

HUMAN RIGHTS IN SERBIA

2014



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The recipients of the services of the Centre and its target groups have been members of legislative bodies, judges and other members of the legal profession, law enforcement officers, military officers, NGO activists, teaching staff of institutions of higher learning, other educators, students, journalists etc.

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HUMAN RIGHTS IN SERBIA 2014
LAW, PRACTICE AND INTERNATIONAL
HUMAN RIGHTS STANDARDS

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Contents

Abbreviations	13
Preface	17
Research Methodology	19
Introduction	23
SUMMARY	29
Right to Life	29
Prohibition of Ill-Treatment	29
Status of Persons Deprived of Liberty	30
Prohibition of Slavery, Forced Labour, Trafficking in Humans and Organs	31
Judicial Reform and Court Independence and Impartiality	32
Fair Trial	34
Right to Privacy and Confidentiality of Correspondence	35
Personal Data Protection and Protection of Privacy	36
Freedom of Thought, Conscience and Religion.	37
Freedom of Expression.	38
Freedom of Peaceful Assembly	39
Freedom of Association	41
Right to Asylum	42
Right to Work	43
Right to Just and Favourable Conditions of Work.	45
Association in Trade Unions and Strikes.	46
Right to Social Security	47
Right to Education	48
Health Care	49
Prohibition of Discrimination and Status of Minorities.	50
I SERBIA'S INTERNATIONAL LEGAL OBLIGATIONS.	57
1. Serbia's Membership of International Organisations	57

1.1. Overview of Serbia's Headway in EU Accession	58
2. International Human Rights Treaties and Serbia	58
3. Fulfilment of Obligations Arising from Membership of International Organisations and Accession to International Treaties	60
3.1. Applications against Serbia before the European Court of Human Rights in 2014	62
3.1.1. Statistics	62
3.1.2. Appointment of the ECtHR Judge in Respect of Serbia.	63
3.1.3. Impact of ECtHR Case Law on the Jurisprudence of Serbian Courts of General Jurisdiction.	64
3.1.4. ECtHR Judgments with Respect to Serbia Delivered in 2014...	64
4. Correlation between National and International Law.	69
II CONSTITUTIONAL AND LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS.	71
1. Constitution of the Republic of Serbia and Provisions on Human Rights, Human Rights Restrictions and Derogations ...	71
1.1. General	71
1.2. Restrictions of Human Rights.	71
1.3. Derogation of Human Rights	73
2. Constitutionality and Legality.	74
2.1. Constitutional Court of Serbia – Composition, Election of Judges and Jurisdiction.	74
2.2. Reviews of Constitutionality and Legality before the Constitutional Court of Serbia	75
2.3. Selected Constitutional Court of Serbia 2014 Case Law	76
2.3.1. Review of the Constitutionality of the Provisions of the Judicial Academy Act and the Acts on Judges and Public Prosecution Services.	76
2.3.2. Review of the Constitutionality of the Serbian Bar Chamber Decision on Fees for Registration in the Directory of Lawyers, Directory of Joint Law Offices and the Directory of Limited Liability Law Partnerships.	77
2.3.3. Review of the Constitutionality of Specific Provisions of the National Councils of National Minorities Act	78

3.	Effectiveness of Legal Remedies for the Protection of Human Rights Provided by the Serbian Legal System	79
3.1.	General	79
3.2.	Ordinary and Extraordinary Legal Remedies in Serbia's Legal System	79
3.3.	Constitutional Appeals and Effectiveness of Constitutional Appeals	81
4.	Independent Human Rights Protection Authorities	84
4.1.	General	84
4.2.	Independent and Public Authorities	85
4.3.	Efficiency of the Independent Authorities	88
4.4.	Adoption of the Whistle-Blowers Protection Act	90
III	INDIVIDUAL RIGHTS	95
1.	Right to Life	95
1.1.	General	95
1.2.	State's Obligations with Respect to the Right to Life	95
1.3.	The ECtHR Judgment in the Case of Petrović v. Serbia	100
1.4.	Euthanasia	101
2.	Prohibition of Ill-Treatment and Status of Persons Deprived of Liberty	102
2.1.	General	102
2.2.	Use of Force by State Agents	105
2.3.	Conditions in Penitentiaries, Detention Units and Police Custody	110
3.	Prohibition of Slavery, Forced Labour, Trafficking in Humans and Organs.	110
3.1.	General	110
3.2.	Trafficking in Human Organs	111
3.3.	Trafficking in Human Beings	112
3.4.	Smuggling of People	115
3.5.	Forced Labour	116
4.	Right to Liberty and Security of Person	118
4.1.	General	118

4.2.	Overcrowded Penitentiaries	119
4.3.	Deprivation of Liberty under the Criminal Procedure Code	123
4.4.	Confinement in the Nikola Tesla Airport Transit Zone	124
4.5.	Damages for Unlawful Deprivation of Liberty	125
5.	Right to a Fair Trial.....	128
5.1.	General	128
5.2.	Judicial System	130
5.3.	Independence and Impartiality of Courts	131
5.3.1.	Election and Appointment of Judges	132
5.3.2.	Termination of Judicial Office and Disciplinary Proceedings. . .	135
5.3.3.	Guarantees of Judicial Independence	136
5.3.4.	Pressures on the Judiciary	138
5.3.5.	Incompatibility	138
5.3.6.	Judicial Training.....	139
5.4.	Fairness	140
5.4.1.	Trial within a Reasonable Time.....	141
5.4.2.	Violations of the right to a trial within a reasonable time.	142
5.4.3.	Notaries Public Act and Blockade of the Judicial System	144
5.4.4.	E-Justice	148
5.4.5.	Public Character of Hearings and Judgments	149
5.4.6.	Equality before the Law.	150
5.5.	Guarantees to Defendants in Criminal Cases	150
5.5.1.	Presumption of Innocence	151
5.5.2.	Prompt Notification of Charges in a Language Understood by the Defendant	151
5.5.3.	Prohibition of Trials in Absentia and the Right to Defence ...	152
5.5.4.	Prohibition of Self-Incrimination.	155
5.5.5.	Status of Witnesses	155
6.	Right to Privacy and Confidentiality of Correspondence	156
6.1.	General	156
6.2.	Families and Family Life	159
6.3.	Abortion.....	162
6.4.	Confidentiality of Correspondence.....	163
7.	Personal Data Protection and Protection of Privacy	167
7.1.	General	167
7.2.	Other Provisions Relevant to Personal Data Protection.....	171

7.3. Commissioner for Information of Public Importance and Personal Data Protection	174
8. Freedom of Thought, Conscience and Religion	176
8.1. General	176
8.2. Legislative Framework, Status of Religious Communities and Exercise of the Right to Freedom of Thought, Conscience and Religion	177
8.3. Situation in Religious Communities	181
9. Freedom of Expression	182
9.1. General	182
9.2. Media Reform	183
9.3. The Public Information and Media Act	185
9.3.1. Public Interest in the Field of Public Information and Co-Funding of Projects of Public Interest	186
9.3.2. Transparency of Media Ownership and Media Pluralism	187
9.3.3. Privacy of Public Figures and Holders of Public Office	188
9.4. Public Media Services Act	189
9.4.1. Definition of Public Media Services	189
9.4.2. Financing of Public Media Services	189
9.4.3. Organisation of Public Media Services	191
9.5. Electronic Media Act	192
9.5.1. Licencing System	195
9.5.2. Restrictions for Operators of Electronic Communication Networks for the Distribution of Media Content	195
9.6. Status of Media and Journalists	196
9.7. Unprofessional Conduct by Media and Journalists	201
10. Freedom of Peaceful Assembly	203
10.1. General	203
10.2. Public Assembly Act	205
10.2.1. Assembly Venues	206
10.2.2. Assembly Notification	208
10.3. Restrictions of the Freedom of Assembly	211
10.3.1. Pride Parade in Belgrade 2014	212
10.4. Legal Remedies	214
10.5. Responsibilities of the Organisers and Penalties	215
10.6. The Role of the Police	217

11. Freedom of Association	217
11.1. General	217
11.2. Associations of Citizens (Non-Government Organisations).	218
11.3. Restriction and Prohibition of the Work of Associations	221
11.4. Association of Aliens	225
11.5. Associations of Civil Servants and Security Forces.	225
12. Right to Asylum	226
12.1. General	226
12.2. Access to the Territory of the Republic of Serbia and to the Asylum Procedure	226
12.2.1. Procedures for obtaining Asylum Status	228
12.2.2. Application of the Safe Third Country Concept and Violations of the Prohibition of Refoulement	231
12.3. Rights and Obligations of Asylum Seekers, Refugees and People Granted Subsidiary Protection	233
12.4. Unaccompanied Minor Asylum Seekers.	234
12.5. Asylum Legislation Reform	235
12.6. Recommendations by the Protector of Citizens	236
13. Right to Work	237
13.1. General	237
13.2. Labour Act.	238
13.3. Employment Rates in Serbia.	241
13.4. Right to Assistance in Employment and in the Event of Unemployment	242
13.5. Workers' Rights Concerning Termination of Employment	243
13.6. Exercise and Protection of Workers' Rights.	246
14. Right to Just and Favourable Conditions of Work	248
14.1. Fair Wages and Equal Remuneration for Work	248
14.1.1. Minimum wages.	248
14.1.2. Overtime work	250
14.1.3. Wage Cuts	251
14.1.4. Non-Payment of Salaries and Contributions	251
14.2. Right to Rest, Leisure and Limited Working Hours.	253
14.3. Occupational Safety and Health	254
14.4. Freedom to Associate in Trade Unions.	256

14.5. Right to Strike	258
15. Right to Social Security	260
15.1. General	260
15.2. Protection Accorded to Family	263
16. Right to Education	265
16.1. General	265
16.2. Education Law and Its Implementation in Practice	267
16.3. Higher Education.	270
17. Health Care	275
17.1. General	275
17.2. Availability of Health Care	276
17.3. Patient Rights	277
IV PROHIBITION OF DISCRIMINATION AND STATUS OF MINORITIES	281
1. Prohibition of Discrimination	281
2. Prohibition of Propaganda for War, Advocacy of National, Racial or Religious Hatred and Hate Crime	284
3. National Minorities and Minority Rights	286
3.1. General	286
3.2. Ethnic Breakdown of the Population of the Republic of Serbia ...	289
3.3. Prohibition of Discrimination against Persons Belonging to National Minorities	290
3.4. Equal Participation in Public Affairs and Political Life	293
3.5. Right to Preservation of Identity	295
3.5.1. Right to Nurture Culture and Tradition	295
3.5.2. Freedom to Express One's National Affiliation	296
3.5.3. Use of Languages	297
3.5.4. The Right to Full and Impartial Information in National Minority Languages	301
3.6. National Councils of National Minorities	302
3.6.1. National Minority Council Elections	306
3.6.2. Problems in the Enforcement of the NCNMA	306
3.7. Prohibition of Forced Assimilation	309
3.8. Incidents and Abuses of Affirmative Action Measures	311

4. Status of Roma	313
4.1. General	313
4.2. Discrimination against Roma	316
4.3. Education of Roma Children	317
4.4. Living Conditions of Roma	318
4.5. Flood Consequences	320
5. LGBT Population	321
5.1. General	321
5.2. Rights of Same-Sex Partners	322
5.3. Freedom of Assembly and Freedom of Expression	323
5.4. Discrimination by and against the Media	324
5.5. Violence and Hate Crimes.	325
5.6. Discrimination in the Education System	326
5.7. Discrimination against Trans*People	327
6. Human Rights of Persons with Disabilities	328
6.1. General	328
6.2. Education.	329
6.3. Community Living	330
6.4. Equality Before the Law.	333
6.5. Employment	334
6.6. Health Protection.	335
6.7. Accessibility	336
7. Gender Equality and Special Protection of Women	338
7.1. General	338
7.2. Special Protection of Women and Maternity	340
7.3. Institutional Gender Equality Protection Mechanisms.	342
7.4. Participation of Women in Political and Public Life	342
Appendix I – The Most Important Human Rights Treaties Binding on Serbia	345
Appendix II – Legislation in Serbia Concerning Human Rights and Mentioned in the Report.	351

Abbreviations

2008–2013 Reports – BCHR Annual Reports on Human Rights in the Serbia

ANEM – Association of Independent Electronic Media

APV – Autonomous Province of Vojvodina

BIA – Security Intelligence Agency

CaT – UN Committee against Torture

CC – Criminal Code

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

doc. UN – UN document

DS – Democratic Party

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

FA – Family Act

FN RJ – Federal People's Republic of Yugoslavia

GDP – Gross Domestic Product

GSA – Gay Straight Alliance

HCA – Health Care Act

HIA – Health Insurance Act

HJC – High Judicial Council

- ICCPR – International Covenant on Civil and Political Rights
ICESCR – International Covenant on Economic, Social and Cultural Rights
IJAS/NUNS – Independent Journalists’ Association of Serbia
ILO – International Labor Organization
IMF – International Monetary Fund
JAS/UNS – Journalists’ Association of Serbia
LA – Labour Act
LGBT – Lesbian Gay Bisexual Transgender
MDRI-S – Mental Disability Rights Initiative of Serbia
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
ODIHR – Office for Democratic Institutions and Human Rights
OSCE – Organization for Security and Cooperation in Europe
PSEA – Penal Sanctions Enforcement Act
RBA – Republican Broadcasting Agency
RHIF – Republican Health Insurance Fund
RS – Republic of Serbia
RTS – Radio Television of Serbia
SAI – State Audit Institution
SaM – Serbia and Montenegro
SFRJ/SFRY – Socialist Federal Republic of Yugoslavia
Sl. glasnik – Official Gazette (of the SRS and, subsequently, the RS)
Sl. list – Official Herald (of the SFRY and, subsequently, SaM)
SNS – Serbian Progressive Party
SORS – Statistical Office of the Republic of Serbia
SPS – Socialist Party of Serbia
SRJ/FRY – Federal Republic of Yugoslavia
SRS – Socialist Republic of Serbia

UN – United Nations

UNESCO – United Nations Educational, Scientific and Cultural Organization

UNHCR – United Nations High Commissioner for Refugees

VBA – Military Security Agency

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

VOA – Military Intelligence Agency

YUCOM – Lawyers' Committee for Human Rights

Preface

The Belgrade Centre for Human Rights has been publishing this synthetic and comprehensive report on the state of human rights in the country since 1998. The Belgrade Centre for Human Rights' associates have been regularly monitoring the legislative activities with the aim of analysing the degree to which the national legislation is in conformity with the most important international (universal and European) standards, i.e. all the treaties Serbia has ratified to date. The relevant provisions in the national laws are compared with Articles in the UN Covenants and Conventions adopted under UN auspices and the European Convention on Human Rights and interpretations provided by the UN Committees and the European Court of Human Rights in their case law. The purpose of the Report is also to present and review the Constitution and the most relevant primary and secondary legislation that may impact on the full enjoyment of human rights.

The authors of the Report 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 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. They 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.

Apart from continuously and systematically monitoring the legislative activities and analysing the compliance of the national law with international standards, the BCHR's associates have also systematically monitored the media and reports of international and local NGOs and focused on the data indicating grave violations of specific rights.

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

The following associates of the Belgrade Centre for Human Rights took part in the preparation of this Report: Nevena Dičić Kostić, Biljana Janjić, Pavle Kilibarda, Nikola Kovačević, Radoš Keravica, Anđelka Marković, Nikolina Milić, Nevena Nikolić, Lena Petrović, Vesna Petrović, Dušan Pokuševski, Dragan Popović, Ivan Protić, Jelena Radojković, Bojan Stojanović, Miloš Stojković, Jovana Stopić, Duška Tomanović, Sonja Tošković and Ana Trkulja.

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.

We take this opportunity to thank to the OSCE Mission to Serbia for supporting the translation of the Report and the efforts of the Belgrade Centre for Human Rights to contribute to the improvement of human rights and human rights reporting.

Associates of the Belgrade Centre for Human Rights

Research Methodology

The methodology applied in the preparation of this Report is based on the analysis of the regulations in force in 2014, some of the relevant draft laws that had not been adopted by the end of the year and 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.

BCHR's associates regularly monitor and use all other available sources indicating the situation in practice in order to review the state of human rights. In their research, they particularly focused on the courts' case law related to human rights protection and perused the information of public importance they obtained upon request from the public authorities, the reports and press releases of Serbian and international NGOs and all other information that came into their possession during the implementation of projects and programmes.

Five dailies – *Politika*, *Danas*, *Večernje novosti*, *Blic* and *Kurir* – and three weeklies – *Vreme*, *Novi magazin* and *NIN* – were monitored for the purpose of this Report. BCHR also followed the reports on the *Tanjug*, *BETA* and *Fonet* wires, the B92 website, the press releases and news issued by the press associations, as well as the *ANEM* Legal Monitoring of the Serbian Media Scene bulletins. A total of 8,067 media reports, or 4% less than in 2013 (8,395) were perused during the preparation of this Report.

Like in 2013, most of them dealt with political rights and democracy although their share in the total number of texts perused in 2014 fell by 22% (22.13%, vis-a-vis 28.63% in 2013), which can be attributed to the March 2014 parliamentary and local elections and the subsequent constitution of the National Assembly and Government, fierce showdowns between the ruling Serbian Progressive Party (SNS) and the opposition and the virtually incessant election campaign waged by the SNS all year round, not just in the run-up to the elections.

Reports on the right to a fair trial again ranked second (20.98% compared to 23.05%) although their share in the total number of texts fell by 9%. This can be attributed to the fact that the fight against corruption ranks high on SNS' agenda, although it is mostly directed against politicians in the opposition and characterised by vociferous announcements of arrests but very few trials.

Texts on economic and social rights and freedom of expression ranked third and fourth (the former accounting for 14.21% vis-à-vis 9.40% in 2013 and the latter for 14.13% vis-à-vis 8.95% in 2013 of all the reports). However, their increased share in the total number of perused reports, by 55 and 58 percent respectively, is a

good illustration of the situation in Serbia, notably, the long-lasting and increasing impact of the economic crisis and the visible rise in the entire gamut of pressures on the media, described in detail in the chapter on the freedom of expression.

Reports on violence ranked fifth in 2014, their share in the total number of texts falling by 21% (from 11.94% in 2013 to 9.40% in 2014). Regardless of this decrease, the way in which the media reported on violence and the intensity with which they violated professional standards reaffirm the conclusion about the rampant tabloidisation of the Serbian media.

Like in 2013, texts on confrontation with the past ranked sixth, although their share in the total number of reports grew by four percent (from 6.45% in 2013 to 6.70% in 2014), which can be attributed to the war crime trials, rehabilitation of political convicts and the return of Vojislav Šešelj, the leader of the ultra-nationalist Serbian Radical Party, from the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague.

Reports on discrimination again ranked seventh (2.81% in 2014 vis-à-vis 2.96% in 2013).

Texts on the freedom of international movement, covering asylum seekers ranked eighth (2.34% vis-à-vis 1.10% in 2013), and they were followed by texts on the status of independent regulatory authorities (1.89% compared to 1.20% in 2013, ninth place), rights of national minorities (1.81% vis-à-vis 2.12% in 2013, tenth place), judicial reform (1.09% compared to 0.81% in 2013, 11th place), human trafficking (0.56% vis-à-vis 0.83% in 2013, 12th place), on Serbia before international bodies, including applications filed with the European Court of Human Rights in Strasbourg (0.56% compared to 0.83% in 2013, 13th place) and on the status of religious communities (0.48% vis-à-vis 0.71% in 2013, 14th place).

The last four places were held by reports on the work of the Constitutional Court (0.40% compared to 0.87% in 2013), the reform of the Criminal Code (0.24% compared to 0.28% in 2013), restitution of property (0.23% compared to 0.40% in 2013) and on the status of non-government organisations (0.02% compared to 0.29%), all of which decreased in number.

The state of human rights in Serbia has continued deteriorating, judging by the breakdown of the monitored reports. The fact that over 40% of the texts regarded human rights areas under strong influence of politics – political rights and democracy and the right to a fair trial – and the way these issues were reported on, corroborates the conclusion that the Serbian media are moving further and further away from the role of watchdog of public interests and democratic values and closer and closer to acting merely as the mouthpieces of the political and economic power centres.

The fact that nearly one-tenth of the reports focused on violence and that those reports were rife with violations of the professional code of conduct and often with sensationalism actually brings the number of texts on human rights in the nar-

rower sense down to under half of the reports perused during the preparation of this Report. Slightly over 50% of them were devoted to problems in exercising social-economic rights and the illegal and increasingly fierce pressures on the Serbian media.

All other human rights areas in the narrower sense – discrimination, rights of national minorities and religious communities, confrontation with the past, freedom of movement, status of the asylum seekers, the work of the Constitutional Court, the status of independent regulatory authorities and judicial reform, accounted for a modest share of the monitored reports (around 18% vis-à-vis 16% in 2013).

The analysis of the above data corroborates the view that the human rights situation in Serbia deteriorated in 2014 compared to the previous year, particularly in respect of social and economic rights, freedom of expression, the status of independent regulatory authorities and the judicial reform.

Introduction

The year 2014 was again an election year in Serbia. The ruling parties announced early parliamentary elections already in late 2013, although the regular parliamentary elections were held less than two years earlier, in May 2012. The decision to call early parliamentary elections was taken by the presidencies of the Serbian Socialist Party (SPS) and the Serbian Progressive Party (SNS), under the explanation that “the will of the people has to be checked“. The Serbian Government, headed by Prime Minister and SPS leader Ivica Dačić, adopted the official motion to call early parliamentary elections and forwarded it to Serbian President Tomislav Nikolić, who on 29 January 2014 called the elections for 16 March. That was the last day on which the parliamentary elections were to have been scheduled if they were to be held simultaneously with the Belgrade local elections, after the new majority in the Belgrade City Assembly voted no confidence in Belgrade Mayor Dragan Djilas on 24 September 2013. Belgrade was run by a caretaker government until the new councillors were elected in March 2014.

Due to the ruling parties’ decision, the first three months of the year were characterised by campaigning and a standstill in the National Assembly. The lack of clarity surrounding the decision to call early parliamentary elections was interpreted as a move by the then First Deputy Prime Minister Aleksandar Vučić (SNS) to consolidate his power and provide his party with the opportunity to score a convincing victory, gain an upper hand over their coalition partners and ensure his premiership. The election campaign was marked by an extremely inequitable representation of the ruling and opposition parties; the vast majority of the dailies favoured the SNS, while the members of this party holding senior state and local government offices promoted the SNS and campaigned even during their regular activities, thus jeopardising the achieved level of free and fair elections in Serbia. The SNS-led coalition won 158 out of 250 seats in the National Assembly at the March elections (i.e. enough to form a Government by itself) and Nikolić designated Vučić prime minister. The new Cabinet was formed in April 2014.

The goals of the new Government presented by Vučić to the Assembly deputies include, notably, economic reforms involving the adoption of reform laws, consolidation of the private sector and the state budget, accompanied by the fight against corruption and grey economy and improved tax collection. He expressed the conviction that the set goals were feasible and the readiness to suffer consequences if his Government failed to achieve them. He said he would do his utmost to avoid a reduction of the pensions, on which the international financial institutions were insisting, and vowed to find alternative ways to cut the budget deficit, including reform of the state administration and local self-governments, public sector down-

sizing, with focus on staff employed because they were members of (the ruling) political parties. In his view, these measures would halt the growth of public debt and allow for higher public sector salaries already in late 2016.

In his inaugural speech in the National Assembly, Vučić said that state-owned companies would be privatised, that the problems of state banks would be resolved, that the restructuring of 157 socially-owned companies would be completed, that management of public companies would be fully professionalised and their losses eliminated. In his view, the “Belgrade Waterfront” project (announced as the biggest future investment from the United Arab Emirates) would boost the construction industry in the whole country. He said that the infrastructural projects would be funded from concessions rather than loans and vowed that the Belgrade-Montenegro highway would be completed in four years’ time.

Among the measures aimed at strengthening the private sector, Vučić promised that the Government would not raise the taxes or additionally burden private companies and that it would empower the banks to support small and medium sized companies with loans. Vučić also mentioned the reform of the education system and the design of the 2015–2025 Youth Strategy including measures for reducing unemployment and encouraging entrepreneurship.

Serbia in 2014 continued implementing pro-EU accession activities. The talks officially began in January 2014 with the first EU-Serbia intergovernmental conference in Brussels. Bilateral screenings for numerous chapters were conducted throughout the year. The Government’s expectations that talks on Chapters 32, 23 and 24 would open by the end of the year, however, did not materialise. The slowdown was mainly prompted by the insufficient normalisation of relations between Priština and Belgrade. 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. Apart from objective circumstances, such as the months-long delay in the forming of a government in Kosovo after the June 2014 elections, EU officials assessed that there were also subjective reasons on the Serbian side, primarily the incomplete implementation of the Brussels Agreement. The EU Council in December 2014 reaffirmed its unequivocal commitment to the European perspective of the Western Balkans but also the need “for fair and rigorous conditionality and the principle of own merits, combined with the EU’s capacity, in all its dimensions, to integrate new members”.

Germany accordingly required that the accession talks begin with Chapter 35 on Kosovo, although Serbia would have preferred them to open with Chapter 32 (Financial Control). The halt in official accession talks also led to increased anti-European rhetoric in the media in Serbia.

Another major obstacle to Serbia’s EU accession is the reluctance of its Government to align its foreign policy with the EU foreign and security policy, above all with regard to the sanctions the EU introduced against Russia because of the crisis in Ukraine. Prime Minister Vučić and other Government members have explained

Serbia's decision not to join in the sanctions against Russia by Serbia's special traditional ties with Russia and the concrete economic damages Serbia would sustain. EU Enlargement Commissioner Johannes Hahn reiterated on several occasions that Serbia had to gradually align its foreign policy with that of Brussels during the EU accession process and that it had to align its positions on difficult issues, such as sanctions against Russia, with the EU.

Serbia's foreign policy has not been defined clearly yet as the contradictory views voiced by the ruling coalition partners demonstrate. The foreign policy of Serbian President Tomislav Nikolić, a co-founder of the SNS, appears to be at odds with that of the Government, specifically Vučić, who now leads both the SNS and the Serbian Government. A number of influential officials seem to be more inclined towards Russia than the EU, despite the Government's professed commitment to EU accession. They appear to believe that Serbia should not rely exclusively on its European partners, but should develop strong political relations also with other partners, primarily Russia and China. Such views are supported by some Serbian citizens, who believe that Russia is Serbia's natural ally and greatest benefactor. The 70th anniversary of Belgrade's liberation in WWII, in which the Soviet troops also took part, was marked by a military parade four days in advance, on 16 October, so that Russian President Vladimir Putin could attend it during his visit to Belgrade.

The Government's 2014 foreign policy successes included the summit of China and 16 East and Central European countries in Belgrade in December. Serbian and Chinese officials discussed economic cooperation and the Chinese investors expressed interest in investing in Serbia.

The global financial and economic circumstances did not benefit Serbia either. The European Union, which was still Serbia's greatest donor and investor in its economy, was stagnating and focused on its internal consolidation. On the other hand, Serbia's economy was staggering at the end of the year; it was in recession for the third time since 2008 and economists estimated Serbia's GDP would fall by 2% in 2014. The Government justified the situation by the major global economic problems reflecting on Serbia as well and the effects of the May 2014 floods. Most economists, on the other hand, alerted to the dangerous continuous fall of production (except in very few areas, such as agriculture, IT and communications), lack of investments and an environment not conducive to business. Serbia's foreign debt stood at 70.9% of the GDP (with public debt accounting for more than half of it), exports were falling and imports stagnating, prompting warnings by experts that the public debt risked to go up to 85% GDP in the following two years. The fiscal consolidation attempts in 2014 failed to yield significant results; the fiscal deficit and public debt were not reduced sufficiently. Nor was the grey economy seriously tackled.

The attempts to achieve fiscal consolidation did not yield satisfactory results; expenditure was not cut as much as planned, which can be ascribed to the money spent to keep banks afloat and subsidise companies undergoing restructuring. Public

sector reform plans were not adopted, whilst the capacities of the public administration were further undermined by the employment of political protégés not fulfilling professional requirements in the already oversized state institutions and companies.

Despite the extremely optimistic predictions, the Government's track record since it came into office leads to the impression that it has encountered numerous difficulties in implementing plans and measures, entailing serious reforms in numerous sectors. Although the Serbian Government has an unprecedented majority in the history of Serbia's parliamentarianism given that a small number of opposition deputies are consistently opposition oriented, the reforms are implemented at a very slow pace and without a clear plan. The Government has been reluctant to make the extremely painful cuts, such as reforming the pension and disability or health insurance funds, the public companies and the security sector, or downsizing the state administration and state-owned companies. The Government implemented specific measures to improve the economy and conditions for doing business in 2014. The National Assembly passed a number of new laws and amended many others (the Labour Act, the Bankruptcy Act, the Pension and Disability Insurance Act, the Planning and Construction Act). The key reforms, however, remained unimplemented, although this is the first time since 2000 that one party boasts a strong parliamentary majority and is immune to obstruction by minor parties. There are, however, risks of the Government abandoning the key reforms due to resistance from, primarily, the trade unions and bureaucracy, as well as other interest groups, given that they entail the spring cleaning of complex systems (inspectorates, the judiciary, the central and local administrations, et al), in which negative recruitment policies and, very often, grave corruption have reigned for a long time now.

Respect for and improvement of economic and social rights remained insufficient yet again in 2014. Indeed, the situation in this field is extremely disquieting. Struggling to keep their heads above water amid the economic difficulties uncondusive to business, employers have been neglecting the rights of workers to a large extent or even entirely. At the end of the year, the Government decided to cut the already low pensions, many of which were already below the existential minimum, and public sector salaries. The latter prompted major dissatisfaction among the employees in public sector. The economy has unfortunately been stagnating, unemployment rate is very high and poverty has been increasing for a long time now. The state has been allocating meagre funds to aid the poor. The social policy model remains unclear. Austerity measures have led to the cancellation of some forms of support to the poor, such as assistance to parents of children with special needs, day care centres, personal assistants, assisted living.

Serbia's economic difficulties were compounded by huge floods in May 2014, leaving 57 people dead and enormous damages. Despite the efforts invested by the people and state institutions charged with emergency response, the flooding defence system proved to be relatively inefficient. The natural disaster was exacerbated by disorganisation and oversights. On the other hand, the citizens demonstrat-

ed a great degree of solidarity with and empathy for the people whose homes were flooded, with thousands volunteering in the devastated areas and makeshift shelters. A donor conference was organised in Brussels, but the information about the promised donations and loans for recovery published in the Serbian media was contradictory and unreliable. The Serbian Government formed an Office for Reconstruction and Flood Relief to coordinate all state and local flood relief activities. A number of homes have been reconstructed, mostly thanks to donations from the UAE, the EU and private companies and foundations.

It can be concluded that not much headway has been made in strengthening the rule of law and improving democratic procedures, primarily due to the fact that the opposition in Serbia has been extremely weakened and that the ruling majority in the National Assembly has been using every chance it can to accuse the few opposition deputies of obstruction whenever they criticise the work of the Government or the parties in power. Opposition deputies were frequently subject to disciplinary measures and their addresses during parliamentary debates cut short by the chairpersons. This situation adversely affects the establishment of democratic institutions, building an open public dialogue and participation of all political actors, especially the citizens, in decision-making on important political and social issues affecting the whole society.

The National Assembly on 29 December 2014 ended its regular autumn session. It adopted 146 laws and 98 other enactments, decisions and conclusions since April, when the deputies, who won seats at the March parliamentary elections, were sworn in. The Assembly held 31 sittings since April (the constituent session, 16 regular, eight extraordinary and six special sittings). The Assembly altogether sat in session 92 days. The work of the National Assembly was characterised also by the adoption of a large number of laws under summary proceedings and the lack of meaningful public debates. In the April-June 2014 period alone, the parliament adopted as many as 41 laws under summary proceedings. Even the deputies had not had enough time to study even the important bills, let alone draft amendments to them.

Although 2014 was announced as the year of reforms and improvements of the legislative framework to ensure the more comprehensive protection of human rights, the key and critical reforms in areas that need them were not implemented. Indeed, specific rights were more jeopardised in 2014 than in the recent years. This particularly holds true for the freedom of expression, i.e. the influence the ruling parties have on most outlets and the direct and indirect pressures on the media, which have resulted not only in censorship but in self-censorship as well. The tabloids in 2014 continued publishing information from investigations and suffering no legal consequences for such conduct, fabricating scandals, and accusing and trying people on their front pages.

The right of access to justice was also brought into question. Judicial reform, which is prerequisite for the realisation of this right, is not implemented at the nec-

essary pace. The situation in the judiciary is further undermined by the effects of the prior reform. The establishment of the new court network as of 1 January 2014 led to adjournments of trials the first two months until the courts and case files were moved. Lawyers went on a brief strike in June over tax hikes. The strike they launched in September over the powers of notaries public continued until the end of the year. The judiciary was thus paralysed for half a year in 2014.

No steps were made to amend the 2006 Constitution, announced for 2014, although the representatives of nearly all political parties again reiterated the need to change it. 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. All comments of the current constitutional order and the problems it has generated still apply. 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.

SUMARRY

Right to Life

1. The Constitution of the Republic of Serbia lays down that human life is inviolable, that there shall be no death penalty in Serbia and that the right to life may not be derogated from. Serbia's laws specify which state agents may use lethal weapons and in which situations. These laws are in accordance with ECHR standards.

2. The Criminal Code includes a chapter on crimes against life and body incriminating various forms of violent deaths as well as numerous categories of other offences that may threaten human lives and health. Measures to protect people whose lives may be at risk are set out also in the Criminal Procedure Code. This Code also lays down 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. The valid criminal legislation thus does not hinder the conduct of effective investigations into crimes threatening human life. However, serious problems often arise in practice with regard to investigations of incidents in which people were deprived of their lives or faced serious life threats.

3. The problem of protecting women from domestic violence remained prominent in 2014. Twenty four women were killed in the domestic-partner context in the first half of 2014. Another fact that should be borne in mind is that numerous crimes committed during the armed conflicts in Croatia, Bosnia and Herzegovina and Kosovo have not been processed or investigated yet and that their perpetrators have not been brought to justice, although the state is under the obligation to criminally prosecute them. Furthermore, the perpetrators of a number of murders, which the public believes the state authorities may have been implicated in, particularly those committed before 2000, have never been identified.

Prohibition of Ill-Treatment

1. Under the Constitution of the Republic of Serbia, human dignity, life and physical and mental integrity shall be inviolable and no one may be subjected to torture, inhuman or degrading treatment or punishment, or subjected to medical and other experiments without their free consent. The Criminal Code provisions on torture and ill-treatment incriminate extortion of statements and torture and ill-treatment. These articles include questionable 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.

2. The penalties are not proportionate to the severity and gravity of this crime. Ill-treatment and torture warrants maximum eight years' imprisonment, while the extortion of a statement warrants 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. The Criminal Procedure Code provides for summary criminal proceedings against defendants accused of these crimes, which practically means that no investigations are to be conducted into crimes prosecuted summarily unless the public prosecutor undertakes specific investigation actions at his own initiative or on the order of the court.

Status of Persons Deprived of Liberty

1. The new Penal Sanctions Enforcement Act, which thoroughly governs the work of a new institute, the penal sanctions enforcement judges, came into force on 1 September 2014. Penal sanctions enforcement judges were introduced to review convicts' complaints of violations of their individual rights in the third instance and to review motions for court protection filed directly by convicts claiming their physical integrity or life is seriously jeopardised.

2. Serbian penitentiaries are still overcrowded and the living conditions in some of them are so desultory that they may amount to inhuman and degrading treatment. The situation is the most critical in Pavilion IV of the Sremska Mitrovica penitentiary, Pavilion VII of the Požarevac penitentiary, a large part of the Belgrade District Prison, the Acute Psychiatry Ward of the Special Prison Hospital in Belgrade, etc. Most police stations lack adequate or sufficient custody facilities and hold the people they took into custody in the prisons.

3. The increasing problem of overcrowded penitentiaries prompted the Serbian Government to enact the Strategy to Reduce Overcrowding in Penitentiaries in the 2010–2015 Period. The Action Plan for the Implementation of the 2010 Strategy was adopted in 2011. The number of inmates in Serbian penitentiaries was reduced by slightly over 1,000 from 2010, when the Strategy was adopted, until the end of 2014. Remanded prisoners accounted for around 1,800 and convicted prisoners for around 10,600 of the inmate population in 2014.

4. The drop in the number of remanded prisoners was the consequence of fewer criminal proceedings instituted against them rather than of fewer court pre-trial detention (PDT) orders. The enforcement of measures alternative to pre-trial detention was negligible compared to the number of pre-trial detention orders, which remained unchanged. Hardly any courts applied any other measures for ensuring the presence of the defendants and the unhindered conduct of criminal proceedings apart from pre-trial detention.

5. This practice has led to the fact that around 20,000 days of unlawful PTD are ordered every year. It also has severe financial impact on the state budget. For

example, in the 1 October 2013–1 November 2014 period, a total of 149,208,100.00 RSD or 1,223,017.00 Euro were paid in damages to people wrongfully held in pre-trial detention. The competent courts awarded around 5,000 RSD on average per day to 204 people, who had wrongfully been held in PTD for altogether 30,149 days.

6. The Reintegration and Alternative Sanctions Department has achieved good results given its current capacities. The further consolidation of the Probation Service and its probation offices and greater resort to non-custodial sanctions by the judicial authorities will lead to a reduction of the convict population. The Ministry of Justice said that 25 probation offices were operational in Serbia and that they covered the jurisdictions of all the Higher Courts.

7. The Non-Custodial Sanctions and Measures Enforcement Act, which came into force on 1 September 2014, should also lead to lesser overcrowding of Serbian prisons. The effective enforcement of this law calls for considerable capacity building of the Probation Service, which is at present manned by only 42 probation officers.

Prohibition of Slavery, Forced Labour, Trafficking in Humans and Organs

1. 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. Although criminal law lays down severe penalties for human trafficking enabling the punishment of 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.

2. A number of people suspected of trafficking in humans for the purpose of labour or sexual exploitation were arrested across Serbia in 2014. Judging by the reports of media, NGOs and international organisations, the fight against human trafficking improved to an extent in 2014. NGOs have been alerting to the courts' failure to confiscate the proceeds of crime of every convicted human trafficker.

3. 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 the phenomenon.

4. Harvesting of organs or body parts is one of the purposes of the crime of human trafficking. A simple Internet search shows that there is a supply and demand for human organs both in Serbia and the region. Those willing to sell their

organs usually say they resorted to this drastic move because they could not make ends meet otherwise.

5. The key problems from the human rights perspective arise from inadequate responses to the increased numbers of children and young people who are victims of human trafficking and of victims trafficked for the purpose of labour exploitation and begging, the fact that the victims of human trafficking do not have access to redress for gross violations of their rights and that the victims of human trafficking for the purpose of sexual exploitation can still be held liable for prostitution. The state's responses to suppress human trafficking are still inadequate and it needs to invest equal efforts in improving the legislative framework and in improving the practices to ensure the full enjoyment of the enshrined rights.

6. The number of reports on human smuggling via the Republic of Serbia towards Western European countries has been increasing every year. The illegal migration routes pass through Serbia to Croatia and Hungary and towards other EU member states. Most of the smugglers are nationals of Serbia, while most of the smuggled migrants originate from Asian and African countries.

7. The adoption of the Decree on the Social Inclusion Measures for Welfare Beneficiaries in 2014, under which welfare beneficiaries will have to work to continue receiving dole, met with sharp criticism. Experts qualified individual provisions of the Decree as interference in the rights of vulnerable categories of the population that are enshrined in the Constitution and the law.

Judicial Reform and Court Independence and Impartiality

1. The Constitution of the Republic of Serbia includes provisions on the right to a fair trial. The full exercise of this right, however, requires a thorough reform of the Serbian judiciary, which was launched in December 2009 with the general (re) appointment of the judges and was still ongoing in 2014.

2. The National Judicial Reform Strategy for the 2013–2018 Period was adopted in 2013. Under the proposed measures, all preparations for amending the constitutional provisions on the judiciary are to be completed by 2018, to ensure the fulfilment of the requirements regarding judicial independence, efficiency and accountability. The criteria for opening accession talks on Chapter 23 – Judiciary and Fundamental Rights and the recommendations Serbia is to fulfil in the process were defined during the screening process, which was completed in July 2014.

3. Serbia's new court network, governed by the Act on the Seats and Jurisdictions of Courts and Public Prosecutor's Offices, started operating on 1 January 2014 and consists of courts of general jurisdiction and specialised courts. Under the Act, the network of courts of general jurisdiction comprises 66 Basic Courts with 29 court units and 58 Basic Public Prosecution Services, 25 Higher Courts and 25 Higher Public Prosecution Services, 16 Commercial Courts, four Appellate Public

Prosecution Services and four Appellate Courts, in Belgrade, Kragujevac, Niš and Novi Sad. There are 44 Misdemeanour Courts. Serbia also has the Supreme Court of Cassation and the Constitutional Court.

4. The procedure for recruiting and promoting judges and prosecutors does not guarantee independence from other government branches. Serbia should ensure that when amending the Constitution and developing new rules, professionalism and integrity become the main drivers in the appointment process, while the nomination procedure should be transparent and merit based. The role of the National Assembly in the election and dismissal of judges, court presidents, the President of the Supreme Court of Cassation and the Republican Public Prosecutor are a direct risk to judicial independence. The situation is similar with respect to the election of the State Prosecutorial Council.

5. The reintegration in the justice system of the circa 800 judges and prosecutors reinstated pursuant to a Constitutional Court decision has been one of the main challenges in the past two years. Another step with long-term consequences was the appointment to permanent tenures of the 900 or so judges elected to three-year terms in office in 2009. The fact that the HJC had not set the criteria for appraising their performance 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 the Act on Judges, under which judges shall be appointed in the event their performance is appraised as satisfactory.

6. The HJC and SPC in 2014 adopted Rulebooks for appraising the performance of judges and prosecutors. Serbia lacked a system for the regular and systematic appraisal of the performance of judges and prosecutors based on clear and transparent criteria, which impacts on the career of judges and prosecutors at any level, including for management positions.

7. The Constitution guarantees the so-called principle of non-transferability of judges. 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. The Act on Judges prescribes the allocation of cases solely on the basis of the designation and case file number in an order set in advance for each calendar year. However, not all courts in Serbia use the automated random case allocation system. Some of them allocate cases to judges in alphabetical order and pursuant to the annual schedules adopted by the court presidents.

8. Financial dependence on other branches of government definitely affects judicial independence. The HJC and SPC continued sharing responsibility with the Justice Ministry regarding budget planning, execution and oversight.

9. 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. To make things worse, the highest court authorities usually do not react to pressures by the executive.

Fair Trial

1. Although the Constitution guarantees everyone the right to equal legal protection without discrimination, the lack of an adequate free legal aid system is one of the problems arising with respect to the right to a fair trial. The Strategy on the Development of a Free Legal Aid System in the Republic of Serbia for the 2011–2013 Period was enacted but the law on legal aid was not adopted by the end of 2014.

2. The enjoyment of this right is impeded by the fact that the Serbian courts are still staggering under huge backlogs although the adjudication of such cases and trials within a reasonable time had been among the top priorities of the Serbian judiciary for years. The backlog of court cases remained a concern, with 2.8 million cases pending at the end of 2013.

3. The 2013 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. The claims are reviewed in accordance with the non-contentious procedure rules. 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.

4. The Law on Mediation in Dispute Resolution adopted in May 2014 is to enter into force on 1 January 2015 and is likely to contribute to relieving the courts of their caseloads. Mediation shall be conducted on a voluntary basis, and the mediators should be neutral and under the obligation to respect the equality of the parties, ensure the exclusion of the public, maintain confidentiality and proceed with urgency. Furthermore, the evidence presented in these proceedings may not be used in other proceedings.

5. According to a public opinion poll, 84% of the population thinks that the judiciary is inefficient, 83% thinks that it is under the influence of politicians and other interest groups, 82% thinks it is partial and 71% does not trust the courts in Serbia.

6. The judicial system was blocked several times in 2014. These blockades were so long that the courts were effectively paralysed for over half a year. The courts did not operate in the first months of the year due to the reorganisation of the court network. Their registries did not open until March. The first strike staged by lawyers (over taxes) in June 2014 resulted in the adjournment of numerous trials.

7. The entry into force of the Notaries Public Act crucially impacted on the exercise of the right to a fair trial. The powers this law vested in notaries public prompted the Serbian Bar Association to launch a months-long strike that totally blocked the work of the judiciary in the last quarter of the year. The strike began on 17 September 2014 and ended only in January 2015. A huge number of trials were postponed during the strike. The first month of the strike passed without any substantial negotiations between the lawyers and the Ministry, because Justice Minister Nikola Selaković conditioned the talks by the immediate end of the strike, a demand refused by the lawyers.

8. The lawyers' protest was not aimed at abolishing the notarial profession in Serbia, but at changing their competences and regulating their relations with other legal professionals. The 2013 amendments to the Notaries Public Act provided the notaries with sole jurisdiction for real estate contracts among all natural and legal persons. According to the representatives of the lawyers, there are over eight thousand lawyers in Serbia drawing up of contracts is presumed to be the predominant or sole activity of half of them. The new regulations have thus prevented a large number of people from doing their job, which has been entirely entrusted to a much smaller number of notaries".

9. The very appointment of the notaries public was also disputable. The changes in the exam rules (since the candidates took the test under different rules because the rulebook was changed in the meantime), the appointment of the recruitment commissions, the violation of the legal appointment criteria and the establishment of the Notary Chamber bodies although not enough notaries were appointed were severely criticised.

10. Expiry of the statutes of limitations leading to discontinuations of trials has been one of the problems constantly plaguing the Serbian judiciary, indicating the inefficiency and poor organisation of the judiciary.

Right to Privacy and Confidentiality of Correspondence

1. The Constitution of Serbia guarantees the inviolability of physical and mental integrity, inviolability of the home and confidentiality of letters and other means of communication. 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.

2. The National Assembly in 2014 adopted the Act Amending the Electronic Communications Act. Under this Act, security agencies and operators are under the

obligation to keep records of access to the operators' databases. The National Assembly also adopted the Act Amending the Criminal Procedure Code in 2014, which stipulates that only the court may, on the motion of the public prosecutor, order derogation from the constitutionally guaranteed right to the confidentiality of correspondence. The Assembly in June 2014 adopted the Act Amending the Security Intelligence Agency Act, which includes amendments of the impugned provisions.

3. The provisional powers vested in the Assembly Security Agency Oversight Committee do not provide sufficient safeguards ensuring that its oversight is actually effective.

Personal Data Protection and Protection of Privacy

1. The Constitution of the Republic of Serbia guarantees the protection of personal data. The Personal Data Protection Act is the main law regulating this field. The Action Plan for the Implementation of the Personal Data Protection Strategy was still not adopted in 2014. 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 reporting period. Given that the legal framework for the protection of personal data is not in line with EU *acquis*, this area needs to be aligned with European standards and practice as soon as possible.

2. The Commissioner for Information of Public Importance and Personal Data Protection drafted a Model Personal Data Protection Act, which comprehensively governs personal data protection and introduces new personal data protection institutes. It is in accordance with Council of Europe and European Union documents.

3. Provisions relevant to personal data protection can also be found in the Classified Information Act and the laws on detectives and on private security. However, the numerous by-laws requisite for the enforcement of these laws were not adopted by the end of the year.

4. The media in 2014 frequently published the personal data of people suspected of crime and under investigation, as well as information about their personal and family lives, including their state of health, which falls under the category of particularly sensitive data. The Commissioner for Information of Public Importance and Personal Data Protection also alerted to the fact that members of the public would be unable to access investigation-related data published by the media if they filed requests for information of public importance because such data were confidential.

5. In mid-December 2014, the Privatisation Agency's database with the personal data of all citizens owning free shares in public companies was made publicly

accessible on the Agency website and the link leading to the database was blocked after the Commissioner for the Protection of Equality intervened and warned that there were numerous ways in which such data could be abused. The fact that the Criminal Code does not incriminate identity theft does not help. The Commissioner for Information of Public Importance and Personal Data Protection initiated a check of the enforcement of the Personal Data Protection Act by the Privatisation Agency.

Freedom of Thought, Conscience and Religion

1. 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. 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 or racial hatred.

2. The Act on Churches and Religious Communities governs in detail the issues related to the exercise of the right to the freedom of thought, conscience and religion. Some provisions in the Rulebook on the Register of Churches and Religious Communities are disputable and may constitute a breach of the principle of state neutrality towards the internal affairs of religious communities.

3. Access to church services in some minority languages is not consistently guaranteed in practice because the law does not consistently guarantee this right. Traditional religious communities are exempted from the obligation to issue fiscal receipts. This gives rise to the issue of using church facilities and conducting activities that have obviously nothing to do with religious services.

4. The Constitutional Court found that the Rulebook on the Register of Churches and Religious Communities, which lays down much stricter registration requirements for traditional and confessional religions, were, indeed different, but did not consider them discriminatory. The difference exists in their obligation to provide evidence, but the registration procedure involves only checks of whether the applicants fulfil the legal requirements to acquire legal personality, which the traditional churches and religious communities have already fulfilled as they had been recognised under specific laws in the past.

5. The Islamic Community in Serbia continued repossessing the property it considers its own in 2014. It began by repossessing a building in the heart of Novi Pazar, where the College of Islamic Studies is now located.

6. The Serbian Orthodox Church (SOC) issued a number of statements re the Pride Parade. The SOC Patriarch made inappropriate statements encouraging the atmosphere of violence in society and amounting to inadmissible interference of the church in state affairs.

Freedom of Expression

1. The Constitution of Serbia guarantees the right to freedom of expression but it also lays down that freedom of expression may be restricted by law. The Constitution guarantees the freedom of the press as well. The National Assembly in 2014 adopted a set of media laws – the Public Information and Media Act, the Electronic Media Act and the Public Media Services Act. The media laws have established a proper legislative framework for achieving all the important goals set out in the Media Strategy and for the first time define programmes of public interest. Some of the shortcomings in these laws may, however, give rise to specific problems in practice.

2. The main achievement of the new media laws is the state's clear and unambiguous commitment to withdraw from media ownership. Public media services, institutions providing information in national minority languages and to citizens in Kosovo will remain in public ownership. The other outlets are to be privatised. The law also introduces project-based funding of media producing programmes of public interest but it gives the last say on which outlets will be granted funding to the competent ministry and the provincial and local self-governments.

3. The Public Media Services Act envisages good systemic solutions regarding the funding of public media services but, on the other hand, establishes a provisional system of budget funding until the end of 2015. The enforcement of this law was, however, undermined at the outset by the provision under which licence fees shall be charged as of 1 January 2016, and the funding of the public media services will depend on the collection rate after that date. Public media services must, on the one hand, be genuinely separated from political and economic power centres whilst, on the other, they must account to the citizens. The Act in that sense provides a solid starting point, that is, a legal framework enabling the public media services to achieve full independence and become genuine mouthpieces of Serbia's citizens, rather than of its political elites.

4. The media reform impacted the most on electronic media, as it aligned the national legislation with the European regulatory framework and introduced numerous new institutes drawing Serbia closer to rules applied in the EU internal market.

5. The degree of media freedoms in Serbia fell considerably in 2014. Political and economic pressures on the outlets were stepped up; censorship and self-censorship grew, accompanied by the hacking of websites publishing critical reports, removal of critical texts from social networks, intensified assaults on journalists and the further deterioration of the already grave financial difficulties of media outlets.

6. The situation in Serbia's media was criticised by a number of actors. European Union representatives praised the adoption of the media laws and progress in investigating the murders of journalists, but warned that the genuine effects of the new laws would be visible only once their enforcement began. OSCE Representative

on Freedom of the Media Dunja Mijatović voiced concern over increasing Internet censorship. Prime Minister Aleksandar Vučić accused her of waging a filthy campaign against him in Serbia and abroad and demanded she apologise. In its annual report, the US State Department also qualified harassment of journalists and pressure on them to self-censor as a significant problem.

7. Serbia's media market is oversaturated: 1,379 outlets were registered at the end of 2014. Over 100 of them were TV stations. Fifteen dailies were published, although the number of people buying newspapers is very small.

8. Assaults on journalists were frequent. According to the Independent Journalists' Association of Serbia (IJAS), nine assaults on journalists and one on their property were registered in the first eight months of the year. The safety of investigative reporters is particularly jeopardised. Dismissals of a number of editors in 2014 were perceived as politically motivated. These dismissals, coupled with the pressures on and even arrests of reporters for allegedly spreading panic during the disastrous floods, have all led to greater self-censorship in the media. Despite some progress, the cases of journalists killed in the 1990s remained unsolved in 2014.

9. Lack of professionalism in journalism was identified a long time ago as a grave problem undermining the reputation of the profession and the right of Serbia's citizens to receive true and reliable information on time. Violations of the Press Code of Conduct have become increasingly apparent, particularly on the part of tabloids, which have not suffered any consequences for persecuting people, publishing unchecked information and which have often been used to clamp down on opposition politicians and public figures not supporting the ruling parties.

Freedom of Peaceful Assembly

1. The right to the 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. Outdoor rallies, demonstrations and other forms of assembly shall be notified to the state authorities in accordance with the law. The Public Assembly Act, which was adopted back in 1992, was amended several times in the meantime, but some of its provisions are still obsolete and largely incompatible with international standards and, indeed, with the relevant article of the Constitution. The Ministry of Internal Affairs in 2014 prepared a new Draft Peaceful Assembly Act, but it had not been submitted to parliament for adoption by the end of the reporting period.

2. General prohibitions of assemblies at specific venues laid down in the Public Assembly Act are not in compliance with either the Constitution or international standards. Under the Act, cities and municipalities shall in advance designate the "appropriate" venues at which public assemblies may be held. The Act unneces-

sarily limits public processions by setting out that a public procession along a public traffic route must be continuous.

3. Organisers of assemblies in Serbia are under the obligation to notify the authorities of the assemblies they are planning to hold, but do not need to wait for their approval, which means that an assembly in Serbia is subject to pre-notification but not to consent. The law does not require of the organisers to obtain various consents and approvals from the public utility authorities, but they are in practice required to do so under local self-government regulations, wherefore it is occasionally ultimately up to the public utility authorities whether an assembly will be held.

4. 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 or when an assembly aimed at the violent change of the constitutional order, undermining the territorial integrity or independence of the Republic of Serbia, at violating constitutionally guaranteed human and civil rights and freedoms, or at inciting and encouraging national, racial or religious hatred and intolerance.

5. The first Pride Parade in Belgrade since 2010 was held on 28 September 2014. The organisers were invited to the meetings in the Belgrade City Assembly, held every Wednesday, and said that these meetings had greatly facilitated the organisation of the Pride Parade. The Pride Parade, in which between 1,000 and 1,500 people took part, was safeguarded by a large number of police and gendarmerie officers. Strong police forces with anti-riot gear blocked the centre of Belgrade. The Pride Parade was not accompanied by counter-demonstrations. The Dveri Movement, which opposed the Parade, organised an event the previous evening, on Saturday, 27 September. After the Pride Parade ended in the afternoon of 28 September, the sympathisers of the Dveri Movement rallied at a special prayer service in the St. Sava Temple and then proceeded to the Cathedral Church of St. Michael the Archangel. This assembly passed without incident as well.

6. The procession under the slogan “Hate-Free Zone” was held in Belgrade on 27 June 2014 to mark International Pride Day. The 100 or so participants were safeguarded by around 50 policemen. None of the participants were assaulted either verbally or physically.

7. A group of aliens, activists of the Falun Gong organisation, filed a total of nine notices of public assemblies with Belgrade police authorities. The ruling prohibiting the assemblies was issued on 11 December 2014 and only said that the requirements for their ban under Article 11 of the Public Assembly Act had been met, without going into the specific circumstances of the case. The police on 14 December deprived of liberty nine activists, all Bulgarian nationals, and one Finnish and one Slovak activists the following day. All arrested aliens were taken to the Alien Reception Centre in Padinska Skela, where they were served rulings ordering them to leave the Republic of Serbia immediately.

Freedom of Association

1. The Constitution of Serbia guarantees the freedom to join and form political, trade union and all other forms of associations. The Constitution 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.

2. The exercise of the freedom of association is governed in greater detail by the Act on Associations and the Act on Political Parties. 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.

3. 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 or cover the funds an association lacks to implement them. These funds shall be disbursed through public calls for proposals. Under the Draft 2013 Act on the Budget Balance Sheet, civic associations were allocated 6,214,569,882.00 RSD by the republican authorities, 7,314,860,355.00 RSD by the local self-government units and 851,511,215.00 RSD by the Vojvodina provincial authorities. Data on overall allocations for civil society organisations in 2014 were unavailable by the end of the reporting period.

4. The Ministry of Labour, Employment, Veteran and Social Issues in 2014 published a call for proposals for civil society organisations extending social protection services. The selection procedure was characterised by numerous irregularities. Public alerts to the deficiencies during the selection procedure prompted Minister Aleksandar Vulin to threaten CSOs with inspections and checks of their business operations over the past ten years and state that he would reallocate the funding for social protection into the Fund for Treatment of Children with Rare Diseases. The CSOs called for the annulment of the call, Vulin's dismissal and the *ex officio* investigation and prosecution of all those who attempted to misuse the tax payers' money. The prosecution service is under the obligation to initiate an *ex officio* investigation into the reasonable suspicion that an organised group, the members of which work in the competent state and local institutions and head the newly-established civic associations, abused the call with the aim of misappropriating budget funds.

5. The Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia prohibits the activities of organisations reaffirming neo-Nazi and Fascist ideas in their statutes and programmes. Despite the relatively good legal framework, which has potential to pre-empt propagation of neo-Nazi and Fascist ideas, associations that aim to incite national, racial, religious and other hatred and intolerance or limit the rights and freedoms of others nevertheless exist in Serbia. The organisation Srbski obraz, for instance, has suf-

ferred no consequences for staging events at public venues. Srbski obraz organised a number of events to mark the return of ICTY indictee Vojislav Šešelj, who was provisionally released from detention on 6 November 2014 for health reasons.

Right to Asylum

1. 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 in the Republic of Serbia and the rights and obligations of asylum seekers, refugees and people granted subsidiary protection.

2. 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 Asylum Office did not register asylum seekers in the temporary Asylum Centres in Tutin and Sjenica from January to mid-April 2014.

3. The intention of a person to seek asylum can be recognised in the proceedings before the misdemeanours judge, who can suspend the proceedings and instruct him to apply for asylum. The Misdemeanour Courts' practices in such situations are inconsistent. The asylum procedure is initiated by the submission of an asylum application on the prescribed form that can be obtained only from an authorised officer of the Asylum Office. The Asylum Commission reviews appeals of Asylum Office decisions. 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.

4. Only one asylum-related administrative dispute was initiated in the first five months of the year. The Administrative Court rendered judgments on five claims filed in 2013 within the same period. It rejected three of the claims and upheld two, revoking the Asylum Commission's rulings. The Administrative Court has to date mostly limited itself to reviewing whether the procedural aspects of the asylum procedure had been observed.

5. One would have expected the first- and second-instance asylum authorities to take heed of the two Administrative Court judgments revoking the Asylum Commission rulings and abandon their practice of systematically abusing the safe country rule and first establish whether a third country was really safe for the asylum seeker, i.e. whether it administered an efficient and fair asylum procedure. The Asylum Office nonetheless continued automatically applying the safe third country concept in 2014.

6. The Commissariat for Refugees and Migrants operated five Asylum Centres in 2014: in Banja Koviljača, Bogovađa, Sjenica, Tutin, Obrenovac and, as of

August 2014, in Krnjača. Some asylum-seekers, who have failed to find accommodation in the Asylum Centres or obtain certificates of intention to seek asylum within the statutory deadline, fear deportation to the FYR of Macedonia. The accommodation of asylum seekers is within the purview of the Commissariat for Refugees and Migrations and is funded from the state budget. Two million RSD were allocated in the 2014 Budget Act for the integration of persons approved subsidiary protection or refugee status.

7. An MIA Project Group and Working Group for drafting amendments to the Asylum Act was established pursuant to an MIA decision in December 2013. The work of the Project Group was an example of good practice of bringing together civil society, international organisations and state authorities in a broad forum with the common goal – to improve the asylum system in the Republic of Serbia. However, the work on the amendments to the Asylum Act was halted after the early parliamentary elections in Serbia in March 2014.

8. In February 2014, the Protector of Citizens identified shortcomings in the work of the MIA and the Commissariat for Refugees and Migrations with respect to aliens expressing the intention to seek asylum in Serbia. The Protector of Citizens forwarded his 26 recommendations based on his findings to the competent state authorities – the MIA Police Directorate and the Commissariat. The recommendations have been partly fulfilled.

Right to Work

1. The Constitution guarantees the right to work and free choice of occupation. Labour is regulated primarily by the Labour Act and the Employment and Unemployment Insurance Act. The General Collective Agreement regulates relations between employers and workers in greater detail. The National Employment Strategy for the 2011–2020 Period was adopted in May 2011. The Strategy envisages a rise in employment from 45.5% to 66%.

2. The amendments to the Labour Act came into force on 29 July 2014, after they were adopted in summary proceedings and in the absence of a proper public debate. Statements by officials during the drafting of the amendments led to the impression that all the provisions curtailing workers' rights were prompted by the need to align them with international standards, EU accession requirements and ILO conventions.

3. The Labour Act amendments primarily concern working and hiring conditions. Fixed-term employment was increased from 12 to 24 months. Overtime is now limited to eight hours a week. The amendments include provisions providing greater protection to pregnant and breastfeeding workers. The amendments allow employers to offer annexes to employment contracts to workers, who, should they refuse to sign them, are entitled to challenge their lawfulness in court if they are dis-

missed. The provisions on disciplinary measures are located in the part of the law governing termination of work contracts by the employers, but fail to elaborate the disciplinary proceedings, who is to conduct them, how disciplinary accountability is established or the disciplinary measures imposed.

4. Firing has been simplified as the new provisions eliminated the prior complicated procedure. Many trade unions believe that the amendments were adopted to facilitate dismissals and cut the employers' costs, with a view to attracting foreign investors, who were unhappy with the conditions for doing business under the prior provisions. The amendments extend the list of reasons why employers may dismiss workers. The Labour Act also provides special protection from dismissal to specific categories of workers: pregnant workers and workers on maternity or childcare leave and also to the workers' representatives during their terms in office provided they acted in keeping with the law, general enactments and their employment contracts.

5. A worker is entitled to complain against a violation or denial of his employment rights to the labour inspection, launch proceedings before the competent court or require the arbitration of the disputed issues together with the employer. The provisions of the Peaceful Settlement of Labour Disputes Act, adopted back in 2004, apply to individual and collective labour disputes. Despite its numerous advantages, the alternative peaceful labour dispute settlement institute has not succeeded in positioning itself as the preferred alternative to court protection, which implies the need to further strengthen the relevant Agency for the Peaceful Settlement of Labour Disputes.

6. The amendments to the Labour Act commendably specify the powers of labour inspectors, although the capacities of the labour inspectorate have to be raised as soon as possible. The labour inspectorate's limited efficiency have been recognised also by the Serbian citizens – nearly 40% list inefficiency, corruption and unequal treatment as the chief problems in the work of the labour inspectors. Labour inspectors performed 18,993 checks in the May-September 2014 period and issued 3,752 rulings requiring the elimination of the shortcomings they found and 176 rulings prohibiting work at the workplaces. In this period, they filed 1,545 motions to initiate misdemeanour proceedings against the companies (8.13% of all oversights performed in this period) and 13 criminal reports.

7. A total of 757,243 (20.3%) job seekers were registered with the National Employment Service (NES) in August 2014, or 0.5% less than at the beginning of the year; 392,562 of them were women. In 2014, 21,895 people found jobs; 261,750 people registered with the NES were first-time job seekers. Job hunting lasts nearly four years on average. Young people account for 26.2% percent of the unemployed. The number of jobless people peaked in February 2014, when 25.1% of them were registered with the NES.

8. Nearly one quarter of Serbia's working age population is unemployed. The employment rate stood at 39.5% in the second quarter of 2014. According to the

World Economic Forum's 2014–2015 Global Competitiveness Report, the chief obstacles to doing business in Serbia include inefficient bureaucracy (13.7%), limited access to funding (13.3%) and corruption (11.9%). Serbia ranks 69th on the irregular payments and bribes and 115th on the hiring and firing practices indicators.

9. As far as hiring practices are concerned, surveys have shown that Serbia's citizens complain the most about corruption, in the public and private sectors alike. The only way to lower the level of corruption in the public sector recruitment process is to amend the labour-related laws and other regulations and introduce clear and binding criteria for hiring civil servants and stringent penalties for their violation. This requires a serious and comprehensive reform of the state administration and all regulations governing labour because that is the only way to depoliticise and professionalise the civil service. Unfortunately, the announced reforms in this field were not even launched in 2014.

10. Grey economy is one of the major challenges the Serbian Government has faced in its efforts to reduce unemployment. Although it said it would take active steps to curb grey economy, no major activities yielding satisfactory results were undertaken in 2014.

Right to Just and Favourable Conditions of Work

The Constitution guarantees the right of workers to fair remuneration for their work, although it does not include a provision explicitly prescribing equal remuneration for work of equal value. The Social-Economic Council in 2014 failed to reach the consensus requisite for a decision on the amount of the minimum wage, wherefore the decision was reached by the Government. The Government set the minimum cost of labour in Serbia in 2015 at 121 RSD per hour, excluding taxes and mandatory social insurance contributions. This decision applies as of 1 January 2015 and will result in an increase of the minimum wage by 5.2 percent, to 28,430.50 RSD per month (gross).

2. The amendments to the Labour Act changed the way the minimum cost of labour is calculated, which may result in the considerable depreciation of its value even if the amount set was realistic at the time the decision was taken, due to the expected inflation and other elements factored in its calculation.

3. Under the amendments to the Labour Act, a worker is under the obligation to work overtime in the event of a *force majeure*, an unexpected increase in the volume of work and in other instances when it is necessary to complete unplanned work. Employers in Serbia often abuse the option of rescheduling working hours provided for by the Labour Act and do not qualify their workers' work after hours as overtime, but rather as rescheduling their working hours.

4. The state budget was revised in the autumn of 2014 and the National Assembly adopted two laws temporarily slashing pensions and public sector salaries.

Pensions above 25,000 RSD were cut by 22%, while public sector wages were linearly cut by 10%. The laws came into force in November 2014 and will apply until the end of 2017. The Government explained its austerity measures by the need to ensure public finance stability, primarily to return Serbia to sustainable fiscal deficit levels and a falling debt-to-GDP path, and, thus, macroeconomic stability. Experts have, however, expressed serious doubts and concerns that these measures will not be effective per se, unless they are accompanied by additional measures, above all, the reform of the state administration and public companies and their downsizing.

5. Under the amendments to the Labour Act, the statements of account of earnings, and/or compensations of earnings the employers are under the obligation to pay and hand over to their workers shall constitute enforceable instruments. This provision may facilitate the position of unpaid workers, because the courts can order the garnishment of the unpaid earnings from the company accounts and their payment to the workers. This is, however, possible only if there is money in the company accounts; otherwise, the companies go bankrupt and the workers have to wait to be paid out of the bankruptcy estate.

6. It remains unknown how many workers in Serbia are not paid regularly. According to the Director of the Employers Union, only 21.8% of the private companies regularly pay their workers for the preceding month on the 1st day of the following month. Around 39% pay the salaries within 60 days and the remaining 39% pay them out with delays exceeding two months.

7. The amendments to the Pension and Disability Insurance Act adopted in July 2014 provide a better definition of insured farmers. The amendments reduce the households' financial obligations.

Association in Trade Unions and Strikes

1. 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. The right to strike is guaranteed by the Constitution as well. 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.

2. Under the Strike Act, this right 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 human health are not jeopardised, that direct pecuniary damage is not inflicted and that work may continue upon the termination of strike. 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 but the draft law was not submitted to parliament for adoption in 2014.

3. The year behind us was characterised by a large number of strikes: by lawyers, teachers, policemen and health workers. Workers of unsuccessfully privatised companies and companies undergoing restructuring staged strikes as well. Public sector staff strikes, unfortunately, received more public attention than the strikes of workers, who have been fighting for their rights for decades.

4. Some strikes, such as the ones staged by the lawyers and teachers, brought to light the exceptional resolve and unity of the protesters, which the trade unions had not succeeded in mustering in the past. Lack of social dialogue is apparently one of the main reasons for strikes in Serbia, as the teachers' and lawyers' strikes demonstrate: talks with the Government were slow, marked by continuous recriminations and the Government's lack of readiness to accept some reasonable suggestions made by the protesters.

5. The months-long teachers' strike undermined the already fragile stability of the education system and public trust in it. Sporadic measures to improve the material status of teachers, the school curricula and the conditions in schools have not yielded results. The financial status of teachers is a serious problem; teachers' salaries are lower than the average national wage and the lowest in the region. The teachers launched their strike in October 2014 and it was ongoing at the end of the reporting period. The teachers' trade unions demanded that school staff be exempted from the 10% public sector salary cuts, that a deadline by which a law on public sector salary grades will be adopted be set and that they sign a separate collective agreement. The Ministry of Education, Science and Technological Development did not fulfil the teachers' demands and the strike continued into 2015.

Right to Social Security

1. The Constitution lays down that citizens and families shall be entitled to social protection. The Constitution also guarantees the rights of workers 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 guarantees special protection to families, mothers, single parents and children.

2. Social security comprises pension, disability, health and unemployment insurance. These issues are regulated by a number of laws. The 2010 amendments to the Pension and Disability Insurance Act lay down stricter retirement requirements and envisage a gradual increase of the retirement ages of men and women until 2023. The Serbian Assembly adopted amendments to the Pension and Disability Insurance Act in July 2014 envisaging cuts of pensions of people taking early retirement and gradually increasing the retirement age for women to equate it with that for men (65) by 2023.

3. 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 are entitled to establish social work centres, while the republican and provincial authorities are entitled to establish social protection institutions.

4. Social security rights include the right to welfare benefits, domiciliary care and assistance 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.

Right to Education

1. Under the Constitution, everyone shall have the right to education. Primary and secondary education are free of charge. Primary education is mandatory. Under the Constitution, all citizens shall have equal access to tertiary education.

2. According to the Serbian 2013–2018 Anti-Corruption Strategy, risks of corruption identified in the education sector are mostly associated with the insufficient transparency of a number of processes taking place within educational institutions, as well as with the great discretionary powers of the decision makers. The Action Plan for the Implementation of the Anti-Corruption Strategy recognises the need to change the current legal framework.

3. The Ministry of Education, Science and Technology has formed working groups to draft amendments to two systemic laws: the Primary Education Act and the Secondary Education Act. The working groups will begin working once the amendments to the corollary education law, the Act on the Bases of the Education System, are completed. The latter amendments were, *inter alia*, initiated by the anti-corruption strategic documents.

4. The Constitution guarantees the autonomy of the universities, colleges and scientific institutions. The amendments to the Higher Education Act adopted in September 2014 introduced a number of changes, including in the procedure for recognising foreign diplomas, and lay down shorter deadlines by which it has to be completed. The new provisions distinguish between recognition of foreign university diplomas for the purpose of employment in Serbia (professional recognition) and for the purpose of continuing education in Serbia (academic recognition). The Act specifies in detail the procedure for accrediting and licencing higher education institutions. The National Council is entitled to revoke a decision of the Accreditation and Quality Assurance Commission and approve a study programme i.e. render a final decision in the second instance.

5. The amendments to the Act enable the adoption of the requisite minimum teaching staff appointment criteria. Amendments aim at improving the quality of doctoral studies by stipulating that at least one member of the thesis committee must teach at a foreign university.

6. Out of 144 countries on the Index in the World Economic Forum Global Competitive Report 2014–2015, Serbia ranked 141st with respect to its capacity to retain talent and 143rd as per its capacity to attract talent.

7. The issue of the quality of doctoral theses ranked high on the public agenda in Serbia in 2014, after media reported on the plagiarised theses by Interior Minister Nebojša Stefanović, Belgrade Mayor Siniša Mali and former senior Democratic Party official Aleksandar Šapić, and the false PhD title of Megatrend University Rector Mića Jovanović.

Health Care

1. The right to health care is guaranteed by the Constitution. The Constitution imposes upon the state the positive obligation to facilitate the development of the health and physical culture. It also obliges the state to establish health insurance funds. Compulsory and voluntary health insurance is regulated by the Health Insurance Act. The Health Care Act stipulates that health care comprises curative, preventive, and rehabilitative care. Health care is funded from the health insurance funds, the state budget and by beneficiaries in cases specified by the law (participation).

2. Lack of access to health care may be attributed both to legislative deficiencies and the lax enforcement of the regulations. Diverse interpretations of the norms result in the violations of the rights of the patients, preventing them from accessing health services. Lack of staff in the medical institutions also undermines access to health care. The ban on hiring new staff has undercut the efficient provision of health services. The age breakdown of the health caregivers gives rise to concern. Some outpatient health clinics do not have any doctors under 50. The situation in the hospitals and clinics is even worse, as doctors need to complete years' of additional training after Medical School to earn specialist degrees.

3. The May 2014 amendments to the Mandatory Social Insurance Act reduced the health insurance contributions from 12.3% to 10.3%. According to the Euro Health Consumer Index for 2014 (EHCI 2014), the Republic of Serbia ranked 33rd with 473 points. A number of workers and their families cannot exercise their right to health insurance and health care mostly because their employers have not paid their health insurance contributions.

4. No visible progress has accompanied ten years of talk of reforming the health care system. Laws governing health care are still frequently amended, but only partially, incurring much more damage than good to the quality of health services.

5. The general dissatisfaction with the health system in Serbia is shared both by the patients and most health sector workers, non-medical and medical alike. Poor organisation, high corruption levels, political influence, non-transparency and lack of cooperation among the authorities charged with health all contribute to the desultory situation in this sector.

