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## Introduction

The authors of the individual country reports in the second Regional Human Rights Report endeavoured to highlight the segments of national legislation and especially practices, which are the most disputable from the viewpoint of the respect of human rights, whilst simultaneously abiding by the specified methodology and list of topics. Notwithstanding specific similarities, there are significant differences amongst the legal orders of the countries covered by this Report. This Introduction will highlight the chief moments and trends in each country report – some are common to all the societies in the region.

Each text in the Regional Human Rights Report 2006, naturally, gives a detailed description and analysis of the human rights situation in the given country. The introductions to the national reports are extremely useful as they present the context in which specific rights are exercised or violated. They also give an overview of the political and social circumstances in the specific countries and note the headway in EU accession. The authors would also like to draw the readers' attention to the comprehensive human rights analyses which are the focus of the 2006 Report – realisation of the right to education, access to law and justice and realisation of rights of at risk and vulnerable groups. The following overview of the main impressions gained after reading all the national reports aims to serve merely as an introduction to the entire annual Report.

Albania. – The Albanian report focuses on the challenges of a society undergoing democratic transition and the harmonisation of its national legislation and practice with the EU accession requirements. The authors record some improvement in specific areas in 2006 (notably, the peaceful handover of power after the elections and stable and high economic growth rate). The Albanian society, however, is still grappling with serious challenges to the rule of law and respect of human rights - the greatest problems stem from widespread corruption, the high unemployment rate, poverty and disparities in regional development. With respect to individual human rights, the authors highlight the problems in protecting the right to life, poor prison conditions, abuse of police powers, discrimination and the poor realisation of social and economic rights.

Bulgaria. – The Bulgarian report deals with the main national political and social issues and puts special focus on the open human rights issues, notably the prohibition of discrimination, protection of social and economic rights, the rights

to education and an effective legal remedy and protection of rights before bodies specialised in human rights protection. The authors of the report assessed that 2006 was marked by the final steps towards EU accession, which took place at the start of 2007. In that respect, the greatest headway in 2006 was made in fulfilling EU requirements with respect to the judiciary, the fight against corruption and organised crime and overall administrative capacity building. The impression is that much less attention and activity was devoted to the realisation of classical human rights not directly linked to the fulfilment of the requirements the EU had set the Bulgarian authorities.

Bosnia and Herzegovina. – Bosnia and Herzegovina (BiH) is a state with a specific state order, organisation of government and division of powers. Under the Paris/Dayton Peace Accords, most of the universal and regional human rights protection instruments are directly applicable in Bosnia and Herzegovina. Large-scale violations of human rights of BiH's citizens were, however, recorded in 2006. They occurred despite the fact that the country has a single centralised human rights protection system, at least formally. The large-scale human rights violations in BiH can also be ascribed to the poor-improper work of the judiciary. The courts in BiH face many problems, from lack infrastructure and trained staff to political pressures, unharmonised legislation, etc. Apart from violations of civic and political rights, large-scale violations of economic, social and cultural rights were recorded in BiH in 2006 as well.

Croatia. – No gross human rights violations were recorded in Croatia in 2006. The authors, however, did not record headway in the respect of human rights over 2005 either - the human rights situation stagnated. Unfortunately, the consequences of prior human rights abuse still were not totally eliminated in 2006. The chief problems still relate to unresolved tenancy and other problems of returnees (accommodation, employment, return of their farmland), the inadequate integration of Roma in the educational system and the declining social status of the so-called new pensioners. Finally, as in most other countries of the region, judicial inefficiency and huge backlogs have significantly burdened the legal order, undermining the principle of rule of law. Ethnically motivated violence and expressions of ethnic intolerance did not abate, but they did draw more public reactions than in the previous years.

Macedonia. - The authors of the report assess that human rights are generally respected in Macedonia but that there are specific problems in individual areas.

Widespread corruption is a serious problem, especially as it has been undermining the extremely sensitive parts of the state apparatus - the police and justice ministries, courts and other segments of the judiciary. Apart from this systemic challenge, Macedonia's society is also challenged by a specific form of human rights abuse caused, inter alia, by the country's geographical position – trafficking, sexual exploitation and forced labour. The discrimination of specific minorities, especially the Roma, remains the main problem related to discrimination. In general, Macedonia did see some headway in human rights protection over the previous year, notably in internal oversight of the security sector and a fall in ethnically-based discrimination.

Montenegro. - Montenegro won its independence and its international recognition in 2006. Legal enactments and declarations binding Montenegro to respect the achieved degree of human rights. Although the report authors note that there were no systematic human rights violations in 2006, they did express some concern, notably with regard to the unfavourable situation in specific fields. For instance, Montenegro still has not adopted a modern Constitution offering quality guarantees of fundamental human rights, some of which are not at all or are improperly provided for in the present Constitution. The authors note the problem of the ineffectiveness of the constitutional appeal as the ultimate domestic legal remedy for protecting human rights. As in other states in the region, the efficiency of the judiciary poses a major challenge to the respect of human rights. Access to justice is additionally hindered by the exorbitant court fees.

Serbia. – The tumultuous political events affected the state of human rights in Serbia in 2006. The disintegration of the State Union of Serbia and Montenegro upset the legal system. The substandard work of institutions charged with the protection of human rights still poses a major problem with respect to the protection and realisation of human rights. The public prosecutors rarely spoke up about human rights violations in 2006. The police investigations were long and did not yield satisfactory results. Court proceedings were also impermissibly long. The failure to launch proceedings over human rights and humanitarian law violations committed in the past, during the former regime and the wars in the former Yugoslavia, remained the key obstacle to the respect of democratic values and the establishment of the rule of law.

## Contributors to this issue

### **Altin Hazizaj**

Mr. Altin Hazizaj is one of the founders of the Children's Human Rights Centre of Albania in 1997, and since 2002 is also the co-Director of CRCA. He has given an important contribution for the protection of children's rights in Albania. He has a Master Degree on European Studies and currently is a PhD candidate of Law School of University of Tirana. He is co-author of many research and reports on children's and youth rights situation in Albania such as: 'The Vicious Circle', 'Forgotten Children', 'Awaiting Trial', 'Youth Employment Opportunities in Albania', 'Albania: Alternative Report for the implementation of CRC', 'No One to Care'. He is also the Editor of the Review for Children and Youth Rights in Albania.

Altin Hazizaj graduated, with excellent marks, Law School of University of Tirana in 1995. Since 1993 to present he has dedicated himself to the protection of children and human rights. He has been working and assisting several organisations in Albania and abroad such as: Albanian Helsinki Committee, Albanian Family Planning Association, Albanian Human Rights Group, Albanian Civil Society Foundation, ILO Turin, Save the Children, World Vision and UNICEF in Kosova. From 1993 to 1999 he has been working as journalist covering political and social issues for national daily papers such as: "Koha Jonë", "Gazeta Shqiptare", "Dita Informacion", "Populli PO"; "KLAN" Magazine, and National Television "KLAN". He has prepared, written and presented many articles and papers that have been included in national and international publications and magazines on sensitive issues such as child abuse, juvenile justice, children in conflict with law, street children, child labour, child trafficking, children's rights situation in Albania etc. He has been a member and a consultant of several policy of working groups of the Albanian Government for the preparation of National Strategy for Children in Albania, National Strategy for Youth in Albania, National Human Rights Treaty Reporting Committee etc.

### **Elma Tërshana (Shehu)**

Elma Tershana (Shehu) is graduated at Social Science Faculty in Tirana. Now she is in process of finalizing her master study on the same science in Tirana Faculty. Since 2001, she is human rights expert and in the mean time program coordinator in 'Albanian Center for Human Rights (ACHR)'. Her passion for being part of education system has been finalized by developing 'Knowing Human rights' subject in National Faculty of Social Science in Tirana (with students of third grade). Her recent work in publication include: assistance in developing of University subject 'Human Rights Education curricula for University', manual 'Knowing human rights', book 'Religions and civilization in the new millennium – the Albanian Case', and co-author in the publication of the 'Balkan Human Rights Yearbook – 2006'. Also, she has produced public reports of ACHR, and is engaged in many project and programs for human rights and human rights education, developed within the country and abroad.

## **Gorana Mlinarević**

Gorana Mlinarević is an academic tutor for Gender Studies at the Center for Interdisciplinary Postgraduate Studies at the University of Sarajevo. She completed the European Regional Master's Degree in Democracy and Human Rights in South-East Europe from the University of Sarajevo and University of Bologna. Her interests in the field of research are human rights with particular stress on women's rights. Her recent publications include "EU values and Bosnia and Herzegovina Addressing taboos and changing prevailing attitudes in respect to gender, sexual orientation and people living with HIV" policy study published by Soros Foundation Sarajevo and "What could the cooperation bring to us: Case study women activists of Iran and Bosnia and Herzegovina?" in *Women and Politics: Eastern Europe and the Third World – Women's Attempt to Re-establish the Dialogue*, published by Zenska Infoteka, Zagreb, Croatia

## **Miroslav Živanović**

Miroslav Zivanovic is head of Library and Documentation Department of the Human Rights Centre of the University of Sarajevo. He graduated from the University of Sarajevo in comparative literature and librarianship and obtained his masters degree in state management and humanitarian affairs from University of Sarajevo, University of Belgrade and University of Rome "La Sapienza". He is library tutor at the Centre for Interdisciplinary Postgraduate Studies of the University of Sarajevo. His research priorities are human rights in Bosnia and Herzegovina, information and communication technologies and human rights, civil society, public administration, good governance, etc. Recent publications include "Selected bibliography on human rights" (In "Human Rights Reader". Sarajevo: Human Rights Center of the University of Sarajevo, 2001.); "Information and Communication Technologies in Human Rights Education: Case Study of Human Rights Center of the University of Sarajevo" (In "Balkan Yearbook of Human Rights 2003: Human Rights Education in the Balkans". Tirana: Balkan Human Rights Network, 2003.); "The Conclusion of Working Group III" (In "Eight Years of Dayton BiH: New Visions for Bosnia and Herzegovina?". Sarajevo: Heinrich Boll Foundation, 2004.); "Human Rights of Elderly Persons in Bosnia and Herzegovina" (In "Protection of Rights of Elderly Persons". Podgorica: Human Rights Centre of the University of Montenegro, 2004.); "Social Capital Research as a Development Tool for Bosnia and Herzegovina" (A research study prepared for Association BiH 2005 and presented at International Conference in Geneva, 20 – 21 October 2005); "Civil Society in Bosnia and Herzegovina: Lost in Transition" (In "Civil Society and Good Governance in Societies in Transition". Vienna: Neuer Wissenschaftlicher Verlag GmbH, 2006); "Human Rights in Bosnia and Herzegovina" (In "Regional Human Rights Report 2005". Belgrade: Belgrade Human Rights Centre, 2006); "Bosnia and Herzegovina and Euro-integrations: The Case of "Significant Progress" on Human Rights Front" (In "Yearbook of the Balkan Human Rights Network 2006. Sarajevo: Balkan Human Rights Network, 2006); "Public Administration Reform in Bosnia and Herzegovina: Capacity Assessment of Education and Training in Public Administration" (policy paper developed within the Policy Development Fellowship Program 2006 implemented by Open Society Fund Bosnia and Herzegovina).

## **Genoveva Tisheva**

Genoveva Tisheva- Managing Director of the Bulgarian Gender Research Foundation / BGRF/ since its inception in 1998.

A lawyer with experience in the field of civil law, human rights law and women's rights, in advocacy and drafting legislation on gender equality and elimination of violence against women.

Genoveva coordinated numerous research projects and monitoring reports on women's rights and socio-economic rights as well as legal aid programmes for disadvantaged groups of women. She is Director of the Women's Human Rights Training Institute / WHRTI/ - an initiative of the Network of East- West Women and the BGRF implemented in cooperation with the Center for Reproductive Rights.

Genoveva Tisheva worked on alternative NGO reports presented in 1998 to the CEDAW Committee and in 1999 to the UN Committee on Economic, Social and Cultural Rights. She is co- author of all the yearly reports of the BGRF presented to the coalition Social Watch since 2000.

She is member of the Network of Independent Legal Experts on Gender Equality to the European Commission; member of the Coordinating Committee of the international coalition Social Watch.

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Tania Tisheva is project coordinator at the Bulgarian Gender Research Foundation since 2002. She has educational background in Political science and European integration and experience in advocacy. As part of the BGRF team she participates in advocacy and research projects on gender and social issues as well as in the design and implementation of campaigns in the field of equal opportunities and non-discrimination for young people and women.

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Teodora Tsanovska is a Legal Adviser and Coordinator of the Youth Program in the Bulgarian Gender Research Foundation /BGRF/. She is also a Project Manager of the Women's Human Rights Training Institute in the framework of BGRF. Since 1998 year she is working in the sphere of violence against women and children – providing legal consultancy and support to women victims of domestic violence and sexual crimes. Implementing projects in the sphere of reproductive health, human rights and gender and youth researches, reports and publications. Working in the Bulgarian National Group of the young leaders with representatives of the biggest NGOs, Trade unions and youth departments of the political parties. Participation in lobbying campaigns on women's rights and legislative changes in the sphere. Coordinator of the school based project of teaching non-violent behaviour among teenagers in the high schools. Participating in the expert group against trafficking, trade and sexual exploration of children, formed by the National Agency for Child Protection in the framework of the Bulgarian Government and in the working group of drafting the Youth Law.

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After getting degree in Law (1975) worked as a civil servant at the Republic Institute of Public Administration and Croatian Parliament. In 1996. was elected to become Deputy Ombudsman and held that function for eight years. Published about fifty professional works in different professional reviews and periodicals concerning administrative (citizen's rights in relation to administrative bodies as well as the organization and sphere of action of administrative bodies etc.) and constitutional law (the rights of national and ethnic minorities, organization of the Parliament, the electoral system etc). On the Annual Conference (1995) of the Association of the Electoral officials countries of Eastern and Central Europe (ACEEEO) was appointed to the Board of the Association to be a President and held that function until she was elected to become Deputy Ombudsman. Since 1991. she participated in various (18) international seminars and conferences where she actively took part presenting 15 written reports. In 2006. she published the Dictionary of Law. She was particularly engaged in problems of ethnic minorities and their protection. She received the Croatian Helsinki Committee's Annual reward in 2001.

### **Albert Musliu**

Albert Musliu is the Executive Director of the Association for Democratic Initiatives (ADI) in Gostivar, Macedonia. He is a Chairman of the Balkan Human Rights Network (BHRN) Steering Committee and represents the network in front of other institutions, partners and donors. He also serves as the sub-regional coordinator for the UN-NGO IRENE Network for South East Europe (SEE), Member of the Remarque Forum of the New York University – New York and the Director of the South East European University Centre for Human Rights in Macedonia. He has testified experience in organizational development in the areas of human rights, minority rights, policy, administration, and research in South East Europe. Also he facilitates the process of cooperation of civil society organizations from SEE with the UN agencies and specialized institutions, and promoting their involvement and interaction with the UN. Albert Musliu has testified as an expert, a teacher and activist in the field of human rights throughout his career and has provided a valuable international dimension to the work of ADI.

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He has published so far around 100 works on human rights. He is an affiliated member of a National Committee for harmonization of law of Montenegro with the European Union law, a member of Working group for study on compatibility of law of Montenegro with the European Convention, a member of a group in charge of development of the Youth National Program in Montenegro and a member of a Working group for development of the Strategy of Minority Rights in Montenegro. He acts as a legal adviser in development of the NGO Report concerning the situation of the child's rights in Montenegro for the last three years. As the lecturer he is engaged at the Police Academy in Montenegro and in the process of education of human resources in the government bodies of Montenegro.

In regard to international cooperation, he worked on the implementation of the project of Human Rights Centers Network in the South-Eastern Europe; he acted as a vice president of the Steering Committee of BHRN Network and a member of the NGO network for the project Minority Rights in Practice in SEE as well as in many other projects in the field of human and minority rights.

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Dina Dobrković graduated at the Law School of Belgrade University. After graduation, she did a Master's Degree programme in Sweden, at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law.

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Since 1998 she has been collaborating with the Belgrade Centre for Human Rights, where she is employed since 2005. Prior to that she was working in the Ministry of Foreign Affairs in Belgrade.

The most recent projects she has been working on include editing of the Belgrade Centre for Human Rights' annual report "Human Rights in Serbia in 2006", and of the Serbian edition of the "Leading cases of the Human Rights Committee" by Martin Scheinin and Raija Hanski..

### **Igor Bandović**

Igor Bandovic is working as a researcher for the Belgrade Centre for Human Rights and as a trainer for numerous national and international organizations. His fields of interest are transitional justice, international human rights law, education for social justice. He worked with the UNDP Serbia Rule of Law Cluster as a Researcher of the Transitional Justice Programme. He was editor of the publication *The Activity of ICTY and National War Crimes Judiciary* (Belgrade: Belgrade Centre for Human Rights, 2005) and contributor to the Belgrade Centre's annual reports on human rights.

### **Jovan Nicić**

Jovan Nicić is a Bachelor of Law. In 2002, he finished the Faculty of Law at Belgrade University and enrolled in Post-Graduate Studies in Public International Law. In May 2004, he completed the second year thesis: *Command Responsibility in the Jurisprudence of the ICTY*. His fields of interest are Public International Law, International Human Rights Law, and Transitional Justice. He worked with the Humanitarian Law Center as the Project Coordinator of the Regional War Crimes Trials Monitoring project and with the UNDP Serbia Rule of Law Cluster as a National Project Coordinator of the Regional Transitional Justice Programme. He has been involved in various research and training projects in the field of international human rights law and transitional justice. His publications include *The Hague Tribunal VI – Plea Agreements and Judgements*, HLC Publication (2003), *The Hague Tribunal VIII – Srebrenica Judgements*, HLC Publication (2005), "Command Responsibility: the Contemporary Law," 2004. He also wrote many articles and analyses on domestic war crimes trials and contemporary issues regarding the ICTY in the local press.



## Articles

# Human Rights in Albania 2006

by Altin Hazizaj & Elma Tershana

*Children's Human Rights Centre of Albania  
Albanian Center for Human Rights*

## **Abstract**

The Human Rights Report 2006 for Albania represents the second report on the respect of individual rights, women and children's rights during a one-year period in the country. The report has been prepared by Children's Human Rights Centre of Albania (CRCA) and Albanian Center for Human Rights (ACHR), two major civil society organisations, based in Tirana.

The report covers a wide range of issues starting with an introduction to Albania, its political and economical situation during one year and then moving to more sensitive issues such as the respect towards human rights, women and girls rights and finally children's rights.

The report states that, although there has been a general improvement of the situation of human rights in the country, still there are many areas of concern that need to be addressed by the Government and civil society alike. The respect of the rights of individuals, women and children have become a priority of the agenda of the national Government and Parliament, but still more needs to be done in terms of eliminating torture, violence and discrimination of individuals.

Further more the report describes in details specific areas of concern such as police ill-treatment and minorities' rights, domestic violence and participation of women in politics, discrimination of children and child exploitation for economical purposes.

The report is based on official data, primary sources and documents provided by the partner organisations and many other civil society organisations in Albania that act as a watch-dog agencies for protection of human rights. The aim of this report is not only to present the evidence of human rights violations in the

country, but rather use it as a tool for changing and improving the current situation.

## Introduction

### *Political, economical and social situation*

The Republic of Albania is a parliamentary democracy with a population of approximately 3.6 million. Legislative authority is vested in the unicameral People's Assembly (parliament), which elects both the prime minister and the president. The prime minister heads the government, while the presidency is a largely ceremonial position with limited executive power. Parliamentary elections held in July 2005 did not fully comply with international standards but were generally considered a step forward in the country's democratic development.<sup>1</sup> Although delayed, a peaceful transition of power occurred in September. Civilian authorities generally maintained effective control over the security forces and the Democratic Party and its allies won the majority in the Assembly after eight years in the opposition.

The country has achieved high economic growth and has enjoyed macroeconomic stability over the past few years and average real Gross Domestic Product (GDP) growth rates of over five percent – the highest in South-eastern Europe – underpinned by rising exports (albeit from a low base), and continuing improvements in productivity. Maintaining this performance will be increasingly difficult; Albania will need to increase public, private and foreign investment. Above all, it will need to build human and physical capital, and improve governance structures to maintain its impressive progress to date. Despite GDP per capita reaching an estimated US \$ 2,664 (2005), poverty, high unemployment, and wide regional disparities remain daunting challenges.<sup>2</sup>

Albania suffers from a high level of corruption, as several studies and reports indicate. According to the Transparency International 2006 annual survey, Albania ranked 111th out of 163 countries with a CPI Score of 2.6,<sup>3</sup> even though the country made progressive improvement by 0.2 from the previous year.

The DP majority centred its election campaign on corruption which undermines public confidence in state structures and is at odds with the rule of law and development of the country. This is one of the priorities of the government's program.<sup>4</sup>

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1 Country Reports on Human Rights Practices - 2006; Released by the Bureau of Democracy, Human Rights, and Labor on March 6, 2007.

2 United Nations in Albania. See

[http://www.un.org.al/subindex.php?faq=content\\_en/albania&PHPSESSID=ffb94446cc9acebe62a08de62c9fe023](http://www.un.org.al/subindex.php?faq=content_en/albania&PHPSESSID=ffb94446cc9acebe62a08de62c9fe023)

3 The 2006 Transparency International Corruption Perceptions Index. See

<http://www.infoplease.com/ipa/A0781359.html>

4 Government program 2005-2009, presented in the Assembly of the Republic of Albania, on 9 September 2005. See

<http://www.keshilliministrave.al/english/programi/default.asp>

In the year 2006, the overall number of complaints submitted to the People's Complaints Office amounted to 1624 complaints or requests.

The Stabilization and Association process (SAP) with the European Union (EU) is very important to Albania. Eventual membership in the EU remains an overarching national goal; the signing of the Stabilization and Association Agreement with the EU in June 2006 is one of the important achievements in this direction. In September the European Parliament ratified a Stabilization and Association Agreement (SAA) between the European Union (EU) and Albania, a significant step in the process of Albania's accession to the EU.

In November the Albanian Parliament approved ratification of Protocol 13 to the European Convention on Human Rights, thereby abolishing the death penalty in all circumstances. Certain legislative reforms were delayed because of political disputes related to forthcoming local elections (February 2007), which led to the boycott of some parliamentary sessions by opposition deputies.

Albania has begun to implement a new Integrated Planning System (IPS) in an ambitious effort to streamline its policy development processes and integrate numerous planning frameworks such as the National Strategy for Development and Integration (NSDI), the Millennium Development Goals (MDGs), and the NATO Partnership for Peace<sup>5</sup>.

Albania has to keep up with the rhythm of reform needed for its development to achieve the required standards.<sup>6</sup>

## Human rights in legislation

### *Constitutional provisions on human rights*

The Albanian Constitution dedicates a separate chapter to human rights. These rights are indivisible, inalienable, and inviolable and form the basis of the entire juridical order. The Constitution further clarifies that agencies with public authority shall during the fulfillment of their duties respect the fundamental rights and freedoms and contribute to their realization. Rights and freedoms are enjoyed by Albanian Citizens and foreigners, as well stateless persons in the territory of the Republic of Albania<sup>7</sup>.

The Constitution classifies the rights as 1. Personal rights and freedoms; 2. Political rights and freedoms and 3. Economic, social and cultural rights. It also includes a specific chapter dealing with social objectives, which declares the goals

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<sup>5</sup> United Nations in Albania. See

[http://www.un.org.al/subindex.php?faq=content\\_en/albania&PHPSESSID=ffb94446ec9acebe62a08de62c9fe023](http://www.un.org.al/subindex.php?faq=content_en/albania&PHPSESSID=ffb94446ec9acebe62a08de62c9fe023)

<sup>6</sup> The information reflects development in a period which is outside the one targeted by the Report but is relevant to the Report.

<sup>7</sup> Regional Human Rights Report 2005. Human Rights Report of Albania 2005. (Belgrade Center for Human Rights 2006), pg. 24

of Albanian state within its constitutional competencies and the means it possesses and aims to be achieved<sup>8</sup>.

#### *Ratified international agreements*

Ratified international agreements on human rights are part of the national legislation and have priority over any national law that conflicts with their provisions. The European Convention on Human Rights, ratified by law, occupies a special place in the Constitution compared to other ratified international treaties. It is the only convention specifically mentioned in the text of the Constitutions: Article 17 of the Constitutions provides that the limitations to human rights may not in any case 'exceed the limitations provided for the European Convention on Human rights'. Law 8137 that ratified the ECHR in Article 5 recognizes 'the jurisdiction of the European Court on Human Rights regarding the interpretation and application of the Convention'. The ECHR is considered an integral part of the Albanian Constitutions with regard to the limitations of the human rights expressly guaranteed by the Constitutions. The interpretation of the ECHR must be taken into account and respected by every Albanian institution, courts included<sup>9</sup>.

#### *National Governance*

The Assembly of Albania is a unicameral Parliament with 140 seats: 100 are elected directly by a simple majority system, and 40 are allotted through a proportional system. The intent of the proportional allocation is to balance any distortions in political representation that might result from the majority system. Nevertheless, in the last two parliamentary elections political parties have used legal loopholes in the electoral code to gain overrepresentation in the Parliament, thus increasing the distortions of the majority system. Parliamentary elections occur every four years. Political parties need to pass a threshold of 2.5 percent in order to gain representation in the Parliament, while party coalitions need to pass a threshold of 4 percent.

The president nominates the prime minister at the suggestion of the coalition of parties controlling the majority of seats in the Parliament. The Constitution provides for a system of checks and balances among the legislative, executive, and judicial branches. In practice, the executive's hold over the other branches, as well as over state institutions in general, is greater than foreseen in the Constitution, but continuous efforts have reduced it over time.

#### *Judicial Framework and Independence*

Albania has a three-layered court system: 29 district courts, 6 civilian appeal courts, and the Constitutional Court and the High Court. The president proposes the names of Constitutional and High Court judges, while the Parliament has to

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<sup>8</sup> Ibid

<sup>9</sup> Ibid, pg. 25

approve the appointments. Judges then serve nine-year court terms. The Constitutional Court interprets the Constitution following a request from state institutions. On the other hand, the High Court is the last instance of appeal after the appeals courts. The High Council of Justice, the regulatory body of the judiciary, appoints, transfers, disciplines, and dismisses judges of the courts of first instance and the courts of appeal.

## **Individual rights**

### *1. Human Rights and Education: Right to Education*

#### *1.1. Legislation.*

The Chapter IV of the Albanian Constitution stipulates that everyone has the right to education (Article 57 of the Albanian Constitution, Chapter IV 'Economic, Social and Cultural Rights and Freedoms'). The law provides for nine years of free education and authorizes private schools. School attendance is mandatory through the ninth grade or until age 16, whichever comes first.

A national education system is a service sector which has the task of ensuring that future citizens have the necessary knowledge, skills and attitudes to complement the national economic development plan of the Republic. It underpins the satisfaction of the national labor market needs and the socio-cultural aspirations of the people.

Although in principle education is available and free for all, in practice, many children left school earlier than allowed by law to work with their families, particularly in rural areas.

Parents had to purchase supplies, books, school materials, and heaters for some classrooms, which was prohibitively expensive for many families (US Department report for Albania – 2006).

According to 2004 World Bank statistics, secondary school enrollment for both boys and girls was 77.8 percent, while the Albanian Institute of Statistics estimated enrollment in secondary education at 53 percent for 2003 to 2004. Enrollment in primary school was approximately 95 percent for the same period. (US Department report for Albania – 2006). The percentages of Roma children, in the education system are lower than that of the rest of the population. Children living in juvenile homes formally get an education but the number of these who actually graduate, especially from high school, is very low.

Three years ago, Albania adopted and is implementing the 'National Education Strategy 2004 – 2015'. The Strategy is intended to guarantee a modern national education system, which will have to promote and instigate the sustainable growth of economy and consolidation of democracy, as well as the success of dialogue and competition with the countries of the region and beyond.

To increase the average level of education completed by its citizens the Government of Albania is implementing a new structure for pre-university education, a three level 5 (primary) + 4 (basic) + 3 (secondary) grade structure. Education is compulsory and free up to grade 9 (previously it was grade 8).

Adopting this structure brought the Albanian education system in line with other countries in the Balkan region as well as those in the EU.

The early years (5 + 4) concentrate on basic literacy and maths along with civic education and healthy living skills, providing the basis for developing the knowledge and skills for a democratic society and a knowledge society. The secondary level is built on the basic level education and develops the knowledge and skills necessary for everyday life in a market-driven and democratic world. This system has two pathways, one that leads directly into academic professions and one that will allow students to develop vocational skills necessary to become productive members of the society when they leave secondary school.

