroborate. There were, however, still instances in which the authorities have persistently ignored the Commissioner's orders and grossly violated the Free Access to Information of Public Importance Act – they failed to abide by the Commissioner's orders to provide access to the information requested and to pay the fines imposed on them by the Commissioner. The Government failed to react adequately to such incidents, although it is under the legal obligation to ensure the enforcement of the Commissioner's conclusions in the event the measures within his remit are ineffective.

At the initiative of the Commissioner, the Government adopted the Personal Data Protection Strategy back in 2010 and bound itself to adopt the relevant Action Plan in November 2010 at the latest. Action Plan is not adopted until the end of 2013.

The National Anti-Corruption Strategy was adopted in June 2013 and in August Government adopted Action Plan for the Implementation of the Strategy in the 2013–2018 Period. The National Assembly shall review the Agency reports on



the implementation of the Strategy at separate sessions. According to the Strategy, the National Assembly will organise public debates on the review of the entities charged with implementing the Strategy. Furthermore, under the Strategy, the Government is under the obligation to report to the Assembly on the implementation of its conclusions after the reviews of the Agency reports within the following six months. The Strategy expanded the powers of the Anti-Corruption Council. It, however, did not include the proposal that the entire public sector introduce mechanisms to strengthen their resistance to corruption after some typical risks, such as unnecessary procedures, unlimited discretionary powers, lack of transparency, control and accountability were identified.

### *Recommendations*

1. Provide the Commissioner for Information of Public Importance and Personal Data Protection, the Commissioner for Protection of Equality, the Anti-Corruption Agency and the State Audit Institution with the resources to recruit appropriate complements of staff envisaged in their in-house job classification enactments.
2. Adopt the proposed amendments to the Protector of Citizens Act to strengthen the independence of this institution.
3. Lay down stricter penalties for misdemeanours laid down in the Act on Free Access to Information of Public Importance.
4. Adopt a new Personal Data Protection Strategy and an action plan for the implementation of the Strategy that will define the activities, expected outcomes, the authorities charged with the specific tasks and the deadlines within which the tasks have to be fulfilled.
5. Adopt the Act on Whistle-Blowers that will take into account the suggestions made during the public debate, particularly regarding the protection of all citizens alerting to harmful practices or violations and mechanisms ensuring the protection of the whistle-blowers from third-party retaliation.
6. Improve the monitoring of the fulfilment of the recommendations made by the independent human rights protection authorities in their annual reports and upheld by the National Assembly.

## *4. Right to Life*

The Constitution of the Republic of Serbia prescribes that human life is inviolable and that there shall be no death penalty in Serbia. Under Serbian law, potentially lethal means of coercion may be used by the officers of the Ministry of Internal Affairs, i.e. the police, the officers of the Security Information Agency (BIA), the guards in penal institutions and private security guards. Police officers have been using potentially lethal weapons in accordance with the law during the

performance of their duties and unjustified or improper use of firearms by policemen on duty is quite rare. Several incidents, in which policemen used their firearms off duty and killed or wounded people, however, occurred in 2013. For instance, criminal proceedings were initiated in 2013 against three members of the Gendarmerie who are suspected of having shot three people dead and trying to kill another person. On the other hand police and prison staff are very rarely, if ever, subjected to regular general medical check-ups once they are employed.

The valid criminal legislation does not per se hinder the conduct of effective investigations into crimes threatening human life but serious problems often arise in practice. Namely, the perpetrators of numerous crimes committed during the armed conflicts in Croatia, Bosnia-Herzegovina and Kosovo in the 1990s have never been brought to justice, although the state is charged with prosecuting them and although they are accessible to it. The perpetrators of a number of murders of journalists have never been identified or punished. Assassinations of leading senior state officials and civil servants have remained unsolved as well.

The problem of protecting women from domestic violence featured prominently in 2013. The number of domestic violence deaths surged in 2013 over the previous years (45 women were killed in the January-November 2013 period, as opposed to 28 women who had lost their lives in 2012). The Protector of Citizens alerted to this problem. According to the data of the Statistical Office of the Republic of Serbia, the number of people convicted for domestic violence is much smaller than the number of criminal reports filed against the alleged perpetrators of this crime every year.

Some courts' penal policy is much too mild and the perpetrators of the gravest crimes have not been punished adequately. For instance, although Criminal Code lays down that a person found guilty of aggravated murder shall be sentenced to imprisonment ranging between 10 and 40 years, in 2012, as many as 26 of the 80 people found guilty of aggravated murder were sentenced to prison terms under 10 years. That year, 77 of the 116 (i.e. 66%) people found guilty of premeditated murder, warranting between five and fifteen years of imprisonment, were sentenced to less than five years' imprisonment. Serious problems have arisen with respect to the exercise of rights arising from violations of the right to life in court deliberations of compensation claims filed by the families of the murdered victims, particularly in proceedings regarding compensations for murders committed during the armed conflicts in Croatia, Bosnia-Herzegovina and Kosovo. The courts have tended to reject the war crime victims' claims against the Republic of Serbia alleging expiry of the statute of limitations. Another problem is the practice of criminal courts, which have been refusing to rule on compensation claims filed by injured parties in criminal proceedings and referring them to file their claims in civil proceedings, although nothing prevents them from ruling on such claims themselves. The victims have thus been forced to launch new proceedings, which can take several years, at their own expense.

*Recommendations*

1. Take appropriate measures to ensure that only officers who are well-trained in the use of firearms and have a clean bill of health are allowed to carry weapons and use them. To that end, organise regular check-ups of staff in state agencies allowed to use means of coercion, which will include mental health examinations.
2. Take appropriate measures to ensure more efficient prevention and adequate punishment of violence, particularly domestic violence and violence against minorities, both ethnic (particularly Roma) and sexual minorities. In that respect, improve cooperation between the police, prosecutors, and courts on the one hand, and social welfare centres and schools on the other.
3. Ensure that investigations into incidents that resulted in deaths or serious life risks are conducted in accordance with standards established in the ECtHR case law, i.e. that they are effective.
4. Invest efforts in the identification and adequate punishment of the perpetrators of various unsolved crimes, including war crimes and crimes against humanity.
5. Take appropriate measures to change the penal policy in order to ensure that everyone responsible for the deaths of or serious life threats to others are handed down adequate penalties.
6. Lay down in the law that the injured parties' compensation claims filed in criminal proceedings must be ruled on in criminal rather than civil proceedings.
7. Adopt measures for indemnifying victims of violations of the right to life for which the authorities of the Republic of Serbia are responsible, including the victims of war crimes and crimes against humanity.

5. *Prohibition of Ill-Treatment and Status of Persons Deprived of Liberty*

The Constitution of the Republic of Serbia absolutely prohibits torture and lays down that persons deprived of liberty must be treated humanely. The Criminal Code still incriminates ill-treatment as extortion of a statement and ill-treatment and torture, as well as other criminal offences (such as infliction of light and grave bodily injuries). These articles include disputable provisions that may lead to misunderstandings of the very concept of ill-treatment, difficulties in qualifying specific acts as ill-treatment and disputable penal policies.

The penalties are not proportionate to the severity and gravity of this crime, as the Committee against Torture noted as well. Ill-treatment and torture warrants maximum eight years' imprisonment, while the extortion of a statement warrants

maximum 10 years' imprisonment. The new Criminal Procedure Code that came into force in October 2013 envisages summary proceedings regarding crimes warranting penalties ranging from fines to up to eight years' imprisonment. This provision gives rise to several problems given that no investigations are to be conducted into crimes prosecuted summarily unless the public prosecutor undertakes specific investigation actions at his own initiative or at the order of the judge. Furthermore, the new CPC excludes the possibility of the injured party, as a subsidiary prosecutor, taking over the criminal prosecution before the confirmation of the indictment in the event the public prosecutor dismissed the criminal report, discontinued the investigation or abandoned the raised but still unconfirmed indictment. The only avenue available to the injured party is to file an objection to the immediately higher prosecutor.

The Ministry of Internal Affairs Internal Control Sector did not possess comprehensive data on the number of initiated disciplinary proceedings or disciplinary measures given that many of them were initiated and issued by the heads of the departments in which the policemen complained of worked. According to the information received from the MIA Access to Information Office, the Internal Control Sector received 507 complaints claiming excessive or unlawful use of means of force, torture, inhuman or degrading treatment or communication disrespecting human dignity in the 1 October 2012 – 1 November 2013 period. The Sector found that 23 of the complaints were well-founded. In the same period the Internal Control Sector filed nine criminal reports against 11 policemen.

Although the Criminal Procedure Code prescribes that court decisions may not be based on evidence when the content of or the manner in which it was obtained was in contravention of the provisions of the Constitution or a ratified international treaty, or expressly prohibited by the CPC or another law, it remains unclear to what extent this prohibition is honoured in practice. The ECtHR has to date rendered two judgments in cases against Serbia, finding it in violation of the right to a fair trial because the courts admitted confessions and statements obtained by ill-treatment. Furthermore, the lack of adequate case law on the crimes of extortion of a statement and torture and ill-treatment gives rise to fears that police extortion of statements is widespread and that the courts do not exclude evidence obtained by ill-treatment.

The situation in the penal institutions in Serbia is unsatisfactory despite the relatively good legislative framework. The main problem lies in overcrowding, which has given rise to numerous other problems: the short periods of time inmates in Serbia can spend outdoors (most of them can spend an hour outside, even less in some penitentiaries), the poor material conditions in the facilities in which convicted and detained persons are incarcerated, the lack of meaningful activities, unsatisfactory access to health care, etc. Although both the PSEA and the Rulebooks on House Rules entitle the inmates to file complaints to persons authorised to oversee the work of the penitentiaries, they do not specify how these complaints are dealt with. Furthermore, they do not even oblige the authorised persons to respond to the complaints.

### *Recommendations*

1. Amend the Criminal Code and specify the elements of the crime of ill-treatment in greater detail.
2. Adopt more detailed provisions on when and where medical examinations are conducted; allow persons deprived of liberty to be examined by a doctor whenever they ask for one, rather than leaving it to the discretion of the police or prison staff.
3. Ensure in all cases that non-medical staff does not attend the medical examinations of persons in police custody or in detention pending trial and convicted prisoners, unless otherwise required by the doctors.
4. Increase the penalties for ill-treatment. The penalties of the cases of ill-treatment must be raised at least to the level mandating an *ex officio* investigation by the public prosecutor.
5. Introduce effective non-judicial mechanisms for reviewing complaints alleging ill-treatment by the police, other state authorities or prison staff.
6. Ensure the transparency of the procedure for reviewing complaints of ill-treatment and that the authority conducting it is fully independent from the units and/or officers whose conduct is under review.
7. Take steps to improve the treatment of inmates and the conditions in prisons in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners; to that end, apart from building new prisons, consider greater resort to alternative sanctions.
8. Ensure thorough, efficient and impartial investigations of all ill-treatment cases and suspension of staff whose liability was established during the investigation.

## *6. Prohibition of Slavery and Forced Labour*

The Serbian Constitution explicitly prohibits slavery, keeping persons in conditions akin to slavery and all forms of trafficking in persons. The Criminal Code incriminates trafficking in human beings as well as trafficking in minors for adoption. The sanctions for this crime are mostly in line with international standards. However, despite the steps taken to punish human traffickers and those knowingly exploiting human trafficking victims, the valid Public Peace and Order Act still lays down that a person found guilty of prostitution will be sentenced to maximum 30 days' imprisonment. Therefore, victims of human trafficking may be held liable and punished for prostitution (given that sexual exploitation is one of the most frequent forms of exploitation of human trafficking victims).

The Government of Serbia for the first time adopted the Strategy to Combat Trafficking in Human Beings in 2006 and the National Plan of Action for the

2009–2011 Period, but the new anti-trafficking strategy and action plan for its implementation had not been adopted by the end of 2013.

Judging by the reports of media, NGOs and international organisations, the fight against human trafficking has improved to an extent in 2013. The enforcement of the law is, however, still perceived as problematic. A number of people suspected of trafficking in humans for the purpose of labour or sexual exploitation were arrested across Serbia in 2013, mostly in the vicinity of Belgrade, in Vojvodina and in Southern Serbia.

Serbia was again ranked as a Tier 2 country, i.e. among countries whose governments do not fully comply with the Trafficking Victims' Protection Act minimum standards but are making significant efforts to bring themselves into compliance with those standards. According to some reports, Serbian women are subjected to sex trafficking by Serbian criminal groups in other Balkan and EU countries, while Serbian men are subjected to labour trafficking in European countries, Azerbaijan, the United Arab Emirates, as well as in construction in Russia. Roma children in Serbia are subjected to forced begging and the victims are often subject to trafficking by family members.

Although the awareness campaigns have been conducted, training was organised for operational stakeholders and an increased number of investigations were being launched, a comprehensive, multi-disciplinary and victim-oriented approach to trafficking still needs to be developed. The Rulebook on Social Welfare Service Provision Conditions and Standards, which was adopted in May 2013, specifies, *inter alia*, the standards that must be fulfilled by the facilities in which victims of human trafficking are accommodated. A fund for assisting human trafficking victims has not been established yet. The fact that the number of child trafficking cases has not been falling notwithstanding the efforts also gives rise to concern.

The number of reports on human smuggling via the Republic of Serbia towards Western European countries has been increasing every year. The illegal migration channels pass through Serbia to Croatia and Hungary towards EU member states. Most of the smugglers are nationals of Serbia, while most of the smuggled migrants originate from Asian and African countries. In all the registered cases, the smuggled people were found in violation of the State Border Protection Act and the Aliens Act and were punished by a fine and/or imprisonment and/or the ban to enter Serbia for a specific period of time. In practice, the competent authorities also take measures against smuggled minors.

The Criminal Code fails to lay down that migrants shall not become liable to criminal prosecution for the fact of having become the victims of the crime of smuggling or of being in possession of false personal or travel documents for that purpose, or for having stayed on in Serbia although they did not satisfy the requirements for lawful residence, whereby it deviates from the standard established in the Second Protocol (Art. 5).

### *Recommendations*

1. Establish a nationwide database on criminal reports and criminal trials for human trafficking. The competent authorities ought to keep records of the number of victims, perpetrators and penalties imposed for human trafficking crimes.
2. Develop a coordinated mechanism for addressing child trafficking to eliminate this form of crime.
3. Align the existing and/or adopt new regulations governing begging. Devise a plan of measures to address child begging.
4. Develop a coordinated mechanism for addressing the problems of organised begging and exploitation of children for begging.
5. Develop a coordinated mechanism for addressing the problem of human trafficking for the purpose of labour exploitation.
6. Decriminalise prostitution.
7. Adopt the relevant provisions on a redress fund and ensure that past and present victims of human trafficking in Serbia are entitled to such redress.
8. Identify a sustainable mechanism for funding legal and other forms of urgent assistance to human trafficking victims provided by NGOs.
9. Establish a mechanism for monitoring and evaluating the victim protection and reintegration mechanisms and implement it in cooperation with international, regional and bilateral partners.
10. Adopt a new Anti-Trafficking Strategy and a relevant action plan.

## *7. Right to Liberty and Security of Person*

The Constitution of Serbia guarantees everyone the right to liberty and security, allows for deprivations of liberty “only on the grounds and in a procedure stipulated by the law”. New Criminal Procedure Code (CPC) that came into force on 1 October 2013 governs deprivation of liberty, either before or during the investigation of the individual at issue or during trial, somewhat differently than its predecessor.

The situation in the penitentiaries prompted the Serbian Government to adopt a Strategy to Reduce Overcrowding in Penitentiaries in the Republic of Serbia in the 2010–2015 Period in 2010, and the Action Plan for its implementation in November 2011. The number of detainees substantially fell from 2010 until early 2013, by nearly a thousand.

The courts’ tendency to order pre-trial detention, which has in some cases lasted several years, has been one of the gravest problems in Serbia’s criminal law system in the past decade. It has resulted in the overcrowding of the pre-trial detention wards in most penitentiaries, wherefore the number of inmates in the peniten-



tiaries greatly exceeded their capacities. The number of detainees substantially fell from 2010 until early 2013. The drop in the number of detainees was the consequence of fewer criminal proceedings, particularly before higher courts. Data obtained from over two-thirds of the Serbian Basic and Higher Courts lead to the conclusion that the percentage of proceedings in which the judges ordered pre-trial detention has not changed significantly over the past few years and that alternatives to detention, such as bail, house arrest and ban on leaving one's place of residence, are very rarely ordered, in an almost negligible number of cases.

In late 2013, the Serbian Government adopted the Strategy for the Development of the Penal Sanctions Enforcement System in the Republic of Serbia until 2020. The Strategy sets as one of its goals the more extensive use of non-custodial penal sanctions. However, the Strategy unfortunately does not envisage the opening of probationary services, which are requisite for the enforcement of community service penalties, across the country until the 2018–2020 period. Only seven of them were operational at the end of 2013. The Strategy envisages the opening of probationary services in another seven towns by the end of 2014 and the adoption of a law governing the enforcement of non-custodial sanctions in detail.

No major headway was made in addressing the problems regarding the de facto deprivation of liberty of specific individuals (primarily those suffering from mental difficulties and those deprived of legal capacity) committed to social protection institutions and problems regarding commitment to psychiatric institutions. The Serbian Assembly adopted the Law on the Protection of People with Mental Disorders in 2013. This is novel law in Serbia's legal system. The law commendably lays down that the person committed to a psychiatric institution may appeal regardless of the state of his mental health. The same rules apply to the submission of a discharge request prior to the expiry of the period for which the patient was committed. The provisions of the law are in this respect fully in compliance with the views of the ECtHR, which insists that everyone must be entitled to initiate proceedings to protect their fundamental rights, such as the right to liberty and security of person, regardless of their state of health.

### *Recommendations*

1. Order more often alternatives to detention, i.e. measures ensuring the presence of defendants and the unobstructed conduct of criminal proceedings (bail, ban on leaving one's place of residence, etc.).
2. Expand the probationary service network as soon as possible, to facilitate the enforcement of non-custodial criminal sanctions across the country.
3. Amend the Road Traffic Safety Act and introduce measures milder than deprivation of liberty for drunk driving, such as, e.g. temporary vehicle seizure.
4. Amend Article 53(3) of the Police Act and put in place an effective legal remedy for persons held in 24-hour custody for disturbing or endanger public law and order.



5. Stop institutionalising i.e. depriving of liberty people deprived of their legal capacity without their consent and pursuant to the consent of their legal guardians. Provide such people with access to a court, which will rule on the justification for their institutionalisation in accordance with the provisions on compulsory hospitalisation.
6. Provide people with psycho-social or intellectual disabilities the opportunity to live in the community or in a less restrictive environment.
7. Render impossible the *de facto* deprivations of liberty of people committed to social welfare institutions given the absence of legal grounds for such deprivations.

## 8. *Judicial Reform*

The Constitution and the Constitutional Act on the Implementation of the Constitution were criticised as soon as they were adopted in 2006, mostly because they postponed the judicial reform, which did not begin before the end of 2009 and was still under way at the end of the reporting period.

A National Judicial Reform Strategy for the 2013/2018 Period was adopted in late 2013 and several key laws: a new Act on the Seats and Jurisdictions of Courts and Public Prosecutor's Offices, the Act Amending the Act on Organisations of Courts, the Act Amending the Act on Judges and the Act Amending the Act on Public Prosecutor's Offices. The network of courts of general jurisdiction will consist of 66 Basic Courts and 58 Basic Public Prosecutor's Offices and 29 court units; some Prosecutor's Offices will have jurisdiction for two courts to save costs. The network will also comprise 25 Higher Courts, 16 Commercial Courts and four Appellate Courts, in Belgrade, Kragujevac, Niš and Novi Sad and 25 Higher Public Prosecutor's Offices and four Appellate Public Prosecutor's Offices. The territorial organisation of 44 Misdemeanour Courts was not changed by the new law. The new court network was to start operating on 1 January 2014.

According to the proposed measures, all preparations for amending the part of the Constitution on the judiciary will have been completed by 2018 to ensure that the requirements for the independence, efficiency and accountability of the judiciary are fulfilled. The Venice Commission recommended amendments to the Constitution to remove the role of the National Assembly in the appointment of judges and court presidents, fearing its involvement undermined their independence and impartiality.

The reintegration in the justice system of some 800 judges and public prosecutors reinstated pursuant to the Constitutional Court decision has been one of the main challenges the judiciary has faced. The Constitutional Court decision again raised the issue of fairness and the purpose of the decisions, first those on reappointment and then those on reinstatement. Some of the judges and prosecutors, who

had been reappointed or were subsequently reinstated, had violated human rights by their decisions or were unworthy of office. The reinstated judges and prosecutors filed claims demanding of the state to compensate them for the material and non-material damages they sustained. According to JAS' estimates, the state will have to pay around 15 million EUR just for the material damages caused by the mistakes in the 2009 general judicial appointment procedure.

Serbian courts are still staggering under huge backlogs although the adjudication of such cases and trials within a reasonable time have been among the top priorities of the Serbian judiciary for years. The total backlog of courts of general and special jurisdiction in Serbia has exceeded three million for several consecutive years.

A negligible number of disciplinary proceedings are launched every year, only one or two of them. In its decision on the non-appointment of judges, the Constitutional Court found that the criteria for evaluating the judges' competence and qualification were inadequate and imprecise. There are still the lack of an institutional accountability mechanism and professional appraisal rules and more systematic application of disciplinary rules, where relevant, to prosecutors and judges to ensure accountability in the judiciary. The HJC formed a working group tasked with drafting a rulebook on the appraisal of the performance of judges and court presidents.

The legislative and constitutional framework still left room for undue political influence, in particular when it came to appointments and dismissals of judges and prosecutors. The integrity and independence of the judiciary is often brought into question by rash, and often even illegal actions by the representatives of the executive government. Announcements of arrests, outcomes of trials, violations of the presumption of innocence are commonplace. Such conduct by politicians undermines public trust in the judiciary and creates the impression that the judiciary is dependent on the executive.

Regarding the question of equality before the law it could be concluded that equality is violated by non-aligned case law. The introduction of prosecutorial investigations can greatly affect the defendants' right to defend themselves. A prosecutorial investigation may create room for substantial inequality between the parties, because it is difficult to expect of the prosecutor to present evidence to the advantage of the defendant, as the Criminal Procedure Code envisages.

The lack of an adequate free legal aid system is one of the problems arising with respect to the right to fairness. 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 but the law was not adopted by the end of the 2013. The Draft Legal Aid Act was criticised by some civil society organisations, which expressed fears that hardly anyone would be capable of fulfilling the requirements to be appointed a lawyer free of charge and that there would be no pro bono lawyers to assist those who did.

The adopted amendments to the Act on the Organisation of Courts entitle parties who believe that their trials are excessively long to sue the courts and claim

compensation for violations of their right to trial within a reasonable time. Under the amendments, the immediately higher court will decide on the protection of the right to a trial within a reasonable time while the trial is still ongoing. Professional associations have alerted to the risk that these proceedings might additionally burden the courts because their enforcement will encounter problems arising from the lack of judicial associates in courts, the administrative burden already placed on the judges and the inadequate provisions in procedural laws.

Under the Judicial Academy Act future judges and prosecutors shall attend additional training after they pass the Bar. The Judicial Academy is an integral part of the judicial system and its purpose is to ensure the independent and impartial work of the judges and prosecutors. The Constitutional Court rendered a ruling initiating the review of the constitutionality of the Judicial Academy Act and in early 2014 declared unconstitutional specific provisions of this law dealing with the election of judges and prosecutors.

### *Recommendations*

1. Systematically and regularly monitor and assess the efficiency of the new court network to pre-empt any problems, including the further slowdown of the courts' work caused by the transfers of large number of cases, changes of judges and starting the trials afresh.
2. Amend Articles 99, 147 and 154 of the Constitution allowing the National Assembly's interference in the election of first-time judges to facilitate the election of Judicial Academy trainees to judicial offices.
3. Impose upon the High Judicial Council and the State Prosecutorial Council the obligation to as soon as possible establish an adequate system for evaluating the performance and accountability of judges and prosecutors through the application of the professional codes of conduct and disciplinary regulations. To that end, introduce mandatory and continuous training for the judiciary and set their performance at the Judicial Academy as one of the promotion criteria.
4. Ensure consistent respect of the rule of law and judicial independence by actively and resolutely fighting against the influence of the executive on the judiciary, particularly the work of the prosecutors, to prevent the further deterioration of public trust in the work of the judiciary.
5. Impose upon the High Judicial Council and the State Prosecutorial Council the obligation to react to judicial and prosecutorial conduct resulting in the expiry of the statutory limitations.
6. Adopt as soon as possible the Legal Aid Act, which will define the beneficiaries of legal aid and the procedure they have to undergo in a manner ensuring genuine and efficient protection.
7. Analyse how other laws, such as the Notaries Public Act and the Enforcement and Security Act, affect the efficiency of court proceedings.

8. Regularly monitor the efficiency of the amendments to the Act on the Organisation of Courts allowing parties to sue the court before the immediately higher courts and be compensated for damages caused by the violations of their right to trial within a reasonable time and establish whether such proceedings additionally burden the courts.
9. Improve the e-justice system by adopting regulations ensuring uniform entry of case data in the software and organise additional training for its users. This entails improving the IT capacities of the courts as well.
10. Ensure that the Supreme Court of Cassation and the Appellate Courts assume responsibility for introducing uniform case law.

## *9. Right to Privacy and Confidentiality of Correspondence*

The Constitution of Serbia does not protect the right to privacy as such but it does guarantee the inviolability of physical and mental integrity, inviolability of the home and confidentiality of letters and other means of communication. The Constitution guarantees that everyone shall have the right to access data in the possession of the state authorities and organisations vested with public powers and lays down that this right shall be exercised “in accordance with the law”, which means that the provisions protecting the right to privacy must be respected. The Criminal Code incriminates breaches of the inviolability of the home, unlawful search, unauthorised disclosure of secrets, violations of the confidentiality of letters and other mail, unauthorised wiretapping, recording and photographing, unauthorised publication of another’s text, portrait or recording. It also incriminates disclosure or dissemination of information of someone’s family circumstances that may harm his honour or reputation.

There have been many debates challenging the provisions of laws governing surveillance of communications in the recent past. The Constitutional Court rendered a Decision finding that Articles 13, 14 and 15 of the Security Intelligence Agency Act were not in compliance with the Constitution twelve years after the initiative to review the constitutionality of its provisions was submitted. The Constitutional Court rendered a decision in June 2013 declaring unconstitutional Articles of the Electronic Communications Act under which the operators were under the duty to retain electronic communication data for the purpose of investigating and revealing crimes and conducting criminal proceedings in accordance with the Criminal Procedure Law and to protect the national and public security of the Republic of Serbia, pursuant to the laws governing the work of security agencies and internal affairs authorities, and to allow state authorities access to such data on request. The Constitutional Court reiterated that the inviolability of the confidentiality of letters and other means of communications regarded not only the content of the electronic communications, but the formal features of the communication as well.

The Ministry of Foreign and Internal Trade and Telecommunications in late 2013 launched a public debate on the Draft Act Amending the Electronic

Telecommunications Act. The Commissioner complained about the wording in the Draft, noting that the expressions “detection of crimes” and “public security” were much broader in scope than the exceptions in the Constitution. The Act also needs to include the operators’ obligation to keep records on how many times the retained data have been accessed and periodically notify the Commissioner thereof.

The Protector of Citizens and the Commissioner recommended to the Government and National Assembly 14 measures to improve the legal framework and practice of the state authorities in the field of protection of privacy. However, the Commissioner stated that these measures have not been fully implemented.

The Constitutional Court has been asked to review the constitutionality of the Criminal Procedure Code, which governs the powers of the police in pre-investigation proceedings to obtain a record of telephone communications or the base stations used, or locate the place from where communication is being conducted pursuant to an order of the public prosecutor, not the court. The Constitutional Court did not render a decision on this issue in 2013.

The Assembly Security Agencies Oversight Committee rendered a Decision on Direct Oversight of the Work of Security Agencies in late March 2013. The Decision, however, envisages a number of restrictions: the Committee Oversight Delegation must notify the agency of its visit at least three days in advance and of the measures that will be subject to oversight; the Delegation may not seek insight in specific data pursuant to the Act on the Basis of the Regulation of the Security Agencies of the Republic of Serbia, etc. These restrictions provide the agencies with the opportunity to conceal the data they had obtained in contravention of the Constitution or the law and to “eliminate” any irregularities in their work before the Delegation’s oversight visit.

### *Recommendations*

1. Integrate in the national legislation the principles and recommendations in the UN Resolution on the Right to Privacy in the Digital Age.
2. Improve the oversight role of the National Assembly, particularly the relevant Assembly Committees, to pre-empt the adoption of laws the provisions of which are in contravention of the constitutional guarantees of the right to privacy and ratified international treaties.
3. Amend the Constitution by adding an article clearly and precisely regulating the right to privacy and defining its scope.
4. Legally regulate all status-related, family and other issues that may arise in case of sex change.
5. Establish a mechanism for granting individual redress to all parents whose children went missing in maternity wards under unclear circumstances. The state is bound to introduce such a mechanism under an ECtHR judgment (in the case of *Jovanović v Serbia*).

6. Adopt a new Electronic Communications Act and align all the provisions of this law with the Constitution of Serbia and international treaties binding on Serbia.
7. Urgently amend the provisions of the Security Intelligence Agency Act declared unconstitutional by the Constitutional Court.
8. The Constitutional Court should as soon as possible review the constitutionality of the Criminal Code provision under which the police may obtain records of telephone communications or the base stations used or locate the place from which communication is being conducted at the order of the public prosecutor, rather than the court.
9. Improve the legislative framework and practices of the state authorities in the field of protection of privacy in accordance with the measures proposed by the Commissioner for Information of Public Importance and Personal Data Protection and the Protector of Citizens.
10. Implement a thorough reform of all security agencies and facilitate effective and regular oversight of their work and particularly strengthen civilian oversight of these agencies.

## *10. Personal Data Protection and Protection of Privacy*

The Constitution of the Republic of Serbia guarantees the protection of personal data and sets out that the collection, storage, processing and use of personal data shall be governed by the law. The Personal Data Protection Act (PDPA) is the main law regulating this field. Under this law, personal data shall denote any information about a natural person, regardless of its form or format, the carrier of the information. A number of problems have arisen in practice with respect to the efficient application of this law as noted by the Commissioner for Information of Public Importance and Personal Data Protection.

Although the Personal Data Protection Strategy was enacted four years ago, an action plan for its implementation was still not adopted in 2013. The Action Plan for the Implementation of the National Judicial Reform Strategy specified that the amendments to the PDPA were to have been drafted, publicly debated and submitted to the Government for endorsement by the end of 2013, but none of these activities had been implemented by the end of the year. The Government still has not adopted a by-law governing the archiving of personal data and measures for protecting particularly sensitive data, which it should have passed back in 2009. The Commissioner alerted that this was why the citizens' rights have been violated on a large scale during the processing of their personal data, particularly by the state authorities. Furthermore, quite a few of the personal data controllers are unfamiliar with the text of the law and the meanings of specific legal terms, particularly the meaning of "personal data processing".

The National Assembly passed the Acts on Detectives and on Private Security in late November 2013. Neither law includes a general provision clearly referring to the Personal Data Protection Act or the Act on Free Access to Information of Public Importance that would ensure the enforcement of these two laws to issues not governing the private security sector. Both laws set out that the by-laws needed for their enforcement shall be adopted within six months from the day they come into force although the Constitutional Court held that the collection, storage, processing and use of data may be governed only by primary legislation. The Government has rarely abided by the legal deadlines within which it is obliged to regulate specific fields in greater detail.

The Classified Information Act was adopted in 2009 but has not been enforced. This law, too, imposes upon the Government and other public authorities the obligation to adopt within a year from the day it comes into force the requisite by-laws governing in detail the manner and procedure for the classification of data, the criteria for determining the degree of confidentiality, the manner and procedure for establishing the fulfilment of the requirements for communicating confidential data to other legal and natural persons, security check forms, the content, form and issuance of certificates, et al. The Government in 2013 adopted two decrees regulating this field only partially.

Areas of major relevance to personal data protection, such as video surveillance, security checks, direct marketing and biometric data remain unregulated, leaving room for extensive abuse.

According to the data the Commissioner published on his website, the number of personal data protection cases was considerably greater in 2013 than in the previous years (by 50% over 2012 and three times higher than in 2011). The Commissioner saw the fact that 2,200 citizens had sought protection of their rights as a positive trend, as it indicated their greater awareness of their rights, but also as indication of the shortcomings of the system and the state authorities' failure to protect personal data.

### *Recommendations*

1. Adopt a new law on personal data protection or amend the existing one as soon as possible and align the provisions with the relevant EU and CoE documents.
2. Organise systematic and continuous training of all personal data controllers to avoid violations of the right to privacy.
3. Adopt a new personal data protection strategy and an action plan for its implementation as soon as possible.
4. Urgently adopt regulations on the archiving and protection of particularly sensitive private data pursuant to the obligation in the Act.
5. Align the laws dealing with fields in which the processing of any kind of personal data can be regulated with the valid Personal Data Protection Act or the new one that will be adopted.



6. Adopt by-laws requisite for the enforcement of the new Acts on Detectives and on Private Security and the Classified Information Act.
7. Regulate by law issues pertaining to personal data protection, such as video surveillance, biometric data and direct marketing.

## *11. Freedom of Expression*

The right to freedom of expression of opinion is guaranteed by the Constitution. The Constitution guarantees the freedom of the press – publication of newspapers is possible without prior authorisation and subject to registration, while television and radio stations shall be established in accordance with law. The Constitution prescribes that 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. The Public Information Act governs the right to public information, as the right to the freedom to express one's opinion.

Under the 2011 Strategy for the Development of the Public Information System in the Republic of Serbia until 2016 (Media Strategy), three new media laws – a Public Information and Media Act, a Public Service Media Act and an Electronic Media Act – were to have been adopted by the end of March 2013.

Work on the new Public Information and Media Act began in 2013, but the draft was not submitted to parliament for adoption by the end of the year. The Media Coalition called for the inclusion of a transitional provision prohibiting publicly owned media from applying for project-based funding until the transition to project funding was completed in order to provide a level playing field for all the media and the inclusion of protective provisions regarding the direct aid media receive from ministries not charged with public information or budget-funded organisations and public companies. It was also of the view that the criteria for approving funding for media projects had to be specified in the law to ensure the uniform enforcement of the provisions on project funding.

The Ministry of Culture and Information published the drafts of the Public Service Media Act and the Electronic Media Act. The Act envisage the existence of two public broadcasters. The former draft was amended several times and underwent a public debate but its fate remained uncertain at the end of the reporting period. The Electronic Media Act was not adopted in 2013 either.

The status of the media in Serbia became disquieting in 2013. As many as 26% of the TV and 25% of the radio stations in Serbia are publicly owned, while one of the three news agencies, Tanjug, is fully owned by the state. Serbian media experts have singled out political and economic influences on the media as the main factor for the problems in this field. The media privatisation case, initiated by the Anti-Corruption Council and included among the 24 priority investigations of controversial privatisations in Serbia, was not resolved in 2013.



A number of assaults on journalists were registered in several Serbian cities in 2013. One of the most serious ones was made by the right-wing organisation Naši, which put up posters with lists of “anti-Serbian” media and NGOs in several cities, accusing them of propaganda-information terrorism and calling for their prohibition and for arrests.

Another problem increasingly characterising the Serbian media stage apart from self-censorship and non-transparent media ownership are the campaigns the so-called tabloids have been waging against people and the unconfirmed information they have been publishing without suffering any consequences. Such media are often a tool in the fight against opposition politicians or public figures critical of the ruling parties. In addition to the Serbian media organisations and associations, the European Commission also remarked on such developments.

Unprofessional conduct and violations of professional and ethical standards occurred the most often in TV reality shows and press coverage of the developments in those shows. The Complaints Review Commission of the Press Council, an independent self-regulatory authority, held ten sessions in 2013 and rendered a number of decisions finding violations of the Press Code of Conduct. ANEM stated in its report that the Commission was out of money.

Individual outlets have been spreading hate speech. The fact that TV stations with nationwide coverage devoted little attention to culture and that public broadcaster RTS Channel 1 only devoted 0.15% of its airtime to culture in nine months was disclosed at a meeting in the National Assembly.

A poll conducted among 2,500 high-school students by the Media Coalition in October and November corroborates the conclusion that provision of true information does not appear to be the priority of the media. Most of the respondents have a poor opinion of the quality of the media and think that the media in Serbia are not independent. In their view, the Internet, social networks and TV are the most influential media. Radio and weeklies are the last on the list of media the young inform themselves from.

### *Recommendations*

1. Put in place mechanisms to ensure the full transparency of media ownership and financing of media and abolish state ownership of the media forthwith.
2. Adopt the three media laws – the Public Information and Media Act, the Public Service Media Act and the Electronic Media Act – as soon as possible.
3. Take measures to improve the financial status of media outlets and professionals.
4. Investigate assaults on media professionals efficiently and effectively and punish those responsible.
5. Solve the murders of journalists Dada Vujasinović, Slavko Ćuruvija and Milan Pantić.

6. Press associations and media self-regulatory authorities need to strengthen their activities.
7. Introduce training of journalists in standards requisite for the protection of everyone's dignity and rights, particularly those developed in ECtHR case law.

## *12. Freedom of Association*

The Constitution of Serbia guarantees the freedom to join and form political, trade union and all other forms of associations. The Register of Associations of Citizens i.e. of non-government organisations is kept by the Business Registers Agency, while the political parties are entered in the Register of Political Parties kept by the Ministry of Justice and State Administration. The exercise of the freedom of association is governed in greater detail by the Act on Associations and the Act on Political Parties.

The 2013 Budget Act earmarked 150,960,000 RSD for NGOs under budget line 481, a drastic cut over 2012, when the allocation stood at 7,846,427,575 RSD. Data on how much money had actually been disbursed to NGOs will be known only after the Act on the Budget Balance Sheet is adopted, after 15 July 2014. As of 25 December 2013, the Government still had not adopted the report on budget funds spent on NGOs in 2012, which was prepared by the Office for Cooperation with Civil Society.

The tax laws do not include provisions allowing direct tax deductions for companies donating funds to associations of citizens. The amendments to the Corporate Profit Tax Act adopted in 2013 did not include the CSOs' suggestions to expand the list of tax-deductible activities to include the promotion and protection of human rights, promotion of democratic values, the fight against corruption, EU integration, gender equality etc.

The Act on Associations prohibits the public use of visual symbols and insignia of prohibited associations but there are no any penalties for non-abidance by this prohibition. The association Otačastveni pokret Obraz, which the Constitutional Court banned in 2012, has continued displaying its symbols and insignia, including at public rallies.

The Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia introduced grounds for initiating the procedure for deleting associations propagating neo-Nazi or Fascist ideas it from the Register. This legal sanction borders on the absurd given that most of the organisations, including Combat 18, which are advocating such ideas, are unregistered. The Constitutional Court could render a decision to prohibit the work of an association on the motion for its prohibition in the event it finds that the association is secret or paramilitary. The Court also could order in its decision the measures to be implemented to prevent the activities of that secret or paramilitary association. It

is, however, unclear how come, since 1995, the neo-Fascist organisation Blood and Honour (Krv i čast) has continued operating despite the fact that this organisation in 2003 established its combat division, Combat 18. No proceedings to prohibit this organisation have been instituted yet.

Aliens are entitled to establish local associations provided that at least one of the founders resides or is headquartered in the territory of Serbia. The Constitution prohibits judges, public prosecutors, the Protector of Citizens, members of the police and armed forces from membership in political parties. Judges and prosecutors are allowed to associate in professional organisations to protect their interests.

The status of human rights defenders was not significantly improved in 2013. There have been isolated incidents and assaults on them, particularly on female human rights defenders. Activists lobbying for and protecting LGBT rights were threatened as well. Some court proceedings against human rights defenders or initiated by them have been excessively long.

### *Recommendations*

1. Align the tax laws with the Act on Associations and ensure that the former provide legal persons with incentives and tax relief in the event they donate funds to associations of citizens engaged in promoting and protecting human rights and democratic values, fighting against corruption, et al.
2. Hold an association liable for a misdemeanour in the event its member engages in prohibited activities only if a connection can be established between these activities and the association and define the concepts of “Fascist and neo-Nazi ideas and insignia” by amending the Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia.
3. Consistently enforce the Constitutional Court decision prohibiting the Fatherland Movement Obraz by preventing the activities of its de facto successor.
4. Amend the Act on Associations by introducing provisions penalising prohibited organisations for displaying their symbols and consistently enforce these provisions.
5. Take the relevant measures to prevent the activities of neo-Nazi associations. Senior state officials should publicly criticise such social phenomena to a greater extent.
6. Align the Act on Associations with the Act on Political Parties and other regulations governing the financing of political parties to ensure that associations of citizens pursuing political goals and political parties have the same rights and obligations with a view to preventing manipulations and ensuring a level playing election field and the full respect of the freedom of association and voting rights.
7. Invest efforts to protect human rights defenders pursuant to the obligations under the UN Declaration on the Protection of Human Rights Defenders.

### *13. Freedom of Peaceful Assembly*

The right to freedom of peaceful assembly is enshrined in the Constitution, under which citizens are to free to assemble peacefully and indoor assemblies shall not be subject to approval or notification. In the Republic of Serbia, the right to freedom of peaceful assembly is governed by the Public Assembly Act, which was adopted in 1992. The Ministry of Internal Affairs drafted a new law back in 2010, which has not been publicly debated yet. The draft includes some improvements over the valid law; however, its authors kept some highly criticised provisions in it as well, and, furthermore, included some new solutions that give rise to concern.

The Constitutional Court launched a review of the Public Assembly Act at its own initiative in May 2013. It was prompted by the shortcomings of the Act regarding the legal remedies and the provisions specifying at which venues public assemblies may not be held and allowing local self-governments to designate venues where public assemblies may be held under the general criteria in the Act.

The provisions on venues “appropriate” for public assemblies in the Public Assembly Act are also disputable. Organisers of assemblies in Serbia are under the obligation to notify the authorities of an assembly they are planning to hold, but do not need to wait for their approval.

The organisers of the Pride Parade were required to obtain a series of other consents and approvals. It took the organisers months to obtain all these decisions, until August 2013. They were also under the duty to submit to the competent authorities a plan of the stage that was to have been put up in the Belgrade Manjež Park and detailed information about the company that would be charged with maintaining order during the event. They were asked to make an advance payment to cover the costs of public traffic changes, given that the Pride Parade was planned as a procession. On the other hand, organisers of the procession marking the 10<sup>th</sup> anniversary of its leader Vojislava Šešelj’s voluntary surrender to the ICTY and the association of soccer fan groups, which organised a procession “Stop to Fan Victims” were obliged only to submit notices of their assemblies to the police. Such unequal treatment of assembly organisers by the competent bodies is absolutely groundless and may amount to a gross restriction of the freedom of assembly based on discrimination. Furthermore, the legal provisions on restrictions of the freedom of peaceful assembly are largely incompatible both with the international standards and the Constitution of the Republic of Serbia.

The authorities prohibited the Pride Parade in 2013. The ruling prohibiting the Pride Parade scheduled for 28 September 2013 was adopted on 27 September 2013, although notification of the assembly had been submitted on 5 October 2012. The Republic of Serbia thus again missed the opportunity in 2013 to fulfil its positive obligation and protect the Pride Parade participants from third parties, primarily members of extremist organisations, who wanted to employ violence to prevent the Pride Parade from taking place.

The adoption of the ruling prohibiting the assembly one day before it was to have been held renders ineffective all the legal remedies the Public Assembly Act envisages. Only after the 2013 Pride Parade was banned did the police file 18 criminal charges against individuals, who had threatened its organisers on social networks.

The Constitutional Court has to date ruled on four cases in which the appellants claimed wrongful restriction of their freedom of assembly. The Court upheld three constitutional appeals and dismissed the fourth because it did not fulfil the procedural requirements. The Constitutional Court commendably referred to ECtHR case law in its interpretations of the constitutional provisions on the freedom of peaceful assembly in each of the cases it reviewed on the merits. What, however, gives rise to concern is that, despite the Court's views, the competent authorities have not aligned their practices with the views of the Constitutional Court.

### *Recommendations*

1. Ensure effective legal remedies for challenging restrictions of the freedom of peaceful assembly.
2. Ensure that the rulings prohibiting public assemblies include detailed factual reasonings in addition to the legal grounds for the bans.
3. Hold a public debate on the Draft Public Assembly Act.
4. Adopt a new Public Assembly Act. Ensure that the regulations on the freedom of public assembly are in line with the Constitution of the Republic of Serbia and international human rights protection standards.
5. Facilitate the holding of a Pride Parade in 2014.
6. Take pre-emptive measures to prevent violence against future Pride Parade organisers and participants.

## *14. Status of Asylum Seekers in Serbia*

Under the Constitution of Serbia, any foreign national with reasonable fear of persecution on account of his race, sex, language, religion, nationality or association with a group or political opinion shall be entitled to asylum in the Republic of Serbia. The Asylum Act governs in detail the asylum procedure. The Act explicitly entitles asylum seekers to contact authorised UNHCR staff during all stages of the asylum procedure but people seeking asylum at Belgrade Airport, however, do not have the possibility of contacting the UNHCR in practice. During 2013, two asylum seekers had access to the asylum procedure via the Belgrade airport. The solution under which the Government unilaterally defines safe third countries in a Decision is also problematic. The valid Decision was adopted in 2009 and has not been revised since.

A total of 5,065 people expressed the intention to seek asylum in Serbia in 2013; 742 asylum seekers were registered and 153 asylum applications were submitted in this period. The Asylum Office interviewed 19 asylum seekers in 2013

and rendered 8 decisions dismissing asylum applications, 4 decisions approving protection and 176 conclusions suspending the asylum procedure in this period. A total of 19 appeals were submitted to the Asylum Commission in 2013: 10 of them were rejected, 2 were adopted and 4 were pending at the end of the reporting period.

The Migration Management Act entrusts the Commissariat for Refugees and Migrations with the accommodation and integration of persons granted asylum or subsidiary protection. The Commissariat has not submitted to the Government a proposal on the steps for integrating them in the social, cultural and economic life of the country yet. Nothing has yet been done to put in place the conditions for their integration; nor have funds in the budget been earmarked for that purpose.

The collected data and information, analysis of the legislation and its application in practice lead to the general impression that the asylum system in Serbia is inefficient. The inefficiency of the asylum procedure is precisely the reason why asylum-seekers perceive Serbia as a transit country, for entering the EU illegally. In August 2012, the UNHCR recommended that, given the current situation in the asylum system, Serbia not be considered a safe third country and called on the states parties to the Convention to refrain from sending asylum seekers back to Serbia on this basis.

Asylum seekers are accommodated in the Asylum Centre in Banja Koviljača or the temporary centres operating in 2013 in Bogovađa, Vračevići, Obrenovac and Sjenica. The accommodation of asylum seekers is within the purview of the Commissariat for Refugees and Migrations and is funded from the state budget. The facilities in Banja Koviljača, Bogovađa and Obrenovac are minimum security establishments and the living conditions in them are satisfactory. The capacities of the Centres are insufficient and up to 200 people were living in open air, near the Bogovađa Centre in 2013. The NPM qualified the living conditions in the Vračevići temporary centre as inhuman and degrading in its October 2013 Report. In December 2013, the asylum seekers, who had been living outside the Asylum Centres, were temporarily put up in the dining hall of a private hotel in Sjenica. Other asylum seekers were accommodated in an Obrenovac hotel in December 2013; the living conditions in this hotel are satisfactory.

The Serbian Government let the Commissariat for Refugees and Migrations use an army barracks in the village of Mala Vrbica near Mladenovac. There are no indications that a Centre will soon be built to permanently address the accommodation of asylum seekers although the Refugee Commissariat was provided with funds from the budget for that purpose back in 2011.

### *Recommendations*

1. Introduce training of police officers on the treatment of asylum seekers as a vulnerable group and on the right to asylum.
2. Introduce independent monitoring of access to the asylum procedure at border crossings.

3. Introduce training on the right to asylum for misdemeanour judges to enable them to recognise the intention of people to seek asylum and react adequately when they recognise such an intention.
4. Consistently refrain from punishing asylum seekers for illegally entering the country.
5. Provide asylum seekers with unhindered access to the territory of Serbia and the asylum procedure.
6. Enable the registration of asylum seekers not living in Asylum Centres due to lack of room and make an effort to ensure adequate accommodation for all asylum seekers.
7. Define the deadline by which the registered asylum seekers must be issued IDs.
8. Allocate funds in the budget to cover the costs of interpretation during the asylum procedure.
9. Ensure consistent abidance by the principle of gender equality in the asylum procedure during the assignment of cases to the Asylum Office staff and by engaging interpreters of both sexes.
10. Ensure consistent abidance by the prohibition of refoulement in accordance with international human rights protection standards.
11. Set adequate criteria for updating the Government list of safe third countries and revise the valid list.
12. Facilitate the integration of people granted asylum or temporary protection.

## *15. Right to Work*

The Constitution guarantees the right to work and free choice of occupation. Labour law is regulated primarily by the Labour Act and the Employment and Unemployment Insurance Act. The General Collective Agreement, which regulated relations between employers and workers in greater detail, ceased to be effective in May 2011. The National Employment Strategy for the 2011–2020 Period was adopted in May 2011 too.

According to the Statistical Office of the Republic of Serbia data, the unemployment rate – the share of the unemployed population of the Republic of Serbia of working age – stood at 20.1% (19.4% among men and 21.2% among women) in October 2013. The employment rate – the share of the employed population above 15 years of age – stood at 39.1% in October 2013 (46.2% among men and 32.5% among women). The informal employment rate is also monitored given the large number of people who are informally employed; this rate was 2.1% higher in October than in April 2013 and 2.4% higher than in October 2012. A total of 2.2 million people, or 45% of the working age population in Serbia, are employed (including informal employment). Out of every 100 residents of Serbia, 24 are working, 24 are



pensioners and 10 are unemployed. People on average spend two years looking for a job and employers have claimed that hiring younger workers without experience cost them more.

The authorities intensively worked on the amendments to the Labour Act in the latter half of the year. After the public debate, the Socio-Economic Council decided to withdraw the draft from the procedure and establish a new working group to draft the amendments in 2014.

A total of 759,372 job seekers were registered with the National Employment Agency (NES), or 1.1% more than the previous year; 395,985 of them were women. In 2013, 214,461 people found jobs; 264,665 people registered with the NES were first-time job seekers. The Serbian Employers' Union believes that the key reason for the high unemployment rate lies in the Labour Act, which it finds restrictive, and numerous other laws hindering investments in the Serbian market. On the other hand, the trade unions blame the employers and think that the way they have been doing business has led to an increase in informal employment and lower costs of labour.

The latest amendments to the Labour Act adopted earlier in 2013 prohibit the dismissal of pregnant women, women on maternity leave and workers on childcare leave.

The Government of Serbia endorsed the Draft Privatisation Act and the Draft Act Amending the Bankruptcy Act in December 2013. The draft amendments to the Bankruptcy Act introduce the institute of automatic bankruptcy and envisage the establishment of a Bankruptcy Oversight Organisation and a Chamber of Bankruptcy Managers in lieu of the Licensing Agency. Under the draft amendments to the Bankruptcy Act, payment of outstanding minimum wages plus interest and pension and disability insurance contributions for the present and former workers of the companies declared bankrupt shall have priority. According to some surveys and analyses, as many as 800,000 people have lost their jobs since the process of privatisation was launched in 2001 due to shoddy privatisations, low prices at which factories were sold and dodgy business arrangements.

In October 2013, the Protector of Citizens issued a press release alerting to violations of the rights of workers of companies under restructuring and the huge number of workers, whose employers had not been paying their health and pension insurance contributions for years. He stressed that the state guaranteed the exercise of rights prescribed by the laws and that the disrespect of these laws resulted in breaches of both the rights of the workers and of those employers who were abiding by the law and thus had greater expenses than their competitors in the market. The Protector of Citizens extended his full support to the Economy Minister and his plan to cut the contribution rates to levels affordable by all employers and introduce zero tolerance for the failure to pay them.

The labour inspectorate is charged with overseeing the enforcement of the labour law. Other inspectorates oversee the enforcement of the law in other fields directly affecting the status of workers. The Labour Inspectorate Act was not adopted in 2013 although it is prerequisite for improving protection at work and preventing the abuse of labour contracts.



The unreasonably long proceedings in Serbia, which can last up to ten years in case of labour disputes, have led more and more dissatisfied workers to take their case to the European Court of Human Rights. Although most of the ECtHR judgments finding Serbia in violation of the ECHR regard the right to a fair trial and the right to a trial within reasonable time, very many of the applications filed against Serbia concern social and economic rights from the legal point of view.

### *Recommendations*

1. Continue with reforms of the labour, business and tax law to improve the employment conditions, attract investments and improve the social status of the workers.
2. Put in place conditions for an open and calm social dialogue resulting in the consensus of all the stakeholders.
3. Regulate labour law to ensure full protection of the right to work and labour-related rights in accordance with international standards and simultaneously ensure better conditions for private businesses.
4. Urgently adopt regulations comprehensively governing inspectorial oversight.
5. Improve the efficiency of courts dealing with labour disputes.
6. Align the school curricula with the labour market demands and systematically monitor the skills gap analysis
7. Adopt a plan on the requalification of jobless individuals to meet employer needs.

## *16. Right to Just and Favourable Conditions of Work*

The Labour Act envisages the right of employees to minimum wages. The minimum wage shall be set by a decision of the Social-Economic Council established for the territory of the Republic of Serbia (Article 112, LA). The Social-Economic Council set the new minimum wage in its Decision of April 2013. The minimum wage for the March 2013-December 2013 period was set at 115.00 RSD net per working hour.

The latest amendments to the Pension and Disability Insurance Act cancelled all pension insurance debts ten or more years old. The state will no longer be able to link the years of service of workers whose employers failed to pay their pension insurance contributions and went bankrupt or into default. The statutory limitation, however, does not mean that the 180,000 or so workers, known to have gaps in insurance payments, will be able to retire. All workers with gaps in the payments will be able to retire but will sooner or later have had to pay the contributions themselves. Namely they will only receive two-thirds of their pensions, while the rest will be used to cover the outstanding contributions. Workers will from now on have to check themselves whether their contributions have been paid every month; until

now, they were able to inform themselves about their status only once a year. Employers owe the Pension and Disability Insurance Fund 143 billion RSD in unpaid contributions. In his reaction to the amendments of the law, the Protector of Citizens said that the state has practically protected the employers who had violated the law and incurred damages both to the workers and the budget.

The Government of the Republic of Serbia adopted a new Strategy for Health and Safety at Work for the 2013–2017 Period. The Strategy interestingly also envisages the inclusion of health and safety at work in the primary and secondary school curricula, the introduction of a single register of work-related injuries and occupational diseases, continuous training of health and safety at work professionals and responsible staff and others and the promotion of the culture of prevention and examples of good practices in the field of health and safety at work. The Strategy aims to cut the number of injuries by 5% vis-à-vis the number registered by the Labour Inspectorate.

A public debate about the new Strike Act drafted by the Ministry of Labour, Employment and Social Policy back in 2011 began on 12 July 2013 and was to have been submitted to parliament for adoption in 2014 after sharp criticisms voiced in 2012 that the preparation of this law was not transparent and accessible to the expert public. Around 200 stakeholders (trade unions, associations of employers, state authorities, public services, companies, MPs and experts) took part in the public debate.

The criticisms heard the most during the public debates were that the law needed to define all the activities which needed to provide essential services during a strike; in the absence of a collective agreement, the minimum service level should be set by the employer, while the law should lay down the minimum number of employees required to continue working during a strike (proposals ranged from 20 to 30 percent of the workers), that workers were entitled to wages while they were on strike, that the word *assets* in the principle on the protection of assets during a strike be replaced by “means of work, equipment and material” and that a provision allowing lockouts be introduced. These suggestions were not upheld because the working group was of the view that they would radically change the model by which minimum work is determined.

### *Recommendations*

1. Urgently adopt a new Strike Act whilst abiding by the ILO and other international and European standards on strikes.
2. Implement the Health and Safety at Work Strategy for 2013–2017 and adopt the action plan for its implementation that will include specific deadlines and clearly define the obligations of the state authorities.
3. Continue the reform of the education system by introducing various forms of training to equip the youth with the basic knowledge and skills they will need when they enter the labour market.
4. Review all possibilities for introducing special insurance against work-related injuries and occupational diseases.

## *17. Right to Social Security*

The Constitution also guarantees the rights of the employed and their families to social protection and insurance, the right to compensation of salary in case of temporary inability to work and to temporary unemployment allowances. The Constitution also affords special social protection to specific categories of the population and obliges the state to establish various types of social insurance funds.

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 provides for voluntary insurance for persons who are not covered by the compulsory insurance arrangements.

The deficit in the pension fund in Serbia remained large. In the absence of sufficient funds for the payment of pensions, transfers from the budget continued to be the largest single item on the expenditure side. Due to insufficiently developed mechanisms of enforcement and control, the overall sustainability of the pension and health funds remained at risk.

The Social Protection Act allows not only state, provincial and local authorities but natural and legal persons fulfilling the legal requirements, as well, to provide social protection services, and thereby affirms the plurality of social protection service providers. The local self-governments may establish social work centres, while the state and province may establish social protection institutions.

The Social Protection Chamber was established in January 2013 as an independent, non-profit professional organisation of employed social protection professionals in Serbia. The key task it has been delegated is to licence social workers, establish a Register of Issued Licences and a Register of Chamber Members. A total of 2,635 social workers were licenced and entered in the Register of Issued Licences since the Rulebook on Licencing Social Protection Professionals came into force, in May 2013.

Implementing legislation required under the Act on Social Welfare was adopted in May and amendments to the Act on Professional Rehabilitation and Employment of Persons with Disabilities were adopted in April.

The Constitution guarantees special protection to the family and the child, mothers and single parents. It guarantees support and protection to mothers before and after childbirth and special protection to children without parental care and children with physical or intellectual disabilities. The Act on the Realisation of the Right to Health Care of Children, Pregnant Women and New Mothers came into force in December 2013. The purpose of this law is to ensure free health care to children, pregnant women and young mothers in the event they are ineligible for health care under other grounds. Some of the provisions of this law are disputable. For instance, the law obligates medical specialists to notify the Republican Health Insurance Fund of terminations of pregnancy and lays down that women, who have

had an abortion, will no longer be entitled to free health care under this law. The duty to notify the Republican Health Insurance Fund of abortions and still births provoked fierce public reactions because such notifications allow for violations of the right to personal data protection.

### *Recommendations*

1. Increase budget allocations for social entitlements and transfers to local self-governments.
2. Continue social protection reforms.
3. Urgently reform the pension and disability insurance system to ensure regular payment of pensions.
4. Improve the existing social service systems, particularly all forms of support to single families and families with children to enable them to be active in the labour market.
5. Amend the Act on Infertility Treatment to ensure that all women have an equal right to infertility treatment.
6. Introduce the practice of keeping mandatory and regular statistical data to facilitate the monitoring of social inclusion and the establishment of an integrated social protection system.

## *18. National Minorities and Minority Rights*

The Constitution of the Republic of Serbia includes a number of provisions protecting the collective and individual rights of persons belonging to national minorities. According to the Census, Serbia is populated by Serbs 83.32%, Albanians 0.08%, Bosniaks 2.02%, Bulgarians 0.26%, Bunjevtsi 0.23%, Vlachs 0.49%, Goranis 0.11%, Yugoslavs 0.32%, Hungarians 3.53%, Macedonians 0.32%, Moslems 0.31%, Germans 0.06%, Roma 2.05%, Romanians 0.41%, Russians 0.05%, Ruthenians 0.20%, Slovaks 0.73%, Slovenes 0.06%, Ukrainians 0.07%, Croats 0.81%, Montenegrins 0.54%, Others 0.24% while 2.23% of the respondents did not declare their nationality, 0.43% declared their regional affiliation and 1.14% were undeclared.

The National Councils of National Minorities are sui generis legal persons vested with extremely important public powers aimed at ensuring the realisation of the national minorities' rights to self-government in culture, education, information and official use of languages and scripts. They were established under the Minority Protection Act. An initiative was launched in 2013 to review the constitutionality of the National Councils of National Minorities Act (NCNMA) provisions on the powers of the National Minority Councils. Given all the costs accompanying the process of amending the Act, it would be more efficient and cost-effective if all the amendments were made in one go. Furthermore, there are fears that not even the Councils to be elected in 2014 will be fully operational with respect to the minori-

ties' right to self-governance in the fields of culture, education and information if only the provisions on the election of the National Minority Councils are amended and the Constitutional Court fails to review the constitutionality of the provisions on their powers soon.

In the view of the Protector of Citizens, the rights of persons belonging to national minorities are not realised in the manner which is in their best interest even in municipalities in which they account for the majority population, which is why he issued recommendations regarding the right to the official use of languages and scripts of national minorities to the local authorities in Novi Pazar, Sjenica, Tutin and Prijepolje.

The Government of the Republic of Serbia and the BNV launched education in the Bosnian language in Sandžak without holding a serious public debate or preparing for its introduction in advance, which resulted in chaos reflected in the contradictory instructions issued by the Ministry of Education and the BNV, a totally banalised process of issuing certificates to teachers, lack of material working conditions, absence of adequate textbooks and numerous other problems. This model risks to undermine the quality of education and create an ethnic distance among the pupils in Sandžak, all of whom actually speak the same language. Furthermore, the question arises whether the BNV is legitimately authorised to choose a model of exercising the right to education in Bosnian in Serbia, given that its members all come from the same party and it has a technical mandate.

The Protector of Citizens had submitted an initiative to the Government back in 2010 to amend the Civil Servants Act and regulate the constitutionally guaranteed right of national minorities to participate in public life, notably to adopt regulations on keeping of records on the staff's nationality and other relevant issues. The Government has not yet notified the Protector of Citizens whether it accepted the initiative.

Apart from the Serbian language and script, the Vojvodina Statute also envisaged that the Vojvodina provincial authorities and organisations also officially use the following languages and scripts: Hungarian, Slovak, Croatian, Romanian and Ruthenian. The Constitutional Court declared this provision unconstitutional in 2013 because the official use of languages and scripts cannot be governed by a Vojvodina general enactment since the Constitution sets out that the official use of languages other than Serbian shall be regulated by a law.

The right of persons belonging to national minorities to full and impartial information is guaranteed both by the Constitution and the Minority Protection Act, which lays down that the state shall ensure the broadcasting of news, cultural and educational content in national minority languages on public service radio and TV stations and that it may also establish radio and TV stations to broadcast programmes in national minority languages (Art. 17). At its session on 3 October 2013, the Constitutional Court declared unconstitutional the following part of this Article "may also establish radio and TV stations to broadcast programmes in national

minority languages”. The Constitutional Court cited Article 10(1) of the ECHR, stating that the impugned part of the provision amounted to the authorities’ illegitimate interference in the realisation of the right to freedom of expression, which was not necessary in a democratic society. In its view, the impugned part of the Article placed media established by the state at an advantage and gave the state the exclusive right to establish outlets broadcasting in minority languages.

A number of incidents demonstrating a high degree of inter-ethnic intolerance and ethnically-based incidents occurred in 2013. Some of them can be qualified violations of the rights of persons belonging to national minorities. The frequent assaults in Temerin, Bečej and Novi Sad are particularly concerning. With a view to suppressing the number of such incidents, which can seriously jeopardise inter-ethnic relations, Serbian Minister of Internal Affairs Ivica Dačić and Vojvodina Assembly Speaker Istvan Pasztor agreed to step up security measures in Vojvodina and, if necessary, engage the gendarmerie in addition to the police.

The Preševo authorities in November 2013 flew the Albanian flag together with the Serbian flag from the Preševo Municipal Hall to mark Flag Day, the national holiday marking the independence of Albania, and a banner saying “Give Us Back Our Monument” a move that provoked fierce reactions. Preševo Deputy Mayor Skender Destani said that the celebration of this holiday was simultaneously a protest, because the Serbian Government has failed to deal with the problems of the Albanian national minority in the three South Serbian municipalities for years. The ethnic Albanian leaders sent a letter to Prime Minister and Deputy Prime Minister concluding that continuation of the dialogue was senseless. They also wrote that they were dissatisfied with the new court network in the area and recalled that a new political process aimed at improving the status of South Serbia Albanians launched in March 2013 had not yielded the desired results.

### *Recommendations*

1. Holders of state offices have to publicly promote tolerance and equality of citizens to a greater extent.
2. The Supreme Court of Cassation ought to render a general legal view on the interpretation of the substance of the crime “Incitement of Ethnic, Religious and Other Hate or Intolerance” (Art. 317 of the Criminal Code) to ensure case law coherence.
3. Promote the good practices of the independent human rights authorities and the judicial and administrative authorities to encourage persons belonging to national minorities to report discrimination on ethnic grounds.
4. Ensure full realisation of the right to the official use of minority languages and scripts.
5. Ensure the fair representation of staff belonging to national minorities in public authorities, by conducting a survey on the realisation of this right, whilst abiding by the staff’s right not to declare their nationality.

6. Ensure that all national minorities can exercise their right to education in their native languages. Provide schools offering education in minority languages or bilingual education with all the requisite textbooks in national minority languages. Particularly provide textbooks in Albanian for the Albanian students in Bujanovac, Medveđa and Preševo.
7. Align the Culture Act with the NSNMA, notably the provisions on the founding of cultural institutions by local self-governments and the transfer of founding rights to cultural institutions to the National Minority Councils.
8. Acquaint the national minorities that are not well organised or do not wield significant political influence with the opportunities the NSNMA offers for the realisation of the collective rights of national minorities.
9. Guarantee and ensure the right of National Minority Councils to found media outlets.
10. Provide for the transfer of a specific percentage of the founding rights to media outlets that broadcast programmes in national minority languages to the National Minority Councils free of charge during the privatisation of these outlets to enable the national minorities to affect the content and languages of the programmes.
11. Ensure that public service broadcasters air programmes in national minority languages.
12. Ensure co-funding for national minority media in the Serbian state budget.

## *19. Status of Roma*

All surveys and research indicate that Roma are one of the most vulnerable categories of the population in Serbia.. The year 2013 was marked by some activities aimed at improving the status of Roma but also by a series of activities aimed at filling the gaps in the institutional and political frameworks of relevance to the status of the Roma national minority in Serbia. The Serbian Government adopted the three-year Action Plan for the Implementation of the Strategy for the Improvement of the Status of Roma in the Republic of Serbia. The Roma Strategy Action Plan lays down the measures, institutions charged with implementing them, the deadlines and the projected costs and sources of funding.

All measures are to be enforced by the same deadline – end of 2014 – which indicates that the ministries and other competent institutions lack a clear plan on the priorities and the order of the measures. Furthermore the Government is mostly relying on foreign sources of funding (donations and loans) and less on the national budget. Moreover, the authors of the Roma Strategy AP failed to envisage funding for most of the measures, which particularly gives rise to concern as regards housing. Housing requires the greatest investments and the Roma Strategy AP envisages a circa 4% contribution from the budget to cover the projected costs but does not



plan for the allocation of even a single dinar either from the budget or from donations for the implementation of the measure regarding the construction of the requisite infrastructure in the settlements.

In late May 2013, the Government formed the Council for the Improvement of the Status of Roma and the Implementation of the Decade of Roma Inclusion (hereinafter: Council) and tasked it with drafting public policy proposals to improve the status of the Roma population and monitoring their implementation, rendering opinions on planned budget funding, analysing the effects of the undertaken measures, monitoring the implementation of the Decade of Roma Inclusion in the Republic of Serbia, etc. The Roma League coalition of Roma associations criticised the fact that most of the representatives of the NGOs in the Council were political appointments.

The new Strategy for the Prevention of and Protection from Discrimination for the 2013–2018 period reiterates that the Roma community in Serbia, especially its most vulnerable categories – women, children, IDPs, legally invisible people – are exposed to various forms of discrimination, above all verbal and physical assaults, destruction of their homes and segregation.

The Commissioner for the Protection of Equality reviewed 13 complaints of discrimination on ethnic grounds in 2013. She found violations of the provisions prohibiting discrimination in six of the eight cases alleging discrimination against Roma. The fact that most of the complaints were submitted by NGOs, gives rise to concern and demonstrates that Roma are still largely unaware who they themselves can complain to about discrimination and how.

Roma children are still greatly overrepresented in the so-called special schools for pupils with developmental difficulties.

### *Recommendations*

1. Urgently prioritise the measures in the Action Plan for the Implementation of the Strategy for the Improvement of the Status of Roma in the Republic of Serbia.
2. Launch activities to raise the awareness of the Roma population of their rights and, in particular, the mechanisms by which they can protect themselves from discrimination.
3. Ensure funding to improve the status of Roma rather than relying only on foreign donations. Allocate funding to build the infrastructure in the existing Roma settlements.
4. Keep records of hate crimes against the Roma population and train the police in how to act in case of ethnically-motivated violence and how to register such incidents.
5. Designate funds to encourage the economic development and entrepreneurship of persons belonging to the Roma community.
6. Consistently implement inclusive education programmes to reduce the number of Roma children in the so-called special schools.



## *20. Status of Persons with Disabilities*

According to the 2011 Census, 571,780 of Serbia's population of 7,186,862 (or 7.96%) declared themselves as persons with disabilities. Most of them have problems walking and fewest have problems communicating. Persons with disabilities in Serbia are on average 67 years old; 58.2% of them are women. These are the first official statistical data on the number of persons with disabilities in the Republic of Serbia.

Deinstitutionalisation, one of the goals of the Social Welfare Strategy and a priority of the social protection system reform, has not been implemented fully. Unfortunately, persons with disabilities cannot achieve full social integration given the existing spectrum of social services in Serbia.

One of the key problems persons with disabilities encounter on an everyday basis regards their exercise of their social and health care rights. A survey conducted by the Centre for Society Integration shows that as many as 71.67% of the respondents do not have access to the support services they need, that 41.67% do not have a say in decisions and selection of services they will be provided or their quality and scope. Therefore, the principle of dignity of as many as 28.33% of the respondents is in serious jeopardy.

The system of social services for persons with disabilities in Serbia is still largely institutionalised, due to the fact that a relatively limited number of community-based services and support services exist at the local level.

The Act on the Protection of Persons with Mental Disorders, adopted in May 2013, defines the beneficiaries of the rights guaranteed under this law and covers mentally challenged persons, persons with mental health disorders and persons suffering from addiction diseases. Professional organisations criticised the failure of this law to consistently elaborate the principle laid down in the Mental Health Protection Strategy, which envisages that mental health services shall provide contemporary and comprehensive community-based treatment, entailing a bio-psycho-social approach, and the treatment of persons as close to their families as possible.

The Anti-Discrimination Strategy states that the courts fully deprived of their legal capacity 93.93% of the people whose cases they reviewed. These concerning statistical data indirectly indicate that persons with disabilities are not accorded the necessary attention in order to pre-empt any abuse or violations of their rights. The fact that courts as a rule do not hear the people they are depriving of legal capacity is a major problem in practice.

Only 13% of the persons with disabilities in Serbia have a job. The fact that 10% are them are working in the NGO sector, in organisations rallying with disabilities, and only 1% in companies and the public sector and that the share of unemployed persons with disabilities is three times higher than that of the rest of the population is particularly concerning.

The gravest education-related problems are the difficulties in implementing inclusive education and the lack of adequate textbooks and teaching aids for school and university students suffering from various forms of disabilities. Furthermore, many educational institutions are not accessible to persons with disabilities and the problem of their transportation to and from school has not been resolved.

Persons with disabilities face obstacles in their everyday activities due to lack of physical access to public transportation, private and public buildings, and when they use household appliances, electronic and digital systems, services and products.

There is only one sign language interpreter to every 1,000 deaf and hard of hearing people in Serbia, which is alarming, given that 30,000 people are in need of such interpreters. A law on the use of sign language was drafted soon after these alarming data were revealed. A public debate on the bill was held in July 2013 but it was not adopted by the end of the year.

### *Recommendations*

1. Adopt a law on the use of sign language and regulate the use of sign language in procedures before public authorities, in school and at work, and in the fields of health and social care, information and telecommunications.
2. Invest additional efforts to increase the number of sign language interpreters by actively assisting associations of persons with disabilities.
3. Introduce mandatory oversight of the enforcement of the Rulebook on Technical Accessibility Standards.
4. Speed up the process of decentralising the funding of programmes regarding persons with disabilities from the state to the local level to allow the local self-governments to assume the obligation to fulfil accessibility requirements.
5. Tailor the school curricula to the needs of persons with disabilities to meet the labour market demands.
6. Impose upon the users of public facilities the obligation to ensure access to persons with disabilities.
7. Improve the quality of health care extended to persons with disabilities and adopt health care service standards and public health programmes fulfilling the needs of persons with disabilities.
8. Step up the inclusion of persons with disabilities in all walks of life, particularly education.
9. Organise training and continuous advanced training of all staff providing services to persons with disabilities and conduct public campaigns to sensitise the general public to the problems they face.

## *21. LGBT Population*

The Serbian legislative framework protecting the equality of the LGBT population is largely satisfactory, but the provisions of the valid laws, strategies and by-laws prohibiting their discrimination are not enforced consistently. The Constitution of the Republic of Serbia does not explicitly list sexual orientation among the personal features that constitute prohibited discrimination grounds, but both gender identity and sexual orientation are mentioned as prohibited grounds of discrimination in the Anti-Discrimination Act.

The vulnerability of this category of the population is substantiated by the fact that 77 of the 144 recommendations the UN Human Rights Council issued in response to the UPR Serbia submitted in January 2013 regard the rights of LGBT persons. These recommendations are to be followed up by 2016.

The Pride Parade was banned for the fourth time, three times in a row, for security reasons i.e. because of the threats voiced against its organisers and participants. Neither the organisers of the event nor the public had any insight in the security assessments. Several hundred people organised a procession past the Serbian Government headquarters on the eve of the banned Parade, on 27 September 2013, demonstrating their revolt against yet another ban. No incidents occurred during the protest. This practice indicates that the human rights of LGBT persons are systematically violated and the state's failure to provide them with adequate protection. The decisions to prohibit the 2011, 2012 and 2013 Pride Parades were allegedly rendered to prevent the disruption of public traffic and damage to the health, public morals or safety of people and property but did not specify on which particular grounds the events were being prohibited.

The competent state authorities have not done their utmost to prevent discrimination against the Parade participants by third parties, while the discriminatory passivity of the competent state institutions and discriminatory statements by the political leaders have facilitated the creation of a climate inciting violence against LGBT persons.

There are, however, no official data on all the crimes committed against LGBT persons or on whether they were motivated by hatred of this group. As of November 2013, Article 54a of the Criminal Code, defining hate crime as an aggravating factor, has not been applied once since it came into force in December 2012. According to GSA's data, physical assaults and attempted assaults accounted for 70% of the reported cases in 2012, while the other 30% of the reports concerned threats, hate speech and discrimination. The police response to attacks against LGBT persons improved slightly in 2013. The GSA awarded its "Rainbow Award" to the MIA Police Directorate Department for Organisation, Prevention and Community Policing for improving its overall work with the LGBT community and its active communication and cooperation with LGBT organisations on cases of violence and discrimination.

### *Recommendations*

1. Adopt a law on same-sex unions or amend the valid legislation to allow same-sex partners to exercise their fundamental rights on grounds of long-term cohabitation.
2. Include hate crimes in the Criminal Code.
3. Ensure the effective enjoyment of the freedom of expression and the freedom of assembly of LGBT persons.
4. Take measures to ensure the effective protection of rights of LGBT persons from threats by third parties.
5. Conduct efficient and effective investigations of threats against or assaults on persons because of their presumed LGBT orientation.
6. Introduce affirmative and accurate portrayals of same-sex sexual and emotional orientation, transgenderism, transsexualism and intersexualism in all (both natural and social science) textbooks, including examples of LGBTTIAQ figures as part of past and present democracies.
7. Introduce a uniform set of criteria for keeping records of cases in courts with general jurisdiction that will include discrimination as one of the criteria.
8. Adopt a law governing the legal recognition of the effects of sex changes.

## *22. Gender Equality and Special Protection of Women*

Serbia ranked 47<sup>th</sup> on the World Economic Forum Global Gender Gap Index of 136 countries in 2013, which is an improvement over 2012, when it was ranked 50<sup>th</sup>. According to the Index, Serbia ranked 59<sup>th</sup> on economic participation and opportunity, 59<sup>th</sup> on educational attainment, 39<sup>th</sup> on political empowerment and 111<sup>th</sup> on health and survival.

Article 20 of the Anti-Discrimination Act prohibits discrimination based on sex or sex change. Violence, exploitation, expression of hatred, belittling, blackmail and harassment on grounds of sex are also prohibited, as are public advocacy, support and cultivation of prejudices, customs and other patterns of social behaviour based on the superiority or inferiority of a sex, including stereotyped gender roles.

The Labour Act was amended in April 2013. Under amendments employers are under the duty to allow women workers who go back to work after maternity leave before their children turn one to take one or more breaks during working hours, lasting 90 minutes altogether, or work 90 minutes less every day so that they can breastfeed their children in the event the working hours in their companies exceed six hours. The amendments also include a new provision prohibiting dismissals of pregnant women, women on maternity leave and workers on childcare leave.

In 2013, Serbia adopted the Strategy for the Prevention of and Protection against Discrimination, the National Action Plan for the Implementation of UN Se-

curity Council Resolution 1325 Women, Peace and Security (2010 – 2015) and the National Strategy for the Prevention and Suppression of Family and Intimate Partner Violence against Women (2010 – 2015).

The Commissioner for the Protection of Equality issued a recommendation to the Republican Health Insurance Fund to ensure mandatory health insurance to pregnant women and women workers on maternity leave until their children turn one in the event their employers are not paying their mandatory health insurance contributions. The relevant state authorities heeded the Commissioner's recommendation.

According to the Inter-Parliamentary Union (IPU), Serbia ranked 23<sup>rd</sup> on the list of countries by the number of women in parliament (33.2%), and it scored better than most EU member states and the other countries in the region. Although it may be concluded that women's participation in political life in 2013 almost reached the 30% threshold for the first time, various reports indicate that women are still underrepresented in local governments and upper echelons of the diplomatic service, political parties and other areas of public life, such as the trade unions and other professional associations. For example, only two ministers in the Government of Serbia after the 2013 reshuffle were women – the Health and Energy Ministers.

Eighty-four (33.6%) of the National Assembly's 250 deputies are women; however, women deputies account for only 11% of the Assembly's 20 Committees. The number of professional women soldiers rose significantly in 2013. The number of female officers is gradually increasing although it is still low (women account for 1.69% of the officers 0.5% of the non-commissioned officers). Women account for 19.28% of the Ministry of Defence staff, while their share in the Army of Serbia, including civilian staff, stands at 8.79%.

### *Recommendations*

1. Continue sensitising the general public and promoting gender equality policies in all spheres of social, public and political life.
2. Develop diverse mechanisms ensuring systemic and efficient support to and protection of women, with a view to improving their status, and, in particular, facilitating the reconciliation of the professional and family lives of working mothers.
3. Continue strengthening the human and financial capacities of all national institutions to facilitate their coordination and implementation of gender equality strategies and action plans.
4. Advance the political participation of women in local governments.
5. Ensure equal treatment of women and men, including representation of women in senior managerial and other decision-making offices and equal remuneration for equal work.
6. Increase women's awareness of their rights through training, outreach publications and media campaigns.
7. Introduce support mechanisms (ideally free legal aid and counselling) for women victims of human rights violations.



# I

## GENERAL CONDITIONS FOR THE ENJOYMENT OF HUMAN RIGHTS

### 1. International Treaties and Serbia

#### *1.1. Correlation between National and International Law*

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)).<sup>1</sup> Therefore, international treaties that had 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.

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<sup>1</sup> In its Opinion on the Constitution of Serbia, the Venice Commission, too, concluded that this provision raised important issues. See European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitution of Serbia*, Opinion No. 405/2006, CDL-AD(2007)004, 19 March 2007, paragraphs 15–17.

## *1.2. International Human Rights Treaties and Serbia*

All major universal human rights treaties are binding on Serbia, including the International Covenant on Civil and Political Rights and two Protocols, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination against Women and its Protocol, the Convention on the Rights of the Child and two Protocols (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography), the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Protocol and the Convention on the Rights of Persons with Disabilities and its Protocol. The only UN human rights convention Serbia has not ratified yet is the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which it had signed back in 2004. Serbia in 2010 ratified the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), the Convention for the Safeguarding of the Intangible Cultural Heritage and the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (See Appendix I).<sup>2</sup>

Serbia ratified many regional instruments. SaM ratified the ECHR and the 14 Protocols thereto on 26 December 2003. Serbia has not had any valid reservations to the ECHR since 2011. The Framework Convention for the Protection of National Minorities was ratified back in 1998 by the then FRY. The SaM Assembly on 26 December 2003 also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Assembly of Serbia and Montenegro ratified the European Charter for Regional and Minority Languages. Serbia ratified the Revised European Social Charter, the CoE Convention on Action against Trafficking in Human Beings and the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. The National Assembly ratified the Council of Europe Convention on

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2 In the view of the Human Rights Committee, all states that emerged from the former Yugoslavia would in any case be bound by the ICCPR since, “once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the ICCPR”. See paragraph 4, General Comment No. 26 on continuity of obligations under the ICCPR, Committee on Human Rights, UN doc. CCPR/C/21/Rev.1/Add.8, 8 December 1997. The Federal Republic of Yugoslavia deposited notification of succession of the former SFRY on 26 April 2001 and continued membership in international treaties. The Republic of Serbia, as the legal successor of the State Union of Serbia and Montenegro, did the same pursuant to a Decision of the National Assembly of the Republic of Serbia of 5 June 2006.



the Protection of Children against Sexual Exploitation and Sexual Abuse and the Council of Europe Framework Convention on the Value of Cultural Heritage for Society and European Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

The nationals of Serbia are entitled to file individual complaints to all the UN Committees charged with monitoring the implementation of human rights conventions and considering such submissions with the exception of the Committee on Economic, Social and Cultural Rights given that Serbia has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.<sup>3</sup> Serbia has also failed to accept the right to the submission of collective complaints to the European Committee of Social Rights under the Revised European Social Charter. Serbia's citizens are also entitled to file applications with the European Court of Human Rights.

### *1.3. Fulfilment of Obligations Arising from Membership of International Organisations and Accession to International Treaties*

As a member of the United Nations, Serbia has specific obligations to its authorities and bodies charged with monitoring and supervising its fulfilment of obligations arising from its membership and ratified international human rights treaties.<sup>4</sup>

Serbia's delegation attended the UN Human Rights Council session in January 2013, at which the Council reviewed the Second Universal Periodic Review

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3 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 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.

4 Serbia's status regarding ratifications and reporting obligations is available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx).

the Government of the Republic of Serbia adopted at its October 2012 session.<sup>5</sup> Serbia accepted 139 and rejected 5 of the Council's 144 recommendations. Of the five rejected recommendations, two regard improving the status of human rights defenders, one regards allowing access to religious services, education and the media in Romanian and one the establishment of an international commission to investigate murders of journalists. Serbia also rejected the recommendation to ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>6</sup> The state accepted the recommendation to ensure that LGBT people can express themselves freely for example, in the Belgrade Pride Parade in 2013, but did not follow through on it.<sup>7</sup> At the invitation of the Republic of Serbia, High Commissioner for Human Rights Navi Pillay visited Serbia in June 2013 and met with the representatives of independent bodies, non-government organisations and of the state authorities.

The Government of Serbia Human and Minority Rights Office<sup>8</sup> is charged with preparing reports for UN bodies in coordination with other state authorities. Serbia in 2013 submitted its report to the Committee against Torture, which will be reviewed at its 53<sup>rd</sup> session in 2014, and its initial report to the Committee on Enforced Disappearances. Serbia is to submit its report to the Committee on the Elimination of All Forms of Discrimination in January 2014. The UN Committee on the Elimination of Discrimination of Women reviewed Serbia's 2<sup>nd</sup> and 3<sup>rd</sup> reports in 2013 and the state is to submit its report on the fulfilment of the Committee's recommendations by 2017.<sup>9</sup> The Human Rights Committee sent follow-up questions to the Government in April and December 2013 asking it to reply to them by early January 2014.<sup>10</sup> Serbia failed to honour its obligation and submit the reports to the Committee on the Rights of the Child and on the implementation of two Optional Protocols to the Convention on the Rights of the Child (on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography) by March 2013.

Serbia, which is a member of the Council of Europe, submitted its 3<sup>rd</sup> Periodic Report on the Implementation of the Framework Convention for the Protection of National Minorities in March 2013 to the CoE Secretary General. The Advisory Committee adopted an opinion on the report, which is expected to be communicated to Serbia in early 2014.

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5 Serbia's Universal Periodic Review is available at: <http://www.ljudskaprava.gov.rs/index.php/yy/component/content/article/47-sr/ljudska-prava/100-o-univerzalnom-periodicnom-pregledu>.

6 The Report of the Working Group on the Universal Periodic Review with the recommendations is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/141/54/PDF/G1314154.pdf?OpenElement>.

7 See: II.10.2.2.

8 More information on the work of the Office is available in Serbian at: <http://www.ljudskaprava.gov.rs>.

9 More on the Committee's findings at III.5.

10 See the letter at: [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SRB/INT\\_CCPR\\_FUL\\_SRB\\_15872\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SRB/INT_CCPR_FUL_SRB_15872_E.pdf).

## *1.4. Serbia before the European Court of Human Rights in 2013*

### *1.4.1. Statistics*

The European Court of Human Rights (ECtHR) dealt with 3,878 applications concerning Serbia in 2013, of which 3,685 were declared inadmissible or struck out. It delivered 24 judgments (concerning 193 applications), 21 of which found at least one violation of the European Convention on Human Rights.<sup>11</sup> With 12,569 pending applications at the end of 2013 Serbia was fourth on the list of countries against which applications had been filed with the ECtHR, preceded by Russia, Italy and Ukraine.<sup>12</sup> Approximately 99,900 applications were pending before a judicial formation on 31 December 2013. More than half of these applications had been lodged against one of 4 countries: Russian Federation, Italy, Ukraine and Serbia<sup>13</sup>

The Optional Protocol No. 16 to the Convention was opened for signature in 2013. This Protocol will allow the highest courts and tribunals of a State Party to request the Court to give advisory opinions. Ten states need to ratify this Protocol for it to come into force and its provisions will be binding only on the states that acceded to it. Serbia has not signed Protocol 16.<sup>14</sup>

### *1.4.2. Impact of ECtHR Case Law on the Jurisprudence of Serbia's Courts with General Jurisdiction*

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

The Criminal Procedure Code, applied by the courts with general jurisdiction as of early October 2013, does not include a provision under which an international court decision may be grounds for a retrial. Article 485 of the CPC provides for the submission of a motion for the protection of legality in the event it is established by a decision of the Constitutional Court that the final judgment or a decision rendered during the proceedings preceding its rendering is not in compliance with the Constitution, generally recognised rules of international law and ratified international treaties, or in the event a human right or freedom of the convict or another participant in the proceedings enshrined in the Constitution or the ECHR and Protocols thereto had been violated or denied as established in a Constitutional Court decision or an

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11 ECtHR statistics, available at: [http://www.echr.coe.int/Documents/CP\\_Serbia\\_ENG.pdf](http://www.echr.coe.int/Documents/CP_Serbia_ENG.pdf).

12 Serbia was fourth also in 2012, see *2012 Report*, p. 28.

13 See: [http://www.echr.coe.int/Documents/Facts\\_Figures\\_2013\\_ENG.pdf](http://www.echr.coe.int/Documents/Facts_Figures_2013_ENG.pdf).

14 The text of Protocol No. 16 is available at [http://www.echr.coe.int/Documents/Protocol\\_16\\_ENG.pdf](http://www.echr.coe.int/Documents/Protocol_16_ENG.pdf). and the list of states that have signed or ratified it is available at: <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=214&CM=1&DF=&CL=ENG>.

ECtHR judgment. This extraordinary legal remedy may be filed to the Supreme Court of Cassation by a defendant via his defence counsel or by the Republican Public Prosecutor.

A survey of case law conducted by the BCHR shows that parties very seek retrial before Serbian courts with general jurisdiction by invoking the above-mentioned provisions of procedural laws allowing reference to ECtHR judgments finding breaches of human rights as grounds, although the ways in which the courts keep statistics on cases limit reliable insight in the number of such cases.<sup>15</sup>

#### *1.4.3. Noteworthy 2013 ECtHR Judgments against Serbia*

*Cases regarding the non-enforcement of final decisions of domestic courts*<sup>16</sup>– the ECtHR's judgments mostly regard the non-enforcement of final judgements of the national courts in the favour of the applicants, natural and legal persons alike, and the problem of debts of companies with predominantly socially-owned capital. The ECtHR did not deviate from its well-established case law<sup>17</sup> and found violations of the right to a fair trial and the free enjoyment of property enshrined in Article 6(1) of the ECHR and Article 1 of Protocol No. 1 in these cases. The ECtHR imposed on Serbia the obligation to pay to the applicants, from its own funds and within three months from the date on which the judgments became final the amounts awarded in the final domestic judgments as well as the enforcement costs less any and all payments that were paid to them on those bases in the meantime and to the cover the costs and expenses incurred before the Court. A total of 2,010 such applications had been filed with the ECtHR by May 2013, 913 of which were communicated to the Government.<sup>18</sup>

*Mitić v Serbia*<sup>19</sup>– the application was filed by the father of a convict who had committed suicide while he was serving his prison sentence. The applicant complained of a violation of the right to life enshrined in Article 2 of the ECHR, claiming that his son should not have been placed in solitary confinement and that the in-

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15 More on the impact of the case law of the ECtHR and the Constitutional Court of Serbia is available in Serbian at: <http://www.bgcentar.org.rs/zastita-ljudskih-prava-pred-srbijanskim-sudovimadoprinos-monitoringu-reforme-pravosudja/>.