Prohibition of Discrimination and Status of Minorities

1. National Minorities and Minority Rights. – 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). The Advisory Committee in general concluded that Serbia invested significant efforts in respecting the rights of persons belonging to national minorities and developing anti-discriminatory policies, but that it still lacked a comprehensive and strategic approach to the integration of national minorities in Serbian society. The Advisory Committee welcomed the fact that in practice, non-citizens sharing a language with a national minority in Serbia were able to benefit from many of the same rights as persons recognised as belonging to national minorities. It, however, recalled its general view that citizenship should not be regarded as an element of the definition per se.

In the view of the Advisory Committee, the Anti-Discrimination Act has significantly strengthened the legislative framework promoting equality. It said that the actions of the Commissioner for the Protection of Equality, the Protector of Citizens and the Vojvodina Ombudsman were, however, hampered by a lack of sufficient staff, and that anti-discrimination legislation was still not sufficiently known or understood amongst the general public. The Advisory Committee qualified as highly regrettable that the recommendations of these institutions were not always followed up expeditiously by the authorities.

The Advisory Committee welcomed steps taken to strengthen the criminal law arsenal against hate motivated offences, in particular through the introduction of hate motivations as a mandatory aggravating circumstance for all ordinary criminal offences (Art. 54a of the Criminal Code) and said that this and other relevant provisions of criminal legislation needed to be more rigorously applied in order to ensure that hate-based offences are adequately investigated, prosecuted and punished.

The Advisory Committee emphasised that national minorities remained significantly under-represented in state-level public administrations and public enterprises and that it remained difficult for smaller national minorities to be represented in the National Assembly.

Furthermore, the Advisory Committee observed that the implementation of the right to use minority languages in contacts with authorities at the local level remained uneven across Serbia and that the education in minority languages is still a significant challenge.

The Constitutional Court in January 2014 rendered a decision declaring unconstitutional a number of provisions of the National Council of National Minorities Act (NCNMA) on the powers of the National Minority Councils.

The second National Minority Council elections were held in late October 2014. According to the report on the National Minority Council elections adopted

by the Republican Election Commission, 37.63% registered voters took part in the elections. Such a low turnout indicates that persons belonging to national minorities have not recognised the National Minority Councils as their representatives.

Problems in the enforcement of the NCNMA—The NCNMA has been in force for five years now, but there are difficulties in its enforcement. Furthermore, this law is not aligned with the other laws, it does not govern specific issues and some of its provisions are imprecise. The National Minority Councils have their share of responsibility for the situation as well. Their public image has been tainted by reports of their abuse of their legal powers and allocated budget funds and the significant influence of political parties on their work, which may lead to the creation of a political climate precluding the exercise of minority rights.

The National Minority Councils have recognised the Protector of Citizens and the Vojvodina Ombudsman as their partners in the endeavours to ensure the consistent enforcement of the law, as testified by the large number of complaints the Councils have filed with these independent authorities and the recommendations the latter communicated to the administrative authorities.

2. Roma Community. – Roma are one of the most vulnerable categories of the population in Serbia. Preparations for the drafting of the new Roma Strategy began in 2014.

The Roma National Minority Council was constituted in 2014. Given that more Roma declared their national affiliation at the 2011 Census, several thousand more names had to be entered in the special election roll to allow for direct elections. The entry of a large number of Roma in the separate election roll is a major success and can primarily be attributed to the campaigns of the Roma civil sector.

Legal provisions to register ‘legally invisible persons’ are being implemented and producing encouraging results, but the speed and efficiency of their enforcement needs to improve. Over 20,000 Roma have been registered in the vital registers to date. However, the legal provision allowing social welfare centres to be used as a temporary address for registration purposes is implemented unevenly across the country.

Discrimination against Roma still exists. Roma looking for jobs are frequently discriminated, they have difficulties accessing education and face discrimination throughout their schooling. The drop-out rate of Roma children is still high. The percentage of children of secondary school age in Roma settlements currently attending secondary school or higher stands at 21.6% while the share of children of that age attending school in the rest of the population stands at 89.1%

The living conditions of the Roma remain difficult. Those living in the numerous informal settlements are subject to a high degree of discrimination in accessing welfare, health care, employment and adequate housing, including the basic hygienic living conditions, water and electricity. Evictions and the right to housing are generally a big problem.

The Roma civil sector initiative regarding the adoption of a *lex specialis* for legalising informal Roma settlements is worthy of consideration. It would facilitate the regulation of the illegal settlements and their coverage by urban plans, which is prerequisite for the legalisation of individual facilities that would be conducted pursuant to the valid Legalisation Act.

The living conditions in the informal settlements are horrible, with most of their residents lacking electricity and water and elementary hygienic conditions. Fires often break out in the informal settlements in fall and winter, because their residents light candles or fires to keep themselves warm.

Roma suffered major damages during the May 2014 floods, but, unfortunately, the prospects that their problems will be addressed are much smaller than those of the rest of the population affected by the floods. It is difficult to determine the precise number of flooded Roma households and vulnerable Roma because of the desultory conditions they had lived in and lack of documents.

3. *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. LGBT persons are discriminated against with respect to access to health care, which is why they are reluctant to reveal their sexual orientation even when such information is of medical relevance.

The Action Plan for the Implementation of the Anti-Discrimination Strategy for the 2014–2018 Period envisages the drafting of a model Act on Registered Same-Sex Partnerships and a model Act Amending the Inheritance Act to equate marriage and civil partnerships and recognise the same sex partners' right of direct inheritance and public debates on these drafts in the last quarter of 2017.

After three banned Pride Parades, this event was organised on 28 September 2014 in Belgrade and it was the first that was not accompanied by incidents or organised violence. Around 30 events organised during Pride Week in the run up to the Parade also passed without incident.

LGBT activists, however, continued to be subject to threats and hate speech. Public officials should publicly and more systematically condemn or react to threats, physical assaults and cases of incitement to violence and hate speech from extremist groups against NGOs, prominent human rights defenders, etc.

The NGO Gay Straight Alliance (GSA) received a number of threats in 2014, including death threats and calls to kill its members and “cleanse” Serbia from this organisation. Threats were voiced in 2014 also against the Pride Parade organisers. The MIA High Technology Crime Department found that 39 people had threatened the organisers of the 2014 Pride Parade and spread hate speech on social networks. Criminal reports were filed against eight of the perpetrators. The Serbian Ministry of Internal Affairs made a positive step in 2014 and appointed a Liaison Officer for the LGBT Community within the Police Directorate.

There was no change in the treatment of same-sex orientation in the high-school textbooks in 2014. Discriminatory content is evident in the presentation of same-sex orientation as pathological and support of negative prejudices in biology, psychology and medical textbooks.

4. 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. These data do not coincide with those of the WHO or Eurostat, according to which persons with disabilities account for between 10 and 15 percent of the population.

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 within the existing spectrum of social services in Serbia. The social inclusion of persons with disabilities leaves a lot to be desired. The Serbian system of social services for persons with disabilities, however, is still largely centralised and characterised by a relatively limited number of services provided at the local level.

The estimates are that number of children with disabilities in education system has increased. However, there are numerous obstacles in implementation, such as lack of resources, difficulties in planning additional services for educating children with disabilities, functioning of municipal cross-sector commissions, lack of professional competencies of teachers.

According to the data of the Republic Institute for social protection, two thirds of children with disabilities living in residential institutions are completely excluded from the education system. The Republic of Serbia has made significant efforts in deinstitutionalization of children and it has one of the lowest institutionalization rates in Europe. However, children with disabilities are overrepresented in residential institutions (58.5 per cent in residential institutions are children with disabilities and only 9.1 per cent of children in family-based setting). In addition, the conditions in some institutions for children and adults have been characterized as inhuman and degrading treatment.

The Law on protection of persons with mental disabilities gives inadequate encouragement to deinstitutionalization and that the treatment of institutionalized persons is not in compliance with international standards. The regulation in this area is outdated and not in compliance with the international legal frameworks and standards, namely it is in contradiction to the obligations taken by the Republic of Serbia with the ratification of international human rights treaties. Number of adults under guardianship in Serbia has been increasing which is a very worrisome trend. Only in 2011, number of adults under guardianship increased in 33.9%, and in 2012, number of persons deprived of legal capacity increased in 20%.

The Law on professional rehabilitation and employment of persons with disabilities was adopted in 2009 and it regulates employment of persons with dis-

abilities in a comprehensive manner. By cancelling factual obligation of the state authorities to employ persons with disabilities by quota system, the state missed the opportunity to promote employment of persons with disabilities and set a positive example to other employers.

The Law on health insurance includes insurance for the cases of illness or injuries outside and within the working place and professional illnesses. The right to health protection also includes medical rehabilitation in the cases of illness or injuries, walking and moving aids, sight, hearing, and speech aids (medical-technical aids).

According to the data of civil society organizations, women with disabilities are specially exposed to discrimination in the health domain. The biggest barrier to exercising health protection is seen in inaccessibility of the services and lack of understanding by the medical workers of the social support model to disabilities.

In their daily activities, persons with disabilities face barriers with the use of public transport, home appliances, electronic and digital systems, services and products, entering public and private buildings. The Law on preventing discrimination against persons with disabilities prohibits discrimination on the grounds of disability in the access to services and public buildings and spaces.

5. Gender Equality and Special Protection of Women. – The Gender Equality Act was adopted 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.

The Labour Act amendments will facilitate the empowerment of women at work and the reconciliation of the family and professional lives of working mothers. The amendments providing special protection to women in terms of health and safety at work will benefit the protection of maternity. The provisions on the protection of maternity now also apply to breastfeeding working women. Furthermore, employers unable to afford pregnant and breast-feeding workers the statutory protection are now under the obligation to assign them to other adequate jobs or, if such jobs are unavailable, send them on paid leave. The protection of pregnant workers is now strengthened by their right to paid leave or time off from work to undergo pregnancy-related medical check-ups.

The Serbian Government in January 2014 adopted a Special Protocol for the Judiciary in Cases of Domestic and Partner Violence against Women, thus completing the set of special protocols various ministries have adopted to facilitate cooperation in combatting violence against women in Serbia.

On the other hand, the results of a public opinion poll on gender equality showed that stereotyped perceptions of gender roles are equally present among women and men. The traditional stereotyped gender role of women devoting their time primarily to unpaid household chores and raising children has exacerbated

gender segregation in the education system and the labour market and is also the key excuse for the small number of women in politics and decision-making offices. As far as inequalities in the business sector are concerned, they merely perpetuate the overall gender inequalities. The poll showed, for instance, that only one quarter (28%) of the highest decision-making offices in companies are held by women and that only one-third of the entrepreneurs are women.

Inequality of women in parliament despite the statutory quotas still exists. Greater numbers of women candidates on the tickets can be found only after the first one hundred candidates, which reduces their chance of winning a seat in parliament.

A research on participation of women in local decision-making showed that women had headed four out of Serbia's 81 local self-governments (4.9%), albeit one of whom was dismissed immediately after the data were collected. There is an evident tendency of appointing women to executive and operational positions, but not to managerial ones. For instance, women account for 72.5% of the chiefs of cabinet of mayors.

There are four women ministers in the Government of Serbia out of 19-member Cabinet and two of them simultaneously hold the posts of Deputy Prime Minister. The Serbian EU accession negotiating team is also headed by a woman.

Women account for 85 of the 250 deputies (34%) in the National Assembly; 35% of the 335 members of the 20 Assembly Committees are women. The number of professional women soldiers rose significantly over the past year, while the number of female officers is gradually increasing, although it is still low.

I

SERBIA'S INTERNATIONAL LEGAL OBLIGATIONS

1. Serbia's Membership of International Organisations

Serbia is a member of the United Nations although the full membership of the Federal Republic of Yugoslavia (FRY, comprising Serbia and Montenegro) was at issue in the 1990s. Namely, the UN General Assembly stated in its Resolution 47/1, adopted on the recommendation of the Security Council, that the SFRY had ceased to exist and that the FRY needed to apply for UN membership and should not participate in the work of the General Assembly. In its Resolution 47/229, the UNGA decided that the FRY should not participate in the work of the Economic and Social Council. The then Serbian regime was of the view that the FRY was the legal successor of the SFRY. The Government that took over after the 5 October 2000 ouster of Slobodan Milošević applied for UN membership in a matter of weeks and the FRY was unanimously admitted on 1 November 2000, wherefore it can be deemed that the FRY was collectively recognised as a new state at that point. After Montenegro's citizens voted for independence at their 2006 referendum, Serbia remained a member of the United Nations, pursuant to the Constitutional Charter of the Serbia and Montenegro State Union.

Serbia is also a member of the Council of Europe (since 2003) and of the Organization for Security and Co-operation in Europe (OSCE). The participating States suspended Yugoslavia (Serbia and Montenegro) from the CSCE in 1992, barring it from participating in the Helsinki Summit that July; its seat in the Permanent Council remained empty until the Federal Republic of Yugoslavia (FRY) became the 55th OSCE Participating State in November 2000. Serbia was slated to assume chairmanship of the OSCE in January 2015; the chairmanship will pose a major foreign policy challenge to it, given that the OSCE is expected to focus on resolving the Ukraine-Russia conflict and Serbia has to date maintained a neutral position on this conflict and has not followed the EU's suit and introduced sanctions against Russia.

1.1. Overview of Serbia's Headway in EU Accession

Serbia was granted the status of an EU candidate country in March 2012, but its progress towards EU membership was slowed down, which can partly be ascribed to the halt in legislative activities caused by the long election campaign in April and May 2012. More headway was made in 2013. The Stabilisation and Association Agreement 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. In September 2013, the Government of Serbia appointed Tanja Mišćević the chief negotiator on Serbia's EU accession. In December 2013, the Serbian Assembly adopted the Resolution on the Role of the National Assembly and the Principles of Serbia's EU Accession Negotiations.

The first EU-Serbia intergovernmental conference was held in Brussels on 21 January 2014. Until the end of 2014, Serbia completed the screening process for 24 out of 35 chapters. The screening process of all chapters will have been completed by March 2015.

The Serbian authorities' expectations – that some negotiating chapters would open and that talks on Chapter 32 (Financial Control), for which all technical preparations have been completed, would begin by the end of 2014 – did not materialise. Some EU member states, primarily Germany, took the view that the full implementation of the Brussels Agreement on the normalisation of relations between Belgrade and Priština, as formulated in Chapter 35, was prerequisite for opening any talks. This primarily entails the integration of the judiciary in north Kosovo in the Kosovo's judicial system and the establishment of the Community of Serb Municipalities.

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 and Convention for the Protection of All Persons from Enforced Disappearance. The only UN human rights convention Serbia has not ratified yet is the Convention on the Protection of the Rights of All Migrant

Workers and Members of Their Families, which it had signed back in 2004. Serbia in 2010 ratified the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), the Convention for the Safeguarding of the Intangible Cultural Heritage and the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (See Appendix I).¹

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.² 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 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.
- 2 The FRY recognised the competence of the Committee against Torture to receive and consider individual communications and communications by states parties under Art. 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. Serbia accepted the jurisdiction of the Committee according to Arts. 31 and 32.

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 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.

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.³ The Government of Serbia Human and Minority Rights Office⁴ is charged with preparing reports for UN bodies in coordination with other state authorities.

Last year, in January, UN Human Rights Council reviewed the Second Universal Periodic Review of Serbia.⁵ Serbia accepted 139 and rejected 5 of the Council's 144 recommendations.⁶

Serbia was under the obligation to submit its report to the Committee on the Rights of the Child in March 2013, the deadline by which it was to have also submitted its reports on the implementation of two Optional Protocols to the Convention on the Rights of the Child (on involvement of children in armed conflict and

3 Serbia's status regarding ratifications and reporting obligations is available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx.

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

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

6 See more in *Report 2013*, I.1.3.

on the sale of children, child prostitution and child pornography). Serbia failed to honour this obligation in 2014 as well.

Serbia in 2014 presented its second periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights.⁷ The Committee on Economic, Social and Cultural Rights adopted its concluding observations on Serbia's second periodic report at its 40th meeting on 23 May 2014. Its main concerns with respect to Serbia's fulfilment of its obligations under this international treaty regard the lack of systematic collection and processing of disaggregated data, which would allow for an accurate assessment of the fulfilment of economic, social and cultural rights and ineffective administration of justice, in particular in the context of employment-related claims against companies that were privatised. The Committee also voiced its concern about the discrimination against members of national and ethnic minorities, persons with disabilities, refugees and internally displaced persons, especially Roma, as evidenced by disproportionately high unemployment, limited access to social security, accommodation in informal settlements, and inadequate health care and education and regretted the shortcomings in the implementation of the 2012–2014 Strategy for Improvement of the Status of Roma. It further noted that only a very few asylum seekers in Serbia have been recognised as refugees and expressed its concern that refugees and internally displaced persons do not have access to comprehensive integration programmes. The Committee also voiced its concern at the limited capacities of social welfare services in places where asylum centres are located and the insufficient reception capacities for asylum seekers.⁸ The Committee expressed its concern about the low employment rate of women, the disproportionately high unemployment rate of young, low-educated and older women and the small proportion of employed persons with disabilities.

The Committee against Torture is yet to review the second periodic report submitted by Serbia in 2013. The report will be reviewed at 54th session in April 2015. At its 7th session in September 2014, the Committee on Enforced Disappearances reviewed Serbia's initial report submitted in 2013 and forwarded Serbia the list of issues. It will review the state's responses at its 8th session in February 2015. In September 2015 the Committee on the Rights of Persons with Disabilities will discuss the list of issues concerning Serbia. Serbia failed to honour its obligations and submit its reports to the Committee on the Elimination of All Forms of Discrimination by January 2014 and the Human Rights Committee by July 2014. The authorities were preparing the second and third periodic reports on the implementation of the Convention on the Rights of the Child, the second and third periodic reports on the implementation of the Convention on the Elimination of All Forms

7 The Report was presented at the 15 May 2014 session of the Committee for Economic, Social and Cultural Rights in Geneva. The Report is available in Serbian at http://www.ljudskoprava.gov.rs/images/konvencije/drugiperizv/Drugi_periodicni_izvestaj_o_primeni_MPESKP-KONACNO.pdf.

8 The Committee's Concluding Observations are available at <http://www.refworld.org/docid/53fdbbb64.html>.

of Racial Discrimination and the third periodic report on the implementation of the ICCPR at the end of the reporting period.

On December 19, the Government of the Republic of Serbia enacted a decision forming a Council for the Monitoring of the Implementation of Recommendations of United Nations Human Rights Mechanisms.⁹ Members of the Council are appointed by the Government. When it comes to jurisdiction, the Council proposes measures to be taken for the implementation of the recommendations; it voices its opinion on the progress made in the field of human rights during the reporting period and gives expert explanations of the state of human rights and of the results achieved by implementing the recommendations.

Serbia, which is also a party to the Framework Convention for the Protection of National Minorities, is under the duty to submit periodic reports on its implementation. Serbia submitted its Third Periodic Report to the Council of Europe Secretary General in 2013. A delegation of the Advisory Committee, which assists the Council of Europe Committee of Ministers in assessing the adequacy of the measures undertaken by the contracting states, visited Serbia on 27–31 May 2013 and in November 2013 adopted its Third Opinion on the Implementation of the Framework Convention on the basis of the information it collected and the data in the Report. The Serbian Government adopted the Comments by the Republic of Serbia on the Third Opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities and forwarded them to the CoE Secretary General in mid-June 2014.¹⁰ The CoE Committee of Ministers adopted a resolution with conclusions and recommendations for the Republic of Serbia regarding the implementation of the Framework Convention.

3.1. Applications against Serbia before the European Court of Human Rights in 2014

3.1.1. Statistics

The European Court of Human Rights (ECtHR) in 2014 ruled on 11,490 applications against Serbia and declared inadmissible or struck out 11,427 of them. The ECtHR delivered 18 judgments with respect to Serbia (concerning 63 applications) and found Serbia in violation of at least one right under the Convention in 16 of them.¹¹ With a total of 2,500 applications pending before the ECtHR at the end of 2014. Serbia was sixth on the list of countries against which the greatest number of applications had been filed with the ECtHR, preceded by Ukraine, Italy, Russia, Turkey and Romania.

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

10 See on: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_Com_Serbia_en.pdf.

11 Statistics of cases before the ECtHR are available at http://www.echr.coe.int/Pages/home.aspx?p=reports&c=#n1347956587550_pointer.

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 ask the Court for an advisory opinion. 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 16.¹²

3.1.2. Appointment of the ECtHR Judge in Respect of Serbia

The term in office of the judge in respect of Serbia in the ECtHR, Prof Dr Dragoljub Popović, expired on 3 April 2014. The Ministry of Justice and State Administration formed a Commission to conduct the recruitment procedure¹³ and advertised the vacancy. Eleven candidates fulfilling the requirements applied by the deadline, 3 March 2014.¹⁴ The transparency and credibility of the procedure for selecting the three candidate judges in respect of Serbia were disputed by civil society organisations¹⁵ and other experts, which alerted to the inadequacy of the language tests the candidates underwent, the lack of objectivity of the procedure, because the tests were not anonymous, et al.¹⁶ The Council of Europe Parliamentary Assembly advisory panel of experts on candidates for election as judges to the Court was of the view that one of the three proposed candidates did not fulfil the criteria,¹⁷ and the election of the new judge in respect of Serbia was postponed for January

12 The text of Protocol No. 16 is available at 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>.

13 The Commission comprised Supreme Court of Cassation President and High Judicial Council Chairman Dragomir Milojević, Supreme Court of Cassation judge Vida Petrović Škero, Deputy Republican Public Prosecutor Snežana Matović, Republican Attorney General Snježana Prodanović, and the then Ministry of Justice State Secretary. See more in *Danas*, “Appointment of Strasbourg Court Judge in Respect of Serbia Stilted” of 19 June, available in Serbian at: http://www.danas.rs/danasrs/drustvo/pravo_danas/zakocen_izbor_sudije_iz_srbije_za_sud_u_strazburu_1118.html?news_id=283828#sthash.vm5WHjKm.dpuf.

14 See the Ministry of Justice press release of 11 February 2014, available in Serbian at: <http://www.mpravde.gov.rs/obavestenje/4779/raspisan-konkurs-za-kandidate-za-sudiju-evropskog-suda-za-ljudska-prava.php>.

15 *Blic Online*, “Embarrassing: Strasbourg Rejects Judges Offered by Serbia”, 21 June, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/475128/BRUKA-Strazbur-nece--sudije-koje-im-Srbija—nudi>.

16 *Politika Online*, “How the Candidates for Judges in Strasbourg were Selected,” 24 March, available in Serbian at: <http://www.politika.rs/rubrike/Hronika/Kako-su-birani-kandidati-za-sudiju-u-Strazburu.lt.html>.

17 The three candidates were: Branko Lubarda, full-time Belgrade University Law College Professor of Labour Law, International Labour Law and Social Law; Branko Rakić, Belgrade University Law College Associate Professor of European Integration Law and International Relations, well known for his role in collecting signatures for the petition against the Act on Cooperation with the ICTY and Secretary of the “Freedom” Association for the defence of former Serbian and Yugoslav President and ICTY indictee Slobodan Milošević; and Katarina Nedeljković, a law graduate working in the ECtHR Department for the Execution of Court Judgments, see the *Blic Online* report in Serbian, “Embarrassing: Strasbourg Rejects Judges Offered by Serbia”, 21

2015.¹⁸ Branko Lubarda was elected judge in respect of Serbia during the repeat vote in January 2015.¹⁹

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

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

The Criminal Procedure Code (CPC), applied by the courts of 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 ECtHR or the Constitutional Court that a human right or freedom of the defendant or another participant in the proceedings enshrined in the Constitution or the ECHR and the Protocols thereto had been violated or denied by the final judgment or a prior decision rendered in the course of the proceedings. This extraordinary legal remedy may be filed by the defendants via their legal counsels or by the Republican Public Prosecutor and it is ruled on by the Supreme Court of Cassation.

3.1.4. ECtHR Judgments with Respect to Serbia Delivered in 2014

Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia (Grand Chamber judgment).²⁰ – The Court found a violation of the applicants' right to property under Article 1 of Pro-

June, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/475128/BRUKA-Strazbur-nece--sudije-koje-im-Srbija--nudi>.

18 CoE Parliamentary Assembly, Committee on Legal Affairs and Human Rights, "Procedure for electing judges to the European Court of Human Rights Information document prepared by the Secretariat", AS/Jur/Inf (2014) 03 rev 5, of 26 September 2014, available at: http://www.assembly.coe.int/CommitteeDocs/2014/ajinfdoc03_2014.pdf.

19 The three candidates in the second round were: Branko Lubarda, Branko Rakić and Supreme Court of Cassation judge Spomenka Zarić. See: CoE Parliamentary Assembly, Committee on Legal Affairs and Human Rights, "List and curricula vitae of candidates submitted by the Government of Serbia", Doc. 13652, of 16 December, available at: <http://www.assembly.coe.int/nw/xml/Xref/Xref-XML2HTML-EN.asp?fileid=21342&lang=en>. Legal professionals disputed the credibility of the procedure in which the candidates in the second round were selected. See "NGO Statement to the Parliamentary Assembly of the Council of Europe" of 23 January 2015, available at: <http://www.yucom.org.rs/rest.php?tip=vestgalerija&idSek=16&idSubSek=56&id=131&status=drugi>.

20 ECtHR, App. Nos. 60642/08, Grand Chamber judgment of 16 July.

tocol No. 1 to the Convention and the right to a legal remedy under Article 13, because they were unable to recover their “old” foreign currency savings after the dissolution of the SFRY.²¹

The Grand Chamber unanimously held in its pilot judgment²² that the failure of the Serbian and Slovene Governments to include the present applicants and all others in their position in their respective schemes for the repayment of “old” foreign-currency savings represented a systemic problem and that Serbia had to make all the necessary arrangements, including legislative amendments, within one year in order to allow Mr. Šahdanović and all others in his position to recover their “old” foreign-currency savings under the same conditions as Serbian citizens, who had such savings in domestic branches of Serbian banks. The Court adjourned the examination of all similar cases against Serbia and Slovenia for one year.

Vučković and Others v. Serbia (Grand Chamber decision on admissibility).²³ – this case, ruled on by the Chamber in 2012,²⁴ was referred to the Grand Chamber at the request of the Serbian Government. The Grand Chamber found that not all domestic legal remedies had been exhausted, *inter alia*, that the applicants had not complained to the Constitutional Court of a violation of the prohibition of discrimination either explicitly or substantively. The case regarded discrimination in the payment of *per diems* to reservists mobilised in the March-June 1999 period against persons not covered by the Government agreement to pay part of the claims to reservists with registered residence in underdeveloped municipalities.

Petrović v. Serbia.²⁵ – The application was filed by the mother of Dejan Petrović, who had died in hospital after jumping out of the window on the second floor of the police station, according to the official explanation she disputed. In its review of the Government’s objections to the admissibility of the application, the Court underlined that situations like this one, in which a request to reopen the proceedings actually resulted in a reopening, or in which a request for extraordinary review was successful, might be an exception to the rule,²⁶ and that the motion for the protection of legality was to be considered an effective legal remedy, i.e. that the six-month time limit was to be reckoned from the adoption of the Supreme

21 The ECtHR found Serbia and Slovenia in breach of the Convention, but not Bosnia and Herzegovina and the Former Yugoslav Republic of Macedonia.

22 There are more than 1,850 similar applications, introduced on behalf of more than 8,000 applicants, pending before the Court and, in the assessment of the Court, there are many thousands of potential applicants, para. 144.

23 ECtHR, App. Nos. 17153/11, 17157/11, 17160/11 et al, Grand Chamber admissibility decision of 25 March 2014.

24 *Vučković and Others v. Serbia*, ECtHR, App. No. 17153/11(2012). The Chamber found a violation of the prohibition of discrimination under Article 14 in conjunction with the right to peaceful enjoyment of property under Article 1 Protocol No. 1 to the Convention.

25 ECtHR, App. no. 40485/08, judgment of 15 July 2014.

26 See, e.g. *Lepojić v. Serbia*, ECtHR, App. No. 13909/05, judgment of 6 November 2007, para. 54.

Court decision. The Court, furthermore, held that the applicant had not lost her victim status although she had been paid the awarded non-pecuniary damages in civil proceedings and disciplinary proceedings had been conducted against the officers present during the incident. After a detailed analysis of all the conducted proceedings, investigation, the actions by the public prosecutor and the applicant's role of subsidiary prosecutor, the Court established a violation of the right to life under Article 2 of the Convention and awarded the applicant 12,000 EUR in respect of non-pecuniary damages for the anguish and distress as a result of her inability to obtain an effective investigation into the death of her son. The Court dismissed the applicant's claim for damages for her suffering due to the death of her son while in police custody.

*Habimi and Others v. Serbia.*²⁷ – The case concerned allegations of the violation of Article 3 of the Convention during the actions by the special police forces to halt the protests and revolt in the Niš Penitentiary, where the 37 applicants were serving their prison sentences. The Court found a violation of the procedural aspect of Article 3 because the State had failed to conduct an effective investigation, but it did not find that the treatment of the prisoners had been in breach of the substantive aspect of this Article. The Court awarded the applicants 3,500 EUR each in respect of non-pecuniary damages and 5,000 EUR jointly for the costs and expenses they had incurred.

*Isaković Vidović v. Serbia.*²⁸ – The applicant suffered grave physical injuries in 1997, after her neighbour hit her on the head after a quarrel. She filed a criminal complaint against him, the public prosecutor initiated criminal proceedings but the court terminated the proceedings in 2007 as time-barred. The Court held that the applicant personally had not contributed to the delay at issue, some three and half years after ratification, and considered that the impugned practices in the specific circumstances of the case had not provided adequate protection to the applicant against an attack on her physical integrity and had shown that the manner in which the criminal law mechanisms were implemented were defective to the point of constituting a violation of the State's positive obligations under Article 8 of the Convention. The Court awarded the applicant 3,000 EUR in respect of non-pecuniary damages and 3,000 in respect of costs and expenses.

*Maširević v. Serbia.*²⁹ – The case concerned the inability of the applicant, a practicing lawyer, to represent himself before the Supreme Court, which dismissed his appeal on points of law because such appeals may only be submitted by an attorney at law, not the plaintiff personally. Given that the applicant was himself a practicing lawyer qualified to lodge appeals on points of law on behalf of others, the Su-

27 ECtHR, App. No. 19072/08, judgment of 3 June 2014.

28 ECtHR, App. No. 41694/07, judgment of 11 July 2014.

29 ECtHR, App. No. 30671/08, judgment of 11 February 2014.

preme Court's strict interpretation of the domestic law in respect of the applicant's *locus standi* precluded a full examination of the merits of his allegations. This barrier imposed on the applicant, therefore, did not serve the aims of legal certainty or the proper administration of justice. The Court found a violation of Article 6(1) and awarded the applicant two thousand Euro in respect of non-pecuniary damages and five hundred Euro in respect of costs and expenses.

Tešić v. Serbia.³⁰ – The applicant is a pensioner with serious health problems, whose already precarious financial situation was exacerbated when the civil court rendered a judgment ordering her to pay damages to her erstwhile lawyer for defamation. The Novi Sad daily *Dnevnik*, which had published the applicant's impugned statement in an article, was also ordered to pay a very similar sum although it was financially more viable. The court issued an enforcement order whereby two thirds of the applicant's pension, the maximum under the law, were to be garnished every month, which left her with only around 60 Euros a month to live on and she could no longer afford the medication she needed, which cost around 44 Euros a month. This is why the Court found that this interference in the applicant's freedom of expression was not necessary in a democratic society and awarded her 6,000 Euro in respect of non-pecuniary damages and 5,500 Euro in respect of pecuniary damages.

Dekić and Others v. Serbia.³¹ – The applicants claimed they had been ill-treated in police custody and that the subsequent investigation into their allegations had not been effective. They claimed that they had been beaten up in the police station by the policemen, who brought them in after a car accident they were implicated in. Their claims were corroborated by the medical reports on their injuries after a doctor examined them upon release from the station. The domestic court found that the force used against the applicants had been necessary because they had been under the influence of alcohol and violent, as numerous witnesses confirmed. The ECtHR reviewed violations of the substantive and procedural aspects of Article 3, but did not find a violation of Article 3 of the ECHR although it identified some shortcomings in the investigation, specifically lack of independence of some of the authorities that had conducted it.

Lakatoš and Others v. Serbia.³² – The five applicants claimed they had suffered physical injuries when the police beat them during arrest and later in the police station. The Government claimed that the applicants, perpetrators of a number of grave crimes, had resisted arrest and that the police had to use force. The Court found violations of the substantive aspect of Article 3, i.e. inhuman and degrading treatment, and of the procedural aspect of Article 3, due to the inadequate investigation concerning four applicants. The ECtHR found a violation of Article 5(3) with

30 ECtHR, App. Nos. 4678/07 and 50591/12, judgment of 11 February 2014.

31 ECtHR, App. No. 32277/07, judgment of 29 April 2014.

32 ECtHR, App. No. 3363/08, judgment of 7 January 2014.

respect to three applicants, because they had spent more than one year and eight months in pre-trial detention, which was extended on 11 occasions and the national courts assessed the need to continue the pre-trial detention from a rather abstract and formalistic point of view, taking into consideration only the severity of the potential sentence and the nature of the crime alleged. The ECtHR awarded each of the four applicants 5,000 Euro in respect of non-pecuniary damages.

Ridić and Others v. Serbia.³³– The applicants were employed by a mining company in Majdanpek, against which they initiated separate civil suits, seeking work-related pecuniary redress on various grounds in the 2001–2005 period. They were paid the full amounts awarded in their favour in 2011. The ECtHR rejected the State’s arguments about the non-exhaustion of legal remedies, although the applicants had not applied to the Constitutional Court of Serbia before complaining to the ECtHR. The Court was of the view that it would be disproportionate to require the applicants to turn to the Constitutional Court for redress more than three and five years, respectively, after they had already lodged their applications with the Court and that, should they now be rejected for non-exhaustion, the applicants could no longer file their constitutional appeals due to the expiry of the deadline.³⁴

The ECtHR found Serbia in breach of the right to a fair trial enshrined in Article 6(1) of the ECHR due to the length of the enforcement proceedings and awarded each of them 2,000 Euro to cover non-pecuniary damages and their costs and expenses.

Nikolić-Krstić v. Serbia.³⁵– The applicant complained about the non-enforcement of a court decision that became final in 1995 ordering her employer, a predominantly socially-owned bank, to pay her outstanding salary and all work-related benefits for the period following her unlawful dismissal. The ECtHR reiterated its view that the State was responsible for the failure to enforce final domestic judgments rendered against State-controlled entities against which bankruptcy proceedings were pending and found Serbia in breach of the right to a fair trial under Article 6 and the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the ECHR.

Relying on its case law, the ECtHR ordered the state to pay the applicant the outstanding debt from the final judgment, less any amounts which may have already been paid on the basis of the said judgment and 2,500 Euro in respect of non-pecuniary damage, costs and expenses.

33 ECtHR, App. Nos. 53736/08, 53737/08, 14271/11, 17124/11, 24452/11 and 36515/11, judgment delivered on 1 July 2014.

34 The ECtHR in this decision again referred to its judgment in the case of *Ferizović v. Serbia* (App. No. 65713/13, 26 November 2013), in which it unequivocally held that the constitutional appeal should be considered as an effective remedy in respect of all socially/State owned companies as of 4 October 2013.

35 ECtHR, App. No. 54195/07, judgment of 14 October 2014.

Pop-Ilić and Others v. Serbia.³⁶– The application regarded the non-enforcement of a final court judgment of 2007 ordering the applicants' employer, a privately owned company as of 2003, to reinstate them and pay their outstanding salaries, the relevant social insurance contributions and their legal costs. The Court noted that the Serbian authorities had not advanced any reasons for their failure to take all necessary measures in order to enforce the judgment in question between July 2007 and January 2011, the date when insolvency proceedings were instituted against the debtor and found the State in breach of Article 6, the right to a fair trial. Bearing in mind that the debtor in the present case was a privately owned company, that there were no documented acts or omissions on the part of Serbia's judicial authorities which could have generated the impossibility to enforce the judgment debt, and the Constitutional Court's ruling of 2013 finding a violation of the applicants' property rights, the Court rejected the applicants' complaints that their right to peaceful enjoyment of possessions was violated as manifestly ill-founded.

The ECtHR awarded each applicant 2,700 Euro in respect of non-pecuniary damages and a total of 1,700 Euro jointly for the costs and expenses incurred in the domestic proceedings.

4. Correlation between National and International Law

The 2006 Constitution of the Republic of Serbia³⁷ includes provisions defining the correlation between international and national law. Under Article 16(2) of the Constitution, the generally accepted rules of international law and ratified international treaties shall be an integral part of the national legal system and applied directly. The Constitution uses the term "ratified international treaties", which covers the international treaties the Serbian National Assembly ratified by law. It is, however, unclear what the authors of the Constitution imply under "generally accepted rules of international law" – just the rules of international customary law or the general international law principles as well.

The constitutional provisions dealing with the hierarchy of legislation stipulate the compliance of the ratified international treaties with the Constitution (Art. 194 (4)) and the compliance of laws and general enactments with ratified international treaties and generally accepted rules of international law (Art. 194(5)), which means that the hierarchy of the international legal norms differs.

International customs and general international law principles ("generally accepted rules of international law") have the same legal force as the Constitution, while the Constitution is hierarchically above the ratified international treaties.

36 ECtHR, App. Nos. 63398/13, 76869/13, 76879/13, 76886/13 and 76890/13, judgment of 14 October 2014.

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

Laws and other general enactments are hierarchically below ratified international treaties, customs and general legal principles and have to be in compliance with them. Consequently, international law shall prevail in the event of a conflict between Serbian and international law, unless the ratified international treaty is in contravention of the Constitution.

This provision may raise the issue of Serbia's international accountability in the event it is not fulfilling its obligations under an international treaty because it is not in compliance with the Constitution. The European Commission for Democracy through Law (Venice Commission) alerted to this risk in its Opinion on the 2006 Constitution³⁸, in which it stated that the Constitution should be interpreted so as to avoid the collision of national regulations and international law rules binding on the state.³⁹

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

Under the Constitution, provisions on human and minority rights shall be interpreted in accordance with the valid international standards and practices of international institutions monitoring their implementation (Art. 18 (3)) and the courts shall rule pursuant to generally recognised rules of international law and ratified international treaties (Art. 142). The practice of applying international treaties and customs before national courts, has not, however, been embraced.

38 See the Venice Commission Opinion on the Constitution of Serbia, opinion No. 405/2006, adopted by the Commission at its 70th plenary session (Venice, 17–18 March 2007), paragraphs 15–17, pp. 5–6 (available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)004-e)).

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

II CONSTITUTIONAL AND LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

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

1.1. General

Section II of the Constitution of Serbia⁴⁰, adopted in 2006 comprising human and minority rights and freedoms (Arts. 18–81), is divided into three parts: I. Fundamental Principles (Arts. 18–22), II. Human Rights and Freedoms (Arts. 23–74) and III. Rights of Persons Belonging to National Minorities (Arts. 75–81).

The Constitution contains a broad catalogue of human rights but some human rights provisions are deficient or ambiguous. For example, the Constitution does not guarantee the rights to adequate housing, food or water, or, for that matter, a number of rights to adequate living standards enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Constitution's guarantees of human rights are in line with international standards but it does not address the issue of gender equality and does not deal with discrimination against women appropriately. Article 21 of the Constitution prohibits discrimination in a gender neutral manner rather than in compliance with Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.⁴¹

1.2. 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

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

41 More on each right in Chapter III.

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.⁴² This shortcoming can be partly overcome by a general interpretation clause in Article 18, under which “[P]rovisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards on human and minority rights, as well as the practices of international institutions which supervise their implementation”. Given the ECtHR’s case law, a legitimate aim would have to be prerequisite for a human rights restriction to be acceptable.

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

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

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

42 In its *Opinion on the Constitution of Serbia*, the Venice Commission commented Article 20 of the Constitution related to restrictions of human and minority rights (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.

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

Article 20 of the Constitution clearly defines the principle of proportionality, as well as the standards which courts in particular must adhere to when interpreting restrictions of human and minority rights. The Constitution strictly lays down the principle of proportionality. The standards for evaluating proportionality are in keeping with the case law of the European Court of Human Rights.⁴³

1.3. Derogation of Human Rights

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

The Constitution allows derogations of constitutionally guaranteed human and minority rights upon the proclamation of a state of war or a state of emergency (formal requirement) but only to the extent deemed necessary (substantive requirement).⁴⁴ This wording provides more leeway for derogations of human rights than the European Convention on Human Rights, which allows derogations “to the extent strictly required by the exigencies of the situation“. There are also some gaps in the list of rights that may not be derogated from in the Constitution (Art. 202(4)).⁴⁵

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

43 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).

44 Article 202(1) of the Constitution.

45 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.

2. Constitutionality and Legality

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

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

Under the Constitution, at least one judge appointed from each of the three lists of candidates must be from the territory of the autonomous provinces (Art. 172 (4)). Judges shall be appointed from amongst “prominent lawyers” who are at least 40 years of age and have at least 15 years of experience in practicing the law (Art. 172 (5)). The Act prohibits the Constitutional Court judges from discharging “another public or professional function or job with the exception of professorship at a law college in the Republic of Serbia” (Art. 16 (1)).

The Constitution and the Constitutional Court Act (hereinafter: CCA)⁴⁶ failed to lay down clear and efficient rules on the appointment of the Constitutional Court judges or proper guarantees of the Court’s independence, which was not rectified by the Act Amending the Constitutional Court Act either although that was recommended by the Venice Commission.

In its 2014 Serbia Progress Report, the European Commission said that the Constitution was largely in line with European standards but that some provisions remained to be put in line with the recommendations of the Venice Commission, in particular concerning the role of parliament in judicial appointments. This deficiency was similarly commented in the Chapter 23 Screening Report on judiciary and fundamental rights.⁴⁷

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

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

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

National Assembly, i.e. even when that judge had been appointed by another body authorised to nominate Constitutional Court judges.

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

Under Article 3 of the Constitutional Court Act, the Court shall ensure the transparency of its work by publishing its decisions and communiqués after sessions on its website, holding public hearings and hearings in proceedings before the Court, issuing press releases, holding news conferences and in other ways. The public shall be excluded only in order to protect the interests of national security, public order and morality in a democratic society or to protect the interests of minors or the privacy of participants in the proceedings (Art. 3(3)).⁴⁸

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

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

48 In 2011 the Constitutional Court's adopted 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. This Conclusion was subject to criticism. It was stated that the Conclusion did not ensure sufficient transparency of the Court's work or contribute to improving its democratic responsibility. In this 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 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.

ties (Art. 169). The procedure for reviewing constitutionality or legality may be initiated by the Constitutional Court, state authorities, provincial and local authorities or at least 25 National Assembly deputies (Art. 168(1)).

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

The Court may notify the National Assembly of the situation and problems regarding the realisation of constitutionality and legality, render its opinions and indicate the necessity to adopt new or amend existing laws. The Constitutional Court, however, still cannot order the legislator to adopt regulations ensuring respect of a constitutional right. The National Assembly has, unfortunately, in most cases not taken further steps to have the disputed provisions amended. Neither has the Government, which has tabled nearly all the laws subject to this procedure before the Constitutional Court.⁴⁹

2.3. Selected Constitutional Court of Serbia 2014 Case Law⁵⁰

2.3.1. Review of the Constitutionality of the Provisions of the Judicial Academy Act and the Acts on Judges and Public Prosecution Services

The Constitutional Court of Serbia declared unconstitutional Article 40 (8, 9 and 11) of the Judicial Academy Act,⁵¹ the second sentence of Article 50(4) of

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

50 The selected case law of the Constitutional Court of Serbia before 2014 is available in Serbian at: <http://www.bgcentar.org.rs/praksa-usravnog-suda-rs/>.

51 *Sl. glasnik RS*, 104/09. The Court rejected the motion to review the constitutionality of Article 26(3) of this Act and dismissed motions to halt the enforcement of individual enactments and actions under the provisions of this Act. Case IUz-497/2011, decision of 6 February 2014.

the Act on Judges⁵² and the second sentence of Article 75(2) of the Act on Public Prosecution Services.⁵³

The Court concluded that the impugned provisions obligated the High Judicial Council (HJC) and the State Prosecutorial Council (SPC) to nominate to the National Assembly candidates with completed Judicial Academy initial training, which brought into question their status laid down in the Constitution. In the view of the Court, these provisions effectively promoted the Judicial Academy initial training into an additional requirement for appointment to a judicial or deputy prosecutorial office, in addition to the general and specific requirements defined by the law. Such a requirement was thus rendered crucial not only for appraising the candidates' competence and qualifications, as the general appointment requirements, but also turned into an essential determinative prerequisite for accessibility to specific offices, wherefore it actually cancelled out and prevented the adequate appraisal of the other requirements prescribed by law.

The Court observed that the legislator had not only given absolute advantage to candidates with initial Academy training over all other candidates fulfilling the requirements under the Acts on Judges and Prosecution Services, but also guaranteed that they would be appointed if there were any vacancies (unless other candidates with initial training but better results at it applied for them). The Constitutional Court accordingly concluded that the impugned provisions violated the principle of prohibition of discrimination and the right to hold public office under equal conditions enshrined in Articles 21 and 53 of the Constitution respectively. The Court also found that the impugned regulations brought into question the enforcement of Article 77 of the Constitution, guaranteeing persons belonging to national minorities equal opportunity to administer public affairs, in view of the obligation to nominate candidates who had completed initial Academy training and regardless of the need to ensure adequate representation of judges and prosecutors belonging to national minorities in the misdemeanour and basic courts and basic public prosecution offices in ethnically-mixed communities.

2.3.2. Review of the Constitutionality of the Serbian Bar Chamber Decision on Fees for Registration in the Directory of Lawyers, Directory of Joint Law Offices and the Directory of Limited Liability Law Partnerships

The Constitutional Court found Articles 1 and 2 of the Serbian Bar Chamber Decision on Fees for Registration in the Directory of Lawyers, Directory of Joint

52 *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. The text of the impugned provision reads as follows: “The High Judicial Council shall nominate candidates who completed initial training at the Judicial Academy for judgeships in the misdemeanour and basic courts pursuant to a separate law.” Case IUz–427/2013, decision of 12 June 2014.

53 *Sl. glasnik RS*, 116/08, 104/09, 101/10, 78/11 – other law, 101/11, 38/12 – Constitutional Court Decision, 121/12 and 101/13. The text of the impugned provision reads as follows: “The State Prosecutorial Council shall nominate candidates who completed initial training at the Judicial Academy for deputy basic prosecutorial offices pursuant to a separate law.” Case IUz–428/2013, decision of 12 June 2014.

Law Offices and the Directory of Limited Liability Law Partnerships⁵⁴ incompatible with the Constitution and the Act on Lawyers. Under the impugned provisions, lawyers registering in the Directory of Lawyers had to pay a 5000 Euro fee in dinars, while paid law apprentices and volunteer law apprentices “who completed the entire apprenticeship term” had to pay 10% of the amount. The Court bore in mind that the fee was not based on objective criteria, the overall economic situation in the country and that practicing law is the way attorneys at law exercise their right to work and concluded that the registration fee limited equal access to the lawyer profession and that the impugned provisions in Article 2 of the Decision were incompatible with the principle of the rule of law in terms of legal certainty and the right to work enshrined in Article 60(1 and 2) of the Constitution. Given that the Act on Lawyers does not distinguish between law apprentices and volunteer law apprentices in terms of the duration of their apprenticeship, i.e. that all candidates have to fulfil the same registration requirements, the Constitutional Court concluded that candidates were subject to unequal treatment during registration in the Directory of Lawyers and in terms of registration fees although they were in the same legal situation and found that Article 1 of the Decision violated the principle of prohibition of discrimination enshrined in Article 21 of the Constitution.

2.3.3. Review of the Constitutionality of Specific Provisions of the National Councils of National Minorities Act

The Constitutional Court declared unconstitutional numerous provisions of the National Councils of National Minorities Act⁵⁵ governing the powers of the National Minority Councils to establish institutions, associations, foundations and companies, render decisions in various areas and initiate proceedings before the Constitutional Court, nominate members of school management boards, transfer rights to establishment of public companies and media to themselves, file motions, opinions and initiatives on issues within the remit of the National Assembly, co-operate with the state bodies of foreign states. The Court also declared unconstitutional the provisions imposing upon the provincial and local government authorities the obligation to review the motions, initiatives and opinions of the National Minority Councils and seek their decisions before the adoption of general enactments in specific areas.⁵⁶

54 Serbian Bar Chamber Management Board Decision No. 789–3/2012 of 18 May 2012. Case IUo–684/2012, decision of 20 February 2014.

55 *Sl. glasnik RS*, 72/09. The Constitutional Court declared the following provisions or parts of them: Article 10 (items 6, 12, 15), Article 12 (1(2 and 5), 3 and 4), Article 15 (item 7), Article 19(2), Article 20 (items 1–4), Articles 23, 24, 25(1 and 3). Case IUz–882/2010, decision of 16 January 2014.

56 More in IV.3.6.

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

3.1. *General*

Article 2(3) of the ICCPR, Article 13 of the ECHR and provisions of some other international treaties impose upon the state the obligation to ensure legal remedies. Effectiveness of the legal remedies 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.

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.⁵⁷ The Constitution guarantees the right to rehabilitation and compensation of damages to persons unlawfully or groundlessly deprived of liberty, detained or convicted for a punishable offence and compensation to persons who had suffered pecuniary or non-pecuniary damages inflicted on them by the unlawful or inappropriate work of the state authorities (Art. 35). Article 36 guarantees everyone the right to file an appeal or apply another legal remedy against any decisions on their rights. Apart from the Constitution, several other laws also envisage the rights to reparations, rehabilitation and compensation of damages.

3.2. *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).⁵⁸ Article 367 of the CPA deals with appeals of judgments and Article 399 governs appeals of decisions. An appeal of a civil judgment must be lodged within 15 days from the day a copy of the judgment is delivered, with the exception of cases regarding promissory

57 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.

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

notes and checks, where the appeals have to be filed within eight days (Art. 367(1)). Article 368 of CPA lays down that an appeal of a first-instance judgment ordering a natural person to pay a claim where the principal does not exceed the equivalent value of 300 EUR in RSD, i.e. an entrepreneur or legal person to pay a claim where the principal does not exceed the equivalent value of 1000 EUR in RSD shall not stay the enforcement of the judgment. Although this provision does not infringe on the right to a legal remedy per se, it appears to prejudice the outcome of the appeals proceedings and to unnecessarily complicate the enforcement of the final court decisions in the event the appeals are upheld and the first-instance judgments are modified or overturned. The most drastic restriction of the right of appeal in the CPA is the prohibition of raising procedural legal objections in the appeals (Art. 372(2)). Civil appeals are reviewed by the 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 (Art. 403). International human rights protection bodies generally treat such revisions as effective and ordinary legal remedies. The right to file a motion for a revision, however, is limited considerably by the CPA. The Act does not allow revisions of final judgments in property disputes when the claims regard the right of ownership of real estate or pecuniary claims, transfers of property or performance of other obligations in the event that the value of the subject matter in the impugned part of the judgment does not exceed the equivalent value of 100,000 EUR at the average exchange rate of the National Bank of Serbia on the day the claim is filed (Art. 403(3)). Furthermore, a motion for a revision may only be filed by a litigant's representative from among the ranks of lawyers (Art. 410). Finally, a motion for a revision may be filed only on points of law or procedure (Art. 407). Such motions may not in principle be filed with respect to incorrect findings of fact (Art. 407(2)). The motions for revision are reviewed by the Supreme Court of Cassation.

The Criminal Procedure Code (CPC)⁵⁹ envisages the right of appeal (Art. 432 of the CPC). An appeal may be lodged within 15 days from the day a copy of the judgment is delivered on the parties. The deadline may be extended at the request of the parties (Art. 432(2)). The appellants may claim substantive violations of the criminal procedure, violations of the substantive criminal law, incorrect and insufficient findings of fact or challenge the penalties. The CPC also allows for retrials and the submission of motions for the protection of legality. The latter remedy primarily serves to reverse human rights violations in criminal proceedings established by the Constitutional Court of Serbia or the European Court of Human Rights (ECtHR). The CPC allows for initiating criminal proceedings regarding specific crimes by private citizens, whereas the proceedings related to other criminal offences prosecuted *ex officio* may be launched only by the public prosecutor. Only if the public prosecutor establishes no grounds for criminal prosecution may the injured party undertake prosecution (Art. 52 CPC). Although this situation in practice does lead

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

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

The General Administrative Procedure Act⁶⁰ and the Non-Contentious Procedure Act⁶¹ 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.⁶²

The provisions of the General Administrative Procedure Act, under which an appeal shall not stay enforcement (Art. 221(1)) affect the effectiveness of legal remedies greatly. This law is, e.g. applied in court reviews of appeals of decisions on asylum applications usually ordering the unsuccessful applicants to leave the territory of the Republic of Serbia. For a remedy to be deemed effective in such proceedings in the meaning of ECtHR case law, the suspensive effect of an appeal must be automatic, rather than resting solely on the discretion of the domestic authority considering the individual's case.⁶³ Although the Administrative Court has not suspended the enforcement of a final administrative enactment in any asylum case to date, the Constitutional Court nevertheless took the view that an appeal filed with the Administrative Court was an effective legal remedy, which is not in accordance with ECtHR case law.⁶⁴

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.⁶⁵

3.3. 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

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

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

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

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

64 *Ibid.*

65 "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.

legal remedies for their protection have been exhausted or do not exist (Art. 170). The Constitutional Court Act also allows for the filing of a constitutional appeal in the event the appellant's right to a fair trial was violated or in the event the law excluded the right to the judicial protection of his human and minority rights and freedoms (Art. 82)). This provision provides for the filing of a constitutional appeal after the exhaustion of all other effective legal remedies. The ECtHR emphasised that the constitutional appeal should be considered an effective remedy as of 7 August 2008, that being the date when the Constitutional Court's first decisions on the merits of the appeals had been published.⁶⁶

The appellants may seek the protection of all human rights enshrined in the Constitution or another international instrument binding on the Republic of Serbia.⁶⁷ The interpretation of the Constitutional Court's case law, however, leads to the conclusion that victims of legal lacunae or the failure of the National Assembly, as the legislator, to legally regulate a particular field, cannot file constitutional appeals and seek the Court's protection on those grounds.⁶⁸

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.⁶⁹ 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 one case.⁷⁰ The ECtHR in its judgment expanded the existence of a violation to

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

67 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.

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

69 In 2013 the Constitutional Court dismissed a constitutional appeal, submitted by natural persons, filed over the 2012 Pride Parade (Court Decision in the case of UŽ-8463/12). The Court held that only the Belgrade Pride Parade Association, which had formally convened the assembly, was entitled to submit the constitutional appeal. This is not in compliance with ECtHR's case law. See the cases of *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.

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

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 appellant has failed to file the constitutional appeal within the set deadline for justified reasons, the Constitutional Court shall allow *restitutio in integrum* if the appellant applies for *restitutio in integrum* at the same time he lodges the constitutional appeal, within 15 days from the day the justified reasons ended (Art. 84(2)). A person may not apply for *restitutio in integrum* in the event more than three months have elapsed since the expiry of the deadline (Art. 84(3)). In the event the constitutional appeal regards the failure to undertake appropriate action, the deadline shall be set in each individual case, depending on the conduct of the defaulting authority and the conduct of the appellant.

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

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

The Constitutional Court may overturn decisions of lower courts when it finds them in violation of human rights.⁷¹ 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.⁷²

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

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

4. Independent Human Rights Protection Authorities⁷³

4.1. General

Independent human rights protection authorities have been operating in Serbia for a number of years now. The Commissioner for Information of Public Importance 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 Act⁷⁴ came into force in 2009.⁷⁵ The National Assembly re-elected Šabić in 2011.

Saša Janković was elected Protector of Citizens in 2007 pursuant to the Protector of Citizens Act⁷⁶ and re-elected in 2012.

The members of the State Audit Institution (SAI) Council and its Chairman Radoslav Sretenović were elected in 2007 under the State Audit Institution Act.⁷⁷ Chairman Sretenović was re-elected SAI Chairman by the Assembly in 2012.

The Anti-Corruption Agency Act⁷⁸ 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. The new Director and Deputy Director were appointed in 2013 (Tatjana Babić and Vladan Joksimović).

Nevena Petrušić was appointed Commissioner for the Protection of Equality in May 2010 to a five-year term in office, pursuant to the Anti-Discrimination Act⁷⁹.

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.

The European Commission stated in its 2013 Serbia Progress Report that the number of recommendations issued by the Protector of Citizens followed up by the government and parliament increased slightly, but that follow-up needed to be more systematic. The Action Plan for the Fulfilment of European Commission Recommendations adopted in February 2014 charges the Government with fulfill-

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

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

75 More about the work of the Commissioner in III.7.3.

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

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

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

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

ing the recommendations regarding the work of independent regulatory authorities, but does not specify the deadlines or the activities the Government is to undertake to improve the situation.⁸⁰

4.2. Independent and Public Authorities

Independent human rights protection authorities submit their annual reports to the National Assembly, but the follow-up on their recommendations is quite limited. The competent parliamentary committees hardly ever review these reports within the 30-day deadline set by the Assembly Rules of Procedure.⁸¹ The report review process ends with the National Assembly issuing conclusions or recommendations proposed by the competent committees, but there is no mechanism to make them binding on those public authorities or actors they refer to. In its conclusions, the National Assembly requires of the Government to submit follow-up reports within six months, but this practice has not taken root yet, wherefore a procedure needs to be put in place for overseeing the implementation of the National Assembly conclusions and, if necessary, taking measures against those who failed to implement them without good cause.⁸²

The inappropriate attitudes of some National Assembly deputies towards the representatives of the independent authorities surfaced during the June 2014 session at which the 2013 reports of the independent authorities were reviewed. The session was adjourned after the representatives of the independent authorities walked out of the session in protest against chair Vladimir Marinković's (SNS) refusal to give the floor to the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Šabić.⁸³ The National Assembly issued an apology the same evening and the debate resumed the following day.⁸⁴ Assembly Speaker Maja Gojković did not intervene when another SNS deputy, Marjan Rističević, grossly insulted Protector of Citizens Saša Janković and Commissioner for the Protection of Equality Nevena Petrušić.

80 Available in Serbian at http://www.seio.gov.rs/upload/documents/akcioniplan/akcioni_plan_2013_feb.pdf.

81 The 2011 Annual Reports of the independent authorities were, interestingly, discussed in the latter half of 2012.

82 Transparency Serbia press release, available in Serbian at: http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=304%3Askuptinski-zakljuci-o-izvetajima-nezavisnih-antikorupcijskih-organa-prednosti-i-slabosti&catid=29%3Aizvetaji-nezavisnih-tela&Itemid=37&lang=sr.

83 "Rodoljub Šabić: They Would Not Let Me Speak in Parliament", *B92*, 4 June 2014, available in Serbian at: <http://www.b92.net/mobilni/info/857044>.

84 In its release, the National Assembly expressed regret that not all participants in the Special Session were allowed to address the parliament and the hope that they would nevertheless accept the invitation to attend the session resuming the following day and exercise their rights under the Assembly Rules of Procedure. See the *Mondo* report, available in Serbian at: <http://mondo.rs/a698417/Info/Srbija/Sabacu-zabranili-da-govori-u-Skupstini.html>.

In June 2014, the National Assembly approved with a majority of votes the Draft Conclusion of the Human and Minority Rights and Gender Equality Committee on the 2013 Annual Report of the Commissioner for the Protection of Equality. It also upheld the Draft Conclusions of the Human and Minority Rights and Gender Equality Committee and the Committee for Justice, State Administration and Local Self-Government on the 2013 Annual Report of the Protector of Citizens and the 2013 Report on the Implementation of the Free Access to Information of Public Importance and Personal Data Protection Acts.⁸⁵

Pursuant to the Protector of Citizens Report, the National Assembly, *inter alia*, charged the Government with adopting laws and other regulations as soon as possible, with a view to achieving the goals in the national Public Administration Reform Strategy adopted in January 2014. The Assembly underlined that the Government should and had to adhere to the recommendations, initiatives and opinions the Protector of Citizens addressed to it and act on his recommendations. It called on the Government to review the Protector of Citizens Act and submit to it for adoption amendments aligning the legal framework governing the work of the Protector of Citizens to the needs identified in his work so far. The recommendations also state that the Government has to enact regulations ensuring the right to a trial within a reasonable time and obligated the Government to continue efforts to improve the status of persons deprived of liberty.⁸⁶

Although the Commissioner for the Protection of Equality noted in her Report that the legislative framework aimed at achieving equality and prohibiting discrimination in the fields of labour, professional rehabilitation and employment of persons with disabilities, the protection of persons with mental disorders and patient rights has been improved, the Assembly conclusions obligate the Government and competent state authorities to take the requisite measures to fully implement the Commissioner's recommendations and protect from discrimination those most discriminated against.

With respect to the Report by the Commissioner for Free Access to Information of Public Importance and Personal Data Protection, the National Assembly concluded that the Government needed to review the valid law and propose an amendment, stipulating that the legislator seek the opinion of the Commissioner about the draft regulations.

Some very important bills, such as the amendments to the Protector of Citizens Act and the Free Access to Information of Public Importance Act⁸⁷, withdrawn from the parliamentary procedure by the new Government that took office after the

85 See the report on the Assembly decisions, available in Serbian at: <http://paragraf.rs/dnevne-vesti/060614/060614-vest1.html>.

86 Conclusion on the 2013 Protector of Citizens Annual Report, available in Serbian at <http://slglasnik.info/sr/60-06-06-2014/23802-zakljucak-povodom-razmatranja-redovnog-godisnjeg-izvestaja-zastitnika-gradana-za-2013-godinu-rs-broj-40.html>.

87 More on the laws in the 2012 Report, II.5.

2012 elections, were not adopted in 2014 either. Commissioner for Information of Public Importance Rodoljub Šabić lay stress on the importance of enacting a new Personal Data Protection Act in a letter to Prime Minister Aleksandar Vučić and placed the model law his Office prepared at the disposal of the Justice Minister.⁸⁸

The Commissioner for Information of Public Importance and Personal Data Protection repeatedly warned the Government to urgently adopt the Action Plan for 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.⁸⁹

The Anti-Corruption Agency submitted an initiative on the adoption of a new law on the Agency to the Justice Ministry in July 2014 and started drafting the new bill. The Agency is of the view that the new law should include clearer and stronger rules on the accountability of senior officials and asset and income reports and increase the Agency's powers to consolidate its independence. The adoption of a new law would also provide an opportunity to align it with the subsidiary legislation adopted in 2013 (Anti-Corruption Strategy and Action Plan).

The executive authorities apparently stepped up their pressures on the independent institutions in 2014, whilst failing to duly recognise their efforts, as Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Šabić also warned.⁹⁰ In February 2014, the Anti-Corruption Agency initiated proceedings against Energy Minister Zorana Mihailović, for violating the Anti-Corruption Agency Act, notably, abusing her office for party purposes. Minister Mihailović accused the Agency of sensationalism.⁹¹ Media extensively reported on the salaries of the representatives of the independent authorities, particularly the Protector of Citizens, although his salary is laid down in the law and equals that of the Constitutional Court president.

The incident during the 2014 Pride Parade, when the Gendarmerie clashed with four people, prompted the Protector of Citizens to file criminal reports against two military police officers for assaulting the Gendarmerie officers. The Protector of Citizens joined the criminal report already filed by the police on the order of the prosecutors against seven Gendarmerie officers for torture and ill-treatment after the incident.⁹² The Protector of Citizens also publicly claimed that the Military Security

88 The Commissioner's letter is available at: <http://www.poverenik.rs/en/press-releases-and-publications/1872-pismo-poverenika-premijeru.html>.

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

90 The Commissioner's letter is available at <http://www.poverenik.rs/en/press-releases-and-publications/1872-pismo-poverenika-premijeru.html>.

91 Proceedings against Minister Mihailović, *Blic*, 12 February 2014, available in Serbian at: <http://www.blic.rs/Vesti/Politika/442032/Postupak-protiv-ministarke-Mihajlovic>.

92 Data available at the Protector of Citizens website: <http://www.ombudsman.rs/>.

Agency (VBA) rejected his request to perform insight in the Agency documentation and work and failed to provide the information about this case he had requested. The Protector of Citizens said that he had obtained reports that this Agency was illegally monitoring the work of specific politicians, judges and TU activists. These statements led to huge pressures on the Protector of Citizens and his fierce criticism by the members and deputies of the ruling party and the Government ministers. The Assembly Security Services Oversight Committee refused to discuss issues within its remit, explaining that it had to wait for the prosecutor's reaction. This has seriously jeopardised the status of a crucial independent authority, which has been publicly criticised, insulted and accused of being an enemy of the state for exercising its powers.⁹³

After reviewing a report submitted in April 2014 by the Association of Judicial and Prosecutorial Assistants of Serbia, the Anti-Corruption Agency moved for the dismissal of Justice Minister Nikola Selaković. The Agency found the Minister in conflict of interests because he voted for the appointment of his Assistants in the Justice Ministry, Radomir Ilić and Mirjana Mihajlović, to the posts of deputy prosecutor and misdemeanour judge respectively in his capacity of member of the State Prosecutorial Council and the High Judicial Council.⁹⁴ Selaković publicly criticised the decision and appealed it with the Agency Committee.⁹⁵ The Committee had not ruled on the appeal by the time this Report went into print.

The Anti-Corruption Agency was also exposed to strong pressures from the media and the executive government in 2014. The media repeatedly accused it of “concealing the salaries of its staff and rigging vacancy recruitments”, all of which the Agency denied in its press releases available on its website.⁹⁶

4.3. Efficiency of the Independent Authorities

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

The Protector of Citizens received 18,437 complaints in 2013, more than in 2014, when 17,201 complaints were filed with his Office. The Protector of Citizens in 2014 issued 554 recommendations, 231 of which were followed up (fewer than in 2013, when a similar number of recommendations were issued and 328 were followed up). The elections in the spring of 2014, which paralysed the work of state

93 More at: <http://www.ombudsman.rs/>.

94 Recommendation to Dismiss, more is available in Serbian at: http://www.acas.rs/images/stories/press/preporuka_zarazresenje_NS.pdf.

95 Selaković: “I don’t like to be lectured by those elbow-deep in the cookie jar”, *Blic*, 17 October 2014, available in Serbian at <http://www.blic.rs/Vesti/Politika/503351/Selakovic-Ne-volim-pridike-onih-kojima-su-ruke-duboko-u-medu>.

96 See the Agency press release, available in Serbian at: http://www.acas.rs/sr_cir/pocetna/39-aktuelnosti/1107-agencija-ne-namesta-konkurse-za-posao.html.

and local authorities, is probably one the reasons why they failed to take on board as many recommendations in 2014.

Public companies and the Tax Administration have failed to heed the recommendations of the Protector of Citizens the most often. The Ministry of Internal Affairs, BIA and the Defence Ministry have fulfilled 88% of the recommendations.⁹⁷ According to the Protector of Citizens, the rate of eliminating the deficiencies he has identified stands at around 93%, the highest in Europe. The success of this authority is all the greater given that there are no penalties for those who fail to act on its findings.⁹⁸

The effectiveness of activities of the Commissioner for Information of Public Importance is also very significant, as testified by the large number of cases citizens file with that Office. The Commissioner for Information of Public Importance had a caseload of 4,399 cases in early 2015; 3,735 regarded access to information and 664 personal data protection. The trend continued in 2015, with 591 requests regarding both access to information and personal data protection filed with the Commissioner in January. The Commissioner and his Office have extremely successful co-operation with the citizens; as a rule, around 400 people contact them seeking their advice about how to exercise their right of free access to information every year. The Commissioner's Office also has around 300 contacts per annum with the representatives of public authorities and personal data filing system controllers whom they consult on the enforcement of the Personal Data Protection Act.

Rodoljub Šabić said that over 90% of those who had been deprived of access to information realised that right in proceedings before the Commissioner. He also underlined that state-owned public companies headed the list of those failing to act on the submitted requests for access to information.⁹⁹

Public trust in the work of the independent authorities has increased also owing to the fact that the Protector of Citizens operates not only the main office in Belgrade, but local offices in Preševo, Bujanovac and Medveđa as well. The offices are open to the public every workday 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.¹⁰⁰

97 "Deputies Praise Reports by Regulatory Authorities", *Politika*, 5 June, p. 6.

98 See the Protector of Citizens press release, available in Serbian at: http://www.ombudsman.rs/index.php/lang-sr_YU/2011-12-25-10-17-15/3549-2014-11-10-12-30-05.

99 "Deputies Praise Reports by Regulatory Authorities", *Politika*, 5 June, p. 6.

100 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.

As far as the staffing of independent authorities is concerned, the Office of the Protector of Citizens found itself seriously understaffed in 2014, when the Assembly Administrative Committee rendered a decision leaving it without 19 associates. The Committee decided to extend the contracts of 14 staff members after the Protector of Citizens complained. The Commissioner for Information of Public Importance and Personal Data Protection warned that the Government cost-cutting decision prohibiting his office from using the official vehicles would likely hinder inspection checks.¹⁰¹ The Assembly Committee on Administrative-Budgetary and Mandate-Immunity Issues approved the Protector of Citizens' internal organisation and staffing rulebook, envisaging an increase in the number of staff reviewing complaints from 46% to 69%, which will boost the Office's effectiveness in protecting the rights of citizens.¹⁰²

The Commissioner for the Protection of Equality opened an office where the citizens can personally file their complaints. In 2014, the Commissioner also opened a regional office in Novi Pazar and plans on opening three more regional offices.¹⁰³ The Anti-Corruption Agency in 2011 moved to a leased building which fully satisfies its needs.

The Office of the Commissioner for Information of Public Importance and Personal Data Protection moved to new offices in 2013, which satisfy its needs. The Commissioner enacted a new internal organisation and staffing rulebook, which was approved by the Assembly Committee on Administrative-Budgetary and Mandate-Immunity Issues in November 2014.

4.4. *Adoption of the Whistle-Blowers Protection Act*

People publicly alerting to data indicating corruption play an important role not only in the fight against corrupt practices, but in uncovering other crimes as well. The gravity of the problem of corruption in Serbia has for several years now been reflected also in the Corruption Perceptions Index; Serbia ranked 78th on the list of 145 countries in 2014.¹⁰⁴ On the other hand, Serbian and international experts had for years been insisting on the adoption of regulations ensuring comprehensive and systemic support to whistle-blowers.¹⁰⁵

101 See the *24 sata* report in Serbian at: <http://arhiva.24sata.rs/vesti/aktuelno/vest/rodoljubu-sabicu-oduzeli-sluzbena-vozila-kako-da-idem-u-inspekciju/138403.phtml>.

102 See the *Tanjug* report, available in Serbian at: <http://www.tanjug.rs/novosti/152896/zastitniku-gradjana-odobreno-produzenje-ugovora-za-14-ljudi.htm>.

103 See the Commissioner's press release, available in Serbian at: <http://www.ravnopravnost.gov.rs/sr/doga%C4%91aji/otvorena-prva-regionalna-kancelarija-poverenika-u-novom-pazaru>.

104 More in: *Transparency International Corruption Perceptions Index*, available at: <http://www.transparency.org/cpi2014/results>.

105 The adoption of the law was greatly delayed as the authorities for a long time failed to heed the recommendations of the Council of Europe (Group of States against Corruption (GRECO))

Whistle-blowers were afforded protection by provisions in several laws: the Personal Data Protection Act, the Civil Servants Act and the Anti-Corruption Agency Act. None of these laws, however, comprehensively covered all issues regarding the protection of whistle-blowers. On the other hand, whistle-blowers have as a rule suffered consequences, many of them serious, for their actions in practice: many were dismissed, threatened or reassigned to other jobs.

The Anti-Corruption Agency focused the most on the protection of whistle-blowers; 170 people sought the status of whistle-blower from the Agency and 104 were granted it.¹⁰⁶ The Constitutional Court in October 2014 declared unconstitutional Article 56(5) of the Anti-Corruption Agency Act, the only grounds under which the Agency was capable of protecting potential whistle-blowers. This provision authorised the Agency Director to adopt a “more thorough regulation” governing the procedure for assisting public sector staff reporting corruption in good faith. The Court simultaneously declared unconstitutional the 2011 Whistle-Blower Protection Rulebook. As it was certain that the Whistle-Blowers Protection Act would be adopted by the end of the year, the Court put off the publication of its decision for three months to avoid a legal vacuum in which whistle-blowers would be devoid of any protection.

The Commissioner for Information of Public Importance and Personal Data Protection published a Draft Act on Whistle-Blowers back in 2013. Apart from protecting whistle-blowers reporting corruption in the narrower sense, the Draft envisaged also protection for individuals alerting to activities jeopardising public interest, such as pollution, risks to human health or issues regarding safety at work. Although the model was commended by the experts, the Serbian authorities did not take it into account and formed a working group that drafted its own version of the law. The Whistle-blowers Protection Act¹⁰⁷, adopted in November 2014 at long last, includes the deficiencies highlighted by experts.¹⁰⁸

The Act defines whistle-blowers as “natural persons who disclose in good faith information about a threat to or violation of public interest in accordance with the Act in the context of their work-based relationship, recruitment, use of services delivered by public authorities, entities exercising public powers or public services, business cooperation or ownership of company shares” (Art. 2). The Act thus pro-

made back in 2006, including the one that a law protecting whistle-blowers would significantly contribute to the suppression of corruption.

106 V. Joksimović: “Agency Looking for a Way to Protect Whistle-Blowers”, *Blic*, 26 November 2014, available in Serbian at: <http://www.blic.rs/Projekat-EU/514443/Joksimovic-Agencija-trazi-nacin-da-zastiti-uzbunjivace>.

107 *Sl. glasnik RS*, 128/14.

108 Nemanja Nenadić of Transparency Serbia alerted to the shortcomings of the law and expressed doubts about whether it would help the fight against corruption. More in Serbian at: http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=467&Itemid=41&lan.: <http://www.blic.rs/Projekat-EU/512237/ZASTITA-UZBUNJIVACA-Nenadic-Kljucna-resenja-su-losa>.

vides protection to both staff in the public and private sectors, job applicants and users of public services.