### *1.2. Vocational Education in Albania.*

In the framework of education, the further development and consolidation of the vocational education occupies a conspicuous place in the government program. In fact vocational education is considered to be a top priority. The vocational education, among other things, aims at encouraging the thorough acquisition of new knowledge and skills, bringing the school closer to the world of employment, combating and eliminating the exclusion of youth from the direct participation in the social and economic life of the country, promoting life-long learning as well as the creation of equal opportunities for all.

In line with Act no. 8872, dated. 29.03.2002, "On Vocational Education and Training in the Republic of Albania", attendance at the Vocational Education schools takes place upon completion of the 9-year compulsory education. All in all, there are 40 purely technical and vocational schools across the country. They are for the most part spread over 22 districts.

### *1.3. Human Rights Education in Public Schools*

An experience from Albania. - It is an inspiring example of what can be achieved if one 'thinks big', takes advantage of a political transition and builds a collaborative alliance with the government. The Albanian Center for Human Rights (ACHR) was formed in March 1992, it works toward the emancipation and democratization of civil society in Albania. ACHR, through its programs implemented, aim to develop democracy in Albania where people understand rights and truly participate in government's decision making. We have chosen to focus on the future – on the children who are the whole next generation of Albania – by changing the education system to reflect human rights values.

ACHR together with other State Institutions, have implemented a series of approaches to achieve this goal. They built strong international contacts, both for financial support and educational expertise, organized mass trainings of teachers, developed a formidable collection of new Albanian curriculum materials for teaching human rights, set up 43 pilot schools and 22 human rights education centers throughout the country and implemented a new university curriculum for the training of future teachers. Many human rights organizations resist the idea of working with the government, as they fear being manipulated and co-opted. ACHR's experience shows that, at least with some governments, this resistance may come at a cost of making a significant impact on society. Because ACHR saw what it could gain by collaborating with the government, they were able to change

the entire public school system. Their story may encourage others to similarly set ambitious goals.

By the end of the decade, we had developed special curricula material in many subjects for all age groups, trained thousands of teachers to use the materials, set up 43 pilot schools throughout the country, and initiated a curriculum in the teachers colleges to integrate the teaching of human rights into their preparation.

## *2. Access to Rights - National Human Rights Institutions in the Country*

### *2.1. People's Advocate.*

The Institution of the People's Advocate was anticipated for the first time in the Albanian's Constitution approved in November 1998. The Parliament passed the Law on the People's Advocate in February 1999. This Law was drafted considering the Legislation of other European Countries that have established such an institution previously. The People's Advocate is a monocratic Institution. People's Advocate is elected by three fifths of all members of the Assembly for a five year period, with the right of re-election.

On 16 February 2000 the Albanian Parliament elected with two thirds (104 out of 115) of votes of all members of the Assembly, the People's Advocate, the Doctor of Juridical Sciences Mr. Ermir DOBJANI, who is still leading this Institution.

According to the structure approved by the People's Advocate, the Office is composed by three Sections, each of them headed by one Commissioner.

- First Section: Deals with complaints and requests towards the central administration bodies, local government and third parties working on their behalf.
- Second Section: Deals with complaints or requests against police, secrete services, armed forces and the judicial power.
- Third Section: Deals with complaints, which are not included in the first two sections, likewise collaborating with NGO-s, and carrying out researches relevant to the activity of human rights and freedoms.

The People's Advocate Institution safeguards the rights freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of public administration bodies and the third parties acting on their behalf. His duty is to prevent conflicts between the public administration and the individual. The People's Advocate, upon finding or suspecting that a right has been violated, initiates an investigation of the case, upon the complaint or request of the interested or injured person, or on his own motion if the particular case in the public domain, but always after providing the interested or injured party consents. If an investigation starts with the initiative of the People's Advocate, the injured party consents is not needed in case of a child, a person with disabilities or to protect the rights of a large group of individuals.

To protect the interests of a broad community, who can be affected by an administrative process, the People's Advocate is entitled to initiate administrative

proceedings and be part of the process in accordance with the requirements of the Code of Administrative Procedures.

The People's Advocate does not give any right to the parties, but he makes recommendations to restore the violated right by the public administration. In cases the relevant authority does not respond to the recommendations of the People's Advocate, he shall have the right to refer the case to the higher organ in hierarchy. The People's Advocate may present to the Assembly a report, which shall include proposals for specific measures to remedy the violations.

During the period of 1 January to 31 December 2006, the People's Advocate Office handled 3609 complaints, requests and notifications (including the complaints and requests immediately responded by the People's Complaints Office ). Out of 3609 complaints, 280 had been carried over from year 2005, 2555 are filed over the year 2006 and 774 cases have been immediately responded to by the Office of the People's Complaints.

Peoples Advocate is exactly one of those monitoring mechanisms, which through daily complaints received from citizens has the functional duty to knock strongly on the door of public authority, to recall to the latter that he is there is to provide service to citizens. Every official should regard this not as a burden, but as a reason for his existence in that duty or position.

Taking into account the fact that Albania has now signed the application to be admitted into the EU in future, not only geographically, but above all politically, People's Advocate intended to justify its institutional existence in the country not only as another guarantor for the implementation of rule of law and observance of human rights in Albania. People's Advocate intended to show that Albania has important constitutional institutions which meet the standards of their European counterparts and are equal to them.

### *3. Disadvantaged, Marginalized and Vulnerable Groups*

#### *3.1.1. Participation of women in politics.*

Albania is a Parliamentary Republic and Parliament of Albania is the principal and the only lawmaking organ. It functions through a parliamentary chamber with 140 seats, 100 of them are elected through direct majority vote while 40 of them are elected through nominated lists deposited in advance by political parties. Parliament has one speaker and two vice-speakers. Since 2005, the Speaker of the Albanian Parliament is a woman, and such election marks an emancipation sign for the Albanian society and for political parties as well.

In 2005, free parliamentary elections for the fifth time were held, and The Democratic Party, first political party to be established in Albania after the fall of communism, won each time. In September of the same year, Sali Berisha was elected Prime minister and his political program consisted on war against organized crime and corruption, two main barriers for development of Albania in recent years.

Elections in 2005 mark the lowest level of participation of women in political events of the country. Even though there was a high number of women candidates, only 10 of them got elected. According to inter-parliamentary union, this puts Albania in the last place in Europe and in 114-th place in the world for

the number of women members of parliament. However, it is worth mentioning that the level number of women in Parliament has gradually increased and all ten women representatives in Parliament, through their own initiatives have proven that women can play an important role in leading the country. This argument is served by the fact that the speaker of the Parliament of Albania is a woman, and Head of Parliamentary Commission for Education and Means of Public Information is also a woman.

Level of representation of women in government remains low. Albanian government has only one woman minister out of 16, while it has 7 women as deputy ministers and 21 men as deputy ministers. This clearly shows that there is a misbalance in including women in political decision-making. The same problem exists at Directorate levels and clerks of public administration. This is more obvious in institutions such as Police and Army, where number of women included in leading positions is low.

Women in Albania make up more than half of the population, but their role in political events of the country remains insignificant. Women can be found in large numbers in educational institutions and that of social welfare but this is rather insignificant when it comes to their participation in Parliament, government and/or institutions of local government.

In 2006 three main civil<sup>10</sup> organizations initiated the establishment of the Coalition for Promotion of Women, Youth and Minorities in politics. At the beginning of February 2006, the coalition publicly declared an open petition where a minimum quota of 30 percent of participation of women in parliament and in local and central government is required. Petition was openly supported by women groups of political parties in Albania, women NGO's and the Ombudsperson. After the declaration of the petition for quota, a number of political parties established a quota for participation of women as a part of their status and their political programs. In the beginning of September 2006, Coalition officially submitted its proposals for modifications of Election Code to the Parliamentary Commission of Elective Reform. Amongst several additions, three new articles required a legal guarantee for participation and representation of women through quota, in elections and in the government.

### *3.1.2. Violence against women and girls.*

A five-year research of the decisions of Tirana Court stated that 189 penal proceedings were recorded for acts of domestic violence. Meanwhile, in the court of Tirana 122 cases of this nature were tried.<sup>11</sup>

Criminal Code in particular expresses protection of an individual and human's rights and freedoms. Many of its dispositions offer protection from acts that

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10 Independent Forum of Albanian Women, Children Human Rights Center of Albania and Centre for Population and Development.

11 Civil Legal Initiative Centre, "For a better execution of law in favor victims of domestic violence" Tirana 2005, pg 30. Published under project "To facilitate work of execution and court structures in regard to laws that punish and prevent domestic violence", with the support of the European Commission. This project included monitor of court decisions of the first degree court of Tirana and acts of Prosecution of Tirana for 2000-2004.

violate physical, mental and sexual integrity of an individual and directly or not ensure protection of women from domestic violence and violence in general.<sup>12</sup>

According to international norms it is required that murders committed for honour are to be legally pursued. However the national legislation does not have dispositions that support this requirement. In practice, there are often cases when court decided in favour of the offender, by providing a lighter sentence. Courts often declare that the violator has no prior criminal record, has responsibility for raising children, committed the act in a severe psychological condition, etc<sup>13</sup>.

U.S. State Department in its report of 2005 stated that “rape is punishable by law, as is marital rape, however in practice marital rape is not reported or pursued legally”<sup>14</sup>. Women –victims of domestic violence refer a little or not at all to this disposition for protection, because concepts of marital rape and sexual harassments are not clearly established and the mentality of the Albanian community does not consider sexual relations, even without consent of one spouse or even violent, a crime or an act against will of women or girls. However, it is difficult in proving data on this form of violence related to family research results in a limited number of reports of this act. Women do not dare report these acts especially when they are about to resolve their marriage<sup>15</sup>.

### 3.1.3. *Situation of Women and Girls in Detention Centres.*

Criminal Code of Albania provides women with special protection in several criminal proceedings. Also a special treatment is stated by Law no. 8323, of 1998 “For the rights and treatments of detainees”, when it said that women should serve their sentences in specific institutions and if not possible in separated sections of institutions. Women can be put in maximum-security prisons and in sections of maximum security prisons for behaviours and acts of extreme violence (article 13 of the law).

Mothers are allowed to keep their children up to their third year of life. For care and child assistance, kindergartens are operational<sup>16</sup>. When it comes to medical care special treatments are stated for pregnant women and breastfeeding mothers<sup>17</sup>. Special treatment is also stated for pregnant women or breastfeeding mothers if employment at this institution is the case (article 34), their family relations (article 40), internal dislocation within institution (article 48), disciplinary measures<sup>18</sup> (article 53), etc.

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12 A.Mandro, “Criminal Code Report: Albania”, 2002.,1. [www.seeline-project.net](http://www.seeline-project.net)

13 With the decision no. 811, date 29.9.2003, R.Q. who murdered his daughter was court sentenced to two years of imprisonment. Sentence was dropped to 1 year and 4 month, because shortened trial was executed. Court of Appeal dismissed this decision.

14 American State Department “Country Reports on Human Rights Practices-2004”, Tiranë, 2005.

15 P.B married, with two children appeared before CLIC and reported sexual violence committed by her husband, in the presence of their children as a reason for marriage dissolution.

16 Article 17

17 Article 29 of the Law

18 Disciplinary measures foreseen for women: expel from particular joint activities for 10 days; from group ventilation no more than 20 days, from all joint activities up to 20 days. For pregnant women or ones that are allowed to keep their children only reprimand either individual or in front of other inmates.

*3.1.4. Situation of women and girls in pre-trial detention centres.*<sup>19</sup> - Immediately after apprehension or arrest, women are held in pre-trial detention centres in precincts until a decision by the court is issued<sup>20</sup> . After decision by the court, they are transferred to a special section for women in pre-trial detention of Prison 313 in Tirana.

Observations by the AHC in pre-trial detention quarters, stated that there were no special sections for women as stated by law. According to prison personnel when a female is apprehended a room of men is emptied, that on the other hand results in overpopulation of other quarters.

In pre-trial detention observed by AHC, personnel that serve in these institutions are all male. There are no female security or prison guards or special personnel for treatment of women in pre-trial detention. This is observed only in pre-trial of Berat.

Women held in pre-trial have no information on their procedural rights at the moment of apprehension or arrest. Their educational background, lack of communication with family in the early moments of investigation and the fact that they do not have an attorney are some of the factors that lead to their unawareness of their rights.

In this institution, several measures are taken to ensure special treatment of women that includes medical service, ventilation, their employment, education and information.

*3.1.4. Situation of women in prisons.*<sup>21</sup>

According to the criteria of the “Law on the rights and treatment of detainees” sentences are served in special institutions only for women and if impossible in special sections of other institutions. Mothers are allowed to stay with their children up to their third year of life. For care and child assistance, kindergartens are operational in institutions where sentences are served.

The special section for sentenced women is located in Prison 325 in Tirana. Women located in this institution are mainly sentenced for severe crimes in the family.

Sleeping Quarters are made of seven rooms. Number of prisoners per room goes up to eight. Even this section, as other penitentiary sections, suffers from overpopulation. The clothing are provided by prisoners themselves or their families.

In Prison 325, convicted women are included in regular cultural activities, relaxing and sport and educational and learning activities. When it comes to their education, several courses are established for uneducated women such as computer course, tailoring. Programs and their execution is a responsibility of prison administration in cooperation with non-profit organizations. Libraries and

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19 For more see “Human Rights in pre-trial detention centers and prisons”, Albanian Helsinki Committee, Tirana 2005.

20 Article 245 of Criminal Procedure Code.

21 Records are taken from observation of AHC in Re-education Institute no.325 Tirana 2006.

religious quarters use to be inmate cells. Library fund requires new books, especially artistic and scientific.

A volleyball and basketball court serves as an appropriate environment for sports activities of convicted women. Their religious activities are performed in the adopted quarter that serves the purpose. Sanitation is not appropriate. Based on observations of the Albanian Helsinki Committee all convicted women had problems with their sanitation.

Medications are kept in the infirmary. All medications are given according to recommendations of the doctor. The doctor is a general medical practitioner and there is no other doctor such as neurologist or psychiatrist. When their condition aggravates they are referred to the prison hospital for a more specialized treatment.

Administration of institution no. 325 tries to ensure employment in a green house. Also, they perform artisan work. Mentally ill women are held in the same areas with other women prisoners. According to article 29/3 of Law no. 8328, of 16.04.1998 "On the rights and treatment of detainees", no special care is provided to mentally-ill prisoners, while special services for women are not operational. Gynaecological visits are not performed in prison, and only emergency cases are referred to the maternity hospital of Tirana. In the pharmacy an assistant physician is employed that is in contradiction with the law that requires a higher degree of education by the person employed in this job.

### 3.1.5. *Women and girls of Roma and Egyptian minority in Albania.*

One of the main issues of discrimination is that of women and girls from minorities. Several minorities exist such as: Roma, Egyptians, Aromanians, Macedonians, Bosnians, Greeks, Serbs and Montenegrins. All of the minorities declare that their rights are not entirely respected and they are often discriminated. Even though discrimination or unjust treatments of all minorities is a big problem, the rights of women and girls from minorities are often completely forgotten.

In 2003, the Government of Albania approved the National Strategy for Improvement of Life of Roma Minority. The purpose of the Strategy is to improve living conditions of this minority that suffers a severe economic and social situation in the Albanian community. The National Strategy addresses particular attention to situation of Roma women and girls, strengthening their position within family, fighting against all kinds of discrimination and special programs for this work group<sup>22</sup>.

### 3.2. *Roma minority.*<sup>23</sup>

Generally, a large part of Roma minority continues to live in large families. Major economic, social and cultural changes have affected their way of life and their organization as a community. A large number continues to maintain their

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<sup>22</sup> Chapter II, section 2.1.2 of this strategy.

<sup>23</sup> For this material observation report on execution of the National Strategy "For improvement of Life Condition of Roma Minority" SOROS.

nomadic tradition and dislocation in different cities while being occupied with trade<sup>24</sup> at the same time.

Two of the biggest concerns facing Roma minority are their poor education and unemployment. Education and employment besides their interactive relation are also an important factor that affects their economics and social problems. Roma women not only suffer problems regarding their minority status, but also discrimination within the family and their own group.

Another concern are the marriages of Roma. This is a more sensitive issue towards Roma girls who are forced to create families at a very young age. It can be said that there are different perceptions of this issue in various areas. Roma minority located in central Albania has a more traditional and conservative mentality regarding social<sup>25</sup> issues, including that of marriage of young Roma girls. Meanwhile these perceptions have changed with change of their economic and social situation and because of education of Roma individuals, as is the case in Fier and Korca<sup>26</sup>. Efforts of various actors of civil society and mainly of Roma NGO's in these areas, meant that there are several activities and training regarding family planning<sup>27</sup>.

There are a number of initiatives undertaken by NGO's as well as self-efforts of representatives of the minority, but there still remains a lot to be done by the representatives of local government. This is due to the further integration of Roma minority, especially in raising awareness of young women and girls in this aspect and of the worrying problem of Roma girls marrying at an early age.

### 3.3. *Egyptian minority.*<sup>28</sup>

Besides Roma minority a particular attention is paid to the Egyptian community. Despite efforts of this community to be recognized as a minority, up until now it is not recognized so by the Government or Parliament of Albania. Egyptian community does not have language of its own but uses the Albanian language. However, it is different from the rest of population by its appearance and its traditions. Egyptians in Albania do not consider themselves gipsies, because they believe that their ancestors came from Egypt. Based on this assumption the country officially have accepted them as such and uses the term Egyptians rather than gipsy.

Egyptian community is widely distributed in Albania. Few live in rural areas but most of them live in cities, in neighbourhoods traditionally known as "gypsy" neighbourhoods. Such locations are in Tirana, Kavajë, Lushnjë, Cërrik, Elbasan, Gjirokastër, Vlorë, Korçë, Delvinë, Përmet, Këlcyrë, Berat, Shkodër, etc. They are known as extremely peaceful communities.

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24 This tradition is still preserved by Roma minority settled in Elbasan.

25 This information is taken from the meeting with organization "Future Roma Woman".

26 This information is taken by AHC observers of AHC in these cities, with interviews, NPO-s, etc.

27 This information is taken from the meeting with organization "Future Roma Woman".

28 Records are taken from the meeting the AHC held with Mr. Fuat Mehmeti, president of the organization "Egyptian Fraternity of Albania".

In most Egyptian families women and girls are not equally treated. The Egyptian community lives in severe economic and social conditions. A part of it is integrated into the Albanian community and the rest lives in extreme poverty. Women are housewives and men do work from time to time.

When it comes to employment of Egyptian women and girls, it is difficult because of their poor education, low level of vocational training and overall rejection by Albanians.

Over 95 percent of marriages are within the community and that is not just because of the tradition or tightly knit community, but also due to rejection from the Albanians. Violence towards women in this community is a devastating consequence of poor economic and social situation. Women are discriminated within the family. This is mostly visible within the community that is not integrated in the Albanian society and lives in extreme poverty.

The Egyptian community, similar to Roma have a poor level of education. What is extremely worrying is a high drop out rate. This is closely related to general tradition to marry girls at a very young age, 12 or 13. Parents have a very negative impact on these children by forcing them to leave school. Very often, even if girls enrol and do well at school, parents force them to leave in order to get married but also because there is a widespread belief that schools are a factor of moral degradation. Girls are the ones that most frequently drop out of school<sup>29</sup>.

With the persuasion of the teachers parents are occasionally convinced to allow further education of their children. However, main factors that affect school abandonment remain poor economical conditions, child labour and lack of understanding among Egyptian families of the importance of education.

#### *3.4. Women and girls affected by HIV/AIDS in Albania.*

Women and girls that are HIV positive are more discriminated and prejudiced than men. Although Albania is still considered a country of low prevalence for this virus, an increase in HIV prevalence has been noted recently. A general tendency of AIDS to claim children and women worldwide is now seen in Albania too.

The number of HIV positive females has increased, particularly after year 2000. According to the Institute of Public Health before 2000, women and girls affected made up only 28.7 percent of diagnosed cases with HIV/AIDS in Albania. In recent years, this figure has gradually increased and proportion that was 4:1 in favour of men in the beginning of this phenomenon has now dropped to 2:1 in favour of men. It is important to point out that most of the family women that were infected are so because of risky behaviour of their husbands that belong to a migratory population.

Most of the cases are diagnosed after they gave birth to a child who is HIV positive, infected through a vertical route of transmission. There is still no specialized personnel who would offer appropriate care and council to women in institutions of primary health care and that of family planning.

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<sup>29</sup> Records are taken from the meeting of the AHC held with Mr. Fuat Mehmeti, president of the organization "Egyptian Fraternity of Albania".

In a legal aspect no sufficiently protective mechanisms exist for protection of human rights of women and girls that are HIV positive and they are therefore exposed to stigma and discrimination. Their involvement in the social welfare scheme as a category in need should be encouraged especially when their husbands had passed away because of AIDS and women are left to single-handedly support their families.

### 3.5. *Trafficking and prostitution of women and girls.*

Trafficking of women and girls has been one of the most severe human rights violations of women in Albania for a long time. One of the main groups that supports women and girls victims of trafficking is Centre "Earth" (Vatra in Albanian), a Vlora based civil society organisation.

During 2005-2006 trafficking of human beings in Albania changed in form and in content. Even though traffic rate throughout the country is falling, it is still presented in two forms: a) recycle of victims in traffic; b) internal traffic that is based on daily prostitution. Based on this situation we can say that Albania is no longer a country of transit of trafficking of human beings, but more a country of its origin. From researches and continuous analysis it can be stated that 50.2 percent of victims of traffic originate from Roma and Egyptian minority.

Children who work and homeless children are the most suffering category, more exposed and less protected than any other category. Only in Tirana more than 1000 children live as beggars, street vendors<sup>30</sup>, etc. About 50 percent of these children are girls. More than 50 thousand children under age 18 work full time or part time in Albania.<sup>31</sup>

Internal trafficking is a new phenomenon and little is known about its development and area distribution.

Victims that feed internal trafficking are mostly adult trafficked girls that were repatriated from different EU countries, and still want to return to those places where they were deported from. This is due to the fact that they are used to that way of life and because they are unable to earn their living differently. All of this has made internal traffic develop and function as business with profits for many smugglers that encourage and keep it up and running.

Also, from records of "Vatra" it resulted that internal trafficking functions as a well established national network, which in its core includes all elements of trafficking of human beings. A number of recruits that are from northern or southern rural regions of the country are transported and accompanied by smugglers or tutors that according to their territories distribute their victims in hotels and motels away from their place of origin.

E.H. is a minor 17 year old girl from a village from the north of Albania and for over a year has been staying in a coastal city. She was conned by a person who

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30 National Strategy for Children, Republic of Albania, Committee for Equal Rights

31 Children's Human Rights Centre Albania – CRCA. Research "Child Labour and Street Children in Albania", Tirana 2005-2006.

promised to marry her, but for a year now is using her for prostitution in a big hotel of this city.

She works at any time, according to clients. During the day she works as a waitress but also has a room in the hotel. All the money that she earns she gives it to the tutor and when she needs anything he provides for her. He continuously lies to her that the earnings are mutual and he has stored in a bank, but E does not believe him anymore. She is forced to work.

She says that she cannot go back to her family, because she will not be accepted and her life will be at risk.

During holiday season, there were 6 other girls in hotel where she works. They came from a distant region of North and Northeast of Albania .....all of them had a son.

Prostitution remains hidden in Albania and it is very hard to differentiate it. Violence against women that practice prostitution is never reported to police or to appropriate authorities. It is believed that because prostitution can be criminalized, women are frightened to report such issues.

### 3.6. *Suicide of women and young girls.*

The phenomenon of suicide in general and of females in particular remains a concern for the Albanian community. From records taken from the Ministry of Interior over a period of ten months in 2006, 180 cases of suicide occurred, while females committed 71 of them or 40 percent of all suicides. In the same period of 2005, 195 cases of suicide were recorded, and females committed 81 of them or 42 percent<sup>32</sup>.

Gender relations bring up the fact that males dominate the act of suicide. It is interesting that these indicators do not synchronize with the overturned proportion of domestic violence, where victims are mostly women and girls. It is seen that most of the suicide cases of women and girls were committed in rural areas: 45 out of 71 cases, while in cities the numbers are lower, 26 of them. Most of the people who commit suicide have a poor educational background.

According to age groups, suicide of girls and women is presented as follows:

- Suicide of women and girls between ages 16-25 dominate;
- Suicides among younger generations tend to include from elementary schools. From records and operative data it can be seen that they occur mostly after a family argument;
- The lowest suicide rate of women is among 56-65 age group.

Looking at suicide rates of women over different periods during a year the following pattern can be noticed: 18 people in average have committed suicide

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32 Records from Ministry of Internal Affairs, Tirana 2006.

per month, and seven of them were women. The highest rate of suicide of women and girls in 2006 was in June, August, January and October. While the lowest rate of suicides of females was seen in July with only one case. In comparison with the worldwide average of 100.000, Albania seems to be moving towards that average rate.

Among factors that contribute to this situation (such as loneliness at elder ages, psychological disturbances, etc), we believe it often occurs after immigrants return from holidays or against their will, psychological abuse, aggravated economy that adds to unfavourable living conditions for many families, poverty, exams and anxiety in children that fall behind in school, etc.

It could be said that suicide rate of females is low, 71 cases in 2006, from 81 in the same period of 2005. Most of them use poison, organic phosphor toxin most often. Actually, this poison can easily be found in markets which in a way makes act of suicide easy. Compared to a period of ten months in 2005, and the same period in 2006, number of suicides using this poison increased to 27 (or 14 more than previously).

Other forms of suicide are also present in Albania, but it should be noted that the wide presence of fire weapons plays a significant part in female suicides.

### *3.7.1. The rights of the child and national mechanisms.*

Albania has taken several steps to improve the situation of children's rights. Although the country does not have a child-friendly legislation, laws and regulations in practice provide a special protection for children.

Albania submitted its first CRC Country Report to the Committee on the Rights of the Child in 2005, but so far has failed to implement most of the concluding observations of the UN Committee on the Rights of the Child. In 2006 the Albanian government reviewed the implementation of the National Strategy for Children in Albania. The strategy clearly states that a National Child Protection Agency shall be established once the strategy enters into force. However two years after the approval, the Agency is still not established. Instead, the Government has opened a small Equal Opportunities Secretariat, which is hosted by the Ministry of Labour, Social Affairs and Equal Opportunities, which is given the mandate to implement the National Strategy.

During 2006 the Government also approved a new National Strategy for Youth in Albania. Youth groups and civil society were consulted widely before this policy document was approved. The strategy covers several issues related to children such as juvenile justice and trafficking in persons. So far no budget has been assigned to the Strategy and it remains to be seen how this document will be implemented by public institutions at national and local level.

Nonetheless, children's rights are found more often on top of the public agenda than previously. Several new mechanisms are in place that can facilitate the protection and advancement of children's rights in the country. The main governmental mechanism remains the child rights section at the Equal Opportunities Secretariat. This body is perceived more as a policy-making and coordination unit for other Ministries of the Albanian Government.

An initiative of Albanian Ombudsman and Save the Children has helped the establishment of the Child Rights Section at the Ombudsman Office. The section, which is funded by Swedish SIDA, aims to collect children's complaints

and provide them with adequate solution. Three offices have been open so far in Tirana, Shkodra and Korça.

Meanwhile at local level several child rights offices have been established. Tirana Municipality has been the front runner of this initiative when it initiated the opening of a Child Rights Section at its Social Service Directorate. In 2006 the office developed several joint initiatives with NGOs to support child labourers, street children and children in need. A similar office has been open in Kukes region (north of Albania) and is supported by UNICEF.

Although one can see that children's rights are streamlined in the political agenda, still much remains to be done to protect children from exploitation, abuse and neglect, while guaranteeing the respect of their rights.

A national hearing organised by the Albanian Parliament agreed to review the situation of children's rights every year by MP's, member of the Parliamentary Sub-commission for Juveniles and Equal Opportunities. It recommended that the Government should start the preparation of a Children's Code as the only way to reform the child-rights legislation in Albania.

### *3.7.2. Situation of children and young people in prisons and pre-trial detention centres.*

Albania does not yet have an entirely established and functional system of administration of juvenile justice. In our country there are several separate organisations that are not coordinated or properly oriented because their jurisdiction is not clearly stated, instead of a multi-disciplinary system that would promote self-esteem and respect of human rights for juveniles in conflict with the law. In addition the situation is made even more difficult by the lack of a system of child welfare at state or municipality level which would tie together efforts so far unfocused and sometimes overturned including those related to the status of children in conflict with the law.