16 See the ECtHR judgments in the cases of *Sekulić and Kučević v. Serbia*, ECtHR, App. No. 28686/06, judgment delivered on 15 October; *Lolić v. Serbia*, ECtHR, App. No. 44095/06, judgment delivered on 22 October; *Marinković v. Serbia*, ECtHR, App. No. 5353/11, judgment delivered on 22 October; *DOO Brojler Donje Sinkovce v. Serbia*, ECtHR, App. No. 48499/06, judgment delivered on 26 November; *DKD-UNION DOO v. Serbia*, ECtHR, App. No. 42731/06, judgment delivered on 10 December; *Stošić v. Serbia*, ECtHR, App. No. 64931/10, judgment delivered on 1 October; *Žarkov v. Serbia*, ECtHR, Nos. 65437/10 and 65443/10, judgment delivered on 10 December 2013.

17 See *2011 Report*, II 9.1.3.

18 See the Justice Ministry website: <http://www.zastupnik.mpravde.gov.rs/cr/articles/presude/u-odnosu-na-rs/presuda-andjelic-i-dr.-protiv-srbije-p.-br.-57611-10.html>.

19 ECtHR, App. No. 31963/08, judgment delivered on 22 January.

vestigation into his death had been ineffective. The ECtHR did not find a violation of Article 2 as regarded the authorities' positive obligation to protect the right to life or in respect of Serbia's obligation to conduct an effective investigation.

*Otašević v Serbia*<sup>20</sup> – the applicant, an animal rights activist, joined in a rescue operation of stray dogs from a dog pound. He claimed that the court recorded the injuries he sustained after the police brought him in but had taken no action about them. He alleged that he had been a victim of the violation of the prohibition of ill-treatment and that the investigation into the incident had been ineffective, i.e. that his rights under Articles 3 and 13 of the ECHR had been breached. The ECtHR decided against reviewing the substantive aspect of a violation of Article 3 because the complaints regarded police ill-treatment in 2003, i.e. before the Convention entered into force in respect of Serbia. The ECtHR reviewed the procedural aspect of the Article 3 breach but did not find a violation.

*Luković v Serbia*<sup>21</sup> – the applicant was arrested and ordered into detention in 2006 on suspicion of organising a criminal group and corruption. His detention was extended a number of times and he was finally released on bail in August 2010. He claimed that his excessively long pre-trial detention had been in breach of Article 5 of the ECHR. The Court, however, noted that the proceedings were of considerable complexity, regard being had to the number of defendants, the extensive evidentiary proceedings and the implementation of special measures required in cases concerning organised crime, and concluded that there had been no violation of the ECHR.

*Momčilović v Serbia*<sup>22</sup> – The Supreme Court of Serbia, acting as a third-instance court, ruled on an appeal on points of law of the second-instance judgment also delivered by the Supreme Court in a five-member judicial panel rather than in a seven-member judicial panel. The ECtHR noted that while Article 491(4) of the 2004 Civil Procedure Act “may indeed be interpreted in various ways as regards which version of the Act (1977 or 2004) is applicable, there is no legal basis for applying one Act to the part of the case concerning the composition of the bench and another Act to the part of the case concerning the assessment of the admissibility of the appeal on points of law”.

The ECtHR found a violation of Article 6(1) of the ECHR, because the bench of the Supreme Court which gave its decision at third instance was not composed in accordance with the domestic law that the Supreme Court found to be in force at the material time and that the Supreme Court's significant deviation from the domestic procedure amounted to a breach of the Convention requirement for the applicant's claim to be determined by a “tribunal established by law”. It awarded the

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20 ECtHR, App. No. 32198/07, judgment delivered on 5 February 2013.

21 ECtHR, App. No. 43808/07, judgment delivered on 26 March, available at [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["Luković"\],"itemid":\["001-117629"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{).

22 ECtHR, App. No. 23103/07, judgment delivered on 2 April 2013, available at [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["Momčilović"\],"itemid":\["001-117879"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)..

applicant compensation in the amount of 3000 EUR for the non-pecuniary damages he suffered and 850 EUR to cover the costs and expenses incurred before the Court.

*Andelković v Serbia*<sup>23</sup> – the applicant had sued his employer for failing to pay his outstanding holiday bonus and the first-instance court found in his favour. The second-instance court partly overturned the judgment, explaining that this would place the applicant at an advantage over his co-workers who had not been paid the holiday bonus either. The ECtHR said in its judgment that the second-instance court had not even made reference to the facts and the labour law as presented by the first-instance court. Nor did it refer in the impugned judgment to what the law was, how it should have been applied to the applicant's case or make any connection between the established facts, the applicable law and the outcome of the proceedings.

The ECtHR found that the second-instance court's ruling was arbitrary and had violated the applicant's right to a fair trial enshrined in Article 6.

*Youth Initiative for Human Rights v. Serbia*<sup>24</sup> – The NGO Youth Initiative for Human Rights asked the Serbian intelligence agency BIA how many people had been subjected to electronic surveillance in 2005 pursuant to the Act on Access to Information of Public Importance but the BIA rejected its request by referring to Article 5(5) of that law. After the Commissioner for Information of Public Importance ordered the Agency to submit the requested information within three days and after the Agency's appeal to the Supreme Court was dismissed, the BIA in 2008 notified the applicant that it did not hold the requested information. The ECtHR found the Agency's reply that it did not hold the requested information unpersuasive in view of the nature of that information (the number of people subjected to electronic surveillance) and that its obstinate reluctance to comply with the order of the Commissioner constituted a violation of Article 10 of the ECHR protecting the freedom of expression. The ECtHR invoked Article 46 and ordered the respondent State to ensure, within three months from the date on which the judgment became final, that the intelligence agency of Serbia provide the applicant with the information requested.

*Zorica Jovanović v Serbia*<sup>25</sup> – the applicant gave birth to a baby boy who allegedly died soon after he was born, before release from the maternity ward in 1983. This case is similar to hundreds of other cases of "missing babies" in the 1970s, 1980s and 1990s, whose parents claimed that their children had disappeared, not died as they were told in the maternity wards. The competent authorities, in-

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23 ECtHR, App. No. 1401/08, judgment delivered on 9 April, available at [http://www.zastupnik.mpravde.gov.rs/uploads/Andjelkovic\\_1401-08\\_eng.pdf](http://www.zastupnik.mpravde.gov.rs/uploads/Andjelkovic_1401-08_eng.pdf).

24 ECtHR, App. No. 48135/06, judgment delivered on 25 July, available at [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"sort":\["kupdate Descending"\],"respondent":\["SRB"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-120955"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{).

25 ECtHR, App. No. 21794/08, judgment delivered on 26 March, available at [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["Zorica Jovanović"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-118276"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{). More in II.6.2.



cluding the Protector of Citizens, after 2003 prepared a number of reports on the shortcomings in the applicable legislation at the relevant time and in the procedures before various state bodies and health authorities, but the competent authorities' reactions to the parents' complaints were inadequate.

The ECtHR agreed to review the application although the applicant's son died or disappeared in 1983, because the state's failure to provide the applicant with information about her son's fate continued even after the Convention came into effect in respect of Serbia and because the applicant's complaint concerned a continuing situation. The applicant had not been provided with any reliable information on what had actually happened to her baby, his cause of death was never confirmed, she was not provided with a copy of an autopsy report and his remains were never handed over to the family. The family was never told where the baby was buried and his death was never entered in the vital records. The applicant's husband filed a criminal report against the maternity ward staff, but it was dismissed as ill-founded. The National Assembly's Investigating Committee investigated this issue in December 2010, which resulted in specific improvements in the wards' subsequent practices but nothing was done about cases like this one, which had occurred in the past. The ECtHR thus unanimously found that the applicant has been has suffered a continuing violation of the right to respect for her family life, protected by Article 8 of the ECHR, on account of the respondent State's continuing failure to provide her with credible information as to the fate of her son.

The ECtHR awarded the applicant 10,000 EUR in respect of non-pecuniary damages and 1,800 EUR in respect of costs and expenses. Given that there is a significant number of potential applicants in a similar situation, the ECtHR invoked Article 46 and held that Serbia had to take all appropriate measures to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicant's within one year from the date judgment became final. This mechanism should be supervised by an independent body, with adequate powers, which would be capable of providing credible answers regarding the fate of each child and awarding adequate compensation as appropriate. As regarded all similar applications already pending before it, the Court decided to adjourn these during the said interval.

*Pejčić v Serbia*<sup>26</sup> – the applicant, a retired officer of the erstwhile Yugoslav People's Army (JNA), complained because he was unable to exercise his right to his so-called military pension. The ECtHR noted that it was clear that under the Succession Agreement, which was applicable, the relevant criterion for establishing the responsibility for payment of military pensions in the cases such as the present one was the country of residence. The applicant moved to Serbia before the entry into

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26 ECtHR, App. No. 34799/07, judgment delivered on 8 October, available at [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["Pejčić"\],"documentcollectionid2":\["GRAND CHAMBER"\],"CHAMBER"}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{).

force of the Succession Agreement, in January 2002. From 2 June 2004 onwards the respondent State had assumed responsibility for the payment of military pensions to its citizens with dual nationality who resided in its territory. The ECtHR further stated that the refusal of the competent administrative bodies to reinstate payment of the applicant's pension undoubtedly amounted to an interference with his right to the peaceful enjoyment of his possessions for the purposes of the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention. At the time the ECtHR was ruling on this application, the proceedings had lasted more than eight years and were still pending before the Constitutional Court.

As regarded pecuniary damage, the ECtHR ordered the respondent Government to pay to the applicant his pensions due from 2 June 2004 until 31 December 2011, together with statutory interest. The Court also awarded the applicant 3,900 EUR in respect of non-pecuniary damage and 4,335 EUR for the costs and expenses incurred before the domestic courts and before that Court.

*Vilotijević v Serbia*<sup>27</sup> – the applicant complained of a violation of his right to a fair trial because the civil proceedings instituted against him in September 1993 were still pending before a first-instance court, although nine and a half years had passed since the ECHR entered into force in respect of Serbia. The ECtHR found Serbia in violation of Article 6(1) of the Convention.

## 2. Constitution of the Republic of Serbia and Provisions on Human Rights, Human Rights Restrictions and Derogations

### 2.1. *General*

The Constitution of Serbia,<sup>28</sup> adopted in 2006 contains a broad catalogue of human rights but some human rights provisions are deficient or ambiguous. For example, the Constitution does not prohibit interpretations of human rights provisions allowing actions abolishing constitutionally guaranteed human rights or restricting them to a greater extent than the Constitution permits. 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 e.g. the ECtHR or the UN Human Rights Committee must be taken into account when interpreting

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27 ECtHR, App. No. 26042/06, judgment delivered on 10 December, available at [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["Vilotijevic"\],"itemid":\["001-138886"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{).

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



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.

Section II of the Constitution, comprising human and minority rights and freedoms (Articles 18–81), is divided into three parts: 1. Fundamental Principles (Articles 18–22), 2. Human Rights and Freedoms (Articles 23–74) and 3. Rights of Persons Belonging to National Minorities (Articles 75–81).

The Constitution does not guarantee the rights to adequate housing, food or water, or, for that matter, a number of rights to adequate living standards enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Constitution's guarantees of human rights are in line with international standards but it does not address the issue of gender equality and does not deal with discrimination against women appropriately. Article 21 of the Constitution prohibits discrimination in a gender neutral manner rather than in compliance with Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.<sup>29</sup>

## *2.2. Restrictions of Human Rights*

The Constitution prescribes that 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. When imposing restrictions on human and minority rights and interpreting these restrictions, all state agencies, courts in particular, are obliged to take into account the essence of the right subject to restriction, the importance of the purpose of restriction, the nature and scope of the restriction, the relationship between the restriction and its purpose, as well as consider the possibility of fulfilling this purpose by a lesser restriction of the right, while the restrictions should never infringe on the essence of the guaranteed right (Art. 20), but the Constitution does not explicitly state that the aim of the restriction must be legitimate.<sup>30</sup> This shortcoming can be partly overcome by a general interpretation clause in Article 18, under which “[P]rovisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards on human and minority rights, as well as the practices of international institutions which supervise their implementation”. Given the ECtHR's case law, a legitimate aim would have to be prerequisite for a human rights restriction to be acceptable.

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29 More on each right in Chapter II.

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

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

The Constitution does not explicitly state which rights may or may not be exercised directly and leaves that assessment to the legislature. This may create potential for abuse and the restriction of directly exercisable rights by laws. The Constitution explicitly prescribes that a law regulating the realisation of a specific right may not infringe on the substance of that right. Article 20 of the Constitution clearly defines the principle of proportionality, as well as the standards which courts in particular must adhere to when interpreting restrictions of human and minority rights. The Constitution strictly lays down the principle of proportionality. The standards for evaluating proportionality are in keeping with the case law of the European Court of Human Rights.<sup>31</sup> The Constitution does not explicitly prohibit restrictions of human and minority rights guaranteed by the generally accepted rules of international law, international treaties, as well as laws and other regulations in force, but it comprises only a general provision prescribing that the achieved level of human and minority rights may not be reduced.

### 2.3. *Derogation of Human Rights*

The Constitution allows derogations of constitutionally guaranteed human and minority rights upon the proclamation of a state of war or a state of emergency (formal requirement) but only to the extent deemed necessary (substantive requirement).<sup>32</sup> This wording provides more leeway for derogations of human rights than the European Convention on Human Rights, which allows derogations “to the extent strictly required by the exigencies of the situation“. There are also some gaps in the list of rights that may not be derogated from in the Constitution (Article 202(4)).<sup>33</sup>

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

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

32 Article 202(1) of the Constitution.

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

(Art. 200 (1)). Therefore, this prerequisite also has to be fulfilled for derogations from human rights in accordance with the Constitution, albeit only with respect to states of emergency and not in case a state of war is declared.

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)). Derogations of specific human rights during a state of war or emergency are in accordance with Article 4 of the ICCPR and Article 15 of the ECHR, which allow for derogations in time of public emergency which threatens the life of the nation.

A state of war or emergency shall be declared by the National Assembly. In the event the National Assembly is unable to convene, a decision to declare a state of war or emergency shall be taken jointly by the President of the Republic, the National Assembly Speaker and the Prime Minister and the National Assembly shall verify all the prescribed measures (Articles 201 and 200).

### 3. Constitutionality and Legality

#### *3.1. Constitutional Court of Serbia – Composition, Election of Judges and Jurisdiction*

Under the Constitution, the judges of the Constitutional Court shall be appointed or elected by the representatives of all three branches of government, the President of the Republic (recognised as the executive in this context), the National Assembly and the Supreme Court of Cassation. The Constitutional Court shall have fifteen judges appointed to nine-year terms of office. The President of the Republic shall appoint five judges from a list of ten candidates nominated by the National Assembly; the National Assembly shall elect five judges from a list of ten candidates nominated by the President of the Republic. The remaining five judges shall be elected at a plenary session of the Supreme Court of Cassation from a list of candidates nominated jointly by the High Judicial Council and the State Prosecutorial Council (Art. 172).

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 Court Act (hereinafter: CCA)<sup>34</sup> failed to lay down clear and efficient rules on the appointment of the Constitutional Court judges or proper guarantees of the Court’s independence, which was not rectified by the Act Amending the Constitutional Court Act either.

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

A Constitutional Court judge shall be dismissed in the event he joined a political party, violated the prohibition of conflict of interests, permanently lost the ability to work, was convicted to a prison sentence or convicted for an offence rendering him unfit for discharging the duty of a Constitutional Court judge (Art. 15 (1), Constitutional Court Act). The Constitutional Court shall assess whether any of these conditions have been fulfilled in a procedure initiated by the bodies authorised to nominate the Court judges or the Constitutional Court itself (Art. 15 (2 and 3)). A decision on the dismissal of a Constitutional Court judge shall be taken by the National Assembly, i.e. even when that judge had been appointed by another body authorised to nominate Constitutional Court judges. The Act prohibits the Constitutional Court judges from discharging “another public or professional function or job with the exception of professorship at a law college in the Republic of Serbia” (Art. 16 (1)).

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

Under Article 3 of the Constitutional Court Act, the Court shall ensure the transparency of its work by publishing its decisions and communiqués after sessions on its website, holding public hearings and hearings in proceedings before the Court, issuing press releases, holding news conferences and in other ways. The public shall be excluded only in order to protect the interests of national security, public order and morality in a democratic society or to protect the interests of minors or the privacy of participants in the proceedings (Article 3(3)). The issue of the Constitutional Court’s transparency was raised in 2013. The former President of the Constitutional Court criticised the Court’s 2011 Conclusion on Transparency, under which the Court’s regular sessions would be open to the public only when it was reviewing cases regarding enactments or constitutional law issues of broader social significance. She claimed that the Conclusion did not ensure sufficient transparency of the Court’s work or contribute to improving its democratic responsibility.<sup>35</sup> In her view, the transparency of the Court is inter alia achieved by allowing accredited media to attend the Court’s public hearings, as Article 29 of the Court Rules of Procedure envisages. The Constitutional Court, on the other hand, stated that the

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35 See the *Danas* article of 20/21 November, entitled Constitutional Court Violating the Constitution, available in Serbian at [http://www.danas.rs/danasrs/drustvo/ustavni\\_sud\\_krsi\\_ustav.55.html?news\\_id=271524](http://www.danas.rs/danasrs/drustvo/ustavni_sud_krsi_ustav.55.html?news_id=271524).

Conclusion was in compliance with Article 175 of the Constitution and the Constitutional Court Act and concluded that the Constitutional Court Act as it stood did not lay down that the regular Court sessions were to be open to the public.<sup>36</sup>

### *3.2. Reviews of Constitutionality and Legality before the Constitutional Court of Serbia*

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

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

The Constitutional Court Act governs the relations between the Constitutional Court and the legislator: the Court may notify the National Assembly of the situation and problems regarding the realisation of constitutionality and legality, render its opinions and indicate the necessity to adopt new or amend existing laws.

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36 See the Constitutional Court's reaction to the *Danas* article, 22 November, available in Serbian at: [http://www.ustavni.sud.rs/page/view/sr-Latn-CS/0-101913/reagovanje-povodom-teksta-u-dnevnom-listu-danas?\\_qs=javnost%20rada](http://www.ustavni.sud.rs/page/view/sr-Latn-CS/0-101913/reagovanje-povodom-teksta-u-dnevnom-listu-danas?_qs=javnost%20rada).

The Constitutional Court shall forward to the National Assembly its decisions finding laws or other general enactments it passed in contravention of the Constitution, generally accepted rules of international law, ratified international treaties or other laws (Article 107, CCA). The Constitutional Court, however, still cannot order the legislator to adopt regulations ensuring respect of a constitutional right. The BCHR analysed the impact of Constitutional Court recommendations to the National Assembly of the Republic of Serbia regarding the necessity of amending specific laws. Pursuant to Article 105 of the CCA, in the event it identifies problems in the realisation of constitutionality and legality, the Constitutional Court shall notify the National Assembly of the need to take specific measures to address the situation. The BCHR identified 25 such general enactments which the Constitutional Court alerted the National Assembly about, highlighting the need to adopt new ones in their stead or bring their provisions into compliance with the Constitution.

The fact that the legislator has disregarded most of the Constitutional Court's recommendations and failed to amend the disputed provisions gives rise to concern. The adoption of amendments to the Pension and Disability Insurance Act and the Penal Sanctions Enforcement Act shows that the problem is not solely technical in character, e.g. that the authorities need time to draft the amendments or hold a public debate on them – the amendments to these laws were adopted without taking the Constitutional Court's suggestions into consideration.

The Government, which has to date submitted the greatest number of laws for adoption, is definitely the most responsible for this disregard of the Constitutional Court's recommendations. The National Assembly has been notifying the Government of the Court's recommendations on the need to harmonise the laws regularly and without any delay. The question arises as to why draft laws the Assembly deputies, who are also authorised to submit draft laws and amendments under the Constitution, have failed to take initiative, whether this should be attributed to the Assembly departments disseminating information and material to the deputies or the deputies' inactivity.

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

### 4.1. *General*

The existence of effective legal remedies is of major importance for the genuine enjoyment of human rights. Article 2(3) of the ICCPR, Article 13 of the ECHR and provisions of some other international treaties ratified by Serbia impose upon it the obligation to ensure legal remedies allowing for the review of appeals over violations of rights enshrined in international treaties, as well as the obligation to provide victims of such violations with adequate satisfaction.

Article 22 of the Constitution of Serbia sets out that everyone shall have the right to judicial protection in case any of their human or minority rights guaranteed by the Constitution have been violated or denied and the right to the elimination of the consequences of such a violation. It also provides everyone with the right to seek protection of their human rights and freedoms before international human rights protection bodies. Under international standards, states shall provide both effective remedies and the right to compensation or some specific legal remedies.<sup>37</sup> Article 35 of the Constitution guarantees the right to rehabilitation and compensation of damages to persons unlawfully or groundlessly deprived of liberty, detained or convicted for a punishable offence and compensation to persons who had suffered pecuniary or non-pecuniary damages inflicted on them by the unlawful or inappropriate work of the state authorities, while Article 36 guarantees everyone the right to file an appeal or apply another legal remedy against any decisions on their rights. Apart from the Constitution, several other laws also envisage the rights to reparations, rehabilitation and compensation of damages.

The distinction drawn between ordinary and extraordinary legal remedies in domestic law is absolutely irrelevant when assessing their effectiveness from the perspective of international law. Legal remedies may be considered effective in general, but their effectiveness is assessed depending on the circumstances of each individual case. In theory, any procedural action laid down in the law and resulting in the realisation of a specific right or providing satisfaction for a breach of that right may be considered a legal remedy. Such procedural actions may be undertaken in civil, non-contentious, misdemeanour, criminal, administrative, bankruptcy proceedings, as well as in constitutional protection proceedings. International documents do not provide guarantees entitling private citizens to institute criminal proceedings against other persons. Restrictions of the private citizens' right to access criminal courts in the capacity of prosecutors (such as the ones in Serbian legislation) are not considered a violation of the right to an effective legal remedy.<sup>38</sup> A distinction also needs to be drawn between the right to an effective legal remedy and the right of access to a court.

#### *4.2. Ordinary and Extraordinary Legal Remedies in Serbia's Legal System*

Citizens are guaranteed the right to appeal any decision of a first-instance civil court according to the Civil Procedure Act (hereinafter: CPA).<sup>39</sup> Article 367 of the CPA deals with appeals of judgments and Article 399 governs appeals of deci-

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

38 See the 2011 Report, I.2.2.

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



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

A motion for the revision of a final judgment is an extraordinary legal remedy envisaged by the CPA (Article 403). International human rights protection bodies generally treat such revisions as effective and ordinary legal remedies. The right to file a motion for a revision, however, is limited considerably by the CPA. The Act does not allow revisions of final judgments in property disputes when the claims regard the right of ownership of real estate or pecuniary claims, transfers of property or performance of other obligations in the event that the value of the subject matter in the impugned part of the judgment does not exceed the equivalent value of 100,000 EUR at the average exchange rate of the National Bank of Serbia on the day the claim is filed (Art. 403(3)). Furthermore, a motion for a revision may only be filed by a litigant's representative from among the ranks of lawyers (Article 410). Finally, a motion for a revision may be filed only on points of law or procedure (Article 407). Such motions may not in principle be filed with respect to incorrect findings of fact (Article 407(2)). The motions for revision are reviewed by the Supreme Court of Cassation.

The other extraordinary legal remedies prescribed by the CPA, the motion for the re-examination of the final judgment and the motion for retrial, do not essentially constitute effective legal remedies under international standards.

The Criminal Procedure Code (CPC)<sup>40</sup> envisages the right of appeal (Article 432 of the CPC). An appeal may be lodged within 15 days from the day a copy of the judgment is delivered on the parties. The deadline may be extended at the request of the parties (Article 432(2)). The appellants may claim substantive violations of the criminal procedure, violations of the substantive criminal law, incorrect and insufficient findings of fact or challenge the penalties. The CPC also allows for retrials and the submission of motions for the protection of legality. The latter remedy primarily serves to reverse human rights violations in criminal proceedings established by the Constitutional Court of Serbia or the European Court of Human Rights (ECtHR).

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



The General Administrative Procedure Act<sup>41</sup> and the Non-Contentious Procedure Act<sup>42</sup> include similar provisions on the right of appeal. Judgments rendered in administrative disputes may not be appealed. Administrative disputes may only be instituted against decisions on matters previously reviewed in administrative proceedings.<sup>43</sup>

The provisions of the General Administrative Procedure Act, under which an appeal shall not stay enforcement (Article 221(1)) affect the effectiveness of legal remedies greatly. For a remedy to be deemed effective in the meaning of ECtHR case law, the suspensive effect of an appeal must be automatic, rather than resting solely on the discretion of the domestic authority considering the individual's case.<sup>44</sup> Therefore, legal remedies *de facto* have suspensive effect in the asylum procedure because the Asylum Office obliges unsuccessful asylum seekers to leave the Republic of Serbia within three days from the day the rulings rejecting or dismissing their asylum claims become effective, unless they are entitled to stay on other grounds. Although the Administrative Court has not yet stayed the enforcement of a final administrative enactment in the asylum procedure,<sup>45</sup> the Constitutional Court nevertheless took the view that an appeal to the Administrative Court was an effective legal remedy.<sup>46</sup>

This principle is critical also in eviction cases in which the non-suspensive effect of appeals is one of the reasons why the vast majority of the residents of informal settlements have been discouraged from appealing the eviction orders. Since appeals do not stay eviction, most rulings on the few appeals that had been filed were issued after the evictions.<sup>47</sup>

### *4.3. Constitutional Appeals and Effectiveness of Constitutional Appeals*

Constitutional appeals may be filed against individual enactments or actions by state bodies or organisations exercising public authority and violating or denying human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have been exhausted or do not exist (Art. 170). The Constitutional Court Act also allows for the filing of a constitutional appeal

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

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

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

44 More in [http://www.azil.rs/doc/ENG\\_periodi\\_ni\\_izve\\_taj\\_FINALNI\\_jun\\_oktobar\\_2013.pdf](http://www.azil.rs/doc/ENG_periodi_ni_izve_taj_FINALNI_jun_oktobar_2013.pdf).

45 The Administrative Court's decisions are available at <http://www.azil.rs/documents/category/judgements>.

46 The Constitutional Court's decision in the case of UŽ-1286/2012, of 29 March 2012 is available at: <http://www.azil.rs/documents/category/odabrane-presude>.

47 *Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing*, Praxis, 2013, available at [http://www.praxis.org.rs/images/praxis\\_downloads/Report\\_right\\_to\\_adequate\\_housing.pdf](http://www.praxis.org.rs/images/praxis_downloads/Report_right_to_adequate_housing.pdf).

in the event the appellant's right to a fair trial was violated or in the event the law excluded the right to the judicial protection of his human and minority rights and freedoms (Art. 82)). This provision provides for the filing of a constitutional appeal after the exhaustion of all other effective legal remedies. The ECtHR emphasised that the constitutional appeal should be considered an effective remedy as of 7 August 2008, that being the date when the Constitutional Court's first decisions on the merits of the appeals had been published.

The appellants may seek the protection of all human rights enshrined in the Constitution or another international instrument binding on the Republic of Serbia.<sup>48</sup> All natural or legal domestic or foreign persons who are holders of the constitutionally guaranteed human rights and freedoms are entitled to file a constitutional appeal. As far as the right to a legal remedy is concerned, the Constitutional Court in 2013 dismissed a constitutional appeal filed over the 2012 Pride Parade, holding that it had been submitted by natural persons who were not entitled to submit it.<sup>49</sup> The Court held that only the Belgrade Pride Parade Association, which had formally convened the assembly, was entitled to submit the constitutional appeal, which is not in compliance with ECtHR's case law. Under ECtHR's case law on Article 11 of the ECHR, natural persons who had participated in an assembly or would have participated in it are entitled to a remedy i.e. have the status of victims of a violation of the freedom of assembly.<sup>50</sup>

A constitutional appeal is not an *actio popularis*, and it needs to be noted that the potential appellant must have personally been the victim of a breach of a constitutionally guaranteed human right or freedom. Other persons (natural persons, state authorities or organisations charged with the monitoring and realisation of human rights) may file a constitutional appeal on behalf of a person whose right or freedom was violated only with his written consent. The Constitutional Court's case law might be affected by ECtHR's judgment in the case of *Valliantos and Others v Greece*.<sup>51</sup> The ECtHR in its judgment expanded the existence of a violation to include also potential violations, by holding that Article 34 of the ECHR applied not only to direct but to potential victims as well, those who have not yet been victims of a Convention breach, but will be if the impugned State act is performed or who would have a valid and personal interest in seeing it brought to an end.

A constitutional appeal must be filed within 30 days from the day of receipt of the individual enactment or performance of the action violating or denying a constitutionally guaranteed right or freedom (Art. 84(1), CCA). In the event an ap-

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48 See the Constitutional Court's views on the reviews of and rulings on constitutional appeals, available in Serbian at [http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/Ставови\\_Уставног\\_суда\\_у\\_поступку\\_испитивања\\_и\\_одлучивања.doc](http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/Ставови_Уставног_суда_у_поступку_испитивања_и_одлучивања.doc).

49 Constitutional Court Decision in the case of UŽ-8463/12.

50 See the cases of *Baczowski et al v. Poland*, App. No. 1543/06, judgment of 3 May 2007; *Stankov and United Macedonian Organisation Ilinden v. Bulgaria*, App. Nos. 29221/95; 29225/95, judgment of 29 June 1998; *Alekseyev v. Russia*, App. Nos. 4916/07, 25924/08 and 14599/09, of 21 October 2010.

51 *Valliantos and Others v Greece*, ECtHR, App. Nos. 29381/09 and 32684/09 (2013).

pellant has failed to file the constitutional appeal within the set deadline for justified reasons, the Constitutional Court shall allow *restitutio in integrum* if the appellant applies for *restitutio in integrum* at the same time he lodges the constitutional appeal, within 15 days from the day the justified reasons ended (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.

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

As mentioned, the Criminal Procedure Code provides for the submission of a motion for the protection of legality in the event the Constitutional Court found that a defendant's right had been violated during the criminal proceedings and that the violation affected the lawful and proper adjudication of the matter or that a constitutionally guaranteed human right or freedom of the defendant or another participant in the proceedings had been violated or denied.

In its reviews of appeals against excessively long trials, the Constitutional Court has played a preventive role as it is entitled to order a review of the case or its completion within the shortest possible period. Although the Constitutional Court has been ordering the courts to speed up adjudication of such cases, it has not been setting them deadlines by which they have to complete the proceedings.

The Constitutional Court in 2012 initiated a review of the constitutionality of the Constitutional Court Act and rendered a decision on the provision under which court decisions were exempted from annulment.<sup>52</sup> The Court held that this provision had narrowed the Constitutional Court's powers, which it needed to eliminate established violations of constitutional rights and freedoms. This Constitutional Court decision is in compliance with the Venice Commission's Opinion on the draft amendments to the Constitutional Court Act, in which it stated that "if the Constitutional Court is competent to examine court decisions, which is very positive from a human rights perspective, it must also be given the power to sanction them, if they are found to be unconstitutional. ... The establishment of the possibility of a full constitutional complaint before the Constitutional Court is highly recommended from a human right's perspective. If the Constitutional Court is not allowed to review judgments of the ordinary courts, there will be more applications to the European Court of Human Rights seeking human rights protection. It is recommended

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52 Constitutional Court Decision in the case of UŽ- 97/2012.

that similar steps be taken by the Serbian legislator.” The Venice Commission also underlined that if a “prior judgment cannot be annulled, this undermines the powers of and the respect for the Constitutional Court”.<sup>53</sup> The Constitutional Court stated in its decision that since the constitutional appeal institute was established, the actual state of affairs indicated that not only did most of the constitutional appeals challenge court decisions, but that they accounted for most of the enactments where the Court found violations of constitutional rights as well. Exempting just court decisions from annulment would amount to a contradiction, because, in the vast majority of cases, court decisions are the last in a series of enactments the review and annulment of which could eliminate a violation of a right, regardless of whether such a violation had been due to a court decision in a judicial protection procedure or a judicial authority’s failure to eliminate violations of a right in the prior stages in which decisions had been taken on an individual’s rights and obligations. In the view of the Constitutional Court, precluding the Court from the possibility of annulling a judgment rendered senseless the introduction of the constitutional appeal institute as a universal legal remedy for protecting constitutional rights and freedoms from violations by enactments or actions of any public authority.

The Constitutional Court is entitled to award compensation for damages in its decisions finding violations of human rights in the event the appellants had claimed compensation in their constitutional appeals.<sup>54</sup> The damages awarded by the national courts, including the Constitutional Court, need to be proportionate to the compensation the ECtHR would award in a similar situation. This, however, does not mean that the redress must be of equal value. Awarding lower amounts of damages than those awarded by the ECtHR does not in principle amount to a violation of the Convention provided that they are not unreasonable.<sup>55</sup>

## 5. Prohibition of Discrimination, War Propaganda and Advocacy of National, Racial or Religious Hatred

### 5.1. *Prohibition of Discrimination*

Discrimination is prohibited by many international treaties ratified by Serbia – by both UN Covenants (the ICCPR and ICESCR), the ECHR and Protocol 12 thereto, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination against Women, the Conven-

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53 See Opinion on Draft Amendments and Additions to the Law on the Constitutional Court of Serbia, adopted by the Venice Commission at its 89<sup>th</sup> plenary session at its 89<sup>th</sup> plenary session (Venice, 16-17 December 2011), paragraphs 47-50, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)050cor-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)050cor-e).

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

55 See the ECtHR judgment in the case of *Vidaković v. Serbia*, ECtHR, App. No. 16231/07.

tion on the Rights of Persons with Disabilities, ILO Convention No. 111 concerning Discrimination (Employment and Occupation)<sup>56</sup> and the UNESCO Convention against Discrimination in Education.<sup>57</sup>

The constitutional prohibition of discrimination is prerequisite for the exercise of all other constitutionally guaranteed human rights under equal conditions. Article 21 of the Constitution of the Republic of Serbia prohibits any “direct or indirect discrimination on any grounds”, which means that the Constitution provides for the prohibition of discrimination on grounds that are not expressly enumerated as well. The grounds listed in this Article include race, sex, nationality, social status, birth, religion, political or other opinion, wealth, culture, language, age and mental or physical disability. Unfortunately, the Constitution does not specifically list sexual orientation and marital status as prohibited grounds for discrimination. Article 76(2) of the Constitution specifically prohibits discrimination on grounds of affiliation to a national minority.

The Constitution envisages affirmative action to achieve the equality of groups who have long been exposed to discrimination, but it does not limit the enforcement of affirmative action measures only until the goals they pursue are achieved. Such a restriction is a necessary criterion for assessing the proportionality of these measures. Specific regulations and provisional measures which the Republic of Serbia may introduce in economic, social, cultural and political life to achieve full equality between the persons belonging to a minority and the majority population shall not be considered discrimination in the event these measures are aimed at eliminating extremely unfavourable living conditions particularly affecting persons belonging to a minority (Article 76(3)).

The Constitution explicitly guarantees the equality of all before the Constitution and the law (Art. 21(1)) and everyone’s right to equal protection under the law without discrimination (Art. 21(2)). Article 76(1) of the Constitution specifically guarantees the right to equality before the law and equal legal protection to persons belonging to national minorities.

Discrimination is a criminal offence under the Criminal Code<sup>58</sup> (Arts. 128, 317 and 387). Many other laws also include anti-discriminatory provisions e.g. the Act on Churches and Religious Communities<sup>59</sup> (Art. 2), the Labour Act<sup>60</sup> (Arts. 18–23), the Employment and Unemployment Insurance Act<sup>61</sup> (Art. 8), the Act on the Basis of the Education System,<sup>62</sup> the Health Protection Act,<sup>63</sup> Patient Rights

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56 *Sl. list FNRJ (Dodatak)*, 3/61.

57 *Sl. list SFRJ (Dodatak)*, 4/64.

58 *Sl. glasnik RS*, 85/05, 88/05, 107/05, 72/09, 111/09, 121/12 and 104/13.

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

60 *Sl. glasnik RS*, 24/05, 61/05, 54/09 and 32/13.

61 *Sl. glasnik RS*, 36/09 and 88/10.

62 *Sl. glasnik RS*, 72/09, 52/11 and 55/13.

63 *Sl. glasnik RS*, 107/05, 88/10, 99/10, 57/11, 119/12 and 45/13 - dr. zakon).

Act<sup>64</sup> etc. The Anti-Discrimination Act<sup>65</sup> is a general anti-discrimination law which leaves room for special regulation of specific areas in which discrimination occurs the most frequently.<sup>66</sup>

## *5.2. Prohibition of Propaganda for War, Advocacy of National, Racial or Religious Hatred and Hate Crime*

Article 49 of the Constitution prohibits incitement to national, racial or religious hatred. The Constitution merely mentions propaganda for war as grounds for restricting the freedom of expression. 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 assemblies and other public venues,” (Art. 11).

The Criminal Code explicitly prohibits incitement to national, racial and religious hate, dissension or intolerance and lays down penalties ranging from six months’ to five years’ imprisonment (Art. 317) but limits the prohibition only to “peoples and ethnic communities living in Serbia”, although the ICCPR prohibits “any” incitement to hate, i.e. against any group no matter where it lives. If this Article were aligned with the ICCPR standard, it would also entail the prohibition of incitement to hate and intolerance against the increasing number of asylum seekers in Serbia.<sup>67</sup> This criminal offence warrants a longer prison term (between one and eight years long) in the event it involved coercion, ill-treatment, endangered someone’s safety or involved derision of national, ethnic or religious symbols, damage to another’s property or the desecration of monuments, memorials or graves.

Article 174 of the CC also incriminates ridicule of a person or a group on grounds of race, skin colour, religion, nationality, ethnic origin or another personal feature. The Criminal Code incriminates incitement to genocide and other war crimes (Art. 375), instigation of or incitement to a war of aggression and ordering a war of aggression (Art. 386), all of which warrant long prison sentences. However, incitement to national, racial or religious hate and war propaganda have been criminally prosecuted extremely rarely in practice.

Hate speech, which is unfortunately still frequent in both public discourse and the media, is also incriminated. The Criminal Code prohibits any propagation of ideas or theories advocating or inciting hate, discrimination or violence on grounds of race, skin colour, religion, nationality, ethnicity or another personal feature (Art.

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64 *Sl. glasnik RS*, 45/13.

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

66 A detailed analysis of the Anti-Discrimination Act and the procedures for protection from discrimination it envisages is available in the *2011 Report*, I.4.1.2.

67 More on asylum seekers at II.13.



387(4)) as well as threats to commit a crime against an individual or group on grounds of their race, skin colour, religion, nationality, ethnicity or another personal feature (Art. 387(5)). Article 344a of the Criminal Code incriminates violent conduct at sports events or public gatherings and prohibits incitement to “national racial, religious *or other* hate or intolerance on any discriminatory grounds” (*italics ours*). The prohibition applies not only to sports events but to public gatherings in general as well.

The Criminal Code includes a new Article (54a) since the adoption of the 2012 amendments, governing the determination of penalties for crimes committed out of hate (hate crimes). Under this Article, in the event a crime was committed out of hate of another on grounds of his race, religion, national or ethnic affiliation, sexual orientation or gender identity, the court shall consider such a circumstance as aggravating unless it is defined as an attribute of the crime. According to adopted standards on hate crimes, the states are under the obligation to record such cases in order to monitor hate crime. To the best of BCHR’s knowledge, such records are unfortunately not kept in Serbia yet.

The introduction of this offence in criminal law is extremely important in view of the rise in the number of crimes including elements of hate crimes in the recent years. One of the cases that caused much public consternation in 2013 regarded the death of 17-year-old Ervin Belicki from Bečej, who was found dead on a road. The investigators established that he had been beaten up and left on the road to die; a minor, P.P, from the same town has been suspected of incurring grave physical injuries to Belicki during their fight; Belicki fell in a ditch in the road and drowned.<sup>68</sup> The Belicki family’s lawyer required that the offence be qualified as a hate crime. The court had not ruled on the case by the end of the year due to an insufficient investigation and lack of evidence.

The Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia<sup>69</sup> prohibits members and followers of neo-Nazi and Fascist organisations and associations from organising events, displaying symbols or acting 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)).<sup>70</sup>

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68 *Blic*, 20 March, p. 8.

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

70 More on the activities of extremist organisations in II.11.3.

The Public Information Act<sup>71</sup> also regulates hate speech. It is forbidden to publish ideas, information and opinions that incite discrimination, hatred or violence against persons or groups of persons on the grounds of their race, religion, nationality, ethnic group, gender or sexual orientation, notwithstanding whether this criminal offence has been committed by such publication (Art. 38). Liability is excluded if such information is a part of a scientific or journalistic work and (1) was published without intent to incite 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 regards and human rights organisations. However, a great number of texts or reports in print and electronic media containing hate speech were identified in 2013 notwithstanding all the prohibitions,<sup>72</sup> which leads to the conclusion that they must be supplemented by much greater self-regulation and self-control of the media and professionalisation of editors and journalists.

The Broadcasting Act<sup>73</sup> entrusts the Republican Broadcasting Agency with preventing broadcasting of programmes that incite 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)); 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 orientation” in the production and broadcasting of their programmes (Art. 79). 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,<sup>74</sup> 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. Given that more and more residents of Serbia are using the Internet and social networks and that content violating the provisions on the prohibition of hate speech is posted on them, more and more debates have been held on the legitimate ways to prevent hate speech.<sup>75</sup> Article 14 of the European Directive on electronic commerce<sup>76</sup> leads to the conclusion that the Internet intermediary is not liable for a published comment in the event it had not known that the comment included impermissible content and it deleted the comment when it became aware of the fact. If these conditions are met, only the author of the comment is liable.

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71 *Sl. glasnik RS*, 43/03, 61/05, 71/09, 89/10 – Constitutional Court Decision and 41/11 – Constitutional Court Decision.

72 More on this issue in II.9.4.

73 *Sl. glasnik RS*, 42/02, 97/04, 76/05, 79/05 – Other Law, 62/06, 85/06, 86/06 - corr. and 41/09.

74 *Sl. glasnik RS*, 19/09.

75 The ECtHR rendered a decision in the case of *Delfi As v. Estonia*, App. No. 64569/09, which met with criticisms among organisations advocating the freedom of expression. More on Internet human rights violations at: <http://www.shareconference.org>.

76 The Directive is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:178:0001:0001:EN:PDF>.



## 6. Independent Human Rights Protection Authorities<sup>77</sup>

### 6.1. General

Independent human rights protection authorities have been operating in Serbia for a number of years now. The Commissioner for Information of Public Importance Rodoljub Šabić was elected in December 2004 under the Free Access to Information of Public Importance Act and his remit was extended to personal data protection when the Personal Data Protection Act<sup>78</sup> came into force in 2009.<sup>79</sup> The National Assembly re-elected Šabić in 2011 and his Deputy Stanojla Mandić was re-elected in office in April 2013.<sup>80</sup>

Saša Janković was elected Protector of Citizens in 2007 pursuant to the Protector of Citizens Act<sup>81</sup> and re-elected in 2012. The terms in office of the Protector's Deputies expired in 2013 and the National Assembly elected new ones in November: Gordana Stevanović, charged with the rights of the child and gender equality, Vladana Jović, charged with the rights of persons with disabilities and Robert Sepi, charged with the rights of national minorities. Miloš Janković was re-elected Deputy in charge of the rights of persons deprived of liberty.

The members of the State Audit Institution (SAI) Council and its Chairman Radoslav Sretenović were elected in 2007 under the State Audit Institution Act.<sup>82</sup> Sretenović was re-elected SAI Chairman by the Assembly in 2012.

The Anti-Corruption Agency Act<sup>83</sup> was adopted in 2008; the members of the Agency Council were elected in March 2009 and the Agency Director and Deputy Director were appointed in July the same year. Following personnel reshuffles in 2012, Tatjana Babić was elected Agency Director in January 2013, and Vladan Joksimović was appointed her Deputy in a public competition pursuant to Article 23 of the Anti-Corruption Agency Act in April 2013.<sup>84</sup>

Nevena Petrušić was appointed Commissioner for the Protection of Equality in May 2010, pursuant to the Anti-Discrimination Act<sup>85</sup> with a five-year term in of-

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77 Commissioner for Information of Public Importance and Personal Data Protection Information Booklet, p. 29.

78 The specific activities, proposals and recommendations of the independent authorities are referred to the texts on the individual rights in Chapter II of this Report. This section provides only a brief overview of their work.

79 *Sl. glasnik RS*, 97/08, 104/09, 68/12 – Constitutional Court Decision, 107/12.

80 More about the work of the Commissioner see in II.7.3.

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

82 *Sl. glasnik RS*, 101/05, 54/07 and 36/10.

83 *Sl. glasnik RS*, 97/08, 53/10, 66/11 – Constitutional Court Decision, 67/13 - Constitutional Court Decision and 112/13 – authentic interpretation.

84 See the Agency release on the appointment of the Deputy Director, available in Serbian at [http://www.acas.rs/sr\\_lat/aktuelnosti/895-zameni-direktora.html](http://www.acas.rs/sr_lat/aktuelnosti/895-zameni-direktora.html). Under Article 21 of the Anti-Corruption Agency Act, the Deputy Director shall perform the duties within the remit defined by the Director.

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

fice. The Act lays down that the Commissioner shall have three Deputies, but she had only two at the end of the reporting period.<sup>86</sup>

Although all these independent authorities have faced a number of difficulties since they were established (primarily lack of office space and staff that would enable them to operate at full steam) they have won public trust over time and improved their operations. They, however, still face some obstacles and the laws need to be amended to strengthen their roles. For instance, there is still no clear mechanism stipulating the enforcement of the National Assembly's conclusions and recommendations after its reviews of the independent authorities' reports.<sup>87</sup> Some very important bills, such as the amendments to the Protector of Citizens Act and the Free Access to Information of Public Importance Act<sup>88</sup> were withdrawn from the parliamentary procedure by the new Government that took office after the 2012 elections and were not adopted in 2013 either.

On the other hand, the members of the public have recognised the independent authorities as their partners, as the increasing number of complaints to and use of mechanisms at the disposal of the independent authorities corroborate.

A total of 18,359 complaints were submitted to the Protector of Citizens in 2013, 3,000 more than the previous year. The Protector issued 395 recommendations in 2013 and 290 of them were fulfilled.<sup>89</sup> The Commissioner for Information of Public Importance and Personal Data Protection processed 23,823 cases and had 3,604 cases pending at the end of 2013.<sup>90</sup> His office performed 206 checks on compliance with the Personal Data Protection Act. As far as the right of access to information of public importance is concerned, the Office received 3,335 complaints, one thousand more than in 2012. Like in the past, the right of access to information was exercised in 2013 the most by private individuals, civic associations, journalists, trade unions, representatives of political parties, the authorities themselves, lawyers, businessmen et al.

## *6.2. Working Conditions of Independent Authorities*

The Protector of Citizens is headquartered in Belgrade and operates local offices in Preševo, Bujanovac and Medveđa. The offices are open to the public every workday

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86 See the Commissioner for Protection of Equality Information Booklet available in Serbian at: <http://www.ravnopravnost.gov.rs/sr/o-nama/informator-o-radu>.

87 Transparency Serbia conducted a survey of the National Assembly's reviews of reports filed by the independent authorities within the project entitled Reports by Independent Authorities – From Identifying Problems to Solving Them. Interestingly, the National Assembly reviewed the 2011 annual reports of the authorities in the latter half of 2012, although the parliamentary Rules of Procedure stipulate their reviews by the relevant committees within 30 days.

88 More on the laws in *2012 Report*, II. 5.

89 Protector of Citizens Statistical Report, available in Serbian at: <http://ombudsman.rs/index.php/lang-sr/2013-01-14-14-36-04>.

90 More is available at: <http://www.poverenik.rs/en/o-nama/monthly-statistical-reports/1728-zbirni-mesecni-statisticki-podaci.html>.

but victims of gross human rights violations can also contact the Protector of Citizens staff out of hours on a designated cell phone number. A citizen unable to draft a complaint himself or with someone else's assistance or come to the office of the Protector of Citizens can ask the office to send an expert team to an address he specifies to discuss his case and enter his complaint for the record. Furthermore, the Protector of Citizens has developed a network of on-call lawyers in 15 Serbian municipalities.<sup>91</sup>

The Commissioner for the Protection of Equality opened an office where the citizens can personally file their complaints. The office works with the public on Tuesdays and Thursdays and the members of the public need to schedule an appointment by phone. The Commissioner was temporarily granted an office in the heart of Belgrade, in Nemanjina 22–26, in May 2012. The Commissioner purchased the office furniture and IT equipment from its budget allocation and donations.

The Anti-Corruption Agency in 2011 moved to a leased building which fully satisfies its needs. The Agency is to have 123 members of staff under its job classification rulebook in force since 1 January 2012<sup>92</sup> but in June 2013, employed only 82.<sup>93</sup> The Protector of Citizens had 11 more staff members in 2013 than originally envisaged (74 instead of 63).<sup>94</sup> The Commissioner for Information of Public Importance and Personal Data Protection moved to new offices in the heart of Belgrade in 2013, but has fewer workers than envisaged in the job classification rulebook (41 instead of 69).<sup>95</sup> The Commissioner for the Protection of Equality is the most understaffed – only 19 of the 60 jobs envisaged in its rulebook have been filled.<sup>96</sup>

### *6.3. Legislative and Executive Authorities' Reactions to Initiatives and Proposals of Independent Authorities*

The Protector of Citizens in March 2013 submitted his 2012 Annual Report to the National Assembly, which reviewed it in June 2013, rendered a conclusion on it and required of the Government to adequately react to the Protector's proposals in the Report.<sup>97</sup> The Protector of Citizens submitted 16 legislative proposals by the end of

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91 On-call lawyers are operating in the following municipalities: Bačka Palanka, Novi Pazar, Prijepolje, Užice, Bor, Dimitrovgrad, Leskovac, Sombor, Vršac, Požarevac, Valjevo, Jagodina, Zaječar, Čačak and Kragujevac.

92 The rulebook is available in Serbian at: <http://www.acas.rs/images/stories/Sistematizacija.pdf>.

93 Including permanently and temporarily employed staff and staff working under special service agreements, see the Agency's 2012 Annual Report available at [http://www.acas.rs/images/stories/Annual\\_Report\\_2012v2\\_1.pdf](http://www.acas.rs/images/stories/Annual_Report_2012v2_1.pdf).

94 See the Protector of Citizens Information Booklet, p. 14 available in Serbian at [www.ombudsman.rs](http://www.ombudsman.rs).

95 See the Commissioner for Information of Public Importance and Personal Data Protection Information Booklet, <http://www.poverenik.rs/en/information-booklet/information-booklet.html>.

96 See the Commissioner for the Protection of Equality Information Booklet, available in Serbian at <http://www.ravnopravnost.gov.rs/sr/o-nama/informator-o-radu>.

97 More in Serbian at [http://www.ombudsman.rs/index.php/lang-sr\\_YU/2011-12-25-10-17-15/2926--2012-](http://www.ombudsman.rs/index.php/lang-sr_YU/2011-12-25-10-17-15/2926--2012-) The Conclusion issued after the review of the Protector of Citizens 2012

2013, which were still pending.<sup>98</sup> The National Preventive Mechanism against Torture (NPM) also submitted its 2012 Annual Report to the National Assembly in 2013.

The Commissioner for Information of Public Importance and Personal Data Protection also submitted his annual report to the National Assembly in March 2012. The National Assembly reviewed the report and rendered a Conclusion<sup>99</sup> on 1 July 2013, stating, *inter alia*, that the Government and other state authorities needed to invest greater efforts in improving the normative, institutional and organisational status of the Commissioner, which entailed the following measures: capacity raising and improvement of the institutional framework to consolidate the Commissioner's role and status in line with the best international practices through further professional development and improvement of communication with the public and the executive authorities and the expansion of the Commissioner's powers.

There were, however, still instances in which the authorities have persistently ignored the Commissioner's orders and grossly violated the Free Access to Information of Public Importance Act – they failed to abide by the Commissioner's orders to provide access to the information requested and to pay into the fines imposed on them by the Commissioner. The Government failed to react adequately to such incidents, although it is under the legal obligation to ensure the enforcement of the Commissioner's conclusions in the event the measures within his remit are ineffective.

The Commissioner for Information of Public Importance and Personal Data Protection began drafting a model law on whistle-blowers in 2012. The Commissioner had been insisting on the adoption of this law governing the protection of whistle-blowers in accordance with CoE Resolution 1729 (2010) for a long time. A number of incidents in 2013 reaffirmed the need for the adoption of such a law. The Commissioner presented his model law in April 2013 and forwarded it to the Justice Ministry,<sup>100</sup> but the Ministry set up its own group which drafted its version of the law on whistle-blowers in late 2013 and organised a public debate on the bill. The provisions of the draft law were seriously criticised during the debate.<sup>101</sup>

The Commissioner for Information of Public Importance and Personal Data Protection repeatedly warned the Government to urgently adopt the Action Plan for

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Annual Report is available in Serbian at: <http://www.slglasnik.info/sr/57-03-07-2013/12828-zakljuak-povodom-razmatranja-redovnog-godinjeg-izvetaja-zatitnika-graana-za-2012-godinu-rs-broj-35.html>.

98 The bills proposed by the Commissioner and pending in parliament include the Draft Act Amending the Non-Contentious Procedure Act, the Draft Act Amending the Act on Financial Support to Families with Children and the Draft Act Amending the Labour Act. The bills are available in Serbian at: <http://www.parlament.gov.rs/akti/zakoni-u-proceduri/zakoni-u-proceduri.1037.html>.

99 The Conclusion is available in Serbian at [http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala\\_akta/2013/RS47-13Lat.pdf](http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala_akta/2013/RS47-13Lat.pdf).

100 See the Commissioner's statement, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/427973/Sabic-Sto-pre-doneti-Zakon-o-zastiti-uzbunjivaca>.

101 See Transparency Serbia's reaction to the Ministry of Justice press release: [http://www.transparentnost.org.rs/index.php?option=com\\_content&view=article&id=412%3Aneutemeljeninavodi-ministarstva-pravde&catid=14%3Avesti&Itemid=40&lang=en](http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=412%3Aneutemeljeninavodi-ministarstva-pravde&catid=14%3Avesti&Itemid=40&lang=en).

the Implementation of the Personal Data Protection Strategy. Namely, at the initiative of the Commissioner, the Government adopted this Strategy back in 2010 and bound itself to adopt the relevant Action Plan within 90 days, in November 2010 at the latest.<sup>102</sup>

The Anti-Corruption Agency also submitted its 2012 Annual Report in March 2013. In its conclusion after reviewing the Report, the National Assembly said that the provisions of the Anti-Corruption Agency Act had to be reviewed with a view to improving the Agency's capacities and efficiency, in order to secure and strengthen its preventive role and put in place a legal framework that would improve the fight against corruption and the prevention of corruption. The National Assembly also noted the need to adopt a law that would protect whistle-blowers.<sup>103</sup>

Under the new National Anti-Corruption Strategy, adopted on 20 June 2013, the National Assembly shall review the Agency reports on the implementation of the Strategy at separate sessions, organise public debates on the review of the entities charged with implementing the Strategy. Furthermore, under the Strategy, the Government is under the obligation to report to the Assembly on the implementation of its conclusions after the reviews of the Agency reports within the following six months. The Strategy expanded the powers of the Anti-Corruption Council. It, however, did not include the proposal that the entire public sector introduce mechanisms to strengthen their resistance to corruption after some typical risks, such as unnecessary procedures, unlimited discretionary powers, lack of transparency, control and accountability were identified.<sup>104</sup> The Government adopted the Action Plan for the Implementation of the Anti-Corruption Strategy in the 2013–2018 Period in August 2013.<sup>105</sup>

After reviewing the 2012 Annual Report of the Commissioner for the Protection of Equality, the National Assembly forwarded its Conclusion to the Government calling on it to provide the Commissioner with the office space and other working conditions her Office needed to operate efficiently. The Assembly stated in the Conclusion that it supported the setting up of the Commissioner's regional offices.<sup>106</sup> In May 2013, the Commissioner submitted a report on the status of persons with disabilities to the Assembly.

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102 More in Commissioner Rodoljub Šabić's comment, available in Serbian at <http://www.naslovi.net/2013-09-24/euractiv/poverenik-sabic-upozorava-na-neuskладjenost-domacih-i-evropskih-propisa/7210325>.

103 More in the Committee for the Judiciary, State Administration and Local Self-Government Conclusion 07 Ref No: 02-1258/13 of 24 June 2013.

104 The Agency's press release on the adoption of the Strategy, available in Serbian at [http://www.acas.rs/images/stories/strategija/Povodom\\_usvajanja\\_Strategije\\_25062013.pdf](http://www.acas.rs/images/stories/strategija/Povodom_usvajanja_Strategije_25062013.pdf).

105 The Strategy and the Action Plan are available in English at <http://www.mpravde.gov.rs/en/vest/3369/the-anti-corruption-strategy-and-the-action-plan.php>.

106 See the Assembly's Conclusion after the Review of the Commissioner for the Protection of Equality 2012 Annual Report.



## II INDIVIDUAL RIGHTS

### 1. Right to Life

#### *1.1. General*

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

1. The state has three basic obligations with respect to this right: the negative obligation to refrain from deprivation of life, which is permitted only in exceptional circumstances, listed in Article 2(2) of the ECHR provided that such deprivation is absolutely necessary;
2. the positive obligation to take appropriate measures to protect life, which above all entails the adoption and effective enforcement of adequate laws; and,
3. the procedural obligation to conduct effective investigations into deaths caused by use of force or the state's failure to protect the right to life.

As far as Serbia's fulfilment of these obligations is concerned, it needs to be noted that the ECtHR has to date rendered only two judgments on alleged violations of the right to life. In its 2012 judgment in the case of *Mladenović v Serbia*, the ECtHR found Serbia in breach of the right to life because it had failed to conduct an effective investigation and punish the perpetrator of a homicide that had occurred back in 1991.<sup>1</sup> The ECtHR in 2013 rendered the other judgment on the alleged breach of the right to life by Serbia, in the case of *Mitić v Serbia*, in which it found that Serbia had not violated the right to life. This case had been filed by an applicant, who had complained that the state had failed to prevent the suicide of his son in the Leskovac District Prison in 2007 and to effectively investigate his death.<sup>2</sup>

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<sup>1</sup> See *Mladenović v Serbia*, App. No. 1099/08 and the *2012 Report 2012*, II.1.4.

<sup>2</sup> See *Mitić v Serbia*, App. No. 31963/08.

The Constitutional Court of Serbia rendered its first decision finding a violation of the right to life in January 2013, because the authorities failed to conduct an effective investigation into the death of the sons of the appellants, who had filed the constitutional appeal.<sup>3</sup> The Constitutional Court has reviewed 38 constitutional appeals alleging breaches of the right to life since the 2006 Constitution provided it with the jurisdiction to review constitutional appeals, but had not found a violation of that right until this case.<sup>4</sup>

### 1.2. *State's Obligation to Refrain from the Deprivation of Life*

The first obligation the state has with respect to the right to life is to refrain from depriving people of their lives. This obligation is not absolute, however, and it is permissible to deprive someone of his life in specific situations. The Serbian Constitution does not specify these situations, but the ECHR does. Under Article 2(2) of the ECHR:

“Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- a. in defence of any person from unlawful violence;
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c. in action lawfully taken for the purpose of quelling a riot or insurrection.”

Serbia's laws specify which state agents may use lethal weapons and in which situations, pursuant to this provision of the Convention.

Namely, in addition to the Army of Serbia, which will not be discussed in this Report,<sup>5</sup> potentially lethal means of coercion may be applied by the officers of the Ministry of Internal Affairs, i.e. the police, the officers of the Security Information Agency (BIA)<sup>6</sup> and the guards in penal institutions under the jurisdiction of

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3 Case of *Jakovljević and Milovanović* (UŽ-4527/2011), which regards the still unclarified murder of Dragan Jakovljević and Dražen Milovanović, who were killed in Belgrade military barracks while they were serving the Army of Serbia and Montenegro in 2004.

4 Decision of the Constitutional Court RS UŽ-4527/11. More about the Constitutional Court decision at II.1.5.

5 Because there are no grounds for the Army to use them given that there are no armed conflicts in Serbia.

6 Under Article 12 of the Security Information Agency Act (*Sl. glasnik RS* 42/2002 and 111/2009), specific Agency officers “engaged in uncovering, monitoring, documenting, preventing, suppressing and breaking up activities of organisations and individuals involved in organised crime and criminal offences with elements of foreign, domestic and international terrorism and the severest forms of crimes against humanity and international law, and the constitutional order and security of the Republic, shall exercise the powers laid down in the law and other regulations applied by authorised officers and staff charged with specific tasks of the Ministry of Internal Affairs pursuant to the regulations on internal affairs.” Pursuant to Article 16 (1 and 2) of the Security Information Agency Act, “[I]f essential for the security of the Republic of Serbia, the Agency may assume and directly perform the duties within the remit of the ministry responsible for internal affairs. The decision on assuming and performing the duties within the



the Ministry of Justice Penal Sanctions Enforcement Administration. These means of coercion may now be also used by private security guards as of December 2013, when the new Private Security Act came into force.<sup>7</sup> Police and BIA officers may use means of coercion, including firearms, under the conditions and in the manner laid down in the Police Act<sup>8</sup> and the Rulebook on the Technical Features and Manner of Use of Means of Coercion,<sup>9</sup> while the Penal Sanctions Enforcement Act (hereinafter: PSEA)<sup>10</sup> and the Rulebook on Measures for Maintaining Order and Security in Penal Institutions<sup>11</sup> specify under which conditions means of coercion may be used in penitentiaries. Private security guards may use firearms in accordance with the Private Security Act<sup>12</sup> and the Police Act.

Article 100 of the Police Act lays down that firearms may be used “only in the event the task cannot be accomplished by the use of other means of coercion” and in the event their use is “absolutely necessary” to protect the lives of people.<sup>13</sup> The regulations on the police use of firearms are in that sense fully in accordance with the standards developed in the ECtHR case law on Article 2.<sup>14</sup> The Rulebook on the Technical Features and Manner of Use of Means of Coercion sets out that the police will prepare an action plan before they exercise their powers against a person in the event they have information indicating that the person will offer armed resistance (Art. 16).<sup>15</sup> Article 25 of the Rulebook prescribes a special internal audit procedure for reviewing whether the use of means of coercion was justified and lawful; such a procedure is conducted whenever firearms were used or when the means of coercion resulted in grave physical injuries or death (Art. 25).<sup>16</sup>

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remit of the ministry responsible for internal affairs shall be taken jointly by the Agency Director and the minister responsible for internal affairs.” These duties, too, shall be performed by the Agency officers “under the conditions and in the manner and by the exercise of powers laid down in the law and other regulations that are applied by authorised officers and staff charged with specific tasks of the Ministry of Internal Affairs pursuant to the regulations on internal affairs” (Art. 16(4)).

7 *Sl. glasnik RS* 104/13.

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

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

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

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

12 *Sl. glasnik RS*, 104/13.

13 Specifically, firearms may be used to: protect the lives of people; prevent the escape of a person apprehended during the commission of a crime but only “if there is an imminent threat to life”; prevent the escape of a person lawfully deprived of liberty or against whom an arrest warrant was issued for a crime “if there is an imminent threat to life”; to repel an immediate attack threatening the life of an officer or another person (Art. 100).

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

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

16 In such cases, the Police Director or the head of the relevant regional police directorate in which the police officer who used the means of coercion works, sets up a commission comprised of at least

When regulating recourse to firearms, the legislators aimed to ensure that they are used in the last resort and in keeping with the principle of proportionality. The law thus prohibits the use of arms in the event it might threaten the lives of people not endangering other people's lives. Furthermore, the Police Act lays down that an officer shall exercise police powers, in accordance with, inter alia, the "standards set in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officers" (Art. 31(5)).

Regulations governing the use of lethal weapons by the staff of penal institutions are somewhat more detailed than those applying to the police. For instance, the Rulebook on Measures for Maintaining Order and Security in Penal Institutions explicitly lays down that the purpose of using firearms is to incapacitate the assailant and that the authorised officer shall endeavour not to injure the convict's vital organs, i.e. that he will aim at the convict's legs (Art. 36(4)). The Rulebook distinguishes between the lethal use of firearms, permitted only if human lives are in danger (Art. 36(5)) and non-lethal use of firearms permitted also when human lives are not in danger.<sup>17</sup> The main difference between regulations governing the use of firearms by the police and the use of firearms by prison guards is that the former strictly limit the use of firearms to situations in which there is "an imminent threat to life", while the latter allow the use of firearms also in situations in which no-one's life is in danger and when there is only the risk of the convict or detainee absconding. This is not, however, in contravention of Article 2 of the ECHR, which allows the use of potentially lethal means of force in situations when it is absolutely necessary to prevent an escape and does not condition it by the existence of danger to anyone's life.<sup>18</sup>

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three police officers, which reviews the circumstances in which the means of coercion were used, makes a record of the review and renders its opinion on whether the use of means of coercion was lawful and professional. The opinion of such a commission, which cannot be deemed independent since it may comprise police officers working in the same unit as the policeman whose actions are under review, even officers directly subordinated to him, is forwarded to the police officer charged by the Minister of Internal Affairs with assessing whether the use of means of coercion was justified and lawful. In the event this officer concludes that the use of means of coercion was unjustified or unlawful, he shall "propose to the Police Director to take the measures prescribed by the law" (Art. 25(3)). This procedure, which does not preclude other forms of internal audits of the police or investigations conducted by judicial authorities, is the only procedure specifically envisaged in case a state agent caused someone's death by using means of coercion. As far as its transparency is concerned, it needs to be noted that the Rulebook on the Technical Features and Manner of Use of Means of Coercion only lays down that "information on cases of unjustified or unlawful use of the means of coercion" shall be an integral part of the MIA annual report to the National Assembly and "publicly available" (Art. 25(4)). The law is silent on the role of the injured parties in the procedure, i.e. whether they can take any part in it or propose measures to protect their interests

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

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

Under the Private Security Act, private security guards may use firearms only in self-defence and in case of utmost necessity (Art. 55(1)). The law stipulates that any use of means of coercion must be in accordance with the principle of proportionality (Art. 46(4 and 5)). A security guard who used means of coercion must immediately notify the competent police administration thereof (Art. 56(2)) and shall submit his report on the use of the means of coercion to the responsible person in the private security company within 12 hours (Art. 56(3)). The latter shall forward the “report with his opinion” to the police administration within 48 hours (Art. 56(4)). The Act does not specify what the report should include, but it does specify that the Police Minister will govern the use of means of coercion in greater detail (Art. 57), wherefore the detailed regulation of the procedures of reporting on the use of the means of coercion and of its oversight is expected soon.<sup>19</sup>

The work of the private security sector has for a long time now been tainted by numerous incidents, some of them resulting in death.<sup>20</sup> Private security guards, including former and current soldiers and policemen, have frequently been linked to criminal activities,<sup>21</sup> such as extortion, drug trafficking etc. Given that Serbia was the only country which did not have a regulated private security sector, this Act is a major step forward, despite all its shortcomings. Whether it will introduce order in the private security sector depends on the Ministry of Internal Affairs, which will play the key role in enforcing it and overseeing its implementation.

Information available to the BCHR leads to the conclusion that police officers have been using potentially lethal weapons in accordance with the law during the performance of their duties and that unjustified or improper use of firearms by policemen on duty is quite rare. The year behind us, however, saw several incidents in which policemen used their firearms off duty and killed or wounded people. Namely, criminal proceedings were initiated in 2013 against three members of the Gendarmerie, the unit planning, organising and conducting the most complex security missions across Serbia, who are suspected of having shot three people dead and trying to kill another person.<sup>22</sup> Another officer of this unit was also charged for a murder he committed while he was off duty; judging by everything, he had not used a firearm to kill his victim.<sup>23</sup> A Novi Sad police officer was charged with shooting his colleague dead in October 2013.<sup>24</sup> Commenting one of these murders,

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19 Under Article 85 of the Act, the by-laws needed for its implementation shall be adopted within six months from the day it comes into force.

20 See the *Novosti* report, available in Serbian at <http://www.novosti.rs/vesti/beograd.74.html:445732-Obezbedjenje-prebilo-mladica-na-smrt-cetvorica-osumnjicnih-zadrzana-u-pritvoru>

21 See the *Blic* report, available in Serbian at <http://www.blic.rs/Vesti/Hronika/398371/Obezbedjenje-paravan-za-dilere-i-naoruzane-bande>.

22 See the *Blic* report, available in Serbian at: <http://www.blic.rs/Vesti/Hronika/429970/Zandarmi-opet-ubijaju-Dacic-cuti-i-nesto-ceka>.

23 See the *Večernje novosti* report, available in Serbian at <http://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:469933-Pripadnik-Zandarmerije-osumnjicen-za-ubistvo>.

24 See the *Večernje novosti* report, available in Serbian at <http://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:457608-Nov-Sad-Policajac-ubio-kolegu>.

Prime Minister and Minister of Internal Affairs Ivica Dačić said that there are police officers who suffer from mental disorders but that the fact that they could not be dismissed presented “a major problem”.<sup>25</sup> To the best of BCHR’s knowledge, police and prison staff are very rarely, if ever, subjected to regular general medical check-ups once they are employed, wherefore it is entirely possible and even very likely that police and prison officers, who would ordinarily be declared unfit to carry and use firearms due to health problems, have access to these weapons.<sup>26</sup> Of course, it is up to the state to ensure that only state agents without serious health problems are allowed to carry and use firearms and that they are trained in using them safely.<sup>27</sup>

### 1.3. *State’s Positive Obligation to Take Measures to Protect Life*

Apart from the obligation to itself refrain from deprivation of life, the state also has the obligation to take the appropriate measures to protect the lives of people, by putting in place a legal framework protecting life and extending protection to people whose lives are in danger in accordance with it, regardless of whether their lives are at risk from other people, natural disasters or dangerous activities of businesses or other entities. This obligation to protect, of course, covers people deprived of liberty, in whose case it is expanded – the state is under the duty to take the adequate measures to prevent people known to have suicidal tendencies from taking their own lives.<sup>28</sup>

Serbia’s legislation can, in principle, be qualified as adequately respecting the right to life.<sup>29</sup> The Criminal Code includes a chapter on crimes against life and body (Chapter XIII, Arts. 113–127), incriminating various forms of violent deaths as well as numerous categories of other offences that may threaten human lives and health. It incriminates offences against human health (Chapter XXIII, Arts. 246–259), the environment (Chapter XXIV, Arts. 260–277), general safety of people and property (Chapter XXV, Arts. 278–288) and public traffic safety (Chapter XXVI, Arts 289–297). Crimes resulting in the deprivation of or threat to life warrant up to 40 years’ imprisonment.

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25 See the *Večernje novosti* report, available in Serbian at <http://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:469933-Pripadnik-Zandarmerije-osumnjicen-za-ubistvo>.

26 See, e.g. *Treatment of Persons Deprived of Liberty I*, BCHR 2010, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/12/Treatment-of-Persons-Deprived-of-Liberty-2010..pdf>.

27 See ECtHR’s judgment in the case of *Sašo Gorgiev v. the Former Yugoslav Republic of Macedonia*, App. No. 49328/06, paras 49–52.

28 See, e.g. ECtHR’s judgments in the cases of *Keenan v The United Kingdom*, App. No. 72729/95, *Trubnikov v Russia*, App. No. 49790/99, *Akdogdu v Turkey*, 46747/99 or *Renolde v France*, App. No. 5608/05.

29 This is corroborated by the reports of treaty bodies monitoring the enforcement of human rights treaties, which have never made comments leading to the conclusion that the protection of life in Serbia’s legislation is inadequate. For instance, the Human Rights Committee made no critical remarks about the legal framework protecting the right to life in its latest Concluding Observations about Serbia’s report. See CCPR/C/SRB/CO/2.

The Criminal Code, of course, is not the only law protecting the right to life. Measures to protect people whose lives may be at risk are set out also in the Criminal Procedure Code, which provides for the protection of witnesses and in the Police Act, under which „if and as long as any justified grounds exist”, the police shall take adequate measures “to protect a witness or another person, who has or may provide information of relevance to a criminal proceeding, or a person in connection with them in the event they are at risk from the perpetrator of the crime or other persons” (Article 73).

There have, however, been problems in practice in applying the legislation that should be protecting the right to life. The problem of protecting women from domestic violence featured prominently in 2013. This problem has existed for years,<sup>30</sup> but the competent state authorities obviously have not been addressing it appropriately, wherefore the number of domestic violence deaths surged in 2013 over the previous years (45 women were killed in the January-November 2013 period, as opposed to 28 women who had lost their lives in 2012).<sup>31</sup> Many of these women had been victims of domestic violence for longer periods of time, of which the competent authorities had been or should have been aware. They, however, failed to adequately protect these women from such violence. The Protector of Citizens found in two cases in 2013 that the Ministry of Internal Affairs and the competent social welfare centre or health institution in which one victim of domestic violence was treated had failed to take measures to the detriment of the victims of domestic violence, which ultimately resulted in their deaths.<sup>32</sup> The Protector of Citizens in 2013 established in another case that the relevant police department and social welfare centre had failed to undertake all the measures within their remit to protect a woman who has been battered by husband, but fortunately did not die.<sup>33</sup> It would be reasonable to assume that many of the domestic violence deaths could have been prevented had the authorities charged with criminally prosecuting the offenders and courts responded adequately every time they became aware of information indicating that someone was a victim of domestic violence, which appears not to be the case. According to the data of the Statistical Office of the Republic of Serbia, the number of people convicted for domestic violence every year is much smaller than the number of criminal reports against the alleged perpetrators of this crime (see the Table below). It also needs to be noted that the victims extremely

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30 See, e.g. the Human Rights Committee’s latest Concluding Observations about Serbia’s report on the implementation of the ICCPR, CCPR/C/SRB/CO/2, paragraph 9.

31 As Coordinator of the Domestic Violence Counselling Centre Vesna Stanojević told *Tanjug* on 25 November 2013, see the RTS report available in Serbian at <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1452707/Ubijeno+45+%C5%BEena+u+porodi%C4%8Dnom+nasilju.html>.

32 See the Protector of Citizens’ recommendations to the Pančevo police and General Hospital and the Jagodina police and Social Welfare Centre of 20 August and 21 October 2013 respectively, available in Serbian at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33>.

33 See the Protector of Citizens’ recommendation to the Kraljevo Social Welfare Centre and police of 24 October 2013, available in Serbian at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33>.

rarely report domestic violence<sup>34</sup> and that the authorities rarely initiate criminal proceedings against the offenders even when the victims file reports against them to the police.<sup>35</sup>

*Table: Domestic Violence Criminal Reports, Indictments and Guilty Verdicts in the 2010–2012 Period*<sup>36</sup>

Year	Number of adults against whom criminal reports were filed	Number of indicted adults	Number of adults found guilty	Number of adults convicted to conditional prison sentences	Number of adults convicted to unconditional prison sentences
2012	3,624	1,827	1,472	970	436
2011	3,550	1,918	1,616	1,135	360
2010	2,837	1,228	1,059	745	236

Although it is difficult to assess how conscientiously and efficiently the state authorities have been protecting the right to life in domestic violence cases without perusing each individual case, there is no doubt much more can be done to protect women victims of domestic violence.<sup>37</sup> The same may be said with regard to the

<sup>34</sup> According to a survey on the implementation of the Strategy for the Protection against Domestic Violence and Other Forms of Gender-Based Domestic Violence in the AP of Vojvodina for the 2008-2012 Period conducted by the Vojvodina Government, only 23.3% of the women victims had reported the last time they were battered to the police. This percentage is even smaller in Central Serbia, according to a survey conducted in that part of the country by the Gender Equality Administration – only 10% of the women victims of domestic violence sought help from a state institution. See the Memo on the Implementation of the Strategy for the Protection against Domestic Violence and Other Forms of Gender-Based Domestic Violence in the AP of Vojvodina in the 2008-2012 Period, p. 9 available in Serbian on the website of the Provincial Secretariat for Economy, Employment and Gender Equality ([http://www.psrzrp.vojvodina.gov.rs/uploads/contpics/informacija\\_nasilje\\_latinaica.pdf](http://www.psrzrp.vojvodina.gov.rs/uploads/contpics/informacija_nasilje_latinaica.pdf)), and M. Babović, K. Ginić and O. Vuković, *Mapping Domestic Violence against Women in Central Serbia* (Belgrade 2010), pp. 11 and 82 (available in Serbian at: [http://sigurnakuca.net/upload/Mapiranje\\_porodicnog\\_nasilja\\_prema\\_zenama\\_u\\_Centralnoj\\_Srbiji.pdf](http://sigurnakuca.net/upload/Mapiranje_porodicnog_nasilja_prema_zenama_u_Centralnoj_Srbiji.pdf)).

<sup>35</sup> According to the Vojvodina Government research on the 2008-2012 period, 69% of the domestic violence incidents reported to the police did not result in the initiation of criminal proceedings. See the Memo on the Implementation of the Strategy for the Protection against Domestic Violence and Other Forms of Gender-Based Domestic Violence in the AP of Vojvodina in the 2008-2012 Period, p. 9.

<sup>36</sup> Statistical Office of the Republic of Serbia data. Data on 2013 were not available by the end of the reporting period.

<sup>37</sup> The Human Rights Committee reached the same conclusion in its latest Concluding Observations comments and called on the Serbian authorities to take specific measures to address domestic violence more efficiently. See CCPR/C/SRB/CO/2, para 9. More information on the extent and features of domestic violence in Serbia is available in Serbian in the above mentioned researches conducted by the Vojvodina Government and the Gender Equality Administration and on the following website <http://sigurnakuca.net/pocetna.4.html>.



protection of children from domestic violence, as well as from peer violence, and with regard to the protection of non-heterosexuals from violence.<sup>38</sup>

#### 1.4. *Obligation to Conduct Effective Investigations into Deaths Not Due to Natural Causes or Deaths of Persons Deprived of Liberty*

The state is under the obligation to conduct effective investigations into all deprivations of life or grave risks to people's lives if there are reasons to believe that they cannot attributed to natural causes with a view to establishing all the circumstances and identifying and punishing those responsible. An investigation into a potential breach of the right to life is deemed effective in the event it fulfils the following requirements: an investigation cannot hinge on the initiative of the injured party, i.e. the competent authorities must launch it *ex officio*, as soon as they become aware of an event that needs to be investigated; the investigation must be independent from those involved in the event, both *de iure* and *de facto* (this is particularly pertinent in situations in which state agents are involved in someone's death, e.g., in the event that a person was shot dead by the police); the investigation must be capable of resulting in the identification and adequate punishment of those responsible for the offence; the investigation must be conducted without delay; the investigation must be subject to sufficient public scrutiny; the investigation must be conducted in a way ensuring that the injured parties or close relatives of the victims are involved in the procedure to the extent necessary to protect their legitimate interests.<sup>39</sup> In principle, Serbia's Criminal Procedure Code provides for effective investigations in the way they are defined in the ECtHR's case law.

Given that the state is responsible for the treatment of people deprived of liberty, it is also under the duty to provide a reasonable explanation of the circumstances of their death. Therefore, the state is in principle under the obligation to investigate the cause of death of people deprived of liberty even when there are no *prima facie* indications that they had not died of natural causes. In this regard, it needs to be noted that Article 129 of the Criminal Procedure Code, which came

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38 The Protector of Serbia in 2013 reviewed two cases in which he found that the schools had failed to protect children from peer violence. In one case, he found that the pupil, who ultimately transferred to another school, had been subjected to peer violence because of his sexual orientation. See the Protector of Citizens' recommendations to the Belgrade primary school Stevan Sremac and the Kuršumlja Economic High School of 12 March and 8 August 2013 respectively, available on the Protector of Serbia's website: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33>. Mention also needs to be made of yet another prohibition of the Pride Parade, which was to have drawn attention to problems non-heterosexuals face in society, in 2013 due to serious threats of violence voiced by various extremist groups, see more in II.10.2.2, II.10.7. and III.4.3.

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

into effect in October 2013, sets out that a public prosecutor or court must order an examination and an autopsy of a person who died whilst deprived of liberty by a forensic medical specialist.

To sum up, the valid criminal legislation does not per se hinder the conduct of effective investigations about crimes threatening human life. However, serious problems often arise in practice with regard to investigations into incidents in which people were deprived of their lives or faced serious life threats. Namely, the perpetrators of numerous crimes committed during the armed conflicts in Croatia, Bosnia-Herzegovina and Kosovo in the 1990s have never been brought to justice although the state is charged with prosecuting them and although they are accessible to it. Furthermore, the perpetrators of a number of murders, which the state authorities may have been implicated in, particularly those committed before 2000, have never been identified or punished. For instance, those responsible for the deaths of journalists Dada Vujasinović, Slavko Ćuruvija and Milan Pantić were still not identified or punished by the end of 2013. Nor have those who tried to kill journalist Dejan Anastasijević, although the Serbian Government recently set up a special commission tasked with investigating all the circumstances regarding these murders of journalists. Assassinations of leading senior state officials and civil servants, such as Zoran Todorović, member of the JUP political party, former FRY Defence Minister Pavle Bulatović, judge Nebojša Simeunović, police Generals Radovan Stijičić and Boško Buha, Director of the national air company JAT, Živorad Petrović and state security agent Momir Gavrilović, have remained unsolved as well.

Problems with fulfilling international standards regarding the right to life have occurred also in cases in which the perpetrators had been identified and brought to justice. Namely, an analysis of the penalties imposed to people convicted for aggravated murder and murder shows that some courts' penal policy is much too mild and that the perpetrators of the gravest crimes have not been punished adequately. For instance, although Article 114 of the Criminal Code lays down that a person found guilty of aggravated murder shall be sentenced to imprisonment ranging between 10 and 40 years, as many as 26 of the 80 people found guilty of aggravated murder were sentenced to prison terms under 10 years: 17 of them were convicted to between 5 and 10 years of prison, four of them to between three and five years of imprisonment, three to prison sentences ranging between two and three years, and two to between one and two years imprisonment. In the same period, 77 of the 116 (i.e. 66%) people found guilty of premeditated murder, warranting between five and fifteen years of imprisonment, were sentenced to less than five years' imprisonment: 44 were sentenced to between three and five years' imprisonment, 22 to between two and three years in jail, ten to between one and two years' imprisonment and one to a prison sentence of less than a year.<sup>40</sup> This extremely problematic penal policy has plagued the Serbian courts for years.<sup>41</sup>

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40 Statistical Office of the Republic of Serbia bulletin "Adult Perpetrators of Criminal Offences in the Republic of Serbia – Criminal Reports, Indictments and Guilty Verdicts", Belgrade 2013, pp. 58-59. The 2013 data were unavailable by the end of the reporting period.

41 See *2012 Report*, II.1.2.



Serious problems have arisen with respect to the exercise of rights arising from violations of the right to life in court deliberations of compensation claims filed by the families of the murdered victims, particularly in proceedings regarding compensations for murders committed during the armed conflicts in Croatia, Bosnia-Herzegovina and Kosovo.<sup>42</sup> Namely, the courts have tended to reject the war crime victims' claims against the Republic of Serbia (for crimes committed by its armed forces or paramilitary units under its control) alleging expiry of the statute of limitations.<sup>43</sup> Another problem is the practice of criminal courts, which have been refusing to rule on compensation claims filed by injured parties in criminal proceedings and referring them to file their claims in civil proceedings, although nothing prevents them from ruling on such claims themselves. The victims have thus been forced to launch new proceedings, which can take several years, at their own expense.

### *1.5. Judgment of the Constitutional Court of Serbia in the Case of Jakovljević and Milovanović<sup>44</sup>*

The Constitutional Court of Serbia rendered its first decision finding a violation of the right to life enshrined in Article 24 of the Constitution on 31 January 2013 after reviewing a constitutional appeal filed in October 2011 by Janko Jakovljević and Petar Milovanović, the fathers of conscripts Dragan Jakovljević and Dražen Milovanović. The latter were killed on 5 October 2004 in the barracks of the Army of Serbia and Montenegro in the Belgrade suburb of Topčider, whilst serving the army. The Constitutional Court found a violation of the procedural aspect of the right to life in this case, because the investigation launched into their deaths suffered from shortcomings that rendered it ineffective, wherefore it was still unknown how they had died and who was responsible for their deaths. Finally, the Constitutional Court ruled on the appellants' just satisfaction claim and awarded each of them EUR 5.000 compensation for non-pecuniary damages. Furthermore, the Constitutional Court ordered the Belgrade Higher Public Prosecutor's Office and Higher Court to "take all measures" to complete the preliminary proceedings about the death of the appellants' sons forthwith.

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42 More in Humanitarian Law Center's report "Serving Justice or Trivializing Crimes: Fulfilling the Right of Victims of Human Rights Abuses to Seek Reparation before Serbian Courts – Report for 2012", Belgrade 2013, available at <http://www.hlc-rdc.org/wp-content/uploads/2013/06/Fulfilling-the-Right-for-Victims-of-Human-Rights-Abuses-to-Seek-Reparation-before-the-Serbian-Courts.pdf>.

43 *Ibid*, pp. 6-7.

44 The Constitutional Court decision is available in Serbian at <http://www.ustavni.sud.rs/page/predmet/sr-Latn-CS/8309/?NOLAYOUT=1>. A more detailed comment of this decision is available in Serbian at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/12/U%C5%BE-4527-2011-Janko-Jakovljevi%C4%87-i-Petar-Milovanovi%C4%87.pdf>.

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

### 2.1. General

The prohibition of torture and degrading or inhuman treatment or punishment (ill-treatment) is envisaged by all relevant international instruments, from the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention of Human Rights, to international human rights treaties focusing exclusively on the prohibition of torture – the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: CaT) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Prohibition of torture is also part of general international customary law<sup>45</sup> i.e. it constitutes *ius cogens*, which implies that there may be no derogation from this norm.

Like the leading international treaties, the Constitution of the Republic of Serbia absolutely prohibits torture and lays down that persons deprived of liberty must be treated humanely. The Constitution prohibits all forms of violence against persons deprived of liberty and extortion of statements. Furthermore, the Constitution sets out that persons deprived of liberty shall be promptly informed about the grounds for their deprivation of liberty, the charges against them and of their rights. Everyone deprived of liberty may initiate proceedings with the court, which is under the duty to urgently review the lawfulness of his deprivation of liberty and order his release in the event his deprivation of liberty was unlawful. The right of persons deprived of liberty to be examined by a doctor of their own choosing is the only one not enshrined in the Constitution, but which persons deprived of liberty must have in the view of the European Committee for the Prevention of Torture and Inhuman Treatment or Punishment (hereinafter CPT).<sup>46</sup>

The Criminal Code still incriminates ill-treatment in Article 136 (extortion of a statement) and Article 137 (ill-treatment and torture), as well as in Articles incriminating other criminal offences, such as infliction of light and grave bodily injuries (Articles 121 and 122). These articles include disputable provisions that may lead to misunderstandings of the very concept of ill-treatment, difficulties in qualifying specific acts as ill-treatment and disputable penal policies.

The first problem arises in the very title of the criminal offence – Ill-Treatment and Torture – given that torture is merely a form of ill-treatment, which also includes inhuman and degrading treatment or punishment. The present title may result in a misunderstanding of the very concept of torture, which is the grossest form of ill-treatment, not a separate concept.

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45 See Vojin Dimitrijević, Dragoljub Popović, Tatjana Papić, Vesna Petrović, *Međunarodno pravo ljudskih prava (International Human Rights Law)*, Belgrade 2006, p. 67.

46 See CPT Standards, paragraphs 36 and 42, available at <http://www.cpt.coe.int/en/documents/eng-standards.pdf>.

The second problem is that there is no essential difference between the crime of ill-treatment and torture, on the one hand, and the extortion of a statement, on the other i.e. the act of extorting a statement fully corresponds to the qualified form of the crime of ill-treatment and torture (Art. 137, paragraph 3, in conjunction with paragraph 2, CC) if committed by a public official, wherefore the question arises as to which criteria the prosecutor will apply when deciding which of the two crimes to prosecute the defendant for. Various acts by public officials (Ministry of Internal Affairs officers) have been qualified in numerous indictments as acts by which the defendants (public officials) endeavoured to “extort a confession from the injured party” only to qualify such acts as ill-treatment and torture (Art. 137, paragraph 3, in conjunction with paragraph 2, CC) rather than as extortion of a statement (Ar. 136, CC) although the very expression was used in the explanation of the indictment.<sup>47</sup> The text of the Criminal Code does not rule out the possibility of applying both Articles in conjunction to the same act. The prosecutors have not made use of this possibility, but there have been cases in which the injured parties, who took over the criminal prosecution from the public prosecutors, insisted on charging the defendants with both crimes.