The Act in Article 12 distinguishes between three types of whistle-blowing: internal (making a disclosure to an employer), external (making a disclosure to a relevant authority, such as an inspectorate, the prosecution service or the police) and public whistle-blowing (making a disclosure via the media, Internet, at public events, et al). Whistle-blowers may choose whom to make a disclosure to, but they must make it within one year from the day they learned about the committed action and no later than 10 years from the commission of such an action (Art. 5(2)). Those the disclosures were made to have to act on them within 15 days (Art. 15 and 18).

Both the employers and the competent state authorities are under the obligation to protect the identity of the whistle-blowers. Persons authorised to receive disclosures are under the duty to protect the personal data of the whistle-blowers and data that may reveal their identity, unless the whistle-blowers agree to the disclosure of such data, pursuant to the personal data protection law (Art. 10). This rule applies not only to persons receiving the information from the whistle-blowers, but to all other persons that become aware of their identity as well. Persons authorised to receive disclosures from whistle-blowers are under the duty to notify them at the time of disclosure that their identity may be revealed to the competent authorities, if the actions of the latter would otherwise be impossible. In the event the whistle-blowers' identity has to be revealed during the proceedings, the persons authorised to receive disclosures must notify the whistle-blowers thereof in advance. Whistle-blowers, however, usually do not want to be anonymous and prefer making public disclosures. The Act, however, does not afford sufficient protection to whistle-blowers publicly alerting to corruption.

The Act specifies that employers shall bear the burden of proof in court proceedings initiated by whistle-blowers alleging they had suffered consequences for whistle-blowing (Art. 29). Whistle-blowers are entitled to compensation of damages they sustained due to whistle-blowing, pursuant to the law on contracts and torts (Art. 22).

The main shortcoming of the Act is that it does not provide sufficient protection to whistle-blowers as it does not envisage criminal law protection but just court protection, which is, furthermore, subject to major restrictions. Furthermore, it does not provide for any other mechanism to facilitate the resolution of the status of whistle-blowers. Exclusive court protection can hardly be deemed sufficient given the length of proceedings before Serbia's courts and their inefficiency. The Commissioner, for instance, proposed in his Draft Act that, in addition to courts, whistle-blowers also be provided with temporary relief by the Protector of Citizens.

Article 25 of the Whistle-Blowers Protection Act explicitly rules out the possibility of contesting the lawfulness of employers' individual enactments on the work-related rights, duties and obligations of their whistle-blowing workers. This

greatly limits the protection of whistle-blowers in view of the fact that most of them are dismissed from their jobs, suspended or reassigned to other jobs. The provision also gives rise to confusion, because such whistle-blowers must decide whether to initiate work-related disputes or to seek protection from retaliation. Penalties for retaliation need to be grave given that fear of retaliation is most often the reason why people are reluctant to corruption.¹⁰⁹ Under the Act, whistle-blowers who have been retaliated against may only seek damages pursuant to the law on contracts and torts, which may not be an adequate or sufficient penalty.¹¹⁰

The crucial importance of penalties also needs to be highlighted in the context of whistle-blower protection. Although the Act provides for safeguards of the whistle-blowers' identity, it does not lay down any penalties for those who violate these rules. The penal provisions do not include any sanctions for revealing the identity of the whistle-blowers. This norm loses in significance if there are no consequences for violating it. It remains to be seen how the law will be implemented in practice, as Serbian laws are as a rule better written than enforced.

109 The Draft prepared by the Commissioner's Working Group envisaged the penalty of imprisonment.

110 Comment of the Draft Whistle-blowers Protection Act, Shareconference, available in Serbian at: <http://www.shareconference.net/sites/default/files/u741/komentar-uzbunjivaci.pdf>. See also the CoE expert report on the Draft Act at http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/PACS-Serbia/Technical%20Paper/TP8%202014%20PACS%20Expert%20Opinion-draft%20Law-Protection-Whistle-blowers_EN.pdf.

III INDIVIDUAL RIGHTS

1. Right to Life

1.1. General

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

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

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

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

Serbia's laws specify which state agents may use lethal weapons and in which situations, pursuant to this provision of the European Convention. Police and BIA¹¹¹ officers may use means of coercion, including firearms, under the condi-

111 Under Article 12 of the Security Information Agency Act (*Sl. glasnik RS*, 42/02 and 111/09), 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." Under Article 16(1 and 2) of the

tions and in the manner laid down in the Police Act¹¹² and the Rulebook on the Technical Features and Manner of Use of Means of Coercion,¹¹³ while the Penal Sanctions Enforcement Act (hereinafter: PSEA)¹¹⁴ and the Rulebook on Measures for Maintaining Order and Security in Penal Institutions¹¹⁵ specify under which conditions means of coercion may be used in penitentiaries. Private security guards may use firearms in accordance with the Private Security Act¹¹⁶ and the Police Act.

The Police Act lays down when firearms may be used, notably in order to: protect the lives of people; prevent the escape of a person apprehended during the commission of a crime but only “if there is an imminent threat to life”; prevent the escape of a person lawfully deprived of liberty or against whom an arrest warrant was issued for a crime “if there is an imminent threat to life”; to repel an immediate attack threatening the life of an officer or another person (Art. 100). These provisions are in accordance with ECHR standards and the principle of proportionality.¹¹⁷

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

The Rulebook on the Technical Features and Manner of Use of Means of Coercion sets out that the police will prepare an action plan before they exercise their powers against a person in the event they have information indicating that the person will offer armed resistance (Art. 16).¹¹⁸ 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

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 charged with internal affairs. The decision on assuming and performing the duties within the remit of the ministry charged with internal affairs shall be taken jointly by the Agency Director and the minister charged with 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)).

112 *Sl. glasnik RS*, 101/05, 63/09 – Constitutional Court decision and 92/2011.

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

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

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

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

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

118 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.

used or when the application of the means of coercion resulted in grave physical injuries or death (Art. 25).¹¹⁹

Regulations governing the use of lethal weapons by the staff of penal institutions are somewhat more detailed than those applying to the police. The Rulebook on Measures for Maintaining Order and Security in Penal Institutions explicitly lays down that the purpose of using firearms is to incapacitate the assailant and that the authorised officer shall endeavour not to injure the convict's vital organs, i.e. that he will aim at the convict's legs (Art. 36(4)). The Rulebook distinguishes between the lethal use of firearms, permitted only if human lives are in danger (Art. 36(5)) and non-lethal use of firearms permitted also when human lives are not in danger.¹²⁰ 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.¹²¹

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 stipu-

119 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 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.

120 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.

121 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.

lates 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). Draft Rulebooks on the training and licencing of companies and individuals extending private security services were presented in March 2014¹²² but were not adopted by the end of the year.

As far as the state’s obligation to take the relevant measures to protect human life is concerned, it may be concluded that Serbia’s legislation adequately protects the right to life.¹²³ 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.

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

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 remained prominent in 2014. Twenty four women were killed in the domestic-partner context in the first half of 2014.¹²⁴

122 The rulebooks governing the professional training in the extension of private security services, licencing requirements, professional examinations and the accreditation of the training centre were presented at the 20th session of the Private Security Association Technical Security Group. The rulebooks were prepared by MIA and Serbian Chamber of Commerce Private Security Association experts.

123 This is corroborated by the reports of treaty bodies monitoring the enforcement of human rights treaties, which have hardly ever 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.

124 <http://mondo.rs/a179781/Info/Drustvo/Od-pocetka-godine-ubijene-24-zene-u-Srbiji.html>.

The state is under the obligation to conduct effective investigations into all deprivations of life or grave risks to people's lives if there are reasons to believe that they cannot be attributed to natural causes with a view to establishing all the circumstances and identifying and punishing those responsible. An investigation into a potential breach of the right to life is deemed effective in the event it fulfils the following requirements: an investigation cannot hinge on the initiative of the injured party, i.e. the competent authorities must launch it *ex officio*, as soon as they become aware of an event that needs to be investigated; the investigation must be independent from those involved in the event, both *de 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.¹²⁵ 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. Criminal Procedure Code sets out that a public prosecutor or court must order an examination and an autopsy of a person who died whilst deprived of liberty by a forensic medical specialist (Art, 129).

To sum up, the valid criminal legislation does not *per se* hinder the conduct of effective investigations about crimes threatening human life. However, serious problems often arise in practice with regard to investigations into incidents in which people were deprived of their lives or faced serious life threats. This is corroborated by the ECtHR judgment finding Serbia in breach of Article 2 of the ECHR in 2012, because it failed to effectively investigate and punish the perpetrator of a homicide that occurred back in 1991,¹²⁶ and its judgment in the case of *Petrović v. Serbia* delivered in 2014. The Constitutional Court of Serbia also delivered a judgment in January 2013 in which it found a violation of the right to life because of the authorities' failure to effectively investigate the deaths of the sons of the applicants who had filed the constitutional appeal.¹²⁷

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

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

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

Another fact that should be borne in mind is that numerous crimes committed during the armed conflicts in Croatia, Bosnia and Herzegovina and Kosovo have not been processed or investigated yet and that their perpetrators have not been brought to justice, although the state is under the obligation to criminally prosecute them. Furthermore, the perpetrators of a number of murders, which the public believes the state authorities may have been implicated in, particularly those committed before 2000, have never been identified. 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 2014. Nor have those who tried to kill journalist Dejan Anastasijević, although the Serbian Government set up a special commission tasked with investigating all the circumstances regarding these murders of journalists. Assassinations of leading senior state officials and civil servants, such as Zoran Todorović, member of JUL, a political party, former FRY Defence Minister Pavle Bulatović, judge Nebojša Simeunović, police Generals Radovan Stojičić and Boško Buha, Director of the national air company JAT, Živorad Petrović and state security agent Momir Gavrilović, have remained unsolved as well.

*1.3. The ECtHR Judgment in the Case of Petrović v. Serbia*¹²⁸

The European Court of Human Rights on 15 July 2014 delivered its judgment in the case of *Petrović v. Serbia*, in which it established a breach of the procedural aspect of the right to life under Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The applicant, Radmila Petrović, alleged, in particular, that no effective investigation had been conducted into the circumstances of her son's ill-treatment and death. The applicant's son, Dejan Petrović, succumbed to his injuries after jumping head first from the second floor of the Vračar police station on 17 January 2002, where he had been brought the previous day on suspicion of theft and spent the night in police custody.

The ECtHR found a number of shortcomings in the investigation conducted by the police after Dejan Petrović's death and listed which other steps should have been taken for the investigative actions and forensic procedures to have satisfied the criteria of independence, thoroughness and diligence pursuant to the Court's case law.

The Court highlighted a number of shortcomings in the actions of the public prosecutor, stating that there were a number of features concerning the evidence which should have alerted the prosecutor to the need to investigate further beyond

128 The judgment is available at: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["40485/08"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-145571"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{).

merely taking written statements. The Court also found that the contradictory forensic reports raised numerous disputable issues, *inter alia*, whether it was possible for Dejan Petrović to have jumped out of the window. In the view of the ECtHR, the Belgrade District Court and the Supreme Court of Serbia have accepted the police officers' version of the events to such an extent that they were prepared to omit to take into account any relevant element which did not corroborate it, as well as the highest prosecutor's criticism of the work of his inferiors. The courts' decisions were rather terse, unconvincing, limited to certain pieces of evidence and reports which were apparently cited wrongly or selectively and some of them were even taken after delays in breach of the domestic law.

The ECtHR concluded that there were no indications that in ascertaining the facts of the incident the prosecutor was prepared to scrutinise thoroughly the police account of the incident. The Court also emphasised that the lack of transparency in this and similar situations would not maintain public confidence in the authorities' adherence to the rule of law.

1.4. Euthanasia

Serbian media in 2014 wrote about the possibility of legalising euthanasia in the working version of Civil Code¹²⁹, on which a public debate was launched in December. The new institute – right to euthanasia – is introduced in Article 87¹³⁰ of the working version of the Civil Code. Health Minister Zlatibor Lončar said in late October 2014 that he, personally, was against euthanasia but that he supported the opening of a public debate on that issue.

Three EU member states have to date legalised euthanasia.¹³¹ The European Court of Human Rights has not yet taken a clear stand on euthanasia and assisted suicide in its case law.¹³²

129 The working version of the Civil Code is available in Serbian at: http://www.paragraf.rs/kk/images-kk/gradjanski_zakonik_republike_srbije.pdf.

130 Under Article 87 of the Civil Code: "The right to euthanasia, as the right of a natural person to a consensual and voluntary premature termination of life, may be acquired provided that the prescribed humane, social and medical conditions are met. The requirements and procedure for realising the right to euthanasia shall be prescribed by a separate law. Abuse of the right to euthanasia to obtain wrongful material or other gain shall be grounds for criminal liability."

131 The Netherlands, Belgium and Luxembourg. Some European states allow some form of assistance to those who want to end their lives, but quite a few European countries, including EU member states, incriminate euthanasia. More in Serbian available at: <http://www.euractiv.rs/eu-prioriteti/8151-u-francuskoj-poela-debata-o-eutanaziji-?params=zQkjyHM1428UBt1596uxb1554YmE1526tCC1330fEG1526JVb1358RRZ1470An-S1512HFpC812gKz1652MEt1414lha1610YaS1540jNB1358tamG896rex1411Jb14HNL-1372Njd1442AVj1386Gfv1414MAj1540qBH1624NIJ1358ouP1596RiGc644ZcK1554nV-R1596ogd1442kdbt644OvL1596NwC1610qDdL826BK5I>.

132 More at http://www.echr.coe.int/Documents/FS_Euthanasia_ENG.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 law¹³³ i.e. it constitutes a *ius cogens*, which implies that there may be no derogation from this norm.

The prohibition of torture protects human physical and mental integrity in absolute terms, which means that there is no justifiable or legitimate interest warranting derogation from this prohibition in any situation (state of war, threat of war, internal political instability or any other public emergency).¹³⁴ The ECtHR underlines in its case law that the prohibition of torture “enshrines one of the most fundamental values of democratic societies”.¹³⁵ Furthermore, the prohibition of torture imposes a number of (positive and negative) obligations on the state.

The first, negative obligation is that the state refrains from any actions or conduct in contravention of the prohibition of torture with respect to persons under its jurisdiction. The UN Convention against Torture also provides for the preventive obligation of states parties to ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Furthermore, the states are under the obligation to ensure that all acts of torture are offences under their criminal law; to conduct prompt, thorough and effective investigations into allegations of torture and identify and punish the perpetrators (be they officials or private

133 See V. Dimitrijević, D. Popović, T. Papić, V. Petrović, *Međunarodno pravo ljudskih prava (International Human Rights Law)*, Belgrade 2006, p. 67.

134 Derogation from the prohibition of torture in time of war or public emergency or on the order of a superior officer or a public authority is absolutely prohibited under Article 4(2) of the IC-CPR, Article 15 of the ECHR and Article 2 of the UN Convention against Torture. See, e.g. *Tomasi v. France*, ECtHR, App. No. 12857/87, para 115.

135 See e.g. *Idalov v. Russia*, ECtHR, App. No. 5826/03, para 91, 22 May 2012; *Labita v. Italy*, ECtHR, App. No. 26772/95, para 119, 6 April 2000; *Ostrovar v. Moldova*, ECtHR, App. No. 35207/03, para 76, 13 September 2005.

individuals); refrain from deportation, refoulement or extradition of individuals to another state where they would be at risk of torture; provide protection and fair compensation to victims of torture or their heirs; ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings; cooperate with the CaT and CPT.

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

The right of persons deprived of liberty to be examined by a doctor of their own choosing is the only one not enshrined in the Constitution, 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).¹³⁶ With the exception of the last above-mentioned right, the provisions of the Constitution on the prohibition of torture are in line with international regulations and standards. The Constitution also guarantees the right to effective judicial protection in the event their rights to physical and mental integrity are violated and the right to elimination of consequences arising from the violation, which entails the right to redress for torture and similar treatment, regardless of who committed it (Art. 22).

The Criminal Code provisions on torture and ill-treatment incriminates extortion of statements (Art. 136) and torture and ill-treatment (Art. 137). 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.

¹³⁶ The CPT has from the start attached particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to next of kin or a third party of his choice, the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice. See para 36 of the CPT 2nd General Report [CPT/Inf (92) 3], available at: <http://www.cpt.coe.int/en/annual/rep-02.htm>.

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. The practice of qualifying specific acts by public officials, mostly Ministry of Internal Affairs officers, as acts aimed at extorting statements but then qualifying them as torture and ill-treatment continued in 2014. It remains unclear why such acts are not qualified as extortion of statements, an offence defined by the very act of commission.¹³⁷

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)).¹³⁸ Such an approach renders the spirit of the prohibition of ill-treatment enshrined in the UN Convention against Torture absolutely senseless in practice. Various forms of violence by men against women were qualified as ill-treatment although Serbia ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence, which in Article 5(2) lays down that states shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate and punish the perpetrators.

The penalties are not proportionate to the severity and gravity of this crime, as the Committee against Torture noted as well.¹³⁹ Ill-treatment and torture warrants maximum eight years' imprisonment, while the extortion of a statement warrants maximum 10 years' imprisonment. With the exception of the qualified form of the

137 Case K 223/13 of the Basic Court in Užice is an illustration of this practice.

138 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”.

139 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.

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).

Given that the penalties for the crimes of torture and ill-treatment have not changed, the CPC provides for summary criminal proceedings against defendants accused of these crimes.¹⁴⁰ This practically means no investigations are to be conducted into crimes prosecuted summarily unless the public prosecutor undertakes specific investigation actions at his own initiative or on the order of the court. The other provisions of the CPC — precluding the injured party, as a subsidiary prosecutor, from taking over 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 — remained unchanged as well.¹⁴¹ The valid provisions and 2013 practice of the judicial authorities¹⁴² clearly demonstrated lack of state will to identify and punish perpetrators of ill-treatment, particularly public officials (usually policemen),

This assertion is corroborated by the fact that the torturers of the applicant who had filed constitutional appeal 4100/2011¹⁴³ and the son of the applicant in the ECtHR case *Petković v. Serbia*¹⁴⁴ have not been identified yet although both the Constitutional Court and the ECtHR ordered the authorities to conduct an effective and efficient investigation to identify and punish the perpetrators of the torture that had undoubtedly occurred.¹⁴⁵

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) and specify the data that report must include.

140 Under Article 495 of the CPC, crimes carrying fines or up to eight years imprisonment shall be tried in summary proceedings.

141 More in the *2013 Report*, II.2.1.

142 *Ibid.*

143 *Ibid.*

144 ECtHR, App. No. 31169/08.

145 The ill-treatment in both cases occurred in Pavilion VII of the Požarevac penitentiary.

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)).¹⁴⁶

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 a doctor after using means of coercion. Most persons, against whom the police used force, are nevertheless examined by a doctor in practice. The NPM visited a number of police stations in 2014 (Subotica, Sombor, Belgrade, Sremska Mitrovica, Valjevo, Smederevo et al) and established that nearly all the cases on the use of force it had insight in included medical reports.¹⁴⁷ The medical reports are in most cases attached to the reports that the police officers, who had applied the coercive measures, submit to their superiors. Some doctors, however, do not forward their findings to the police, justifying their refusal by the need to protect the patients' privacy.¹⁴⁸

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)).

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

147 More at <http://www.npm.lis.rs/>.

148 Serbia is expected to fulfil all the recommendations the CPT made after its 2011 visit within the EU accession process. The CPT recommended that, in cases regarding police custody and use of force by the police, the record drawn up following the medical examination a full account of all the circumstances in which the injuries occurred, objective medical findings on the causes of the identified injuries and the account of the person against whom force was used. This will facilitate oversight of the lawfulness of the use of force and the identification and punishment of excessive or unlawful use of force.

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.¹⁴⁹ 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”.¹⁵⁰

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.

149 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.

150 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).

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,¹⁵¹ 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 over-seeing the lawfulness of police work can hardly be considered independent.¹⁵² When the decision on the complaint is rendered, the complainants are notified that the complaints review procedure has been completed and that they “have at their disposal all legal and other means to protect their rights and freedoms”.

The Serbian Ministry of Internal Affairs received a total of 637 complaints alleging police misconduct in the 1 October 2013–1 November 2014 period. It found that 49 of them were well-founded and initiated disciplinary proceedings in 36 cases. In 24 cases, the policemen were found to have committed the offences. The following disciplinary sanctions were imposed against them: salary reduction (in eight cases), reprimand (in 10 cases) and demotion (one case). The other five disciplinary proceedings were under way at the time the MIA replied to BCHR’s request for information of public importance. Twenty-five criminal reports were filed after proceedings for the following crimes in the same period: ill-treatment and torture (Art. 137 CC, in 18 cases), light bodily injury (Art. 122 CC, in three cases), coercion (Art. 135 CC, in one case), endangerment of safety (Art. 138 CC, in three cases). Five police officers were dismissed, one of whom for extorting a statement (Art. 136(2) CC).¹⁵³

The new Penal Sanctions Enforcement Act (PSEA)¹⁵⁴, which thoroughly governs the work of a new institute, the penal sanctions enforcement judges, came

151 The content of the minutes is specified in Article 24 of the Complaints Review Procedure Rule-book.

152 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”.

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

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

into force on 1 September 2014. Penal sanctions enforcement judges were introduced to review convicts' complaints of violations of their individual rights in the third instance (Arts. 76–131)¹⁵⁵ and to review motions for court protection filed directly by convicts claiming their physical integrity or life is seriously jeopardised (Art. 37). Furthermore, remand prisoners, who had under the previous law been entitled to complain to the presidents of the higher courts¹⁵⁶, may file complaints to the penal sanctions enforcement judges in writing or orally, for the record (Art. 37). The penal sanctions enforcement judge may hold an oral hearing about the complaint or the motion for court protection in the court or penitentiary, and question the parties to the proceedings about the facts and evidence of relevance to the court decision (Art. 38)The judge shall invite the legal representative of the remanded or convicted prisoner to the hearing if s/he has one (Art. 38(3)). The penal sanctions enforcement judge may also call to the witness stand the penitentiary staff, other prisoners, obtain or have insight in the records of the penitentiary or other state authorities, visit the penitentiary and establish facts in another manner (Art. 38(5)). Penal sanctions enforcement judges render decisions in the form of rulings. In the event they find the complaint or motion for court protection well-founded, they shall order the penitentiary to eliminate the identified breach of law within a specific period and notify them of the measures taken to that end. In the event the breach cannot be eliminated, the penal sanctions enforcement judge shall determine the breach and prohibit its recurrence (Art. 39). An appeal of the penal sanction enforcement judge's ruling may be filed within three days of service with the non-procedural council of the same court, via the penal sanctions enforcement judge who had rendered the first-instance ruling. The non-procedural council is under the obligation to rule on the appeal within eight days (Art. 41).

The practices of penal sanction enforcement judges will be discussed in the 2015 Report given that the enforcement of the new PSEA began on 1 September 2014.

The Justice Ministry Oversight Department performed 19 checks in response to complaints by persons deprived of liberty concerning: delays in the payment of their work allowances, visitation procedures, living conditions, inadequate clothes and footwear, non-provision of workwear, violation of the right to a free phone call on admission, failure of the penitentiaries to allow them to spend time with their visitors in separate rooms, limited time they can spend outdoors, etc. No proceedings were initiated in the same period against the governors or security guards for excessive use of means of coercion but criminal proceedings were instituted against three guards in the two Požarevac (men's and women's) penitentiaries for other breaches of discipline. Fifty-two convicted and remanded prisoners died in 2014.

155 In place of protection provided by the Administrative Court.

156 Both the ECtHR and the Constitutional Court qualified as inefficient and ineffective the complaints remanded prisoners were entitled to file with the competent higher courts under the 2001 CPC. See more in the *2013 Report*, II.2.4.

Five of them committed suicide, three in the Sremska Mitrovica penitentiary, one in the Special Prison Hospital and one in the Zrenjanin penitentiary.¹⁵⁷

2.3. Conditions in Penitentiaries, Detention Units and Police Custody

The new PSEA does not bring any significant changes with respect to living conditions in penitentiaries. As elaborated in the 2013 Report, the legislative framework has guaranteed every convict accommodation in warm cells with access to fresh air and natural lighting and a reasonable period time they may spend outdoors, as well as adequate health care et al.¹⁵⁸

Serbian penitentiaries are still overcrowded and the living conditions in some of them are so desultory that they may amount to inhuman and degrading treatment. The situation is the most critical in Pavilion IV of the Sremska Mitrovica penitentiary, Pavilion VII of the Požarevac penitentiary, a large part of the Belgrade District Prison, the Acute Psychiatry Ward of the Special Prison Hospital in Belgrade, etc.¹⁵⁹

Most police stations lack adequate or sufficient custody facilities and hold the people brought in by the police in the prisons.¹⁶⁰

3. Prohibition of Slavery, Forced Labour, Trafficking in Humans and Organs

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.¹⁶¹ Contemporary international standards on combating human trafficking are incorporated in the United Nations Convention against Transnational Organized Crime and its two Protocols.¹⁶²

157 Data obtained from the Penal Sanctions Enforcement Administration in response to a request for access to information of public importance Ref. No. 7–00–111/2014–03 of 15 December 2014.

158 More in the *2013 Report*, II.2.4.

159 Information obtained during BCHR's regular annual visits to these institutions.

160 See, e.g. the NPM's reports on the visits to the Novi Pazar and Vranje police stations, available in Serbian at <http://ombudsman.npm.rs/>.

161 See the list of ratified international treaties in BCHR's *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).

162 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

3.2. *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 2009¹⁶³ 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 81–83.¹⁶⁴

A simple Internet search shows that there is a supply and demand for human organs both in Serbia and the region.¹⁶⁵ 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

Smuggling of Migrants by Land, Sea and Air, which supplements the Convention against Transnational Organized Crime (hereinafter: Second Protocol) defines smuggling of people.

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

164 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 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>.

165 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.

black market of human organs but also the critical depth of poverty in specific parts of the country.

3.3. *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)). The Criminal Code¹⁶⁶ 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 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 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 Act¹⁶⁷ 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).

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).

The Government of Serbia adopted the Strategy to Combat Trafficking in Human Beings.¹⁶⁸ The Strategy was operationalised by the National Plan of Action for the 2009–2011 Period, adopted at a Government session in April 2009.¹⁶⁹ A new

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

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

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

169 *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.

anti-trafficking strategy and action plan for its implementation had not been adopted by the end of 2014.

A number of people suspected of trafficking in humans for the purpose of labour or sexual exploitation were arrested across Serbia in 2014.¹⁷⁰ Most of them were nationals of Serbia.

Judging by the reports of media, NGOs and international organisations, the fight against human trafficking has improved to an extent in 2014. The competent authorities continued investing efforts in improving the status of human trafficking victims in 2014. The enforcement of the law is, however, still perceived as problematic. The Centre for the Protection of Human Trafficking Victims, began working in 2012 and is partly operational.¹⁷¹ The establishment of the fund for assisting human trafficking victims, announced back in 2012¹⁷², is still pending.

According to the US State Department Office to Monitor and Combat Trafficking in Persons 2014 Trafficking in Persons Report¹⁷³, 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 nationals are subjected to labor trafficking in European countries, including Azerbaijan, Slovenia, and Russia, as well as in the United Arab Emirates in the construction sector. Like the previous reports, the 2014 Report also emphasises that Roma children in Serbia are subjected to internal sex trafficking, forced labor, forced begging, and coercion to petty crime within the country. The Report highlighted again the fact that Serbian victims were often subject to trafficking by family members. The authors of the Report stated that the government continued to prosecute and convict trafficking defendants; significantly increased funding for the center for victim protection and trained Roma mediators on victim identification and trafficking awareness, but were nevertheless critical of the enforcement of the legislation in practice.¹⁷⁴ 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.

In its annual 2014 Progress Report on Serbia,¹⁷⁵ the European Commission noted that awareness campaigns have been conducted and that training was organ-

170 See *January-June 2014 Statistics*, available in Serbian at the MIA website (<http://www.mup.gov.rs/cms/resursi.nsf/statistika-2014-01-06.pdf>).

171 "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/>.

172 More in the *2012 Report*, II.3.

173 See "The Trafficking in Persons Report 2014", available at <http://serbia.usembassy.gov/trafficking-in-persons-report-2014-serbia.html>.

174 The government, however, only partially funded the only shelter for victims of trafficking operated by a NGO and victims were not afforded sufficient protections in criminal proceedings against repeated victimization and intimidation.

175 *Serbia 2014 Progress Report*, October 2014, p. 95.

ised for operational stakeholders. 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 Act¹⁷⁶ 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 Special Department of the Belgrade Higher Court delivered a first-instance judgment in February 2014 finding guilty a four-member criminal group charged with trafficking six young women, two of whom were minors. The court sentenced the defendants to stringent prison sentences and ordered them to pay 55,000 Euro from the proceeds of crime.¹⁷⁷

Furthermore, NGOs have been alerting to the courts' failure to confiscate the proceeds of crime of every convicted human trafficker. NGO Astra issued a statement alerting to the failure of the Appellate Court in Belgrade to seize the sizeable proceeds of human trafficking from Safet Cucak, found guilty of this crime and sentenced to ten and a half years' imprisonment.¹⁷⁸

A number of events were staged to alert to the human trafficking problem.¹⁷⁹ Although some representatives of the competent institutions have been investing significant efforts in combating human trafficking,¹⁸⁰ the number of preventive activities funded exclusively from the state budget is negligible.

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.¹⁸¹

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

177 First-instance judgment delivered against organised crime group for human trafficking, *Astra*, 7 February 2014.

178 See Astra's press release at <http://www.astra.org.rs/eng/?p=1395>, 20 January 2014.

179 A number of activities were traditionally organised on 18 October 2014 to mark EU Trafficking Day for the seventh consecutive year.

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

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

The representatives of the competent authorities deny that begging is widespread although the problem is increasingly visible. They claim “that there are no organised crime groups forcing people to beg in Belgrade, that self-organised family begging is at issue”.¹⁸²

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 media 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,¹⁸³ to involve themselves more actively in addressing this issue. The media have for years now been quoting individual NGOs advocating the decriminalisation of prostitution.¹⁸⁴ However, apart from these individual appeals by the NGO sector, no other initiatives were launched to amend the legislation governing this important issue.

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 require-

182 “Begging in Belgrade is a ‘Family Business’”, *RTS*, 3 March 2014.

183 “Construction Workers’ Nightmare – Working under Threat of Guns”, *Večernje novosti*, 3 January 2013; “Worker in Sochi: We Just Want to Make it Home”, *Radio Free Europe*, 20 January 2014, “Employer in Russia Duped Workers”, *Blic*, 11 February 2014, etc.

184 More in the 2013 Report, I.3.3.2.

ments 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. 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.¹⁸⁵

3.5. *Forced Labour*

Forced or compulsory labour encompasses every work done under threat or punishment.¹⁸⁶ 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.¹⁸⁷

The Defence Act¹⁸⁸ 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,

185 More on the status of asylum seekers in Serbia in III.12.

186 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)).

187 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.

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

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.

Article 26(4) of the Constitution 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.

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.¹⁸⁹

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.

The adoption of the Decree on the Social Inclusion Measures for Welfare Beneficiaries¹⁹⁰ met with sharp criticism in October 2014. Experts qualified individual provisions of the Decree as interference in the rights of vulnerable categories of the population that are enshrined in the Constitution and the law.

Namely, although the eligibility for welfare is laid down in the Social Protection Act, as it should be, Article 2(2(5)) of the Decree introduces a new requirement: the obligation of welfare beneficiaries to perform "community service".

Under the Decree, the Social Welfare Centres are entitled to "reduce or revoke the beneficiaries' right to welfare in the event they failed to fulfil their obligations under the individual activation plan without good cause" (Art. 4(1)).

The Decree thus threatens to limit some of the rights enshrined in the Constitution, such as the right to social protection and the freedom of individuals not to perform any work on pain of punishment or work they have not consented to or applied for of their own free will.

¹⁸⁹ 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.

¹⁹⁰ *Sl. glasnik RS*, 112/14.

NGOs, political parties and the Protector of Citizens filed initiatives with the Constitutional Court of Serbia in November and December 2014, asking it to review the constitutionality and legality of the individual provisions of this Decree.¹⁹¹

4. Right to Liberty and Security of Person

4.1. General

The Republic of Serbia ratified all major international instruments protecting the right to liberty and security of person, including, notably, the ECHR, which in Article 5 governs in detail all forms of deprivation of liberty and circumstances in which this right may be limited. The ECtHR in its case law further specified the criteria the Contracting States need to fulfil to avoid unlawful/arbitrary deprivations of liberty amounting to a violation of Article 5.

The right to liberty and security of person is of the highest importance “in a democratic society” within the meaning of the Convention.¹⁹² According to the ECHR and ECtHR case law, imprisonment, house arrest¹⁹³, custodial and home detention, police custody, involuntary commitment to a psychiatric hospital or social welfare institution, confinement in an airport transit zone¹⁹⁴, police stops and searches¹⁹⁵, questioning in a police station¹⁹⁶, et al also amount to deprivation of liberty. Each of these forms of deprivation of liberty must fulfil the lawfulness requirement, i.e. individuals must be deprived of liberty in accordance with a procedure clearly prescribed by law. Otherwise, any form of arbitrary deprivation of liberty places the individuals in question in a state of legal uncertainty and amounts to a breach of the ECHR, as well as of Serbia’s law.

The Constitution of Serbia governs the right to liberty and security of person in a number of articles, perhaps too extensively for this form of enactment. Article 27 allows for deprivation of liberty “only on the grounds and in a procedure stipulated by the law” while Article 30 and 31 are devoted to pre-trial detention. Article 29 deals with deprivations of liberty not ordered by the court, such as police arrests and police custody. Article 28 focuses on treatment of persons deprived of

191 Such initiatives were filed by Praxis and SKRUG on 4 November 2014; YUCOM, the Autonomous Women’s Centre and the Regional Centre for Minorities on 5 November 2014; the Democratic Party on 6 December 2014; and the Protector of Citizens on 1 December 2014 and are available on their websites.

192 See, e.g. *Medvedyev and Others v. France*, ECtHR, App. No. 3394/03, para 76, and *Stanev v. Bulgaria*, ECtHR, App. No. 36760/06.

193 Confinement of a convict in his home rather than a prison.

194 See, e.g. *Amuur v. France*, ECtHR, App. No. 19776/92.

195 See, e.g. *Foka v. Turkey*, ECtHR, App. No. 28940/95.

196 See, e.g. *I. I. v. Bulgaria*, ECtHR, App. No. 44082/98.

liberty and refers to the protection already provided by Article 25 of the Constitution, which guarantees the inviolability of physical and mental integrity (prohibition of torture).¹⁹⁷

4.2. Overcrowded Penitentiaries

The increasing problem of overcrowded penitentiaries prompted the Serbian Government to enact the Strategy to Reduce Overcrowding in Penitentiaries in the 2010–2015 Period (hereinafter: the 2010 Strategy).¹⁹⁸ The Government adopted its Decision Amending the 2010 Strategy¹⁹⁹ on 25 August 2011 and the Action Plan for the Implementation of the 2010 Strategy²⁰⁰ on 24 November 2011. The latter elaborates in the detail the broad spectrum of measures envisaged in the 2010 Strategy with a view to reducing the number of remanded and convicted prisoners, including: non-custodial penal sanctions and measures to ensure the presence of the defendants and unhindered conduct of criminal proceedings, parole and early release, deferral or discontinuation of criminal prosecution by the prosecutor in the event the defendant fulfilled the imposed obligations, construction of new penitentiaries, et al.

The number of inmates in Serbian penitentiaries was reduced by slightly over 1,000 from 2010, when the Strategy was adopted, until the end of 2014. According to the statistics in the Penal Sanctions Enforcement Administration (PSEA) 2011 and 2013 Annual Reports, Serbia's prison population stood at 11,211 on 1 January 2011 and at 10,031 on 31 December 2013.²⁰¹ A more thorough analysis of the PSEA 2010–2013 statistics clearly indicates that the number of remanded prisoners has been reduced, from around 3,000 in 2011²⁰² to 1,894 on 31 December 2013.²⁰³ Remanded prisoners accounted for around 1,800 and convicted prisoners for around 10,600 of the inmates in 2014.²⁰⁴ It may therefore be concluded that the implementation of the 2010 Strategy has not led to a decrease in the convict population.

197 This Report is available in Serbian at <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Pritvor-Ultima-ratio.pdf>.

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

199 *Sl. glasnik RS*, 65/11.

200 Conclusion 05 Ref. No. 02–8564/2011, of 24 November 2011.

201 The 2011 and 2013 PSEA Annual Reports are available in Serbian at: http://www.uiks.mpravde.gov.rs/images/Godisnji_2011_%20UIKS.pdf and http://www.uiks.mpravde.gov.rs/images/Godisnji_izvestaj_UIKS-a_za_2013.pdf.

202 The PSEA 2011 Annual Report, available in Serbian at http://www.uiks.mpravde.gov.rs/images/Godisnji_2011_%20UIKS.pdf.

203 The PSEA 2013 Annual Report, available in Serbian at http://www.uiks.mpravde.gov.rs/images/Godisnji_izvestaj_UIKS-a_za_2013.pdf.

204 Data provided by the Director of the Penal Sanctions Enforcement Administration at an international conference organised by the BCHR on 26–27 January 2015.

*Table: Number of Inmates in Serbian Penitentiaries
at the End of the 2009–2013 Calendar Years*

Year	2009	2010	2011	2012	2013
Convicted Prisoners	7,463	7,167	7,322	6,952	7,330
Remand Prisoners	2,601	3,332	3,109	2,532	1,894
Medical Treatment Measure	234	242	208	232	213
Juvenile Prison	41	36	29	22	24
Correctional Measure	217	213	218	210	215
Misdemeanour Sentences	239	221	208	278	355
Total	10,795	11,211	11,094	10,226	10,031

A research the BCHR conducted in the 2010–2012 period showed that the drop in the number of remanded prisoners was the consequence of fewer criminal proceedings instituted against them rather than of fewer court pre-trial detention (PTD) orders.²⁰⁵ The research indicated that the enforcement of measures alternative to PTD was negligible compared to the number of PTD orders, which remained unchanged in the given period. Furthermore, the research demonstrated that hardly any courts applied any other measures for ensuring the presence of the defendants and the unhindered conduct of criminal proceedings apart from PTD.²⁰⁶ Therefore, the smaller number of remanded prisoners could not be linked to a change in court practices or a more extensive application of measures alternative to PTD.

*Table: Number of Remand Prisoners
at the End of the Past Five Calendar Years*

2010	2011	2012	2013	2014
3,332	3,109	2,532	1,894	circa 1,800 ²⁰⁷

205 It would be reasonable to assume that this finding also applied to the first nine months of 2013, i.e. until 1 October 2013, when the new Criminal Procedure Code, transferring the power to initiate criminal proceedings (open an investigation) to the public prosecutors, came into force.

206 More in BCHR's "Overview of the Results of Measures Undertaken in Accordance with the Government of Serbia Strategy for Reducing Overcrowding in Penal Institutions in the Republic of Serbia in the 2010–2015 Period" 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>.

207 The final data will be published by the Penal Sanctions Enforcement Administration in its annual performance report.

Table: Comparative Overview of People Ordered PTD and Alternatives to PTD Ensuring Their Presence and Unhindered Criminal Proceedings from 2010 to 1 November 2014 (Note: the number of people ordered PTD is higher since some courts specified the number of PTD cases involving more than one person)²⁰⁸

Measures	2010.	2011.	2012.	1 October 2013–1 November 2014
PTD	4,037	3,246	3,317	4,926
House arrest and the ban on leaving one's temporary place of residence	91	113	145	This measure has not existed since October 2013
Bail	56	38	52	44
House arrest	This measure did not exist until 1 October 2013			319 (200 of which with electronic surveillance)
Ban on leaving one's temporary place of residence	This measure did not exist until 1 October 2013			214
Restraining order	This measure did not exist until 1 October 2013			104

As far as non-custodial sanctions are concerned, it could be concluded that the Reintegration and Alternative Sanctions Department²⁰⁹ has achieved good results given its current capacities. The further consolidation of the Probation Service and its probation offices and greater focus on non-custodial sanctions by the judicial authorities creating Serbia's penal policy will lead to a reduction of the convict population. The Minister of Justice said that 25 probation offices exist in Serbia and they cover the jurisdictions of all the Higher Courts. This will ensure that all citizens in Serbia have equal access to non-custodial sanctions, given that those convicted in jurisdictions without probation offices have effectively been deprived of the chance to be sentenced to e.g. community service as such sentences could not be enforced.

The Non-Custodial Sanctions and Measures Enforcement Act (NCSMEA)²¹⁰, which came into force on 1 September 2014, should also lead to lesser overcrowd-

208 The data in the Table reflect the practices of 92% of the Basic and Higher Courts that replied to the requests for access to information of public importance. However, not all of these courts forwarded all the requested information – 80% did. The BCHR is of the view that this is a good sample for assessing the current situation.

209 The Reintegration and Alternative Sanctions Department is a unit of the Penal Sanctions Enforcement Administration, which is charged with the enforcement of non-custodial sanctions and individual measures alternative to PTD, as well as with the work of the reintegration departments in the penitentiaries.

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

ing of Serbian prisons. The law precisely defines the remit of the Probation Service. Under Article 5 of the NCSMEA, the Probation Service shall perform the following duties: monitor compliance with obligations stipulated by prosecutorial decisions to defer criminal prosecution and judgments rendered pursuant to plea agreements; monitor the enforcement of home detention and restraining orders; organise, enforce and monitor house arrest; organise, implement and monitor the enforcement of community service and protective supervision of parolees; supervise parolees and support their compliance with the restrictions ordered by the court; provide aftercare to avoid recidivism; perform other duties of relevance to enforcement of non-custodial sanctions and measures. The above list clearly indicates that the scope of duties to Probation Service is to perform is extremely broad.

The effective enforcement of the NSCMEA calls for considerable capacity building of the Probation Service, which currently comprises only 42 probation officers, 23 of whom also work as prison reintegration counsellors,²¹¹ which cannot but affect their performance both in the penitentiaries and outside them. Furthermore, aftercare requires the engagement of a much greater number of people because, according to Deputy Protector of Citizens Miloš Janković, reoffenders account for 70% of the prison population.²¹² Aftercare is one of the key measures that is to help cut the recidivism rate and thus indirectly reduce the prison population.

Table: Community Service Sentences Imposed in the 2007–2014 Period

Year	2007	2008	2009	2010	2011	2012	2013	2014	Total
Delivered Sentences	48	35	51	71	357	365	348	–	1,275
Enforced Sentences	–	–	17	17	90	209	253	351	937

Table: Home Imprisonment Sentences Imposed in the 2011–2014 Period

Year	2011	2012	2013	2014 (2, December)	Total
Number of Imprisonment Sentences	88	610	725	627	2,050

Table: Conditional Sentences Imposed in the 2010–2013 Period

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

211 Reply to a request for access to information of public importance Ref. No. 7–00–109/2014–03 of 24 November 2014.

212 See the B92 report of 24 August 2014, available in Serbian at http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=08&dd=24&nav_category=12&nav_id=891670.

Table: Conditional Sentences under Protective Supervision Imposed in the 2010–2014 Period

Year	2010	2011	2012	2013	2014	Total
Conditional Sentences under Protective Supervision	3	21	11	14	29	78

Table: Provisional Releases Granted in the 2008–2013 Period

2008	2009	2010	2011	2012	2013
1,423	1,674	1,646	936	581	1,036

Table: Paroles Granted in the 2009–2013 Period

2008	2009	2010	2011	2012	2013
0	36	38	244	213	41

4.3. Deprivation of Liberty under the Criminal Procedure Code

The police may summon citizens on so-called “informative talks” (questioning) for the purpose of collecting information.²¹³ Under Article 288(1) of the CPC, the summons must specify the reason for summoning the citizen and the capacity in which the citizen is being summoned. A person who failed to respond to a summons may be brought in forcibly only if he had been cautioned accordingly in the summons. According to Article 289(1) of the CPC, when the police collect information from a person reasonably suspected of a crime or undertake towards that person actions in the pre-investigation proceedings stipulated by his Code, they may summon him only in the capacity of a suspect. The suspect will be advised in the summons that he is entitled to retain a defence counsel.

Police officers, however, have different views on when the police custody of a suspect actually begins, as the NPM (National Preventive Mechanism) noted during its visits to police stations in Serbia. Some reckon custody from the moment the suspect is read his rights under Article 69(1) of the CPC,²¹⁴ others from the mo-

213 To be precise, obtaining of information from citizens/suspects.

214 “In addition to the rights under Article 68 (paragraphs 1(2–4, 6) and 2) of this Code, a person arrested is entitled to: 1) be informed immediately in a language he understands of the reason for his arrest; 2) have a confidential conversation, which may be subject to visual but not audio monitoring, with his defence counsel before his first interrogation; 3) demand prompt notification of his arrest to a family member or another person close to him, a diplomatic and consular

ment they are served a custody order, while others, yet, reckon it from the moment the suspects appear for questioning.²¹⁵ ECtHR case law, which is legally binding on Serbia²¹⁶ and Article 294 of the CPC²¹⁷ are unambiguous that a person is deprived of liberty from the moment he responded to a police summons. Furthermore, there is no doubt that a person who responded to a summons is unable to leave the “informative talk”, which is conducted in a restricted area and under police supervision. All these circumstances indicate that deprivation of liberty has occurred at the moment a person responded to a police summons for questioning.²¹⁸

Persons deprived of liberty under Articles 291 and 292 of the CPC must be served with the custody orders within two hours from the moment of deprivation of liberty. It also needs to be emphasised that custody is reckoned from the moment of deprivation of liberty.²¹⁹ Apart from the wrong interpretations of when custody begins, the NPM in 2014 also found that the police on occasion failed to serve custody orders to the suspects within the deadline.²²⁰ During one of its unannounced visits to the Kruševac police, the NPM established that one person, who was being held in custody at the time, had not been served a custody order at all.²²¹

4.4. *Confinement in the Nikola Tesla Airport Transit Zone*

The BCHR team visited the Belgrade airport Nikola Tesla transit zone several times in 2014 with a view to extending legal aid to aliens who had expressed the intention to seek asylum whilst in transit. It noted the following problem,

representative of the state of which he is a national or a representative of an authorised international public law organisation in the event he is a refugee or a stateless person; 4) demand that he be examined without delay by a physician of his own choosing, and if that physician is unavailable, by a physician designated by the public prosecutor or the court.”

215 See, e.g. the NPM’s Vranje Police Station Visit Report, pp. 11 and 12, available in Serbian at <http://ombudsman.npm.rs>.

216 See the beginning of the chapter listing forms of deprivation of liberty.

217 “A public prosecutor may exceptionally retain in custody a person arrested under Article 291(1) and Article 292(1) of this Code or a suspect referred to in Article 289 (1–2) of this Code for a maximum of 48 hours from the time of arrest or response to a summons in order to question him.”

218 More on criteria to be applied when establishing whether someone has been deprived of his liberty in *Guide on Article 5 of the Convention – Right to Liberty and Security*, Council of Europe/European Court of Human Rights, 2014, pp. 5 and 6, available at http://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf.

219 Article 294(1).

220 See, e.g. the NPM’s reports on its visits to the Vranje police station (pp 11–12) available in Serbian at <http://ombudsman.npm.rs> and to the Valjevo police station, available in Serbian at http://ombudsman.npm.rs/attachments/394_%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98.PDF.

221 NPM’s report on its visit to the Kruševac police station, available in Serbian at <http://ombudsman.npm.rs/index.php?limitstart=7&lang=sr>.

which in two instances resulted in its requests to the ECtHR to issue provisional measures: the competent police officers forcibly remove aliens who, in their opinion, do not fulfil the requirements for entering Serbia, without conducting any procedure whilst their confinement in the transit zone, which amounts to deprivation of liberty under Council of Europe standards (which are binding on Serbia as well), is not based on any positive legal regulation of the Republic of Serbia. In other words, persons to be forcibly removed to third countries or their countries of origin are illegally/arbitrarily deprived of liberty, since the Belgrade border police officers confine them in separate rooms in the transit zone and keep them there until they can return to the country they had come from.²²² From what the BCHR learned, such confinement can last between several hours and several months, but the competent authorities fail to issue any decisions on which such deprivation of liberty is based.

In that respect, it is very important to draw attention to the following CPT view:

“For its part, the CPT has always maintained that a stay in a transit or “international” zone can, depending on the circumstances, amount to a deprivation of liberty within the meaning of Article 5 (1)(f) of the European Convention on Human Rights, and that consequently such zones fall within the Committee’s mandate. The judgement delivered on 25 June 1996 by the European Court of Human Rights in the case of *Amuur* against France can be considered as vindicating this view. In that case, which concerned four asylum seekers held in the transit zone at Paris-Orly Airport for 20 days, the Court stated that “The mere fact that it is possible for asylum seekers to leave voluntarily the country where they wish to take refuge cannot exclude a restriction (“atteinte”) on liberty” and held that “holding the applicants in the transit zone was equivalent in practice, in view of the restrictions suffered, to a deprivation of liberty”.²²³

4.5. Damages for Unlawful Deprivation of Liberty

Serbia has for years faced the problem arising from unlawful pre-trial detention orders. This problem can evidently be primarily ascribed to the judiciary’s proneness to order pre-trial detention rather than alternative measures. During its implementation of the project “Transparent Work of the Judicial Authorities – Starting Point for Addressing the Problem of Overcrowding in the Penitentiaries”,²²⁴

222 Article 46(2), State Border Protection Act: “Individuals who do not fulfil the requirements for entering the territory of the Republic of Serbia shall be returned to their initial destination at the expense of the airline under paragraph 1 of this Article”.

223 Paragraph 25, 7th General Report on the CPT’s activities covering the period 1 January to 31 December 1996 [CPT/Inf (97) 10], CPT Standards, available at <http://www.cpt.coe.int/en/annual/rep-07.htm>.

224 More at <http://www.bgcentar.org.rs/bgcentar/eng-lat/transparent-work-judicial-authorities-starting-point-addressing-problem-overcrowding-penitentiaries/#more-4755> and the publication N. Kovačević, Ž. Marković, N. Nikolić, *Pre-Trial Detention – Ultima Ratio?*, BCHR, Belgrade,

the BCHR concluded that around 20,000 days of unlawful PTD were ordered every year. This practice is lethal above all from the perspective of the realisation and protection of human rights (above all the right to liberty and the prohibition of torture); it, however, also has severe financial impact on the state budget.

*Table: Work of the Ministry of Justice Damages Commission
from 2005 to 1 October 2013²²⁵*

Year	Number of claims filed for wrongful deprivation of liberty	Number of claims the Commission reviewed	Number of days of deprivation of liberty in claims reviewed by the Commission	Number of settlements	Number of days of deprivation of liberty in settled claims	Total amount of compensation paid in accordance with settlements (in RSD)
2005	876	496	/	315	17,461	48,155,980
2006	904	405	24,872	170	12,687	40,016,500
2007	698	455	26,913	206	15,930	62,127,000
2008	452	275	27,535	133	6,924	17,581,000
2009	528	237	13,499	63	2,722	7,644,000
2010	572	217	12,071	53	3,051	7,517,500
2011	574	346	22,076	50	4,149	25,061,400
2012	607	342	21,582	51	2,355	6,424,000
Until 1 October 2013	658	408	31,591	45	5,419	25,045,000
				40	6,154	22,528,000
Total	5,896	3,181	180,089	1,126	76,852	262,100,380

2014, available in Serbian at <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Pritvor-Ultima-ratio.pdf>.

225 The available data indicate that the Damages Commission has in the past nine years annually paid out around 250,000 Euro in damages for unlawful PTD.

*Table: Damages for Wrongful PTD Awarded by Courts
in the 1 October 2013–1 November 2014 Period*

City	Total Number of Damage Claims	Number of days of Wrongful PTD	Awarded Damages (in RSD)
Belgrade	104	19,739	114,917,500.00
Leskovac	19	896	3,545,600.00
Zaječar	17	2,561	12,242,000.00
Zrenjanin	8	191 (one judgment, number of days not established)	1,445,000.00
Kraljevo	13	596	2,523,000.00
Kragujevac	13	1,259	7,563,000.00
Valjevo	10	211	1,124,000.00
Niš	2	127	1,160,000.00
Novi Sad (did not respond to request for access to informa- tion of public importance)			
Požarevac	4	106	1,690,000.00
Subotica	8	1,016	2,558,000.00
Užice	3	44	440,000.00
Total	204	30,149	149,208,100.00

The above Table leads to the following conclusions:

- The competent courts awarded around 5,000 RSD on average per day to 204 people, who had wrongfully been held in PTD for 30,149 days.
- In the 1 October 2013–1 November 2014 period, a total of 149,208,100.00 RSD or 1,223,017.00 Euro were paid in damages to people wrongfully held in PTD.
- The total amount of damages clearly exceeds 1.5 million Euro when one adds to these 1,223,017.00 Euro the average damages awarded every year by the Justice Ministry Damages Commission over the past nine years (238,707.00 Euro), and the damages awarded in lawsuits in which Serbia's interests were represented by the Novi Sad Attorney General's Office (which it failed to forward to the BCHR).²²⁶

²²⁶ The BCHR plans on initiating proceedings against the Novi Sad Attorney General's Office before the Commissioner for Information of Public Importance and Personal Data Protection in

- The longest a person awarded damages for wrongful PTD in this period had spent behind bars was 1,273 days; other “record holders” spent 910, 794, 758, 709 and 636 days.

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. The requirement regarding the independence and impartiality of the judiciary shall derive also from Article 47 of the EU Charter of Fundamental Rights when Serbia joins the EU.

Articles 32–36 of the Constitution of the Republic of Serbia govern the right to a fair trial. Although 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 full exercise of this right, however, requires a thorough reform of the Serbian judiciary, which was launched in December 2009 with the general (re) appointment of the judges²²⁷ and was still ongoing.

The National Judicial Reform Strategy for the 2013–2018 Period (hereinafter: NJRS)²²⁸ was adopted in 2013, wherefore it was possible to monitor its effects and the pace and quality of its implementation in 2014. The Strategy Implementation Commission, headed by the Ministry of Justice and comprising 15 representatives of the major stakeholders, was established in September 2013 to monitor and measure the headway in its implementation.

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 implementation²²⁹

order to obtain precise information about the amounts of damages awarded for wrongful PTD in the 1 October 2013 – 1 November 2014 period.

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

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

229 The Action Plan is available in Serbian at: <http://www.mpravde.gov.rs/obavestenje/2890/akcioni-plan-za-sprovođenje-nacionalne-strategije-reforme-pravosuđa-za-period-2013–2018-godine.php> and the Report on the Implementation of the Action Plan is available in English

specifies the measures, activities, deadlines and institutions charged with implementing them, and the sources their implementation will be funded from.

Under the proposed measures, all preparations for amending the constitutional provisions on the judiciary are to be completed by 2018, to ensure the fulfilment of the requirements regarding judicial independence, efficiency and accountability. These provisions of the 2006 Constitution and the Constitutional Act for its implementation had been criticised as soon as these two enactments were adopted. 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.²³⁰

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.²³¹ The criteria for opening accession talks on Chapter 23 – Judiciary and Fundamental Rights and the recommendations Serbia is to fulfil in the process were defined during the screening process, which was completed in July 2014. One of the main issues that was noted in the Screening Report concerned the amendment of the Constitution.²³² According to the Screening Report, further steps in the reform of the court network will require a prior comprehensive analysis notably in terms of cost, efficiency and access to justice.²³³

The Screening Report divides the field of the judiciary into four areas: independence; impartiality and accountability; professionalism, competence and efficiency; and war crimes. The Report gives an overview of the valid legal and institutional frameworks for each area, assesses them against best European standards and suggests improvements to the current situation. Its authors made a number of recommendations in each area and they were quite critical of the Serbian judiciary, primarily dwelling on the need to undertake additional activities, particularly in terms of ensuring the full independence of the judiciary and its impartiality and efficiency.

at: http://www.mpravde.gov.rs/files/NSRJ_2013%20to%202018_Action%20Plan_English%20version.pdf.

230 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).

231 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; 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.

232 *Screening Report* is published on 1 August 2014, available on: http://ec.europa.eu/enlargement/pdf/key_documents/2014/140729-screening-report-chapter-23-serbia.pdf.

233 *Ibid*, p. 27.

During the accession process, Serbia must ensure the involvement of civil society and professional organisations in defining further steps in the reform process and in monitoring the implementation of the action plans.

5.2. Judicial System

Serbia's new court network, governed by the Act on the Seats and Jurisdictions of Courts and Public Prosecutor's Offices,²³⁴ started operating on 1 January 2014 and comprises 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 now solely first-instance courts while Higher Courts rule on appeals of decisions rendered by Basic Courts and also try crimes in the first instance.²³⁵

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 ensure uniform application of the law by the courts and the equality of arms in court proceedings, review the application of the law and other regulations and the work of courts; appoint Constitutional Court judges, render opinions on the candidates for the post of Supreme Court of Cassation President and exercise other powers envisaged by the law.

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

235 The jurisdictions of the Basic and Higher Courts are governed by Articles 22 and 23 of the Act on the Organisation of Courts. See in detail *2013 Report*, II.5.2.

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 prosecution service 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.²³⁶ The duties of the public prosecution service are discharged by the public prosecutor and his deputies acting on his instructions. The public prosecution service comprises the Republican Public Prosecution Service and the appellate, high and basic public prosecution services.

Under the Act on the Seats and Jurisdictions of Courts and Public Prosecution Services, the network of courts of general jurisdiction comprises 66 Basic Courts with 29 court units and 58 Basic Public Prosecution Services, 25 Higher Courts and 25 Higher Public Prosecution Services, 16 Commercial Courts and four Appellate Public Prosecution Services and four Appellate Courts, in Belgrade, Kragujevac, Niš and Novi Sad. There are 44 Misdemeanour Courts.

The sustainability of the court network calls for continuous analyses of its efficiency and access to justice to pre-empt any problems, such as further slowdowns in the work of the courts due to the transfers of large numbers of pending cases to the courts now charged with them and changes of the trial judges.

5.3. Independence and Impartiality of Courts

Judicial independence is the key prerequisite for exercising the right to a fair trial and one of the most critical steps Serbia has to make in the EU accession process.

Article 4 of the Constitution comprises provisions on the separation of powers and independence of the judiciary. The Act on the Organisation of Courts²³⁷ 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).

The Screening Report makes 12 recommendations aimed at strengthening judicial independence in Serbia, which essentially regard amendment of the system for recruiting and promoting judges and prosecutors, the consolidation of the independent judicial institutions, establishment of a system for appraising the performance of judges and prosecutors, as well as the involvement of the NGO sector in defining further steps in the judicial reform process.

²³⁶ Constitution, Articles 156–165.

²³⁷ *Sl. glasnik RS*, 116/08, 104/09, 101/10, 31/11, 78/11 and 101/11.

The Report clearly indicates that the independence of the judiciary is primarily affected by political influence, the system for the recruitment of judges and prosecutors, the appraisal of their performance and their promotion, the system for appointing court presidents and prosecutors and the members of the independent judicial institutions (the High Judicial Council and the State Prosecutorial Council), the system for overseeing and managing the judicial budget and the role and powers of the Justice Ministry re the work of the judiciary.²³⁸

The most comprehensive recommendation is definitely the one regarding the amendments to the Constitution, which must bear in mind the Venice Commission recommendations and European standards. The constitutional amendments are to eliminate the shortcomings with regard to the independence, impartiality and efficiency of the judiciary.

The constitutional amendments will have to be followed by amendments of all laws governing the constitutional provisions in detail, such as the Act on Judges, the Act on the Organisation of Courts, the High Judicial Council and State Prosecutorial Council Acts and the Judicial Academy Act. As the authors of the Screening Report noted, it is important that all these constitutional and legal changes are widely consulted and debated so as to ensure the largest possible degree of “ownership” within the judicial system to avoid that constant legal changes create a feeling of insecurity among judges which risks to adversely affects their independence.

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 (HJC) and the State Prosecutorial Council (SPC). Judges shall be elected to their first three-year terms in office by the National Assembly at the proposal of the High Judicial Council, while their appointments on permanent tenure shall be made by the High Judicial Council (Art. 147, Constitution).

The chief problem arises from the fact that the procedure for recruiting and promoting judges and prosecutors does not guarantee independence from other government branches. Serbia should ensure that when amending the Constitution and developing new rules, professionalism and integrity become the main drivers in the appointment process, while the nomination procedure should be transparent and merit based.²³⁹ The role of the National Assembly in the election and dismissal of judges, court presidents, the President of the Supreme Court of Cassation and the Republican Public Prosecutor are a direct risk to judicial independence. This role of the National Assembly is one of the main shortcomings identified in the Screening Report.²⁴⁰ The political influence of the National Assembly on the judiciary arises

238 *Screening Report*, p. 24.

239 *Ibid.*, p. 22.

240 *Ibid*, p. 21.

from the very composition of the HJC defined in Article 153 of the Constitution and the judicial appointment procedure laid out in Article 154 of the Constitution. The Screening Report underlines that the HJC and SPC should have at least 50% of members stemming from the judiciary and their elected members should be selected by their peers.

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

The influence of the National Assembly is thus dominant, because it elects eight of the eleven members directly and the *ex officio* members (the Justice Minister, the President of the Supreme Court of Cassation and the Chairperson of the Assembly judiciary committee) indirectly given that they had previously been elected to office. The situation is similar with respect to the election of the State Prosecutorial Council. The legislature's influence on the election of the SPC members and appointment of prosecutors and deputy prosecutors stems from Articles 159 and 164 of the Constitution.

The Screening Report recommends that the HJC and the SPC should have a pluralistic composition, without involvement of the National Assembly (unless solely declaratory), with at least 50% of members stemming from the judiciary, representing different levels of jurisdiction and that their elected members should be selected by their peers.

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

The problems that arose during the general election/appointment of all judges pursuant to the Constitutional Act for the Implementation of the Constitution²⁴¹ were analysed in the prior BCHR Reports. The Constitutional Court rendered a series of decisions upholding all the criticisms of the judicial appointment procedure.²⁴²

The reintegration in the justice system of some 800 judges and prosecutors reinstated pursuant to this Constitutional Court decision has been one of the main

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

242 See 2012 Report, II.5.3.1.

challenges in the past two years.²⁴³ 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 prosecution services they had worked in or the ones that had assumed the jurisdiction of their old courts and prosecution services.

The reinstatement of the judges and prosecutors, which is now complete, raised a number of questions, notably, what the purpose and goal of the judicial reform was. The judicial reform was necessary not only to spring-clean the judiciary, but also to put in place a system, which, however, does not appear stable although several years have passed. One of the graver consequences of the poorly conducted reform is the fact that some of the reinstated and reappointed judges and prosecutors have violated human rights by their decisions or are 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.

A document published by the Judges Association of Serbia also points to the mistakes and irregularities during the 2009 judicial appointment procedure. It contains lists of candidate judges in the Vlasotince municipality drawn up in accordance with the recommendations of the DS municipal board and demonstrates that candidates whose spouses were members of that party or who were its sympathisers had an advantage over those who did not.²⁴⁴

Another step with long-term consequences was the appointment to permanent tenures of the 900 or so judges elected to three-year terms in office in 2009. The fact that the HJC had not set the criteria for appraising their performance 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.²⁴⁵

The Constitutional Court declared unconstitutional the provisions of the Judicial Academy Act, under which the HJC and SPC may nominate only candidates, who have completed the initial Academy training, for first-time judges and prosecutors.²⁴⁶

The HJC and SPC in 2014 adopted the Rulebooks for appraising the performance of judges and prosecutors.²⁴⁷ Serbia lacked a system for the regular and

243 Decision in case of 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). More in the 2012 Report, II.5.3.1.

244 "How the Authorities Drew up Secret Lists of Suitable Judges", *Politika*, 8 March, p. 9.

245 *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.

246 See more in III.5.3.6.

247 The HJC and SPC Performance Appraisal Rulebooks are available at: http://www.vss.sud.rs/sites/default/files/attachments/pravilnik%20vrednovanje%20rada%20sudija%2022%2007%202014_0.

systematic appraisal of the performance of judges and prosecutors based on clear and transparent criteria, which impacts on the career of judges and prosecutors at any level, including for management positions. The authors of the Screening Report recommended the establishment of a fair and transparent system of promotion of judges and prosecutors, together with a periodical professional assessment of judges and prosecutors' performance and that the HJC and SPC bear the responsibility for taking decisions on promotion, demotion or dismissal and that external and particularly political influence be excluded.

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 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.

pdf and <http://www.dvt.jt.rs/doc/Pravilnik%20o%20kriterijumima%20i%20merilima%20vrednovanja%20rada%20javnih%20tuzilaca%20i%20zamenika%20javnih%20tuzilaca.pdf>.

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.²⁴⁸

Codes of Ethics for judges and prosecutors have been adopted by there are no effective mechanisms to monitor compliance with them. Furthermore, public awareness of acceptable and unacceptable conduct under the Codes of Ethics needs to be raised, not only among judges and prosecutors but among the general public as well.

The Screening Report noted that the HJC and SPC should be empowered with leadership and the power to manage the judicial system. The Screening Report recommends, *inter alia*, that grounds for the dismissal of judges be clarified. The Report stated that the scope of application of the provisions on the functional immunity of judges and prosecutors and procedures for removing functional immunity were are not fully clear and needed to be reviewed to ensure full accountability of judges and prosecutors under criminal law.

As the Screening Report noted, existing "conflict of interest" rules require judges and prosecutors to provide asset declarations, but there is no adequate mechanism in place to effectively check assets, which significantly hampers the impact of these rules.

Under the amendments to the Act on Judges²⁴⁹ and the Act on the Public Prosecution Services²⁵⁰, judges and public prosecutors shall retire when they turn 65. Under the prior provisions, they were eligible for retirement after forty years of service.

5.3.3. *Guarantees of Judicial Independence*

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.²⁵¹

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

248 More in the 2012 Report, II.5.3.2.

249 *Sl. glasnik RS*, 117/14.

250 *Ibid.*

251 Article 6.

been appointed to is abolished.²⁵² 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 a judge 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 Act on Judges prescribes the allocation of cases solely on the basis of the designation and case file number in an order set in advance for each calendar year. The Act explicitly lays down that the order of the files shall not depend on who the parties to the proceeding are or what the case concerns. No one may establish judicial panels or allocate cases disregarding the work schedule or the order in which they were filed (Art. 24). In accordance with the Court Rules of Procedure, a case may be taken from a judge only in case of prolonged absence or in the event a final disciplinary sanction has been pronounced against him for committing a disciplinary offence of undue dilatoriness (Art. 25 (2)).

Not all courts in Serbia use the automated random case allocation system. Some of them allocate cases to judges in alphabetical order and pursuant to the annual schedules adopted by the court presidents. This approach is particularly problematic in courts with very small numbers of judges where it is extremely easy to predict which judge will rule on which case. This is why the Screening Report states that more guarantees are needed for the integrity and transparency of the system of case allocation throughout the judiciary (including in prosecution offices), to ensure that Court Presidents and heads of prosecution offices are fully accountable for all decisions to diverge from the random allocation system.

Financial dependence on other branches of government definitely affects judicial independence. The HJC and SPC continued sharing responsibility with the Justice Ministry regarding budget planning, execution and oversight. This is why the Screening Report recommended that sufficient administrative capacities and financial authority over their own budget needed to be ensured to allow the High Judicial and the State Prosecutorial Councils to effectively perform their tasks and that their work should be governed by transparency and institutional accountability.²⁵³

252 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>.

253 *Screening Report*, p. 26.

5.3.4. Pressures on the Judiciary

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 Anti-Corruption Council noted in its 2014 Report on Judicial Independence that the situation had not improved with respect to judicial independence over the past two years. It concluded that it had, on the contrary, deteriorated as the Council identified greater interference in the work of judicial institutions by the executive authorities.²⁵⁴ Additionally discouraging is the fact that the highest court authorities usually do not react to pressures by the executive.

In its 2014 Serbia Progress Report, the European Commission said that the constitutional and legislative framework still left room for undue political influence affecting the independence of the judiciary, particularly in relation to the career of magistrates. The Screening Report says that the full respect of the independence of the judiciary also implies abstaining from commenting court decisions and that criticising judicial decisions, in particular by politicians, puts independence at risk. This is why its authors stated that Serbia had to establish a clear procedure for both the HJC and SPC to react publicly in cases of political interference in the judiciary and prosecution.

With respect to the judiciary, the Protector of Citizens also said in his 2013 Annual Report that the second round of judicial reforms failed to yield visible improvements in this sector.²⁵⁵ He observed that the independence of the judiciary was still staggering under populist and institutional pressures and that the HJC “has remained tight-lipped in the public about the majority of the cases that caused concern”.

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.

254 Anti-Corruption Council Report on Judicial Reform, published on 22 April 2014, available in Serbian at: <http://www.antikorupcija-savet.gov.rs/izvestaji/cid1028-2486/izvestaj-o-reformi-pravosua>.

255 Protector of Citizens 2013 Annual Report, published on 15 March 2014, available at http://www.zastitnik.rs/attachments/3332_Annual%20Report%20of%20the%20Protector%20of%20Citizens.pdf.

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. The fact that some of the judges reinstated in 2013 publicly 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.²⁵⁶

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,²⁵⁷ future judges and prosecutors shall attend additional training after they pass the Bar. The Academy training 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 prosecution 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 in early 2014 declared unconstitutional several provisions of the Judicial Academy Act. Specifically, it declared unconstitutional the provisions stipulating that the HJC and SPC could only nominate candidates, who had completed initial Academy training, for the positions of Basic or Misdemeanour Court judge or deputy basic public prosecutor and could nominate other candidates fulfilling the general appointment requirements only in the event none of the applicants had completed the initial training (Art. 40 (8, 9 and 11)). In the view of the Constitutional Court, these provisions violated the constitutional principle of equality of all before the Constitution and the law, and the constitutionally defined role of the HJC and the SPC, as independent and autonomous authorities, to, *inter alia*, nominate candidates for first-time judges and deputy public prosecutors.

²⁵⁶ See more at: <http://www.blic.rs/Vesti/Tema-Dana/203012/Uclanjenjem-u-SNS-sudije-krse-Ustav>.

²⁵⁷ *Sl. glasnik RS*, 104/09.

The major influence the Judicial Academy still commands creates the need to introduce the quality of the training. Although its curriculum focuses on developing skills and analytical thinking and is subject to the consent of the HJC and SPC, such a 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. Doubts about the quality of the provided training have justifiably been voiced given that the by-laws governing the criteria and standards for the appointment of mentors, Commission members, lecturers and other trainers had not been adopted before the training began.

The Screening Report recommends the introduction of a yearly curriculum covering all areas of law, including EU law. This is prerequisite to ensure that judges from various courts and specialising in various fields of law can attend the training they need in their respective fields of law. Training in EU law needs to begin as soon as possible given that the legal framework within which the judges and prosecutors will render their decisions when Serbia joins the EU will change significantly, as they will be applying both national and EU law. It is crucial that EU law is not merely part of the initial training of the future judges and prosecutors; they should also be trained in applying EU regulations.

The EC noted in its 2014 Progress Report that there was a need to further improve the expertise of judges in certain areas, especially in taxation and financial matters, consumer protection, state subsidies, competition, asylum and human rights protection.

5.4. Fairness

Although the Constitution guarantees everyone the right to equal legal protection, without discrimination (Art. 21) this right is not available to everyone in Serbia. 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. Pursuant to the Strategy objectives, the Justice Ministry established a working group in May 2011 to draft the Legal Aid Act.²⁵⁸ The Working Group made Draft Legal Aid Act but the law was not adopted by the end of the 2014, although there had been indications when the prior Government was formed that work on this piece of legislation would intensify.

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

258 See the *2011 Report*, I.4.6.4.

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.²⁵⁹ The adoption of the Legal Aid Act was still pending at the time this Report was finalised.

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 recognises the rights of the defendants to be brought before a court as soon as possible and to a trial without any undue delay and obliges the courts to endeavour to conduct the proceedings without undue delay.

Serbian courts are still staggering under huge backlogs although the adjudication of such cases and trials within a reasonable time have been among the top priorities of the Serbian judiciary for years. Court inefficiency has strongly reflected on the duration of court proceedings, the respect of human rights of parties to the proceedings and appraisals of the performance of judges and public prosecutors and has prompted the submission of many applications against Serbia to the ECtHR.

The National Judicial Reform Strategy envisages measures for addressing the problem, including the identification and reassignment of the backlog, 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 National Backlog Reduction Programme, aimed at reducing the backlog of cases older than two years nationwide by 80% by the end of 2018, was adopted in December 2013 pursuant to the Action Plan for the Implementation of the Judicial Reform Strategy.²⁶⁰ In the view of the HJC Chairman and President of the High Court of Cassation, the National Backlog Reduction Programme is much too ambitious and, furthermore, Serbia lacks another 200 judges.²⁶¹ In November 2014, the Supreme Court of Cassation President adopted the Special Programme of Measures for Reducing the Backlog of Enforcement Cases, standing at 1,615,830 in

259 Legal Aid Will be Virtually Unavailable, see the press release in Serbian at: <http://www.izkruga.org/194-besplatna-pravna-pomoc-bice-skoro-nedostupna>.

260 Su I-1 384/13-49.

261 "Serbia Lacks around 200 Judges", *Danas*, 21 September, available in Serbian at: http://www.danas.rs/danasrs/drustvo/pravo_danas/srbiji_nedostaje_oko_200_sudija_.1118.html?news_id=289371.

basic courts and at 29,872 in commercial courts at the end of 2013. Under the Programme, the backlog of enforcement cases in basic courts and commercial courts should be cut down to maximum 324,000 and around 5,800 cases respectively by the end of 2018.²⁶²

5.4.2. *Violations of the right to a trial within a reasonable time*

The 2013 amendments to the Act on the Organisation of Courts²⁶³ 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 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 (Art. 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 (Art. 8a). Appeals of decisions on such claims will always be ruled on by the Supreme Court of Cassation.