At both national and local level there is a tendency for creating sectors for children's and juvenile's rights in municipalities. Despite of these steps no increase in budget for children is seen, especially in aspect of their social protection.

Treatment of children's and juveniles in police stations, pre-trial detention centres and prisons is, still, far from required standards. Despite the increase in recent years of concern of public institutions for children's issues there are still high numbers of cases of violation of rights of the children.

### *3.7.3. Sharing cells with adults.*

No separate quarters for juveniles exist in any of the detention centres under the Ministry of Internal Affairs. Overpopulation has turned into a chronic problem for the pre-trial detention system in Albania. Directors of police try to separate juveniles from adults but due to overpopulation this is impossible. As a consequence juveniles often live and sleep in same quarters as adults that raise chances of physical and sexual abuse by adults. In time of this research no case of sexual violence or abuse was reported, neither from police staff to juveniles or of adults to juveniles.

Pre-trial detention institution 313 in Tirana holds juveniles and adults, male and females. In this institution, which is under the Ministry of Justice since 1995, two years ago a special quarter was created for male juveniles. This is a completely

separated area and besides staff no adult detainee can enter this area. But on the other hand living conditions for juveniles in this location are devastating.

In Vaqar prison juvenile section is almost completely cut off from that of adults. It is located in the left wing, second floor of the building, close to the prison library. Even though it appears that there is no possibility of contact between juvenile and adult detainees, it often happens, usually in shared quarters like showers and toilets and in play yards behind the prison.

#### *3.7.4. Right to elementary education, information and entertainment.*

Convention of the Rights of the Child of the UN and the Law on Pre-university Education System in Albania guarantee to all children an equal right to education. Article 28 of CRC requires of state parties to create equal opportunities for all children for education and encourages various forms of secondary education, both general and professional.

These norms are valid for all children and juveniles, including them in detention and prison. Nevertheless education is denied to all children held in pre-trial detention centres in Albania. Even that there are a number of factors that influence in this direction like for e.g. poor physical conditions and inappropriate environments in such centres, it doesn't justify denial to such important right for such a long time. From time to time various NGOs have organized partial and limited teaching classes, but these are not formal and not recognized by the government.

There is no possibility for information or entertainment of children in pre-trial detention centres. Juvenile detainees are kept under lock during all time but for one hour that respects the right to ventilate in a particular sector of the centre. Often children complain that due to overpopulation their time is restricted from 1 hour to 30 minutes or less.

It seems that situation in prison is more different. To all juvenile males in Vaqar prison elementary education is provided. A 9-year elementary school operates from Monday to Thursday in Vaqar prison. But prison doesn't support further education. There is no possibility for juveniles to follow secondary or even university while serving sentences in prison.

Vaqar prison has appropriate quarters for entertainment. In this institution there is a library equipped with several computers, about 300 books and space for sports activity. Nevertheless sports facilities are shared with adults, often juveniles are allowed to play basketball for some limited time. Possibility of contact and exchange between children and adults is high and there is a risk of manipulation of juveniles by adults or of conflict between them.

#### *3.7.5. Torture, violence towards children in conflict with the law.*

Nearly all children and juveniles that we interviewed during our observation declared that they were a subject of violence or inhuman treatment in one way or another in time of their apprehension by the police. Some of them said that they were also subject of violence while they were held in detention. None of the juveniles interviewed stated that they were subject of torture or of cruel and inhuman punishments during their stay in police stations, pre-trial detention and prisons.

*3.7.6. Right to maintain regular contacts with family and community.*

Children, as adult detainees, have right to meet with their families three times a month for 30 minutes. Given that most of the juveniles live in the same quarters as adults do time of their appointment is sometimes less than stated. In some cases children complain about not having visits from their relatives because detention centres or prisons are located too far from their places of residence. There are no supportive programs that encourage parents or representatives of the community to meet with juveniles. Rarely parents refuse to meet with their children due to the fact that they are in prison.

Meeting rooms in detention centres sometimes have separated compartments with walls or bars. These rooms are not friendly for children. Furthermore they have a negative impact in child's psychology and often they return in tears after meeting with their parents. Experts believe that General Directory of Prisons should find new ways of encouraging these meetings in more child friendly environments.

Juveniles in prisons have the right to talk with their families or to a person authorized by them with prepaid calling cards. Phone booths are located far from the place where children are held. A juvenile who wants to make a phone call needs to walk a long way, privacy cannot be guaranteed, because a police member is always present in a hallway where phone booth is located. Prepaid card can be afforded only by a family member.

Prison management doesn't make any exceptions on number of calls allowed for juveniles except in cases of good behaviour. A problem encountered in Vaqar Prison was that of a number of phone calls juveniles can make to their attorneys or offices for children's rights. Given that there are only 4 phone calls allowed in a month, children don't want to lose contacts with their parents and consequently fail to report cases of violence or other problems that they might have to their attorneys or other organizations. As a consequence most of the cases of abuse of juveniles by prison personnel are reported only in direct contacts of juveniles with representatives of NPO-s. According to our opinion prison management should reconsider their priorities and allow children to talk to any office when according to needs.

*3.7.7. Conditions in prison cells, sanitation and personal care.*

Conditions in cells of detention centres and prisons remain poor, although there are some substantial changes between cells and way of life for juveniles in detention centres and prisons. Juveniles in prisons are accommodated better, have more freedom of movement, education and entertainment while juveniles in detention centres are not. Detention centres have no beds, no sheets and shelves while all this is guaranteed in prisons.

In most of pre-trial detention rooms that we visited there were cracked walls, beds without any bedding and damp. In some facilities like pre-trial detention 313 conditions of cells and of beds are plain horrible and way below minimum. Lights are on 24 hours a day which makes sleeping almost impossible.

Toilets in prisons are located in cells and can be used by juveniles at any time. In some cases, especially during summer there is no water. Meanwhile in detention centres toilets are shared and should be attended in schedule. Usually that is carried out according to cells and three times a day. Although some improvement

was made, in most of them there is still work to be done. Juveniles privacy is not respected in the showers or toilets. Toilets are separated with a one-meter wall with no possibility of closing the door. Showering is allowed two times a week but most of them said that they could shower once in ten days.

Juveniles are obliged to get their own soap, shampoo, and etc.. There is no laundry in detention centres so juveniles are often forced to hand wash their clothes or wait for their parents' visits.

Due to poor organisation in detention centres hygiene is not top of agenda. Even in prisons as in detention centres, juveniles are not encouraged to perceive their personal hygiene as a way of health care.

#### *3.7.8. Children living with HIV/AIDS.*

The number of children living with HIV/AIDS in Albania has almost doubled during the last two years. It is reported that there are 11 children living with HIV/AIDS. In 2006 the Minister of Health declared that 4 children aged between 10 and 15 years old had contracted HIV virus while receiving blood in public hospitals. Although the Government accepted responsibility no one has been charged so far, nor have the victims been compensated.

Medicines are given free of charge to children with HIV/AIDS. However the Association of Persons Living with HIV/AIDS in Albania, every year complains that medicines often come very late, they are not made for children or are near the expiry dates.

Discrimination against children with HIV/AIDS takes place mainly in public education. Although medical services are specialised to deal with child HIV patients there were several reports that the services outside Tirana were refused or not given in respect of the human dignity.

In September 2006 two children living with HIV/AIDS were denied their right to be registered in a public kindergarten under the assumption that they presented a health risk to other fellow children. Although the Children's Human Rights Centre of Albania and Association of Persons Living with HIV/AIDS in Albania complained to several bodies including the Albanian Parliament and the Minister of Education, the case remains unresolved. There were no reports of discrimination of children living with HIV/AIDS in formal obligatory education.

#### *3.7.9. Child labour, street children and child trafficking.*

The Labour Code sets the minimum age of employment at 14 and regulates the amount and type of labour that can be performed by children under the age of 18. Children between the ages of 14 and 16 may work legally in part time jobs during summer vacation; children between the ages of 16 and 18 can work throughout the year in certain specified jobs. The law requires the Ministry of Labor, Social Affairs, and Equal Opportunity to enforce minimum age requirements through the courts; however, there were no reports that enforcement took place.

CRCA<sup>33</sup> estimates that approximately 50,000 children under the age of 18 worked either full or part time. The majority of child labourers worked as street or shop vendors, beggars, farmers or shepherds, drug runners, vehicle washers, textile factory workers, and shoeshine boys, some as many as 16 hours a day.

In Tirana and other cities, children, mostly Roma, worked as beggars or sold cigarettes and other items on the street; the police generally ignored this practice. There were approximately 1,000 street children in Tirana. An increasing number of children in Tirana is falling victim to prostitution and other forms of exploitation.

The country remains a source for trafficking of children for the purposes of sexual exploitation and forced labour, but is seen by international community to no longer be a significant country of destination or transit<sup>34</sup>. The trafficking of children to Kosovo and Greece for begging or sexual exploitation continued to be a problem, although estimates varied widely on the number of victims annually. According to NGOs, approximately 1,000 unaccompanied Albanian children were living in Italy, although not all were victims of trafficking.

Internal trafficking of children continued to be a problem. TDH identified 90 children who during the year had been trafficked within the country for forced begging, forced labour, and possible sexual exploitation. Romani and Balkan-Egyptian communities are particularly vulnerable due to poverty and illiteracy. In a few cases children were bought from families or kidnapped, reportedly for begging or working abroad.

The country has a child trafficking strategy and action plan based on UNICEF guidelines that are intended to prevent recruitment of potential victims and protect victims, including those returned from abroad. The government has a full time anti-trafficking deputy minister at the Ministry of Interior who is in charge of coordination of the implementation of the strategy. The government signed a bilateral child trafficking cooperation agreement with the Greek government and established a National Referral Mechanism for the reintegration of victims into society. In an effort to move anti-trafficking efforts out of the capital and into the rural areas that are most heavily affected, the government also established in July regional committees in each of the country's 12 prefectures.

#### *3.7.10. Child abuse and neglect.*

Child abuse and neglect remain the biggest threat of child rights in Albania. A UNICEF research in 2006 found that more than 50 percent of children complaint of abuse came from within the family. Another third reported being abused in schools by teachers or friends.

The use of physical abuse by parents and almost in all levels of society is considered as a method of child disciplining, a method fostered by tradition and sanctioned in customs. Often, this punishment is associated with the idea that "it is for the child's benefit", that through it the obedience to the authority of the parent is ensured and this helps the creation of the family concept.

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33 "Child Labour and Street Children in Albania" – a research report of the Children's Human Rights Centre of Albania, Tirana 2006.

34 US State Department Report, Albania: Country Report on Human Rights Practices, 2006.

There are even proverbs that support such attitudes, such as: “beating is good for the child”, “the more the child is beaten, the better person he/she becomes”.

Though the male children are punished less, especially mothers are less willing to do so, more violence models are offered to them. Mainly, the father offers these models, but also by games and activities they are exposed to. Because the girls are less spared from punishing, they become accustomed to accept every form of abuse even since very early childhood. They learn to be obedient, not strong-headed, tolerant, but at the same time patient. As such, they can become object of abuse not only by their parents, but also by their elderly brothers or other members of family.

Albanian legislation provides few clues to the age of the person that have the right to bring a complaint to the court. In principal the Criminal Code requires the victim to send a complaint in front of a judge. In case of young children this is almost impossible, because of his/her age and lack of understanding of procedures. In late 2006 CRCA provided the Albanian Parliament with a proposal to criminalise child abuse and neglect by amending some articles of the Criminal Code. Also a new “Law on measures against violence in the family” was adopted by the Albanian Parliament in late December. It is hoped that the Law will be used in cases of child abuse too.

### *3.8. The right to life.*

In Albania, the life of a person is protected by law (article 21, Chapter II ‘Personal Rights and Freedoms’). The right of life in Albania remains only a word on paper, as long as people keep fire arm in their homes.

Many murders are committed as a result of individual or clan vigilante actions connected to traditional "blood feuds" or gang conflicts. According to the interior ministry, at least five persons were killed during the year in blood feuds based on the medieval Code of Lek Dukagjini (the kanun). Approximately six persons were killed for revenge. The National Reconciliation Committee (NRC), an NGO that worked on blood feud issues, estimated that there were as many as 78 deaths from feuds nationwide.

Although police have successfully busted some weapon trafficking places and the implementation of the Law on illegal weapons has had better results, the number of illegal weapons possessed by citizens is still high.

Several cases of blood feud crime have been tried in courts. Under the Criminal Code, premeditated murder, when committed for revenge or a blood feud, is punishable by 20 years or life imprisonment.

As regards the trafficking of human beings there has been a positive development recently especially regarding border control. It is a fact nowadays that the illegal passing to Italy has been reduced and Albanians have been caught while trying to go through transit countries, like Croatia. The trafficking of women for prostitution and trafficking of children have lessened in numbers, and every day we hear about perpetrators being brought to justice.

*3.9. Police ill-treatment.*

'No one may be subjected to cruel, inhuman or degrading torture, punishment or treatment.<sup>35</sup>' This constitutional principle is in accordance with Article 1 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Detainees frequently alleged that they had been ill-treated by police during arrest or during questioning following arrest. In some cases minors who had been questioned by police without a parent, lawyer or psychologist present complained of physical and psychological ill-treatment. At initial remand hearings prosecutors and judges rarely initiated investigations when a defendant complained of ill-treatment or bore clear marks of injury. In July the European Committee for the Prevention of Torture (CPT) published reports on visits to Albania in 2003 and 2005. The CPT reported that during both visits most of the detainees interviewed alleged that they had been beaten by police, often during questioning. In some cases the alleged beatings amounted to torture. In a number of cases a medical examination of the complainant found injuries consistent with these allegations. A report by the OSCE published in November, *Analysis of the Criminal Justice System in Albania*, reached similar conclusions.

Below there are few selected cases reported by Amnesty International and Albanian Rehabilitation Center for Trauma and Torture.

1. In March, D. L. was allegedly hit on the head with a pistol butt, kicked and beaten by police officers during his arrest in Tirana. He filed a criminal complaint against a police officer, alleging the use of force, abuse of office and torture. The prosecutor decided not to open an investigation into this complaint and reportedly did not inform Dorian Leci of this decision, as required by law.

2. In June, A. P., aged 17, committed suicide at home a few days after Korça police officers questioned him for six hours. The Ombudsperson later concluded that police officers had psychologically and physically ill-treated A. P. and had questioned him without a parent, psychologist or a lawyer present – in violation of the law. Korça police denied that police officers had ill-treated the boy. A criminal investigation against a police officer was opened, but had not been completed by the end of the year.

3. K.V. detained by Durrresi police as an accomplice in a bank robbery was asked by the judge whether police officers ill-treated him, or any member of his family. He answered by saying, 'I have not tried to make it public, but I can say that I have been massacred. I have been beaten barbarically. I cannot complain for prosecutors, because they have treated me well, but in police station I was ill-treated. I heard my wife also was subject to ill-treatment, was sent to hospital in coma and sent back to the police station last night'.

4. A.Sh. (ex-police officer) was detained for disobedience, insult and hitting police officers (case happened in June 2005). Afterwards he was sent to hospital saying

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<sup>35</sup> Article 25 of the Albanian Constitution.

that he hit the walls of the isolation cell. Relatives of A.Sh. disagree with this version, stating that for their relative was mistreated by his ex-colleagues.

On 26 June 1987 Albania signed, ratified and entered into force the 'European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment'; Article 2 of this Convention states that each person has the right not be subjected to torture.

*Each state Party shall take effective legislative, administrative, judicial and other effective measures to prevent acts of torture in any territory under its jurisdiction.*

*No exceptional circumstances whatsoever, whether a state of war, or a threat of war, internal political instability, or any other public emergency may be invoked as a justification of torture.*

An order from a superior officer or a public authority may not be invoked as justification for torture.

The provisions of this article have to be implemented in particular in interrogation rooms, being that these are places where torture is most likely to occur.

The Ministry of the Interior was reported as stating that during 2006 more than 40 police officers accused of ill-treating people, taking bribes or other misconduct in relation to the treatment of suspects at police stations had been punished administratively and referred to prosecutors' offices for investigation.

### *3.10. Conditions of detention.*

The Ministry of Justice operates all prisons and some pre-trial detention facilities. Most pre-trial facilities were co-located with police commissariats and were operated by the Ministry of the Interior. Despite an EU-supported programme of prison reform and some improvements to detention conditions, these were still generally very poor and characterized by overcrowding, poor hygiene and sanitation, and inadequate diet and health care.

The July CPT report stated that conditions inside the prisons and detention centres remained poor and were marked by decrepit conditions, overcrowding, poor food quality, physical abuse of detainees, and lack of medical care. The Ministry of Justice's Directorate of Prisons asserted that many of the problems highlighted in the CPT report have been corrected in prisons and detention facilities that it operated.

Contrary to Albanian law and international standards, minors were still sometimes held together with adult detainees. Mentally ill prisoners were often held in prisons instead of being sent for medical treatment in specialized institutions in accordance with court decisions. Detainees held in cells in police stations suffered particularly harsh conditions, and there were frequent complaints. Conditions were particularly poor, largely due to overcrowding, in Durrës, Elbasan and Korça police stations.

Overcrowding remained a serious problem in prisons and detention centres. The director of prisons reported that, as of December, there were 3,060 persons held in prisons designed for 2,718 and 752 persons in pre-trial detention facilities designed for 671. According to the director of prisons, all of the 50 convicted criminals that in 2005 were serving sentences in pre-trial detention facilities had

been transferred to prisons. This number did not include the 40 to 50 convicted prisoners who may be in pre-trial detention facilities at any time awaiting transfer to prison.

According to the General Directorate of Prisons, there were 80 women serving in Prison 325 for women in Tirana and 47 women in pre-trial detention. A nursery was constructed at Prison 325 and in September it housed two children.

### *3.11. Minority Rights.*

Several articles of the Albanian 1998 Constitutions refer to minority rights. Article 3 considers 'pluralism, national identity and heritage, religions coexistence, the understanding of the Albanians for minorities' as the basis of the Albanian state. Minority groups in the country do enjoy equality and are not exposed to any discrimination, everyone in the country may exercise all rights. Moreover, separate laws have been passed to address minority issues. The Constitution specifically prohibits discrimination, inter alia on grounds of race, ethnicity or language<sup>36</sup>.

There were reports of police violence and social discrimination against members of minority groups. As visible minorities, the Roma and Balkan-Egyptian communities were subject to considerable social abuse and discrimination on a daily basis. These communities are the most exposed to different negative phenomena of society as human trafficking and child abuse. In the past year, there were many cases made present by Albanian media, when many Roma families planned to have children in order to sell them later to anybody interested, without taking into consideration any risk for the future life of a child.

Albanian Government adopted 'National Strategy for Roma' three years ago and is implementing it, and during this year (2006), Minister of Work, Social Affairs and Equal Opportunities has organized a conference regarding Strategy implementation and results.

The Law permits official minority status for national groups and for ethno linguistic groups. National minorities in Albania are: Greeks Macedonians and Montenegrins; Aromanians (Vlachs) and Roma are defined as ethno linguistic minority groups. The government has not provided minority status for the Balkan-Egyptian community. To qualify for minority status under the law, a group of individuals must share the same language (other than Albanian), have documentation to prove its distinct ethnic origin or national identity, and have distinct customs and traditions or a link to a kinship state outside of the country.

### *3.12. Economic, Social and Cultural Rights.*

Albanian government and other levels of authority are unable to ensure the respect of economic, social and cultural rights of citizens due to the extremely unstable and insecure social and political environment, deficient economic order, inefficient legal protection system, underdeveloped economy and the material and cultural poverty of the country.

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36 Article 18 of the Albanian Constitution.

The field of economic, social and cultural rights comprises the rights to work and labor-related rights, such as the right to fair and adequate work conditions, protection at work, unionist rights and freedoms, etc; the right to an adequate living standard, including the right to housing; the right to health; the right to education and the rights of persons with disabilities, etc. Providing for the realization of these rights requires major financial outlays and investments by the state.

Albania is a signatory of a whole set, of international documents regulating economic, social and cultural rights, including also the 'European Social Charter', the key regional document in this area of human rights.

The national minimum wage was \$145 (14,000 lek) per month. However, it was not sufficient to provide a decent standard of living for a worker and family. The average wage for government workers was approximately \$300 (28,950 lek) per month. According to a 2005 report by the UNDP, 25 to 30 percent of the population lived under the official poverty line of \$47 (4,720 lek) per month. Another 30 percent lived very close to that line. The Albanian Institute of Statistics reported that average monthly wages in the public sector increased 14.4 percent from 2003 to 2004.

The law establishes a 40-hour workweek; however, the actual workweek typically was set by individual or collective agreements. Many persons worked six days a week. The law requires payment of overtime and rest periods; however, these provisions were not always observed in practice. The government had not established standards for a minimum number of rest periods per week, limits on the maximum number of hours worked per week, or the amount of premium pay for overtime and did not prohibit excessive compulsory overtime.

The Ministry of Labour, Social Affairs, and Equal Opportunity is responsible for enforcing government occupational health and safety standards and regulations; however, these regulations were generally not enforced in practice. Actual workplace conditions were frequently very poor and in some cases dangerous. During the year the media reported a number of job-related deaths, particularly in the construction and mining industries. The law does not provide workers with the right to remove themselves from hazardous situations without jeopardy to their employment.

# **Human Rights in Bosnia and Herzegovina in 2006**

By Miroslav Živanović & Gorana Mlinarević

## **Abstract**

This report represents the review of the Human Rights situation in Bosnia and Herzegovina in 2006 focusing on issues of right to education, right to work for disadvantaged, marginalized and vulnerable groups and access to rights through BiH national human rights institutions. Although, on the formal level, Bosnia and Herzegovina has unique system of protection with the European Convention for the Protection of Human Rights and Fundamental Freedoms directly applicable through the Constitution of BiH, the violations of human rights have occurred in every segment of society in Bosnia and Herzegovina throughout 2006.

In respect to the right to education the fragmentation of the educational system leaves a lot of space for misuse, manipulation and politicizing of the education system and consequently for violations and discriminative applications of right to education. The most obvious example of violations and discriminative applications of right to education is application of apartheid like concept of segregation in schools known as “two schools under one roof”. Even though prohibited by law and publicly condemned by the international community, this “phenomenon” is still present in 54 schools throughout Bosnia and Herzegovina. In addition to this gross violation, it is important to mention serious violations of the access to right to education to the returnees and their children as well as to Roma children.

In respect to the access to human rights through BiH national human rights institutions in 2006 it is only the Constitutional Court of BiH that could be

singled out as effective mechanism for the protection of human rights in BiH. However, the Constitutional Court of BiH has jurisdiction only to monitor implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and non-discrimination in respect to the enjoyment of rights and freedoms as provided by the international documents listed in the Annex I of the Constitution of BiH. There is no institution in charge of monitoring the implementation of the international mechanisms for the protection of human rights signed and ratified by Bosnia and Herzegovina. The institution of Ombudsman in BiH has shown ineffective and upcoming merger of the Office of Ombudsman of BiH and entities' Ombudsman has put forward the concerns that this merger will only confirm the existing consociation and make the system for the protection of human rights in Bosnia and Herzegovina even more vulnerable.

Considering the fact that during 2006 the number of unemployed almost equalized with the number of employed it is not hard to conclude that most of the citizens of Bosnia and Herzegovina is denied the right to work. In this situation the disadvantaged, marginalized and vulnerable groups have been placed in even harder position in respect to access to work.

In the state where the economic situation is dire the right to work is hard to fulfill, especially if it is viewed only as the positive and progressive obligation of the state to secure the right within available resources. Unfortunately, during 2006 due to the political situation mainly caused by the power struggles before the general elections, the political elites were more occupied with instigating ethnic animosity rather than securing better social and economic conditions for the citizens and residents of Bosnia and Herzegovina.

**Keywords:** human rights in Bosnia and Herzegovina, Bosnia and Herzegovina, right to education in Bosnia and Herzegovina, access to rights through BiH national human rights institutions, right to work for disadvantaged, marginalized and vulnerable groups.

## Introduction

During 2006, numerous violations of human rights have been reported in BiH. These violations have occurred despite the fact that the country, at least nominally, has a unified system of human rights protection, based on the direct inclusion of international standards of human rights, principally that of European Convention of Human Rights and Fundamental Freedoms (ECHR), into the Constitution.

A long list of numerous human rights violations exist in BiH, but the nature of this introduction does not allow for the enumeration of all areas of society that

divergences from international and domestic human rights standards have been noted.

The year 2006 was an election year in BiH. The 1 October general elections in BiH were conducted in line with international standards for democratic elections according to the final report of OSCE monitoring mission. Nevertheless, the report states that “it was regrettable” that these elections were marred by a violation of the ECHR’s Protocol No. 12, which provides for a general prohibition against discrimination. Thus all citizens who do not identify themselves as Croats, Serbs or Bosniaks are effectively bared from standing for the State presidency and the State and the entity parliaments. This violation of human rights is a consequence of constitutional limits which give precedence to collective or ethnic rights over individual ones.

It is precisely the current BiH Constitution, in fact Annex 4 of Dayton Peace Accord, which is one of the key Bosnian ‘problems’, the solution of which is nowhere in sight. From its inception at the end of 1995, the BiH Constitution was “the victim” of numerous and often totally contradictory interpretations made by various political forces, which is one of the reasons why the Constitution has come to be viewed as an obstacle to the development of BiH. With respect to human rights, it is quite clear that the constitution gives precedence to the rights of ethnic groups, so called constitutive peoples (Serbs, Croats, Bosniaks) over the individual rights of a citizen, while in the process violating the provisions of ECHR (the aforementioned Protocol 12). The question of the reform of the BiH Constitution came on the agenda only in mid-2005 and that was, of course, under the pressure of the international community. The negotiations on the constitutional amendments were conducted among the leaders of the eight most influential Bosnian political parties without representation of non-governmental organizations and associations. In March 2006, the negotiations were concluded with an agreed upon draft of constitutional annexes to result in very modest, yet still important constitutional changes. However, proposed constitutional annexes did not get a required majority during the April 2006 session of the BiH Parliament, so the discriminatory constitutional arrangements have remained effective in BiH. The constitutional reform is stalled and there is no indication in which direction this process might possibly unfold.

Numerous violations of human rights in BiH have also been a consequence of the current state of (non) functional judiciary. When it comes to the judiciary in BiH, it can be noted that, during 2006, Bosnian courts faced a backlog of 2 million cases, half of which were filed by utility companies for non-payment of water, heating and rubbish hauling. Pending utility cases are stifling the judiciary and are influencing a great deal the way in which other court cases are dealt with. The High Judicial and Prosecutorial Council in BiH reported that by the end of the last day of 2006, courts in BiH had 1,083,371 pending so-called utility cases, which were 56%, another 20% were pending misdemeanor cases, and eight percent were civil cases. Of course, the overburdening of courts by utility cases is not the only reason for the violation of a right to a fair trial. Courts in BiH still have outstanding issues in the areas of infrastructure, staff training, vulnerability

to political pressures, discrepancies in legislation etc. Furthermore, it needs to be stated that lawyers in BiH are still inadequately familiar with the system of human rights protection in BiH, which is why they are not able to adequately protect the human rights of their clients. The prison system in BiH is also at an unsatisfactory level, both in terms of space as well as in terms of the conditions in which the inmates serve their sentences, which results in a double violation of human rights of both those of citizens, who find themselves at the mercy of the inmates who roam the streets, and those of prisoners who serve time in totally outdated prisons.

Beside civil and political rights, massive violations have also been noted in the area of economic, social and cultural rights. Numerous strikes of rightless workers have again marked the year 2006. Their status has not been getting better over the years. However, despite strikes and other forms of protest, the public perception is that citizens have been extremely lethargic and unorganized when it comes to fighting for their economic, social and cultural rights (Ademović, 2006). It is more than obvious that vulnerable categories such as workers and pensioners are not familiar with the institutional mechanisms put in place to protect their rights. At the same time, the attitude of the BiH government toward the catalogue of economic, social and cultural rights can be clearly seen in the fact that BiH is one of eight European countries which have signed up to European Social Charter, but have not yet ratified it. Had it ratified the Charter, BiH would be bound to implement the European standard in solving key economic and social issues of its citizens: the right to accommodation and housing, movement of people, labor relations, health, education, and welfare. By failing to ratify it, BiH authorities do not want, and probably, do not dare to take responsibility for the implementation of economic, social and cultural rights. On the other hand, one can discuss the responsibility of Bosnian citizens for the current situation because there is no pressure on their part upon the authorities compelling ratification of European Social Charter.<sup>37</sup> Meanwhile, even though the BiH economy continues to sustain real GDP growth above 5% (EPPU BiH, 2006)<sup>38</sup>, the general indicators of economic, social and cultural rights (employment level, the number of health and socially insured people, the number of people without accommodation, the number of illiterate people etc.) are still extremely low (Ademović, 2006).