The third problem arises from the definition of the crime of ill-treatment and torture (Art. 137(2)) which is broader than the one in the UN Convention against Torture, as it may be committed by anyone, not only a public official or an individual at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (in which case it is a qualified form of the crime, under Article 137(3)).<sup>48</sup> Such an approach renders the spirit of the prohibition of ill-treatment enshrined in the UN Convention against Torture absolutely senseless in practice. For instance, Serbia’s case law qualifies various forms of violence men inflict upon women as ill-treatment and torture: from cell phone text messages with sexual content<sup>49</sup>, threats to kill or injure them,<sup>50</sup> to physical violence.<sup>51</sup> The importance of punishing these crimes, which are often committed

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47 Reply to requests for information Ref No 10-301/13, case K 1574/12, Sombor Basic Court; Ref No. 10-297/13, case K 212/13, Prijepolje Basic Court; Ref No 10-304/13, case K 223/13, Užice Basic Court.

48 The Convention against Torture defines torture in the following terms: „For 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 suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.“

49 Reply to requests for information Ref No 10-301/13, case K 501/13, Sombor Basic Court; Ref No. 10-297/13, case K 318/12, Prijepolje Basic Court.

50 Reply to request for information Ref No 10-296/13, case K 189/2013, Požega Basic Court.

51 Reply to requests for information Ref No 10-304/13, cases K 709/12, K 176/13 and K 379/13, K 501/13, Užice Basic Court; Ref No 10-291/13, case 2556/13, Novi Sad Basic Court.

in the Republic of Serbia, is not disputable. However, they should not be subsumed under torture and ill-treatment but defined as a separate criminal offence in which only women are the passive subjects.<sup>52</sup> Furthermore, Serbian case law has qualified as ill-treatment and torture various forms of insults and harassment of workers by their employers, teachers slapping their students, threats to and slapping of children by the parents of other children or neighbours, insults traded by quarrelling neighbours, various insults on ethnic grounds, etc. Many of these acts could have been qualified as insults, endangering safety or light bodily injuries rather than as ill-treatment and torture.<sup>53</sup>

The crime of ill-treatment and torture often results in the infliction of bodily injuries. However, authorised prosecutors have been known to state that the injured parties sustained light or grave bodily injuries (Art. 122 and 121, CC) in their descriptions of the acts but not to include them in the charges although some authorised prosecutors charged the defendants with both ill-treatment and torture and with inflicting light or grave bodily injuries. The case law on ill-treatment and torture in conjunction with the crimes of inflicting light and grave bodily injuries clearly has to be aligned to ensure equality in the application of the law. There have been cases in which the crime of ill-treatment and torture was applied in conjunction with the crimes of endangering safety (Art. 138), unlawful deprivation of liberty (Art. 132), extortion (Art. 214), domestic violence (Art. 194) et al.<sup>54</sup>

The penalties are not proportionate to the severity and gravity of this crime, as the Committee against Torture noted as well.<sup>55</sup> Ill-treatment and torture warrants maximum eight years' imprisonment, while the extortion of a statement warrants

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52 The National Assembly of the Republic of Serbia adopted the Act Ratifying the Council of Europe Convention on preventing and combatting violence against women and domestic violence on 31 October 2013. Article 5(2) of the Convention, the parties to the Convention "shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors".

53 Under the Convention against Torture, an act may be qualified as torture in the event it fulfils the following requirements: 1) a public official must be involved in the act of torture, even this involvement entails only tacit acquiescence; 2) it must have caused the victim severe pain or suffering, whether physical or mental; 3) the perpetrator acted intentionally (involuntary torture is impossible); 4) the perpetrator had a specific purpose - to obtain information or a confession from the victim or a third person, to punish the victim, to intimidate or coerce the victim or a third person or to discriminate against the victim. See, e.g. M. Nowak and E. McArthur, *The United Nations Convention against Torture: A Commentary*, Oxford 2008, p. 28.

54 Data obtained in replies of the Basic Courts in Sombor, Prijepolje, Kraljevo, Leskovac, Novi Sad and Pančevo to requests for access to information of public importance.

55 See the Committee against Torture Concluding Observations of 21 November 2008, paragraph 5. In its 2011 Concluding Observations on Serbia's Report on the Implementation of the IC-CPR, the Human Rights Committee expressed concern over the lenient penalties laid down for ill-treatment and torture and the short statutory limitation period and recommended to Serbia to lay down stricter prison terms and extend the statute of limitations bearing in mind the gravity of such crimes. See paragraph 11 of the Concluding Observations of the Human Rights Committee of 24 March 2011.

maximum 10 years' imprisonment. With the exception of the qualified form of the crime of extortion of a statement, the Criminal Code allows the courts to convict the perpetrators of both crimes to conditional sentences (Art. 66(1), CC).

Article 495 of the new Criminal Procedure Code (hereinafter: CPC)<sup>56</sup> that came into force in October 2013 envisages summary proceedings regarding crimes warranting fines or up to eight years' imprisonment. This provision gives rise to several problems from the perspective of prosecuting and punishing defendants found guilty of ill-treatment, given that no investigations are to be conducted into crimes prosecuted summarily unless the public prosecutor undertakes specific investigation actions at his own initiative or at the order of the judge. Consequently, cases of ill-treatment may not be investigated at all, wherefore the penalties it warrants must be raised at least to the level mandating an *ex officio* investigation by the public prosecutor. Furthermore, the new CPC excludes the possibility of the injured party, as a subsidiary prosecutor, taking over the criminal prosecution before the confirmation of the indictment in the event the public prosecutor dismissed the criminal report, discontinued the investigation or abandoned the raised but still unconfirmed indictment. The only avenue available to the injured party is to file an objection to the immediately higher prosecutor. In the event the latter upholds the objection, he shall render a ruling ordering the competent public prosecutor to either initiate or resume criminal prosecution (Art. 51). If the injured party filed a criminal report in summary proceedings, he is entitled to file an objection with the immediately higher public prosecutor in the event the competent public prosecutor failed to file a motion to indict or notify the injured party that he had dismissed the report within six months. All these provisions further reduce chances of prosecuting and punishing criminal offences violating the prohibition of ill-treatment, particularly when public officials are the defendants, given that practice has shown that the competent public prosecutor's offices have in many cases either not undertaken at all or abandoned the prosecution of this category of the defendants.

In the October 2012-October 2013 period,<sup>57</sup> 74 motions to indict, 12 indictments and three private lawsuits for the crime of ill-treatment and torture were filed in Serbia.<sup>58</sup> The courts delivered five judgments rejecting the charges, 12 judgments acquitting the defendants and 18 judgments convicting the defendants in the same pe-

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56 *Sl. glasnik RS*, 72/11, 101/11 and 121/12.

57 These data were collated from the replies obtained from 31 Basic Courts, not all of which forwarded comprehensive information. For instance, some courts were unable to forward us data on pending cases in which the case files were in an Appellate Court (wherefore we were unable to familiarise ourselves with the subject matter) or in which the case files had been forwarded to the public prosecutor to file indictments. Some court replies were incomplete, e.g., in its reply to our request for information Ref No 10-303/13, the Subotica Basic Court stated that some of the cases were pending, wherefore they were unable to forward us the decisions that had been rendered in the given period (which had not posed a problem to 90% of the other courts that replied to our requests).

58 These proceedings were still under way at the end of the reporting period.

riod.<sup>59</sup> Out of these 18 judgments, the courts ordered unconditional prison sentences in four cases (two years and six months; one year and nine months; one year and six months; and 30 days imprisonment); four fines<sup>60</sup> and nine conditional sentences. Furthermore, 11 rulings to discontinue the proceedings (mostly because the authorised prosecutors waived prosecution), two rulings, one rejecting the motion to indict and the other dismissing the lawsuit of the injured party as a subsidiary prosecutor, and one ruling to conduct an investigation were rendered in the same period.

Fifty-one proceedings had been conducted or were still under way in the given period against 95 public officials (98% of them MIA officers). Thirty-three charges were raised (25 motions to indict and eight indictments); the courts delivered four judgments acquitting the defendants, two judgments rejecting the charges and four judgments convicting the defendants (all of them to conditional prison sentences).<sup>61</sup> The courts also issued four rulings discontinuing the proceedings, three rulings dismissing the lawsuits and one ruling to conduct an investigation. One motion to investigate was also filed in that period. Interestingly, a large share of these proceedings had been initiated after the public prosecutors abandoned or refused to criminally prosecute the defendants. In proceedings launched by the injured parties as subsidiary prosecutors, the courts rendered two rulings discontinuing the proceedings (because the authorised prosecutors waived prosecution), two acquittals and two rulings dismissing the motions to indict.

Only five cases regarded the crime of extortion of a statement. The motions to indict were dismissed in two cases, two trials were still under way, while the fifth case ended with the Appellate Court's final judgment to reject the indictment because the absolute statutory limitation for criminal prosecution had expired.<sup>62</sup> Four of the five proceedings had been initiated by the injured party as a subsidiary prosecutor. The defendants in two of the cases had been charged with extortion of a statement in conjunction with ill-treatment and torture.

At the 24<sup>th</sup> session of its First Grand Chamber on 10 July 2013, the Constitutional Court for the first time rendered a decision finding a violation of the appellant's right to inviolability of his physical and mental integrity enshrined in Article 25 of the Constitution (case UŽ-4100/2011). The Court upheld the constitutional appeal and found that both the substantive and procedural aspects of the appellant's right to inviolability of his physical and mental integrity had been violated during his pre-trial detention and imprisonment.<sup>63</sup> In that judgment, the Court took the

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59 We were unable to establish how many of these judgments were final from the replies we had received from the courts.

60 Mostly for various forms of sexual harassment, via the phone or text messages.

61 Replies to requests for access to information of public importance Ref. No. 20-287/13, case K 148/2011, Loznica Basic Court; Ref. No. 10-297/13, case K 212/13, Prijepolje Basic Court; Ref. No. 10-292/13, case K 347/10, Pančevo Basic Court.

62 Reply to request for access to information of public importance Ref. No. 10-279/13, case K 8627/12, Belgrade Basic Court.

63 See the Constitutional Court's Decision in Serbian at <http://www.ustavni.sud.rs/page/jurisprudence/35/>.



view that both the detention and prison security guards had treated the appellant inhumanly, that the use of force against him had been justified but disproportionate in three instances and found that it had been unjustifiably applied against him the fourth time.

## *2.2. Use of Force by State Agents*

Police officers may use force in the circumstances and in the manner laid down in the Police Act and the Rulebook on the Technical Features and Manner of Use of Means of Coercion, while prison guards may use force in the circumstances and in the manner laid down in the Penal Sanctions Enforcement Act (PSEA) and the Rulebook on Maintaining Order and Security in Penitentiaries. Both the regulations on the police and those on the use of force in penitentiaries lay down that means of coercion shall be applied in accordance with the principle of proportionality (Art. 11(2 and 3) and Art. 36 of the Police Act, Art. 127(2 and 3), PSEA) and that reports shall be prepared on every use of force to ensure that it was lawful; policemen and prison guards submit these reports to their superiors (Art. 86 of the Police Act and Art. 130(4) of the PSEA). Both laws specify the data that each report must include. The PSEA also lays down that inmates subjected to use of force, with the exception of fixation, must be examined immediately by a doctor. The medical report, including the name and allegations of the inmate subjected to means of coercion, shall include the doctor's opinion on whether his injuries may have been caused by the applied measure. This report is submitted to the prison governor together with the guard unit's report and is forwarded to the Director of the Penal Sanctions Enforcement Administration (Art. 130(3 and 4)).<sup>64</sup>

The regulations on the use of force by the police do not include this obligation or provide the policemen with any other instructions on when they are to call in

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64 The PSEA also lays down that the inmate will be examined again between the 12<sup>th</sup> and 24<sup>th</sup> hours since the measure was applied, wherefore the prison governor, and the Director of the Penal Sanctions Enforcement Administration subsequently, are submitted two medical reports together with the prison guards' report. The Committee against Torture stated the following in paragraph 40 of its General Comment No. 3, "On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those who have not received redress. States parties shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress." See the Committee against Torture Concluding Observations of 21 November 2008, paragraph 5, and the Human Rights Committee Concluding Observations of 24 March 2011, paragraph 10. The PSEA also lays down that the inmate will be examined again between the 12<sup>th</sup> and 24<sup>th</sup> hours since the measure was applied, wherefore the prison governor, and the Director of the Penal Sanctions Enforcement Administration subsequently, are submitted two medical reports together with the prison guards' report.

a doctor after using means of coercion. Therefore, some policemen call the doctors in every time force was used, while others only do so when they think it necessary (most often if they notice injuries) or if the person subjected to coercive measures asks for a doctor. Furthermore, in some police stations, the doctors leave their findings/reports with the police, which are attached to the reports that the police officers, who had applied the measures, submit to their superiors. In others, yet, the doctors do not leave their findings/reports with the police, justifying their refusal by the need to protect the patients' privacy.

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

The work of the state authorities entitled to use force is also controlled by reviews of complaints. Complaints about police use of force may be filed pursuant to and in accordance with the Police Act (Art. 180) and the Complaints Review Procedure Rulebook, while complaints about the use of force by prison guards are submitted pursuant to Articles 114 and 144a of the PSEA and/or the penitentiary House Rules.<sup>65</sup> Complaints of ill-treatment by the police and prison guards may also be filed with the Protector of Citizens (Arts. 25–31, Protector of Citizens Act), but this form of protection is subsidiary in character and the citizens may submit their complaints to the Protector of Citizens only after they had tried to protect their rights in "appropriate legal proceedings" (Art. 25(3)). The Protector of Citizens may exceptionally initiate a procedure on the complaint before "the exhaustion of all legal remedies".<sup>66</sup>

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65 Four Rulebooks on House Rules are applied in Serbian penitentiaries: the Rulebook on House Rules in Correctional Institutions and District Prisons (*Sl. glasnik RS*, 72/10), the Rulebook on House Rules in Juvenile Correctional Institutions (*Sl. glasnik RS*, 71/06), the Rulebook on House Rules in Juvenile Homes (*Sl. glasnik RS*, 71/06) and the Rulebook on House Rules in Detention Facilities (*Sl. glasnik RS*, 35/99). Each Rulebook includes provisions on the submission of complaints and grievances regarding the violations of the rights of persons deprived of liberty.

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



Under Article 180(1) of the Police Act, “[E]veryone is entitled to file a complaint to the Ministry against a police officer if they believe that their rights or freedoms were violated by an illegal or improper action of the police officer”. The complaint shall be submitted to the “police or the Ministry” but it must first be reviewed by the head of the unit in which the implicated police officer works or a person designated by the head of the unit. In the event the complainant disagrees with the views of the superior who reviewed the complaint or fails to respond to an invitation to an interview, or in the event the complaint gives rise to suspicions that a crime prosecuted *ex officio* had been committed, the entire case file is forwarded to a three-member commission, which then conducts a review of the complaint. Complaint Review Commissions have been established in the Ministry and each regional police administration. Every commission comprises three members (a police officer appointed by the Minister, a representative of the Internal Control Sector appointed by the head of that Sector, while the third “civilian representative” is appointed by the police minister at the proposal of the local self-governments (to the commissions of the regional police administrations) or of the “professional associations and NGOs” (to the Ministry Commission). The Commission sessions are public and the complainants and implicated police officers are invited to them; they may be represented by their lawyers at their own expense and “present documents and other evidence”, but they can only present evidence in the possession of the police. The head of the unit in which the implicated officer works and the Commission members may order the procurement of the documents and the presentation of the evidence as well. The commissions keep minutes of their sessions,<sup>67</sup> and the final decisions on the complaints must be reasoned in detail and served on the complainant in writing. All this would lead to the conclusion that the complaints review procedure laid down in the valid regulations is transparent, but this form of overseeing the lawfulness of police work can hardly be considered independent.<sup>68</sup> When the decision on the complaint is rendered, the complainants are notified that

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

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

the complaints review procedure has been completed and that they “have at their disposal all legal and other means to protect their rights and freedoms”.

The police Internal Control Sector received 507 complaints claiming excessive or unlawful use of means of force, torture, inhuman or degrading treatment or communication disrespecting human dignity in the 1 October 2012 – 1 November 2013 period. The Sector found that 23 of the complaints were well-founded. In its response to BCHR’s request for access to information of public importance, the MIA Access to Information Office stated that the Internal Control Sector did not possess comprehensive data on the number of initiated disciplinary proceedings or disciplinary measures given that many of them were initiated and issued by the heads of the departments in which the policemen complained of worked. Furthermore, the Internal Control Sector filed nine criminal reports against 11 policemen in the above-mentioned period for the following crimes: ill-treatment and torture (three reports against four officers), coercion (one police officer), extortion (four police officers), violent conduct (one police officer) and endangering safety (one police officer). What happened after the submission of the criminal reports remains unknown. The Internal Control Sector further does not possess information on whether any police officers have been dismissed from their jobs because they had been convicted to unconditional sentences exceeding six months’ imprisonment.<sup>69</sup>

Convicts may file their complaints of ill-treatment to the prison governors, the Director of the Penal Sanctions Enforcement Administration (if they believe that the prison governor violated their rights) or an authorised officer overseeing the work of their penitentiary. Remanded inmates may file their complaints also to the presidents of the competent courts and, under the new CPC, the penal sanctions enforcement judges (Art. 222(3)). The complaints review procedure is regulated relatively poorly. The regulations lay down the deadlines within which the prison governors and the Director of the Penal Sanctions Enforcement Administration (who reviews appeals of decisions on complaints rendered by the prison governors in the second instance or, exceptionally, the complaints in the first instance, if they concern the prison governors) must review the complaints, but do not oblige them to reason decisions (with the exception of the Rulebook on House Rules in Juvenile Correctional Institutions, which states in Article 108(3) that the head of the institution is under the duty to reason the decision on a juvenile’s complaint). Nor do they specify the role the complainants may play in the complaints review procedure (whether they can suggest the presentation of evidence or the procurement of specific documentation).

Neither the PSEA nor the Rulebooks on House Rules provide for hearings which the complainants would be invited to and at which they would possibly have the opportunity to confront the penitentiary staff member whose treatment they complained of. It, therefore, appears that the complainants cannot affect the proce-

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69 The data obtained in MIA’s reply 01 Ref. No. 11750/13-2 of 9 December 2013 are those in possession of the Internal Control Sector and do not comprise data held by the regional police administrations.

ture in any way from the moment they file the complaint. The complaints review procedure can hardly be considered transparent given that the review authorities are not under the obligation to reason their decisions or specify in them the measures they had undertaken during the procedure to ascertain whether the complaint was well-founded.

Although both the PSEA and the Rulebooks on House Rules entitle the inmates to file complaints to persons authorised to oversee the work of the penitentiaries, they do not specify how these complaints are dealt with. Furthermore, they do not even oblige the authorised persons to respond to the complaints.

A similar problem exists with respect to complaints remanded prisoners may file with the presidents of the competent courts or penal sanctions enforcement judges. Although the 2011 CPC (Art. 222(3)) and the Rulebook on House Rules in Detention Facilities (Art. 40(2)) specify that detainees may file their complaints to court presidents overseeing remanded prisoners i.e. the penal sanctions enforcement judges, none of these regulations include any provisions laying down how such complaints should be dealt with. Nor do they oblige the court presidents/penal sanctions enforcement judges to review the detainees' complaints. In view of all of the above considerations, the procedures for reviewing the complaints of people deprived of liberty can hardly be qualified as effective mechanisms for protecting their rights.

As mentioned above, the Constitutional Court rendered its first decision finding a violation of the right to the inviolability of physical and mental integrity (Article 25 of the Constitution) in July 2013. In its decision, the Court, *inter alia*, stated:

“[...] The Constitutional Court is of the view that, in this specific case, the legal complaint mechanisms laid down in the CPC and PSEA did not constitute effective and efficient legal remedies ensuring a review of the appellant's allegations of ill-treatment in pre-trial detention before he filed his constitutional appeal [...]”<sup>70</sup>

The procedure in which the Protector of Citizens reviews allegations of ill-treatment cannot be considered effective because the only enactment that the Protector can adopt in such a procedure is a recommendation to an administrative authority and recommendations are not binding.

It can therefore be concluded that none of the non-judicial legal mechanisms for investigating claims of ill-treatment by the state authorities are effective and that only the judicial criminal proceedings allow for the conduct of effective investigations of allegations of ill-treatment.

### *2.3. Judgments Based on Evidence Obtained under Duress*

The Criminal Procedure Code prescribes that court decisions may not be based on evidence when the content of or the manner in which it was collected was in contravention of the provisions of the Constitution or a ratified international

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70 Case UŽ 41000/2013, available at <http://www.ustavni.sud.rs/page/jurisprudence/35/>.

treaty, or expressly prohibited by the CPC or another law (Art. 18). It, however, remains unclear to what extent this prohibition is honoured in practice. The ECtHR has to date rendered two judgments in cases against Serbia,<sup>71</sup> finding it in violation of the right to a fair trial because the courts admitted confessions and statements obtained by ill-treatment. Furthermore, the problematic case law on extortions of statements and ill-treatment and torture gives rise to apprehension that the police extortion of confessions is widespread and that the courts do not exclude evidence obtained through ill-treatment.<sup>72</sup>

#### 2.4. *Living Conditions in Penitentiaries and Detention Units*

Inhuman or degrading treatment or punishment may arise in the event the state authorities fail to provide the inmates with adequate living conditions, i.e. accommodate them in dry cells of adequate size<sup>73</sup> and provide them with access to fresh air and natural lighting, adequate health care, the chance to spend a specific period of time outside their prison cells and protection from inter-prisoner violence.<sup>74</sup> Under the PSEA, every convict must have at least four square i.e. eight cubic metres of living space in the dormitory.<sup>75</sup> Convicts are entitled to accommodation satisfying contemporary hygienic requirements and suited to the local climate.<sup>76</sup> The penitentiary sanitary facilities must be adequate and clean and accessible to the inmates at all times; they must also afford them privacy.<sup>77</sup> The facilities in which the inmates live and work must be clean, dry, ventilated, heated and sufficiently lit, both by natural and artificial lighting, enabling them to read and work without straining their eyesight.<sup>78</sup> Convicts are entitled to spend at least two hours a day outdoors during their spare time.<sup>79</sup>

The situation in the penal institutions in Serbia is unsatisfactory despite the relatively good legislative framework. The main problem lies in overcrowd-

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71 *Stanimirović v. Serbia*, ECtHR, App. No. 26088/06(2011) and *Hajnal v. Serbia*, ECtHR, App. No. 36937/06(2012).

72 See *2012 Report*, II.2.3.

73 According to the CPT “[t]he level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint”, CPT’s 2<sup>nd</sup> General Report, 1991, paragraph 46.

74 According to the CPT “[t]he cumulative effect of overcrowding and poor material conditions... could be considered to be inhuman and degrading, especially when persons are being held under such conditions for prolonged periods (i.e. up to several months)”. *CPT’s Report on its visit to Lithuania in 2008*, paragraph 44.

75 PSEA, Art. 67(1), Rulebook on House Rules in Correctional Institutions and District Prisons, Art. 16(2)).

76 PSEA, Art. 68(1).

77 Rulebook on House Rules in Correctional Institutions and District Prisons, Art. 17(3)).

78 PSEA, Art. 67(1).

79 PSEA, Art. 68(1).

ing, which has given rise to numerous other problems: the short periods of time inmates in Serbia can spend outdoors (most of them can spend an hour outside, even less in some penitentiaries), the poor material conditions in the facilities in which convicted and detained persons live, the lack of meaningful activities, unsatisfactory access to health care, etc.<sup>80</sup> Pavilion II in the Niš penitentiary was renovated in late 2013.<sup>81</sup> The BCHR had repeatedly warned of the extremely poor living conditions in this Pavilion, in which the remanded and convicted prisoners spent 23 hours a day in small dilapidated and damp cells with triple bunk beds and inadequate access to fresh air and natural light.<sup>82</sup> The situation in the Special Prison Hospital in Belgrade<sup>83</sup> also gives rise to concern: accommodation in Ward E (acute psychiatry) risks leading to ill-treatment i.e. inhuman or degrading treatment.<sup>84</sup>

Most police stations lack adequate or sufficient custody facilities and hold the people brought in by the police in the prisons. The NPM repeatedly alerted to this problem in its recommendations and the police stopped holding people in some of these facilities.<sup>85</sup>

The CPT found non-standard issue objects in the police stations on all three visits to the Republic of Serbia (in 2004, 2007 and 2011).<sup>86</sup> The NPM also found non-standard issue objects in several police stations it visited in 2012 (wooden poles, iron bars, a handmade sword, etc) in the offices in which the interrogations are held.

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80 More on the status of persons deprived of liberty in BCHR's 2010 and 2011 annual reports entitled *Prohibition of Ill-Treatment and Rights of Persons Deprived of Their Liberty in Serbia*, available at: [http://english.bgcentar.org.rs/index.php?option=com\\_content&view=article&id=550:2009-suppressing-and-punishing-torture-in-serbia-from-adopting-legal-standards-to-improving-practice-link&catid=155](http://english.bgcentar.org.rs/index.php?option=com_content&view=article&id=550:2009-suppressing-and-punishing-torture-in-serbia-from-adopting-legal-standards-to-improving-practice-link&catid=155).

81 More is available in Serbian at <http://www.mpravde.gov.rs/vest/4239/selakovic-u-poseti-vas-pitno-popravnomo-domu-u-krusevcu-i-kazneno-popravnomo-zavodu-u-nisu.php> and <http://www.novimagazin.rs/vesti/osudjenici-u-nisu-proizvode-hranu-i-oslikavaju-crkvu-foto>.

82 More on the living conditions in Pavilion II of the Niš penitentiary in the Bulletin No. 14 "Treatment of Persons Deprived of Liberty", available in Serbian at <http://www.bgcentar.org.rs>.

83 The Special Prison Hospital was designed to accommodate around 400 patients, but the number of inmates it treats exceeds 700. More on the conditions in the Special Prison Hospital in Belgrade in the Bulletin No. 11 "Treatment of Persons Deprived of Liberty", available in Serbian at <http://www.bgcentar.org.rs>.

84 The Director of the Penal Sanctions Enforcement Administration and the Deputy Protector of Citizens also alerted to the desultory state of the Special Prison Hospital. See the press release on their visit available in Serbian at <http://www.mpravde.gov.rs/lt/news/vesti/poseta-direktora-uprave-i-zamenika-zastitnika-gradjana-okruznomo-zatvoru-u-beogradu-i-specijalnoj-zatvorskoj-bolnici-povodom-medjunarodnog-dana-ljudskih-prava.html>

85 More on the Strategy to Reduce Overcrowding in Penitentiaries and the situation in police stations in *2012 Report, II.2.4*.

86 Non-standard issue objects are those that do not fall under standard police equipment and that can be used to intimidate or ill-treat persons deprived of liberty, such as, e.g. baseball bats, metal bars, steel cables, knives, etc.

### 3. Prohibition of Slavery and Forced Labour

#### 3.1. General

With regard to the prohibition of slavery and forced labour, Serbia is bound both by the ECHR, the ICCPR and many other international treaties on prohibition of slavery and other forms of servitude.<sup>87</sup> By ratifying these treaties, Serbia assumed the obligation to protect specific rights and suppress and punish all forms of slavery, status akin to slavery, transportation of enslaved people, human trafficking and forced labour.

Article 4(2) of the ICCPR prohibits derogation from rights listed in paragraphs 1 and 2 of Article 8, because they regard the general status of man, while the other rights listed in this Article deal with labour which is not voluntary, but is neither permanent nor continuous.

Contemporary international standards on combating human trafficking are incorporated in the United Nations Convention against Transnational Organized Crime and its two Protocols.<sup>88</sup>

No proceedings claiming violations of Article 4 of the ECHR have been instituted against Serbia before the ECtHR by the time this Report went into print.

#### 3.2. Trafficking in Human Beings

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 law of the land is a significant step forward in the protection of fundamental human rights and freedoms.

The Criminal Code<sup>89</sup> incriminates trafficking in human beings in Article 388 as well as trafficking in minors for adoption (Art. 389). The sanctions for this crime are mostly in line with international standards. Trafficking in humans carries between three and twelve years' imprisonment (Art. 388(1) and minimum five years' imprisonment if the victim was a minor (Art. 388(3)) or the crime resulted in grave bodily injuries (Art. 388(4)). Ten years' imprisonment is the minimum penalty in

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87 See the list of ratified international treaties in *2012 Report*, II.3. Serbia in 2013 also ratified the Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption (Hague Adoption Convention) (*Sl. glasnik RS (Međunarodni ugovori)*, 12/13).

88 Article 3(1) of the First Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of the Convention against Transnational Organized Crime (hereinafter: First Protocol), defines trafficking in human beings. Article 3(1) of the Protocol against Smuggling of Migrants by Land, Sea and Air, which supplements the Convention against Transnational Organized Crime (hereinafter: Second Protocol) defines smuggling of people.

89 *Sl. glasnik RS*, 85/2005, 88/2005 - corr, 107/2005 - corr, 72/2009, 111/2009, 121/2012 and 104/2013.

the event the crime was committed by an organised criminal group (Art. 388(7)); the victim's consent is irrelevant (Art. 388(10)).

Article 388 includes a paragraph laying down that whoever knew or could have known that a person was a victim of human trafficking and used her position or enabled another to use her position for the purpose of exploitation shall be punished by imprisonment ranging from six months to five years (Art. 388(8)), while perpetrators who knew or could have known that the victim was a minor will be punished by imprisonment ranging from one to eight years (Art. 388(9)).

The Criminal Code also incriminates trafficking in minors for adoption (Art. 389) but it does not cover all persons under the age of 18. Paragraph 1 of this Article specifies that this crime is perpetrated against a person who has not turned 16 yet. Although this Article commendably specifies that the perpetrators of this crime committed by an organised crime group will be sentenced to five years' imprisonment, it still deviates from the international standard under which everyone under 18 is considered a child.

The penalty for procurement of prostitution is between six months and five years' imprisonment and a fine (Art. 184). Whoever committed this crime against a minor shall be punished by between one and ten years' imprisonment and a fine (Art. 184(2)).

Despite the steps taken to punish human traffickers and those *knowingly* exploiting human trafficking victims, the valid Public Peace and Order Act<sup>90</sup> still lays down that a person found guilty of prostitution will be sentenced to maximum 30 days' imprisonment (Art. 14(1)). Therefore, victims of human trafficking may be held liable and punished for prostitution (given that sexual exploitation is one of the most frequent forms of exploitation of human trafficking victims), which is quite absurd. This Act governs begging in much the same way and beggars are automatically punished because the law does not envisage exploitation as an extenuating circumstance or grounds for acquittal (Art. 12). Furthermore, judging by the prescribed penalty,<sup>91</sup> the Public Peace and Order Act has almost equated the liability of the beggars with that of the organisers. In light of the already chronic problem of exploitation of persons beggars in Serbia, the solution is inadequate and, furthermore, not in compliance with the relevant provisions of the national legislation governing human trafficking.

The Government of Serbia for the first time adopted the Strategy to Combat Trafficking in Human Beings.<sup>92</sup> The Strategy was operationalised by the National

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90 *Sl. glasnik RS*, 51/92, 53/93, 67/93, 48/94, 85/05 and 101/05.

91 "Whoever disrupts the citizens' tranquillity or disturbs public peace and order by begging ... shall be fined up to 20,000 RSD or sentenced to maximum 30 days' imprisonment. Whoever organises begging ... shall be fined up to 30,000 RSD or sentenced to maximum 60 days' imprisonment", Public Peace and Order Act, Art. 12 (1 and 2), *Sl. glasnik RS*, 51/92, 53/93, 67/93, 48/94, 85/05 and 101/05.

92 *Sl. glasnik RS*, 111/06.



Plan of Action for the 2009–2011 Period, adopted at a Government session in April 2009.<sup>93</sup> A new anti-trafficking strategy and action plan for its implementation had not been adopted by the end of the reporting period.<sup>94</sup>

A number of people suspected of trafficking in humans for the purpose of labour or sexual exploitation were arrested across Serbia in 2013, mostly in the vicinity of Belgrade, in Vojvodina and in Southern Serbia.<sup>95</sup> Most of them were nationals of Serbia and had subjected their victims to sexual exploitation, as well as labour exploitation and begging. In some cases, the parents or relatives of the exploited children had known and or consented to their exploitation.

According to ASTRA's data, Serbian nationals accounted for 77.5% of all the victims this NGO identified during its activities as of June 2013.

Judging by the reports of media, NGOs and international organisations, the fight against human trafficking has improved to an extent in 2013. The enforcement of the law is, however, still perceived as problematic.

According to the US State Department Office to Monitor and Combat Trafficking in Persons 2013 Trafficking in Persons Report<sup>96</sup>, Serbia is a source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labour, including domestic servitude and forced begging. The Report notes that Serbian women are subjected to sex trafficking by Serbian criminal groups in other Balkan and EU countries, while Serbian men are subjected to labour trafficking in European countries, Azerbaijan, the United Arab Emirates, as well as in construction in Russia. Like the previous reports, the 2013 Report also emphasises that Roma children in Serbia are subjected to forced begging and compelled to commit petty crimes. This was, however, the first time the Report highlighted the fact that Serbian victims were often subject to trafficking by family members.

The authors of the Report assessed that the government investigated more cases of labour trafficking, increased prosecutions of trafficking crimes, and continued to convict trafficking offenders and that it increased funding for the government centre dedicated to formal identification and protection of victims. The Report was nevertheless critical of the enforcement of the legislation in practice.<sup>97</sup> Serbia was again

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93 *Sl. glasnik RS*, 35/09. Conclusion on the Adoption of the National Plan of Action for Combating Trafficking in Humans in the 2009-2011 Period.

94 "The final Round Table on the Draft 2013-2018 Anti-Trafficking Strategy and the Draft 2013-2014 Action Plan was held in Belgrade on 23 April 2013. The Working Group that drafted the Strategy and Action Plan met again on 28 May and the documents are to be finalised in the coming months." See ASTRA's E-bulletin No. 36 of April-June 2013.

95 *B92*, 25 March, 2 April, *Telegraf*, 24 January, *Blic*, 25 January, 7 September, *Politika*, 4 February, etc.

96 See the Trafficking in Persons Report 2013 (of June 2013), available at <http://www.state.gov/documents/organization/210741.pdf>.

97 Like many of the reports published over the previous years, the 2013 Report again recommended to the authorities to secure funding for NGOs providing victims of human trafficking with legal aid and supporting their reintegration. It reiterated the recommendation to the government to earmark adequate funding for the victims' rehabilitation and to ensure that victims



ranked as a Tier 2 country, i.e. among countries whose governments do not fully comply with the Trafficking Victims' Protection Act minimum standards but are making significant efforts to bring themselves into compliance with those standards.

In its annual 2013 Progress Report on Serbia<sup>98</sup>, the European Commission noted that awareness campaigns have been conducted, that training was organised for operational stakeholders and that an increased number of investigations were being launched. It, however, noted that a comprehensive, multi-disciplinary and victim-oriented approach to trafficking still needed to be developed and that victims' identification needed to be improved, together with their access to assistance, support and protection.

In October 2008, the Serbian Assembly adopted the Aliens Act<sup>99</sup> which, *inter alia*, envisages that a victim of transnational human trafficking shall be granted temporary residence even if he does not submit specific evidence in the event his residence is in the interest of criminal proceedings for the crime of human trafficking (Art. 28). It, however, remains unclear whether this provision applies also to victims in cases in which no criminal proceedings have been initiated or in the event the victim is unable or unwilling to take part in them.

Neither the Aliens Act nor any other Serbian regulations govern the safe return of victims of transnational human trafficking to their countries of origin or the repatriation procedure.

The competent authorities continued investing efforts in improving the status of human trafficking victims in 2013. The Centre for the Protection of Human Trafficking Victims, which was established in 2012<sup>100</sup>, has begun working and is partly operational. The Rulebook on Social Welfare Service Provision Conditions and Standards<sup>101</sup>, which was adopted in May, specifies, *inter alia*, the standards that must be fulfilled by the facilities in which victims of human trafficking are accommodated. The fund for assisting human trafficking victims<sup>102</sup> has not been established yet.

A number of events were staged to alert to the human trafficking problem.<sup>103</sup> Although some representatives of the competent institutions have been investing

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are not penalised for acts committed as a direct result of their trafficking. The Report again noted the need to ensure that courts implement the full range of protections in order to diminish postponements in hearings, witness intimidation, and secondary victimisation and to "sensitize police and social workers to issues facing Roma children and families to improve identification and protection for trafficking victims".

98 *Serbia 2013 Progress Report*, Brussels, 16 October 2013, p. 52 available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf)

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

100 Mechanism of Assistance to Victims of Human Trafficking in the Republic of Serbia, available in Serbian at <http://www.astra.org.rs/new/cinjenice-o-trgovini/trgovina-ljudima-u-srbiji/>

101 *Sl. glasnik RS*, 42/13.

102 More in *2012 Report*, II.3.

103 A number of activities were organised on 18 October 2013 to mark EU Anti-Trafficking Day, for the sixth consecutive year.

significant efforts in combating human trafficking,<sup>104</sup> the number of preventive activities funded exclusively from the state budget is negligible. Non-government organisations, and the media highlighted several problems in this area in 2012. They noted the steady increase in the number of trafficked children and men trafficked for the purpose of labour exploitation.<sup>105</sup>

The fact that the number of child trafficking cases has not been falling notwithstanding the efforts also gives rise to concern. In its press release marking Universal Children's Day, ASTRA noted that the number of child victims soared in the past ten years and that children now accounted for around 40% of the identified victims. Despite the increasing number of identified child victims, Serbia still does not have an appropriate shelter for child victims of human trafficking.<sup>106</sup>

There are no updated or reliable data on the number of children begging in Serbia. The surveys of child begging identified a series of chronic problems. One of them is that the precise number of child beggars cannot even be estimated because of the specific features of the phenomenon and the fact that there are no records of them or a single methodology for registering them. Furthermore, the experts themselves disagree on what child begging actually entails, which is why no planned measures for addressing the problem exist.<sup>107</sup>

Several thousand victims of human trafficking have been registered in the years Serbia has fought against human trafficking. Only a few victims were awarded redress by the court; the amounts of the redress did not reflect the gravity of the violations of their rights.

The NGOs in 2013 repeatedly alerted to the increase in human trafficking for labour exploitation and called on stakeholders such as the labour, market and other relevant inspectorates, prosecutors, police, embassies and consulates in countries in which Serbian workers are subject to exploitation,<sup>108</sup> to involve themselves more actively in addressing this issue.

The media quoted several NGOs advocating the decriminalisation of prostitution in late 2013.<sup>109</sup> However, apart from these individual appeals by the NGO sector, no other initiatives were launched to amend the legislation governing this important issue.

The key problems from the human rights perspective arise from the fact that  
1) the response to the increase in the number children and young people who are

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104 The representatives of state authorities have launched the initiatives, attended the events and taken part in their organisation.

105 Media reports on labour exploitation mostly focused on the labour exploitation of Serbian nationals in other countries. See *Blic* 28 February, 21 July, 19 November, *B92* 16 August, *Novosti* 17 August, *RTS* 20 August, et al.

106 Press Release on the Occasion of Universal Children's Day, ASTRA, 20 November 2013.

107 More in the *2011 Report*, I.4.4 and *2012 Report*, I.3.

108 See ASTRA's press release and news conference marking 2 December – International Day for the Abolition of Slavery <http://www.astra.org.rs/eng/?p=1361>

109 "Decriminalise Prostitution. Full Stop", *Radio 021*, 9 December.

victims of human trafficking is inadequate, 2) the response to the increase in the number of victims trafficked for the purpose of labour exploitation is inadequate, 3) the response to begging and exploitation for begging is inadequate, 4) the victims of human trafficking do not have access to redress for gross violations of their rights and that 5) the victims of human trafficking for the purpose of sexual exploitation can still be held liable for prostitution. Despite the state's efforts to suppress human trafficking, it can be concluded that its responses are still inadequate and that as much effort needs to be invested in improving the legislative framework as in improving the practices to ensure the full enjoyment of the prescribed rights.

### *3.3. Trafficking in Human Organs*

Harvesting of organs or body parts is mentioned as one of the purposes of the crime of human trafficking (Criminal Code, Art. 388(1)). Article 78 of the Transplantation of Organs Act adopted in August 2009<sup>110</sup> incriminates, inter alia, coercing a person to consent to donate his or another person's organ for transplantation while he is alive or upon death and the extraction of his organs (the offender will be sentenced to between two and ten years of imprisonment). The same sentence shall be pronounced against a person donating or offering to donate his 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 transplantation 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 he was alive (Art. 80).

The legislation in this area has been completed and aligned with relevant international standards by the qualification of these offences as crimes and the list of misdemeanours in Articles 81–83.<sup>111</sup>

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110 *Sl. glasnik RS*, 72/09.

111 The CoE Convention on Human Rights and Biomedicine (Art. 21) and its Additional Protocol Concerning Transplantation of Organs and Tissues of Human Origin (Arts. 21 and 22) and the CoE Parliamentary Assembly Recommendation 1611 (2003) (Arts. 12 and 14(iii(e))) insist on the prohibition of organ trafficking for commercial purposes, the advertising of the sale or purchase of organs or tissues in return for material gain and on the amendment of the national criminal codes to ensure that those responsible for trafficking, brokers, intermediaries, hospital/nursing staff and medical laboratory technicians involved in the illegal transplant procedure and medical staff who are encouraging and providing information on "transplant tourism", who are involved in transplanting organs obtained through illegal trafficking or in follow-up care of

A simple Internet search shows that there is a supply and demand for human organs both in Serbia and the region.<sup>112</sup> Those willing to sell their organs usually say they resorted to this drastic move because they could not make ends meet otherwise. This demonstrates not only the citizens' awareness of the existence of the black market of human organs but also the critical depth of poverty in specific parts of the country.

### 3.4. *Smuggling of People*

Article 350(2) of the Criminal Code prohibits the smuggling of people and specifies that whoever enables a person who is not a national of Serbia to illegally cross Serbia's border or to live in or transit through Serbia illegally in return for material gain shall be punished by imprisonment between six months and five years'. Under paragraph 3 of this Article, endangering the life or the health of the smuggled person shall be considered an aggravating circumstance and the perpetrator shall be sentenced to between one and ten years' imprisonment. In the event the crime of smuggling was committed by an organised crime group, the perpetrator(s) shall be sentenced to between three and twelve years' imprisonment. This provision, however, still does not afford the smuggled people with adequate protection – inhuman or degrading treatment and exploitation of the smuggled migrants are not defined as a qualified form of crime, which deviates from the standard established in the Second Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Art. 6(3)).

The Criminal Code also fails to lay down that migrants shall not become liable to criminal prosecution for the fact of having become the victims of the crime of smuggling or of being in possession of false personal or travel documents for that purpose, or for having stayed on in Serbia although they did not satisfy the requirements for lawful residence, whereby it deviates from the standard established in the Second Protocol (Art. 5).

The number of reports on human smuggling via the Republic of Serbia towards Western European countries has been increasing every year.<sup>113</sup> The illegal migration channels pass through Serbia to Croatia and Hungary towards EU member states. Most of the smugglers are nationals of Serbia, while most of the smuggled migrants originate from Asian and African countries.<sup>114</sup> In all the registered

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the patients and who fail to alert the health authorities of the situation are held accountable. The Convention, Protocol and Recommendation are available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/164.htm>, <http://conventions.coe.int/Treaty/EN/Treaties/Html/186.htm>, and <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta03/EREC1611.htm>.

112 The number of classified ads with specific data (phone number or address) of a person offering or looking for a specific human organ is not negligible.

113 *RTS*, 21 August, 22 October, *B92* 2 October, *Južne vesti* 7 February, 11 February, 6 March, 8 April, 30 September, 25 November, *Novi magazin* 12 July, etc.

114 More on the status of asylum seekers in Serbia in II.13.

cases, the smuggled people were found in violation of the State Border Protection Act and the Aliens Act and were punished by a fine and/or imprisonment and/or the ban to enter Serbia for a specific period of time. In practice, the competent authorities also take measures against smuggled minors.<sup>115</sup>

### 3.5. *Forced Labour*

Forced or compulsory labour encompasses every work done under threat or punishment.<sup>116</sup> 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 in compliance with Article 8(3c) of the ICCPR.

The ICCPR prescribes that the prohibition of forced or compulsory labour cannot be interpreted as a prohibition of execution of forced labour sanctions pronounced by the competent court. Under Article 218 of the CPC, detainees may perform specific jobs within the penitentiary compound but only voluntarily and at their own request and shall be remunerated for the work in the amount set by the governor of the penitentiary.

The relevant provisions on convict labour in the national legislation have been harmonised with international standards. In the provisions on the work obligation of convicts, the PSEA (Arts. 86–100) emphasises the rehabilitation element of work performed by convicts.<sup>117</sup>

The Defence Act<sup>118</sup> 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 leave, a person unfit for work (Art. 55 (3)), which is in keeping with international standards. However, the Defence Act does not prescribe the duration of the work obligation of individuals.

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115 The Misdemeanour Court issued a reprimand to a minor national of Afghanistan. See the *RTS* report in Serbian “Criminal Report for Human Smuggling” (“Krivična prijava zbog krijumčarenja ljudi”), 21 August.

116 Article 2(2) of ILO Convention No. 29 defines 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 *Van der Mussele v. Belgium*, ECmHR, App. No. 8919/80 (1983); *Siliadin v. France*, ECtHR, App. No. 73316/01 (2005)).

117 The European Court of Human Rights ruled in the case of *De Wilde, Ooms, Versyp v. Belgium* that convict labour that did not contain elements of rehabilitation was not in accordance with Article 4 (2) of the ECHR.

118 *Sl. glasnik RS*, 116/07, 88/09 and 104/09.

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 a state of emergency, but its authors failed to limit the duration of the work obligation.

However, the failure of the legislator to define the duration of compulsory labour in the Defence Act provides room for arbitrariness in decisions on the duration of the citizens' work obligations during a state of war or emergency, wherefore it deviates from international standards. The provisions of this law thus have to be aligned with ILO Convention No. 29 Concerning Forced or Compulsory Labour, which states in Article 12(1) that the maximum period for which any person may be taken for forced or compulsory labour of all kinds in any one period of twelve months shall not exceed sixty days, including the time spent in going to and from the place of work.<sup>119</sup>

Furthermore, Article 55(1) of the Defence Act lays down that all citizens over 15 years of age with a legal capacity shall be subject to the work obligation. The provision is not in keeping with Article 11(2) of ILO Convention No. 29, under which only persons over 18 and under 45 years of age may be called upon for forced or compulsory labour.

## 4. Right to Liberty and Security of Person

### 4.1. *Prohibition of Arbitrary Arrest and Detention*

The key purpose of the right to liberty and security of person is to prevent arbitrary or unjustified deprivations of liberty. The distinction between a deprivation of, and a restriction upon, liberty is merely one of degree or intensity and not one of nature or substance.<sup>120</sup> The issue of whether someone was deprived of liberty is reviewed in the context of the circumstances of the specific case. Account must be taken of a whole range of criteria such as the "type, duration, effects and manner of implementation of the measure in question".<sup>121</sup> Reviews of the lawfulness i.e. non-arbitrariness of the deprivations of liberty do not extend only to deprivations of liberty

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119 In paragraph 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 he was subjected to compulsory labour.

120 The right to liberty of movement and freedom to choose residence is a restriction upon liberty lower in intensity and it is protected by Article 2(1) of Protocol No. 4 to the ECHR.

121 *Guzzardi v Italy*, ECHR, App. No. 7367/76 (1980), paragraph 92 and *Creanga v Romania*, ECtHR, App. No. 29226/03 (2012), paragraph 91.

of people who are criminally prosecuted or punished for misdemeanours but also to all other situations in which people are deprived of liberty, e.g. due to a mental illness, vagrancy, alcohol or drug addiction, etc.<sup>122</sup> According to ECtHR case law, involuntary commitment to a psychiatric hospital or social welfare institution also amounts to deprivation of liberty,<sup>123</sup> as does confinement to an airport transit zone,<sup>124</sup> questioning in a police station,<sup>125</sup> police stops and searches,<sup>126</sup> house arrests,<sup>127</sup> etc.

This right includes a number of procedural safeguards against unlawful and arbitrary deprivations of liberty, notably everyone's right to be informed of the reasons for his arrest and of any charge against him, to be promptly taken before a judge, to release and compensation. Furthermore, states must define precisely the instances in which deprivations of liberty are justified and ensure judicial control of the lawfulness of detention. Finally, according to the UN Human Rights Committee, states are obliged to take "reasonable and appropriate" measures to protect the personal integrity of every individual from injury by others.<sup>128</sup> As far as the right to liberty and security is concerned, the states have the following obligation arising from the principles of necessity and proportionality in restricting human rights: to put in place a legal framework permitting deprivations of liberty only when they are genuinely necessary and when the aim pursued cannot be achieved by another, less restrictive measure. In other words, the state should lay down in the law measures alternative to deprivation of liberty and apply them whenever possible, both measures alternative to pre-trial detention, such as bail, electronic surveillance, house arrest, or ban on leaving one's place of residence, and measures alternative to prison sentences, the severest sanction in CoE countries, such as community work.

Although the Constitution of Serbia guarantees everyone the right to liberty and security, allows for deprivations of liberty "only on the grounds and in a procedure stipulated by the law" (Art. 27(1) and includes safeguards against unlawful and arbitrary deprivations of liberty, numerous problems with respect to the exercise of the right to liberty and security have occurred in Serbia, as BCHR reported in its previous annual reports.<sup>129</sup> This Report will thus focus below only on the following issues of relevance to the exercise of this right where major changes occurred in 2013.

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122 In its General Comment No 8 on Article 9, the Human Rights Committee pointed out that this right was applicable also to deprivations of liberty in cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.

123 *Shukaturvov v Russia*, ECtHR, App. No. 44009/05, (2008); *Stanev v Bulgaria*, ECtHR, App.No. 36760/06 (2012).

124 See *Amuur v France*, ECHR, App. No. 19776/92 (1996).

125 See *I. I. v Bulgaria*, ECtHR, App. No. 44082/98, (2005).

126 *Foka v Turkey*, ECHR, App. No. 28940/95, (74-79).

127 *Dacosta Silva v Spain*, ECHR, App. No. 69966/01, (2006).

128 See Delgado Paéz v. Columbia, UN Human Rights Committee, UN doc. CCPR/C/39/D/195/1985 (1990), paragraph 5.5.

129 See, e.g. 2012 Report, II.4.



First, the new Criminal Procedure Code (CPC) that came into force on 1 October 2013 governs deprivation of liberty, either before or during the investigation of the individual at issue or during trial, somewhat differently than its predecessor.

Second, the number of people in pre-trial detention fell significantly in 2013. To recall, the remand wards had been extremely overcrowded in the recent past and the conditions in them were so poor that they could have been qualified as inhuman or degrading. However, as the results of a survey the BCHR conducted in 2013 demonstrated, the cut in the number of detainees cannot unfortunately be ascribed to a change in the courts' jurisprudence or greater resort to alternatives to detention, but to fewer criminal proceedings in most Serbian courts in the year behind us.

Third, the Strategy for the Development of the Penal Sanctions Enforcement System in the Republic of Serbia until 2020,<sup>130</sup> envisaging the development of a non-custodial sanctions system, was adopted in late 2013.

And last but not the least, the National Assembly in 2013 adopted the Act on the Protection of People with Mental Disorders,<sup>131</sup> which governs the admission and commitment of people with mental disorders to psychiatric institutions without their consent.

Not much headway was, however, made in 2013 in addressing extremely grave problems, such as the *de facto* deprivations of liberty of specific individuals (primarily those with mental disorders deprived of legal capacity) confined in social welfare institutions in the absence of legal grounds, or the commitment of people to psychiatric hospitals, even high security ones like the Belgrade Special Prison Hospital, who do not have to be kept in such institutions, but who have not been provided with adequate support to live on their own, in the community.<sup>132</sup>

#### 4.2. *Deprivation of Liberty under the Criminal Procedure Code in Force as of 1 October 2013*

The Criminal Procedure Code (CPC) that came into force on 1 October 2013 allows the police to deprive of liberty individuals they find at the scene of the crime (Art. 290), individuals if there are reasons for their detention (Art. 291). The CPC also allows everyone to deprive of liberty an individual caught in the commission of a crime prosecuted *ex officio* (Art. 292). Every person deprived of liberty must immediately be brought before a public prosecutor, who is under the duty to read him his rights. The person deprived of liberty is entitled to:

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130 *Sl. glasnik RS*, 114/13.

131 *Sl. glasnik RS*, 45/13.

132 These problems will not be elaborated in greater detail given the lack of substantial headway in addressing them. They were discussed in greater detail in *2012 Report*, II.4.

1. be informed immediately in a language he understands of the reason for his arrest;
2. have before his first interrogation a confidential conversation with his defence counsel, which shall be subject to only to visual but not to audio monitoring;
3. require prompt notification of his arrest of a family member or another person close to him, a diplomatic or consular representative of the state he is a national of or a representative of an authorised international public law organisation in the event he is a refugee or stateless;
4. require a prompt examination by a physician of his own choosing, or, in the event that physician is unavailable, by a physician designated by the public prosecutor or the court.

Under the CPC, the public prosecutor shall proceed to interrogate the arrested person in the presence of his defence counsel. Immediately after the interrogation, the public prosecutor shall decide whether to release the arrested person or file a motion for his detention with the judge for preliminary proceedings (Art. 293(4)). Custody for the purpose of interrogation is not decided on by the police, but by the public prosecutor, who, however, may authorise the police to rule on custody. A person may not be held in police custody more than 48 hours and the ruling on custody must be issued and served on the person immediately, or not more than two hours after the suspect was told that he would be kept in custody (Art. 294(2)). The suspect and his defence counsel are entitled to appeal the ruling on custody within six hours from the moment the ruling was served on them. A decision on the appeal is issued by the judge for the preliminary proceedings within four hours of receiving the appeal. The appeal shall not stay the enforcement of the ruling (Art. 294(3)).

The defendant may be detained during the investigation and subsequently, during the main hearing. Under the CPC, detention may be ordered only in the event the same purpose cannot be achieved by another measure and all authorities participating in the criminal proceedings and those extending legal assistance are under the duty to keep the duration of detention to a minimum and act particularly expeditiously in the event the defendant is in detention (Art. 210 (1 and 2)).

A defendant may be kept in detention for a maximum of three months from the day he was deprived of liberty under a ruling of the judge for preliminary proceedings (Art. 215(1)). A panel of the immediately higher court may extend his detention for another three months at most for important reasons and upon a reasoned motion of the public prosecutor (Art. 215(2)). The CPC limits detention after indictment only inasmuch as it lays down that it may last until the commitment of the defendant to serve a custodial penal sanction, but only for the duration of the penal sanction pronounced in the first-instance judgment (Art. 216(6)).

#### 4.3. Excessive Resort to Pre-Trial Detention of Criminal Defendants

The courts' tendency to order pre-trial detention, which has in some cases lasted several years, has been one of the gravest problems in Serbia's criminal law system in the past decade. It has resulted in the overcrowding of the pre-trial detention wards in most penitentiaries, wherefore the number of inmates in the penitentiaries greatly exceeded their capacities.

##### *Number of Inmates in Serbian Penitentiaries in the 2005–2009 Period<sup>133</sup>*

31 Dec 2005	31 Dec 2006	31 Dec 2007	31 Dec 2008	31 Dec 2009
8,078	7,893	8,970	9,701	10,974

The situation in the penitentiaries prompted the Serbian Government to adopt a Strategy to Reduce Overcrowding in Penitentiaries in the Republic of Serbia in the 2010–2015 Period (hereinafter: Strategy) in 2010,<sup>134</sup> and the Action Plan for its implementation in November 2011.<sup>135</sup> These documents envisage more extensive use of measures alternative to detention as well as measures alternative to imprisonment.

##### *Number of Inmates in Serbian Penitentiaries in the 2010– End of 2013 Period*

31 Dec 2010	31 Dec 2011	31 Dec 2012	Late 2013
11,211	11,094	10,226	cca 10,200

Interestingly, the number of detainees substantially fell from 2010 until early 2013, by nearly a thousand. For the first time in the past few years, the Belgrade District Prison, in which more than one-third of all detainees in Serbia are incarcerated, witnessed a drop in the number of all inmates from around 1,500 in 2010 and 2011 to below 1,000 in early 2013. This means that, for the first time in the past few years, this penitentiary is not overcrowded.

##### *Number of Detainees in Serbian Penitentiaries in the 2007–2012 Period*

31 Dec 2007	31 Dec 2008	31 Dec 2009	31 Dec 2010	31 Dec 2011	31 Dec 2012
2,187	2,351	2,586	3,328	3,019	2,478

It might appear at first glance that the measures envisaged by the Strategy, primarily alternatives to detention, have yielded results and that the judges were less prone to order pre-trial detention in the past two years. However, the results of a survey the BCHR conducted in 2013 showed that this was not the case and that the drop in the number of detainees was the consequence of fewer criminal proceedings,

133 Source: Strategy to Reduce Overcrowding in Penitentiaries in the Republic of Serbia in the 2010-2015 Period.

134 *Sl. glasnik RS*, 53/10.

135 *Sl. glasnik RS*, 90/11.

particularly before higher courts.<sup>136</sup> Data obtained from over two-thirds of the Serbian Basic and Higher Courts lead to the conclusion that the percentage of proceedings in which the judges ordered pre-trial detention has not changed significantly over the past few years and that alternatives to detention, such as bail, house arrest and ban on leaving one's place of residence, are very rarely ordered, in an almost negligible number of cases.<sup>137</sup>

#### *4.4. Strategy for the Development of the Penal Sanctions Enforcement System in the Republic of Serbia until 2020*

The Serbian Government adopted the Strategy for the Development of the Penal Sanctions Enforcement System in the Republic of Serbia until 2020 in late 2013.<sup>138</sup> With respect to the liberty and security of person, the Strategy sets as one of its goals the more extensive use of non-custodial penal sanctions, which should result in depriving of criminal and misdemeanour offenders of liberty only when the purpose of punishment cannot be achieved by another, less restrictive sanction. However, the Strategy unfortunately does not envisage the opening of probationary services, which are requisite for the enforcement of community service penalties, across the country until the 2018–2020 period. The lack of probationary services (only seven of them were operational at the end of 2013 – in Belgrade, Kragujevac, Niš, Novi Sad, Sombor, Subotica and Valjevo) is precisely the reason why the number of enforced judgments ordering community service is still very small.<sup>139</sup> The Strategy envisages the opening of probationary services in another seven towns by the end of 2014 and the adoption of a law governing the enforcement of non-custodial sanctions in detail.

#### *4.5. Deprivation of Liberty under the Act on the Protection of People with Mental Disorders*

The Serbian Assembly adopted the Law on the Protection of People with Mental Disorders<sup>140</sup> in 2013. This novel act in Serbia's legal system governs the admission and commitment of people with mental disorders to psychiatric institutions without their consent. Under the law, a person with a mental disorder may be placed

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136 Detailed results of this survey are available on BCHR's website: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/12/An-Overview-of-the-Results-of-the-Strategy-for-Reducing-Prison-Overcrowding-in-Serbia-June-2013.pdf>.

137 *Ibid.*

138 *Sl. glasnik RS*, 114/13.

139 More in the report on the BCHR survey, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/12/An-Overview-of-the-Results-of-the-Strategy-for-Reducing-Prison-Overcrowding-in-Serbia-June-2013.pdf>.

140 *Sl. glasnik RS*, 45/13.

in a psychiatric institution involuntarily in the event a medical practitioner finds that he is seriously and directly endangering his own life, health or safety or the lives, health or safety of others, but only if other, less restrictive ways for extending him health care are unavailable (Art. 21).

The procedure for referring and committing a person with a mental disorder to a psychiatric institution without his consent may be initiated by his close family members, the social welfare centre, his employer or a health professional, who shall notify the Ministry of Internal Affairs and the medical emergency service of his threatening conduct (Art. 22(1)). The police officers and emergency service medical staff are under the duty to take the person without delay to the nearby outpatient health centre or emergency ward (Art. 22(2)). In the event the doctor who examined the person is of the view that he needs to be hospitalised, he will refer him to a psychiatric institution without delay (Art. 22(3)). The psychiatrist, who admits the person in the institution, is under the duty to examine him without delay to determine whether he needs to be hospitalised (Art. 23). In the event the psychiatrist establishes that there are medical reasons to hospitalise the person without his consent, he shall without delay render a decision on his involuntary hospitalisation (Art. 24(1)). The decision on hospitalisation must be reasoned (Art. 24(2)). The person must also be examined by the psychiatric institution's medical advisory board which will determine whether to keep the person in hospital or discharge him. This examination must take place on the first workday upon the person's admission at the latest (Art. 24). In any case, the institution to which the person with a medical disorder has been committed against his will is under the duty to forward the commitment notice to the competent court "within 24 hours from the day of his examination by the medical advisory board" together with his medical records and a reasoning (Art. 25(2)). The commitment notice must also be served on the committed patient, his legal representative (if known), a family member and the competent social welfare centre (Art. 25(3)).

The court shall hold a hearing in the psychiatric institution within three days from the day it receives the commitment notice, during which it shall interview the committed person and render a decision on his involuntary commitment (Art. 29). The decision shall specify the duration of his commitment, which may not be longer than 30 days, reckoned from the day the psychiatrist rendered his decision on the patient's involuntary commitment (Art. 33). At the request of the psychiatric institution, the court may subsequently extend the person's institutionalisation up to three months and then extend it to up to six months (Art. 34). The court must interview the patient every time before it decides whether to extend his institutionalisation.

The psychiatric institution shall "as a rule" submit to the court regular quarterly reports on the involuntary patient's state of health, or more frequently at the request of the court. A decision on the commitment of a person with a mental disorder to a psychiatric institution may be appealed by the person in question and his legal representative within three days from the day the decision was served on them. The

second-instance court must rule on the appeal within three days. The law commendably lays down that the person committed to a psychiatric institution may appeal regardless of the state of his mental health (Art. 37(2)). The same rules apply to the submission of a discharge request prior to the expiry of the period for which the patient was committed. The provisions of the law are in this respect fully in compliance with the views of the ECtHR, which insists that everyone must be entitled to initiate proceedings to protect their fundamental rights, such as the right to liberty and security of person, regardless of their state of health.

## 5. Right to a Fair Trial

### 5.1. *General*

Article 14 of the ICCPR and several articles of the ECHR (Arts. 6 and 7 and Arts. 2, 3 and 4 of Protocol 7 to the ECHR) guarantee equality before the courts, which entails numerous procedural guarantees in civil and criminal proceedings and the right to have court decisions reviewed by higher courts. Although a constitutional and legal guarantee of equality of everyone before the court authorities is extremely important for the exercise of these rights, the main prerequisite for the full exercise of the guaranteed rights is that the courts render decisions independently, impartially and efficiently in order to enable access to justice. The fulfilment of these requirements above all calls for having in place a procedure for appointing judges and prosecutors ensuring that they are absolutely independent from other branches of government and abidance by clear appointment criteria; another prerequisite is to ensure that the judiciary is organised in a manner enabling easy access to justice.

The Constitution and the Constitutional Act on the Implementation of the Constitution were criticised as soon as they were adopted in 2006, mostly because they postponed the judicial reform, which did not begin before the end of 2009 and was still under way at the end of the reporting period.<sup>141</sup> A National Judicial Reform Strategy for the 2013/2018 Period was adopted in late 2013.<sup>142</sup> The Strategy sets out the five key principles and priorities for the reform of Serbia's judicial system: independence, impartiality and quality of justice, competence, accountability and efficiency. The Action Plan for its implementation<sup>143</sup> specifies the meas-

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

142 The Strategy is available at: <http://www.mpravde.gov.rs/en/vest/3394/the-national-judicial-reform-strategy-for-the-period-2013-2018-.php>.

143 The Action Plan is available in Serbian at: <http://www.mpravde.gov.rs/obavestenje/2890/akcioni-plan-za-sprovođenje-nacionalne-strategije-reforme-pravosudja-za-period-2013-2018->

ures, activities, deadlines and institutions charged with implementing them, and the sources their implementation will be funded from. In March 2013, the Ministry of Justice sent a memo to all court presidents to organise public debates on the judicial reform strategy and the potential election of new High Judicial Council members and submit their reports by 20 March. The Judges' Association of Serbia (JAS) criticised the request to judges to publicly declare themselves and the very short deadline the Justice Ministry gave, claiming that the judges did not have enough time to analyse the draft strategy in depth and qualifying this as an attempt to control the judiciary.<sup>144</sup>

According to the proposed measures, all preparations for amending the part of the Constitution on the judiciary will have been completed by 2018 to ensure that the requirements for the independence, efficiency and accountability of the judiciary are fulfilled. The Venice Commission recommended amendments to the Constitution to remove the role of the National Assembly in the appointment of judges and court presidents, fearing its involvement undermined their independence and impartiality.<sup>145</sup> The European Commission supported the adoption of the Strategy, underlining that it aimed at strengthening the High Judicial Council (HJC) and the State Prosecutorial Council (SPC) and acknowledged the need to amend to Constitution to address the lack of real judicial independence seen in many features of the current system.<sup>146</sup>

The National Assembly on 20 November 2013 adopted several key laws: a new Act on the Seats and Jurisdictions of Courts and Public Prosecutor's Offices,<sup>147</sup> the Act Amending the Act on Organisations of Courts,<sup>148</sup> the Act Amending the Act on Judges<sup>149</sup> and the Act Amending the Act on Public Prosecutor's Offices<sup>150</sup> which were to come into force on 1 January 2014. The judiciary will clearly face very serious challenges in the coming years, particularly in view of the fact that the talks on EU accession will open with Chapter 23, and that the talks on the judiciary and fundamental rights will not close until the end of the accession negotiations.<sup>151</sup>

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godine.php and the Report on the Implementation of the Action Plan is available in English at: [http://www.mpravde.gov.rs/files/NSRJ\\_2013%20to%202018\\_Action%20Plan\\_English%20version.pdf](http://www.mpravde.gov.rs/files/NSRJ_2013%20to%202018_Action%20Plan_English%20version.pdf).

144 See the JAS statement at <http://www.sudije.rs/files/file/NEW%20Report%20on%20judges'%20declarations%20on%20responsibility%20of%20HJC%2019%2003%202013.pdf>.

145 *Opinion on Draft Amendments to Laws on the Judiciary of Serbia Adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013)* CDL-AD(2013)006-e, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)006-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)006-e).

146 Serbia 2013 Progress Report, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf).

147 *Sl. glasnik RS*, 101/13.

148 *Ibid.*

149 *Ibid.*

150 *Ibid.*

151 The National Judicial Reform Strategy sets out the following as the main priorities: reintegration of reinstated judges and prosecutors in the judicial system; review of the judicial network;



## 5.2. *Judicial System*

Serbia's court network consists of courts of general jurisdiction and specialised courts. Courts of general jurisdiction comprise Basic, Higher and Appellate Courts and the Supreme Court of Cassation, as the highest court in the state. Specialised courts comprise the Commercial Courts, the Commercial Appellate Court, Misdemeanour Courts, the Higher Misdemeanour Court and the Administrative Court (Art. 11, Act on Organisation of Courts).

Basic Courts are first-instance courts. Higher Courts rule on appeals of decisions rendered by Basic Courts and also try in the first instance crimes warranting over 10 years' imprisonment, crimes against humanity and other values protected under international law, offences under the law on confidentiality of data, crimes against the Army of Serbia, disclosure of a state secret, incitement to a violent change of the constitutional order, incitement to national, racial or religious hatred or intolerance, violation of territorial sovereignty, conspiracy to commit an anti-constitutional activity, damage to the reputation of the Republic of Serbia, a foreign state or an international organisation, money laundering, disclosure of an official secret, violations of the law by judges, public prosecutors and their deputies, endangering air traffic safety, manslaughter, rape, sexual intercourse with a helpless person, sexual intercourse by abuse of post, abduction, trafficking in minors for adoption purposes, violent conduct at a sports event and acceptance of bribes. Higher Courts also conduct criminal proceedings against juveniles, rule on petitions for the suspension of security measures or legal consequences of convictions for criminal offences within their jurisdiction and on requests for rehabilitation, the prohibition of the distribution of the press and dissemination of information by media outlets.

Furthermore, Higher Courts conduct civil proceedings in the first instance in the event the value of the matter under dispute allows for an appeal on the points of law, rule in civil disputes involving establishing or disproving maternity or paternity, copyrights and related rights, the protection and use of inventions, models, samples, trademarks and indications of geographic origin (unless they fall within the jurisdiction of another court), disputes regarding the publication of a correction or a reply to information over a violation of the prohibition of hate speech, protection of the right to a private life, the failure to publish information and redress for publishing information. Higher Courts also hear disputes over strikes and collective agreements in the event they were not resolved by arbitration, disputes on mandatory social insurance unless they fall under the jurisdiction of another court, on vital book records and on the appointment and dismissal of the bodies of legal persons unless they fall under the jurisdiction of another court.

Higher Courts review appeals of Basic Court decisions in civil disputes, of verdicts in small claims, enforcement and non-litigation disputes and also conduct

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resolution of backlogs; trials within a reasonable time; improvement of the status of the High Judicial Council and the State Prosecutorial Council and normative regulation of their accountability; harmonisation of case law and the establishment of a single e-justice system.

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. The amendments to the Act on the Organisation of Courts expanded the second-instance jurisdiction of the Higher Courts, which will now review also appeals of Basic Court decisions on all measures ensuring the presence of the defendants in court and appeals regarding crimes warranting up to five years' imprisonment. These amendments are to relieve the caseloads of the Appellate Courts.

Appellate Courts are second-instance courts ruling on appeals of: Higher Court decisions; Basic Court decisions in criminal proceedings unless the Higher Court has the jurisdiction to review appeals of such decisions; and, Basic Court decisions in civil proceedings unless the Higher Court has the jurisdiction to review appeals of such decisions. 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.

The Supreme Court of Cassation has contentious and non-contentious jurisdiction. Within its contentious jurisdiction, the Court shall rule on extraordinary legal remedies against decisions taken by Serbian courts and other matters envisaged by the law, on conflicts of jurisdiction between courts unless such decisions are within the jurisdiction of another court, and on transfer of jurisdiction to another court to facilitate proceedings or for other important reasons. 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.

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

Under the Constitution, the public prosecutor's office shall be an independent state body which shall prosecute the perpetrators of criminal and other punishable offences and take measures in order to protect constitutionality and legality.<sup>152</sup> The duties of the public prosecutor's office are discharged by the public prosecutor and his deputies acting on his instructions. The Public Prosecutor's Office comprises the Republican Public Prosecutor's Office and the appellate, high and basic public Prosecutor's Offices.

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<sup>152</sup> Constitution, Articles 156-165.

The drastic cut in the number of judges during the previous reform proved to be an inadequate, uneconomical and inefficient solution in practice, as both the Serbian and international legal professionals had been warning.<sup>153</sup> The previous network of courts of general jurisdiction comprised 34 Basic Courts with 102 court units, 26 Higher Courts and four Appellate Courts. Under the new Act on the Seats and Jurisdictions of Courts and Public Prosecutor's Offices, the network of courts of general jurisdiction will consist of 66 Basic Courts and 58 Basic Public Prosecutor's Offices and 29 court units; some prosecutor's offices will have jurisdiction for two courts to save costs.<sup>154</sup> The network will also comprise 25 Higher Courts, 16 Commercial Courts and four Appellate Courts, in Belgrade, Kragujevac, Niš and Novi Sad and 25 Higher Public Prosecutor's Offices and four Appellate Public Prosecutor's Offices. The territorial organisation of 44 Misdemeanour Courts was not changed by the new law. The new court network was to start operating on 1 January 2014.

The sustainability of the new court network calls for continuous analyses of its efficiency and access to justice to pre-empt any problems, such as further slow-downs in the work of the courts due to the transfers of large numbers of pending cases to the courts now charged with them and changes of the trial judges.

### *5.3. 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 the Organisation of Courts<sup>155</sup> 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).

#### *5.3.1. Election and Appointment of Judges*

The Constitution establishes two bodies charged with appointing judges and deputy public prosecutors, the High Judicial Council and the State Prosecutorial

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153 See 2011 Report, II.4.6.

154 The Vranje Basic Public Prosecutor's Office will also be in charge of the jurisdiction covered by the Bujanovac Basic Court, the Zaječar Basic Public Prosecutor's Office will also be in charge of the jurisdiction covered by the Basic Court in Knjaževac, the Negotin Basic Public Prosecutor's Office will also be in charge of the jurisdiction covered by the Majdanpek Basic Court, while the Novi Pazar Basic Prosecutor's Office will also be in charge of the jurisdiction covered by the Sjenica Basic Court. The Pirot Basic Public Prosecutor's Office will also be in charge of the jurisdiction covered by the Dimitrovgrad Basic Court, the Prijepolje Basic Public Prosecutor's Office will also be in charge of the jurisdiction covered by the Priboj Basic Court, the Sremska Mitrovica Basic Public Prosecutor's Office will also be in charge of the jurisdiction covered by the Šid Basic Court, while the Čačak Basic Prosecutor's Office will also be in charge of the jurisdiction covered by the Ivanjica Basic Court.

155 *Sl. glasnik RS*, 116/08, 104/09, 101/10, 31/11, 78/11 and 101/11.

Council.<sup>156</sup> Judges shall be elected to their first three-year terms in office by the National Assembly at the proposal of the High Judicial Council, while their appointments on permanent tenure shall be made by the High Judicial Council (Art. 147, Constitution).

The High Judicial Council (HJC) has 11 members. They comprise the President of the Supreme Court of Cassation, the Justice Minister and the chairperson of the Assembly committee charged with the judiciary, who shall be members *ex officio*, and eight members elected by the National Assembly. These eight members 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 in office. The work of the High Judicial Council had been subject to numerous criticisms and many were of the view that the judicial appointments, which this body had influenced to a large extent, were to blame for the failure of the judicial reform. In early 2013, the National Assembly rendered a decision relieving from office the then President of the Supreme Court of Cassation Nata Mesarović, an *ex officio* member and Chairwoman of the HJC. The decision was rendered at the initiative of the Justice Minister<sup>157</sup> after the Constitutional Court of Serbia declared unconstitutional Article 102(5) of the Act on Judges pursuant to which Mesarović had been elected President of the Supreme Court of Cassation. The Judges' Association of Serbia (JAS) called on the Justice Ministry to draft a new Act on the High Judicial Council that would facilitate early election of new HJC members from among the ranks of judges in a constitutional manner and on the HJC to launch a confidence vote in the current HJC members elected from the ranks of judges.<sup>158</sup> The Protector of Citizens supported the JAS' conclusions.<sup>159</sup>

The Constitution retained the principle of permanent judicial tenure, but introduced the rule that judges shall first be elected on three-year tenures and shall thereupon be appointed to permanent judicial offices. The Constitutional Act on the Implementation of the Constitution<sup>160</sup> provided for the general election/appointment of all judges. The problems that arose during the general appointment of judges in 2009 were analysed in the prior BCHR Reports. The Constitutional Court rendered a series of decisions upholding all the criticisms of the judicial appointment procedure.

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156 Public Prosecutors are elected by the National Assembly at the proposal of the Government.

157 The Decision relieving the President of the Supreme Court of Cassation from office of 20 February 2013 is available in Serbian at: [http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala\\_akta/2013/RS5-13Lat.pdf](http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala_akta/2013/RS5-13Lat.pdf).

158 JAS Conclusions of 8 December 2013, available in Serbian at <http://www.sudije.rs/sr/aktuelnosti/vesti/zakljucci-sa-skupstine-drustva-sudija-srbije-odrzane-8-decembra-2013-godine>.

159 Protector of Citizens' support to conclusions of professional judicial and prosecutorial associations of 11 December 2013, available in Serbian at: <http://www.ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/2011-12-25-10-13-14/3116-2013-12-11-14-47-34>.

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

The most important Constitutional Court decision was the one it rendered in July 2012, when it declared unconstitutional the non-appointment of over 100 judges.<sup>161</sup> Namely, the Constitutional Court established that the procedure in which the judges were declared incompetent, unqualified or unworthy of judgeship was not in compliance with the requirements of the right to a fair trial enshrined in Article 32 of the Constitution. The Court established that the right to a fair trial of the non-appointed judges had been violated on five different grounds. Firstly, the objections of the non-appointed judges were not reviewed by an independent appeals authority. Secondly, even in cases where the appeals authority could have been considered independent, the Court established that the criteria for establishing the judges' worthiness and competence were inadequate and did not satisfy the "lawfulness" requirement under the ECHR standards. Furthermore, the Court found procedural violations during the appointment and objection review procedures. Finally, the Court found that the judges, who had filed objections challenging their non-appointment, had been deprived of the right to a public hearing.<sup>162</sup>

The reintegration in the justice system of some 800 judges and public prosecutors reinstated pursuant to the Constitutional Court decision<sup>163</sup> has been one of the main challenges the judiciary has faced. The HJC and the SPC reinstated all the judges and prosecutors who had not been reappointed within the 60-day deadline set by the Constitutional Court. They were assigned to the courts and public prosecutor's offices they had worked in or the ones that had assumed the jurisdiction of their old courts and prosecutor's offices.

The reinstatement of the judges and prosecutors again raised the issue of fairness and the purpose of the decisions, first those on reappointment and then those on reinstatement. Some of the judges and prosecutors, who had been reappointed or were subsequently reinstated, had violated human rights by their decisions or were unworthy of office.<sup>164</sup> This is one of the graver consequences of the poorly conducted reform, because the situation in the judiciary ultimately had not changed and proper appointment criteria had not been applied. The deadlines for initiating any disciplinary proceedings have expired and it is up to the HJC and SPC now to "clean the judiciary up" by applying an adequate system for appraising the performance of the judges and prosecutors and calling them to account.

The reinstated judges and prosecutors filed claims demanding of the state to compensate them for the material and non-material damages they sustained. According to JAS' estimates, the state will have to pay around 15 million EUR just for the material damages caused by the mistakes in the 2009 general judicial appointment procedure.<sup>165</sup>

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161 Case VIIIU-534/2011. Available in English on the website of the Judges' Association of Serbia [http://www.sudije.rs/files/file/pdf/VIIIU-534-2011-final-ENG%20\(1\).pdf](http://www.sudije.rs/files/file/pdf/VIIIU-534-2011-final-ENG%20(1).pdf).

162 BCHR's comment of this decision is available in *2012 Report*, II.5.3.1.

163 Constitutional Case No. VIIIU-534/2011.

164 More in *2012 Report*, II.5.3.1.

165 Compensation to Judges - 15 Million EUR, interview with JAS Chairwoman Dragana Boljević, 27 October, *Politika*, available in Serbian at <http://www.politika.rs/rubrike/Hronika/Odstete-sudijama-15-miliona-evra.lt.html>.

Around 900 judges elected to three-year terms in office in 2009 were appointed to permanent tenures in 2013 although the HJC had not set the criteria for appraising their performance, which naturally gives rise to the question whether these judges really satisfy all the requirements for appointment to permanent tenure. Their appointment is also in contravention of Article 52 of the Act on Judges, under which judges shall be appointed in the event their performance is appraised as satisfactory.<sup>166</sup>

Only several court presidents were elected in 2013, although the deadline for their appointment expired on 31 March 2010. Acting Court Presidents were in the meantime appointed to all courts apart from the Supreme Court of Cassation, which is now run by Dragomir Milojević. The Presidents of the Belgrade, Niš and Kragujevac Appellate Courts, the Higher Commercial Court, the Administrative Court and the Higher Misdemeanour Courts were also elected.<sup>167</sup> The President of the Novi Sad Appellate Court was not elected because none of the judges applied for the job. Unfortunately, the Higher Court Presidents have not been elected yet although the new law on the court network did not make any changes in their number or jurisdiction. These courts have been run by acting presidents for four years now, which is not conducive from the perspective of the independence of court presidents.

### 5.3.2. Termination of Judicial Office and Disciplinary Proceedings

Under the Constitution, the tenure of a judge shall terminate at his own request, on meeting the legal retirement requirements, by dismissal or non-appointment on permanent tenure (Arts. 148 (1) and 57, Act on Judges). The decision shall be taken by the High Judicial Council (Art. 57). The Constitution does not list grounds for the dismissal of judges, leaving the regulation of this issue to law, whereby it reduces the constitutional protection of judges from the legislative branch. The Act on Judges lists the following grounds for dismissal: a) in the event he had been convicted to a prison sentence of minimum 6 months or a punishable offence rendering him unworthy of judgeship, b) in the event he had discharged his duties incompetently or committed a grave disciplinary offence (Art. 62). Incompetence shall denote insufficiently successful discharge of judicial duties, if a judge's performance is appraised as "unsatisfactory" in accordance with the criteria for 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

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166 *Sl. glasnik RS*, 116/08, 58/09 – Constitutional Court Decision, 104/09, 101/10, 8/12 - Constitutional Court Decision, 121/12, 124/12 - Constitutional Court Decision and 101/13)

167 Duško Milenković was elected President of the Belgrade Appellate Court, Dragan Jocić was elected President of the Niš Appellate Court and Dubravka Damjanović was elected President of the Kragujevac Appellate Court. Miroslav Nikolić was elected President of the Higher Commercial Court, Jelena Ivanović was elected President of the Administrative Court and Zoran Pašalić was elected President of the Higher Misdemeanour Court.



of judges or the Disciplinary Commission. The High Judicial Council shall establish whether there are grounds for dismissal (Art. 64). Article 151 of the Constitution and Article 5 of the Act on Judges guarantee immunity to judges, wherefore they may not be held liable for opinions they voiced or how they voted on a decision, unless they committed a criminal offence in violation of the law.

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

In its decision on the non-appointment of judges, the Constitutional Court found that the criteria for evaluating the judges' competence and qualification were inadequate and imprecise.<sup>168</sup> The HJC formed a working group tasked with drafting a rulebook on the appraisal of the performance of judges and court presidents.<sup>169</sup> The European Commission criticised the lack of an institutional accountability mechanism and recommended the adoption of professional appraisal rules and more systematic application of disciplinary rules, where relevant, to prosecutors and judges to ensure accountability in the judiciary.<sup>170</sup>

A negligible number of disciplinary proceedings are launched every year, only one or two of them.<sup>171</sup> One judge was sanctioned following disciplinary procedures in 2013 and convicted to a salary reduction of 40% for a period of one year. The disciplinary authorities for prosecutors were appointed by the SPC and first cases were processed, leading to the dismissal of a Deputy Public Prosecutor in May.<sup>172</sup>

News broke early in 2013 that the Belgrade First Basic Prosecutor's Office filed a motion to investigate Constitutional Court judge Tomislav B. Stojković on suspicion of fraud.<sup>173</sup> He had not been suspended and he took part in the Constitutional Court's work all year. The Humanitarian Law Centre on 11 February 2011 filed an initiative for the dismissal of this judge on suspicion that he had been involved in the abduction of a Kosovo lawyer.<sup>174</sup>

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168 More in *2012 Report*, II.5.3.2.

169 Judicial Appraisal Criteria Near Completion, *Tanjug*, 24 November, available at <http://www.tanjug.rs/novosti/107256/kriterijumi-za-vrednovanje-sudija-u-finalnoj-izradi.htm>.

170 Serbia 2013 Progress Report, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf).

171 See *Danas* report in Serbian [http://www.danas.rs/danasrs/drustvo/zalbe\\_na\\_sudije\\_direktno\\_kod\\_tuzioca.55.html?news\\_id=272497](http://www.danas.rs/danasrs/drustvo/zalbe_na_sudije_direktno_kod_tuzioca.55.html?news_id=272497).

172 Dismissed for bribery, *RTS*, available in Serbian at <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1328560/Razre%C5%A1en-du%C5%BEnosti+zbog+mita.html>.

173 Constitutional Court Judge Faces 10 Years' Imprisonment, *Danas*, 18 February, p. 9.

174 More at <http://www.hlc-rdc.org/?p=20853&lang=de>.



### 5.3.3. *Guarantees of Judicial Independence (Recusal, Case Assignment, Non-Transferability)*

The Constitution guarantees the so-called principle of non-transferability of judges (Art. 150) and this principle was consistently elaborated in the Act on Judges (Arts. 2(2) and 18). A judge may be assigned or seconded to another court only if he agrees to the transfer. Exceptionally, the consent of the judge shall not be required if the court he has been appointed to or most of its jurisdiction has ceased to exist. Judicial transfers became a certainty after the changes of the court network, which is why the adopted amendments to the Act on Judges elaborate the provisions on transfers. The law now allows transfers of judges only to courts of the same instance that have assumed the jurisdiction of abolished courts.<sup>175</sup>

The new court network prompted the HJC to adopt a new Rulebook on Criteria for Judicial Transfers in the event most of the jurisdiction of the courts they had been appointed to is abolished.<sup>176</sup> The criteria comprise: the consent of the judge at issue, his place of residence and the number of years he has been a judge. These criteria also apply to transfers of all other court staff.

Judicial impartiality is guaranteed by Serbian law in provisions specifying a number of reasons when judges may be recused from a proceeding. These reasons focus on conflict of interests or regard their 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. Under Article 22 of the Act on Judges, a judge is not obliged to justify his legal views and findings of fact to anyone, including the court president and the other judges, except in the reasoning of the decisions and in instances explicitly stipulated by the law. The police summons to judges to discuss the criminal cases they have been adjudicating at the request of the Higher Public Prosecutor's Office in Zaječar is in contravention of this provision.<sup>177</sup> The JAS stated that this was not the first time the police and prosecutors have taken steps undermining the reputation and dignity of judges and courts.<sup>178</sup>

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 lays down that the order of the files shall not depend on who the parties to the proceeding are or what the case concerns. No one may establish judicial panels or 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 has been pronounced against him for committing a disciplinary offence of undue dilatoriness (Art. 25 (2)).

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175 Article 6.

176 Rulebook on Criteria for Judicial Transfers to Other Courts, available in Serbian at <http://www.vss.sud.rs/doc/premestaj/Pravilnik-o-premestaju-28-11-2013.pdf>.

177 Police Called in Judges for Questioning, *Politika*, 21 September, available in Serbian at <http://www.politika.rs/rubrike/Hronika/Policija-pozivala-sudije-na-informativni-razgovor.lt.html>.

178 *Ibid.*

#### *5.3.4. Pressures on the Judiciary*

The European Commission assessed that the legislative and constitutional framework still left room for undue political influence, in particular when it came to appointments and dismissals and noted the need for its amendment.<sup>179</sup> The integrity and independence of the judiciary is often brought into question by rash, and often even illegal actions by the representatives of the executive government. Announcements of arrests, outcomes of trials, violations of the presumption of innocence are commonplace. Such conduct by politicians undermines public trust in the judiciary and creates the impression that the judiciary is dependent on the executive. The Supreme Court of Cassation Board alerted to interferences in the work of the judiciary by the representatives of the executive and parliamentary authorities and warned that specific statements by senior officials undermined the reputation of the judiciary and thus the status of the courts.<sup>180</sup> Such statements are welcome, but should not be so general and issued so rarely, because the public was not told whether such pressures were limited only to media appearances or whether they were exerted on the judges directly as well and by whom.

Herewith a few of the many illustrations of pressures the executive branch has been exerting on the judiciary: statements on the pre-trial detention of Miroslav Mišković, the owner of the Delta company, and the proceedings against him before the Belgrade Higher Court's special department on organised crime charges. Politicians have often announced arrests and revealed information about investigations under way in specific media, thus indirectly prejudicing the decisions of the courts.<sup>181</sup> Politicians and media have also impermissibly interfered in the work of the court in Ljig and a parental dispute over child custody before it. After an intervention by the executive branch, the judge, who was supposed to have enforced the judgment to the father's advantage, was recused and subject to disciplinary proceedings and the enforcement of the judgment was halted.<sup>182</sup>

#### *5.3.5. Incompatibility*

The Constitution of the Republic of Serbia prohibits judges from involvement in political activities (Art. 152). 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. The fact that some of the judges reinstated in 2013 publicly

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179 More on p. 39 of the Serbia 2013 Progress Report, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf).

180 Supreme Court of Cassation press release after the 8 November 2013 session, available in Serbian at <http://www.vk.sud.rs/saopstenje-sa-sednice-kolegijuma-vrhovnog-kasacionog-suda-od-08.11.2013.-godine.html>

181 See in II.8.

182 „Rea Staying in Ljig for Now“, RTS, 13 November, available in Serbian at <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1442886/Rea+za+sada+ostaje+u+Ljigu.html>.

stated that they joined the Serbian Progressive Party in 2010 and that their membership was not factored in during their reinstatement gives rise to concern.<sup>183</sup>

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 or be politically active 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 state, provincial or municipal election commission. Other offices, 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).

### *5.3.6. Judicial Training*

Under the Judicial Academy Act<sup>184</sup> future judges and prosecutors shall attend additional training after they pass the Bar. The Academy training is has become a very important requirement for appointment to a judicial term in office after the Act of Judges was amended. Under the new Article 50(4) of this law, the HJC cannot nominate candidates for judgeship in misdemeanour and basic courts unless they have completed initial training in the Academy.

Judicial and prosecutorial associates, who have been working in courts for years, have filed an initiative with the Constitutional Court to review the constitutionality of specific articles of the Judicial Academy Act. They claim that the Academy training requirement undermines their chance of becoming judge.