The claims are reviewed in accordance with the non-contentious procedure rules and the courts peruse the case files to establish whether the right to a trial within a reasonable time has been breached or not. 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. Professional associations have alerted to the risk that these proceedings might additionally burden the courts.²⁶⁴

The state is already under major pressure because of the non-enforcement of court decisions, pressure that has increased with every ECtHR judgment and

262 The Programme is available in Serbian at: <http://vk.sud.rs/sites/default/files/attachments/MINI%20STRATEGIJA%20IZVRSENJA.pdf>.

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

264 "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>.

friendly settlement.²⁶⁵ The EC stated in its 2014 Progress Report that the number of bailiffs increased, but remained insufficient to meet the target set by the law for its implementation. The Screening Report proposed that Serbia consider measures for reducing the case backlog, which may also include using alternative dispute resolution methods (i.e. mediation) in all civil and commercial cases and reducing the backlog of enforcement cases through a number of measures, such as using the services of public notaries and bailiffs. It also suggested “[A]t short notice and in order to be able to strengthen overburdened courts or prosecution offices, incentive-based measures that would contribute to the voluntary mobility of judges and prosecutors could be considered.”

The Law on Mediation in Dispute Resolution²⁶⁶ adopted in May 2014 is to enter into force on 1 January 2015. The Law aligns the regulation of this area with international standards and is likely to contribute to relieving the courts of their caseloads. Mediation shall be conducted on a voluntary basis, and the mediators shall be neutral and under the obligation to respect the equality of the parties, ensure the exclusion of the public, maintain confidentiality and proceed with urgency. The parties have to personally participate in the mediation procedure. Mediation may be applied in criminal and misdemeanour proceedings regarding proprietary and damage claims. The settlements have the effect of court decisions and the status of enforceable instruments. Mediators shall be licenced by the Ministry of Justice and Public Administration. People holding a university degree (not necessarily a law degree) are eligible to apply. Oversight of the mediators shall be performed by a special commission entitled to revoke their licences.

Both the 2014 Progress Report and the Screening Report qualified major violations of the right to a trial within reasonable time as one of the chief problems of Serbia’s judiciary. The 2014 Progress Report noted that a proper case methodology to measure workload and to ensure a more equal distribution of cases among judges and prosecutors as part of the reform of the court network was required.

According to a public opinion poll “Perceptions of the Contents of Chapters 23 and 24 of the Serbia-EU Accession Talks”, 84% of the population thinks that the judiciary is inefficient, 83% thinks that it is under the influence of politicians and other interest groups and 82% thinks it is partial. This is why 71% do not trust the courts in Serbia.²⁶⁷ The strike staged by lawyers, which completely blocked the work of courts for several months, definitely did not contribute to improving public trust in the judiciary.

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

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

267 The poll, conducted within the project “Argus – all seeing media eye observing chapters 23–24” implemented by news agency Beta, was presented on 25 March 2014. The results are available in Serbian at: http://docs.euractiv.rs/gaani-ne-veruju-pravosu-Percepcija_sadrzaja_poglavlja_23_i_24_pregovora_za_pristup_Srbije_EU.pdf.

Expiry of the statutes of limitations has been one of the problems constantly plaguing the Serbian judiciary – the number of such cases stood at nearly 1000 in 2013.²⁶⁸ Expiry of the statutes of limitations undoubtedly indicates that the judiciary is inefficient and poorly organised, but it may also suggest that pressures are brought to bear on courts to prolong proceedings against particular defendants. For instance, the statutes of limitations in the past years expired in numerous cases against public figures, including notably against the son and wife of late Serbian/Yugoslav President and ICTY indictee Slobodan Milošević, Marko Milošević and Mirjana Marković, Serbian Orthodox Church Bishops Ilarion and Pahomije, controversial businessman Predrag Rajković aka Peconi et al. The statute of limitations in 2014 also expired in the case against former Federal Customs Director Mihalj Kertes, who had been charged with abuse of post, funnelling funds to Cyprus and illegally transferring Customs funds to accounts of individual companies.²⁶⁹

5.4.3. Notaries Public Act and Blockade of the Judicial System

The judicial system was blocked several times in 2014. These blockades were so long that the courts were effectively paralysed for over half a year. The courts did not operate in the first months of the year due to the reorganisation of the court network. Their registries did not open until March. The first strike staged by lawyers (over taxes) in June 2014 resulted in the adjournment of numerous trials.

The entry into force of the 2011 Notaries Public Act²⁷⁰ crucially impacted on the exercise of the right to a fair trial. The powers this law vests in notaries public under amendments adopted in February 2013 prompted the Serbian Bar Association to launch a months-long strike that totally blocked the work of the judiciary in the last quarter of the year. The strike began on 17 September 2014 and ended only in January 2015. The main problem lies in the exclusive powers of the notaries public that have endangered the bar profession, prompting the lawyers to demand amendments to this and several other laws, the resignation of the Justice Minister and lower taxes.

Article 82(1) of the Notaries Public Act, governing legal transaction documents that must be drawn up in the form of notarial documents, was the main point of contention between the lawyers and the Ministry. Under the Notaries Public Act, a notarial deed is a document drawn up on the basis of the parties' statements by a notary public in his or her official capacity of a person enjoying public confidence (Art. 6). Under Article 82(1) of this Act, notaries public shall be exclusively charged with drawing up property and property division agreements between spouses and cohabiting partners, legal maintenance agreements; real estate disposition contracts;

268 "814 court and 139 investigation cases. Statutes of Limitations for Crimes Expiring on Authorities' Orders", *Blic*, 28 March 2014, pp. 12–13.

269 See: <http://www.blic.rs/Vesti/Hronika/441434/Mihalj-Kertes-oslobodjen-optuzbi-zbog-zastarelosti>.

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

ante mortem property assignment and division contracts, lifelong support contracts; gift promises and gifts *mortis causa*.

The 2011 Notaries Public Act originally gave the notaries exclusive jurisdiction for contracts on real estate transactions of persons without legal capacity. The 2013 amendments to the Notaries Public Act²⁷¹ deleted the words “persons without legal capacity” from the relevant provision, which resulted in providing the notaries with sole jurisdiction for contracts on real estate transactions among all natural and legal persons. According to the representatives of the lawyers, there are over eight thousand lawyers in Serbia drawing up of contracts is presumed to be the predominant or sole activity of half of them. The new regulations have thus prevented a large number of people from doing their job, which has been entirely entrusted to a much smaller number of notaries.²⁷²

A new Real Estate Transactions Act²⁷³ was adopted in 2014 with a view to aligning it with the Notaries Public Act. Under the prior law on real estate transactions,²⁷⁴ any real estate transaction had to be made out in the form of a written contract to be legally effective and the parties certified their signatures in court. Given that the Real Estate Transactions Act was amended in 2009 the last time, there was no need to adopt a new one, as the provision on the format of real estate disposition contracts was replaced by Article 82 of the Notaries Public Act, as the subsequently adopted law.²⁷⁵

The first month of the strike passed without any substantial negotiations between the lawyers and the Ministry, because Justice Minister Nikola Selaković conditioned the talks by the immediate end of the strike, a demand refused by the lawyers. One of the arguments in favour of the notaries invoked by the Minister was that, as opposed to the lawyers, the notaries were held liable with all their property for any mistakes.²⁷⁶ He claimed he had offered the same to the lawyers but that they had refused. The lawyers, on the other hand, claimed that this was untrue and that it was senseless from the legal point of view as they were already under the obligation to take out professional indemnity insurance under Article 37 of the Act on Lawyers.²⁷⁷

The representatives of the lawyers filed a few initiatives with the Constitutional Court of Serbia. The Constitutional Court on 12 November 2014 held a

271 *Sl. glasnik RS*, 19/13.

272 Vladimir Beljanski, “Lawyers’ Rebellion”, *Peščanik*, 10 October 2014, available in Serbian at: <http://pescanik.net/emisija-10-10-2014/>.

273 *Sl. glasnik RS*, 93/14 and 121/14.

274 *Sl. glasnik RS*, 42/98 and 111/09.

275 Vesna Rakić Vodinelić, “Lawyers and Notaries in Serbia Today”, *Peščanik*, 11 October 2014, available in Serbian at: <http://pescanik.net/advokatura-i-notarijat-u-srbiji-danas/>.

276 “More on the strike of Serbian lawyers and EU institutions”, *Danas*, 5 October 2014, available in Serbian at: http://www.danas.rs/danasrs/drustvo/pravo_danas/o_strajku_srpskih_advokata_i_u_institucijama_eu_1118.html?news_id=290194 and <http://protestadvokata.org/>.

277 *Ibid.*

preparatory session on cases arising from initiatives disputing the constitutionality of the Notaries Public Act, the Real Estate Transactions Act and the Act Amending the Non-Contentious Procedure Act and cases arising from motions disputing enactments regarding the lawyers' strike.

The National Assembly adopted amendments to the Notaries Public Act²⁷⁸ during the lawyers' protest, eliminating the notaries' exclusive jurisdiction for drawing up real estate disposition contracts. Such contracts can now be drawn up by lawyers or other legal professionals and are to be notarised by the notaries public. Furthermore, under the amendments, the notaries shall pay a tax amounting to 30% of the performance fees they earn minus VAT and these funds will go into the state budget. These funds will be used to cover the courts' operational expenses, improve the financial status of court staff and cover other court expenditures and investments. Interestingly, the notaries had originally not been obliged to pay any percentage of their fees into the budget. Under the amendments, notary candidates may apply also for positions in municipalities in which they do not habitually reside, but they will be under the obligation to change their place of residence before they start working.

A huge number of trials were postponed during the strike. For instance, 98,000 trials in the Niš Basic Court and 7,500 trials in the Niš Higher Court were adjourned during the first two months of the strike.²⁷⁹ Supreme Court of Cassation President Dragomir Milojević said that the reason for so many adjournments also lay in the fact that some judges may have automatically adjourned the hearings rather than applying their procedural powers.²⁸⁰

The representatives of the Serbian Bar Association (SBA) and the Justice Ministry in early January 2015 reached an agreement on the adoption of amendments to the Notaries Public Act, the Real Estate Act, the Non-Contentious Procedure Act, the Inheritance Act and the Family Act, after which the lawyers ended their strike.²⁸¹ Under the amendments passed by the National Assembly, notaries public will only certify real estate contracts prepared by the citizens and lawyers, but will retain exclusive jurisdiction for contracts in which one of the parties is deprived of legal capacity, deaf, blind, mute or illiterate, and legal maintenance agreements. Furthermore, notaries are entitled to draft, on the motion of the parties, con-

278 *Sl. glasnik RS*, 121/14.

279 120,000 Trials Adjourned Due to Lawyers' Strike, Statement by Supreme Court of Cassation and High Judicial Council Chairman Dragomir Milojević, *Tanjug*, 6 November 2014, available in Serbian at: <http://www.tanjug.rs/novosti/152358/zbog-strajka-advokata-odloženo-120-000-sudjenja.htm>.

280 Milojević "Estimates 70% of Trials Adjourned Due to Strike", *Tanjug*, 5 October 2014, available in Serbian at: <http://www.tanjug.rs/novosti/147823/odloženo-70-odsto-sudjenja-zbog-strajka.htm>.

281 The Serbian Bar Chamber decision is available in Serbian at: <http://protestadvokata.org/%D0%BE%D0%B4%D0%BB%D1%83%D0%BA%D0%B0-%D1%81%D0%BA%D1%83%D0%BF%D1%88%D1%82%D0%B8%D0%BD%D0%B5-%D0%B0%D0%BA%D1%81-16-01-2015/>.

tracts on mortgages and lien statements that are to have the character of enforceable decisions. The amendments allow for the certification of any form of contract prepared by citizens and lawyers, as the law originally prescribed. Notaries are entitled to refuse to certify a contract only in the event a party to a contract does not have legal capacity or a valid power of attorney, or when they deem that an absolutely void contract is at issue. The parties are entitled to challenge these refusals before the courts (they had previously been entitled to complain only to the Chamber of Notaries Public); these provisions ensure judicial oversight of the notaries' work.²⁸²

During the lawyers' protest, the Justice Ministry officials repeatedly insinuated that the protest was politicised, referring to the trials of Serbian tycoon Miroslav Mišković, and other defendants charged with similar crimes and defendants accused of the gravest crimes. The Justice Ministry's statements were clearly aimed at demeaning and tarnishing the entire bar profession and relativising the reasons for their protest. The state's role should not be to undermine and degrade the bar profession, but to ensure its autonomy and independence. Furthermore, mentions of specific cases amount to the pressure on the courts because they indicate the outcomes the executive authorities are expecting.

The lawyers' protests, as well as the concerns raised by other legal professionals, are not aimed at abolishing the notarial profession in Serbia, but at changing their competences and regulating their relations with other legal professionals. The notary public profession is a necessary and efficient means for relieving the legal system. The problem is that its introduction has been flawed and significantly limited the citizens' options. The gradual introduction of the notarial system accompanied by an adequate public debate would surely have precluded the blockade of the judiciary. But such an approach would have required quality communication between the Justice Ministry and the prosecution services, courts and lawyers from the start. Such communication has not been established yet.

Apart from the months-long strike that totally blocked the work of the judiciary the very appointment of the notaries public was also disputable. The appointment of the first generation of public notaries took place in July. A group of unsuccessful candidates, who had applied for the first 100 vacancies, wrote an open letter to the NGO Transparency Serbia, claiming multiple violations of the law during the recruitment and appointment procedure. They, in particular, alerted to the change in the exam rules, the appointment of the recruitment commission, the violation of the legal appointment criteria and the establishment of the Notary Chamber organs although not enough notaries were appointed. The candidates took the test under different rules because the rulebook was changed in the meantime. The exams differed in a number of respects: in duration, in how they were taken, the membership and composition of the commissions. The unsuccessful candidates also claimed that

282 The agreement and the agreed amendments to the Notaries Act and other regulations, 16 January 2015, available in Serbian at: <http://protestadvokata.org/wp-content/uploads/2015/01/sporazum-i-usaglasene-izmene-ZOJB-i-seta-pratecih-propisa.pdf>.

the Appointment Commission's interpretation of the appointment criteria was arbitrary.²⁸³ The Commission, for instance introduced a new criterion "impression of the candidate", which carried between 0 and 15 points out of 100. The Recruitment Commission assessed whether the candidates were worthy of becoming notaries public after interviewing them between two and five minutes on average. The unsuccessful candidates alerted to the inadmissibility of applying a criterion based on the subjective impression the candidate leaves on the commission, which is not laid down in any regulations.

The Notary Chamber was established on 15 August 2014 to monitor and manage the work of notaries public. According to the law the Notary Chamber will be established when first 100 notaries public are appointed. At the moment when Chamber was established only 94 of the 351 notaries public have been appointed in Serbia.²⁸⁴

While the introduction of public notaries is a positive step, concerns were raised as to the selection and appointment procedures, which should be improved. The law should be implemented by taking into consideration the need to ensure quality services and access to justice. As the 2014 Progress Report was published before the escalation of the conflict between the lawyers and the Justice Ministry, it only dealt with suggestions regarding the organisation of the notary public system. Its authors are of the view that the number of notaries will need to increase substantially in order to meet the demand and, while they qualified the introduction of public notaries as a positive step, they said that concerns were raised as to the selection and appointment procedures, which should be improved.

5.4.4. E-Justice

The automation of the judiciary and introduction of ICT tools in its work significantly contribute both to the efficiency and transparency of the judiciary. This is why the Screening Report recommends the establishment of a reliable system for gathering complete statistical information on courts' performance, the duration of trials and the human and financial resources allocated.

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.

283 See more on: http://www.danas.rs/danasrs/drustvo/pravo_danas/moguca_veca_steta_od_reforme_pravosudja_iz_2009.1118.html?news_id=287763 and Note of Arbitrariness, *Vreme*, 14 August 2014, available in Serbian at: <http://www.vreme.com/cms/view.php?id=1220337>.

284 See the Notary Chamber President's interview to *Beta*, available in Serbian at: <http://www.euractiv.rs/vladavina-prava/7709-predsednik-komore-izbor-notara-ozbiljan-i-transparentan->.

The courts' records, however, are not uniform because several systems for electronic registration of data are in use. Almost all of them suffer from specific shortcomings. Surveys have shown that the courts are frequently unable to provide the information sought under the free access to information regulations precisely because the software limitations do not allow the search of the database under different criteria. These shortcomings may also reflect on the courts' ability to prepare comprehensive analyses and reports of major importance, such as the ones submitted to the numerous international bodies. The following steps could be made to improve the electronic system: the adoption of regulations on a uniform method for entering case file data in the database, organisation of additional training for the users of the software, improvement of the courts' ICT to ensure optimal storage of data in the electronic database.²⁸⁵

5.4.5. Public Character of Hearings and Judgments

The Constitution guarantees the public character of court hearings (Art. 32), but it does not explicitly guarantee the public pronouncement of court judgments. The Constitution lists 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 Act²⁸⁶).

The Act on Misdemeanours²⁸⁷ 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

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

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

287 *Sl. glasnik RS*, 101/05, 116/08 and 11/09.

interests of a minor or the privacy of the participants in the proceedings (Art. 322). Under the CPA, the public may be excluded from a hearing also in order to maintain order in the court.

All procedural laws stipulate that the decision on the exclusion of the public must be reasoned and public. Both the CPC and CPA lay down that a judgment must always be delivered publicly, notwithstanding whether the public was excluded from the proceedings, but that the court shall decide whether the public will be allowed to hear the reasoning of the judgment. The Administrative Disputes Act²⁸⁸ 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).

5.4.6. 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.²⁸⁹ A case law database allowing courts insight in the judgments of other courts would facilitate the alignment of case law.²⁹⁰

The Screening Report recommends that Serbia improve consistency of jurisprudence through judicial means (consider simplification of the court system by abolishing courts of mixed jurisdiction and possibility to file an appeal before the Supreme Court of Cassation based on legal grounds against any final decision) and by ensuring complete electronic access to court decisions and motivations and their publication within a reasonable amount of time.²⁹¹

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

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

289 Act on Organisation of Courts, Art. 24(3)).

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

291 *Screening Report*, p. 27.

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 amendments to the Criminal Code that came into force on 1 January 2013.²⁹² 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).

²⁹² Press associations had called for the amendment or deletion of this provision, while the representatives of the prosecutors and Justice Ministry had 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.

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.

The Screening Report made general recommendations and identified other specific problematic issues. One of them concerns the alignment of the provision on interpretation and translation with Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. The Report noted that the provision in Serbian law that allowed waiving the right to interpretation (if the person declared to know the language of the proceedings) was not in line with Directive 2010/64/EU on the right to interpretation and translation. Under this Directive, Member States should ensure that there is a procedure or mechanism in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter, regardless their waiver of that right.

A problem regarding this right has led to the adjournment of 60 proceedings before the Prijepolje Basic Court and proceedings in 250 cases before the town's Misdemeanour Court, after the defendants insisted they use the services of Bosnian court-sworn interpreters. The Basic Court in 2009 received a negative reply from the Justice Ministry when it asked whether there were any registered court-sworn interpreters into Bosnian.²⁹³

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 on 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.

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

293 "Bosnian Language Troubling Prijepolje Judiciary", *Politika*, 15 March 2014, p. 9. Available in Serbian also at <http://www.politika.rs/rubrike/Hronika/Muke-sudstva-u-Prijepolju-zbog-bosanskog-jezika.lt.html>.

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), 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. The 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 defendants 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 into 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).

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.²⁹⁴ 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.²⁹⁵ 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.²⁹⁶ 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.

Another problematic issue the Screening Report identified was how suspects or defendants waive their right of access to a lawyer and whether they are aware of all the consequences of their decision at the time. Under Directive 2013/48/EU, effective exercise of the rights of the defence is an essential part of the right to a

294 See the *Politika* article of 21 May 2012, available in Serbian at: <http://www.politika.rs/rubrike/Hronika/Stranputice-novog-krivcnog-postupka.lt.html>.

295 Criminal Procedure Code, Preface: G. Ilić, S. Beljanski, M. Majić, *Sl. glasnik*, 2011.

296 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>.

fair trial. This Directive ensures that the conditions in which suspects may consult with their lawyers do not differ in the EU Member States. The Directive *inter alia* guarantees access to a lawyer from the first stage of questioning by the police and throughout the entire criminal proceedings before the court, which the Screening Report recognised as a problem in Serbian legislation. The CPC adequately guarantees these rights but further efforts need to be invested in ensuring their consistent enforcement in practice. Under Article 289 of the CPC, suspects must be notified during pre-investigation proceedings that they have the right to a defence counsel who will attend their questioning and that they are not under the obligation to respond to the questions in his absence. Arrested persons have the same right under Article 293 of the CPC. A suspect must be represented by a defence counsel as soon as a ruling on his custody is issued (Art. 294(5)). Defence counsels are entitled to confidential consultations with suspects deprived of liberty even before the latter are questioned and with defendants in pre-trial detention.

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. 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 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 Proceedings²⁹⁷ 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.²⁹⁸ According to ECtHR case law, privacy encompasses, *inter alia*, the physical and the moral integrity of a person, sexual orientation,²⁹⁹ relationships with other people, including both business and professional relationships.³⁰⁰ 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.³⁰¹

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

298 See *Pfeifer v. Austria*, ECtHR, App. No. 10802/84, 25 February 2007; *Lindon and Others v. France*, ECtHR, App. Nos. 21279/02 and 36448/02 (2007).

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

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

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

Serbia is also a signatory of the CoE Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data,³⁰² 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,³⁰³ 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), 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 personality³⁰⁴ 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.”³⁰⁵ 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).

302 *Sl. list SRJ (Međunarodni ugovori)*, 1/92 and *Sl. list SCG*, 11/05.

303 *Sl. glasnik RS (Međunarodni ugovori)*, 98/08.

304 Constitutional Court Decision No. UŽ-3238/2011, p. 9.

305 *Ibid.*

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 Snowden scandal³⁰⁶ provoked serious debates about the existing standards on the protection of privacy under international law and the application of the valid international law provisions, particularly whether they applied to extraterritorial violations of the right to privacy.³⁰⁷ UN Resolution on the Right to Privacy in the Digital Age³⁰⁸, which was unanimously adopted by the General Assembly on 18 December 2013, reaffirms the right to privacy enshrined in Article 17 of the International Covenant on Civil and Political Rights 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.

As provided for in the Resolution, the UN Office of the High Commissioner for Human Rights (UNOHCHR) in June 2014 presented its Report on the right to privacy in the digital age³⁰⁹. It concluded that international human rights law provided a clear and universal framework for the promotion and protection of the right to privacy, including in the context of domestic and extraterritorial surveillance, the interception of digital communications and the collection of personal data, but that practices in many States have, however, revealed a lack of adequate national legislation and/or enforcement, weak procedural safeguards, and ineffective oversight, all of which have contributed to a lack of accountability for arbitrary or unlawful interference in the right to privacy.

306 More in the *2013 Report*, II.6.1.

307 See: <http://www.ejiltalk.org/foreign-surveillance-and-human-rights-introduction/>.

308 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.

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

6.2. Families and Family Life

According to the ECtHR, family life is interpreted in terms of the actual existence of close personal ties.³¹⁰ It comprises a series of relationships, such as marriage, children, parent-child relationships,³¹¹ and unmarried couples living with their children.³¹² Even the possibility of establishing a family life may be sufficient to invoke protection under Article 8.³¹³ Other relationships that have been found to be protected by Article 8 include relationships between siblings, uncles/aunts and nieces/nephews,³¹⁴ parents and adopted children, grandparents and grandchildren.³¹⁵ 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.³¹⁶

The Constitution does not include a provision protecting the family within the right to privacy and merely deals with the family from the aspect of society as a whole. Under Article 66(1), “the family, mothers, single parents and children (...) shall enjoy special protection.”

Article 63 of the Constitution guarantees the right to freely decide whether to have children or not. The fact that this right is guaranteed “to all” is disputable. The question arises how one can guarantee this right to the prospective father, if the mother decides not to have the baby (a right she is guaranteed under this Article).

The Constitution guarantees everyone the right to freely enter and dissolve a marriage and prescribes that entry into and the duration and dissolution of a marriage are based on spousal equality (Art. 62). The Constitution also envisages that a marriage is valid only with the freely given consent of a man and woman, whereby it effectively renders any legislation allowing homosexual marriages unconstitutional. Although the regulation of this issue is within the jurisdiction of states, the question arises whether it had been necessary to establish it as a constitutional principle, thus impeding any legislative changes. This solution is particularly problematic in cases in which one spouse had undergone a sex change, such as a case the Constitutional Court reviewed.³¹⁷ These cases also give rise to the problem of recognising the parental rights of the person who had undergone a sex change.

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

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

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

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

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

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

316 See *X., Y. and Z. v. the United Kingdom*, ECtHR, App. No. 21830/93 (1997). In its judgment in the case *Schalk and Kopf v. Austria*, ECtHR, App. No. 30141/04 (2010), the ECtHR for the first time took the view that a stable relationship between two persons of the same sex living together fell under the scope of family life protected under Article 8.

317 Constitutional Court Decision UŽ – 3238/2011.

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 Act³¹⁸ 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 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.³¹⁹

One such case was ruled on by the ECtHR, which delivered a judgment in the case of *Jovanović v. Serbia* on 26 March 2013, in which it found Serbia in violation of Article 8 of the ECHR.³²⁰ As the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, the ECtHR held 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 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

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

319 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.

320 *Jovanović v. Serbia*, ECtHR, App. No. 21794/08 (2013). See the 2013 Report, II.6.2.

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 Court further ruled that the Republic of Serbia had to 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. It further stated that this mechanism should be supervised by an independent body, with adequate powers, which would be capable of providing credible answers regarding the fate of each child and awarding adequate compensation as appropriate.

The one-year deadline the ECtHR gave Serbia expired on 9 September 2014, but the mechanism has not been established yet despite the claim of the Association of the "missing babies" parents that more than three thousand criminal charges in connection with cases of missing baby was failed to the prosecutor but that the investigation was not launched.³²¹ The Minister of Health said in late November that the Serbian government will form a special commission to resolve cases of missing baby and that all necessary regulations for the operation of the commission will be adopted by 15 January 2015.³²²

At its meeting on 25 September 2014, the Committee of Ministers, the Council of Europe body charged with overseeing the enforcement of final ECtHR judgments, noted that the Serbian authorities have taken the first steps towards the introduction of the mechanism, but that they had to intensify their efforts with a view to fulfilling the obligations imposed in the final judgment, above all given that the deadline had expired on 9 September 2014. At a meeting on December the Committee of Ministers emphasized that Serbia is in the process of establishing an adequate mechanism that would provide compensation to parents in each case.³²³

In late December, the Minister of Justice and Minister of Health made the decision that it is necessary to adopt a law on missing babies in order to create a legal basis for the establishment of an independent body that would have the authority to conduct an investigation to determine the truth in each case.³²⁴ The law should be provided and criteria for payment of compensation to parents who due to ineffective investigation procedure have not been able to determine the fate of her child.

321 See on: http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=11&dd=11&nav_category=12&nav_id=922798.

322 More on: <http://www.blic.rs/Vesti/Drustvo/511511/Loncar-Formira-se-komisija-za-slucaj-nestalih-beba>.

323 [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2014\)1214/20&Language=lanFrench&Ver=original&Site=CM&BackColorInternet=DBC2F2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2014)1214/20&Language=lanFrench&Ver=original&Site=CM&BackColorInternet=DBC2F2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

324 On behalf of the families whose children have "disappeared" Professor Vesna Rakic Vodinelić and Danilo Čurčić drafted model legislation in May 2014 and submitted to the Government. Relevant state authorities didn't have any comments on it. Model law available on Serbian on: <http://pescanik.net/wp-content/PDF/zakononestalimbebama.pdf>.

Ministers have announced that they will inform about this decision the Committee of Ministers of the Council of Europe on January 9, 2015.³²⁵

6.3. *Abortion*

Neither the ICCPR nor the ECHR define the beginning of life.³²⁶ Article 63 of the Constitution guarantees *everyone* the right to freely decide whether to have children or not, while the Family Act³²⁷ *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.³²⁸

Abortion is regulated by the Act on Termination of Pregnancies in Medical Institutions,³²⁹ 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.³³⁰ 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.³³¹ The Act is in accordance with international standards in this field.

The Criminal Code³³² incriminates illegal termination of pregnancy i.e. an abortion committed, initiated or assisted in contravention of regulations (Art. 120).

325 See: <http://www.blic.rs/Vesti/Drustvo/521728/Roditelji-nestalih-beba-dobice-odstetu-od-drzave>.

326 In its judgment in the case *Vo v. France*, ECtHR, 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.

327 *Sl. glasnik RS*, 18/05 and 72/11 – other law.

328 *Paton v. the United Kingdom*, ECtHR, App. No. 846/78, 19 DR 244, 3 EHRR 408 (1980).

329 *Sl. glasnik RS*, 16/95 and 101/05.

330 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.

331 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 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.

332 *Sl. glasnik RS*, 85/05, 88/05 – corr., 107/05 – corr., 72/09 and 111/09.

Although there were no major polemics on the right to abortion in 2014, it needs to be noted that some seriously call for the abolition of this right. The Holy Synod of the Serbian Orthodox Church, for example, supported an initiative by a number of doctors urging the prohibition of abortion in 2013.³³³ These demands are not only in contravention of Serbia's positive legislation and accepted international norms; they can also lead to practices not justified by any legal enactments. Namely, the Health Care Act³³⁴ 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.

Article 5 of the Act on Health Care of Children, Pregnant Women and Young Mothers³³⁵, 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 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 Decision³³⁶.

There have been many debates challenging the provisions of laws governing surveillance of communications in the recent past.³³⁷ The Constitutional Court

333 SOC Calls for Banning Abortions, *RTS online*, 4 June 2013, <http://www.rts.rs/page/stories/sr/story/9/Politika/1336636/SPC+pozvao+na+zabranu+abortusa.html>.

334 *Sl. glasnik RS*, 107/05, 72/09 – other law, 88/10, 99/10, 57/11, 119/12 and 45/13 – other law.

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

336 Constitutional Court Decision Iuz 1245/10.

337 Act on the Military Security Agency and the Military Intelligence Agency (*Sl. glasnik RS*, 88/09 and 55/12 – Constitutional Court Decision), the Electronic Communications Act (*Sl. glasnik RS*, 44/10), Criminal Procedure Code (*Sl. glasnik RS*, 72/11 and 101/11), the Security Intelligence Agency Act (*Sl. glasnik RS*, 42/02 and 111/09).

rendered a decision³³⁸ declaring unconstitutional the provisions of the Act on the Military Security Agency and the Military Intelligence Agency³³⁹ 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.³⁴⁰ 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.³⁴¹ The National Assembly of the Republic of Serbia in 2013 adopted the Act Amending the Act on the Military Security Agency and the Military Intelligence Agency³⁴², 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, without insight in their content.³⁴³

The Constitutional Court also reviewed the compatibility of specific provisions of the Electronic Communications Act³⁴⁴ with Article 41 of the Constitution. The Constitutional Court in 2013 rendered a decision declaring unconstitutional Article 128 (paragraphs 1 and 5) and Article 129(4) of this Act,³⁴⁵ which, *inter alia*, allowed state authorities to access electronic communication data, which the operators have to retain for a year.³⁴⁶

The National Assembly on 13 June 2014 adopted the Act Amending the Electronic Communications Act.³⁴⁷ Under this Act, access to the retained data is not permitted without the users' consent, except for a specific period of time and pursuant to a court decision provided that such access is necessary to conduct criminal proceedings or ensure the protection and safety of the Republic of Serbia. Under the amendments, security agencies and operators are under the obligation to keep

338 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>.

339 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).

340 “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.

341 The Security Intelligence Agency Act is the only law that specifies that such decisions shall be issued by the Supreme Court of Cassation.

342 *Sl. glasnik RS*, 88/09, 55/12 – Constitutional Court Decision and 17/13.

343 Article 13a, Act Amending the Act on the Military Security Agency and the Military Intelligence Agency.

344 *Sl. glasnik RS*, 44/10.

345 The Decision is available in Serbian at <http://www.ustavni.sud.rs/page/predmet/sr-Cyrl-CS/9081/?NOLAYOUT=1>.

346 More on the impugned Articles in the 2013 Report, II. 6.4.

347 *Sl. glasnik RS*, 62/14.

records of access to the operators' databases. The amendments have thus introduced oversight of access to the operators' electronic communication databases and provided legal prerequisites for the protection of the right to confidentiality of correspondence.

To recall, the Commissioner for Information of Public Importance and Personal Data Protection and the Protector of Citizens in 2012 performed oversight of the cell phone operators in order to establish the scope and the way in which the security agencies and the police accessed the retained data on the citizens' communications without a legal basis. The results of their oversight and the data the BCHR obtained pursuant to requests for access to information of public importance were worrisome, to say the least.³⁴⁸ The above authorities' actions could be ascribed to the extremely restrictive interpretation of the laws as they stood. It remains to be seen whether the newly-adopted provisions will preclude abuse of powers by the police and the security agencies.

The Criminal Procedure Code was another law governing this matter that was referred to the Constitutional Court. A motion for the review of the constitutionality of Article 286 of the CPC on police powers in pre-investigation proceedings was filed with this Court in 2013. Under paragraph 3 of that Article, the police were entitled to obtain a record of telephone communications or the base stations used, or locate the place from where communication was being conducted on an order of the public prosecutor, rather than the court. The National Assembly on 23 May 2014 adopted the Act Amending the Criminal Procedure Code³⁴⁹, which, *inter alia*, included an amendment of the impugned provision. Under the amendment, only the court may, on the motion of the public prosecutor, order derogation from the constitutionally guaranteed right to the confidentiality of correspondence. The National Assembly thus deviated from its hitherto practice and responded before the Constitutional Court rendered its decision on the compatibility of this paragraph with the Constitution. Namely, the National Assembly had previously waited for the Constitutional Court to declare provisions unconstitutional before it amended them (e.g. the Act on the Military Security Agency and the Military Intelligence Agency, the Electronic Communications Act, and the Security Intelligence Agency Act).

Although the National Assembly's proactive move is definitely a step forward over its prior practice, one should not disregard the fact that the legislator had been aware of the Constitutional Court's view on this issue before the Criminal Procedure Code was enacted in 2011. The Constitutional Court explicitly confirmed that only the court was allowed to permit derogation from the constitutionally guaranteed right to confidentiality of correspondence and other means of communication back in 2009, in its decision on the constitutionality of the Telecommunications Act. Although it is under the obligation to adhere to all Constitutional Court decisions, the legislator had totally disregarded this view and enacted not only the 2011 CPC,

348 See the 2012 Report, II 6.4.

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

but the Act on the Military Security Agency and the Military Intelligence Agency and the Electronic Communications Act, as well (in 2009 and 2010 respectively). As already noted, both of the latter laws included unconstitutional provisions in terms of the guaranteed right to the confidentiality of correspondence and existed as such in the Serbian legal system, until the Constitutional Court reiterated its view that a court decision constituted the only constitutional grounds for derogating from the right enshrined in Article 41 of the Constitution.

The last in this group of laws is the Security Intelligence Agency Act.³⁵⁰ The initiative to review the constitutionality of specific provisions of this law was filed back in 2002. It was not until a decade later, in 2012, that the Constitutional Court first stated any views of this initiative, after the National Assembly asked it in September 2012 to halt its review because it was in the process of amending the law.³⁵¹ Fifteen months later, the law remained unchanged, and the Constitutional Court rendered its decision declaring the disputed articles incompatible with Article 41 of the Constitution.³⁵² The Court put off the publication of its decision for four months to leave the legislator time to amend the unconstitutional articles, in light of the potential legal consequences that might ensue if they were invalidated and the disputed issues remained unregulated.

The Committee for Constitutional Issues and Legislation of the National Assembly, despite the opposition of certain members of the Committee, on 29, January 2014 proposed to the Constitutional Court to postpone for the longer period the publication of its decision due to the upcoming elections.³⁵³ The Constitutional Court in February 2014 postponed the publication of its decision for six months from the date of adoption.³⁵⁴ Finally, the Assembly adopted the Act Amending the Security Intelligence Agency Act on 29 June 2014, which includes amendments of the impugned provisions after 12 years since the initiatives for assessing constitutionality of the Law on BIA was filed.³⁵⁵

The Protector of Citizens and the Commissioner proposed a 14-point plan to the Government and National Assembly to improve the legal framework and practice of the state authorities in the field of protection of privacy.³⁵⁶ Although it may

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

351 See the 2012 Report, II.6.4.

352 The Constitutional Court's decision is available in Serbian at <http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/%D0%9E%D0%B4%D0%BB%D1%83%D0%BA%D0%B0%20I%D0%A3%D0%B7-252-2002.pdf>. See the 2013 Report, II.6.4.

353 See on: <http://www.rts.rs/page/stories/sr/story/9/Politika/1507382/Odlo%C5%BEeno+objavljivanje+odluke+USS-a+o+BIA.html>.

354 See on: <http://www.ustavni.sud.rs/page/view/149-101971/saopstenje-sa-8-sednice-ustavnog-suda-odrzane-27-februara-2014-godine-kojom-je-predsedavala-vesna-ilic-prelic-predsednica-ustavnog-suda>.

355 *Sl. glasnik RS*, 66/14.

356 All the measures are listed on page 187 of the Protector of Citizens' 2012 Annual Report, available at http://icoaf.org/docs/Serbia/Annual_Report_2012.pdf.

be concluded that headway has been made in this area, given that the disputed legal provisions incompatible with the Constitution have been amended, the partial adoption of the proposed measures does not suffice. The more comprehensive approach establishing a quality system of protection of the right to privacy needs to be taken.

Despite the need to precisely regulate the civilian control of the security services no legislative changes took place in this field in 2014 and no developments triggering a public debate on the introduced oversight occurred, although at the end of 2014, some ministers from the government placed information about the attempted interception of the Prime Minister, by placing listening devices in a private hotel where he was supposed to reside.³⁵⁷ Certainly the provisional powers vested in the Assembly Security Agency Oversight Committee to control the security services do not provide sufficient safeguards that such control is actually effective.

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)³⁵⁸ 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

357 More at: <http://www.blic.rs/Vesti/Politika/508683/Selakovic-Vucica-su-pokusali-da-prisluskuju-u-Miskovicevom-hotelu>.

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

data regardless of the time of creation, place of storage or the means by which they were obtained or of any other features of such data.³⁵⁹ 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.³⁶⁰ 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.³⁶¹

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".³⁶² 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.

Action plan for the implementation of the Personal Data Protection Strategy³⁶³ was still not adopted in 2014. Furthermore, the domestic legislation needs to be aligned with the relevant documents of the European Union³⁶⁴ and the Coun-

359 Article 3, PDPA.

360 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.

361 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.

362 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".

363 *Sl. glasnik RS*, 58/10.

364 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://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>.

cil of Europe.³⁶⁵ The Action Plan for the Implementation of the National Judicial Reform Strategy³⁶⁶ 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 Serbian Justice Ministry this autumn 2014 published the Draft Action Plan for Accession Negotiations on Chapter 23 (hereinafter: Draft Action Plan for Chapter 23).³⁶⁷ Given all the problems in this area, the activities envisaged under the Draft Action Plan for Chapter 23 indicate the lack of state interest in regulating personal data protection. Namely, the first envisaged activity is the preparation of a table of concordance of Serbia's personal data protection normative framework with the EU *acquis*, in the last quarter of 2014. The second activity involves amending the normative framework pursuant to the table of concordance. The Draft Action Plan states that the deadline for this activity is the third quarter of 2015." Given that the legal framework for the protection of personal data is not in line with EU *acquis*, this area needs to be aligned with European standards and practice as soon as possible.

Although the Commissioner is not legally entitled to propose amendments to laws, he has reacted proactively to the legal lacunae and the numerous problems in enforcing the PDPA in practice and drafted a Model Personal Data Protection Act. The Model Act was published on the Commissioner's website in May and after the public and experts commented on the text, it was forwarded to the Ministry of Justice. The Model Act comprehensively governs personal data protection and introduces new personal data protection institutes. It is in accordance with Council of Europe and European Union documents.

The Commissioner changed the part of the definition of consent to data processing regarding the content and form of consent, thus enabling the enforcement of the law in the actual environment and the processing of personal data via information and communication technologies. Under the Model Act, consent may also be given by clear affirmative action. For instance, a person who enters a facility with a visibly displayed notice that it is under video surveillance has thus consented to data processing by entering the facility.

Departing from the basic principle that data processing is admissible only if it is envisaged by the law or the data subject consented to it, the new law is to regulate particular processing issues, such as the protection of the subjects' vital interests or particular types of processing. It should in particular limit processing of data by government authorities pursuant to the subjects' consent.

365 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>.

366 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>.

367 <http://www.mpravde.gov.rs/tekst/7715/drugi-naact-akcionog-plana-za-poglavlje-23.php>.

The Model Act is the first to deal with the issue of video surveillance. It contains a general provision obligating the controllers to display clearly visible and conspicuous notices that facilities are under video surveillance. The notices must be textual and graphical and include information about the controllers performing the video surveillance.

The Model Act also governs the processing of biometric data. Under its provisions, use of biometric measures in data processing must be prescribed by law and exceptionally, pursuant to a prior decision of the Commissioner, when necessary to ensure the safety of people and property or protect confidential data and business secrets, access to equipment and detection of perpetrators of crime, provided that this cannot be achieved by another method of processing.

Article 40 of the Model Act also governs direct marketing i.e. direct advertising. Data controllers may process personal data for the purpose of direct advertising by telephone, e-mail or other distance communication means only pursuant to the law, with the consent of the individuals or, if publicly available data are at issue, with the consent of the persons they concern. The following personal data may be processed: the names, addresses, phone numbers, e-mails and other contact details of the persons. The controllers may also access other personal data, but only with the consent of the individuals at issue. The latter may require of the controllers to stop processing their data at any time.

The Model Act imposes special obligations on the controllers in the event of data security breaches. Controllers are to notify the Commissioner of any data security breaches within 15 days and submit reports on measures taken to prevent further threats to the security of the data. The controllers are also to notify all the subjects the security of whose data was compromised within 15 days, but the Model Act also sets out when such notification is not mandatory. The new law should envisage the obligation of individual controllers to notify the Commissioner of data security breaches and, in specific situations, also the data subjects at issue, whereby Serbian law will have been aligned with Commission Regulation 611/2013 of 24 June 2013 on the measures applicable to the notification of personal data breaches under Directive 2002/58/EC of the European Parliament and of the Council on privacy and electronic communications and the Draft General Data Protection Regulation.

Given that the public authorities have frequently invoked personal data protection in their refusals of requests for access to information of public importance, the Model Act regulates the relationship of these two rights in a separate provision.

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.³⁶⁸

368 Šabić: "Many problems in data protection field", *Blic*, 30 December 2013, available in Serbian at: <http://www.blic.rs/Vesti/Drustvo/431228/Sabic-Veliki-broj-problema-u-oblasti-zastite-podataka>.

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 Records³⁶⁹ 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 Detectives³⁷⁰ and on Private Security³⁷¹ in late November 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.³⁷² 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.³⁷³ 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.³⁷⁴

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 others (Art. 31(2)). The collected data may not be shared with other persons or

369 *Sl. glasnik RS*, 46/96, 101/05 – other law and 36/09 – other law.

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

371 *Ibid.*

372 The precise number of people working in the private security sector is still unknown.

373 *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.

374 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.

published (Art. 68(1)) and they must be handled in accordance with regulations on data confidentiality (Art. 69).

The Act is, however, still a dead letter since the numerous by-laws requisite for its enforcement have not been adopted yet. The 11 decrees or rulebooks to be enacted are to regulate specific issues, such as, e.g. the licencing procedure, the form and use of IDs, etc. The BCHR alerted to this risk in its *2013 Report*.³⁷⁵

The situation regarding the by-laws for the enforcement of the Classified Information Act³⁷⁶, 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. In the meantime the Government adopted only two decrees, one which governs the forms for designating and safeguarding information and documents containing classified data and the procedure for designating information as classified,³⁷⁷ and second, regulating classifying information by the National Security Council.³⁷⁸ The Government in 2014 adopted two more decrees specifying the criteria for classifying information as Restricted and Confidential by the Ministry of Defence³⁷⁹ and the public authorities.³⁸⁰

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.

375 More in *2013 Report*, II.7.2.

376 *Sl. glasnik RS*, 104/09.

377 *Sl. glasnik RS*, 8/11.

378 *Sl. glasnik RS*, 86/13, entered into force on 15 December 2013.

379 *Sl. glasnik RS*, 66/14.

380 *Sl. glasnik RS*, 79/14.

Access to the data in the citizens' criminal records³⁸¹ 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.

Media have in the past few years frequently published the personal data of people suspected of crime and under investigation, as well as information about their personal and family lives, including their state of health, falling under the category of particularly sensitive data. The Commissioner for Information of Public Importance and Personal Data Protection also alerted to the fact that the public would be unable to access investigation-related data published by the media if they filed requests for information of public importance because such data are confidential.³⁸² Given that such data can become publicly available only if the staff of the institutions in their possession forward them to the media, it needs to be noted that the Criminal Code includes the crime of using personal data for other than the original purpose and that public officials who commit this crime may be sentenced to maximum three years' imprisonment. Responsibility for such grave misconduct rests also with the media/journalists publishing information about the citizens' private lives.

A major breach of the right to personal data protection occurred in mid-December 2014 when the Privatisation Agency database with the personal data of all citizens, who have free shares in public companies was made, publicly accessible on the Agency website. Data, such as the first and last names, sex, age, personal identification numbers and addresses of the citizens were publicly available for a specific period of time and the link leading to the database was blocked after the Commissioner for the Protection of Equality intervened and warned that there were numerous ways in which such data could be abused. The fact that the Criminal Code does not incriminate identity theft definitely does not help matters.³⁸³

381 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 and 111/09).

382 See the Commissioner's statement at: <http://www.poverenik.org.rs/en/press-releases-and-publications/1867-nezakonita-obrada-podataka-o-licnosti-krivicno-delo.html>.

383 See the B92 report, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=11&dd=03&nav_id=919183.

It was not established by the end of the reporting period whether these data became publicly available due to a hacker attack or the unlawful and unauthorised conduct by the Agency staff. However, the initial reactions, or, better said, lack of reaction, of the state officials and representatives of state authorities are concerning given that they demonstrate for the umpteenth time that the state does not treat the issue of personal data protection seriously. This conclusion is corroborated by a statement of the State High Technology Crime Prosecutor, who said that his department would launch an investigation if the data had become publicly available due to a hacker attack, whereas, if it transpired that staff negligence or carelessness was the cause, the staff should be subject to disciplinary measures pursuant to the rules governing the work of the Privatisation Agency. Surely such a serious security issue, such as the publication of the personal data of 5,190,396 citizens³⁸⁴, cannot be treated as a mere disciplinary offence.

The Commissioner for Information of Public Importance and Personal Data Protection initiated a check of the enforcement of the Personal Data Protection Act by the Privatisation Agency. He also said he would file misdemeanour charges against responsible officials and require of the prosecution service and the MIA to initiate proceedings to establish their criminal liability.³⁸⁵

To recall, all those who kept the data may also be held liable under Article 146 of the Criminal Code, which states that whoever without authorisation obtains, communicates to another or otherwise uses information that is collected, processed and used in accordance with law, for purposes other than those for which they are intended, shall be punished with a fine or imprisonment up to one year.

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 Protection³⁸⁶ (hereinafter: Commissioner) is an autonomous and independent state authority charged with the protection of personal data. The Commissioner is, *inter alia*,

384 See <http://www.shareconference.net/en/defense/personal-data-more-5-million-citizens-serbia-unlawfully-published>.

385 See the Commissioner's statement in Serbian at: <http://www.poverenik.rs/sr/saopstenja-i-aktuelnosti/1953-povreda-prava-na-zastitu-podataka-o-licnosti-skoro-svih-punoletnih-gradjana-srbije.html>.

386 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

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.³⁸⁷ Furthermore, the Commissioner keeps a nationwide Central Register of data files and data file catalogues all controllers³⁸⁸ processing personal data are under the obligation³⁸⁹ to establish in the manner set out in a Government Decree.³⁹⁰ The Central Register is electronic, public and available on the Internet;³⁹¹ 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.³⁹² The Commissioner, whose work is characterised by a high degree of transparency,³⁹³ 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.

The Commissioner launched oversight of the enforcement and implementation of the Personal Data Protection Act by the operators of public communication networks providing Internet services to natural persons in 2013. The results of the first oversight exercise – during which questionnaires were distributed to Internet providers asking them how they kept and processed the data on their users and whether they adopted rules on the privacy and security of personal data – were qualified as concerning by the Commissioner.³⁹⁴ For instance:

(*Sl. glasnik RS*, 97/08 and 104/09) and he is now the Commissioner for Information of Public Importance and Personal Data Protection Commissioner.

387 The restrictions of the Commissioner's oversight powers in Article 45 (2–4) of the Personal Data Protection Act, limiting the Commissioner's access to data if such access would seriously undermine the interests of national or public security, defence of the country or actions aimed at the prevention, detection, investigation or prosecution of criminal offences were abolished by the Classified Information Act (*Sl. glasnik RS*, 104/09, Art. 109) and the Commissioner is now entitled to conduct full oversight.

388 Under Article 3(1(5)), a data controller shall denote a natural or legal person or public authority that processes personal data.

389 Article 48, Personal Data Protection Act.

390 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>.

391 The Central Register is accessible via: <http://www.poverenik.rs/registar/index.php/en/home.html>.

392 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.

393 The Commissioner's press releases and other information of relevance to the work of this authority are available at www.poverenik.rs.

394 See the Commissioner's press release, available at <http://www.poverenik.rs/en/press-releases-and-publications/1764-zabrinjavajuci-rezultati-nadzora-nad-operatorima-interneta.html>.

- As many as 92 of the 184 operators (57%) said they did not keep record of who entered the premises in which access to communication data was possible or how long they stayed in them; many do not even keep the technical equipment in separate premises;
- Only 93 of the 184 operators (57%) said they had installed intrusion detection systems, but only one of them provided the requested supporting documents;
- As many as 115 of the 184 operators (71%) said that their staff with access to electronic communication data either in real time or in the archives did not have to fulfil any requirements regarding professional qualifications, training or security certification;
- Only 25 of the 184 operators (15%) said that they kept the “retained data” for 12 months, as explicitly stipulated by the Electronic Communications Act, while all others replied that they kept them for longer or shorter periods of time.

After news broke that business banks in Serbia sought their clients’ consent to allow insight in their accounts by the US Internal Revenue Service, the Commissioner performed a check and established that 14 out of 29 banks collected such information. The Commissioner underlined that there were no legal grounds for such data processing in the absence of a signed and ratified Foreign Account Tax Compliance Act (FATCA) agreement and warned the banks that disclosure of personal data to foreign sources constituted a grave offence under the Personal Data Protection Act.

Under the Draft Action Plan for Chapter 23, the Commissioner is to be ensured sufficient financial and human resources. The Commissioner’s Office was at long last provided with adequate office space in 2014.

8. Freedom of Thought, Conscience and Religion

8.1. General

The right to freedom of thought, conscience and religion is enshrined in Article 9 of the ECHR and Article 18 of the ICCPR. Under these Articles, everyone shall freely manifest the belief or religion of his choice whilst the freedom to manifest one’s beliefs or religion may be subject only to such limitations as are prescribed by law.

The Constitution of Serbia states that Serbia is a secular state and treats the separation of the church and state at the level of constitutional principles, i.e. prohibits the establishment of a state or mandatory religion (Art. 11). The Constitution

also enshrines the right to freedom of thought, conscience and religion, i.e. guarantees the right to stand by or change one's religion or belief by choice (Art. 43). 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 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 Communities³⁹⁵ 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.³⁹⁶ 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.³⁹⁷ 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 European Commission again reiterated in its 2014 Progress Report³⁹⁸ that some disputable provisions of the rulebook on the register of churches and religious communities

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

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

397 *Sl. glasnik RS*, 64/06.

398 *Serbia 2014 Progress Report*, p. 53.

may constitute a breach of the principle of state neutrality towards the internal affairs of religious communities.

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.³⁹⁹ 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.⁴⁰⁰ Namely, the Act on Churches and Religious Communities recognises the status of traditional churches and traditional religious communities to those churches and communities, 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).

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).

399 See the Constitutional Court Decision No. I Uz 455/2011 of 16 January 2013.

400 Article 4, Act on Churches and Religious Communities.

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.⁴⁰¹ Whereas traditional religious communities need to submit only applications for registration, confessional communities need to file numerous documents together with their applications.

The Constitutional Court found that there were, indeed, *different registration requirements* laid down for traditional and confessional religious communities but did not consider them discriminatory. The difference exists in their obligation to provide evidence, but the registration procedure involves only checks of whether the applicants fulfil the legal requirements to acquire legal personality, which the traditional churches and religious communities have already fulfilled as they had been recognised under specific laws in the past.

In the view of the Constitutional Court, such actions by the executive authorities are necessary because the state does not possess enough information about the confessional communities. The Constitutional Court also underlined that the disputed provision of the law did not impose upon the administrative authority an obligation to assess the scope and legitimacy of religious dogmas and teachings in practice during the registration procedure, which would be unjustified.

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 is, however, refuted in practice.

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.⁴⁰² 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.

401 Article 18, Act on Churches and Religious Communities.

402 More in the 2012 Report, II.7.2.

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 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.

Both the 2014 Progress Report⁴⁰³ and the Screening Report⁴⁰⁴ noted with respect to the freedom of thought, conscience and religion, a lack of transparency and consistency in the registration process, preventing some smaller religious groups from exercising their rights and that equal access to church services in some minority languages was not consistently guaranteed in practice.

Traditional religious communities are exempted from the obligation to issue fiscal receipts. Under the Property Tax Act, these religious groups are exempted from paying real estate tax if the property is used exclusively for religious activities. This gives rise to the issue of church facilities and activities that have obviously nothing to do with religious services, such as e.g. the overnight accommodations

403 *Serbia 2014 Progress Report*, p. 53.

404 Chapter 23 *Screening Report*.

or congress centre within the tourist-laic-spiritual centre, which the St. Panteleimon Church rents out on Mt. Divčibare.⁴⁰⁵

8.3. Situation in 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.⁴⁰⁶

Two Islamic Communities have existed in Serbia since 2007. One of them is headed by Mufti Zukorlić and is spiritually linked to the Islamic Community Riyaset in Bosnia-Herzegovina, and the other is headed by Reis-ul-Ulema Adem Zilkić and has limited its activities to Serbia. The rift between the two communities continued in 2014, although there had been indications in 2013 that they may overcome it.⁴⁰⁷

The Islamic Community in Serbia continued repossessing the property it considers its own in 2014. Its activists fenced off and cleared the ground in front of a supermarket, which, they claim, was built on land belonging to that religious community. The Islamic Community launched such activities in 2006, invoking the Act on Churches and Religious Communities. It first repossessed a building in the heart of Novi Pazar in 2008, in which the Islamic Studies College is now located. The judgments benefitting the owner cannot be enforced. The court issued several eviction orders but the court enforcement agents failed to show up. The Islamic Community in Serbia also took over the land of the General Hospital, where a new building of the Medical Secondary School was to have been built, and plans on building an Islamic Centre on it. Four years ago, the activists of this community also took over the Novi Pazar Spa, which a private company bought during its privatisation. The court ruled in favour of the owner, but the court enforcement agent was unable to enforce the judgment.⁴⁰⁸

405 "SOC and Business: Hail 'Holy Real Estate'", *Radio Free Europe*, 22 February 2014, available in Serbian at: <http://www.slobodnaevropa.org/content/uskliknimo-s-ljubavlju-svetoj-nekretnosti/25271442.html>.

406 *Novosti*, 14 October 2013, p. 4.

407 "I Will Do My Utmost to Reunite the Two Islamic Communities", *Danas*, 17 February 2014, available in Serbian at: http://www.danas.rs/danasrs/drustvo/ucinicu_sve_da_dodje_do_ujedinjenja_dve_iz_55.html?news_id=276441.

408 "Supermarket is Islamic Property, Too", *Danas*, 6 July 2014, available in Serbian at: http://www.danas.rs/danasrs/drustvo/i_samoposluga_vakuf.55.html?news_id=284932&action=print.

The Serbian Orthodox Church issued a number of statements re the Pride Parade in 2014. The SOC Patriarch made inappropriate statements encouraging the atmosphere of violence in society and amounting to inadmissible interference of the church in state affairs. The Patriarch qualified the Parade as an immoral event and likened the LGBTI population with paedophilia and incest. Most parliamentary parties, including the SNS, SPS and DS, condemned the Patriarch's statements.⁴⁰⁹

The Serbian Genuinely Orthodox Church (SGOC) organised in July 2014 the St. Lazar Orthodox Youth Camp in the Kučaj Mountains, where boys and girls between seven and 17 years of age lived outdoors, in army-like conditions and, *inter alia*, learned to shoot air rifles. The Ministry of Internal Affairs said that the police had launched an investigation and the representatives of the SOC condemned the abuse of children.⁴¹⁰

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 Constitution of Serbia guarantees right to freedom of expression of opinion. It prescribes that freedom of expression may be restricted by law. Restriction could be imposed only if necessary to protect the rights and reputation of others, uphold the authority and impartiality of the courts and protect public health, morals of a democratic society and the national security of the Republic of Serbia (Art. 46 (2)). It is unclear what is exactly implied by "morals of a democratic society", a coinage introduced by the Constitution as grounds for restricting specific rights.

The Constitution guarantees the freedom of the press – publication of newspapers is possible without prior authorisation and subject to registration, while television and radio stations shall be established in accordance with law (Art. 50).

Censorship of the press and other media is prohibited by the same article. Only competent court may prevent the dissemination of information. This preventive measure could be imposed only if that is "necessary in a democratic society to prevent incitement to the violent change of the constitutional order or the viola-

409 "Church Inciting Violence", *Danas*, 25 September 2014, available in Serbian at: http://www.danas.rs/danasrs/drustvo/crkva_podstice_nasilje_u_drustvu_55.html?news_id=289551.

410 "Abbess Efrosinija: What's Wrong with Rifles?!", *Danas*, 5 August 2014, available in Serbian at: http://www.danas.rs/danasrs/drustvo/igumanija_efrosinija_sta_je_lose_u_puskama.55.html?news_id=286694.

tion of the territorial integrity of the Republic of Serbia, to prevent propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (Art. 50 (3)). The right to correction is guaranteed by the Constitution (Art. 50 (4)), which leaves its detailed regulation to the law. Criminal Code incriminate insult but warrant only fines (Art. 170).

9.2. Media Reform

The National Assembly on 2 August 2014 adopted a set of media laws – the Public Information and Media Act,⁴¹¹ the Electronic Media Act⁴¹² and the Public Media Services Act⁴¹³. The state thus fulfilled most of the obligations it assumed under the Strategy for the Development of the Public Information System in the Republic of Serbia until 2016 (hereinafter: Media Strategy) adopted back in 2011.⁴¹⁴

The Strategy authors set the following main goals: the elimination of state (co-) ownership of any media and the switch to project-based state funding of programmes of public interest, protection of media pluralism and media ownership transparency, establishment of an environment conducive to the development of independent public service broadcasters, completion of the digitalisation process, and media literacy development as a permanent goal. The formal goals set out in the Media Strategy have mostly been fulfilled, and a new Advertising Act is the only law that remains to be adopted. The media reform has, however, suffered from some shortcomings, primarily reflected in the considerable delays in the adoption of important enactments, the state’s constant reluctance to withdraw from media ownership and the major gaps between the letter of the law and practice.

The media laws have established a proper legislative framework for achieving all the important goals set out in the Media Strategy and for the first time define programmes of public interest. On the other hand, the shortcomings in the laws may give rise to specific problems in practice and even bring into question the media reform. Furthermore, European models (above all the EU Directive on Audio Visual Media Services) do not provide answers to numerous questions, given that they do not deal with media freedoms, but with establishing single media market standards. In other words, European regulations regarding the freedom of expression are either meagre or refer to the case law of the relevant institutions, such as the European Court of Human Rights.

In its Serbia Progress Report, the European Commission noted the adoption of the media laws, observing that they significantly improved the media legal framework, in line with the 2011 Serbian Media Strategy, and further aligned Ser-

411 *Sl. glasnik RS*, 83/14.

412 *Ibid.*

413 *Ibid.*

414 *Sl. glasnik RS*, 75/11.

bian legislation with the EU legal framework in this area. The authors of the Report said that their implementation and the adoption of the necessary by-laws would be crucial to achieve the goals of the 2011 Serbian Media Strategy, adding that it had been reported that the “media market continues to suffer from non-transparent public funding of selected state-owned media and commercial media through direct budgetary subsidies and contracts with public enterprises and authorities” and that, “pending the full implementation of the newly adopted legislative package, the Serbian media continued to operate in a blurred legal environment which delayed the state’s withdrawal from media ownership”. The Report also noted that media ownership remained non-transparent and the need to ensure the independence as well as the transparency of the work of the Regulatory Body for Electronic Media. In its assessment of Serbia’s headway under Chapter 23, the European Commission qualified the adoption of the media laws as a significant positive development, noted the progress in the work of the commission specially tasked to look into unresolved cases of murdered journalists from 1999 and 2001, the stepped up activity of the Regulatory Body for Electronic Media related to content monitoring and generally functional access to information of public interest.

On the other hand, the European Commission said that there were concerns about deteriorating conditions for the full exercise of freedom of expression in Serbia. “More generally, there is a growing trend of self-censorship which, combined with undue influence on editorial policies, and a series of cases of intervention against websites, are detrimental to freedom of the media and adversely affect the development of professional and investigative journalism,” the Commission stated, adding that Serbia was expected to invest efforts to identify and prosecute suspects of violations of Internet freedoms. The Commission also said it expected of Serbia to ensure the sustainability of public broadcasting services in minority languages, including sustainable financing of RTV. The authors of the Progress Report said that threats and violence against journalists, including cases of physical assault at local level still remained a concern and, in that context, that final convictions remained rare although some criminal charges were filed for incitement to ethnic, racial and religious hatred and intolerance. They noted that media campaigns based on anonymous or leaked sources, detailing investigations, announcing arrests and quoting investigation documents undermined trust in judicial institutions, violated personal data laws and challenged the presumption of innocence. This part of the Report concluded with the recommendation that media owners and top editorial staff should pay more attention to abiding by professional standards, with support from the Press Council.

The main achievement of the new media laws is the state’s clear and unambiguous commitment to withdraw from media ownership, that is, to eliminate public media ownership (with the exception of public service broadcasters and precisely defined entities). The state is to withdraw from media ownership by 1 July 2015 at

the latest.⁴¹⁵ All publicly-owned media, some 80 of them, are to be privatised by that date in the manner decided by the Privatisation Agency. If an outlet is not sold, it will be privatised by the distribution of its shares to its workers and it will be dissolved. Privatised outlets must continue performing media activities for at least five years (Art. 142).⁴¹⁶ It remains unclear who will monitor whether the new owners abide by this provision, provided that the Privatisation Agency is entitled to do so for only two years.⁴¹⁷

9.3. *The Public Information and Media Act*

The Public Information and Media Act is the first Serbian law to adequately define the media. Its definition makes a clear distinction between media and similar form of expression. For a form of expression to be treated as a medium, it must cumulatively fulfil the following three requirements: 1) there must be content (images, information, ideas, etc.), 2) which is under editorial control, and 3) is intended for an indefinite number of recipients. Editorially shaped content is precisely the *differentia specifica* between a traditional media outlet and specific forms of expression on the Internet⁴¹⁸ as a modern channel of communication (Art. 30).

The Act, however, allows these other forms of expression to become media as well, if they wish to and register in the Media Register. The provisions defining media are the more progressive parts of the law, because they recognise the distinctness of the forms of expression on the Internet, that is, differentiate between “editorially shaped content” and “user generated content”, whilst allowing them to become classical media, with all the rights and duties inherent in the status, if they have such an interest. It remains to be seen to what extent these legal provisions will improve freedom of expression on the Internet, but it is already evident that the public authorities are not particularly amenable to the specificities of expression on the Internet, as they frequently resort to the criminal prosecution of individuals for the views they expressed on the Internet. It goes without saying that expression on the Internet does not entail total anarchy and that it is subject to the general rules regarding restrictions of the right to the freedom of expression. It seems, however,

415 Prior media laws also stipulated the privatisation of publicly owned radio and TV stations by specific deadlines, but their sale was put off for years. One of the reasons lay in the conflicting provisions in the Local Self-Government Act, the Capital City Act, the National Councils of National Minority Act and the media laws. First the Constitutional Court and then the new legislation eliminated the inconsistencies and the single legal order on which press and media associations had been insisting for years has finally been established.

416 This provision aims at preventing the practice of buying outlets for their real estate and then shutting them down.

417 Another related question regards penalties against owners who default on this obligation in the meantime, before the expiry of the five-year deadline.

418 Not all, because the websites of traditional media are *ex lege* media with all the corresponding rights and obligations.

that the state has in the recent months reacted too sharply to statements by individuals on social networks, especially during the May floods.⁴¹⁹

9.3.1. Public Interest in the Field of Public Information and Co-Funding of Projects of Public Interest. – Public interest is the key component of the state's financial participation in the design of programme content, which actually represents the extent of the state's "admissible interference" in public information. In order to ensure the full freedom of the media, the state must refrain from inappropriate influence on the outlets' editorial policies. That is precisely why the law prohibits direct and indirect funding of media, to preclude the state from exerting financial pressures on the media and thus influencing the way they report. Around 80 outlets are still in public ownership, which means that they are financially dependent on the public authorities, that the latter, as the outlets' founders directly affect the appointment and dismissals of the directors and editors⁴²⁰, but also that they have an unwarranted advantage in the media market.

Act explicitly prohibits funding of the media from public funds, apart from the exceptions it enumerates (Art. 143). Such exceptions are allowed only with a view to achieving public interest in the field of public information, which entails: provision of truthful, impartial, timely and comprehensive information to all citizens of the Republic of Serbia, persons belonging to national minorities and the Serbian diaspora; the preservation of the cultural identity of the Serbian people and national minorities living in the territory of the Republic of Serbia; provision of information to foreign audiences in foreign languages when that is in the Republic of Serbia's interest; facilitating the provision of information to persons with disabilities and other minority groups; promotion of the protection and development of human rights and democracy; fostering rule of law and the welfare state, free development of persons and the protection of children and youths, development of cultural and artistic creativity, development of education, including media literacy as part of the education system, the development of science, sports and physical culture, environmental and human health protection; improvement of media and journalistic professionalism.

Public media services, institutions providing information in national minority languages and to citizens in Kosovo will remain in public ownership. The law also introduces project-based funding of media producing programmes of public interest.

419 See articles published on SHARE Defense's website, available at: <http://www.shareconference.net/en/defense/internet-remembers-everything> and <http://www.shareconference.net/sh/blog/cil-ing-efekat-presude-protiv-dva-forumasa-u-slucaju-malagurski-da-li-je-sloboda-izrazavanja-na>.

420 The recent dismissals of publicly owned media chief editors Aleksandar Timofejev (*Studio B*) and Jovanka Marović (*RTV Kragujevac*) are merely a reflection of the ill-established system allowing the Supervisory Boards of these public companies, comprising mostly representatives of the ruling political parties, to appoint politically "suitable" and dismiss politically "unsuitable" editors.

The national, provincial and local governments shall ensure the realisation of public interest by encouraging media content diversity, freedom of expression of ideas and opinions, free development of independent and professional media, which shall contribute to fulfilling the citizens' needs for information and content covering all walks of life, without discrimination (Art. 15).

The other outlets are to be privatised and may count only on public funding granted for co-financing their projects. This legal solution does not fully eliminate the possibility of exerting inappropriate influence on the outlets' editorial policies either, but it will reduce it to an acceptable extent if it is consistently applied. On the other hand, decisions on which media will be granted funding are to be taken by the ministry, the competent provincial authority and the local self-government units (Art. 25). The independent project commissions are to suggest which media should be granted co-funding after the completed tender but the political authorities are not bound by its suggestions. Abuse will, however, be reduced to a minimum if every political official deciding on the grants adheres to the law. Therefore, the success of the entire system depends on how the legal provisions will be applied. Unfortunately, the first few months of the implementation of the law indicate that many local self-governments have cut the amount of funding for the media, thus rendering senseless the project co-funding concept.⁴²¹

The main deficiency of the system established under the law lies in who has the last say on which outlets will be granted funding – the competent ministry and the provincial and local self-governments, that is, political authorities. They can clearly affect such decisions and grant project funding only to the “suitable media” rather than those producing good programmes. Similar doubts are harboured with respect to institutions providing information in national minority languages because there are not enough guarantees ensuring that they do not become instruments in the hands of National Minority Councils, which are also political bodies, although they are charged with preserving the minorities' cultural and linguistic identity.

9.3.2. Transparency of Media Ownership and Media Pluralism. – The Act establishes a new Media Register, which contains detailed information that will be publicly available and enable the citizens to form their own opinions about the credibility and reliability of the ideas, information and opinions published in the media, with a view to identifying the outlets' potential influence on public opinion and to protecting media pluralism (Art. 7). The Act comprises other provisions aimed at protecting media pluralism, the most important of which are those prohibiting media concentration. Prohibited media concentration shall exist in the event the same owner owns more than one daily publishing information from all walks of life, the total annual circulation of which exceeds 50% of sold or otherwise distributed circulation of dailies in the territory of the Republic of Serbia in the calendar year

421 See e.g. the statement by IJAS Chairman in Serbian at: <http://www.radiostoplus.com/item/15698>.

preceding the merger; as far as electronic media are concerned, prohibited media concentration shall exist in the event of a merger of two or more radio and television publishers whose combined audience share exceeded 35% of the total audience in the coverage area in the calendar year preceding the merger (Art. 45).

The Act also lays down rules applying to distributors of media content. It prohibits the acquisition of over 50% of the share in the stock capital between a publisher of a daily publishing information from all walks of life and with an average daily circulation exceeding 50,000 copies a year, and a publisher providing radio or television services (Art. 46(1)). Persons involved in media publisher activities and in the distribution of media content shall perform the former activities via affiliated legal persons (Art. 46(2)). The existence of prohibited media concentration with respect to print media shall be identified by the ministry charged with information and media, and, in the event at least one electronic media outlet is involved, by the electronic media regulatory authority (Art. 47).

The restrictions are quite more liberal than those in the prior laws. Thresholds of prohibited media concentration are quite high, due to the legislator's wish to attract investments in the staggering media industry. This is why both the ministry and the electronic media regulatory authority must exercise particular caution to ensure that the desire to attract new investments does not lead to the total lack of media diversity (pluralism).

9.3.3. Privacy of Public Figures and Holders of Public Office.— Information regarding a person's private life or personal records (letters, diaries, notes, digital records, etc.), their images (photographs, drawings, film, video, digital, etc.) and audio recordings (tape-recordings, gramophone records, digital, etc.), may not be published without the consent of the person whose private life the information refers to, or of the person whose words, image or voice it contains, if such publication may lead to the disclosure of that person's identity (Art. 80(1)).

Such interest shall be deemed to exist, *inter alia*, in the event: the information or record pertains to a person, event, or occurrence of public interest, especially if it pertains to a holder of public or political office and its publication is in the interest of national security, public safety, or economic welfare of the country, in order to prevent disorder or crime, protect health or morals or the rights and freedoms of others (Art. 82(2)).

This exception is particularly important as it is much more restrictive than the one in the prior Public Information Act, under which information or records could be published without the individual's consent in the event they pertained to a person, event or occurrence of public interest, especially if they regarded a holder of a state or political office and their publication was relevant in view of the fact that the person was exercising that office. Therefore, the prior law set only two requirements: that the information regarded an individual exercising a state or political office and that it was relevant because of that office. It remains unclear why the

new Act introduced an additional, third requirement: that the publication of information be in the interest of national security, public safety, or economic welfare of the country, in order to prevent disorder or crime, or protect health or morals or the rights and freedoms of others. The consistent application of this provision risks to impose upon the media the obligation to seek the consent of political and state officials nearly every single time, which will considerably hinder the status and work of journalists and stifle critical journalism.

9.4. Public Media Services Act

9.4.1. Definition of Public Media Services. – Public media services shall denote independent and autonomous legal entities constituting institutionally organised forms for the realisation of public interests in the field of public information (Art. 2). The operations of public media services shall be guided by the following principles: truthful, impartial, complete, and timely provision of information; independence of editorial policy; independence of sources of funding; prohibition of any form of censorship and unlawful influence on the operations of the public media services, editorial staff and journalists; implementation of internationally recognised norms and principles, particularly respect of human rights and freedoms and democratic values, as well as of professional standards and codes (Art. 4). Public media services shall be institutionally independent in performing their main activities and enjoy the freedom, notably to design and select programme contents, edit programme schedules, organise their activities, appoint their managers, editors-in-chief and recruit staff, etc. (Art. 5). The democratic character and independence of public media services rest on the stability, sustainability and autonomous sources of funding, the system of appointing the public media service management authorities and their accountability to and treatment of their audiences funding their work. All these issues are resolved relatively well in the law, but individual disputable provisions cast a shadow over the legislator's good will.

9.4.2. Financing of Public Media Services. – The Public Media Services Act envisages good systemic solutions regarding the funding of public media services but, on the other hand, establishes a provisional system of budget funding until the end of 2015. Namely, the provisions on funding will apply as of 1 January 2016; until then, both public media services will be funded from the budget (Art. 61).

The so-called “dual concept”, i.e. the co-existence of public media services and commercial media exists in most European countries. Practice in these states has shown that public funding mechanisms are the only sustainable model for financing public media services. The Public Media Services Act recognises this and

envisages the payment of so-called licence fees⁴²² which the public media services will directly collect from the citizens and which will fund only their programme functions, that is, the production of programmes serving public interest (Art. 37). Under the Act, public media services may also finance their activities from: 1) commercial revenues from the sale of their programmes (so-called net benefits), which may be used for funding their public service programming but not for financing commercial activities (e.g. these revenues may be used for funding programmes for national minorities but not for buying the Champions League programmes); 2) other commercial revenues (advertising)⁴²³, and 3) the budget, but only exceptionally, for programmes of public interest and pursuant to submitted project proposals (Arts. 36, 43, 44 and 46).