During 2006, BiH was not able to solve the violation of rights to education. There are a number of issues in this area, like non-passage of the law on higher education, unregulated students standards, corruption, and the principle of autonomous university and academic freedoms is not respected, but the biggest issue remains the segregation in schools. In segregated BiH schools, three ethnic curriculums prevail and children are divided according to their ethnicity. Also, a

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<sup>37</sup> BiH signed the European Social Charter on May 11, 2004.

<sup>38</sup> According to a report by Unit for Coordination of Economic Research and Implementation of Mid-term Development Strategy of BiH, after 2005, when a growth of real GDP reached 5,7%, no significant changes were inspected in 2006 in comparison with the previous year.

phenomenon coined “two schools under one roof”<sup>39</sup> persists, despite attempts by the international community, first and foremost that of the Office of High Representative, to put a stop to it. The abolition of segregation in the schools was one of the goals of the state Primary and Secondary Education Act passed in 2003. However, the act has not been enforced and BiH still has 54 school operating as “two schools under one roof” (ICG, 2007).

It is obvious that the system of human rights protection in BiH has significant loopholes that make it possible to violate human rights with impunity and on a massive scale. What is of particular concern is that the BiH authorities do not act to improve the situation, but rather make matters worse through their actions. “The erosion of the institutions for protection of human rights” is a phrase that may best depict the current state of human rights protection in BiH (Hodžić, 2007). More than four years ago, BiH had several institutions specializing in the protection of human rights: the BiH Ombudsman, the Human Rights Chamber, the FBiH Ombudsman, and the Republika Srpska Ombudsman. The Law on Changes and Amendments to the Law on Ombudsman for Human Rights in BiH has created conditions for establishing a single structure of Ombudsman at the State level. In this way, of all specialized bodies, only that of the State Ombudsman will remain, but the question arises as to what extent it will be capable, in conditions of extreme politicization and marginalization, to respond to the challenges of massive violations of human rights in BiH. It should be added that the law has not yet entered into force, thus leaving BiH with the State and entity ombudsmen.

## **Human rights in legal documents**

Miroslav Živanović

In relation to 2005, the structure of human rights protection in BiH has undergone certain changes, but has maintained its characteristic constitutional framework. Furthermore, it can easily be commented that the institutional framework of the structure of human rights has changed significantly – it has shrunk, to be precise – while its constitutional foundations have remained the same.

Since the anticipated constitutional changes did not take place during the second half of 2005 and during the whole of 2006, the BiH Constitution continues to hold a unique position and commitment to human rights. Article 2 of the BiH Constitution provides in part:

BiH and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms.

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<sup>39</sup> This phenomenon is typical for some Cantons in the Federation of BiH and is related to segregation of Bosniak and Croat children.

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in BiH. These shall have priority over all other law.

Article 3, Section 2 of the BH Constitution laid down the catalogue of rights including:

- a) The right to life.
- b) The right not to be subjected to torture or to inhuman or degrading treatment or punishment.
- c) The right not to be held in slavery or servitude or to perform forced or compulsory labor.
- d) The rights to liberty and security of person.
- e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
- f) The right to private and family life, home, and correspondence.
- g) Freedom of thought, conscience, and religion.
- h) Freedom of expression.
- i) Freedom of peaceful assembly and freedom of association with others.
- j) The right to marry and to found a family.
- k) The right to property.
- l) The right to education.
- m) The right to liberty of movement and residence.

Article 2 of BiH Constitution in Paragraphs 4 to 8, lays down provisions regulating the principles on nondiscrimination in the enjoyment of the aforementioned rights, rights of refugees and displaced persons, responsibility for the implementation of international standards of human rights and the issue of additional international treaties on human rights and cooperation with the international institutions.

Annex I of BiH Constitution brings a list of 15 additional human rights agreements to be applied in BiH. On the list are the following agreements:

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
4. 1957 Convention on the Nationality of Married Women
5. 1961 Convention on the Reduction of Statelessness
6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
8. 1966 Covenant on Economic, Social and Cultural Rights
9. 1979 Convention on the Elimination of All Forms of Discrimination against Women
10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
12. 1989 Convention on the Rights of the Child
13. 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
14. 1992 European Charter for Regional or Minority Languages)
15. 1994 Framework Convention for the Protection of National Minorities

Article 10, Paragraph 2 of the BiH Constitution, which is regulating changes and amendments to the Constitution, is vital for the constitutional framework of human right protections and freedoms:

No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in Article II of this Constitution or alter the present paragraph.

The constitutional provision sounds a little bit absurd if one takes into account the fact that the first and original text of the Constitution contains provisions which are in direct contravention to the ECHR and its Protocol No. 12 and also

Article 25 of the International Covenant on Civil and Political Rights. Of course, the aforementioned Articles 4 and 5 of the BiH Constitution deal with the setting up and structure of the Parliamentary Assembly and BiH Presidency. In brief, the fact that citizens of Serb ethnicity in the Federation of BiH are barred from standing for offices in the House of Peoples of the Parliamentary Assembly of BiH and BiH Presidency violates human rights. The same right is denied to citizens of Croat and Bosniak ethnicity from the Republika Srpska. Such discriminatory character of the BiH Constitution has also been reported in the OSCE final report on the elections in 2006 in BiH.<sup>40</sup> Having in mind the said facts, the question of the constitutionality of the BiH Constitution recurs, in other words, a conclusion that some articles of the Constitution are mutually exclusive at the expense of the guaranteed human rights.

Since the coming into force of the BiH Constitution, which set the foundation for the protection of human rights, national jurisprudence has been broadened with numerous regulations, which have as a goal the elaboration of a legal framework for the protection of human rights and freedoms. These laws have directly and indirectly dealt with the majority of rights from Sections 2 and 3 of Article 2 of the BiH Constitution and also aimed at implementing the ECHR and the other 15 international treaties enumerated in Annex 1 of the Constitution. Nevertheless, the fact that laws, such as ones on gender equality, freedom to access information, ethnic minorities, and primary and secondary education have been passed, does not mean that the human rights guaranteed by them are indeed protected. Of course, what is meant by this is that there persists a highly pronounced problem of

The issue of lack of enforcement of international human rights standards as well as adequate national jurisprudence has been identified in the European Commission's Progress Report on BiH for 2006. The report makes mention of a number of areas and requests from BiH to make advancements in those areas with particular regard to protection and application. Those areas include the catalogue of enumerated rights of Article 2 (3) of the BiH Constitution, which covers a wide range of civic and political, economic and social rights.<sup>41</sup>

## **Human rights and education: the right to education**

Gorana Mlinarević

The right to education is one of the rights that have been hotly discussed in BiH, but unfortunately those discussions have not led to a good education system free of discrimination. Reform was stopped half way through, and everything that has been enacted so far represents a series of compromises, which have been made at the expense of the right to education.

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40 Office for Democratic Institutions and Human Rights. Bosnia and Herzegovina: General Elections: 1 October 2006: OSCE/ODIHR Election Observation Mission Final Report.

41 European Commission. Bosnia and Herzegovina 2006. Progress Report: COM (2006) 649 Final. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/bih\\_sec\\_1384\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/bih_sec_1384_en.pdf) (Last viewed on 20.06.2007.)

*2.1. Legal provisions regulating education*

The right to education is enshrined in the BiH Constitution. This right is explicitly listed as one of the enumerated rights under the Article II/3.1 of the Constitution as one of the rights and freedoms enjoyed by all citizens in BiH territory. The minimum standard of this right, according to Article II/2 of the Constitution, is provided by Article 2 of the first Protocol of the ECHR, which ensures that no one should be denied the right to education. Article II/4 of the Constitution ensures that the enjoyment of rights and freedoms, as provide by the 15 international treaties listed in Annex I to the Constitution (including Convention relating to the Status of Refugees, International Convention on the Elimination of All Forms of Racial Discrimination, Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, European Charter for Regional or Minority Languages, Framework Convention for the Protection of National Minorities,) to all persons in BiH, will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This means that BiH is to provide all citizens who are living within its borders with mandatory primary education free-of-charge, as well as easily accessible forms of secondary and university education and measures to ensure equal access to life-long learning opportunities and vocational programs.

However, education-related legislation in BiH is very complex and represents a series of political compromises leaving vast room for manipulation and discriminatory implementation of the right to education.

As for the legislation related to primary and secondary education, a State-level Framework Law on Primary and Secondary Education was adopted in 2003. According to Article 1 of the law (Official Gazette of BiH No. 18/03 and 24/03), this law regulates the principles of preschool, primary and secondary education and upbringing, adult education, and the establishment and functioning of institutions providing services in education in BiH, as well as supplementary education for the children of BiH citizens abroad. Article 16 of the framework law provides free primary education for every person until eighteen years of age. This law was written with an ideal and functioning society in mind and takes for granted the existence of universal elementary education for children between the ages of 6 to 15 or 18. The framework law does not provide for any possible divergence (even though everything in BiH is far from universal and ideal). For example, it does not regulate instances of free adult education. This is more pronounced by the fact that Article 35 of the law forbids schools to discriminate among children (persons until the age of 18) in access to education or their participation in the educational process, not all persons. Furthermore, according to Article 17 of the law, secondary education is available to all according to their attained level of success in primary school, personal interest, and practicalities. In the second paragraph of this Article, the law guarantees secondary education in

public institutions free of charge. This law also provides in Article 20 that adult education should be organized for educating adults in specific subjects and for their professional and personal development. According to the law, adult education includes further professional training, training for acquiring additional qualifications, re-training, and other activities ensuring lifelong education. Finally, it is important to point out that in Article 19, the law regulates education of children and youth with serious disorders and developmental difficulties. In this respect, the law introduces education premised on the inclusion of children and youths with special needs mandating their education in regular schools and according to curriculums adapted to their individual needs. Children and youth with serious disorders and developmental difficulties may be educated in part or wholly at special educational facilities, when it is impossible to provide appropriate education in regular schools

Further elaboration of the law and its enforcement is transferred to lower units, meaning to the entity level in the Republika Srpska (centralized), while in the Federation of BiH to cantonal levels (decentralized), and at the level of the Brčko District. Though it could be said that the legal regulations on primary and secondary education at all levels are at least on paper harmonized with the framework law, such levels of decentralization, which in reality are fragmentations of the educational structure, leaves room for potential misuses and further politicization of the educational system, and opens up the possibility of the violation of rights to education. The sole fact that educational system is under the authority of 13 ministries<sup>42</sup> means that, apart from separate legislative and executive roles, there is also a disparity in respect to available funds as well as discrepancy in allocation and quality of education. This in and of itself represents different treatment in the fulfillment of the right to education across the territory of BiH.

As for higher education, the situation in respect to the legal regulations is even worse because the reform of higher education has been stalled for years at all governmental levels. All attempts to reach equal standards of university education in BiH via a single law on Higher Education and equal access to higher education have failed because of the lack of political will to pass a uniform act. In the meantime, the opponents of the regulation on higher education at the state level have pushed through the Higher Education Act in Republika Srpska (Official Gazette of RS 85/06) during 2006. With this move Republika Srpska has completely detached itself from the unified regulation of this field, except in terms of the accreditation of universities and paying lip service to the acceptance of the principles of Bologna process<sup>43</sup>. Instead of all public universities

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42 There are 10 Cantonal ministries of education in the Federation of BiH. There is no FBiH Education Act and no FBiH Ministry for Education and Science. Then there are Ministry of Education and Culture in Republika Srpska and Ministry of Civil Affairs at the State level.

43 Even though BiH signed Bologna Declaration back in 2003, the enforcement remains to be seen. According to Darija Duilović (Bologna Process vs. "Vital National Interests": Reform of Higher Education and European Integrations in BiH, 2005, available at

nationwide working under the same conditions and rules with a unified access to state financing and all students studying under the same conditions and rules, the passage of this law has established all preconditions for fragmentation in the field of education. That is, a situation has been created in which higher education should be regulated at the cantonal levels in the Federation of BiH and at the entity level of Republika Srpska, and, with this, the very situation which allows for different treatment in the fulfillment of the right to education has been fomented. Surely, just like other recently passed acts in BiH, the Higher Education Act of Republika Srpska officially, in Article 5(e) as a principle of higher education provides for the respect of human rights and civic freedoms, including the prohibition of all types of discrimination, which is further amended with Articles 71 and 99, which state that the founding acts of higher education institutions must contain provisions that prohibit discrimination of staff and students on grounds of gender, race, sexual orientation, marital status, color, faith, political or other conviction, national, ethnic or social connection with a national community, property, birth, or any other status. It should be added that one of the principles of higher education as stated in Article 5(j) is the principle of life-long education. The text of the law meets EU standards. However, the law attempts to regulate issues that need to be regulated at the State level. Legislation in the Federation of BiH is very chaotic. The law passed in the Socialist Republic of BiH in 1990 is still in force in the Federation of BiH. That law only regulates higher education at universities as public organizations, which are mandated to co-exist as higher specialized schools, different departments, and art academies.

According to the law, each department is a unit on its own while the universities have no autonomy. The law does not provide for other types of higher education, nor does it provide for a life-long education. Also, the law does not contain provisions that would expressly prohibit discrimination on any ground. Furthermore, within the Federation of BiH, some cantons have passed their own laws on higher education – so far seven. Unsko-sanski Canton has only passed the Law on University in Bihać pursuant to which higher education is only pertinent to that organization. Srednjo-Bosanski Canton and Hercegovacko-Neretvanski Canton do not have any cantonal level regulations. Of course, as typical for post-1995 legislatures in BiH, the current cantonal laws primarily contain formal provisions that expressly prohibit any type of discrimination and define the focus of higher education furthering the strengthening of the respect for human rights and fundamental freedoms. However, the problems are created in the course of the implementation of those provisions.

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[http://www.soros.org.ba/images\\_vijesti/stipendisti\\_2006/program\\_podrske\\_ispitivanjima\\_iz\\_oblasti\\_javnih\\_politika/daria\\_duilovic-bolonjski\\_proces\\_naspram\\_vitalnog\\_nacionalnog\\_interesa.pdf](http://www.soros.org.ba/images_vijesti/stipendisti_2006/program_podrske_ispitivanjima_iz_oblasti_javnih_politika/daria_duilovic-bolonjski_proces_naspram_vitalnog_nacionalnog_interesa.pdf)) "BiH public was officially introduced to the concept of Bologna Process within the Strategy of the education reform ("Five promises about education: Strategic document on the reform of BiH education," OSCE BiH, Sarajevo, November 2002. Available at <http://www.oscebih.org>). This was done jointly by the representatives of local educational authorities and institutions, as well as members of international community and it was supported in November 2002 by all Ministries of Education in BiH and Peace Implementation Council in BiH."

Such legal bedlam, without a uniform law which would ensure the basic principles of higher education, uniform standards, and quality of education, leaves room for manipulation and unequal access to higher education across BiH. Also, different levels of oversight leave room for politicization of the institutions of higher education, even to a greater degree than in relation to primary and secondary schools. For example, this is apparent in the appointments of deans and presidents who are appointed and removed according to deals and interests of political parties.

### *2.2. Human rights in practice in terms of the right to education*

Just like in the previous years, the rights to education in BiH saw a number of issues in 2006. As has been already mentioned, the use of education at all levels can often be seen to be used for political purposes, which most frequently leads to a violation of the right to education. The most obvious example is a phenomenon unique to BiH known as “two schools under one roof” which still exists, among other places, in some parts of Srednjobosanski and Hercegovackoneretvanski Canton. According to data published in the Report on Human Rights in BiH in 2006, Helsinki Committee reported that there are still 54 such schools in BiH. This is further evident in the access to education for returnees and their children, to whom the right to education in their mother tongue has been denied.

Furthermore, a serious problem in BiH is the lack of education for some categories of children. Before all those are Romani children, who are also victims of trafficking. Even though these children are perpetually present on our streets (because they are forced into begging) – they are as a matter of fact “invisible” to society, because they are usually unregistered upon birth. As these children “do not exist” in sense of registration, their rights are also denied (among those is the right to education). Incomplete statistics, meaning that providing an estimate of the number of children is hard, represents a serious concern. Some data collected by the OSCE claim that 64% of Romani children do not attend school.

It needs to be pointed out that an issue faced by pupils in Hercegovackoneretvanski Canton and Canton of Zapadna Hercegovina arose during the first part of 2006 when they didn't have schooling because of a strike of teachers. In other words, they have been denied the right to education. Unfortunately, considering the situation in BiH, there will be even more reasons for such strikes unless a systematic attempt is made to solve those accumulated problems in education, otherwise this denial of the right to education may become more frequent.

In the context of the full enjoyment of the right to education in BiH, it needs to be pointed out that the problems are compounded by the fact that Bosnian authorities are not trying to change the status quo in which the education system in BiH found itself. Some actions command praise, such as a project of the Norwegian non-governmental organization Save the Children in Unsko-Sanski Canton thanks to whom more than 200 children between 15 and 18 years of age, between 2004 and 2006, started primary education. Those were mainly from

Bosanska Krupa, Cazin, Bužim and Velika Kladuša, because according to records compiled by competent authorities, the majority of children who do not attend school come precisely from those municipalities. However, those were short term measures, limited to specific regions and dependent on donor funding. There is still little sign of a systematic approach to solving issues by governments or their administrative units.

It also needs to be pointed out that even though public education at almost all levels, including a good part of higher education, is textually free of charge, in reality this is not the case. In some primary and secondary schools, examinations are charged, as well as various school activities that have been imposed on children as mandatory, including the purchase of textbooks and accessories. Against the background of the social situation in this country, this represents a huge financial burden on some parents, who are incapable of sending their children to school. Such parents rather risk facing fines. Also, the universities are located in major towns, so education for students from other places costs much more considering limited capacities in student dormitories. Currently there is no law in BiH that would regulate the issues of student standards or other types of student welfare.

Parents, pupils, students, and citizens are not aware of their role, obligations, duties and rights in education. One regrettable example of participation is when parents find themselves manipulated for political ends. This is most obvious in organized boycotts, that is, threats to boycott by children of Croatian nationality because of the merging of “two schools under one roof” (as was the case in Bugojno and Gornji Vakuf-Uskoplje), and so the failure to enforce the Law on Secondary Education, which was mandated by the High Representative, since the Cantonal authorities were not able to come to agreement. What resulted was that parents of children of Croatian nationality opposed the school unification claiming without arguments that their children would be denied their right to education in their mother tongue. Unfortunately, this has produced another bad compromise and the segregation remained in the schools.

Also, it should be pointed out that handicapped children are fairly limited in their right to access education. Children who are physically handicapped are meeting obstacles when accessing school buildings and moving within schools, because many schools have physical barriers, such as inadequate access routes, entrances, classrooms and restrooms. Also, children with special needs are facing numerous problems and it is impossible for them to attend classes on a regular basis. Even though a new system of regular inclusive education has come into force, this type of education is still limited due to the lack of trained and qualified staff and the non-existence of adequate training programs.

Furthermore, it should be pointed out that there is an issue of lacking curricula for minority children of school, with a view to their right to study their culture and use their mother tongue.

Violence has been on the rise among children in schools and in their proximity, especially with cases of extortion.

### 2.3. *Main issues*

In order to make the right to education available to everyone free of discrimination across the Bosnian territory, first and foremost, local authorities need to take measures to harmonize different educational systems. Segregation in schools must be immediately abolished and authorities must ensure the implementation of the passed laws. Also, the government and government institutions have an obligation to develop a strategy for the education system as a whole and take responsibility for the development of an action plan to implement the strategy. The government and its institutions have to understand the importance of quality education for the development of the society as a whole, in other words, finally recognize the fact that the social and economic advancement of the country and its citizens can only be achieved through a quality educational system free of political meddling, and they have to make up their mind about what objectives or advancements they want to achieve through an education system. It is clear that a universal right is to study in one's own national/ethnic language and have study materials in that language. However, this right should not be used for the political ends or for the promotion of it. Educational materials should be harmonized. As much as studying of one's national culture is important, so to is not excluding, ignoring or leaving out the cultural heritages of other nations/ethnic groups, and especially - not to misrepresent them. Furthermore, it is necessary to enforce already developed action plans in terms of education of Romani children and members of other ethnic minorities and to secure the enforcement of other relevant legal provisions so that these groups of Bosnian citizens stop being sidelined and marginalized.

With respect to issues faced by children with disabilities and children with special needs, especially in situations where inclusive education has been introduced without first educating staff, without curricula and adequate school infrastructure, it is necessary to do all that can be done to remedy these matters as soon as possible and enable equal access to education for children with disabilities and children with special needs. It is important that professional training be made available for all teaching staff, especially for teaching staff who are working with children with special needs. It is necessary in order to provide better access to schools and remove barriers within schools so as to secure better access for children with physical impediments.

Finally, due to the fact that BiH is not a country with an ideal set of conditions for education, that is, it is not a country where all children enjoy their right to primary education before they turn 15, it is necessary to establish a systematic approach to finding a solution for basic education of children and adults from 15 years of age and over. It is also important to secure a system of a life-long education, so that adults can be provided with the right to education necessary for their further development and perfection.

## **Approach to law**

Miroslav Živanović

The constitution of BiH in Section 6 of Article 2 laid down an extremely important provision which is related to the sole enforcement of provisions on human rights and, in doing so, gives an institutional framework for the protection of human rights.

Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 above.

Based on this constitutional provision, it was possible to set the list in 2001 of all available instruments in BiH for the protection of human rights:

- Governmental organs responsible for the protection of human rights
- Respective court and administrative mechanism
- Institutions of Ombudsman in BiH (Federation of BiH Ombudsman, Republika Srpska Ombudsman and the BiH Ombudsman)
- Parliamentary commissions
- Human Rights Chamber
- Constitutional courts (in Federation of BiH, Republika Srpska and of Bosnia and Herzegovina)

Not to mention that BiH citizens, whose human rights have been violated, had a number of non-governmental organizations (NGOs), media and international organizations to turn to.

In comparison with 2001, the system of human rights protection in BiH in 2006 underwent significant changes. Keeping in mind that the current provisions on human rights in the BiH constitution have not undergone changes in the past period, the government bodies of BiH remain the first door in the process of human rights protection. However, taken against the backdrop of the statistics available to courts and the institutions of Ombudsman, it becomes clear that ombudsman is the first instance when seeking the protection of human rights that were denied by the authorities. When speaking on the local court instruments, the novelty is the Court of BiH. Article 1 of the Law on the Court of BiH states:

In order to secure to ensure the effective exercise of the competencies of the State of Bosnia and Herzegovina and the respect of human rights and the rule of law in the territory of this State, a Court of Bosnia and Herzegovina is established.<sup>44</sup>

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<sup>44</sup> Law on the Court of BiH (Official Gazette of BiH, 16/02)

However, in respect to contemporary case law, one cannot view the Court of BiH as a specialized instrument for the protection of human rights. During 2006, the Constitutional Court of BiH was the most important specialized institution for the protection of human rights. In line with the standards of constitutional judiciary, the Constitutional Court of BiH shall be the defender of constitutionality and an institutional guarantor for the protection of human rights and freedoms<sup>45</sup>. It needs to be pointed out that the Court not only figures as an institutional guarantor for the protections of rights and freedoms, as established by Article 2 of the BiH Constitution, but also as the guarantor of the rights and obligations pursuant to all instruments under Annex 1 of BiH Constitution and other international documents. To complete its task, the Court has five competencies which are defined by Paragraph 3 of Article 4 and by Paragraph 3 of Article 6 of the BiH Constitution:

- Conflicts arising over the allocation of power
- Abstract normative interpretation of the BiH Constitution
- Appellate jurisdiction
- Referral of questions from other courts
- Handling of disagreements that block the BiH Parliament arising from ethnic interpretations.<sup>46</sup>

However, the Court as the most important institutional guardian of human rights in BiH does not have competency to oversee the implementation of all international instruments for the protection of human rights that BiH has ratified. The Constitutional Court in fact is granted only the authority over the rights guaranteed by the ECHR and the oversight of non-discrimination in relation to the enjoyment of rights and freedoms provided in the international agreements listed in the Annex I of the Constitution. There is still no government body charged with the oversight of the implementation of signed and ratified international treaties for the protection of human rights.

In the period between 2001 and 2006, BiH lost a second specialized judiciary body charged with the protection of human rights. The Human Rights Chamber was established by Annex 6 to the General Framework Agreement for Peace in BiH. The Chamber had as a mandate the consideration of alleged or apparent violations of human rights guaranteed by the ECHR and the 15 other international agreements listed in the Appendix of Annex 6.

The Chamber was receiving applications concerning violations of human rights directly from the parties who are signatories to Annex 6 or from persons, non-governmental organizations, or groups of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing.

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45 Vehabović, Faris. Relation between the Constitution of Bosnia and Herzegovina and the European Covenant for the Protection of Human Rights and Fundamental Freedoms.. Sarajevo: ACIPS, 2006. p. 82

46 More on the competencies of the BiH Constitutional Court can be found on its official web page <http://www.ustavnisud.ba/bos/article.php?pid=1193&kat=104&pkat=720>

The mandate of the Chamber ended on 31 December 2003. In line with this agreement between the parties in accordance with the Article XIV of Annex 6, signed on 22 and 25 September 2003 and in January 2005, the Human Rights Commission within the Constitutional Court of BiH was established with the jurisdiction to decide on cases that were received by the Chamber until 31 December 2003 and on which the Chamber did not conclude during its mandate.<sup>47</sup>

The Human Rights Commission within the Constitutional Court of BiH was tasked to conclude its work and decide upon the remaining 9,000 cases. The Commission was operating from 1st January 2004 until 31 December 2006 during which period it has solved around 8,500 cases of the former Chamber. It needs to be stressed that the Commission was working fully as a national body, without the presence of international judges or other international staff. Apart from that, the Constitutional Court of BiH (hereinafter the Constitutional Court) provided great material, personal and technical support to the work of the Commission.

Five hundred pending cases have been taken over by the Constitutional Court based on the agreement among BiH, Federation of BiH and Republika Srpska, pursuant to Article XIV of Annex 6 of General Framework Agreement for Peace in BiH from January 2007 and the obligation to end these cases by 30 June 2007. The Constitutional Court with its Panel and the Plenary Commission has held a total of 13 sessions in the first six months of 2007. The Constitutional Court has considered the remaining 154 applications in which the applicants have alleged violations of human rights and freedoms guaranteed by Annex 6. Some important decisions were passed on that last session. Among other things, in the case CH/03/13402, the Constitutional Court establish to retroactively review the legal validity of contracts on the purchase of apartments based on Article 5 of the Law on Changes and Amendments to the Law on Privatization of State-owned Apartments (“Official Gazette of Republika Srpska”, No. 65/03) had violated the principle of legal certainty under Article I/2 of the Constitution of BiH and it constitutes “illegal” interference with the right to property of 27 applicants who were waiting for the registration of their apartments in the land records based on the contracts on purchase of apartments from 1991. Furthermore, in Case CH/03/3834, the Constitutional Court found that there was discrimination on ethnical grounds since in 1993 the applicant was denied the right to work in public catering company “Balkan” just because of her ethnic affiliation. The Constitutional Court also established that the applicants were illegally deprived of their property and thus their return to the prewar homes in the Republika Srpska was prevented as well. .

Upon the completion of work on the said cases the Constitutional Court exhausted its jurisdiction under the Agreement as required by Article XIV of Annex 6 to the General Framework Agreement for Peace in BiH from January

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<sup>47</sup> In the course of its operation Human Rights Chamber has received 15,169 complaints.

2007. At the same time, upon the completion of these cases, one of the Annexes to the General Framework Agreement for Peace in BiH has de facto closed. Accordingly, the so-called Dayton Peace Agreement had one more of its Annexes closed.<sup>48</sup>

Thus Human Rights Chamber and Human Rights Commission within the Constitutional Court of BiH have concluded their mandates as interim judicial institutions specializing exclusively in the protection of human rights in BiH. Their jurisdiction and powers have been fully taken up by the Constitutional Court of BiH.