The Constitutional Court rendered a ruling initiating the review of the constitutionality of the Judicial Academy Act<sup>185</sup> and in early 2014 declared unconstitutional specific provisions of this law dealing with the election of judges and prosecutors.

Under the Act Amending the Act on Judges, the HJC shall nominate only one candidate for a judicial office to the National Assembly. This provision aims to limit the rule of the legislature in the election of judges, wherefore the decisions on who will be elected are essentially now in the hands of the HJC. Given that the graduates of the Judicial Academy are eligible for judicial office, this solution carries specific risks related to the quality of Academy training as well, although its curriculum focuses on developing skills and analytical thinking and is subject to the approval

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183 See the *Blic* report available in Serbian at <http://www.blic.rs/Vesti/Tema-Dana/203012/Uclan-jenjem-u-SNS-sudije-krse-Ustav>.

184 *Sl. glasnik RS*, 104/09.

185 Constitutional Court press release available in Serbian at: <http://www.ustavni.sud.rs/page/view/sr-Latn-CS/0-101872/pokrenut-postupak-za-ocenu-ustavnosti-clana-26-stav-3-i-clana-40-st-8-9-i-11-zakona-o-pravosudnoj-akademiji>

of the HJC and SPC. The solution places a major responsibility on the state to guarantee impartiality, put in place objective and measurable criteria for selecting the Academy trainees and to provide them with the best training. The Judicial Academy is an integral part of the judicial system and its purpose is to ensure the independent and impartial work of the judges and prosecutors, although the European Commission noted in its Serbia 2013 Progress Report that the Academy remained largely understaffed and underequipped.<sup>186</sup>

#### 5.4. *Fairness*

The lack of an adequate free legal aid system is one of the problems arising with respect to the right to fairness. Although the Constitution guarantees everyone the right to equal legal protection, without discrimination,<sup>187</sup> this right is not available to everyone in Serbia. The Government of the Republic of Serbia adopted the Strategy on the Development of a Free Legal Aid System in the Republic of Serbia for the 2011–2013 Period but the law was not adopted by the end of the reporting period, although there had been indications when the Government was formed that work on this piece of legislation would intensify. Pursuant to the Strategy objectives, the Justice Ministry established a working group in May 2011 to draft the Legal Aid Act.<sup>188</sup>

The Draft Legal Aid Act was criticised by some civil society organisations, which expressed fears that hardly anyone would be capable of fulfilling the requirements to be appointed a lawyer free of charge and that there would be no pro bono lawyers to assist those who did. The draft has several key shortcomings: the definition of the beneficiaries of legal aid; the complicated procedure they have to pass through to exercise their right to legal aid; the legislator's decision to entrust the reviews of requests for legal aid to social welfare centres; and, the penal provisions posing a threat to all those who have been doing pro bono work to date and who will not be funded from the Serbian budget under the new law either.<sup>189</sup>

##### 5.4.1. *Trial within a Reasonable Time*

Under the Constitution, everyone shall have the right to a public hearing *within a reasonable time* before an independent and impartial tribunal already established by the law which shall hear and pronounce a judgment on their rights and obligations, grounds for suspicion that led to the initiation of the initiated procedure and charges against them (Art. 32 (1)). Serbia's Criminal Procedure Code

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186 Serbia 2013 Progress Report, available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf).

187 Article 21.

188 See the 2011 Report, I.4.6.4.

189 Legal Aid Will be Virtually Unavailable, see the press release in Serbian at <http://www.izkruga.org/194-besplatna-pravna-pomoc-bice-skoro-nedostupna>.

recognises the rights of the defendants to be brought before a court as soon as possible and to a trial without any undue delay and obliges the courts to endeavour to conduct the proceedings without undue delay.

Serbian courts are still staggering under huge backlogs although the adjudication of such cases and trials within a reasonable time have been among the top priorities of the Serbian judiciary for years. The total backlog of courts of general and special jurisdiction in Serbia has exceeded three million for several consecutive years.<sup>190</sup> Cases regarding the enforcement of court decisions, however, account for most of the backlog and the Supreme Court of Cassation adopted a programme on how the courts should address their backlogs.<sup>191</sup> Court inefficiency has strongly reflected on the duration of court proceedings, the respect of human rights of parties to the proceedings and appraisals of the performance of judges and public prosecutors and has prompted the submission of many applications against Serbia to the ECtHR.

The National Judicial Reform Strategy envisages measures for addressing the problem, including the identification and reassignment of the backlog, automated case management, horizontal reallocation of judges and court staff whilst respecting the constitutional guarantees and with adequate stimulation; resolution of a significant number of cases by enforcement agents and notaries public, amendments of substantive and procedural laws in order to improve the efficiency and legal certainty.

The application of the Notaries Public Act adopted in 2011 was put off until 1 March 2014, because an insufficient number of candidates passed the notary public exam, wherefore the vacancies were not even advertised. The powers of the notaries public were expanded under the amendments to this Act<sup>192</sup>; they will be solely responsible for the conclusion and certification of real estate contracts, wherefore they will be under the obligation to review all parts of the contracts and warn the parties of any problems.

The adopted amendments to the Act on the Organisation of Courts<sup>193</sup> entitle parties who believe that their trials are excessively long to sue the courts and claim compensation for violations of their right to trial within a reasonable time. These amendments were prompted by numerous constitutional appeals submitted to the Constitutional Court, most of which claimed violations of the right to trial within a reasonable time, and the large number of applications against Serbia submitted to the ECtHR. Such a large number of pending constitutional appeals has undermined the Constitutional Court's efficiency in providing protection. Under the amendments, the immediately higher court will decide on the protection of the right to a

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190 The Strategy is available at <http://www.mpravde.gov.rs/en/vest/3394/the-national-judicial-reform-strategy-for-the-period-2013-2018-.php>.

191 See the Supreme Court of Cassation Nationwide Backlog Resolution Programme, available in Serbian at [http://www.vk.sud.rs/assets/files/o\\_sudu/jedinstveni\\_program.pdf](http://www.vk.sud.rs/assets/files/o_sudu/jedinstveni_program.pdf).

192 *Sl. glasnik RS*, 19/13.

193 *Sl. glasnik RS*, 101/13.

trial within a reasonable time while the trial is still ongoing, wherefore the injured party will not have to wait for the completion of the proceeding and then have to file a constitutional appeal. In the event the immediately higher court finds a violation of the party's right to trial within a reasonable time, it shall set a deadline by which the sued court is to render its decision and set the amount of compensation to be paid to the claimant for the damage he suffered because his right to a trial within a reasonable time was violated (Article 8b). Compensation of damages caused by the violation of the right to a trial within a reasonable time will be paid from the Serbian budget allocation for the work of the courts (Article 8a). Appeals of decisions on such claims will always be ruled on by the Supreme Court of Cassation.

The claims will be reviewed in accordance with the non-contentious procedure rules and the courts will peruse the case files to establish whether the right to a trial within a reasonable time has been breached or not. Professional associations have alerted to the risk that these proceedings might additionally burden the courts.<sup>194</sup> Although these provisions aim at addressing the problem, their enforcement will nevertheless encounter problems arising from the lack of judicial associates in courts, the administrative burden already placed on the judges and the inadequate provisions in procedural laws.

The state is already under major pressure because of the non-enforcement of court decisions, pressure that has increased with every ECtHR judgment and friendly settlement.<sup>195</sup>

#### *5.4.2. E-Justice*

An electronic Case Management System was introduced in all Serbian courts with the exception of Misdemeanour Courts. This system facilitates the work of courts in a number of areas, from the monitoring of the status of cases in courts to the preparation of extensive statistical reports on the work of the courts. Furthermore, it facilitates the creation of a large case law database, which can easily be made available to interested parties given that it is electronic, whereby it also enhances the transparency of the judiciary.

The courts' records, however, are not uniform because several systems for electronic registration of data are in use. Almost all of them suffer from specific shortcomings. Surveys have shown that the courts are frequently unable to provide the information sought under the free access to information regulations precisely because the software limitations do not allow the search of the database under different criteria. These shortcomings may also reflect on the courts' ability to prepare

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194 "Citizens will be Able to Sue Courts over Violations of Their Right to Trial within a Reasonable Time", see the RTS report of 7 December 2013, available in Serbian at <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1464720/Nikoli%C4%87%3A+Tu%C5%BEbe+gra%C4%91ana+zbog+predugog+su%C4%91enja+.html>.

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

comprehensive analyses and reports of major importance, such as the ones submitted to the numerous international bodies. The following steps could be made to improve the electronic system: the adoption of regulations on a uniform method for entering case file data in the database, organisation of additional training for the users of the software, improvement of the courts' ICT to ensure optimal storage of data in the electronic database.<sup>196</sup>

#### 5.4.3. Public Character of Hearings and Judgments

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

Civil and criminal proceedings are guided by the general rule that hearings and trials are public and may be attended by adults. The CPC envisages that the main hearing may be attended by persons over 16 years of age. Under the CPC, the court may *ex officio* or upon a motion by a party, but only upon hearing the views of the parties, exclude the public from the entire or part of the trial in order to protect morals, public law and order, national security, minors or the privacy of the parties to the proceedings or to protect justified interests in a democratic society. The public is always excluded from a trial of a minor (Art. 75, Juvenile Justice Act<sup>197</sup>).

The Act on Misdemeanours<sup>198</sup> 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 formulates the grounds for excluding the public from a hearing differently: the public may be excluded from a hearing to protect the interests of national security, public order and morals in a democratic society and to protect the interests of a minor or the privacy of the participants in the proceedings (Art. 322). Under the CPA, the public may be excluded from a hearing also in order to maintain order in the court.

All procedural laws stipulate that the decision on the exclusion of the public must be reasoned and public. Both the CPC and CPA lay down that a judgment must always be delivered publicly, notwithstanding whether the public was

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

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

198 *Sl. glasnik RS*, 101/05, 116/08 and 111/09.



excluded from the proceedings, but that the court shall decide whether the public will be allowed to hear the reasoning of the judgment. The Administrative Disputes Act<sup>199</sup> specifies that the hearings shall as a rule be public and lists grounds for excluding the public, which are in accordance with the ECHR (Art. 35).

#### *5.4.4. Equality before the Law*

The constitutional principle under which all shall be equal before the law is violated by non-aligned case law. Divergent judicial assessments are possible and normal, but this divergence cannot be of such proportions so as to result in totally different decisions regarding identical or nearly identical facts. Such decisions lead to continuous legal uncertainty and undermine public trust in the judiciary. Many of the applications filed with the ECtHR regard this problem. The Supreme Court of Cassation and the Appellate Courts should play a crucial role in harmonising the case law. The amendments to the Act on the Organisation of Courts aim to address this problem by envisaging joint sessions of the Appellate Courts and their notification of the Supreme Court of Cassation of disputable issues relevant to the work of the courts.<sup>200</sup> A case law database allowing courts insight in the judgments of other courts would facilitate the alignment of case law.<sup>201</sup>

### *5.5. Guarantees to Defendants in Criminal Cases*

There are three forms of punishable offences in Serbian law: criminal offences, misdemeanours and economic offences. A criminal offence is an offence defined by the law as a criminal offence which is unlawful and committed with a guilty mind (Art. 14, CC). A misdemeanour is an unlawful act committed with a guilty mind and defined as a misdemeanour in regulations enacted by a competent authority (Art. 2, Act on Misdemeanours). Under the ECHR, all these punishable offences fall within the scope of protection afforded by Article 6 of the ECHR.

#### *5.5.1. Presumption of Innocence*

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 and 2), CPC).). Under the CPC, not only courts, but all other state authorities, media, civic associations, public figures and others as well, are under the obligation to respect the presumption of innocence.

The impugned provision of the Criminal Code incriminating public statements to media during criminal proceedings (Art. 336a) was abolished by the

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

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

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

amendments to the Criminal Code that came into force on 1 January 2013.<sup>202</sup> However, the presumption of innocence is violated very often in practice and the question arises as to how it can be protected, particularly since it is often violated by public figures, politicians and even by representatives of the state authorities, the police and the prosecutors, not only by journalists. The presumption of innocence has been left to the conscience of the actors after the attempts to incriminate violations of it were abandoned, which may prove problematic given the general lack of legal culture and awareness of the importance of respecting human rights.

*5.5.2. Prompt Notification of Charges,  
in a Language Understood by the Defendant*

Under the Constitution, all persons accused of crimes shall have the right to be notified promptly, in detail and in a language they understand of the nature and reasons for the charges laid against them and the evidence against them (Art. 33). This right is guaranteed by the provisions of the Serbian criminal procedure law. The police are also under the obligation to notify a person that they consider him a suspect in the event they assess as that he may be a suspect during the questioning. The indictment shall be “served to an accused at liberty without delay and within 24 hours to a defendant in custody” and must include, 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. Notice of indictment is also guaranteed in misdemeanour proceedings (Arts. 85 (2) and 86, Act on Misdemeanours).

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

Parties, witnesses and other participants in the proceedings are entitled to use their languages in court and interpretation shall be provided in such instances. The court is under the obligation to advise these persons of their right to interpretation and they may waive this right in the event they understand and speak the language in which the proceedings are held. The violation of this right constitutes a substantive violation of due process.

Affording a defendant sufficient time to prepare his defence is one of the basic principles of the criminal procedure. The CPC thus lays down that summons to the main hearing must be served upon the defendant at least eight days before the main hearing to give the defendant enough time to prepare his defence. At least 15 days for preparing their defence will be provided to defendants accused of crimes warranting minimum ten years’ imprisonment.

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202 Press associations have called for the amendment or deletion of this provision, while the representatives of the prosecutors and Justice Ministry have argued that it was not directed against journalists and that it aimed at protecting the presumption of innocence and limiting the executive authorities’ interference in court trials.

### 5.5.3. 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 own trial and may not be sentenced unless 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 the event the defendant is at large or otherwise inaccessible to government agencies and there are compelling reasons for trying him despite his absence. Furthermore, the defendant tried *in absentia* must have a defence counsel from the moment the decision is taken to try him in his absence. At the request of the person convicted *in absentia* or his defence counsel, a new trial may be scheduled.

The Constitution guarantees the right to defence (Art. 33). Under the CPC, the defendant is entitled to defend himself or retain a professional defence attorney of his own choosing. Only a lawyer may act as the defence counsel of a defendant in criminal proceedings (Art. 74, CPC), but the CPC does not set any requirements regarding the experience of the defence counsels.

The court is under the obligation to assign a defendant a defence counsel *ex officio* in two instances: in the event the defendant must be represented by a defence counsel and he had not retained one and in the event the defendant cannot afford a lawyer. The court president shall assign a defendant a defence counsel *ex officio*, who shall represent him until the judgment becomes legally effective. In the event the defendant is sentenced to 40 years' imprisonment and in the event the defendant has been taken into custody or placed under house arrest. The assigned counsel shall also represent him in reviews of extraordinary legal remedies. Article 74 of the CPC explicitly lists the instances in which the defendants must be represented by a defence counsel. CPC stipulates that defendants must be represented by professional counsels if they are charged with a crime warranting eight or more years' imprisonment. The CPC also stipulates that such defendants must be represented by a defence counsel if they are in custody or under house arrest. Moreover, a court president may dismiss an assigned legal counsel who is not fulfilling his duties.

The CPC lays down that defendant who cannot afford a defence counsel shall be appointed one at their request if they are accused of a crime warranting over three years' imprisonment or in the interest of fairness (Art. 77). The possibility of applying this provision will be extensive once a legal aid system is introduced and starts operating.

During the pre-investigation proceedings, the police shall advise a suspect of his right to an attorney, who shall attend his further interrogation, and that he is not obliged to answer any questions in the absence of his attorney (Art. 289). Suspects placed under custody have the same right (Art. 293) and they must have a defence counsel as soon as a ruling on their custody is issued (Art. 294(5)). 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 (Arts. 69 and 72 of the CPC).

The introduction of prosecutorial investigations can greatly affect the defendants' right to defend themselves. A prosecutorial investigation may create room for substantial inequality between the parties, because it is difficult to expect of the prosecutor to present evidence to the advantage of the defendant, as the Criminal Procedure Code envisages.<sup>203</sup> Furthermore, the provisions entitling the defence to collect evidence during the prosecutorial investigation and submit motions to the prosecutor on which evidence he should present may also prove disputable, because there are fears that they are merely a façade creating the illusion of the equality of the parties (prosecutor and defence) in the proceedings.

Both the prosecutors and the defence counsels may collect the evidence during the investigation. Under the CPC, upon receiving an order to conduct an investigation, the prosecutor shall present the evidence; the defence may also collect evidence during the investigation and ask the prosecutor to present it. In the event the prosecutor disagrees with the motion of the defence, the final decision on this motion shall be taken by the judge for preliminary proceedings.

Under the CPC, the prosecutor is no longer under the obligation to prove the guilt of the defendant, but primarily to shed light on the crime, which might alleviate the inequality of the parties to an extent.<sup>204</sup> Both parties to the proceedings might enjoy equality of arms in the event the CPC is applied adequately, because it is not in the prosecutor's interest to prove the charges at all costs, but to shed as much light on the specific case as possible, whilst abiding by due process.

The Act on Misdemeanours guarantees the right to defence in Article 85. Defence may be presented in written form (Art. 177). 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 a defence counsel is guaranteed by Articles 109 and 167 of the Act.

The Constitutional Court of Serbia declared unconstitutional the provision in the Non-Contentious Procedure Act, which stipulated that all parties in court had to be represented by lawyers.<sup>205</sup> The Court stated in the reasoning of its decision that this provision limited access to court, which may not be conditioned or hindered. The Court found that citizens had to be free to themselves decide who, if anyone, would legally represent them in civil proceedings before first-instance courts. It took the view that the legal obligation to engage a lawyer constituted discrimination of citizens on grounds of the assets they owned.

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203 See the *Politika* article of 21 May 2012, available in Serbian at <http://www.politika.rs/rubrike/Hronika/Stranputice-novog-krivcnog-postupka.lt.html>.

204 *Criminal Procedure Code*, Preface: G. Ilić, S. Beljanski, M. Majić, Službeni glasnik 2011.

205 Constitutional Court Statement of 23 May 2013, available in Serbian at <http://www.ustavni.sud.rs/page/view/sr-Latn-CS/80-101831/saopstenje-sa-17-sednice-ustavnog-suda-odrzane-23-maja-2013-godine-kojom-je-predsedavao-dr-dragisa-slijepcevic-predsednik-ustavnog-suda>.

#### *5.5.4. 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 persons close to him or to confess guilt (Art. 33 (7)). A defendant has the right to remain silent and the court or another state authority is under the obligation to warn him before questioning him that anything he says may be used against him. Before questioning the defendant at the main hearing, the court must advise him of his rights to remain silent, not answer any questions and enter a plea if he wishes to. A court judgment may not be based on the defendant's statement if he had not been duly advised of his rights (Art. 85(5) CPC).

The CPC formulates the prohibition of torture more broadly and states that any resort to torture, inhuman or degrading treatment, force, threat, coercion and deception, medical treatment or other means affecting the free will of the defendant or extorting a confession or another statement from or action by the defendant shall be prohibited and punishable. A court judgment may not be based on a statement by the defendant obtained in contravention of this prohibition.<sup>206</sup> The CPC provides for the conclusion of a plea bargain between the defendant and the prosecutor and also allows the defendant and prosecutor to conclude an agreement under which the defendant shall be granted the status of collaborating witness in return for testifying.

#### *5.5.5. Status of Witnesses*

A defendant is entitled to question witnesses for the prosecution and require that the witnesses for the defence be questioned under identical conditions and in his presence. The CPC allows the defendant to call new witnesses or court experts or to present new evidence until the end of the main hearing. However, in the interest of procedural economy, the CPC envisages the holding of a preparatory hearing at which the evidence to be presented at the main hearing is elaborated and new evidence is proposed, wherefore the chairing judge may refuse to examine evidence at the trial which the parties had been aware of but had not proposed at the preparatory hearing without justified reasons.

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

Perjury is incriminated by Article 206 of the Criminal Code. The CPC obliges the court to protect a witness from insults, threats and any other attacks. A

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206 More on this in II.2.1 and II.2.3.

witness may be granted the status of protected witness in circumstances specified by the law. The CPC also introduces the institute of a particularly vulnerable witness. Apart from the protection afforded by the CPC, the Act on the Protection of Participants in Criminal Proceedings<sup>207</sup> also envisages witness protection measures under specific conditions.

## 6. Right to Privacy and Confidentiality of Correspondence

### 6.1. General

The ECHR and the ICCPR guarantee the right to privacy, which includes the protection of family life, home and correspondence. The ICCPR also guarantees the right to protection of honour and reputation. Although this right is not explicitly listed in the ECHR, the European Court of Human Rights (ECtHR) acknowledged a similar interpretation of the concept of privacy in its judgments.<sup>208</sup> According to ECtHR case law, privacy encompasses, *inter alia*, the physical and the moral integrity of a person, sexual orientation,<sup>209</sup> relationships with other people, including both business and professional relationships.<sup>210</sup> The ECtHR accepts a wider interpretation of the concept of privacy and considers that the content of this right cannot be predetermined in an exhaustive manner.<sup>211</sup>

Serbia is also a signatory of the CoE Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data,<sup>212</sup> the first binding international instrument on the protection of personal data. The States Parties to the Convention are obliged to undertake the necessary measures to ensure the legal protection of fundamental human rights with regard to the automatic processing of personal data. The Additional Protocol to the Convention, which Serbia also ratified,<sup>213</sup> obliges states to establish oversight authorities and regulates in greater detail the transborder flow of the personal data to a recipient, which is not subject to the jurisdiction of a party to the Convention.

The Constitution of Serbia does not protect the right to privacy as such but it does guarantee the inviolability of physical and mental integrity (Art. 25),

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

208 See *Pfeifer v. Austria*, ECHR, App. No. 10802/84 25 February 2007 and *Lindon and Others v. France*, App. Nos. 21279/02 and 36448/02 (2007).

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

210 See *Niemitz v. Germany*, ECHR, App. No. 13710/88 (1992).

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

212 *Sl. list SRJ (Međunarodni ugovori)*, 1/92 and *Sl. list SCG*, 11/05.

213 *Sl. glasnik RS (Međunarodni ugovori)*, 98/08.

inviolability of the home (Art. 40), and confidentiality of letters and other means of communication (Art. 41). Although the Constitution does not include an explicit provision on the respect for the right to private life, the Constitutional Court of Serbia is of the view that this right is an integral part of the constitutional right to dignity and the free development of the personality<sup>214</sup> enshrined in Article 23 of the Constitution. The Constitutional Court also found that “the sphere of a person’s private life clearly includes, *inter alia*, a person’s sex, sex orientation and sex life, and that private life entails the right to determine the details of a personal identity and self-determination, and, in that sense the right to change one’s sex to match one’s gender identity.”<sup>215</sup> The Constitutional Court has, thus, recognised a broader interpretation of the right to privacy, which is in accordance with international standards.

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

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

Although the Constitutional Court has so far demonstrated that it assesses the provisions of the Constitution strictly in accordance with the ECtHR case law and guarantees of the right to privacy in the ECHR, it would have been much better if the Constitution included a specific provision on the right to privacy instead of the current casuistic approach.

Apart from the protection afforded by the Constitution, the right to privacy is mainly protected by the Criminal Code, which incriminates specific forms of violations of the right to privacy in Articles 139–146, dealing with: inviolability of the home, unlawful search, unauthorised disclosure of secrets, violations of the confidentiality of letters and other mail, unauthorised wiretapping, recording and photographing, unauthorised publication of another’s text, portrait or recording. The Criminal Code incriminates disclosure or dissemination of information of someone’s family circumstances that may harm his honour or reputation (Art. 172).

The development of technology has enabled new forms of communication, which are definitely conducive to faster exchange of information and freedom of

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

215 *Ibid.*



expression, but have also resulted in the creation of technologies that can be used to monitor, intercept and collect data on communication. As far as the right to privacy is concerned, 2013 was without doubt marked by the publication of US National Security Agency documents by its former employee Edward Snowden testifying of its surveillance of the electronic communications of many people, mostly outside the US, including the leaders of some countries. This scandal gave rise to serious debates about the existing international law standards on the protection of privacy and the application of the existing international law norms, notably, whether they applied to extra-territorial violations of the right to privacy.<sup>216</sup> The Snowden case put the protection of privacy in the digital era in the limelight, as corroborated by the unanimous adoption of the Resolution on the Right to Privacy in the Digital Age<sup>217</sup> by the UN General Assembly on 18 December 2013. The Resolution reaffirms the right to privacy enshrined in Article 17 of the ICCPR, recognises the rapid advancement in information and communications technologies, and affirms that the same rights that people have offline must also be protected online, in particular the right to privacy. It further calls on all states to review their procedures, practices and legislation regarding the surveillance of communications, their interception and collection of personal data, and to establish independent national oversight mechanisms capable of ensuring transparency and accountability of state surveillance of communications, their interception and collection of personal data.

Serbia should take this call seriously given the number of times the Constitutional Court had to defend Article 41 and the concerning data on the lack of adequate control of the state authorities' access to communications of its citizens. Although this Resolution cannot create a legal obligation on states, it carries political weight and can definitely serve as a starting point for improving the protection of the right to privacy in Serbia's legislation.

## *6.2. Families and Family Life*

According to the ECtHR, family life is interpreted in terms of the actual existence of close personal ties.<sup>218</sup> It comprises a series of relationships, such as marriage, children, parent-child relationships,<sup>219</sup> and unmarried couples living with their children.<sup>220</sup> Even the possibility of establishing a family life may be sufficient to invoke protection under Article 8.<sup>221</sup> Other relationships that have been found to be protected by Article 8 include relationships between siblings, uncles/aunts

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216 See the posts on <http://www.ejiltalk.org/foreign-surveillance-and-human-rights-introduction/>.

217 Resolution on the Right to Privacy in the Digital Age, available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/C.3/68/L.45](http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/68/L.45).

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

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

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

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

and nieces/nephews,<sup>222</sup> parents and adopted children, grandparents and grandchildren.<sup>223</sup> 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.<sup>224</sup>

The Constitution does not include a provision protecting the family within the right to privacy and merely deals with the family from the aspect of society as a whole. Under Article 66(1), “the family, mothers, single parents and children (...) shall enjoy special protection.”

Article 63 of the Constitution guarantees the right to freely decide whether to have children or not. The fact that this right is guaranteed “to all” is disputable. The question arises how one can guarantee this right to the prospective father, if the mother decides not to have the baby (a right she is guaranteed under this Article).

The Constitution guarantees everyone the right to freely enter and dissolve a marriage and prescribes that entry into and the duration and dissolution of a marriage are based on spousal equality (Art. 62). The Constitution also envisages that a marriage is valid only with the freely given consent of a man and woman, whereby it effectively renders any legislation allowing homosexual marriages unconstitutional. Although the regulation of this issue is within the jurisdiction of states, the question arises whether it had been necessary to establish it as a constitutional principle, thus impeding any legislative changes. This solution is particularly problematic in cases in which one spouse had undergone a sex change, such as the case the Constitutional Court reviewed.<sup>225</sup> These cases also give rise to the problem of recognising the parental rights of the person who had undergone a sex change.

The procedure of entering a marriage in Serbia is administrative in character and relatively simple. Although the Family Act legally equated marital and extra-marital unions, numerous regulations governing individual rights arising from family relations have not been aligned with this legal norm yet.

The provisions of the Family Act<sup>226</sup> are in accordance with international standards in terms of the right to privacy. The Act prescribe that everyone has the right to the respect of family life (Art. 2 (1)). It also guarantees the children’s right to maintain personal relationships with the parents they are not living with, unless there are reasons for partly or fully depriving those parents of parental rights or in case of domestic violence (Art. 61). The children are also afforded the right to maintain

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

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

224 See *X., Y. and Z. v. the United Kingdom*, ECHR, App. No. 21830/93 (1997). In its judgment in the case *Schalk and Kopf v. Austria*, App. No. 30141/04 (2010), the ECtHR for the first time took the view that a stable relationship between two persons of the same sex living together fell under the scope of family life protected under Article 8.

225 Constitutional Court Decision UŽ – 3238/2011.

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

personal relationships with other relatives they are particularly close to (Art. 61 (5)). The Family Act is also the first law in Serbia taking into account the parents' interests in their children's education, as it entitles them to provide their children with education in keeping with their ethical and religious convictions (Art. 71).

Media have for a decade now been extensively reporting about the cases of new-borns "disappearing" from Serbian maternity wards. Parents, who believe that their children had not died and that they had been taken from them as soon as they were born, have not been able to obtain relevant information about their children's deaths from the maternity wards or from the vital records departments, which are under the duty to register their deaths in the vital records. The prosecutors have been dismissing the parents' criminal charges for lack of evidence. The Inquiry Committee, formed by the National Assembly to investigate these cases, drafted a report in which it recommended a set of measures to pre-empt such incidents in the future. The Protector of Citizens also prepared a report in which he outlined the mistakes and omissions of the state authorities.<sup>227</sup>

The ECtHR rendered a judgment in 2013 in which it found Serbia had violated Article 8 of the ECHR.<sup>228</sup> The applicant, Zorica Jovanović, who gave birth to a healthy baby boy on 28 October 1983 in the Čuprija Medical Centre (hereinafter: Medical Centre), was told on 31 October by the duty doctor that "her baby ha[d] died". The orderlies prevented her from seeing the baby and she was subsequently told that an autopsy would be performed in Belgrade. When the media started extensively reporting on missing baby cases in 2001, the applicant asked the Medical Centre and the Čuprija vital records department for documentation about the death of her son. The Medical Centre informed her that his death had been classified as "*exitus non sigmata*", meaning death from unknown causes, while the Čuprija vital records department informed her that her son's birth had been registered in the municipal records but that his death had not. The child's father filed a criminal report in 2003, which the Municipal Public Prosecutor's Office dismissed for lack of evidence. No further reasoning was offered and there was no indication as to whether any preliminary investigation had been carried out.

The essential object of Article 8 is to protect the individual against arbitrary interference by public authorities. The ECtHR is of the view that there may, however, be additional positive obligations on the states inherent in this provision extending to, *inter alia*, the effectiveness of any investigating procedures relating to

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227 The Protector of Citizens concluded that the "non-existence or incompatibility of all the requisite administrative procedures and non-abidance by the existing procedure; irresponsible approach to documenting official activities and archiving documentation by individual authorities, organisations and civil servants; passage of time and inconsiderate and bureaucratic treatment of the family members by some civil servants have led to the following situation: without an inquiry by specialised state authorities, one cannot claim reliably today that the babies had not been unlawfully separated from their families. See the Protector of Citizens Report on "Missing Baby" Cases and his recommendations, Ref No. 12443, 29 July 2010.

228 *Jovanović v. Serbia*, ECtHR, App. No. 21794/08, judgment of 26 March 2013, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-118276>.

one's family life. Given that the applicant was not allowed to see the body of her son or forwarded the autopsy results, and that it appeared that the criminal report had been rejected without adequate consideration, the ECtHR concluded that the applicant had suffered a continuing violation of the right to respect for her family life on account of the respondent State's continuing failure to provide her with credible information as to the fate of her son. The ECtHR also ruled that the Republic of Serbia must take all appropriate measures within one year the judgment became final to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicant's.

### 6.3. *Abortion*

Neither the ICCPR nor the ECHR define the beginning of life.<sup>229</sup> Article 63 of the Constitution guarantees *everyone* the right to freely decide whether to have children or not, while the Family Act<sup>230</sup> *specifies that women* are free to decide whether or not they will have children. The European Commission of Human Rights took the view that the right to respect for family life cannot be interpreted so widely as to confer on the father a right to be consulted or to make applications about an abortion his wife intends to have performed.<sup>231</sup>

Abortion is regulated by the Act on Termination of Pregnancies in Medical Institutions,<sup>232</sup> under which an abortion may be performed only at the request of the pregnant woman and with her explicit written consent. A simple request by the pregnant woman is sufficient up to the tenth week of pregnancy (Art. 6) and only in three instances thereafter.<sup>233</sup> The decision on the fulfilment of requirements for the termination of a pregnancy is rendered in every individual case by the health institution performing the termination. Who in the health institution renders the decision depends on the week of pregnancy.<sup>234</sup> The Act is in accordance with international standards in this field.

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229 In its judgment in the case *Vo v. France*, ECHR, App. No. 53924/00, (2004), the ECtHR took the view that the issue of when life begins is within the jurisdiction of the member states as there is no consensus in Europe on the scientific and legal definition of 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.

230 *Sl. glasnik RS*, 18/2005 and 72/2011 – other law.

231 *Paton v. the United Kingdom*, ECHR, App. No. 846/78, 19 DR 244, 3 EHRR 408 (1980).

232 *Sl. glasnik RS*, 16/95 and 101/05.

233 Exceptionally, a pregnancy may be terminated in the event the medical findings indicate that the life of the mother is at stake or that serious damages to her health cannot be prevented otherwise, in the event it can be concluded on the basis of scientific and medical knowledge that the child will be born with severe physical or mental disorders, and in the event the woman's pregnancy was the result of a commission of a crime – rape, intercourse with a helpless or underage person or by abuse of authority, seduction and incest.

234 The following establish whether the abortion requirements have been fulfilled: until the 11th week of pregnancy – the health institution's specialist in obstetrics and gynaecology; from the

The Criminal Code<sup>235</sup> incriminates illegal termination of pregnancy i.e. an abortion committed, initiated or assisted in contravention of regulations (Art. 120).

The Holy Synod of the Serbian Orthodox Church supported an initiative by a number of doctors urging the prohibition of abortion in early June 2013.<sup>236</sup> Although the initiative was not upheld by the state officials, at least not publicly, such views are in contravention of Serbia's positive legislation and accepted international norms. They can also lead to practices not justified by a legal enactment. Namely, the Health Care Act<sup>237</sup> lays down that an ethical committee shall be formed as one of the professional bodies of a health institution from among the institution's medical staff and citizens with a law degree residing or working in the catchment area of the institution. The Act on Termination of Pregnancies in Medical Institutions sets out that the ethical committee shall also review whether the conditions for the termination of a pregnancy have been met in case the woman is 20 or more weeks pregnant. The Ethical Committee of the Clinical Centre of Serbia has 11 members, one of whom is a Serbian Orthodox priest. His appointment is not envisaged by the law, as the above-quoted provision of the Health Care Act demonstrates. No other than the Clinical Centre of Serbia had issued an order to the Gyn-Ob Institute back in 2002 to ensure that the medical staff recommend to all patients who want to have and fulfil the requirements for an abortion to first have a talk with the Serbian Orthodox priest in the Centre. In that enactment, the Centre also launched an initiative with the then Health Ministry to appoint a Serbian Orthodox priest to the Ethical Committee. The Centre Director decided in July 2013 to ban the "recommendation" on the talk with the priest, thanks to a reaction by the Youth Initiative for Human Rights.<sup>238</sup>

Article 5 of the newly-adopted Act on Health Care of Children, Pregnant Women and New Mothers<sup>239</sup>, under which doctors are under the obligation to notify the Republican Health Insurance Fund of abortions, also met with sharp public reactions.

#### 6.4. Confidentiality of Correspondence

Article 41 of the Constitution guarantees the right to confidentiality of letters and other means of communication and allows for derogations from this right only on the order of the court and if such derogations are necessary to conduct

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11th to the 20th week of pregnancy – by the medical consultation team of the appropriate relevant institution; after the 20th week of pregnancy – by the Ethical Committee of the health institution.

235 *Sl. glasnik RS*, 85/05, 88/05 - corr, 107/05 - corr, 72/09 and 111/09.

236 "SOC Calls for Banning Abortions", *RTS online*, 4 June, <http://www.rts.rs/page/stories/sr/story/9/Politika/1336636/SPC+pozvao+na+zabranu+abortusa.html>

237 *Sl. glasnik RS*, 107/2005, 72/2009 – other law, 88/2010, 99/2010, 57/2011, 119/2012 and 45/2013 – other law.

238 Talk with Priest before Abortion Abolished, *24 sata*, 17 July 2013, available at <http://www.24sata.rs/vesti/aktuelno/vest/jedan-besmisao-manjeu-srbiji-ukinuli-savetovanje-sa-svestenikom-spc-pre-abortusa/98103.phtml>.

239 *Sl. glasnik RS*, 104/2013. NB New mothers denote women who have given birth and mothers of children under one.

criminal proceedings or protect the security of the state in the manner prescribed by the law. State interference in the confidentiality of correspondence and other means of communication may be only temporary. The Constitution, unfortunately, does not specify that measures infringing on the confidentiality of communication must be necessary in a democratic society. The Constitutional Court has, however, introduced this standard in the Serbian legal system by referring to Article 8 of the ECHR and ECtHR's case law in its Decision<sup>240</sup>.

There have been many debates challenging the provisions of laws governing surveillance of communications in the recent past.<sup>241</sup> In April 2012, the Constitutional Court rendered a decision<sup>242</sup> declaring unconstitutional the provisions of the Act on the Military Security Agency and the Military Intelligence Agency<sup>243</sup> that had entitled the Director of the Military Security Agency or a person he designated to order the application of special procedures and secret collection of data, including, *inter alia*, the secret electronic surveillance of communication and information systems, i.e. surveillance of communication, without previously obtaining a court decision.<sup>244</sup> The Constitutional Court reaffirmed that a court decision was the only constitutional ground for restricting the right to confidentiality of letters and other means of communication, but it failed to specify which court had the authority to issue such decisions.<sup>245</sup> The National Assembly of the Republic of Serbia on 20 February 2013 adopted the Act Amending the Act on the Military Security Agency and the Military Intelligence Agency,<sup>246</sup> under which the competent Higher Court must issue an order for secret electronic surveillance of telecommunications and information systems in order to collect retained data on telecommunication traffic.<sup>247</sup>

At its session on 13 June 2013, the Constitutional Court rendered a decision declaring unconstitutional Article 128 (paragraphs 1 and 5) and Article 129(4) of

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240 Constitutional Court Decision IUz 1245/10.

241 Act on the Military Security Agency and the Military Intelligence Agency (*Sl. glasnik RS*, 88/09 and 55/2012 – Constitutional Court Decision), the Electronic Communications Act (*Sl. glasnik RS*, 44/10), Criminal Procedure Code (*Sl. glasnik RS*, 72/11 and 101/11), the Security Intelligence Agency Act (*Sl. glasnik RS*, 42/02 and 111/09).

242 Constitutional Court Decision IUz-1218/2010 of 19 April 2012 available in Serbian at: <http://www.ustavni.sud.rs/page/predmet/sr-Cyrl-CS/7485/?NOLAYOUT=1>.

243 The BCHR was one of the organisations that filed a motion for the review of the constitutionality of this law. The Constitutional Court declared the following provisions of the Act on the Military Security Agency and the Military Intelligence Agency unconstitutional: Article 13(1) in conjunction with Article 12(1(6)) and Article 16(2) of the Act. (*Sl. glasnik RS*, 88/09).

244 “Surveillance of communication” entails surveillance of data on who talked to whom, for how long and from where, without insight in the content of the communication.

245 The Security Intelligence Agency Act is the only law that specifies that such decisions shall be issued by the Supreme Court of Cassation.

246 *Sl. glasnik RS*, 88/09, 55/12 – Constitutional Court Decision and 17/13.

247 Article 13a, Act Amending the Act on the Military Security Agency and the Military Intelligence Agency.



the Electronic Communications Act.<sup>248</sup> Under the impugned provisions of Article 128, the operators were under the duty to retain electronic communication data for the purpose of investigating and revealing crimes and conducting criminal proceedings in accordance with the Criminal Procedure Law and to protect the national and public security of the Republic of Serbia, pursuant to the laws governing the work of security agencies and internal affairs authorities, and to allow state authorities access to such data on request. Furthermore, Article 129(4) set out that the ministry charged with telecommunications would lay down the detailed requirements for the retention of data on electronic communications after obtaining the opinions of the ministries charged with justice, internal affairs and defence, the Security Intelligence Agency and the authority charged with personal data protection.

The provisions imposing upon the operators the duty to retain data on their users' communications pursuant to the Criminal Procedure Code, the laws governing the work of security agencies and internal affairs authorities and allowing state authorities access to such data on request obviously are not in accordance with the Constitution, which allows derogations from the right to confidentiality of letters and other means of communication only pursuant to a law.

The initiative to review the constitutionality of the Electronic Communications Act also challenged paragraph 4 of Article 128, under which an operator must keep the retained data on communication over a period of 12 months since it took place. The Constitutional Court stated in its Decision that "the mere keeping of the retained data does not violate the principle of the confidentiality of the means of communication... rather, this provision merely sets out how long the operators must keep the retained data, which may be accessible to the competent authorities only pursuant to a court order, specifying the duration of the measure, wherefore the period during which the retained data have to be kept is different from the time of use of such data".

The Constitutional Court reiterated in its Decision that the inviolability of the confidentiality of letters and other means of communications regarded not only the content of the electronic communications, but other elements as well, who communicated with whom, where from and how many times (formal features of the communication).

The declaration of the above-mentioned provisions of the Electronic Communications Act unconstitutional also put an end to the debates<sup>249</sup> about the Draft Rulebook on the Technical Requirements for the Equipment and Software for the Lawful Interception of Electronic Communications and Retention of Data on Electronic Communications, which had been based on these provisions. The Rulebook

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248 The Decision is available in Serbian at <http://www.ustavni.sud.rs/page/predmet/sr-Cyrl-CS/9081/?NOLAYOUT=1>.

249 Secret Services and Police Will Have a Harder Time Accessing Retained Data, *Danas*, available in Serbian. at [http://www.danas.rs/danasrs/drustvo/tajne\\_sluzbe\\_i\\_policija\\_teze\\_do\\_zadr-zanih\\_podataka.55.html?news\\_id=262555](http://www.danas.rs/danasrs/drustvo/tajne_sluzbe_i_policija_teze_do_zadr-zanih_podataka.55.html?news_id=262555).



used vague terminology and allowed interception of electronic communications and access to the retained data pursuant to an “enactment” of the competent authority rather than a “court order”.<sup>250</sup>

In the wake of the Constitutional Court’s Decision, the Ministry of Foreign and Internal Trade and Telecommunications launched a public debate on the Draft Act Amending the Electronic Telecommunications Act, which lasted until 20 December 2013. The Draft, *inter alia*, includes a new paragraph 2 in Article 128, which specifies that “...access to data shall not be allowed without the user’s consent except for a fixed period of time and pursuant to a *court order*...”<sup>251</sup> The Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: Commissioner) sent a letter to the Minister of Foreign and Internal Trade and Telecommunications, alerting him to the wording used in the Draft.<sup>252</sup> Under the Constitution, derogation from the confidentiality of communication shall be allowed only if necessary to conduct criminal proceedings or protect the security of the Republic of Serbia. The Draft, however, mentions “detection of crimes” and “public security” that are much broader in scope than the exceptions in the Constitution, which may lead to problems in interpretation. The Commissioner emphasised that the Act also needed to include the operators’ obligation to keep records on how many times the retained data have been accessed and periodically notify the Commissioner thereof.

The Constitutional Court rendered a Decision<sup>253</sup> finding that Articles 13, 14 and 15 of the Security Intelligence Agency Act were not in compliance with the Constitution twelve years after the initiative to review the constitutionality of its provisions was submitted. In the press release it posted on its website, the Constitutional Court stated that the “impugned provision of Article 13 of the Act, setting out derogation from the principle of inviolability of correspondence and other means of communication, is not formulated clearly and precisely enough... The provision of impugned Article 13 of the Act, specifying whose constitutionally guaranteed right may be restricted and measures for restricting them, is neither precise, specific, nor specifiable. Citizens and companies are thus prevented from ascertaining which legal rule will be applied in the given circumstances and are thus deprived of the possibility to protect themselves from inadmissible restrictions of their right or arbitrary interference in their right to respect of their private life and correspondence.” Since Articles 14 and 15 are legally and logically linked with Article 13, the Constitutional Court found that they, too, were not in compliance with the Constitu-

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250 More on the Rulebook in 2012 Report, II.6.4.

251 Draft Act Amending the Electronic Communications Act, available in Serbian at [http://mtt.gov.rs/download/Nacrt\\_zakona\\_o\\_izmenama\\_Zakona\\_o\\_el\\_komunikacijama.pdf?lang=lat](http://mtt.gov.rs/download/Nacrt_zakona_o_izmenama_Zakona_o_el_komunikacijama.pdf?lang=lat).

252 Secrecy of Communication Guaranteed under the Constitution has to be Ensured in Practice as Well, <http://www.poverenik.rs/en/press-releases/1724-ustavom-garantovana-tajnost-komunikacija-mora-biti-i-realno-obezbedjena.html>.

253 See the Constitutional Court press release, available in Serbian at <http://www.ustavni.sud.rs/page/view/156-101935/odredbe-cl-13-14-i-15-zakona-o-bezbednosno-informativnoj-agenciji-nisu-u-saglasnosti-s-ustavom>.

tion. The Constitutional Court put off the publication of its Decision in the Official Gazette for four months to give the legislator time to address the impugned issues, given that the National Assembly had asked the Constitutional Court back in September 2012 to halt its review of the constitutionality of the Act because its amendment was under way.<sup>254</sup> The Constitutional Court perhaps need not have put off the publication of its Decision since 15 months have passed and the legislator failed to amend the Act.

The Constitutional Court has been asked to review the constitutionality of Article 286(3) of the Criminal Procedure Code as well. This Article governs the powers of the police in pre-investigation proceedings and paragraph 3 allows the police to obtain a record of telephone communications or the base stations used, or locate the place from where communication is being conducted pursuant to an order of the public prosecutor, not the court. The Constitutional Court did not render a decision on the constitutionality of this provision by the end of the reporting period.

The Commissioner alerted to another way in which the authorities have been ignoring the constitutional guarantee under which derogations from the right to confidentiality of correspondence and other means of communication have to be ordered by the court. Article 282(1(3)) of the Criminal Procedure Code allows the public prosecutor's office to ask the state and other authorities and legal persons to provide it with the requisite information in the event it is unable to ascertain the probability of the the allegations in a criminal report or in the event the information in the report do not provide it with enough grounds to decide whether it needs to conduct an investigation into the case or in the event it had learned that a crime had been committed in another way. The public prosecutors have been invoking this provision and asking fixed and mobile phone operators to provide them with lists of telephone calls by specific individuals.

The Protector of Citizens and Commissioner recommended to the Government and National Assembly 14 measures<sup>255</sup> to improve the legal framework and practice of the state authorities in the field of protection of privacy. However, the Commissioner stated that these measures have not been fully implemented.<sup>256</sup>

The Protector of Citizens and Commissioner in 2012 carried out an oversight exercise to establish how often the security agencies and police accessed the mobile operators' databases without proper legal grounds and alerted the public to their alarming findings, which are corroborated by the information the BCHR obtained by seeking access to information of public importance and perusing the data forwarded by the mobile phone operators.<sup>257</sup> The media in 2012 reported that the

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254 See *2012 Report*, II.6.4.

255 The measures are set out in the Commissioner's press release available at: <http://www.pov-erenik.rs/en/activities/1386-konferencija-za-medije.html>.

256 "We Can Only Take the Security Agencies at Their Word", *Novi magazin*, 1 December, available in Serbian at <http://www.novimagazin.rs/vesti/sabic-bezbednjacima-mozemo-samo-da-verujemo-na-rec>.

257 See *2012 Report*, II.6.4.

electronic communications of the Serbian President and First Deputy Prime Minister were under surveillance.<sup>258</sup> The President claimed at the end of this year that the “Wiretapping” scandal had not been resolved and that he was still under secret surveillance.<sup>259</sup>

Canadian-based Citizen Lab found command and control servers for FinSpy backdoors, part of a “remote control system” in 25 countries, including Serbia.<sup>260</sup> These servers allow for the surveillance of electronic communications via e-mail, chat, Skype and real time surveillance via web cameras and microphones. All this demonstrates the relativity of the guarantees of confidentiality of communication in the Constitution and international conventions and the necessity of radically reforming the legislation, and, above all, the practices of the state authorities.

Some headway has been made with respect to civilian oversight of the security agencies, as the European Commission, too, noted in its 2013 Report.<sup>261</sup> The conclusion that there is no readiness for a substantial reform, however, still stands. Under the Act on the Basis of the Regulation of the Security Agencies of the Republic of Serbia<sup>262</sup>, the security agencies shall be subject to democratic civilian oversight. However, Article 19, which governs the direct oversight of security agencies by the competent Assembly Committee (the Security Agencies Oversight Committee at present), sets out that the Committee members may not seek information from the agencies on the methods they apply to collect intelligence and security data. The question arises how this Committee can properly perform its duties and oversee the constitutionality and lawfulness of the agencies’ work, specified in Article 16 of the Act, if it cannot ask the security agencies how it had obtained specific information. Given that the confidentiality of correspondence and other means of communication may be in play, these legal illogicalities need to be interpreted through the prism of the above problems regarding access to mobile phone operators without proper legal ground.

The Assembly Security Agencies Oversight Committee rendered a Decision on Direct Oversight of the Work of Security Agencies in late March 2013. The Decision governs the way in which the Committee oversees the agencies’ work. Direct oversight entails oversight visits to the security agencies, during which the Committee members shall be allowed access to the agency offices, perusal of their documents and access to data and information about their work. The Decision, however, envisages a number of restrictions: the Committee Oversight Delegation must

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258 See the *Blic* report in Serbian at [http://www.blic.rs/Vesti/Politika/350930/BIA-potvrđila-MUP-izdao-nalog-za-prisluškivanje-Vucica-i-Nikolica](http://www.blic.rs/Vesti/Politika/350930/BIA-potvrдила-MUP-izdao-nalog-za-prisluškivanje-Vucica-i-Nikolica).

259 “I know they are wiretapping me”, *Press*, 23 December, available in Serbian at <http://www.pressonline.rs/info/politika/295160/tomislav-nikolic-znam-da-me-tajno-prisluškuju.html>.

260 See the Wikileaks report, available at <http://www.wikileaks-forum.com/surveillance/325/intrusive-surveillance-software-finspy-found-in-25-countries-including/18026/>.

261 Serbia 2013 Progress Report, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf).

262 *Sl. glasnik RS*, 116/07.

notify the agency of its visit at least three days in advance and of the measures that will be subject to oversight; the Delegation may not seek insight in specific data pursuant to the Act on the Basis of the Regulation of the Security Agencies of the Republic of Serbia, etc.<sup>263</sup> These restrictions provide the agencies with the opportunity to conceal the data they had obtained in contravention of the Constitution or the law and to “eliminate” any irregularities in their work before the Delegation’s oversight visit. Under Article 17 of the Decision, the Committee members and Assembly staff are under the duty to preserve the confidentiality of the information they learned during the work of the Committee even after they are no longer its members or cease working in the National Assembly. This provision merely formally eliminates the risk that they may jeopardise an investigation, wherefore the specified restrictions are even more difficult to justify.

## 7. Personal Data Protection and Protection of Privacy

### 7.1. *General*

Article 42 of the Constitution of the Republic of Serbia guarantees the protection of personal data and sets out that the collection, storage, processing and use of personal data shall be governed by the law. It further sets out that the use of personal data for any the purpose other than the one they were collected for shall be prohibited and punishable in accordance with the law, unless such use is necessary to conduct criminal proceedings or protect the security of the Republic of Serbia, in a manner stipulated by the law. Everyone is entitled to be informed about the personal data collected about him, in accordance with the law, and to court protection in case of their abuse.

The Personal Data Protection Act (hereinafter PDPA)<sup>264</sup> is the main law regulating this field. This law governs the conditions for collecting and processing personal data, the rights and protection of the persons (data subjects) whose data are collected and processed, restrictions of personal data protection, the procedure for protecting personal data before the competent authority, data safety, personal data records, transfer of data outside the Republic of Serbia and monitoring of the enforcement of this law.

Under the PDPA, personal data shall mean any information about a natural person, regardless of its form or format, the carrier of the information (paper, tape, film, electronic medium, et al) or at whose order, in whose behalf or for whose account it is stored. Information about a natural person shall constitute personal data

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263 Security Agencies Oversight Committee Decision 22 Ref. No. 02-1322/13, of 29 March 2013, Belgrade.

264 *Sl. glasnik RS*, 97/08, 104/09 and 68/12 – Constitutional Court Decision.

regardless of the time of creation, place of storage or the means by which they were obtained or of any other features of such data.<sup>265</sup> The purpose of collecting data must be specified in advance and clearly. The Act distinguishes between processing of personal data with the consent of the data subject and in accordance with an authority's legal remit. The data subject whose consent for processing his data is sought shall be clearly notified in advance of the purpose of the data processing and is entitled to subsequently withdraw his consent. Personal data may be processed without the data subject's consent in specific instances.<sup>266</sup> The grounds for processing personal data have been set very broadly and the Act allows public authorities to process personal data without the subjects' consent in a large number of instances.<sup>267</sup>

A number of problems have arisen in practice with respect to the efficient application of the PDPA.<sup>268</sup> Quite a few of the personal data controllers are unfamiliar with the text of the law and the meanings of specific legal terms, particularly the meaning of "personal data processing".<sup>269</sup> Every controller should designate a unit that will act on requests to exercise the rights regarding personal data processing to improve the efficiency of acting on these requests. Furthermore, the controllers need to adopt in-house enactments specifying the measures for the protection of the personal data they have collected during their work.

The shortcomings of the PDPA have become apparent during the five years this law has been implemented, as the Commissioner for Information of Public Importance and Personal Data Protection has regularly alerted. Although the Personal Data Protection Strategy<sup>270</sup> was enacted four years ago, an action plan for its implementation was still not adopted in 2013. Furthermore, the domestic legislation

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265 Article 3, PDPA.

266 Article 12 of the Personal Data Protection Act allows the processing of a person's data without his consent in three instances: when a vital interest, particularly the life, health or physical integrity of the data subject or another person prevails, for the purpose of fulfilling obligations specified in a law, in an enactment adopted in accordance with the law or a contract concluded between the data subject and the controller, and for the purpose of preparing the conclusion of a contract and in other instances specified in the Act to achieve a prevailing justified interest of the subject, controller or user.

267 Under Article 13 of the Personal Data Protection Act, a state authority may process personal data without the consent of the data subject if such processing is necessary to perform the legally-defined duties within its purview laid down in the law or another regulation with the aim of achieving the interests of national or public security, state defence, prevention, detection, investigation and prosecution of criminal offences, economic or financial interests of the state, protection of health and morals, protection of rights and freedoms and other public interests, and in other cases with the written consent of the data subject.

268 Protection of Privacy in Serbia, available in Serbian at: <http://partners-serbia.org/privatnost/wp-content/uploads/2013/07/Zastita-privatnosti-u-Srbiji.pdf>.

269 Under Article 3(3) of the PDPA, personal data processing shall denote any action performed upon data, including data archiving and storage. There have been instances of controllers failing to reply to requests regarding the data archiving periods, the processing actions, legal grounds for and purpose of the processing, as they believe that they are "not processing data".

270 *Sl. glasnik RS*, 58/10.

needs to be aligned with the relevant documents of the European Union<sup>271</sup> and the Council of Europe<sup>272</sup>. The Action Plan for the Implementation of the National Judicial Reform Strategy<sup>273</sup> specified that the amendments to the PDPA were to have been drafted, publicly debated and submitted to the Government for endorsement by the end of 2013, but none of these activities had been implemented by the end of the reporting period.

The Government still has not adopted a by-law governing the archiving of personal data and measures for protecting particularly sensitive data, which it should have passed back in 2009. The Commissioner alerted that this was why the citizens' rights have been violated on a large scale during the processing of their personal data, particularly by the state authorities.<sup>274</sup> A case that caused public furore at the end of 2013 corroborates the necessity of adopting regulations protecting particularly sensitive data. After the adoption of the Act on Health Care of Children, Pregnant Women and Young Mothers Act<sup>275</sup> in late November, a debate<sup>276</sup> ensued about a provision in this law under which gynaecologists must notify the Republican Health Insurance Fund of abortions they performed on women exercising the right to health care under this Act. Personal health data fall under particularly sensitive data and their collection is allowed only with the consent of the data subject or in the event a law stipulates their collection, wherefore this provision is not in conflict with the Constitution or the PDPA. Nevertheless, data collected in such a manner may be used only for the purpose for which they were collected, notably, data on abortions may serve as grounds for depriving women exercising the right to health care under this law (not all pregnant women or young mothers) but the authorities may not draw up any lists or keep records of women who have had abortions. Furthermore, procedures for communicating and processing such data need to be put in place to ensure that as few people as possible have insight in them. The Commissioner wrote a letter to the Health Ministry, alerting it to the problems that may arise in this area and the protection measures that need to be undertaken.<sup>277</sup>

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271 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>.

272 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm>.

273 The Action Plan is available at: <http://www.mpravde.gov.rs/en/vest/2906/action-plan-for-the-implementation-of-the-national-judicial-reform-strategy-for-the-period-2013-2018-.php>.

274 "Many problems in data protection field", *Blic*, 30 December, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/431228/Sabic-Veliki-broj-problema-u-oblasti-zastite-podataka>

275 *Sl. glasnik RS*, 104/13.

276 "This is How We're Fighting against Low Birth Rates: State Registering Women Who Had an Abortion", *Telegraf*, 4 December, available in Serbian at <http://www.telegraf.rs/vesti/892999-ovako-se-borimo-protiv-bele-kuge-drzava-popisuje-zene-koje-su-abortirale>.

277 Commissioner's press release, Processing of Data of Pregnant Women and Young Mothers for Purposes Other than Those Stipulated by the Law is Inadmissible and Punishable, is avail-



## 7.2. Other Provisions Relevant to Personal Data Protection

Provisions relevant to personal data protection can also be found in other laws and regulations, notably those governing labour, tax procedures and the tax administration, health, the banking sector, education, advertising, etc. The PDPA is the main law governing personal data protection and it sets out the relevant principles. These principles should be elaborated by all the other laws governing various fields (security, education, health, labour, economy...). Few, however, do. For example, the Act on Labour-Related Records<sup>278</sup> specifies which data are to be collected and processed during staff recruitment and employment. This Act had been adopted quite a long time before the PDPA and its provisions are thus not in accordance with the new standards.

The National Assembly passed the Acts on Detectives<sup>279</sup> and on Private Security<sup>280</sup> in late November 2013. Both laws came into effect on 15 December 2013. The status of numerous companies providing security services and around 60,000 working in the sector was finally regulated by the adoption of the Private Security Act.<sup>281</sup> Under the Act, responsible persons in companies, entrepreneurs and natural persons providing security services must be vetted by the Ministry of Internal Affairs before it issues them operating licences. This requirement does not extend to owners of private security companies, i.e. there is a risk that people with a criminal past can own such companies as well.

The Private Security Act does not address security checks apart from stating that they shall be undertaken in accordance with the Weapons and Ammunition Act.<sup>282</sup> That law sets out the requirements for obtaining weapons licences and definitely does not suffice for assessing whether someone is fit to provide security services.<sup>283</sup>

The Private Security Act also includes provisions on the protection of privacy. Technical equipment may not be used in a manner violating the privacy of

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able at <http://www.poverenik.rs/en/activities/1716-obrađa-podataka-trudnica-i-porodilja-van-zakonom-utvrdjene-svrhe-je-nedopustena-i-kaznjiva.html>.

278 *Sl. glasnik RS* 46/96, 101/05 – other law and 36/09 – other law.

279 *Sl. glasnik RS*, 104/13.

280 *Ibid.*

281 The precise number of people working in the private security sector is still unknown.

282 *Sl. glasnik RS*, 9/92, 53/93, 67/93, 48/94, 44/98, 39/03, 101/05 – other law, 85/05 – other law, 27/11 – Constitutional Court decision and 104/13 – other law.

283 This further corroborates the necessity of adopting a law on security checks that would regulate this issue in a general manner. Some laws require security checks but deal with this issue only partially (in the field they govern) and incompletely (e.g. they specify which authority is to conduct the security checks but not against which criteria). For instance, under the Classified Information Act, people must be vetted before they are allowed to access and use classified information. The provisions of this law specify which authorities conduct the security checks depending on the degree of confidentiality but do not set out which requirements must be fulfilled for clearance. The non-regulation of security checks, which are requisite in many fields with respect to numerous issues, lends itself to the conclusion that the authorities conducting such checks on an everyday basis enjoy a broad margin of appreciation.



others (Art. 31(2)). The collected data may not be shared with other persons or published (Art. 68(1)) and they must be handled in accordance with regulations on data confidentiality (Art. 69).

The Act on Detectives sets out the requirements for engaging in this activity, the licencing procedure, the powers of detectives and how they shall perform their activities. Articles 30–32 govern personal data protection. The collected data may be used only for the purpose for which they were collected and may not be shared with third parties or published. It is instrumental that the provisions of these two laws are in compliance with the PDPA given that the private security sector, which comprises both private security service providers and the work of private detectives, comes into possession of personal data by the very nature of its job. A general provision clearly referring to the PDPA or the Act on Free Access to Information of Public Importance that would ensure their enforcement with respect to issues not governed by the two new laws is, however, missing in both of them.

On the other hand, both laws lay down that the requisite subsidiary legislation shall be adopted within six months from the day they come into force. These provisions are extremely dangerous for several reasons. First of all, they provide for the regulation of such an important field as the right to privacy by by-laws, although the Constitutional Court held that the data collection, storage, processing and use may be governed only by a law and that Articles 12 and 13 of the PDPA, under which legal grounds for data processing may also be established by a by-law, were not in compliance with the Serbian Constitution.<sup>284</sup>

Second, the Government has very rarely adopted the requisite by-laws within the legal deadlines. For instance, it still has not fulfilled its obligation in Article 16(5) of the PDPA to pass a regulation on the archiving and protection of particularly sensitive data within six months from the day the PDPA came into force, an obligation it was to have fulfilled by May 2010.

The situation regarding the by-laws for the enforcement of the Classified Information Act<sup>285</sup>, which the Government was to have enacted within six months from the day it became effective, is similar. Under this Act, the Government was to have passed regulations on the designation of information as classified (Art. 13(2)), the confidentiality degree criteria (Art. 14(3)), the manner in and procedure for establishing whether other legal or natural persons fulfilled the requirements to access classified information (Art. 46(3), security check questionnaire forms (Art. 61(2), security check certificates (Art. 72(1)) and classified information record-keeping and periods (Art. 83). Under this law, other public authorities were to have passed the by-laws within their purview within one year from the day it came into effect. The adoption of all these regulations is long overdue. The Government adopted only two decrees in the meantime: the Decree on Designation of Information as

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284 Constitutional Court Decision No. IUz-41/10, published in *Sl. glasnik RS*, 68/12. More in 2012 Report, II.6.5.

285 *Sl. glasnik RS*, 104/09.

Classified<sup>286</sup>, which governs the forms for designating and safeguarding information and documents containing classified data and the procedure for designating information as classified, and the Decree on Criteria for classifying information as RESTRICTED and CONFIDENTIAL by the National Security Council.<sup>287</sup>

Access to the data in the citizens' criminal records<sup>288</sup> is governed by the Criminal Code of the Republic of Serbia, under which no one is entitled to seek proof from citizens that they have or do not have a criminal record. Although it prohibits such conduct, the Criminal Code, however, does not penalise it. The Code lays down that citizens may be issued data on the existence or non-existence of a criminal record at their request. On the other hand, state authorities, companies, other organisations or entrepreneurs may obtain such data upon the submission of a reasoned request, in the event the legal consequences of the conviction or the security measures are still in effect and they have a justified and legally based interest in such information.

Areas of major relevance to personal data protection, such as video surveillance, security checks, direct marketing and biometric data remain unregulated, leaving room for extensive abuse.

### 7.3. *Commissioner for Information of Public Importance and Personal Data Protection*

The Commissioner for Information of Public Importance and Personal Data Protection<sup>289</sup> (hereinafter: Commissioner) is an autonomous and independent state authority charged with the protection of personal data. The Commissioner is, *inter alia*, tasked with overseeing the process of personal data processing and reviewing complaints regarding violations of the right to personal data protection. The Commissioner is also entitled to unlimited access to and insight in the collected data, as well as to the documentation, enactments and offices of persons authorised to collect personal data.<sup>290</sup> Furthermore, the Commissioner keeps a nationwide Central Reg-

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286 *Sl. glasnik RS*, 8/11.

287 *Sl. glasnik RS*, 86/13, entered into force on 15 December 2013.

288 Criminal records shall include the personal data of the criminal offenders, the crimes they were convicted of, the data on their penalties, any conditional sentences, court cautions, acquittals or pardons, and data on the legal consequences of the convictions. Subsequent changes to the data in the criminal records, the data on the sentences served and on the expungement of records of wrongful convictions shall also be entered in the criminal records. Article 102(1), Criminal Code (*Sl. glasnik RS*, 85/05, 88/05 - corr., 107/05 - corr., 72/09, 111/09, 121/12 and 104/13).

289 The Commissioner was established as an authority charged with the protection of access to information of public importance under the Free Access to Information of Public Importance Act (*Sl. glasnik RS*, 20/04, 54/07, 104/09 and 36/10). The Commissioner's mandate was expanded to include personal data protection when the Personal Data Protection Act was adopted (*Sl. glasnik RS*, 97/08 and 104/09) and he is now the Commissioner for Information of Public Importance and Personal Data Protection Commissioner.

290 The restrictions of the Commissioner's oversight powers in Article 45 (2–4) of the Personal Data Protection Act, limiting the Commissioner's access to data if such access would seriously undermine the interests of national or public security, defence of the country or actions aimed

ister of data files and data file catalogues all controllers<sup>291</sup> processing personal data are under the obligation<sup>292</sup> to establish in the manner set out in a Government Decree.<sup>293</sup> The Central Register is electronic, public and available on the Internet;<sup>294</sup> it allows the citizens access to the personal data being processed and simultaneously ensures oversight over the work of the data collectors. Insight in the records on individual files may be denied only in the instances set out in the Act.<sup>295</sup> The Commissioner, whose work is characterised by a high degree of transparency,<sup>296</sup> has been continuously conducting activities and alerting to the need to respect and improve the valid regulations in this field and to adopt new ones to ensure abidance by the constitutional guarantees.

According to the data the Commissioner published on his website, the number of personal data protection cases was considerably greater in 2013 than in the previous years (by 50% over 2012 and three times higher than in 2011). The Commissioner saw the fact that 2,200 citizens had sought protection of their rights as a positive trend, as it indicated their greater awareness of their rights, but also as indication of the shortcomings of the system and the state authorities' failure to protect personal data.<sup>297</sup>

The Commissioner's launch of oversight over the enforcement and implementation of the Personal Data Protection Act by the operators of public communication networks and services<sup>298</sup> deserves to be singled out among his numerous activities in 2013.<sup>299</sup> All Internet providers (462 registered providers) were asked

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at the prevention, detection, investigation or prosecution of criminal offences were abolished by the Classified Information Act (*Sl. glasnik RS*, 104/09, Art. 109) and the Commissioner is now entitled to conduct full oversight.

291 Under Article 3(1(5)), a data controller shall denote a natural or legal person or public authority that processes personal data.

292 Article 48, Personal Data Protection Act.

293 Decree on the Form and Manner of Keeping Records of Personal Data Processing (*Sl. glasnik RS*, 50/09), available at: <http://www.poverenik.org.rs/en/legal-framework/bylaws-zp/781-2009-07-23-07-33-26.html>.

294 The Central Register is accessible via: <http://www.poverenik.rs/registar/index.php/en/home.html>.

295 At the request of the collector, the Commissioner shall deny access if necessary to achieve a prevailing interest of preserving national or public security, state defence, the work of public authorities, the state's financial interests or in the event a law, another regulation or enactment based on the law specifies that the records on the data collection shall be confidential – Article 52(7), Personal Data Protection Act.

296 The Commissioner's press releases and other information of relevance to the work of this authority are available at [www.poverenik.rs](http://www.poverenik.rs).

297 See Commissioner's press release: Significantly Different Attitude toward Personal Data Protection Required, available at <http://www.poverenik.rs/en/press-releases/1726-neophodan-bitno-drukciji-odnos-prema-zastiti-podataka-o-licnosti.html>.

298 See the Commissioner's press release: The Commissioner has Initiated Supervision over Internet-Based Operators, available at <http://www.poverenik.rs/en/press-releases/1696-poverenik-pokrenuo-nadzor-nad-operatorima-interneta.html><http://www.poverenik.rs/yu/saopstenja/1696-poverenik-pokrenuo-nadzor-nad-operatorima-interneta.html>.

299 More on the Commissioner's activities in I. 6.

to fill a questionnaire and their answers should provide the Commissioner with the most precise data to date on how they store and process data on their users and whether they have adopted rules on privacy and personal data safety. Their reply to the questions whether individuals not working for the legal persons keeping the data have access to the stored data and on what grounds they may access the databases.<sup>300</sup> The questionnaire is the first part of the oversight exercise and the Commissioner will proceed to directly oversee the operators' abidance by the regulations depending on the quality of the replies they give.

## 8. Freedom of Thought, Conscience and Religion

### 8.1. *General*

The right to freedom of thought, conscience and religion is guaranteed by Article 9 of the ECHR and Article 18 of the ICCPR. Under these Articles, everyone shall freely manifest the belief or religion of his choice whilst the freedom to manifest one's beliefs or religion may be subject only to such limitations as are prescribed by law.

The Constitution of Serbia states that Serbia is a secular state and treats the separation of the church and state at the level of constitutional principles, i.e. prohibits the establishment of a state or mandatory religion (Art. 11). The Constitution also enshrines the right to freedom of thought, conscience and religion, i.e. guarantees the right to stand by or change one's religion or belief by choice (Art. 43). In its provisions on individual religious freedoms, the Constitution also enshrines the freedom to freely manifest one's religion, in worship, observance, practice and teaching, individually or in community with others, and to manifest one's religious beliefs in private or public. Although the freedom of religion is unlimited per se, the Constitution lays down when the manifestation of religious beliefs may be restricted. Freedom of manifesting a religion or a belief may be restricted by law only if that is necessary in a democratic society to protect the lives and health of people, morals of a democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent incitement of religious, national, and racial hatred. The Constitution also lays down that no-one is obliged to declare his religion or beliefs and guarantees parents the right to freely decide on their children's religious education and upbringing. The freedom of religious organisation is governed in the provisions of the Constitution on the status of church and religion, i.e. the equality of churches and religious communities (Art. 44). The right to conscientious objection is enshrined in Article 45 of

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300 The worrying data on the access to mobile telephone users' communications by the security agencies and police published by the Protector of Citizens and Commissioner should always be borne in mind.

the Constitution, but this guarantee has lost its practical relevance after the Army of Serbia was professionalised in 2011.

## 8.2. *Legislative Framework, Status of Religious Communities and Exercise of the Right to Freedom of Thought, Conscience and Religion*

The Act on Churches and Religious Communities<sup>301</sup> governs in detail the issues related to the exercise of the right to the freedom of thought, conscience and religion. It distinguishes between the following four categories of churches and religious communities: traditional, confessional and new religious organisations, whilst the fourth category, unregistered religious communities, is implicitly rather than explicitly established by the Act. Under the Act, churches and religious communities are under the obligation to register. The registration procedure is governed in detail by the Rulebook on the Register of Churches and Religious Communities.<sup>302</sup> Both the Act and the Rulebook provoked harsh criticisms as soon as they were adopted and several initiatives and motions were submitted to the Constitutional Court of Serbia to review the constitutionality of their provisions. The impugned provisions of the Act on Churches and Religious Communities had been analysed in detail in the previous BCHR annual human rights reports.<sup>303</sup>

The Constitutional Court held a public hearing on these motions and initiatives in October 2010 but the proposal of the judge rapporteur did not win the requisite majority and another judge rapporteur was appointed. In 2013, the Constitutional Court dismissed or rejected as inadmissible both initiatives and all four motions to review the constitutionality of specific provisions of the Act on Churches and Religious Communities, six years after they were submitted.<sup>304</sup> Having performed a test of abstract constitutional review, the Constitutional Court thus ruled that all the impugned provisions were in line with the Constitution and international human rights protection instruments.

The *discriminatory distinctions between religious entities* in the very text of the law, which favours the traditional churches and religious communities and places confessional and other religious communities at a disadvantage, may well be the most significant issue contested before the Constitutional Court.<sup>305</sup> Namely, the Act on Churches and Religious Communities recognises the status of traditional churches and traditional religious communities to those churches and communi-

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

302 *Sl. glasnik RS*, 64/06.

303 All annual Human Rights Reports are available at <http://www.bgcentar.org.rs/bgcentar/eng-lat/publikacije/izvestaji-o-stanju-ljudskih-prava-3/>. A detailed overview of the problematic provisions in the Act on Churches and Religious Communities is available in *2011 Report*, I.4.8.

304 See the Constitutional Court Decision No I Uz 455/2011 of 16 January 2013.

305 Article 4, Act on Churches and Religious Communities.

ties, which have continuously existed for centuries and which had acquired their legal personality pursuant to specific laws (Art. 10 (1 and 2)). Furthermore, the Act specifies which churches and religious communities are traditional: the Serbian Orthodox Church, the Roman Catholic Church, the Slovak Evangelical Church a.v, the Christian Reform Church and the Evangelical Christian Church a.v, as well as the Islamic and Jewish Religious Communities. On the other hand, the Act does not list the specific confessional communities in Serbia, although they had already been registered in accordance with prior regulations (Art. 16) wherefore their legal personality has actually been discontinued.

Invoking the guarantees of the equality of religious entities in Serbia in Article 44 of the Constitution, the initiators of normative control challenged the concept of traditional churches and religious communities claiming it was a legal construct based neither on the Constitution nor on comparative law. The Constitutional Court, however, took the view that the provision in Article 44 of the Constitution genuinely guaranteed the equality of churches and religious communities and that the existing legal division into traditional and confessional churches and religious communities did not violate the guarantee of their equality or the freedom of all believers to manifest their religion and beliefs. Furthermore, in the view of the Constitutional Court, recognition of the different roles various religions played in the history of the state is permissible as long as such differences are not used as an excuse for discrimination. It, however, needs to be noted that the distinctions the Act makes between traditional and confessional religious communities unfortunately have greater repercussions on the exercise of other rights by religious communities that are not considered traditional (e.g. the right to freedom of religious organisation, i.e. the possibility to register themselves in the relevant Register, or the eligibility for state financial aid).

The issue of *different registration requirements* laid down for traditional and confessional religious communities is also closely related to the discriminatory distinction among different categories of churches and religious communities.<sup>306</sup> Whereas traditional religious communities need to submit only applications for registration, confessional communities need to file numerous documents together with their applications. In the interpretation of the Constitutional Court, the principle of non-discrimination dictates that different requirements may not be set out for a same category of entities, but, differentiated treatment during the registration procedure is justified given that the traditional and confessional religious communities (in accordance with the above argumentation) are not in an identical situation where registration is concerned. It also said in its Decision that these two categories were, indeed, subject to different treatment in the registration procedure, but only inasmuch as confessional communities had to provide evidence that they fulfilled the legal requirements. Given that the registration procedure does not entail approval of the applications and that it boils down to mere checks of whether the applicants

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306 Article 18, Act on Churches and Religious Communities.



fulfil the requirements to acquire legal personality, the Constitutional Court opined that such actions by the executive authorities were necessary because the state did not possess enough information about the confessional communities. The Court also underlined that the impugned provision of the law did not impose on the administrative authority an obligation to assess the scope and legitimacy of the religious dogmas and teachings of confessional communities during the registration process and that such actions would be unjustified.

However, the Constitutional Court's view that the administrative authority's actions do not affect the rights all churches and religious communities have under the Constitution applies in practice only to the procedure for re-registering traditional churches and religious communities, but not to the procedure for registering where confessional and other religious communities. Namely, the Rulebook on the Register of Churches and Religious Communities lays down much stricter requirements for the registration of confessional and other new religious organisations (Art. 7(3) and Art. 18(2(1)) and Art. 18). As the BCHR noted in its previous annual Human Rights Reports, the Rulebook sets an excessively high threshold of founders needed to register a religious community in the Register. Namely, all religious communities except traditional ones, need to supplement the decision on their establishment with a list of the signatures of the founders accounting for at least 0.001% of Serbia's adult citizens residing in Serbia according to the official census of the population, or of foreign nationals permanently residing in the territory of the Republic of Serbia. Furthermore, they must submit overviews of their main religious teachings, religious rites and religious goals, whereby they are practically forced to declare their religious beliefs.<sup>307</sup> Precisely the impugned provision in Article 18 of the Act on Churches and Religious Communities provides the executive authorities with the opportunity to assess the quality of the religious teachings, rites and goals during the registration procedure, which is absolutely inadmissible from the viewpoint of the freedom of thought and religion and has a restrictive effect on the freedom of religious organisation.

One of the initiatives for the review of the constitutionality of the Act on Churches and Religious Communities also challenged Article 7 of that law, envisaging the provision of adequate *state assistance in the enforcement of final decisions and judgments of the competent bodies of the churches and religious communities*. Although this obligation upon the state indirectly creates room for abuse of the system for the forcible execution of canonical decisions rendered in procedures that mostly do not abide by the rules of contemporary procedural law and thus the right to a fair trial in the meaning of Article 6 of the ECHR, the Constitutional Court was of the view that although church decisions cannot have the character of an enforceable document, the executive authorities, notably the Ministry of Internal Affairs of the Republic of Serbia, has the discretionary right to decide in each specific case whether it will extend its assistance in the enforcement of a church decision. Given

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307 More in 2012 Report, II.7.2.



that decisions of church authorities have effect only within the system of autonomous church law and not in the positive law system, such reasoning by the Constitutional Court is extremely dangerous because it directly violates the principle of the separation of the church from the state.

During its consideration of this issue, the Constitutional Court also found it necessary to first elaborate what secularity meant in Serbia's legal system. In its view, the authors of the Constitution opted for the *system of cooperative separation of the church from the state*. Such a system is based on the separation of the state from the church but simultaneously entails the recognition of the numerous joint tasks these two entities cooperate on, such as, for instance, the state's financial assistance to churches or religious instruction in state schools. With that view of the Constitutional Court in mind, the fact that this decision implicitly gives the green light to the executive authorities to decide arbitrarily and ad hoc whether the police will physically assist the enforcement of a church decision does not come as a surprise. Moreover, the commitment to the so-called system of cooperative separation of the church from the state means the introduction of a greater degree of legal uncertainty in practice.

### 8.3. *Religious Communities*

In addition to the traditional churches, another 19 religious organisations officially exist in Serbia. The last to register, in 2011, was Christ's Evangelical Church. Numerous other small religious communities, estimated at as many as 100, also exist in Serbia. Small religious communities have often complained of discrimination and of being equated with sects. They are also critical of the obligation that they have to declare their religious beliefs on registration and quote this as the reason why most of them have not officially been registered.<sup>308</sup>

Two Islamic Communities have existed in Serbia since 2007. One of them is headed by Mufti Zukorlić and is spiritually linked to the Islamic Community Riyaset in Bosnia-Herzegovina, and the other is headed by Reis-ul-Ulema Adem Zilkić and has limited its activities to Serbia. There were indications in 2013 that the rift between the two communities would be soon resolved.<sup>309</sup>

One murder and one attempted murder that occurred in Novi Pazar within a period of ten days in June 2013 caused tensions in the city. They sparked public protests and calls for the dismissal of the chief of police. Mufti Muamer Zukorlić said that the protests were politically motivated and targeted him and all the activists of his Islamic Community in Serbia and that there were no attempts to fight crime in Sandžak. Novi Pazar Mayor Meho Mahmutović denied the accusations and called on the state authorities to react to them.<sup>310</sup>

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308 *Novosti*, 14 October, p. 4.

309 *Danas*, 5-6 October, p. 15.

310 *Danas*, 21 June, p. III.

The reputation of the Serbian Orthodox Church was shaken by several criminal proceedings conducted against its priests. The one that drew a lot of public attention in 2013 was the trial of priest Branislav Peranović, the erstwhile manager of the Drug Rehab Centre Sretenje in Jadranska Lešnica, who brutally killed a ward of the Centre. The Šabac Higher Court convicted Peranović to 20 years' imprisonment in June 2013. The Appellate Court held a hearing on Peranović's appeal in December but did not render a decision on it by the end of the year.<sup>311</sup>

Representatives of the Serbian Orthodox Church (SOC) openly called for the prohibition of abortions, which met with fierce criticisms among part of Serbia's public.<sup>312</sup> The media wrote about and published data on the privileged status of religious communities, especially the SOC, which boasts the greatest number of believers and religious facilities generating income exempted from VAT. Reports were published claiming that individual bishoprics were selling cemetery plots, that priests were setting up private for-profit companies, which were not subject to any control, that they were renting facilities and land, et al.<sup>313</sup> Other churches in Serbia have engaged in similar activities as well.<sup>314</sup>

## 9. Freedom of Expression

### 9.1. *General*

Freedom of expression is enshrined in Article 19 of the ICCPR and Article 10 of the ECHR. Both of these international treaties allow restrictions of this freedom, provided that they are in accordance with law and necessary in a democratic society.

The right to freedom of expression of opinion is guaranteed by the Constitution (Art. 46). The Constitution guarantees the freedom of the press – publication of newspapers is possible without prior authorisation and subject to registration, while television and radio stations shall be established in accordance with law (Art. 50). The Constitution prescribes that 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

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311 See the *Blic* report in Serbian, available at <http://www.blic.rs/Vesti/Hronika/428051/Svestenik-Peranovic-pred-sudom-Nisam-hteo-da-ubijem-sticenika-vec-da-ga-spasem>.

312 *Vreme*, 27 June, p. 70 and *Danas*, 6 June.

313 *NIN*, 3 October, pp. 19-22.

314 *NIN*, 10 October, pp. 22-24.

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.

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 change of the constitutional order or the violation of the territorial integrity of the Republic of Serbia, to prevent propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (Art. 50 (3)). The right to correction is guaranteed by the Constitution (Art. 50 (4)), which leaves its detailed regulation to the law.

The crime of defamation was finally deleted from the Serbian Criminal Code in 2012<sup>315</sup>, as the press associations and media professionals had been demanding for years. Insults are still incriminated (Article 170) but warrant only fines.

The Public Information Act<sup>316</sup> 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 informing about issues of public interest, protects the interests of national and ethnic minorities and persons with special needs, forbids media monopolies and narrows the scope of privacy of state and public officials (Arts. 2–10). This law is to be replaced soon by a new Public Information and Media Act, which was being drafted throughout 2013 within the media law reform process.

## *9.2. Media Law Reform*

### *9.2.1. Public Information and Media Act*

Under the 2011 Strategy for the Development of the Public Information System in the Republic of Serbia until 2016 (hereinafter: Media Strategy), new media laws were to have been adopted by the end of March 2013. The Media Strategy, based on a 2010 Media Study Report<sup>317</sup> and recommendations by EU experts, was redrafted a number of times by several working groups. The public debate on the

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315 Act Amending the Criminal Code, *Sl. glasnik RS*, 121/12.

316 *Sl. glasnik RS*, 43/03, 61/05, 71/09, 89/10 and 41/11.

317 The Media Study Report is available at <http://www.mc.rs/upload/documents/PDF/MediaStudyReport.pdf>.

Media Strategy and its adoption were put off on a number of occasions and it was at long last adopted in a Government telephone session in October 2011. Its enactment was one of the requirements Serbia had to fulfill to be granted the status of an EU candidate country.<sup>318</sup> The European Union warned that the implementation of the Media Strategy, particularly the parts on media ownership transparency and media funding, was a priority and one of the key issues for EU candidate countries.<sup>319</sup>

The implementation of the Media Strategy and the media law reform involves the adoption of three new laws: a Public Information and Media Act, as the corollary law, a Public Service Media Act and an Electronic Media Act. The media reform aims at eliminating state (co-)ownership of any media and the switch to project-based state aid; the funds that have so far been earmarked for a smaller number of media are to be disbursed among a greater number of outlets to ensure a level playing field in the media market.

Work on the new Public Information and Media Act began in 2013, but the draft was not submitted to parliament for adoption by the end of the year, wherefore the BCHR was unable to comment the specific provisions of the draft. The public debate, however, indicated which provisions may pose a threat to the full realisation of media freedoms and accurate and impartial the provision of accurate and impartial information to the public, which should lie at the heart of the media reform. Two groups emerged during the lively public debate: one for and the other against the state's rapid relinquishment of its (co-)ownership of the media.<sup>320</sup>

The Draft Act sets out the principles of public information, the concept of public interest. It governs the work of editors and journalists, professional press associations, impressum, media distribution, temporary storage of and insight in media reports, the special rights and obligations related to the provision of information to the public, publication of information about individuals, judicial protection, oversight of the implementation of the law and lays down the penalties for violations of the law in its penal provisions. With a view to achieving media ownership transparency, the Draft lays down that media shall be registered in the Media Register,

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318 The Head of the Delegation of the EU to Serbia Vincent Degert said that there could be no more delays in the implementation of the Media Strategy, noting that the EU had supported the strategy by earmarking 1.2 million EUR for its implementation (See the report in Serbian in *Danas*, 18 June, available at [http://www.danas.rs/danasrs/politika/ek\\_vanredno\\_o\\_srbiji.56.html?news\\_id=262747](http://www.danas.rs/danasrs/politika/ek_vanredno_o_srbiji.56.html?news_id=262747)).

319 *Politika*, 22 July, p. 6.

320 Some debates on the draft were extremely heated. The representatives of the Culture Ministry and the OSCE Mission were even threatened orally and physically during a debate the Ministry organised with OSCE's support in Niš in March 2013 (*Politika*, 16 March). The Independent Journalists Association of Serbia (IJAS), the Independent Journalists' Association of Vojvodina (IJAV), the Association of Independent Electronic Media (ANEM) and Local Press (LP) said in their joint press release that, instead of being characterised by arguments, the atmosphere in which the debate was conducted was marked by intolerance and, at times pogrom-like (<http://www.anem.rs/en/aktivnostiAnema/saopstenja/story/14588/Obstruction+of+public+discussion+on+the+Draft+Law+on+Public+Information.html>).

which will, in addition to the main information about the outlets and their owners, include also data about the individuals associated with them, including their spouses or partners, relatives, household members and proxies. The Register should also include data on state aid granted to each outlet, on financial aid provided by state authorities and funding earned from advertising.<sup>321</sup> In the view of media representatives, the Draft sets out that the media provide superfluous information, e.g. they are to regularly report the state aid they receive, although the State Aid Oversight Commission is charged with this obligation. Furthermore, the media are also to report revenues earned from advertising public companies, although the State Auditing Institution should be tasked with this duty.<sup>322</sup>

Under the Draft, a media outlet may be established only by a legal person. The Draft, however, does not allow the Republic, autonomous province, local self-government unit, or an institution, company or another legal person fully or partly owned by the state or fully or partly funded from public revenues to found an outlet, either directly or indirectly. Media outlets may be established by National Minority Councils, state universities, with the aim of informing and training students, and the Republic, to inform the population in Kosovo.

The Draft prohibits media ownership concentration and sets a ceiling of 50% of the circulation for print media and a 35% audience share ceiling for electronic outlets in one calendar year. The latter practically leaves the electronic media market open to abuse because the ownership share in the outlets is irrelevant as long as their audience share does not exceed 35%. Since the ownership share in the outlets is irrelevant as long as their audience share does not exceed 35%, the Draft actually allows for the establishment of a network of radio or TV stations covering a large share if not all of Serbia's territory and thus a monopoly.

The new mode of state aid to media, the main change this draft law brings, prompted the greatest number comments and suggestions among the media associations, mostly about the transparency of fund allocation. The Media Coalition, comprising the IJAS, JAS, IJAV, ANEM and LP, called for the inclusion of a transitional provision prohibiting publicly owned media from applying for project-based funding until the transition to project funding is completed in order to provide a level playing field for all the media, the inclusion of protective provisions regarding the direct aid media receive from ministries not charged with public information or budget-funded organisations and public companies. It is also of the view that the criteria for approving funding for media projects must be specified in the law to ensure the uniform enforcement of the provisions on project funding.<sup>323</sup>

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321 The Journalists' Association of Serbia (JAS) suggested that the Register also include data on funding received from foreign states and foreign state agencies and all other sources that exceed 10% of the outlets' annual revenues. See the report on the public debate in Serbian, available in Serbian at: <http://www.mc.rs/brojne-primedbe-na-nactr.50.html?eventId=62374>.

322 More in Serbian in *Politika*, 9 March.

323 See Comments and Suggestions on the Draft Law on Public Information and Media, available at <http://www.anem.rs/en/aktivnostiAnema/AktivnostiAnema/story/14574/COMMENTS+AND+SUGGESTIONS+ON+THE+DRAFT+LAW+ON+PUBLIC+INFORMATION+AND+MEDIA.html>.