Specific provisions strengthened the financial discipline of the public media services, notably the ones limiting their use of specific funding. Licence fee and net benefit income may be used only for funding the main activities of the public media services but not for funding their commercial programmes – the so-called *prohibition of cross-subsidising* (Art. 45). Another major novelty is that the public media services will keep separate books on revenues from their main activities and on their other commercial revenues (Art. 49). All revenue and expenditure accounts shall be subject to periodic audits by internal auditors and annual audits by independent external auditors (Art. 50). Public media services shall submit annual reports on their performance to the National Assembly of the Republic of Serbia, which shall review them, and to the electronic media regulatory authority, for its information (Art. 51). These provisions aim at improving financial discipline, accountable business and transparent spending of funds collected from the citizens.

The funding system is a good one, although it was undermined at the outset by the provision under which it shall apply as of 1 January 2016, and it will depend on the collection rate after that date. The year 2016 now seems very far away in terms of the public media services' survival. Furthermore, there are no clear plans for restructuring the overstaffed public media services. And last but not the least, the state budget is a stable source of funding only at first glance, as it is subject to the effects of the general economic developments. This is why the new laws have not eliminated fears that the Serbian public media services might experience the "Greek scenario". In addition, direct budget funding increases risks of political pressures (by the executive authorities) in the coming 12 months.

422 A licence fee is a form of fiscal obligation all citizens are to pay in order to contribute to the funding of the public media services' programme function. The Broadcasting Act envisaged the payment of subscription fees, which are essentially the same in character as licence fees. The public got the wrong impression during the debates on the media laws that two different institutes were at issue.

423 Under Article 67 of the Electronic Media Act, public media services may broadcast six minutes and commercial media 12 minutes of advertisements per every full hour of programme.

9.4.3. Organisation of Public Media Services. – The Act preserved the organisational structure established under the prior Broadcasting Act. A public media service shall have: a Management Board, a Director General and a Programme Council (Art. 16, Public Media Service Act). The Management Boards remain the central management authorities, which adopt the Statutes and all major public media service enactments and appoint and dismiss the Director Generals. Management Board members are appointed by the electronic media regulatory authority (the erstwhile Republican Broadcasting Agency, RBA) to five-year terms in office from among experts in fields relevant to the work of public media services. Members of Government, Assembly deputies, members of the provincial Government and other senior officials under the law governing conflicts of interests may not be nominated to the Management Boards (Art. 17).

The main question regarding these provisions is whether they succeeded in eliminating the possibility of political influence on the appointment and dismissal of Management Board members. As with most other media law provisions, the final assessment will depend on practice, on the extent to which the regulatory authority is itself independent and whether it will abuse its powers in this respect and to what extent.

The Programme Council is another public media service authority taken over from the Broadcasting Act. Its functions and role in the organisation of public media services is not fully clear. The Programme Council is charged with ensuring that the interests of the audience with respect to programme content are satisfied; it shall review the realisation of the programme concept and the quality of the programme content of the public media service and issue the relevant recommendations and proposals to the Director General and Management Board.

The Programme Council shall monitor the implementation of the programme principles and obligations set out in the law and notify thereof the Management Board, the Director General and relevant editors in writing. Furthermore, the Programme Council shall organise 15-day public debates on the public media service's programme content at least once a year and submit the reports on the public debates and recommendations on how to improve the programme content made during the public debates to the Director General and the Management Board (Art. 30). These provisions are more progressive than those in the Broadcasting Act as they specify that members of the Programme Councils must be experts in fields of relevance to the public media services' activities and may not be in conflict of interest. Under the Broadcasting Act, seven of the 19 Programme Council members had been appointed from among Assembly deputies. The new Act cut the number of Council members to 15 and does not allow holders of political office to sit on the Council at which will have greatly strengthened the independence of this body.

Programme Council members are appointed by the public media services' Management Boards from among candidates nominated by the relevant (Serbian and Vojvodina) Assembly committees, which are charged with advertising the va-

cancies, conducting the recruitment procedure and drawing up the list of nominees. This is why political influence cannot be ruled out entirely, because the Assemblies and their bodies play a major role in the appointment of the Council members as they assess whether the applicants fulfil the legal requirements. In other words, the provisions in the new Act are better than those in its predecessor, but practice will show whether the Councils will genuinely advocate the interests of the audience or whether they will remain a “mere decorative element of the public media services” as they have been to date.

Public media services must, on the one hand, be genuinely separated from centres of political and economic powers whilst, on the other, they must account to the citizens. The Act in that sense provides a solid starting point, that is, a legal framework enabling the public media services to achieve full independence and become genuine mouthpieces of Serbia’s citizens, rather than of its political elites.

9.5. Electronic Media Act

The media reform impacted the most on electronic media, as it aligned the national legislation with the European regulatory framework – the Audio Visual Media Services Directive (hereinafter: the AVMSD) – and introduced numerous new institutes drawing Serbia closer to rules applied in the EU internal market. To recall, this Directive harmonises rules to facilitate the functioning of the EU internal media market, i.e. strives to find the “least common denominator” within the legislation of the 28 member states with respect to the protection of minors, mandatory independent production quotas, electronic media advertising, et al. This is why harmonisation with EU regulations in this field does not necessarily imply a higher degree of media freedoms.⁴²⁴ The chief sections of the new Act regarding the development of freedom of expression are the ones on the organisation of the independent regulator, the licencing system and restrictions of the powers of the operators (infrastructure owners).

The degree in which media freedoms are exercised depends on the independence of regulation in the electronic media field, wherefore the regulation of the status of this body is extremely important. The AVMSD mentions “independent regulatory bodies” only twice, in (non-binding) Recital 94, where it states that member states are “are free to choose the appropriate instruments according to their legal traditions and established structures, and, in particular, the form of their competent independent regulatory bodies, in order to be able to carry out their work in implementing this Directive impartially and transparently” and in Article 30, which

424 The Serbia Progress Report mentions the problem of self-censorship in general. In addition, there was an evident decrease in the number of critically oriented reports, notably in the electronic media, which are the most influential outlets. This is why a reform aimed at harmonising Serbia’s law with rules applicable in the EU does not guarantee anything, as long as the basic issues of media freedoms remain unresolved.

merely specifies the obligations of such bodies to provide each other and the Commission with the information necessary for the application of the provisions of this Directive. The AVMSD thus provides (excessively) broad powers to the member states and those who wish to accede to the EU. Such a solution was counter-productive in Serbia's case, because the weaknesses (rigidity) of the national legal system has resulted in the independent regulator "levitating" between a state administration authority and a genuinely independent institution. With its "creative solutions", the Electronic Media Act has further complicated the situation and considerably jeopardised independent regulation.

The Electronic Media Act defines the independent regulatory body – the Regulator – as an autonomous and independent regulatory organisation with the status of a legal person, which exercises public powers and is functionally and financially independent of state authorities and organisations, media service providers and operators (Art. 5). The Serbian Constitution, specific public powers may be also conferred to specific authorities, which shall perform regulatory duties in specific fields or affairs. The Constitution clearly implies that regulatory authorities may perform "conferred" activities but that those activities are still within the remit of the public authorities and that the latter may take over the performance of those activities at any time (via the competent ministries). Articles 45 and 46 of the State Administration Act⁴²⁵ provide legal grounds for interfering in the independence of the electronic media regulatory authority: a ministry charged with a specific field, in this case the media, may control the lawfulness and expediency of those performing conferred activities. Furthermore, inspection activities may not be conferred to holders of public powers. Control of lawfulness entails control of the compliance of by-laws enacted by a regulatory authority with the Constitution and the law. In addition, the competent ministry is entitled to take over the performance of the conferred activities for a 120-day period in the event the regulatory authority has not been performing them adequately.

Therefore, under the State Administration Act, a regulatory authority does not have inspectorial powers, it performs activities conferred to it, while the competent ministry reviews the constitutionality and lawfulness of its enactments and may take over the performance of the conferred activities. All these provisions significantly hinder the status of independent regulatory authorities given that the executive authorities have ample control and supervisory powers. The provisions of the Electronic Media Act, which at first glance appear to be technical and organisational in character, further reduce the independence of the regulatory body and facilitate political and economic pressures on it. Above all, the appointment/dismissal procedure may lead to the politicisation of the Regulator Council, as the central authority. The appointment procedure, taken over from the prior law, entails appointment of the Council members from among experts in areas of relevance to the remit of the regulatory body, who are nominated by the following authorised nominators: com-

425 *Sl. glasnik RS*, 79/05, 101/07, 95/10 and 99/14.

petent National Assembly committee (two nominees), competent Vojvodina Assembly committee, accredited universities, associations of electronic media publishers and press associations, associations of film, stage and theatre artists and composers, associations focusing on the freedom of expression and child protection, National Minority Councils, and churches and religious communities (Art. 9). The list of authorised nominators indicates direct political influence on the appointment of at least four members of the Council, as they are nominated by political bodies: the National Assembly, the Vojvodina Assembly and the National Minority Councils.

There is also a risk of political dismissals of Council members – only the National Assembly (minimum 20 deputies) is authorised to initiate the dismissal of a member, while the Council, the only one that can have insight in the violation of the law as grounds for dismissal, is only entitled to suspend a Council member whose dismissal has been initiated. The main two organs are Regulator Council and the Regulator Council Chairperson. Council is a central organ that enacts by-laws and strategic enactments, decides on rights and duties of media service providers, pronounces measures, issues licences and performs other duties. The Council Chairperson, on the other hand, chairs and manages the Council sessions, signs the Council decisions but also represents the Regulator, accounts for the lawfulness of the Regulator's work and ensures the transparency of its work. In other words, the Council Chairperson renders decisions as a member of the Council and then implements them and is, on the one hand, a management organ and, on the other, an executive organ.⁴²⁶

Furthermore, the Electronic Media Act vests the Regulator with major new powers but sets out that its administrative and technical staff will be subject to regulations governing the work of civil servants. Independent regulatory authorities (such as the Electronic Media Regulator, RATEL, Commission for the Protection of Competition) should, conditionally speaking, be a fourth branch of government, separated from the executive, the legislature and the judiciary, vested with their own public powers and functionally and financially independent. Applying rules governing the work of “ordinary” civil servants to the Regulator administrative and technical staff can only lead to their transfer to more profitable industries, while the remaining or new staff will be unable to fully exercise the increased powers, which will affect both the quality of regulation and its independence.

426 The situation will be clearer if these provisions are compared with those in the Pre-Draft Electronic Media Act prepared by a Ministry of Culture and Information working group supported by the OSCE and presented in May 2012. Under the Pre-Draft, there were two separate authorities, the Council and the Director. The Council had the same powers as the one under the valid Electronic Media Act; the Director accounted for the lawfulness of the Regulator's work, represented the Regulator and looked after the rights and duties of the staff. The Council Chairperson under the valid Act has been entrusted with the powers that the Director originally had and has thus become the central organ in the system of the Regulator. This solution is not only impractical; it is also undemocratic, because it concentrates all the power in one body and, furthermore, facilitates potential pressures on the independent regulatory authority.

9.5.1. Licencing System. – The Electronic Media Act retained the outdated operating licence concept for various platforms. The Act envisages three types of licences for the provision of media services: licences issued to successful applicants in the free to air broadcasting public competition, licences for cable and satellite broadcasting under a considerably simplified procedure compared to the previous one and licences for on demand services.

The law's failure to recognise specific platforms will become apparent very soon and will preclude investments in such broadcasting and the citizens from making the most of technological developments. The Act has not fully distinguished between operators (those providing the technology for the provision of media services) and media service providers. The emergence of new technologies will pose problems for the Regulator, which will have to seek creative solutions for conforming the new forms of media service provision to the legal regime.

9.5.2. Restrictions for Operators of Electronic Communication Networks for the Distribution of Media Content. – Infrastructure owners greatly affect the media stage and there have been frequent cases of vertical integration, with one operator owning one or more media service providers. The Draft Electronic Media Act that was publicly debated in 2013 prohibited vertical integration, i.e. operators from owning media service providers. The prohibition was deleted from the final text under pressure from the European Commission and the national operators and the only restriction is the one in the Public Information and Media Act, under which persons distributing media content in addition to media publishing shall be obligated to carry out their media publishing activities through affiliated legal persons.

Indeed, prohibition of vertical integration to protect media pluralism is a much too restrictive measure and is not based on comparative European practice. This is why safeguards need to be in place to preclude infrastructure owners from abusing their positions and from depriving media service providers of access to their networks without good cause. The Electronic Media Act in that sense adequately lays down the numerous obligations of the operators, who are under the duty to notify and obtain the consent of the Regulator to include particular media services in their programme packages; to distribute media services in a fair, transparent and non-discriminatory manner with respect to the media service providers, to broadcast the main public media services' programmes free of charge, to forward data on users of the media distribution and broadcasting services, to abide by logical channel numbering et al.

The Regulator shall supervise and ensure the implementation of the operator's obligations prescribed by the provisions of this Article, in cooperation with the regulatory authority for electronic communications (Art. 100, Electronic Media Act). Furthermore, in specific situations, the operators are under the obligation to broadcast specific media services – the so-called must carry obligation (Art. 106, Electronic Media Act). Although it may not seem immediately apparent, operators

can largely affect the content of the programmes broadcast via their networks. This area was not regulated at all until the Electronic Media Act was adopted and the operators demonstrated a lot of arbitrariness in their decisions on which programmes they would make available to their users. The regulatory body had no mechanisms to react to the numerous abuses⁴²⁷. Now that these mechanisms are in place, the regulatory body is expected to exercise its powers.

9.6. *Status of Media and Journalists*

The degree of media freedoms in Serbia fell considerably in 2014. Political and economic pressures on the outlets were stepped up; censorship and self-censorship grew, accompanied by the hacking of websites publishing critical reports, removal of critical texts from social networks, intensified assaults on journalists and the further deterioration of the already grave financial difficulties of media outlets and professionals.

The situation in Serbia's media was criticised by a number of actors. European Union representatives praised the adoption of the media laws and progress in investigating the murders of journalists, but warned that the genuine effects of the new laws would be visible only once their enforcement began. The European Commission, *inter alia*, listed the following problems in its 2014 Serbia Progress Report: non-transparent ownership and funding of media; increasing threats against and pressures on the media; censorship and self-censorship; hacking of websites; media campaigns based on anonymous or leaked sources, detailing investigations, announcing arrests and quoting investigation documents, thus undermining trust in judicial institutions, violating personal data laws and challenging the presumption of innocence. The European Commission also said that media owners and top editorial staff should pay more attention to abiding by professional standards, with support from the Press Council.⁴²⁸

OSCE Representative on Freedom of the Media Dunja Mijatović, voiced concern over increasing Internet censorship. Prime Minister Aleksandar Vučić accused her of lying and waging a filthy campaign against him in Serbia and abroad and demanded she apologise.⁴²⁹ He said he had proof that numerous individuals in the international community, including some ambassadors, were pressuring the media to campaign against him and his family.⁴³⁰

427 For instance, the inadequate conduct by cable operators during the days of mourning for the victims of the May 2014 floods, when they took off the air foreign media programmes at their own initiative and illegally, thus merely demonstrating that the right to freedom of expression, which, *inter alia*, entails the right of access to information, can nowadays be jeopardised by private entities as well (not just the state).

428 2014 Serbia Progress Report, p. 46, available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

429 More in: *Blic*, *Večernje novosti* and *Politika*, 3 June 2014, pp. 4, 3 and 7 respectively.

430 *Danas*, 10 June 2014, p. 4.

In its annual report, the State Department also qualified as a significant problem harassment of journalists and pressure on them to self-censor,⁴³¹ while the European Federation of Journalists called on the Serbian Government to let the journalists publish the truth about the May floods.⁴³² According to London-based *Index on Censorship* and the Italian *Osservatorio Balcani e Caucaso*, 16 cases of censorship were reported in Serbia in May and June 2014 alone, the most in the Balkans.⁴³³ Likewise, Eduard Busek, former SEE Stability Pact Coordinator, said the media situation in the whole Balkan region was very bad and that there were no media freedoms in it anymore, while former European Parliament Serbia Rapporteur Jelko Kacin listed self-censorship, lack of investigative reporting, non-transparent ownership and the increasing number of tabloids as the greatest problems in Serbia.⁴³⁴

Freedom House is describing Serbia as partly free, whilst assessing that media freedoms in the world are at their lowest since 1996. Reporters without Borders ranked Serbia 67th on the list of 180 countries, 13 places lower than in 2013.⁴³⁵

Serbia's media market is over saturated: 1,379 outlets were registered at the end of 2014, 107 of them were TV station and 350 radio station. Another 26 radio and three TV stations were in the air illegally.⁴³⁶ Fifteen dailies (including three regional, two sports, one focusing on economy and one distributed free of charge) were published, although the number of people buying newspapers is small.⁴³⁷ According to a survey conducted by the local Partner Agency, published in August 2014, around 1,200,000 people in Serbia read newspapers on an everyday basis: around 770,000 read the 15 dailies (1.54 people read one copy). Unfortunately, tabloids account for over two-thirds of the sold copies.⁴³⁸

As far as the funding of public services is concerned, it needs to be noted that the subscription fee for the public service broadcasters (RTS and RTV) was formally cancelled in early January and that they have since been funded from the state budget. On the other hand, the citizens were under the duty to continue paying it the next eight months, because the Broadcasting Act provision stipulating the payment of the subscription fee applied until October 2104.⁴³⁹ In November 2014, the

431 Serbia 2013 Human Rights Report, <http://www.state.gov/documents/organization/220539.pdf>.

432 *Danas*, 6 June 2014, p. 5. According to the EFJ, thirty or so people were held in custody for "spreading lies and panic", two websites with critical articles about Prime Minister Vučić were hacked and three people faced criminal charges over critical reports on Facebook.

433 *Danas*, 9 July 2014, p. 5.

434 More available in Serbian in: *Danas*, 25–26 November 2014, p. 11 and *Politika*, 2 April, p. 8.

435 See: <http://www.euractiv.rs/vesti/193-mediji/8370-rsf-srbija-nazadovala-po-slobodi-medija-.html>.

436 UNS, *E-bilten*, 13 March 2015 and *Kurir*, 26 March 2014, p. 9.

437 No precise data on the circulation of dailies were recently published, the most recent data, from 2012, put the total circulation of dailies at 800,000.

438 The survey results are published at: <http://www.p-rs.rs/2014/10/mein-print-indeks-efikasnosti-dnevni-novina/>.

439 *Blic*, 28 April and 16 August 2014, pp. 10 and 11 respectively.

Serbian Government earmarked additional 900 million RSD for the funding of the public services to compensate the amounts they would have received from the subscription fees not collected in October, November and December.⁴⁴⁰ Prime Minister Vučić's statement of May 2013 that "the TV subscription fees will be cancelled, just as I promised the citizens" was the main reason why the collection rate dropped as soon as he uttered it. The rate dropped to 15–16% of the 57 million Euros that used to be collected.⁴⁴¹

Revenues from advertisements, one of the major sources of income for the media, stood at between 150 and 160 million Euro in 2013, down by 20% over 2012. Experts expected them to stay at that level or rise in 2014.⁴⁴² The media's financial problems are sure to exacerbate once the state shifts to project funding as of 1 July 2015, which will lead to a further cut of the low salaries of journalists, although they on average have the highest education levels.⁴⁴³

The adoption of a new Advertising Act may be an opportunity to bring some order into advertising by the state, including advertising by public companies and other companies with a majority state stake. It may also provide an opportunity to prevent the authorities from placing ads in and thus giving advantage to outlets supporting them.

Assaults on journalists were frequent. According to the Independent Journalists' Association of Serbia (IJAS), nine assaults on journalists and one on their property were registered in the first eight months of the year.⁴⁴⁴ The fact that the perpetrators have not been identified gives rise to most concern. ANEM, IJAS and JAS mentioned in their reports numerous assaults on journalists across Serbia (Valjevo, Aleksandrovac, Niš, Belgrade, Kuršumlija, Gornji Milanovac, Vrnjačka Banja, Kraljevo, Ruma, Majdanpek).⁴⁴⁵ Journalists were attacked by politicians, policemen, security guards, soccer coaches and ordinary citizens.

News agency FoNet editor Davor Pašalić was beaten up near his home in New Belgrade on 2 July 2014. Three unidentified young men threatened him with a gun and demanded he hand over his money. When he refused, they started beating him and insulting him on ethnic grounds (calling him an "Ustasha" and "Croat"). Pašalić sustained grave injuries. The fact that the assailants knew that Pašalić was a Croat indicates that they targeted him on purpose. They have not been identified despite protests by media and press associations and Minister of Internal Affairs Nebojša Stefanović's assurances that the police were treating the assault on Pašalić extremely seriously.

440 *Danas*, 21 November 2014, p. 4.

441 *Vreme*, 7 August, p. 8.

442 *Vreme*, 16 January 2014, p. 30.

443 *Politika*, 3 March 2014, p. 7.

444 *Danas*, 20–21 September 2014, p. 13.

445 More in ANEM's Media Monitoring Reports, available at <http://anem.org.rs/en.html>.

The safety of investigative reporters is particularly jeopardised. The Business Registers Agency (APR), for instance, started registering all those accessing its archives, i.e. all journalists searching its archives have to file requests specifying their personal data and which companies they are interested in. This prompted the Commissioner for Information of Public Importance and Personal Data Protection to announce a check of the APR's enforcement of the Personal Data Protection Act. He said he would demand the APR to specify the legal grounds for processing the reporters' data as this practice was easily prone to abuse.⁴⁴⁶

Dismissals of a number of editors in 2014 were publicly ascribed to political reasons. These dismissals, coupled with the pressures on and even arrests of reporters for allegedly spreading panic during the disastrous floods, have all led to greater self-censorship in the media. Taking Impression of the Week, a cult political talk show on B92, off the air smacked of political pressure. The B92 management offered its author Olja Bećković to move the show to its cable Info Channel, justifying the move by a change in its programme concept and focus on entertainment and commercial programmes. Bećković refused, qualifying the move as a ban of her show.⁴⁴⁷ The management's justification of the move does not hold water because Impression of the Week was a very popular show with lots of commercials. Its disappearance prompted protests in front the B92 headquarters in September and October.⁴⁴⁸ Another political show, Forefinger (*Kažiprst*) is no longer aired in the mornings; when its authors refused to record it one day in advance, it was cut down from 30 to 8–10 minutes and is now broadcast within the afternoon news.⁴⁴⁹

Round about that time, *TV Studio B* took off the air political shows critical of the authorities (Problem and In the Heart). The reason given by the station's new management, that they were poorly rated, does not capture the truth.⁴⁵⁰ The Duty Editor of *Večernje novosti* was dismissed in May for criticising the Government.⁴⁵¹

446 APR introduced this practice when the reporters started expressing interest in Asomakum, a company opened in the name of the Serbian Prime Minister's brother Andrej Vučić. The police claimed that it had been opened several years earlier by someone using his forged ID. The tabloid *Informer* knew which reporters had been perusing the company documents in less than 24 hours. More in the ANEM 58th Monitoring Report of November 2014, available at <http://www.anem.rs/en/aktivnostiAnema/monitoring/story/17064/FIFTY-EIGHTH+ANEM+MONITORING+REPORT.html>.

447 *Blic*, 16 September 2014, p. 4.

448 In an interview to *Istinomer*, Olja Bećković said that Prime Minister Vučić called her up a number of times to express dissatisfaction with her show. More in ANEM's Legal Monitoring of the Serbian Media Scene October 2014 Report, p. 5, available in Serbian at <http://www.anem.rs/sr/aktivnostiAnema/monitoring/story/16990/PEDESET+SEDMI+MONITORING+IZ+VESTAJ+.html>.

449 *Politika*, 31 October 2014, p. 8.

450 *Vreme*, 18 September 2014, p. 10 and *Blic*, 13 September 2014, p. 23.

451 *Politika*, 10 May 2014, p. 8.

Peščanik's website was hacked in early June 2014, after it published a text by three Serbian scientists seriously indicating that Internal Minister Nebojša Stefanović's PhD thesis was plagiarised. The Rector of the private university, Megatrend, where Stefanović defended his thesis, refuted the allegations, qualifying them as politically motivated.⁴⁵² Similar comments came from politicians, some of whom even said the text was an attack of Aleksandar Vučić's Government and all those in favour of radical reforms. *Peščanik's* website was hacked again and its texts replaced by political messages.⁴⁵³

In the run up to the March 2014 parliamentary elections, the ruling SNS accused practically all outlets reporting critically about it of campaigning against it.⁴⁵⁴ Data on media coverage of the election campaign, however, show that the media devoted the most time and space to the SNS (and still do). The opposition parties, on the other hand, protested against unfair coverage on RTS and some commercial TV stations.⁴⁵⁵

National Assembly deputies showed their lack of understanding for the status and role of free and independent journalism as well. The parliamentary majority and opposition in 2014 engaged in a polemic and traded recriminations over the reasons for three failed attempts to hold a Culture and Information Committee session on media freedoms. The session was finally held in November and the Committee adopted conclusions and expressed the expectation that all competent state authorities would react to any attempts to jeopardise editorial autonomy and media independence and energetically work on shedding light on all attacks on editors, journalists and other individuals participating in the collection of information, as well as on the outlets.⁴⁵⁶

Courts in 2014 also ruled on lawsuits and damage claims against journalists and outlets, mostly sued for damaging the plaintiffs' honour and reputation. The courts found the journalists and media guilty in most cases and, innocent, in fewer cases. However, there were concerning reports of the police hauling in journalists for questioning because of their reports.⁴⁵⁷

Cases of journalists killed in the 1990s were not closed in 2014 either, but some positive steps were made in that direction. Charges were filed against two former senior State Security officials – former agency director Radomir Marković

452 *Blic*, 3 June 2014, p. 10.

453 *Danas*, 7–8 June 2014, p. 8 and 28 August 2014, p. 7.

454 *Danas*, 10 and 15–17 February 2014, pp. 3 and 2 respectively.

455 *Danas*, 18, 26 and 28 February 2014, pp. VI, III and II respectively, *Danas*, 6 and 13 March 2014, pp. 2 and 3 respectively, *Večernje novosti*, 28 February 2014, p. 3 and *Danas*, 20 February 2014, p. II.

456 More in the ANEM 58th Monitoring Report of November 2014, available at <http://www.anem.rs/en/aktivnostiAnema/monitoring/story/17064/FIFTY-EIGHTH+ANEM+MONITORING+REPORT.html>.

457 *Politika*, 7 and 20 June 2014, pp. 16 and 8 respectively.

and former chief of the Belgrade branch Milan Radonjić and two agents Ratko Romić and Miroslav Kurak – suspected of killing Slavko Ćuruvija in April 1999.

Marković is already serving a long sentence of imprisonment for assassinating former Serbian President Ivan Stambolić, Radonjić and Romić were arrested and an international arrest warrant was issued for Kurak, who is at large. The indictment charges Romić and Kurak of assassinating Ćuruvija on the order of Marković and Radonjić. The crime was first qualified as “aggravated murder for base motives”, but the Belgrade Special Court requested an additional investigation. The prosecutor said that the role of Mirjana Marković, the widow of late FRY President Slobodan Milošević, repeatedly alleged to have ordered the assassination, was still being investigated.

A fresh investigation into the killing of *Večernje novosti*’s Jagodina correspondent Milan Pantić was under way and the prosecution did not disclose any new information about this murder by the end of the reporting period. No new information or proof was made public about the murder of *Duga* journalist Dada Vujasinović in 2014 either.⁴⁵⁸

9.7. *Unprofessional Conduct by Media and Journalists*

Lack of professionalism in journalism was identified a long time ago as a grave problem undermining the reputation of the profession and the right of Serbian citizens to receive true and reliable information on time. Violations of the Press Code of Conduct have become increasingly apparent, particularly by tabloids, which have not suffered any consequences for persecuting people, publishing unchecked information and which often been used to clamp down on opposition politicians and public figures not supporting the ruling parties. Some tabloids waged genuine campaigns against opposition politicians, senior police officials and some businessmen.⁴⁵⁹

Not only public figures, but ordinary citizens as well, are targets of reports violating the Press Code of Conduct. Although this problem has been alerted to for several years now, there were numerous instances of print and electronic media violating the main ethical rules in 2014 as well. Herewith only a few drastic examples of this widespread practice on Serbia’s media stage.

The media, for instance, published unverified information and reports on a tragedy that befell the Jurić family, whose daughter was murdered near their home.⁴⁶⁰ The media extensively reported on Tijana Jurić’s disappearance and her

458 More on the unresolved murders of journalists in BCHR’s (1998–2013) Reports.

459 See *Kurir* 9, 12, 22 and 23 February, 10 March, 9 and 10 May 2014, and *Blic*, 1 February 2014.

460 Tijana Jurić, a fifteen-year-old girl from Bajmok disappeared on 26 July 2014. Her body was found on 7 August and her killer was arrested the same day (*Blic*, *Kurir* and *Večernje novosti*, 7 August 2014).

father said that some outlets blackmailed him, refusing to publish his daughter's photograph unless he talked to them. Some papers claimed that she had disappeared because her father owed money to loan sharks. When the girl's body was found at long last, some dailies extensively carried the suspect's statements and detailed descriptions of what he had done to Tijana, thus grossly violating professional standards and abusing details from the investigation someone in the authorities leaked to them.⁴⁶¹ Minister of Internal Affairs Nebojša Stefanović said at a news conference that he regretted that Serbia had abolished capital punishment.⁴⁶²

Many newspapers, especially the tabloids, front-page sensationalist titles or photographs of public figures to sell their papers.⁴⁶³ The daily *Blic* front-paged a private lawsuit against a Belgrade actor for rape before an investigation was launched.⁴⁶⁴ Violations of the presumption of innocence are frequent in the print media⁴⁶⁵ as are their disclosures of the victims' identity, none of which facilitates the work of the judiciary.⁴⁶⁶

Despite the general impression that professional standards were increasingly violated in 2014, the Press Council⁴⁶⁷ received only around 50 complaints from individuals, institutions and media about violations of the ethical standards laid down in the Press Code of Conduct. Although this self-regulatory authority received more complaints than in 2014, their number is still very small given the character and number of articles violating the rules of the profession in 2014. The reason may lie in the public's general lack of awareness of the Council's work and the procedures at their disposal. Serbian President Tomislav Nikolić complained to the Press Council about the dailies *Blic* and *Alo*. Although the Press Council in both cases found that these newspapers had not violated the Press Code of Conduct, the complaints are extremely relevant as the President drew public attention to the Council by fil-

461 See *Kurir*, *Blic* and *Večernje novosti* reports of 8 and 9 August, 2014. Press Council member Tamara Skrozza said that "... the media treatment of her father Igor Jurić is absolutely disgraceful for anyone who considers himself a journalist, to blackmail a man whose child has disappeared, that they would publish her photograph if he promised he would give them an exclusive statement".

462 Such reports and the Minister's statement are probably the reason why a large number of mostly threatening messages appeared on the social networks and why Facebook page demanding the re-introduction of the death penalty was liked by over 100,000 people in just one morning.

463 Prime Minister Aleksandar Vučić appeared on the front pages of dailies 877 times in 2014, Serbian President Tomislav Nikolić was front-paged 181 times, Foreign Minister Ivica Dačić appeared 252 times, while, for instance, Novak Đoković, who was the best tennis player in the world for six months last year, was shown 275 times on the front pages. Vučić was front-paged on various occasions, even when the articles illustrated by his photographs did not even mention him. Six headlines criticising the Prime Minister were front-paged altogether in 2014 (five in the daily *Danas* and one in *Politika*) See: <http://linkis.com/www.cenzolovka.rs/uLhCm>.

464 See: *Blic*, 22 October 2014, p. 1.

465 *Kurir*, 16 August 2014, p. 15.

466 *Kurir*, 23 November 2014, p. 1.

467 More on the Press Council's activities at <http://www.savetzastampu.rs/english/>.

ing them, thus, perhaps inadvertently, raising awareness of an alternative to suing the media.

The electronic media regulatory authority issued a warning to TV Pink, the first under the new Electronic Media Act, to protect minors in its broadcasts and threatened to impose a more severe measure – suspension of broadcasts.

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. 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,⁴⁶⁸ 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

468 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.

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.

A group of aliens, activists of the Falun Gong organisation, filed a total of nine notices of public assemblies with the City of Belgrade police station and the police stations of the Belgrade municipalities Stari Grad and New Belgrade in December 2014. The assemblies were planned for 15, 16, 17 and 18 December, on the eve of and during the summit of China and Central and East European countries in Belgrade to alert to the state of human rights in China and the persecution of Falun Gong activists in that country. The ruling prohibiting the assemblies was issued on 11 December 2014 and only said that the requirements for their ban under Article 11 of the Public Assembly Act had been met, without going into the specific circumstances of the case.⁴⁶⁹ The police on 14 December deprived of liberty nine activists, all Bulgarian nationals, and one Finnish and one Slovak activists the following day. All arrested aliens were taken to the Alien Reception Centre in Padinska Skela, where they were served rulings ordering them to leave the Republic of Serbia immediately. According to Falun Gong's activist from Serbia, the police had offered the aliens to sign statements that they had come to Serbia to take part in unreported assemblies in exchange for releasing them from the Aliens Reception Centre or face deportation after the summit. The aliens were reportedly deported on 17 December 2014; the BCHR, however, has not obtained precise information on how these aliens left Serbia. The police had also turned back at the border two activists from Croatia and one from Slovenia, who were planning to take part in the planned assemblies.⁴⁷⁰ Such conduct by the Serbian MIA gravely violates the human rights of both the aliens and the citizens of Serbia, who had planned to participate in the pre-notified assemblies, particularly since the ruling prohibiting the assemblies was not reasoned, but merely referred to the article of the Public Assembly Act setting out the grounds for the prohibition of a public assembly. Given that the ruling only mentioned the relevant article without referring to the constitutional definition of the freedom of assembly guaranteed to Serbia's *citizens*, it remains unclear whether the aliens' freedom of assembly was restricted also because they are not Serbian citizens.

Under the Constitution, the authorities need not be notified of indoor assemblies. On the other hand, the Constitution sets out that the state authorities shall be notified of outdoor assemblies in accordance with the law. It is unclear from this provision whether each outdoor assembly must be reported or whether the law may

469 Information obtained from the Lawyers' Committee for Human Rights (YUCOM). See also *Radio Free Europe's* report "Falun Gong Activists Deported on Eve of Belgrade Summit", available in Serbian at <http://www.slobodnaevropa.org/content/rse-saznaje-proterani-aktivisti-falun-gonga/26750607.html>.

470 *Ibid.*

specify in which cases such an obligation does not exist. The latter interpretation is definitely preferable.

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 assembly may be restricted by the law only if necessary, while Article 20 prescribes that human rights may be restricted only “to the extent necessary to meet the constitutional purpose of the restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right”. Article 54 lists four grounds on which the freedom of assembly may be restricted: to protect public health, morals, rights of others or the security of the Republic of Serbia. Therefore, no other grounds except these can justify restrictions of the freedom of assembly, because the list in the Constitution is exhaustive. Of course, the question remains how these grounds are interpreted in practice, i.e. what can be subsumed under them because they are set quite broadly.

10.2. Public Assembly Act

In the Republic of Serbia, the right to freedom of peaceful assembly is governed by the Public Assembly Act⁴⁷¹, which was adopted back in 1992. Although the Act was amended several times in the meantime, some of its provisions are still obsolete and largely incompatible with international standards and, indeed, with the relevant Article 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.⁴⁷² 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 in 2012, which has not been publicly debated. The draft included 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.⁴⁷³ The MIA in 2014 prepared a new Draft Peaceful Assembly Act (hereinafter: New Draft)⁴⁷⁴, which has not been publicly debated yet either, and can still be amended and improved during the public debate. The New Draft had not been submitted to parliament for adoption at the time this Report was prepared. The Second Draft Action Plan for Chapter 23 lays down that the new Peaceful Assembly Act shall be adopted in the second quarter of

471 *Sl. glasnik RS*, 51/92, 53/93, 67/93 and 48/94; *Sl. list SRJ*, 21/01 – Federal Constitutional Court decision and *Sl. glasnik RS*, 101/05 – other law.

472 [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).

473 The draft law was analysed in detail in the *2012 Report*, II.9.

474 The BCHR obtained the text of the New Draft Peaceful Assembly Act from YUCOM on 22 December 2014.

2015 with a view to ensuring the effective exercise of the freedom of assembly by everyone, particularly minority groups and communities.⁴⁷⁵

The 1992 Public Assembly Act, which is still in force, does not give a precise definition of an assembly 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 includes a somewhat more precise definition of an assembly as it specifies that a peaceful assembly shall denote an assembly of more than 20 people, who have rallied to express, exercise and promote their political, social and national beliefs and other forms of assembly. The New Draft, however, unjustifiably sets the number of participants of an assembly required for it to be deemed a public assembly in the meaning of the law. Furthermore, other forms of assembly that are sports, religious, cultural, humanitarian or entertaining in character are also considered public assemblies under the New Draft, which is unjustified, as 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 since the freedom of assembly protects fundamental democratic values, whereas a sports event, for example, is not of such relevance to society.

As opposed to the valid Act, the New Draft recognises and defines also spontaneous assemblies – all open-air or indoor assemblies accessible to everyone, which have not been organised and at which the people spontaneously rallied to express their views or opinions on issues of public or general relevance or in reaction to specific events.

In its recommendations in the Chapter 23 Screening Report, the European Commission emphasised that the Public Assembly Law needed to be aligned with Article 11 of the European Convention of Human Rights and Fundamental Freedoms and Article 12 of the Charter of Fundamental Rights of the European Union, in particular as regards the right to freedom of peaceful assembly, locations for holding a public assembly, responsibilities of the organiser of a public assembly and reasons for banning and suspension of a public assembly.⁴⁷⁶

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

475 Second Draft Action Plan for Chapter 23, Republic of Serbia, Chapter 23 Negotiating Group, Point 3.6.1. 21.

476 Chapter 23 *Screening Report*, p. 34, available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/140729-screening-report-chapter-23-serbia.pdf.

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 (Art. 2).

The Act thus prohibits assemblies at venues at which an assembly causes “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. The Act allows the holding of public assemblies at venues where public traffic takes place provided that traffic may be rerouted by additional measures; these additional requirements may be qualified as excessive and unjustifiably limiting the freedom of peaceful assembly.

Article 2(4) includes another major restriction regarding assembly venues: public assemblies may not be held in the vicinity of the Federal Assembly or the National Assembly of the Republic of Serbia⁴⁷⁷ immediately before or during the sessions.” This provision amounts to an unwarranted limitation of the freedom of assembly given that the participants in assemblies may feel it crucial that they rally precisely in front of the National Assembly at the very moment the deputies are in it with a view to conveying their message to the political decision-makers.

Furthermore, the Act does not specify what “the vicinity” of the Assembly entails, which leaves additional room for arbitrariness. The above-mentioned general prohibitions of assemblies at specific venues laid down in the Public Assembly Act are not in compliance with either 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 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 the 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 discretion to designate appropriate assembly venues allows for back-door restrictions of the freedom of assembly via local self-government administrative enactments.

The New Draft does not include such clear restrictions of *appropriate* assembly venues. It, however, introduces new restrictions in the form of blanket legal norms that may be interpreted extremely broadly and thus provide the competent authorities with room for arbitrariness. It, notably, sets out that a public assembly

⁴⁷⁷ 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.

venue shall denote any open-air or indoor space adequate for an assembly of people, whose number and identity are not known in advance. To recall, Article 54(2) of the Constitution states that indoor assemblies shall not be subject to approval or notification. The New Draft lays down the organisers' obligation to pre-notify indoor assemblies only when the organisers think it necessary or they require additional security. Under the New Draft, venues next to dangerous sites potentially jeopardising human life, health and other rights, freedoms and morality or property and venues closed to the public shall not be deemed adequate public assembly venues. Furthermore, the organisers are under the obligation to obtain approval of assemblies to be held at venues the use of which is subject to special regulations. Under the New Draft, local governments may designate spontaneous assembly venues, which might fully defeat the purpose of spontaneous assemblies in practice.

The Act unnecessarily limits public processions by setting out that a public procession along a public traffic route must be continuous. This provision is absent from the New Draft.

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 pre-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.

Under Article 6 of the Public Assembly Act, an organiser shall specify the following information in a notice of a public assembly: the programme, purpose, venue, time and duration of the public assembly and information on the measures for maintaining law and order and the stewards engaged to that end, along with an estimate of the number of participants in the assembly. A notice not including all of the above mentioned information shall be returned to the organiser, who shall be provided with an additional deadline to supplement the information. A public assembly shall be deemed notified upon the submission of a complete notice (Art. 7(1 and 2)). The obligation to provide the above information may, however, impose an additional burden on the organisers of a public assembly, who may not always be able to estimate how many people will take part in it or specify its duration. Insight in the notices indicates that their content varies significantly, but that the competent authorities mostly tolerate such lack of uniformity in practice.⁴⁷⁸

478 Notices forwarded by the Mladenovac police station together with its reply to a request for access to information of public importance Ref. No. 212 sl – 136/14 of 8 December 2014.

Under the New Draft, assemblies must be pre-notified at least seven days in advance, and, in case of assemblies that are religious, sports, cultural, entertaining or humanitarian in character, at least 72 hours in advance. The New Draft also lists the data that must be included in the notices, including information of relevance to safety. It, however, does not specify what such information is to comprise, which may lead to different interpretations in practice and pose an additional burden on the organisers.

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 Belgrade Pride Parade have been regularly collecting the extensive documentation they needed for holding their assemblies, which involved a lot of organisation, time and considerable costs.⁴⁷⁹ The situation was the same in 2014 as well.

The law does not require of the organisers to obtain various consents and approvals from the public utility authorities, but they are in practice required to do so under local self-government regulations, wherefore it is occasionally ultimately up to the public utility authorities whether an assembly will be held.

Under Article 14 of the valid Act, the police shall prevent the holding of an assembly they had not been notified of. Those who hold an assembly without pre-notifying the police shall be charged with a misdemeanour, warranting a maximum 10,000 RSD fine or up to 60 days' imprisonment (Art. 15). 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. Practice is nevertheless somewhat more flexible than the law. The participants in the conference "Rights Belong to Us – LGBT Rights on the Road to Accession" staged a protest walk on 13 September 2014, after a German participant in the conference was assaulted earlier that day, at around 3 am in the heart of Belgrade. The procession started at Belgrade Hotel Metropol, down King Alexander Boulevard, where traffic was halted, and ended in front of the Belgrade City Assembly. The organisers were unable to pre-notify the police on time of this protest walk, prompted by the assault on the German national.

479 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. More in the *2013 Report*, II.10.2.2.

The police, however, did not prohibit it and safeguarded the participants.⁴⁸⁰ The Belgrade police also told the organisers of the procession that they would not be charged with misdemeanours although they had not adhered to the pre-notification regulations.⁴⁸¹ The organisers were also not required to cover the costs of the temporary rerouting of the traffic.⁴⁸² The New Draft lays down that the police shall prohibit an assembly not pre-notified on time, which may preclude the organisation of spontaneous assemblies guaranteed by that very New Draft.

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. For instance, fifteen unreported assemblies were held in the territory under the jurisdiction of the Valjevo Police Directorate from 1 January to 20 November 2014. Fourteen were folk fairs, which were not prohibited, and the 15th event was an unreported basketball game. The police prohibited the game and filed a misdemeanour report against its organisers.⁴⁸³ This is yet another illustration of how the imprecise definition of a public assembly in the law has led the police to qualify even sports events and folk fairs as public assemblies, because an assembly in terms of the internationally guaranteed right to the freedom of assembly may require of the authorities to exhibit a greater degree of tolerance on occasion since the freedom of assembly protects fundamental democratic values. The Mladenovac police have been qualifying sports events as public assemblies as well. According to information obtained from that police directorate, it was notified of 344 public assemblies from 1 January to 20 November 2014; 336 regarded sports events,⁴⁸⁴ while the one scheduled for 6 October 2014 was organised to enable the citizens to express their views (*dissatisfaction*) about the transformation of the army barracks in Mala Vrbica into an asylum centre. No public assemblies were prohibited in the Mladenovac municipality in the above period.⁴⁸⁵

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 shortcom-

480 As the BCHR participants in the event saw for themselves, see also “Protest Walk over Attack on LGBT Conference Participant”, available in Serbian at <http://www.telegraf.rs/vesti/beograd/1225315-protestna-setnja-zbog-napada-na-ucenika-lgbt-konferencije>.

481 Information obtained from the NGO Labris in a telephone interview on 13 October 2014.

482 *Ibid.*

483 Valjevo Police Directorate reply to a request for access to information of public information Ref. No. 03/33 0375–53/14 of 27 November 2014.

484 Mladenovac Police Directorate reply to a request for access to information of public information Ref. No. 212 sl – 136/14 of 8 December 2014.

485 *Ibid.*

ings that the police sought the rectification of. 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.

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.

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. The competent authorities are under the obligation to notify the organiser of a public assembly of the ban at least 12 hours before it is scheduled to begin. An appeal of the decision banning the assembly shall not stay its enforcement.

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 court is under the duty to hold a hearing and review the motion for the prohibition of an assembly within 24 hours from the day of receipt. The court shall deliver a ruling rejecting the motion and revoking the ruling on the temporary prohibition of the public assembly or a ruling banning the public assembly (Art. 10(3)).

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. The New Draft mentions only permanent bans of public assemblies.

Furthermore, in circumstances described in Articles 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.

Under the New Draft, a public assembly may be prohibited by a decision rendered not later than five days before the scheduled date in the event it is aimed at inciting armed conflicts or violence, violations of civil rights and liberties or at instigating racial, ethnic, religious hatred or intolerance, in the event there is a risk of violence or threat to public safety or safety of property, or in order to protect public health. Therefore, the New Draft commendably does not list disruption of public traffic among the grounds for prohibiting an assembly. The New Draft does not envisage the enforcement of less restrictive measures or specify that restrictions may be imposed only if they are necessary in a democratic society.

10.3.1. Pride Parade in Belgrade 2014. – The first Pride Parade in Belgrade since 2010 was held on 28 September 2014. The event was notified to the Savski venac and Stari grad municipal police stations on 17 June 2014. The Ministry of Internal Affairs required of the organisers to submit the following documents, in addition to the notice: consent of the Belgrade City Traffic Secretariat to hold the Parade, for which they had to pay a 5,150 RSD fee; consent of the Green Spaces Public Utility Company; the decision of the Stari grad Municipality; consent of the Public Transportation Secretariat. Once they obtained these documents, they were required to file requests with the Belgrade City Traffic Police Directorate, the City First Aid Institute and the Belgrade City Administration to remove the flower pots and trash cans and let them use 700 crowd control barriers and submit a fee waiver request. Furthermore, they were to apply to the Belgrade Water Supply and Sewage Public Utility Company asking it to make available two cisterns with potable water. The copies of all requests and consents were to be forwarded to the Stari grad and Savski venac police stations. The problem is that the above authorities take a long time ruling on these requests and applications and that the organisers cannot submit some of them before they receive other consents and decisions.⁴⁸⁶ The organisers were invited to the meetings in the Belgrade City Assembly, held every Wednesday, and said that they had greatly facilitated the organisation of the Pride Parade.

The Pride Parade, in which between 1,000 and 1,500 people took part, was safeguarded by a large number of police and gendarmerie officers. Strong police

486 Information obtained from the NGO Youth Initiative for Human Rights, 14 October 2014.

forces with anti-riot gear blocked the centre of Belgrade. The Pride Parade participants rallied in front of the Serbian Government building at noon and proceeded to the Belgrade City Assembly, where they held their rally. The police hauled in 16 people during the Pride Parade, whom it found in possession of torches, bats and knives. Some of them did not have their identity documents on them.⁴⁸⁷ A group of 50 or so people tried to break the cordon but was stopped by the gendarmerie. Another group of young men rallied at the St. Sava Temple and headed towards the centre of the city, but the gendarmerie stopped it at the nearby Slavija roundabout. The youths then retreated and started hurling stones at the police. A group of 30 hooligans attacked the headquarters of RTV B92 in New Belgrade and the police safeguarding it. Two policemen were injured.⁴⁸⁸ The Pride Parade was not accompanied by counter-demonstrations. The Dveri Movement, which opposed the Parade, organised an event the previous evening, on Saturday, 27 September. After the Pride Parade ended in the afternoon of 28 September, the sympathisers of the Dveri Movement rallied at a special prayer service in the St. Sava Temple and then proceeded to the Cathedral Church of St. Michael the Archangel. This assembly passed without incident as well.⁴⁸⁹

The strong police forces safeguarding the Pride Parade at the same time precluded people from taking part in it, as access to the rallying point was restricted to only several “entry points”, after rigorous police control. However, people had to pass through several police cordons to reach those “entry points” and the police were not letting the people through for security reasons. Many of the people, who had wanted to attend the Pride Parade, were thus unable to join the participants.⁴⁹⁰ The rigorous police control prevented other citizens from moving about Belgrade, wherefore the visibility of the Pride Parade messages was insufficient, except in the print and electronic media.

In addition to the *official* Pride Parade, a procession under the slogan “Hate-Free Zone” was held in Belgrade on 27 June 2014 to mark International Pride Day. The 100 or so participants were safeguarded by around 50 policemen.⁴⁹¹ None of the participants were assaulted either verbally or physically. Although the assembly promoted the same values as the Pride Parade, its participants were able to convey their messages and views to the passers-by freely, thus giving rise to the question whether the security surrounding the 2014 Pride Parade, which had precluded any interaction between its participants and the passers-by was, indeed, necessary and

487 B92: “Police Bring in 16 During Pride Parade”, 29 September 2014, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=09&dd=29&nav_id=905239.

488 RTS: “Pride Parade in Belgrade”, 28 September 2014, available in Serbian at <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1708390/Parada+ponosa+u+Beogradu.html>.

489 RTS: “Anti-Pride Special Prayer Service and Procession”, 28 September 2014, available at <http://xn--g2aaa.xn--p1acc.xn--90a3ac/page/stories/sr/story/125/Dru%C5%A1tvo/1708577/Moleban+i+%C5%A1etnja+protiv+Prajda.html>.

490 As BCHR participants in the Pride Parade saw for themselves.

491 As BCHR participants in the procession saw for themselves.

adequate. It should, however, be borne in mind that, as opposed to the June procession, the organisation of the Pride Parade is as a rule accompanied by fierce public debates and extensive media coverage, providing the organisers of and participants in any counter-demonstrations with enough information about the Parade time and venue.

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 first-instance court decisions temporarily banning an assembly. The parties may appeal the decision with the Supreme Court of Cassation within 24 hours from the time of service and this Court is under the obligation to rule on the appeal within the following 24 hours. 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. Whereas organisers of temporarily banned assemblies may seek protection from a court of general jurisdiction and the Supreme Court of Cassation, organisers of permanently banned assemblies may also avail themselves of legal remedies in administrative proceedings (although they are not explicitly provided for by the Act), i.e. they may file an appeal or lawsuit with the Administrative Court. The reason why the legislator drew this distinction remains absolutely unclear.

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.

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 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. The Constitutional Court also has to date ruled on four cases in which the appellants claimed wrongful restriction of their freedom of assembly.⁴⁹²

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 (as they again did when they prohibited the assemblies of the Falun Gong activities in December 2014) or render their rulings prohibiting the events on time, which is precisely what the Constitutional Court qualified as inadmissible. No constitutional appeals claiming restrictions of the right to assembly were filed with the Constitutional Court of Serbia in 2014.⁴⁹³

Under the New Draft, organisers may appeal the decisions prohibiting their assemblies with the MIA within 24 hours and the MIA shall rule on the appeals within 24 hours. An appeal shall not stay enforcement. The organisers may file claims against the MIA's decisions on their appeals with the Administrative Court within 24 hours from time of service and the Court shall rule on the claims urgently. Although the authors of the New Draft appear to have endeavoured to eliminate the shortcomings regarding the inefficiency of the legal remedies envisaged by the valid Act and provide for the adoption of final or legally binding decisions before the scheduled dates of the public assemblies, the 24-hour deadlines for contesting the decisions are much too short given that the organisers may be unable to collect the evidence they need to submit together with their appeals or claims in such a short period of time.

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 law and order at the event, that is, organise a steward unit." As already mentioned, these obligations exceed those allowed under international standards.

492 The first two cases before the Constitutional Court are described in detail in the *2012 Report*, II.9.2. The third case, in which the Court upheld the constitutional appeal, and the fourth case, in which it rejected the constitutional appeal, are elaborated in detail in the *2013 Report*, II.10.7.

493 As a search of the Constitutional Court case law database available at www.ustavni.sud.rs indicated.

The New Draft additionally increases the already substantial burden on the organisers. It imposes upon the organisers the obligations to designate the leaders of the assemblies, take measures to maintain public law and order, manage and oversee the assemblies and oversee the work of the stewards. Organisers are to ensure the free movement of the police, fire-fighters and public transportation and act in compliance with the orders of the competent authorities. Furthermore, organisers shall notify the public in the event their assemblies have been prohibited. The New Draft commendably does away with the organisers' obligation to bear the costs of rerouting traffic, but imposes upon them the one to ensure the movement of public transportation. The latter obligation may affect the choice of assembly venue and thus unjustifiably restrict the freedom of assembly. Organisers not complying with the above obligations may be imposed fines ranging from 30,000 to 100,000 RSD (if they are natural persons) or from 500,000 to 1,000,000 RSD (if they are legal persons). The fines may also be imposed on organisers of unreported assemblies, which risks to totally abolish the possibility of holding spontaneous assemblies.

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 law 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 New Draft 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 New 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, which is what happened during the attempts to organise Pride Parades before 2014. The new law should set some guidelines for regulating this issue. Some of the New Draft provisions govern simultaneous assemblies extremely rigidly. Under one article, in the event two assemblies in the same place and at the same time are pre-notified to the police and they cannot be held simultaneously for security reasons, priority shall be given to the assembly that was pre-notified first. This provision may jeopardise the exercise of the freedom of assembly and preclude the holding of counter-demonstrations, which are extremely important for the development of pluralism in a democratic society.

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. Under the New Draft, the police may prevent the holding of an assembly or disperse it on the same grounds on which assemblies may be prohibited, and do not need to issue a formal decision thereto. The police may also disperse a public assembly held at a dangerous site or a venue closed to the public. Given that the New Draft does not stipulate that the police must issue formal decisions in such cases, it remains unclear which legal remedies are at the disposal of the assembly organisers to contest the conduct of the police.

The Second Draft Action Plan for Chapter 23 envisages the training of police officers in maintaining law and order at public assemblies and other large-scale events in accordance with international human rights protection instruments.⁴⁹⁴ Under the Draft Action Plan, this activity is to be implemented in the last quarter of 2017, which is unjustifiably late in view of the numerous legal lacunae allowing for arbitrary police action.

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

⁴⁹⁴ Second Draft Action Plan for Chapter 23, Republic of Serbia, Chapter 23 Negotiating Group, Point 3.6.1. 22.

non-government organisations (hereinafter Register) is kept by the Business Registers Agency, while the political parties are entered in the Register of Political Parties kept by the Ministry of Justice and State Administration (Register of Political Parties).

The exercise of the freedom of association is governed in greater detail by the Act on Associations⁴⁹⁵ and the Act on Political Parties.⁴⁹⁶ The procedure by which associations are registered is thoroughly regulated by the Business Registers Agency Registration Procedure Act.⁴⁹⁷

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 condition an association has to fulfil to acquire the status of a legal person but it does not have to register to work.

A Registrar's decision may be challenged with a Ministry. Neither the Act on Associations nor the Business Registers Agency Registration Procedure Act specify which ministry is charged with ruling on the complaints. An administrative dispute may be initiated against a decision of the Minister. The Business Registers Agency Registration Procedure Act envisages a special legal remedy against a final Administrative Court decision – the submission of a motion for its review to the Supreme Court of Cassation. A motion for the review of a court decision is an extraordinary legal remedy envisaged by the Administrative Disputes Act (ADA)⁴⁹⁸. The ADA does not envisage appeals of Administrative Court decisions nor motions for the

495 *Sl. glasnik RS*, 51/09 and 99/11.

496 *Sl. glasnik RS*, 36/09.

497 *Sl. glasnik RS*, 99/11.

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

protection of legality, but specify that such motions may be filed by parties to an administrative dispute⁴⁹⁹ and the competent public prosecutor.

Associations may engage in economic activities but are not entitled to distribute their profits to their members and founders.⁵⁰⁰ 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 interest⁵⁰¹ 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 2010.⁵⁰² 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.

499 An administrative dispute may be initiated by a party challenging an administrative decision on its rights and obligations; by a public prosecutor in the event an administrative enactment violated the law to the detriment of public interest; the Attorney General in the event an administrative enactment violates the law to the detriment of the property rights and interests of the Republic of Serbia, an autonomous province or a local self-government (Art. 11, ADA). The defendant in an administrative dispute denotes the authority the enactment or silence of which is disputed (Art. 12, ADA).

500 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))).

501 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.

502 *Sl. glasnik RS*, 26/10.

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 them⁵⁰³, which should increase the transparency of budget allocations and prevent the misuses that had been possible due to existence of legal lacunae.

The annual report on total Serbian budget funds spent to support programme activities of civic associations in 2013 was still being prepared and the data on overall allocations for civil society organisations in 2014 were unavailable at the time this Report was prepared. Under the Draft 2013 Act on the Budget Balance Sheet, civic associations were allocated 6,214,569,882.00 RSD by the republican authorities, 7,314,860,355.00 RSD by the local self-government units and 851,511,215.00 RSD by the Vojvodina provincial authorities.⁵⁰⁴

The Ministry of Labour, Employment, Veteran and Social Issues in 2014 published a call for civil society social protection service proposals. The selection procedure was characterised by numerous irregularities and funding was granted to 122 associations, 31 of which were established only a month before the call was published, while some of them were even set up after its publication on 27 October.⁵⁰⁵ Funds were granted also to related CSOs, CSOs represented by the same persons, associations headed by local public officials and CSOs with identical Articles of Association. Public alerts to the deficiencies during the selection procedure and obvious embezzlement prompted Minister Aleksandar Vulin to threaten CSOs with inspections and checks of their business operations over the past ten years and state that he would reallocate the funding for social protection into the Fund for Treatment of Children with Rare Diseases.⁵⁰⁶ The CSOs called for the annulment of the call, Vulin's dismissal and the *ex officio* investigation and prosecution of all those who attempted to misuse the tax payers' money.⁵⁰⁷ The prosecution service is under the obligation to initiate an *ex officio* investigation into the reasonable suspicion that an organised group, the members of which work in the competent state and local institutions and head the newly-established civic associations, abused the call with the aim of misappropriating budget funds.

The Act on Associations lays down that legal and natural persons that give contributions and donations to associations are entitled to tax exemption. Under Ar-

503 *Sl. glasnik RS*, 8/12.

504 Reply of the Office for Cooperation with the Civil Sector to a request for access to information of public importance Ref. No. 96-00-3/2014-1 of 30 December 2014.

505 See "Generous Vulin Hands out 226 Million Euros to Undeserving CSOs", *Blic*, 4 December 2014, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/514585/SIROKE-RUKE-Vulin-na-lepe-oci-podelio-226-miliona-dinara>.

506 See "NGOs: Dismiss Vulin", *Blic*, 4 December 2014, available in Serbian at <http://www.blic.rs/Vesti/Politika/516398/Nevladine-organizacije-Smenite-Vulina>.

507 Motion to establish the responsibility for and rectify the deficiencies in the Labour Ministry call, available in Serbian at <http://www.crnps.org.rs/wp-content/uploads/20141203-Zahtev-za-utvrdjivanje-odgovornosti.pdf>.

ticle 15 of the Corporate Profit Tax Act,⁵⁰⁸ 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.⁵⁰⁹ 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 amendments⁵¹⁰ to the Draft Act Amending the Corporate Profit Tax Act.

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 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 secu-

508 *Sl. glasnik RS*, 25/01, 80/02, 80/02 – other law, 43/03, 84/04, 18/10, 101/11 and 119/12.

509 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.

510 Civic Initiatives, European Centre for Not-for-Profit Law and the Balkan Community Initiative Fund. See “Debate on Amendments to Laws Hindering the Work of NGOs”, available in Serbian at <http://www.gradjanske.org/page/news/sr.html?view=story&id=6027§ionId=1>.

rity” 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 2012,⁵¹¹ has continued displaying its symbols and insignia, including at public rallies. Pamphlets and posters of the Serbian Radical Party, including the logo of the *Srbski obraz* association, identical to that of the prohibited association, were displayed and circulated in Belgrade in the run up to the May 2014 parliamentary elections. *Srbski obraz* is definitely the ideological successor of the prohibited association and is led by the same man. *Srbski obraz*, the Serbian Radical Party and the association *Naši* staged a protest in front of the offices of the Delegation of the European Union in Belgrade in June 2014, under the title “Stop the Killing of Russian Children in Donetsk, Luhansk and Slavyansk”. The symbols of the prohibited association were also used during the protest, but, to the best of BCHR’s knowledge, no-one has been prosecuted for 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 Insignia⁵¹² further prohibits the activities of organisations reaffirming neo-Nazi and Fascist ideas in their statutes and programmes. Under the Act, a procedure may be initiated to delete from the Register a registered organisation or association advocating neo-Nazi or Fascist goals and disregarding the prohibitions in the Act (Art. 2(2)). The Act, therefore, does not introduce fresh grounds for the prohibition of an association, but grounds for initiating the procedure for deleting it from the Register. This legal sanction borders on the absurd given that most of the organisations, including *Combat 18*, which

511 Constitutional Court decision VII U 249/2009, *Sl. glasnik RS*, 69/12.

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

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 Discrimination⁵¹³ 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, has suffered no consequences for staging events at public venues. *Srbski obraz* organised a number of events to mark the return of ICTY indictee Vojislav Šešelj, who was provisionally released from detention on 6 November 2014 for health reasons.⁵¹⁴

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

513 *Sl. list SFRJ*, 31/67.

514 See “*Obraz in Action*”, available in Serbian at <http://www.obraz.rs/?cat=5>.

it was secret and that its activities were thus prohibited. The Court also prohibited its registration.⁵¹⁵ 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*)⁵¹⁶ is still operating; it is not registered 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).⁵¹⁷ No proceedings to prohibit this organisation have been instituted so far. No proceedings on motions for prohibiting a civic association were instituted before the Constitutional Court of Serbia in 2014.⁵¹⁸

The Constitutional Court in 2012 rendered a Decision prohibiting the work of the association called "Fatherland Movement Obraz" (*Otačastveni pokret obraz*)⁵¹⁹ 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*.⁵²⁰ 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 inad-

515 More in the 2011 Report, I 4.11.3.

516 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 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.

517 "Neo-Nazis Forming Combat Divisions", *Blic* online, 4 November 2013, available in Serbian at <http://www.blic.rs/Vesti/Hronika/417302/Neonacisti-formiraju-borbeno-odrede>.

518 Constitutional Court reply to a request for access to information of public importance Ref. No. Su 17/84–14 of 5 December 2014.

519 Constitutional Court decision VII U 249/09, published in *Sl. glasnik RS*, 69/12 of 12 July 2012.

520 Available in Serbian at <http://www.obraz.rs/>.

missible 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.

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 Prosecution Services allow judges, public prosecutors and their deputies to associate in professional organisations to protect their interests and take measures to protect their autonomy (public prosecutors and their deputies) and their independence and autonomy (judges). The Act on the Army of the Republic of Serbia guarantees professional army members the right to organise in trade unions (Art. 14(3)). In addition to prohibiting army members from membership of a political party, the Act also prohibits them from attending political events in uniform and from engaging in any other political activities apart from exercising their active right to vote (Art. 14(1)). Given that the Constitution of Serbia explicitly prohibits specific civil servants from membership of political organisations in Article 55(5) but does not include a ban on membership of a trade union, the interpretation according to which these categories of civil servants have the constitutionally guaranteed right to associate in trade unions is a correct one.

12. Right to Asylum⁵²¹

12.1. General

The 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees,⁵²² 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 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 Act⁵²³ 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 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.

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.⁵²⁴

12.2. 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

521 See more in *Right to Asylum in the Republic of Serbia* 2013, BCHR, Belgrade, 2014.

522 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.

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

524 About fulfillment of this principles see more in the *2013 Report*, II.13.1.

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. The Asylum Office did not register asylum seekers in the temporary Asylum Centres in Tutin and Sjenica from January to mid-April 2014,⁵²⁵ wherefore the asylum seekers were *de facto* prevented from obtaining the asylum seekers' IDs issued upon registration. The Asylum Office has since been registering the asylum seekers in the Tutin and Sjenica Centres, albeit not regularly. Many of the human rights of asylum seekers without IDs are restricted, as the BCHR has alerted to in its prior reports.⁵²⁶

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. Ten certificates of intention to seek asylum were issued at Belgrade Airport Nikola Tesla in the first half of 2014.⁵²⁷

At BCHR's request, the European Court of Human Rights in July 2014 issued a provisional measure ordering the Republic of Serbia not to deport an asylum seeker from the Nikola Tesla Airport. The ECtHR issued the provisional measure because the border police staff refused to issue a certificate of intention to seek asylum to a Somali national at the airport and tried to return him to Somalia, without issuing a formal decision he could have challenged. The BCHR was refused access to the part of the airport where he was held to extend him legal aid.⁵²⁸

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 misdemeanours judge, who can suspend the proceedings and instruct him to apply for asylum. The Misdemeanour Courts practices in such situations are inconsistent. For instance, the Pirot Misdemeanour Court in 2014 recognised the intention to seek asylum in five misdemeanour proceedings and accordingly discontinued them.

525 Information obtained from an Asylum Office member of staff.

526 See BCHR's Reports: *Right to Asylum in the Republic of Serbia 2013*, *Asylum in the Republic of Serbia – January-April 2014 Report*; *Asylum in the Republic of Serbia – May 2014 Report*, available at <http://www.azil.rs/documents/category/reports>.

527 Information obtained from the BCHR legal team extending support to persons issued certificates of intention to seek asylum at Nikola Tesla Airport.

528 The European Court of Human Rights issued the provisional measure ordering Serbia not to deport the asylum seeker from the Nikola Tesla Airport to Greece or Iran. The alien was issued the certificate only after a phone intervention, but the BCHR team was not allowed to access the part of the airport where he was held and extend him legal aid. The police officers refused to inform the BCHR where the alien was and whether he was allowed entry into Serbia after he was issued the certificate.

The Raška Misdemeanour Court, on the other hand, found Syrian nationals guilty of misdemeanour although it noted that they had left their country because of the war and had come to Serbia in order to “rest in the refugee camp” and then to leave for Germany and seek asylum there.⁵²⁹

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.⁵³⁰

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.⁵³¹ 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.⁵³²

To the best of BCHR’s knowledge, state authorities do not deport persons found guilty of misdemeanours. During their visits to the Asylum Centres in 2014, BCHR’s legal team met persons found guilty by the misdemeanour courts and issued removal or expulsion orders. Furthermore, some asylum-seekers, who have failed to find accommodation in the Asylum Centres or obtain certificates of intention to seek asylum within the statutory deadline, fear deportation to the FYR of Macedonia.⁵³³

12.2.1. Procedures for obtaining Asylum Status

The asylum procedure is initiated by the submission of an asylum application on the prescribed form that can be obtained only from an authorised officer of the Asylum Office (Art. 25). The Asylum Office shall render a decision upholding the

529 See the Group 484 report *Challenges of the Asylum System*, Belgrade, 2014, p. 35, available at http://www.azil.rs/doc/Challenges_of_Asylum_syst_2014.pdf.

530 More in *2012 Right to Asylum in the Republic of Serbia Report*, BCHR, Belgrade, 2013.

531 The asylum procedure is initiated at the moment an asylum application is submitted, not at the moment the intention to seek asylum is expressed.

532 Aliens Act (*Sl. glasnik RS*, 97/08) Arts. 42 and 85.

533 During its visit to the Banja Koviljača Asylum Centre in 2014, the BCHR legal team was told by an Afghani woman that her husband was deported to FYROM after he went to the Loznica police station with the intention of seeking asylum.

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. 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.⁵³⁴

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.⁵³⁵

Appeals of first-instance decisions on asylum applications may be lodged within 15 days from the day they are served (Art. 35).

In his Recommendations Ref. No. 75–6/14 of 10 February 2014,⁵³⁶ the Protector of Citizens noted that the Asylum Office had to ensure that its staff were on duty in all Asylum Centres every day. Pursuant to these Recommendations, the Ministry of Internal Affairs in early September 2014 designated Valjevo and Novi Pazar police officers to work in the Asylum Centres in Bogovađa, Sjenica and Tutin. The MIA in September also ensured the presence of a police officer in the Asylum Centre in Krnjača. The designated police officers, however, are not Asylum Office staff. With the exception of the Bogovađa Centre, they were unable to perform any asylum-related duties in the other Centres at the time this Report was finalised because they lacked the technical equipment⁵³⁷.

During its field visits to Asylum Centres in 2014, the BCHR heard complaints that the Loznica police officers would not issue them certificates of intention to seek asylum and that, when they went to register at the Belgrade Police Aliens Department, they were questioned in detail about why they had left their countries of origin and decided to apply for asylum in Serbia and that the Department staff drew up official records of those interviews; this procedure is not provided for in the Asylum Act. The BCHR, however, has not registered any cases of the Aliens Department's refusal to issue certificates of intention.

534 More in III.12.2.3. and the 2013 Report, II.13.2.

535 More in the *June – October 2013 Periodic Report on the Right to Asylum*.

536 More under III.12.6.

537 The Commissariat for Refugees and Migrations published a tender for the expedited procurement of the requisite technical equipment.

The European Commission noted that Serbia had to implement a comprehensive reform of the asylum system, including sufficient and well-trained staff to handle an increasing number of applications.⁵³⁸

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.⁵³⁹

Thirteen appeals were filed with the Asylum Commission in 2014. The Commission rendered two decisions upholding the appeals, seven rejecting the appeals and four are still pending. Seven appeals are filed due to the silence of the administration – three are accepted. In its hitherto decisions on appeals regarding the failure of the Asylum Office to render a ruling within two months from the day the procedure was initiated, the Asylum Commission has ordered the Office to implement the procedure and issue its ruling within a specific deadline, although the Commission should itself rule on the administrative matter when the appeal concerns the silence of the administration, i.e. it should rule on the asylum application on the merits.⁵⁴⁰ According to the reliable data the Asylum Commission has never issued a final ruling on an appeal regarding the silence of the administration.

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. Only one asylum-related administrative dispute was initiated in the first five months of the year. The Administrative Court rendered judgments on five claims filed in 2013 within the same period. It rejected three of the claims and upheld two, revoking the Asylum Commission's rulings. In one of its judgments upholding a claim, the Administrative Court found that the Asylum Commission had violated the procedural rules under Article 235(2) of the General Administrative Procedure Act, because it had not assessed all the submissions in the claim or any of the evidence filed with the claim. The plaintiff's counsel specified in the claim the reasons why she had been unable to seek asylum in the countries which are qualified as safe and submitted a list of sources corroborating that these countries were not safe for the plaintiff. The Court found that the Asylum Commission had in its reasoning of its decision merely given a blanket assessment that the submissions in the claim were not relevant to the administrative matter and that the plaintiff had not submitted valid proof that one of the safe countries she had spent time in or passed through were not safe for her personally. This judgment has almost precedential value for the asylum procedure, given that, in the preceding three years, the Administrative Court had never upheld a claim or found that the blanket assessments

538 *Serbia 2014 Progress Report*, p. 58.

539 The general 60-day deadline prescribed in Article 208 of the General Administrative Procedure Act is to be applied accordingly.

540 More in the *Asylum in the Republic of Serbia: January – September 2014 Report*.

of submissions and evidence filed by asylum seekers that the countries they had passed through on their way to Serbia were not safe for them in the meaning of Article 33(1(6)) of the Asylum Act amounted to a violation of the rules of procedure.

The Administrative Court has to date mostly limited itself to reviewing whether the procedural aspects of the asylum procedure had been observed. As a rule, a claim to the Administrative Court does not stay the enforcement of the challenged administrative enactment,⁵⁴¹ 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.⁵⁴²

12.2.2. 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),⁵⁴³ 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 reviewing whether the applicant satisfies the asylum eligibility criteria (Arts. 2 and 33). It is crucial that the state is reassured in all these cases that the protection an asylum seeker will enjoy in another state is truly effective and that it in any case provide the asylum seeker with the opportunity to dispute the allegations that the other state is safe for him.

Given that the states Serbia borders with and through which nearly all asylum seekers enter Serbia are considered safe countries, this requirement is impossible to fulfil and renders meaningless the entire procedure for exercising the right to asylum in Serbia.

541 Article 23, Administrative Disputes Act, *Sl. glasnik RS*, 111/09.

542 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*.

543 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.

The solution under which the Government unilaterally defines safe third countries in a Decision is also problematic. The valid Decision was adopted in 2009 and has not been revised since. When it was drawing up the list of safe countries, the Government did not obtain guarantees that asylum applications were reviewed in a fair and efficient procedure in the countries it was designating as safe. In determining whether a particular country was safe, the Government only took into consideration the opinion of the Serbian Ministry of Foreign Affairs, whether the country ratified the 1951 Refugee Convention, and whether it had a visa-free regime for Serbian citizens.⁵⁴⁴ 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,⁵⁴⁵ the UNHCR and reports by the relevant international organisations, such as the Council of Europe⁵⁴⁶ and international NGOs focusing on the international protection of refugees and asylum seekers.

One would have expected the first- and second-instance asylum authorities to take heed of the of the two Administrative Court judgments revoking the Asylum Commission rulings and abandon their practice of systematically abusing the safe country rule⁵⁴⁷ and first establish whether a third country was really safe for the asylum seeker, i.e. whether it administered an efficient and fair asylum procedure. The Asylum Office nonetheless continued automatically applying the safe third country concept in 2014.

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.⁵⁴⁸ 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

544 *Serbia as a Safe Third Country: Revisited*, p. 7.

545 For instance, Greece is on the list of safe countries, although it has not been considered a safe third country since the ECtHR judgment in the case of *M. S. S. v. Belgium and Greece*, ECtHR, App. No. 30696/09 (2011).