In the period between 2001 and 2006, the structure of the institution of Ombudsman for human rights in BiH has undergone dramatic changes. Instead of three institutions of Ombudsman in BiH (one state and two entity institution) based on the Law on Changes and Amendments to the Law on Ombudsman for Human Rights in BiH (Official Gazette 32/06 and 38/06), BiH had an obligation to establish a single institution of Ombudsman for the whole country by the end of 2006. At the moment of the finalization of this report, (mid-2007), the single body has still not been created, and so Bosnian citizens are still denied this extremely important mechanism for the protection of human rights, since all three institutions of Ombudsman (keeping in mind that the entity institutions are still acting semi-officially) are very busy in the transitional period and are limited in the ways in which they can offer services to citizens.

Under these circumstances, the potential of NGOs and citizens' associations, as well as that of media and international organizations, has been developed with a view to the protection of human rights. Ever more present public protest reported by the media and pressures on international organizations, as was the case with the Association of Decertified Policemen, whose members have even gone on hunger strike to put pressure on local authorities and the United Nations. At the same time, there is no valid analysis supported by statistics to show how much have judicial bodies in BiH have taken to citing the ECHR and the other international documents listed in Annex 1 of the Constitution of BiH. Certainly, there exist a lot of cases in which the abovementioned pressures have been exerted, but more detailed data are still missing.

*The guardian of citizenry and the hostage of consociation: Ombudsman for human rights in BiH*

Edin Hodžić

(This Article was first published on 26 February 2007 on the internet portal "Beat of Democracy"<sup>49</sup>)

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48 Ademović, Nedim. Conclusion of work on the cases of former Human Rights Chamber of BiH and coming to an end of Annex 6 to the General Framework Agreement to Peace in BiH. Available at:

<http://www.ustavnisud.ba/bos/press/index.php?pid=2181&sta=3&pkat=125> (Last viewed on 29.06.2007.)

49 The Beat of Democracy is a community of people with different opinions.

Even though the Office of Ombudsman was envisioned as a mechanism for the protection of universal human rights of all citizens, this is just one of many institutions in BiH that embodies the supremacy of the ethnic principle over that of an individual. *Edin Hodžić* brings new and old ailments of this institution under the limelight.

With respect to forthcoming consolidation of the Office of Ombudsman BiH, those of the entities into a single institution of Ombudsman for Human Rights in BiH, purported to commence on 1 January 2007, it is necessary to bring into the limelight some of the important structural issues, such as its composition, appointment procedures and methods of operation. The first impression based on the look of this new, reformed structure in the light of international standards and comparative experiences is that only formal, administrative consolidation has taken place, which cements de facto the domination of the ethnic approach to the protection of human rights and delays the implementation of the principles of parity, consensus, and internal balance of decisions among the representatives of the three constitutional peoples in this organ. In this way, instead of serving as a solution to consociation, which is more than problematic from the perspective of human rights and with an inherent focus on the balance of the rights of the individual against the dominant ethnic paradigm in BiH, the reformed ombudsman just copycats the fundamental elements of consociation, making the system of human rights in BiH even more vulnerable.

Keeping in mind that this discussion will deal with structural issues, it seems realistic to expect that all these shortcomings will come out in the new, united institution of the Ombudsman BiH. If there is to be true change and the hope of success of this institution in changing the perception and the context in which human rights are implemented, distinguished public figures need to be appointed to this important office in the future. Only ombudsmen who are ready to persevere through the use of legal language against ethnicization and politicization of the implementation of human rights in our country can enforce internal procedures that would make this institution a strong and efficient guardian of citizens.

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Through reader's comments, each article in its own right, and the Beat as a whole, become a network of different opinions which are again and again confronted and reviewed. In this way, the Beat is the product of its readers as much as it is of the newsroom staff. The goal is not come up with a uniform answer to an issue, because such an answer cannot exist in a real and truly pluralist democracy, but to sustain a continuity of professional discussion on the issues of importance to the BiH society..

Therefore, the Beat treats all opinions equally– the meeting of differences is inherent to democratic discussion, the same way as facing each one of us with the limitations and weaknesses of our own position – through a discussion with those opposing us.

This is exactly the reason why The Beat does not attempt to do its readers' thinking for them – instead, The Beat listens to what they have to say.

It was founded by the Open Society Fund in Bosnia and Herzegovina (FOD BiH)

*A unique structure: consolidation or reduction*

Dayton Peace Accords has established a complex constitutional and political arrangement in our country, as well as a complex system of human rights protection, which was expected to respond to the challenges of post-conflict transition and also to become a ballast to such structure of the country. The system aimed to protect an individual from violation of his or her rights in the complex labyrinth of multi-level governance in BiH.

The Constitution of BiH (Article 2, Paragraph 1) and Annex VI of Dayton Peace Accords have established a peculiar State institution for the protection of human rights – Commission on Human Rights (hereinafter Commission), which consists of two parts: the Office of the Ombudsman and the Human Rights Chamber.

The main difference between these two institutions is the following: while the Chamber was established as a judicial body with authority to impose a legally binding outcome in cases of violations of human rights of BiH nationals, the Ombudsman institutions are institutions whose decisions have a character of persuasive, but without legally binding outcome for the governmental bodies in BiH. Along with the Office of Ombudsman for Human Rights in BiH, between 1995 and 2000, such agencies exist at the levels of Federation of BiH and Republika Srpska. Up until the end of the mandate of the Human Rights Chamber on 31 December 2003, the BiH Ombudsman remained the sole state institution for the protection of human rights at the State level, while the FBiH Ombudsman and RS Ombudsman continued to act on adjudicating cases of inappropriate practices of public administration and the violation of human rights of citizens at the entity levels.

The Office of the Ombudsman for Human Rights in BiH was established in 1996 and was held by one individual, a foreign national. In the beginning of 2004, this post was succeeded by a BiH national, but as is typical for our country, the number of ombudsmen was multiplied to three. In April of 2006, the Changes and Amendments to the Law on Ombudsman for Human Rights was passed, which foresaw a single structure of ombudsmen in our country, which presupposes a cessation of the work of similar institutions at the entity level.

There are many reasons for the consolidation of the Office of Ombudsman in BiH and cessation of its entity counterparts. Those arguments are possibly best summarized in the 2003 Report of the Office of Ombudsman for Human Rights in BiH, in which it is stated that the consolidated institution and reduction in the number of ombudsmen from 9 to 3 result in “better service for less money,” and elimination of “public confusion, contradictions, duplications, the issues of coordination and parallel administration” (p.10).

The merger of these institutions is one of the post-accession obligations of BiH to the Council of Europe. Along with this, UN bodies charged with the implementation of the conventions on human rights have not missed to mention

the issue of the three ethnic structure of Ombudsman in their documents about BiH, as an area of concern. So in April 2006, the Final Conclusions of the Committee on the Elimination of Racial Discrimination stated that the tripartite structure of this institution jeopardizes its efficiency, so the upcoming merger should be conducted with an aim to “insure a unique, and not ethnically divided approach to protection of human rights” (Paragraph 9).

So the fact of the matter is that the UN’s concern is ethnicization of structure and the manner of operation of the institutions of BiH Ombudsman, not a parallel existence of these institutions at the entity level. However, it seems that the amendments to the Law on Ombudsman passed in April of last year truly represent a reduction of the instruments for the protection of human rights within the institutions committed to addressing this issue and a true confirmation of the ethnic principle in the protection of human rights with a formal administrative establishment of a single nationwide Ombudsman.

It needs to be pointed out, however, that the Ombudsmen of FBiH and RS expressed their reservations at the end of their term, which boils down to the fear that a reformed, uniform institution will lead to reduction of a full structure for the protection of human rights in our country, which is not without a foundation. To this speaks the fact that a significant reduction of this body’s annual budget has already been announced, and also closing of some of its regional offices, which will make it more difficult to implement the principle of accessibility to all citizens. This announcement is causing rightful concern, particularly against the backdrop of the statistical data on the rise of complaints on the violation of human rights in recent years. As an example, it should be mentioned that until August 2003, the Ombudsman of Federation of BiH had received around 570,000 complaints from citizens (Christopoulos i Hormovitis, 2003: 29) while, according to this institution’s records, between 2003 and 2006 almost 700,000 additional complaints were filed. Such a rise in complaints can be explained in part by an increase in citizen awareness of the work and resources of this institution, but it certainly points to a perpetual issue of human rights violations in the post-war period. According to the statistical records of the RS Ombudsman, a 40 percent rise in civil complaints was noted in 2006 from the previous year, which certainly makes apparent that a single institution of Ombudsman for Human Rights in BiH will have to overcome a number of challenges while performing its duties.

Therefore, it can be said that the explained erosion of the institutions for the protection of human rights in BiH has not been followed by a decrease in the reasons that initially led to the establishment of this complicated structure. However, it is hard to realistically assess, in this phase when a single Ombudsman for Human Rights in BiH has yet to start working, what the potential of this institution and its efficiency might be, but two elements which are the focus of this article – the composition of the institution and the appointment of ombudsman – are conceptual and not empirical in nature, so they can already be analyzed against the international standards and the experience of other countries.

Since it followed from several decades of development on the relevant international standards, and after a long period of ombudsman institutions being operative in many countries of the world, the biggest part of 2006 Law on Ombudsman for Human Rights in BiH represents the highest achievement of standards regarding the work of this agency. By swapping relevant provisions of Annex VI of the Dayton Peace Accord, the law gave this agency broad jurisdiction, including oversight of all State organs, including the judiciary. This is certainly in line with the highest standards as stated in the 1993 UN Paris Principles, which represent a principle source of international standards for the establishment and operation of State institutions for the protection of human rights. Along with the typical powers related to the way in which it will receive and investigate complaints from individuals in cases involving illegality or more broadly any complaint on the inappropriate work of public administration, the Ombudsman for Human Rights in BiH will be able to commence an investigation on his or her own initiative and recommend general and specific measures.

It should also be noted that the institutional position of the institution as established by the Constitution of BiH and the law are very important, because, as has been often pointed out, the greater the legal force of an act regulating the operations of a State body for the protection of human rights, the greater are the guarantees for its independence.

However, along with an adequate legal status and powers, the composition of a body for the protection of human rights and the procedure for the selection of candidates for the highest offices in this body are certainly important elements for its overall success. It is the credibility and respect for the institution's members which will dictate the achievement of full independence from both the authorities and an inappropriate influence of civil society organizations, by employing and keeping in it a quality pool of professionals committed to staying with the institution and to developing its efficiency and to its legitimacy, especially in a society as divided as the BiH one.

The Paris Principles recognize, inter alia, that one important element of an institution's independence will be its pluralism. As it can be seen from a number of reports (for example, *Assessing the Effectiveness of National Human Rights Institutions*, p.8), an institution for protection of human rights should ensure the inclusion of women, people of different ethnicities, linguistic minorities, and the indigent depending on the national context, to ensure significantly its efficiency. According to the Law on Ombudsman for Human Rights in BiH, the role of "The guardian of human rights" is provided by three ombudsmen. Even though this institution is generally viewed as being represented by one person, which prohibits it from fulfilling the mentioned principle of pluralist representation, BiH is not the only exception to this rule.

For example, there are four Parliamentary Ombudsmen in Sweden, in Austria it is a collective body composed of three Ombudsmen, while in Belgium the role of

Federal Ombudsman is composed of two individuals, one belonging to French and the other to Dutch language community.

Though the original version of the 2001 bill does not contain a provision on ethnic membership of ombudsman, stating that every adult citizen of BiH has a right to be nominated for this office, the number suggests that there is an inherent intention of the lawmaker to first reach a balance among the representative of constitutive peoples. A very good proposal was included in the preliminary bill on the unified structure of this institution, which was drafted by Ombudsman BiH officials during 2003. (I 2003 Report of the Ombudsman for Human Rights in BiH). The proposal was that the composition should include one ombudsman and three deputies, and such legal solution was governed by a principle that it is not necessary to cite a provision on ethnic belonging of persons heading these posts nor about their possible rotation on the position of ombudsman, because a relevant representation of constitutive people and others in this body will be secured through the practice of the Presidency and Parliamentary Assembly, who should have been in charge of appointment according to the bill. The current law, however, in accordance with the 2006 changes and amendments, almost as if a joke, states that the ombudsmen “shall be appointed from the ranks of three constitutive peoples... which do not exclude the possibility of appointments from the ranks of others.” Such formulation is truly absurd, since two elements of this provision are mutually excluding: if ombudsmen are really appointed from the ranks of constitutive peoples, in which way will the tripartite structure provide for the presence of the fourth ethno-cultural entity in BiH – “others?” On the other hand, if the members of “others” really have a right to be appointed to this office, the first part of the provision, which regulates the representation of constitutive people, becomes completely unnecessary.

In this manner, the previous make-up of the Parliamentary Assembly of BiH, which passed the Law on Changes and Amendments to the Law on Ombudsman for Human Rights has completely ignored the opinion of the Venice Commission on the draft of 2004 act, and it stressed that even though it will most probably happen that the representatives of the three constitutive peoples will be indeed holding offices, the law itself should be rid of ethnic criteria for appointment to this office and a formulation should be included stating that ombudsmen should be BiH citizens.

Such approach to human rights protection and securing even the Ombudsman institution for the members of three constitutive peoples – to which we have already been accustomed, as it were, by the BiH Presidency and the BiH House of Peoples of Parliamentary Assembly – is absolutely unacceptable. Instead of serving as a good opportunity for the government to show readiness to improve the position of “others” in political and public life of BiH, the amended Law on Ombudsman for Human Rights in BiH represents a totally unnecessary and inappropriate stamp of approval for the dominant ethnic pattern.

Such solution is particularly unacceptable in the context of the notion of the representation of an institution for the protection of human rights, which according to one report, should understand the positive efforts to safeguard the presence of politically and economically marginalized groups, which would ensure increase of credibility of this type of institutions in the context of those to whom its services are potentially most needed (Assessing the Effectiveness of National Human Rights Institutions, p 15).

In similar light, it should be considered that even the said amendments to the law have not brought it into the line with the Law on Gender Equality in BiH, which, among other things lays down equal representation of both genders in the government organs of all levels. The contemporary legal solution does not provide any safeguards that women will be in the situation to hold these offices, and it is indicative to note that all three ombudsmen, whose mandates has recently expired, were males.

Accordingly, the purpose of the existence of three ombudsmen in BiH begs the question. The structure of the institution, at least as far as the law is concerned, is formally united, but it has not shed the core element and motivating force of the reform, which, among other things, is being stated in the referent documents of the UN relevant to the subject: the elimination of ethnic, tripartite approach to human rights protection and the providing of institutional-procedural embodiment of the principles of universality, non-division and the uniqueness of human rights. For, the contemporary legal solution preserves the tripartite structure of this institution, making just an illusion of a step forward by the fact that the ombudsmen will be rotating every second year to the position of chairperson, whose role will be occupied by the coordination of the office's operations. It appears that this provision does not bring any groundbreaking changes in comparison to the previous structure, except for the fact that the practice of rotation will additionally strengthen the significance of the ethnic element in the work of the BiH Ombudsman. Such solution will enable the conflicts and divisions within the very institution, as we have witnessed in the last years, to continue in the united structure as well.

As has been noted, BiH is not an exception to the rule that a role of ombudsman shall be vested in one person. In its structure and the number of members, the BiH Ombudsman is the closest to a State institution for the protection of human rights in Austria. Still, limiting factors for the selection to this office, which can be found in that country (closeness to one of the leading political options), are surely softer and are not tied to unchangeable characteristics (such as ethnicity). By deficiency in the representation of the most important social forces, however, BiH institution for the protection of human rights is the closest to the Belgium Federal Ombudsman, two-person strong body which doesn't allow for the representation of German group, the third important culturally and language group in this country.

However, the true curiosity of Ombudsman for Human Rights in BiH is the fact that an increase in the number of ombudsmen has not resulted in the efforts to

increase the institutional efficiency through internal procedures. For example, while in Sweden, which is being used as an example how a greater number of persons heading the government institutions for the protection of human rights can lead to its greater independence, authority and credibility, the divisions “in the field of oversight” as it has been done, in accordance with the personal expertise of each ombudsmen (as has been the case, otherwise, with the Austrian Ombudsman), has not been done in BiH so far.

Accordingly, one gets the impression that the purpose of existence of three ombudsmen at the head of the institution is only to enable a token presence of the representative of constitutive peoples, which copycats consociation and the division of power among ethnic groups in BiH also to the area of the institutional protection of human rights, in which it should not exist under any circumstances. If we were even to attempt to justify such approach by utilizing the principle of representation of potential violations of human violations in this institution to the advantage of constitutive peoples by a statement that, with a view of the depth of ethnic divisions in BiH, that the very members of those ethnic groups would be the most probable victims of human rights violations, even that the premise seems not be seriously grounded. To this point, as an example, it can be seen in the statistics of The FBiH ombudsman from August 2003, according to which in the ethnic breakdown of appellants are dominant the members of “others.”(Christopoulos i Hormovitis, 2003: 32).

#### *How to protect a guardian?*

Against the background of earlier described discriminatory and totally out of place ethnic pattern in the composition, and at least potentially, in the functioning of the institution of Ombudsman BiH, and with it a big structural views for its compromising in the BiH public, the authority, independence and in general, the personal qualities and characteristics of the ombudsman can be of key importance for the success of this institution. This is why in this point in time, a very important role can be played by the organizations for the protection of human rights and civil society by a general pressure on the Parliamentary Assembly of BiH, which according to the latest law has exclusive authority to appoint persons to this office. Such approach has been established in the Paris Principles and the explicit request contained in the document that the selection of ombudsman must be done in transparent and inclusive manner. The inclusion of the process of the selection of ombudsman in the context of this document understands the obligation of co-operation and broad consultations of the government institutions with the organizations for the protection of human rights, concerned professional associations and eminent academics.

In other words, for the successful operation of this institution it is very important not to repeat an event from 2003 when, according to a report by Helsinki Committee in BiH, Presidency of BiH, which was nominating candidates for the post of Ombudsman BiH according to an earlier act, decided to nominate “individuals close to nationalist political parties and without any references in the field of human rights.” This is why it is worth recalling the legal provision

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establishing that “BiH nationals can be appointed as an ombudsman...with a track record in the protection of human rights and civil liberties and high moral standing.”

IN the transitional context of BiH, the institution of Ombudsman plays a particular role. Unlike in developed democracies, in which this institution represents an important element in the preserving and safeguarding the respect for principles and procedures of democratic authority, in our countries it is expected an important role of this body in the development and consolidation of those principles. Also, one should not neglect the fact that these authorities are unusually broad as this institutions go, even in the comparative perspective, so its potential to positively influence the processes of consolidations of democratic institutions and the development of standards of good governance in BiH is extremely high.

It is thus from the utmost importance to provide this important office with individuals who will conceive internal procedures which will finally enable them to act as at least united Ombudsman, if it is unrealistic to expect them to be three times more efficient due to the specific nature of the issues they will be facing and the context in which they will be performing.

## **Right to labor - disadvantaged, marginalized and vulnerable groups**

Gorana Mlinarević

As has been noted, Bosnia and Herzegovina is a complex country which is the reason why its human rights standards and their enforcement are disjointed. When speaking about groups that are disadvantaged, marginalized and vulnerable, it is estimated that due to the political and economic situation in Bosnia and Herzegovina, about 80% of population fits into one of those groups. This makes it very difficult to define them. The issue of fulfilling the right to work is even more difficult because the rate of unemployment surpassed. 40% in 2006. For the purposes of this report, several examples of disadvantaged, marginalized and vulnerable groups are presented without the intention of downplaying the needs and importance of other groups.

### *4.1. Legal provisions related to this area of human rights*

#### *4.1.1. Labor laws*

Right to work does not fall in those rights which are directly guaranteed by the Constitution of Bosnia and Herzegovina. This right is not covered in the catalogue of rights pursuant to Article II/3 of the Constitution of Bosnia and Herzegovina which otherwise follows the list of rights guaranteed by the European Convention for the Protection of Human Rights and Basic Freedoms. However, in Annex I point 8 of the Constitution of Bosnia and Herzegovina –

Additional Human Rights Agreements To Be Applied In Bosnia And Herzegovina, mentions among other documents, the 1966 Covenant on Economic, Social and Cultural Rights, which in its Articles 6 and 7 recognizes the right to work and the right to enjoyment of just and favorable conditions of work and obliges States to take steps to achieve progressively the realization of these rights. These articles are usually interpreted only in connection with Article II/4 of the BiH Constitution which specifies the rights and freedoms as laid down in the Article II of the Constitution of Bosnia and Herzegovina or in the international agreements listed in Annex I to the Constitution. All individuals in BiH are given these rights and freedoms without discrimination as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

As pertains to disadvantaged, marginalized and vulnerable groups, it must be added that some sort of affirmative action with a goal of taking concrete steps to enable the employment of people belonging to these groups and annulling the effects of historic discrimination, has not been addressed by the Constitution. Pursuant to Article II/5 of the Constitution of BiH and in connection with Annex 7 of General Framework Agreement for Peace in BiH, the affirmative action could be applicable in connection to the right to work, and specifically in terms of employment of returnees. Also, the international treaties from the Annex I of BiH Constitution could be interpreted as approving affirmative action in terms of right to work for women and national and ethnic minorities.

Considering the complexity of the country, the area of work and social relations falls directly under the competency of the entities and of the District of Brčko. Exceptions to this are the issues of immigration and refugees (Article III/1.f) of the BiH Constitution, and regulation of work and social relations for the staff of state government institutions.

In terms of work relations, the state-level legislation is regulated by The Labor Law in the Institutions of Bosnia and Herzegovina (Official Gazette of BiH 26/04, 7/05 and 48/05) and the Law on State Service in the Institutions of Bosnia and Herzegovina (Official Gazette of BiH 19/02, 08/03, 35/03, 04/04, 17/04, 26/04, 02/06). In relation to disadvantaged, marginalized and vulnerable groups, it is important to point out that both laws contain provisions prohibiting discrimination in employment pursuant to Article 6 of the Labor Law in the Institutions of Bosnia and Herzegovina and pursuant to Article 23 of the Law on State Service in the Institutions of Bosnia and Herzegovina. Unlike in the Article II/4 of the Constitution of Bosnia and Herzegovina, the bodily impaired, i.e. persons with disabilities, are directly enumerated as a group to be protected against discrimination in both acts. Age as grounds for banning discrimination has been cited in the Law on State Service in the Institutions of Bosnia and Herzegovina, while sexual orientation as a grounds for prohibiting discrimination is cited in the Law on State Service in the Institutions of Bosnia and Herzegovina. The labor law in the Institutions of Bosnia and Herzegovina pursuant to Article 14 paragraph 2 expressly prohibits employers from asking women responding to want ads or who are already employed with the employer, to take a pregnancy

test. Also, as is set in Article 34 of the same law, the employer is prohibited from refusing to employ a woman because of pregnancy or of terminating her contract due to such a state. Articles 34 to 43 of the law deal with protection of women and maternity. At the time of hiring into the institutions of Bosnia and Herzegovina, returnees or members of ethnic minorities might benefit on occasion from Article 2, Paragraph 2 of the Law on State Service in the Institutions of Bosnia and Herzegovina which mandates that the composition of state officials in the state service shall adequately represent the ethnic composition of the population of Bosnia and Herzegovina as found in the last census. However, it needs to be pointed that the institutions of Bosnia and Herzegovina are mainly located in Sarajevo, which significantly decreases the chances for a balanced approach to employment in these institutions. Both of these laws contain provisions which recognize rights of the employees to just and favorable conditions of work and to remuneration pursuant to Article 7 of the International Covenant on Economic, Social and Cultural Rights.

With regard to entity laws and by-laws regulating labor relations, there are entity labor laws along with the Law on State Service in the Institutions of Bosnia and Herzegovina.

The Law on the State Service in the Federation Bosnia and Herzegovina (Official Gazette of FBiH No. 29/03, 23/04, 39/04, 54/04, 67/05 and 8/06) follows the wording of the Law on State Service in the Institutions of Bosnia and Herzegovina, so it contains a provision prohibiting discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status, both in the treatment of government employees and in the employment policy in the government service. In Article 2 the law also sets out the proportional ethnic representation based on the 1991 census until Annex 7 is fully implemented. This law does not contain any special provisions in connection with the protection of women and maternity.

The Law on Administrative Service in the Administration of the Republika Srpska (Official Gazette of RS no. 16/02, 62/02, 38/03 and 42/04) contains a general clause on non-discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, and disability, but this is only in the treatment of government employees. The law sets out the proportional ethnic representation based on the 1991 census until Annex 7 is fully implemented. This law, like the corresponding Law in the Federation BiH, contains no specific provisions related to the protection of woman and maternity.

The law on Government Service in the Administrative Bodies of Brčko District (Official Gazette of Brčko District no 28/06 and 29/06) mandates equal representation when it comes to employment of government employees. Article 26, paragraph 2 provides for the possibility of a limited affirmative action in government service: "Only in cases where several individuals has the same added grade, then in the process of selection of the best candidate, they shall be ranked on a list that reflects the population composition (ethnicity, sex, age, qualifications and other structures). These cases should not be manipulated into selecting a less-qualified candidate." Also, the law mandates the protection of women and

maternity, and gives the right to an additional two days of annual sick leave to individuals suffering more than 70% disability.

It is important to say that the rule book on the general criteria and selection procedure and treatment of an employee on probation, grade VII, by the bodies of government service of the Federation of Bosnia and Herzegovina (Official Gazette of Federation BiH, No. 35/06) as one criteria for selection of probationers into the government service establishes the level of disability, and in the case that a candidate has a disability over 60% he or she will be awarded 5 points.

Entity laws regulating labor relations outside of the government bodies that contain some provisions applicable to disadvantaged, marginalized and vulnerable groups include the Labor Act of the Federation of BiH (Official Gazette of Federation BiH, no. 43/99, 32/00, 29/03), The Law on Employment of Foreign Citizens in the Federation of BiH (Official Gazette Federation BiH, no. 8/99), the Law on Employment and Welfare Security of Unemployed Persons in the Federation of BiH (Official Gazette Federation of BiH no. 41/01 and 22/05 ), the Law on the Organizations of Work Associations for Employment and Training of Persons with Disability ( Official Gazette of SR BiH no. 37/85) which is still applicable in the Federation BiH, The Labor Law in the RS ( Official Gazette RS 38/00, 40/00, 47/02, 38/03, 6/03), RS Employment Act ( Official Gazette of RS 54/05 and 64/06), The Law on Employment of Foreign Nationals and Aliens in the RS (Official Gazette no. 97/04, 96/05 and 123/06), the Law on Professional Rehabilitation, Retraining and Employment of Persons with Disabilities in the RS (Official Gazette of RS no. 98/04 and 91/06), the Labor Act of Brčko District of BiH (Official Gazette of Brčko District of BiH no. 7/00, 8/03, 33/04 and 29/04), Employment Act and Rights of the Unemployed in Brčko District of BiH (Official Gazette of BiH no 33/04) and Law on the Employment of Foreigners in Brčko District of BiH (Official Gazette of Brčko District of BiH no 17/02).

All three laws contain provisions prohibiting discrimination against persons seeking employment and against employed persons. Though the principle of non-discrimination should be universal, the laws contain slightly different grounds for prohibiting discrimination. Even though a generalized provision of “or in any other circumstances” is inevitably attached to every provision on the prohibition of discrimination as a way to cover many other “non-recognized” grounds, this imbalance leaves space for unequal treatment within Bosnia and Herzegovina. So, for example, sexual orientation is the only direct grounds for the prohibition of discrimination in the Labor Law on in Brčko District of BiH, while physical and mental disabilities are not explicitly listed as grounds for prohibition of discrimination in the Labor Law of the Republika Srpska. All three laws mandate the protection of woman and maternity and prohibit employer from refusing to employ a woman or wishing to terminate her contract in case of pregnancy.

In terms of the Law on Job Placement it is necessary to note that the differences in prohibition of discrimination in the standard wording of the two laws leave

room for certain type of affirmative action. So, Article 3, paragraph 3, point b of the Law on Job-Placement in Republika Srpska allows the establishment of special measures in the promotion of equality and representation of sexes and in the elimination of existing inequality, i.e. the protection of sexes based on biological determination. The law on Job Placement and Social Security of the Unemployed in Brčko District of BiH states in Article 5 paragraph 2 that a special protection to certain categories of individuals (the disabled, juveniles, the elderly) is not in contravention with the principle of the prohibition of discrimination.