### 9.2.2. Public Service Media and Electronic Media

The situation was even more complicated with respect to the other two laws being drafted – the Public Service Media Act and the Electronic Media Act. The Ministry of Culture and Information published the drafts of these two laws in early August, which envisage the existence of two public broadcasters – Radio Television Serbia (RTS) and Radio Television Vojvodina (RTV). A member of the working group drafting the two laws, Vladimir Vodinelić, said that the Ministry had made changes to the Draft Public Service Media Act the group had prepared and sharply protested against its practice<sup>324</sup>. Media associations and professionals also criticised this draft law.<sup>325</sup> The Ministry soon withdrew the Draft from the public debate and formed a new expert group to prepare the law.<sup>326</sup>

The two draft laws were publicly debated in October 2013. The debate on the Public Service Media Act was accompanied by a fierce polemic, particularly about the provisions on the privatisation of the media and the number of public service media in Serbia<sup>327</sup>. Representatives of several electronic outlets owned by local self-government called for the establishment of regional public service media; this would spare them from privatisation and they would continue receiving money from the budget<sup>328</sup>. Media experts are against this solution, arguing that the media will not enjoy equality in the market if it is upheld.<sup>329</sup> Under the final version of the Draft Public Service Media Act, public broadcasters will mainly be funded from subscription fees and will receive funds from the budget only if the collection rate falls under 85%. Public broadcasters will also be allowed to earn money from advertising and other activities (concerts, exhibitions and international funds). In the event the law is adopted in its present form, 2014 will be a transitional year and the Serbian Government will have until September 2014 to propose a comprehensive and efficient way for funding the public service media through subscription; budget funding of these broadcasters is to cease in 2015, unless the subscription fee collection rate falls below 85%. Although Ministry of Culture and Information State Secretary Gordana Predić told news agency Beta that the draft would be in the par-

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324 See report on the Pešćanik website, available in Serbian at <http://pescanik.net/2013/07/ko-pise-medijske-zakone/>.

325 The IJAS and the Centre for Advanced Legal Studies (CUPS) called on the Ministry of Culture and Information to withdraw the drafts from the public debate because they had not been prepared by the Ministry working group charged with drafting the media laws.

326 The disputed provision in the draft that was withdrawn did not set the timeframe within which RTS would be funded from the budget, while the previous version envisaged that it would be funded from the budget until 2015. More in the RTS report, available in Serbian at <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1378474/Povu%C4%8Den+Nacrt+zakona+o+javnim+servisima.html>.

327 See the *Studio B* report available in Serbian at <http://www.studiob.rs/info/tema.php?id=463>.

328 See IJAS report available in Serbian at: <http://nuns.rs/info/news/18944/gradovi-brane-svoje-televizije.html>

329 See IJAS report available in Serbian at: <http://www.nuns.rs/info/news/20788/jednake-uslove-poslovanja-za-sve-lokalne-medije.html>



liament pipeline before the end of the year, the fate of this law remained uncertain at the end of the reporting period.

Given the major delays in the drafting of the Electronic Media Act, the work of the radio and TV stations is still governed by the Broadcasting Act<sup>330</sup> adopted back in 2002. The Republican Broadcasting Agency (RBA) was established pursuant to this law as an autonomous and independent legal authority vested with public powers.<sup>331</sup> The draft of the Electronic Media Act that will replace the Broadcasting Act *inter alia* governs the powers and purview of the regulatory electronic media authority, a Council, which will be established in lieu of the RBA. The Council will issue operating licences, which will be valid for eight years, but it will be entitled to revoke an outlet's licence in the event it establishes irregularities in its operations. The Ministry representatives claimed that the Council would comprise experts (two are to be elected by the Serbian Assembly, one by the Vojvodina Assembly, and the rest by media associations, art associations and church and university), but, as some participants in the debate warned, it does not prohibit the appointment of an individual finally convicted of a crime to the Council. Under the Draft Act, electronic media shall comprise public service media, commercial stations and stations established by NGOs. The Draft does not envisage the existence of state-owned media (apart from public service media) and prohibits ownership of electronic media outlets by political parties and legal persons in case it is impossible to identify the owners of the initial capital.

Most of the participants in the public debate on the draft laws were critical of the drafts, claiming that the procedure in which they had been endorsed was undemocratic, that their authors disregarded the Media Strategy and that some of their provisions were unconstitutional. Representatives of local electronic and print media claimed that they were in a subordinate position because they were not involved in preparing the laws. Some members of the working group were criticised as well. Namely, allegations were voiced that working group member Saša Mirković was registered as the representative of the ANEM business association in the Business Registers Agency and that he had a 30.09% share in the B92 management and consulting company, which gave rise to doubts that he was in conflict of interests.<sup>332</sup>

The representatives of the Ministry of Culture and Information said that the draft laws were finalised after the public debate and forwarded to the other ministries for comment.<sup>333</sup> Although Assistant Culture and Information Minister Saša Mirković said in December 2013 that a public call for media projects the Ministry would fund in 2014 had been published and that project funding would predominate in 2015,<sup>334</sup> it remained unclear whether the state would discontinue directly fund-

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330 *Sl. glasnik RS*, 42/02, 97/04, 76/05, 62/06, 85/06 and 41/09.

331 A detailed analysis of this law is available in the 2002 *Report*, I.4.9.3.1.

332 More in the Euractiv report, available in Serbian at: <http://www.euractiv.rs/mediji/6386-zakon-o-elektronskim-medijima-nejasan-i-neustavan->.

333 <http://www.blic.rs/Vesti/Drustvo/431458/Nacrti-medijskih-zakona-upuceni-ministarstvima>.

334 See more at <http://www.blic.rs/Vesti/Politika/429604/Mirkovic-Novi-medijski-zakoni-pocekom-2014>.



ing the media from the budget as of 1 January 2014 and whether the state would withdraw from its (co-)ownership of the media by the end of 2014 and how. It was also unclear when the Public Information and Media Act and the other two laws would be adopted. At a round table on media organised by ANEM in late December, Mirković said that the Draft Public Information and Media Act was upheld by the Ministry of Foreign and Internal Trade and Telecommunications and that the Ministry was still waiting for feedback from the Ministries of Finance and Justice and the Republican Legislation Secretariat and would then ask Brussels for a final opinion via the Serbian European Integration Office.

It may be concluded that the problems of media, the revenues of which have constantly been declining, have been exacerbated, inter alia, because of the failure to pass the media laws within the Media Strategy deadlines. The independent media are at a particular risk and are in need of particular support given that they have been losing revenues from advertising because of their critical reports. There is a risk that such media will disappear in the absence of transparent and impartial project funding.

### 9.3. *Status of Media and Media Professionals*

The status of the media in Serbia became disquieting in 2013. Indications that the authorities were interfering in the work of the media in 2012<sup>335</sup> were corroborated in 2013 not only by the delays in the adoption of the new media laws, but also by the views of individual senior officials indicating the state's reluctance to withdraw from its (co-)ownership of the media. The European Union also warned that the implementation of the Media Strategy was a priority and that transparency in media ownership and financing of the sector still needed to be comprehensively addressed, particularly as regarded direct state financing, highlighting that this was one of the key issues for EU candidate countries.<sup>336</sup>

As many as 26% of the TV and 25% of the radio stations in Serbia are publicly owned, while one of the three news agencies, *Tanjug*, is fully owned by the state. Former Assistant Minister of Culture and Information Dragan Kolarević said in August that this agency would be transformed into a Government Press Bureau mirroring the German model<sup>337</sup>, which provoked harsh criticisms among media professionals. The representatives of the Ministry of Culture and Information said in late 2013 that the this idea was abandoned and that the agency would be privatised.<sup>338</sup>

Rather than the withdrawal of the state from the two national public service broadcasters, the draft media laws envisage the abolition of subscription fees and their partial budget financing because of the problems with collecting the subscrip-

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335 See more in *2012 Report*, II.8.6.

336 *Politika*, 22 July, p. 6.

337 *Politika*, 6 August, p. 8.

338 The Ministry of Finance earmarked funding for Tanjug for the first six months of 2014. In the event the agency is not privatised by then, the state will have to secure funding for the latter half of the year as well. (*Danas*, 11 December, p. 6)

tion fees. In the spring of 2013, First Deputy Prime Minister Aleksandar Vučić earlier in the year said that the subscription fees would be abolished,<sup>339</sup> which led to a slump in the collection rate in the following months. The OSCE warned that state financing of the public broadcasters gave rise to the risk of government influence on their editorial policies.<sup>340</sup> Assembly Culture and Media Committee Chairwoman Vesna Marjanović also voiced concern that some media were propaganda tools in the hands of the ruling parties and that control of and pressures on media risked to jeopardise their independence and autonomy.<sup>341</sup>

Amnesty International stated in its report its concern over the intimidation of journalists and increasing threats to the freedom of the media in Serbia,<sup>342</sup> while the US State Department noted that harassment of journalists and pressure on them to self-censor was also a significant area of concern.<sup>343</sup> The European Commission held a similar view, assessing that threats and violence against journalists remained a significant factor in self-censorship.<sup>344</sup>

Serbian media experts have singled out political and economic influences on the media as the main factor for the problems in this field and warned that the Government has persistently been refusing to review the report of the Anti-Corruption Council, which analysed the situation in the Serbian media in detail.<sup>345</sup> The media privatisation case, initiated by the Anti-Corruption Council and included among the 24 priority investigations of controversial privatisations in Serbia, was not resolved in 2013.<sup>346</sup> First Deputy Prime Minister Aleksandar Vučić spoke about the results of these investigations at a news conference in December 2013, specifying that the investigation into media privatisation had not yielded any results yet and that this was “the only controversial case in which the preliminary proceedings have not been completed yet”.<sup>347</sup>

On the other hand, Freedom House ranked Serbia as a partly free country. Serbia was rated 74<sup>th</sup> on its list, one place up compared to 2012.<sup>348</sup>

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339 *Vreme*, 28 November, p. 16.

340 *Danas*, 4 October, p. 5.

341 See the RTS report in Serbian at <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1438018/Stefanovi%C4%87:+Ozakoniti+nezavisan+polo%C5%BEaj+RTS-a.html>.

342 *Blic*, 27 February, p. 9.

343 US State Department 2012 Report on Human Rights Practices, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

344 Serbia 2013 Progress Report, p. 44, available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf).

345 *Politika*, 27 June, p. 8.

346 The case was initiated after the Anti-Corruption Council published its Report on Pressures on and Control of Media in Serbia back in 2011, available at: <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/mediji/IZVESTAJ%20O%20MEDIJIMA%20PRECISCEN%20ENG..pdf>.

347 See *Novosti* report, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:470769-Vucic-Rasvetljene-24-sporne-privatizacije-pokrenuto-11-istraga>.

348 Freedom House, 2013 Freedom of the Press report, available at <http://www.freedomhouse.org/report/freedom-press/2013/serbia#.Utz7zN11jmg>.

### 9.3.1. Financial Status of the Media and Media Professionals

Fifteen dailies, three of them regional, one focusing on sports and one other on economy, were published in 2013. One daily was distributed free of charge. There were no reliable data on the circulation of dailies in 2013 by the end of the reporting period, although it is definitely smaller than in 2012, when it totalled around 800,000 copies. Tabloids were the most popular (accounting for two-thirds of the total circulation). The following dailies were sold the most across the country and yielded the greatest influence: *Politika*, *Danas*, *Blic*, *Večernje novosti* and *Kurir*.

Pressures on media have increased also due to the increasing financial difficulties they and their staff have been facing, caused by the years-long economic crisis and unregulated media market. According to the Business Registers Agency data, over 1,000 media outlets are operating in Serbia, but only four dailies and less than half of the weeklies have earned profits in the past three years.<sup>349</sup> According to some assessments, media revenues from advertising fell to one-third of what they used to earn, wherefore the state, which earmarks nearly two billion RSD for the media, is one the leading media “clients”, which provides it with additional room for influencing their editorial policies.

The Ministry of Culture and Information set aside 28 million RSD to co-fund media projects in 2013, or 20% less than in 2012. Former Minister Bratislav Petković allocated the funding pursuant to the laws on state administration and public information, based on the reasoned proposals of the commission he himself had established and his perusal of the projects.<sup>350</sup> The local authorities have followed similar practices. For instance, local TV stations, which did not cover Leskovac Mayor Goran Cvetković’s tour of the clean-up of the wild garbage dump in the village of Međa, will be allocated 10% less funding from the city budget.<sup>351</sup> Zaječar Mayor Velimir Ognjenović allocated 18 million RSD from the city budget to the TV station he owns, *TV BEST*. Another TV station, owned by a member of the City Council, was allocated 6.5 million RSD, while the third local station received only 250,000 RSD.<sup>352</sup>

The plight of print media will deepen as of 1 January 2014, when the VAT is raised from 8 to 10 percent. The Vojvodina Government in mid-2013 owed the daily *Dnevnik* 30 million RSD, i.e. half of the annual sum it had granted this outlet from the budget under a Vojvodina Assembly decision.<sup>353</sup> All of this has put the media staff in financial dire straits. Serbia is the only country in Europe in which average salaries of journalists are lower than the national average salaries.<sup>354</sup>

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349 *Vreme*, 1 August, p. 16.

350 *ANEM*, Legal Monitoring of the Serbian Media Scene, June, p. 18.

351 The Leskovac Mayor was also quoted as saying the following: “If the gentlemen in the local media want funds from the local self-government, they will have to cover us at all times,” (*ANEM*, Legal Monitoring of the Serbian Media Scene, September, p. 4).

352 *Blic*, 25 August, p. 4.

353 *Politika*, 18 July, p. 8

354 *Politika*, 11 October, p. 5.

### 9.3.2. Trials of and Assaults and Pressures on the Media

A number of assaults on journalists were registered in several Serbian cities in 2013 (Leskovac, Novi Sad, Beograd, Nova Pazova, Bački Gračac et al).<sup>355</sup> Hand grenades were thrown at the house of the owner of the Telegraf portal in March.<sup>356</sup> Four journalists were round the clock police protection – B92 Broadcasting Company Chief Editor Veran Matić, author of the B92 investigative reporting show Brankica Stanković, Večernje novosti Loznica correspondent Vladimir Mitrić and journalist Aida Ćorović, who had headed the Novi Pazar NGO Urban in. Ćorović stepped down two weeks later because, as she stated, she did not “want this organisation to be targeted by malevolent people and those who want to continue pulling this society back.”<sup>357</sup>

Numerous threats were voiced against journalists in the year behind us as well. One of the most serious ones was made by the right-wing organisation *Naši*, which put up posters with lists of “anti-Serbian” media and NGOs in several cities, accusing them of propaganda-information terrorism and calling for their prohibition and for arrests. *Naši* also called on the authorities to adopt a law on foreign agents.<sup>358</sup> Prime Minister Ivica Dačić called on the prosecutor’s office to react and it opened an investigation and B92 filed a criminal report against members of the organisation *Naši*.<sup>359</sup> Threats were also voiced against the owner of the daily *Kurir*, the journalists of Smederevo *TV Jerina*, the Valjevo correspondent of *Privredni pregled*, *Danas*’ Novi Pazar correspondent, journalists of the Prokuplje-based portal *Južne vesti*,<sup>360</sup> the reporters and editors of Novi Pazar *Radio sto plus*, journalists of the newspapers *Alo* and *Naše novine*, RTS’ correspondent in Sokobanja and other journalists.<sup>361</sup>

The decriminalisation of defamation led to fewer trials against journalists and media companies in 2013 over 2012, when, according to Statistical Office of the Republic of Serbia (SORS) data, the courts rendered 553 judgments in insult and defamation cases, finding many outlets and reporters guilty. Politicians had been awarded the largest amounts of compensation, between 300 and 400 thousand RSD.<sup>362</sup> The courts discontinued a number of trials in January 2013 and acquitted a number of defendants charged with defamation; they also rejected the plaintiffs’ motions to sue the defendants for insult instead. Revocations and rejections of claims continued in 2013 as well. The Belgrade dailies *E novine* and *Danas* and writer Svetislav Basara were found guilty of violating the plaintiffs’ honour and reputation in 2013.

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355 The reports are available in the BCHR archives.

356 *Večernje novosti*, 24 March, p. 8.

357 *Danas*, 11 December, p. 7.

358 ANEM Legal Monitoring of the Serbian Media Scene, January-February, p. 4; *Danas*, 15 and 16 January, pp. 3 and 7; *Politika*, 16 January, p. 5.

359 *Blic*, 17 January, p. 5.

360 The Niš Basic Public Prosecutor’s Office filed a motion for indictment against three people suspected of making these threats (*Politika*, 4 September, p. 9)

361 The reports are available in the BCHR archives.

362 *Večernje novosti*, 26 July, p. 5.

The most problematic conviction against the media was brought against the Apatin weekly *Novi glas komune* and radio stations *Dunav* and *Apatin*. The parents of a student, M.N, who had committed suicide, sued these outlets for publishing untrue reports. The Sombor Higher Court rejected the claims, but the Novi Sad Appellate Court upheld them, ordering the weekly to pay one million RSD and cover the court expenses in the amount of 200,000 RSD; *Radio Dunav* was ordered to pay 400,000 RSD and *Radio Apatin* 200,000 RSD. The Novi Sad Appellate Court rendered this unprecedented verdict against a local media outlet although it had been concluded that their reports were true (and the Press Council confirmed they had not violated the press code of conduct). The Court said in its reasoning that the plaintiffs' right to privacy had been violated, although they had not complained of such a breach, and that there was no justified public interest to know about the young woman's tragic death.<sup>363</sup>

#### 9.4. Conduct by Media and Media Professionals

Another problem increasingly characterising the Serbian media stage apart from self-censorship and non-transparent media ownership are the campaigns the so-called tabloids have been waging against people and the unconfirmed information they have been publishing without suffering any consequences. Such media are often a tool in the fight against opposition politicians or public figures, who do not support the ruling parties. In addition to the Serbian media organisations and associations, the European Commission also remarked on such developments, noting that "[R]eports of orchestrated media campaigns in certain tabloids against the opposition, coalition partners or independent bodies, detailing investigations or announcing arrests, based on anonymous or leaked sources from the police investigation or prosecution, raise concerns".<sup>364</sup> Tabloids are used for clashes within the ruling coalition as well. They have continued publishing police and security agency documents and information<sup>365</sup> and violating the presumption of innocence, the right to privacy, the prohibition of discrimination and the regulations on the protection of the identity of minors and their protection from pornographic and other inadequate material.

The daily *Kurir* waged a campaign against Police Director Milorad Veljović and several other senior police officials throughout September, accusing them of links with organised crime and tycoons and of exerting influence on politicians, whilst mostly quoting anonymous sources or failing to quote their sources altogether. *Kurir* also published an entire criminal report in a special supplement.<sup>366</sup> A

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363 *Večernje novosti*, 25 July, p. 4, *Politika*, 31 July, p. 7 and October, p. 7; *NiN*, 5 September, p. 4.

364 See the Serbia 2013 Progress Report, p. 10, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf), and *Danas*, 18 October, p. 2.

365 The publication of photographs taken during the police surveillance of a well-known drug lord is definitely one of the more striking examples, see the photos and article in Serbian at: <http://www.kurir-info.rs/skandalozno-veljovic-i-osmani-zajedno-u-toaletu-fotogalerija-clanak-988041>.

366 *Kurir* 4-27 September, pp. 3-6.

similar campaign was waged for months against Democratic Party (DS) leader and the then Belgrade Mayor Dragan Đilas.<sup>367</sup> TV Pink owner Željko Mitrović joined in it and also started attacking the daily *Blic* and the IJAS<sup>368</sup> for reporting about an accident in which one girl was killed and which was caused by his son. The RBA at long last spoke up and issued a warning to *TV Pink* that it was violating the law and the professional code of conduct and threatened to revoke its broadcasting licence temporarily, and even permanently.

A days-long campaign was conducted against the parents of eight-year-old Tijana Ognjanović, who died during medical treatment for which the family raised a large sum of money through public appeals, with the media accusing them of spending the money or trying to keep it.<sup>369</sup> When the inheritance proceedings were completed, it transpired that over 1.6 million EUR remained in the family's account, that it had only spent a portion of the money on the little girl's treatment and funeral and that the parents would give the remaining funds to charity. Journalist Dušan Mašić published an open letter on B92's website to the *Kurir* journalist Sanja Ilić, who had written about the Ognjanović family, but his letter was soon removed from B92's website, resulting in numerous comments about self-censorship in the media.<sup>370</sup> B92 founder and News Chief Editor Veran Matić apologised for the gesture, stating that this would not have happened had he been in the country.<sup>371</sup>

Unprofessional conduct and violations of professional and ethical standards occurred the most often in TV reality shows and press coverage of the developments in those shows.<sup>372</sup> Paedophilia, offensive language, physical clashes and hate speech have featured in such programmes. The RBA in April stepped up surveillance of reality shows and required of *TV Pink* to stop broadcasting the show *Adulterers* and move another, similar show *Moment of Truth* to a late night time slot. *TV Pink* complied.<sup>373</sup>

The Complaints Review Commission of the Press Council,<sup>374</sup> an independent self-regulatory authority, held ten sessions in 2013 and rendered a number of decisions finding violations of the Press Code of Conduct — the Commission cannot

367 *Kurir*, 17 October, p. 3.

368 *Kurir*, 16, 19, 20, 22 and 25 June, pp. 9, 6, 6, 5, 6; *Večernje novosti*, 14 and 22 June, p. 5 and *Politika*, 22 June and 7, 8, and 18 August, pp. 6, 5, 8 and 8.

369 *Kurir*, 1, 3, 4, 5, 6, 8, 9, 14, 27 and 28 November, pp. 10, 8, 10, 8, 8, 10, 6, 8, 11 and 8.

370 Letter to *Kurir* Journalist Taken off Portal in Serbia, see the report in Serbian at <http://www.mojevijesti.ba/novost/176715/Tekst-upucen-novinarki-Kurira-skinut-sa-portala-u-Srbiji>.

371 Veran Matić Publicly Apologises for Censorship of Mašić's Letter, see the report in Serbian at <http://www.021.rs/Info/Srbija/Veran-Matic-se-javno-izvinio-zbog-cenzure-Masicevog-pisma.html>.

372 According to the April 2013 poll by agency *Faktor plus* and the daily *Politika*, 38% of the respondents regularly and 43% of them occasionally watch reality shows. Articles on reality shows are read regularly by 30% and temporarily by 36% of the pollees. Nearly one half of the respondents (47%) like such shows, while 25% of them do not have an opinion about them, *Politika*, 30 April, p. 6.

373 *ANEM*, Legal Monitoring of the Serbian Media Scence, April, p. 11. See also *Večernje novosti*, 1 June, p. 15.

374 More on the work of the Press Council is available at <http://www.savetzastampu.rs>.



itself initiate proceedings and can only act on complaints submitted to it.<sup>375</sup> ANEM stated in its report that the Commission was out of money because the Norwegian Embassy in Serbia stopped funding its work and that it risked dissolution although it has been receiving more and more serious complaints about the way the press in Serbia has been reporting.<sup>376</sup>

Individual outlets have been spreading hate speech, as the Chairwoman of the National Assembly Culture and Media Committee Vesna Marjanović noted as well. She also alerted to negative trends in the electronic media programming and that stations with national frequencies devoted little time to culture; she specified that, during a nine-month period, only 0.15% of RTS Channel 1's airtime was devoted to culture, that culture programmes accounted for 5.47% of RTS Channel 2's broadcasts while *TV Prva* and *TV Pink* had not aired any culture programmes during that period.<sup>377</sup>

A poll conducted among 2,500 high-school studentss by the Media Coalition in October and November corroborates the conclusion that provision of true information does not appear to be the priority of the media. Most of them have a poor opinion of the quality of the media and think that the media in Serbia are not independent. In their view, the Internet, social networks and TV are the most influential media. Radio and weeklies are the last on the list of media the young inform themselves from.<sup>378</sup>

## 10. Freedom of Peaceful Assembly

### 10.1. General

The freedom of peaceful assembly is guaranteed by the leading international human rights documents that are binding on Serbia as well. This right is enshrined in general terms in Article 20 of the Universal Declaration of Human Rights.

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375 Most of the complaints regarded articles published in *Kurir*, *Blic*, *Informer* and *Alo*.

376 According to Complaints Review Commission member on behalf of IJAS and *Vreme* journalist, Tamara Skrozza, the Commission has been operating actively since the autumn of 2011 and has to date received 104 complaints: 15 were submitted by institutions or associations, five by politicians, seven by other media and the rest by members of the public. The Commission rendered 53 decisions, finding violations of the Serbian Press Code of Conduct in 29 cases. The other 51 complaints did not fulfil the review requirements. All decision see on <http://www.savetzastampu.rs>.

377 Joint session of the Serbian Assembly Culture and Information Committee and the CoE Parliamentary Assembly Sub-Committee on Media and Information Society, more is available at [http://www.parlament.gov.rs/16th\\_Sitting\\_of\\_the\\_Culture\\_and\\_Information\\_Committee.20131.537.html](http://www.parlament.gov.rs/16th_Sitting_of_the_Culture_and_Information_Committee.20131.537.html).

378 See RTV's report in Serbian at [http://www.rtv.rs/sr\\_lat/drustvo/istrazivanje-mladi-nezadovoljni-medijima\\_445650.html](http://www.rtv.rs/sr_lat/drustvo/istrazivanje-mladi-nezadovoljni-medijima_445650.html).



The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (Art. 11) and the International Covenant on Civil and Political Rights (ICCPR) govern this right in greater detail (Art. 21).

The right to freedom of peaceful assembly is enshrined in Article 54 of the Constitution, under which citizens are to free to assemble peacefully and indoor assemblies shall not be subject to approval or notification. Outdoor rallies, demonstrations and other forms of assembly shall be notified to the state authorities in accordance with the law. The Constitution guarantees only the freedom of *peaceful* assembly, which is in accordance with international standards. The Constitution, however, states that *citizens* may assembly freely, i.e. it does not guarantee this right to aliens or stateless persons. The ECHR guarantees the right to freedom of peaceful assembly to “everyone”, while the ICCPR “recognises” this right generally, without limiting it to specific categories of people. The ECHR includes a separate article allowing restrictions of the activity of aliens,<sup>379</sup> but only with respect to political activity, wherefore this provision could justify the ban on political assemblies organised by aliens. Assemblies are not necessarily always political and the general exclusion of aliens from the exercise of the right to freedom of assembly, like the one in the Constitution, is unjustified. Furthermore, the ECHR does not mention restrictions of rights of stateless persons. It, however, needs to be noted that in all of its decisions on constitutional appeal cases on the freedom of peaceful assembly, the Constitutional Court of Serbia noted that Article 11 of the ECHR did not substantively differ from Article 54 of the Constitution, which may indicate that the Constitutional Court interprets the right in these articles in accordance with the standards established by the ECtHR, and that it would recognise it also in case of aliens unless political assemblies are at issue. The Constitutional Court has not yet reviewed any cases alleging violations of the right to freedom of assembly because the organiser was an alien, wherefore one cannot draw a conclusion on what its view on that issue would be.

Under the Constitution, the authorities need not be notified of indoor assemblies. On the other hand, the Constitution sets out that the state authorities shall be notified of outdoor assemblies in accordance with the law. It is unclear from this provision whether each outdoor assembly must be reported or whether the law may specify in which cases such an obligation does not exist. The latter interpretation is definitely preferable, for, although the valid law does not envisage exceptions to the pre-notification obligation, the new law might govern the notification procedure more liberally and more in accordance with international standards.

The last paragraph of Article 54 of the Constitution, specifying when the freedom of assembly may be restricted, is in accordance with international standards. Article 54 of the Constitution explicitly lays down that the freedom of assem-

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379 Article 16 of the ECHR – Restriction on the political activity of aliens: Nothing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

bly may be restricted by the law only if necessary, while Article 20 prescribes that human rights may be restricted only “to the extent necessary to meet the constitutional purpose of the restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right”. Article 54 lists four grounds on which the freedom of assembly may be restricted: to protect public health, morals, the rights of others or the security of the Republic of Serbia. Therefore, no other grounds except these can justify restrictions of the freedom of assembly, because the list in the Constitution is exhaustive. Of course, the question remains how these grounds are interpreted in practice, i.e. what can be subsumed under them because they are set quite broadly.

### *10.2. Public Assembly Act*

In the Republic of Serbia, the right to freedom of peaceful assembly is governed by the Public Assembly Act<sup>380</sup>, which was adopted back in 1992. The Act was amended several times in the meantime but its provisions are still obsolete and largely incompatible with international standards and, indeed, Article 54 of the Constitution. The previous Government formed a working group to formulate recommendations to align the legislative framework with international standards and asked the OSCE/ODIHR and Venice Commission to render their opinion on the valid law.<sup>381</sup> The working group completed its work and adopted its recommendations, which took into account the opinion of the OSCE/ODIHR and the Venice Commission, back in 2010. The Ministry of Internal Affairs, which is charged with this field, drafted a new law, which has not been publicly debated yet. The draft includes some improvements over the valid law; however, its authors kept some highly criticised provisions in it as well, and, furthermore, included some new solutions that give rise to concern.<sup>382</sup> The draft can still be amended and improved during a public debate.

The Constitutional Court launched a review of the Public Assembly Act at its own initiative in May 2013 pursuant to Article 168(1) of the Constitution.<sup>383</sup> It was prompted by the shortcomings of the Act regarding the legal remedies, which it had already found ineffective in its reviews of constitutional appeals. Furthermore, the Constitutional Court is of the view that it needs to review whether the grounds for restricting the freedom of assembly in the Act, which are broader than those set out in the Constitution, are in compliance with the Constitution. The Constitutional Court finds disputable Article 11(3) of the Act, under which an appeal of a first-instance ruling prohibiting a public assembly shall not stay its enforcement, as well as deadlines in various provisions within which the relevant authorities must decide whether

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380 *Sl. glasnik RS*, 51/92, 53/93, 67/93 and 48/94, *Sl. list SRJ*, 21/01; Constitutional Court decision, *Sl. glasnik RS*, 101/05 – other law.

381 [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)031-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)031-e.pdf).

382 Draft law was analysed in detailed in the 2012 *Report*, II.9.

383 Constitutional Court Ruling Initiating Proceedings I Uz 204/2013 of 30 May 2013.

to ban a pre-notified public assembly, as well as the deadline by which a public assembly must be notified, because the effectiveness of the protection of the guaranteed freedom directly depends on these deadlines. In the Constitutional Court's view, the provisions specifying at which venues public assemblies may not be held and allowing local self-governments to specify venues where public assemblies may be held under the general criteria in the Act are also disputable. The following question arises in principle: can the legislator, departing from Article 20(1) of the Constitution,<sup>384</sup> lay down any grounds for prohibiting a public assembly without explicitly linking them directly to the grounds for restricting this freedom in the Constitution.

The BCHR had alerted to all the deficiencies of this Act in its prior annual human rights reports.

The 1992 Public Assembly Act, which is still in force, does not define assemblies precisely and merely specifies that a public assembly shall denote the convening and holding of a rally or another event at an appropriate venue (Art. 2 para. 1).

The Act does not specify that an assembly in terms of this law denotes only an assembly held to express common claims and goals, which is protected by international human rights law. This has given rise to confusion whether e.g. sports or commercial events fall under legislation on the freedom of peaceful assembly.

The new Draft Act on assemblies defines an assembly as "any organised assembly of more than 10 people held to publicly express, realise and promote political, social and national views and goals, and other forms of assembly". Other forms of assembly entail public performances i.e. "assemblies organised for the purpose of pursuing state, religious, cultural, humanitarian, sports, entertainment and other interests". The inclusion of these "forms of assemblies" in a law governing the freedom of assembly is unjustified, because an assembly in terms of the international guaranteed right to freedom of assembly may on occasion require greater tolerance than some other events at which a greater number of people are rallying, because the freedom of assembly protects fundamental democratic values, whereas, a sports event, for example, is not of such relevance to society. Therefore, there is a risk that the police may have greater leeway in assessing whether to allow fans to attend soccer matches than in assessing whether to allow an event conveying a political message. The definition of an assembly in the Draft equates all types of events.

### *10.2.1. Assembly Venues*

The provisions on venues "appropriate" for public assemblies in the Public Assembly Act are also disputable. The Act defines an appropriate venue as a location which is accessible and suitable for gatherings of persons whose number and

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384 Human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of the restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right (Article 20, Constitution).

identity are not established in advance, and in which the assembly of citizens does not cause the disruption of public traffic or threaten the health, public morals or safety of people and property. According to the Act location adequate for a public assembly shall also denote a location in which public transport takes place, when it is possible to ensure the temporary rerouting of traffic by additional measures, as well as the protection of the health and safety of people and property.

The Act thus prohibits assemblies at venues at which an assembly does “not cause the disruption of public traffic”. The grounds for such a restriction do not exist either in the Constitution or international standards and the existence of this provision in the law is unacceptable. Although the following paragraph of this Article allows assemblies at venues where public traffic takes place, it sets out additional requirements (in this and other articles of the Act), which may be regarded as excessive and unjustifiably limiting the freedom of peaceful assembly.

The provision prohibiting assemblies at venues causing traffic disruption is one of the most disputable and criticised provisions of the Act. Lamentably, the new Draft Act includes a nearly identical provision, differing from the valid law only inasmuch as it specifies that the organiser of the assembly shall bear the costs of rerouting the traffic.

Article 2(4) includes another major restriction regarding assembly venues stipulated that public assembly may not be held in the vicinity of the Federal Assembly or the National Assembly of the Republic of Serbia<sup>385</sup> immediately before or during the sessions.”

Although the expression “immediately before or during the sessions” may at first glance lead to the conclusion that assemblies at these venues are prohibited for short periods of time, a “session” actually denotes the entire period the National Assembly is in session and may last weeks. Indeed, participants in assemblies will wish to rally in front of the Assembly at the very time the deputies are in it in order to convey their message to the political stakeholders. Furthermore, the Act does not specify what “the vicinity” of the Assembly entails, which leaves additional room for arbitrariness. The Draft Act does not restrict the organisation of assemblies in front of the National Assembly.

The above-mentioned general prohibitions of assemblies at specific venues laid down in the Public Assembly Act are not in compliance either with the Constitution or international standards. There might well be grounds in specific situations for prohibiting a specific assembly in front of the Assembly, e.g. to protect national security. The existence of such grounds and the necessity of prohibiting such an assembly must, however, be assessed on a case to case basis.

Under the Public Assembly Act, cities and municipalities shall in advance designate the “appropriate” venues at which public assemblies may be held. There is, however, no reason why the authorities should designate only specific venues for

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385 Due to the political changes in the country, the Federal Assembly has in the meantime ceased to exist, but the National Assembly of the Republic of Serbia holds its sessions in that building.

assemblies; rather, the organisers should be provided with the opportunity to themselves choose the venues of their assemblies, whilst the authorities should assess whether any of the grounds for restriction are applicable and whether restriction is necessary in each specific case. Furthermore, the Constitution and international instruments allow for restrictions of the freedom of assembly only in accordance with the law. The provision providing the local authorities with the discretionary right to designate appropriate assembly venues allows for restricting the freedom of assembly via local self-government administrative enactments through the back door. The Draft Act commendably does not include this provision, which the Constitutional Court will review in the proceedings it launched in May 2013.

The Act states that public assemblies may be held at a venue or along a specified route, which is in keeping with international standards. The Act, however, unnecessarily limits public processions by setting out that a public procession along a public traffic route must be continuous. This provision facilitates the work of the police and of the authorities charged with traffic management, but definitely does not constitute sufficient grounds for restricting the right to freedom of assembly. This provision is rightly absent from the Draft Act.

#### *10.2.2. Assembly Notification*

Organisers of assemblies in Serbia are under the obligation to notify the authorities of an assembly they are planning to hold, but do not need to wait for their approval, which means that an assembly in Serbia is subject to notification but not to consent. This solution is in accordance with international standards. The deadlines for notification are acceptable as well – static assemblies must be reported at least 48 hours in advance, while public processions must be reported at least five days in advance. If the deadlines are too short, it is extremely unlikely that the courts will be able to decide on appeals of decisions prohibiting assemblies in time for the events to be held as scheduled. It is, however, difficult to strike the right balance to ensure that the freedom of assembly is not restricted by unreasonably long notification deadlines, on the one hand, and to provide the courts with enough time to rule against an unjustified restriction, on the other. The Draft Act stipulates that static assemblies must be reported at least five days and public processions at least seven days in advance. The deadlines it gives courts to rule on any appeals, however, lack another 24 hours if the goal is to ensure that their final decisions are rendered before the scheduled time of the assemblies.

According to the valid Public Assembly Act, the organiser shall file an advance notice of an assembly with the Ministry of Internal Affairs and a copy of the notice to the competent city or municipal authority charged with public utility services related to the holding of an assembly. The law, unfortunately, does not specify which local government departments the organiser should contact and with respect to which issues, or how a negative response from these departments affects the holding of an assembly. The collection of the requisite documentation can on

occasion incur considerable costs, which restricts the right to freedom of peaceful assembly. The organisers of the Pride Parade have over the previous years regularly collected the extensive documentation they needed for holding their assemblies, which involved a lot of organisation, time and considerable costs. The situation was the same this year as well.

The organisers of the Pride Parade were required to obtain a series of other consents and approvals from Belgrade City and Savski venac municipal authorities and public companies.<sup>386</sup> It took the organisers months to obtain all these decisions, until August 2013. They were also under the duty to submit to the competent authorities (the Savski venac Municipality, the Belgrade public utility company Green Spaces, the Savski venac police station) a plan of the stage that was to have been put up in the Manjež Park and detailed information about the company that would be charged with maintaining order during the event. They were asked to make an advance payment to cover the costs of public traffic changes, given that the Pride Parade was planned as a procession. Organisers of other public processions in 2012 had not been required to obtain the numerous consents imposed upon the Pride Parade organisers in 2011 and 2012.<sup>387</sup> In 2013, all that was required of the Serbian Radical Party, which organised a procession to mark the 10<sup>th</sup> anniversary of its leader Vojislava Šešelj's voluntary surrender to the ICTY, and the association of soccer fan groups, which organised a procession "Stop to Fan Victims", was to submit notices of their assemblies to the police.<sup>388</sup> Such unequal treatment of assembly organisers by the competent bodies is absolutely groundless and may amount to a gross restriction of the freedom of assembly based on discrimination.

The law does not require of the organisers to obtain various approvals from the public utility authorities, but these approvals are in practice required under local self-government regulations, wherefore it is occasionally up to the public utility authorities whether an assembly shall be held.

The Draft Act merely obliges the organisers to pre-notify the Ministry of Internal Affairs of their assemblies but does not mention the current obligation to submit copies of the notices to the local self-governments. Indeed, the current Act does not impose on the organisers the obligation to obtain approval from the local authorities either, just to submit copies of the notices to them and the practice of seeking approval from the local authorities will likely continue under the local regulations although there are no grounds for it either in the valid or the draft law.

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386 For example: consent of the Savski Venac Municipality to organise an assembly in the territory of the municipality, consent of the City Traffic Secretariat to hold a procession, consent of the Green Spaces PUC to hold the assembly on a city green space, request to the City Garbage PUC to dislocate the garbage containers, request to the Parking Services PUC to dislocate parked vehicles, etc.

387 As the monitoring of the freedom of assembly within an OSCE Mission to Serbia 2012 project, in which the BCHR was involved, revealed.

388 See *Analysis of the Assembly Notification Administrative Procedures*, Youth Initiative for Human Rights, available in Serbian at <http://rs.yihr.org/rs/article/1045/>



The Draft Act is unfortunately silent on the duties and powers of local authorities regarding the freedom of assembly, although there are many problems in that field.

The Draft Act poses an additional burden on the organisers of assemblies by stipulating that they must file their notices “personally”. There appears to be no good reason for the imposition of this obligation, particularly in view of the already onerous requirements the organisers have to satisfy.

Under Article 14 of the valid Act, the police shall prevent the holding of an assembly they had not been notified of. This is not in accordance with international standards which accept the existence of an advance notification system in general but also require the existence of exceptions when the character of the assembly precludes its timely notification. The Draft Act regrettably also lays down that the police shall prohibit, i.e. prevent or disperse an assembly “not reported on time or properly”.

Although the Act obligates the police to disperse an assembly they have not been notified of or in the event the notice does not satisfy all the legal requirements, such assemblies are nevertheless held in practice. The police can, of course, always prohibit such assemblies under the law if they want to. That is precisely the problem. Although allowing spontaneous assemblies is commendable from the perspective of the freedom of assembly, such actions by the police are not based on the law (moreover, they are in contravention of the law). The possibility to invoke the law to prohibit one unreported assembly and allow another one to proceed in the same circumstances leaves room for arbitrariness. The police have on occasion demonstrated excessive flexibility, e.g. when they provided protection to an assembly at which discriminatory messages were voiced. A rally was staged in Bogovađa at Lajkovac in November 2013 to protest against the presence of asylum seekers, who had been sleeping in the woods around the local Asylum Centre, which lacked the capacities to accommodate them. The organisers claimed that the asylum seekers posed a security risk to the local residents. The protest, at which some 200 residents of Bogovađa, Donji Lajkovac and Vračevići took part, lasted one hour and involved the blockade of the central village crossroad.<sup>389</sup> That was the only assembly reported in the Lajkovac territory in November; not one assembly was banned that month.<sup>390</sup> The media, however, reported that an unreported two-day protest rally was held in the same village later that month. The Vračevići villagers blocked the Bogovađa-Vračevići road and prevented deliveries of food to the asylum seekers.<sup>391</sup> One cannot but wonder why this assembly had not been prohibited or dispersed given that it seriously endangered the rights of others, which constitutes grounds for restricting the freedom of assembly under the Constitution and international treaties.

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389 “Bogovađa: Protest over Asylum-Seekers”, *RTS*, 9 November, available in Serbian at <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1440497/Bogova%C4%91a,+protest+zbog+azilantata.html>.

390 Information obtained from the Valjevo Regional Police Administration in response to a request for access to information of public importance, No. 037-33/13 of 16 December.

391 “Villagers not Letting Through Food for Asylum Seekers”, *Telegraf*, 28 November, available in Serbian at <http://www.telegraf.rs/vesti/888591-mestani-ne-daju-da-se-azilantima-donese-hrana>



The villagers of Ušće and Skele at Obrenovac rallied in November 2013 to protest against the announcement of the Commissariat for Refugees and Migrations that it would put up the asylum seekers in a former worker's barracks.<sup>392</sup> The relevant police station in Obrenovac had not been pre-notified of the protests.<sup>393</sup> Although the protesters voiced xenophobic and discriminatory messages, the authorities did not prohibit the rally.

Another burden on the organisers is imposed by the provision under which every change in the content of the notice (including also when the organisers are asked to amend or supplement deficient notices) shall be regarded as the submission of a new notice. This may result in the untimely submission of a notice, which had been initially submitted on time but suffered from some negligible shortcomings that the police sought the rectification of. Under the Draft Act, the competent authorities, i.e. the police, shall return a deficient notice to the organiser and ask him to supplement it within 24 hours. The Draft commendably does not include a provision specifying that the submission deadline shall be reckoned from the moment the amended or supplemented notice is submitted.

The organisers are under the obligation to specify the estimated number of participants in the notice. The Act does not specify which consequences they shall bear in case their estimate was wrong. In their Opinion, the OSCE/ODIHR and the Venice Commission noted that a mistake in the estimated number of participants should not lead to any consequences for the demonstration. The Draft Act brings no changes in this respect – it, too, requires of the organisers to provide an estimate of the number of participants in the notice and does not specify the consequences of a wrong estimate.

The current notification system in Serbia can be qualified as overly strict given all the notification related requirements set out in the Public Assembly Act. The Draft Act does not bring any improvements; rather, it is even more demanding in some aspects. It does, however, lay down that the competent local authorities may designate one venue for holding assemblies, which the authorities had not been notified of in advance. The local self-governments are not, however, under the obligation to designate such venues, wherefore this option will not exist in practice if they fail to do so, even if the law allows it.

The Draft Act, however, introduces another obligation, which is in contravention of the constitutional provision on the freedom of assembly. Namely it stipulates that even indoor assemblies shall be reported to the police in the event it necessitates “special security measures”. To recall, the Constitution explicitly lays down that indoor assemblies shall not be subject to approval or notification (Art. 54(2)).

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392 “Asylum Seekers Moved from Bogovada to Obrenovac”, *Blic online* 27 November, available at <http://www.blic.rs/Vesti/Srbija/423092/Azilanti-iz-Bogovadje-preseljeni-u-Obrenovac>.

393 In its reply to a request for access to information of public importance Ref. No. 01/1 214.4-407/13 of 23 December 2013, the MIA Belgrade regional administration stated that 56 sports and 22 other assemblies (family celebrations) were pre-notified in the Obrenovac Municipality in November 2013. Not one ruling prohibiting a public assembly was issued in that period.

### *10.3. Restrictions of the Freedom of Assembly*

The legal provisions on restrictions of the freedom of peaceful assembly are largely incompatible both with the international standards and the Constitution of the Republic of Serbia. Nowhere does the Act mention that the restrictions may be imposed only if they are necessary. Nor do the grounds for restrictions correspond to the international and constitutional standards. The Act also does not provide the possibility of applying a less restrictive measure, such as, e.g. the change in time or venue of the assembly, and envisages only the prohibition of an assembly. Similarly, when an assembly is already under way, the law should lay down that the competent authority shall take all the necessary steps to restore order at the assembly (for instance, by removing the individual or group causing the violence) and disperse the assembly only in the last resort. This would not only be in accordance with international standards but with Article 20 of the Constitution as well.

Draft merely states that the freedom of assembly may be restricted “only on the grounds set out in this Act”, which does not mean much, particularly in view of the fact that the “grounds set out in this Act” i.e. in the Draft do not satisfy international and constitutional standards.

Article 11(1) of the Public Assembly Act allows the police to prohibit a public assembly if they believe it would threaten the health, public morals or safety of people and property or disrupt public traffic. The last ground is in contravention of both international standards and the Constitution and should be struck out from the law.

Apart from these grounds for prohibition, the Act also sets out that the police may temporarily ban an assembly aimed at the violent change of the constitutional order, undermining the territorial integrity or independence of the Republic of Serbia, the violation of constitutionally guaranteed human and civil rights and freedoms, or at inciting and encouraging national, racial or religious hatred and intolerance (Art. 9). The police are under the obligation to submit to the competent court a motion to review the permanent prohibition of such an assembly at least 12 hours before the assembly is scheduled to start.

The organisers of an assembly must be notified of its prohibition 12 hours before the beginning of the assembly both when their assembly is temporarily and permanently prohibited.

Furthermore, in circumstances described in Article 9 and 11 and in the event the assembly is already under way, the police shall order the organisers to disperse the assembly and if they fail to do so, the police shall render a decision on its prohibition and themselves disperse the assembly.

In its above-mentioned review of the constitutionality of the Act, the Constitutional Court will analyse whether these provisions of the Act are in compliance with Articles 20 and 54 of the Constitution, which lay down the grounds on which restrictions of the freedom of assembly are permitted.

The authorities prohibited the Pride Parade in 2013. Although the Constitutional Court had already stated in its rulings on two constitutional appeals that decisions that are post hoc in character are not effective legal remedies, the Ministry of Internal Affairs in 2013 again ignored its view and its authority. Namely, the ruling prohibiting the Pride Parade scheduled for 28 September 2013 was adopted on 27 September 2013, although notification of the assembly had been submitted on 5 October 2012. The adoption of the ruling prohibiting the assembly one day before it was to have been held renders ineffective all the legal remedies the Public Assembly Act envisages. Like the rulings prohibiting the Pride Parades the previous years, this one, too included a blanket explanatory note merely stating that the conditions for prohibiting the assembly had been fulfilled, that it might result in the disruption of public traffic and endanger health, public morals and the safety of people and assets. The Pride Parade organisers met in early September 2013 with the representatives of the Ministry of Internal Affairs and the Minister's Cabinet to discuss the security arrangements. The representatives of the state authorities failed to provide a concrete answer on what their security assessment was or what the police would do. Media reported that the decision to prohibit the Parade was taken by the Bureau for the Coordination of Security Services, chaired by First Deputy Prime Minister Aleksandar Vučić and attended by Prime Minister and Minister of Internal Affairs Iвица Dačić.<sup>394</sup> The latter said that the Parade was banned because security assessments "indicated that no one can guarantee that the Pride Parade would be safe and that there are very serious threats to public law and order."<sup>395</sup> Neither the Parade organisers nor the general public had any insight in the security assessments he mentioned. A number of counter-demonstrations were again scheduled on the day the 2013 Pride Parade was to have been held, wherefore the police prohibited all the public assemblies planned for 28 September 2013.<sup>396</sup> This blanket prohibition effectively equates violent and non-violent public assemblies. The prohibition of all assemblies, including the non-violent ones by people against the Pride Parade, renders the state's interference in the freedom of assembly even more disproportionate. The organisation of the Pride Parade was accompanied by numerous discriminatory statements by state officials and religious dignitaries.<sup>397</sup> Prime Minister Dačić in 2013 openly qualified non-heterosexual orientation as "abnormal" and "unnatural": "it is unnatural and if it is unnatural, if they are a minority and an exception, then they, too, have to endeavour not to insult the feelings of the majority"<sup>398</sup> and

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394 Belgrade Pride Parade will not be Held, *B92*, 27 September, available at [http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=09&dd=27&nav\\_id=87819..](http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=09&dd=27&nav_id=87819..)

395 *Ibid.*

396 The Ministry of Internal Affairs also prohibited *Dveri's* procession Family Walk, the procession planned by the association *Istinoljublje*, and the Prayer Walk scheduled by *Obraz* (an association that has been banned).

397 "Church Wants Higher Birth Rate, not Gay Parade", *B92*, 26 September, available at [http://www.b92.net/eng/news/society.php?yyyy=2013&mm=09&dd=26&nav\\_id=87795](http://www.b92.net/eng/news/society.php?yyyy=2013&mm=09&dd=26&nav_id=87795).

398 "Dačić: Gays are Not Normal, They Portrayed Jesus as a Homosexual", *Press*, 24 September, available in Serbian at <http://www.pressonline.rs/info/politika/286997/dacic-gejevi-nisu-normalni-isusa-su-predstavili-kao-homoseksualca.html>.

that “homosexuals have the same rights as other citizens, but don’t tell me that it is normal when it isn’t. If it’s normal, what are we then, exceptions? Just because this phenomenon exists in EU countries doesn’t mean we have to support it.”<sup>399</sup> It is not, however, up to the state officials to assess the expediency of the Pride Parade; it was up to the organisers of and participants in the Pride Parade to decide whether they wanted to risk their personal safety and fight for equality in Serbia’s society in this way, while it was the state’s duty to protect them from hate and violence of others. This was the fourth time the authorities prohibited the Pride Parade, which indicates that freedom of assembly is systemically violated in cases in which an assembly is promoting a view not supported by the majority. The Pride Parade organisers and would-be participants organised a procession past the Serbian Government headquarters on 27 September 2013, demonstrating their revolt against yet another ban of the Pride Parade, which passed without incident and was safeguarded by the police.<sup>400</sup> That fact demonstrates that the holding of the Parade was entirely possible. No controversial public assembly can be free of all risks. If that were the test for restricting the freedom of assembly, then any assembly could be banned because a group of violent individuals want to prevent it and the state is unable to protect the participants in the assembly from all violence.<sup>401</sup> The Protector of Citizens said that the decision to ban the Pride Parade “accurately reflects the view of those who had taken it and of what they think of human rights – we will protect them, but only if that does not cause us problems in the electorate.”<sup>402</sup>

Only after the 2013 Pride Parade was banned did the police file 18 criminal charges against individuals who had threatened its organisers on social networks.<sup>403</sup> In the opinion of the Commissioner for the Protection of Equality, the competent authorities have again failed to take pre-emptive measures to enable the holding of the Pride Parade “by failing to do enough to suppress homophobia and develop a spirit of tolerance, as corroborated by the data on the extensive hatred of the LGBT population, particularly among young people...”<sup>404</sup>

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399 “Dačić: Being a Homosexual is Not Normal!” *Kurir*, 25 September, available in Serbian at <http://www.kurir-info.rs/dacic-nije-normalno-biti-homoseksualac-clanak-1001325>

400 “Protest Pride Parade Held”, *B92*, 27 September, available in Serbian at [http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=09&dd=28&nav\\_category=12&nav\\_id=75887](http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=09&dd=28&nav_category=12&nav_id=75887).

401 As the ECtHR stated in its judgment in the case of *Christians against Racism and Fascism v. the United Kingdom*, ECtHR, App. No. 8440/78 (1980). “[T]he possibility of violent counter-demonstrations, or the possibility of extremists with violent intentions, not members of the organising association, joining the demonstration cannot as such take away that right. Even if there is a real risk of a public procession resulting in disorder by developments outside the control of those organising it, such procession does not for this reason alone fall outside the scope of Article 11(1), but any restriction placed on such an assembly must be in conformity with the terms of paragraph 2 of that provision”.

402 “Ombudsman Criticises Pride Parade Ban”, *B92*, 30 September, available at [http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=10&dd=01&nav\\_id=87837](http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=10&dd=01&nav_id=87837)

403 “Criminal Reports over Threats against Pride Parade Organisers”, *Blic*, available in Serbian at <http://www.blic.rs/Vesti/Hronika/409224/Krivicne-prijave-zbog-pretnji-organizatorima-Parade-ponosa>.

404 “Pride Parade Banned”, *Politika*, 28 September, available in Serbian at <http://www.politika.rs/rubrike/tema-dana/Parade-ponosa-u-Beogradu-nece-biti.lt.html>.

The Republic of Serbia thus again missed the opportunity in 2013 to fulfil its positive obligation and protect the Pride Parade participants from third parties, primarily members of extremist organisations, who wanted to employ violence to prevent the Pride Parade.<sup>405</sup>

The grounds for prohibiting an assembly in the Draft Act largely coincide with the grounds in the valid law. The former does not mention the protection of public morals as grounds for the ban (although it is listed in the Constitution). Although the disruption of public traffic is not mentioned in the article listing grounds for the prohibition of assemblies, they are practically limited on this ground, too, because the article governing assembly venues specifies that assemblies may be held at venues where public traffic takes place “in the event additional measures can ensure a temporary rerouting of public traffic and the protection of the health of people and the safety of people and property.” In other words, disruption of public traffic gives rise to indirect restrictions. The Draft Act also lays down new grounds for the prohibition of assemblies, not present in the valid law. One of them – stipulating the ban of an assembly organised by a prohibited association – is acceptable. The Draft, however, also lays down that an assembly shall be prohibited if the organiser fails to take the additional measures required by the competent authority on time. This provision imposes a substantial burden on the organisers, who, under international standards, may only be obligated to act peacefully and (perhaps) submit advance notices of their assemblies; the Draft envisages the most drastic sanction for the disrespect of the authority’s order – the prohibition, i.e. prevention or termination of the assembly. The Draft also allows the police to interrupt an event if the stewards are unable to maintain peace and order. To recall, such obligations cannot be imposed on the organisers. Maintaining peace and order is the duty of the police. An entire assembly cannot be deemed violent even if individuals attending it are behaving violently. In any case, whenever there are elements of violence, it is up to the police to react; the responsibility should not be passed to the stewards. The police may disperse an assembly if the violence acquires such proportions that it cannot be halted by removing individuals from the assembly.

#### 10.4. Legal Remedies

The organisers may contest a decision on the permanent prohibition of an assembly (pursuant to Article 11) by filing an appeal in administrative proceedings. An administrative dispute may be instituted against a final decision to ban the assembly. Under Article 9 of the Public Assembly Act, the organisers may appeal

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405 In its judgment in the case of *Plattform “Ärzte für das Leben” v. Austria*, App. No. 10126/82, judgment of 28 May 1988 the ECtHR stressed that the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate. Moreover, in the event the intention of the organiser of a counter-demonstration is specifically to prevent the other assembly from taking place, effectively to destroy the rights of the others, a counter-demonstration cannot be considered peaceful any longer and cannot enjoy protection afforded to the right to peaceful assembly.

first-instance court decisions temporarily banning an assembly. The Public Assembly Act sets out that the decision on the prohibition of an assembly shall be rendered by the competent district court and that it may be appealed. The Act has not been aligned with the new organisation of the courts, which is definitely unacceptable. In the new court system, decisions to ban an assembly are rendered by the Administrative Court. The Administrative Court may render a decision rejecting the motion to prohibit an assembly and revoking the decision on the temporary prohibition or a decision prohibiting a public assembly. The parties may appeal the decision within 24 hours from the moment it is served upon them. The appeal shall be reviewed by the Supreme Court of Cassation within 24 hours from the moment of filing.

Given that the organiser is notified of the prohibition at least 12 hours before the event is to begin, it is very unlikely that the court will be able to render a final decision revoking the prohibition and allowing the assembly in time for it to be held as planned. This is why the Constitutional Court, too, concluded that the protection accorded by the law was ineffective.

Legal remedies are governed much differently in the Draft Act. First of all, it does not distinguish between temporary and permanent prohibitions and treats all bans in the same way. Furthermore, it commendably introduces deadlines within which the courts have to act on prohibitions of assemblies. These deadlines are extremely short and it remains to be seen how they will be observed in practice. Under the Draft Act, the police may prohibit an assembly only temporarily and is in such cases under the obligation to submit to the competent Higher Court a reasoned motion for the prohibition of the assembly at least 48 hours before it is due to begin. The court is under the duty to rule on the motion within 24 hours and the parties then have 24 hours to appeal its decision. Nevertheless, even with such short deadlines, the second-instance decision cannot be rendered before the planned time of the assembly. Namely, if the police submit the motion to the court at the last moment, 48 hours before the event, and then the court renders its decision within 24 hours, the parties have another 24 hours to appeal; this deadline expires at the moment the assembly is to start. The second-instance court is also under the duty to rule on the appeal within 24 hours. Therefore, under the deadlines set in the Draft, if the police are to file the motion 72 hours before the scheduled event, the second-instance decision will also have been rendered by the time the event is scheduled to begin. This is why it would be worth considering imposing upon the police the obligation to file its motion 72 hours before the beginning of the event, which should be feasible, given that a notice of a static assembly has to be filed at least two days and a notice of a public procession at least four days before that deadline.

Another problem that has arisen in practice with respect to the effectiveness of the legal remedies regards the failure to act of the authority charged with rendering a decision on the prohibition of an assembly. Namely, if the competent authority, for instance, does not prohibit an assembly and proposes its “relocation” because it will not allow it to proceed at the proposed venue, the competent authority cannot



formally render any decision restricting the participants' right, because it cannot render a decision on the relocation of the assembly as there are no legal grounds for such a decision. In such cases, there are no decisions of the competent authority the organiser can appeal. This is precisely what happened in 2009, when the competent authority "proposed the relocation" of the assembly to the organisers of the Pride Parade but had de facto prohibited the event. This issue was also reviewed by the Constitutional Court in its decision on the constitutional appeal.

Precisely the provisions of the Act governing the legal remedies prompted the Constitutional Court to itself initiate a review of the constitutionality of this law in 2013.

### *10.5. Responsibilities of the Organisers and Penalties*

Apart from financial obligations arising from the organisation of assemblies in venues with public traffic, the organisers have other obligations to fulfil under the law. In addition to the obligation to file an advance notice of an assembly, the organiser is also under the duty to "take measures to maintain order at the event, that is, organise a steward unit." As already mentioned, these obligations exceed those allowed by international standards.

The Draft Act additionally increases the already substantial burden on the organisers. It does not explicitly mention anywhere that the organisers will bear the costs of the assembly or how the costs will be borne. The Draft introduces the objective responsibility of the organiser for the damage incurred by the assembly participants. Furthermore, it introduces numerous obligations the organiser needs to fulfil – supervise the course of the assembly and manage the work of the stewards, take the necessary measures to ensure peace and order, take measures ensuring that the participants are unarmed and do not incur damage, secure a sufficient number of stewards, take the appropriate health and fire safety measures, etc. All these requirements pose an exceptional burden on the organisers and may have a significant deterrent effect and thus adversely affect the freedom of assembly, wherefore they may be deemed unacceptable, particularly in view of the fact that it is primarily the obligation of the police to maintain public peace and order.

The valid Act prescribes extremely rigorous penalties, including imprisonment, for assembly organisers who violate the law, even the obligation to pre-notify their assemblies. The Draft Act does not envisage the imprisonment penalty.

The valid law makes no mention of the state's obligation to protect peaceful assemblies, although the problems this issue has to date produced in practice reaffirm the necessity of explicitly obliging the competent authorities to protect peaceful demonstrators and facilitate their assemblies which third parties are trying or threatening to prevent by employing violence. The Draft does not bring any changes in that respect.



The valid Act does not govern the issue of counter-demonstrations at all. Given their practical importance i.e. the need to govern issues arising with respect to counter-demonstrations, i.e. how to handle situations in which two organisers want to hold assemblies in the same place at the same time, the new law should set some guidelines for regulating this issue. The provisions in the Draft Act are unacceptable, as they state that in the event that advance notices of two or more assemblies at the same place and at the same time are submitted, preference will be given to the organiser who first submitted the notice. This provision practically prohibits counter-demonstrations, which is undoubtedly excessive. Even hitherto practice has shown that more than one rally can be held at the same place and at the same time without incident and that there is no need for such a rigid solution.<sup>406</sup>

### *10.6. The Role of the Police*

As the above overview of the Act demonstrates, it includes several problematic solutions and provides the Ministry of Internal Affairs with broad powers to prohibit assemblies. However, although the conduct of the police has been beyond reproach in most instances, authorities should not have the leeway to act as they wish as they do now, when the police can decide to prohibit an assembly for a formal reason not in accordance with international standards.

Such leeway has given rise to problems, above all with respect to the Pride Parades, when the police have applied a more rigid approach. On the other hand, as the event in Bogovoda illustrates, the police sometimes display excessive tolerance and allow even assemblies at which the rights of other people are jeopardised.

### *10.7. Constitutional Court Case Law on the Right to Freedom of Assembly*

The Constitutional Court has to date ruled on four cases in which the appellants claimed wrongful restriction of their freedom of assembly. The Court upheld three constitutional appeals and dismissed the fourth because it did not fulfil the procedural requirements.<sup>407</sup> The latest constitutional appeal the Court upheld on 18 April 2013<sup>408</sup> was filed by the Belgrade Pride Parade Association, which organised the 2011 Pride Parade to promote equality and the visibility of people of

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406 Three assemblies were organised with respect to the procedure for the rehabilitation of WWII Chetnik commander Dragoljub Mihailović at a small venue in front of the Higher Court in June 2012 – they organised by the Women in Black, the “partisans” and the “Chetniks”. A large number of policemen were securing the events, which passed without incident. See [http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=06&dd=22&nav\\_category=12&nav\\_id=620491](http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=06&dd=22&nav_category=12&nav_id=620491).

407 The first two cases before the Constitutional Court are described in detail in *2012 Report*, I.9.2.

408 Decision Už 5284/2011 of 18 April 2013.

a different sexual orientation. This event was prohibited by a ruling of the Savski venac municipal police station.<sup>409</sup> In its decision, the Constitutional Court reiterated its opinion that the legal remedies the organisers had at their disposal under the Public Assembly Act were ineffective. In 2011, the ruling prohibiting the event scheduled for 2 October was rendered on 30 September 2011, wherefore the legal remedies provided by the Act would have had post hoc effect, i.e. would have not provided the appellants with timely and thus effective protection of their right. The Constitutional Court concluded that, although the collected data in this specific case did not provide reliable grounds for concluding that the competent administrative authority's decision was arbitrary, the very inability of the appellant to apply a legal remedy and seek a review of the decision to prohibit the event in a proceeding providing it with judicial protection amounted to a violation of the right to judicial protection (Art. 22(1) of the Constitution) and the right to a legal remedy (Art. 36(2) of the Constitution) and, consequently, to a violation of the freedom of peaceful assembly. Therefore, the Constitutional Court did not review whether the prohibition of the Pride Parade was lawful, legitimate, proportionate and necessary in a democratic society in this case, but concluded that the freedom of peaceful assembly had been violated "indirectly" because the organisers of the event had been deprived of the right to an effective legal remedy. The Constitutional Court also observed that the freedom of assembly had not been violated in this case by the state authorities' failure to act, notably, by the MIA's failure to prevent violence against Pride Parade participants by third parties, i.e. to prevent discrimination against them because, as the Constitutional Court concluded, there are not enough grounds for such a violation given that the authorities had prohibited both the Pride Parade and all other assemblies scheduled for the same day. Although the Constitutional Court's decision is based on the law and logical to a large extent, it should have (given its role in promoting democracy and rule of law) also reviewed whether the prohibition of the freedom of assembly had been legitimate, proportionate and necessary in a democratic society, particularly because the prohibition of Pride Parades has almost acquired the proportions of a systematic restriction of the freedom of assembly in the Republic of Serbia. A Constitutional Court's opinion to that effect would definitely affect the future actions of the MIA and undermined the credibility of the homophobic statements state officials have been giving the media in the run up to the Pride Parade. A Constitutional Court decision on the essence of the (in)admissibility of limiting the freedom of assembly would undoubtedly be conducive to the creation of a climate of tolerance and understanding in society.

The 2012 Pride Parade organisers and would-be participants also appealed the prohibition with the Constitutional Court. The Court, however, in 2013 dismissed the constitutional appeal<sup>410</sup>, reasoning that the appeal could not have been submitted by natural persons who had filed it – representatives of the Belgrade Pride

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409 See *2011 Report*, I.4.10.3.

410 Decision UŽ 8463/2012 of 9 July 2013.

Parade Association – and who would have taken part in it had it been held but only by the Belgrade Pride Parade Association, as the legal entity that had given notice of the event. Under ECtHR’s case law on Article 11 of the ECHR, natural persons who had participated in an assembly or would have participated in it are entitled to a remedy i.e. have the status of victims of a violation of the freedom of assembly.<sup>411</sup> The rights of all the individuals had been directly endangered, wherefore there were no grounds for the Constitutional Court to dismiss their constitutional appeal on procedural grounds.

The Constitutional Court commendably referred to ECtHR case law in its interpretations of the constitutional provisions on the freedom of peaceful assembly in each of the cases it reviewed on the merits. What, however, gives rise to concern is that, despite the Court’s views, the competent authorities have not aligned their practices with the views of the Constitutional Court. Specifically, the police still do not reason their prohibitions of public assemblies but merely paraphrase the relevant article or render their rulings prohibiting the events on time, which is precisely what the Constitutional Court qualified as inadmissible.

## 11. Freedom of Association

### *11.1. General*

The International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) guarantee everyone the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. Both of these international documents allow the States Parties to impose lawful restrictions on the exercise of these rights by members of the armed forces and the police, while the ECHR also allows them to impose such restrictions on members of the administration of the State.

The Constitution of Serbia guarantees the freedom to join and form political, trade union and all other forms of associations (Art. 55). The Constitution lays down that associations shall be formed by entry in a register, in accordance with the law, and that they shall not require prior consent. The Register of Associations of Citizens i.e. of non-government organisations (hereinafter Register) is kept by the Business Registers Agency, while the political parties are entered in the Register of Political Parties kept by the Ministry of Justice and State Administration (Register of Political Parties).

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411 See the cases of *Baczowski et al v. Poland*, ECHR, App. No. 1543/06, judgment of 3 May 2007; *Stankov and United Macedonian Organisation Ilinden v. Bulgaria*, ECHR, App. Nos. 29221/95; 29225/95, judgment of 29 June 1998; *Alekseyev v. Russia*, ECHR, App. Nos. 4916/07, 25924/08 and 14599/09, of 21 October 2010.

The exercise of the freedom of association is governed in greater detail by the Act on Associations<sup>412</sup> and the Act on Political Parties.<sup>413</sup> The procedure by which associations are registered is thoroughly regulated by the Business Registers Agency Registration Procedure Act.<sup>414</sup>

### *11.2. Associations of Citizens (Non-Government Organisations)*

The Act on Associations regulates the establishment, legal status, registration and deregistration, membership, bodies, changes in status, dissolution and other issues of relevance to the work of associations of citizens, as well as the status and activities of foreign associations. The Act defines an association as a voluntary and non-government non-profit organisation based on the freedom of association of more than one natural or legal persons established to achieve and promote a specific common or general goal or interest not prohibited by the Constitution or the law. The Act applies subsidiarily, as a *lex generalis*, to other associations the activities of which are governed by other laws (e.g. religious communities, trade unions, political parties, etc.).

An association of citizens may be established by at least three natural or legal persons, one of whom must have residence in the territory of the Republic of Serbia. An association shall pursue its goals freely and autonomously and have legal subjectivity from the moment it is entered in the Register. Regulations on civil partnership shall apply to associations not entered in the Register. Therefore, registration is the *conditio sine qua non* an association has to fulfil to acquire the status of a legal person but it does not have to register to work.

A Registrar's decision may be challenged with the Ministry of Justice and State Administration. An administrative dispute may be initiated against a decision of the Minister. The Business Registers Agency Registration Procedure Act envisages a special legal remedy against a final Administrative Court decision – the submission of a motion for its review to the Supreme Court of Cassation. A motion for the review of a court decision is an extraordinary legal remedy envisaged by the Administrative Disputes Act (ADA).<sup>415</sup> The ADA does not envisage appeals of Administrative Court decisions nor motions for the protection of legality, but specify that such motions may be filed by parties to an administrative dispute<sup>416</sup> and the competent public prosecutor.

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412 *Sl. glasnik RS*, 51/09 and 99/11.

413 *Sl. glasnik RS*, 36/09.

414 *Sl. glasnik RS*, 99/11.

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

416 An administrative dispute may be initiated by a party challenging an administrative decision on its rights and obligations; by a public prosecutor in the event an administrative enactment violated the law to the detriment of public interest; the Attorney General in the event an administrative enactment violates the law to the detriment of the property rights and interests of the

Associations may engage in economic activities but are not entitled to distribute their profits to their members and founders.<sup>417</sup> An association may use its assets only to pursue its goals. Only a local non-profit legal person founded to achieve the same or similar goal may be designated as the successor of an association's assets in its statute in the event it dissolves. An association's assets shall become the assets of the Republic of Serbia and may be used by the local self-government unit in which the association had been headquartered in the event the assets cannot be transferred in accordance with the law or with the association's statute at the time of its dissolution or in the event it was dissolved pursuant to a decision prohibiting its work or in the event its statute does not specify what will happen to its assets in the event it dissolves.

The Act on Associations lays down that funds will be earmarked in the budget of the Republic of Serbia to encourage the implementation of programmes of public interest<sup>418</sup> or cover the funds an association lacks to implement them. These funds shall be disbursed through public calls for proposals. Autonomous provinces and local self-government units may also grant funds to associations from their budgets. Associations funded in this manner are under the obligation to publish reports on their work and funding at least once a year and to submit such reports to their donors (Art. 38). Under the Act, the Government shall specify in detail the grant criteria, the grant procedure and the procedure for reimbursing the funds not used for the purpose they had been granted for. The Office for Cooperation with Civil Society was established by a Government Decree in April 2010.<sup>419</sup> Its main goals are: to involve civil society organisations (associations of citizens) in a continuous dialogue with the Government institutions and encourage ongoing and open cooperation between the associations of citizens and the state administration authorities. In 2012, the Government enacted a Decree on funding to encourage the implementation of programmes of public interest by associations or cover the funds they lack to implement them<sup>420</sup>, which should increase the transparency of budget allocations and prevent the misuses that had been possible due to existence of legal lacunae.

The 2013 Budget Act earmarked 150,960,000 RSD for NGOs under budget line 481, a drastic cut over 2012, when the allocation stood at 7,846,427,575 RSD.

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Republic of Serbia, an autonomous province or a local self-government (Art. 11, ADA). The defendant in an administrative dispute denotes the authority the enactment or silence of which is disputed (Art. 12, ADA).

417 An association performing an economic activity generating income exceeding the amount it needs to pursue its goals shall be fined between 50 and 500 thousand RSD (Art. 73(1(2))).

418 Programmes of public interest shall, notably, comprise programmes in the fields of social welfare, veteran-disability protection, protection of people with disabilities, social care of children, protection of internally displaced people from Kosovo and refugees, birth rate stimulation, aid to the elderly, health care, human and minority rights protection and promotion, education, science, culture, information, environmental protection, sustainable development, animal protection, consumer protection, anti-corruption, as well as humanitarian and other programmes via which an association is exclusively and directly satisfying public needs.

419 *Sl. glasnik RS*, 26/10.

420 *Sl. glasnik RS*, 8/12.

Data on how much money had actually been disbursed to NGOs will be known only after the Act on the Budget Balance Sheet is adopted, after 15 July 2014.<sup>421</sup> As of 25 December 2013, the Government still had not adopted the report on budget funds spent on NGOs in 2012, which was prepared by the Office for Cooperation with Civil Society.<sup>422</sup> The Office analysed the collected data and established that civil society organisations had been allocated funds from other budget lines as well.

The Act on Associations lays down that legal and natural persons that give contributions and donations to associations are entitled to tax exemption. Under Article 15 of the Corporate Profit Tax Act,<sup>423</sup> a company's outlays – in the amount not exceeding 3.5% of its total revenue – on health care, cultural, educational, scientific, humanitarian, religious, environmental protection and sport-related purposes, as well as on social care institutions established in accordance with the law governing social protection, shall be recognised as expenditure.<sup>424</sup> These outlays shall be recognised as expenditure only if the funds were paid to legal persons that were registered for those purposes and have been using the funding solely to pursue the above mentioned activities. The tax laws, however, do not include provisions allowing for tax relief on these grounds yet, i.e. direct tax deductions for companies donating funds to associations of citizens. Civil society organisations have filed amendments<sup>425</sup> to the Draft Act Amending the Corporate Profit Tax Act. The amendments to the Corporate Profit Tax Act adopted in 2013 did not include the CSOs' suggestions to expand the list of tax-deductible activities to include the promotion and protection of human rights, promotion of democratic values, the fight against corruption, EU integration, gender equality etc.

### 11.3. Restriction and Prohibition of the Work of Associations

Freedom of association is not an absolute right, wherefore it may be restricted in the event such restrictions are prescribed by law, necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others (Art. 11(2), ECHR). Art. 22(2) of the ICCPR lays down that freedom of association may be restricted in the interest of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The Constitution

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421 Office for Cooperation with Civil Society Memo 022 No. 96-00-0001/2013-1 of 11 December 2013.

422 As the Office for Cooperation with Civil Society told BCHR in response to a phone query.

423 *Sl. glasnik RS*, 25/01, 80/02, 80/02 – other law, 43/03, 84/04, 18/10, 101/11 and 119/12.

424 The percent of recognised expenditure affects the amount of taxable corporate profit as the taxable profit is calculated in the tax balance by adjusting the company profit declared in accordance with the method of acknowledging, measuring and estimating revenue and expenditure.

425 Civic Initiatives, European Centre for Not-for-Profit Law and the Balkan Community Initiative Fund. See *Debate on Amendments to Laws Hindering the Work of NGOs*, available in Serbian at <http://www.gradjanske.org/page/news/sr.html?view=story&id=6027&sectionId=1>.

specifies that the Constitutional Court may ban only associations the activities of which are aimed at the violent change of the constitutional order, violation of guaranteed human and minority rights or incitement to racial, ethnic or religious hate. The Act on Associations further prescribes that an association may be prohibited in the event its goals and activities are aimed at undermining the territorial integrity of the Republic of Serbia, incitement of inequality, hate or intolerance on grounds of race, ethnicity, religious or other affiliation or orientation, as well as of gender, sex, physical, psychological or other features or abilities.

The Act on Associations thus introduces new grounds for banning an association not recognised in international documents – undermining territorial integrity. On the other hand, it specifies what “protection of the rights and freedoms of others” as grounds for prohibiting an association entail. However, undermining territorial integrity need not necessarily fall under “the interests of national security” grounds. If the activities of an association are peaceful and if it is conducting non-violent political activities and advocating e.g. greater autonomy for cities and provinces, then “undermining territorial integrity” does not constitute legitimate and sufficient grounds for prohibiting its work. The Anti-Discrimination Act prohibits associating to commit discrimination, i.e. activities of organisations or groups aimed at violating the rights and freedoms enshrined in the Constitution, international and national law, or at inciting national, racial, religious or other forms of hate, dissent or intolerance (Art. 10), whereby it also elaborates the “protection of the rights and freedoms of others” grounds.

Under the Act on Associations, a decision to prohibit an association may also be based on the actions of the association’s members provided that there is a link between their actions and the activities or goals of the association, that the actions are based on the organised will of the members and the circumstances of the case indicate that the association tolerated the actions of its members (Art. 50(2)). Secret and paramilitary associations are prohibited by the Constitution *ex constitutio* and by the Act on Associations *ex lege*.

The Act on Associations prohibits the public use of visual symbols and insignia of prohibited associations (Art. 50(5)). The Act’s penal provisions, however, do not lay down any penalties for non-abidance by this prohibition. The association *Obraz*, which the Constitutional Court banned in 2012,<sup>426</sup> has continued displaying its symbols and insignia, including at public rallies. Interestingly, they are freely displayed even in front of the Belgrade Justice Palace as well.<sup>427</sup> The BCHR, however, is unaware of whether the authorities have initiated any proceedings regarding this violation of the law.

The Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia<sup>428</sup> further prohibits the activities

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426 Constitutional Court decision VII U 249/2009, *Sl. glasnik RS*, 69/12.

427 Photograph available at <http://www.obraz.rs/odlozeno-sudjenje-clanovima-obraza-2/>.

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



of organisations reaffirming neo-Nazi and Fascist ideas in their statutes and programmes. Under the Act, a procedure may be initiated to delete from the Register a registered organisation or association advocating neo-Nazi or Fascist goals and disregarding the prohibitions in the Act (Art. 2(2)). The Act, therefore, does not introduce fresh grounds for the prohibition of an association, but grounds for initiating the procedure for deleting it from the Register. This legal sanction borders on the absurd given that most of the organisations, including Combat 18, which are advocating such ideas, are unregistered. Under the Act, a fine shall be imposed upon a registered association the member of which committed the misdemeanour of propagating neo-Nazi or Fascist ideas; the Act however, does not require that the individual acted in the capacity of a member in the specific case or that the association supported, endorsed or tolerated his actions. Such automatic punishment of associations for the activities of their members may jeopardise the freedom of association because associations cannot control or be aware of all the actions of all their members. The Convention on the Elimination of All Forms of Racial Discrimination<sup>429</sup> lays down that States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination and obliges them to declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and recognise participation in such organisations or activities as an offence punishable by law (Art. 4(1)). The Republic of Serbia has acted in compliance with the commitments it assumed when it ratified the Convention on the Elimination of All Forms of Racial Discrimination by adopting and applying this Act. The Act, however, needs to be elaborated in greater detail with respect to the misdemeanour penalties imposed on associations and it needs to define the concept “neo-Nazi and Fascist ideas and insignia”. Furthermore, the Act prohibits “all activities of neo-Nazi and Fascist associations” without requiring of the Constitutional Court to first qualify the associations as such and prohibit their work or of the Business Registers Agency to dismiss their registration applications, which provides a lot of room for arbitrariness of the misdemeanour courts.

Despite the relatively good legal framework, which has potential to pre-empt propagation of neo-Nazi and Fascist ideas, associations aiming at inciting national, racial, religious and other hate and intolerance or limiting the rights and freedoms of others nevertheless exist in Serbia. The organisation *Srbski Obraz*, for instance, suffered no consequences for organising a petition against “LGBT propaganda” in public places; the petition is also available on the website of this association.<sup>430</sup> Other “patriotic” organisations have also announced that they would be collecting signatures for the adoption of a law prohibiting LGBT propaganda.<sup>431</sup> The associa-

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429 *Sl. list SFRJ*, 31/67.

430 Available in Serbian at <http://www.obraz.rs/potpisite-peticiju/>.

431 See the report in Serbian at <http://www.nspm.rs/hronika/patriotske-organizacije-najava-peticije-za-za-donosenje-zakona-o-zabrani-lgbt-propagande-maloletnicima.html?alphabet=l>.

tion Serbian National Movement (SNP) Naši put up anti-Semitic posters during the local election campaign in the Belgrade municipality of Voždovac.<sup>432</sup> The Minister of Justice and State Administration publicly criticised the campaign and called on the competent authorities to identify its masterminds,<sup>433</sup> but noted that it was likely that it was launched by a parliamentary party, which had offered the competent authorities help in identifying those “branding their political opponents as Fascists”.<sup>434</sup> A simple search of SNP Naši’s website corroborates that this association was behind the anti-Semitic campaign in Voždovac, wherefore it remains unclear why it is mystified in the public. The BCHR is of the view that the public must be clearly told who has been conducting such campaigns and that criminal proceedings have to be initiated against the responsible individuals.

The procedure for prohibiting an association is initiated on the motion of the Government, the Republican Public Prosecutor, the ministry charged with administration affairs, the ministry charged with the field in which the association is pursuing its goals or the registration authority – the Business Registers Agency.

Under Article 51(2) of the Act on Associations, the procedure to prohibit an association may be initiated also against associations that do not have the status of a legal person, i.e. are not entered in the Register. In June 2011, however, the Constitutional Court banned the organisation National Formation, after establishing that it was secret and that its activities were thus prohibited. The Court also prohibited its registration.<sup>435</sup> The Constitutional Court was of the view that the formal shortcomings were the consequence of the founders’ conscious intention to conduct their activities clandestinely precisely because they were aimed at achieving prohibited goals and that this hindered the competent state authorities from taking adequate measures against the association and its members and penalising them. The Constitutional Court Act was amended in December 2011. The new Article 81a lays down that the Constitutional Court shall render a decision to prohibit the work of an association on the motion for its prohibition in the event it finds that the association is secret or paramilitary and entitles the Constitutional Court to order in its decision the measures to be implemented to prevent the activities of that secret or paramilitary association. It is, however, unclear how come the neo-Fascist organisation Blood and Honour (*Krv i čast*)<sup>436</sup> is still operating; it is not registered and

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432 Available in Serbian at <http://nasisrbija.org/index.php/2013/12/24/ja-sam-ivan-ivanovic-izazi-vac-verske-rasne-i-nacionalne-mrznje/>.

433 “Who is Behind the Hitleresque Campaign”, B92, 29 November, available in Serbian at [http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=11&dd=29&nav\\_category=11&nav\\_id=783354](http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=11&dd=29&nav_category=11&nav_id=783354)

434 See the B92 report in Serbian at [http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=11&dd=29&nav\\_id=783440](http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=11&dd=29&nav_id=783440).

435 More in the 2011 Report, I 4.11.3.

436 This organisation belongs to the neo-Nazi Blood and Honour network established in the UK in 1989. It advocates white supremacy and the struggle for racial nationalism and uses Nazi symbols. The Constitutional Court of the Federal Republic of Germany prohibited Blood and

no proceedings to ban it have been instituted since 1995, when it was set up. This organisation in 2003 established its combat division, Combat 18 (the numerals 1 and 8 stand for the first and eighth letters of the alphabet, Adolf Hitler's initials).<sup>437</sup> No proceedings to prohibit this organisation have been instituted yet; it remains unknown whether its members have been criminally charged for advocating racial, religious and national hate and intolerance.

The Constitutional Court in 2012 rendered a Decision prohibiting the work of the association called "Fatherland Movement Obraz" (*Otačastveni pokret obraz*)<sup>438</sup> and ordered its deletion from the Register, but did not review the admissibility of the Republican Public Prosecutor's motion that the Constitutional Court prohibit all future associations and groups that want to continue with the association's activities in order to prevent Obraz's activists from circumventing the Decision on its prohibition and register new associations with the same goals and the activities of which would testify to continuity of Obraz's activities. The Constitutional Court should have upheld the Prosecutor's motion given that Obraz continued operating under another name, *Srbski obraz*.<sup>439</sup> The "new" Obraz is evidently the successor of the prohibited association – it has the same leader and uses the same symbols and insignia and the only difference in its objectives is that they do not include the inadmissible ones indicated by the Constitutional Court. The founders and members of this association thus practically circumvented the Constitutional Court's prohibition.

#### 11.4. Association of Aliens

The Act on Associations allows aliens to establish local associations provided that at least one of the founders resides or is headquartered in the territory of the Republic of Serbia. The Act also governs the status-related issues of foreign associations in Serbia. Under the Act, a foreign association shall denote an association headquartered in another state, established under that state's regulations to achieve a joint or common interest or goal, the activities of which are not aimed at making profit. A foreign association may pursue activities in Serbia in the event it establishes a representative office entered in a separate register of the Business Registers Agency.

The representative office of a foreign association is entitled to operate freely in the territory of the Republic of Serbia provided that its goals and activities are not in contravention of the Constitution or laws of the Republic of Serbia, international treaties acceded to by the Republic of Serbia or other regulations. The Constitutional Court shall decide on the prohibition of a foreign association on the motion of the same authorities entitled to seek the prohibition of a national association.

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Honour back in 2000. The programme of the Blood and Honour chapter in Serbia is available in Serbian at [http://www.youtube.com/watch?v=NfmafGr\\_a6o](http://www.youtube.com/watch?v=NfmafGr_a6o).

437 "Neo-Nazis Forming Combat Divisions", *Blic online*, 4 November, available in Serbian at <http://www.blic.rs/Vesti/Hronika/417302/Neonacisti-formiraju-borbeno-odrede>.

438 Constitutional Court decision VII U 249/09, published in *Sl. glasnik RS*, 69/12 of 12 July 2012.

439 Available in Serbian at <http://www.obraz.rs/>.

### 11.5. Associations of Civil Servants and Security Forces

The Constitution prohibits the judges of the Constitutional Court and other courts, public prosecutors, the Protector of Citizens, members of the police and armed forces from membership in political parties. The Police Act allows police officers to organise in trade unions, professional and other organisations but prohibits their organisation in parties and political activities in the ministry (Art. 134). The Act on Judges and the Act on Public Prosecutor's Offices allow judges, public prosecutors and their deputies to associate in professional organisations to protect their interests and take measures to protect their autonomy (public prosecutors and their deputies) and their independence and autonomy (judges). The Act on the Army of the Republic of Serbia guarantees professional army members the right to organise in trade unions (Art. 14(3)). In addition to prohibiting army members from membership of a political party, the Act also prohibits them from attending political events in uniform and from engaging in any other political activities apart from exercising their active right to vote (Art. 14(1)). Given that the Constitution of Serbia explicitly prohibits specific civil servants from membership of political organisations in Article 55(5) but does not include a ban on membership of a trade union, the interpretation according to which these categories of civil servants have the constitutionally guaranteed right to associate in trade unions is a correct one.

### 11.6. Status of Civic Associations and Individuals Involved in the Protection of Human Rights

The status of human rights defenders did not improve significantly and isolated incidents and assaults on them continued in 2013. Tabloids continued with their stereotyped descriptions of human rights defenders, especially women. Renowned Novi Pazar activist Aida Ćorović<sup>440</sup> was threatened both in the media and over the phone and every electronic media report mentioning her was accompanied by numerous disparaging comments and threats, which led the police to put her under security detail in late 2013. Semiha Kačar, Jelena Milić, Biljana Srbijanović and other women human rights activists were victims of similar threats and articles as well.

A series of negative articles were published against the Helsinki Committee for Human Rights in Serbia chairwoman Sonja Biserko in *Večernje novosti* and other papers, after news broke that she would testify in a case the Republic of Croatia launched against Serbia before the International Court of Justice in The Hague. The articles smacked of those published in the 1990s, accusing her of treason and accompanied by comments rife with threats and insults.<sup>441</sup>

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440 "Who Will Punish Aida Ćorović for Islamophobia", available in Serbian at: <http://sandzakpress.net/a-ko-ce-kazniti-aidu-corovic-za-islamofobiju>.

441 See the *Blic* report available in Serbian: Protector of Citizens Condemns Attacks on Sonja Biserko, <http://www.blic.rs/Vesti/Politika/425885/Zastitnik-gradjana-osudio-napade-na-Sonju-Biserko>

Threats against activists focusing on the protection of LGBT rights were registered in 2013 as well. Messages, such as “We know where you live, we know where you sleep” were written on the door of the apartment in which Pride Parade co-organiser Boban Stojanović lives, can only be construed as open threats. They also demonstrated that information about his place of residence was publicly available.

Some court proceedings against human rights defenders<sup>442</sup> and the ones they initiated<sup>443</sup> have been ongoing for an excessively long time. One of them concerns the criminal report filed by the B92 legal team against the organisation Naši in 2012 after extremist organisations published lists of organisations, individuals and media they branded as traitors;<sup>444</sup> the prosecutors ordered that all those on Naši’s list give statements to the police. Although the representatives of Women in Black and the Lawyers Committee for Human Rights and other human rights defenders gave statements to the police in April and May 2013, there was no information about the status of this case at the end of the reporting period.

Rallies staged by human rights defenders and organisation, primarily by Women in Black, were again qualified as high risk events in 2013. Numerous policemen secured the events, at which rightist organisations also turned up, chanting their slogans and voicing threats.

The Protector of Citizens’ Gender Equality Council in December 2013 condemned the frequent attacks on human rights defenders and highlighted individual incidents.<sup>445</sup> A similar assessment was also made by the European Commission in its Serbia 2013 Progress Report,<sup>446</sup> in which it said that “[T]he most discriminated groups remain the Roma, women, people with disabilities and sexual minorities, who often face hate speech and threats. Serbian authorities need to develop a proactive approach towards the better inclusion of the LGBTI population and a greater understanding across society.”

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442 *Dveri* filed charges against Borka Pavićević in 2009 over her statements in the show “State of the Nation”. The Lawyers Committee for Human Rights represented her in the proceedings, which ended in 2013 after the expiry of the absolute statutory limitations. See YUCOM’s 2013 Annual Report, p. 22, available at [http://www.yucom.org.rs/upload/GI\\_2013\\_layout%20ENG%20web.pdf](http://www.yucom.org.rs/upload/GI_2013_layout%20ENG%20web.pdf). The proceedings against N.M. charged with discrimination were initiated in 2011. The Appellate Court in 2013 overturned the verdict and ordered a retrial, see YUCOM’s Annual Report, p. 18, available at [http://www.yucom.org.rs/upload/GI\\_2013\\_layout%20ENG%20web.pdf](http://www.yucom.org.rs/upload/GI_2013_layout%20ENG%20web.pdf).