546 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.

547 See the See BCHR's Reports: *Right to Asylum in the Republic of Serbia 2013*, *Asylum in the Republic of Serbia – January-April 2014 Report*; *Asylum in the Republic of Serbia – May 2014 Report*.

548 See *M. S. S. v. Belgium and Greece*, judgment of 21 January 2011, App. No. 30696/09.

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.”⁵⁴⁹ 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.⁵⁵⁰

The UNHCR did not alter in 2014 the recommendation it made in 2012 – that Serbia should not be considered a safe third country given the current situation in the asylum system, and its call on the states parties to the Convention to refrain from sending asylum seekers back to Serbia on this basis.⁵⁵¹

12.3. Rights and Obligations of Asylum Seekers, Refugees and People Granted Subsidiary Protection

The Commissariat for Refugees and Migrants operated five Asylum Centres in 2014: in Banja Koviljača, Bogovađa, Sjenica, Tutin, Obrenovac and, as of August 2014, in Krnjača. The need for opening a new centre still exists given that the number of asylum seekers has been increasing every month and that the temporary centre in Obrenovac was shut down after the May 2014 floods. Regardless of the new temporary centres in Sjenica, Tutin and Krnjača, the Asylum Centres still cannot accommodate all the asylum seekers; the number of people who expressed the intention to seek asylum in 2014 – 16.490 – drastically exceeds the number of people who have expressed such an intention since 2008, when the Asylum Act was adopted⁵⁵². On the other hand, the increase in accommodation capacities cannot itself resolve the problem Serbia is facing. Namely, the increase in the number of asylum-seekers can be ascribed also to the inefficient and lengthy asylum procedure.

A temporary Asylum Centre was opened in Krnjača, where two of the 17 barracks housing refugees and IDPs from Croatia, Bosnia and Kosovo since 1993 were designated for asylum seekers. The two barracks can accommodate 100 peo-

549 Decision in the case of UŽ-1286/2012, of 29 March 2012, available at: <http://www.azil.rs/documents/category/judgements>.

550 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>.

551 *Serbia as a Country of Asylum*, paragraph 4.

552 Data obtained from the UNHCR Office in Belgrade.

ple. During its regular visits to the Centre in 2014, the BCHR legal team established that asylum seekers had no common room in which they could spend time, or a kitchen in the two barracks. The asylum seekers take their meals in the cafeteria serving food, in shifts, to all the residents of the 17 barracks. The barracks, rooms and toilets are quite old and dilapidated and, unless they are improved, cannot satisfy minimum accommodation standards in the long term, comprising proper nutrition and hygiene, health and social care, etc.

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. 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 (while it existed) are minimum security establishments and the living conditions in them are satisfactory.

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 Act⁵⁵³ entrusts the Commissariat for Refugees and Migrations with the accommodation and integration of persons granted asylum or subsidiary protection (Arts. 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. Two million RSD were allocated in the 2014 Budget Act for the integration of persons approved subsidiary protection or refugee status.

*12.4. Unaccompanied Minor Asylum Seekers*⁵⁵⁴

As provided for by international standards, the Asylum Act lays down that asylum seekers with special needs, including minors separated from their parents or guardians, shall be provided with special care (Art. 15). There are no particular norms or protocols for establishing the age of aliens seeking asylum in Serbia.⁵⁵⁵ 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

⁵⁵³ *Sl. glasnik RS*, 107/12.

⁵⁵⁴ Unaccompanied minors denote aliens under 18 years of age who arrived in the Republic of Serbia unaccompanied by their parents or guardians or were separated from them upon arrival in the Republic of Serbia (Art. 2, Asylum Act).

⁵⁵⁵ *Serbia as a Safe Third Country*, p. 10.

asylum in Serbia; if they do not, they are returned to the border of the country from which they entered the territory of Serbia.⁵⁵⁶ Unaccompanied minors who apply for asylum are referred to the Asylum Centres in Banja Koviljača, Bogovađa, Sjenica, Tutin, Obrenovac and Krnjača 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 adhered to.

12.5. Asylum Legislation Reform

An MIA Project Group and Working Group for drafting amendments to the Asylum Act was established pursuant to an MIA decision in December 2013. The Project Group meetings were attended by the representatives of the state institutions (the MIA, the Commissariat for Refugees and Migrants, Protector of Citizens), representatives of international agencies and organisations (UNHCR, IOM, DEU, UN Office in Serbia) and NGOs (the BCHR, the Asylum Protection Center, Group 484 and Zero Tolerance). The Project Group was chaired by MIA State Secretary Vladimir Božović and it held six meetings in the first four months of 2014.

The Project Group was mandated with reviewing and analysing the asylum-related legislation and the situation in the field and issuing proposals based on which the Working Group was to draft the new Asylum Act by 30 June 2014. The Project Group applied the Chatham House Rule,⁵⁵⁷ under which the participants may use the information they obtain at meetings freely but are not allowed to reveal the source of the information, i.e. the identity of the person who had disclosed it, which encourages the openness and free sharing of information among the Group members.⁵⁵⁸

The work of the Project Group was an example of good practice of bringing together civil society, international organisations and state authorities in a broad forum with the common goal – to improve the asylum system in the Republic of Serbia.

Work on the amendments to the Asylum Act was halted after the early parliamentary elections in Serbia in March 2014.

556 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.

557 More at <http://www.chathamhouse.org/about-us/chathamhouserule>.

558 All Project Group members had the opportunity to comment the valid Asylum Act and highlight the problems in its enforcement, as well as to propose amendments to the Act. It remains to be seen, however, to what extent the new Government draft amendments will take on board the civil society's proposals and to what extent will they be the result of a compromise of various policies and interests.

12.6. Recommendations by the Protector of Citizens

In February 2014, the Protector of Citizens identified shortcomings in the work of the MIA and the Commissariat for Refugees and Migrations with respect to aliens expressing the intention to seek asylum in Serbia.⁵⁵⁹ These shortcomings, notably, included, delays in the registration and determination of status of aliens, who had expressed the intention to seek asylum in Serbia, and the failure to provide them with adequate support. Consequently, these people are precluded from exercising their rights enshrined in national and international regulations. The Protector of Citizens forwarded his 26 recommendations based on his findings to the competent state authorities – the MIA Police Directorate⁵⁶⁰ and the Commissariat.⁵⁶¹

The Protector of Citizens recommended to the MIA to register expressed intentions to seek asylum, an obligation it already has under Article 22 of the Asylum Act, and to issue certificates of intention comprising the photographs and biometric data of the asylum seekers⁵⁶². Furthermore, in the view of the Protector of Citizens, the MIA needs to ensure that the Asylum Office operates autonomously, not within the Border Police Administration, and provide it with adequate working conditions and capacities⁵⁶³. Other recommendations to the MIA include that it implement its official activities, including registration and issuance of IDs in a timely manner, as soon as the aliens are admitted in the Centre,⁵⁶⁴ that the aliens are instructed on their obligation to file applications within 15 days in the language they understand⁵⁶⁵ and that the applicants are interviewed as soon as possible⁵⁶⁶. The Protector of Citizens also recommended the allocation of funds in the state budget for removing aliens whose applications were rejected⁵⁶⁷, specifying that the relevant legal restrictions must be complied with during the removal process⁵⁶⁸.

559 Ref. No. 3220 of 10 February 2014, available in Serbian at: <http://azil.rs/documents/category/odabrane-presude>. The conclusions and recommendations also address the treatment of aliens, whose identities have not been established, who do not have travel documents or legal grounds for staying in Serbia and those the authorities were unable to immediately remove from Serbia in accordance with the valid regulations and standards.

560 See the MIA letter to the Protector of Citizens on the prerequisites for the enforcement of the recommendations, Case 01 Ref. No. 1686/14–10 (1), available in Serbian at <http://azil.rs/documents/category/odabrane-presude>.

561 See the response of the Commissariat for Refugees and Migrations to the Protector of Citizens' report and recommendations, Ref. No. 019–707/2, available in Serbian at <http://azil.rs/documents/category/odabrane-presude>. Zasto ne date ukratko sta su mu MUP i Komesarijat odgovorili?

562 Recommendation III 2.

563 Recommendation V 1.

564 Recommendation V 3.

565 Recommendation V 4.

566 Recommendation V 5.

567 Recommendation V 9.

568 Recommendation V 7.

In his recommendations addressed to the Commissariat, the Protector of Citizens voiced that the Asylum Centres need to be established and organised exclusively with a view to facilitating the efficient implementation of the asylum procedure.⁵⁶⁹, that the accommodation capacities needed to be increased⁵⁷⁰, and that they need to fulfil the relevant standards in terms of living conditions, nutrition, hygiene, access to health care, et al⁵⁷¹. The Commissariat was, in particular, instructed⁵⁷² to put an end to the practice of approving leave from the Centres⁵⁷³, and “keeping rooms” or beds for aliens who had left the Centres on any grounds⁵⁷⁴ (Recommendation IV 6).

Given that the implementation of some of the recommendations requires amendments of the valid regulations, the Protector of Citizens recommended to the MIA to submit the proposed amendments to the Government within 15 days from the day of receipt of the recommendations. It can be concluded that the recommendations have been partly fulfilled. The MIA still does not undertake the official activities as soon as possible or issue certificates of intention in a timely manner, which hinders the work of all the relevant asylum authorities. The Commissariat still allows leaves from the Asylum Centres and rooms are still kept for absent asylum-seekers in the Centres. The accommodation capacities have been increased by the opening of the Centre in Krnjača, which is conducive to the implementation of the asylum procedure as it is close to the Asylum Office. On the other hand, the Sjenica and Tutin Asylum Centres are still operational although they do not facilitate the implementation of the asylum procedure, due to their distance from the Asylum Office.⁵⁷⁵

13. Right to Work

13.1. 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

569 Recommendation IV 1.

570 Recommendation IV 2.

571 Recommendation IV 3.

572 Recommendation IV 5.

573 Asylum Centre managers allow the aliens living in them to leave the Centres for a specific period of time, usually 72 hours. Aliens with the Centre managers' passes can legally move in all parts of the country, included border areas. Although such leaves may be justified in exceptional circumstances, the hitherto practice indicates that the asylum seekers are abusing them on a large scale and trying to cross the border illegally.

574 Recommendation VI 1.

575 The Asylum Office staff conducted the official activities in those Centres only three times in 2014.

organisation,⁵⁷⁶ including Convention No. 122 Concerning Employment Policy⁵⁷⁷, Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation⁵⁷⁸ and ILO Convention No. 100 Concerning Equal Remuneration.

According to the case law of the UN Committee on Economic, Social and Cultural Rights (CESCR), the right to work does not imply the right of a person to be provided with a job he wants, but the state's obligation to take necessary measures to achieve full employment.⁵⁷⁹ The right to work entails the right to employment, the right to the freedom of choice of work, i.e. prohibition of forced labour⁵⁸⁰ and the prohibition of arbitrary dismissal.

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.⁵⁸¹

Labour law is regulated primarily by the Labour Act⁵⁸² and the Employment and Unemployment Insurance Act.⁵⁸³ The General Collective Agreement⁵⁸⁴, 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 2011⁵⁸⁵. 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%.

13.2. Labour Act

The shortcomings and ambiguities of the 2005 Labour Act became evident during its implementation, prompting the legislator to amend specific labour law

576 Serbia has to date adopted 77 ILO Conventions.

577 *Sl. list SFRJ (Međunarodni ugovori i drugi sporazumi)*, 34/71.

578 *Sl. list FNRJ (Međunarodni ugovori i drugi sporazumi)*, 3/61.

579 General Comment No. 18, UN doc. E/C.12/GC/18.

580 More on the prohibition of forced labour in III.3.5.

581 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.

582 *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13 and 75/14.

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

584 *Sl. glasnik RS*, 50/08, 104/08 – Annex I and 8/09 – Annex II.

585 *Sl. glasnik RS*, 37/11.

institutes and conform them to the new needs of the labour market and economy and to introduce new standards to improve the business and investment enabling environment in Serbia.⁵⁸⁶

The amendments to the Labour Act were proposed in 2013, but withdrawn after a brief public debate on 20 January 2014, at the meeting of the Social-Economic Council. A new working group, comprising representatives of the Government, trade unions and employers, started working on new draft amendments that were to be adopted by 30 July 2014. The working group was to reach consensus on the following five issues: fixed-term employment, dismissal of workers, severance pay, the extended effect of collective agreements to employers who have not signed them and are not party to them and minimum wages. The working group met on a weekly basis for four months, but the representative trade unions on 10 July walked out of the session in protest of the Labour Ministry's proposal regarding the extended effect of collective agreements which, in their view, was inapplicable in practice.⁵⁸⁷

The Labour Act is unfortunately just one of the many laws that was ultimately amended in the absence of a proper prior public debate. The amendments to the Act came into force on 29 July 2014, after they were adopted in summary proceedings. The Government said that they were part of the structural reforms aimed at putting in place conditions for establishing a business environment facilitating foreign and domestic investments, increasing economic productivity and opening of new jobs, etc. The legislator said that their goal was to reduce the unnecessary administration procedures not contributing to securing and protecting workers' rights whilst imposing major costs on the employers.

Statements by officials during the drafting of the amendments led to the impression that all the provisions reducing workers' rights were prompted by the need to align them with international standards, EU accession requirements and ILO conventions. One of them is, for instance, EU Directive 2006/54 on equal treatment of men and women in matters of employment and occupation, although it has already been applied in Serbia's legal system via the Anti-Discrimination Act. As far as labour-related rights in the EU are concerned, the Serbian public ought to be aware of the fact that the EU does not regulate workers' rights to a great extent, except in the context of the prohibition of discrimination, general definition of minimal rights workers have to be afforded and the regulation of workers in specific areas (such as, e.g., transportation). The International Labor Organization governs workers' rights more thoroughly, but none of the adopted amendments to the detriment of the workers are an integral part of any documents of either this or any other international organisation; indeed, the ILO was estab-

586 Z. Lazić et al, *Enforcement of the Labour Act Enforcement Act*, Ministry of Labour, Employment, Veteran and Social Issues, Paragraf, Belgrade, 2014.

587 See Trade Unions Leaving Talks on Labour Act, *Blic*, 11 July 2014, available in Serbian at <http://www.blic.rs/Vesti/Ekonomija/479897/Sindikati-napustaju-pregovore-o-Zakonu-o-radu>.

lished to promote and strengthen the rights of workers and encourage social dialogue.⁵⁸⁸ On the other hand, the legislator did not take into account the obligation Serbia assumed when it ratified in 2003. ILO Convention 181 concerning Private Employment Agencies – “leasing” of workers remains unregulated, perpetuating their legally and factually unsustainable status.

The Labour Act amendments primarily concern working and hiring conditions. Fixed-term employment was increased from 12 to 24 months (Art. 37). Overtime is now limited to eight hours a week. Overtime is paid at a rate at least 26% higher than the wage base and workers are not allowed to work more than 12 hours a day, including overtime. Under amendments to Article 108, work in shifts is no longer grounds for a higher wage; wages are increased by 0.4% per every full year of service with the present employer (and the previous employers in case of status-related changes or change of employer. The minimum wage is set on the basis of the minimum cost of work, years of service and taxes and contributions paid from the gross wage (Arts. 111 and 112). Retirement bonuses paid by employers were reduced from three to two average wages (Art. 158).

With the aim of aligning the national regulations with ILO Convention 183 concerning Maternity Protection, the amendments include provisions providing greater protection to pregnant and breastfeeding workers. Pregnant women are entitled to leave to undergo pregnancy-related check-ups with their selected doctors, provided they notify their employers in advance.

The amendments allow employers to offer annexes to employment contracts to workers, who, should they refuse to sign them, retain the right to challenge their lawfulness in court if they are dismissed. The procedure for amending employment contracts has been simplified and the employers no longer have to offer annexes to workers they are temporarily reassigning to other jobs to insure the prompt performance of work. The procedure for amending an employment contract shall not apply in the event the annex is concluded at the initiative of the worker (Arts. 172 and 172a).

The lack of provisions on disciplinary proceedings and sanctions was one of the major problems in the original Labour Act. Although disciplinary measures were introduced by the amendments, they have not addressed the problems, primarily due to the way they have been regulated. The provisions on disciplinary measures are located in the part of the law governing termination of work contracts by the employers, but fail to elaborate the disciplinary proceedings, who is to conduct them, how disciplinary accountability is established or the disciplinary measures imposed.⁵⁸⁹

588 See the analysis by Union University Law School Assistant Professor and Secretary of the Labour Law Legal Clinic Mario Reljanović at *Peščanik*, 28 July 2014, available in Serbian at <http://pescanik.net/sve-neistine-o-izmenama-i-dopunama-zakona-o-radu/>.

589 *Ibid.*

13.3. Employment Rates in Serbia

Nearly one quarter of Serbia's working age population is unemployed. According to the Labour Force Survey, conducted by the Statistical Office of the Republic of Serbia, which uses the Eurostat methodology, the unemployment rate, i.e. the share of unemployed residents of Serbia of working age stood at 20.3% in October 2014 (19.5% among men and 21.3% among women). The unemployment rates per region stood at: 18.3% in the Belgrade Region, 21.6% in the Autonomous Province of Vojvodina, 18.3% in Šumadija and West Serbia and at 23.3% in South and East Serbia. The unemployment rate fell by 0.5% in October 2014 over the beginning of the year, when it stood at 20.8%, while employment grew by 1.1% in that period.

The employment rate – the share of the employed population above 15 years of age – stood at 39.5% (46.7% among men and 32.8% among women) in the second quarter of 2014. The employment rate was the highest in Šumadija and West Serbia (42.1%) and Vojvodina (39.4%). The employment rate stood at 38.9% in the Belgrade region and at 36.8% in the South and East Serbia Region. The SORS also monitors the informal unemployment rate given the large number of workers who are not formally registered.⁵⁹⁰ This rate grew by 0.7% in the second quarter of 2014 over the previous quarter and by 0.9% over October 2013.⁵⁹¹

According to the World Economic Forum's 2014–2015 Global Competitiveness Report rating 144 countries, the chief obstacles to doing business in Serbia include inefficient bureaucracy (13.7%), limited access to funding (13.3%) and corruption (11.9%). Serbia ranks 69th on the irregular payments and bribes and 115th on the hiring and firing practices indicators.⁵⁹²

As far as hiring practices are concerned, surveys have shown that Serbia's citizens complain the most about corruption. Corruption is present in this area in both the public and private sectors, although the surveys, studies and media reports contain hardly any information on the presence of corruption in the private sector. This can, on the one hand, be attributed to the fact that corruption is by definition associated with the public sector. Corruption in the private sector, on the other hand, has its own distinct features and usually takes indirect form. For instance, there is a widespread practice in Serbia of the state granting owners of private companies various benefits and allowances (subsidies for opening new jobs, et al) but there are no reliable surveys about the degree to which the job applicants' rights are respected in the recruitment procedure, only occasional media reports

590 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.

591 SORS press release, available at: rzs.stat.gov.rs.

592 More at: http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf.

of abuses of the granted subsidies, their use for other purposes and the protected status of the owners. There are also numerous indications that the owners granted the subsidies are expected, better said, set the condition to hire a specific number of people from the ruling party or its coalition partners (at various levels, from the local to the republican).⁵⁹³

The only way to lower the level of corruption in the public sector recruitment process is to amend the labour-related laws and other regulations and introduce clear and binding criteria for hiring civil servants and stringent penalties for their violation. This requires a serious and comprehensive reform of the state administration and all regulations governing labour because that is the only way to depoliticise and professionalise the civil service. The announced reforms in this field unfortunately were not even launched in 2014.

When viewed by occupation field, the least corruption has been observed in the poorly-paid, unattractive jobs and jobs hazardous to health and safety. In local public utility companies, party cadres are mostly employed to perform senior managerial or administrative duties. The fact that corruption is also present in the employment of members of the traditionally most reputable professions (judges, university professors, doctors, et al) gives rise to concern.

13.4. Right to Assistance in Employment and in the Event of Unemployment

Employment is regulated in greater detail by the Employment and Unemployment Insurance Act⁵⁹⁴. Job seekers are provided assistance in finding employment free of charge by the National Employment Service (NES) and recruitment 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 757,243 job seekers were registered with the National Employment Service (NES) in August 2014, or 0.5% less than at the beginning of the year; 382,562 of them were women. In 2014, 21,895 people found jobs; 261,750 people

593 *Corruption against Decent Work*, Centre for Democracy Foundation, Belgrade, 2013.

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

registered with the NES were first-time job seekers.⁵⁹⁵ Job hunting lasts nearly four years on average. Young people account for 26.2% percent of the unemployed. The number of jobless people peaked in February 2014, when 25.1% of them were registered with the NES.⁵⁹⁶

Grey economy is one of the major challenges the Serbian Government has faced in its efforts to reduce unemployment. Although it said it would take active steps to curb grey economy, no major activities that would yield satisfactory results were undertaken in 2014. The fight against grey economy is extremely unpopular and affects many layers of society, which is most probably the reason why it was not waged in the year behind us. A survey conducted by IPSOS and financially supported by USAID⁵⁹⁷ indicated that nearly one-third of the citizens (30%) think that grey economy essentially does not have negative effects on the lives of the man in the street. Although they agree that grey economy jeopardises workers' rights and reduces state revenues, 73% of the respondents think that grey economy is the only way the poor can make ends meet. The survey also indicated that employers pay the salaries into the workers' current accounts in only 67% of the cases.

The amendments to the Labour Act introduce the employers' 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. This provision, however, has to be accompanied by amendments to the tax legislation, and, more importantly, by greater efficiency of the labour and tax inspectorates.

13.5. Workers' Rights Concerning Termination of Employment

The provisions on termination of employment underwent major changes when the Labour Act was amended. Firing has been simplified as the new provisions eliminated the prior complicated procedure.⁵⁹⁸ Many trade unions believe that the amendments were adopted to facilitate dismissals and cut the employers' costs, with a view to attracting foreign investors, who were unhappy with the conditions for doing business under the prior provisions.⁵⁹⁹

595 National Employment Service monthly statistical bulletins, available in Serbian at <http://www.nsz.gov.rs/>.

596 *Politika*, 6 October 2014, p. 11.

597 *Grey Economy – Views and Experiences of the General Population*, IPSOS Strategic Marketing, March 2014, available in Serbian at <http://www.mc.rs/upload/documents/istrazivanje/2014/042514-Istrazivanje-Siva-ekonomija-NALED-USAID.pdf>.

598 *Sl. glasnik RS*, 75/14, termination of employment is governed in Chapter XVI, Articles 175–192.

599 See, e.g. the High Education Trade Union's opinion available in Serbian at http://www.svos.org.rs/pdfs/zor_pregled_izmena_i_dopuna2-avgust2014.pdf, and the opinion of the Nezavisnost trade union, available in Serbian at http://www.nsprv.org/Informator_br._79.pdf.

Under Article 175 of the Labour Act, employment may terminate: upon the expiry of the period for which it was contracted; when the worker turns 65 and has at least 15 years of service; by mutual consent; by notice of cancellation of the employment contract by the employer or the worker; at the request of a parent or guardian of a worker under 18 years of age; in the event of death of the worker; and in other cases specified by law. Workers are also entitled to quit their jobs (Art. 178, Labour Act), in which case they have to notify their employers in writing at least 15 days in advance (longer deadlines have to be set out in the company general enactments or the workers' employment contracts). Paragraph 3 of this Article, according to which "[S]hould the employee cancel the employment contract due to a violation by the employer of the obligations established by law, the general enactment and the employment contract, the employee shall be entitled to all the rights on the grounds of employment, as in the case of unlawful dismissal" (forced resignation) has been deleted from the law. The legislator instead decided to delete this paragraph, that is, to overhaul it. Workers who quit their jobs over mobbing or discrimination can now challenge their forced resignations in accordance with the general rules of the law of contracts and torts applying to contract nullity or voidability.⁶⁰⁰

The amendments extend the list of reasons why employers may dismiss workers (Art. 179(3)) and introduce concepts with ethical elements, such as abuse of post, excess of powers, inexpedient and irresponsible use of the means of work; non-use or misuse of personal safety equipment or facilities, etc.

Employers are now also under the obligation to refer their workers to health institutions to establish whether there are reasonable grounds to dismiss them for inebriation or substance abuse or to establish whether they are under the influence of drugs or alcohol in another manner, in accordance with their general enactments. A worker's refusal to subject himself to an analysis shall be deemed disrespect of the work discipline in terms of paragraph 3 of this Article. The enforcement of this obligation needs to be regulated in detail in the collective agreement, otherwise the employers will be referring their workers to the relevant institutions without guidance on when they should refer them, what blood alcohol concentration shall be deemed grounds for dismissal, etc.

The Labour Act now includes a sub-section titled *Measures in Case of Work Discipline Violations* (Art. 179a). Workers who violated their duties may now face also the following sanctions: unpaid suspension lasting up to 15 days; a fine not exceeding 20% of their basic wage in the month in which it was imposed for a maximum of three months (enforced by withholding of the amounts, pursuant to the employer's decision imposing the fine), and a warning before dismissal.

The legislator, however, failed to lay down the procedure for imposing these measures and it remains unclear who will assess the gravity of the violation and decide on the sanction, whether the workers will be entitled to appeal the decisions,

600 Labour Act Implementation Guide, Paragraf Lex, September 2014, p. 75.

particularly on the fines, and with whom (apart from the courts, of course), whether the decisions will instruct the workers on the legal remedies at their disposal, etc. Presumptions are that all these issues will be addressed in the collective agreement.

Workers are entitled to seek letters of confirmation from their former employers specifying when they began and stopped working for them, the job they performed and assessing their performance and conduct as proof of their work experience.

Article 191(1) of the Labour Act on the legal effects of the unlawful termination of employment, that is reinstatement, compensation of damages and payment of contributions, has been rephrased to avoid misinterpretations of this provision. Under the original provision, in the event the court rendered a legally binding decision finding that a worker had been unlawfully dismissed from his job, the worker was entitled to first prove the unlawful dismissal in court and then file a lawsuit demanding reinstatement. The proceedings typically took unreasonably long and the employers in the meantime hired other people to do those jobs. Under the new provision, the workers immediately have to specify whether they seek reinstatement. They are also under the obligation to sue their employers before the decision on their dismissal becomes legally binding, otherwise their lawsuits will be dismissed.

Article 191 now includes a new paragraph (7) which also benefits employers, because it lays down that the court may reject the former worker's reinstatement request in the event it establishes that there had been grounds for terminating his employment but that the employer acted in contravention of the provisions governing the termination of employment procedure. In the event the court rejects the reinstatement request, it shall award the former worker compensation equalling his six wages.

According to the Serbian High Education Trade Union, a substantive law, even a systemic law such as the Labour Act, cannot allow an employer to dismiss a worker pursuant to a judicial decision alone, although the court found the employer in violation of the procedure. In its view, the *restitutio in integrum* principle must apply in the event the court ruled on the merits and found that a specific action had been unlawful (i.e. the worker must be reinstated). It also alerted to the risk of employers deliberately violating the procedure and the former workers ending up only with compensation of their six wages.⁶⁰¹

The Labour Act also provides special protection from dismissal to specific categories of workers: pregnant workers and workers on maternity or childcare leave (Art. 187). Special protection from dismissal is also afforded to the workers' representatives during their terms in office if they acted in keeping with the law, general enactments and their employment contracts. It is up to the employers to prove that they had not dismissed a worker because of his activities in the capacity

⁶⁰¹ The opinion of the High Education Trade Union is available in Serbian at http://www.svos.org.rs/pdfs/zor_pregled_izmena_i_dopuna2-avgust2014.pdf.

of a workers' representative, his trade union membership or participation in union activities (Art. 188). The Labour Act originally prohibited employers only from placing workers' representatives in an unfavourable position; the ban now applies to all workers if the reason for the unfavourable treatment lies in their status or activities in the capacity of workers' representatives, their trade union membership or participation in union activities. This provision is in line with ILO Convention 135 on workers' representatives.⁶⁰²

13.6. Exercise and Protection of Workers' Rights

A worker is entitled to complain against a violation or denial of his employment rights to the labour inspection (Arts. 268–272, LA), launch proceedings before the competent court (Art. 195, LA) or require the arbitration of the disputed issues together with the employer (Art. 194, LA). The provisions of the Peaceful Settlement of Labour Disputes Act apply to individual and collective labour disputes.⁶⁰³

The International Labor Organization (ILO) set for its member states the general principles and guidelines for resolving labour disputes, which primarily promote collective bargaining and settlement of labour disputes by assisting the parties to themselves resolve their disputes or ask arbiters for help in resolving their disputes. The Republic of Serbia has not, however, ratified all the conventions and recommendations on the settlement of labour disputes in keeping with international standards. Notably, it has not ratified the Collective Bargaining Conventions 151 and 154 although their relevance is emphasised also in the Serbia Decent Work Country Programme Document 2013–2017.⁶⁰⁴ The Programme Document underlines the necessity of assisting the social partners to effectively realise the right to collective bargaining in both the private and the public sectors through implementation of coordinated collective bargaining structures and mechanisms, whilst noting that participatory governance will add legitimacy to the decision-making process.

Serbia enacted the Peaceful Settlement of Labour Disputes Act⁶⁰⁵ back in 2004 in order to prevent labour disputes from ending up in court. A research conducted within the project *Social Partners' Joint Support to the Peaceful Settlement of Labour Disputes*,⁶⁰⁶ demonstrates that various factors and circumstances have precluded this institute from gaining visibility and affirmation in the past decade. Court protection remains the primary vehicle for protecting workers' rights due to the existing constraints, which can be ascribed to the employers' and workers' un-

602 *Sl. list SFRJ – International Agreements*, 14/82.

603 *Sl. glasnik RS*, 125/04 and 104/09.

604 Available at <http://www.ilo.org/public/english/bureau/program/dwcp/download/serbia.pdf>.

605 *Ibid.*

606 Research on Peaceful Resolution of Labour Disputes in Belgrade, Novi Sad, Kragujevac and Niš, Initiative for Development and Cooperation with the support of the Swiss Labour Assistance Serbia Office, in partnership with the TU Nezavisnost, 2014.

familiarity with the institute, the poor visibility of the Republican Agency for the Peaceful Settlement of Labour Disputes and specific deficiencies of the Act. Despite its numerous advantages, the alternative peaceful labour dispute settlement institute has not succeeded in positioning itself as the preferred alternative to court protection. This is why the European Commission, too, noted the need to further strengthen the Agency for the Peaceful Settlement of Labour Disputes in its 2014 Serbia Progress Report.

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 (Arts. 268–272).

The amendments to the Labour Act commendably specify the powers of labour inspectors. When performing oversight, they are entitled to: peruse individual and general enactments, records and other documents in order to establish the relevant facts, establish the identity of individuals and take their statements, check whether the employers fulfilled their legal obligation to register their workers with the social insurance authorities pursuant to the data in the Central Register of Mandatory Social Insurance, inspect the company offices, facilities, plants and equipment and order preventive and other measures within their legal remit (Art. 268a).

The clarification of the labour inspectors' powers and actions they are entitled to undertake during their checks is expected to facilitate the alignment of their oversight of enforcement of the labour law and other regulations governing the rights, duties and obligations of workers.⁶⁰⁷

The need to build the capacities of the labour inspectorates was recognised also by the European Commission and the UN Committee on Economic, Social and Cultural Rights. In its 2014 Serbia Progress Report, the EC noted that the capacity of the Labour Inspectorate needed to be strengthened to allow for efficient inspections in the field (there are currently 250 inspectors or 1 inspector per 1,300 companies).⁶⁰⁸ In its Concluding Observations on Serbia's 2nd Periodic Report on the implementation of the International Covenant on Economic, Social and Cultural Rights, the UN Committee on Economic, Social and Cultural Rights noted with concern the limited effectiveness of the Labour Inspectorate.⁶⁰⁹

A survey conducted by the Centre for Democracy Foundation's⁶¹⁰ shows that the problems labour inspectors face in their work most often regard: (1) antedated employment contracts (87% of the polled inspectors); (2) absence of employment

607 Labour Act Implementation Guide, Paragraf Lex, pp. 103–104.

608 2014 Serbia Progress Report, p. 36, available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

609 Concluding Observations on the Second Periodic Report of Serbia, UN Committee on Economic, Social and Cultural Rights, E/C.12/SRB/CO/2, available at <http://www.refworld.org/type/CONCLOSURES/53fdbbb64,0.html>.

610 Centre for Democracy Foundation, "Towards More Efficient Prevention of Undeclared Work and Shadow Economy", available in Serbian at <http://www.centaronline.org/en/publications/>.

contracts in the premises where the workers are working (82% of the polled inspectors); (3) lack of employment contract records (68%); (4) inefficient follow-up by other institutions to which they report undeclared workers (37%); (5) the employers' or the relevant company officers' attempts to avoid responding to the inspectors' requests or provide them with insight in the requested documents (26%); (6) the employers' unfamiliarity with the regulations and their obligations (18%); (7) lack of a database on performed oversights and undertaken measures (16%); inadequate fines and penal policy (16% of the polled inspectors). The problems regarding the Inspectorate's limited efficiency have been recognised also by the Serbian citizens – nearly 40% list inefficiency, corruption and unequal treatment as the chief problems in the work of the labour inspectors.

Labour inspectors performed 18,993 checks in the May-September 2014 period and issued 3,752 rulings requiring the elimination of the shortcomings they found and 176 rulings prohibiting work at the workplaces. In this period, they filed 1,545 motions to initiate misdemeanour proceedings against the companies (8.13% of the oversights performed in this period) and 13 criminal reports. Rotations of labour inspectors are frequent when they are performing intensive oversights and they often conduct checks of companies outside the territory in which the labour inspectorate offices they work in are headquartered. According to the above-mentioned survey of labour inspectors, the Labour Inspectorate departments, sections and groups are not under the obligation to communicate or exchange information among themselves. Another factor undermining the labour inspectors' efficiency is the lack of a separate Labour Inspectorate website on which various documents, instructions, guidelines and other information would be published. Such a website would considerably facilitate the inspectors' work and provide information about the employers' obligations, the workers' rights and the role, powers, planned and implemented activities and results of the inspectors' checks to the employers, workers and the general public. Targeted campaigns raising awareness of the Labour Inspectorate's work in suppressing undeclared work are not implemented either.⁶¹¹

14. Right to Just and Favourable Conditions of Work

14.1. Fair Wages and Equal Remuneration for Work

14.1.1. Minimum wages. – 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).

611 *Ibid.*, p. 28.

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 in 2014 failed to reach the consensus requisite for a decision on the amount of the minimum wage in the Republic of Serbia, wherefore the decision was reached by the Government, as provided for by the Labour Act. The Confederation of Autonomous Trade Unions of Serbia and the Trade Union Confederation *Nezavisnost* demanded that labour cost be set at 137.9 RSD per hour, while the Employers Union and Government were of the view that it should remain at 115.00 RSD net per hour.⁶¹² The Government set the minimum cost of labour in Serbia in 2015 at 121 RSD per hour, excluding taxes and mandatory social insurance contributions. This decision applies as of 1 January 2015 and has resulted in an increase of the minimum wage by 5.2 percent, to 28,430.50 RSD per month (gross).⁶¹³ The cost of labour was last changed in April 2012, when it was raised from 112 to 115 RSD per hour.

The amendments to the Labour Act changed the way the minimum cost of labour is calculated – it is now set per hour, does not include taxes and contributions, for the following calendar year, by 15 September of the current year at the latest, and it applies as of 1 January of the following year. This may result in the considerable depreciation of its value even if the amount set was realistic at the time the decision was taken, due to expected inflation and other elements factored in its calculation (including the consumer price growth rate, changes in the dinar's exchange rate, average wage trends). The amendments to the Act make no mention of the abuse of the minimum wage by the employers, who pay minimum wages even for jobs obviously worth much more.⁶¹⁴

612 Social-Economic Council, available in Serbian at <http://www.socijalnoekonomskisavet.rs/2014.htm>.

613 “Minimum Wage Increased”, *RTS*, 29 September 2014, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/13/Ekonomija/1709134/Pove%C4%87ana+minimalna+cena+rada.html>.

614 M. Reljanović, “Why Employers Believe in Santa Claus”, *Peščanik*, 5 July 2014, available in Serbian at: <http://pescanik.net/zasto-poslodavci-veruju-u-deda-mraza/>.

In its review of Serbia's Second Periodic Report⁶¹⁵, the UN Committee on Economic, Social and Cultural Rights noted with concern the way the minimum wage was established without taking into account the cost of living or the views of the social partners and without regular review and recommended to the state to take measures to ensure that the level of the minimum wage provides all workers and their families with an adequate standard of living.

14.1.2. Overtime work. – Under the latest amendments to the Labour Act, a worker is under the obligation to work overtime in the event of a *force majeure*, an unexpected increase in the volume of work and in other instances when it is necessary to complete unplanned work (Art. 54). Under the amendments, overtime work may not exceed eight hours a week and workers may not work more than 12 hours a day, including overtime (paragraphs 2 and 3) The law now also prohibits ordering workers with shorter working hours to work overtime, unless otherwise provided for by another law (paragraph 4). This provision was introduced to make sure that the purpose of shorter working hours of workers performing particularly difficult, strenuous and hazardous jobs is achieved. In addition to the prior prohibitions of overtime for specific categories of workers, the law now also prohibits overtime work of breast-feeding workers if that would be detrimental to their health and the health of their children (Art. 90).

Employers in Serbia often abuse the option of rescheduling working hours provided for by the Labour Act and do not qualify their workers' work after hours as overtime, but rather as rescheduling their working hours. Under the Act, working hours may be rescheduled as long as the workers' total working hours during a six-month period do not on average exceed their working hours under their employment contracts (Art. 57). Workers, whose working hours have been rescheduled, may not seek payment for overtime because they worked longer. Employers in practice often neglect the fact that the rescheduling of working hours is limited in terms of hours and time and workers often end up working more than 60 hours a week, even when the average number of rescheduled hours during a six-month period in one calendar year exceeds 40 hours a week. Employers often disregard the working hours laid down in the employment contracts and issue oral orders to their workers to work overtime. Employers either do not keep records of overtime or keep in-house records, which can be adjusted to conform with the legal regulations if need be. For instance, the working hours in some companies are from 08:00 to 17:00, i.e. 45 hours a week. Other companies insist that their workers work full time on Saturdays as well, although the employment contracts stipulate five-day and 40-hour working weeks, while the wages in the contracts are set for five-day working weeks.⁶¹⁶

615 Concluding Observations on the Second Periodic Report of Serbia, UN Committee on Economic, Cultural and Social Rights, E/C.12/SRB/CO/2, available at <http://www.refworld.org/type,CONC/OBSERVATIONS,,,53fdbbb64,0.html>.

616 M. Stojanović, "Timetable, Rescheduling of Working Hours and Overtime", available in Serbian at: http://www.paragraf.rs/100pitanja/posao/radno_vreme_zakon_o_radu.html.

Although workers are entitled to complain about such abuses to the competent inspectorate or seek protection in court, the inspectors have a very hard time establishing the actual situation and the workers have trouble proving in court that they had worked overtime and are entitled to be paid for it.

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 12 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).

14.1.3. Wage Cuts. – The state budget was revised in the autumn of 2014 and the National Assembly adopted two laws temporarily slashing pensions and public sector salaries.⁶¹⁷ Pensions above 25,000 RSD were cut by 22%, while public sector wages were linearly cut by 10%. The laws came into force in November 2014 and will apply until the end of 2017. Full-time workers with net wages under 25,000 RSD are not affected. Workers, whose net wages would fall below 25,000 RSD if they were cut, are paid 25,000 RSD. The wages of part-time workers are set in proportion to their working hours and their reduction is commensurate to the cut of the wages they would suffer if they worked full time in the given month.

The Government explained its austerity measures by the need to ensure stability of public finance, primarily to return Serbia to sustainable fiscal deficit levels and a falling debt-to-GDP path, and, thus, macroeconomic stability. Experts have, however, expressed serious doubts and concerns that these measures will not be effective per se, unless they are accompanied by additional measures, above all, the reform of the state administration and public companies and their downsizing.

14.1.4. Non-Payment of Salaries and Contributions. – Under the law, employers must pay wages to their workers within one month from the month they earned them at the latest, but many employers pay their workers neither their salaries nor the contributions. Under the amendments to the Labour Act, the statements of account of earnings, and/or compensations of earnings the employers are under the obligation to pay and hand over to their workers shall constitute enforceable instruments (Art. 121(5)). This provision may facilitate the position of unpaid workers, because the courts can order the garnishment of the unpaid earnings from the company accounts and their payment to the workers. This is, however, possible only if there is money in the company accounts; otherwise, the companies go bankrupt and the workers have to wait to be paid out of the bankruptcy estate.

It remains unknown how many workers in Serbia are not paid regularly. According to the Director of the Employers Union, only 21.8% of the private companies regularly pay their workers for the preceding month on the 1st day of the fol-

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

lowing month. Around 39% pay the salaries within 60 days and the remaining 39% pay them out with delays exceeding 60 days.⁶¹⁸

The 2013 amendments to the Pension and Disability Insurance Act⁶¹⁹ brought even more uncertainty in the field of workers' rights. The amendments 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 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.

In his reaction 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 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.⁶²⁰

The amendments to the Pension and Disability Insurance Act⁶²¹ adopted in July 2014 provide a better definition of insured farmers after the prior definition proved inapplicable. Namely, all members of agricultural households were originally considered insured farmers and had to pay pension and disability insurance, which families working small plots of land were unable to cover from their income. Some farmers ended up owing huge amounts of money to the state and risked losing their homes and land because they had not been paying all the pension and disability insurance contributions.⁶²²

The amendments reduce the households' financial obligations since now only the head of an agricultural household and the head of a family farm, i.e. at least one

618 "Law Does Not Guarantee Regular Salaries", *Politika*, 5 July 2014, available in Serbian at: http://www.politika.rs/rubrike/Ekonomija/Zakon-ne_garantuje-redovnu-platu.lt.html.

619 Pension and Disability Insurance Act, *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.

620 Protector of Citizens statement to *Politika*, 16 June 2013.

621 *Sl. glasnik RS*, 75/14.

622 "Farmers Owe Plenty for Pension and Social Insurance", *RTV Vojvodina*, 4 July 2014, available in Serbian at: http://www.rtv.rs/sr_lat/vojvodina/subotica/poljoprivrednici-mnogo-duguju-zapenziono-i-socijalno_500429.html.

member of the agricultural household, family farm or mixed household has to pay farmer pension and disability insurance, while the other members of the household may be insured pursuant to the law.

14.2. 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. 51). 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 Economic and Social Committee, which considers that a working week exceeding 60 hours under certain conditions is unreasonable.⁶²³

The Act Amending the Labour Act introduced a new definition of working hours: “Working hours shall denote the time during which the workers are under the obligation to perform the tasks in accordance with the instructions of their employers or during which they are at the disposal of their employers to perform those tasks”.⁶²⁴ Working hours, therefore, do not comprise only the time workers spend at work but also the time they are *at the disposal of their* employers to perform the tasks in accordance with their employers’ instructions. Under Article 50(4) of the Labour Act, “the stand-by period and remuneration for it shall be regulated by law, a general enactment or an employment contract”.

Given that the law does not specify what *disposal* entails, there are fears that employers might stipulate in the employment contracts or their general enactments that the workers be at their disposal at times when they are not at their workplaces. This might be used as grounds for dismissing workers who violated their employment contracts or other company general enactments (which constitute grounds for dismissal) by not being at their employers’ *disposal*.⁶²⁵

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

623 Conclusions XIV-2, *The Netherlands*, pp. 535–536.

624 S. Mandić, “Long Live Labour”, *Peščanik*, 24 July 2014, available in Serbian at: <http://pescanik.net/da-nam-zivi-rad/>.

625 *Ibid.*

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.⁶²⁶ Under Article 108 of the Labour Act, an employee shall be entitled to an increase in pay for work during a public holiday amounting to a minimum 110% of the wage base.

14.3. Occupational Safety and Health

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 Health⁶²⁷ and Convention No. 167 on Safety and Health in Construction.⁶²⁸ The ESC specifically guarantees the right to safe and healthy working conditions in Article 3.⁶²⁹ The ratification and effective implementation of the ILO Convention No. 167 is very important given the many accidents experienced by construction workers in Serbia.⁶³⁰

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. The Government of the Republic of Serbia adopted a new Occupational Safety and Health Strategy for the 2013–2017 Period.⁶³¹ The Action Plan for the Implementation of the Strategy was adopted in July 2014.⁶³²

The amendments to the Labour Act brought no changes in this field. 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 care 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

626 *Conclusions XVIII–I*, Croatia, p. 116.

627 *Sl. glasnik RS (Međunarodni ugovori)*, 42/09.

628 *Ibid.*

629 More in *Digest of the Case Law of the European Committee of Social Rights*, pp. 35–43.

630 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.

631 More in the *2013 Report*, I.15.3.

632 The Action Plan is available in Serbian at http://www.minrzs.gov.rs/files/doc/bezbednost/Akcioni_plan_za_sprovedjenje_Strategije_bezbednosti_i_zdravlja_na_radu_RS_2013_2017.pdf.

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 Act⁶³³ 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 health at work: the Labour Act, the Health Care Act⁶³⁴, the Health Insurance Act⁶³⁵, the Pension and Disability Insurance Act⁶³⁶, etc. The legislative framework of the system of health and safety at work has been completed by the adoption of the requisite by-laws.⁶³⁷

In its 2014 Serbia Progress Report, the European Commission noted that work on amending the Law on Health and Safety at Work was well advanced, that the new strategy on health and safety at work for 2013–2017 was adopted in November 2013 and the accompanying action plan for 2014 was adopted in July. It further observed that the register of injuries at work was still under construction and depended on the adoption of the Law on Registers.⁶³⁸

The UN Committee on Economic, Social and Cultural Rights noted with concern the limited effectiveness of the Labour Inspectorate, in particular in preventing occupational accidents and diseases. It recommended that Serbia empower the Labour Inspectorate to help employers prevent occupational accidents and disease.⁶³⁹

The ILO Decent Work Country Programme Document 2013–2017 for Serbia noted that promotion of safe and healthy workplaces was a global agenda and that Serbia was not an exception. It observed that there has been a decreasing trend of occupational diseases in the past decade, but that the number of work accidents has remained at almost the same level. The total number of recorded occupational accidents in 2012 was around 16,682, of which 1,991 were serious accidents and 26 were fatal.⁶⁴⁰ Analyses of work accidents have to take into account that only data

633 *Sl. glasnik RS*, 101/05.

634 *Sl. glasnik RS*, 107/05, 88/10, 99/10 and 57/11.

635 *Sl. glasnik RS*, 107/05, 109/05 and 57/11.

636 *Sl. glasnik RS*, 34/03, 64/04, 84/04, 85/05, 5/09, 107/09 and 101/10.

637 Portal Quality, Occupational Safety and Health, http://kvalitet.org.rs/index.php?option=com_content&view=article&id=166&Itemid=82.

638 *2014 Serbia Progress Report*, p. 42, available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

639 Concluding Observations on the Second Periodic Report of Serbia, UN Committee on Economic, Cultural and Social Rights, E/C.12/SRB/CO/2, paragraph 19, available at <http://www.refworld.org/type,CONCOBSERVATIONS,,53fdbbb64,0.html>.

640 The 2012 Labour Inspectorate Annual Report is the latest report in the public domain, see <http://www.minrzs.gov.rs/lat/dokumenti/inspekcija-rada/izvestaji-o-radu>.

on reported cases are available and that they probably account for only a fraction of the actual cases.

“The most important component of the occupational safety and health system that is currently being reviewed by the institutions of the Republic of Serbia and their social partners is the employment injury benefits system. To harmonize Serbia’s overall OSH legislation with the EU *Acquis Communautaire*, the ILO has been assisting its Serbian constituents in developing the most suitable policy option for insurance against occupational injuries and diseases.

“Another important item that makes all analysis of the system and all new policy making complicated is the lack of a unified registry of occupational injuries and diseases, which is due to be addressed by the OSH institutions of the Republic of Serbia in the near future,” the ILO said in its Programme Document.

According to the Occupational Safety and Health Act⁶⁴¹ 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). The Act also prescribes penalties for violating the provisions of the Act or the relevant norms, standards, regulations and directives.

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.

14.4. 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),⁶⁴² ILO Convention No. 98 Concerning the Application of the Prin-

641 *Sl. glasnik RS*, 101/05.

642 *Sl. novine Kraljevine Jugoslavije*, 44–XVI/30.

ciples of the Right to Organise and to Bargain Collectively⁶⁴³ and ILO Convention No. 135 Concerning Workers' Representatives. Article 5 of the Revised European Social Charter⁶⁴⁴, 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, labour-related, economic, social, cultural and other individual and collective interests (Art. 6). Article 206 of the Act guarantees workers the freedom of organising in trade unions. Trade unions shall be established by entry in a register and do not require prior consent. The register shall be kept by the ministry charged with labour affairs. The trade union registration procedure is governed by the Rulebook on the Registration of Trade Unions.⁶⁴⁵ 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)⁶⁴⁶. Under the Act on Associations, only the Constitutional Court may render a decision to ban any association (Art. 50(1)).⁶⁴⁷

In its Concluding Observations on Serbia's Second Periodic Report, the UN Committee on Economic, Social and Cultural Rights expressed its concern at the low level of enjoyment by employees in the private sector of their right to form or join trade unions and at the excessive restrictions on the right to strike for public sector employees even if they do not provide "essential services". The Committee urged Serbia to ensure to the employees in both the private and public sectors the effective enjoyment of the right to freely form and join trade unions, as well as the right to strike. While noting the draft law on strikes of 2013, the Committee recom-

643 *Sl. list FNRJ (Addendum)*, 11/58.

644 *Sl. glasnik RS*, 42/09.

645 *Sl. glasnik RS*, 50/05 and 10/10.

646 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.

647 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.

mended that Serbia limit the prohibition against striking for public sector employees by narrowing the definition of “essential services” so that it complies with the Covenant and relevant International Labour Organization standards.⁶⁴⁸

14.5. 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 Act⁶⁴⁹ 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)).⁶⁵⁰

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 but was not submitted for adoption to parliament in 2014.⁶⁵¹

The year behind us was characterised by a large number of strikes: by lawyers, teachers, policemen and health workers. Workers of unsuccessfully privatised companies and companies undergoing restructuring staged strikes as well. The Priboj Car Seat Plant workers went on strike demanding they be paid their minimum wages, the extension of their health insurance and that they be given work.⁶⁵² Kraljevo Railcar Plant workers went on strike demanding the payment of 20 overdue salaries and the extension of their health insurance.⁶⁵³ The Belgrade-Mladenovac road was blocked by the workers of the ceramic plant in Mladenovac, who

648 Concluding Observations on the Second Periodic Report of Serbia, UN Committee on Economic, Cultural and Social Rights, E/C.12/SRB/CO/2, paragraph 21, available at <http://www.refworld.org/type,CONCOBSERVATIONS,,,53fdbbb64,0.html>.

649 *Sl. list SRJ*, 29/96 and *Sl. glasnik RS*, 101/05 – dr. zakon i 103/12 – odluka US.

650 More on the right to strike in the *2011 Report*, I.4.17.4.3.

651 More on the Draft Strike Act in the *2011 Report*, I.4.17.4.3 and the *2013 Report*, II.15.5.

652 “Strike in Car Seat Plant in Priboj”, *RTS*, 3 March 2014, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1537010/%C5%A0trajk+u+fabrici+sedi%C5%A1ta+u+Priboju.html>.

653 “Kraljevo, Strike in Railcar Plant Continues”, *RTS*, 17 January 2014, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1497956/Kraljevo,+nastavak+%C5%A1trajka+u+fabrici+vagona.html>.

had not been paid for twenty months.⁶⁵⁴ The workers of the company 24 September blocked the Užice road to Mt. Zlatibor in protest over the non-payment of 28 salaries and the merger of the company with the Electricity Company of Serbia.⁶⁵⁵ Workers of the textile plant Jumko went on strike over salary arrears and demanded the extension of their health insurance.⁶⁵⁶

Some of these strikes, such as the ones staged by the lawyers⁶⁵⁷ and teachers, brought to light the exceptional resolve and unity of the protesters, which the trade unions had not succeeded in mustering in the past.

Teachers' Strike. – The months-long teachers' strike undermined the already fragile stability of the education system and public trust in it. The need to improve the education system and the status of pupils and teaching staff has been talked about for years, but the authorities have failed to address this issue in a comprehensive and serious manner. Sporadic measures to improve the material status of teachers, the school curricula and the conditions in schools have not yielded satisfactory results. The financial status of teachers is a serious problem; teachers' salaries are lower than the average national wage and the lowest in the region. They can hardly be expected to introduce new systems and education methods modernising education to respond to contemporary needs given their status and the conditions in which they work.

The teachers launched their strike in October 2014 and it was ongoing at the end of the reporting period. The teachers' trade unions demanded that school staff be exempted from the 10% public sector salary cuts, that a deadline by which a law on public sector salary grades be set and that they sign a separate collective agreement. The Ministry of Education, Science and Technological Development did not fulfil the teachers' demands and the strike continued into 2015. The strike, led by several trade unions, the Serbian School Staff Trade Union, the Union of School Staff Trade Unions, the Serbian Education Trade Union and Nezavisnost, primarily entailed cutting the length of classes from 45 to 30 minutes.

The Ministry of Education, Science and Technological Development had no understanding for the trade unions' demands and remained adamant that there was no money in the budget allowing the exemption of teachers from the wage cuts.⁶⁵⁸

654 "Keramika's Workers: We won't let them take our mine", *B92*, 28 February 2014, available in Serbian at http://www.b92.net/biz/vesti/srbija.php?yyyy=2014&mm=02&dd=28&nav_id=817803.

655 "Strike in Užice company 24 September: They are shutting our company down to seize our land on Mt. Zlatibor", *Blic*, 18 February 2014, available in Serbian at <http://www.blic.rs/Vesti/Ekonomija/443624/Strajk-u-uzickom-24-septembra-Gase-nam-firmu-da-bi-nam-oteli-plac-na-Zlatiboru>.

656 "250 Jumko Workers Staging Strike in Belgrade", *Blic*, 22 September 2014, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/496892/U-Beogradu-strajkuje-250-radnika-Jumka>.

657 More on the lawyers' strike at III.5.4.3.

658 "Teachers' Strike on 22 December, Ministry: Unlawful Decision", *Tanjug*, 22 December 2014, <http://www.tanjug.rs/novosti/157016/strajk-prosvete-22-decembra--ministarstvo--odluka-nezakonita.htm>.

Finance Minister Dušan Vujović also commented on the teachers' strike. He said that the teachers' working hours were short anyway and that they had enough time to work on the side. Apart from being insulting, such a view also displays disregard of the specificities of the teaching profession and the fact that teachers are one of the few categories of public sector staff whose salaries depend on the number of classes they hold. .

The strike brought into question the pupils' completion of the autumn semester⁶⁵⁹ and the talks continued in January 2015. The teachers demand strong guarantees from the Ministry that they will be compensated for the cut wages, i.e. that each of them is paid an additional 15,000 RSD during the year, or they will continue holding 30-minute classes. They also claim that it is untrue that 95% of the education budget allocation is spent on their salaries and want to be included in a working group and have full insight in the finances, because they believe that savings can be made elsewhere, without cutting their wages.⁶⁶⁰

Public sector staff strikes have, unfortunately, received more public attention than the strikes of workers, who have been fighting for their rights for decades. Lack of social dialogue is apparently one of the chief reasons for strikes in Serbia, as the teachers' and lawyers' strikes demonstrate: talks with the Government were slow, marked by continuous recriminations and the Government's lack of readiness to accept some reasonable suggestions made by the protesters.

15. Right to Social Security

15.1. General

Under Article 69 of the Constitution, citizens and families in need of welfare to overcome their social and existential difficulties and begin providing subsistence for themselves shall be entitled to social protection, the provision of which shall be based on the principles of social justice, humanity and respect for human dignity. In its Opinion on the Constitution of Serbia, the Venice Commission commented that social protection was not granted generally but only to citizens and families by the Constitution.⁶⁶¹

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

659 "Report Cards Will Not Be Issued in Absence of Agreement", *B92*, 12 December 2014, http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=12&dd=10&nav_id=934583.

660 "Talks with Teachers Fail Again", *Večernje novosti*, 23 January 2015, <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:530312-Pregovori-sa-prosvetarima-opet-propali>.

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

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 Act⁶⁶² and the Act on Voluntary Pension Funds and Pension Plans.⁶⁶³ Compulsory insurance encompasses all employees, individual entrepreneurs and farmers. This insurance ensures the rights of the insured persons in old age, or in the event of disability, death or corporal injury caused by a work-related accident or occupational disease.

The 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 another 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 Act⁶⁶⁴ lay down stricter retirement requirements and envisage a gradual increase of the retirement ages of men and women until 2023.⁶⁶⁵

The Serbian Assembly adopted amendments to the Pension and Disability Insurance Act in July 2014⁶⁶⁶ envisaging cuts of pensions of people taking early retirement and gradually increasing the retirement age for women to equate it with that for men (65) by 2032.

People are eligible for early retirement if they have at least 40 years of service and are at least sixty years old. The age and service length early retirement requirements will gradually increase by six months for men and by eight months for women per annum until 2023 (for men) and 2024 (for women). Furthermore, the early retirees' pensions will be 0.34% lower per month of early retirement, 20.4% at most. The same transitional period applies to the reduction of early retirement pensions, that is, the age limit for women workers will increase gradually from 2015 to 2032.

662 *Sl. glasnik RS*, 34/03, 64/04, 84/04, 85/05, 5/09, 107/09 and 101/10.

663 *Sl. glasnik RS*, 85/05 and 31/11.

664 *Sl. glasnik RS*, 101/10.

665 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/>.

666 *Sl. glasnik RS*, 75/14.

Workers eligible for early retirement under the reduced years of service criterion because of the work they do now have to have spent at least two-thirds of their pensionable service at such jobs. For some categories (MIA, BIA, police, army et al), these jobs cannot include administrative and technical jobs, only jobs that are extremely difficult, dangerous or hazardous to health, jobs limited by the age of those performing them or the character and difficulties they entail, where the physiological functions deteriorate to a degree precluding their further successful performance.

In its 2014 Serbia Progress Report, the European Commission noted that the pension fund deficit remained large and that more than 40% of the revenues of the pension fund came from the budget. The EC observed that budget transfers to pay pensions continued to be the largest single item on the expenditure side and that some 14% of GDP was spent on pensions in 2013.⁶⁶⁷

The Social Protection Act⁶⁶⁸ 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, domiciliary care and assistance 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.

The Act lists the forms of material support, including, among others, domiciliary care and assistance allowances and increased domiciliary care and assistance 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.⁶⁶⁹ The Chamber has the remit to licence social protection profes-

667 *Serbia 2014 Progress Report*, p. 38, available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

668 *Sl. glasnik RS*, 24/11.

669 More about the Social Protection Chamber in Serbian at http://www.komorasz.rs/O_nama.html.

sionals, 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 EC noted that, according to preliminary data from the first survey on income and living conditions, the at-risk-of-poverty rate in Serbia stood at 24.6%. It said that a national mechanism ensuring reliable, adequate and timely data on the social situation needed to be developed, that the availability of community-based services across the country remained limited and that the efficiency of the licensing process for social services providers introduced by the 2011 Social Protection Act were being discussed.⁶⁷⁰

15.2. 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 fulfil the obligations regarding the full protection of children and young people (Art. 7) and the right of employed women to protection of maternity by defining the legal minimum obligations of employers towards pregnant women (Art. 8). Furthermore, it undertook to promote the economic, legal and social protection of family life by such means as social and family benefits (Art. 16) and to take measures to ensure the protection of children and young people from negligence and violence, provide them with free education and provide special aid to young people deprived of their family's support (Art. 17).

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.

⁶⁷⁰ *Serbia 2014 Progress Report*, p. 37, available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

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.⁶⁷¹

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. 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).

Under the Act on Financial Support to Families with Children,⁶⁷² 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 Belgrade City Administration in April 2014 issued a press release saying that the employed and unemployed young mothers would continue receiving financial aid from the city budget but that the amounts would have to be cut.⁶⁷³ Under the new City decision on additional forms of protection of young mothers in the territory of the City of Belgrade⁶⁷⁴, women on maternity leave have since 25 April 2014 been receiving 10,000 RSD and unemployed young mothers 20,000 RSD a month.

The City Administration press release also said that the Social Protection Secretariat and professional departments revised the prior City of Belgrade decision and set new amounts of financial aid to the beneficiaries. A young mother is entitled to one-off financial aid provided she files an application and attaches her baby's

671 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.

672 *Sl. glasnik RS*, 16/02, 115/05 and 107/09.

673 Statement available in Serbian at <http://www.beograd.rs/cms/view.php?id=1599037>.

674 *Sl. list grada Beograda*, 36/14.

birth certificate, excerpt from the Pension and Disability Insurance Fund register, marriage certificate, ID of her spouse or civil partner, residence registration for her underage child dependant(s) and records of household income paid in the previous three months.

The authorities justified the submission of so many documents together with the application for financial aid by the need to establish the social status of the applicants more adequately and to distribute the limited funding more equitably and fairly.⁶⁷⁵

Given the particular vulnerability of financial aid beneficiaries, such small aid, especially for the unemployed, cannot provide the young mothers and their families with an adequate living standard, which is the primary purpose of this type of support.

16. Right to Education

16.1. General

Under the Constitution, everyone shall have the right to education. Article 71 sets out that primary and secondary education shall be free of charge. In addition, primary education shall be mandatory. Under the Constitution, all citizens shall have equal access to tertiary education; the state shall provide free tertiary education to successful and talented students, who are unable to pay the tuition, in accordance with the law.

In mid-2012, the Government of the Republic of Serbia adopted the Education Development Strategy until 2020⁶⁷⁶. The Strategy focuses on improving the quality, fairness and efficiency of the education system. It, *inter alia*, defines the measures for preventing dropping out, defines the education policy reflecting the labour market demands and envisages comprehensive support for inclusive education and inclusion of children from marginalised groups. The Strategy, however, has some shortcomings, including the failure to address human rights and rights of the child education, although it was drafted after the UN Committee on the Rights of the Child recommended that these rights be incorporated in the school curricula.

This topic was not incorporated in the mainstream school curricula in 2014 either, wherefore education on the rights of the child is still not available to all children. Elements of human and child rights education are included within the subject called Civic Education, which is elective and thus not attended by all pupils (pupils

⁶⁷⁵ *Ibid.*

⁶⁷⁶ *Sl. glasnik RS*, 107/12. The Strategy is available in Serbian at <http://www.mpn.gov.rs/prosveta/page.php?page=307>.

can choose between Civic Education and Religion). On the other hand, Civic Education classes are held only once a week in all primary and secondary school levels, which is insufficient; furthermore, these classes are often cancelled. They are taught by teachers qualified to teach other subjects, who undergo brief training insufficient to ensure quality teaching of civic education content. There are no teachers specialising in civic education in Serbia, which creates a systemic obstacle to introducing education in the rights of the child in the mainstream school curricula.

Like most strategies, the Education Development Strategy is rife with plans and important goals but does not provide a clear picture of their feasibility. The Ministry of Education in 2014 prepared Action Plans for the Implementation of the Education Development Strategy laying down in detail the actions to be implemented in kindergartens, schools and tertiary educational institutions and their timeframes. According to the members of the National Education Council, the poorly designed financial framework is the main shortcoming of the Plans, as they fail to specify the funding needed to implement most of the activities.⁶⁷⁷

According to the Serbian 2013–2018 Anti-Corruption Strategy,⁶⁷⁸ risks of corruption identified in the education sector are mostly associated with the insufficient transparency of a number of processes taking place within educational institutions, as well as with great discretionary powers of the decision makers.⁶⁷⁹ Risks of corruption are particularly related to discretionary powers of school principals in terms of employing staff, public procurement procedures, organisation of school trips, renting of school facilities, etc. The absence of effective control represents a great problem because mechanisms for responding to different types of irregularities do not exist. The lack of control is also connected to the problems with the education inspection, whose work and decisions may be influenced by the ministry in charge of education.

The Action Plan for the Implementation of the Anti-Corruption Strategy recognises the need to change the legal framework for the appointment, status and powers of primary and secondary school principals and college deans. It sets out the following steps: the analysis of the laws in terms of corruption risks and introduction into the Act on the Bases of the Education System and the Higher Education Act the legal obligation to appoint and periodically evaluate the work and performance of school principals, college deans and teaching staff in all educational institutions pursuant to objective, clear, precise and predetermined criteria. The Action Plan particularly notes that the laws should include provisions, *inter alia*, limiting the discretionary powers of the principals, deans and teaching staff and that their discretionary decisions must be reasoned and transparent.

677 “Strategic Changes in Education Start This Month”, *Politika*, 2 February 2014, available in Serbian at: <http://www.politika.rs/rubrike/Drustvo/Od-ovog-meseca-strateske-promene-u-obrazovanju.lt.html>.

678 *Sl. glasnik RS*, 9/10.

679 “National Anti-Corruption Strategy”, p. 15, available in Serbian at: http://www.acas.rs/images/stories/Nacionalna_strategija_zabornubuprotiv_korupcije.pdf.

The OECD 2012 Report “Strengthening Integrity and Fighting Corruption in Education – Serbia”⁶⁸⁰ observes that it is essential to make internal university rules and regulations clear to the students, to implement them in a fair and transparent manner and to ensure that academic merits of students, and not favouritism, are a guiding principle for grading. The normative framework in the Republic of Serbia is apparently not fully capable of providing transparent operation of schools and use of privately raised funds. It does not determine what sources of school revenues are permitted, and financial control of school revenues is not strong enough to adequately control the amount of inflow of private funds into the system.

According to the Anti-Corruption Agency’s Report on Integrity Self-Evaluations by Public Authorities in the Republic of Serbia, the greatest risk to the integrity of the education system lies in the field of ethics and personal integrity.⁶⁸¹ Failure to designate staff charged with/responsible for keeping records of gifts to senior officials and staff was recognised by all institutions as the most widespread risk in the field of ethics and personal integrity.

In its 2014 Serbia Progress Report,⁶⁸² the European Commission said that quality assurance in primary and secondary education has been improving but that the action plan to implement the strategy for the development of education up to 2020 has not yet been adopted. The EC noted that little progress had been made in the reform of the VET system, which currently did not match labour market needs and the need to rationalise the number of VET schools and mainstream more of the new, more labour market-relevant, VET pilot profiles. The EC also warned that the lack of an efficient system for recognition of diplomas represented a serious impediment to graduates for further schooling and employment. It observed that a new law on higher education, adopted in September, regulated accreditation issues, access of EU citizens to higher education, recognition of foreign diplomas, measures to improve transparency in the system and established a registry of PhD theses, thus increasing transparency in the attainment of the highest university degrees in the country.

16.2. Education Law and Its Implementation in Practice

The Act on the Bases of the Education System⁶⁸³ provides for the non-segregated inclusion of children in education and continuous schooling, extends the duration of the mandatory and free Preschool Preparatory Programme from six to

680 The Report is available at http://www.keepeek.com/Digital-Asset-Management/oecd/education/strengthening-integrity-and-fighting-corruption-in-education_9789264179646-en#page5.

681 “Report on Integrity Self-Evaluations by Public Authorities in the Republic of Serbia, Integrity Plans”, Anti-Corruption Agency, Belgrade, March 2014, p. 146, available in Serbian at http://www.acas.rs/images/stories/plan_integriteta/PI_izvestaj.pdf.

682 See: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

683 *Sl. glasnik RS*, 72/09 and 52/11.

nine months, governs the inclusive education approach and envisages mechanisms to support the children and the teaching staff. When this law came into effect, the Republic of Serbia made the first steps towards improving access to education by providing a fairer enrolment policy ensuring greater inclusion of children with disabilities and marginalised groups in the education system. The law has thus specified the measures and instruments allowing the adjustment of the curricula to the individual children with disabilities and ensuring that they can learn and develop in an inclusive environment. However, despite the improved legal and institutional framework, the implementation of the law and oversight mechanisms are still problematic in practice.

The Ministry of Education, Science and Technological Development⁶⁸⁴ launched an analysis of all education laws in cooperation with various stakeholders, including the Anti-Corruption Agency. It formed a Coordination Group for improving the education normative framework that held a number of meetings throughout 2013 and 2014, at which it reviewed the systemic laws, the specific laws governing various levels of education and the Higher Education Act. The Anti-Corruption Agency issued recommendations that form the baseline for amending the education laws.⁶⁸⁵

The Ministry of Education, Science and Technology has formed working groups to draft amendments to two systemic laws: the Primary Education Act and the Secondary Education Act. The working groups will begin working once the amendments to the corollary education law, the Act on the Bases of the Education System, are completed. The latter amendments were, *inter alia*, initiated by the anti-corruption strategic documents.⁶⁸⁶

A public debate on the Draft Textbook Act opened in late 2014. Although the Draft is better than the valid Act, some of its provisions have to be improved to ensure the adequate participation of the expert public. Under the Draft, socially vulnerable pupils are entitled to free textbooks but the criteria for distributing the free textbooks every school-year remain to be specified. Furthermore, textbook publishers applying with their textbooks to the relevant institutions are under the obligation to attach statements confirming that they will publish the approved textbooks in the languages of the national minorities or adapt them to pupils with disabilities. However, if the provision on maximum prices also applies to textbooks with small circulations, a category most textbooks in minority languages and for pupils with disabilities fall under, there are fears that the publishers will be unable to assume the obligation to print specific textbooks, even if they may be the best ones. This may

684 Reply to a request for access to information of public importance Ref. No. 07-00-01211/2014-01 of 5 December 2014.

685 The Recommendations were adopted in February 2014 and are available in Serbian on the Anti-Corruption Agency website www.acas.rs.

686 The Reply by the Ministry of Education, Science and Technological Development, Ref. No. 07-00-01210/2014-01, of 9 December 2014.

result in undermining the rights of persons belonging to national minorities to education in their languages and in the discrimination of persons with disabilities.⁶⁸⁷

The Preschool Education Act⁶⁸⁸ gives priority to enrolment of children from vulnerable groups and provides for the implementation of separate, specialised and alternative programmes.

In early September 2014, the media reported that some local self-governments (Belgrade and several other cities) illegally charged kindergarten fees.⁶⁸⁹ The Ministry of Education, Science and Technological Development confirmed allegations that parents of children attending state kindergartens in a number of Serbian cities have for years been paying higher fees than prescribed by law. It has so far been established that Belgrade and Kragujevac violated the law; the parents in these cities paid 80 percent of the total fee, rather than just 20 percent, as laid down in Article 159 of the Act on the Bases of the Education System and Article 50 of the Preschool Education Act.

These laws had come into force in 2009 and 2010 respectively, wherefore it remains unclear why the state has not yet put an end to the arbitrariness of the local self-governments, which set the state kindergarten fees, the discounts for particular categories of the population and the amounts the parents have to pay disregarding any legal regulations. The two laws do not envisage penalties for disrespect of these provisions and the parents can only try to fight for their rights in court. What is even more concerning is the failure to act of the local self-governments, above all Belgrade, which has the greatest number of children attending kindergarten, and the weakness of the institutions, the competent Ministry of Education, to put an end to such illegal and wrongful actions by the City Child Protection Secretariat.

The Act on Pupil and Student Standards⁶⁹⁰ governs the rights related to pupil and student standards, the establishment of organisations and the work of pupil and student standard institutions. In 2010, the Government of Serbia established the Vocational and Adult Education Improvement Council, which is chaired by the Serbian Chamber of Commerce.⁶⁹¹

Education laws comprise provisions protecting groups and individuals from discrimination and protection from corporal punishment and verbal abuse of students. They thus reaffirm the provisions of the Convention on the Rights of the

687 The civil sector's comments of the Draft Textbook Act are available in Serbian at: <http://www.gradjanske.org/poziv-za-podrsku-komentarima-i-predlozima-izmena-zakona-o-udzbencima/>.

688 *Sl. glasnik RS*, 18/10.

689 More in Serbian at <http://www.politika.rs/rubrike/Drustvo/Visoke-cene-vrtica-nezakonite.lt.html>, <http://www.novosti.rs/vesti/beograd.74.html:516747-Grad-krsio-odluku-o-cenama-vrtica-od-1-januara-5000-dinara> and <http://www.roditelj.org/2014/10/24/roditelji-nezakonito-placaju-visu-cenu-vrtica/>.

690 *Ibid.*

691 "The First National Report on Social Inclusion and Poverty Reduction", March 2011, Government of the Republic of Serbia, p. 121.

Child related to non-discrimination, protection from abuse and school discipline in terms of the way it can be exercised (Arts. 2, 19(1) and 28(2), Convention on the Rights of the Child).⁶⁹² These prohibitions are supported by appropriate protection mechanisms and their breach constitutes the grounds for dismissal of teachers or associates from the teaching process (Art. 73 (1), Act on Primary Schools and Art. 80 (1), Act on Secondary Schools). These are also the grounds for dismissal of school principals who do not take appropriate action in cases of improper conduct of the teachers (Art. 88(3), Act on Secondary Schools), and penalties have also been prescribed for the school, which is obliged to pay a fine for the offence if it fails to take action against such conduct (Art. 109 (11 and 12), Act on Primary Schools and Art. 140 (1 and 2), Act on Secondary Schools).

16.3. Higher Education

The Constitution of Serbia explicitly guarantees the autonomy of the universities, colleges and scientific institutions (Art. 72). Under paragraph 2 of the Article, they shall decide freely on their organisation and work in accordance with the law. Article 73 of the Constitution also guarantees the freedom of scientific and artistic creation.

This area is regulated by the Higher Education Act.⁶⁹³ In its introductory provisions, the Act says that higher education is of special relevance to the Republic of Serbia and part of international, notably European education, science and arts (Art. 2). Higher education is based, *inter alia*, on the principles of academic freedoms, autonomy, respect of human rights and civil liberties, including prohibition of all forms of discrimination, participation of students in management and decision making, especially on issues of relevance to quality of instruction (Art. 4).