The Law on the Organizations of Work Associations for Employment and Job Training of Persons with Disabilities in the Federation of BiH and Law on Professional Rehabilitation, Training and Job-Placement of Persons with Disabilities in RS are laws that deal directly with the right to work of disadvantaged, marginalized and vulnerable groups. The law as has been applied in the Federation of BiH provides for the existence of employment service and job placement for persons with disabilities. However, the fact of the matter is that the law has still not been harmonized with contemporary needs and standards, showing the lack of interest of Federation authorities in this category of the population. As for the Law on Professional Rehabilitation, Training and Employment of Persons with Disabilities in the RS, it is interesting to note that, among other things, the law prohibits discrimination based on gender and sexual orientation, and this leaves room for affirmative action in relation to sex as grounds for differing treatment. Article 16 of the law sets out a quota (progressive realization) for the employment of persons with disability in government departments, the judiciary and other government branches, the organs of local administration, departments, institutions and bureaus and companies in the full or in majority ownership of the Republika Srpska government.

So, the labor laws on all levels prohibit discrimination on different grounds, be it employment, registering of employment, receipt of the same pay for the same job, promotion possibilities, access to resources, etc. All labor legislation is harmonized with the conventions of International Labor Organization as ratified by BiH.

#### *4.1.2. Equality of sexes at work*

The Law on Gender Equality in BiH explicitly safeguards full equality of the sexes in all spheres of society including employment and work. The law does not directly deal with the right to work for lesbian, gay and trans-gendered people LGBTTIQ people and for those with HIV, nor does it prohibit discrimination on grounds of belonging to these groups.

#### *4.1.3. Persons under temporary admission on humanitarian grounds and asylum seekers*

The Law on Movement and Residence of Foreigners in BiH (Official Gazette of BiH 29/03 and 4/04) deals with foreign nationals granted a temporary stay on humanitarian grounds. Only foreign nationals granted a stay on humanitarian grounds pursuant to Article 35.1.d of the law are granted a right to work,

education, health and social security under the same conditions as BiH nationals. Victims of organized crime, e.g. victims of trafficking and aliens are denied this right. In relation to the rights of asylum seekers, or refugees, it should be stated that in Article 81.3 only a foreign national with a recognized status of a refugee shall be provided with work, education, health and social security under the same conditions as BiH nationals. The same Article in paragraph 4 states that the “Ministry, in collaboration with the Ministry for Human Rights and Refugees BiH and the Ministry of Civilian Affairs BiH, will enable access to the rights pursuant to Articles 81 and 82 of the law only for individuals granted refugee rights. However, these bylaws have not yet been passed, so how these rights are enforced is a question.

Serbian and Montenegrin nationals whose place of last permanent residence was Kosovo enjoy a special status, a so-called status of temporary admission which is regulated through the Instruction on the Extension of Temporary Admission Status in BiH for Persons from Serbia and Montenegro whose Place of Last Permanent Residence was Kosovo (Official Gazette of BiH 33/04) which has not covered the right to work at all.

#### *4.1.4. Displaced persons, returnees and refugees from BiH*

The law regulating the rights of Displaced Persons, Returnees and Refugees in BiH and the Law on Refugees from BiH and Displaced Persons in BiH (Official Gazette of BiH 23/99, 21/03, 33/03) The Law on Displaced Persons, Returnees and Refugees in FBiH and Refugees from BiH (Official Gazette FBiH 15/05), The Law on Displaced Persons, Returnees and Refugees in the RS (Official Gazette RS 42/05), do not explicitly recognize the right to work, nor do they leave room for affirmative action in employing from these categories.

#### 4.2. Human rights in practice

During 2006 the number of unemployed people in Bosnia and Herzegovina almost balanced out that of the employed. From this information it is not easy to infer that the majority of Bosnian citizens are denied a right to work. In a country which has a bad economic situation, it is difficult to enjoy the right to work, especially when it is interpreted only as a positive and progressive obligation of the government to secure the conditions in accordance with its possibilities. Unfortunately, during 2006, due to the political situation caused by a power struggle around the general elections in October, political elites have given more time to fanning national hatred, than to creating better social and economic conditions for all citizens of Bosnia and Herzegovina.

According to data published by the Agency for Work and Employment of Bosnia and Herzegovina in its newsletter 2/2006, the number of registered unemployed individuals in Bosnia and Herzegovina in 2006 rose from 510,345 in January to 524,839 at the end of December (362,368 in FBiH, 144,106 in RS and 18,365 in the Brčko District). This trend is more worrying if the data are compared with the number of registered employees, which was 647,646 in December. Considering all this data, it is surprising that budgets in BiH for 2006 and 2007 were termed to be emergency or administrative, rather than developmental or simulative. The

labor market in BiH in 2006 was marked, among other things, by a significant volume of “black” labor market, poor rate of job creation, retransfer of jobs, mobility and flexibility of labor force, discrimination etc. (A survey of the state of labor market in BiH by Huso Sarić of the Bosnia and Herzegovina Agency for Work and Employment.) Political instability and slow implementation of economic reforms in Bosnia and Herzegovina have significantly added to bad realization of the right to work.

In such a situation disadvantaged, marginalized and vulnerable groups find themselves in an unfavorable situation when it comes to the realization of a right to work. Due to the war and its consequences, the number of persons with disabilities is significantly higher than the global average of 10% of the total population. Persons with disabilities nationwide are facing problems with the realization of their human rights. However, it needs to be said that immediately after the war continuing to this day, there has been a huge difference in the way disabled veterans have been treated vs. disabled civilians, with the veterans given priority. However, when it comes to the realization of the right to work and employment of persons with disabilities, the situation is bad in general.

All persons with disabilities have limited access to jobs. Rarely will an employer chose to adjust working conditions or job descriptions to make a place for a person with disabilities. The Act on Spatial Standards, Zoning and Technical Conditions and Norms for Prevention to Creation of All Barriers to Persons with Decreased Bodily Abilities ( Official Gazette of FBiH, issue 10/2004 from 20.02.2004, with obligatory enforcement from 28.02.2004), oblige all business owners to take steps to eliminate disadvantages to employees or clients, regardless of the form or severity of their disability. However, many did not take the appropriate steps even in 2006.

During 2006 there was several examples of giving support to employment of persons with disabilities by the employment Bureaus at different levels, but in the end only few persons with disabilities were employed because the employers have not shown that much interest. So, for example, the Employment Department of Tuzla Canton had to republish a public notice of invitation to employers to participate in the Project of Employment of Persons with Special Needs, because it did not have enough interested parties in a first round. Unfortunately, the Federation Employment Bureau does not keep statistics about the number of unemployed among persons with disabilities, but from some cantonal statistics it can be concluded that the number of unemployed persons with disabilities remained unchanged during 2006. The FBiH Parliament failed in 2006 to pass a Law on Professional Rehabilitation, Training and Employment of Persons with Disabilities in the Federation BiH..

Even though the current Law on Professional Rehabilitation and Employment of Persons with Disabilities in RS provides for tax breaks and other benefits to stimulate employers to hire persons with disabilities, this has not yet proved successful because the law is still new and is not well known. Also, many employers consider that to incorporate alternative arrangements that eliminate

discriminatory barriers would cost them more than they would gain by breaks<sup>50</sup>. Also, as the Law offers two solutions for employment insurees. One is employment of the persons with disabilities, and the other is payment of contributions of 0,2% on the net payments of the employees. Employers, therefore, (even if they are organs of the State administration, judiciary bodies and other government organs, bodies of local administration, public agencies, institutions and funds and the companies owned or in majority ownership of Republika Srpska) would rather opt for the easier solution, because employment requires the accommodation of conditions, while the contributions payments solve all those obligations. During 2006 the number of unemployed persons with disabilities as registered in the Republika Srpska Employment Bureau has significantly decreased from 4,796 in December 2005 to 4,063 in December of 2006. This, naturally, does not have to mean that all those persons have been employed, because some have taken pensions over the course of the year.

Women's participation in the work force is among the lowest in the region. According to data from the Agency for Statistics, only 34.9% of women are employed even though they make up 51.6% of the total population in BiH.<sup>51</sup> Of the total number of unemployed registered in BiH on Dec. 31, 2006, 47.04 % were women. Difference in pay between men and women for the same type of job is not discernible. On the other hand, women have a harder time getting promoted in work (considering the political situation in the country, the precedence goes to balancing quotas of the representation of constitutional peoples rather than to representation of sexes.).

As for the realization of employment rights for lesbian, gay and trans-gendered people and individuals infected with HIV, taboos and societal stigma make it rare for individuals to go public on with complaints about discrimination. Out of fear of stigmatization, the majority of members in this community are not open about their sexual orientation or gender identity or HIV status.

With regard to persons granted temporary residence on humanitarian grounds and asylum seekers few have gained employment rights. It should be mentioned that persons from Serbia and Montenegro whose place of last permanent residence was Kosovo have been given a special status of admission, but little in regards to work rights. Their special status allows them temporary protection against expulsion back into their country of origin, but does not give them other rights that come with residency. For example, beside the fundamental right to health care, they do not enjoy the right to work. Considering that they have spent more than 8 years in BiH, these persons would have attained the right to

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<sup>50</sup> The analysis of the polls: Private entrepreneurs and the rights of persons with disabilities,

<http://www.ckptb.org/down/1.pdf>, Center for coordination and support to human rights of disabled in the municipalities of Trebinje, Ljubinje, Berkovići, Bileća, Gacko and Nevesinje

<sup>51</sup> Helsinki Committee for Human Rights in Bosnia and Herzegovina, the Report on the state of human rights in Bosnia and Herzegovina (for the period January to December of 2006) available at <http://www.bh-hchr.org/Izvjestaji/izvj2006.htm>

citizenship and with it the right to work, had they been given any other status in BiH. In the light of the fact that these persons are mainly Roma or Bosniaks from Kosovo, who do not want to go back to Kosovo, and who are currently residing in UNHCR's collective centers scheduled to be closed in 2007, it is unclear what will happen with them. (Some might be resettled into the third countries with the help of UNHCR, but the majority of them who even have children who are citizens of BiH, will remain in this legal limbo without rights.)

The group whose right to work was most threatened is the returnees. Laws on displaced persons, refugees and returnees in BiH have only achieved the return of property to persons, but they have not established conditions for sustainable return. One of the biggest issues is employment. According to the Helsinki Committee for Human Rights in BiH<sup>52</sup>, only between 0.8 and 1 percent of returnees are employed where they have returned. Laws on local self-governance and government service generally are not observed when it comes to the employment of returnees. The committee's legal department has noted that not one returnee applicant was reinstated to work in line with Article 143 of the Labor Law of the Federation of BiH and Article 152. of the Labor Law of the Republika Srpska<sup>53</sup>. Since privatization had mainly taken place before returnees began coming, privately owned companies are mainly composed of members of one ethnic group, while public institutions which widely practice nepotism are still not concerned with employment of returnees (who usually belong to ethnic minorities in these communities).

#### 4.2. Principle issues

An overhaul of the labor market and social policy would be required to ensure the right to labor of all BiH citizens. In order for this to happen, politicians and ruling elites should finally turn to the economic development of the country instead of to the fanning of ethnic hatred.

With regard to an approach the right of marginalized and vulnerable groups in BiH, bigger commitment and awareness by the community is needed to guarantee rights. Better implementation of existing legislation is needed. Target groups should be defined better with a goal to undertake measures to stimulate employment and protect their right to work. Existing legislation should be optimized and harmonized. Provisions on the prohibition of discrimination should be harmonized, equalized and broadened to all identified grounds for discrimination. Affirmative action with regard to disadvantaged, marginalized and vulnerable groups should be allowed to such an extent that it annuls the effect of historic discrimination and secures the right to work for members of these groups.

It is also necessary to promote existing laws and regulations in order to get target groups and employers familiar with their rights and duties. It is necessary to

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<sup>52</sup> Ibidem

<sup>53</sup> Ibidem

provide for the exchange of experience and good practices with regard to the possibilities of employing the disadvantaged, marginalized and vulnerable and to motivate employers and to set up foundations. Good examples of employment should be spread through a publicity campaign.

Furthermore, it is necessary to pass as soon as possible new laws and bylaws. Needed are measures that address professional rehabilitation, training and employment of persons with disabilities in FBiH and in Brčko District. Also needed are bylaws in line with the Law on Movement and Residence of Foreign Nationals in BiH and laws to safeguard the right to work for groups not already protected, especially returnees. Agencies, associations and organizations which are set up to monitor and secure the rights of disadvantaged, marginalized and vulnerable groups should be more engaged and work proactively to strengthen and promote benefits under the current law. They also should initiate official collaboration between individuals and organizations with employment bureaus, chambers of commerce, business outfits, employers, non-governmental and international organizations in order to create more jobs through joint efforts and better employment policies.

Considering that the UN passed a Covenant on the Rights of Persons with Disabilities at the end of 2006, signing and ratification of this covenant should be actively promoted in the BiH Parliament.

# **Human Rights in Bulgaria 2006**

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## **Abstract**

The report explores the experience of Bulgaria, which is a New EU Member State, in the field of the realization of the right to education, as well as the right to employment of persons from minorities. The achievements and shortcomings in the realization of these closely interrelated human rights and the practice of new institutions for protection of human rights, as the Commission for Protection from Discrimination and the National Ombudsman, are presented with the respective challenges, which could be of relevance to other Balkan countries.

In addition to the Constitutional guarantees, Bulgaria has adhered to the main international instruments and policy documents on the right to education. Furthermore, as a full member of the EU since January 2007, Bulgaria has to align its educational system in view of the achievement of the goals and objectives of the Lisbon Strategy. The practice of the implementation of the legal standards and their translation into governmental action, though, show that they are still high and intangible standards. The mechanisms necessary for the implementation of the international standards and those of the Law on Protection from Discrimination in practice are still missing, despite the efforts and initiatives deployed mainly by the Ministry of Education and Science.

The obstacles to implementation are also the result of the macro-economic trends and policies characterizing the Bulgarian transition and the resulting financial constraints. The final result of the reform in the education system was the economic exclusion of vulnerable groups with noticeable racial profile.

Some of the main problems identified in the course of the study are: 1/ The integration of children and students from minorities, despite the strategies and

other documents developed by the government, remains a severe human rights issue; 2/ Another serious issue is the social exclusion and multiple discrimination of Roma women and girls; 3/ The low economic status of the teachers in Bulgaria- with average wages less than 200 EURO per month Bulgaria falls among the countries with the lowest average wage for teachers in Europe; 4/ Comprehensive education on gender equality and for elimination of gender stereotypes is still missing.

In the last year before the accession to the EU, along with the adopted legislation, programs and plans, the Government has made efforts for institutional changes in terms of integration of Roma in Bulgarian society. Although the data show some progress in the field, in order to speak about achievements, the sustainability of Roma employment as well as the perspectives for real career have to be further assessed. Unemployment remains one of the gravest problems for the Roma ethnoses. In the regions with concentrated Roma population 65% to 75% of people are still out of work. The low level of education and professional training is the main contributing factor for unemployment and isolation.

Some of the measures for realization of the right to employment for Roma people are connected with: creation of a special fund for promotion of Roma employment, incentives for self- organization and encouragement of Roma at local level, creation of new programs and service packages, incentives granted to employers for sustainable employment of Roma, involving more young Roma in the programmes, etc.

## **Introduction**

### *1. Political and social situation*

The year 2006 was marked by the final preparations of Bulgaria for full accession to the EU, which happened on 1 January 2007. The emphasis was on the compliance with the requirements of the EU, focusing mainly on the problems of the judicial system, organized crime, corruption and administrative capacity.

Realization of the human rights guaranteed in the Constitution and the compliance with international instruments in the field were of minor concern for the State, as if the problems pointed out by the European Commission were not related to the realisation and full enjoyment of human rights by the Bulgarian citizens. As a matter of fact, corruption, inefficiency of the judiciary and low administrative capacity impact negatively on human rights of citizens and the mechanisms for their implementation. It impacts seriously on socio-economic rights of citizens and further impedes the convergence of incomes in Bulgaria with the level of incomes in the EU.

The triple coalition formed by the Bulgarian Socialist Party (BSP), the National Movement of Simeon the Second (NMSS) and the Movement for Rights and Freedoms (MRF), which continued to govern Bulgaria in 2006, could not propose a consistent policy for improvement of citizens' rights, mainly socio-economic rights, for inclusion of disadvantaged groups and easier access to

education, employment, health, housing, decent standard of living in general. Instead of following the human rights discourse, Bulgarian government turned its interest only towards the forthcoming structural funds. The political parties, facing the full accession to the EU, could not formulate even a single objective related to human rights.

Such low ranking of human rights stems from the government's "self-sufficiency", its belief that it is the government, and not the citizens (who actually paid the price) who lead Bulgaria towards the EU. The government focuses only on the record of laws adopted prior to the accession, some of them closely related to human rights, as is the case with the Law on Protection from Discrimination. Implementation of these laws, however, does not seem to be of any concern.

In 2006 the European Commission published two assessment reports on the state of preparedness of Bulgaria for the EU membership – in May and in September<sup>54</sup>. Both of them outlined some problems regarding the status of human rights in Bulgaria (abuse of detainees during the preliminary detention, poor conditions in the detention facilities, discrimination of Roma and people with physical and mental disabilities, human trafficking and child protection). In general, however, these assessments dealt superficially with human rights and ultimately remained outside the range of the final major recommendations of the Commission before the membership. Therefore, the European Commission failed to provoke adequate public debate on these topics.

In the recent report by the Agency Eurofound (European Foundation for the Improvement of Living and Working Conditions) it is stated that the minimum wage in Bulgaria is 82 EURO, compared to 1503 EURO in Luxembourg. The average income in Bulgaria is still the lowest in the EU.

The perspectives seem pessimistic given the deep demographic crisis, which also makes Bulgaria's the most worrying situation in the EU. According to data compiled by the Bulgarian Social watch report 2006,<sup>55</sup> during the 1990s and early 2000s the demographic discount in Bulgaria is the largest and the most rapidly increasing among the countries in the region (about -0.7 percent per year), which, together with net out-migration (about -0.1 percent per year), has resulted in a negative population growth averaging - 0.8 percent per year. Despite some improvement registered over the past few years, the fertility rate in 2005 was only 1.31 children, compared to the theoretical minimum of 2,1<sup>56</sup>. In these conditions, matching the Lisbon agenda criteria of increasing employment and productivity, increasing the employment rate to 70 percent by 2010, which implies increasing labour market participation, seems highly questionable for Bulgaria, if not impossible.

In these severe conditions, the positive developments like, for example, improvement of the protection of human rights in the course of the penal

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54 Comprehensive Monitoring Report on the State of Preparedness for EU membership of Bulgaria, 19 May 2006 and Comprehensive Monitoring Report on the State of Preparedness for EU membership of Bulgaria and Romania, 26 September 2006, both of them available online at: <http://www.evropa.bg/bg/del/eu-and-bulgaria/documents.html>.

55 Report of the Bulgarian Gender Research Foundation, part of the Spocial Watch report 2006- "Impossible Architecture"- [www.socialwatch.org](http://www.socialwatch.org).

56 Demographic strategy of Bulgaria, Ministry of Labour and Social Policy, 2006.

procedure, the adoption of new legislation on legal aid and on the support and compensation of victims of crime cannot be fully enforced. Same can be said for some positive elements in the field of protection of social rights of vulnerable groups.

The national human rights institutions, the Ombudsman and the Anti-discrimination Commission finally launched their activities in 2006. Despite that, they need to be further strengthened and they still have difficulties with positioning themselves as independent bodies.

Other structures formally established for ensuring equal opportunities, were not functioning properly in 2006: the Parliamentary Sub-committee on Women's Rights and Gender Equality, the National Council on Equality between Women and Men (an advisory body of the Council of Ministers), the National Commission for Combating Trafficking in Human Beings, the Consultative Commission on Equal Opportunities for Women and Men and Disadvantaged Groups on the Labour Market.

It is worth exploring the experience of Bulgaria as a New Member State of the EU in the field of the realization of some fundamental human rights in the framework of this review of the status of human rights in the Balkans. Its challenges and the steps undertaken to tackle them could be of relevance to the other Balkan countries.

## **Human rights in legislation**

### *1. Constitutional provisions*

The 1991 Constitution of Bulgaria (last amended in February 2007) is the first Constitution adopted after the beginning of democratization. In Chapter I "Basic Principles" of the Constitution, equality of all citizens before the law is declared (Art. 6 (2)), as well as the inadmissibility of any limitation of rights or any privileges. It is a pity that this principle has not been declared in the very first article of the Constitution and also that the principle of equality de facto and the possibility for affirmative action have not been explicitly stipulated in this act. Despite that, the Constitutional Court Ruling No.14 from 1992 can be quoted, where the Court admits that granting some privileges to some vulnerable social groups is accepted, when such privileges are socially necessary and justified, provided that the principle of equality of all citizens has priority.

Chapter II of the Constitutions contains the "Basic Rights and Obligations of Citizens" (Art. 25 and following). We note that the governmental structure, like for example, the political parties, are regulated before the basic rights of citizens - in the first chapter. Only the rights to property and the right to inheritance are protected in the first chapter. Family, motherhood and children are protected as well in the basic principles framework. The sets of civil and political, and social, economic and cultural rights are guaranteed in the second chapter: right to life, right to freedom from torture, right to personal security and integrity, right to respect for private life, right to freedom of thought, freedom of thought and religion, right to freedom of expression, right to freedom of assembly and of

association, right to work and to social security, right to health insurance and accessible health services, right to education, etc.

According to Article 5 (2) of the Constitution, the provisions of the Constitution shall apply directly, which means that the citizens can refer directly to the constitutional provisions for the protection of their human rights. This direct application of the Constitution does not exclude the need for the creation of concrete additional guarantees and mechanisms for the proclaimed human rights. The rights guaranteed by the Constitution are further reinforced by the guarantees of the international instruments through the application of Article 5 (4) of the Constitution (international instruments duly ratified and promulgated make integral part of the national legislation and prevail upon the legal provisions which are in contradiction with these instruments).<sup>57</sup>

Considering the right to a decent living, and especially for marginalized groups, it is worth mentioning that according to Article 48 (5) of the Bulgarian Constitution, which, among others, guarantees only the right to the minimum wage. Contrary to the commitments undertaken by Bulgaria under the UN Covenant on Economic, Social and Cultural Rights, the Bulgarian government does not guarantee the right to a decent living for the workers and their families. The Constitutional Court in Bulgaria which rules mainly on the compliance of the laws with the Constitution, does not act upon individual complaint, but upon initiative of: 20% of the MPs, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, the Prosecutor General.

The Court's rulings concerning the protection of the legitimate rights and interests of citizens, the separation of powers, the inviolability of private property, free enterprise, the independence of the media and the prohibition of censorship, the compliance of the Framework Convention on the Protection of National Minorities with the Constitution, etc., have elicited positive public and international response.

An important “breakthrough” is the amendment of the Constitution with a new paragraph 3 to Article 150 - the Ombudsman can refer a case to the Constitutional Court for establishing non-compliance with the Constitution of a law which violates the rights and freedoms of citizens.<sup>58</sup>

## **Individual rights**

### *1. Human Rights and Education: Right to Education*

The right to education is a basic social-economic right in itself and an indispensable means for realizing other human rights<sup>59</sup>. It is an empowerment right - it has a vital role in empowering women and safeguarding children from

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57 Bulgarian report in the “Constitutional Country reports”, SEELINE/South-Eastern European Women’s Legal Initiative/ publication, B.a.B.e., 2002, p. 43

58 SG 27/2006.

59 General comment No.13 on the Right to Education of the Committee on Economic, Social and Cultural Rights – 1999.

exploitation and hazardous labour and sexual exploitation. Increasingly, education is recognized as one of the best financial investments states can make, it is an irreversible long-term investment with high sustainability.

The main principles and essential contents of the universal right to education are set forth by the Universal declaration of Human Rights, Article 13 of the UN Covenant on Economic, Social and Cultural Rights (entered into force in January 1976), the UNESCO Convention against Discrimination in Education (entered into force in 1962), Article 10 of the Convention for the Elimination of All forms of Discrimination against Women (CEDAW) and, more recently, by the Millennium Development Goals (MDGs) and the UNESCO initiative EFA (Education for All).

According to the universal human rights instruments, all education - public and private, shall be directed to the “full development of the human personality”, to his/her “sense of dignity”, shall “enable all persons to participate effectively in a free society” and shall promote understanding among all “ethnic” groups. The right to education shall be ensured with non-discrimination, no exclusion, distinction, limitation or preference based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth. More specifically, women shall enjoy the same access to and conditions for education, career and vocational training.

The essential features of the right to education are: availability, accessibility (including non-discrimination, physical accessibility and economic accessibility), acceptability (minimum standards approved by the State), adaptability; primary education should be compulsory and free to all; secondary education should be generally available; higher education should be equally accessible to all on the basis of capacity. An important requirement is to progressively introduce free secondary and higher education. In addition, the technical and vocational education should form an integral element of all levels of education.

To these essential elements of the universal right to education, the commitments and tasks of the MDGs and the EFA initiative should be added as goals to be achieved by 2015: provide free and compulsory primary education for all, expand early childhood care and education, promote learning and skills for young people and adults, increase adult literacy by 50%, achieve gender parity by 2005, gender equality by 2015, enhance educational quality.

Within this general framework, some issues pertaining to the right to education in Bulgaria will be explored, and mainly the equal access to education without discrimination, the education for diversity and non-discrimination, the quality of education, etc.

## **Legal provisions**

### *1.1.1. - Constitution and international instruments.*

The right to education is enshrined in the Bulgarian Constitution. Article 6 declares equality of all before the law and the principle of non-discrimination - no limitations and privileges in the exercise of the rights, based on race, nationality,

ethnic origin, sex, origin, religion, education, belief, political affiliation, personal and social status or economic status. Article 53 explicitly declares equality for all in the exercise of the right to education, establishes compulsory education until the age of 16, the obligation of the state to promote education by building and financing schools, by supporting talented students and by creating conditions for vocational training and retraining. The education in state and municipal primary and secondary schools is free and under some conditions established by law, higher education in state institutions is free too.

Important provisions about the education in mother tongue and the cultural diversity in education are contained in Article 36 - those for whom Bulgarian is not the mother tongue, have the right, along with the obligatory Bulgarian language, to study and use their own language. And, more generally, each individual has the right to develop his/her own culture in conformity to his/her ethnicity and this is recognized and developed by law (Art. 54).

All international instruments duly ratified, promulgated and in force in Bulgaria, make integral part of the domestic legislation and, in case of contradiction, prevail upon national legislation (Art. 5 (4) of the Constitution). This article represents an entry point for the majority of the international standards concerning the right to education mentioned above, and namely the UN Covenant on Economic, Social and Cultural Rights (CESCR) (in force in Bulgaria since 23 March 1976)<sup>60</sup>, the Convention for the Elimination of All forms of Discrimination against Women (CEDAW) (in force in Bulgaria since 10 March 1982) and its Optional Protocol (in force in Bulgaria since 1 August 2006). These two instruments, although ratified by the Bulgarian government, have not been promulgated and therefore do not make full part of the domestic legislation. Article 4 of CEDAW is particularly relevant for providing a standard for the governments to adopt temporary special measures aimed at achieving real equality. Article 5 of CEDAW obliges the states to eliminate gender stereotypes which cause discrimination and is therefore closely related to the educational process.

The last governmental reports under the CEDAW and the CESCR were presented by the Bulgarian government respectively in 1998 and 1999 and the next reports are still expected and overdue. It is relevant to this study to mention some arguments from the Concluding Observations of the Committee on Economic, Social and Cultural Rights on Bulgaria from 8 December 1999<sup>61</sup>. The Committee calls upon the government to continue its efforts to integrate ethnic minorities into society, and to undertake measures to provide the opportunity for such minorities to be educated in their own languages; to explain, in its fourth periodic report, the measures it has taken to ensure that all teaching staff enjoy the conditions, including wages, commensurate with their status, in accordance with Article 13 (2) (e) of the Covenant. In addition to that, given that fees for higher education may represent a serious obstacle to disadvantaged groups, the Committee requests the State party to explain, in its fourth periodic report, the steps taken to improve access to higher education for all, such as the introduction

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60 SG 43/76.

61 E/C.12/1/Add.37 (Concluding Observations/Comments).

of an effective fellowship system, as provided for in Article 13 (2) (e) of the Covenant.

In the course of consideration of the Second and Third consolidated reports of the Bulgarian government and its Final recommendations from February 1998, the CEDAW Committee expresses serious concern about the social and economic status of women from minority groups and about the fact that many children from minority groups drop out from school at a very early stage.

As it will be explained further, some of these challenges were addressed by the government but others, almost eight years after the Committee recommendations, still impact negatively the equal access and quality of education, and hence, condition the low social status of some vulnerable groups. In November 1962 the Bulgarian government accepted the Convention against Discrimination in Education and the realization of the right to education can be measured also against its standards.