443 It took the First Basic Court in Belgrade more than four years to open the trial for the compensation of damages incurred by the prohibition of the Gay Straight Alliance news conference to have been held on 26 February 2009 by the Belgrade Congress Centre Sava. See: <http://en.gsa.org.rs/2013/09/a-trial-for-the-case-of-gsa-press-conference-ban-at-the-sava-center-began-after-more-than-four-and-a-half-years/>.

444 See B92 report: Naši Draws up NGO Black List, available in Serbian at: [http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=11&dd=13&nav\\_category=12&nav\\_id=659778](http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=11&dd=13&nav_category=12&nav_id=659778)

445 The press release is available in Serbian at [http://www.ombudsman.rs/index.php/lang-sr\\_YU/2011-12-25-10-17-15/2011-12-25-10-13-14/3129-2013-12-25-14-02-47](http://www.ombudsman.rs/index.php/lang-sr_YU/2011-12-25-10-17-15/2011-12-25-10-13-14/3129-2013-12-25-14-02-47).

446 See [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf).

## 12. Political Life

### 12.1. General

In addition to the right to vote, the ICCPR and the ECHR acknowledge the rights of citizens to be elected.<sup>447</sup> 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.<sup>448</sup>

The Constitution proclaims the sovereignty of the people and that suffrage is universal and equal (Arts. 2 and 52). Every adult citizen with a legal capacity shall be entitled to vote and to be elected (Art. 52 (1)). The Constitution guarantees all citizens the right to participate in the administration of public affairs, to employment in public services and to hold public office under equal conditions (Art. 53).

Under Article 5 of the Act on Political Parties<sup>449</sup>, a political party shall acquire legal status and may launch its activities upon registration in the Register of Political Parties. The last, 95<sup>th</sup> party to register by the end of the reporting period was the Democratic Left of Serbia, an ethnic Greek party. A total of 52 minority parties have been registered to date.<sup>450</sup>

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447 This right is deemed to be implicitly recognised by Article 1 of the First Protocol.

448 *Gitonas v. Greece*, ECtHR, App. Nos. 18747/91, 19376/92, 19379/92, 28208/95 and 27755/95 (1997); *Fryske Nasjonale Partij v. The Netherlands* ECmHR, App. No. 11100/84 (1985); *Tanase v. Moldavia*, ECHR, App. No. 7/08 (2010).

449 *Sl. glasnik RS*, 36/09.

450 The Roma national minority is represented by seven political parties: the Democratic Union of Roma, the Roma Democratic Party, the Roma Democratic Left, Srđan Pajin's Roma Party, which is part of the ruling coalition, the United Party of Roma, the Roma Party of Unity and the Union of Roma of Serbia. The interests of the Hungarian national minority are represented by the Democratic Party of Vojvodina Hungarian headed by András Ágoston, the Hungarian Hope Movement led by Bálint László, the Alliance of Vojvodina Hungarians chaired by István Pásztor, the Civic Alliance of Hungarians headed by László Rác Szabó, the Democratic Fellowship of Vojvodina Hungarians led by Áron Csonka and the Party of Hungarian Unity chaired by Zoltan Smieszko. The Albanian minority is represented by the following parties: Riza Halimi's Party for Democratic Action, Ragmi Mustafa's Democratic Party of Albanians, the Democratic Union of the Valley, the Democratic Union of Albanians, the Party for Democratic Progress and the Democratic Party. The following four parties represent the Vlach national minority in political life (the Vlach Democratic Party of Serbia, "Serbia in the East", the Vlach Democratic Party and None of the Above), headed by People's Deputy Nikola Tulimirović. The interests of the Croatian national minority are represented by the Democratic Alliance of Croats in Vojvodina and the Democratic Community of Croats. Montenegrins, Macedonians and Goranis are each represented by one party: the Montenegrin Party, the Democratic Party of Macedonians and Orhan Dragaš's Civic Initiative. Ruthenians, Slovaks and Romanians are each represented by two parties, while the Bunjevci and the Bulgarian national minorities are each represented by three parties. Eight of the 12 existing Bosniak parties were formed in 2000; the Bosniak



## 12.2. Electoral Rights

Under the Constitution, every adult citizen of the Republic of Serbia with a legal capacity shall have the right to vote and be elected. Elections shall be free and direct and voting shall be by secret ballot and in person (Art. 52). Whether a person may vote and be elected to a public office depends on whether he is entered in the voter registers. Persons fully or partly deprived of legal capacity are not entered in the Single Voter Register. The nationwide voter register, established under the Act on a Single Voter Register<sup>451</sup>, was used in Serbia in 2012 for the first time since the introduction of the multi-party system. Under the new Act on Ministries, the Ministry of Justice and State Administration is charged with keeping the voter register.<sup>452</sup>

## 12.3. Electoral Procedures

The electoral procedures are governed in detail by the Act on the Election of Assembly Deputies (AEAD),<sup>453</sup> the Local Elections Act (LEA),<sup>454</sup> the Act on the Election of the President of the Republic,<sup>455</sup> and the Decision on the Election of AP Vojvodina Assembly Deputies (DEVĐ).<sup>456</sup>

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)<sup>457</sup> and polling committees. The Republican Election Commission (REC) is also empowered in the first instance to review complaints against decisions, actions or omissions by polling commit-

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People's Party, headed by Mujo Muković, Serbian Progressive Party's coalition partner, was established in 2012. The eldest Bosniak party in Serbia is the Sandžak Democratic Party (1990), after which the following parties were established: Party of Democratic Action of Sandžak (1996), the Bosniak Democratic Party of Sandžak headed by Esad Džudžević (1996) and the People's Movement of Sandžak (1999).

451 *Sl. glasnik RS*, 104/09 and 99/11.

452 *Sl. glasnik RS*, 72/12.

453 *Sl. glasnik RS*, 35/00, 57/03, 72/03, 18/04, 101/05, 85/05, 104/09 and 36/11.

454 *Sl. glasnik RS*, 129/07, 34/10 and 54/11.

455 *Sl. glasnik RS*, 111/07 and 104/09.

456 *Sl. list AP Vojvodine*, 12/04, 20/08, 5/209, 18/09 and 23/10.

457 The Republican Election Commission and the polling committees are the authorities charged with implementing the republican parliamentary elections, while the local government election commissions and polling committees are charged with implementing local elections (See Arts. 28–38, AEAD and Arts. 11–17, LEA). All three – the Republican Electoral Commission, the local government election commissions and polling committees – are charged with the implementation of presidential elections (Art. 5, Act on the Election of the President of the Republic).



tees (under Art. 95(2)), AEAD). Pursuant to the election laws, bodies administering elections are independent. However, the legal provisions specifying that the bodies charged with conduct of elections shall be 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 involvement of political party representatives in municipal commissions was in specific instances perceived as membership on the basis of the political balance in the respective municipality, and resulted in those commissions taking decisions along political lines.

The election commissions establish the overall number of votes received by each election ticket in proportion with the number of votes received, establish the number of seats each ticket is awarded pursuant to the D'Hondt system. The parliamentary and local elections are held under the proportional system. According to the election regulations applied in the Autonomous Province of Vojvodina, 60 deputies of the Vojvodina Assembly are elected under the proportional system, while the other 60 deputies are elected under the two-round first past the post system, each in one of the 60 election units. The tickets running under the proportional system must collect 6,000 signatures (parties) or 3,000 signatures (minority parties), while each candidate running under the first past the post system in one of the 60 election units must collect 200 signatures.<sup>458</sup>

Only tickets that won more than 5% of the votes of all the voters who cast their votes in the election unit are awarded seats. The Republic of Serbia is a single election unit. The Act on Political Parties defines a national minority party as a party the activities of which are aimed at "representing and advocating the interests of a national minority, at protecting and advancing the rights of persons belonging to that national minority in accordance with the Constitution, the law and international standards, and which are regulated in the articles of association, programme or statute of the political party" (Art. 3). A national minority party may be founded by 1,000 adult nationals of Serbia with a legal capacity (Art. 9), which is ten times less than the number of nationals needed to establish a party that is not a national minority party. Furthermore, the so-called election threshold does not apply to national minority parties, which means that they are awarded seats even if they win less than 5% of the votes cast. Paradoxically, the law stipulates that national minority parties must collect and certify 10,000 signatures in support of their tickets,<sup>459</sup> i.e. just as many as other parties need, which renders meaningless the preferential treatment idea, given that a minority party needs around 15,000 votes in accordance with the natural threshold.

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458 Vojvodina Assembly Decision on the Election of AP Vojvodina Assembly Deputies, *Sl. list APV*, 12/04, 20/08, 5/09, 18/09, 23/10, 1/12.

459 The Constitutional Court revoked the Republican Election Commission Instruction on 18 March 2008, under which minority tickets require 3,000 signatures, see the B92 report in Serbian at [http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=04&dd=09&nav\\_category=418&nav\\_id=293145](http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=04&dd=09&nav_category=418&nav_id=293145).

#### *12.4. Party Participation in Executive Government*

Deputies who ran on 11 election tickets in the 2012 parliamentary elections have taken part in the work of the National Assembly. The “Let’s Move Serbia – Tomislav Nikolić” ticket is represented by 73 deputies, the ticket “Choice for a Better Life –Boris Tadić” by 67 deputies and the “Ivica Dačić – SPS, PUPS, JS” ticket by 44 deputies. The “Democratic Party of Serbia – Vojislav Koštunica” won 21 seats, the “Čedomir Jovanović – Turnabout” ticket won 19, while the “United Regions of Serbia – Mladen Dinkić” ticket won 16 seats. The Alliance of Vojvodina Hungarians, an ethnic Hungarian party, has five deputies, the “Party of Democratic Action of Sandžak – Sulejman Ugljanin” has two deputies, while the “All Together: BDZ, GSM, DZH, DZVM, Slovak Party – Emir Čulafić” and “None of the Above” tickets each won one seat in parliament. The Coalition of the Albanians of the Preševo Valley, comprised of seven Albanian minority parties, ran in the elections and won one seat in the National Assembly. The Albanian national minority is thus represented in the National Assembly by Riza Halimi, an independent people’s deputy. The Bosniaks have two ministers in the Government: Sandžak Democratic Party leader Rasim Ljajić is the Deputy Prime Minister and Minister of Foreign and Internal Trade and Telecommunications, while the leader of the Party of Democratic Action of Sandžak, Sulejman Ugljanin, is the Minister without Portfolio.

#### *12.5. Influence of Parties on Authorities*

Although political parties should be merely one of the mechanisms in the public arena, the parties are apparently still motivated primarily by their particularistic and party rather than general interests. One of the campaign promises all parties made, including the ones now in power, was that they would depoliticise the public administration and shut down the numerous state agencies mostly employing party rank and file. These promises still remained unfulfilled at the end of 2013. Data indicated that the Government appointed 148 people to senior state offices, but had advertised vacancies only 12 times from the time it took office until March 2013.<sup>460</sup> Ordinary citizens have recognised party membership as a job requirement at the local level as well.<sup>461</sup>

Under Article 5(4) of the Constitution, political parties may not directly exercise power or subject it to their control. A survey conducted in May 2013 alerts to a concerning lack of public trust in political parties.<sup>462</sup> Political parties in Serbia suffer from a lack of intra-party democracy; many of them have been headed by the

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460 “Hired without Competitions”, *Blic*, 3 March, and Transparency Serbia press release of 27 February, Problematic Appointments and the Depoliticisation of the State.

461 Center for Democracy Foundation survey conducted within the project “Stop to Corruption Threatening Dignity at Work”.

462 Report on the public opinion poll “Attitude of Citizens Regarding the National Assembly of the Republic of Serbia”, May 2013, UNDP.

same leaders for years. Hardly any party allows intra-party debates on the goals and programmes they advocate and members of most parties unquestioningly follow the views of their party leaders. Given the crucial influence political parties wield in Serbia's social life, this risks to weaken democratic processes in society and at the same time undermine the legitimacy of all collective political institutions. Polls of public trust in the institutions show that the church and religious institutions, the army and the President enjoy the greatest public trust.<sup>463</sup>

The following political topics predominated in 2013: normalisation of relations with Kosovo, the fight against corruption and EU accession. Prime Minister Ivica Dačić led the talks with the Kosovo delegation in Brussels, while the First Deputy Prime Minister, Aleksandar Vučić, took charge of the fight against corruption. The representatives of the European Union have welcomed the Government's moves on both fronts, as was reaffirmed by granting Serbia the date for launching EU accession talks, generally perceived as a tangible accomplishment of the Government in 2013. The Serbia's public largely shares the view that the opening of the accession talks is very important, but both the EU's representatives and the man in the street have been critical of the headway in the fight against corruption. Both have noted the negative trend of announcing the arrests in the media. Head of the DEU to Serbia Michael Davenport stated that, if the fight against corruption was to be successful, the corruption cases needed to end up in court, not just on the front pages of newspapers.<sup>464</sup> Some are of the view that the strongest party in the ruling coalition and its leader, who is also the Coordinator of the Security Agencies' Coordination Bureau and charged with the fight against corruption in the Government, are using the anti-corruption developments to increase their rating.<sup>465</sup> Although political will is prerequisite for an effective fight against corruption and, indeed, the parties currently in power recognise, this fight cannot be waged by or depend on only one body or one man, given that corruption has deeply permeated the society and its eradication is bound to be a long process, which cannot depend on political will alone. Corruption must be fought at all institutional levels; all state authorities should do their part of the job, free from the pressures and influence of the parties in power.

### *12.6. Relations within the Ruling Coalition and the Opposition*

The balance of forces in the coalition that formed the Government after the May 2012 elections was an unnatural one: the office of the Prime Minister went to the Socialist Party of Serbia (SPS), a minority partner in the ruling coalition,

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463 Transparency International expressed the same view re the publication of the regional report "Buying Influence: Money and Elections in the Balkans," press release of 25 June 2013.

464 See <http://www.anem.rs/en/medijskaScena/uFokusu/story/15274/DAVENPORT%3A+CORRUPTION+CASES+IN+COURTS,+NOT+IN+HEADLINES.html>.

465 See e.g. the Radio Free Europe report available in Serbian at <http://www.slobodnaevropa.org/content/most-na-cemu-se-zasniva-vuciceva-moc/25045386.html>.

although the Serbian Progressive Party (SNS) commanded greater support and had more deputies in the National Assembly. The SNS' popularity in the meantime exceeded its 2012 election results and it prevailed over the SPS. Early elections had been mentioned almost from the moment the new Government took office and were finally called in late January 2014, although the reason for them remained unclear, given that the parties in power claimed that the Government was working well and enjoyed public support.<sup>466</sup>

The Serbian Government was reshuffled in 2013. The reshuffle, announced in the spring, took place in September 2013. As expected, the SNS strengthened its position; SPS' influence waned while the United Regions of Serbia was left out of the coalition. Non-party experts Lazar Krstić and Saša Radulović were given ministerial offices and the burden of implementing the painful economic and financial reforms. The reshuffled Government had 18 ministries and three ministers without portfolio.<sup>467</sup> Only two of the ministers were women.<sup>468</sup> As the Human Rights House member organisations stated in their report, the number of women in Government/decision-making offices fell from 26% to 15%, falling short of the principle of equal gender representation. They assessed that Serbia had taken a step back in the standards that it had already achieved.<sup>469</sup>

The opposition parties were very weak in 2013, for a number of reasons. The strongest opposition party, the Democratic Party (DS), has been undergoing a very strong period of consolidation after it fell from power. Its activities were undermined by the recriminations traded between its members, a media blockade and arrests of some of its members for corruption and profiting from the privatisation of companies. The arrests were announced in the tabloids, which damaged the party's reputation in public. The DS was also shaken by the Main Board's decision insisting that its MPs, who had been ministers in the previous DS-led Government, hand back their mandates.<sup>470</sup> Former Agriculture Minister Dušan Petrović refused to hand back his mandate and formed the Together for Serbia caucus.<sup>471</sup> Vuk Jeremić, the former Foreign Minister who chaired the UN General Assembly in New York

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466 Prime Minister Ivica Dačić said in December 2013 that early parliamentary elections were not an issue and that the Government was operating well. *Blic*, 22 December, p. 4.

467 The reshuffled government was voted in by 134 deputies in the National Assembly. See *B92's* report, available at [http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=09&dd=03&nav\\_id=87529](http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=09&dd=03&nav_id=87529). The Act Amending the Act on Ministries was voted in on 29 August 2013, *Sl glasnik* 72/12.

468 The breakdown of the reshuffled Government is available at <http://www.srbija.gov.rs/vlada/sastav.php>.

469 See: <http://kucaljudskihprava.rs/>. For example, Prime Minister Mirko Cvetković's first Government (2008-2011) had five (18%) women ministers and his reshuffled Government had three women (14%) ministers.

470 After he was elected President of the Democratic Party, Dragan Đilas called on all the former ministers, now deputies in the National Assembly, to hand back their mandates. He justified the move by saying that they were, *inter alia*, to blame for the Democratic Party's poor results at the elections.

471 See: <http://www.novimagazin.rs/vesti/petrovic-danas-formiramo-poslanicki-klub-zajedno-za-srbiju>.

until 2013, also refused to fulfil the Main Board's demand and filed an initiative with the Constitutional Court to review the constitutionality and lawfulness of the DS' decision to expel him from the party. The Constitutional Court declared itself incompetent to review the matter as the DS decision was not a general legal enactment, but rather an internal party rule which was not legally binding, and explained that this decision could only be perceived as an instruction to the party members elected to parliament.<sup>472</sup>

The opposition was further weakened by the decision of a number of minor parties to join forces with the ruling SNS-SPS coalition. Furthermore, the ruling parties have taken over the programmes of the opposition parties, which are primarily based on Serbia's EU accession. The opposition parties' views on those in power ruling ones differ. Rather, the impression is that the differences among the civic-minded politicians have been growing, with some of them viewing the authorities' moves with benevolence and others perceiving the way they rule as a major threat to democracy in Serbia.

The only parliamentary party that has consistently held that Serbia's citizens will not benefit from EU accession and that Serbia should conduct a neutral policy is Vojislav Koštunica's Democratic Party of Serbia (DSS).

### *12.7. Elections in 2013*

Kosovo Serb parties took part in the local elections held in Kosovo in late 2013, which were in some places characterised by an atmosphere of fear and insecurity. An association/community of Serb majority municipalities, envisaged by the Brussels Agreement signed in April, was not formed by the end of the reporting period. The elections were to be held again in Kosovska Mitrovica. It remains to be seen how this process will be completed because relations with the EU hinge on it.

Local elections were held in a number of Serbian towns and municipalities in 2013 as well, notably in Zaječar, Kosjerić, Odžaci, Srbobran, Varvarin, Kostolac, Zemun, Voždovac et al. Violence, intimidation of voters and vote-buying were registered in nearly all these towns. Senior party officials fervently accused each other. For instance, in the run up to the local elections in Vrbas, the Democratic Party accused SNS activists of abducting and beating up its activist, and the Vojvodina Prime Minister and DS Vice-President Bojan Pajtić said that the SNS bussed organised groups of "thugs" into the towns in which elections were being held, who were intimidating the voters with their violence. Such accusations against the SNS were earlier made also by members of other parties, especially in Zaječar. Reporters covering the elections were assaulted as well, e.g. the TV B92 and TV Prva crews filming a fight in front of a polling station in Odžaci.

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472 See: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:430743-Ustavni-sud-od-bio-Jeremica>.

The impression is that the prosecutors have not reacted to numerous media reports of such irregularities.<sup>473</sup> Transparency Serbia did and asked the Požarevac Basic Prosecutor's Office whether any criminal reports had been filed over voting-related bribery or any other offence prosecuted *ex officio*. The Office replied that "perusal of the Prosecutor's Office registers shows that it had not acted on media allegations that gifts had been offered to voters ahead of the elections in the municipality of Kostolac in December 2013".<sup>474</sup>

There were major changes at the helms of local self-governments in 2013 in which local elections were not held as well. A new ruling majority, headed by SNS Miloš Vučević, was formed in Novi Sad. The Belgrade City Assembly voted no confidence in Mayor Dragan Đilas on 24 September and Belgrade ended the year under receivership, appointed under a Government decision on 18 November 2013. The Belgrade city elections are due to take place on 16 March 2014.<sup>475</sup>

This trend in practice amounts to the invalidation of the electoral will of the citizens and demonstrates the huge influence of the central authorities on political developments at the local level. This is why the election laws need to be amended to ensure that local elections do not coincide with the parliamentary ones, because that is the only way to ensure that the citizens' electoral will is respected.

## 12.8. Financing of Political Parties

Party funding is governed by the Act on the Financing of Political Activities<sup>476</sup> and the Rulebook on Donation and Property Records, Annual Financial Reports and Election Campaign Costs of Political Entities.<sup>477</sup> Political party funding and oversight are also governed by the Criminal Code, the State Audit Institution Act,<sup>478</sup> the media laws (Advertising Act,<sup>479</sup> Broadcasting Act,<sup>480</sup> and the Public Information Act<sup>481</sup>) and the budget laws (Budget System Act<sup>482</sup> and the Accounting

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473 See e.g. the following press reports in Serbian: <http://eizbori.com/da-li-je-ovo-kupovina-glasova-sasa-mirkovic-vodi-sve-koji-dodu-u-sns-na-koncert-ace-lukasa/>

<http://www.vesti-online.com/Vesti/Srbija/367823/U-toku-glasanje-na-Vozdovcu-u-Odzacima-i-Kostolcu>, <http://www.blic.rs/Vesti/Tema-Dana/424363/Srpski-izborni-kokosinjac-Za-glas-nude-kokosku-i-jaja>

474 Criminal Code, Article 156.

475 The interim Belgrade government has five members: Chairman Dr Siniša Mali, Secretary Goran Vesić and Andreja Mladenović, Nebojša Čović and Nikola Nikodijević. More is available in Serbian at <http://www.beograd.rs/cms/view.php?id=1575817>.

476 *Sl. glasnik RS*, 43/11, more on the Act in 2011 Report, II.7.

477 *Sl. glasnik RS*, 72/11 and 25/12.

478 *Sl. glasnik RS*, 85/05, 88/05 - corr, 107/05 - corr, 72/09, 111/09 and 121/12.

479 *Sl. glasnik RS*, 79/05.

480 *Sl. glasnik RS*, 42/02, 97/04, 76/05, 79/05 – other law, 62/06, 85/06, 86/06 - corr. and 41/09.

481 *Sl. glasnik RS*, 43/03, 61/05, 71/09, 89/10 – Constitutional Court Decision and 41/11 - Constitutional Court Decision.

482 *Sl. glasnik RS*, 54/09, 73/10, 101/10, 101/11 and 93/12.



and Audit Act<sup>483</sup>). The fact that early parliamentary elections and Belgrade City elections had been called by the time this Report went into print, the text below will provide an overview of the collective effects of the Act on the Financing of Political Parties, which was adopted in June 2011 and applied for the first time at the May 2012 elections.<sup>484</sup>

The National Anti-Corruption Strategy adopted in 2013 describes the situation in the area covered by this law in the section on political activities.<sup>485</sup> The Anti-Corruption Agency is charged with overseeing the funding of political parties. In its conclusions on after monitoring the 2012 election campaign, Transparency Serbia stated that most of the campaign funding came from the budget, twice as much than during the previous campaign. Bank loans ranked second – around 30% of the funding was secured in this manner, which raises the issue of how these loans will be repaid.

In the view of Transparency Serbia, the 2012 elections showed that the practices of the political entities improved thanks to the legislative framework. Transparency Serbia, however, also identified various forms of grave violations of the law. Namely, some parties disregarded the formal reporting requirements, failed to submit reports on local election campaign costs, failed to specify all costs or report campaign donations. The reasons should be sought in the legal provisions on loans and assumed obligations, wherefore the public has only limited knowledge of the ultimate sources of funding.<sup>486</sup>

The Anti-Corruption Agency stepped up its oversight activities after the appointment of the new Director and filed misdemeanour reports against the political parties that had failed to report their campaign funding and costs in December 2012,<sup>487</sup> but the Agency did not present its preliminary report until May 2013.<sup>488</sup> The reported funding of all political entities totalled 3,109,834,700.00 RSD (1,916,251,944.00 RSD, or 61.6% came from public sources), while their reported costs amounted to 3,576,057,932.00 RSD.<sup>489</sup>

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483 *Sl. glasnik RS*, 46/06, 111/09 i 99/11 – other law.

484 Elections at all levels (republican, provincial and local) were held in May 2012.

485 National Anti-Corruption Strategy for the 2013-2018 Period, *Sl. glasnik RS*, 57/2013 “[...]certain legal solutions proved to be deficient in practice, particularly in terms of obligations of the persons connected to political entities, the use of public resources, and obligations of the authorities charged with controlling the financing of political entities. No external audit of political entities has been carried out to date as the law does not mandate their audits by the State Audit Institution (hereinafter: SAI). An additional difficulty in this field is the lack of necessary capacities of the authorities charged with controlling the financing [...]”

486 As the BCHR already warned, see *2012 Report*, II.12.6.

487 The list of parties that failed to submit their reports is available in Serbian at [http://www.acas.rs/sr\\_cir/aktuelnosti/800-borba-2012.html](http://www.acas.rs/sr_cir/aktuelnosti/800-borba-2012.html).

488 Transparency Serbia report *Transparency in Financing of Election Campaign in Serbia*, available at <http://www.transparentnost.org.rs/images/stories/materijali/31072013/TRANSPARENCY%20ENG.pdf>, p. 6.

489 More in the Anti-Corruption Agency’s *First Political Entity Financing Oversight Report*, p. 18, available in Serbian at [http://www.acas.rs/images/stories/Prvi\\_izvestaj\\_o\\_kontroli\\_finansiranja\\_politickih\\_subjekata\\_-\\_izborne\\_kampanje\\_2012\\_preciscen\\_tekst.pdf](http://www.acas.rs/images/stories/Prvi_izvestaj_o_kontroli_finansiranja_politickih_subjekata_-_izborne_kampanje_2012_preciscen_tekst.pdf).



Apart from slowing down the work of the executive and legislative authorities during the election campaign and the talks on the new Government, the early elections will also have financial impact on the state: around 802,400,000.00 RSD are to be spent from the budget reserve for the funding of the political activities. Add to this at least 8,024,000.00 RSD for the oversight of the election campaign by the Anti-Corruption agency and at least as much for monitoring the elections in Belgrade, Negotin and Pećinci. The costs of conducting the elections will be almost as great (between half a billion and a billion RSD).<sup>490</sup> The Anti-Corruption Agency has been approved 16,278,216.00 RSD for its funding oversight activities during the Belgrade, Negotin and Pećinci local elections and it has requested 22,892,040.00 RSD for overseeing the financing of the early parliamentary elections.<sup>491</sup> The Republican Election Commission estimated that the early parliamentary elections would cost Serbia 146,000,000.00 RSD.<sup>492</sup> The differences in the resources available to different political entities are the hidden campaign costs which should be rigorously monitored and penalised.

## 13. Right to Asylum<sup>493</sup>

### 13.1. General

The Universal Declaration of Human Rights is the first international document that mentions the right of everyone to seek and to enjoy in other countries asylum from persecution. The 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees,<sup>494</sup> include a set of rights and obligations arising from the right to the recognition of the refugee status. Under the Convention, a refugee is any person who has well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and

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490 Transparency Serbia press release Visible and Invisible Election Costs, of 28 Jan 2013, available in Serbian at [http://www.transparentnost.org.rs/index.php?option=com\\_content&view=article&id=404%3Avidljivi-i-nevidljivi-trokovi-izbora&catid=34%3Afacebook-naslovi&lang=sr](http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=404%3Avidljivi-i-nevidljivi-trokovi-izbora&catid=34%3Afacebook-naslovi&lang=sr).

491 Anti-Corruption Agency Director's statement, available in Serbian at [http://www.rtv.rs/sr\\_lat/drustvo/babic-cilj-procesuiranje-prekrsaja-u-kampanji\\_457953.html](http://www.rtv.rs/sr_lat/drustvo/babic-cilj-procesuiranje-prekrsaja-u-kampanji_457953.html).

492 See the report in Serbian at [http://www.rtv.co.rs/sr\\_lat/politika/izbori-ce-kostati-oko-1-14-milijardi-dinara\\_457354.html](http://www.rtv.co.rs/sr_lat/politika/izbori-ce-kostati-oko-1-14-milijardi-dinara_457354.html).

493 See more in *Right to Asylum in the Republic of Serbia* 2013, BCHR, Belgrade 2014.

494 Serbia also ratified numerous other international treaties directly or indirectly relevant to asylum issues: the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the UN Convention on the Rights of the Child, etc.

is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (Art.1 A (2)).

Under the Constitution of Serbia, any foreign national with reasonable fear of persecution on account of his race, sex, language, religion, nationality or association with a group or political opinion shall be entitled to asylum in the Republic of Serbia (Art. 57(1)). The Asylum Act<sup>495</sup> governs in detail the asylum procedure in the Republic of Serbia and the rights and obligations of asylum seekers, refugees and people granted subsidiary protection. Apart from the right to asylum, which includes the right to refuge and the right to subsidiary (humanitarian) protection, the Act also envisages temporary protection provided in case of a large-scale influx of people when it is impossible to conduct individual asylum procedures.<sup>496</sup>

The principles in Chapter II of the Asylum Act lay down the procedural safeguards applied during the asylum procedure – the principles of directness, to be informed, confidentiality and free legal assistance, as well the principle of free translation/interpretation. Asylum seekers are entitled to legal assistance free of charge and representation by the UNHCR or non-government organisations the goals and activities of which focus on the provision of legal aid to refugees (Art. 10). The following two NGOs provided asylum seekers with free legal aid in 2012: the Belgrade Centre for Human Rights<sup>497</sup> and the Asylum Protection Center (APC).<sup>498</sup> The principle of free interpretation/translation (Art. 11) into the asylum seeker's native language or a language he understands is consistently abided by thanks to UNHCR funding; the Serbian authorities have not earmarked any funding from the state budget for this purpose yet.<sup>499</sup> Although guaranteed by Article 14 of the Act, the principle of gender equality, under which every asylum seeker is entitled to be interviewed by an officer of the same sex, i.e. with the help of an interpreter or translator of the same sex, is not honoured as a rule. It cannot, however, be concluded that the disrespect of this principle is necessarily illegal, given that the Act clearly lays down that this principle may be derogated from in the event it is impossible to designate a staff member of the same gender or in the event abidance by this principle would cause disproportionate difficulties to the authority conducting the asylum procedure. One nevertheless has the impression that this "impossibility" is largely due to the competent authorities' personnel policy. Namely, the MIA always hires male interpreters although there are qualified female interpreters as well; the

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

496 More in D. Dobrković, *Right to Asylum – Legal Framework in the Republic of Serbia, Comment of the Serbian Asylum Act*, BCHR, 2008, available in Serbian at: [http://azil.rs/doc/komentar\\_zakona\\_o\\_azilu\\_beljp.pdf](http://azil.rs/doc/komentar_zakona_o_azilu_beljp.pdf).

497 The BCHR was UNHCR's implementing partner in 2012 and 2013. More at [www.azil.rs](http://www.azil.rs).

498 More at [www.apc-cza.org](http://www.apc-cza.org).

499 *Serbia as a Country of Asylum*, paragraph 18.

Asylum Office has both men and women on staff, but does not take the principle of gender equality into consideration when it assigns asylum cases.<sup>500</sup>

The information obtained about an asylum seeker in the course of the asylum procedure shall constitute a state secret and access to it shall be allowed only to persons authorised by law (Art. 18).<sup>501</sup>

### *13.2. Access to the Territory of the Republic of Serbia and to the Asylum Procedure*

Aliens may access the asylum procedure by expressing the intention to seek asylum to a police officer orally or in writing at the border or within the territory of the Republic of Serbia. The aliens' intentions are registered and they are referred to the Asylum Office or an Asylum Centre, which they have to report to within the following 72 hours. Certificates of intention to seek asylum are not always issued on time, wherefore the asylum seekers, most of whom do not have any identification papers, are exposed to the risk of deportation.<sup>502</sup>

The Asylum Act explicitly entitles asylum seekers to contact authorised UNHCR staff during all stages of the asylum procedure (Art. 12); people seeking asylum at Belgrade Airport, however, do not have the possibility of contacting the UNHCR in practice. During 2013, two asylum seekers had access to asylum procedure via the Belgrade airport.<sup>503</sup>

The work of border police officers in contact with irregular migrants, i.e. the way in which the border authorities fulfil their obligation to provide asylum seekers with access to the regular asylum procedure ought to be subjected to independent monitoring. Such monitoring could be performed by non-government organisations, a practice already developed in the other countries in the region.<sup>504</sup>

Pursuant to Article 31 of the UN Convention Relating to the Status of Refugees and Article 8 of the Asylum Act, asylum seekers shall not be punished for illegal entry or stay in the Republic of Serbia provided that they apply for asylum without delay and offer a reasonable explanation for their illegal entry or stay. The intention of a person to seek asylum can be recognised in the proceedings before the

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500 Based on the experience of BCHR lawyers, who extended legal aid to asylum seekers in 2012.

501 Information about asylum seekers may not be disclosed to their countries of origin unless they have to be deported there after the rejection of their asylum applications.

502 More in the *Right to Asylum in the Republic of Serbia 2013 Report and the June-October 2013 Periodic Report on the Right to Asylum*.

503 Information received on 28 January 2014 from the Information of Public Importance Office at the Cabinet of the Minister of Internal Affairs. According to BCHR's information, only one person was allowed into the country after he expressed the intention to seek asylum in the international zone of the Belgrade airport.

504 More on border monitoring in Central Europe <http://www.unhcr-centraleurope.org/en/what-we-do/monitoring-the-border.html>; more on border monitoring in Croatia at <http://www.mup.hr/main.aspx?id=79225>.

misdemeanours judge, who can suspend the proceedings and instruct him to apply for asylum.<sup>505</sup>

Misdemeanour courts hearing aliens charged with illegal entry or stay in Serbia do not always engage court-sworn interpreters, wherefore they are precluded from following the proceedings. This amounts to an absolutely substantive violation of the provisions governing misdemeanour proceedings that cannot be reversed since the aliens are not even aware of their right to appeal because they are not provided with an interpreter. The violation of this principle also derogates from the principle of determining the truth in proceedings.<sup>506</sup> Misdemeanour judges need to be provided with training in the right to asylum to enable them to recognise the intention of people to seek asylum and react adequately when they recognise such an intention.

The Asylum Office allows the registration and submission of asylum applications only to individuals accommodated in the Asylum Centres or who have received consent to rent private accommodation – only such individuals have unhindered access to the asylum procedure.<sup>507</sup> Aliens, who are forced to live outside because the Asylum Centres lack capacities to take them in, are denied the right to access the asylum procedure.

Aliens, who have certificates of intention to seek asylum and are waiting for a vacancy in an Asylum Centre, may be deported from Serbia unless they are secured accommodation within 72 hours. Namely, once the 72-hour deadline expires, an alien without other grounds for legal residence in the territory of Serbia may be penalised for a misdemeanour and ordered to leave the territory of the Republic of Serbia.<sup>508</sup> Information available to the BCHR indicates that the state authorities have not been deporting aliens convicted for misdemeanours, which is encouraging; however, asylum seekers, who have failed to move into an Asylum Centre within the legal deadline, fear mass deportations by bus to the territory of the Republic of Macedonia reportedly conducted by the police.<sup>509</sup>

### *13.2.1. First-Instance Procedure*

The entire first-instance procedure and all the decisions on asylum applications and the termination of the right to asylum are within the purview of the Asylum Office. The asylum procedure is initiated by the submission of an asylum application on the prescribed form that can be obtained only from an authorised of-

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505 See the decision of the Preševo Misdemeanour Court of 11 March 2009, as a good practice example, available at: <http://www.azil.rs/documents/category/judgements>.

506 More in *2012 Right to Asylum in the Republic of Serbia Report*, BCHR, Belgrade, 2013.

507 The asylum procedure is initiated at the moment an asylum application is submitted, not at the moment the intention to seek asylum is expressed.

508 Aliens Act (*Sl. glasnik RS*, 97/08) Arts. 42 and 85.

509 More on deportations and the removal of irregular migrants in *2012 Right to Asylum in the Republic of Serbia Report* and the *June-October 2013 Periodic Report on the Right to Asylum*.

ficer of the Asylum Office (Art. 25). In practice, however, asylum seekers file their applications in their statements for the record to the Office staff.<sup>510</sup> The authorised Asylum Office officers interview the asylum seekers to establish all facts of relevance to the decisions on the asylum applications, particularly the seekers' identity, the grounds for asylum, their movement after they left their countries of origin and whether they already sought asylum in another state (Art. 26).

The Asylum Office shall render a decision upholding the asylum application and recognising the alien the right to refuge or grant him subsidiary protection or a decision rejecting the asylum application and ordering the alien to leave the territory of the Republic of Serbia within a specific deadline unless he has other grounds for residence. Under the Act, the Asylum Office may decide to suspend the asylum procedure (Art. 27). Article 33 of the Act specifies the instances in which the Asylum Office shall dismiss asylum applications without reviewing whether the asylum seekers satisfy the asylum eligibility requirements.<sup>511</sup>

The Asylum Office usually gives the unsuccessful asylum seekers (i.e. individuals whose asylum applications were dismissed or rejected or in whose case the asylum procedure was suspended) three days to leave the country voluntarily. This deadline is unjustifiably short, given that the vast majority of unsuccessful asylum seekers lack either travel documents or funds or both. An unsuccessful asylum seeker who fails to leave Serbia within the set deadline is forcibly removed pursuant to the Aliens Act. That law, however, does not specify what happens to aliens who cannot be forcibly removed after the expiry of the 180-day deadline they spend in the Aliens Shelter waiting for removal.<sup>512</sup>

Appeals of first-instance decisions on asylum applications may be lodged within 15 days from the day they are served (Art. 35).

The Asylum Office staff did not perform any official duties in the temporary Asylum Centre in the village of Vračevići (did not register or receive asylum applications from the aliens who stayed there).<sup>513</sup>

### *13.2.2. Appeals Procedure*

The Asylum Commission that reviews appeals of Asylum Office decisions is comprised of nine members appointed by the Government to four-year terms of office. The Asylum Act lays down that the Commission shall render its decisions by a majority vote (Art. 20), but does not specify the deadline within which it has to render them.<sup>514</sup> Ever since the Asylum Act was adopted, the Asylum Commission

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510 Based on the experience of BCHR lawyers, who extended legal aid to asylum seekers in 2012 and 2013.

511 More in II.12.2.3.

512 More in the *June - October 2013 Periodic Report on the Right to Asylum*.

513 More in the *January - June 2013 Periodic Report on the Right to Asylum*.

514 The general 60-day deadline prescribed in Article 208 of the General Administrative Procedure Act is to be applied accordingly.

has never rendered a decision on the merits in cases where it upheld the appeals; rather, it has quashed the first-instance rulings and instructed the Asylum Office to correct or amend them.<sup>515</sup>

An Asylum Commission decision may be challenged in an administrative dispute before the Administrative Court, which rules on the claims in three-member judicial panels. The Administrative Court has to date mostly limited itself to reviewing whether the procedural aspects of the asylum procedure had been observed.<sup>516</sup> As a rule, a claim to the Administrative Court does not stay the enforcement of the challenged administrative enactment,<sup>517</sup> wherefore this remedy is inefficient in asylum-related cases. Namely, for a remedy to be deemed effective in the meaning of ECtHR case law, the suspensive effect of an appeal must be automatic, rather than resting solely on the discretion of the domestic authority considering the individual's case.<sup>518</sup> The European Commission noted the need for the further development of training of administrative judges in specific areas, including asylum.<sup>519</sup>

### *13.2.3. Application of the Safe Third Country Concept and Violations of the Prohibition of Refoulement*

Apart from the duty to honour the prohibition of refoulement in the Convention Relating to the Status of Refugees (Art. 33),<sup>520</sup> the competent Serbian authorities are also bound by Article 6 of the Asylum Act, which prohibits the expulsion of people against their will to a territory where their lives or freedom would be in danger on account of their race, sex, language, religion, nationality, membership of a particular social group or political opinion.

Under the Act, the state may, inter alia, invoke the concepts of a safe third country and a safe country of origin and dismiss an asylum application without

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515 More in the *June-October 2013 Periodic Report on the Right to Asylum*.

516 The Administrative Court did not uphold any claims by asylum seekers in 2011, 2012 and 2013. and the first half of 2012. It annulled two decisions of the first Asylum Commission due to formal shortcomings in the minutes on the Commission's deliberation and vote, *Challenges of Forced Migration*, p. 27. The Court in 2011 rendered only one judgment on the merits (more in the *2011 Report*, I.4.16.2.4). Selected Administrative Court judgments are available at <http://www.azil.rs/documents/category/judgements>.

517 Article 23, Administrative Disputes Act, *Sl. glasnik RS*, 111/09.

518 More in N. Mole, C. Meredith, Asylum and the European Convention on Human Rights, Council of Europe, 2010, pp. 118-121 and the *January-June 2013* and *June-October 2013 Periodic Reports on the Right to Asylum*.

519 *Serbia 2013 Progress Report*, p. 41.

520 The prohibition of expulsion or return (non-refoulement) entails the prohibition of transferring a person to a state where he risks a real danger of serious human rights violations or of being transferred to a third state where he would be subject to such risks. Abidance by the principle of non-refoulement also entails the state's obligation to do its utmost to prevent the return of asylum seekers to their countries of origin without the substantive examination of their asylum applications – so-called direct refoulement and the transfer of an asylum seeker to a third country that may transfer him elsewhere, to a place where he fears persecution – so-called indirect refoulement.



reviewing whether the applicant satisfies the asylum eligibility criteria (Articles 2 and 33). It is crucial that the state is reassured in all these cases that the protection an asylum seeker will enjoy in another state is truly effective and that it in any case provide the asylum seeker with the opportunity to dispute the allegations that the other state is safe for him.

Ever since the Asylum Act came into effect, the competent authorities have systematically abused the safe third country rule practically and have almost automatically applied<sup>521</sup> the Government Decision on Lists of Safe Countries of Origin and Safe Third Countries.<sup>522</sup> Authorities reviewing asylum applications are of the view that applications are to be reviewed on the merits in the event the applicants entered Serbia legally, with visas in valid passports or from countries not listed in the Government Decision on Lists of Safe Countries of Origin and Safe Third Countries.

The Administrative Court reaffirmed in its case law the lawfulness of the automatic application of the Government Decision on Lists of Safe Countries of Origin and Safe Third Countries although neither the first- nor second-instance authorities had previously established whether the third countries were really safe for the asylum seekers. The Administrative Court has repeatedly held that the second-instance authority had properly applied the law when it rejected the appeals as ill-founded given that the first-instance authority had established that the asylum seekers had passed through safe third countries before they arrived in Serbia.<sup>523</sup>

Given that the states Serbia borders with and through which nearly all asylum seekers enter Serbia are considered safe countries, this condition is impossible and renders meaningless the entire procedure for exercising the right to asylum in Serbia.

The solution under which the Government unilaterally defines safe third countries in a Decision is also problematic. The valid Decision was adopted in 2009 and has not been revised since. When it was drawing up the list of safe countries, the Government did not obtain guarantees that asylum applications were reviewed in a fair and efficient procedure in the countries it was designating as safe. In determining whether a particular country was safe, the Government only took into consideration the opinion of the Serbian Ministry of Foreign Affairs, whether the country ratified the 1951 Refugee Convention, and whether it had a visa-free re-

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521 In 2011, the Asylum Office reviewed 55 asylum applications, but only two of them on the merits. In 2012, the Asylum Office rendered 64 decisions dismissing asylum applications in 2012 and adopted three decisions on the merits. More in the *2012 Right to Asylum in the Republic of Serbia Report*.

522 *Sl. glasnik RS*, 67/09. The BCHR filed an initiative for the review of the compatibility of this Decision with Article 57 of the Constitution, Article 33 of the Convention relating to the Status of Refugees and Article 3 of the ECHR and called on the Constitutional Court to suspend the enforcement of both that Decision and all individual enactments rendered in accordance with it until it rendered a final decision on its initiative. The Constitutional Court dismissed the initiative. It was of the view that the Decision at issue was not a general legal enactment and thus was not subject to constitutional review. Case IUo-218/2012 of 24 April 2013, the Court's decision and a comment of it are available in the *January-June 2013 Periodic Report on the Right to Asylum*.

523 More in the *January-June 2013 Periodic Report on the Right to Asylum*.



gime for Serbian citizens.<sup>524</sup> The Decision listing the safe third countries should be reviewed periodically, with due account being taken of the situation in the countries and the degree of protection of rights of asylum seekers, including the views of the ECtHR,<sup>525</sup> the UNHCR and reports by the relevant international organisations, such as the Council of Europe<sup>526</sup> and international NGOs focusing on the international protection of refugees and asylum seekers. The European Union also noted that Serbia still needed to align the criteria of safe countries of origin and the list of safe non-EU countries with the *acquis*.<sup>527</sup>

The provisions of the Asylum Act should be interpreted in the following manner: the designation of a country as safe in the Decision should be a rebuttable presumption, i.e. the authority reviewing an asylum application should not render its decision by relying merely on the presumption that the applicant will be treated in accordance with the standards of the Refugee Convention in a third country, but has to establish how the authorities of the safe third country apply their regulations.<sup>528</sup> The asylum authorities ought to take into account all the relevant sources, such as UNHCR Report and NGO reports or the decisions of international human rights tribunals, above all the ECtHR. This view was taken also by the Constitutional Court of Serbia, which, although it has not found a violation of the principle of non-refoulement in any of the cases yet, noted that the prohibition of expulsion and other relevant provisions of the Asylum Act “lead to the conclusion that the list of safe third countries is, inter alia, formed also on the basis of the reports and conclusions of the UN High Commissioner for Refugees. Furthermore, this Court assesses that the reports of that organisation contribute to the proper application of the Asylum Act by the competent authorities of the Republic of Serbia, insofar as they shall not dismiss an asylum application in the event the asylum seeker arrived from a safe third country on the Government list if that country applies its asylum procedure in contravention of the Convention.”<sup>529</sup> Despite this view, the Constitutional Court of Serbia’s decisions demonstrate its unfamiliarity with this field of law. In two decisions, in which it gave contradictory reasonings, it declared as lawful the manner in which the state authorities charged with reviewing asylum applications applied the safe third country concept.<sup>530</sup>

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524 *Serbia as a Safe Third Country: Revisited*, p. 7.

525 For instance, Greece is on the list of safe countries, although it has not been considered a safe third country since the ECtHR judgment in the case of *M.S.S v. Belgium and Greece*, App. No. 30696/09 (2011).

526 The impugned Decision, for instance, declares Belarus a safe country of origin although its CoE membership was suspended in 1997 because of its poor human rights protection standards; the situation in this country deteriorated further in the meantime. See, e.g. CoE Parliamentary Assembly, *The Situation in Belarus*, AS/Pol (2012) 29, of 3 October 2012.

527 *Serbia 2013 Progress Report*, p. 50.

528 See *M.S.S. v. Belgium and Greece*, ECHR, App. No. 30696/09, judgment of 21 January 2011.

529 Decision in the case of UŽ–1286/2012, of 29 March 2012, available at: <http://www.azil.rs/documents/category/judgements>.

530 Decisions in the cases UŽ–5331/2012 of 24 December 2012 and UŽ–3548/2013 of 19 September 2013 are available in Serbian at: <http://www.azil.rs/documents/category/odabrane-presude>.

#### 13.2.4. Statistics and General Assessment

A total of 5065 people expressed the intention to seek asylum in Serbia in 2013. A total of 742 asylum seekers were registered and 153 asylum applications were submitted in this period. The Asylum Office interviewed 19 asylum seekers in 2013 and rendered 8 decisions dismissing asylum applications, 4 decisions approving protection and 176 conclusions suspending the asylum procedure in this period. A total of 19 appeals were submitted to the Asylum Commission in 2013: 10 of them were rejected, 2 were adopted and 4 were pending at the end of the reporting period. The first-instance authority was instructed to act re three complaints over the silence of the administration.<sup>531</sup>

The collected data and information, analysis of the legislation and its application in practice leads to the general impression that the asylum system in Serbia is inefficient. The rights guaranteed by law are illusory, because the asylum-seekers' applications are not reviewed either on time or on the merits. The inefficiency of the asylum procedure is precisely the reason why asylum-seekers perceive Serbia as a transit country,<sup>532</sup> for entering the EU illegally.<sup>533</sup>

The prohibition of refoulement to third countries is not observed in practice because the authorities are formalistically and mechanically applying the rigid legal norms, thus enabling chain refoulement, i.e. the return of asylum seekers to third countries where they face the real risk of being subject to persecution, inhuman treatment and other grave forms of human rights violations.<sup>534</sup> In August 2012, the UNHCR recommended that, given the current situation in the asylum system, Serbia not be considered a safe third country and called on the states parties to the Convention to refrain from sending asylum seekers back to Serbia on this basis.<sup>535</sup>

#### 13.3. Rights and Obligations of Asylum Seekers, Refugees and People Granted Subsidiary Protection

These rights are governed by Chapter VI of the Asylum Act and include the right to residence, accommodation, basic living conditions, health care, education, etc. These provisions, too, suffer from shortcomings, the most significant of which is that specific rights are guaranteed to persons granted the right to asylum but not to beneficiaries of subsidiary protection.<sup>536</sup>

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531 Information received on January 2014 from the Information of Public Importance Office at the Cabinet of the Minister of Internal Affairs.

532 BCHR press release of 28 November 2013 re accommodation for asylum seekers, available in Serbian at: <http://azil.rs/news/view/saopstenje-beogradskog-centra-za-ljudska-prava-povodom-smestaja-za-trazioce-azila>.

533 *Serbia 2013 Progress Report*, p. 50.

534 See similar assessments in the *Serbia as a Country of Asylum* and *Serbia as a Safe Third Country* reports.

535 *Serbia as a Country of Asylum*, paragraph 4.

536 See more in the *2011 Report*, I.4.16.2.5.

### 13.3.1. Accommodation

Pending decisions on their applications, asylum seekers are accommodated in the Asylum Centre in Banja Koviljača or the temporary centres operating in 2013 in Bogovađa,<sup>537</sup> Vračevići,<sup>538</sup> Obrenovac and Sjenica. The accommodation of asylum seekers is within the purview of the Commissariat for Refugees and Migrations and is funded from the state budget. Issues of relevance to the work of the Asylum Centres are regulated in greater detail by by-laws.<sup>539</sup> Families with children and individuals with health problems are given priority during the accommodation of asylum seekers. The facilities in Banja Koviljača, Bogovađa and Obrenovac are minimum security establishments and the living conditions in them are satisfactory.

The capacities of the Centres are insufficient and up to 200 people were living in open air, near the Bogovađa Centre in 2013.<sup>540</sup> They had to sleep on the ground, unprotected from inclement weather; only a few of them had nylon tents or slept in abandoned wooden barracks, wherefore the NPM qualified their living conditions as inhuman and degrading in its October 2013 Report.<sup>541</sup>

In early 2013, the Commissariat for Refugees and Migrations concluded a contract with the owner of a private estate in the village of Vračevići near Bogovađa to rent his house under construction and auxiliary buildings and use it as a temporary Asylum Centre. Over 450,000 RSD were spent for the accommodation of asylum seekers in these facilities, which do not satisfy even the minimal requirements of dignified and humane accommodation in the 25 January-end March 2013 period. Under Article 4 of the contract the Commissariat concluded with the owner, the latter was under the obligation to provide the asylum seekers with heating, weekly change of bed linen, bathrooms for 20 asylum seekers, a dining room seating 30 asylum seekers, electricity, water and the Internet. The owner, however, did not fulfil these obligations. Most of the people accommodated in Vračevići actually were not asylum seekers, i.e. they did not have certificates of intention to seek asylum.<sup>542</sup> Based on information obtained during its visits to the Vračevići Centre and

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537 The Red Cross Rest Home for Children in Bogovađa was designated as an asylum centre under the Government Decision

538 At the proposal of the Commissariat for Refugees and Migrations, the Serbian Government rendered a conclusion opening a temporary centre to accommodate individuals, who expressed the intention to seek asylum and who the Bogovađa Centre could not take for lack of room, in a private home in this village (Government Conclusion 05 Ref. No. 019-340/2013 of 24 January 2013.

539 Rulebook on Medical Examinations of Asylum Seekers on Admission to Asylum Centres (*Sl. glasnik RS*, 93/08); Rulebook on Accommodation Conditions and Basic Living Conditions in Asylum Centres (*Sl. glasnik RS*, 31/08); Rulebook on Social Assistance to Individuals Seeking and Granted Asylum (*Sl. glasnik RS*, 44/08); Rulebook on Records of Individuals Accommodated in Asylum Centres (*Sl. glasnik RS*, 31/08); Rulebook on Asylum Centre House Rules (*Sl. glasnik RS*, 31/08).

540 As the BCHR team extending legal aid to asylum seekers saw for itself during its visits in 2013.

541 Protector of Citizens, Ref. No. 71 – 59/ 13 October 2013.

542 More in the *January-June 2013 Periodic Report on the Right to Asylum*.

the NGO YUCOM, the BCHR estimates that over 500 people (or between 50 and 85 a day) had been accommodated in this Centre.<sup>543</sup>

In December 2013, asylum seekers, who had been living outside the Asylum Centres, were temporarily put up in the dining hall of the private hotel Berlin.<sup>544</sup> Other asylum seekers were accommodated in an Obrenovac hotel in December 2013; the living conditions in this hotel are satisfactory.<sup>545</sup>

The Serbian Government let the Commissariat for Refugees and Migrations use an army barracks in the village of Mala Vrbica near Mladenovac and renovate it to accommodate asylum seekers.<sup>546</sup> There are no indications that a Centre will soon be built to permanently address the accommodation of asylum seekers although the Refugee Commissariat was provided with funds from the budget for that purpose back in 2011.<sup>547</sup>

### 13.3.2 Integration

Article 46 of the Asylum Act lays down a general obligation of the Republic of Serbia to, commensurate with its capacities, ensure conditions for the integration of refugees in social, cultural and economic life and facilitate the naturalisation of the refugees. The Migration Management Act<sup>548</sup> entrusts the Commissariat for Refugees and Migrations with the accommodation and integration of persons granted asylum or subsidiary protection (Articles 15 and 16). The Commissariat has not submitted to the Government a proposal on the steps for integrating them in the social, cultural and economic life of the country yet. Nothing has yet been done to put in place the conditions for their integration; nor have funds in the budget been earmarked for that purpose.<sup>549</sup> One individual, who had the status of a refugee and had lived in an Asylum Centre with other asylum seekers, left Serbia illegally in 2013, because he had not been provided with any opportunities for integration for months.<sup>550</sup>

### 13.4. Unaccompanied Minor Asylum Seekers<sup>551</sup>

As provided for by international standards, the Asylum Act lays down that asylum seekers with special needs, including minors separated from their parents

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543 More in the *January-June 2013 Periodic Report on the Right to Asylum*.

544 Information received from the UNHCR Office in Belgrade.

545 As the BCHR team extending legal aid to asylum seekers saw for itself during its visits in 2013.

546 *Challenges of Forced Migration*, p. 29.

547 See: *2011 Report*, II.4.6.

548 *Sl. glasnik RS*, 107/12.

549 Information received on 5 February 2014 from the Commissariat for Refugees and Migrations.

550 As the BCHR team extending legal aid to asylum seekers established during its visits in 2013.

551 Unaccompanied minors are aliens under 18 years of age who arrived in the Republic of Serbia unaccompanied by their parents or guardians or were separated from them upon arrival in the Republic of Serbia (Art. 2, Asylum Act).

or guardians, shall be provided with special care (Art. 15). There are no particular norms or protocols for establishing the age of aliens seeking asylum in Serbia.<sup>552</sup> When an asylum seeker declares that he is a minor, the MIA contacts the local social work centre, which designates him a temporary guardian. The guardian escorts the minor to the Institution for Children and Youths Vasa Stajić in Belgrade or the Institution for Children and Youths in Niš, which have special high security wards looking after minor asylum seekers. The minors are appointed new guardians in the institutions and provided with the opportunity to declare whether they want to seek asylum in Serbia; if they do not, they are returned to the border of the country from which they entered the territory of Serbia.<sup>553</sup> Unaccompanied minors who apply for asylum are referred to the Asylum Centres in Banja Koviljača and Bogovađa, where they live until a final decision on their asylum application is rendered.

In keeping with the principle of representing unaccompanied minors (Art. 16), the social work centres appoint guardians for the minors before they apply for asylum. These guardians ought to be trained in working with unaccompanied minors. The obligation in the Act that the guardians attend interviews of unaccompanied minors is consistently honoured by.

## 14. Right to Work

### 14.1. General

Serbia is a member of the International Labor Organization (ILO) and a signatory of a large number of conventions adopted under the auspices of this organisation,<sup>554</sup> including Convention No. 122 Concerning Employment Policy<sup>555</sup>, Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation<sup>556</sup> and ILO Convention No. 100 Concerning Equal Remuneration.

According to the case law of the Committee for Economic, Social and Cultural Rights (CESCR), the right to work does not imply the right of a person to be provided with a job he wants, but the state's obligation to take necessary measures to achieve full employment.<sup>557</sup> The right to work entails the right to employment, the right to the freedom of choice of work, i.e. prohibition of forced labour<sup>558</sup> and the prohibition of arbitrary dismissal.

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552 *Serbia as a Safe Third Country*, p. 10.

553 See more in *Status of Asylum Seekers in Serbia (July-October 2012)*, available at [http://www.azil.rs/doc/ENG\\_ASYLUM\\_3\\_FINAL\\_rev.pdf](http://www.azil.rs/doc/ENG_ASYLUM_3_FINAL_rev.pdf).

554 Serbia has to date adopted 75 ILO Conventions.

555 *Sl. list SFRJ (Međunarodni ugovori i drugi sporazumi)*, 34/71.

556 *Sl. list FNRJ (Međunarodni ugovori i drugi sporazumi)*, 3/61.

557 General Comment No. 18, UN doc. E/C.12/GC/18.

558 More on the prohibition of forced labour in II.3.5.

The Constitution guarantees the right to work and free choice of occupation (Art 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.<sup>559</sup>

Labour law is regulated primarily by the Labour Act<sup>560</sup> and the Employment and Unemployment Insurance Act.<sup>561</sup> The General Collective Agreement,<sup>562</sup> which regulated relations between employers and workers in greater detail, ceased to be effective in May 2011, which essentially means that the Labour Act, particularly the branch collective agreements (if concluded), general enactments (employers' collective agreements or rulebooks) or employment contracts apply to work-related rights, obligations and duties.

The National Employment Strategy for the 2011–2020 Period was adopted in May 2011<sup>563</sup>. The primary goal of the employment policy is to establish an efficient, stable and sustainable trend of employment growth and fully align the employment policy and the labour market indicators with the practices of EU member states. The Strategy envisages a rise in employment from 45.5% to 66%.

#### 14.2. Employment Rates in Serbia

According to the Statistical Office of the Republic of Serbia (SORS) data, the unemployment rate – the share of the unemployed population of the Republic of Serbia of working age – stood at 20.1% (19.4% among men and 21.2% among women) in October 2013. The unemployment rate stood at 16.7% in the Belgrade region and at 23.1% in the Autonomous Province of Vojvodina, while 18.6% of the population in Šumadija and Western Serbia and 22% of the residents of South and East Serbia were unemployed. The unemployment rate was 4% lower in October 2013 than in April the same year, when it stood at 26.7%, while employment grew by 2.8% in the same period.

The employment rate – the share of the employed population above 15 years of age – stood at 39.1% in October 2013 (46.2% among men and 32.5% among women). The highest rates of employment were registered in Šumadija and West Serbia (41.1%) and the South and East Serbia region (39.3%). The employment rate in the Belgrade region stood at 38.8%, while the Vojvodina region had an employment rate of 37.3%. The informal employment rate is also monitored given the large

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559 Article 4 of the ESC guarantees the right to a fair remuneration. See *Digest of the Case Law of the European Committee of Social Rights*, pp. 44–48 and General Comment No. 18, paragraph 1.

560 *Sl. glasnik RS*, 24/05, 61/05, 54/09 and 32/13.

561 *Sl. glasnik RS*, 36/09 and 88/10.

562 *Sl. glasnik RS*, 50/08, 104/08 – Annex I and 8/09 – Annex II.

563 *Sl. glasnik RS*, 55/05, 71/05 – corr, 101/07, 65/08 and 16/11).

number of people who are informally employed;<sup>564</sup> this rate was 2.1% higher in October than in April 2013 and 2.4% higher than in October 2012.<sup>565</sup>

### *14.3. Labour Legislation*

The need to adopt a new labour law has been discussed for years. The authorities intensively worked on the amendments to the Labour Act in the latter half of the year and opened a public debate on them in December 2013 and January 2014 with the representatives of state authorities, public services, companies, trade unions, experts and other interested members of the public. After the public debate, the Socio-Economic Council decided to withdraw the draft from the procedure and establish a new working group to draft the amendments in 2014.

According to the proposer<sup>566</sup> of the draft amendments, the 2005 Labour Act needs to be amended in order to improve the legal work-related institutes, ensure more comprehensive protection of workers' rights and align the Act with international standards, particularly with EU regulations.<sup>567</sup> The proposer also stated in the explanatory note that the provisions of the law giving rise to different interpretations and resulting in legal insecurity needed to be specified in greater detail and that one of the goals of the amendments was to put in place a legal framework to stimulate employment, with special focus on difficult to employ categories. In the view of the proposer, the new provisions would provide more flexible regulation of employer-worker relations in accordance with international standards and ensure the protection of the workers, as the weaker party in the contractual relationship. The amendments, *inter alia*, included new provisions on oversight, the powers of the labour inspectorate and penal provisions.

The draft amendments also included new provisions on working and employment conditions. Employment contracts no longer have to be signed in advance and may be signed on the day the worker begins work. They also simplified the hiring and firing red tape. Duration of maximum fixed-term employment was increased from 12 to 36 months, overtime was limited to maximum eight hours a week, the workers could take maximum two (instead of three) weeks of the first part of their vacation at a time, the suspension period was extended from three to 15 days and trade union representatives were protected from dismissal six months after they stopped discharging their trade union duties (the valid law allows such dismissals

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564 The informal employment rate is the percentage of all employed who are working without formal employment contracts. This category covers workers in unregistered and registered companies, who have not signed formal employment contracts and do not have social and pension insurance, and unpaid household workers.

565 SORS press release of 30 December 2013, available at <http://webzrs.stat.gov.rs>.

566 The amendments were drafted in 2013 by the Ministry of Labour, Employment and Social Policy and include the suggestions and recommendations of the Ministry of Economy available in Serbian at [www.nezavisnost.org](http://www.nezavisnost.org).

567 *Vreme*, 9 January 2014, p. 16.



after one year). Paid leave were reduced from seven to five days. As far as mothers of children under one are concerned, the draft amendments allowed them to return to work prior to the expiry of their maternity leave at their own request, in which case they were entitled to work part-time. The new company owners had to abide by the valid collective agreements at least six months (whereas the valid law stipulated that they had to honour them for at least a year).

The redundancy provisions in the Labour Act, which were sharply criticised by the employers, draft law stipulated differently – the employers' obligation is to pay the workers redundancy only for the period they worked in their companies, not for all their years of service. The draft amendments also introduced new forms of employment, such as "work in pairs" allowing eight-hour jobs to be split into two four-hour jobs that would be performed by two workers, who would be paid half the salary. Other changes were also envisaged by the amendments, but, as mentioned above, the draft was withdrawn from the procedure and is likely to undergo further changes in the ensuing negotiations. Given that the parliament was dissolved in January 2014 and parliamentary elections were called for March 2014 and the country was run by a caretaker Government, it remained uncertain when the talks on the amendments to the Labour Act, which are instrumental if the state is genuinely committed to serious reforms, would resume.<sup>568</sup>

The European Commission noted in its Report<sup>569</sup> that Serbia needed to invest more effort and adopt measures aimed at achieving a more flexible labour market. It welcomed the adoption of the 2013 National Employment Action Plan and the participation of over 2,000 jobless Roma in measures under the 2012 National Employment Action Plan. On the other hand, the European Commission assessed that the national budget approved for active labour market measures in 2013 still represented 0.1% of GDP which was still too low to ensure appropriate coverage of the unemployed based on needs. It concluded that additional efforts were needed to ensure better targeted and efficient labour market measures and to develop a strategic approach to employment, especially in a context of limited financial resources, increasing unemployment and deteriorating economic growth. The Commission also noted the lack of headway as regarded preparations for the European Social Fund.

#### *14.4. Right to Assistance in Employment and in the Event of Unemployment*

Employment is regulated in greater detail by the Employment and Unemployment Insurance Act<sup>570</sup>. Job seekers are provided assistance in finding employment free of charge by the National Employment Service (NES) and recruitment

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568 The draft amendments are available at <http://www.paragraf.rs/dnevne-vesti/181213/181213-vest5.html>.

569 Serbia 2013 Progress Report, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf).

570 *Sl. glasnik RS*, 36/09 and 88/10.

agencies. The NES has been headquartered in Kragujevac since 2010. The NES is under the obligation to provide its services to the unemployed free of charge. Job seekers can also look for employment through private recruitment agencies. The costs of the recruitment agencies' services are fully borne by the employers. The NES is duty-bound to publish a job vacancy within 24 hours from the moment it is notified of the vacancy. The definition of job seekers now includes an additional category apart from the existing categories (the unemployed) – that of persons who want to change jobs. This category covers persons who cannot be categorised as unemployed on legal grounds (high school and university students, pensioners) and provides them with the opportunity to avail themselves of the NES' services. A total of 759,372 job seekers were registered with the National Employment Agency (NES), or 1.1% more than the previous year; 395,985 of them were women. In 2013, 214,461 people found jobs; 264,665 people registered with the NES were first-time job seekers.<sup>571</sup> Both the employers and trade unions are aware of how difficult finding a job is but ascribe that to different causes. The Serbian Employers' Union believes that the key reason for the high unemployment rate lies in the Labour Act, which it finds restrictive, and numerous other laws hindering investments in the Serbian market. On the other hand, the trade unions blame the employers and think that the way they have been doing business has led to an increase in informal employment and lower costs of labour.<sup>572</sup>

A total of 2.2 million people, or 45% of the working age population in Serbia, are employed (including informal employment). Out of every 100 residents of Serbia, 24 are working, 24 are pensioners and 10 are unemployed. People on average spend two years looking for a job and employers have claimed that hiring younger workers without experience cost them more. Most of the jobless registered with the National Employment Service would prefer to work in the public sector. Furthermore, the education system is not responsive to labour market needs. Most youths start looking for a job as soon as they finish school. However, those fresh out of college or secondary school lack communication and time management skills and many of them do not know any foreign languages. A survey has shown that 10% of the jobless youths have not completed even primary school, that 15% have not completed secondary school, while 60% are high school graduates. The fact that over half of the youths are jobless is extremely concerning.<sup>573</sup>

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 provision is in keeping with the practice of international bodies monitoring economic and social rights.

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571 National Employment Service monthly statistical bulletins, available in Serbian at [http://www.nsz.gov.rs/live/dokumenti/statisti\\_ki\\_bilteni\\_nsz.cid667](http://www.nsz.gov.rs/live/dokumenti/statisti_ki_bilteni_nsz.cid667).

572 *Blic*, 17 October, p. 5.

573 Employers' Union survey, available in Serbian at [http://www.poslodavci.org.rs/images/pages/brosura\\_bolji\\_uslovi\\_za\\_zaposljavanje\\_mladih.pdf](http://www.poslodavci.org.rs/images/pages/brosura_bolji_uslovi_za_zaposljavanje_mladih.pdf). Similar data were presented also by the representatives of the National Employment Service.

The Act includes an extremely important provision entitling jobless individuals to unemployment allowances, which are within the jurisdiction of the NES. The unemployment allowances are paid out for a maximum of 12 months, exceptionally 24 months in the event the unemployed person lacks two years of service to retire (Article 72). The amount of the monthly unemployment allowance has been reduced and now ranges from 80 to 160 percent of the minimum wage.

The Constitutional Court of Serbia in 2012 reviewed an appeal filed by one of the 1,858 workers of the Kraljevo plant Magnohrom, who were declared redundant and lost their jobs. The appellant was advised to report to the NES branch office in Kraljevo within 30 days to exercise his rights under the Employment and Unemployment Insurance Act. However, when he arrived at the NES, he saw an official notice signed by the branch director posted on the door saying that only people with less than two years until retirement were entitled to unemployment benefits. This information had been published and broadcast repeatedly by the media. The appellant first complained to the Basic and then appealed to the Higher Court in Kraljevo, claiming that the NES notice had misled him and that he was entitled to unemployment benefits under the Employment and Unemployment Act regardless of the timeframes, redundancy or other social programme options. Both the Basic Court, and the Higher Court, which reviewed his appeal, took the view that the appellant could have engaged a lawyer to provide him with legal aid in registering and applying for unemployment benefits. In the view of both Courts, the fact that the NES misled the beneficiaries of its services via the media and its bulletin boards did not amount to a violation of the appellant's rights.

The Constitutional Court took the opposite view in its decision<sup>574</sup> upholding the constitutional appeal and finding violations of the appellant's rights to a fair trial and wequal protection of his rights enshrined in the Constitution. It stated that the NES had de facto deprived the appellant of his unemployment rights by incorrectly interpreting the Labour and the Employment and Unemployment Insurance Acts. In the view of the Court, the NES is an organisation vested with public powers and under the obligation to extend legal advice and expert assistance to the unemployed.

Constitutional Court decision led the courts to find in favour of the Magnohrom workers who had pressed charges. Over 40 motions for retrial were filed with the Kraljevo Basic Court in the first nine months of 2013.

A survey conducted by the Foundation for the Advancement of Economics (FREN) with USAID's support<sup>575</sup> showed that nearly one-third of the companies in Serbia, as many as 28%, operated in the grey economy. Most of these companies were in the construction, agriculture, hospitality and transportation sectors. The survey also showed that entrepreneurs and start-ups were more likely to engage in grey

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574 Constitutional Court Decision Už - 3778/11 of 29 March 2012.

575 "Shadow Economy in Serbia", Foundation for the Advancement of Economics, March 2013, available at <http://www.fren.org.rs/sites/default/files/articles/attachments/the-shadow-economy-in-serbia-study.pdf>.

economy and that the share of shadow economy in the GDP stood at 31%, the highest percentage in the region, after Bulgaria. Amendments to the Labour Act may lead to a reduction of the grey economy as, under the valid provisions, employers can avoid registering their workers, which has often prevented the labour inspectors from fighting against shadow economy. 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 contracts with the competent NES units or the competent municipal administration authorities before the workers begin working and to keep the employment contracts and the mandatory social insurance registration forms in their offices.<sup>576</sup>

A new Article 33a was included in the draft amendments to the Labour Act, under which an employer is under the obligation to keep the employment contracts and other special service agreements and the mandatory social insurance registration forms in their headquarters or other offices, depending on where their staff are working. The amendments to the Labour Act need to be accompanied by amendments to the tax legislation. Apart from improving the legislative framework, the authorities need to ensure greater efficiency of the labour and tax inspectorates.

#### *14.5. Workers' Rights Concerning Termination of Employment*

According to Article 179 of the Labour Act, employment may be terminated against the employee's will for a just cause relating to his working ability (if the worker does not perform or does not have the necessary knowledge or ability to perform the assigned duties), his conduct (if the worker violates the duties laid down in the employment contract, violates work discipline, if his conduct precludes his further work for the employer, in the event he 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). Under the draft Labour Act, which has been withdrawn, the employer shall bear the burden of proof in the event he dismissed a worker who abused his 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

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<sup>576</sup> Amendments to Articles 32 and 33 of the Labour Act proposed by the Centre for Democracy, available in Serbian at [http://www.politickiforum.org/tribina\\_stamp.php?naredba=stampa\\_teksta&id=646](http://www.politickiforum.org/tribina_stamp.php?naredba=stampa_teksta&id=646).

against the employee's will in the event he disagrees with an annex to the provisions in the employment contract regarding remuneration. A worker who consents to the annex to the contract is still entitled to contest the legality of the contract in civil proceedings (Art. 172(4)).

Employers may not dismiss workers without prior notice or if they can offer them another job or re-training. Article 183(4) prohibits discrimination in dismissal, including dismissal on the grounds of political opinion, which is in accordance with the case-law of the Committee for Economic, Social and Cultural Rights (CESCR).<sup>577</sup> 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 representatives of the employees have 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.

The latest amendments to the Labour Act adopted earlier in 2013 prohibit the dismissal of pregnant women, women on maternity leave and workers on childcare leave. This prohibition commendably prevents discrimination on grounds of gender and parenthood.

The draft amendments to the Labour Act include a new provision on the burden of proof in case of dismissals of workers representatives. It is up to the employers to prove that they had not dismissed a workers' representative because of his status or activities. This is fully acceptable, given the character of employment and the existence of legal subordination benefiting the employer as the stronger party.

Under the draft amendments, a former worker is entitled to seek from his past employer a document certifying when he started and stopped working for his past employer and detailing his job description. At the request of the worker, the employer may appraise his conduct and performance. This is in keeping with ILO Convention No. 158 and Recommendation No. 166 concerning termination of employment at the initiative of the employer.

A number of valid Labour Act provisions are devoted to the termination of employment against the workers' will, on grounds of redundancy caused by technological, economic or organisational changes in the company, and to the realisation of the workers' rights due to the bankruptcy of the company. The employer has to adopt a redundancy programme, which will in particular specify: the reasons why there is no need for the jobs, the number of and other data on the redundant workers, the possibility of their requalification 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

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<sup>577</sup> See *Concluding Observations on the Report of Germany*, E/C.12/1993/17, paragraph 8.

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.

The Bankruptcy Act<sup>578</sup> 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 contributions borne by the employer.

The Government of Serbia endorsed the Draft Privatisation Act and the Draft Act Amending the Bankruptcy Act in December 2013.<sup>579</sup> The draft amendments to the Bankruptcy Act introduce the institute of automatic bankruptcy and envisage the establishment of a Bankruptcy Oversight Organisation and a Chamber of Bankruptcy Managers in lieu of the Licensing Agency. The Chamber shall issue, extend and revoke the bankruptcy managers' licences and keep a register of bankruptcy managers. The Bankruptcy Oversight Organisation shall represent state creditors in bankruptcy and restructuring proceedings, and shall be entitled to submit reorganisation plans for the bankruptcy debtors with a majority social or state stake.

The draft amendments to the Bankruptcy Act for the first time govern the bankruptcy of related companies by envisaging the appointment of one bankruptcy manager for all of them, the establishment of one bankruptcy estate and the adoption of one reorganisation plan. Furthermore, the principle of even settlement of claims shall apply to all the creditors of the related companies while these companies' mutual claims shall be cancelled out.

Under the draft amendments to the Bankruptcy Act, payment of outstanding minimum wages plus interest and pension and disability insurance contributions for the present and former workers of the companies declared bankrupt shall have priority. The authors of the amendments stated that this was a step towards ensuring guaranteed payments of these claims, after which they are to be bought by the Transition Fund.

In October 2013, the Protector of Citizens issued a press release alerting to violations of the rights of workers of companies under restructuring and the huge number of workers, whose employers had not been paying their health and pension insurance contributions for years. He underlined that some employers have been violating the law for years, while the state authorities charged with ensuring its enforcement were waiting for a political solution, which was taking its toll on the workers and their families.<sup>580</sup> The Protector of Citizens has been alerting to this

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578 *Sl. glasnik RS*, 104/09.

579 The draft laws are available in Serbian at [www.parlament.gov.rs](http://www.parlament.gov.rs).

580 Protector of Citizens press release of 19 September 2013 on the restructuring of the Machine and Tractor Plant and Engine Plant Rakovica.



problem in his Annual Reports to the National Assembly for years. He stressed that the state guaranteed the exercise of rights prescribed by the laws and that the disrespect of these laws resulted in breaches of both the rights of the workers and of those employers who were abiding by the law and thus had greater expenses than their competitors in the market. The Protector of Citizens extended his full support to Economy Minister Saša Radulović and his plan to cut the contribution rates to levels affordable by all employers and introduce zero tolerance for the failure to pay them.

According to some surveys and analyses, as many as 800,000 people have lost their jobs since the process of privatisation was launched in 2001 due to shoddy privatisations, low prices at which factories were sold and dodgy business arrangements.<sup>581</sup> Cities in which most residents were working in the large factories and companies that were shut down were hit the hardest. The shutdowns of the factories led to loss of jobs and the cities have faced economic collapse. Transition brought upon the workers financial and other forms of insecurity, loss of jobs and the inability to meet their basic needs.<sup>582</sup>

#### *14.6. Oversight of the Respect of the Right to Work and Work-Related Rights*

A worker is entitled to complain against a violation or denial of his employment rights to the labour inspection (Arts. 268–272, LA), launch proceedings before the competent court (Art. 195, LA) or require the arbitration of the disputed issues together with the employer (Art. 194, LA). The provisions of the Peaceful Settlement of Labour Disputes Act apply to individual and collective labour disputes.<sup>583</sup>

The labour inspectorate is charged with overseeing the enforcement of the labour law. Other inspectorates oversee the enforcement of the law in other fields directly affecting the status of workers. The Labour Inspectorate Act was not adopted in 2013 although it is prerequisite for improving protection at work and preventing the abuse of labour contracts. The imminent reform of the inspection system is not under question, but the model of the reform is. One of the dilemmas is whether the 33 existing inspectorates should be unified in an Inspectorate General or continue operating within the ministries and interlinked electronically. Both the domestic and foreign investors claim that the current system brings uncertainty into business, due to the large number of regulations, overlapping powers of the inspectorates, diverse penal policies and the fact that no-one is controlling the companies in the “grey zone”.<sup>584</sup>

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581 *Danas*, 10 November, p. 4.

582 According to the survey, 3,163 companies were on sale, 2,365 sale contracts were signed and 680 of them broken off. The companies were sold for 2.6 billion EUR, the mandatory investments in them amounted to 1.07 billion EUR and the value of their mandatory social programmes totalled 267.7 million EUR. See *Danas*, 10 November, p. 4.

583 *Sl. glasnik RS*, 125/04 and 104/09.

584 See the report in Serbian, available at <http://www.euractiv.rs/srbija-i-eu/5674-srbiji-potreban-novi-zakon-o-inspekcijama>.



At an event organised by the Serbian Chamber of Commerce and the Fund for Democracy, Agency for Peaceful Labour Dispute Resolution Agency adviser Olga Kićanović said that all legal frameworks had to be aligned among themselves to ensure their applicability in practice if informal employment and grey economy were to be reduced. Participants in the meetings organised in the autumn with the representatives of the state, the business community and the civil sector<sup>585</sup> and the academia concluded that the work of the labour inspectorate had to be improved and that the obligation to register employment contracts in public services had to be introduced to prevent informal employment. Furthermore, they noted the work of the inspectorates needed to be coordinated or integrated, the number of inspectors needed to be increased and the number of regulations they oversee reduced. They were also of the view that the inspectorates' authority needed to be ensured and that the inspectors' independence needed to be protected against pressures from third parties.

The unreasonably long proceedings in Serbia, which can last up to ten years in case of labour disputes, has led more and more dissatisfied workers to take their case to the European Court of Human Rights. Although most of the ECtHR judgments finding Serbia in violation of the ECHR regard the right to a fair trial and the right to a trial within reasonable time, very many of the applications filed against Serbia concern social and economic rights from the legal point of view.

The ECtHR has not ruled yet on a case that warranted a lot of media and expert attention in 2012 and 2013, which regards the payment of per diems to army reservists. All thirty appellants<sup>586</sup> had been called up during the NATO air strikes. The law entitled them to per diems for the days they were mobilised in the March-June 1999 period. After they were demobilised, the Serbian Government refused to pay the reservists their per diems and they organised a series of public protests. After extensive negotiations, the Serbian Government on 11 January 2008 agreed to pay the per diems to some reservists, mostly those residing in seven municipalities categorised as "underdeveloped". The applicants, who were not registered as residents of these municipalities, filed lawsuits complaining of discrimination and demanding that they be paid their per diems. The reservists exhausted also their last legal remedy by complaining to the Constitutional Court, which also rejected their claims. They complained to the ECtHR of violations of their rights under Article 1 Protocol No. 1 (protection of property), Article 14 of the ECHR (prohibition of discrimination) and Protocol No. 12 (general prohibition of discrimination). The latter in August 2012 rendered a judgment finding Serbia in breach of these articles because it did not provide an objective and reasonable justification why the applicants had been treated differently merely on grounds of their places of residence.

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585 BCHR representatives also took part in the meetings held in September, October and November 2013.

586 *Vučković and Others v. Serbia*, ECtHR, App. No. 17153/11 (2012), available at [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["Vučković"\],"documentcollectionid2":\["GRANDCHAMBER"\],"CHAMBER":"","itemid":\["001-112706"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{).

The ECtHR also stated that per diems, not social benefits, were at issue and that the Serbian Government's reaction was arbitrary because the reservists from the seven "underdeveloped" municipalities had not been under the obligation to prove their indigence. The Serbian Government asked that the case be referred to the Grand Chamber, which reviewed the case in May 2013. Serbia's Agent before the ECtHR refuted the allegations of the applicants that the lists the Government submitted were forged and offered to submit certified copies of the documents as a guarantee that the lists were original. The Grand Chamber decision was still pending at the end of the reporting period.<sup>587</sup>

## 15. Right to Just and Favourable Conditions of Work

### *15.1. Fair Wages and Equal Remuneration for Work*

Serbia is a signatory of the ILO Minimum Wage Fixing Convention (No. 131) and the ILO Equal Remuneration Convention (No. 100), but has not yet ratified ILO Minimum Wage-Fixing Machinery Convention (No. 26) and the ILO Minimum Wage Fixing Machinery (Agriculture) Convention (No. 99).

The Constitution guarantees the right of workers to 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, abilities, responsibility and physical and intellectual work.

With a view to ensuring financial and social security of employees, the Labour Act envisages the right of employees to minimum wages. The minimum wage shall be set by a decision of the Social-Economic Council established for the territory of the Republic of Serbia (Art. 112, LA). The Social-Economic Council set the new minimum wage in its Decision of April 2013. The minimum wage for the March 2013-December 2013 period was set at 115.00 RSD net per working hour.<sup>588</sup>

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

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587 A legal summary of the *Vučković and Others v. Serbia* case is available at [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"itemid":\["002-7412"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{).

588 Data from: <http://www.socijalnoekonomskisavet.rs/minimalnazarada.html>.

year of service (Art. 54). The Act does not oblige employers to keep records of overtime. This has greatly obstructed the checks by the labour inspectors because most employers do not render decisions on overtime or keep records of their staff's overtime. Labour inspectors have a hard time establishing the facts regarding overtime and whether the employers paid the staff for it. In practice, workers tend not to report violations of their labour rights in fear of losing their jobs; such violations are reported only once they no longer work for the employer.<sup>589</sup>

The Labour Act introduced the possibility of the employer ordering the employee to take a leave of absence exceeding 45 days with adequate compensation of wages, 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 set in accordance with the Act (Art. 116).

Many employers have not been paying the workers their salaries or their mandatory contributions. The latest amendments to the Pension and Disability Insurance Act<sup>590</sup> cancelled all pension insurance debts over ten years old. The state will no longer be able to link the years of service of workers whose employers failed to pay their pension insurance contributions and went bankrupt or into default, because, under the latest tax regulations, the pension and disability insurance debts have a ten-year statutory limitation. All workers with gaps in the payments would sooner or later have had to pay the contributions themselves because their firms had gone bankrupt or were in default for more than a year. The statutory limitation, however, does not mean that the 180,000 or so workers, known to have gaps in insurance payments, will be able to retire, but will only receive two-thirds of their pensions, while the rest will be used to cover the outstanding contributions. The employers will have to submit tax forms for every single worker pursuant to which a part will be deducted for the contributions whether or not the employers paid them. Workers will from now on have to check themselves whether their contributions have been paid every month; until now, they were able to inform themselves only once a year. Employers owe the Pension and Disability Insurance Fund 143 billion RSD in unpaid contributions. In 2012 alone, the employers failed to pay the contributions for around 90,000 workers, but only 8,000 misdemeanour reports were filed against them.<sup>591</sup>

In his reaction to the amendments of the law, the Protector of Citizens said that workers, whose employers had not paid their pension and disability insurance contributions and ten years had passed since, would practically not be entitled even to sue them or exercise their right to full pensions. With the latest set of tax laws

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589 More is available in Serbian on the Black on White website at <http://www.cmonabelo.com>.

590 *Sl. glasnik RS*, 34/03, 64/04 – Constitutional Court Decision, 84/04 – other law, 85/05, 101/05 – other law, 63/06 – Constitutional Court Decision USRS, 5/09, 107/09, 101/10, 93/12, 62/13 and 108/13).

591 Belgrade Chamber of Commerce press release, available in Serbian at [http://www.kombeg.org.rs/aktivnosti/c\\_eko/Detaljnije.aspx?veza=8903](http://www.kombeg.org.rs/aktivnosti/c_eko/Detaljnije.aspx?veza=8903)

and the provisions on the statutory limitations on debts and pension and disability insurance contributions, the state has practically protected the employers who had violated the law and incurred damages both to the workers and the budget. Instead of forcing them to make amends, even if only in court, the state relieved them of all responsibility under the law, even of the risk of being sued.<sup>592</sup>

At the proposal of the trade unions, the state Social-Economic Council filed an initiative with the Ministry of Labour and Social Policy seeking the amendment of the Criminal Code and the introduction of criminal sanctions against solvent employers who do not pay their workers.<sup>593</sup> The proposed amendments to the Criminal Code were not adopted in 2013, but the draft penal provisions of the Labour Act include new misdemeanours such as the non-payment of wages on time, the employers' failure to forward copies of employment contracts to the workers and to allow workers insight in the general company enactments. The authors of the latter draft amendments also proposed the increase of the fines.

### 15.2. Right to Rest, Leisure and Limited Working Hours

Serbia ratified nearly all ILO conventions regarding weekly rest and paid leave. Serbia withdrew from ILO Holidays with Pay Convention (No. 52) and Holidays with Pay (Agriculture) Convention (No. 101). Serbia never ratified ILO Hours of Work (Commerce and Offices) Convention (No. 30) or the Forty-Hour Week Convention (No. 47).

Article 60(4) of the Constitution explicitly guarantees the right to limited working hours, daily and weekly rest, and paid annual 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 case law of the European Economical and Social Committee, which considers that a working week exceeding 60 hours under certain conditions is unreasonable.<sup>594</sup>

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 European Social Charter [ESC]) and work performed on a public holiday should be paid at least double the usual rate.<sup>595</sup> Under Article 108 of the

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592 Protector of Citizens statement to *Politika*, 16 June.

593 *Blic*, available in Serbian at: <http://www.blic.rs/Vesti/Ekonomija/362623/Ko-zaradjuje-a-ne-isplacuje-plate-mogao-bi-u-zatvor>.

594 *Conclusions XIV-2, The Netherlands*, pp. 535–536.

595 *Conclusions XVIII-1, Croatia*, p. 116.

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.

### *15.3. 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 following two ILO Conventions are the most relevant in that respect: Convention No. 187 on a Promotional Framework for Occupational Safety and Health<sup>596</sup> and Convention No. 167 on Safety and Health in Construction.<sup>597</sup> The ESC specifically guarantees the right to safe and healthy working conditions in Article 3.<sup>598</sup> The ratification and effective implementation of the ILO Convention No. 167 is very important given the many accidents experienced by construction workers in Serbia.<sup>599</sup>

Article 60(4) of the Constitution guarantees everyone the right to occupational safety and health and the right to protection at work. Paragraph 5 of the Article guarantees special protection at work to women, 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 own health and safety and those of other employees and people. An Occupational Safety and Health Directorate has been set up within the Ministry of Labour and Social Ministry. It is charged with monitoring the implementation of occupational safety and health regulations and measures, overseeing the work of employers with respect to safety and health at work, collecting and analysing data on work-related injuries, organising counselling and professional training for the employers and informing the public of the state of health and safety at work.

The Serbian Occupational Safety and Health Act<sup>600</sup> complies with the ratified ILO Conventions and the main Directive 89/391/EEC and the directives deriving from it by adhering to all the guidelines in these directives to the extent and in the form reflecting the national circumstances. Apart from the Occupational Safety and Health Act, the following laws also deal with various aspects of safety and

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596 *Sl. glasnik RS (Međunarodni ugovori)*, 42/09.

597 *Ibid.*

598 More in *Digest of the Case Law of the European Committee of Social Rights*, pp. 35–43.

599 The majority of injuries at work take place in the spheres of industry and construction. Thirty seven percent of the workers whose injuries at work were fatal had fixed-term contracts, while 22% had worked in the informal economy More in: *Decent work in the Republic of Serbia, putting equality in the heart of EU integration*, Centre for Democracy, 2011, p. 7, available at [http://www.solidar.org/IMG/pdf/35\\_serbia\\_decent\\_work\\_english.pdf](http://www.solidar.org/IMG/pdf/35_serbia_decent_work_english.pdf).