The amendments to the Higher Education Act adopted in September 2014⁶⁹⁴ introduced a number of changes. They change the procedure for recognising foreign diplomas and set shorter deadlines, with a view to facilitating and expediting the employment of graduates of foreign universities who want to come back to Serbia. Out of 144 countries on the Index in the World Economic Forum Global Competitiveness Report 2014–2015, Serbia ranked 141st with respect to its capacity to retain talent and 143rd as per its capacity to attract talent.⁶⁹⁵

The new provisions distinguish between recognition of foreign university diplomas for the purpose of employment in Serbia (professional recognition) and for

692 See *Campbell and Cosans v. the United Kingdom*, ECtHR, App. No. 7511/76 and 7743/76 (1982). Re corporal punishment of minors see also the case *Tyrer v. United Kingdom* ECmHR, App. No. 5856/72 (1978).

693 *Sl. glasnik RS*, 76/05, 100/07, 97/08 and 44/10.

694 *Sl. glasnik RS*, 99/14.

695 The Global Competitiveness Report 2014–2015 is available at <http://www3.weforum.org/docs/GCR2014-15/Serbia.pdf>. See also a comment “Captured (Boom) Mind”, *Peščanik*, 27 September 2014, available in Serbian at: <http://pescanik.net/zarobljeni-bum/>.

the purpose of continuing education in Serbia (academic recognition) (Art. 29). The latter remains within the jurisdiction of Serbian colleges and universities, which are under the obligation to render a ruling within 60 days from the day of application. The procedure for recognising foreign diplomas of graduates planning to work in Serbia has been transferred from the universities to the the Ministry of Education, specifically, the National Centre for the Recognition of Foreign Higher Education Documents, which must render a decision within 90 days from the day of application.

The amendments made a concession to students, who had enrolled in college before the Bologna system was introduced, extending the deadline by which they have to graduate to the end of the 2015/2016 school year (Art. 32). Under the Act, the tuition of students, who earned 48 or more ECTS credits during the previous school-year, shall be covered from the state budget. Students staged a series of protests after the adoption of the amendments, demanding more exam periods, one-year extension of the senior status for students whose tuition is funded from the budget and extension of the graduation deadline for students enrolled under the Bologna system.⁶⁹⁶ The most radical student protest erupted at the Belgrade College of Philosophy, which was blocked over six weeks.

The Act specifies in detail the procedure for accrediting and licencing higher education institutions. Accredited institutions are issued five-year licences and the Ministry is under the obligation to prohibit the work of those institutions that failed to apply for the extension of their accreditation within three days from the day of its expiry. The amendments introduce a 12-month deadline within which decisions on accreditation applications must be rendered; the prior provisions had not set any deadline, wherefore the procedure was prolonged and rendered meaningless. The National Council is entitled to revoke a decision of the Accreditation and Quality Assurance Commission and approve a study programme i.e. render a final decision in the second instance (Art. 4).

Although entitled to initiate *ad hoc* external checks of the quality of higher education institutions, the Accreditation Commission failed to react to public allegations of irregularities at the private Belgrade university Megatrend.⁶⁹⁷ It also failed to act on the request to forward Megatrend's accreditation documents with a view to establishing whether the non-existent international network of that university was mentioned in them. In other words, the Commission refused to provide access to information that would have facilitated the identification of any corruption in the licencing and accreditation of Megatrend.⁶⁹⁸

696 "No Agreement between Students and Education Ministry", *Danas*, 7 October 2014, available in Serbian at: http://www.danas.rs/danasrs/drustvo/studenti_i_ministarstvo_prosvete_bez_dogovora.55.html?news_id=290350#sthash.MgdAPyyD.dpuf.

697 "Megatrend's Potemkin Universities", *Deutsche Welle*, 13 June 2014, available in Serbian at: http://www.dw.de/megatrendovi-potemkinovi-univerziteti/a-17704655?maca=ser-serbian_all-2277-rdf.

698 "High Education without a Moral Compass", *Deutsche Welle*, 27 October 2014, available in Serbian at: <http://www.dw.de/visoko-%C5%A1kolstvo-srbije-bez-moralnog-kompasa/a-18022721>.

The amendments to the Act enable the adoption of the requisite minimum teaching staff appointment criteria. The Conference of Universities of Serbia and the Conference of Applied Studies Academies have been given a six-month deadline from the day the amendments came into force to propose the minimum appointment criteria to the National Council, which is then to set the minimum appointment requirements within three months. This will hopefully put an end to the years-long non-transparent promotion practices, as well as the practice of awarding the same titles to teachers with different qualifications or appointing to full tenures individuals who have not published even one single paper. This task will definitely befall the new members of the National High Education Council, given that the terms in office of the incumbent members expire at the end of the year and the members of KONUS – the Conference of Universities of Serbia (comprising representatives of all state and private universities) – are far from a compromise on the key appointment parameters.⁶⁹⁹ Media reports indicate that half of the full professors at Belgrade University have not published any papers.⁷⁰⁰

The new members of the National Council are to be appointed by the end of 2014 or in early 2015. The Council plays an important role, because it is charged with laying down the standards and controlling the quality of state and private higher education institutions in Serbia. Furthermore, this body is entrusted with developing the high education policy and proposing it to the competent ministry. The list of nominees for the Council, however, includes individuals with questionable CVs, some of whom do not fulfil the Council membership requirements.⁷⁰¹

Article 3 of the amendments aims at improving the quality of doctoral studies by stipulating that at least one member of the thesis committee must teach at a foreign university (Art. 3). The amendments also impose upon both the state and private universities the obligation to establish publicly available electronic repositories of doctoral theses and on the Ministry of Education to keep copies of the theses in its central repository (Art. 8). This provision may greatly contribute to the improvement of the quality of the scientific papers and knowledge sharing in Serbia. To date, doctoral theses have been kept in the libraries of the colleges where they were defended and in the university libraries, wherefore only two copies of them were available publicly, albeit only to the library members and during the library working hours. Needless to say that most of the theses were rarely perused and that access to the results of various researches was inadequate. This measure may also lead to an improvement in the quality of the doctoral theses, a number of

699 “Law Forcing Universities to Change”, *Danas*, 8 September 2014, available in Serbian at: http://www.danas.rs/danasrs/drustvo/zakon_tera_univerzitete_na_promene.55.html?news_id=288664#sthash.IEEogvCS.dpuf.

700 “Schools are High but Motives are Low”, *Peščanik*, 29 June 2014, available in Serbian at: <http://pescanik.net/skole-visoke-pobude-niske/>.

701 “High Education without a Moral Compass”, *Deutsche Welle*, 27 October 2014, available in Serbian at: <http://www.dw.de/visoko-%C5%A1kolstvo-srbije-bez-moralnog-kompasa/a-18022721>.

which are unfortunately under question, because all those interested in reading them will be able to access them more rapidly and efficiently.

In its opinion on assessed risks of corruption in the draft amendments to the Higher Education Act, the Anti-Corruption Agency noted that they did not include amendments to the provisions on the accreditation procedure and work of the Accreditation and Quality Assurance Commission. The Agency is of the view that the accreditation procedure and *post hoc* checks of whether higher education institutions fulfil the operation requirements should be regulated in a manner ensuring that they are based on clear, objective, transparent and pre-determined criteria.⁷⁰² The Ministry of Education, Science and Technological Development, on the other hand, observed in its reply that the setting of criteria and standards for accrediting (and checking) higher education institutions was within the sole competence of the National High Education Council, which adopted them, and the Accreditation Commission, which proposed them, and that the issue was not within the Ministry's remit. The Ministry also stated the view that the Accreditation Commission could be transformed into the National Accreditation Agency, which would operate as an independent highly professional institution.⁷⁰³

The issue of the quality of doctoral theses ranked high on the public agenda in Serbia in 2014, after media reported on the plagiarised theses by Interior Minister Nebojša Stefanović, Belgrade Mayor Siniša Mali and former senior Democratic Party official Aleksandar Šapić, and the false PhD title of Megatrend University Rector Mića Jovanović. The Minister of Education called on the latter to resign after it was indisputably established that he had not earned a PhD at the London School of Economics or a degree at the University of London.⁷⁰⁴

Megatrend University in late August 2014 formed a commission to check Nebojša Stefanović's thesis and found that it was undisputable and that there were no grounds to revoke his title.⁷⁰⁵ Those who criticised the thesis listed in detail what was wrong with it but the commission reviewing the dissertation failed to address these allegations.⁷⁰⁶ The commission rendered two conclusions: that the text that was allegedly plagiarised was not the same one defended by Stefanović and that it believed that the several formal shortcomings it found in the text must have

702 The Agency's opinion is available in Serbian at http://www.acas.rs/images/stories/Nacrt_zakona_o_visokom_obrazovanju_fin.pdf.

703 Information obtained during an in-depth interview with Mrs. Vesna Lukić, Ministry of Education Normative Affairs Department, 10 December 2014.

704 "Verbić: Mića Jovanović Did Not Earn a PhD in London", *Novi magazin*, 12 June 2014, available in Serbian at: <http://www.novimagazin.rs/vesti/ministarstvo-proverava-doktorat-mice-jovanovicia>, see also the *Peščanik* report of 7 June 2014 at <http://pescanik.net/rector-mica-baron-von-munchhausen-or-how-the-ministers-supervisor-misplaced-his-own-doctorate/>.

705 "Shameless Epilogue of the False Doctorate Scandals", *Radio Free Europe*, 20 October 2014, available in Serbian at <http://www.slobodnaevropa.org/content/most-sramni-epilog-afera-okolaznih-doktorata/26645785.html>.

706 Danica Popović, "Minister Stefanović's Beautiful Mind", *Politika*, 18 June 2014, available in Serbian at: <http://www.politika.rs/pogledi/Danica-Popovic/Blistavi-um-ministra-Stefanovicia.lt.html>.

been eliminated “during the defence of the dissertation”.⁷⁰⁷ Serbian Prime Minister Aleksandar Vučić joined in the debate on the thesis, saying that he had never heard anything more ridiculous than the arguments corroborating the plagiarism allegations.⁷⁰⁸ The disapproval of the Minister’s doctorate prompted hacker attacks on the website of Peščanik, which was the first to publish the analysis of three Serbian academics working at British universities, in which they claimed that the parts of Stefanović’s thesis were plagiarised.⁷⁰⁹

The Belgrade College of Organisation Sciences, at which Belgrade Mayor Siniša Mali received his PhD, did not even form a commission to check the allegations about his thesis. Neither the Accreditation Commission, National High Education Council nor the Ministry of Education, which has specific supervisory powers, reacted either to this or the other cases. All these institutions took the view that they were not competent for initiating procedures to check the disputed degrees.

The doctorate of Aleksandar Šapić, Mayor of the New Belgrade Municipality, was also brought into question. Šapić had defended his thesis at the Belgrade Union University College of Business and Industrial Management. Union issued a press release that it was in the University’s interest that there is no plagiarism and that the plagiarists are penalised, but its attempts to establish a commission to review the allegations in July failed after no one applied even to its public invitation to sit on the commission. The Union University Senate planned to establish a commission comprising mostly professors of other universities, above all those founded by the Republic of Serbia. Some state colleges, however, took the view that none of their staff should be involved in assessing the doctorates of politicians.⁷¹⁰ Union in December 2014 published on its website that the commission had finally been formed.⁷¹¹

Director of the Vojvodina electricity company Elektrovojvodina Tihomir Simić, for instance, earned his PhD at the unaccredited Hawaiian *Western Pacific University*,⁷¹² which was ordered to cease operation in May 2006 after it was accused of selling degrees and PhDs via the Internet without running any study programmes.

707 “Shameless Epilogue of the False Doctorate Scandals”, *Radio Free Europe*, 20 October 2014, available in Serbian at <http://www.slobodnaevropa.org/content/most-sramni-epilog-afera-okolaznih-doktorata/26645785.html>.

708 “Vučić: Academics’ Explanation is Stupid”, *B92*, 3 June 2014, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=06&dd=03&nav_id=856287.

709 “Getting a PhD in Serbia: the case of minister Stefanović”, *Peščanik*, 2 June 2014 <http://pescanik.net/getting-a-phd-in-serbia-the-case-of-minister-stefanovic/>.

710 “Academic Violence”, *Danas*, 21 November 2014, available in Serbian at: http://www.danas.rs/dodaci/nedelja/akademsko_nasilje.26.html?news_id=292877.

711 More on this case is available in Serbian at: <http://www.union.edu.rs/saopstenja-i-informacije-povodom-sumnje-da-je-disertacija-dr-aleksandra-sapica-plagijat>.

712 “Director Has False Degree”, *B92*, 27 August 2012, available at: <http://www.naslovi.net/2012-08-27/b92/direktor-ima-laznu-diplomu/3798386>.

17. Health Care

17.1. General

The right to physical and mental health is guaranteed by the Article 12, ICE-SCR.⁷¹³

The right to health care is guaranteed by the Constitution, which entitles children, pregnant women, mothers on maternity leave, single parents of children under seven and the elderly to free medical aid even if they are not beneficiaries of compulsory health insurance. The Constitution obliges the state to assist the development of health and physical culture. It also obliges the state to establish health insurance funds.

The compulsory and voluntary health insurance is regulated by the Health Insurance Act.⁷¹⁴ The Republican Health Insurance Bureau is charged with managing and ensuring compulsory health insurance, while voluntary health insurance may be provided by private insurance and special health insurance investment funds whose organisation and activities will be regulated by a separate law.

The Health Care Act⁷¹⁵ stipulates that health care comprises curative, preventive, and rehabilitative care. It is funded from the health insurance funds, the state budget and by beneficiaries in cases specified by the law (participation). Health care may be fully covered from insurance funds or with the participation of the insured person. The Act enumerates all the cases in which the insurant must participate in the medical costs and sets the amounts in percentages (Art. 45, Health Insurance Act). Specific categories are exempted from paying the participation (war military and civilian invalids, other persons with disabilities, blood donors, et al).

A set of so-called health laws was adopted in 2009 and 2010. These laws improve the possibilities for planning the national health policies, oblige the state to define a public health policy and strategy and special public health programmes and define and implement tax and economic policy measures encouraging healthy lifestyles. They also lay down the procedure, conditions, oversight and organisation of blood transfusion, govern issues of relevance to the transplantation of organs or parts of organs, the harvesting and donation of organs, and the procurement, donation, testing, processing, preservation, storage and distribution of human cells and tissues for human application.⁷¹⁶

713 More on the standard see in General Comment No. 14, UN doc. E/C 12/2000/4.

714 *Sl. glasnik RS*, 107/05, 109/05 – corr., 57/11, 110/12 – Constitutional Court decision, 119/12, 99/14, 123/14 and 126/14 – Constitutional Court decision.

715 *Sl. glasnik RS*, 107/05, 72/09 – other law, 88/10, 99/10, 57/11, 119/12, 45/13 – other law and 93/14.

716 The Blood Transfusion Act, the Transplantation of Organs Act and the Cell and Tissue Transplantation Act (*Sl. glasnik RS*, 72/09). More in the 2010 Report, I.4.18.9.3.

17.2. Availability of Health Care

Lack of access to health care can be attributed both to legislative deficiencies and the enforcement of the regulations. Diverse interpretations of the norms result in the violations of the rights of the patients who are prevented from accessing health services. Patients are provided services not only by the outpatient health clinics and hospitals, but by the offices of the Republican Health Insurance Fund (RHIF) as well. Furthermore, constant disagreements among the health sector institutions have resulted in contradictory decisions and provision of contradictory information to the patients. One gains the impression that the Health Ministry and RHIF think they can effect positive changes by frequently amending the norms, adopting new enactments and setting up new bodies. Practice has, however, shown that none of the steps taken to date have been strategically thought out, which is why they have not improved health care.

The Government adopted a Decision⁷¹⁷ on the establishment of a Budget Fund for the treatment of diseases, conditions or injuries that cannot be successfully treated in the Republic of Serbia (hereinafter: Fund), with a view to enabling Serbia's citizens to avail themselves of medical treatment abroad in the event it is unavailable in Serbia. Several months after the Decision was adopted, the Health Minister enacted a by-law governing in detail the requirements and procedure for approving money from the Fund⁷¹⁸ and the Fund's Supervisory Board adopted its Rules of Procedure⁷¹⁹ in order to eliminate the deficiencies in the Government Decision. The potential beneficiaries have already faced problems collecting the required documents due to the poor cooperation among the competent health institutions, the RHIF and the Health Ministry.

Lack of staff in the medical institutions also undermines access to health care. The ban on hiring new staff has undercut the efficient rendering of health services. Medical institutions have been prohibited from hiring new doctors to replace those fulfilling the retirement requirements although their staffing plans envisage those positions. Health care in Serbia is consequently increasingly inaccessible, rather than accessible. The situation in the health sector is best illustrated by the Kula Outpatient Health Clinic. The patients have been forced to travel to the health institutions in Sombor and Vrbas after five of its specialist doctors retired; the Clinic could not hire new doctors in their stead due to the Government hiring ban⁷²⁰. The situation in Užice is yet another striking example. The Užice Hospital opened a new heart surgery operating room in summer 2014, but has not been used

717 *Sl. glasnik RS*, 92/14.

718 Ref. No. 500-01-1291/2014-05.

719 The Supervisory Board's Rules of Procedure are available in Serbian at <http://www.zdravlje.gov.rs/downloads/2014/Decembar/Decembar2014PoslovnikoraduNOFonda.pdf>.

720 *Večernje novosti*, 10 December 2014, available in Serbian at: <http://www.novosti.rs/vesti/srbija.73.html:523615-Opstina-Kula-bez-ginekologa>.

yet because the Hospital is prohibited from hiring a heart surgeon. All patients in the Zlatibor District in need of a heart operation are referred to Belgrade⁷²¹.

The age breakdown of the health caregivers gives rise to concern. Some outpatient health clinics do not have any doctors under 50. The situation in the hospitals and clinics is even worse, as doctors need to complete years' of additional training after Medical School to earn specialist degrees. Lack of specialists is one of the reasons for the long patient waiting lists; this problem cannot be addressed only by buying medical equipment. On the other hand over 2000 doctors are registered in the National Employment Service records.⁷²²

The May 2014 amendments to the Mandatory Social Insurance Act⁷²³ reduced the health insurance contributions from 12.3% to 10.3%, which gives rise to the question how the health sector will keep up even the volume of services it provides with less funding, when even the 12.3% were deemed insufficient.

According to the Euro Health Consumer Index for 2014 (EHCI 2014), the Republic of Serbia scored 33rd place with 473 points.⁷²⁴ The right to health insurance and health care of a number of employees and their families is not protected mostly due to late payment of contributions by employers. Health care is not equally available to all citizens of the Republic of Serbia – citizens living at great distances from big cities or in rural areas have least access to health care. At the same time patients are not sufficiently informed about their rights.

17.3. Patient Rights

The Patient Rights Act⁷²⁵ entered into force in May 2013, although the enforcement of some provisions was moved to December. This law was adopted to improve the protection of patient rights and eliminate all shortcomings identified in the enforcement of the Health Care Act. After this law came into force, the offices of Patient Rights Protectors in the health institutions ceased to exist. They have been replaced by Patient Rights Advisors (hereinafter: Advisors)⁷²⁶ headquartered in the municipal buildings. Under the transitional and final provisions of the Act, all Advisor Offices were to have been established by 1 December 2013. This obligation was not fulfilled by all the municipalities by that deadline, because some of them lacked capacity to start implementing the law. Most Advisors were appointed by the end of 2014.

721 See the *Blic* report of 10 December 2014, available in Serbian at: <http://www.blic.rs/Vesti/Srbija/518015/Pacijente-salju-u-Beograd-Uzice-nema-kardiohirurga>.

722 See the *Danas* report of 9 December 2014, available in Serbian at http://www.danas.rs/danasrs/drustvo/veci_broj_specijalista_tek_za_pet_godina.55.html?news_id=293943.

723 *Sl. glasnik RS*, 84/04, 61/05, 62/06, 5/09, 101/11, 47/13, 108/13 and 57/14.

724 http://www.healthpowerhouse.com/files/EHCI_2014/EHCI_2014_report.pdf.

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

726 Patient Rights Act, Article 39.

The Patient Rights Act also envisages the establishment of Health Councils (hereinafter: Councils)⁷²⁷ charged with reviewing the patients' complaints and actively participating in improving health care in the local self-governments. Article 42(3) of the Act commendably stipulates the participation of representatives of civic associations focusing on patient rights in the Councils. Not all local self-governments have, however, set up their Councils and the Ministry of Health decided to extend the deadline by which they are to fulfil this obligation to the beginning of 2020.⁷²⁸ Patients in municipalities and cities that have no Councils are thus deprived of the right to adequate protection because they cannot complain against the Advisors' decisions.

The Patient Rights Act does not clearly lay down the procedure of complaining to the Advisors. During the public debates about the law, the Health Ministry promised that this issue would be governed in detail by subsidiary legislation. However, the Rulebook on Reviews of Complaints, Forms and Contents of the Records and the Reports of the Patient Rights Advisors⁷²⁹ does not regulate the procedure and it remains absolutely unclear which procedure applies from the moment a patient files a complaint until an Advisor renders a decision. The main failure of the law is that it does not define the procedure by which the patients can challenge the Advisors' procedure.

The Belgrade Patient Rights Office was established under the Decision Amending the Decision on the City of Belgrade City Administration⁷³⁰ in December 2013, but a new Decision Amending the Decision on the City of Belgrade City Administration⁷³¹ adopted only five months later, in April 2014, deleted Item 7a introducing the Patient Rights Office and Article 79a. The latter Decision also added a new paragraph (2) to Article 67, expanding the remit of the Health Secretariat to coordination of the Advisors' work. This solution is extremely unfortunate, because the Council members are Health Secretariat employees and it brings into question the impartiality of the Council ruling on complaints against the Advisors' replies. The Belgrade Patient Rights Office became operational in January 2014 and was set up as a separate organisation unit within the City Administration⁷³². The Office is headquartered in Tiršova Str.1 and has jurisdiction for the entire territory of the City of Belgrade. The Office needs to be staffed by 17 Advisors (one for each of the City municipalities) if it is to ensure adequate protection of patient rights. The Office, however, is manned by only four Advisors.

Reports on the performance of the Advisors and Councils have not been published yet. Under Article 42(2) of the Patient Rights Act, the Councils are under the

727 Patient Rights Act, Article 42.

728 See the *Blic* report, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/429556/Lokalni-saveti-za-zdravlje-do-2020u-svim-gradovima-Srbije>.

729 *Sl. glasnik RS*, 71/13.

730 *Sl. list grada Beograda*, 61/13, Articles 72 and 79a.

731 *Sl. list grada Beograda*, 37/14.

732 <http://www.beograd.rs/cms/view.php?id=1581626>.

obligation to submit their annual reports to the Protector of Citizens, wherefore the initial information on their performance in 2014 will become available in March 2015. The Vojvodina Ombudsman published a report on the first six months of work of Advisors in Vojvodina⁷³³. She noted that the following patient rights were violated the most: right of access to health care, right to quality health services and right to respect for the patients' time. The fact that the number of ill-founded complaints (61%) is much higher than the number of well-founded ones (39%) gives rise to concern. The Ombudsman alerted to the fact that information about Advisors was insufficiently visible, that they were in need of further training and that the patients were unfamiliar with their rights.

The Protector of Citizens published report⁷³⁴ on his Office's activities related to health care, legislative changes, his assessment of the situation in the health sector and recommendations. The Protector highlighted the results his Office achieved: most of its proposals and suggestions regarding the Draft Patient Rights Act were included in the final text; the replacement of the existing health insurance documents was suspended at its initiative; and it warned of abuses of additional work in health institutions. Commissioner for the Protection of Equality Report⁷³⁵ underlining that the greatest social distance was exhibited towards LGBT persons and people living with HIV. Complaints of discrimination on the basis of health status accounted for 16.3% of the complaints the Commissioner received in 2013. Most complaints (64) were filed by an NGO against dental clinics that refused to schedule an appointment for a person living with HIV. The Commissioner for Information of Public Importance and Personal Data Protection noted in the Report⁷³⁶ that health and health insurance institutions fell in the group of institutions keeping records of extremely sensitive personal data and alerted to the fact that they often processed personal data in the absence of explicit legal grounds for such processing and/or the consent of the people whose data they are processing. Of all complaints filed with the Commissioner, 1.4% pertained to threats to and protection of human health. Fourteen complaints and 171 requests regarding the Health Ministry were filed with the Commissioner in 2013.

733 Six-Month Work of Advisors for the Protection of Patient Rights in Local Self-Government Units in the Territory of the Autonomous Province of Vojvodina, available in Serbian at: <http://www.ombudsmanapv.org/riv/attachments/article/1441/6%20meseci%20SPP%20APV.pdf>.

734 The Protector of Citizens' 2013 Annual Report is available at http://www.ombudsman.rs/attachments/3332_Annual%20Report%20of%20the%20Protector%20of%20Citizens.pdf.

735 The 2013 Report of the Commissioner for Protection of Equality is available at: <http://www.ravnopravnost.gov.rs/en/reports/annual-report>.

736 The 2013 Report on the Implementation of the Free Access to Information of Public Importance Act and the Personal Data Protection Act is available at: <http://www.poverenik.rs/en/onama/annual-reports/1772-izvestaj-poverenika-za-2013-godinu.html>.

IV PROHIBITION OF DISCRIMINATION AND STATUS OF MINORITIES

1. Prohibition of Discrimination

Discrimination is prohibited by many international treaties ratified by Serbia.⁷³⁷

The Constitution of the Republic of Serbia explicitly guarantees the equality of all before the Constitution and the law and everyone's right to equal protection under the law without discrimination. Article 21 of the Constitution prohibits any direct or indirect discrimination on the grounds of race, sex, nationality, social status, birth, religion, political or other opinion, wealth, culture, language, age and mental or physical disability or any other grounds which means that the Constitution provides for the prohibition of discrimination on grounds that are not expressly enumerated as well. Unfortunately, the Constitution does not specifically list sexual orientation and marital status as prohibited grounds for discrimination.

The Constitution specifically guarantees the right to equality before the law, equal legal protection to persons belonging to national minorities and specifically prohibits discrimination on grounds of affiliation to a national minority (Art. 76 (1 and 2)).

The Constitution envisages affirmative action to achieve the equality of groups who have long been exposed to discrimination. 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 (Art. 76(3)). The Constitution does not limit the enforcement of affirmative action measures only un-

737 By both UN Covenants, the ECHR, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, ILO Convention No. 111 concerning Discrimination (Employment and Occupation) and the UNESCO Convention against Discrimination in Education.

til the goals they pursue are achieved. Such a restriction is a necessary criterion for assessing the proportionality of these measures.

Serbia adopted the Anti-Discrimination Act⁷³⁸ in 2009. It is a general anti-discrimination law which leaves room for special regulation of specific areas where discrimination occurs the most frequently. There is a law protecting the rights of persons with disabilities, and its provisions apply with respect to discrimination of persons with special needs.

The Act establishes the general prohibition of discrimination by defining the principle of equality in Article 4. The Act prohibits a broad scope of forms of discrimination. Key prohibitions include direct and indirect discrimination, disrespect of the principle of equal rights and obligations, conspiracy to exercise discrimination, hate speech, harassment or degrading treatment. The law prohibits calling a person to account because he or she reported discrimination (victimisation). Aggravated discrimination is discrimination on more than one grounds, repetitive or continuous discrimination, etc. The Act lists specific forms of discrimination to ensure that the most frequent forms of discrimination are recognised and that their victims are provided protection.

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

The Act on the Prevention of Discrimination against Persons with Disabilities⁷³⁹ obliges state bodies to provide persons with disabilities access to public services and facilities and prohibits discrimination in specific areas, such as employment, health and education (Arts. 11–31). The Act includes provisions obliging state and local self-government bodies to undertake special measures to encourage equality of persons with disabilities (Arts. 32–38).⁷⁴⁰

The Public Information and Media Act⁷⁴¹ prohibits any direct or indirect discrimination of programme editors, journalists or other persons involved in the public information sector based, in particular, on their political affiliations and beliefs or other personal features (Art. 4). The Act also prescribes that budget funding for the realisation of public interests in the field of public information shall be allocated in accordance with the principle of non-discrimination (Art. 17).

738 *Sl. glasnik RS*, 36/09. 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.

739 *Sl. glasnik RS*, 33/06.

740 Although the Act defines these measures only in the most general terms it entitles persons with disabilities to sue the competent institutions that have failed to introduce such measures. See more in the *2008 Report 2008*, I.4.1.3 and the *2009 Report*, I.4.13.

741 *Sl. glasnik RS*, 83/14.

Discrimination is a criminal offence under the Criminal Code⁷⁴² (Arts. 128, 317 and 387). Many other laws e.g. the Act on Churches and Religious Communities⁷⁴³ (Art. 2), the Labour Act⁷⁴⁴ (Arts. 18–23), the Employment and Unemployment Insurance Act⁷⁴⁵ (Art. 8), the Act on the Basis of the Education System,⁷⁴⁶ the Health Care Act,⁷⁴⁷ the Patient Rights Act⁷⁴⁸ et al, also include anti-discriminatory provisions.

The 2013–2018 Anti-Discrimination Strategy⁷⁴⁹ was adopted in June 2013 at the recommendation of the Commissioner for the Protection of Equality. Its objectives are to eliminate causes of discrimination, strengthen public awareness of the necessity to accept and respect others and those who differ from them and promote tolerance in society. Joint and coordinated activities of state authorities and other relevant stakeholders in society shall be implemented to effectively suppress discrimination in society, eradicate prejudices and improve the status of marginalised and vulnerable social groups.

In October 2014, the Serbian Government adopted the Action Plan for the Implementation of the Anti-Discrimination Strategy for the 2014–2018 Period, which was proposed by the Human and Minority Rights Office. The Action Plan set a number of crucial goals: reduce the number of cases of discrimination in labour and employment by improving the legal framework and applying affirmative measures for vulnerable social groups; reduce and eliminate cases of discrimination in the system of education at all levels; provide training for public sector staff to prevent their discrimination against members of the public from vulnerable social groups; define guidelines for fighting against discrimination in local self-government units. The Action Plan outlines activities to prevent discrimination of particularly vulnerable social groups in the fields of health, health and social protection and (social) housing. The Action Plan also envisages amending the legal framework to prevent discrimination with respect to marriage, family relations and inheritance of persons belonging to vulnerable social groups and the opening of a public debate on the recognition of the institute of civic same-sex partnerships and on the recognition of the inheritance rights of same-sex partners. The Action Plan also envisages strengthening the culture of tolerance via the media. Funds for the implementation of Action Plan measures and activities will be provided from the national and local self-government budgets and donations.

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

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

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

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

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

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

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

749 http://www.seio.gov.rs/upload/documents/ekspertske%20misije/2014/ad_strategzy.pdf.

A body will be established to monitor the implementation of the Action Plan. The body will be established by the Government of Serbia, which shall render a decision specifying its remit, term in office, reporting deadlines and other relevant issues. The body is to comprise representatives of republican, provincial and local government authorities and the civil society and other stakeholders and is to be set up in the first half of 2015.

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, but only 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 Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia⁷⁵⁰ 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)).

The Criminal Code explicitly prohibits incitement to national, racial and religious hate, dissension or intolerance (Art. 317). Prohibition is limited only to “peoples and ethnic communities living in Serbia.”⁷⁵¹ Stricter penalties are laid down for perpetrators who commit this crime by coercion, maltreatment, compromising security, exposure to derision of national, ethnic or religious symbols, damage to other persons, goods or 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

⁷⁵⁰ *Sl. glasnik RS*, 41/09.

⁷⁵¹ The ICCPR prohibits “any” incitement to hate, i.e. against any group no matter where it lives.

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). However, incitement to national, racial or religious hate and war propaganda have been criminally prosecuted extremely rarely in practice.

The Criminal Code incriminate hate speech and 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. 387(4)). Teats to commit a crime against an individual or group on grounds of their race, skin colour, religion, nationality, ethnicity or another personal feature is prohibited as well (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.

Determination of penalties for crimes committed out of hate (hate crimes) is stipulated in the Article 54a of the Criminal Code. According this article, the court shall consider such a circumstance as aggravating unless it is defined as an attribute of the crime, 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.⁷⁵²

According to the Public Information and Media Act⁷⁵³ 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. 75). Liability is excluded if such information is a part of a journalistic work and was published without intent to incite discrimination, hatred or violence, as a part of an objective journalistic report or intends to critically review such occurrences (Art. 76).

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.⁷⁵⁴ Article 14 of the European Directive on electronic commerce⁷⁵⁵ 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.

752 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.

753 *Sl. glasnik RS*, 83/14.

754 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>.

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

3. National Minorities and Minority Rights

3.1. *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).⁷⁵⁶ Under Article 26 of the Framework Convention, the CoE Council of Ministers is ultimately responsible for monitoring the implementation of the Framework Convention and adopting Resolutions containing conclusions and recommendations to the States concerned. The Resolutions are largely based on the Opinions of the CoE Council of Ministers Advisory Committee on the implementation of the Framework Convention.

The Advisory Committee in late November 2013 adopted an opinion on Serbia's Third Report (hereinafter: Third Report), which was forwarded to the competent Serbian authorities and published on 23 June 2014.⁷⁵⁷ The Advisory Committee in general concluded that Serbia invested significant efforts in respecting the rights of persons belonging to national minorities and developing anti-discriminatory policies, but that it still lacked a comprehensive and strategic approach to the integration of national minorities in Serbian society and that inter-ethnic relations in Serbia remained a source of concern. The Advisory Committee said that xenophobia and religious intolerance remained present in Serbian society and racist attacks against persons belonging to national minorities have occurred. In the view of the Advisory Committee, Serbia has pursued a constructive approach to the monitoring process of the Framework Convention. The Committee welcomed the fact that representatives of national minorities were consulted in the preparation of the State Report,⁷⁵⁸ but expressed regret that there have again been changes in the level to which re-

756 Serbia's Third Report is available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCN-Mdocs/PDF_3rd_SR_Serbia_en.pdf.

757 Available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Serbia_en.pdf.

758 More on the National Minority Councils' views included in the Third Report in the *2013 Report*, III 1.6.

sponsibilities for minority issues have been allocated within the governmental structure in recent years, with the Ministry for Human and Minority Rights becoming the Office for Human and Minority Rights in 2012.⁷⁵⁹ The Government of the Republic of Serbia, notably its Human and Minority Rights Office, submitted its Comments on the Third Opinion, which were published together with the Advisory Committee's Third Opinion.⁷⁶⁰

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 somewhat rectifies the ethnic definition of the state, by laying down that sovereignty shall be vested in the citizens (Art. 2(1)).

In its 2013 decision declaring unconstitutional an article of the Vojvodina Statute,⁷⁶¹ the Constitutional Court underlined 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" whereby it merely reaffirmed 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).⁷⁶² 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 the legal definition, only nationals of Serbia may be considered persons belonging to national minorities, which places at a

759 Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Serbia, adopted on 28 November 2013, p. 5.

760 Available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_Com_Serbia_en.pdf.

761 More in the 2013 Report, III 1.1.

762 *Sl. glasnik SRJ*, 11/02.

disadvantage stateless people and persons with specific difficulties in exercising the right to a legal personality in the Republic of Serbia (mostly Roma).⁷⁶³

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”.⁷⁶⁴ In its Third Opinion on Serbia, the Advisory Committee welcomed the fact that in practice, non-citizens sharing a language with a national minority in Serbia were able to benefit from many of the same rights as persons recognised as belonging to national minorities. It, however, recalled its general view that citizenship should not be regarded as an element of the definition per se but may appropriately be regarded by states as a precondition to access *certain* minority rights.⁷⁶⁵

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 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,⁷⁶⁶ Croatia,⁷⁶⁷ Romania⁷⁶⁸ and Hungary.⁷⁶⁹ 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

763 More in III.4. and the 2011 Report, II.3 and 4.5.

764 Serbia’s Third Report, pp. 36–37.

765 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Serbia*, adopted on 28 November 2013, p. 11.

766 Sl. list SCG (*Međunarodni ugovori*), 6/05.

767 Sl. list SCG (*Međunarodni ugovori*), 3/05.

768 Sl. list SCG (*Međunarodni ugovori*), 14/04.

769 Sl. list SCG (*Međunarodni ugovori*), 14/04.

bilateral agreements also provide for the establishment of joint inter-governmental commissions charged with monitoring the implementation of these agreements.

3.2. 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.⁷⁷⁰ 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%⁷⁷¹, Bosniaks 2.02%, Bulgarians 0.26%, Bunyevtsi 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 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.⁷⁷² The extraordinary census announced in September 2013 by the Chairman of the Government Coordination Body for the Municipalities of Preševo, Bujanovac and Medveđa was not held in 2014. The Serbian Government in June 2013 adopted a Conclusion upholding the Report by the Chairman of the Government Coordination Body for Preševo, Bujanovac and Medveđa and including the seven points for talks with Ministry representatives proposed by the representatives of the ethnic Albanian political parties. The talks began on 29 October 2013 but soon broke off because of the Albanian representatives' dissatisfaction with the network of courts and prosecution services. The talks were also to have covered the issue of the extraordinary census in the Preševo, Bujanovac and Medveđa municipalities.⁷⁷³

In its Third Opinion, the Advisory Committee called on the competent authorities to take into account additional data collected through independent surveys and research, which may provide crucial complementary information.⁷⁷⁴

770 Available at <http://media.popis2011.stat.rs/2012/Nacionalna%20pripadnost-Ethnicity.pdf>.

771 Most of the Preševo, Bujanovac and Medveđa Albanians boycotted the census, see *2011 Report*, II.4.2.1.

772 More in the *2011 Report*, II.4.2.1.

773 Information obtained by e-mail from an Adviser of the Coordination Body for Preševo, Bujanovac and Medveđa on 26 December 2014.

774 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Serbia*, adopted on 28 November 2013, pp. 13 and 14.

3.3. *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 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.

In the view of the Advisory Committee, the Anti-Discrimination Act has significantly strengthened the legislative framework promoting equality. It said that the actions of the Commissioner for the Protection of Equality, the Protector of Citizens and the Vojvodina Ombudsman were, however, hampered by a lack of sufficient staff, and that anti-discrimination legislation was still not sufficiently known or understood amongst the general public. The Advisory Committee qualified as highly regrettable that the recommendations of these institutions were not always followed up expeditiously by the authorities. Furthermore, the Advisory Committee noted that, in contrast with the provisions on the prohibition of discrimination in the field of labour, education and the provision of public services, the Anti-Discrimination Act did not include detailed provisions with respect to discrimination in the areas of housing and social protection. The Advisory Committee observed in this regard that persons belonging to national minorities, who in many cases live in isolated areas that are at a relative socio-economic disadvantage, may be particularly affected by discrimination in these fields and expressed concern that the lack of clarity of the Act in this regard may both deter individuals from bringing claims of discrimination in the fields of housing and social protection and, if any such claims are brought, result in their dismissal.⁷⁷⁵ In its Comments on the Third Report, the Serbian Government underlined that the adoption of the Act had not removed the need to adopt other separate laws including anti-discriminatory provisions and that the Social Protection Act⁷⁷⁶ comprised clear anti-discriminatory norms in Article 25, and thus asked the Committee of Ministers not to accept the observation of the Advisory Committee about the alleged lack of precise provisions relating to the prohibition of discrimination in the area of social protection.⁷⁷⁷

775 *Ibid*, pp. 7 and 15.

776 *Sl. glasnik RS*, 24/11.

777 Serbian Government Comments on the Third Opinion on Serbia of the Advisory Committee on the Framework Convention for the Protection of National Minorities, published on 23 June 2014, pp. 6–7.

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.⁷⁷⁸ 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.⁷⁷⁹

In its Third Opinion, the Advisory Committee noted that racist attacks against persons belonging to national minorities and their property continued to occur despite a welcome drop in the number of racist incidents reported in the last few years⁷⁸⁰ and a worrying series of inter-ethnic incidents between Serbian and Hungarian youths in Temerin in late 2011 and early 2012. The Advisory Committee

778 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).

779 See *2012 Report*, I.6.2.3. and *2013 Report*, III.1.3.

780 In its Third Report, Serbia stated that the MIA recorded 1,411 incidents that might be of relevance to inter-ethnic relations in the broadest sense from 2007 to 1 March 2012. Criminal charges were filed with respect to 503 offences and 197 motions for initiating misdemeanour proceedings were submitted in that period. Out of the criminal offences, a total of 303 were “cleared up” i.e. 60.2%, where 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), but without specifying how many final judgments have been rendered for these criminal offences and misdemeanours. 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.

welcomed steps taken to strengthen the criminal law arsenal against hate motivated offences, in particular through the introduction of hate motivations as a mandatory aggravating circumstance for all ordinary criminal offences (Art. 54a of the Criminal Code) and said that this and other relevant provisions of criminal legislation needed to be more rigorously applied in order to ensure that hate-based offences are adequately investigated, prosecuted and punished. The Advisory Committee also welcomed initiatives taken to train the police and judiciary on discrimination issues and tolerance, to promote a more multi-ethnic police force in southern Serbia and to promote the learning of minority languages by police officers in some multilingual areas in Vojvodina. It noted that efforts in these fields needed to be both sustained in time and expanded in scope. It said that occasional reports of police brutality against persons belonging to national minorities also needed to be duly investigated and such actions sanctioned.⁷⁸¹

In its Comments on the Third Opinion, the Serbian Government noted that the number of inter-ethnic conflicts was continuously dropping and that special focus was put in Vojvodina on joint actions of the Ministry of Interior, provincial institutions and local self-governments with the goal of preserving public order, safety, good inter-ethnic relations and mutual respect. These activities have contributed to the reduction of the number of inter-ethnic incidents in 2013 in the area of AP Vojvodina and an increase in the numbers of *resolved* hate crime cases and indictments. The number of incidents in which the victims were members of the Hungarian national minority was reduced by 43.7% compared to 2012, i.e. by 67.8% compared to 2011. In the period that ensued after the submission of the Third Report on the Implementation of the Framework Convention, the Ministry of Internal Affairs undertook measures for including persons belonging to national minorities, particularly women, in the police force. The Ministry implemented the project entitled *Support to the Inclusion of National Minorities in the Police Force of the Republic of Serbia*, during which it conducted a multi-lingual information pro-inclusion campaign, organised promotional forums in areas inhabited by members of national minorities to encourage them to apply for the admission, etc.

As far as police brutality towards persons belonging to national minorities noted in the Third Opinion is concerned, the Republic of Serbia elaborated in detail the procedure for reviewing complaints against the police in its Comments. It noted that the Ministry of Interior did not possess the data on the number of complaints which refer to endangering of rights of the national minorities, as there are no separate records on this subject, but that persons belonging to national minorities received the same treatment and had equal rights as other citizens.

The Serbian Government said in its Comments that the Internal Affairs Sector (which operates within the police) had not filed any criminal reports against police officers because none were reasonably suspected of crimes motivated by in-

781 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Serbia*, adopted on 28 November 2013, p. 8.

ter-ethnic intolerance or hatred. Furthermore, as it said in the Comments, since the protection of persons belonging to national minorities and solving cases of criminal offences and other incidents committed against persons belonging to national minorities is one of the Ministry's priorities, the Internal Affairs Sector has thoroughly been checking all grievances, complaints and other information including allegations that the police abused or overstepped their powers at the expense of persons belonging to national minorities but has not established any such misconduct by the police in the observed period.⁷⁸²

3.4. 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 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.⁷⁸³ The Protector of Citizens had submitted an initiative to the Government back in 2010 to amend the Civil Serv-

782 Serbian Government Comments on the Third Opinion on Serbia of the Advisory Committee on the Framework Convention for the Protection of National Minorities, published on 23 June 2014, pp. 25–26.

783 Third Report, p. 346.

ants 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.⁷⁸⁴

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.⁷⁸⁵ 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.

The Advisory Committee emphasised that national minorities remained significantly under-represented in state-level public administrations and public enterprises and that it remained difficult for smaller national minorities to be represented in the National Assembly.⁷⁸⁶ Furthermore, the data on the national affiliation and native languages of local self-government administrative staff in Central Serbia⁷⁸⁷ can be used to define and implement the policy for ensuring equitable representation of national minorities in public affairs. According to the data collected by the Human and Minority Rights Office, ethnic Albanians account for 0.07% of the local administration staff in Central Serbia. This percentage, however, does not reflect the real situation both due to the ethnic Albanian boycott of the 2011 Census and the fact that the Human and Minority Rights Office poll did not cover all the ethnic Albanians. The poll showed that there are 0.67% Vlach, 0.009% Jewish, 0.05% Hungarian, 2% Roma, 0.07% Romanian, 0.05% Slovak, 0.04% Slovene, 0.21% Croat and 0.31% Montenegrin administrative staff in the local administrations.⁷⁸⁸

As of 2014, five deputies represent the interests of the Hungarian and four deputies the interests of the Bosniak national minorities in the National Assembly.⁷⁸⁹ The Cabinet also includes a Bosniak – Rasim Ljajić, who is a Deputy Prime Minister and Minister of Trade, Tourism and Telecommunications.

784 Third Report Submitted by Serbia Pursuant to Article 25 of the Framework Convention for the Protection of National Minorities, pp. 367–368.

785 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.

786 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Serbia*, adopted on 28 November 2013, p. 10.

787 Available in Serbian at http://www.ljudskaprava.gov.rs/images/pdf/nacionalne_manjine/nacionalna_pripadnost_i_maternji_jezik_zaposlenih_u_upravama_jedinica_lokalne_samouprave_u_centralnoj_srbiji.pdf.

788 The data on the national affiliation of the staff and their native languages were collected on a voluntary basis via a poll in which 41.08% administrative staff of 124 local self-governments took part.

789 Data obtained by searching the National Assembly website. It was, however, impossible to establish the representation of persons belonging to other national minorities in the National Assembly by searching its website.

3.5. 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).⁷⁹⁰

3.5.1. 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 (Art. 12).

The National Councils of National Minorities Act (NCNMA)⁷⁹¹ provided the National Minority Councils with numerous powers in the field of culture.⁷⁹² The Constitutional Court, however, declared some of these powers unconstitutional in its decision of January 2014.⁷⁹³

790 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.

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

792 More in the 2013 Report, III 1.5.1.

793 More in III.6.

The Advisory Committee noted in its Third Opinion that the State Fund for National Minorities was still not operative, meaning that decisions of national minority councils may have a disproportionate impact on the manner in which national minorities' cultural activities are supported. It noted that the funding provided by the Ministry of Culture to the cultural and artistic activities of national minorities was primarily project-based, which hampered the financing of long-term activities, and said that some minority representatives also indicated that the criteria for the award of such funds were insufficiently transparent.⁷⁹⁴ In its Comments on the Third Opinion, the Serbian Government said that the Ministry of Culture and Information and the Vojvodina Secretariat for Culture and Information and local self-governments were the main financers of cultural activities. It noted that the Ministry of Culture and Information funds were allocated in open competitions according to specific criteria and that the committees take into account the specific features of the national minorities, such as their size, existence of other Vojvodina or local government sources of funding, support provided by the mother countries, etc. In addition, funds allocated to National Minority Councils may be used for funding their activities, including programmes in the fields of culture, education, information and the official use of language and script. Serbia explained in detail in its Third Report why the State Fund was not operational yet, although the funds for it have been allocated since 2010.⁷⁹⁵

3.5.2. 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 (Art. 130 of the Criminal Code).

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 Croats⁷⁹⁶ and the

794 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Serbia*, adopted on 28 November 2013, p. 8.

795 Third Report submitted by Serbia to the Council of Europe Secretary General, pursuant to Article 25 of the Framework Convention, para 3.3. p. 106, available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Serbia_en.pdf.

796 "Bunjevtsi in Subotica: Croats are Doing Their Utmost to Assimilate Us", *Novosti online*, 22 March 2013, available in Serbian at <http://www.novosti.rs/vesti/srbija.73.html:425663-Bunjevci-u-Subotici-Hrvati-cine-sve-da-nas-asimiluju>.

Vlachs and Romanians⁷⁹⁷ 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.

In its Third Opinion, the Advisory Council welcomed the Serbian authorities' consistent stance that they would not interfere in debates concerning the ethnic affiliation of persons belonging to national minorities, in so far as this reflects a commitment not to arbitrate in disputes about ethnic affiliation or to impose an identity on any community. The Advisory Committee also observed that the effect of these prolonged controversies over identities was to allow differences to be instrumentalised for political purposes, which deflected attention from the realisation of the rights of the persons belonging to the national minorities concerned. The Advisory Committee encourage the Serbian authorities to take steps to promote constructive dialogue between persons identifying themselves as belonging to the Romanian and Vlach national minorities, and between persons identifying themselves as belonging to the Croat and Bunjevci national minorities.⁷⁹⁸

3.5.3. 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

⁷⁹⁷ See the 2012 Report, I.6.2.5.

⁷⁹⁸ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Serbia*, adopted on 28 November 2013, p. 12.

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 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.⁷⁹⁹ 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.⁸⁰⁰ 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.⁸⁰¹ 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,⁸⁰² 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.

Under Article 11 of the Minority Protection Act, the names of the authorities exercising public powers, local self-government units, towns and villages, squares and streets and other topographical signs shall in such units also be written in the languages of national minorities, in accordance with their tradition and orthography. National Minority Councils propose the introduction of the languages and scripts of

799 See the ECtHR judgment *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v. Belgium*, ECtHR, App. Nos. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63 and 2126/64 of 23 July, 1968.

800 *Ibid.*

801 *Ibid.*

802 *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05 and 30/10.

national minorities as official languages and scripts in local self-government units and specify the traditional names of local self-government units, settlements and other topographical signs in national minority languages (Art. 22, NCNMA).

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 (Art. 9). The Official Use of Languages and Scripts Act 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 (Art. 11).

Notwithstanding whether a national minority language is officially in use in a local self-government unit, the Vital Records Act⁸⁰³ lays down that the names of persons belonging to national minorities shall be entered in the vital records in the languages and orthography of the national minorities. 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)).

In its Third Opinion, the Advisory Committee observed that the implementation of the right to use minority languages in contacts with authorities at the local level remained uneven across Serbia and that progress in introducing minority languages as languages in official use remained generally slower outside Vojvodina. It welcomed the introduction of Bosniak as an official language in Prijepolje, but noted with concern that the municipality of Priboj had refused to introduce Bosniak in official use, in spite of a recommendation by the Protector of Citizens that the municipality take the necessary steps to enable the exercise of the right to official use of the Bosniak language and script.⁸⁰⁴ Similar difficulties have been reported in eastern Serbia, for example as regards the introduction of Vlach as an official language in Bor. The Advisory Committee noted that where a minority language is in official use, lack of staff proficient in the relevant languages and/or a lack of resources for the translation of official documents were reportedly cited by the local authorities as reasons for not fulfilling the obligations laid down by law. The reform of the judicial system in 2010, which led to smaller local courts being closed and transferred to larger urban centres, has also aggravated difficulties in access to justice in national minority languages. The Advisory Committee observed that the needs of persons belonging to national minorities should be fully taken into account in the reform of the court network.⁸⁰⁵

803 *Sl. glasnik RS*, 20/09.

804 Recommendation No. 16–1566/09 of 31 March 2010.

805 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Serbia*, adopted on 28 November 2013, pp. 34–35.

In its Comments on the Third Opinion, the Government of the Republic of Serbia noted that the practice of exercising the rights to use minority languages in communication with local bodies in central Serbia was almost identical to the practice of communication of citizens with the administrations of local self-government units in AP Vojvodina. As far as the use of Vlach language and script is concerned, the Comments note that the National Council of the Vlach National Minority has not yet suggested the introduction of the Vlach language and script in official use given that it only adopted the Vlach script in 2012. With respect to the Advisory Committee's observation on the lack of staff proficient in the relevant languages and/or a lack of resources for the translation of official documents, the Government said in its Comments that the analysis of the collected data on the native languages of staff in Central Serbian local self-governments conducted by the Human and Minority Rights Office in 2013 allowed for estimating the number of speakers of specific minority languages, either as a native language or as a second language, as a precondition for the communication between persons belonging to national minorities and local administrative staff given that the analysis indicated that every local self-government in Central Serbia had the staff capacity to achieve that goal. The new territorial organisation of courts will enable simple access to justice to all citizens of the Republic of Serbia.⁸⁰⁶

The Advisory Committee said in its Third Opinion that problems continued to arise in practice with the exercise of the right to enter personal names in the language and script of national minorities in the civil registers and called on Serbia to eliminate all obstacles to the realisation of this right, which is a core linguistic right, linked closely to personal identity and dignity.⁸⁰⁷ The Advisory Committee noted that the practice of displaying topographical signs in minority languages was not even across Serbia, in spite of the recommendations by the Protector of Citizens and the Commissioner for the Protection of Equality in the previous years. It emphasised the importance of promoting bilingualism in signposts as a means of conveying the message that a given territory is shared in harmony by various population groups.⁸⁰⁸

In its Comments on the Third Opinion, the Serbian Government said that the relevant ministry had prepared a template of an information booklet on the registration of persons belonging to national minorities in registry books in order to inform persons belonging to national minorities of their right to register their names in their own languages and scripts. The information booklets are distributed both to persons belonging to national minorities and the relevant institutions to familiarise persons belonging to national minorities with their right and address any lack of knowl-

806 Serbian Government Comments on the Third Opinion on Serbia of the Advisory Committee on the Framework Convention for the Protection of National Minorities, published on 23 June 2014, pp. 33–36.

807 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Serbia*, adopted on 28 November 2013, p. 36.

808 *Ibid*, p. 37.

edge among staff entering data in vital records. The Administrative Inspectorate, which supervises the implementation of the Vital Records Act, has not received any complaints by persons belonging to national minorities alleging they were unable to exercise this right. Furthermore, the Ministry of Internal Affairs issues IDs in Albanian, Bosniak, Croatian, Czech, Hungarian, Romanian, Ruthenian, Slovakian and Turkish.

According to the Advisory Committee's Third Opinion, education in minority languages is still a significant challenge. In practice, teaching in minority languages is currently available in Albanian, Croatian, Hungarian, Romanian and Slovakian at pre-school, primary and secondary levels, and in Bulgarian and Ruthenian at primary and secondary levels. The Advisory Committee observed, however, that a number of obstacles prevented the greater use of these opportunities by pupils belonging to national minorities, including resistance by some school principals, lack of political will to apply the law at the local level and the lack of adequate textbooks. The Advisory Committee also noted that the Vlach and Roma minority councils have been prompted to devote considerable resources to establishing standardised versions of their languages.

Although an extensive range of textbooks published in Albanian, Bulgarian, Croatian, Czech, Hungarian, Romanian, Ruthenian, Slovakian and Ukrainian have been approved for use in schools in Serbia since 2007, the Advisory Committee observed nonetheless that many of these textbooks were for the learning of Serbian as a second language rather than for teaching in or of the minority language. The Advisory Committee recommended that the Serbian authorities step up their efforts to ensure that the availability of textbooks in minority languages adequately reflects the needs expressed by national minorities and emphasised that low circulation and various administrative obstacles should not constitute a barrier to the publication of such textbooks. It also noted that authorities should ensure that adequate opportunities for teacher training of teaching in and of minority languages are provided. The Advisory Committee welcomed the opening of new faculty branches in southern Serbia and indications that the situation regarding the recognition of diplomas issued by educational institutions in Kosovo was improving, although it observed that not all problems appeared to have been resolved.⁸⁰⁹

3.5.4. 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.

809 *Ibid*, pp. 38–41.

In its Third Opinion, the Advisory Committee observed that minority media were reliant on external support for their survival and that, in consequence, local authorities and national minority councils often directly funded the media outlets that they owned. It noted that a number of questions regarding editorial and political independence as well as respect for pluralism in minority media may arise as a result. Confusion may moreover easily arise as national minority councils are elected bodies but appear essentially to act as private media owners when exercising founders' rights. The Advisory Committee recommended that national minority councils be closely consulted in the process of drawing up and enacting legislation governing media privatisation. Particular care should be taken to ensure that this process does not lead to a reduction in the offer of broadcasting in minority languages, especially where there may be issues of commercial.

Viability of such broadcasting. It said that questions surrounding the role of national minority councils with respect to the media also need to be resolved, in full consultation with these councils as well as with media outlets and associations themselves. It noted that public radio and television broadcasting was now available in nine minority languages in Vojvodina and several weekly programmes in Roma on the national broadcaster. Local community and other broadcasters provide radio and/or television broadcasting in three additional minority languages. The Advisory Committee observed that outside Vojvodina, however, financial support for minority language print media was no longer provided on a regular footing but depended on sporadic grants made in the context of open competitions of the Ministry of Culture.

The Advisory Committee noted in its Third Opinion that civil society has consistently reported that the media are largely under the control of, or at best are strongly influenced by, political parties, which is a significant impediment to balanced and objective reporting on all subjects, including issues related to national minorities. It quoted civil society reports that it was difficult to interest mainstream media in the day-to-day concerns of persons belonging to national minorities and that there was an overall tendency in the media to portray minorities as mere folklore. The Committee said that examples of negative media stereotyping against Roma had also been cited and that it received reports of misleading media coverage of events in the Sandžak that fuelled intolerance between the majority and minority communities.⁸¹⁰

3.6. 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.⁸¹¹ The National Minority Councils

810 *Ibid.*, pp. 28–29.

811 More on the powers and election of National Councils in the *2011 Report*, II 4.13.6.

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).⁸¹² 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.⁸¹³

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.

The Constitutional Court in January 2014 rendered a decision⁸¹⁴ declaring unconstitutional a number of NCNMA provisions on the powers of the National Minority Councils. The Constitutional Court first commented the erroneous referral to the "competences" of the Councils in the law, noting that only state, provincial and local authorities may have competences whilst National Minority Councils are bodies exercising public powers. The Court declared unconstitutional the provision under which the National Minority Councils are entitled to establish institutions, associations, foundations and companies and take decisions also in areas of relevance to the preservation of the identity of the national minorities that do not regard culture, education, official use of minority languages and scripts or information (Art. 2(10)) and the provision entitling the National Minority Councils to initiate proceedings before the Constitutional Court (Art. 10(12)).

The Constitutional Court also declared unconstitutional part of Art. 12(1) regarding the role of the National Minority Councils in nominating members of management boards of schools where most of the classes are taught in minority

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

813 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.

814 Case No. IUz 882/2010.

languages and paragraphs 3 and 4 of that Article. Furthermore, the Constitutional Court stated that Article 15 (item 5) of the law entitled the Councils to render their opinions on the number of pupils to be enrolled in secondary schools and consent to the number of pupils to be enrolled in vocational, requalification, additional qualification and specialisation courses, without specifying that this provision applied only to secondary schools where classes are taught in minority languages, wherefore it went beyond the constitutionally guaranteed powers.

In the area of information, the Constitutional Court declared unconstitutional Article 19(2), under which the Republic, an autonomous province or local self-government units that had established public companies and institutions engaged in the provision of information entirely or mostly in minority languages were entitled to transfer all or part of the rights to establishment to the National Minority Councils pursuant to an agreement with them. The Constitutional Court here relied on its prior decision⁸¹⁵ declaring unconstitutional the provision of the Minority Protection Act under which the Republic was entitled to establish special radio and TV stations broadcasting minority language programmes. Namely, the Electronic Media Act, an umbrella law, prohibits the granting of media service licences to the Republic of Serbia, an autonomous province, local self-government units; companies, institutions and other legal persons whose assets are wholly or partly in public ownership, i.e. which were established by the Republic of Serbia, an autonomous province or local self-government units. The Constitutional Court, however, emphasised that the prior transfer of rights to establishment of individual media outlets was not brought into question.

Provisions in Article 20 (items 1–4) were also declared unconstitutional. Under these provisions, National Minority Councils had been entitled to: 1) render their opinions on nominated members of the Management Board, the Programme Board and the Director General of Radio Television of Serbia in the event it broadcast programmes in the respective minority languages; 2) render their opinions on nominated members of the Management Board, the Programme Board and the Director General of Radio Television of Vojvodina, in the event it broadcast programmes in the respective minority languages; 3) set the criteria for the appointment of the public service broadcasters' minority programme Chief Editors; 4) nominate to the public service broadcasters' Management Boards applicants fulfilling the requirements for the positions of minority programme Chief Editors.

The Constitutional Court also declared unconstitutional Article 24 on the transfer of all or part of the rights to establishment of schools holding class in minority languages, cultural institutions focusing on the preservation and development of minority cultures, institutions providing information only in minority languages, and institutions of particular relevance to national minorities. The Court was of the view that there were legal grounds allowing the founders to transfer the rights to establishment but that the transfers had to be based on the consent of will of

815 Constitutional Court Decision I Uz–27/2011 of 3 October 2013.

the founders and the legal persons to which the rights to establishment were being transferred, that is, that unilaterally expressed will of the persons seeking the transfer of the rights to establishment should not be imposed upon the founders. Furthermore, the Constitutional Court specified in its reasoning that criteria for declaring a specific establishment an institution one of particular relevance to a national minority had to be defined.

The Constitutional Court furthermore found that the National Minority Councils' powers to submit motions, initiatives and opinions on issues within the remit of the National Assembly were not in compliance with the Constitution, as, in its view, they are not authorised to propose laws and the procedure for seeking their opinions would amount to conditioning and restricting the main competence of the National Assembly. The Court was also of the view that the Councils' powers to submit motions, initiatives and opinions on issues within the remit of the Government were in contravention of the Constitution since the Government was entrusted with autonomously regulating its work by its Rules of Procedure, including both the procedure for adopting subsidiary legislation and the procedure by which it submits laws for adoption to the National Assembly.

The Constitutional Court also declared unconstitutional paragraphs 2, 3 and 4 of Article 26, under which provincial and local authorities were under the obligation to review the motions, initiatives and opinions of National Minority Councils and take the relevant measures and, to seek the Councils' opinions on their draft general enactments in areas within the purview of the Councils. The Court opined that the autonomous province was entitled to autonomously regulate its authorities and their work subject only to constitutional restrictions, wherefore issues regarding the remit, organisation and work of provincial authorities could not be governed by law, but only by the provincial Statute and other provincial general enactments. The Court was of the view that the province should regulate the above-mentioned issues in its Statute in the way it deemed fit if it found such regulation necessary. Local self-government units, it noted, are also entitled to self-regulation, which is limited not only by the Constitution, but by the Local Self-Government Act as well. The Constitutional Court said that the minorities' participation in local government decision-making was already governed by the Local Self-Government Act and that the further regulation of this issue by the NCNMA created legal insecurity. It opined that the Councils for Inter-Ethnic Relations, the local bodies envisaged by the Local Self-Government Act, might contribute to the exercise of minority rights more effectively than the National Minority Councils. It, however, needs to be noted that the Councils for Inter-Ethnic Relations have not played a prominent role in most local governments and, indeed, have not even been established in all of them.

The Constitutional Court also declared unconstitutional the provision in Article 27, under which National Minority Councils were entitled to, *inter alia*, cooperate with the state authorities of foreign states. It explained that cooperation with the state authorities of foreign states was inter-state (international) cooperation and part

of a state's foreign policy, wherefore non-state entities could not be actors of such cooperation.

The provisions in the NCNMA governing the election and constitution of National Minority Councils were amended in May 2014 to eliminate the numerous shortcomings in the election procedure identified during the first election of the Councils in 2010. An administrative dispute may now be initiated to challenge any enactment adopted by the competent ministry during the enforcement of this law. Furthermore, the Republican Election Commission is now the supreme authority charged with National Minority Council elections.

3.6.1. National Minority Council Elections. – The second National Minority Council elections were held in late October 2014. Members of 17 Councils (the Albanian, Ashkali, Bosniak, Bulgarian, Bunyevtsi, Vlach, Greek Egyptian, Hungarian, German, Roma, Romanian, Ruthenian, Slovak, Ukrainian and Czech Councils) were directly elected while the members of the Macedonian, Montenegrin and Croatian National Councils were elected at electoral assemblies. No major irregularities were registered during the elections. The incidents in the Tutin Municipality led to the repetition of the elections for the Bosniak National Minority Council at three polling stations. Elections were also repeated at a polling station in the Bujanovac Municipality.⁸¹⁶

According to the report on the National Minority Council elections adopted by the Republican Election Commission⁸¹⁷ 171,799 of 456,444 (37.63%) registered voters took part in the elections.

Such a low turnout indicates that persons belonging to national minorities have not recognised the National Minority Councils as their representatives. This, however, is not the only reason. In general, most citizens are unaware of the Councils and their purview. Furthermore, the media with national coverage did not report on the Council elections adequately except on election-day. To recall, Article 39 of the NCNMA obligates the media to cover the National Minority Council election activities and elections. Numerous irregularities were identified in the election coverage of minority language media, including the involvement of journalists and editors in the election campaigns.⁸¹⁸

3.6.2. Problems in the Enforcement of the NCNMA. – The NCNMA has been in force for five years now, wherefore the difficulties in its enforcement and its main shortcomings can be analysed more thoroughly. In a nutshell, the NCNMA is not aligned with the other laws, it does not govern specific issues (such as criteria

816 “No Problems during Repeat Elections in Tutin and Bujanovac”, *Studio B*, 2 November 2014, available in Serbian at <http://www.studiob.rs/info/vest.php?id=109527>.

817 REC Adopts Report on National Minority Council Elections, 24 November 2014, available in Serbian at <http://www.paragraf.rs/dnevne-vesti/241114/241114-vest9.html>.

818 Irregularities in Minority Language Media Reports, 18 December 2014, available in Serbian at <http://www.autonomija.info/nepravilnosti-u-izvestavanju-medija-na-manjinskim-jezicima.html>.

for declaring a cultural establishment an institution of particular relevance to the preservation of the identity of a national minority) and some of its provisions are imprecise. The lack of political will to enforce the NCNMA, particularly at the local level, is also evident: the enforcement of this law has often depended on the will of the political party(ies) running a city or municipality. Responsibility also rests with the state, specifically the ministries charged with minority rights and their passive attitude towards these issues.

The National Minority Councils have their share of responsibility for the situation as well. Their public image has been tainted by reports of their abuse of their legal powers and allocated budget funds and the significant influence of political parties on their work, which may lead to the creation of a political climate precluding the exercise of minority rights.

It can be concluded that the arbitrariness of the authorities enforcing this law has led to discrepant practices, resulting in the absence of legal security in terms of exercising the rights under the NCNMA.

The purpose of the NCNMA is to provide the National Minority Councils with mechanisms to facilitate the exercise of minority rights to self-governance in culture, education and informing and use of minority languages and scripts. If the situation in the field of protecting minority rights is to improve, the Ministry of State Administration and Local Self-Governments needs to perform a substantial analysis of the valid law as soon as possible and prepare amendments to it, which would not be reduced only to aligning it with the above Constitutional Court decision. Given that the existing minority policy concept, or, more precisely, lack of a clear concept, has not resulted in the establishment of a fully functional mechanism for exercising the minorities' rights to self-governance, the amendment process might be a good opportunity to review whether the National Minority Councils should be regulated in a different manner, more in line with the circumstances in Serbia. This is precisely why a broad participatory public debate should be organised with representatives of the National Minority Councils and civil society.

The National Minority Councils have recognised the Protector of Citizens and the Vojvodina Ombudsman as their partners in the endeavours to ensure the consistent enforcement of the law, as testified by the large number of complaints the Councils have filed with these independent authorities and the recommendations the latter communicated to the administrative authorities.

The same cannot, however, be said of the Commissioner for the Protection of Equality. Only two National Minority Councils have applied the NCNMA provision entitling them to file complaints with the Commissioner on behalf of a group of persons or individuals belonging to a minority. The fact that the Roma National Minority Council has not lodged any complaints about discrimination with the Commissioner is particularly worrying, given that Roma are frequently victims of discrimination.

Of the recommendations and opinions issued by independent authorities, the BCHR would like to draw attention to the opinion of the Protector of Citizens about the complaint filed by the Serbian – Tzintzar association Lunjina regarding the Ministry of Justice and State Administration decision rejecting its request to form a separate election roll of the Tzintzar national minority.⁸¹⁹ The Ministry rejected the request, explaining that the number of people declaring themselves as Tzintzars, 243 under the 2011 Census, was insufficiently representative. The Protector of Citizens reviewed the lawfulness of the Ministry's work and concluded that, although its decision was not formally unlawful, it was essentially deficient because the number of people who declared themselves as belonging to a specific minority cannot be the sole criterion for the recognition of the collective right to form a national minority council, unless that number of people is so small that they cannot be considered a community but only a group of people with tens of members. The Minority Protection Act lists representativeness among the criteria groups of citizens must fulfil to be considered a minority, but does not specify how many members of the group are considered representative. The Protector of Citizens further said that other small national minority groups, such as the Ashkali, have been recognised the right to establish a national minority council, although their numbers are negligibly higher than the number of citizens who declared themselves as Tzintzars. The Protector of Citizens in particular emphasised that precisely small communities were in greater need of protection enabling them to preserve their cultural identity.

The Vojvodina Ombudsman published a report on a survey⁸²⁰ conducted to establish the extent to which the National Minority Councils exercised their legal powers. As far as their general powers under Article 10 of the NCNMA are concerned, the survey demonstrated that most of the Councils exercised at least one of them and that nearly all of them exercised the power to identify educational institutions of relevance to their national minorities and participate in the management of these institutions. A few National Minority Councils made use of the opportunity to have all or part of the rights to establishment transferred from the Republic, province or local self-government units to themselves, which, in the view of the Vojvodina Ombudsman, can mainly be attributed to financial reasons, because rights to establishment entail specific financial obligations as well.

Although the National Minority Councils have exercised their powers in the field of culture, not one of them used the opportunity to propose to the local governments to halt the enforcement of spatial and urban plans because they would jeopardise cultural goods of particular relevance to a national minority. Only seven National Minority Councils exercised the power to themselves establish cultural institutions and the number of such institutions now stands at only 10. On the other hand, the National Minority Councils identified 107 cultural institutions as those of

819 Opinion Ref. No. 14304 of 21 May 2014.

820 "Four Years of the National Minority Councils", available in Serbian at: http://www.ombudsmanapv.org/riv/attachments/article/1436/4%20god_nac_saveta_final_site.pdf.

particular relevance to the preservation, promotion and development of the cultural specificities and identity of the minorities.

The National Minority Councils have not focused enough on the area of information either. They did not exercise their legal power to render opinions and give suggestions to the Republican Broadcasting Agency (RBA) Council about minority language programmes; nor did they appoint their representatives to attend the RBA Council sessions discussing minority language programmes.⁸²¹

As far as the official use of languages and scripts is concerned, the scope of the National Minority Councils' powers depends on whether their particular languages and scripts are officially used, given that these powers cannot be exercised by the minorities, the languages and scripts of which are not officially used. The National Minority Councils that could exercise this right, however, applied a number of powers. The Vojvodina Ombudsman underlined that most of the complaints filed with her office regarded precisely this field and that nearly 90% of the recommendations she had issued after reviewing the complaints have been complied with.

The NCNMA also governs the National Minority Councils' relations with the state, provincial and local authorities. The Vojvodina Ombudsman voiced the opinion that the National Minority Councils could have exercised the powers regarding cooperation with these authorities to a greater extent.⁸²²

3.7. 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 NCNMA, 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).

821 Nearly all the provisions of the NCNMA regarding the participation of National Minority Councils in the management of the public service broadcasters RTS and RTV Vojvodina were rendered ineffective under the above-mentioned Constitutional Court decision.

822 As mentioned above, the Constitutional Court in its decision declared unconstitutional the provisions entitling the National Minority Councils to submit motions, opinions and initiatives on issues within their remit to these authorities.

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 NCNMA, National Minority Councils shall propose to competent authorities to perform oversight of the official use of languages and scripts.

In its Third Opinion, the Advisory Committee said that it was striking that minorities in the Preševo valley and the Sandžak region expressed a lack of trust in, and a sense of abandonment by, the central authorities and that this was heightened by their perceptions of government policies as inhibiting their expression of their identities, such as the destruction in early 2013 of (illegally built) monuments to Albanian “war heroes” in the Preševo area, prosecutions of persons displaying the national symbols of Albania (even when the Serbian flag was flown alongside), a certain tendency in some circles to portray the Bosniak national minority as “only” a religious community.⁸²³

In its Comments on the Third Opinion, the Republic of Serbia said it has generally implemented a policy toward national minorities whose ultimate goal is their full integration in the social life, with a further preservation and development of their national and cultural specificities. The use of national symbols of national minorities is regulated by the Minority Protection Act, under which persons belonging to national minorities are entitled to choose and use national symbols and emblems, and stipulating that a national symbol or emblem of a national minority may not be identical to the symbol or emblem of another country. The legislator’s intention was to find symbols which would represent entire national minorities, not their mother countries.

It underlined that the State has acknowledged the Bosniaks’ separate national identity through the establishment of the National Council of the Bosniak National Minority and asked the CoE Committee of Ministers not to uphold the Advisory Committee’s views on inter-ethnic relations in these two areas. Serbia asked the Advisory Committee to use the geographical names and official names of the municipalities in the south of Serbia (Bujanovac, Medveđa and Preševo), traditionally used by persons belonging to the Albanian national minority, rather than the term Preševo Valley, which is used by Albanians to present the territory as a cultural and historical unit, is not in official use and does not exist as a geographical term. The term Sandžak is also not in official use and does not refer exclusively to the territory of the Republic of Serbia, wherefore Serbia asked the Advisory Committee to use the official term “Raška area”, lest the use of these terms may be interpreted by certain supporters of the use of the above mentioned terms as support for undertaking certain activities violating the territorial integrity and sovereignty of the State Parties.⁸²⁴

823 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Serbia*, adopted on 28 November 2013, p. 25.

824 Serbian Government Comments on the Third Opinion on Serbia of the Advisory Committee on the Framework Convention for the Protection of National Minorities, published on 23 June 2014, pp. 18–20.