Bulgaria has adhered to important regional instruments related to the right to education in the framework of the Council of Europe, and namely to the European Convention for the Protection of Human Rights and Fundamental Freedoms (in force in Bulgaria since September 1992) (and its Protocol 1) and namely Article 2 guaranteeing the rights of parents to ensure such education and teaching corresponding to their own religious and philosophical convictions, and to the Framework Convention for the Protection of National Minorities (in force in Bulgaria since 1 September 1999). Unfortunately, Bulgaria has not yet ratified Protocol 12 to the ECHR, which entered into force in April 2005. This protocol is a powerful tool for combating discrimination in education.

On 5 April 2006 the Advisory Committee on the Convention for the Protection of National Minorities of the Council of Europe published its opinion after it considered the first state report submitted by Bulgaria<sup>62</sup>. In it the Committee expressed its concern in several areas of application of the Convention on the part of the Bulgarian authorities, among which those related to the right to education are: discrimination and social exclusion of Roma people, particularly in the areas of employment, housing, healthcare and education; the insufficient study of the languages of the minorities and lack of any instruction in the mother tongue.

Results of these reports of international treaty and monitoring bodies point to some of the main issues and obstacles to the full realization of the right to education in Bulgaria.

Bulgaria signed the Beijing Declaration and Platform for Action which marked the major actions aimed at achieving equality for women in education and vocational training. Additionally based on CEDAW provisions, are: ensuring universal equal access to education; elimination of illiteracy among women; broadening access of women to vocational training, to education in the field of

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62 Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Bulgaria, adopted on 27 May 2004, Strasbourg, 5 April 2006, available online at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanisms/4\\_opinions\\_of\\_the\\_advisory\\_committee/1\\_country\\_specific\\_opinions/1\\_first\\_cycle/1st\\_OP\\_Bulgaria\\_eng.asp#TopOfPage](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanisms/4_opinions_of_the_advisory_committee/1_country_specific_opinions/1_first_cycle/1st_OP_Bulgaria_eng.asp#TopOfPage).

science and technologies and to continuous education; ensuring non-discrimination in education and in professional training; allocating sufficient resources for educational reforms and control over their realization; ensuring life-long learning opportunities for young girls and women.

Bulgaria is also part of the MDG process, the EFA process through the initiative of the Decade of Roma inclusion (2005-2015), all influencing legislation, policy and practice of the right to education.

Although education is not formally part of the “common European policy” and the competence regarding the contents and organization of education falls within duties of the Member States, Bulgaria, as a full member of the EU since January 2007, has to align its educational system in view of the achievement of the goals and objectives of the Lisbon Strategy. In that respect, in further compliance with the European documents, high quality education, high enrollment in higher education, equal access and participation of women and all groups in society, quality vocational training and retraining are required.

#### *1.1.2. Legal and regulatory provisions.*

Further development of the above mentioned Constitutional and international standards for the realization of the right to education in Bulgaria are ensured through legislative and regulatory provisions. Such provisions are contained in the Law on Protection from Discrimination from 2004, the Law on Child Protection from 2000, the Law on Education from 1991, the Law on Professional Education and Training from 1999, the Law on Higher Education from 1995, the Law on the level of education, the general educational minimum and the educational plan from 1999 and others, as well as in some regulatory provisions. Further on, a number of documents as strategies, plans, etc. of the Ministry of Education and Science will be mentioned and discussed in order to assess the implementation of the right to education.

The Law on Protection from Discrimination - LPFD (last amended in 2006) broadens the legal basis for protection from discrimination set forth in the Constitution also in education by its Article 4 (1) - it explicitly prohibits discrimination on the grounds of disability and sexual orientation. Furthermore, all other forms of discrimination are banned set by law or international treaty to which Bulgaria is a party. Besides this general provision, the LPFD contains a wide range of provisions regulating equality in education. The main areas regulated are as follows:

- definitions of non-discriminatory practices related to education - different treatment of persons on the basis of religion, belief or gender in religious education or training, including training or education for the purpose of carrying out an occupation carried out in religious institutions or organisations when, by reason of the nature of the occupation or of the conditions in which it is carried out the religion, belief or gender constitutes a genuine and determining professional requirement in view of the character of the institution or organisation, when objective is legal and the requirement does not exceed what is necessary for its achievement (Art. 7 (1.4);

- it is not deemed discriminatory setting requirements for minimum and maximum age for access to training and education, when this is objectively approved for attaining a legal aim and the means for its achievement do not exceed what is necessary with a view of the nature of the training or education, or of the conditions in which it is conducted and the means for its achievement do not exceed what is necessary (Art. 7 (1.11);
- the measures in the field of education and training to ensure balance in the participation of men and women, as far and while these measures are necessary are not considered discriminatory (Art. 7 (1.12);
- the special measures benefiting individuals or groups of persons in disadvantaged position on the basis of the grounds, referred to in Article 4, Para 1 aiming at equalisation of their opportunities, as far and while these measures are necessary, are not considered discriminatory (Art. 7 (1.13);
- non-discriminatory are also the measures for protection of originality and the identity of persons, belonging to ethnic, religious or language minorities, and their right of sustaining and developing, individually or jointly with the rest of their group members, their culture, of professing and practicing their religion, or of using their own language;
- special measures are allowed also in the field of the education and training to ensure participation of persons belonging to the ethnical minorities, as far and while these measures are necessary;
- the Minister of Education and Science and the local self-government bodies shall take necessary measures not to allow any racial segregation in the educational institutions (Art. 29 (1);
- the head of the educational institution shall take effective measures to prevent any form of discrimination in this institutions and to take effective measures against any form of harassment (Art. 29 (2) and Art. 31) ;
- the educational institutions shall take appropriate measures in order to equalise the opportunities for efficient exercise of the right to education and training of the persons with disabilities, unless the expenses for such measures are unreasonably large and they would impose serious burden on the institution (Art. 32);

Article 35 stipulates that persons, providing training or education, including authors of textbooks and learning materials, are obliged to give information and to apply methods of training and education in a way, focused on overcoming the stereotyping of the roles of women and men in all spheres of public and family life; kindergartens, schools and high schools shall include in their educational curricula and plans aimed at tackling problems of the equality of women and men; these obligations shall apply also to overcoming the negative stereotypes towards racial, ethnic and religious groups, as well as towards persons with disabilities.

Even at this stage, it can be observed that the obligation to take measures against racial segregation in schools is incumbent on the Minister of Education and Science, while the education against gender stereotypes is

regulated as an obligation at the level of different educational institutions. It creates serious obstacles for formulation of policies and programmes in the field of gender equality.

For ensuring protection against discrimination, some administrative and procedural guarantees are provided: the governmental bodies and the local self-governance bodies shall take affirmative action measures, where necessary, as well as measures for protection of victims of multiple discrimination; shifting of the burden of proof in cases of alleged discrimination; the provisions of the law and all administrative provisions related to protection against discrimination shall be displayed in a highly visible place within the premises of educational institutions.

Specific provisions for non-discrimination, although more limited compared to the LPFD are contained in the Law on Education and in the Law on Higher Education. Other legal documents which make the basis for equal access to education and diversity of the educational process are: the Law on religious denominations from December 2002, the Law on Asylum and Refugees from 1 December 2002, the Law on Integration of Persons with Disabilities from January 2005, the Strategy of the Ministry of Education and Science (MES) for educational integration of children and students from ethnic minorities from June 2004 and the Action plan for the implementation of the strategy, National Plan for Integration of children with special educational needs and/or chronic diseases in the public education of the MES from January 2004, Ordinance No. 2 from June 2003 of the Minister of Education and Science for education on the subject "Religion", the National Programme for the Development of School Education and Pre-school Upbringing and Preparation (2006-2015), etc.

Major legislative provisions in the field: students have the right to study their mother tongue in the municipal schools, in the context of protection and control from the state; religious institutions can open religious schools for children who have completed primary education, with the consent of the Minister of Education and Science and the education in such schools can be recognized by the MES if the state educational requirements are respected; the subject "Religion" can be selected by pupils/students from first to last grade; refugee children under 18 have the right to education in the state and municipal schools according to the conditions set by the President of the State Agency for refugees and the Minister of Education and Science.

Other documents adopted in the frame of the MES and relevant to the quality of education and its links with professional realization are the National Strategy for life-long professional education for the period 2005-2010 and the National strategy for introducing ICTs in the Bulgarian schools from 2004<sup>63</sup>.

### *1.2. Practice.*

The implementation of the legal standards and their translation into governmental action shows that they are still high and intangible. The mechanisms necessary for the implementation of the international standards and those of the LPFD are still missing, despite the efforts and initiatives deployed mainly by the Ministry of

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63 [www.minedu.government.bg](http://www.minedu.government.bg).

Education and Science. In that respect, it is still too early to try to assess the progress based on strategies, plans and other policy documents intended as tools for realisation of the right to education and adopted relatively recently.

Further obstacles to implementation include macro-economic trends and policies characterizing the Bulgarian transition and the resulting financial constraints.

### *1.3. The economic context.*

According to the 2006 Global Education Report, in Bulgaria we observe the shift from public to private financing, from free to for-fee education, which was the World Bank's advice<sup>64</sup>. It objected to public financing of schools because it limited their capacity to mobilize funds from other sources. Schools were, then, encouraged to increase their own resources. As the consequence of increasing costs, enrolments after the fourth year of compulsory education decreased to 87%<sup>65</sup>. As in other countries in the region, compulsory education has been de-universalized.

Finally, Bulgaria complies with the MDGs' goal of universal primary education but only 4 years of schooling is less than half of the EU's average. The model of education introduced in the 90s - "each and every citizen has the right to choose his/her school and type of education, according to his/her preferences and possibilities" - means that those with low or without purchasing power are left without choice, whatever their preferences may be. The final result of the reform was the economic exclusion of vulnerable groups with noticeable racial profile. Thus in 1999 half of Roma children of school age were found to be out of school. This systemic problem could not be remedied through various projects aimed at bringing financial incentives, such as free textbooks, free meals, etc.

The problem of the social inclusion of Roma was mentioned in many Progress towards accession reports of the European Commission and is still pointed out by the EU in its 2006 Annual Report on Human Rights.

This situation was an incentive for the case against racial segregation in education filed by the European Roma Rights Centre (ERRC v. Ministry of Education) - case No. 11630/2004, which ended with a decision of the Sofia District Court of 25 October 2005, to be mentioned further.

Another challenge of the Bulgarian educational system is the need to "produce" a more skilled and trained labour force in order to meet the criteria of the Lisbon strategy. This challenge should be perceived in the context of the state budget constraints and possible expenditure restructuring, especially related to the EU membership<sup>66</sup>. Investing in upgrading labour skills and education is a major direction for reallocation of the funds from the state budget.<sup>67</sup>

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64 2006 Global Education Report, Katarina Tomasevsky, pp. 89-90.

65 OECD - Reviews of national Policies for education: South East Europe, Vol. 1, Paris, 2003, pp. 176-178.

66 See more in "Bulgaria - The Road to Successful EU integration - The Political Agenda"- World Bank CEM/Country Economic Memorandum/- 2005 and "Bulgaria - Public Finance Policy review- Leveraging EU funds for Productivity and Growth"- February 2006, World Bank.

67 Bulgarian Social Watch report, BGRF, 2006, part of the Social Watch Report 2006 "Impossible Architecture".

The main tasks are: improving the quantity and quality of human capital and access to education by vulnerable groups, and strengthening the links between the skills acquired in the education system and those needed in the job market. They can be achieved through more resources for education and vocational training and more effective spending of public resources. Optimising expenditure in education involve quality-enhancing inputs, including the modernization of curricula, textbooks, and teaching materials, and also financing educational results. Investments in teachers' wages and qualification should be considered also a quality-enhancing input as they play a key role in the educational process - a role that is not yet recognized by the government. With average wages close to the country average (and namely less than 200 EURO per month), Bulgaria falls among the countries with the lowest average wage for teachers, even in the Balkan region. This is an important point of disagreement regarding advice of the IFIs (International Financial Institutions) on spending on education. These institutions also recommend not to increase public spending on education as a share of GDP ("better outputs with the same cost") and shrinking the role of the state by expanding the role of private education providers. Recommendations of the IFIs, if followed by the government, will bring an even deeper crisis in the sector, like in the health sector, which, upon their advice, had to undergo a series of reform programmes that failed. The solution to be adopted by the government should not exclude expansion and reallocation of resources for education while bearing in mind efficiency considerations<sup>68</sup>. As a result of the restructuring of the sector, in the beginning of 2006 the President of the Teachers' trade union, Yanka Takeva, announced that over a period of ten years 1 500 schools closed down, 13 000 school teachers and 8000 auxiliary personnel were laid off.

Data from the Ministry of Finance show that the share of education in GDP and state budget for 2004 is 4,3%. According to data from the UNESCO Institute for Statistics, 47% of public expenditure for 2004 is allocated at the level of secondary education. This is also more or less the share from the state budget adopted for 2006. Compared to the allocations for education in other European countries, and more specifically in NMS (New Member States from the previous wave), the share in Bulgaria is much lower: Estonia - 5,7%, Hungary - 5,5%, Latvia - 5,8%, Lithuania - 5,9%, Poland - 5,6%, Slovenia - 5,9%.<sup>69</sup> Instead of IFT's advice, the government of Bulgaria can follow the example of the NMS, which obviously and with perspective took the appropriate measures in order to meet the Lisbon agenda requirements.

Reallocation of resources for the purposes of education and vocational training is possible also in the framework of the current state budget. For example, the share for Defense and Security of 5% of the GDP for 2005 is a very high burden for the budget and the citizens. The defense was allocated 2,3% of the GDP in 2004 and is assessed as very high even by the WB (World Bank) economic analyses. Comparison with the defense share of the same NMS, which are also NATO members is very indicative: Estonia - 2%, Hungary - 1,4%, Latvia - 1,7%,

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68 Experts from the MES share their opinion that more efficient spending of resources is needed in the light of the increasing GDP and the severe demographic crisis, which increases in practice the resources in education per capita.

69 Source: Bulgaria, MoF; IMF Government Finance Statistics; Eurostat; and OECD.

Lithuania - 1,6%, Poland - 1,8%, Slovenia - 1,4%.<sup>70</sup> Clearly, the Bulgarian government has to redirect resources from state security to human security, by better balancing and not overemphasizing the requirements for financial efficiency. And this is equally valid for investments in education from the EU funds.

*1.4.. Main issues identified in the implementation process.*

The integration of children and students from minorities, despite the strategies developed and the efforts deployed by the government, remains a severe human rights issue. Statistics in that respect are merciless. In fact, data from 2004 show 95% of girls and 96% of boys enrolled in primary education in Bulgaria. In comparison, only 46,2 % of Roma children complete primary education. Eighty-seven percent of girls and 90% of boys complete secondary school (in some statistical sources the average figure is 81%); in contrast, only 7,4% of Roma complete secondary education. Forty-one percent of the population of tertiary age is enrolled in tertiary education, while only 0,2% of Roma can afford completing this cycle of education.<sup>71</sup>

Although recognizing the problem of the early drop-outs of Roma children as a serious problem related to the severe social exclusion of this group, some governmental measures aimed at tackling this problem, are highly debatable.<sup>72</sup> This measure will clearly affect and penalize mainly Roma families. Instead of penalization, more analysis and social support is needed.<sup>73</sup>

The status of Roma women and girls in education is particularly worrying and their access to education is seriously hampered. According to data from ASA (Agency for Social Analysis), there are twice as many Roma women than men and Roma women who completed secondary education make up only 1/4 of men who complete it.<sup>74</sup> <sup>75</sup> Compared with the already extremely low percentage of Roma who completed secondary education, the marginalized situation of Roma women is obvious. The vulnerability of this group of women entails further vulnerability of Roma children, since a high number of Roma women are single mothers without access to labour market and thus the vicious circle is closed.

Given this fact, it is inexplicable why this serious issue of social exclusion and multiple discrimination of Roma women and girls is not properly addressed in

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70 Ibid.

71 Data from Unesco Institute for Statistics and from "Monitoring Education for Roma" of OSI - Education Support Programme, December 2006.

72 For example, the measures proposed by the Minister of Labour and Social Policy and enacted in 2006 about the so called "responsible parenthood" include cutting the Family assistance for children benefits in cases the children have more than 5 days unjustified absence from school.

73 In an interview of the Minister of LSP Mrs. Maslarova from September 2006 / the daily newspaper "Sega"/, she shares that in October 2006 more than 674 families would not receive Family assistance benefits due to the absence of the children from school.

74 Dimova L. and others - "Roma- new challenges"- ASA, 2004.

75 The causes for the early drop-outs are mainly early marriages and giving birth. "Roma in CEE"- UNDP, 2003.

any of the strategies and other policy documents of the government. It was practically omitted from the Strategy of the Ministry of Education and Science (MES) for educational integration of children and students from ethnic minorities and also from the 2006 Action Plan for promoting equality between women and men.<sup>76</sup>

Priority was set in the Strategy for educational integration of children and students from minorities, adopted in 2004 - full integration through desegregation of pre-school and school institutions in Roma communities and ensuring equal access to quality education. A National Action Plan was adopted for the implementation of the Strategy.

Insufficient qualification of teachers was identified as one of the main problems when working in a multi-cultural environment. Additional qualification is planned also for development of the cultural identity of students and their courses in mother tongue. This is a big problem regarding the human rights education of teachers in general. In order to achieve this important shift in the preparation of teachers, promotion of changes in the programmes has been envisaged. The completion of this task is expected in the period 2004-2009, which is a relatively long period. It corresponds to the time needed for the “shift of mind” but, being a key element, it will delay the implementation of the Strategy as a whole. In addition to the changes needed in teachers’ preparation in universities, a continuous training in human rights and working in intercultural environment is envisaged.<sup>77</sup>

Another issue and concrete task set in the Action Plan is the adoption of internal regulations in the schools for ensuring tolerant and non-discriminatory attitude. The creation in the MES of a database is envisaged for materials for intercultural education, human rights and also about the data on the process of desegregation.

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<sup>76</sup> Adopted by a Decision of the Council of Ministers from 24 November 2005.

<sup>77</sup> In addition to the state level, the qualification of teachers is ensured also at institutional level. The latter means at the level of the universities which benefit of academic autonomy/ freedom, according to Art. 53 of Constitution. Art. 54 stipulates that the state, nevertheless, exercises control over all types and levels of educational establishments/schools.

With respect to school teachers, the academic autonomy means above all the freedom to select the structure of the teaching programmes and curricula. Two levels of determination of preparation of teachers- the state sets the minimum requirements and the universities- the diversity/ modalities of teachers’ preparation. Here lies the big responsibilities of the universities. – source- National report on the preliminary preparation of teachers on the issue of diversity- from 2005 document, Ministry of Education and Science.

The state policy for preparation of the teachers for education on diversity/ immigrants/ refugees, language diversity, religious minorities, individuals with special needs, gender, etc/ is based mainly on the documents mentioned above in section legislation- the Constitution, Law on Protection against Discrimination. Law on the Asylum and Refugees, National programme for the integration of refugees, the Strategy for educational integration of children and students from ethnic minorities, National Action Plan for the implementation of the strategy, Law on religious denominations, Law on Integration of persons with disabilities, National plan for integration of children with special needs and/ or with chronic diseases in the educational system, etc.

According to data from reports of Directorate for “Educational environment and Integration”<sup>78</sup> of the MES, the main achievements by 2006 are as follows: the Ministry elaborated and sent to the Regional Inspections on Education tentative models for desegregation of Roma education; meetings are planned with local stakeholders in places where the desegregation process has not yet begun; the process of compiling the general educational programmes with elements of history and culture of ethnic minorities was initiated; ensuring free school transport for students of compulsory education age, which falls within the responsibilities of the respective municipalities; the text of anti-discrimination internal regulations was disseminated among different schools; 3500 students from Roma communities are reported integrated in general schools; in May 2006 a Centre for Education Integration of Children and Students from Ethnic Minorities” was created within the MES with main tasks to prepare and support projects for equal access to quality education and also to improve the qualification of teachers in this field; a new Consultative Committee on education of children and students from ethnic minorities was established as an advisory body to the Ministry with participation of experts also from universities and non-governmental organizations.

During this period the Ministry cooperated with and supported NGOs in their work for integration of Roma children. For example, here was a project for desegregation in Plovdiv, Montana, Sliven, Vidin and Pazardjik aimed at involving parents in this process; together with the Bulgarian Helsinki Committee an analysis and assessment was carried out of the performance in education of Roma children included in the desegregation projects of NGOs in 5 municipalities - Vidin, Montana, Pleven, Sliven, Stara Zagora.

The Strategy for educational integration of children and students from ethnic minorities was adopted in June 2004 and encompasses the period 2005-2015. This coincides with the Decade of Roma inclusion and the Unesco World Programme EFA (Education for All). The Strategy itself provides for the assessment of its implementation, and the document will be updated on a yearly basis. There is no official report available for the assessment of the implementation of this Strategy.

For 2005 the assessment came through the court case ERRC v. Ministry of Education/ - case No. 11630/ 2004, which ended with a decision of the Sofia District Court on 25 October 2005.

The European Roma Rights Centre won a precedent-setting court victory against Bulgaria’s Ministry of Education on the integration of human rights in education policy in 2005. The case revolved around educational and residential segregation of the Roma, epitomized in School No. 103 in the national capital, Sofia. The school had 100% of Romani children, the court found, while teaching and learning took place “in conditions of misery”. The Ministry of Education argued that everybody had a right to free choice of school, which equally applied to the Romani parents and children. In theory, they were free to change their residence and their school. In practice, they were unable to do so due to poverty and social

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78 Part of the functions of this unit are directly related to promoting diversity in Bulgarian education.

exclusion. The court did not accept such 'free choice' but decided that the Romani school children were subjected to racial segregation and unequal treatment. This judgment had rapid and broad ripple effects as it promised to change governmental inaction in the face of widespread misery and segregation of the Roma.

On 7 June 2006 the Parliament adopted a National Programme for the Development of School Education and Pre-school Upbringing and Preparation for 2006–2015. According to the Bulgarian Helsinki Committee,<sup>79</sup> this programme is a step back from the commitments undertaken with the 1999 Framework Programme for Equal Integration of Roma in Bulgarian Society. Unlike the Framework Programme, the National Programme does not mention desegregation of the Roma schools at all. It does not mention integration of the children from the special schools for children with disabilities (Roma primarily) into the mainstream schools. Despite the few official papers on Roma integration that were adopted by the authorities in 2006, no practical steps were taken to overcome these problems. One could add that this is despite the above mentioned court decision, which confirms that this is a systemic problem and cannot be tackled through fragmented initiatives.

It is recognized by the MES itself that most of the strategies, programmes and plans are still on paper, their implementation is in its initial stage and they cannot reach the people responsible for their implementation and the target groups cannot fully benefit from them. Similar problems occur with the process of integration of children with special needs/ disabled children - closing special schools and integrating those children in general schools, with monitoring and support of the children and their parents.

The low economic status of teachers in Bulgaria is a big issue related to quality of education. The basic low average remuneration of teachers (under 200 EURO - one of the lowest in Europe) is a unique situation affecting dignity of teachers, entailing degradation of the educational process and involvement of teachers in informal sector activities. Without improving the basic levels of remuneration, in 2006, at the idea of the Minister of Education and Science, the prevailing principles of efficiency and competitiveness were progressively introduced in this highly sensitive sphere, through regulatory mechanisms<sup>80</sup> and targeted programmes. A new system is introduced where teachers' career development is the focus. Its purpose is making each teachers' individual salary relevant to results achieved in the process of education in order to create motivation and competition among teachers. Instead of introducing this experiment at the secondary education level, the basic salary should be increased in order to improve the overall status of teachers and increase the quality and standing of education. In addition to that, over 80% of teachers are women, giving the issue a

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79 2006 Human Rights in Bulgaria, Bulgarian Helsinki Committee.

80 Ordinance No.2 of the Minister of Education and Science of 7 September 2006 on the procedure and the way of defining the individual monthly salaries of the personnel in secondary education.

strong gender connotation and indicating a segregation of labour and gender discrimination.

Comprehensive education on gender equality and for elimination of gender stereotypes is still missing in schools, despite the clear provisions of the international instruments and of the Law for Protection from Discrimination. Some initiatives containing elements of such education should be mentioned: in the frame of the National programme for reproductive health initiated in 2000 by the Ministry of Health and supported by UNFPA education and training of teachers and students was conducted; an educational tool on sexual education for students between 5th and 8th form was created and broadly disseminated - the issues of equality between women and men, of violence and of gender stereotypes are part of this manual; some schools in Sofia and in the country have cooperated with NGOs, like the Bulgarian Gender Research Foundation and Gender Project for Bulgaria Foundation, on projects of gender education; elements of gender equality are contained in other compulsory subjects from the “educational package“ (“Social sciences, civil education and religion”).

Nevertheless, the lack of any comprehensive strategy or other governmental policy document is obvious in this important human rights sphere. The delayed adoption of a specific law on equal opportunities for women and men as well as the establishment of an institutional mechanism for gender equality in Bulgaria are the main reasons for this gap.

Other outstanding issues related to the right to education are the need for promoting life-long learning and introducing ICTs in schools, which at the moment are processes in their very initial phase. The obsolete material basis of the Bulgarian schools is also mentioned as an alerting problem, as well as the need for improving the accessibility of language and the overall content of the school textbooks. The problems with the remunerations in the tertiary education remain severe, as well as the inaccessible fees for some vulnerable groups of students, the absence of a credit system for students and the need to reinforce the link between the university curricula and the requirements of the labour market. While the full realization of the right to education is an important issue for the future decentralization, the need for a stronger and more coherent state policy is obvious.

## *2. Access to rights: National Human Rights Institutions in the country*

Relatively recently, the Bulgarian citizens were provided with new opportunities for protection of their human rights by two independent human rights institutions - the National Ombudsman, who since 2004 acts as a “mediator” between the individual and the institutions, and the Commission for Protection from Discrimination, which operates since mid-2005 as a special jurisdiction. Both institutions are relatively new and still in the process of positioning themselves, having started developing their practice in 2006.

Their accessibility for citizens, the simplified and more informal procedure they follow and their role in informing the society on human rights issues are their major contributions to promoting human rights in the country.

The activity of the Commission for Protection from Discrimination (CPFD) is described in details because we consider it an interesting example that should be followed by the countries in the region of SEE.

*2.1. The Bulgarian Commission for Protection from Discrimination.*<sup>81</sup>

The Commission for protection from discrimination is an independent specialized state body for prevention of discrimination, protection against discrimination and ensuring of equal opportunities. The Commission exerts control over the implementation and compliance of the Law on protection from discrimination<sup>82</sup> and other laws regulating equality of treatment and reports annually to the National Assembly. It is a legal entity on budget support, having its head office in Sofia. The Commission is established in accordance with the Law on protection from discrimination (LPFD), which entered into force in 2004. The Commission began its work in 2005.

The Commission is a collegial body comprising 9 persons, of which at least 4 have to be jurists (currently 5 of them are jurists). The National Assembly selects 5 and the President of the Republic appoints 4 of the members of the Commission. The mandate of the members of the Commission is 5 years. In the selection or appointment of the Commission members the principles of balanced participation of women and men and participation of persons belonging to ethnic minorities shall be respected.

The Commission for protection against discrimination shall:

- find out violations of the LPFD and other laws, which regulate the equality of treatment, identify the offender and the affected person;
- state prevention from and termination of the violation and restoration of the initial situation;
- impose the provided sanctions and enforce administrative compulsory measures;
- issue obligatory prescriptions for compliance with the LPFD and other laws, which regulate the equality of treatment;
- appeal against the administrative acts, which are in contravention to the LPFD and other laws, which regulate the equal treatment, initiate claims before the court and act as a concerned party in proceedings under the LPFD and other laws, which regulate the equal treatment;
- issue proposals and recommendations to the state and local self-government bodies to terminate discrimination practices and to revoke their acts, which have been issued in contravention to the LPFD and other laws, which regulate the equal treatment;
- maintain a public register of the adopted decisions and obligatory prescriptions which entered into force;
- issue statements on the conformity of the legal act drafts with the legislation for prevention of discrimination, as well as recommendations for adopting, revoking, amending and supplementing legal acts;

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<sup>81</sup> The report in this part is largely based on the 2006 Annual report of the CPFD.

<sup>82</sup> SG 86/2003, last amended SG 68/2006.

- provide independent assistance to the victims of discrimination in constituting complaints against discrimination;
- conduct independent researches related to discrimination;
- publish independent reports and provide recommendations on all issues related to discrimination;
- carry out other competencies, provided in the Rules of Procedure.