600 *Sl. glasnik RS*, 101/05.

health at work: the Labour Act, the Health Protection Act<sup>601</sup>, the Health Insurance Act<sup>602</sup>, the Pension and Disability Insurance Act,<sup>603</sup> etc. The legislative framework of the system of health and safety at work has been completed by the adoption of the requisite by-laws.<sup>604</sup>

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, Occupational Safety and Health Act). The Act also prescribes penalties for violating the provisions of the Act or the relevant norms, standards, regulations and directives.<sup>605</sup>

Workers in Serbia injured at work or suffering from an occupational disease exercise their rights in accordance with the Health Insurance Act and the Pension and Disability Insurance Act. They can, however, claim (pecuniary and non-pecuniary) damages in civil proceedings. This type of protection is declaratively afforded also to workers in the informal economy, who can turn to the labour inspectors in the event they suffer an injury at work and claim their labour-related, health, pension and disability insurance rights. Only a few have, however, done so in practice.

The Government of the Republic of Serbia adopted a new Strategy for Health and Safety at Work for the 2013–2017 Period.<sup>606</sup> The Health and Safety at Work Administration said that the Strategy relies on the EU Strategy for Health and Safety at Work. The Serbian Strategy is also based on the Health and Safety at Work Act, ILO Conventions and EU directives by respecting the key principles promoted in these documents and the Act Ratifying the Revised European Social Charter on which the system of health and safety of work is now based.

In addition to the principles in the prior Strategy (prevention, involvement of all stakeholders, accountability, achievability of goals), the new Strategy introduces a new principle on the promotion of health and safety at work, i.e. raising the awareness of the general public of the importance of applying health and safety at work measures which will be achieved by organising various promotional activities. The Strategy interestingly also envisages the inclusion of health and safety at work in the primary and secondary school curricula, the introduction of a single register of work-related injuries and occupational diseases, continuous training of health and safety at work professionals and responsible staff and others and the promotion of the culture of prevention and examples of good practices in the field of health and safety at work.

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601 *Sl. glasnik RS*, 107/05, 88/10, 99/10 and 57/11.

602 *Sl. glasnik RS*, 107/05, 109/05 and 57/11.

603 *Sl. glasnik RS*, 34/03, 64/04, 84/04, 85/05, 5/09, 107/09 and 101/10.

604 Portal Quality, Occupational Safety and Health, [http://kvalitet.org.rs/index.php?option=com\\_content&view=article&id=166&Itemid=82](http://kvalitet.org.rs/index.php?option=com_content&view=article&id=166&Itemid=82).

605 Chapter XI Occupational Safety and Health Act, *Sl. glasnik RS*, 101/05.

606 Serbian Government press release on its session of 14 November 2013.



The association of employers and three representative trade unions are also involved in the process of improving health and safety at work. The Employers Union of Serbia established a working body for health and safety at work issues and a unit of the Union's expert department also deals with health and safety at work. The Association of Independent Trade Unions of Serbia formed an expert team for health and safety at work and the branch trade unions formed their own working bodies for health and safety at work. The Trade Union Confederation Nezavisnost's Programme Board for the Protection of the Environment and the Working Environment has continuously been working on improving the health and safety at work. The Confederation of Free Trade Unions, organised along branch and regional principles, lobbied through its members to ensure that all the employers' collective agreements have a chapter defining the field of health and safety at work.<sup>607</sup>

The 2012 data<sup>608</sup> of the Labour Inspectorate charged with safety at work and operating within the Ministry of Labour, Employment and Social Police show that 6,765 work-related injuries occurred in 2012, or 3,482 less than in the previous period.<sup>609</sup> The Strategy aims to cut the number of injuries by 5% vis-a-vis the number registered by the Labour Inspectorate.<sup>610</sup>

Only six of the 6,771 reports on work-related injuries and occupational diseases the employers submitted to the Health and Safety at Work Administration in 2012 regarded occupational diseases, while the rest regarded work-related injuries. Most of the latter were light injuries (5,930); 829 of the injuries were grave and six were lethal. The breakdown of the work-related injuries by activity, discounting the injuries the workers sustained on their way to or from work, shows that the greatest number of grave and lethal injuries occurred in the industry and mining sector (35.32%), machinery being the main source of the injuries, while the fewest injuries were registered in tourism and the hospitality sector (0.61%). The failure to apply special safety at work regulations caused most of the injuries (23.43%), which were followed by performance of work operations in contravention of safety at work rules and measures (19.17%) and the workers' exhaustion caused by hard work, overtime and insufficient rest (13.23%). Men accounted for 67.11% of the people injured at work.<sup>611</sup>

As the European Commission underlined in its Serbia 2013 Progress Report,<sup>612</sup> the process of alignment with EU Directives on health and safety at work advanced, with further alignment on the remaining EU directives on electromagnetic waves and on optical radiation in December.

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607 Strategy for Health and Safety at Work for the 2013-2017 Period, Institutional Framework.

608 The Labour Inspectorate's 2013 Report was not yet available at the end of the reporting period, wherefore we included here the 2012 data.

609 Strategy for Health and Safety at Work for the 2013-2017 Period, Background.

610 Strategy for Health and Safety at Work for the 2013-2017 Period, Goal.

611 Health and Safety at Work Administration, 2012 Annual Report.

612 Serbia 2013 Progress Report, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf).



#### 15.4. Freedom to associate in trade unions

The freedom to associate in trade unions is the only trade union freedom guaranteed by all four general human rights protection instruments ratified by the Republic of Serbia – Article 22 of the ICCPR, Article 11 of the ECHR, Article 8 of the ICESCR and Articles 5 and 6 of the ESC. This freedom entails the right to establish a trade union and join it of one's own free will, the right to establish associations, national and international alliances of trade unions and the right of trade unions to act independently, without interference from the state. Serbia has also signed ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, ILO Convention No. 11 Concerning Right of Association (Agriculture),<sup>613</sup> ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively<sup>614</sup> and ILO Convention No. 135 Concerning Workers' Representatives. Article 5 of the Revised European Social Charter<sup>615</sup>, ratified by Serbia in 2009, enshrines the right of workers and employers to organise, which entails the right to form local, national or international organisations for the protection of their economic and social interests.

Article 55 of the Constitution guarantees the freedom of association in trade unions. Trade unions may be established by registration with the competent state authority pursuant to the law and do not require prior approval. The Constitutional Court is the only authority entitled to prohibit the work of any association, including a trade union, and only in the cases explicitly laid down in paragraph 4 of Article 55. The exercise of the freedom to organise in a trade union is governed in greater detail by the Labour Act, laws regulating association of citizens and by-laws. The Labour Act defines a trade union as an autonomous, democratic and independent organisation of workers associating in it of their own will to advocate, represent, promote and protect their professional, work, economic, social, cultural and other individual and collective interests (Art. 6). Article 206 of the Act guarantees workers the freedom of organising in trade unions. Trade unions shall be established by entry in a register and do not require prior consent. The register shall be kept by the ministry charged with labour affairs. The trade union registration procedure is governed by the Rulebook on the Registration of Trade Unions.<sup>616</sup> Under Article 7 of the Rulebook, an organisation shall be deleted from the register, inter alia, pursuant to a final decision prohibiting the work of a trade union (Art 7 (item 2) of the Rulebook)<sup>617</sup>. Under the Act on Associations, only the Constitutional Court may render a decision to ban any association (Art. 50(1)).<sup>618</sup>

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613 *Sl. novine Kraljevine Jugoslavije*, 44–XVI/30.

614 *Sl. list FNRJ (Addendum)*, 11/58.

615 Act Ratifying the Revised European Social Charter (*Sl. glasnik RS*, 42/09).

616 *Sl. glasnik RS*, 50/05 and 10/10.

617 Article 4 of the ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise explicitly prohibits the dissolution and suspension of work of a trade union by the administrative authorities. According to the ILO Committee on Freedom of Association, this is the most extreme form of interference in the independent operations of trade unions by public authorities.

618 The provisions, which had allowed *municipal administrative bodies* charged with internal affairs to render decisions prohibiting the work of trade unions, were abolished by the adoption of the Act on Associations.

### *15.5. Right to Strike*

The right to strike is guaranteed by Article 61 of the Constitution. Workers are entitled to stage strikes in accordance with the law and the collective agreement. The right to strike may be restricted only by law and in accordance with the type and nature of activity.

Under the Strike Act<sup>619</sup> the right to strike is limited by the obligation of the strikers' committee and workers participating in a strike to organise and conduct a strike in a manner ensuring that the safety of people and property and people's health are not jeopardised, that direct pecuniary damage is not inflicted and that work may continue upon the termination of strike. Besides that general restriction, a special strike regime is also established: "in public services or other services where work stoppages could, due to the nature of the service, endanger public health or life, or cause major damage" (Art. 9 (1)).<sup>620</sup>

A public debate about the new Strike Act drafted by the Ministry of Labour, Employment and Social Policy back in 2011 began on 12 July 2013 and was to have been submitted to parliament for adoption in 2014. The draft includes a number of novel provisions aiming to align this area with the Constitution and other laws and fulfil Serbia's EU accession requirements.

After sharp criticisms voiced in 2012 that the preparation of this law was not transparent and accessible to the expert public, the Ministry of Labour, Employment and Social Policy organised public debates in July 2013; around 200 stakeholders (trade unions, associations of employers, state authorities, public services, companies, MPs and experts) took part in the public debate.

Many of the proposals and suggestions made during the public debates were upheld – the concept of a strike was elaborated, the provision prohibiting subjecting workers to threats or coercion to prevent them from participating in a strike or force them to take part in it and the principle on the protection of assets were elaborated and the draft law now specifies in greater detail who the decision to go on strike in the territory of the province or a local self-government is communicated to. The draft further allows holding a strike outside the company grounds, provided that it is in compliance with the Public Assembly Act, includes a broader range of penalties to ensure adequate punishment of offences, specifies under which conditions a worker may conclude an agreement with the employer on the payment of an allowance for the time he was on strike and clearly defines the role of the inspectors and their oversight powers, etc.

The criticisms heard the most during the public debates were that the law needed to define all the activities which needed to provide essential services during a strike; in the absence of a collective agreement, the minimum service level should

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619 *Sl. list SRJ*, 29/96 and *Sl. glasnik*, 101/05 – other law and 103/12 – CC decision.

620 More on the right to strike in the *2011 Report*, I.4.11.

be set by the employer, while the law should lay down the minimum number of employees required to continue working during a strike (proposals ranged from 20 to 30 percent of the workers). Opinions were heard that the Agency for the Peaceful Settlement of Labour Disputes should not be charged with defining minimum service levels, that workers were entitled to wages while they were on strike, that the word *assets* in the principle on the protection of assets during a strike be replaced by “means of work, equipment and material”, that a provision allowing lockouts be introduced. These suggestions were not upheld because the working group was of the view that they would radically change the model by which minimum work is determined.<sup>621</sup>

## 16. Right to Social Security

### 16.1. General

Under Article 69 of the Constitution, citizens and families in need of welfare to overcome their social and existential difficulties and begin providing subsistence for themselves shall be entitled to social protection, the provision of which shall be based on the principles of social justice, humanity and respect for human dignity. In its Opinion on the Constitution of Serbia, the Venice Commission commented that social protection was not granted generally but only to citizens and families by the Constitution.<sup>622</sup>

The Constitution also guarantees the rights of the employed and their families to social protection and insurance, the right to compensation of salary in case of temporary inability to work and to temporary unemployment allowances. The Constitution also affords special social protection to specific categories of the population and obliges the state to establish various types of social insurance funds. Article 70 of the Constitution specifically guarantees the right to pension insurance.

Social 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<sup>623</sup> and the Act on Voluntary Pension Funds and Pension Plans.<sup>624</sup> Compulsory insurance encompasses all employees, individual entrepreneurs and farmers. This insurance ensures the rights of the insureds in old age,

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621 Report on the public debate, available in Serbian at <http://www.minrzs.gov.rs/latinica/javna-rasprava-zakon-o-strajku.php>.

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

623 *Sl. glasnik RS*, 34/03, 64/04, 84/04, 85/05, 5/09, 107/09 and 101/10.

624 *Sl. glasnik RS*, 85/05 and 31/11.

or in the event of disability, death or corporal injury caused by a work-related accident or occupational disease.

The law also provides for voluntary insurance for persons who are not covered by the compulsory insurance arrangements, in the manner prescribed by a separate law (Art. 16, Pension and Disability Insurance Act). At the same time, the insured persons may secure a wider scope or other form of rights for themselves and their families through voluntary insurance, other than those prescribed by the Act. The Pension and Disability Insurance Act provisions related to voluntary insurance resolved the dilemma whether an employer-pension fund agreement (so-called pension plan) may be concluded on behalf of third parties i.e. employees.

The 2010 amendments to the Pension and Disability Insurance Act<sup>625</sup> lay down stricter retirement requirements and envisage a gradual increase of the retirement ages of men and women until 2023.<sup>626</sup>

In its Serbia 2013 Progress Report<sup>627</sup> the European Commission stated that, in the field of social protection, the deficit in the pension fund remained large, despite a limit on the indexation of pensions and that, in the absence of sufficient funds for the payment of pensions, transfers from the budget continued to be the largest single item on the expenditure side. The EC went on to say that due to insufficiently developed mechanisms of enforcement and control, the overall sustainability of the pension and health funds remained at risk. It noted that Serbia continued to develop the statistics and data needed to monitor social inclusion and set up an integrated social protection statistics system, in line with EU practices. In February, an improved database was introduced and included state-level and local indicators. The EC concluded that comprehensive restructuring and reforms were needed in order to regain sustainability and that integrated/cross-sectoral social services needed to be further developed.

The National Assembly of the Republic of Serbia adopted the new Social Protection Act<sup>628</sup> in March 2011. Article 17 of the Act commendably allows not only state, provincial and local authorities but natural and legal persons fulfilling the legal requirements, as well, to provide social protection services, and thereby affirms the plurality of social protection service providers. The local self-governments may establish social work centres, while the state and province may establish social protection institutions.

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 the placement of beneficiaries in a social institution or another family, and one-off assistance.

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625 *Sl. glasnik RS*, 101/10.

626 Detailed information about the retirement eligibility requirements is available on the website of the Serbian Pension and Disability Insurance Fund <http://www.pio.rs/eng/>.

627 Serbia 2013 Progress Report, p. 36, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf).

628 *Sl. glasnik RS*, 24/11.

The Act lists the forms of material support, including, among others, outside assistance and care allowances and increased outside assistance and care allowances (Art. 79). These allowances are granted people who are in need of the assistance and care of another person to perform basic everyday activities because of a physical or sensory impairment, intellectual disability or health problems (Art. 92(1)). It provides for the introduction of a social protection chamber, licensing of professionals and service providers, introduction of the public procurement of services, redesign of the oversight, supervision and inspection mechanisms. Furthermore, the Act envisages targeted transfers from the state budget for funding community-based services within the remit of the local self-governments (Arts. 206 and 207).

The Social Protection Chamber was established in January 2013 as an independent, non-profit professional organisation of employed social protection professionals in Serbia.<sup>629</sup> The Chamber has the remit to licence social protection professionals, adopt a Professional Code of Conduct and set the standards applicable in practice. The key task it has been delegated is to licence social workers, establish a Register of Issued Licences and a Register of Chamber Members. A total of 2,635 social workers were licenced and entered in the Register of Issued Licences since the Rulebook on Licencing Social Protection Professionals came into force, in May 2013.

The authorities have commendably worked on creating a social services database and raising the capacities of the local self-governments in this field. Namely, the Social Inclusion and Poverty Reduction Unit mapped the social protection services in late 2012 in cooperation with UNICEF Serbia and the Ministry of Labour, Employment and Social Policy. The primary goal of the mapping was to collect data on existing non-residential social services within the remit of the local self-governments. The mapping involved the assessment of all the existing social services in all sectors providing services in Serbia in terms of their availability, efficiency and quality, regardless of whether they were funded from the republican or local budgets or through donor projects.

The data on social services were collected for the 2011/2012 period across Serbia, in all 145 local self government units (at the city level in Belgrade and Niš) and the entire database of services, number of beneficiaries, and the human and financial capacities of the local self-governments (providing social services within their purviews) will be available on the Social Inclusion and Poverty Reduction Unit's website in 2014.<sup>630</sup>

As regards social inclusion, the European Commission noted in its Serbia 2013 Progress Report that implementing legislation required under the Law on Social Welfare was adopted in May and that Amendments to the Law on Professional Rehabilitation and Employment of Persons with Disabilities were adopted in April. The public fund for professional rehabilitation and enhancement of the employment

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629 More about the Social Protection Chamber available in Serbian at [http://www.komorasz.rs/O\\_nama.html](http://www.komorasz.rs/O_nama.html).

630 17<sup>th</sup> Newsletter on Social Inclusion, available at file:///D:/17th-Newsletter-on-Social-Inclusion.pdf.

of people with disabilities covered approximately 6,500 people with specific measures on employment and professional development. The Commission also noted that the number of social assistance recipients had increased.

### *16.2. Protection Accorded to Family*

Apart from the ICESCR, Serbia is a signatory of the Convention on the Rights of the Child, the Optional Protocol to the Convention on Sale of Children, Child Prostitution and Pornography, and the ILO Conventions on Maternity Protection (No. 3); Medical Examination of Young Persons (Sea) (No. 16), Underground Work (Women) (No. 45), Night Work (Women) (Revised) (No. 89), Night Work of Young Persons (Industry) (Revised), (No. 90), Maternity Protection (Revised) (No. 103), Minimum Age (No. 138), Workers with Family Responsibilities (No. 156) and Worst Forms of Child Labour (No. 182).

By ratifying the ESC, Serbia undertook also to fulfill the obligations regarding the full protection of children and young people (Art. 7) and the right of employed women to protection of maternity by defining the legal minimum obligations of employers towards pregnant women (Art. 8). Furthermore, it undertook to promote the economic, legal and social protection of family life by such means as social and family benefits (Art. 16) and to take measures to ensure the protection of children and young people from negligence and violence, provide them with free education and provide special aid to young people deprived of their family's support (Art. 17)

Article 66 of the Constitution guarantees special protection to the family and the child, mothers and single parents. In paragraph 2 of this Article, it guarantees support and protection to mothers before and after childbirth and, in paragraph 3 of this Article, it guarantees special protection to children without parental care and children with physical or intellectual disabilities. The Constitution prohibits employment of children under 15; minors over 15 are prohibited from performing jobs that may adversely affect their health or morals. Article 64 of the Constitution is devoted to the rights of the child.

The Labour Act does not afford special protection to employed women, except in case of pregnancy, which is in conformity with European trends to equate treatment of men and women at work, although Serbia did not denounce the relevant ILO conventions.<sup>631</sup>

Maternity leave is a fundamental right of working women. Pregnant women and women with children under the age of three may not work overtime or at night.

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631 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.



Exceptionally, a woman with a child over the age of two may work at night but only if she specifically requests this in writing. Single parents with a child under seven or a severely handicapped child may work overtime or at night only if they make a written request to this effect (Art. 68, Labour Act).

If the condition of a child requires special care or if it suffers from a severe disability, one of the parents has the right to additional leave. One of the parents may choose between leave and working only half-time, for 5 years maximum (Art. 96, Labour Act). Under the Labour Act, one parent may take leave from work until the child's third birthday and his labour rights and duties will remain dormant during this period. (Art. 100 (2), Labour Act).

The 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)). The only exception regards employees with fixed-term contracts if their employment contract expires while they are exercising the rights.

The Act on the Realisation of the Right to Health Care of Children, Pregnant Women and New Mothers<sup>632</sup> came into force on 4 December 2013. The purpose of this law comprising 10 articles is to ensure free health care to children, pregnant women and mothers on maternity leave in the event they are ineligible for health care under other grounds. Some of the provisions of this law are disputable although the legislator's intention was essentially a commendable one. For instance, Article 5<sup>633</sup> obligates medical specialists to notify the Republican Health Insurance Fund of terminations of pregnancy and lays down that women, who have had an abortion, will no longer be entitled to free health care under this law. The duty to notify the Republican Health Insurance Fund of abortions and still births provoked fierce public reactions because such notifications allow for violations of the right to personal data protection.

Under the Act on the Realisation of the Right to Health Care of Children, Pregnant Women and New Mothers, the obligation to notify the Republican Health Insurance Fund of women who had an abortion and exercise the right to health care under this law extends also to private health institutions.<sup>634</sup>

The Commissioner for Information of Public Importance and Personal Data Protection reacted to public speculations about the law and the establishment of

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632 *Sl. glasnik RS*, 104/2013. New mothers denote women of children under one.

633 Under Article 5 of the Act, obstetricians and gynaecologists are under the obligation to notify the Republican Health Insurance Fund as soon as they establish that a woman exercising the right to health care under this law is pregnant or had an abortion. The health institution, in which a woman gave birth to a stillborn child, is also under the obligation to notify the Fund thereof. Women, who gave birth to stillborn children, are entitled to free health care under this law three months after delivery.

634 See the *Blic* report in Serbian, available at: <http://www.blic.rs/Vesti/Drustvo/425193/Babic-Nepravi-se-nikakav-registar-zena-koje-su-abortirale>.



registers and databases of women who had abortions.<sup>635</sup> He said that the Personal Data Protection Act allowed for exceptional processing of personal health data, including “particularly sensitive data” without the consent of the data subjects if such processing was envisaged by another law. The Commissioner said that the provisions of the Act on the Realisation of the Right to Health Care of Children, Pregnant Women and New Mothers thus were not formally or legally in contravention of either the Constitution or the Personal Data Protection Act. He said that the only purpose for processing these data was to establish who was no longer eligible to exercise the right to health care under this particular form of health insurance and that such processing did not extend to all pregnant women and new mothers, only to those exercising the right to health care under this law. Furthermore, processing of data for other purposes is inadmissible and the relevant authorities must ensure that these data are available only to a minimal circle of people. Processing the data for other purposes, particularly the establishment of a register or a database of women who had abortions et al would be absolutely illegal and would be punishable by law, maybe even constitute a crime. The Commissioner concluded by alerting to the Serbian Government’s failure to adopt a Decree on the Protection of Particularly Sensitive Data for five years now and called on it to fulfil its legal obligation.<sup>636</sup>

Under the Act on Financial Support to Families with Children,<sup>637</sup> 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. Parents are not entitled to benefits for their successive children, unless the mother gives birth to twins or more children the next time (with the special consent of the ministry charged with social affairs). The adequacy of protection of the poorest families with children through child allowance, however, remains an outstanding issue, as all hitherto surveys have demonstrated that the Republic of Serbia has not been earmarking sufficient funding for social welfare, that the coverage of the poor is low and that the amounts of assistance are insufficient.<sup>638</sup>

The Act on Infertility Treatment by Bio-Medically Assisted Fertilisation Procedures<sup>639</sup> defines the principle under which the medical justifiability of bio-medically assisted fertilisation shall be applied in the event infertility treatment by other procedures is impossible or has considerably lesser chance of success unless bio-medically assisted treatment leads to unacceptable risks to the health, life and safety of the mother or child.

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635 More in the *Danas* report in Serbian, available at [http://www.danas.rs/danasrs/drustvo/rfzo\\_licni\\_podaci\\_o\\_abortusu\\_neophodni\\_zbog\\_sprecavanja\\_zloupotreba.55.html?news\\_id=272240](http://www.danas.rs/danasrs/drustvo/rfzo_licni_podaci_o_abortusu_neophodni_zbog_sprecavanja_zloupotreba.55.html?news_id=272240).,

636 The Commissioner’s press release is available at <http://www.poverenik.rs/en/press-releases/1714-obrada-podataka-o-licnosti-trudnica-i-porodilja.html>.

637 *Sl. glasnik RS*, 16/02, 115/05 and 107/09.

638 First National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia, Government of the Republic of Serbia, March 2011, available at: <http://www.inkluzija.gov.rs/wp-content/uploads/2011/04/First-National-Report-on-Social-Inclusion-and-Poverty-Reduction.pdf>.

639 *Sl. glasnik RS*, 72/09.

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.

### III

## STATUS OF MINORITIES

### 1. National Minorities and Minority Rights

#### *1.1. General*

The Republic of Serbia has ratified the leading international documents protecting the rights of national minorities, including the Council of Europe Framework Convention for the Protection of National Minorities (hereinafter: Framework Convention), the European Charter for Regional and Minority Languages and the International Covenant on Civil and Political Rights. These documents, however, comprise merely blanket norms programmatic in character that define the goals states ought to achieve. Their provisions can hardly be applied directly. This is why the goals set in the international documents are primarily pursued by the adoption of relevant laws and Government policy measures at the national level.

Serbia in March 2012 submitted to the CoE Secretary General its report under the third cycle of monitoring of the implementation of the Framework Convention pursuant to Article 25 of the Framework Convention (hereinafter: Third Report).<sup>1</sup> In late November 2013, the Advisory Committee adopted an opinion on the Third Report that it will forward to the competent Serbian authorities in early 2014.<sup>2</sup>

The Constitution of the Republic of Serbia includes a number of provisions protecting the collective and individual rights of persons belonging to national minorities (Part II, Chapter 3). The constitutional provisions on national minorities largely follow the provisions of the Framework Convention. Several constitutional provisions, however, warrant criticism, not because they are in contravention of international law, but because they treat the social reality in Serbia inappropriately. Namely, the Constitution defines the Republic of Serbia as the state of Serbian people and all citizens who live in it (Art. 1), whereby it gives the majority population precedence over the national minorities. On the other hand, the Constitution some-

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1 Serbia's Third Report is available at [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCN-Mdocs/PDF\\_3rd\\_SR\\_Serbia\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCN-Mdocs/PDF_3rd_SR_Serbia_en.pdf)

2 Information obtained by e-mail from Nikola Markes, *Secretariat of the Framework Convention for the Protection of National Minorities*.

what rectifies the ethnic definition of the state, by laying down that sovereignty shall be vested in the citizens (Art. 2(1)). The Constitutional Court in 2013 declared unconstitutional an article of the Vojvodina Statute, under which “Serbs, Hungarians, Slovenes, Croats, Montenegrins, Romanians, Roma, Bunjevtsi, Ruthenians and Macedonians and other smaller ethnic minorities living in the Autonomous Province of Vojvodina shall be equal in realising their rights”.<sup>3</sup> The Constitutional Court reasoned that regulation of the ethnic equality issue was a prerogative of the state authorities, wherefore an autonomous province’s guarantee of national equality in its highest legal enactment was in contravention of the constitutionally defined substance of an autonomous province. The Constitutional Court noted that granting persons belonging to a constituent nation the feature of “persons belonging to a national community in their own unitary state (which is the state of the Serbian nation and all other citizens living in it, under Article 1 of the Constitution) is nonsensical in terms of constitutional law”. The Constitutional Court’s view thus merely reaffirms the ethnic definition of the state in Article 1 of the Constitution.

None of the international documents define the concept of a national minority, which is left to the will of the legislators of the contracting states. This definition is provided in the Act on the Protection of Rights and Freedoms of National Minorities (hereinafter: Minority Protection Act).<sup>4</sup> The Act affords protection to every group of nationals sufficiently representative but constituting a minority in the territory of the Republic of Serbia, belonging to a population group with a long-standing and firm bond with the territory and possessing distinctive features, such as language, culture, national or ethnic affiliation, origin or religion, distinguishing it from the majority of the population, and the members of which are characterised by their concern for the preservation of their common identity, including culture, tradition, language and religion. Under this definition, only nationals of Serbia may be considered persons belonging to national minorities, which places at a disadvantage stateless people and persons who cannot exercise the right to a legal personality (mostly Roma) in the territory of the Republic of Serbia.<sup>5</sup> Serbia has made no changes in the definition of the term “national minority” although the CoE Advisory Committee recommended in its opinion on Serbia’s report under the second reporting cycle that the definition should not include the citizenship criteria. In its Third Report, Serbia specified that the shortcomings of the definition of a national minority would primarily be addressed by “more liberal solutions in terms of obtaining citizenship”.<sup>6</sup>

The authors of the Constitution failed to incorporate in it the provision in the Framework Convention, under which any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of

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3 Constitutional Court decision I Uz 27/2011 of 3 October 2013, pp. 79-81.

4 *Sl. glasnik SRJ*, 11/02.

5 More in the 2011 Report, II.3 and 4.5.

6 Serbia’s Third Report, pp. 36-37.

persons belonging to the majority or to other national minorities in the exercise of rights and freedoms flowing from the principles enshrined in the Framework Convention (Art. 20). This prohibition is, however, set out in the Minority Protection Act, which prohibits any abuse of rights aimed at violently changing the constitutional order, violating territorial integrity or guaranteed rights and freedoms or instigating racial, religious or ethnic hatred or intolerance (Art. 7(1)). Furthermore, the rights enshrined in the Act may not be exercised to achieve goals in contravention of the principles of international law or directed against public safety, morals or health of people (Art. 7(2)).

The Republic of Serbia is also a party to bilateral agreements on the protection of national minorities with Macedonia,<sup>7</sup> Croatia,<sup>8</sup> Romania<sup>9</sup> and Hungary.<sup>10</sup> These documents, which are declarative in character, reaffirm the constitutional and legal obligations the Republic of Serbia has towards national minorities. The agreement with Hungary specifies that the Contracting Parties shall “make a maximum effort to restore to the minority communities, or the church communities of the national minorities and their organisations, their property, assets, real estate, documentation and archives which were confiscated or seized by other measures in the past”. The bilateral agreements also provide for the establishment of joint inter-governmental commissions charged with monitoring the implementation of these agreements.<sup>11</sup>

## *1.2. Ethnic Breakdown of the Population of the Republic of Serbia*

The Statistical Office of the Republic of Serbia (SORS) on 29 November 2012 published a report on the ethnic breakdown of Serbia’s population pursuant to the 2011 Census of the Population, Households and Dwellings.<sup>12</sup> The Census applied the concept of *habitual residence*, under which individuals are considered residents of the place where they spend most of their time regardless of where they are registered as residents. According to the Census, Serbia is populated by Serbs 83.32%, Albanians 0.08%<sup>13</sup>, Bosniaks 2.02%, Bulgarians 0.26%, Bunjevtsi 0.23%,

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7 *Sl. list SCG – Međunarodni ugovori*, 6/05.

8 *Sl. list SCG – Međunarodni ugovori*, 3/05.

9 *Sl. list SCG – Međunarodni ugovori*, 14/04.

10 *Sl. list SCG – Međunarodni ugovori*, 14/04.

11 The Serbian-Hungarian Inter-Governmental Commission held four sessions by October 2013. The Serbian-Croatian Inter-Governmental Committee met five times, last time in Belgrade and Šid on 19 and 20 September 2011. The Serbian-Romanian Inter-Governmental Commission met twice. Only the Serbian-Macedonian Commission has not met yet, although both states have appointed the delegations to take part in its work. New chairpersons of the Serbian members of the Commissions with Romania and Croatia were appointed after the Government of the Republic of Serbia was sworn in in July 2012. More in Serbian at: <http://www.ljudskaprava.gov.rs/index.php/yu/vesti-1/379-gordana-goveradica-o-radu-meduvladinih-mesovitih-tela>.

12 Available at <http://media.popis2011.stat.rs/2012/Nacionalna%20pripadnost-Ethnicity.pdf>.

13 Most of the Preševo, Bujanovac and Medveđa Albanians boycotted the census, see *2011 Report*, II.4.2.1.

Vlachs 0.49%, Goranis 0.11%, Yugoslavs 0.32%, Hungarians 3.53%, Macedonians 0.32%, Moslems 0.31%, Germans 0.06%, Roma 2.05%, Romanians 0.41%, Russians 0.05%, Ruthenians 0.20%, Slovaks 0.73%, Slovenes 0.06%, Ukrainians 0.07%, Croats 0.81%, Montenegrins 0.54%, Others 0.24% while 2.23% of the respondents did not declare their nationality, 0.43% declared their regional affiliation and 1.14% were undeclared. The data on the ethnic breakdown of the population are important for understanding cultural diversity and the status of the ethnic groups in society, as well as for defining the policies and strategies to advance the status of persons belonging to ethnic groups.

Albanians in South Serbia boycotted the 2011 Census.<sup>14</sup> The Chairman of the Government Coordination Body for the Municipalities of Preševo, Bujanovac and Medveđa said in September 2013 that an extraordinary census of the population in these three municipalities would be held in 2014. He said that “the defective census and the inadequate number of residents [registered in the Census] has resulted in the allocation of only 13.5 million RSD to the National Council of the Albanian National Minority, which had earlier received around 18.5 million RSD, because the funds are allocated proportionately to the number of residents. The cut has been used to claim that Serbs are discriminating against Albanians.” Leader of the ethnic Albanian Party for Democratic Progress Riza Halimi criticised the announcement of a new census in the three municipalities, saying that the Government was under the duty to start seriously addressing the difficult and sensitive problems of the Albanians in the south of the country.<sup>15</sup> He opined that the Government was only putting off the resolution of these problems by holding the census,<sup>16</sup> which, in his view, would create an unrealistic indication of the number of Albanians living in South Serbia because, as he claimed, the Ministry of Internal Affairs had deleted from the records Albanians who had been forced to move to Kosovo after the war.

### *1.3. Prohibition of Discrimination against Persons Belonging to National Minorities*

The Constitution prohibits discrimination against persons belonging to national minorities and guarantees their equality before the law. The prohibition of discrimination is also guaranteed by the Minority Protection Act, the Anti-Discrimination Act and the Statute of the Autonomous Province of Vojvodina (Art. 20), the Act on the Basis of the Education System (Art. 44) and the Labour Act (Art. 18). The Constitution allows for affirmative action measures to achieve full equality of the majority population and persons belonging to national minorities but only in the event such measures are aimed at eliminating the extremely unfavourable living conditions

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<sup>14</sup> More in *2011 Report*, II.4.2.1.

<sup>15</sup> *Danas*, 18 September, p. 51.

<sup>16</sup> Halimi: Belgrade Deleting [Preševo] Valley Albanians from Records, 16 September 2013, available in Serbian at <http://www.titulli.com/2013/09/16/halimi-beograd-namerava-da-brise-sa-evidencije-albanaca-sa-doline/>.

which particularly affect them. The Framework Convention (Art. 4) and the Minority Protection Act (Art. 4) do not set these additional conditions for the implementation of affirmative action measures, and merely state that such measures shall be undertaken to promote full and effective equality. Article 128 of the Criminal Code incriminates the denial or restriction of the “rights of man and citizen” on grounds of nationality; the simple form of this crime warrants up to three years’ imprisonment. Public officials who committed this offence while discharging their duties shall be punished to between three months and five years of imprisonment (paragraph 2).

The prohibition of inciting racial, ethnic, religious or other inequality, hatred or intolerance is constitutional in rank (Art. 49 of the Constitution). Article 317 of the Criminal Code incriminates incitement of ethnic, religious and other hatred or intolerance.<sup>17</sup> The BCHR researched the courts’ penal policies and case law regarding Article 317 of the Criminal Code and arrived at the conclusion that they have not been uniformly interpreting the elements of the substance of this crime, particularly where the act and the consequences of the crime are at issue. Namely, a linguistic interpretation of the provision suggests that this particular crime is an inchoate crime. In other words, no actual harm has to have occurred as a consequence of incitement. The substance of the crime lacking a consequence is at issue. The act of incitement suffices even if no consequence occurred.<sup>18</sup>

The Kragujevac Appellate Court in 2013 rendered a judgment in which it held that the simple form of this crime existed in the event someone instigated or fomented ethnic, racial or religious hatred and that it was not necessary that the act caused hate or intolerance or that any organisation was behind it. In its view, what is of relevance for the existence of this crime is that the act may have objectively caused hatred or intolerance.<sup>19</sup> The same view was taken by the Novi Sad Appellate Court as well.<sup>20</sup> The courts’ interpretation is correct, given that the consequences of this crime, in the form of unrest, violence or other grave consequences on inter-ethnic coexistence constitutes the qualified form of the crime incriminated by paragraph 3 of Article 317. Direct or potential intent is requisite for guilt.<sup>21</sup> The

17 Whoever instigates or foments ethnic, racial or religious hatred or intolerance among the peoples and ethnic communities living in Serbia shall be punished by imprisonment of six months to five years (paragraph 1). If the offence is committed by coercion, ill-treatment, compromising security, ridicule of national, ethnic or religious symbols, damage to property belonging to someone else, desecration of monuments, memorials or graves, the offender shall be punished by imprisonment of one to eight years (paragraph 2). Whoever commits the offences in paragraphs 1 and 2 of this Article by abuse of office or powers, or in the event these offences result in riots, violence or other grave consequences to co-existence of peoples, national minorities or ethnic groups living in Serbia, shall be punished for the offence specified in paragraph 1 of this Article by imprisonment of one to eight years, and for the offence specified in paragraph 2 of this Article by imprisonment of two to ten years (paragraph 3).

18 See *2012 Report*, I.6.2.3.

19 Kragujevac Appellate Court judgment in the case of Kž 1178/13 of 9 September 2013, p. 12.

20 Novi Sad Appellate Court judgment in the case of Kž 1.812/13, of 14 May 2013, p. 3.

21 Novi Pazar Higher Court judgment in the case of K 315/10 of 22 April 2013, p. 4.



Novi Sad Appellate Court, however, held in another judgement that the existence of this crime required direct intent, that is, the perpetrator's intent to cause inter-ethnic intolerance.<sup>22</sup> Furthermore, in the view of BCHR's researchers, the qualified form of this crime cannot be committed in ideal concurrence with the offence of violent behaviour in Article 344 of the Criminal Code<sup>23</sup> because the qualified form of the crime subsumes the crime of violent behaviour given that the crime of violent behaviour is merely a way in which the crime of instigating inter-ethnic, racial, religious or other hatred and intolerance in Art. 317 (2 and 3) of the Criminal Code is committed. The Zrenjanin Higher Court, however, did not share that view.<sup>24</sup> The Belgrade Higher Court gave an *interesting* interpretation of Article 317 of the Criminal Code in one judgment, in which it stated that the elements of this crime are not consummated in the event the act was directed at an individual rather than a people, because the constitutional order and security of the Republic of Serbia and not the individual are the object of protection of this offence.<sup>25</sup> In the view of BCHR's researchers, this view is incorrect because the act directed at an individual is objectively capable of instigating inter-ethnic and religious hatred and intolerance in a specific environment and a specific context. To conclude, case law on the definition of the object of protection in Article 317 of the Criminal Code is still not uniform.<sup>26</sup> Most courts punished the perpetrators of the simple form of this crime to conditional sentences but, where such crimes were committed in multi-ethnic communities, the perpetrators were sentenced to terms of imprisonment.

In its Third Report, Serbia stated that the Ministry of Internal Affairs recorded 1,411 incidents that might be of relevance to inter-ethnic relations in the broadest sense from 2007 to 1 March 2012.<sup>27</sup> Criminal charges were filed with respect to 503 offences and 197 motions for initiating misdemeanour proceedings were submitted in that period; the authorities established that there were no elements of a criminal offence or a misdemeanour in the other cases. Serbia stated in its report that, out of the total of 503 criminal offences, a total of 303 were "cleared up" i.e. 60.2%, where

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22 Novi Sad Appellate Court judgment in the case of Kž 1374/13, of 11 July 2013, p. 3

23 Whoever by rude insults or maltreatment of another, violence directed against another, instigating a brawl or insolent or ruthless behaviour causes significant distress of citizens or seriously violates public peace and order, shall be punished by imprisonment of three months to three years (para 1). If the offence specified in paragraph 1 of this Article is committed by a group or if during commission of the offence a person sustains light bodily injury or if grave degradation of citizens results, the offender shall be punished by imprisonment of six months to five years (para 2).

24 Zrenjanin Higher Court judgment in the case of 3 K 42/12 of 12 July 2012.

25 Belgrade Higher Court judgment in the case of K 794/13 of 13 November 2013.

26 The BCHR alerted to the lack of uniform case law on this issue in its *2012 Report*.

27 Breakdown of the incidents: assaults - 117 (more than 60% against Roma); fights between persons belonging to different minorities - 33; anonymous threats - 31; verbal clashes - 212; damage of religious facilities - 232; defilement and desecration of graves and memorials - 41; damage of facilities owned by persons belonging to the Albanian, Gorani and Turkish national minorities - 81; damage of facilities owned by Roma - 23; writing slogans, drawing graffiti and other symbols - 580; other cases - 29.

criminal charges were submitted against 457 persons (347 Serbs, 34 Hungarians, 30 Moslems, 18 Roma, 6 Slovaks, 7 Albanians, 6 Croats, two Bosniaks and two Romanians and one ethnic German, Turk, Montenegrin, Macedonian and Vlach).<sup>28</sup>

In March 2012, unidentified vandals damaged the memorial plaque on the mass grave of Germans who perished in WWII camps in the village of Gakovo at Sombor. According to information available to the BCHR, the perpetrators had not been identified by the end of 2013.<sup>29</sup>

A group of youths were attacked in Subotica in February 2013, reportedly because they were talking in Hungarian.<sup>30</sup> The frequent assaults in Temerin, Bečej and Novi Sad are particularly concerning. The Hungarian Deputy Prime Minister issued a press release expressing concern over the fights and graffiti insulting the ethnic Hungarians in Serbia. With a view to suppressing the number of such incidents, which can seriously jeopardise inter-ethnic relations, Serbian Minister of Internal Affairs Ivica Dačić and Vojvodina Assembly Speaker Istvan Pasztor agreed to step up security measures in Vojvodina and, if necessary, engage the gendarmerie in addition to the police.<sup>31</sup>

Unidentified perpetrators destroyed the Slovak Cultural Centre sign in Novi Sad in February 2013. According to the National Council of the Slovak National Minority, which sharply condemned the incident, the perpetrators have not been apprehended yet.<sup>32</sup>

#### *1.4. Equal Participation in Public Affairs and Political Life*

The Constitution entitles persons belonging to national minorities to participate in public affairs and hold public offices under the same conditions as other citizens and states that the ethnic breakdown of the population and the adequate representation of persons belonging to national minorities shall be taken into consideration when recruiting the staff of state, provincial and local self-government authorities and public services. Under the Minority Protection Act, the ethnic breakdown of the population must be taken into account when recruiting staff of public services, including the police (Art. 21). There are, however, no records on the

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28 Serbia did not specify in its Third Report how many final judgments have been rendered for these criminal offences and misdemeanours, but merely whether they were “cleared up” or not. The BCHR is of the view that this expression is inadequate and imprecise as it does not provide a realistic picture of the number of final convictions and acquittals.

29 Information obtained in a telephone conversation with the Chairman of the ethnic German association Gerhard.

30 New Incidents in Subotica, *Vajdasag*Ma online 17 February, available in Serbian at: <http://www.vajma.info/cikk/szerbkiadas/2545/Novi-incident-u-Subotici.html>.

31 *Autonomija Portal*, 16 February, available at <http://www.autonomija.info/dacic-i-pastor-o-merama-za-podizanje-bezbednosti-u-vojvodini.html>.

32 Information obtained in a telephone conversation with a representative of the National Council of the Slovak National Minority.

representation of persons belonging to ethnic minorities in public affairs. Although keeping of such records appears not to be in accordance with the freedom to express one's ethnic affiliation guaranteed by the Framework Convention, the Constitution and the Minority Protection Act, the Republic of Serbia should nevertheless collect and register such data, particularly since records of the ethnic breakdown of the population are already kept for other purposes (e.g. to establish whether the right to the official use of a minority language may be or is realised). Given that the SORS collected the ethnicity data fully in accordance with the law (the census takers advised the citizens that they were not under the obligation to declare their ethnicity) during the 2011 Census, these records could prove useful in establishing the representation of national minorities in public affairs and political life and indicate whether affirmative action measures need to be introduced to ensure genuinely equal representation.

In its Third Report, Serbia stated that the Central Human Resource Register of civil servants and state employees in the state administration and Government departments did not include data on their nationality given that there were no legal grounds for collecting such data, wherefore it was impossible to present data on minority representation in the state administration.<sup>33</sup> The Protector of Citizens had submitted an initiative to the Government back in 2010 to amend the Civil Servants Act and regulate the constitutionally guaranteed right of national minorities to participate in public life, notably to adopt regulations on keeping of records on the staff's nationality and other relevant issues. The Government has not yet notified the Protector of Citizens whether it accepted the initiative or why it has rejected it.<sup>34</sup>

Serbia also stated in its Third Report that the High Judicial Council took into account the ethnic breakdown of the population in the jurisdiction of the courts during the 2010 judicial appointment procedure.<sup>35</sup> The National Councils of National Minorities, however, stated in their supplements to the Report that many judges belonging to national minorities had been relieved of duty during the judicial appointment procedure.

Tomislav Žigmanov, the Director of the Croatian Cultural Institute in Vojvodina, criticised the status of the Croatian minority, underlining that ethnic Croats were the most underrepresented in the state administration bodies. He also noted that minority politicians were reluctant to discuss current political topics (e.g. not one minority party voiced a view on Kosovo's status), which adversely affected the development of democracy in Serbia.<sup>36</sup>

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33 Third Report Submitted by Serbia Pursuant to Article 25 of the Framework Convention for the Protection of National Minorities, p. 346.

34 *Ibid*, pp. 367-368.

35 Breakdown of judges belonging to national minorities who took office on 1 January 2010: 6 Albanians, 34 Bosniaks, 8 Bulgarians, 5 Bunyevtsi, 3 Vlachs, 2 Goranis, 42 Hungarians, 5 Moslems, 1 Roma, 10 Romanians, 5 Ruthenians, 8 Slovaks, 6 Croats and 15 Montenegrins.

36 *Danas*, 24-25 August, p. 17.

### *1.5. Right to Preservation of Identity*

The Constitution guarantees to persons belonging to national minorities the rights to express, preserve, foster, develop and publicly express their national, ethnic, cultural and religious specificities; use their symbols in public places; use their languages and scripts; and have proceedings conducted in their languages by state authorities, organisations vested with public powers, provincial and local self-government authorities in communities in which they account for a substantial share of the population; to education in their languages in state and provincial institutions and to establish private educational institutions; to use their first and last names in their native languages; to write the traditional local names of streets, settlements and topographic signs in their languages in communities in which they account for a substantial share of the population; and to full, timely and impartial information in their languages, including the rights to express, receive, impart and exchange information and ideas and to establish their own media outlets in accordance with the law (Art. 79).<sup>37</sup>

#### *1.5.1. Right to Nurture Culture and Tradition*

The Constitution guarantees to the national minorities the right to establish educational and cultural associations to be funded from voluntary contributions. The Minority Protection Act lays down that the state shall provide such associations with financial aid to the extent possible and ensure public service broadcasts of cultural content in the languages of national minorities. Cultural institutions founded by the state are under the obligation to ensure the presentation and protection of the cultural and historical heritage of the minorities in their territory and involve the representatives of National Minority Councils in decisions on the manner of presenting the national minorities' cultural and historical heritage (Article 12).

The National Councils of National Minorities Act (NCNMA)<sup>38</sup> allows the National Minority Councils to establish cultural institutions to preserve, advance and develop the cultural specificities and preserve the national identities of the national minorities and the Republic of Serbia; it also allows autonomous provinces

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37 Persons belonging to national minorities have the following rights: of expression; to preserve, nurture, develop and publicly express their national, ethnic, cultural and religious specificities; to use their symbols in public places; to use their languages and scripts; to have state authorities, organisations vested with public powers, autonomous province and local self-government authorities conduct proceedings in their languages in areas in which they account for a significant share of the population; to education in their own languages in state and provincial schools; to establish private educational institutions; to use their first and last names in their languages; to have traditional local names, names of streets, settlements and toponyms written also in their languages in communities in which they account for a significant share of the population; to be fully, timely and impartially informed in their own languages, which includes the right to express, receive, communicate and exchange information and ideas in their own languages; to establish media outlets in their languages pursuant to the law.

38 *Sl. glasnik RS*, 72/09.

and local self-government units to transfer their founder's rights re these institutions to the Councils (Article 16). The Act also envisages the possibility of them transferring their founder's rights re other cultural institutions of particular relevance to the national minorities (Article 24). The transfer of founder's rights shall be made by concluding a contract on the transfer of founder's rights between the founders of the institutions and the National Councils. The Constitutional Court of Serbia was reviewing the constitutionality of Article 24 at the end of the reporting period. The fate of the concluded contracts on transfers of founder's rights will be brought into question in the event it declares Article 24 unconstitutional.

The NCNMA also entitles the National Minority Councils to take part in the management of cultural institutions they deem of particular relevance to preserving the identity of the national minorities (Article 17). However, there are no criteria for declaring a cultural institution one of particular relevance, which may result in the abuse of this right and the creation of a political climate hindering the exercise of minority rights. Furthermore, paragraph 2 of this Article lays down that more than one National Minority Council may declare an institution as one of particular relevance, in which case each national minority is entitled to appoint one member of the institution's Board of Directors; the Culture Act,<sup>39</sup> on the other hand, specifies that National Minority Councils shall in these cases jointly appoint one member of the Board of Directors (Article 42(3)). This legal discrepancy has led to inconsistent appointment practices.<sup>40</sup>

The Preševo authorities in November 2013 flew the Albanian flag together with the Serbian flag from the Preševo Municipal Hall to mark Flag Day, the national holiday marking the independence of Albania, and a banner saying "Give Us Back Our Monument",<sup>41</sup> a move that provoked fierce reactions. Chairman of the Coordination Body for Preševo, Medveđa and Bujanovac Zoran Stanković said that Albanians in South Serbia would as of next year be allowed to put up only symbols approved in accordance with the National Minorities Act.<sup>42</sup> Preševo Deputy Mayor Skender Destani said that the celebration of this holiday was simultaneously a pro-

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39 *Sl. glasnik RS*, 72/09.

40 See Realisation of Rights of National Minorities – Implementation of Recommendations of Independent Institutions for the Protection of Human Rights in Serbia, BCHR 2013, pp. 13-17, available at: [http://www.bgcentar.org.rs/images/stories/Datoteke/Realisation\\_of\\_Rights\\_of\\_National\\_Minorities\\_zb\\_web.pdf](http://www.bgcentar.org.rs/images/stories/Datoteke/Realisation_of_Rights_of_National_Minorities_zb_web.pdf).

41 The names of 27 killed members of the so-called Liberation Army of Preševo, Bujanovac and Medveđa (OVPBM), which had fought for the secession of the Preševo Valley from Serbia, were inscribed on the monument.

42 In his press release, Stanković said that "a flag may be based on a country, Albania in this case, but at least 30% of the flag has to differ from the flag of Albania. It is too late now for the Albanian national minority to get its own symbol by 28 November, since they have not proposed a national minority flag, but I hope that this will be done next year." See the report in Serbian in the daily *Danas* of 19 September 2013, entitled "Flags are not in Stanković's Jurisdiction", available at [http://www.danas.rs/danasrs/drustvo/upotreba\\_zastave\\_nije\\_u\\_stankovicevoj\\_nadleznosti.55.html?news\\_id=267948](http://www.danas.rs/danasrs/drustvo/upotreba_zastave_nije_u_stankovicevoj_nadleznosti.55.html?news_id=267948)

test, because the Serbian Government has failed to deal with the problems of the Albanian national minority in the three South Serbian municipalities for years.<sup>43</sup> A protest was held in front of the Preševo Municipal Hall and the ethnic Albanian leaders sent a letter to Prime Minister Ivica Dačić and Deputy Prime Minister Aleksandar Vučić, concluding that continuation of the dialogue was senseless. They also wrote that they were dissatisfied with the new court network in the area and recalled that a new political process aimed at improving the status of South Serbia Albanians launched in March 2013 had not yielded the desired results.

Six ethnic Albanian political parties in South Serbia staged a protest rally in Bujanovac after a monument to Gendarmerie officers killed in action was erected in the Lučane Municipality, in which Albanians account for most of the population. This act was perceived as a provocation<sup>44</sup> given that the monument to killed members of the Liberation Army of Preševo, Bujanovac and Medveđa erected in front of the Preševo Municipal Hall was removed at the same time. There are at least 20 monuments in South Serbia that have been disputed either by the Serbs or the Albanians.<sup>45</sup> The erection of such monuments has only created tensions between the Albanian and Serbian population, already burdened by conflicts in the past.

At the proposal of the National Council of the Bosniak National Minority with a technical mandate (BNV), a memorial plaque was erected in Novi Pazar on 4 August 2012 to mark the anniversary of Bosniak cultural heritage and commemorate a controversial figure Aćif Hadžiahmetović. The plaque was painted blue during the night of 3/4 March 2013 and the BNV called on the competent authorities to identify the desecrators.<sup>46</sup> The perpetrators were not identified by the end of 2013.<sup>47</sup>

### *1.5.2. Freedom to Express One's National Affiliation*

Under Article 3 of the Framework Convention, every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice. This freedom is enshrined both in the Constitution and the Minority Protection Act (Art. 5). Furthermore, the Personal Data Protection Act qualifies data regarding ethnicity, race, language and religion as particularly sensitive data that may not be processed without the voluntary consent of the person they concern. Violation of the freedom to express one's national affiliation is a crime (Article 130 of the Criminal Code).

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43 Albanian Flag Day Marked in Preševo, *RTS* online, 28 November, available in Serbian at <http://www.rts.rs/page/stories/sr/story/9/Politika/1456501/Dan+albanske+zastave+u+Pre%C5%A1evu.html>.

44 *Politika*, 2 February, p. 5.

45 Preševo: Monuments Causing New Tensions, 23 January 2013, *Radio Free Europe* online, available in Serbian at <http://www.slobodnaevropa.org/content/presevo-spomenici-uzrocinovih-tenzija/24881844.html>

46 *Blic*, 5 March, p. 15.

47 Information obtained in a telephone conversation with a representative of the National Council of the Bosniak National Minority.



Attempts are still made in the Republic of Serbia to dispute individual national minorities and impose different identities on persons belonging to minorities identified during the 2002 and 2011 Censuses. The Bunyevtsi and Croats<sup>48</sup> and the Vlachs and Romanians<sup>49</sup> have not resolved their disputes yet. In all three reports on the implementation of the Framework Convention, the Republic of Serbia took the view that state authorities could not enter discussions on the national identity of a particular national minority and that supporting one or the other minority community would be tantamount to imposing a national identity on a minority. The Republic of Serbia is nevertheless under the duty to recognise the status of a national minority pursuant to the definition of national minorities in Article 2 of the Minority Protection Act.

### *1.5.3. Use of Languages*

The right to linguistic identity, as a fundamental collective right of national minorities, is protected by the European Charter for Regional or Minority Languages. The Charter also binds the States Parties to ensure that the judicial and administrative authorities and public services communicate with persons belonging to national minorities in their languages (under specific conditions). The Charter specifies the alternative measures the States Parties are to undertake in their education systems to protect minority languages. These measures apply to all levels of education (preschool, primary, secondary, technical, vocational, university and adult education) and bind the States to make available full or a substantial part of education in the relevant minority languages, to provide for the teaching of the relevant regional or minority languages as an integral part of the curriculum or to provide facilities for the study of these languages as university and higher education subjects (Art. 8).

The Charter also binds the States Parties to provide the basic and further training of the teachers required for holding classes in minority languages. Under Article 2 of Protocol No. 1 to the ECHR, no person shall be denied the right to education and in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical conviction. This Article, therefore, does not oblige the states to comply with the parents' preferences about the language in which their children are schooled; nor can linguistic preferences be subsumed under a "religious and philosophical conviction". Although it appears that the right to education would be meaningless if it did not entail the right to education in a national minority language, the interpretation of Article 2 of Protocol No. 1 does not entail the state's obligation to provide

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48 Bunyevtsi in Subotica: Croats are Doing Their Utmost to Assimilate Us, *Novosti online*, 22 March, available in Serbian at <http://www.novosti.rs/vesti/srbija.73.html:425663-Bunjevci-u-Subotici-Hrvati-cine-sve-da-nas-asimiluju>.

49 See 2012 Report, I.6.2.5.



education in minority languages at its own expense; nor does Article 2 guarantee the parents and children the right to demand to be schooled in a language of their choice.<sup>50</sup> The right to education guarantees to persons subject to the jurisdiction of the states signatories to Protocol No. 1 the right, in principle, to avail themselves of the means of instruction existing at a given time.<sup>51</sup> To interpret the right to education in conjunction with the prohibition of discrimination in Article 14 of the ECHR as conferring on everyone within the jurisdiction of a State a right to obtain education in the language of his own choice would lead to absurd results.<sup>52</sup> For the right to education to be effective, the state must officially recognise also studies in other languages, which are not officially in use.

Under the Constitution, the Serbian language and the Cyrillic script shall be officially in use in the Republic of Serbia. The official use of other languages and scripts is governed by the Official Use of Languages and Scripts Act,<sup>53</sup> under which the municipalities shall specify in their statutes which minority languages are in official use in their territories. The exercise of this right is safeguarded primarily by the cities and municipalities, because the right to the official use of a language is exercised primarily in the local community institutions. Under the Minority Protection Act, the language and script of a national minority shall be officially used on an equal footing in the municipality in the event the national minority accounts for at least 15% of the population of the municipality according to the last census results. National Minority Councils propose the introduction of the languages and scripts of national minorities as official languages and scripts in local self-government units.

Apart from the Serbian language and script, the Vojvodina Statute also envisaged that the Vojvodina provincial authorities and organisations also officially use the following languages and scripts: Hungarian, Slovak, Croatian, Romanian and Ruthenian (Article 26). The Constitutional Court declared this provision unconstitutional in its decision of 5 December 2013,<sup>54</sup> because the official use of languages and scripts cannot be governed by a Vojvodina general enactment since the Constitution sets out that the official use of languages other than Serbian shall be regulated by a law.

Under Article 37(3) of the Constitution, persons belonging to national minorities may use their first and last names in their languages. The Minority Protection Act further guarantees the entry of the names of persons belonging to national minorities in their languages and scripts in all public documents, official records and personal data registers (Article 9). The Official Use of Languages and Scripts Act

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50 See the ECtHR judgment *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v. Belgium*, App. Nos. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63 and 2126/64 of 23 July, 1968.

51 *Ibid.*

52 *Ibid.*

53 *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05 and 30/10.

54 Constitutional Court Decision I Uo 360/2009 of 5 December 2013.

sets out that the official use of languages and scripts shall also entail the issuance of public documents, keeping of official records and personal data registers in national minority languages and the recognition of such documents as valid (Article 11).

The Ministry of Justice and State Administration acted on a recommendation made by the Protector of Citizens and the Provincial Ombudsman in 2011 and amended the Instructions on Keeping Vital Records and on Forms of Vital Records, which has been applied since 20 April 2011, and issued guidance on how to implement the Instructions to the vital records departments.<sup>55</sup> During its monitoring visit to the Ministry of Justice and State Administration in 2013, the BCHR research team was told that the Administration Inspectorate charged with monitoring the enforcement of regulations by vital records departments has not received any complaints about their work, but that it was nevertheless difficult to ensure that they applied uniform procedures after following different ones for years. The BCHR team was, however, unable to establish whether the vital records departments were consistently implementing the Ministry's instructions on their communication with the citizens, notably their obligation to advise the latter how they could exercise their right to have their first and last names entered in their minority languages and scripts in the vital records. Furthermore, during their field visits to local self-governments, the BCHR researchers were told that the practice of bilingual entries was still not followed through in smaller towns.<sup>56</sup>

The Protector of Citizens and Provincial Ombudsman in 2011 recommended to the Ministry of Internal Affairs to put up notices in all police buildings and stations advising the persons belonging to national minorities of their right to have their names entered in their languages and scripts in their identification papers and how they could exercise that right. The Ministry acted on the recommendation and sent a memo to all police administrations that they had to notify persons belonging to national minorities about how they could exercise their right to have their names entered in their identification documents in their minority languages and scripts. During its monitoring visit to the Ministry, the BCHR researchers learned that no complaints regarding the entry of names in minority languages and scripts have been lodged with the Ministry since it had sent the memo, and that the internal oversight officers had established that all the police authorities were fulfilling the obligation, apart from the Medveđa police station, which had not been subject to internal oversight although it had been singled out by the Protector of Citizens and Provincial Ombudsman in the explanatory note to their recommendation. During their visit to the Bujanovac police station, the BCHR researchers were told that the notice had been displayed publicly in that police station, but was removed during works in the building.

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55 See *2012 Report*, I.6.2.11.

56 More in Realisation of Rights of National Minorities – Implementation of Recommendations of Independent Institutions for the Protection of Human Rights in Serbia, BCHR 2013, p. 58, available at: [http://www.bgcentar.org.rs/images/stories/Datoteke/Realisation\\_of\\_Rights\\_of\\_National\\_Minorities\\_z\\_a\\_web.pdf](http://www.bgcentar.org.rs/images/stories/Datoteke/Realisation_of_Rights_of_National_Minorities_z_a_web.pdf), pp. 53–54.

The IT and E-Government Sector of the Vojvodina Secretariat for Education, Administration and National Communities keeps a database on the official use of languages and scripts in the territory of the Autonomous Province of Vojvodina. The database includes data on the ethnic breakdown of the population in each city and municipality, data on administrative proceedings conducted in national minority languages and on funding the Provincial Secretariat for Education, Administration and National Communities awarded cities and municipalities to promote multilingualism in the territory of the AP of Vojvodina.

The Montenegrin Party sent an open letter to the Serbian leadership and Protector of Citizens complaining about the delay in the introduction of Montenegrin into official use in the Municipality of Vrbas.<sup>57</sup> The Montenegrin minority accounts for 17.5% of the population in this municipality. However, the Montenegrin language has not been introduced into official use by the end of the reporting period. It is in official use only in the Municipality of Mali Idoš.

Notwithstanding whether a national minority language is officially in use in a local self-government unit, the Vital Records Act<sup>58</sup> lays down that the names of persons belonging to national minorities shall be entered in the vital records in the language and orthography of the national minority. 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)). These legal provisions are, however, not always applied in practice.

The Government of the Republic of Serbia and the BNV launched education in the Bosnian language in Sandžak without holding a serious public debate or preparing for its introduction in advance, which resulted in chaos reflected in the contradictory instructions issued by the Ministry of Education and the BNV, a totally banalised process of issuing certificates to teachers, lack of material working conditions, absence of adequate textbooks and numerous other problems. The BNV decided to institute proceedings against all those that have failed to introduce the Bosnian language in primary and secondary schools. Criminal charges for abuse of post have been filed against several headmasters in the Raška Region<sup>59</sup> because they deprived the pupils of their right to schooling in their native language.<sup>60</sup> Many of the schools in the area, including the Novi Pazar classical high school, have not even begun to introduce education in Bosnian. This model of schooling risks to un-

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57 Montenegrin Party Seeks Official Use of Montenegrin Language in Vrbas, *Naslovi.net*, 24 March, available in Serbian at <http://www.naslovi.net/2013-03-24/akter/crnogorska-partija-trazi-uvodjenje-jezika-u-vrbasu/5091939>.

58 *Sl. glasnik RS*, 20/09.

59 Under Article 129 of the Criminal Code, whoever denies or restricts a citizen's right to use their mother tongue or script when exercising their rights or addressing authorities or organisations, in contravention of the regulations governing the use of languages and scripts of peoples or persons belonging to minority national or ethnic communities, shall be punished by a fine or imprisonment up to one year.

60 "Going to Court over Bosnian Language", *Večernje novosti online*, 8 October.

dermine the quality of education and create an ethnic distance among the pupils in Sandžak, all of whom actually speak the same language. Furthermore, the question arises whether the BNV is legitimately authorised to choose a model of exercising the right to education in Bosnian in Serbia, given that its members all come from the same part and it has a technical mandate.

#### *1.5.4. The Right to Full and Impartial Information in National Minority Languages*

The right of persons belonging to national minorities to full and impartial information is guaranteed both by the Constitution and the Minority Protection Act, which lays down that the state shall ensure the broadcasting of news, cultural and educational content in national minority languages on public service radio and TV stations and that it may also establish radio and TV stations to broadcast programmes in national minority languages (Art. 17). At its session on 3 October 2013, the Constitutional Court declared unconstitutional the following part of this Article “may also establish radio and TV stations to broadcast programmes in national minority languages”.<sup>61</sup> The Constitutional Court cited Article 10(1) of the ECHR, stating that the impugned part of the provision amounted to the authorities’ illegitimate interference in the realisation of the right to freedom of expression, which was not necessary in a democratic society. In its view, the impugned part of the Article placed media established by the state at an advantage and gave the state the exclusive right to establish outlets broadcasting in minority languages.

Under Article 17 of the Public Information Act, the Republic, autonomous provinces and local self-governments are under the obligation to secure part of the funding or other conditions for the work of media outlets in national minority languages. Most media in national minority languages in the multi-ethnic municipalities are not privately owned and are funded by the cities and municipalities, i.e. they were founded by the cities and municipalities. Under the 2011 Strategy for the Development of the Public Information System in the Republic of Serbia until 2016, minority media may be established by commercial entities, civil society organisations and national minority councils. Although, under the Strategy, the Republic of Serbia and the AP of Vojvodina may co-fund the best media projects contributing to provision of information in minority languages, media established by national minority councils *are not entitled to apply with their projects for funding at the republican, provincial or local levels*. The Strategy rests upon the commitment that the state may not own media outlets either directly or indirectly but allows it to establish national, regional and local media. However, the following risk arises in the event the outlets broadcasting in minority languages are privatised: the new owners may decide to halt minority programmes, especially if they had bought the outlets for another reason (because of the land and buildings, rather than to engage in the provision of information). The Protector of Citizens criticised the Strategy in his opinion in 2012.<sup>62</sup>

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61 Constitutional Court Decision I Uz 27/2011 of 3 October.

62 Opinion of the Protector of Citizens of 20 June 2012.

Notwithstanding the numerous constitutional and legal guarantees, most minorities have not been publishing magazines in their native languages and a number of TV and radio stations with minority programming have gone off the air. Such a fate befell the magazine *Romano neviqe*, which had been published by the National Council of the Roma National Minority, and *RTV Nišava*, which aired programmes in Roma as well.<sup>63</sup>

The civic association “Centre for the Affirmation of Ashkalis” sent a letter to the Novi Sad Mayor in December 2013 in which it noted that the City Administration had not been funding Ashkali culture and information programmes for four years and that the City had done nothing to support such projects although he had been alerted to the situation the previous year. The Association also noted that there were no media or education in the Ashkali language.<sup>64</sup>

### *1.6. National Councils of National Minorities*

The National Councils of National Minorities are sui generis legal persons vested with extremely important public powers aimed at ensuring the realisation of the national minorities’ rights to self-government in culture, education, information and official use of languages and scripts.<sup>65</sup> The National Minority Councils were established under the Minority Protection Act and their powers and election are governed in greater detail by the National Councils of National Minorities Act (NCNMA).<sup>66</sup> According to the regulations in force, however, the concept of the NCNMA better suits the needs and capacities of the national minorities that are larger, better organised, concentrated in a particular area and that have influential political parties represented at all government levels. The other minorities, which are not as united, live in diverse parts of the country or lack the capacities or the financial and technical support, have availed themselves of merely a small part of the opportunities afforded by the Act. The NCNMA governs the fundamental issues regarding the internal make-up of the Councils in a very general manner. Under the Act, a National Minority Council shall have a Chairperson, who shall act for and on behalf of the Council, an executive authority and committees for education, culture, information and the official use of languages and scripts. The Act does not specify whether a National Minority Council may also establish committees dealing with other fields which fall under minority rights in a broader sense e.g. a committee that would focus on the minority’s proportionate representation in public life. Such committees have been established in practice, although the Act does not explicitly provide for that possibility.<sup>67</sup>

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63 *Danas*, 10/11 August, p. 20.

64 Centre for the Affirmation of Ashkalis press release, 11 December.

65 More on the powers and election of National Councils in the *2011 Report*, II 4.13.6

66 *Sl. glasnik RS*, 72/09.

67 The National Council of the Roma National Minority, for instance also established a Housing Committee, an Employment Committee and a Health Committee. It had initially planned to establish 19 committees.

Under the NCNMA, National Minority Councils shall take part in the allocation of budget funds for national minorities awarded at tenders for funding programmes and projects in the fields of culture, education, information and the official use of languages and scripts.

An initiative was launched in 2013 to review the constitutionality of the NCNMA provisions on the powers of the National Minority Councils, but the Constitutional Court had not rendered a decision on it by the end of the reporting period. On 25 November 2013, the Ministry of Justice and State Administration opened a public debate on the draft amendments to the NCNMA, but they regard only the election of the National Minority Councils, with a view to improving the certainty of the election process. Although the Act suffers from other deficiencies as well, and is not consistent with other laws (e.g. the Culture Act), the Ministry was of the view that the provisions on the powers of the National Minority Councils should not be debated until the Constitutional Court rendered its decision. The Constitutional Court Act, however, entitles the Assembly to ask the Constitutional Court to suspend its review of the constitutionality of a law to give it time to deal with the impugned provisions within a specific timeframe. Given all the costs accompanying the process of amending the Act, it would be more efficient and cost-effective if all the amendments were made in one go. Furthermore, there are fears that not even the Councils to be elected in 2014 will be fully operational with respect to the minorities' right to self-governance in the fields of culture, education and information if only the provisions on the election of the National Minority Councils are amended and the Constitutional Court fails to review the constitutionality of the provisions on their powers soon.

The Republic of Serbia Council for National Minorities, which should be monitoring the realisation of the rights of the national minorities, was established under a Government Decree in 2009. However, this Council has not held any sessions since its constituent session.<sup>68</sup> A total of 19 National Minority Councils and the Association of Jewish Municipalities have been registered in Serbia. The Register of National Minority Councils is kept by the Ministry of Justice and State Administration.

The National Minority Councils had the opportunity to state their views and make their recommendations in supplements to the Third Report the Republic of Serbia submitted to the CoE Secretary General. The Report does not include the supplements of all the registered Councils.

In its supplement, the National Council of the Bunyevtsi National Minority expressed its dissatisfaction with the underrepresentation of the Bunyevtsi in the public administration and called for changes to election law to eliminate this shortcoming. This Council claimed that it was discriminated against in competitions for funding earmarked for National Minority Councils. It specified that the Ministry of

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68 This fact was noted by the National Minority Councils in their supplements to Serbia's Third Report.



Human and Minority Rights, Administration and Local Self Governments passed a Decree two years earlier under which points were awarded to institutions the Bunyevtsi minority did not have and could not establish without the state's support. The Council also noted that the local self-government competitions, through which funds for projects relevant to national minorities are allocated, were not transparent and called for affirmative action measures that would enable the Bunyevtsi to exercise their rights. The Council said that it, rather than the Ministry of Education, was covering the costs of training and salaries of the teachers teaching the Bunyevtsi Language with Elements of National Culture in 13 schools in Subotica and Sombor and that many schools did not conduct surveys of pupils to ascertain which of them wanted to take this optional subject. The Bunyevtsi Council also stated that it lacked the material and technical conditions for full equality in the field of information and called for the opening of Bunyevtsi language desks in the Subotica and Sombor media. The Council also alerted to the absence of religious services in the Bunyevtsi language and noted that the Republic of Serbia should put in place conditions for the standardisation of the Bunyevtsi language.

The Association of Jewish Municipalities underlined that the state was not investing enough efforts to ensure the enforcement of and abidance by the valid regulations and that the investigations of anti-Semitic crimes were ineffective and slow.<sup>69</sup> In the view of this Association, the state has not been allocating enough funding for the Jewish community's projects, but qualified its presence in the public media as satisfactory. It stated that the relevant state institutions' involvement in all issues related to the development and nurturing of the Jewish community's language was extremely modest. The ongoing Hebrew language courses, textbooks and teacher training are funded from the Association's own revenues.

The National Council of the Hungarian National Minority singled out as its gravest problem the difficulties it has had in taking over part of the founder's rights to cultural and educational institutions because some local self-governments have failed to adopt the general enactments on the transfer of founder's rights. The Council also pointed out the problems it has had with funding its work given that some local self-governments still have not allocated funding in their budgets for the National Minority Councils, as provided for by the NCNMA.

The National Council of the Macedonian National Minority stated that the NCNMA had to be amended and brought into compliance with the other regulations. In the view of this Council, distinctions are made between traditional and new national minorities with respect to the realisation of the right to education in minority languages. Whereas the traditional national minorities are provided with comprehensive education in their languages, the ethnic Macedonians are having trouble

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69 Case No K-345/05, Belgrade Higher Court. Criminal report filed against Prof. Živojin Savić – author of the publication *Holy Script – Jewish Mirror*, Dr. Ratibor Đurđević – author of the preface *The Judeans, Enemies of the Human Race* to the publication, and Editor-in-Chief Aleksandar Tasić, Belgrade publishing company *Ihtus Hrišćanska knjiga* (the proceedings were initiated in 1991).



organising Macedonian language lessons. Macedonian Language with Elements of National Culture is treated as an optional rather than as an elective subject. Another problem is the recognition of diplomas acquired in Macedonia. As far as information in Macedonian is concerned, the Macedonian National Minority Council underlined that the public broadcaster, Radio Television of Serbia, did not air entire shows in Macedonian, only occasional reports. The Macedonian National Council assessed that this minority was represented only symbolically in the public administration. It also criticised the system for awarding points in competitions for funding earmarked for National Minority Councils, because it gave advantage to minorities which had established the institutions that are awarded points, while other minorities, which are unable to establish them, have fewer chances of winning funding for their projects from the budget. Macedonians born in Macedonia have had difficulties obtaining birth certificates – the Council thinks that the local self-governments should officially ask the Macedonian authorities to forward these documents, which are instrumental for the realisation of numerous rights by the ethnic Macedonians.

The Culture Committee of the National Council of the Romanian National Minority is of the view that the NCNMA precisely defines the Council's powers in the field of culture and underlines that the work of the Vojvodina Romanian Culture Institute is funded from the Vojvodina budget but that the cultural establishments are generally in poor condition. The Romanian Council said that the ethnic Romanians did not have access to the media in the Timok area. As far as information in Romanian is concerned, the Council qualified as the main problem regulations on public broadcasters given that the Broadcasting Act "does not recognise" the institute of National Minority Councils. The National Minority Councils are consequently not recognised in the statutes of the Vojvodina and Serbian public broadcasters; their recognition would ensure greater legal certainty in the realisation of minority rights to information in their own languages. As far as print media are concerned, the Romanian National Minority Council emphasised that newspapers and publications in Romanian were published by nearly all local self-governments, but that they were mostly funded by the Council and that this funding was insufficient. Although Romanian is in official use in nine municipalities, the Council is of the view that ethnic Romanians cannot use it sufficiently in communication with local government civil servants or in court and administrative proceedings. The Council also noted that the authorities rarely issued bilingual documents. The Romanian Council recalled that it had specified the traditional Romanian names of 38 settlements back in 2003, but that the Romanian names of only 22 settlements have been posted alongside the Serbian ones. There are substantial problems in the field of education in Romanian: delays in the printing of textbooks, lack of teachers teaching in Romanian, who receive scholarships from the Romanian Minority Council. Pupils who have declared themselves as Romanians but attend classes in Serbian can take Native Language with Elements of National Culture as an optional subject. The Ministry of Education and Science has not yet met the request, made by all the Councils, to make this subject mandatory. In the opinion of the Romanian National

Council, this national minority is not provided with the opportunity to take part in the legislative bodies at all levels. The Act on Churches and Religious Communities does not categorise the Romanian Orthodox Church as a traditional church, which has prevented it from holding religion classes in schools.

The National Council of the Croatian National Minority singled out the lack of a level playing field for all national councils eligible for funding from the budget as the greatest problem in the realisation of minority rights. This Council pointed out that both the republican and local authorities disregarded the Council's opinion on the allocation of funds, as opposed to the Vojvodina administration. Croatian is officially in use in three cities and three municipalities; the Council thinks that the Croatian minority is not treated equally to minorities of similar size with respect to the realisation of the right to information in minority languages. It fears that the status of the Croatian minority will deteriorate once the radio stations founded by the local governments are privatised. Although education in Croatian has been conducted for ten years now, the pupils are still using textbooks imported from Croatia. The Croatian National Council has tried to contact the National Education Council to address the issue, but to no avail.

The views of the Czech national minority in the Third Report are mostly positive. The National Council of the Czech National Minority is the only one that is headquartered in a municipal building. The Council has, however, had to curtail the activities it planned after the erstwhile Ministry of Human Rights, State Administration and Local Self Governments and the Provincial Secretariat for Education, Administration and National Communities cut the funds they had been allocating. The Council noted that it had repeatedly alerted to the fact that provision of regular information via electronic media (radio) was not possible as the provisions in the NCNMA allowing National Minority Councils to set up their own outlets are in conflict with the Broadcasting Act.

The problem regarding the legitimacy of the two National Councils of the Bosniak National Minority was not resolved in 2013. There are two National Minority Councils representing the interests of persons belonging to the Bosniak national minority – one has a technical mandate and the other is not recognised.

### *1.7. Prohibition of Forced Assimilation*

The Constitution prohibits forced assimilation (Art. 78). The Minority Protection Act prohibits both forced assimilation (Art. 5(3)) and measures changing the ethnic breakdown of the population in areas inhabited by national minorities and impeding the realisation of the rights of persons belonging to national minorities (Art. 22). Article 23 of the Minority Protection Act allows persons belonging to a national minority and National Minority Councils to file damage claims with the competent courts to protect their rights. The Act also allows National Minority Councils to file constitutional appeals (on their own behalf or on the behalf of persons belonging to a national minority).

Under the NSNMA, National Minority Councils shall initiate proceedings before the Constitutional Court, the Protector of Citizens, the Provincial Ombudsman and other competent authorities if they believe that a constitutionally or legally guaranteed right or freedom of a person belonging to a national minority has been violated (Art. 10).

The Official Use of Languages and Scripts Act lays down that its implementation shall be overseen by the ministries charged with administration, transportation, urbanism and housing-communal affairs, education, culture and health within their purviews (Art. 22). Under Article 22 of the NSNMA, National Minority Councils shall propose to competent authorities to perform oversight of the official use of languages and scripts.

### *1.8. Protection of the Rights of Persons Belonging to National Minorities before Independent Regulatory Authorities*

In response to a complaint by the National Council of the Bosniak National Minority, the Protector of Citizens in April 2013 issued recommendations to the City of Novi Pazar and the municipalities of Priboj, Sjenica and Prijepolje to ensure the consistent enforcement of the law and the realisation of the National Minority Councils' right to funding from their local budgets. The BNV claimed that Tutin was the only municipality to have fulfilled its obligations set out in the NCNMA, while the other municipalities had not rendered decisions securing funding in the budget or decisions allocating the funds for the work of the BNV. The Protector of Citizens concluded that the local governments' failure to act resulted in the violation of the rights of the Councils and persons belonging to the Bosniak national minority, particularly in view of the fact that the Act sets out that the National Minority Councils shall use the funding to fund and co-fund, inter alia, the work of institutions, foundations, business organisations and other organisations they founded or co-founded and programmes and projects in the fields of education, culture, information and official use of minority languages and scripts of relevance to the preservation of the ethnic and cultural identity of persons belonging to national minorities.<sup>70</sup>

In the view of the Protector of Citizens, the rights of persons belonging to national minorities are not realised in the manner which is in their best interest even in municipalities in which they account for the majority population. The Protector of Citizens issued recommendations regarding the right to the official use of languages and scripts of national minorities to the local authorities in Novi Pazar, Sjenica, Tutin and Prijepolje and established that local authorities had failed to display the names of the authorities exercising public powers, local self-government units, settlements, squares and streets and other toponyms in the language of the

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70 Protector of Citizens' Recommendation No. 16-330/13 of 2 April 2013.

Bosniak national minority pursuant to the Official Use of Languages and Scripts Act, although they introduced Bosnian as an official language in their Statutes.

The BCHR team monitored the implementation of these recommendations in February 2013 and concluded that the failure of the local governments to act on the BNV's 2010 Decision specifying the traditional names of the local self-government units, settlements and other toponyms in Bosniak in the Novi Pazar, Tutin, Sjenica and Prijepolje areas could not be justified by lack of funding, which these local governments quoted as the reason in their replies to the Protector of Citizens' query. Under Article 21 of the Official Use of Languages and Scripts Act, funding requisite for the official use of languages and scripts shall be secured by the authorities and organisations in which the legally defined rights and obligations are realised. The BCHR is of the view that three years was a sufficient period of time for the local governments to implement the Decision.<sup>71</sup>

In the 1 January – 31 October 2013 period, the Vojvodina Ombudsman received 45 applications from citizens and five applications from National Minority Councils claiming violations of minority rights. The Ombudsman initiated seven proceedings at his own initiative, based on what he personally had learned or on media reports. The citizens mostly complained that, by their failure to act, the administration authorities at various levels were violating the right to official use of minority languages and scripts and the right to freely choose a name. They also complained about how the budget funds for (co)funding projects in culture were allocated and about the non-transparent allocation of such funds at competitions, and the failure of local governments and public companies to take into account the representation of minorities during recruitment, which has hindered communication with these authorities and companies and use of their services. The proceedings were in most cases discontinued because the authorities at issue had eliminated the irregularities complained of in the applications. The National Councils of the Croatian, Slovak, Romanian and German National Minorities filed applications with the Ombudsman, complaining of breaches of the right to official use of minority languages and scripts, problems in securing textbooks in minority languages and the way in which kindergarten teachers were recruited in minority-language kindergartens.<sup>72</sup>

The Office of the Commissioner for the Protection of Equality issued 13 opinions and recommendations in 2013 in response to complaints of discrimination on grounds of nationality in the fields of service provision, work and recruitment. The Commissioner issued a greater number of recommendations regarding the discrimination of Roma children in 2013.<sup>73</sup>

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71 *Realisation of Rights of National Minorities – Implementation of Recommendations of Independent Institutions for the Protection of Human Rights in Serbia*, BCHR 2013.

72 Provincial Ombudsman's reply to a request for access to information of public importance – VII-OM-D-28/3013/7.

73 More in III.2.

## 2. Status of Roma

### 2.1. General

The status of Roma did not improve much in 2013. All surveys show that Roma are one of the most vulnerable categories of the population in Serbia. The year 2013 was marked by some activities aimed at improving the status of Roma but also by a series of activities aimed at filling the gaps in the institutional and political frameworks of relevance to the status of the Roma national minority in Serbia.

The Serbian Government rendered a conclusion adopting the three-year Action Plan (Roma Strategy AP)<sup>74</sup> for the Implementation of the Strategy for the Improvement of the Status of Roma in the Republic of Serbia (hereinafter: Roma Strategy)<sup>75</sup> with an 18-month delay, in June 2013. Paradoxically, this key Government applies retroactively also to 2012 (given that the prior Roma Strategy AP had been in force until 2011) and will be enforced until 1 January 2015. The Roma Strategy AP lays down the measures, institutions charged with implementing them, the deadlines and the projected costs and sources of funding. Two segments of the Roma Strategy AP – the deadlines and sources of funding – stand out immediately. Namely, all measures are to be enforced by the same deadline – end of 2014 – which indicates that the ministries and other competent institutions lack a clear plan on the priorities and the order of the measures they are to take to make specific and appreciable improvements in the status of Roma. Second, the Government is mostly relying on foreign sources of funding (donations and loans) and less on the national budget. Moreover, the authors of the Roma Strategy AP failed to envisage funding for most of the measures, which particularly gives rise to concern as regards housing. Housing requires the greatest investments and the Roma Strategy AP envisages a circa 4% contribution from the budget to cover the projected costs but does not plan for the allocation of even a single dinar either from the budget or from donations for the implementation of the measure regarding the construction of the requisite infrastructure in the settlements (Measure 2.4.2. b).

In late May 2013, the Government formed the Council for the Improvement of the Status of Roma and the Implementation of the Decade of Roma Inclusion<sup>76</sup> (hereinafter: Council) and tasked it with drafting public policy proposals to improve the status of the Roma population and monitoring their implementation, rendering opinions on planned budget funding, analysing the effects of the undertaken measures, monitoring the implementation of the Decade of Roma Inclusion in the

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74 The Conclusion was published in *Sl. glasnik RS*, 53/13 and the Action Plan is available in Serbian at: <http://www.ljudskaprava.gov.rs/images/pdf/Akcioni%20plan%20za%20sprovedjenje%20strategije%20za%20unapredjenje%20polozaja%20Roma.pdf>.

75 The English translation of the Strategy (*Sl. glasnik RS*, 27/09) is available at: <http://www.ink-luzija.gov.rs/wp-content/uploads/2010/03/Strategija-EN-web-FINAL.pdf>.

76 Decision Establishing the Council for the Improvement of the Status of Roma and the Implementation of the Decade of Roma Inclusion, *Sl. glasnik RS*, 46/13 in force as of 1 June 2013.

Republic of Serbia, etc. To recall, such a Council was established for a four-year period in 2008, as an inter-ministerial body chaired by the then Deputy Prime Minister and comprising the state secretaries, ministerial advisors and assistant ministers, as well as the representatives of the Roma civil sector and the National Council of the Roma National Minority (NCRNM). The new Council is chaired by a Roma deputy in the National Assembly and the Human and Minority Rights Office takes part in its work and provides it with technical support. The decision establishing the Council does not specify the ranks of the ministry representatives in the Council. Apart from the representatives of the executive government, the Council also includes Roma representatives of the civil sector, media, some local self-government units and a representative of the NCRNM. The Roma League coalition of Roma associations criticised the changes and opined that most of the representatives of the NGOs in the Council were political appointments and that the Chairman did not have adequate influence on the work of the competent ministries since he came from the ranks of the legislative branch.<sup>77</sup>

Despite the internship programme for Roma youths implemented by the Human and Minority Rights Office in cooperation with the OSCE Mission to Serbia with a view to achieving equitable representation of national minorities in the public administration, the number of Roma working in the civil service is still negligible.<sup>78</sup>

The adoption of the Decision on the Standardisation of the Roma Language<sup>79</sup> by the National Council of the Roma National Minority is extremely relevant to the realisation of the collective rights of the Roma national minority. The practical reach of the decision on the realisation of the right to use the Roma language, to information and education in and nurturing of the Roma language is yet to be seen.

## *2.2. Discrimination against Roma*

The new Strategy for the Prevention of and Protection from Discrimination<sup>80</sup> for the 2013–2018 period reiterates that the Roma community in Serbia, especially its most vulnerable categories – women, children, IDPs, legally invisible people – are exposed to various forms of discrimination, above all verbal and physical assaults, destruction of their homes and segregation. In the section on national minorities, the Strategy devotes particular attention to the status of Roma (section 4.2.2.3) and sets out special measures (Measures 4.2.4, paragraphs 10–13) and objectives (Section 4.2.5.4) regarding the Roma national minority.

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77 Standing Conference of Roma Civic Associations (SKRUG), Roma League, Minority Rights Centre, YUROM Centre, Roma Women's Centre Bibija, see the report entitled *Monitoring of the Implementation of Roma Policies at the National and Local Levels in the Republic of Serbia*, available in Serbian at [http://www.cpzv.org/download/izvestaj\\_RP.pdf](http://www.cpzv.org/download/izvestaj_RP.pdf), December 2013, p. 118.

78 *Ibid.*, p. 119.

79 Decision on the Standardisation of the Roma Language No. 493-09/13 of 30 September 2013, National Council of the Roma National Minority of Serbia.

80 *Sl. glasnik RS*, 60/13.



The Office of the Commissioner for the Protection of Equality has undoubtedly contributed the most to the prevention of and protection against discrimination. The Office website includes only data on the number of reviewed complaints, but does not specify how many complaints were filed altogether in 2013 or on what grounds. The Commissioner reviewed 13 complaints of discrimination on ethnic grounds in 2013.<sup>81</sup> She found violations of the provisions prohibiting discrimination in six of the eight cases alleging discrimination against Roma. The fact that a relatively small number of complaints claiming discrimination of Roma was filed and that only one of them was submitted by a Roma victim, while the other seven were submitted by NGOs, gives rise to concern and demonstrates that Roma are still largely unaware who they themselves can complain to about discrimination and how.

Five of the complaints of discrimination against Roma the Commissioner reviewed regarded the violation of the equality of Roma children and pupils in the field of education. The Commissioner for the Protection of Equality highlighted the discrimination against Roma children in education in her report on the status of children. She noted that “Roma children and children with developmental difficulties and disabilities are discriminated against the most in preschools and schools, usually because the educational institutions failed to take timely and appropriate preventive measures and the responsible individuals failed to react adequately to instances of discrimination. Roma children are victims of peer-to-peer discriminatory harassment to a much greater extent than other children.”<sup>82</sup>

One of the reasons why staff in educational institutions and administration, above all the school inspectors, do not have the capacity to themselves recognise and penalise discrimination arises from the fact that the Ministry of Education, Science and Technological Development in 2013 again failed to prescribe the detailed criteria for recognising forms of discrimination by the staff, pupils or third parties in the educational institutions provided for by Article 44(4) of the Act on the Bases of the Education System<sup>83</sup> although four years have passed since its adoption.<sup>84</sup>

### 2.3. *Education of Roma Children*

As far as (violations of) equality and access to quality education is concerned, the Republic of Serbia undoubtedly launched major and critical systemic changes when it adopted the corollary Act on the Bases of the Education System. The commitment to inclusive education has, however, remained unfulfilled for most Roma children still attending the so-called special schools for pupils with developmental

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81 The Office reviewed 9 and 20 complaints of discrimination on ethnic grounds in 2012 and 2011 respectively, see [www.ravnopravnost.gov.rs](http://www.ravnopravnost.gov.rs), accessed on 20 January 2014.