3.8. Incidents and Abuses of Affirmative Action Measures

Abuses of affirmative action measures facilitating enrolment of a specific number of Roma youths in secondary schools and colleges received a lot of media coverage in 2014.⁸²⁵ Under the Constitution and the law, everyone is free to express the national affiliation they feel. Non-Roma pupils have frequently abused these provisions and declared themselves Roma in order to enrol in college and win scholarships and beds in student dormitories more easily. On the other hand, youths declaring themselves as Roma must submit evidence of their Roma affiliation under the college enrolment and dormitory competition requirements, set by the Ministry of Education. Such certificates are issued by the National Council of the Roma National Minority and the Roma Inclusion Office. In her Opinion⁸²⁶ to the two institutions, the Vojvodina Ombudsman noted that “There are no legal grounds for issuing national affiliation certificates to citizens in the Republic of Serbia. The right to a special measure introduced to achieve full equality of persons belonging to a national minority and those belonging to the majority population may be exercised exclusively pursuant to a unilateral, personal and at any time revocable declaration of national affiliation by a citizen.” The state must as soon as possible regulate the procedure and criteria for applying these measures to ensure that precisely those citizens they are targeting are not precluded from enjoying the privileges guaranteed under the legal order.

Chairman of the prior Bosniak National Minority Council Esad Džudžo changed his last name⁸²⁷ and called on other Bosniaks to follow suit as this was one of the ways to reaffirm their Bosniak identity. Namely, Esad Džudžo claims that the suffixes –ić/-vić were added to the Bosniaks’ last names without their consent after 1912, i.e. after their vital records were burnt down. The right to a personal name falls within the category of personal rights people bearing them should decide about. The Family Act allows change of names and there was thus nothing controversial in Esad Džudžo’s decision to change his last name. Launching a campaign to persuade other persons belonging to the Bosniak national minority to change their last names may, however, be somewhat problematic given that the right to change one’s name is strictly a personal right.

Serbian President Tomislav Nikolić in early September 2014 provoked sharp reactions among Croatian officials when he donated to children attending Bunjevtsi Language with Elements of the National Culture textbooks in the Cyrillic script. Vice-Chair of the European Parliament Committee for Foreign Affairs Andrej Plenković called for the protection of the rights of Croats in Serbia at the first Eu-

825 See, e.g. the *Večernje novosti* article, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:502016-Izjasnjavaju-se-kao-Romi-da-bi-upisali-fakultet>.

826 Opinion No: I-NM-1-40/13.

827 See the report in Serbian at: <http://sandzaklive.rs/index.php/sandzak-drustvo/409-dzudzevic-sad-se-zovem-esad-dzudzo>.

ropean Parliament autumn session in Strasbourg, qualifying the move as “continuation of the policy of diluting the Croatian minority in Serbia”.

Residents of the settlement Sirča at Kraljevo, including chairman of the Sirča Local Community Mladen Vasiljević, blocked the road leading to a house two Roma families were to move into. The Ministry of Labour, Employment, Veteran and Social Policy condemned the protest, qualifying as inadmissible the policy of disparaging the elementary human rights of Roma and treating them as second-class citizens.⁸²⁸ The Commissioner for the Protection of Equality issued a warning vehemently condemning the protest⁸²⁹, in which she said that “the views of the Local Community chairman, who, according to some media, said “We can’t mix with them” and “We simply can’t live together with them because they are disturbing our peace”, do not amount merely to the disparagement and violation of the human dignity of the Roma national minority, but also to a grave form of racial discrimination prohibited by law.”

A pane in front of the Kikinda Culture Hall with a poster with the programme of the exhibition “The Righteous among Peoples” organised by the Association of Jewish Municipalities and the Kikinda Jewish Municipality was smashed. The abutting panes advertising other exhibitions were not damaged.⁸³⁰ Deputy Protector of Citizens in Zrenjanin Trajan Pankarićanin warned that it has never been established who was behind the numerous incidents indicating hate and intolerance of national minorities and that the public had never learned whether the courts had rendered any final decisions in those cases in which criminal proceedings had been instituted against the perpetrators.⁸³¹

The Novi Sad High Court in August 2014 delivered a two-year sentence of imprisonment against a minor, P.P. (14), for killing Ervin Bilicki in Bečej on 17 March 2013. Judge Milica Novaković said that the defendant was 14 years and that he would have been sentenced to stricter punishment if only he were 16 years old.⁸³² Ervin Bilicki’s sister Melanija was beaten up by Tamara T. (24) in January 2014. The police believe that, like her brother, she was the victim of an assault prompted by some kind of inter-ethnic and racial hatred.⁸³³

828 See the report in Serbian at: <http://www.blic.rs/Vesti/Drustvo/481708/Ministarstvo-Nedopustiv-protest-mestana-Sirce-protiv-doseljavanja-Roma>.

829 See the Commissioner’s warning in Serbian at <http://www.ravnopravnost.gov.rs/sr/upozorenja/upozorenje-povodom-protesta-zbog-doseljavanja-roma>.

830 See the *Blic* report in Serbian at: <http://www.blic.rs/Vesti/Hronika/448650/Razbijen-pano-s-najavom-izlozbe-o-Jevrejima>.

831 See the *Blic* report in Serbian at: <http://www.blic.rs/Vesti/Vojvodina/436183/Zrenjanin-Napadina-manjine-ostaju-nerasvetljeni-godinama>.

832 See the report in Serbian at: <http://www.svet.rs/hronika/zlocin-ali-ne-i-kazna-ubici-ervina-bilickog-dve-godine-zatvora>.

833 See the *Blic* report in Serbian at: <http://www.blic.rs/Vesti/Hronika/432474/Pretucena-sestra-ubijenog-mladica-Ervina-Bilickog>.

In late November 2014, a young man and woman physically assaulted an Ashkali family and their child. After they heard them talking in Ashkali, they started hitting them with their hands and kicking them.⁸³⁴ The Ashkali Heritage Association issued a press release fiercely condemning attacks on the Ashkali population and calling on the Serbian MIA to protect them “rather than ingratiate themselves with the assailants”. It said in the statement that this was not the first time Ashkali were assaulted, and that its Chairman Jahir Toplica was physically attacked by a man in the street who heard him talking on his cell phone and shouted “Don’t speak Albanian here, this is not Albania”.

4. Status of Roma

4.1. General

The status of Roma did not improve much in 2014, Roma are one of the most vulnerable categories of the population in Serbia. The three-year Action Plan (Roma Strategy AP)⁸³⁵ for the Implementation of the Strategy for the Improvement of the Status of Roma in the Republic of Serbia (hereinafter: Roma Strategy)⁸³⁶ was adopted in 2013. Paradoxically, this key Government document 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

834 See the RTS report in Serbian at: <http://www.rts.rs/page/stories/sr/story/135/Hronika/1758574/A%C5%A1kalijska+porodica+napadnuta+u+Novom+Sadu.html>.

835 The Conclusion on the adoption of the Action Plan 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%20sprovodjenje%20strategije%20za%20unapredjenje%20polozaja%20Roma.pdf>.

836 The English translation of the Strategy (*Sl. glasnik RS*, 27/09) is available at: <http://www.inkluzija.gov.rs/wp-content/uploads/2010/03/Strategija-EN-web-FINAL.pdf>.

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 its Chapter 23 Screening Report⁸³⁷ the European Commission underlined that Serbia should dedicate additional financial assistance to implement the current and future Roma strategy in particular regarding education and health measures.

The Government received moderate praise for its implementation of the Roma Strategy AP from the European Commission, which noted in its 2014 Progress Report⁸³⁸ that the new set of recommendations formulated during the June 2013 EU-Serbia seminar on Roma inclusion produced some positive results, and contributed to a broader awareness of the challenges.⁸³⁹

In May 2014, the UN Committee on Economic, Social and Cultural Rights reviewed Serbia's second periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights and adopted its Concluding Observations.⁸⁴⁰ The Committee expressed its concern about the prevailing discrimination against Roma as evidenced, *inter alia*, by disproportionately high unemployment, limited access to social security, accommodation in informal settlements, and inadequate health care and education. It noted also the shortcomings in the implementation of the 2012–2014 Roma Strategy and the insufficient implementation of the nationally agreed priorities regarding Roma at the local level. The Committee expressed concern that a number of refugees, returnees and internally displaced persons remained without personal identity documents, which limited their enjoyment of economic, social and cultural rights.

As regards the forced evictions from informal Roma settlements, the Committee urged Serbia to take urgent measures to consult affected communities throughout all stages of evictions, to ensure due process guarantees and compensation and to provide in particular for adequate alternative accommodation in locations suitable for social housing construction. In its Concluding Observations, the Committee expressed concern at the small number of social housing units constructed annually for low-income families and inadequate living conditions in informal Roma settlements.

Preparations for the drafting of the new Roma Strategy began in 2014. A baseline study was completed with a view to proposing the framework of the new

837 The Chapter 23 *Screening Report* is available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/140729-screening-report-chapter-23-serbia.pdf.

838 The 2014 Progress Report is available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

839 The Seminar “Roma Social Inclusion in the Republic of Serbia” was organised by the Social Inclusion and Poverty Reduction Unit, the Human and Minority Rights Office and the European Commission. The conclusions are available in Serbian at: <http://socijalnoukljucivanje.gov.rs/rs/seminar-o-socijalnom-ukljucivanju-roma-jun-2013/>.

840 Available at: <http://www.refworld.org/docid/53fdbbb64.html>.

strategy in line with the Europe 2020 strategy for smart, sustainable and inclusive growth.⁸⁴¹ Serbia is expected to start preparations for adopting at the end of 2014 a new multi-annual strategy and action plan to improve the living conditions of Roma, including actions to ensure their registration, comprehensive measures on non-discrimination, ensure compliance with international standards on forced evictions and access to guaranteed socio-economic rights.⁸⁴²

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 Inclusion⁸⁴³ (hereinafter: Roma 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. 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 members of the Roma Council were appointed in 2014. The Council is now chaired by the Minister of Labour and Social Issues rather than the Deputy Prime Minister, which may indicate its lesser political relevance. The decision to entrust chairmanship to the Minister is quite problematic in view of the fact that this Ministry has been the least active on Roma inclusion issues. The Ministry has to date avoided undertaking any activities apart from those it is entrusted with under the Social Protection Act, although the Act on Ministries clearly sets out that it is charged with both welfare and Roma inclusion.⁸⁴⁴ The issues regarding the future financing of the Council support the Progress Report recommendation that Governmental coordination, together with operational cooperation between the various ministries and bodies relevant for Roma inclusion, remain to be further improved.⁸⁴⁵

The National Minority Council elections were held on 26 October 2014. The NCRNM was constituted and Vitimir Mihajlović was re-appointed Chairman. Given that more Roma declared their national affiliation at the 2011 Census, several thousand more names had to be entered in the special election roll to allow for di-

841 The Baseline Study is available in Serbian at: <http://www.ljudskaprava.gov.rs/>.

842 The Chapter 23 *Screening Report* is available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/140729-screening-report-chapter-23-serbia.pdf.

843 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 of 24 May 2013, in force as of 1 June 2013.

844 Protector of Citizens, Roma Strategy Implementation Report and Recommendations, available in Serbian at: http://www.ombudsman.rs/attachments/3285_Izvestaj%20o%20sprovedjenju%20Strategije%20za%20unapredjenje%20polozaja%20Roma.pdf.

845 The 2014 Progress Report is available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

rect elections. The entry of a large number of Roma in the separate election roll is a major success, and can primarily be attributed to the campaigns of the Roma civil sector. On the other hand, the smaller turnout than at the previous elections may indicate increasing political passivity of this category of the population traditionally reluctant to exercise its right to political participation or of its lack of trust in the NCRNM as an institution. During the campaign, the Women's Roma Network alerted to the lack of gender equality in Serbia's representative bodies and the exclusion of elected women from the decision-making process, despite the National Councils of National Minorities Act providing for a quota of the under-represented gender, which was *inter alia* adopted to remedy the exclusion of women.⁸⁴⁶

The number of Roma working in public administration remains negligible⁸⁴⁷ despite the Roma youth internship programme⁸⁴⁸ that was launched to ensure equitable representation of national minorities in the civil service. Although internship programmes provide youths belonging to national minorities with the opportunity to gain working experience in the civil service, notably on issues directly affecting them, this programme has not led to their full-time employment in the public administration or an increase in the employment of persons belonging to national minorities in it.

The adoption of the Decision on the Standardisation of the Roma Language⁸⁴⁹ 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 exercise of the rights to use the Roma language, to information and education in and nurturing of the Roma language is yet to be seen.

Legal provisions to register 'legally invisible persons' are being implemented and producing encouraging results, but the speed and efficiency of their enforcement needs to improve. Over 20,000 Roma have been registered in the vital registers to date. The legal provision allowing social welfare centres to be used as a temporary address for registration purposes is implemented unevenly across the country.⁸⁵⁰

4.2. Discrimination against Roma

Strategy for the Prevention of and Protection from Discrimination⁸⁵¹ for the 2013–2018 period reiterates that the Roma community in Serbia, especially its most vulnerable categories – women, children, IDPs, legally invisible people – are ex-

846 "Women Belonging to Minority Groups Subject to Discrimination", 16 October 2014, available in Serbian at: <http://izbori.minoritynews.rs/nacionalni-savet-romske-nacionalne-manjine>.

847 The Human and Minority Rights Office in 2014 published a call inviting youths belonging to the Albanian, Bosniak and Roma national minorities to apply for internships.

848 *Ibid.*, p. 119.

849 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.

850 *The 2014 Progress Report* is available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

851 *Sl. glasnik RS*, 60/13.

posed to various forms of discrimination, above all verbal and physical assaults, destruction of their homes and segregation. In the section on national minorities, the Strategy devotes particular attention to the status of Roma (section 4.2.2.3) and sets out special measures (Measures 4.2.4, paragraphs 10–13) and objectives (Section 4.2.5.4) regarding the Roma national minority.

The Office of the Commissioner for the Protection of Equality has undoubtedly contributed the most to the prevention of and protection against discrimination.

Roma looking for jobs are frequently discriminated against as well. The Commissioner for the Protection of Equality, for instance, in one case established that a pizza parlour owner in Niš discriminated against a Roma woman who had applied for a job.⁸⁵² After the owner advertised a vacancy in the pizzeria, two NGOs, Praxis and Women's Space, conducted situational testing: two women, one Roma and the other non-Roma of similar age and work experience and other features applied for the job. The employer, however, intended to hire only the non-Roma applicant. The Commissioner in this case observed that employers were absolutely at liberty to decide which applicant they would hire based on their professional knowledge and skills but noted that it was impermissible to exclude or give priority to specific applicants during the recruitment process based on their personal features, which are not real or decisive prerequisites for the performance of a job, in view of its character and specificities and the conditions in which it is performed.

4.3. Education of Roma Children

Not only do Roma have difficulties accessing education; they face discrimination throughout their schooling. 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 2014 again failed to prescribe the detailed criteria for recognising forms of discrimination by the staff, pupils or third parties in the educational institutions envisaged under Article 44(4) of the Act on the Bases of the Education System⁸⁵³ although five years have passed since its adoption.⁸⁵⁴ The adoption of these criteria was one of the recommendations made by the Commissioner for the Protection of Equality.⁸⁵⁵

852 See NGO Praxis' report at <http://www.praxis.org.rs/index.php/en/praxis-in-action/discrimination/item/783-an-employee-discriminated-against-a-roma-woman-in-establishing-employment-relationship/783-an-employee-discriminated-against-a-roma-woman-in-establishing-employment-relationship>.

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

854 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.

855 Summary of the 2014 Annual Performance Report, available in Serbian at <http://www.slglasnik.info/sr/34-26-03-2014/22974-sazetak-redovnog-godisnjeg-izvestaja-o-radu-za-2014-godinu.html>.

As far as (violations of) equality and access to quality education are concerned, the Republic of Serbia undoubtedly launched major and critical systemic changes when it adopted the corollary 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 difficulties. The number of Roma pupils has fallen, but is still too high. The drop-out rate of Roma children is still high. According to UNICEF's 2014 Multiple Indicator Cluster Survey, the percentage of Roma settlement children of secondary school age currently attending secondary school or higher stands at 21.6% while the share of children of that age attending school in the rest of the population stands at 89.1%⁸⁵⁶

4.4. *Living Conditions of Roma*

The living conditions of the Roma are still difficult. Those living in the numerous informal settlements are subject to a high degree of discrimination in accessing welfare, health care, employment and adequate housing, including the basic hygienic living conditions, water and electricity.

Evictions and the right to housing are generally a big problem. Serbia is far from fulfilling the international standards on evictions and resettlement. Social housing is still at an early stage and, in the absence of a comprehensive legal framework and the slow implementation of the activities envisaged by the National Social Housing Strategy, it does not provide a satisfactory response to the Roma housing problems. The previous experience in Belgrade shows that "about 10% of social apartments are allocated to persons of Roma ethnicity".⁸⁵⁷ The NGO Praxis alerted to the problems of the beneficiaries of social housing in Belgrade, whose lease contracts were cancelled or not renewed because they were unable to pay the high rents and utility fees. Namely, they cannot exercise legal protection in the event their contracts are cancelled, the costs of social housing often exceed the total incomes of the entire households and the beneficiaries are not offered subsidies, i.e. housing allowances. Furthermore, the beneficiaries do not have the status of protected energy customers and have to pay personal property tax on the apartments although they do merely use them and do not own them.⁸⁵⁸

The European Union earmarked 3.6 million Euro for the "Livelihood Enhancement for the Most Vulnerable Roma Families in Belgrade" (Let's Build a

856 The 2014 Serbia Multiple Indicator Cluster Survey and 2014 Serbia Roma Settlements Multiple Indicator Cluster Survey, available at http://www.unicef.org/ceecis/MICS_5_-_Key_Findings.pdf.

857 "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.

858 Article 46, Decree on Standards and Norms for Planning, Designing, Constructing, Using and Maintaining Social Housing Facilities.

Home Together) project, which is to provide durable and adequate housing solutions for up to 200 Roma families resettled from the Belgrade Belvil informal settlement and living in the Belgrade container settlements in Makiš, Jabučki rit, Resnik and Kijevo. The Project is implemented in partnership with the City of Belgrade, the United Nations Office of High Commissioner for Human Rights (UN OHCHR) through the UN Human Rights Adviser (HRA) in Serbia, the Danish Refugee Council, the Housing Development Centre for Socially Vulnerable Groups, the OSCE and the UN Serbia Team.⁸⁵⁹ The implementation of the project began in February 2013 and is to be completed by early 2015. It has achieved modest results. By end July 2014, 16 village houses were purchased and eight families already relocated to their new homes. The construction of twelve social housing units in Orlovsko naselje started, while seven beneficiaries made significant progress in the reconstruction of their own property. Given that the implementation of the project is to end in early 2015, expectations are that 30% of the targeted beneficiaries at most will have been accommodated. The project faced a number of problems, including lack of funding, higher construction costs and poor cooperation with the local authorities. Despite some promises, the City of Belgrade failed to cede any new locations by the end of July 2014, although social housing cannot be constructed on three of the five sites identified in the Action Plan. Segregation and the selection of the sites are a problem in themselves.⁸⁶⁰ Only two of the sites offered by the Belgrade City Administration were qualified as adequate, but only 27 of the planned 121 housing units can be built on them.⁸⁶¹

The Roma civil sector initiative regarding the adoption of a *lex specialis* for legalising informal Roma settlements⁸⁶² is worthy of consideration. The valid law on legalisation, adopted in 2013, does not provide the residents of Roma settlements in Serbia with the opportunity to legalise their homes satisfying construction and utility standards. The *lex specialis* would facilitate the regulation of the illegal settlements and their coverage by urban plans, which is prerequisite for the legalisation of individual facilities that would be conducted pursuant to the valid Legalisation Act. The draft *lex specialis* relies on the Vienna Declaration,⁸⁶³ which Serbia signed in 2004, and which underlines the importance of legislation in this area and states

859 The First Intermediary Report, "Let's Build a Home Together", 8 February–31 July 2013, UNOPS Serbia, 18 August 2013, available at http://www.sagradimodom.org/dokumenti/en/27_542934_first-intermediary-report-feb-july-2013.pdf.

860 The Second Intermediate Report, "Let's Build a Home Together", available at: http://www.sagradimodom.org/dokumenti/en/27_583300_lbht-second-intermediate-report-feb-jul-14.pdf.

861 Minutes of the Second Project Sub-Committee Meeting (Draft), Belgrade, 28 November 2013, p. 5, available at: http://www.sagradimodom.org/dokumenti/en/28_329103_minutes-2ndscm-2813-v4.pdf.

862 The Draft Act is available in Serbian at: http://www.ligaroma.org.rs/images/stories/prednacrt-zakona-o-legalizaciji-odrzivih-neformalnih-romskih-naselja_11.9.2014_1.pdf.

863 Vienna Declaration on Informal Settlements in South Eastern Europe, available at: http://www.stabilitypact.org/housing/f%20-%20050415_Vienna%20Declaration.pdf.

that the urban, social and economic integration of informal settlements within the overall city structure will be a key factor in preparing for accession to the EU.

The living conditions in the informal settlements are horrible, their residents mostly lacking electricity and water and elementary hygienic conditions. Fires often break out in the informal settlements in fall and winter, because their residents light candles or fires to keep themselves warm. Three Roma children perished when a fire broke out in an informal settlement in New Belgrade in September 2014. The NGOs focusing on the protection and improvement of Roma rights and the Protector of Citizens warned that this tragedy was a reminder of the desultory living conditions in informal Roma settlements and called for the urgent adoption of specific measures to improve the housing and living conditions of Roma in Serbia.⁸⁶⁴ Reporters of many newspapers covering the event violated all norms of journalistic ethics, laying stress on the children's ethnicity and even publishing their names.⁸⁶⁵

4.5. Flood Consequences

Roma suffered major damages during the May 2014 floods, but, unfortunately, the prospects that their problems will be addressed are much smaller than those of the rest of the population affected by the floods. It is difficult to determine the precise number of flooded Roma households and vulnerable Roma because of the desultory conditions they had lived in and lack of documents. Consequently, Roma have spent much longer periods of time in collective centres without a certain solution on the horizon.⁸⁶⁶ It is equally difficult to monitor what, if any, assistance they have been extended.

The Protector of Citizens established that the rights of 31 Roma citizens, including 12 children, had been violated during the floods. They had fled their flooded homes in informal settlements within the inner Belgrade city limits, which they had been living in since 2012, when they were evicted from the Belvil informal settlement. This group of people had not been provided with accommodation or other kinds of assistance and protection in the same manner and in the same extent or of the same quality that was extended to other citizens (including Roma) from the outer city limits. The group lived in various facilities in the possession of public authorities and organisations, none of which satisfied the requisite hygienic

864 See the *Politika* report, available in Serbian at: <http://www.politika.rs/rubrike/dogadjaji-dana/Tri-deteta-smrtno-stradala-u-pozaru.lt.html>.

865 More in Praxis' report, available at <http://www.praxis.org.rs/index.php/en/praxis-in-action/child-rights/item/825-stradanje-dece-kao-posledica-lo%C5%A1eg-polo%C5%BEaja-romske-populacije/825-stradanje-dece-kao-posledica-lo%C5%A1eg-polo%C5%BEaja-romske-populacije>.

866 "Two Months in Collective Centre", *RTS*, 13 July 2014, available at: <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1647925/Romi+dva+meseca+u+kolektivnom+centru.html>.

conditions. One reception centre they were referred and transported to in Dobanovci refused to take them in on explicitly discriminatory grounds.

5. LGBT Population

5.1. 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).⁸⁶⁷

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,⁸⁶⁸ 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 BCHR was unable to obtain reliable data on the number of discrimination trials due to the different statistical criteria courts apply in their records.

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 2016.⁸⁶⁹

867 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.

868 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 Už – 1918/2009, of 22 December 2011.

869 *Serbia 2013 Progress Report*, p. 42.

The European Commission noted that awareness and protection of the rights of LGBTI persons have started to improve in 2013, but that this needed to be sustained.⁸⁷⁰ The Serbian Government in October 2014 adopted the Action Plan for the Implementation of the Anti-Discrimination Strategy for the 2014–2018 Period (hereinafter: Anti-Discrimination Strategy Action Plan), comprising 19 measures referring specifically to the LGBT population.⁸⁷¹

5.2. Rights of Same-Sex Partners

Same-sex partners are not recognised the right to marry⁸⁷² or the right to form extramarital unions,⁸⁷³ wherefore they are discriminated against with respect to a number of rights (alimony, joint adoption of children, joint property, special protection from domestic violence, succession of a surviving partner to the deceased's tenancy rights, the right to refuse to testify, to legal inheritance, to pension survivor benefits, et al). LGBT persons are discriminated against also with respect to access to health care, which is why they are reluctant to reveal their sexual orientation even when such information is of medical relevance. Partners of LGBT persons cannot visit them in hospital or access their medical data.⁸⁷⁴

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

870 *Serbia 2014 Progress Report*, p. 54.

871 Action Plan for the Implementation of the Anti-Discrimination Strategy for the 2014–2018 Period, adopted by a Government Conclusion No. 05 Ref. No. 90–11489/2014, od 2.10.2014, available in Serbian at: http://www.srbija.gov.rs/extfile/sr/221135/strategija_zastita_od_diskriminacije-akcioni_plan053_cyr.zip.

872 The Constitution defines marriage as a union of a man and a woman (Art. 62 (2)).

873 Constitutional Court decision in case No. IU–347/2005 of 22 July 2010.

874 Council of Europe, Labris, Forum for Ethnic Relations, “Support to the development of public policies in the field of rights protection and improving the quality of life of LGBT people”, Draft Initial Public Policy Proposal,” 2014 available in Serbian at <http://www.fer.org.rs/en/articles/activities/lgbt/>.

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.⁸⁷⁵ The Commissioner for the Protection of Equality qualified the authorities' refusal to issue a certificate of eligibility to marry to a person who wanted to enter a same-sex marriage outside Serbia as 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.⁸⁷⁶

The Action Plan envisages the drafting of a model Act on Registered Same-Sex Partnerships and a model Act Amending the Inheritance Act to equate marriage and civil partnerships and recognise the same sex partners' right of direct inheritance and public debates on these drafts in the last quarter of 2017.⁸⁷⁷ The Centre for Advanced Legal Studies has already drafted a model law on registered same –sex partnerships.⁸⁷⁸

5.3. Freedom of Assembly and Freedom of Expression

After three banned Pride Parades, this event was organised on 28 September 2014 in Belgrade and it was the first that was not accompanied by incidents or organised violence. Between 1,000 and 1,500 people, including human rights activists and Serbian and foreign public and political figures, took part in the Parade. Around 30 events organised during Pride Week in the run up to the Parade also passed without incident.⁸⁷⁹

The ECtHR joined the applications by the 2009, 2011, 2012 and 2013 Pride Parade organisers and would-be participants and communicated them to the State.⁸⁸⁰

875 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.

876 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.

877 Anti-Discrimination Strategy Action Plan, points 4.3.2. and 4.3.3.

878 See: <http://cups.rs/wp-content/uploads/2010/03/Model-zakona-o-registrovanim-istopolnim-zajednicama.pdf>.

879 See parada.rs, "SUCCESS: Belgrade 2014 Pride – New Page in History!", available in Serbian at: <http://parada.rs/uspeh-beograd-prajd-2014-nova-strana-istorije/#more-1107>.

880 ECtHR, *Milica Đorđević and others against Serbia and 3 other applications*, App. No. 5591/10, 25 June 2014, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145735>.

5.4. Discrimination by and against the Media

The NGO Labris filed a complaint joined by numerous organisations and individuals against Iвица Dačić, who was Serbia's Prime Minister at the time, over a statement⁸⁸¹ he made two days before the 2013 Pride Parade was to have been held. The Commissioner for the Protection of Equality rendered an opinion that the Prime Minister's statement, which had been widely reported by the media in Serbia, included views that were disturbing and humiliating and violated the dignity of persons of same-sex orientation. She also noted that the topmost state officials and holders of public office should be aware of their responsibility and of the weight their statements carry. She recommended to Dačić to invite a delegation of the lesbian human rights NGO Labris to a meeting within 15 days from the day of receipt of her opinion and recommendation in order to hear from them what problems persons of same-sex orientation faced on an everyday basis and how such statements affected them and recommended to him to refrain from making statements undermining the dignity of the LGBT population and upholding stereotypes against persons of same-sex orientation in the future, and to contribute with his actions to the suppression of homophobia, violence and discrimination and promotion of tolerance towards this population and all other minority groups.⁸⁸²

The Independent Journalists' Association of Serbia (IJAS) expressed concern about the insults against LGBT persons in the paper *Informer* on 22 September 2014 after this daily front-paged a headline insulting both the members of the LGBT community and the foreign embassies and their staff in Serbia, thus bringing into question the rights of a minority group.⁸⁸³

The Executive Producer of a Belgrade theatre staging a play (Mrs. Minister), in which the leading female role is played by an actor, refused to forward the media material to the gay magazine O, clearly explaining that she did not want this magazine to write about the play because "such an advertisement would not suit the theatre". The Commissioner for the Protection of Equality stated in her opinion that the theatre's actions constituted direct discrimination on grounds of sexual orientation prohibited under Article 6 of the Anti-Discrimination Act. She recommended to the theatre to send a letter of apology to the magazine within 15 days from the day of receipt of her opinion and recommendation and refrain from discriminatory treatment in the future.⁸⁸⁴

881 See e.g. *Kurir Online*, "Dačić: Being a Homosexual is not normal!", 25 September 2014, available in Serbian at <http://www.kurir-info.rs/dacic-nije-normalno-biti-homoseksualac-clanak-1001325>.

882 Opinion of the Commissioner for the Protection of Equality Ref. No. 07-00-695/2013-02, of 3 March 2014.

883 See *parada.rs*, "IJAS Condemns Informer's Insults", 23 September 2014, available in Serbian at: <http://parada.rs/nuns-osudio-uvredljive-poruke-informera/>.

884 Opinion of the Commissioner for the Protection of Equality Ref. No. 07-00-649/2013-02, of 20 January 2014.

5.5. Violence and Hate Crimes

The Criminal Code was amended in 2012 and now includes Article 54a, under which in courts shall consider as an aggravating circumstance the commission of a crime out of hate of another on grounds of his race, religion, national or ethnic affiliation, sexual orientation or gender identity. The adoption of this Article could contribute to the efficient prosecution of those suspected of violence and other crimes against LGBT persons and facilitate their stricter punishment. There are, however, no centralised official data on the number of crimes motivated by hate of LGBT persons.⁸⁸⁵ LGBT persons rarely report hate crimes due to their fear of stigmatisation and further violence, as well as due to their lack of trust in the institutions. LGBT persons are victims of violence both in larger and smaller communities, but the assaults in the smaller communities are under-reported.⁸⁸⁶

The European Commission also noted that LGBTI activists continued to be subject to threats and hate speech.⁸⁸⁷ The EC underlined that public officials should publicly and more systematically condemn or react to threats, physical assaults and cases of incitement to violence and hate speech from extremist groups against NGOs, prominent human rights defenders, etc.⁸⁸⁸ The Serbian Ministry of Internal Affairs in 2014 appointed a Liaison Officer for the LGBT Community within the Police Directorate.⁸⁸⁹

German national D. H., an LGBT activist, who was attending an international conference on LGBT rights in Belgrade, sustained serious injuries when he was assaulted on the street. The assault was condemned by the representatives of the state authorities and the civil sector.⁸⁹⁰ The Protector of Citizens stated that the police and other state authorities had “acted promptly, effectively and unequivocally” to identify the perpetrators of the incident.⁸⁹¹

885 Statistics are kept only by type of crime. The authorities need to introduce new methods for keeping official statistics and keep records of judgments in which the courts found aggravating circumstances under Article 54a.

886 More in I. Stjelja, K. Todorović, D. Todorović, J. Todorović: *HATE CRIMES Actions of State Authorities in Cases of Attacks Against LGBT Persons in Serbia*, Labris, Belgrade, 2014, available at: <http://labris.org.rs/en/wp-content/uploads/2014/04/Hate-Crimes-Publication-English.pdf>.

887 *2014 Progress Report*, p. 54.

888 *2014 Progress Report*, p. 53.

889 *Blic Online*, “Davenport: Appointment of a Liaison Officer for the LGBT Community is a Positive Signal from the MIA”, 4 April, available in Serbian at: <http://www.blic.rs/Vesti/Drustvo/455362/Devenport-Imenovanje-oficira-za-vezu-s-LGBT-zajednicama-je-pozitivan-signal-MUPa-za-Paradu-ponosa>.

890 *TANJUG*, “Reactions to Assault on German National,” 13 September 2014, available in Serbian at: <http://www.tanjug.rs/videodet.aspx?galID=139093>; YUCOM, “Sharp Condemnations of Assault on German LGBT Activist (Serbian Diaspora 14 September 2014)”, available in Serbian at: <http://www.yucom.org.rs/rest.php?tip=vest&idSek=4&idSubSek=4&id=697&status=drugi>.

891 *RTS Online*, “Video of Assault on German National”, 14 September 2014, available at: <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1696852/Snimak+napada+na+nema%C4%8Dkog+dr%C5%BEavljanina+.html>.

The NGO Gay Straight Alliance (GSA) received a number of threats in 2014, including death threats and calls to kill its members and “cleanse” Serbia from this organisation.⁸⁹² Threats were voiced in 2014 also against the Pride Parade organisations. The MIA High Technology Crime Department found that 39 people had threatened the organisers of the 2014 Pride Parade and spread hate speech on social networks. Criminal reports were filed against eight of the perpetrators.⁸⁹³

The Novi Sad Appellate Court Civil Law Division delivered a final judgment ordering Predrag Prgić from Bečej to pay 138,000 RSD in damages to an LGBT activist on account of the physical and mental pain and fear sustained when the former assaulted him out of hate, notably, because of his sexual orientation and participation in the 2010 Pride Parade.⁸⁹⁴

The Belgrade First Basic Court in July 2013 delivered a judgment⁸⁹⁵ finding spokesman of the “SNP 1389” Movement Miša Vacić guilty of racial and other discrimination (Art. 387 CC), unlawful possession of arms and explosives (Art. 348 CC) and obstructing a public official from performing his duties (Art. 332 CC) and sentencing him to one-year imprisonment or a four-year suspended sentence. Both the prosecutor and the defendant’s counsels appealed the judgment, which was pending before the Belgrade Appellate Court for almost a year and a half. The very mild penalty Vacić was handed down for the three crimes and the fact that these criminal proceedings have not been completed for four years now give rise to doubts about the state’s efficiency and determination to suppress discrimination against the LGBT population.

5.6. *Discrimination in the Education System*

There was been no change in the treatment of same-sex orientation in the high-school textbooks in 2014. Discriminatory content is evident in the presentation of same-sex orientation as pathological and support of negative prejudices in biology, psychology and medical textbooks.⁸⁹⁶

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

892 See, e.g. GSA’s press release “GSA Receives Death Threats Again”, 1 April 2014, available in Serbian at: <http://gsa.org.rs/2014/04/ponovo-pretnje-smrcu-gej-strejt-alijansi/>.

893 “Police File Reports for Hate Speech against Gay Population”, 24 September 2014, available in Serbian at: <http://korak-hapi-step.eu/policija-podnela-prijave-zbog-govora-mrznje-prema-gej-populaciji/#more-2073>.

894 “Novi Sad: Final Judgment for Homophobic Violence”, 10 January, available in Serbian at: <http://korak-hapi-step.eu/novi-sad-pravnosnazna-presuda-za-nasilje-izazvano-homofobijom/#more-1335>.

895 Belgrade First Basic Court Case No. K-407/2010.

896 “Same-sex Orientation in High School Textbooks”, *Labris*, 2014, available in Serbian at: <http://labris.org.rs/wp-content/uploads/2014/07/Analiza-diskriminatornog-sadrzaja-srednjoskolskih-udzbenika.pdf>.

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 democratic societies.”⁸⁹⁷

One of the goals of the Anti-Discrimination Strategy is to raise awareness among youths through the education system that all people, including LGBT persons, are equal, and provide objective information on sexual orientation and gender identity in the school curricula and textbook materials.⁸⁹⁸

5.7. Discrimination against Trans⁸⁹⁹ People

The Anti-Discrimination Strategy highlights the following major problems: lack of legal regulations protecting the right of transgender persons to the legal recognition of their sex change and clearly facilitating the prompt changes of their personal documents and the current inconsistent practices on this issue, which have resulted in depriving such persons of numerous rights, e.g. the right to work. Apart from the need to legally regulate the procedures for changing the names and sex of persons who have undergone sex change in their personal documents, a number of laws need to be amended, specifically the Vital Records Act, the Family Act, the Pension and Disability Insurance Act, the Act on the Basis of the Education System, the Labour Act, etc.⁹⁰⁰

Rather than amending a number of laws and bylaws, the requisite changes can also be introduced by the adoption of one law comprehensively regulating the legal status of these persons.

In its decision on a constitutional appeal by a transgender person⁹⁰¹, who was precluded from obtaining personal documents reflecting her post-operative identity, the Constitutional Court stated it had decided to send a letter to the Protector of Citizens alerting to the lack of legal regulations governing the legal effects in cases of post-operative transsexuals given that the Protector of Citizens was entitled to initiate or propose the legal regulation of these issues.⁹⁰² The Protector of Citizens and the Commissioner for the Protection of Equality in 2013 drafted the

897 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.

898 The Anti-Discrimination Strategy, p. 47, available at http://www.seio.gov.rs/upload/documents/ekspertske%20misijske/2014/ad_strategy.pdf.

899 Trans covers all persons whose gender identity, expression or behaviour is different from those typically associated with their assigned sex at birth, including transgender, transsexual, gender-queer and genderfluid persons, transvestites/cross-dressers, bigender and agender persons, etc.

900 The Anti-Discrimination Strategy, pp. 43 and 45.

901 Constitutional Appeal UŽ-3238/2011, the Constitutional Court decision on the appeal is available in Serbian at <http://www.ustavni.sud.rs/Storage/Global/Documents/UstavneZalbe/%D0%A3%D0%B6-3238-2011.pdf>.

902 Article 18 of the Protector of Citizens Act.

“Recommendations for Amending Regulations of Relevance to the Legal Status of Transgender Persons”.⁹⁰³

The Anti-Discrimination Strategy Action Plan envisages two more measures addressing this issue: 1) the drafting of a law on gender identity to improve the status of transgender persons until mid-2016⁹⁰⁴ and 2) the implementation of the Constitutional Court’s above-mentioned decision, i.e. the preparation of a draft sex change law, that would subsequently serve as grounds for amending other relevant laws; the latter measure, however, does not need to be implemented until the last quarter of 2017.⁹⁰⁵ The relevant regulations need to be adopted as soon as possible to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way.⁹⁰⁶ Rather than amending a number of laws and bylaws, the requisite changes can also be introduced by the adoption of one law comprehensively regulating the legal status of these persons.

The Commissioner for 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.”⁹⁰⁷ The Action Plan envisages the drafting of a rulebook on the legal recognition of gender reassignment in school and university certificates and diplomas; this measure, also recommended by the Commissioner for the Protection of Equality, is to be implemented in the first quarter of 2015.⁹⁰⁸

6. Human Rights of Persons with Disabilities

6.1. General

By ratifying the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional protocol, the Republic of Serbia took over international obligation to “improve, protect and respect full and equal enjoyment of human

903 Available in Serbian at: <http://www.ombudsman.rodnaravnopravnost.rs/images/stories/preporuke%20transpolne%20osobe.doc>.

904 Anti-Discrimination Strategy Action Plan, 3.1.6(4).

905 *Ibid.*, 3.1.14.

906 Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, para. 21.

907 Commissioner for the Protection of Equality, Recommendation of Measures to Achieve Equality, Ref. No. 335 of 16 March 2012.

908 Anti-Discrimination Strategy Action Plan, 4.1.4.

rights and fundamental freedoms to all persons with disabilities and improve respect to their inherited dignity.”⁹⁰⁹

According to 2011 Census in Serbia, 7.96% of persons (571.780) declared they were persons with disabilities (total population is 7.186.862). Most of the people declared having problems with walking and the least of those having communication problems. The average age of persons with disabilities is 67, and women are more represented (58.2%). Data acquired at the census are not in line with the estimates of the World Health Organization and statistics of the Eurostat, which assess that there are 10% to 15% of persons with disabilities in Serbia. The reasons should be sought in specific methodologies and different definitions of disability.⁹¹⁰

The Convention on the Rights of Persons with Disabilities states that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”⁹¹¹

6.2. Education

The Law on foundations of education system⁹¹² defined principles and mechanisms to develop and implement inclusive education, which incorporates equal right and accessibility of the education to every child without discrimination while ensuring additional support in accordance with the child’s individual functioning. Comprehensive changes of the legal framework initiated a process of reforming the education system in the Republic of Serbia, which includes individualization of teaching and learning, affirmative measures for enrolment in pre-school and school, ensuring additional support, developing services supportive of inclusive education, introducing assistive technologies, etc. The Law on education of adults⁹¹³ defines that education has to be accessible to persons with disabilities in accordance with their needs and possibilities (Art. 21).

The estimates are that number of children with disabilities in education system has increased. However, there are numerous obstacles in implementation, such as lack of resources, difficulties in planning additional services for educating children with disabilities, functioning of municipal cross-sector commissions, lack of professional competencies of teachers. In addition, the awareness of the citizens in Serbia about educational needs of children with disabilities is still very low. Almost 80% citizens in Serbia believes that children with sensory and physical disabilities

909 Article 1 of the Law on ratifying Convention on the Rights of Persons with Disabilities, *Sl. glasnik RS (Međunarodni ugovori)*, 42/09.

910 Milan M. Markovic, “Persons with disabilities in Serbia: 2011 census of population, households and dwellings in the Republic of Serbia”, Republic statistical institute, Belgrade, 2014.

911 Preamble of the CRPD, Article 1, paragraph e.

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

913 *Sl. glasnik RS*, 55/13.

attending mainstream schools have negative impact on other children, while 65.2% believes the same refers to children with intellectual disabilities.⁹¹⁴

The cross-sector commissions for assessing needs for additional educational, health and social support to a child and pupil⁹¹⁵ are important mechanism for improving inclusive education, but significant improvements are needed in the area of improving legal framework for commissions' functioning, ensuring resources for planning and making additional support accessible, and building capacities of the commissions for child-centered assessments in order to ensure conditions for development, learning and equal participation in the local community.

The Law on textbooks and other learning aids⁹¹⁶ defines that textbooks are published in accordance with the educational needs of pupils both in Serbian language but also in minority languages (Art. 3). The law also defines textbooks on the Brail, electronic or other formats accessible for students with visual impairment. However, textbooks still tend to be inaccessible to all students – they might be available for students in schools for children with disabilities (so-called special schools), but not to children in mainstream schools.

Right to education is particularly violated to children with disabilities living in residential institutions. According to the data of the Republic Institute for social protection, two thirds of children with disabilities living in residential institutions are completely excluded from the education system.

The authorities still have not adopted regulations for additional measures to recognize and react to discrimination in education system.

6.3. Community Living

Social inclusion of persons with disabilities in Serbia is not satisfactory. According to the Ministry of labor, employment, veteran and social policy, 70% of persons with disabilities live in poverty, only 13% are employed, and more than half of them live on different social benefits.

Although the Law on social policy⁹¹⁷ brought important modern and comprehensive changes in advocating social inclusion, but there are still several inconsistencies. On one hand, the law is oriented towards deinstitutionalization, but it still leaves residential institutions as a social service and states that the institution for children cannot exceed 50 clients, while the institutions for adults cannot exceed 100 clients. This approach still maintains institutionalization.

914 Second national report on social inclusion and poverty reduction in the Republic of Serbia for period 2011–2014, October 2014.

915 Rulebook on additional educational, health and social support to children and pupil, *Sl. glasnik RS*, 63/10.

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

917 *Sl. glasnik RS*, 24/11.

The Republic of Serbia has made significant efforts in deinstitutionalization of children and it has one of the lowest institutionalization rates in Europe. However, children with disabilities are overrepresented in residential institutions (58.5 per cent in residential institutions are children with disabilities and only 9.1 per cent of children in family-based setting).⁹¹⁸ In addition, the conditions in some institutions for children and adults have been characterized as inhuman and degrading treatment that can lead to torture.⁹¹⁹ Other characteristics of living in residential institutions are over-medication of clients, inaccessibility of medical treatments that should be provided by the health system, lack of privacy, denying decision-making about basic life issues, abuse and neglect, and the practice of isolation and physical restraint.⁹²⁰

The Law on protection of persons with mental disabilities⁹²¹ defines improvement of rights and change in the approach to treatment of these persons. The implementation of prevention, care, treatment and rehabilitation should be practiced in the local health centers, while the treatment in psychiatric institutions should be used when there is no other option or it is in the best interest of the patient. The European Commission assessed that this law gives inadequate encouragement to deinstitutionalization and that the treatment of institutionalized persons is not in compliance with international standards. The EC also expressed that the process of deinstitutionalizations should be improved, especially in regard to employment, education, and participation of the local self-governments in ensuring support and social inclusion to persons with psychosocial disabilities.⁹²²

Although the Strategy for mental health protection defines that the mental health services should provide modern and comprehensive treatment adjusted to bio-psycho-social approach that has to take place in the community, close to the family, this principle has not been consistently implemented in the law, which was criticized by various organizations and the Protector of the Citizens.

From the medical standing, the law relies on the existing psychiatric institutions and health centers. The right to treatment in least restrictive environment is not elaborated except for listing the principle to use the restrictive measures only if they are efficient. However, other options are not developed, and the prevention, rehabilitation and inclusion are not part of this law. The law does not regulate necessary presence of the lawyer when a person is brought to the psychiatric hos-

918 Republic Institution for social protection, 2013.

919 Report on visit to institution "Veternik", National Preventive Mechanism for Torture, Monitoring institutions for persons deprived of liberty, Protector of Citizens and MDRI-S, 12 March 2014.

920 Hidden and forgotten: segregation and neglect of children and adults with disabilities in Serbia, Mental Disability Rights Initiative of Serbia MDRI-S, Belgrade, 2012.

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

922 Communication from the Commission to the European Parliament and the Council: Serbia 2013 Progress Report, Brussels, 2013.

pital. It also does not contain provisions about the court review of the placement, especially when it comes to involuntary placement of children. The control only includes obligation of the psychiatric institution to submit regular report to the court every three months about the health condition of the person with mental disabilities placed involuntary in an institution, and there are no mechanisms for professional control and review of patient's protection from possible abuse while in the institution.⁹²³

Successful process of deinstitutionalization has to be followed by comprehensive changes in the systems of education, social policy, health protection, employment, accessibility, participation, and overall development of local support services. Unfortunately, with the existing scope of social support services in Serbia, persons with disabilities cannot achieve full social inclusion.⁹²⁴

Provisions of social support services are regulated by the Law on social protection and additional regulations. The Rulebook on condition and standards for provision of social support services⁹²⁵ defines the system for admission of clients, determining the level of support, planning, internal evaluation, building human capacities and accessibility of programs and services in the community. The Rulebook on licensing of professionals in social protection⁹²⁶ and the Rulebook on licensing organizations of social protection⁹²⁷ were adopted in 2013 and they are important for improvement of the entire area of the social service provision.

However, the pluralism of service providers has not been achieved which contributes to the limited number of local support services. Despite the provisions of the Law on social protection about financing local social services, the regulation for transfers to local self-governments has not been adopted. When services are dependent only on the funds from the local self-governments, their proper functioning and sustainability are at risk. Significant number of local municipalities in Serbia are characterized as devastated and they are not capable of ensuring adequate funds for local support services, meaning that the inclusion and realization of rights of persons with disabilities becomes a question of 'place of living', which brings people in less-developed municipalities in an unequal position. Sustainability of the services is also dependent on project funding, so their functioning is limited to project duration. However, in 2014, funds for some services (e.g. personal assistance), were also canceled in developed cities such as Belgrade and Novi Sad.

923 More about the issue in provisions II.4.5.

924 More information in Social services for persons with disabilities as a support to equal socio-economic development – Monitoring report 2012, Serbia, Center for society orientation, 2012, p. 48, available at http://sr.cod.rs/images/COD_Monitoring-izvestaj-2012_Socijalni_servisi-2012.pdf.

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

926 *Ibid.*

927 *Ibid.*

6.4. *Equality Before the Law*

Significant number of persons with disabilities in Serbia is deprived of legal capacity, which results in “civic death” and denies their fundamental human rights. The Family law⁹²⁸ and Law on Non-contentious procedure⁹²⁹ regulate guardianship and deprivation of the legal capacity.

Persons deprived of legal capacity cannot enter into marriage, have parental rights, take actions in court proceedings, be accepted in Serbian citizenship, be enrolled in voting list, vote and be voted on, decide about ending the pregnancy or medical treatments, decide where and with whom to live,⁹³⁰ etc. The regulation in this area is outdated and not in compliance with the international legal frameworks and standards, namely it is in contradiction to the obligations taken by the Republic of Serbia with the ratification of international human rights treaties.⁹³¹

Number of adults under guardianship in Serbia has been increasing which is a very worrisome trend. Only in 2011, number of adults under guardianship increased in 33.9%, and in 2012, number of persons deprived of legal capacity increased in 20%.⁹³²

The consequences of full and partial deprivation of legal capacity are different. In decisions for the partial deprivation, the court determines the type of actions a person can take. On the other hand, full deprivation of legal capacity means that a person cannot independently take legal actions, which also includes possibilities of decision-making and enjoying his/her rights.

The result of the research on courts’ practice,⁹³³ conducted by Belgrade center for human rights and Mental Disability Rights Initiative MDRI-S in 2011 showed that in 87% of the cases, the person on whose legal capacity the court was deciding had not been heard. It was not possible to determine whether the judge was present at the medical examination of the clients. The data show that the practice of legal capacity deprivation mostly hits persons with intellectual disabilities (45.3%) and persons with psychosocial disabilities (31%). In addition, in 99% of the cases, the

928 *Sl. glasnik RS*, 18/05, 72/11 – other laws.

929 *Sl. glasnik SRS*, 25/82 and 48/88, *Sl. glasnik RS*, 46/95 – other laws, 18/05 – other laws, 85/12, 45/13 – other laws and 55/14.

930 Beker, K., “Deprivation of legal capacity: legislation and practice in the Republic of Serbia”, November 2014, Mental Disability Rights Initiative of Serbia MDRI-S.

931 *Ibid.*

932 In 2012, there were 11.267 children and young people under guardianship, 11.852 adults, and 5.611 elderly persons, 2012 Synthesized report on the centers for social work in Serbia, Republic Institute for Social Protection, Belgrade, 2013.

933 “Legal capacity as a human right in Serbia”, Belgrade center for human rights and Mental Disability Rights Initiative MDRI-S, 2011. The results are presented in the publication “Universality of rights: analysis of the implementation of the UN Convention on the Rights of Persons with Disabilities in the contexts of persons with intellectual disabilities in Serbia”, MDRI-S and People in Need (2012).

decision about the deprivation of legal capacity clearly states the type of disability as a reason, which is a violation of the Article 12 of the CRPD and the principle of equality.

According to the Article 12 of the CRPD, person's legal capacity cannot be limited or deprived only on the basis of his/her disabilities. This provision brings completely new approach to legal capacity of persons with disabilities. The changes of the national legislation and its harmonization with the CRPD would greatly contribute to improving the position of persons with disabilities. Long discriminatory practice in this area based on prejudices, legal and terminology confusion, the approach to persons with disabilities have all asked for further clarification of CRPD provisions. Therefore, the first General Comment of the CRPD Committee from April 2014 refers to clarifications of the Article 12 of the Convention.⁹³⁴ It gives guidelines to state parties for reforms of the legislation by confirming that all persons with disabilities have legal capacity on an equal basis with others and that the disability cannot be reason for deprivation of legal capacity. Instead of the deprivation of legal capacity, state parties have to provide support to persons with disabilities necessary for right to act. Support in enjoying legal capacity has to respect rights, wishes, and preferences of a person with disabilities, and it should include formal and informal types of support of different scope and nature. The Committee's opinion is that the state parties should review the laws regulating guardianship or trusteeship and take all necessary measures to change the substituted decision-making with supported decision-making. The supported decision-making includes different possibilities that give priority to wishes and preferences of a person with disabilities and at the same time protect his/her human rights. The state parties should also provide training for persons getting the support in order to understand when such support is no longer needed.

The Law on Non-contentious procedure (changed in May 2014) defines the obligation of the court to review the decisions and reasons for previous cases of legal capacity deprivation. This is a positive step because it shows that there is awareness about the necessity of reforming the procedure, but we are still waiting for the results of the practical implementation.

6.5. Employment

The Law on professional rehabilitation and employment of persons with disabilities⁹³⁵ was adopted in 2009 and it regulates employment of persons with disabilities in a comprehensive manner. The Rulebook on procedures, costs, and criteria for assessment of work capability and possibilities for employment of persons with disabilities⁹³⁶ regulates that the assessment authority determines the health condi-

934 <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>.

935 *Sl. glasnik RS*, 36/09 and 32/13.

936 *Sl. glasnik RS*, 36/10.

tion and disability relevant for work capability. Therefore it has a discretionary right to determine the employability status of a person based on loosely set standards - so-called “third degree of illness and disability” – which completely excludes a person from the employment measures under general or special conditions.

The institute of legal capacity deprivation and extension of parental right also violate the exercise of employment rights for persons with disabilities, because a person under guardianship cannot make an employment contract. On the other hand, the law defines a possibility for these persons to have working engagement within working centers, which is actually work therapy, namely long-term form of professional rehabilitation. This is also problematic and it enforces inequality, because one group of people with disabilities is provided with the employment opportunities while the other group of persons only with the working therapy. Persons fully deprived of legal capacity cannot even be volunteers or receive symbolic subsistence for volunteering.

The Rulebook on controlling a duty of employer to employ persons with disabilities and proving the duty implementation⁹³⁷ makes employment of persons with disabilities less important to some degree, because it defines that the direct and indirect users of the republic budget have an obligation to employ persons with disabilities on the basis of quota system but in a different manner to other employers. The Republic of Serbia fulfills its obligation by allocating needed financial resources in the budget for each year. By cancelling factual obligation of the state authorities to employ persons with disabilities by quota system, the state missed the opportunity to promote employment of persons with disabilities and set a positive example to other employers.

However, taking into account a high rate of unemployment in Serbia, but also low level of education of majority of persons with disabilities, which is a result of the structural discrimination and long denial of right to education and social inclusion, some additional measures for employment of this marginalized group should be introduced, because the so-called ‘quota system’ proved to be insufficient.

6.6. Health Protection

The Law on health insurance⁹³⁸ includes insurance for the cases of illness or injuries outside and within the working place and professional illnesses. The law determines persons who can be exposed to higher risk due to their membership in a particular group, and it also includes persons with disabilities under the rules of pension and disability insurance, and persons with mental disabilities (Art. 22, para. 4). The right to health protection also includes medical rehabilitation in the cases of illness or injuries, walking and moving aids, sight, hearing, and speech aids

937 *Sl. glasnik RS*, 33/10 and 48/10 – correction.

938 *Sl. glasnik RS*, 107/05, 109/05 – correction, 57/11, 110/12 – Constitutional court decision and 119/12.

(medical-technical aids). The law defines a right to assistant if a person is not able to take actions independently, and this also refers to persons with sight and hearing impairments during the stationary treatment and medical rehabilitation if this is grounded from the medical point of view.

The Rulebook on medical rehabilitation⁹³⁹ in specialized health institutions regulates the types of indication, duration, manner and procedures for rehabilitation. The Rulebook also gives a precise list of conditions for using medical rehabilitation in health institutions and determines the procedure for justification of the treatment given by the doctors' commission on the suggestion of the chosen doctor or appropriate health institutions.

The Law on health insurance defines that persons with disabilities who have health insurance can be provided with medical-technical aids. The Republic fund for health insurance provisions the type of aids and indications for their use, conditions and procedures for obtaining aids in accordance with the Rulebook on medical-technical aids provided from the fund of the obligatory health insurance.⁹⁴⁰ The changes of this Rulebook in 2014 define aids as medical aids in accordance with the Law on medicines and medical aids, which had not been the case previously. It defines the obligation of the aid provider with the objective of ensuring aids of the appropriate standards and quality. The indication for using the aids were also changed and they have become more restrictive to some degree, but the duration of the aid and deadline for replacements were shortened, which is an improvement because it reduces the possibility for a person to be left without the aid if the damage occurs before the duration deadline.

According to the data of civil society organizations, women with disabilities are specially exposed to discrimination in the health domain. The biggest barrier to exercising health protection is seen in inaccessibility of the services and lack of understanding by the medical workers of the social support model to disabilities.⁹⁴¹ The public awareness campaign for prevention are usually totally inaccessible to women with sensory disabilities (majority of videos, brochures, posters for health protection are not subtitled or written on Brail). The main conclusion on the condition in health at the local and provincial level is the gap between legal provisions and implementation of the provisions by the health institutions.

6.7. Accessibility

In their daily activities, persons with disabilities face barriers with the use of public transport, home appliances, electronic and digital systems, services and products, entering public and private buildings. The Law on preventing discrimina-

939 *Sl. glasnik RS*, 47/08, 69/08, 81/10, 103/10, 15/11 and 48/12.

940 *Sl. glasnik RS*, 52/12, 62/12 – correction, 73/12 – correction, 1/13, 7/13 – correction, 112/14 and 114/14 – correction.

941 <http://www.izkrugavojvodina.org/publikacije/218-istraivaki-izvetaj-o-kvalitetu-ivota-ena-sa-invaliditetom-u-vojvodini>.

tion against persons with disabilities⁹⁴² prohibits discrimination on the grounds of disability in the access to services and public buildings and spaces.

The access to public spaces is regulated by the Rulebook on technical standards of accessibility⁹⁴³, and it refers to new objects and object under construction. The Rulebook deals in details with the necessary elements of the accessibility (height differences, moving, public transport). However, it does not regulate the controlling of the implementation. The accessibility of the public transport for persons with disabilities is unsatisfactory.

When it comes to accessibility of information and communication, persons with disabilities have barriers in calling police, emergency and fire departments, which do not provide a possibility for persons with disabilities to reach them by mobile phones (messaging) in an emergency. The accessibility of electronic communication is also a problem although the legislation provides the basis for fulfillment of the right to public information, especially the freedom of receiving ideas, information and opinion for persons with disabilities.

The Law on planning and construction and its additional regulation about controlling mechanisms for respecting accessibility standards should further define clear criteria, authorities, procedures and monitoring. Furthermore, additional efforts are needed for educating professionals, accessibility controlling authorities, persons with disabilities, and activists of their organizations. General provisions about accessibility of public information and electronic communication for persons with disabilities need to be elaborated and additional regulations are needed with the precise technical guidelines about accessibility. The legislation on sign language is still missing, and it is important to guarantee persons with hearing impairment communication in their mother tongue, to recognize their community, and improve the availability of the sign language interpreters.

Similar comments refer to Law on movement of persons with sight impairment with the assistance of the dog, which adoption is expected in 2015.

Besides right to court interpreter, national provisions do not recognize other types of adjustments to ensure efficient participation before the public authorities to persons with disabilities. This particularly refers to giving information about the procedure, the content of decisions and legal remedies. Having a court interpreter is almost impossible in practice for majority of persons with disabilities because there are only eight permanent court interpreters for sign language in Serbia (five in Belgrade and one in Nis, Novi Pazar, and Kragujevac).⁹⁴⁴ The use of facsimile is very important for persons with sight impairments, but also persons who under certain physical and/or communicational barriers are not capable of confirming their identity by signature. Although there are not legal prohibitions for authorization of

942 *Sl. glasnik RS*, 33/06.

943 *Sl. glasnik RS*, 46/13.

944 Initial report on implementation of the Convention on the Rights of Persons with Disabilities, the Government of the Republic of Serbia, 2012.

the facsimile, there is a lack of additional legislation which leads to some courts and public authorities take proceedings that violate efficient participation in the procedure for persons with disabilities. Such discriminatory acts of the public authorities are defined as grave form of discrimination.⁹⁴⁵

7. Gender Equality and Special Protection of Women

7.1. *General*

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 Act⁹⁴⁶ 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.

Under the Gender Equality Act, public authorities are under the obligation to develop equal opportunity policies in all walks of life and monitor the achievement of gender equality. Although they formally and legally enjoy the same rights as men, women remain at a disadvantage in practice. This conclusion is corroborated by the 2014 World Economic Forum Global Gap Report,⁹⁴⁷ which ranked Serbia 54th among the 136 countries on the Global Gap Index, Serbia ranked 67th on economic participation and opportunity, 54th on educational attainment, 74th on health and survival and 51st on political empowerment.

Article 20 of the Anti-Discrimination Act⁹⁴⁸ 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 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

945 Special report on discrimination against persons with disabilities, Commissioner for Protection of Equality, April 2013.

946 *Sl. glasnik RS*, 104/09.

947 More at <http://reports.weforum.org/global-gender-gap-report-2014/economies/#economy=SRB>.

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

a form of discrimination prohibited under the Act (Art. 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.

The Labour Act amendments⁹⁴⁹ adopted in July 2014 will facilitate the empowerment of women at work and the reconciliation of the family and professional lives of working mothers. The amendments providing special protection to women in terms of health and safety at work will benefit the protection of maternity. The provisions on the protection of maternity now also apply to breastfeeding working women (Art. 89). Furthermore, employers unable to afford pregnant and breastfeeding workers the statutory protection are now under the obligation to assign them to other adequate jobs or, if such jobs are unavailable, send them on paid leave (Art. 89(2)). The protection of pregnant workers is now strengthened by their right to paid leave or time off from work to undergo pregnancy-related medical check-ups. These examinations must be ordered by the workers' general practitioners and the workers have to submit the referrals to the employers on time to ensure that the latter have enough time to make work-related arrangements during the workers' absence. These amendments were adopted with a view to aligning the legislation with ILO Convention No. 183⁹⁵⁰ and ILO Maternity Protection Recommendation (No 191)⁹⁵¹.

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 Discrimination⁹⁵², 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)⁹⁵³.

The National Assembly of the Republic of Serbia ratified the Council of Europe Istanbul Convention on Preventing and Combatting Violence against in Oc-

949 *Sl. glasnik RS*, 75/14.

950 *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.

951 The Recommendation is available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R191.

952 *Sl. glasnik RS*, 55/05, 71/05 – corr., 101/07, 65/08, 16/11, 68/12 – Constitutional Court and 72/12.

953 *Sl. glasnik RS*, 55/05, 71/05 – corr., 101/07, 65/08 and 16/11.

tober 2013.⁹⁵⁴ Serbia reserved the right not to apply the provisions on awarding compensation to the victims, the issues of territorial jurisdiction in situations when the perpetrator has habitual residence in Serbia and jurisdiction over sexual violence cases pending the alignment of its national criminal legislation with these provisions of the Convention. Serbia is thus to amend its Criminal Code, introduce new and redefine the existing relevant criminal offences and establish a more efficient mechanisms of assistance to victims of all forms of violence under the Convention.

The Serbian Government in January 2014 adopted a Special Protocol for the Judiciary in Cases of Domestic and Partner Violence against Women⁹⁵⁵, thus completing the set of special protocols various ministries have adopted to facilitate cooperation in combatting violence against women in Serbia. The goal of the Protocol is to facilitate the identification and prevention of violence against women, the provision of legal and other expert support to women victims of domestic and partner violence, improve cooperation with all other actors involved in preventing this form of violence and create a safer and more just society based on the principle of ensuring a non-discriminatory setting and trust of women victims of family or partner violence in the state and other authorities in the realisation of protection and guaranteed rights.

In its 2014 Serbia Progress Report, the European Commission noted that the administrative capacity on gender equality issues remained weak. The Gender Equality Directorate was dismantled in April 2014. The Gender Equality Directorate in the Ministry of Labour, Employment and Social Policy has been transformed into a division within the Department for planning and development affairs. The EC also noted that adequate resources and better coordination of the national machinery for promoting gender equality needed to be ensured and that labour legislation needed to be fully implemented, particularly regarding the dismissal of pregnant women and women on maternity leave, sexual harassment and inequality in promotion and salaries. The EC noted the increase in the number of women killed by their partners and the inadequate system of protection and observed that an action plan for the implementation of the National Strategy on Preventing and Combatting Family and Partner Violence against Women⁹⁵⁶ remained to be adopted.

7.2. 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.

954 *Sl. glasnik RS (Međunarodni ugovori)*, 12/13.

955 Protocol No. 119–01–00130/2013–05 of 14 January 2014.

956 *Sl. glasnik RS*, 27/11.

Serbia ratified ILO Convention No. 183 on Maternity Protection⁹⁵⁷ 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.⁹⁵⁸

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 rendered 294 opinions and recommendations in response to 1,651 complaints received in the 2010–2013 period and filed 11 lawsuits for protection from discrimination and ten misdemeanour reports over violations of the Anti-Discrimination Act and other laws, as well as three motions for the review of the constitutionality and legality of general enactments. The Commissioner issued 165 recommendations of measures to ensure equality to public authorities and other entities, 79 warnings and public statements and 14 legislative initiatives and opinions on regulations. Three complaints filed with the Commissioner in 2014 claimed gender-based discrimination.⁹⁵⁹ 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.⁹⁶⁰ 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.⁹⁶¹ In the Commissioner's view, these women cannot be left without health insurance because their employers are not fulfilling their obligation to pay the contributions, because that would be in contravention of numerous international treaties, the Con-

957 *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.

958 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.

959 See: <http://www.ravnopravnost.gov.rs/en>.

960 Recommendation No. 1050 of 23 July 2012, available in Serbian at www.ravnopravnost.gov.rs.

961 See Article 22(4) of the Health Insurance Act, available at <http://www.zso.gov.rs/doc/Health%20Insurance%20Act.pdf>.

stitution of the Republic of Serbia and laws guaranteeing health care to this category of the population. The relevant state authorities heeded the Commissioner's recommendation.

The results of a public opinion poll on gender equality presented in September 2014⁹⁶² showed that stereotyped perceptions of gender roles are equally present among women and men. The traditional stereotyped gender role of women devoting their time primarily to unpaid household chores and raising children has exacerbated gender segregation in the education system and the labour market and is also the key justification for the small number of women in politics and decision-making offices. As far as inequalities in the business sector are concerned, they merely perpetuate the overall gender inequalities. The poll showed, for instance, that only one quarter (28%) of the highest decision-making offices in companies are held by women and that only one-third of the entrepreneurs are women.

7.3. Institutional Gender Equality Protection Mechanisms

The Gender Equality Directorate in April 2014 published its Report on the First Interval (25 July 2013–25 March 2014) of Monitoring the Implementation of UN Committee on the Elimination of Discrimination against Women (CEDAW) Recommendations. The fact that only 25% of the Serbian local self-governments had forwarded the Directorate the relevant data on the implementation of CEDAW's recommendations clearly demonstrates the lack of awareness of the relevance of this issue among the authorities at the local level despite international donors' and national NGOs' efforts to help them put in place gender equality mechanisms and introduce gender sensitive budgeting.

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).

7.4. 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,

962 Survey "Gender Equality in Serbia 2014", commissioned by the Ministry of Labour, Employment, Veteran and Social Issues and conducted by IPSOS Strategic Marketing in autumn 2013, available in Serbian at: <http://www.mc.rs/upload/documents/istrazivanje/2014/09-25-14-Rodna-ravnopravnost.pdf>.

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.

The results of a research conducted by a civil society coalition within the USAID sponsored Open Parliament Initiative “Women in Parliament – a quota or real impact”⁹⁶³ presented in March 2014 showed inequality of women in parliament despite the statutory quotas. Greater numbers of women candidates on the tickets can be found only after the first one hundred candidates, which reduces their chance of winning a seat in parliament; 5.4% of the women deputies stated they had been directly subject to unequal treatment in parliament, three of them said they had been repeatedly discriminated against, while as many as 22% women deputies confirmed they had been exposed to discriminatory comments, jokes or offers by their male colleagues. The research showed that women deputies submitted amendments to bills more often and took a more active part in the discussions about laws than their male counterparts, but that they found it much more challenging to enter certain parliamentary circles and to move up through the ranks of political party hierarchies.

The research on the participation of women in local decision-making,⁹⁶⁴ which had been commissioned by the Gender Equality Directorate within the implementation of the National Action Plan for the Implementation of the Strategy for Improving the Status of Women and Gender Equality (2010–2015) showed that women had headed four out of Serbia’s 81 local self-governments (4.9%), albeit one of whom was dismissed immediately after the data were collected. There is an evident tendency of appointing women to executive and operational positions, but not to managerial ones. For instance, women account for 72.5% of the chiefs of cabinet of mayors.

There are four women ministers in Prime Minister Aleksandar Vučić’s 19-member Cabinet and two of them simultaneously hold the posts of Deputy Prime Minister. The Serbian EU accession negotiating team is also headed by a women. According to the Inter-Parliamentary Union, Serbia was slipped from 23rd place in 2013 to 25th on the list of countries by the number of women in parliament (34%) in October 2014, still outranking most EU member-states and the other states in the region.⁹⁶⁵

Women account for 85 of the 250 deputies (34%) in the National Assembly; 35% of the 335 members of the 20 Assembly Committees are women, which

963 Available at: <http://www.otvoreniparlament.rs/wp-content/uploads/2014/08/Publication-Towards-Open-Parliament.pdf>.

964 The website [//www.gendernet.rs](http://www.gendernet.rs) has unfortunately been disabled.

965 Women in National Parliaments, data as of 1 October 2014, available at www.ipu.org/wmn-e/classif.htm.

marks a major increase over 2013, when only 11% sat on the Committees. Women deputies are in the majority in the Committee for Human and Minority Rights and Gender Equality and the Rights of the Child Committee. Interestingly, the Security Service Oversight Committee has no women members, while only one woman deputy sits on the Kosovo and Metohija Committee.

The number of professional women soldiers rose significantly over the past year, while the number of female officers is gradually increasing, although it is still low. Women applying for the Military Academy have had to fulfil the same requirements as the male applicants since 2007. As of 2014, girls can apply for enrolment in the Military High School as well. According to the data published in 2013, 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%. Women account for 1.69% of the officers and 0.5% of the non-commissioned officers in the Serbian Army.⁹⁶⁶ There are no women generals in Serbia at the moment, but Minister of Defence Gašić said that the first woman general might be appointed in 2015.⁹⁶⁷

966 *Blic*, 30 August 2013, p. 8.

967 See the *Blic* report of 12 September 2014, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/494671/Gasic-Iduce-godine-prva-zena-sa-cinom-generalu>.

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 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 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 Financial Support to Families with Children, *Sl. glasnik RS*, 16/02, 115/05 and 107/09.
- Act on Free Access to Information of Public Importance, *Sl. glasnik RS*, 120/04, 54/07, 104/09 and 36/10.
- Act on Health Care of Children, Pregnant Women and New Mothers, *Sl. glasnik RS*, 104/13.
- Act on the Implementation of the Constitution, *Sl. glasnik RS*, 98/06.
- Act on Judges, *Sl. glasnik RS*, 116/08, 58/09 – CC decision, 104/09, 101/10, 8/12 – CC decision, 121/12, 124/12 – CC decision, 101/10 and 171/14.
- Act on the Judicial Academy, *Sl. glasnik RS*, 104/09.
- Act on Mediation in Dispute Resolution, *Sl. glasnik RS*, 55/14.
- Act on the Military Security Agency and the Military Intelligence Agency, *Sl. glasnik RS*, 88/09, 55/12 – CC decision and 17/13.
- Act on Ministries, *Sl. glasnik RS* 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 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 Public Prosecutor's Offices, *Sl. glasnik RS*, 116/08, 104/09, 101/10 and 171/14.
- Act on the Realisation of the Right to Health Care of Children, Pregnant Women and New Mothers, *Sl. glasnik RS*, 104/13.
- 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.
- 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.
- 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.
- 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, 45/13 and 55/14.
- Decree on Designation of Information as Classified, *Sl. glasnik RS*, 8/11.

- Electronic Media Act, *Sl. glasnik RS*, 83/14.
- 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.
- General Collective Agreement, *Sl. glasnik RS*, 50/08, 104/08 – Annex I and 8/09 – Annex II.
- Gender Equality Act, *Sl. glasnik RS*, 104/09.
- Health Care Act, *Sl. glasnik RS*, 107/05, 72/09 – other law, 88/10, 99/10, 57/11, 119/12, 45/13 – other law and 93/14.
- Health Insurance Act, *Sl. glasnik RS*, 107/05, 109/05 – corr., 57/11, 110/12 – CC decision and 119/12.
- Labour Act, *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13 and 75/14.
- Languages and Scripts Act, *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05, 30/10.
- 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.
- Non-Custodial Sanctions and Measures Enforcement Act, *Sl. glasnik RS*, 55/14.
- Notaries Public Act, *Sl. glasnik RS*, 31/11, 85/12, 19/13, 55/14 – other law, 93/14 – other law, 121/14 and 6/15.
- Patient Rights Act, *Sl. glasnik RS*, 45/13.
- 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.
- Penal Sanctions Enforcement Act, *Sl. glasnik RS*, 55/14.
- 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 and 48/94, *Sl. list SRJ*, 21/01 – Federal CC decision and *Sl. glasnik RS*, 101/05 – other law.
- Public Information and Media Act, *Sl. glasnik RS*, 83/14.
- Public Media Services Act, *Sl. glasnik RS*, 83/14.
- Public Peace and Order Act, *Sl. glasnik RS*, 51/92, 53/93, 67/93, 48/94, 85/05 and 101/05.
- 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 Conditions and Standards for the Provision of Social Protection Services, *Sl. glasnik RS*, 42/13.
- 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 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 for the Development of the Penal Sanctions Enforcement System, *Sl. glasnik RS*, 114/13.
- 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.
- Whistle-blowers Protection Act, *Sl. glasnik RS*, 128/14.

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The Belgrade Centre for Human Rights (BCHR) has been publishing its synthetic and comprehensive reports on the state of human rights in the country since 1998. The purpose of these synthetic reports is 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 methodology applied in the preparation of this Report is based on the analysis of the regulations in force in 2014, some of the relevant draft laws that had not been adopted by the end of the year and 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.”

The analysis corroborates that the human rights situation in Serbia deteriorated in 2014 compared to the previous year, particularly in respect of social and economic rights, freedom of expression, the status of independent regulatory authorities and the judicial reform.

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