82 *Special Report on Discrimination against Roma Children*, November 2013, p. 29, available in Serbian at: <http://www.praxis.org.rs/index.php/en/reports-documents/other-reports/item/674-special-report-on-discrimination-against-children-published>.

83 *Sl. glasnik RS*, 72/09, 52/11 and 55/13.

84 Under Article 171 of Act on the Bases of the Education System, the requisite by-laws were to be adopted within three years from the day the Act came into effect.



difficulties. The European Roma Rights Centre in 2013 collected statistical data on the share of Roma pupils in “special schools” to alert to their overrepresentation. The ERRC supplemented its research by conducting a survey in 128 households with Roma children attending “special schools” in ten Serbian cities and talking to their parents and guardians to establish how these children ended up in special schools. The results of the research based on data obtained from 31 special schools across Serbia show that the number of Roma pupils in such schools has fallen, but was still too high. A number of schools covered by this research had alarming shares of Roma pupils, as many as 73% in the 2012/2013 school-year.<sup>85</sup>

#### *2.4. Some Incidents of Ethnically Motivated Violence against and Assaults on Roma*

A number of violent incidents targeting Roma were registered in 2013 in Belgrade<sup>86</sup>, Pančevo<sup>87</sup>, Bečej, Niš<sup>88</sup> and Novi Sad.

Ervin Bilicki (17) from Bečej, died in the night of 17 March when he was brutally beaten up on the street, fainted, fell into a puddle and drowned in it. A minor (14) is on trial for inflicting grave injuries to Bilicki that resulted in his death.<sup>89</sup> Although the authorities initially ruled out the possibility that multi-ethnic violence was at issue, there are indications that the assault was racially motivated.<sup>90</sup>

The container settlement in Resnik, in which families resettled from the informal settlement Belvil in New Belgrade are living, was the target of a number of consecutive attacks. The first incident happened around 11 pm on 28 August, when a group of at least 20 men with balaclavas entered the settlement with iron bars during a private party. The hooligans threatened the residents of the settlement and insulted them on racial grounds. Some of the men entered the settlement, threw stones and broke a window of a container under which children were sleeping. One

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85 European Roma Rights Centre, *Overrepresentation of Roma Children in Special Schools* – press conference in the Belgrade Media Center, 28 November 2013, available in Serbian at <http://www.mc.rs/prezastupljenost-romske-dece-u-specijalnim-skolama-u-srbiji.4.html?eventId=9218#report>.

86 See also “Belgrade: Roma Attacked at Beer Fest!”, *Romske novine*, 21 August, available in Serbian at: <http://romskenovine.wordpress.com/2013/08/21/beograd-napadnuti-romi-na-beer-fest-u/>.

87 “Roma Youth Beaten up, Doctors Fighting for his Life”, *Telegraf*, 3 May, available in Serbian at <http://www.telegraf.rs/vesti/682877-pancevo-pretucen-mladic-romske-nacionalnosti-lekari-mu-se-bore-za-zivot>.

88 See also “Roma Youth Beaten up on Christmas Eve”, *Blic*, 07 January, available in Serbian at <http://www.blic.rs/Vesti/Hronika/361495/Romski-mladic-pretucen-na-Badnje-vece-u-Nisu> ; “Monument to Šaban Bajramović Desecrated Again”, *Press Online*, 27 March, available in Serbian at <http://pressonline.rs/info/srbija/267187/ponovo-oskrnavljen-spomenik-sabanu-bajramovicu-.html>.

89 “Ervin Bilicki Murder Suspect Fails Lie Detector Test”, *Blic*, 18 June, available in Serbian at <http://www.blic.rs/Vesti/Hronika/388562/Osumnjiceni-za-ubistvo-Ervina-Bilickog-pao-na-poligrafu>.

90 “Testimony: Teenager Killed because he was Roma”, *Blic*, 9 April, available in Serbian at <http://www.blic.rs/Vesti/Hronika/376498/Svedocenje-Tinejdzer-ubijen-zato-sto-je-Rom>.

resident was injured when the men struck him with a metal bar through the window. The assailants continued coming to the settlement in groups in the nights that followed, trying to provoke and intimidate its residents and threatening to set them on fire. The residents reported every attack to the police and the police cars appeared within four to ten minutes. The police apprehended four assailants (including a minor) during their intervention in the night of 31 August. The Roma families organised night watch in the settlement fearing for their lives and those of their children. The police sent a police car to watch the settlement at night only after it was attacked for the sixth consecutive night and the NGOs intervened.<sup>91</sup> The Commissioner for the Protection of Equality issued a warning with respect to the attacks, calling on all competent authorities to promptly take all the necessary measures to ensure peace and order to all citizens and prevent violence against minorities.<sup>92</sup> This was not the first time this settlement was subjected to racially motivated violence. The local population staged violent protests against the decision to resettle the Belvil families in Resnik before they moved there in April 2012. The Roma lived under round the clock police protection for the first few months.<sup>93</sup>

Seven or eight vehicle charged into the Roma settlement Beograd mala in Niš at around 10 pm on 30 July 2013. Young men ran out of the vehicles, fired a few shots and wounded one minor. The Niš Higher Court stated that they suspected the young men of having committed the crime of endangering general safety and inciting racial and religious hatred and intolerance because they voiced insults at the Rome. This incident is believed to have ensued after a fight in the yard of a nearby secondary school several days earlier, in which Roma were involved and in which an NCO of the 63<sup>rd</sup> Parachute Brigade in Niš and a minor sustained grave physical injuries<sup>94</sup> while another minor sustained light physical injuries.<sup>95</sup> The fact that criminal reports were filed against all those who had taken part in the fight did not prevent a collective retaliation, as it were, against the Roma in the Beograd mala settlement. The Commissioner for the Protection of Equality condemned the incident and appealed to the competent state authorities to establish the links between the two incidents and identify and bring to justice all the perpetrators of the crimes.<sup>96</sup>

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91 "Racist Attacks on Resettled Roma in Belgrade", European Roma Rights Centre, 10. September, available at: <http://www.errc.org/cms/upload/file/serbia-letter-of-concern-resnik-10-september-2013-serbian.pdf>.

92 Warning re incidents against Roma in container settlement in Resnik, Commissioner for the Protection of Equality, Ref No. 021-02-52/2013-01 of 11 September 2013, available in Serbian at: <http://ravnopravnost.gov.rs/sr/upozorenja/upozorenje-povodom-incidenata-prema-romima-u-kontejnerskom-naselju-u-resniku>.

93 "Racist Attacks on Resettled Roma in Belgrade", European Roma Rights Centre

94 "Shots and Insults in Roma Settlement!", *Alo*, 31 July 2013, available in Serbian at: <http://www.alo.rs/vesti/hronika/pucali-i-vredali-u-romskom-naselju/26341>.

95 "63<sup>rd</sup> Parachute Brigade NCO Beaten up!", *Alo*, 31.07.2013., available in Serbian at: <http://www.alo.rs/vesti/hronika/prebijen-podoficir-iz-63-padobranske/26249>.

96 Press release re the assault on Roma settlement in Niš, Commissioner for the Protection of Equality, 1 August, available in Serbian at: <http://ravnopravnost.gov.rs/sr/saopštenja/saopštenje-povodom-napada-na-romsko-naselje-u-nišu>.

A group of skinheads in Novi Sad on 19 October 2013 stopped a Roma couple with the intention of kidnapping their two-year-old son because his skin was lighter than his father's. They were yelling that the couple must have stolen the child and that they should be in jail. One of the hooligans said he was a policeman and then they offered to "buy" the child from the parents. The father called the police and the hooligans fled.<sup>97</sup>

Roma were victims of violence in early November 2013 as well, when anti-Roma protests were organised in the Belgrade suburb of Zemun polje. The protests were sparked by an outbreak of mange in the local primary school, for which the Roma pupils were blamed. The doctors established that only three Roma pupils had contracted mange and immediately isolated the children until they were cured<sup>98</sup>, and tried to reassure the local community that there was no reason to fear an epidemic.<sup>99</sup> This, however, did not dissuade the local residents from organising large-scale rallies and protests accompanied by racist statements and threats. They demanded of the city authorities to prevent other Roma from moving into the neighbourhood and to move out the Roma living in the social housing in the Zemun polje settlement of Kamendin.<sup>100</sup> Roma account for only a quarter of the tenants of the social apartments in this settlement. Roma families lived in fear of physical violence for days and many did not dare send their children to school. The protests were condemned by the Commissioner for the Protection of Equality, the Protector of Citizens<sup>101</sup> and numerous NGOs. The Minority Rights Centre filed criminal reports against the protest organisers and participants for instigating ethnic, racial and religious hatred and intolerance because they were chanting "We don't want Gypsies, we don't want mange!", "Get out, mangy Gypsies!", "Slay the Gypsies!" "Kill, slay all Gypsies!", "We'll exterminate you!", "Get out of Zemun polje!" "We'll move the Gypsies out!" It also filed a criminal report against the responsible persons in the daily *Večernje Novosti* for publishing a racist article and readers' comments fomenting hatred against Roma on its website.<sup>102</sup>

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97 "Skinheads Wanted to Kidnap Roma's Child Because of its Lighter Skin", *Blic*, 22 October, available in Serbian at: <http://www.blic.rs/Vesti/Hronika/414303/Skinhedsi-hteli-da-Romu-ot-mu-dete-jer-je-svetlije-puti>.

98 "New Anti-Roma Protest in Zemun", *RTS*, 6 November, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1438191/Novi+antiromski+protest+u+Zemunu.html>.

99 A total of 64 people (including three pupils) were diagnosed with mange. Of them, only five families (39 people) live in the Kamendin social housing, while the others live in the informal settlement in Zemun polje; see "Being Roma is not Easy, Being Human is even Harder" – *Minority News* No 6, November, available in Serbian at: [http://www.minoritynews.rs/wp-content/uploads/2013/12/minority\\_news\\_6.pdf](http://www.minoritynews.rs/wp-content/uploads/2013/12/minority_news_6.pdf).

100 "Belgrade: Roma in Zemun Polje Afraid", *Radio Free Europe*, 7 November, available in Serbian at: <http://www.slobodnaevropa.org/content/beograd-romi-u-zemun-polju-u-strahu-zbog-napada/25161548.html>.

101 *Ibid.*

102 "Prevent Racist Violence against Roma", *Danas*, 9 November, available in Serbian at: [http://www.danas.rs/danasrs/srbija/beograd/spreciti\\_rasisticko\\_nasilje\\_nad\\_romima.39.html?news\\_id=270872](http://www.danas.rs/danasrs/srbija/beograd/spreciti_rasisticko_nasilje_nad_romima.39.html?news_id=270872).

### 3. Status of Persons with Disabilities

#### 3.1. General

By ratifying the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, Serbia bound itself to fulfilling the standards enshrined in this Convention.

According to the 2011 Census, 571,780 of Serbia's population of 7,186,862 (or 7.96%) declared themselves as persons with disabilities. Most of them have problems walking and fewest have problems communicating. Persons with disabilities in Serbia are on average 67 years old; 58.2% of them are women. These are the first official statistical data on the number of persons with disabilities in the Republic of Serbia.

Deinstitutionalisation, one of the goals of the Social Welfare Strategy and a priority of the social protection system reform, has not been implemented fully. Unfortunately, persons with disabilities cannot achieve full social integration given the existing spectrum of social services in Serbia.<sup>103</sup>

One of the key problems persons with disabilities encounter on an everyday basis regards their exercise of their social and health care rights. A survey conducted by the Centre for Society Integration shows that as many as 71.67% of the respondents do not have access to the support services they need, that 41.67% do not have a say in decisions and selection of services they will be provided or their quality and scope. Therefore, the principle of dignity of as many as 28.33% of the respondents is in serious jeopardy.<sup>104</sup>

#### 3.2. Social Services

The Social Protection Act<sup>105</sup> governs the provision of welfare services to persons with disabilities. These services denote activities supporting and assisting persons with disabilities and their families in order to improve the quality of their lives and enable them to live independently in the community. Social services shall primarily be extended in the immediate and less restrictive environment and on time; they shall be of high quality and accessible financially, physically and geographically and extended by social workers with expertise who shall apply the individualised approach to the beneficiaries.

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103 More in Social Services for Persons with Disabilities as Support for Equal Socio-Economic Development 2012 Monitoring Report, Serbia, Center for Society Orientation, p. 48. Available at <http://www.cod.rs/en/news/social-services/>.

104 G. Lončar, R. Keravica, S. Vasic, *Monitor Your Rights*, Center for Society Orientation, Belgrade 2013, available at <http://www.cod.rs/en/news/holistic-report-monitor-your-rights-monitoring-of-rights-of-persons-with-disabilities-in-republic-of-serbia/>.

105 *Sl. glasnik RS*, 24/11.

The Social Protection Act stipulates the adoption of Rulebooks to facilitate its implementation. The Rulebook on Conditions and Standards for the Provision of Social Protection Services<sup>106</sup> governs the admission of beneficiaries, their assessment, determination of the degree of support they need, planning, internal evaluations, staff development and the availability of programmes and services in the community. This Rulebook does not set the criteria for exercising the rights to social protection or regulate in greater detail the relations between the service providers and the beneficiaries, focusing mostly on the coordination of the social workers. It is restrictive in terms of the family and household members because it does not allow them to be personal assistants of persons with disabilities.

The Rulebook on Licencing Social Protection Workers<sup>107</sup> and the Rulebook on Licencing Social Protection Organisations<sup>108</sup> adopted in 2013 aim at improving the operations of the social protection system and provision of social services. Their efficiency will be put to test in the upcoming period.

The system of social services for persons with disabilities in Serbia is still largely institutionalised, due to the fact that a relatively limited number of community-based services and support services exist at the local level. The process of decentralising funding and powers (from the central to the local governments) has begun and needs to be monitored.

Numerous inconsistencies have arisen in the exercise of pension and disability insurance rights, particularly with respect to the determination of the right to domiciliary care and assistance and of physical damages. The expert evaluation procedure allows for appeals and the general administrative procedure rules apply. Persons with disabilities are rarely allowed insight in their medical documentation i.e. the findings, evaluations and opinions of the expert bodies deciding on their eligibility to exercise their pension and disability insurance rights. They are only forwarded the rulings on their rights, but not the relevant medical documentation.

### *3.3. Health Care*

Persons with disabilities have to be guaranteed the right to maximum health care without discrimination on grounds of their disabilities. The Health Care Act<sup>109</sup> does not govern in detail the health care of persons with disabilities. Patient rights are governed by the Patient Rights Act,<sup>110</sup> which also does not focus in particular on the rights of persons with disabilities. Under this law, all patients shall be entitled to accessible and quality health care addressing their needs. Although it prohibits discrimination on various grounds, it does not specifically prohibit discrimination of persons with disabilities.

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106 *Sl. glasnik RS*, 42/13.

107 *Ibid.*

108 *Ibid.*

109 *Sl. glasnik RS*, 107/05, 72/09- other law, 88/10, 99/10, 57/11, 119/12 and 45/13 – other law.

110 *Sl. glasnik RS*, 45/13.

The Health Insurance Act<sup>111</sup> covers insurance against illness and injury outside of work and insurance against work-related injuries and occupational diseases. This law specifies at risk categories, which, inter alia, include persons with disabilities under pension and disability insurance regulations and mentally challenged persons (Art. 22(4)). The right to health care includes medical rehabilitation in case of an illness or injury, as well as prostheses, orthoses and other mobility aids and visual, audio and speech aids. Article 37 of the Act also provides for escorts for people unable to independently perform everyday activities, including blind, visually impaired and deaf people during hospitalisation or rehabilitation where medically necessary. The Republican Health Insurance Fund decides on medical rehabilitation in accordance with the Rulebook on the Content and Scope of the Right to Health Care under Mandatory Health Insurance and Participation for 2013<sup>112</sup>, which essentially specifies the rights of insured beneficiaries to medical aids, medical rehabilitation in case of an injury or illness, et al.

The Rulebook on Medical Rehabilitation in Inpatient Institutions Specialising in Rehabilitation governs the indications, duration, manner and procedure for referring patients for medical rehabilitation in specialised health institutions.<sup>113</sup> The Rulebook specifies in detail the conditions for referral for medical rehabilitation in inpatient rehabilitation institutions and the procedure by which the medical commissions render their final decisions on the proposals of the patients' doctors or relevant health institutions. The provision of medical aids is governed by the Rulebook on Medical Aids Covered by Mandatory Health Insurance.<sup>114</sup> The Republican Health Insurance Fund lays down the types of medical aids, indications for prescribing them, the shelf life of the aids, the manner of their procurement and maintenance.

### *3.4. Deinstitutionalisation*

The Act on the Protection of Persons with Mental Disorders<sup>115</sup>, adopted in May 2013 defines the beneficiaries of the rights guaranteed under this law and covers mentally challenged persons, persons with mental health disorders and persons suffering from addiction diseases. Professional organisations criticised the failure of this law to consistently elaborate the principle laid down in the Mental Health Protection Strategy,<sup>116</sup> which envisages that mental health services shall provide contemporary and comprehensive community-based treatment, entailing a bio-psycho-social approach, and the treatment of persons as close to their families as possible.

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111 *Sl. glasnik RS*, 107/05, 109/05 – corr, 57/11, 110/12 – Constitutional Court Decision and 119/12.

112 *Sl. glasnik RS*, 124/12.

113 *Sl. glasnik RS*, 47/08, 69/08, 81/10, 103/10, 15/11 and 48/12.

114 *Sl. glasnik RS*, 52/12, 62/12 – corr, 73/12 – corr, 1/13 and 7/13 – corr.

115 *Sl. glasnik RS*, 45/13.

116 *Sl. glasnik RS*, 8/07.

In his opinion on the law before it was adopted, the Protector of Citizens voiced the view that there would be no need to discuss the problem of the social inclusion of people with mental disorders during the debates of the bill if adequate support systems had been introduced by other regulations or an efficient support system were developed in practice. He also underlined that the support system within the social protection system under the Social Protection Act<sup>117</sup> did not provide sufficient safeguards enabling the social inclusion of persons with mental disorders and thus favoured the practice of their institutionalisation.<sup>118</sup>

From the medical point of view, the Act relies on the existing institutions, such as psychiatric hospitals and outpatient health clinics. The right to treatment in the least restrictive conditions is not elaborated apart from a general provision stating that restrictive methods shall be applied only if no other methods are efficient, but the authors of the law did not propose other treatment options, wherefore it effectively does not deal with prevention, rehabilitation and inclusion.

The Act also does not include a provision that was proposed – that persons committed to psychiatric institutions must be accompanied by their lawyers on admission. Nor does it include provisions on periodic court reviews of their commitment, particularly in cases of involuntarily committed children, which would be in compliance with the Convention on the Rights of the Child. Oversight boils down to the psychiatric institutions' obligation to submit regular reports to the courts on the state of health of involuntarily committed patients every three months (or more frequently at the court's request). The law also lacks mechanisms ensuring expert oversight and checks to protect patients from any abuse during their commitment.<sup>119</sup>

Articles 31–44 of the Non-Contentious Procedure Act govern the full or partial deprivation of legal capacity. The procedure depriving a person of his legal capacity may be initiated by the court *ex officio* or on the motion of his guardianship authority, spouse, parent or another family member with whom he is living. A person may himself ask the court to be deprived of his legal capacity in the event he is capable of understanding the meaning and consequences of such a step.

The consequences of a full and partial deprivation of legal capacity vary to a great extent. In its decision to partly deprive someone of his legal capacity, the court may specify which kinds of transactions a person may engage in apart from the ones he is entitled to under the law. A person fully deprived of his legal capacity may not engage in any legal transactions independently, wherefore he has absolutely no possibility to take decisions or exercise his rights.

The Anti-Discrimination Strategy states that the courts fully deprived of their legal capacity 93.93% of the people whose cases they reviewed. These concerning

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117 *Sl. glasnik RS*, 24/11.

118 Opinion on the Bill on the Protection of Persons with Mental Disorders the Protector of Citizens sent to the Ministry on 18 December 2012, Ref. No. 32425. Available in Serbian at [http://www.ombudsman.rs/index.php/lang-sr\\_YU/2011-12-11-11-34-45/2654-2012-12-20-08-51-16](http://www.ombudsman.rs/index.php/lang-sr_YU/2011-12-11-11-34-45/2654-2012-12-20-08-51-16).

119 More on these provisions in II.4.5.



statistical data indirectly indicate that persons with disabilities are not accorded the necessary attention in order to pre-empt any abuse or violations of their rights.<sup>120</sup> The fact that courts as a rule do not hear the people they are depriving of legal capacity is a major problem in practice.

### 3.5. *Employment*

The inequality of persons with disabilities in the field of employment is still prominent despite some headway.<sup>121</sup> The Initial Report on the Implementation of the Convention on the Rights of Persons with Disabilities<sup>122</sup> includes World Bank data indicating that only 13% of the persons with disabilities in Serbia have a job. The fact that 10% are them are working in the NGO sector, in organisations rallying with disabilities, and only 1% in companies and the public sector and that the share of unemployed persons with disabilities is three times higher than that of the rest of the population is particularly concerning.

The Act on the Professional Rehabilitation and Employment of Persons with Disabilities,<sup>123</sup> adopted in 2009, is the first law to comprehensively govern the employment of persons with disabilities and it gives precedence to the employment of persons with disabilities in the open labour market over alternative models of employment. The Rulebook on the Procedure, Costs and Criteria for Evaluating the Abilities and Opportunities for the Employment and Retention of Employment of Persons with Disabilities<sup>124</sup> lays down that the relevant authority shall assess how a person's illness or disability affects his ability to work, find a job and retain it, wherefore it has the discretion to find a person totally incapable of being involved in any employment measures either under general or special conditions on the basis of a very vague and elusive standard.

The institutes of legal capacity deprivation and extended parental custody prevent persons with disabilities from exercising their labour-related rights, which has particularly affected persons with psycho-social or intellectual disabilities.<sup>125</sup> The right to work is acquired when a person turns 18 and may be lost by depriving that person of his legal capacity; in the eyes of the law, such a person is the same as a child who has not turned 14 yet.

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120 Anti-Discrimination Strategy, available at [http://www.seio.gov.rs/upload/documents/ekspert-ske%20misije/2014/ad\\_strategy.pdf](http://www.seio.gov.rs/upload/documents/ekspert-ske%20misije/2014/ad_strategy.pdf).

121 Report on the Discrimination of Persons with Disabilities, Commissioner for the Protection of Equality, Belgrade, 2013, p. 31.

122 Initial Report on the Implementation of the Convention on the Rights of Persons with Disabilities, Government of the Republic of Serbia, Belgrade, 2012, p. 7.

123 *Sl. glasnik RS*, 36/09 and 32/13.

124 *Sl. glasnik RS*, 36/10.

125 Deprivation of legal capacity and extended parental custody are governed by provisions two laws (the Non-Contentious Procedure Act, *Sl. glasnik SRS*, 25/82 and 48/88 and *Sl. glasnik RS*, 46/95 – other law, 18/05 – other law, 85/12 and 45/13 – other law, and the Family Act, *Sl. glasnik RS*, 18/05 and 72/11 – other law)

The Rulebook on the Fulfilment of the Obligation to Employ Persons with Disabilities and Proof of the Fulfilment of the Obligation<sup>126</sup> relativises the obligation by allowing direct and indirect state budget beneficiaries to fulfil the quota employment obligation in a different manner than other employers. The Republic of Serbia as an employer shall fulfil this obligation by allocating the requisite funds in the state budget every year. By essentially abolishing the state authorities' obligation to hire persons with disabilities, the state has taken a measure in contravention of Article 27(1(g)) of the Convention on the Rights of Persons with Disabilities, under which States Parties shall take appropriate steps to employ persons with disabilities in the public sector. The Rulebook was criticised also by the Commissioner for the Protection of Equality, who said that it was not only in contravention of the law, which put all employers in an equal position, but that it was also sending a very wrong message to all other employers and the public at large, because, instead of setting an example and encouraging the employment of persons with disabilities, the state in its capacity of employer was actually using the opportunity to avoid this obligation to hire persons with disabilities in all budget-funded authorities and institutions.

### *3.6. Education*

Serbia's primary and secondary legislation governs the education rights of persons with disabilities. This legislation rests on the principles of non-discrimination, inclusion and respect of diversity.<sup>127</sup> On the other hand, the level of awareness of the needs of children with disabilities is still very low among their peers, the parents of their peers and even their teachers.

The Act on the Bases of the Education System<sup>128</sup> put in place the conditions to facilitate the successful inclusion of every child in the education process through systemic and institutionalised support. The inter-departmental commissions established under the Rulebook on Additional Educational, Health and Social Support to Children and Pupils<sup>129</sup> are charged with assessing the individual needs of children to ensure that they are provided with the additional support for their development, learning and equal participation in life of the community. According to a Report on the Monitoring of Education by Inclusive Principles (Inclusive Education) in the Education System Institutions,<sup>130</sup> inter-departmental

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126 *Sl. glasnik RS*, 33/10 and 48/10 - corr.

127 More information about inclusive education legislation in: I. Danilović, I. Lončar, G. Pavlović, *Monitoring Disability Laws and Policies*, Center for Society Orientation, Belgrade 2013.

128 *Sl. glasnik RS*, 72/09, 52/11 and 55/13.

129 *Sl. glasnik RS*, 63/10.

130 S. Stefanović et al, *Civil Society for Inclusive Education – Education Tailored to the Children, Report on the Monitoring of Education by Inclusive Principles (Inclusive Education) in the Education System Institutions*, Child and Youth Development Society, Open Club, available in Serbian at: [http://www.velikimali.org/attachments/article/170/Izvestaj\\_o\\_rezultatima\\_pracenja\\_IO.pdf](http://www.velikimali.org/attachments/article/170/Izvestaj_o_rezultatima_pracenja_IO.pdf).

commissions tend to issue similar and uniform recommendations in their decisions on individual education plans, without taking into account the specific problems in the field, which has extremely complicated the implementation of the plans by the teachers and other staff.

In her 2013 Report on the Discrimination of Persons with Disabilities, the Commissioner for the Protection of Equality highlighted as the gravest education-related problems the difficulties in implementing inclusive education and the lack of adequate textbooks and teaching aids for school and university students suffering from various forms of disabilities. Furthermore, many educational institutions are not accessible to persons with disabilities and the problem of their transportation to and from school has not been resolved. Professionals have come to almost identical conclusions and the general impression is that the implementation of inclusive education is not yielding satisfactory results yet. Most teachers are of the view that the 16 hours of training they attended has not adequately prepared them for the problems they encounter on an everyday basis. Most schools have not hired pedagogical or personal assistants yet; the parents of children with disabilities pay for the help of such assistants, although their engagement falls within the remit of the Ministry of Education. Only several municipalities have assumed this obligation.

Another major problem arises from the gap between the education and skills of persons with disabilities and the labour market needs. Many of them are schooled for professions for which there has been no demand in the labour market for a long time now.<sup>131</sup>

The Act on Textbooks and Other Teaching Aids<sup>132</sup> lays down that textbooks fulfilling the special needs of pupils with developmental difficulties and/or disabilities shall be published in Serbian and minority languages (Art. 3). Teaching aids may be published in Braille, electronic format and formats adjusted to blind and visually impaired pupils. The textbooks are, however, still inadequate or are only tailored to the needs of pupils in special schools, while children with special needs in mainstream schools do not have any. Hardly any funding is allocated for textbooks for children with disabilities and the only library with books for the visually impaired and blind “Dr Milan Budimir“ is about to be shut down because the Ministry of Culture and Information failed to provide it with the funds to cover its operating costs. The law also lays down that local self-governments shall secure the transportation of pupils with disabilities to and from school, but many local self-governments are in dire straits and have not organised such transportation. The Adult Education Act<sup>133</sup> also stipulates the

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131    Employment of Persons with Disabilities in the Republic of Serbia, 2011 Monitoring Report, Center for Society Orientation, Belgrade 2012, available at: [http://www.cod.rs/wp-content/uploads/2013/12/Employment\\_PWDs\\_2012.pdf](http://www.cod.rs/wp-content/uploads/2013/12/Employment_PWDs_2012.pdf).

132    *Sl. glasnik RS*, 72/09.

133    *Sl. glasnik RS*, 55/13.

provision of education to persons with disabilities in accordance with their needs and abilities (Art. 21).

### 3.7. *Accessibility*

Persons with disabilities face obstacles in their everyday activities due to lack of physical access to public transportation, private and public buildings, and when they use household appliances, electronic and digital systems, services and products. The Act on the Prevention of Discrimination against Persons with Disabilities<sup>134</sup> prohibits discrimination on grounds of disability with respect to access to services and areas and facilities in public use (Art. 13). The Commissioner for the Protection of Equality stated in 2013 that her Office checked the accessibility of the buildings of 23 state authorities (the offices, registries, toilets and elevators) and established that most of them did not satisfy the accessibility criteria. She said in her Report<sup>135</sup> that the number of complaints of discrimination by persons with disabilities has increased and that many of them regarded the accessibility of the buildings in which the highest state authorities were headquartered. She also noted that only a small number of local governments have seriously and comprehensively addressed the problem of inaccessibility.<sup>136</sup>

The Rulebook on Technical Accessibility Standards<sup>137</sup> governs the accessibility of public areas and applies to all new facilities and those being reconstructed. The Rulebook regulates in detail all the requisite accessibility elements but does not specify how the fulfilment of the requirements is to be overseen. The accessibility of public transport to persons with disabilities is unsatisfactory.

The Commissioner for the Protection of Equality and organisations of persons with disabilities in March 2013 alerted to the fact that persons in wheelchairs could not enter<sup>138</sup> even the Belgrade public transport vehicles that were wheelchair friendly<sup>139</sup>. They noted that only a few stations have been adapted and the Commissioner recommended that the Belgrade City Transport Company and the Public

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134 *Sl. glasnik RS*, 33/06.

135 More in the Report on the Accessibility of the State Authority Buildings to Persons with Disabilities, Commissioner for the Protection of Equality, Belgrade, 2013, available in Serbian at: <http://www.ravnopravnost.gov.rs/sr/izve%C5%A1taji/izve%C5%A1taji>.

136 The Commissioner for the Protection of Equality also highlighted the good practices of municipalities which began addressing the accessibility problem together with NGOs and drew attention to a project within which 13 Vojvodina municipalities drafted their accessibility strategies.

137 *Sl. glasnik RS*, 46/13.

138 The Commissioner's Recommendations are available in Serbian at: <http://www.ravnopravnost.gov.rs/sr/preporuke-mera-organima-javne-vlasti/preporuka-gsp-beograd-za-uvo%C4%91enje-mera-za-ostvarivanje-ravnopravnosti>.

139 The Belgrade City Transport Company fleet includes 22 trams with automatic ramps, 83 trolley buses with mechanical ramps and 135 buses with ramps.

Transport Directorate adapt the stations without delay and use the existing capacities for the transportation of persons with disabilities.

The situation in other cities is even worse. The City of Novi Sad Accessibility Strategy<sup>140</sup> states that the city public transport company has a total of 92 low-floor buses but that only 21 of them have mechanical ramps and that none of the 822 stations have been adjusted to the low-floor buses. The Strategy envisages the reconstruction of these stations and adaptation of the existing fleet and the purchase of new vehicles to enable the transport of persons with disabilities.

Persons with disabilities also have problems calling the police, paramedics and the fire departments, most of which do not provide them with the option of sending them cell phone text messages in emergencies. The inaccessibility of information to persons with sensory or intellectual disabilities is particularly prominent in the public administrative departments (counter halls).

Sign language is extremely important for the exercise of the right to receive information and many other rights of persons with disabilities. The Association of Serbian Sign Language Interpreters noted the problems in this area. According to its data, there is only one sign language interpreter to every 1,000 deaf and hard of hearing people in Serbia, which is alarming, given that 30,000 people are in need of such interpreters. A law on the use of sign language was drafted soon after these alarming data were revealed. A public debate on the bill was held in July 2013<sup>141</sup> but it was not adopted by the end of the year.

Access to electronic communications of persons with disabilities is also problematic although the law lays down the grounds for their exercise of the right to public information, particularly the freedom to receive ideas, information and opinions. The Electronic Communications Act,<sup>142</sup> for instance, sets out that the needs of specific categories of the population, including persons with disabilities, the elderly and socially vulnerable users, must be taken into account and that they must be provided with the possibility of making the most of electronic communications. Although this law envisages the modification of the prices or conditions for the use of services in a transparent and non-discriminatory manner in the interest of ensuring equal opportunities for the use of services by persons with disabilities and access for socially vulnerable users (Article 56), full equality in the use of these services has not been achieved in practice yet.

In her above-mentioned report, the Commissioner for the Protection of Equality stated people with visual impairments faced a major obstacle due the lack of regulations allowing the use of facsimile signatures and the lack of the possibility of issuing documents in electronic format, which can be translated by assistive technologies into Braille or audio format via a speech synthesis programme.

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140 City of Novi Sad Accessibility Strategy 2012 – 2018, December 2012, “Living Upright” Center, p. 33.

141 The report on the public debate about this law is available at <http://civilnodrustvo.gov.rs/vesti/javna-rasprava-o-nacrtu-zakona-o-upotrebi-znakovnog-jezika/>.

142 *Sl.glasnik RS*, 44/10 and 60/13 – Constitutional Court Decision.

## 4. LGBT Population

### 4.1. General

The prohibition of discrimination on grounds of sexual orientation and gender identity (against lesbian, gay, bisexual or transgender [LGBT] persons) is based on the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other UN human rights documents, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).<sup>143</sup>

The Serbian legislative framework protecting the equality of the LGBT population is largely satisfactory, but the provisions of the valid laws, strategies and by-laws prohibiting their discrimination are not enforced consistently. The Constitution of the Republic of Serbia does not explicitly list sexual orientation among the personal features that constitute prohibited discrimination grounds,<sup>144</sup> but both gender identity and sexual orientation are mentioned as prohibited grounds of discrimination in Article 2 of the Anti-Discrimination Act. Article 21 of the Anti-Discrimination Act lays down that sexual orientation is a private matter and that no-one may be requested to publicly declare their sexual orientation and that everyone is entitled to express their sexual orientation and prohibits discriminatory treatment based on such an expression. The Criminal Code was amended in late 2012 and now includes Article 54a, under which “[I]f a criminal offence is committed out of hate on grounds of race, religion, national or ethnic affiliation, sex, sexual orientation or gender identity of another, the court shall consider such a circumstance as aggravating unless it is stipulated as a feature of the criminal offence.”<sup>145</sup> The introduction of this offence could contribute to the efficient prosecution of those suspected of violence and other crimes against LGBT persons and facilitate their stricter punishment.

The vulnerability of this category of the population is substantiated by the fact that 77 of the 144 recommendations the UN Human Rights Council issued in response to the UPR Serbia submitted in January 2013 regard the rights of LGBT persons. These recommendations are to be followed up by 2016.<sup>146</sup>

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143 See Yogyakarta Principles - Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, International Commission of Jurists, 2007, available at <http://www.unhcr.org/refworld/docid/48244e602.html>. See the Council of Europe standards on non-discriminatory treatment of LGBT persons in *Combating discrimination on grounds of sexual orientation or gender identity - Council of Europe standards*, 2011, available at: [http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit\\_aliasid=2590](http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=2590).

144 Although the Constitution does not explicitly mention discrimination on grounds of sexual orientation, it prohibits discrimination on any grounds and on grounds of a personal feature, which includes sexual orientation, as the Constitutional Court confirmed, see its decision in the case Uš - 1918/2009, of 22 December 2011.

145 More on hate crimes in I.5.2.

146 *Serbia 2013 Progress Report*, p. 42.

## 4.2. *Rights of Same-Sex Partners*

Same-sex partners are not recognised the right to marry<sup>147</sup> or the right to form extramarital unions,<sup>148</sup> wherefore they are discriminated against with respect to a number of rights (alimony, joint adoption of children, joint property, special protection from domestic violence, succession of a surviving partner to the deceased's tenancy rights, the right to refuse to testify, to legal inheritance, to pension survivor benefits, et al). The Constitutional Court took the view that "the authors of the Constitution defined the concept of extramarital unions indirectly, by defining marriage. In other words, by equating extramarital unions with marriage, the authors of the Constitution linked the definition of the essential elements requisite for the existence of an extramarital union to the existence of elements requisite for the existence of a marital union. Given that the Constitution lays down the different sexes of persons consenting to enter a marriage as one of the constituent elements for concluding a marriage, the Constitutional Court is of the view that this condition also extends to persons in extramarital unions. It follows that the concept of an extramarital union in constitutional law entails a union of a man and a woman." However, although stable homosexual partnerships are not recognised as extramarital unions under Serbian law, such unions of same-sex partners are covered by the concept of "family life" just like heterosexual unions and constitute grounds for the creation of mutual rights and obligations, such as, e.g. the right to inheritance, the right to alimony or to protection from domestic violence, wherefore they need to be regulated by law.<sup>149</sup> The Belgrade Stari grad Municipal Department of Vital Records refused to issue a certificate of eligibility to marry to a person who wanted to enter a same-sex marriage in another country, explaining that it was not entitled to issue such certificates to people who wanted to enter a same-sex marriage abroad. The Commissioner for the Protection of Equality found this to be direct discrimination on grounds of sexual orientation, prohibited under Article 6 of the Anti-Discrimination Act in conjunction with Articles 21(2) and 17(1) of that law.<sup>150</sup>

## 4.3. *Freedom of Assembly and Freedom of Expression*

The European Commission assessed that political support was still insufficient although some activities have been undertaken to regarding the protection of

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147 The Constitution defines marriage as a union of a man and a woman (Art. 62(2)).

148 Constitutional Court decision in case No. IU-347/2005 of 22 July 2010.

149 See, e.g. the ECtHR judgments in the cases of *Karner v. Austria*, App. No. 40016/98, judgment of 24 July 2003, and *Schalk and Kopf v Austria*, App. No. 30141/04, judgment of 24 June 2010.

150 Opinion of the Commissioner for the Protection of Equality re the complaint by O. z. I. Ij. against the Administration Secretariat of the City of Belgrade City Administration re discrimination on grounds of sexual orientation in procedures before public authorities Ref. No. 07-00-184/2013-02, of 27 July. The Department amended its practice and acted in accordance with the Commissioner's recommendation in four cases by December 2013. Information obtained from the Office of the Commissioner for the Protection of Equality on 13 December 2013.



LGBT persons.<sup>151</sup> The Pride Parade was banned for the fourth time, three times in a row, for security reasons i.e. because of the threats voiced against its organisers and participants.<sup>152</sup> Neither the organisers of the event nor the public had any insight in the security assessments.<sup>153</sup> Several hundreds people organised a procession past the Serbian Government headquarters on the eve of the banned Parade, on 27 September 2013, demonstrating their revolt against yet another ban. No incidents occurred during the protest.<sup>154</sup>

This practice indicates that the human rights of LGBT persons are systematically violated and the state's failure to provide them with adequate protection. The competent state authorities have not done their utmost to prevent discrimination against the Parade participants by third parties, while the discriminatory passivity of the competent state institutions and discriminatory statements by the political leaders have facilitated the creation of a climate inciting violence against LGBT persons.<sup>155</sup>

The Constitutional Court already found that the constitutional right to the freedom of assembly (Art. 54(1) and the right to a legal remedy (Art. 36(2)) were violated by the Ministry of Internal Affairs decision to relocate the 2009 Pride Parade<sup>156</sup> because such decisions are not envisaged by the law and because the organisers of the event did not have at their disposal a legal remedy to challenge the lawfulness of the decision.<sup>157</sup> The Court also found in that decision that the anti-discrimination principles could be linked to the denial of the freedom of assembly, but it did "not find that the Ministry had an explicit discriminatory attitude towards the appellants on grounds of their sexual orientation".<sup>158</sup> The Court further stated that "discrimination occurs also when the competent state authorities undertake, without discriminatory intent, specific measures that disproportionately affect members of a specific social group, even when these measures do not directly con-

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151 *Serbia 2013 Progress Report*, p. 12.

152 More on the prohibition of the Pride Parade in 2013 in II.10.2.2.

153 Protest Pride Parade Held, B92, 27 September 2013, available in Serbian at [http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=09&dd=28&nav\\_category=12&nav\\_id=75887](http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=09&dd=28&nav_category=12&nav_id=75887).

154 *Ibid.*

155 See, e.g. the following media reports in Serbian "Dačić: Gays are not Normal, They Portrayed Jesus as a Homosexual" *Press*, 24 September 2013, available in Serbian at <http://www.pressonline.rs/info/politika/286997/dacic-gejevi-nisu-normalni-isusa-su-predstavili-kao-homoseksualca.html>; "Dačić: Being a Homosexual is Not Normal!" *Kurir*, 25 September 2013, available at <http://www.kurir-info.rs/dacic-nije-normalno-biti-homoseksualac-clanak-1001325>.

156 The organisers of the 2009, 2011 and 2012 Pride Parades complained to the Constitutional Court and the European Court of Human Rights via the Belgrade Centre for Human Rights (*Đorđević and Others v. Serbia*, Application No. 5591/10, UŽ – 5284/2011, *Gabelić Špicer and Others v. Serbia*, App. No. 17802/12). The Constitutional Court rendered a decision on the constitutional appeal filed by the 2009 Pride Parade organisers, see the decision in the case UŽ- 1918/2009, of 22 December 2011.

157 UŽ – 1918/2009, Paragraph 6.

158 UŽ – 1918/2009, Paragraph 8.

cern them, as well as when they fail to take all the measures within their purview to prevent discrimination against a specific group by third parties". However, since the Pride Parade had not taken place, the Court observed "that it cannot be reasonably concluded that the competent state authorities had failed to prevent discrimination against the event participants by third parties, because the event had not taken place. The Constitutional Court also found that the constitutional appeal did not cite evidence which would indicate, *prima facie*, the existence of differential treatment of the appellants by the Ministry because of their sexual orientation vis-à-vis the participants in other public events."<sup>159</sup> The Constitutional Court dismissed the constitutional appeal against the prohibition of the 2012 Pride Parade since it was filed by the Belgrade Pride Parade Association, not by natural persons entitled to submit appeals under the law, which is not in compliance with ECtHR case law.<sup>160</sup>

The decisions to prohibit the 2011, 2012 and 2013 Pride Parades were rendered to allegedly prevent the disruption of public traffic and damage to the health, public morals or safety of people and property (Art. 11(1). Serbian Assembly Act) but did not specify on which particular grounds listed in this Article the events were being prohibited. The Constitutional Court has not ruled yet on the constitutionality of these bans, i.e. whether they pursued a legitimate aim and, if they did, whether they were necessary in a democratic society, i.e. whether there was a pressing social need for such an interference or restriction, whether the state authorities provided relevant and sufficient grounds for such interference and whether such interference in the freedom of assembly was proportionate to the legitimate aim it pursued.

#### 4.4. Violence

Serbian NGOs and independent authorities in 2013 publicly alerted to a number of attacks against people the perpetrators presumed were members of the LGBT community.<sup>161</sup> There are, however, no official data on all the crimes committed against LGBT persons or on whether they were motivated by hatred of this

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<sup>159</sup> *Ibid.*

<sup>160</sup> Small Chamber Decision Už-8463/2012, Decision, of 24 July 2013. Under ECtHR's case law on Article 11 of the ECHR, natural persons who had participated in an assembly or would have participated in it are entitled to a remedy i.e. have the status of victims of a violation of the freedom of assembly, see the cases of *Baczkowski et al v. Poland*, App. No. 1543/06, judgment of 3 May 2007; *Stankov and United Macedonian Organisation Ilinden v. Bulgaria*, App. Nos. 29221/95; 29225/95, judgment of 29 June 1998; *Alekseyev v. Russia*, App. Nos. 4916/07, 25924/08 and 14599/09, judgment of 21 October 2010.

<sup>161</sup> See e.g. the GSA press releases: "Reaction to Assault in Front of the Mistik Club" of 13 November 2013; "Sexual Orientation Reason for Abduction", of 8 November 2013; YUCOM and GSA press release "NGOs' Press Release on Assault in Novi Sad", of 10 September 2013; Protector of Citizens, Press Release on the Completion of the Procedure Finding that the Kuršumljija Economic School Failed to Protect Its Pupil from Violence, Abuse and Neglect because of His Sexual Orientation over a Long Period of Time, of 25 October 2013, available in Serbian at: <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/2978-2013-08-13-11-10-18>.

group.<sup>162</sup> As of November 2013, Article 54a of the Criminal Code, defining hate crime as an aggravating factor, has not been applied once since it came into force in December 2012.<sup>163</sup> According to GSA's data, physical assaults and attempted assaults accounted for 70% of the reported cases in 2012, while the other 30% of the reports concerned threats, hate speech and discrimination.<sup>164</sup> The number of reports the victims submitted to the police at their own initiative increased in 2012, but most of the incidents still remain unreported.<sup>165</sup> The EC said that the police response to attacks against LGBT persons improved slightly in 2013.<sup>166</sup> The GSA awarded its Rainbow Award to the MIA Police Directorate Department for Organisation, Prevention and Community Policing for improving its overall work with the LGBT community and its active communication and cooperation with LGBT organisations on cases of violence and discrimination.<sup>167</sup>

#### *4.5. Court Proceedings*<sup>168</sup>

The Novi Sad Appellate Court rendered the first final judgment in Serbia under the Anti-Discrimination Act for discrimination at work on grounds of sexual orientation. The Court established that the victim, a homosexual, had been subjected to discriminatory conduct and gross discrimination at work by his colleague in a private company in Vršac they both worked in. The Court noted that “there is no doubt that the words ‘faggot’ and ‘fairy’ were negative, degrading, debasing and insulting expressions for a male of homosexual orientation” and that referring to someone by using those words “constitutes disturbing and degrading treatment aimed at and amounting to a violation of dignity on grounds of a personal feature – same-sex sexual orientation.” The Court awarded the injured party 180,000 RSD in compensation for the mental anguish he suffered due to the violations of his right of personality, reputation and honour.<sup>169</sup>

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162 Statistics are kept only by form of crime. The method of keeping official statistics ought to be changed since the legislators amended the Criminal Code. It will be useful if the state start to keep statistics of the judgments based on the use of “aggravating circumstances” according the article 54a.

163 GSA press release: “Reaction to Assault in Front of the Mistik Club”, 13 November.

164 GSA, Annual Report on the Human Rights of LGBT Persons in Serbia in 2012, available in Serbian at <http://gsa.org.rs/2013/05/godisnji-izvestaj-o-stanju-ljudskih-prava-lgbt-osoba-u-srbiji-za-2012-godinu/>.

165 *Ibid.*

166 *Serbia 2013 Progress Report*, p. 37.

167 GSA Press Release: “Rainbow Prize Awarded to Ministry of Internal Affairs Department for Community Work”, 17 May.

168 The BCHR was unable to collect reliable data on discrimination trials because the courts apply different criteria for keeping court statistics.

169 GSA Press Release: “First Final Judgment for Gross Discrimination at Work on Grounds of Sexual Orientation, 9 January.

The Belgrade First Basic Court convicted SNP 1389 spokesman Miša Vacić to a prison sentence of one year or a four-year suspended sentence for spreading racial and other discrimination (Art. 387, CC), illegal possession of arms and explosives (Art. 348, CC) and preventing an official from discharging his duties (Art. 322, CC). The court pronounced a minimal, concurrent sentence and a suspended one at that. A group of NGOs monitoring the trial criticised the court's decision, warning it may have far-reaching consequences on the fight against discrimination and the improvement of the status of LGBT persons in Serbia.<sup>170</sup>

The Belgrade Appellate Court in 2012 quashed a judgment against Dragan Marković *aka* Palma, an MP and the leader of Single Serbia (JS) charged with discrimination against the LGBT population, and ordered the Belgrade First Basic Court to retry the case.<sup>171</sup> The charges were dismissed as ill-founded during the retrial by the same judge of the first-instance court, who had initially found the defendant guilty of gross discrimination against the LGBT population. In her reasoning of her latter judgment, she concluded that "the upholding of the charges would violate Dragan Marković Palma's rights to hold his own opinion and freedom of speech, wherefore any conclusion that his statement amounted to discriminatory conduct would be absolutely in contravention of the reason why the Anti-Discrimination Act was adopted" (sic!)<sup>172</sup>

The Novi Sad Higher found S.S. guilty of violent behaviour and attempted murder and convicted him to seven years' imprisonment – six years for attempted murder and one year for violent behaviour. In June 2012, in a full Novi Sad public bus, S.S. first hit and then attacked with a knife the two victims, brothers, who he presumed were gay, gravely injuring one of them.<sup>173</sup>

#### *4.6. Discrimination in the Education System*

The Commissioner for the Protection of Equality in 2011 recommended to the Ministry of Education and Science, the National Education Council and the Education Improvement Institute to "introduce affirmative and accurate portrayals of same-sex sexual and emotional orientation, transgenderism, transsexualism and intersexualism in all (both natural and social science) textbooks, including examples of LGBTTIQA figures as part of past and present democratic societies."<sup>174</sup> Psychology, sociology and philosophy textbooks make no mention of LGBT persons. The

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170 NGO Group Press Release "Scandalous Verdict against SNP 1389 Spokesman", 12 July, available in Serbian at [www.labris.org.rs](http://www.labris.org.rs).

171 See *Report 2011*, II.4.1.1. and *Report 2012*, I 6.5.4.

172 GSA Press Release "Verdict against Dragan Marković Palma Modified", 8 November.

173 YUCOM, Press Release "Court Renders Judgment on Physical Assault in Novi Sad," 14 November.

174 Commissioner for the Protection of Equality, Recommendation to the Ministry of Education and Science of the Republic of Serbia, the National Education Council and the Education Improvement Institute to eliminate discriminatory content from teaching material and practice and promote tolerance and respect of Human Rights, Ref No 649/2011, of 10 June 2011.

11<sup>th</sup> grade psychology textbook for vocational high schools elaborates the topic of LGBT orientation in the section on prostitution, after zoophilia and sodomy.<sup>175</sup>

The Commissioner for Protection of Equality found a violation of Article 44 of the Act on the Basis of the Education System in response to a complaint by a pupil who complained that he was insulted and called names by his peers because of his sexual orientation. The Commissioner established that the headmistress had not taken timely or appropriate measures to address the pupils' discriminatory attitude towards the LGBT population and prevent discrimination against the pupil because of his sexual orientation and recommended she undertake all the necessary measures without delay to ensure that all the school staff undergo training in the prohibition of discrimination on grounds of sexual orientation or other personal features, to ensure that all the school staff are sufficiently sensitised, and to develop the spirit of tolerance, respect of diversity and non-discriminatory behaviour among the pupils through relevant programmes, workshops and training.<sup>176</sup>

#### 4.7. *Discrimination against Transsexuals*

Transsexual persons are exposed to a high degree of discrimination in exercising their fundamental human rights.<sup>177</sup> Transsexuals who underwent sex change operations and obtained legal recognition, i.e. documents in their new names, have had trouble obtaining diplomas in their new names. After reviewing a complaint about this issue, the Commissioner for Protection of Equality recommended to universities in Serbia "to undertake all the necessary measures forthwith to ensure that the University colleges issue new diplomas and other public college documents to persons who changed their names after undergoing a sex change (transgender persons) at their request in a rapid, transparent and accessible procedure, in compliance with national and international standards on protecting transgender persons from all forms of discrimination."<sup>178</sup>

As per employment, there is an obvious disproportion between the education levels and jobs held by transgender persons. Most of them perform one-off jobs or work in the grey economy until they obtain the new documents, which additionally jeopardises their livelihood. Transgender persons affected by poverty to a greater extent are forced to engage in the sex industry, which further undermines their safety and exposes them to multiple discrimination.<sup>179</sup>

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175 "LGBT Persons in Section on Prostitution and Zoophilia in Psychology Textbook", *Blic Online*, 13 January, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/362430/U-udzbeniku-iz-psihologije-LGBT-osobe-u-delu-o-prostituciji-i-zoofiliji>.

176 Commissioner for the Protection of Equality, Opinion No. 499/2012, of 8 February.

177 Commissioner for Protection of Equality, Recommendation of Measures to Achieve Equality, Ref. No. 335 of 16 March 2012.

178 *Ibid.*

179 J. Zulević, "Research of Problems Transsexuals Face in the Fields of Education, Labour and Employment, Health Care and State Administration," p. 27 and S. Pavlović, "Analysis of the Legal Status of Transgender and Transsexual Persons in the Republic of Serbia," pp. 65, 68 in

## 5. Gender Equality and Special Protection of Women

### 5.1. General

The Republic of Serbia is party to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>180</sup>, numerous ILO Conventions,<sup>181</sup> as well as the Revised European Social Charter and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Under Article 15 of the Constitution of the Republic of Serbia, the state shall guarantee the equality of women and men and develop equal opportunity policies. Article 62(3) of the Constitution guarantees the equality of spouses. The Serbian National Assembly adopted the Gender Equality Act<sup>182</sup> in 2009 to create the conditions for the implementation of equal opportunity policies and the realisation of rights both by women and men, the implementation of special measures and the prevention and elimination of discrimination on grounds of sex.

Serbia ranked 47<sup>th</sup> on the World Economic Forum Global Gender Gap Index of 136 countries in 2013,<sup>183</sup> which is an improvement over 2012, when it was ranked 50<sup>th</sup>. According to the Index, Serbia ranked 59<sup>th</sup> on economic participation and opportunity, 59<sup>th</sup> on educational attainment, 39<sup>th</sup> on political empowerment and 111<sup>th</sup> on health and survival.

Article 20 of the Anti-Discrimination Act<sup>184</sup> prohibits discrimination based on sex or sex change. Violence, exploitation, expression of hatred, belittling, blackmail and harassment on grounds of sex are also prohibited, as are public advocacy, support and cultivation of prejudices, customs and other patterns of social behaviour based on the superiority or inferiority of a sex, including stereotyped gender roles.

The Labour Act<sup>185</sup> prohibits placing job seekers or workers at a disadvantage on account of their sex. This Act comprises anti-discrimination norms generally prohibiting the discrimination of employed persons and job seekers, prohibits the most frequent forms of work-related discrimination and allows for the enforcement of affirmative action measures. Job seekers and workers may file damage claims with the competent courts pursuant to the law in the event they had been subjected to a form of discrimination prohibited under the Act (Article 23, Labour Act). The Labour Act anti-discrimination provisions were passed within the process of aligning Serbian law with the EU *acquis*. They also incorporate the provisions in the 1968 ILO Convention No. 111 prohibiting discrimination in respect of employment and occupation.

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S. Gajin (ed), *Model Law on the Recognition of the Legal Effects of Sex Changes and Determination of Transsexualism*, CUPS, Belgrade 2012.

180 *Sl. list SFRJ (Međunarodni ugovori)*, 11/81.

181 ILO Conventions Nos. 100, 111, 89 and 156.

182 *Sl. glasnik RS*, 104/09.

183 More at [http://www3.weforum.org/docs/WEF\\_GenderGap\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_GenderGap_Report_2013.pdf)

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

185 *Sl. glasnik RS*, 24/05, 61/05 and 54/09.



The Labour Act<sup>186</sup> amendments adopted in April 2013 will facilitate the empowerment of women at work and the reconciliation of the family and professional lives of working mothers. Under these amendments, employers are under the duty to allow women workers who go back to work after maternity leave before their children turn one to take one or more breaks during working hours, lasting 90 minutes altogether, or work 90 minutes less every day so that they can breastfeed their children in the event the working hours in their companies exceed six hours (Article 93a). The Commissioner for the Protection of Equality rendered an opinion on the draft amendments to the Labour Act<sup>187</sup>, noting that they ought to ensure better protection of maternity, greater employment security for pregnant women and parents, reduce the gap between the work activities of women with and without children and facilitate the prevention and suppression of work-related discrimination on grounds of pregnancy or parenthood.<sup>188</sup> Another important amendment to the Labour Act is the extension of the validity of fixed-term employment contracts until the expiry of the right to leave (Article 187(2)). This amendment provides general protection against dismissal of workers with fixed-term contracts during pregnancy, maternity leave, child care or special child care leave. The employers will not suffer any financial consequences given that allowances paid to workers on these forms of leave are covered from the budget.<sup>189</sup> The amendments also include a new provision prohibiting dismissals of pregnant women, women on maternity leave and workers on child care leave,<sup>190</sup> which is expected to effectively prevent discrimination on grounds of gender and parenthood.

In February 2009, the Government of the Republic of Serbia adopted the first strategic document dealing with gender equality — the National Strategy for Improving the Status of Women and Gender Equality in the 2010–2015 Period. The Strategy outlines a comprehensive state policy for eliminating all forms of discrimination against women and attaches the greatest priority to economy, education, health, suppression of violence against women and gender stereotypes in the media. In addition, Serbia adopted several other important strategic documents that aim to improve the status of women, notably, the Strategy for the Prevention of and Protection against Discrimination<sup>191</sup>, the National Action Plan for the Implementation of UN Security Council Resolution 1325 Women, Peace and Security (2010 – 2015) and the National Strategy for the Prevention and Suppression of Family and Intimate Partner Violence against Women (2010 – 2015)<sup>192</sup>.

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186 Act Amending the Labour Act, *Sl.glasnik RS*, 32/13.

187 Commissioner for the Protection of Equality, Opinion No. 011-00-13/2013-02 of 22 March 2013.

188 More is available in Serbian at <http://www.ravnopravnost.gov.rs/sr/zakonodavne-inicijative-i-mi%C5%A1ljenje-o-propisima/mi%C5%A1ljenje-o-odredbama-predloga-zakona-o-izmenama-i-dopunama-zakona-o-radu>.

189 Commissioner for the Protection of Equality, Opinion No. 011-00-13/2013-02 of 22 March 2013.

190 Article 187(3).

191 *Sl. glasnik RS*, 55/05, 71/05 – corr, 101/07, 65/08, 16/11, 68/12 – Constitutional Court and 72/12.

192 *Sl.glasnik RS*, 55/05, 71/05- corr, 101/07, 65/08 and 16/11.



## 5.2. *Special Protection of Women and Maternity*

The Labour Act affords special protection to pregnant working women. Pregnant workers are not allowed to perform jobs which the competent authority established are injurious to their health or that of their children, particularly jobs entailing heavy lifting, harmful radiation or exposure to high temperatures (Art. 89). This protective norm is an improvement over the one in the prior Labour Act because it applies to the entire period of pregnancy.

Serbia ratified ILO Convention No. 183 on Maternity Protection<sup>193</sup> 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 and payment of the full wages during pregnancy leave. The Convention also requires of states to adopt the appropriate measures eliminating the risk of maternity being a source of labour-related discrimination. The latest amendments to the Labour Act bring the Serbian legislation in line with ILO Convention No. 183 on maternity protection and the expected amendments to EU Council Directive 92/85/ EEC.<sup>194</sup>

On the other hand, the amended Health Insurance Act of the Republic of Serbia does not satisfy the standards on pregnancy leave laid down in ILO Convention No. 183. Pregnancy leave allowances were cut from 100% to 65% of the women's wages since 2006. Pregnant women receive remuneration equalling their wages only in Belgrade, Novi Sad, Zrenjanin, Jagodina and Bela Crkva – 65% of their allowances are paid by the Republican Health Insurance Fund and the remaining 35% are covered from the local budgets.

The Commissioner for the Protection of Equality issued a recommendation to the Republican Health Insurance Fund to take measures to ensure the equality of women workers planning a family, pregnant workers and women workers on maternity leave.<sup>195</sup> She recommended that the Fund apply Article 22(1(2)) of the Health Insurance Act to ensure mandatory health insurance to women workers planning a family, pregnant workers and women workers on maternity leave until their children turn one in the event their employers are not paying their mandatory health insurance contributions.<sup>196</sup> In the Commissioner's view, the fact that some employers are not fulfilling their obligation to pay the contributions cannot leave these women without health insurance, because that would be in contravention of numerous inter-

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193 *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.

194 Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding - tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC.

195 Recommendation No. 1050 of 23 July 2012, available in Serbian at [www.ravnopravnost.gov.rs](http://www.ravnopravnost.gov.rs).

196 See Article 22(4) of the Health Insurance Act, available at <http://www.zso.gov.rs/doc/Health%20Insurance%20Act.pdf>.

national treaties, the Constitution of the Republic of Serbia and laws guaranteeing health protection to this category of the population. The relevant state authorities heeded the Commissioner's recommendation.

### *5.3. Institutional Gender Equality Protection Mechanisms*

The following institutional mechanisms oversee the realisation of gender equality at the state level in Serbia: the National Assembly Gender Equality Committee (established in 2002), the Serbian Government Gender Equality Council (established in 2004) and the Gender Equality Directorate within the Labour and Social Policy Ministry (established in 2008). The independent regulatory authorities, notably the Protector of Citizens of the Republic of Serbia and the Commissioner for Protection of Equality, are also vested with powers relating to gender equality.

Gender equality mechanisms are also in place at the provincial and local levels. In Vojvodina, they comprise the Vojvodina Provincial Secretariat for Labour, Employment and Gender Equality, the Provincial Ombudsman, the Provincial Gender Equality Council, the Vojvodina Assembly Gender Equality Committee and the Provincial Gender Equality Institute. At the local level, cities and municipalities have begun forming Gender Equality Commissions as stipulated by the Gender Equality Act (Art. 39).

In July 2013, the UN Committee on the Elimination of Discrimination against Women (CEDAW) issued Concluding Observations on Serbia's combined second and third periodic reports on the status of women and gender equality<sup>197</sup>, in which it, inter alia, stated that, notwithstanding the existence of an extensive national machinery, the institutions and bodies for the advancement of women were understaffed and lacked adequate resources and authority to influence government policy and decision-making. The Committee also recommended that formal and informal dialogue and consultations between the national machinery and the relevant NGOs, in particular women's organisations, be ensured and that a system of cooperation, which shall respect the autonomy of women's organisations, be put in place.

The Committee welcomed the adoption of a number of strategies and action plans, but noted the lack of adequate funding from Serbia's budget for the implementation of these and other strategies and action plans aimed at eliminating all forms of discrimination against women and the lack of harmonisation among various national strategies and their action plans with strategies at the local level. It recommended to the state to allocate substantial and sustained resources, both human and financial, take measures to harmonise its national strategies and action plans, and monitor and regularly evaluate the process of their implementation through reporting on progress achieved.

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197 CEDAW/C/SRB/CO/2-3, of 25 July 2013, available at [http://www.gendernet.rs/files/dokumenta/Engleski/Reports/CEDEW\\_concluding\\_observations\\_2013\\_engl.pdf](http://www.gendernet.rs/files/dokumenta/Engleski/Reports/CEDEW_concluding_observations_2013_engl.pdf).

#### 5.4. *Participation of Women in Political and Public Life*

The status of women has been improved by the adoption of the Act on the Election of Assembly Deputies that regulates how many women each election ticket must include, a commonplace practice in many European countries. Under the Act, one out of every four candidates on the ticket must belong to the less represented gender on the ticket i.e. the election ticket must comprise at least 30% of the candidates of the less represented gender altogether. A ticket 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.

Although it may be concluded that women's participation in political life in 2013 almost reached the 30% threshold for the first time, various reports indicate that women are still underrepresented in local governments and upper echelons of the diplomatic service, political parties and other areas of public life, such as trade unions and other professional associations.<sup>198</sup>

The number of women ministers in Prime Minister Ivica Dačić's Cabinet fell from five to two (of 19 ministers) after the 2013 reshuffle. The only women in the Government are Health Minister Slavica Đukić Dejanović (SPS) and Energy Minister Zorana Mihajlović (SNS). According to the Inter-Parliamentary Union (IPU), Serbia ranked 23<sup>rd</sup> on the list of countries by the number of women in parliament (33.2%), and it scored better than most EU member states and the other countries in the region.<sup>199</sup>

Eighty-four (33.6%) of the National Assembly's 250 deputies are women; however, women deputies account for only 11% of the Assembly's 20 Committees. Interestingly, the only two Committees that have no women members are the Kosovo and Metohija and the Defence and Internal Affairs Committees. The Security Service Oversight Committee is the only one chaired by a woman while all its other members are men. The European Integration Committee, which is charged with a very important aspect of Serbia's foreign policy, is a positive example. It is chaired by a woman, Tanja Mišćević, and women account for most of its 17 members. The number of professional women soldiers rose significantly in 2013. The number of female officers is gradually increasing although it is still low (women account for 1.69% of the officers 0.5% of the non-commissioned officers). Women account for 19.28% of the Ministry of Defence staff, while their share in the Army of Serbia, including civilian staff, stands at 8.79%.<sup>200</sup>

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198 More in the CEDAW Concluding Observations CEDAW/C/SRB/CO/2-3. See also the Gender Equality Directorate's Report on Gender Equality in the Republic of Serbia in the 2008-2012 Period, Belgrade, 2013, available in Serbian at [www.gendernet.rs](http://www.gendernet.rs).

199 *Politika*, 31 July, p. 7.

200 *Blic*, 30 August, p. 8.

## Appendix I

### *The Most Important Human Rights Treaties Binding on Serbia*

- Act Amending the Act on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG (Međunarodni ugovori)*, 5/05.
- Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature and committed through computer systems, *Sl. glasnik RS*, 19/09.
- Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data regarding Supervisory Authorities and Transborder Data Flows, *Sl. glasnik RS (Međunarodni ugovori)*, 98/08.
- Additional Protocol to the Criminal Law Convention on Corruption, *Sl. glasnik RS*, 102/07.
- Agreement between the Republic of Serbia and the European Community on the Readmission of Persons Residing without Authorisation, *Sl. glasnik RS*, 103/07.
- Agreement between the Republic of Serbia and the European Community on Visa Facilitation, *Sl. glasnik RS*, 103/07.
- Agreement on Amending and Accessing the Central Europe Free Trade Agreement – CEFTA 2006.
- Civil Law Convention on Corruption, *Sl. glasnik RS*, 102/07.
- CoE Convention on Action against Trafficking in Human Beings, *Sl. glasnik RS*, 19/09.
- CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, *Sl. glasnik RS*, 19/09.
- Convention against Discrimination in Education (UNESCO), *Sl. list SFRJ (Dodatak)*, 4/64.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SFRJ (Međunarodni ugovori)*, 9/91.
- Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, 6/01.
- Convention Concerning Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *Sl. list SFRJ (Dodatak)*, 13/64.
- Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, *Sl. list SRJ (Međunarodni ugovori)*, 1/92 and *Sl. list SCG*, 11/05.

- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, *Sl. glasnik RS*, 38/09.
- Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SFRJ (Međunarodni ugovori)*, 11/81.
- Convention on Environmental Impact Assessment in a Transboundary Context, *Sl. glasnik RS*, 102/07.
- Convention on the High Seas, *Sl. list SFRJ (Dodatak)*, 1/86.
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, *Sl. list SRJ (Međunarodni ugovori)*, 7/02 and 18/05.
- Convention on the Nationality of Married Women, *Sl. list FNRJ (Dodatak)*, 7/58.
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, *Sl. list SFRJ (Međunarodni ugovori)*, 50/70.
- Convention on Police Cooperation in South East Europe, *Sl. glasnik RS*, 70/07.
- Convention on the Political Rights of Women, *Sl. list FNRJ (Dodatak)*, 7/54.
- Convention on the Preservation of Intangible Cultural Heritage, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- Convention on the Prevention and Punishment of the Crime of the Genocide, *Sl. vesnik Prezidijuma Narodne skupštine FNRJ*, 2/50.
- Convention on the Protection and Promotion of Diversity of Cultural Expression, *Sl. glasnik RS*, 42/09.
- Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, *Sl. glasnik RS (Međunarodni ugovori)*, 12/10.
- Convention Relating to the Status of Refugees, *Sl. list FNRJ (Dodatak)*, 7/60.
- Convention Relating to the Status of Stateless Persons and Final Act of the UN Conference Relating to the Status of Stateless Persons, *Sl. list FNRJ (Dodatak)*, 9/59 and 7/60 and *Sl. list SFRJ (Dodatak)*, 2/64.
- Convention on the Rights of the Child, *Sl. list SFRJ (Međunarodni ugovori)*, 15/90 and *Sl. list SRJ (Međunarodni ugovori)*, 4/96 and 2/97.
- Convention on the Suppression of Trade in Adult Women, *Sl. list FNRJ*, 41/50.
- Convention for the Suppression on the Trafficking in Persons and of the Exploitation of the Prostitution of Others, *Sl. list FNRJ*, 2/51.
- Criminal Law Convention on Corruption, *Sl. list SCG (Međunarodni ugovori)*, 18/05.
- European Charter of Local Self-Government, *Sl. glasnik RS*, 70/07.
- European Convention on the International Validity of Criminal Judgments, with appendices, *Sl. list SCG (Međunarodni ugovori)*, 18/05.

- European Convention on Extradition with additional protocols, *Sl. list SRJ (Međunarodni ugovori)*, 10/01.
- European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, *Sl. glasnik RS (Međunarodni ugovori)*, 13/10.
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Sl. list SCG (Međunarodni ugovori)*, 9/03.
- European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG (Međunarodni ugovori)*, 9/03.
- European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, *Sl. list SRJ (Međunarodni ugovori)*, 1/02.
- European Charter on Regional and Minority Languages, *Sl. list SCG (Međunarodni ugovori)*, 18/05.
- European Framework Convention on the Value of Cultural Heritage for Society, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- Framework Convention for the Protection of National Minorities, *Sl. list SRJ (Međunarodni ugovori)*, 6/98.
- ILO Convention No. 3 Concerning Maternity Protection, *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 11 Concerning Right of Association (Agriculture), *Sl. novine of the Kingdom of Yugoslavia*, 44-XVI/30.
- ILO Convention No. 14 Concerning Weekly Rest (Industry), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 16 Concerning Medical Examination of Young Persons (Sea), *Sl. novine of the Kingdom of Serbs Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 17 Concerning Workmen's Compensation (Accidents), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 18 Concerning Workmen's Compensation (Occupational Diseases), *Sl. novine Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 19 Concerning Equality of Treatment (Accident Compensation), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 29 Concerning Forced Labour, *Sl. novine of the Kingdom of Yugoslavia*, 297/32.
- ILO Convention No. 45 Concerning Underground Work (Women), *Sl. vesnik of the Presidium of the Assembly of the Federal People's Republic of Yugoslavia (FNRJ)*, 12/52.

- ILO Convention No. 81 Concerning Labour Inspection, *Sl. list FNRJ (Addendum)*, 5/56.
- ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, *Sl. list FNRJ (Dodatak)*, 8/58.
- ILO Convention No. 89 Concerning Night Work of Women (revised), *Sl. list FNRJ (Dodatak)*, 12/56.
- ILO Convention No. 90 Concerning Night Work of Young Persons in Industry (Revised) *Sl. list FNRJ (Dodatak)*, 12/56.
- ILO Convention No. 91 Concerning Paid Vacations for Seafarers (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 7/67.
- ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, *Sl. list FNRJ (Dodatak)*, 11/58.
- ILO Convention No. 100 Concerning Equal Remuneration, *Sl. list FNRJ (Međunarodni ugovori)*, 11/52.
- ILO Convention No. 103 Concerning Maternity Protection (Revised), *Sl. list FNRJ (Dodatak)*, 9/55.
- ILO Convention No. 105 Concerning Abolition of Forced Labour, *Sl. list SRJ (Međunarodni ugovori)*, 13/02.
- ILO Convention No. 106 Concerning Weekly Rest (Commerce and Offices), *Sl. list FNRJ (Dodatak)*, 12/58.
- ILO Convention No. 109 Concerning Wages, Hours of Work and Manning (Sea), (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 10/65.
- ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation, *Sl. list FNRJ (Dodatak)*, 3/61.
- ILO Convention No. 121 Concerning Employment Injury Benefits, *Sl. list SFRJ (Međunarodni ugovori)*, 27/70.
- ILO Convention No. 122 Concerning Employment Policy, *Sl. list SFRJ*, 34/71.
- ILO Convention No. 129 Concerning Labour Inspection (Agriculture), *Sl. list SFRJ (Međunarodni ugovori)*, 22/75.
- ILO Convention No. 131 Concerning Minimum Wage Fixing, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 132 Concerning Holidays with Pay Convention (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 52/73.
- ILO Convention No. 135 Concerning Workers' Representatives, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 138 Concerning Minimum Age for employment, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.



- ILO Convention No. 140 Concerning Paid Educational Leave, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 144 Concerning Tripartite Consultation (International Labour Standards), *Sl. list SCG (Međunarodni ugovori)*, 1/05.
- ILO Convention No. 155 Concerning Occupational Safety and Health, *Sl. list SFRJ (Međunarodni ugovori)*, 7/87.
- ILO Convention No. 156 Concerning Workers with Family Responsibilities, *Sl. list SFRJ (Međunarodni ugovori)*, 7/87.
- ILO Convention No. 161 Concerning Occupational Health Services Convention, *Sl. list SFRJ (Međunarodni ugovori)*, 14/89.
- ILO Convention No. 167 concerning safety and health in construction, *Sl. glasnik RS*, 42/09.
- ILO Convention No. 182 Concerning the Worst Forms of Child Labour, *Sl. list SRJ (Međunarodni ugovori)*, 2/03.
- ILO Convention No. 183 of the Maternity Protection, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- ILO Convention No. 187 concerning the promotional framework for occupational safety and health, *Sl. glasnik RS*, 42/09.
- International Covenant on Civil and Political Rights, *Sl. list SFRJ*, 7/71.
- International Covenant on Economic, Social and Cultural Rights, *Sl. list SFRJ*, 7/71.
- International Criminal Court Statute, *Sl. list SRJ (Međunarodni ugovori)*, 5/01.
- International Convention on the Elimination of All Forms of Racial Discrimination, *Sl. list SFRJ (Međunarodni ugovori)*, 6/67.
- International Convention on the Suppression and Punishment of the Crime of Apartheid, *Sl. list SRFJ*, 14/75.
- Kyoto Protocol to the UN Framework Convention on Climate Change, *Sl. glasnik RS*, 88/07.
- Optional Protocol to the International Covenant on Civil and Political Rights, *Sl. list SRJ (Međunarodni ugovori)*, 4/01.
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SRJ (Međunarodni ugovori)*, 13/02.
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SCG (Međunarodni ugovori)*, 16/05.
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, *Sl. list SRJ (Međunarodni ugovori)*, 7/02.

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, *Sl. list SRJ (Međunarodni ugovori)*, 7/02.
- Optional Protocol to the UN Convention on the Rights of Persons with Disabilities, *Sl. glasnik RS*, 42/09.
- Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, 6/01.
- Protocol Amending the Slavery Convention Signed at Geneva 25 September 1926, *Sl. list FNRJ (Dodatak)*, 6/55.
- Protocol No. 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG (Međunarodni ugovori)*, 5/05 and 7/05.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, 6/01.
- Protocol on Relating to the Status of Refugees, *Sl. list SFRJ (Dodatak)*, 15/67.
- Revised European Social Charter, *Sl. glasnik RS*, 42/09.
- Second Optional Protocol to the International Covenant on Civil and Political Rights, *Sl. list SRJ (Međunarodni ugovori)*, 4/01.
- Slavery Convention, *Sl. novine Kraljevine Jugoslavije*, XI–1929, 234.
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *Sl. list FNRJ (Dodatak)*, 7/58.
- Third Additional Protocol to the European Convention on Extradition, *Sl. glasnik RS (Međunarodni ugovori)*, 1/11.
- UN Convention Against Corruption, *Sl. list SCG (Međunarodni ugovori)*, 18/05.
- UN Convention for the Protection of All Persons from Enforced Disappearance, *Sl. glasnik RS (Međunarodni ugovori)*, 1/11.
- UN Convention on the Reduction of Statelessness, *Sl. glasnik RS (Međunarodni ugovori)*, 8/11.
- UN Convention on the Rights of Persons with Disabilities, *Sl. glasnik RS*, 42/09.

## Appendix II

### *Legislation in Serbia Concerning Human Rights and Mentioned in the Report*

- Act Amending the Act on Organisations of Courts, *Sl. glasnik RS*, 101/13.
- Act Amending the Act on Judges, *Sl. glasnik RS*, 101/13.
- Act Amending the Act on Public Prosecutor's Offices, *Sl. glasnik RS*, 101/13.
- Act on Associations, *Sl. glasnik RS*, 51/09 and 99/11.
- Act on the Basis of the Education System, *Sl. glasnik RS*, 72/09, 52/11 and 55/13.
- Act on the Basis of the Regulation of the Security Agencies of the Republic of Serbia, *Sl. glasnik RS*, 116/07.
- Act on the Constitutional Court, *Sl. glasnik RS*, 109/07 and 99/11.
- Act on Churches and Religious Communities, *Sl. glasnik RS*, 36/06.
- Act on Defence, *Sl. glasnik RS*, 116/07, 88/09 – other law and 104/09 – other law.
- Acts on Detectives, *Sl. glasnik RS*, 104/13.
- Act on the Election of Assembly Deputies, *Sl. glasnik RS*, 35/00, 57/03, 72/03, 18/04, 101/05, 85/05, 104/09 and 36/11.
- Act on the Election of the President of the Republic, *Sl. glasnik RS*, 111/07 and 104/09.
- Act on Financial Support to Families with Children, *Sl. glasnik RS*, 16/02, 115/05 and 107/09.
- Act on Financing of Political Activities, *Sl. glasnik RS*, 43/11.
- Act on Free Access to Information of Public Importance, *Sl. glasnik RS*, 120/04, 54/07, 104/09 and 36/10.
- Act on Health Care of Children, Pregnant Women and New Mothers, *Sl. glasnik RS*, 104/13.
- Act on the Implementation of the Constitution, *Sl. glasnik RS*, 98/06.
- Act on Infertility Treatment by Biomedically Assisted Fertilisation Procedures, *Sl. glasnik RS*, 72/09.

- Act on Judges, *Sl. glasnik RS*, 116/08, 58/09 – CC decision, 104/09, 101/10, 8/12 – CC decision, 121/12, 124/12 – CC decision and 101/13.
- Act on the Judicial Academy, *Sl. glasnik RS*, 104/09.
- Act on Labour-Related Records, *Sl. glasnik RS* 46/96, 101/05 – other law and 36/09 – other law.
- Act on the Military Security Agency and the Military Intelligence Agency, *Sl. glasnik RS*, 88/09, 55/12 – CC decision and 17/13.
- Act on Ministries, *Sl. glasnik RS* 72/12.
- Act on Misdemeanours, *Sl. glasnik RS*, 101/05, 116/08 and 111/09.
- Act on the Organisation of Courts, *Sl. glasnik RS*, 116/08, 104/09, 101/10, 31/11, 78/11, 101/11 and 101/13.
- Act on Political Parties, *Sl. glasnik RS*, 36/09.
- Act on Prevention of Discrimination against Persons with Disabilities, *Sl. glasnik RS*, 33/06.
- Act on Private Security, *Sl. glasnik RS*, 104/13.
- Act on the Professional Rehabilitation and Employment of Persons with Disabilities, *Sl. glasnik RS*, 36/09 and 32/13.
- Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia, *Sl. glasnik RS*, 41/09.
- Act on the Protection of Participants in Criminal Proceedings, *Sl. glasnik RS*, 85/05.
- Act on the Protection of People with Mental Disorders, *Sl. glasnik RS*, 45/13.
- Act on Seats and Jurisdictions of Courts, *Sl. glasnik RS*, 116/08, 104/09 101/10, 31/11 – other law, 78/11 – other law, 101/11 and 101/13.
- Act on a Single Voter Register, *Sl. glasnik RS*, 104/09 and 99/11.
- Act on the Realisation of the Right to Health Care of Children, Pregnant Women and New Mothers, *Sl. glasnik RS*, 104/13.
- Act on Termination of Pregnancies in Medical Institutions, *Sl. glasnik RS*, 16/95 and 101/05.
- Act on Textbooks and Educational Tools, *Sl. glasnik RS*, 72/09.
- Act on Voluntary Pension Funds and Pension Plans, *Sl. glasnik RS*, 85/05 and 31/11.
- Action Plan for implementation Strategy to Reduce Overcrowding in Penitentiaries, *Sl. glasnik RS*, 90/11.
- Adult Education Act, *Sl. glasnik RS*, 55/13.
- Accounting and Audit Act, *Sl. glasnik RS*, 46/06, 111/09 i 99/11 – other law
- Aliens Act, *Sl. glasnik RS*, 97/08.

- Anti-Corruption Agency Act, *Sl. glasnik RS*, 97/08, 53/10, 66/11 – CC decision, 67/13 – CC decision and 112/13 – authentic interpretation.
- Advertising Act, *Sl. glasnik RS*, 79/05.
- Administrative Disputes Act, *Sl. glasnik RS*, 111/09.
- Anti-Discrimination Act, *Sl. glasnik RS*, 22/09.
- Asylum Act, *Sl. glasnik RS*, 109/07.
- Bankruptcy Act, *Sl. glasnik RS*, 104/09.
- Budget System Act, *Sl. glasnik RS*, 54/09, 73/10, 101/10, 101/11 and 93/12.
- Broadcasting Act, *Sl. glasnik RS*, 42/02, 97/04, 76/05, 79/05 – other law, 62/06, 85/06, 86/06 - corr. and 41/09.
- Civil Procedure Act, *Sl. glasnik RS*, 72/11, 49/13 – CC decision and 74/13 – CC decision.
- Classified Information Act, *Sl. glasnik RS*, 104/09.
- Constitution of the Republic of Serbia, *Sl. glasnik RS*, 83/06.
- Constitutional Court Act, *Sl. glasnik RS*, 109/07, 99/11, 18/13-CC decision.
- Corporate Profit Tax Act, *Sl. glasnik RS* 25/01, 80/02, 80/02 – other law, 43/03, 84/04, 18/10, 101/11 and 119/12.
- Criminal Code, *Sl. glasnik RS*, 85/05, 88/05, 107/05, 72/09, 111/09, 121/12 and 104/13.
- Criminal Procedure Code, *Sl. glasnik RS* 72/11, 101/11, 121/12, 32/13 and 45/13.
- Culture Act, *Sl. glasnik RS*, 72/09.
- Decision on the Election of AP Vojvodina Assembly Deputies, *Sl. list AP Vojvodine*, 12/04, 20/08, 5/209, 18/09 and 23/10.
- Decree on Criteria for classifying information as RESTRICTED and CONFIDENTIAL by the National Security Council, *Sl. glasnik RS*, 86/13.
- Decree on Designation of Information as Classified, *Sl. glasnik RS*, 8/11.
- Employment and Unemployment Insurance Act, *Sl. glasnik RS*, 36/09 and 88/10.
- Family Act, *Sl. glasnik RS*, 18/05 and 72/11 – other law.
- Electronic Communications Act, *Sl. glasnik RS*, 44/10 and 60/13 – CC decision.
- General Collective Agreement, *Sl. glasnik RS*, 50/08, 104/08 – Annex I and 8/09 – Annex II.
- Gender Equality Act, *Sl. glasnik RS*, 104/09.
- Health Care Act, *Sl. glasnik RS*, 107/05, 72/09 – other law, 88/10, 99/10, 57/11, 119/12 and 45/13 – other law.
- Health Insurance Act, *Sl. glasnik RS*, 107/05, 109/05 – corr, 57/11, 110/12 – CC decision and 119/12.

- Health Protection Act, *Sl. glasnik RS*, 107/05, 88/10, 99/10, 57/11, 119/12 and 45/13 – other law.
- High Judicial Council Act, *Sl. glasnik RS*, 116/08 and 101/10.
- Juvenile Justice Act, *Sl. glasnik RS*, 85/05.
- Labour Act, *Sl. glasnik RS*, 24/05, 61/05, 54/09 i 32/13.
- Languages and Scripts Act, *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05 and 30/10.
- Local Elections Act, *Sl. glasnik RS*, 129/07, 34/10 – CC decision and 54/11.
- Mental Health Protection Strategy, *Sl. glasnik RS*, 8/07.
- Minority Protection Act, *Sl. glasnik SRJ*, 11/02.
- National Councils of National Minorities Act, *Sl. glasnik RS*, 72/09.
- National Employment Strategy for the 2011–2020, *Sl. glasnik RS*, 55/05, 71/05 – corr, 101/07, 65/08 and 16/11.
- Notaries Public Act, *Sl. glasnik RS*, 31/11, 85/12 and 19/13.
- Patient Rights Act, *Sl. glasnik RS*, 45/13.
- Pension and Disability Insurance Act, *Sl. glasnik RS*, 34/03, 64/04 – CC decision, 84/04 – other law, 85/05, 101/05 – other law, 63/06 – CC decision, 5/09, 107/09, 101/10, 93/12, 62/13 and 108/13.
- Personal Data Protection Act, *Sl. glasnik RS*, 97/08, 104/09, 68/12 – CC decision, 107/12.
- Peaceful Settlement of Labour Disputes Act, *Sl. glasnik RS*, 125/04 and 104/09.
- Personal Data Protection Strategy, *Sl. glasnik RS*, 58/10.
- Private Security Act, *Sl. glasnik RS* 104/13.
- Police Act, *Sl. glasnik RS*, 101/05, 63/09 – CC decision and 92/11.
- Protector of Citizens Act, *Sl. glasnik RS*, 79/05 and 54/07.
- Public Assembly Act, *Sl. glasnik RS*, 51/92, 53/93, 67/93 i 48/94, *Sl. list SRJ*, 21/01; CC decision, *Sl. glasnik RS*, 101/05 – other law.
- Public Information Act, *Sl. glasnik RS*, 43/03, 61/05, 71/09, 89/10 – CC decision and 41/11 – CC decision.
- Public Peace and Order Act, *Sl. glasnik RS*, 51/92, 53/93, 67/93, 48/94, 85/05 and 101/05.
- Registration Procedure Act, *Sl. glasnik RS*, 99/11.
- Regulation on Measures for Maintaining Order and Security in Penitentiaries, *Sl. glasnik RS*, 105/06.
- Rulebook on Additional Educational, Health and Social Support to Children and Pupils, *Sl. glasnik RS*, 63/10.

- Rulebook on the Content and Scope of the Right to Health Care under Mandatory Health Insurance and Participation for 2013, *Sl. glasnik RS*, 124/12.
- Rulebook on Conditions and Standards for the Provision of Social Protection Services, *Sl. glasnik RS*, 42/13.
- Rulebook on the Fulfilment of the Obligation to Employ Persons with Disabilities and Proof of the Fulfilment of the Obligation, *Sl. glasnik RS*, 33/10 and 48/10 – corr.
- Rulebook on Licencing Social Protection Organisations, *Sl. glasnik RS*, 42/13.
- Rulebook on Licencing Social Protection Workers, *Sl. glasnik RS*, 42/13.
- Rulebook on Medical Aids Covered by Mandatory Health Insurance, *Sl. glasnik RS*, 52/12, 62/12 – corr, 73/12 – corr, 1/13 and 7/13 – corr.
- Rulebook on Medical Rehabilitation in Inpatient Institutions Specialising in Rehabilitation governs the indications, duration, manner and procedure for referring patients for medical rehabilitation in specialised health institutions, *Sl. glasnik RS*, 47/08, 69/08, 81/10, 103/10, 15/11 and 48/12.
- Rulebook on the Procedure, Costs and Criteria for Evaluating the Abilities and Opportunities for the Employment and Retention of Employment of Persons with Disabilities, *Sl. glasnik RS*, 36/10.
- Rulebook on the Register of Churches and Religious Communities, *Sl. glasnik RS*, 64/06.
- Rulebook on the Registration of Trade Unions, *Sl. glasnik RS*, 50/05 and 10/10.
- Rulebook on Social Welfare Service Provision Conditions and Standards, *Sl. glasnik RS*, 42/13.
- Rulebook on Technical Accessibility Standards, *Sl. glasnik RS*, 46/13.
- Rulebook on the Technical Features and Manner of Use of Means of Coercion, *Sl. glasnik RS*, 19/07 and 112/08.
- Safety and Health Act, *Sl. glasnik RS*, 101/05.
- Social Protection Act, *Sl. glasnik RS*, 24/11.
- State Audit Institution Act, *Sl. glasnik RS*, 101/05, 54/07 and 36/10.
- Strategy to Combat Trafficking in Human Beings, *Sl. glasnik RS*, 111/06.
- Strategy for the Development of the Penal Sanctions Enforcement System, *Sl. glasnik RS*, 114/13.
- Strategy for the Prevention of and Protection from Discrimination, *Sl. glasnik RS*, 60/13.
- Strategy for the Prevention of and Protection against Discrimination, *Sl. glasnik RS*, 55/05, 71/05 – corr, 101/07, 65/08, 16/11, 68/12 – CC decision and 72/12.
- Strategy for the Prevention and Suppression of Family and Intimate Partner Violence against Women (2010–2015), *Sl. glasnik RS*, 55/05, 71/05- corr, 101/07, 65/08 and 16/11.



- Strategy to Reduce Overcrowding in Penitentiaries, *Sl. glasnik RS*, 53/10.
- Strikes Act, *Sl. list SRJ*, 29/96, *Sl. glasnik RS*, 101/05 – other law, 103/12 CC decision.
- Transplantation of Organs Act, *Sl. glasnik RS*, 72/09.
- Vital Records Act, *Sl. glasnik RS*, 20/09.
- Weapons and Ammunition Act, *Sl. glasnik RS*, 9/92, 53/93, 67/93, 48/94, 44/98, 39/2003, 101/2005 – other law, 85/2005 – other law, 27/2011 – CC decision and 104/2013 – other law.



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