*2.1.1. Proceedings before the Commission or the court for protection against discrimination.*  
According to the LPFD, proceedings before the Commission shall be instituted after:

- a complaint by affected persons;
- initiative of the Commission;
- signals from natural or legal persons, state and local self-government bodies.

Proceedings shall not be instituted, and those already instituted shall be terminated, in case that three years have past since the occurrence of the violation. In case the Commission discovers that proceedings in court have been initiated on the same case, it does not institute, or terminate the proceedings, instituted before it. No state fees shall be collected for proceedings before the Commission. The expenses incurred during the proceedings shall be covered by the budget of the Commission.

After the institution of proceedings the Chair of the Commission shall transfer the claim file to the respective panel, which shall appoint a rapporteur among its members. The rapporteur shall start an investigation in which he/she shall collect written evidences, necessary for the complete and comprehensive clarification of the circumstances in which he/she shall use assistants and additional experts. All persons, state and local self-government bodies shall assist the Commission in the process of the investigation and they shall be obliged to provide the required information and documents, and to give the necessary explanations.

Investigations shall be carried out within 30 days. In cases, which present factual or legal complexity, this period may be prolonged to up to 30 additional days with an order issued by the Chairperson. After completion of the investigation the parties shall be given an opportunity to get acquainted with the materials collected during the investigation. If in the process of the investigation, evidence for a committed crime has been found, the Commission shall send the claim file to the prosecution.

The speaker shall prepare a conclusion and shall submit the claim file to the chair of the panel, who shall call a session meeting within seven days. The sessions of the Commission are open/public.

At the first session the rapporteur shall invite the parties to reach a settlement. In case of agreement, expressed by the parties, the speaker shall call settlement proceedings session. In case of achieving an agreement between the parties on the basis of equal treatment during the settlement proceedings, the Commission shall approve it by a decision and shall terminate further proceedings. If the agreement is achieved only for part of the dispute, the proceedings shall continue for the unsettled part. The settlement approved by the Commission shall be enforced

and the Commission exercise control over the compliance with the settlement. After factual and legal clarification of the case, the chair of the panel shall close the session and shall announce the day for the pronouncement of the decision. The decision shall be pronounced not later than 14 days after the holding of the session. With the stated decision the panel shall:

- ascertain the committed violation;
- ascertain the offender and the affected person;
- determine the kind and the amount of the sanction;
- enforce coercive administrative measures;
- ascertain that no violation of the law has been committed and leave the claim without consideration.

The decision shall be in written form and shall contain:

- the name of the authority that issued it;
- the factual and legal grounds for its issuing;
- operative part, in which the kind and the amount of the sanction are stated or the coercive administrative measure, if such should be imposed;
- the authority and the term before and within which the decision may be appealed.

The Commission shall carry out a control over the compliance with the coercive administrative measures. The person to whom the coercive administrative measure has been imposed shall be obliged to take measures to implement the obligatory prescriptions and to communicate with the Commission in writing according to terms specified in the decision, which may not be longer than 1 month.

In case of not implementing by the persons in-charge the obligatory prescriptions, the Commission shall send a report containing proposals for undertaking relevant measures to the respective state and local self-government bodies.

The Commission may send the decision to other authorities, which are interested in the completed investigation, for information, or to undertake relevant actions. The decisions of the CPFDP can be appealed before the Supreme Administrative Court within 14 days according to the Code of the Administrative Procedure. The decisions of the Commission shall enter into force, if:

- they have not been appealed against within the term;
- the appeal submitted has not been taken into consideration;
- the settlement reached between the parties has been approved by the decision.

For prevention and termination of the violations of the LPFD or other laws regulating the equal treatment, as well as for prevention and removal of the harmful consequences of such violations, the Commission, on its own initiative

or after a proposal of trade unions, natural or legal persons may apply the following coercive administrative measures:

- to give obligatory prescriptions to the employers and the officials to remove violations of the legislation for prevention of discrimination;
- to stop the execution of illegal decisions or orders of employers or officials, which lead or may lead to discrimination;

The appeal proceedings shall not stop the execution of the compulsory administrative measure unless the Court orders otherwise.

Besides the cases described above, any person whose rights under this or other laws regulating the equal treatment have been violated, may lodge a claim before the Regional Court through which to demand:

- the violation to be ascertained;
- the defendant to be sentenced to terminate the violation and to restore the status quo as it was before the violation, as well as to restrain in future from further violations;
- compensations for damages (this is actually an issue only the court can rule on).

We note that trade unions organisations and their units, as well as the non-for-profit legal persons carrying out activities beneficial to the public may, upon request from persons whose rights have been violated, lodge a claim before the court. These organisations may step in as a concerned party into a pending legal action on discrimination. Furthermore, in cases of discrimination when rights of many people have been violated, these organisations may lodge an independent claim

The general principle of shifting of the burden of proof in favour of the alleged victim of discrimination is valid for the procedure under the LPFD both before the Commission and the Court.

#### *2.1.2. Commission's activities in 2006.*

The Commission's activities in 2006 were directed towards the implementation of one of the main Constitutional principles in Republic of Bulgaria – the principle of equality of all citizens before the law and their equal treatment by state institutions. The Commission for protection against discrimination worked for the Bulgarian full membership in the EU, as did the other state institutions during 2006.

The main aim of the Law for protection against discrimination is to develop a guarantee for equality according to Article 6 of the Bulgarian Constitution and to establish new mechanisms for protection against discrimination on the basis of different grounds.

In 2006 the Commission continued its national information campaign and opening of consultative offices for citizens in different towns of the county, thus continuing to implement its preventive function. It worked closely with other state institutions for human right protection as well as with the trade unions and NGOs, local authorities and the EU bodies.

In 2006 there is a trend for higher numbers of complaints and signals before the Bulgarian Commission for Protection from Discrimination in comparison to 2005. One of the main factors for it is the socially oriented procedure according to the LPFD.

The total number of complaints and signal registered by the Commission is 389 in 2006. Of those, 189 were rejected. The claim files were divided between the specialized panels of the Commission as follows:

*I specialized panel – 48 files:*

- on the basis of „ethnic origin and race” – 48 files.

*II specialized panel – 42 files:*

- on the basis of “gender” – 3 files;
- in connection with the right to labour - 26 files;
- on the basis of “harassment” in connection with the right to labour – 4 files;
- because of trade unions activity – 8 files;
- because of trade union affiliation – 1 file.

*III specialized panel – 11 files:*

- on the basis of “citizenship” – 7 files;
- on the basis of “religion and faith” – 4 files.

*IV specialized panel – 21 files:*

- on the basis of „education” – 8 files;
- on the basis of „political affiliation” - 2 files;
- on the basis of „personal and social status” - 6 files;
- on the basis of „personal status” - 3 files;
- on the basis of „ social status” - 2 files.

*V specialized panel – 42 files:*

- on the basis of „disability” – 25 files;
- on the basis of „age” – 7 files;
- on the basis of „sexual orientation “ – 7 files;
- on the basis of “sexual harassment” - 2 files;
- on the basis of „health status” - 1 file.

*VI specialized panel – 4 files:*

- on the basis of „marital/family status” - 2 files;

- on the basis of „property status” - 2 files.

*ad hoc panel (for specific cases) - 9 files:*

- right to access to own real estate – 1 file;
- violated right of respect of person’s dignity on the workplace - 1 file;
- harassment in connection with the right to labour - 1 file;
- unfavorable treatment connected to age – 1 file;
- unfavorable treatment connected with the supply of goods and services – 1 file;
- determination of the entrance fee in the Sofia Bar Association - 1 file;
- assessment of different service prices (water and sewage) - 1 file;
- on the basis of “personal and social status” - 1 file;
- because of trade union’s activity – 1 file.

*5 members` panel - 43 files.<sup>83</sup>*

The Commission for protection against discrimination issued decisions and rulings on 62 claim files and 6 obligatory prescriptions. The panels had 126 public/open and 4 closed sessions.

### *2.1.3. Summary of Commission’s decisions in 2006;*

Education, employment, health, ethnic origin, disadvantaged, marginalized and vulnerable groups. - The analysis of Commission’s activity shows that the majority of the decisions are issued on the basis of “ethnic origin”. The fewest are the acts issued on the basis of “age”, “citizenship”, “gender”, “social status” and “education”. There are six decisions issued by the 5 members` panel concerning multiple discrimination.

On the other hand, there is a clear trend of increasing the number of the decisions issued in connection with exercising of the right to labour as well as the ones based on “disability”. This practice motivated the Commission to mention in its Action Plan for combating discrimination (2006 – 2010) the need for “positive action” in favour of representatives of vulnerable groups in education and participation in the labour market. Some examples of the Commission’s practice:

*Decision № 7/29.03.2006* based on „disability” on a claim file against the Municipal Council’s decision which is alleged to be issued in violation with the Law for Integration of Persons with Disabilities. The Commission prescribes to the Mayor to cancel his acts as well as to propose to the Municipal Council’s session cancellation of their decision mentioned above and to stop the practice of discrimination against disabled people. It also prescribes to the Regional Governor to exercise control over the acts of the Mayor and the Municipal Council.

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<sup>83</sup> Such kind of panels, consisting of 5 members are formed in cases of multiple discrimination, which is based on more than one ground.

*Decision № 12/17.04.2006* based on a claim file for assessing instigation to direct discrimination on religious ground because of a number of articles and publications in a Bulgarian newspaper. The Commission confirms the claim in its part for suffering discrimination and religious harassment according the LPF. It prescribes not to make new violations of the anti-discrimination legislation against the officially registered religious groups in Bulgaria.

*Decision № 19/19.05.2006* on a claim file concerning discrimination on the basis of “ethnic origin”. The Commission ascertains the committed direct discrimination through refusal of goods and services. It rules a fine and prescribes the employer to undertake effective measures in its trade activities in order to avoid other violations by the staff towards clients from Roma community.

*Decision № 21/22.05.2006* on a claim file based on discrimination on ethnic ground and right to learning mother tongue violated. It is claimed that the Rudars are a separate ethnic group whose mother tongue is Romanian. The Commission prescribes necessary measures to be undertaken in order to make possible for them to learn their mother tongue,

*Decision № 27/12.06.2006* on a claim file for discrimination on the basis of “disability” in connection with a competition for a vacancy in the city of Varna. The Commission found a violation of the LPFD and namely the organizers had not done enough in order to provide the respective commission with an expert in the sphere of integration of disabled people. It confirms violation by the respective officials who allowed addressing questions, conned to the disability of the candidate and purposely did not assess his/hers professional skills.

*Decision № 31/11.07.2006* of the full nine members` panel about the inadequacy of the legal norms and texts in the sphere of disabled people’s protection against discrimination and the need for the adoption of legal measures of free access for disabled people to public buildings – state and municipal property in Republic of Bulgaria by the end of 2006. The Commission prescribes to all ministers, district governors, municipality councils and mayors to adopt the necessary measures in order to adjust the existing architectural environment in accordance with the Law for Integration of Persons with Disabilities, included to provide financial support for activities directed at free access of disabled people to the buildings. Sets a term of one month for informing the above mentioned persons and institution to send updated information to the Commission about the measures they have undertaken. The CPFD recommends to the Minister of Labour and Social Policy, to the Minister of Agriculture and Forests, the Minister of Regional Development and Urbanization and the Minister of Health to amend respective legislation for avoiding discrimination of people with disabilities.

*Decision № 37/27.07.2006* (this decision concerns wearing headscarves by some female students) on the basis of “religion” and a signal sent by a regional governor. The Commission decided that the restriction for wearing headscarves by female students is not a discriminatory practice in the schools with adopted

and approved uniforms. The Commission recommends to the Minister of Education and Science to initiate changes in the respective legal acts in the part concerning the choice of a uniform. Permanent monitoring will be imposed to the respective institution in the town of Smolian. This decision was declared as highly debatable by some human rights NGOs in view of the need to ensure freedom of conscience and freedom of religion

*Decision № 38/27.07.2006* of an ad hoc panel on a claim and signal for discrimination on the basis of “ethnic origin” in a case of emergency aid. It confirms the existence of direct discrimination on the basis of “ethnic origin” and the Commission fined the defendant and approved the agreement between the parties.

*Decision № 53/14.11.2006* based on an application for declaring discriminatory the practice of Sofia University “St. Kliment Ohridski” for determination of gender quotas for access to the subject “Bulgarian philology”. The Commission decided that the practice of Sofia University – to have fixed gender quotas for access to the subject “Bulgarian philology” does not represent discrimination according to the LPFD, one of the arguments being that this quota prevents excessive feminization of the teachers’ profession. This decision again was debated and contested by some human rights NGOs.

#### *2.1.4. Main conclusions on the incidence of discrimination in Bulgarian society*

- a survey conducted by the Bulgarian Commission for Protection from Discrimination in 2006 - The research encompasses data of a series of surveys including 3 580 respondents in the period January – May 2006. It mainly focuses on access to education, health care and legal protection of different groups of the population. The research clearly shows the existence of indirect discrimination based on material status.

Discrimination against Roma is still a prevailing trend. Roma people consider their low status in society a direct result of discrimination. Main issues related to Roma are the fixing/adjusting the poverty line and also balancing the level of social assistance for Roma. A clear vision is necessary on both issues of poverty and increased opportunities for participation in the labour market. The research showed strong intolerance of the majority of Bulgarians regarding the possibility of representatives of minority groups taking high positions in state and local administration.

The access to education is strongly influenced by ethnic origin of children and young people. There is a clear trend of high drop out rates among Roma people, with potentially dangerous proportions – almost half of the young Roma people can now reach primary education and the functional illiteracy is 1/3 among this group which means that they are practically excluded from the labour market.

According to the Commission, this is not an indication of direct discrimination, this is a “functional” one – this is a question of direct connection between the access to education and material means/financial resources of the family. This conclusion can be further debated in the light of what was said in the section about the Right to education.

In addition to that, the highest extent of intolerant behaviour is demonstrated toward homosexual people and people who have HIV and AIDS. People still believe that each contact with such a person is extremely dangerous. This trend is alerting, although according to the Commission ethnic intolerance remains the main problem. The intolerance of all other ethnic groups toward Roma people is alarmingly high as well. Among the main prejudices are: Roma people do not want to work, they are lazy, they live off state support, etc. Clearly, the Bulgarian government has to address these problems of exclusion and intolerance towards Roma people.

The overall assessment of the practice of the Commission in 2006 was positively assessed by NGOs, primarily the Bulgarian Helsinki Committee.<sup>84</sup> The practice of the Commission demonstrated positive trends as the Commission issued a number of fair decisions in which it demonstrated its involvement in the protection of human rights, e.g. its explicit involvement in protecting the equal opportunities of disabled people, understanding and sympathy to the vulnerability of other groups, for example women, as well as to the current mechanisms for oppression and social exclusion. In addition, the Commission consistently refers to the international law and jurisprudence, the constitutional rights, as well as the general principles of the law and the common sense. The Commission approach to collecting and assessing evidence is dynamic and active; it is characterized by lack of formalism, as well as by its attempts to comply with the real dimensions of public life outside the narrow boundaries of the case with which the Commission excels many judges. The Commission was actively involved in helping the applicants with instructions on how to comply with the procedural requirements which makes easier the access to it of the socially excluded people. This said, although some of the decisions of the Commission were criticized by NGOs, this body has the potential to grow into an efficient human rights institution. In addition, the Commission's initiative to establish its own regional structures so that it can be accessible to as many people as possible is highly commendable.<sup>85</sup>

## *2.2. The institution of the National Ombudsman.*

The institution of the National ombudsman was established in 2005 (the Law on the ombudsman was adopted in 2003 and entered into force in 2004). Since 2006 the Ombudsman can refer cases to the Constitutional Court (Art. 150 (3) of Bulgarian Constitution).

The institution of Ombudsman is completely independent from all State institutions, including the Parliament. This is in compliance with international standards and namely with Recommendation 1615 from 2003 of the Parliamentary Assembly of the Council of Europe. Another principle defining the functioning of this institution is the publicity and transparency.

Citizens in a way express their control over State bodies through the institution of Ombudsman – national and local and over their administrations. This control further expands over all stakeholders who perform public services.

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<sup>84</sup> "Human Rights in Bulgaria"- Bulgarian Helsinki Committee.

<sup>85</sup> Upon the initiative of the Commission, in 2006 the Anti-Discrimination Act was amended in this direction.

The institution of Bulgarian National Ombudsman has no power to impose sanctions. Its force and strength lie with the moral authority and the competence to issue recommendations for the respect of rights violated.

The work is structured around the consideration of individual complaints from the citizens in a non-judicial procedure for the settlement of conflicts between people and the institutions of public administration. Although the evaluations of the work of the Ombudsman from 2005 till the end of 2006 have been positive, NGOs and citizen's associations are not yet in a position to refer to the Ombudsman. This is a serious gap in the law which is within the competence of the Parliament who can make required changes if they wish to do so. The law provides, however, another advantage – the power of the Ombudsman to make self-referral (e.g. in case of continuous violations or occasionally when citizens and public opinion give signals about some severe and dangerous violations of rights). This power is often exercised.

In 2006 the Public register/record of citizens' complaints and signals was created. The Ombudsman institution is open for cooperation with other institutions and NGOs and it has signed agreements with various State bodies. Protocols for cooperation were signed with the Ministry of Justice, as well as with some parliamentary committees (the Committee for Petitions and Signals of the Citizens, the Commission for Fight against Corruption). The Ombudsman has well developed contacts with the Commission for Protection from Discrimination, contacts which are based on a cooperation agreement.

Most often vulnerable groups refer to the Ombudsman, especially when their access to social services is denied.<sup>86</sup> Complaints are submitted regularly against the programme “Assistance for retirement”, mainly by women. In such cases the practice of the Ombudsman is to mediate with Job placement offices. People with disabilities are the major group signaling for violated rights and access to social services. In all procedures the Ombudsman makes an assessment for the existence of discrimination. Signals are being analysed for assessment of the most frequent groups to contact the Ombudsman – a method which can serve for the review of the situation of vulnerable groups in Bulgaria. Two years of work led to the conclusion made by the administration of the Ombudsman that special attention and more information about the institution is required by the marginalized and vulnerable groups. A campaign promoting Ombudsman activities throughout the country is planned to start in 2007.

The number of complaints received from 2005 until the first trimester of 2006 was 1102. Until 23 of June they became 1790<sup>87</sup> and from June till the end of 2006 the number of signals and complaints was up to 4 000. In 2006 about 40% of the complaints were processed.

The Ombudsman demonstrated clear commitment for the protection of human rights of citizens by addressing serious issues pertaining to the compliance of legal provisions with the Constitution and started initiating cases before the

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86 Presentation of Deputy Ombudsman, Mr. Chetin Kazak, conference “Policies for non-discrimination and equal opportunities at local level”, organised by the Bulgarian Gender Research Foundation, 24-25 February 2007.

87 Shorthand record of the 132 th Session of the National Assembly from 23.06.2006. More information at: [www.parliament.bg](http://www.parliament.bg).

Constitutional Court. Such issues addressed are: the practice of the central heating companies vis-à-vis citizens, violating their rights, infringement of the rights of the citizens in the administrative procedure, etc.

### *3. Disadvantaged, Marginalized and Vulnerable Groups*

#### *The right to work - Minorities and development of equal opportunities for employment*

In Bulgaria, 87 % of the Roma households live at or below the poverty threshold of BGN 102 per month. The life expectancy for Roma in Bulgaria is in average 5 to 6 years shorter than for the other groups. The child mortality rate is twice the average for the country. Although the Roma in Bulgaria have settled lifestyles, most of them do not possess land and home and don't have permanent income.

The problems faced by Roma in Bulgaria during the last few years prior to the EU accession, have been object of growing interest for State institutions, political parties, and NGOs. It is a notorious fact that programmes and projects realised in the last 15 years have had very little effect on the improvement of the status of Roma in Bulgaria. Protection and integration of minorities remains an issue of major concern also after the integration of Bulgaria to the EU. At the end of 2005 the European Commission issued a very critical monitoring report for Bulgaria.<sup>88</sup> The main critique was that the documents and actions adopted by the government remain largely on paper and that the related programmes and plans lack sufficient strategic approach, coordination and finance. The issues of major concern haven't changed – they are still related to the high rate of unemployment; poverty, worsened education and health care for Roma.

There are, however, some tendencies for better coordination between the stakeholders in this field and for overcoming the fragmentary approach. Experts consider that one solution could be the establishment of one coordinating body for Roma issues, whose functions shall include: 1) ensuring that all resources are spent efficiently; 2) coordinating related activities and monitoring results of the implemented international projects; 3) formulating priorities and informing and reporting on the achieved results.

The problem is that only in the course of the last two years we observe the elements of a coherent strategic approach of the government to tackle the issue, the clear definition of the importance of the social integration of Roma and the terms and conditions for its achievement. This is the reason why so little progress is assessed in the field.

#### *3.1. Existing legislation and institutional and policy framework.*

The principle of equality before the law is established in the Bulgarian Constitution. It is regrettable that the principle of equality de facto is not stipulated in the Constitution, as it is extremely relevant for the rights of

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<sup>88</sup> Bulgaria - Human rights and rights of minorities (Assessment by the October 2005 European Commission Comprehensive Monitoring Report) Source: European Commission: Bulgaria - 2005 Comprehensive Monitoring Report (COM (2005) 534 final).

[http://europa.eu.int/comm/enlargement/report\\_2005/pdf/SEC1352\\_CM\\_MASTER\\_BG%20COLLEGE.pdf](http://europa.eu.int/comm/enlargement/report_2005/pdf/SEC1352_CM_MASTER_BG%20COLLEGE.pdf).

minorities. This principle and also the principle of allowing special measures aimed at equality de facto for disadvantaged groups was enhanced by the Constitutional Court's rulings.

Major international instruments which make integral part of the Bulgarian legislation can be mentioned, and namely the Covenant on Economic, Social and Cultural Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), in force since January 1969, the above mentioned Framework Convention for the protection of National Minorities and others.

The Concluding Observations of the Committee on ESCR from 1999 are valid for the situation of minorities in employment and not yet fully implemented by the Bulgarian government.

This issue has been recently addressed (April 2006) by the Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe.<sup>89</sup> The Committee expressed its concerns about discrimination and exclusion of Roma in the area of employment.

It is important to note that affirmative action is mentioned in the CERD as a means to achieve equality and this is especially relevant for the situation of Roma people in Bulgaria.

The principle of equal treatment of all the citizens regardless of their race or ethnicity is established in the Law on Protection from Discrimination. This principle is established also in many other Bulgarian laws, like the Labor Code, the Employment Promotion Act, the Law on Integration of People with Disabilities, the Civil Servants' Act, the Criminal Code, and others.

The provisions of the LPFD which are especially pertinent to the rights of minorities in the field of employment stipulate that: special measures benefiting individuals or groups of persons in disadvantaged position in order to achieve equal opportunities are allowed, as far and while these measures are necessary; the employer shall ensure equal remuneration for equal and equivalent work and equal opportunities for vocational training for all groups; the employer shall protect the workers from harassment at work; positive measures are allowed in order to encourage persons belonging to less represented gender or ethnic group to apply for a certain job or position; the employer shall encourage vocational development and participation of workers and employees, belonging to a certain gender or ethnic group, when the latter are less represented among the workers and employees.

It is relevant to note that the measures and programmes under the Employment Promotion Act, where incentives are provided for the employment of groups at risk and vulnerable groups in the labour market, are deemed a priori non-discriminatory, according to the last amendments of the LPFD from 2006.

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89 Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Bulgaria, Adopted on 27 May 2004, Strasbourg, 5 April 2006, available online at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/4\\_opinions\\_of\\_the\\_advisory\\_committee/1\\_country\\_specific\\_opinions/1\\_first\\_cycle/1st\\_OP\\_Bulgaria\\_eng.asp#TopOfPage](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/4_opinions_of_the_advisory_committee/1_country_specific_opinions/1_first_cycle/1st_OP_Bulgaria_eng.asp#TopOfPage).

Although it might look a positive step, it makes an obstacle to the testing and “scanning” for discrimination of the programmes adopted by the Ministry of Labour and Social Policy (MLSP). The practice shows that the latter not always protect effectively the rights of disadvantaged groups.

In the last year before the accession to the EU along with the adopted legislation, programs and plans, the Government has made efforts to include institutional changes in terms of integration of Roma in Bulgarian society.<sup>90</sup> The National Council on Ethnic and Demographic issues (NCEDI) at the Council of Ministers was transformed into the National Council for cooperation on Ethnic and Demographic issues (NCCEDI) with Decree No. 333 from 10 December 2004. This is a consultative and coordinating body for the implementation of public policies on ethnic and demographic issues, whose functioning is supported by 13 deputy ministers, 7 chairs of State and executive agencies, representatives of the Bulgarian Academy of Sciences and of NGOs. Regional Councils on ethnic and demographic issues already exist and in 25 Regional administrations (all Regional administrations in the country being 28) twenty seven experts on minority issues were appointed. At present in a half of all 264 Bulgarian municipalities local experts on ethnic and demographic issues have been nominated.<sup>91</sup> Experts from NGOs can participate in the Regional and Local councils.

In March 2007 the National Council for cooperation on Ethnic and Demographic issues (NCCEDI) started the procedure on the establishment of seven working groups around several problem areas and namely: social policy, education, housing, infrastructure, culture and media, health care, youth and sports and legal issues.<sup>92</sup>

Other relevant structures at ministerial level exist at the MES (mentioned above), of the Ministry of Culture (Roma Public Council on cultural issues and Public Council on Cultural Diversity, Regional cultural policy departments).

Roma representatives are included in the discussions of integration policies, at the level of the MLSP, in the discussions on the Framework program for Equal integration of Roma in Bulgarian society and the governmental Action plan for

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90 The Bulgarian institutions work for the integration of Roma also in compliance with the following documents adopted and endorsed by the Government:

- National Programme for improvement of the living conditions of Roma in the Republic of Bulgaria for the period 2005-2015
- the Programme “ People are the walth of Bulgaria
- the Framework Program for equal integration of Roma in Bulgarian society
- The Health strategy concerning people in disadvantaged position, belonging to ethnic minorities and the Action plan to the Health strategy concerning people in disadvantaged position, belonging to ethnic minorities / 2005-2007/
- the strategies and plans mentioned in the section on education ,
- as well as the Joint memorandum on social inclusion of the Republic of Bulgaria and Action plan on improving the situation of Roma and Sinti within the OSCE Area

91 Data from the NCCEDI.

92 Information about the first working session of the NCCEDI for 2007 - [http://www.nccedi.government.bg/upload/docs/I\\_zasedanie\\_21.03.07.doc](http://www.nccedi.government.bg/upload/docs/I_zasedanie_21.03.07.doc).

2006. Despite that, participation of Roma in the formulation of the respective policies was assessed as insufficient by the State of the World's Minorities 2007 report.<sup>93</sup>

In March 2006 a National Programme for Improvement of the Living Conditions of Roma in the Republic of Bulgaria for the period 2005-2015 was adopted by the Council of Ministers. The Ministry of Regional Development is the executive body for the implementation of the above-mentioned programme, according to the Action plan for 2006-2007, adopted by the government. The overall costs for ten years are estimated at 1,26 billion BGN. The construction of 17 000 dwellings is planned. The main sources of financing will be: the state budget; the municipal budgets and the Structural Funds of the European Union. It is envisaged that the contribution of the municipalities will be 17% of the total cost of the Programme. For the period July 2006 – end of June 2007 Bulgaria chairs the Decade for Roma Inclusion. Priorities of the National Action include: education, health care, employment and improvement of living conditions. The Ministry of Labour and Social Policy (MLSP) is the coordinating institution for the implementation of the programme.<sup>94</sup> Two additional priorities have been set up for the country – protection against discrimination and cultural development. Several major achievements in the priority areas should be considered according to the official data of the MLSP.<sup>95</sup> Further data about Roma employment will be discussed.

### *3.2. Practice.*

According to the report on the implementation of the “Decade for Roma Inclusion”, 80% of Roma population in Bulgaria are beneficiaries of the most extensive programme “From social assistance to employment” for 2006 and 50% of Roma citizens have been integrated in the qualification and training programs. 33% of people employed under the project “Beautiful Bulgaria” (initiative of the UNDP and the MLSP) are Roma. According to data presented by the Minister of Labour and Social Policy, the National Action plan for Employment, such job opportunities are secured for 32 093 Roma, and 8123 were already professionally trained and prepared for the labour market and more than 2450 are participating in professional qualification courses.

Another 300 Roma took part in 2006 in the Programme for enhancement of the entrepreneurship. Ten specialized job fairs have been organized for Roma groups and 912 working places have been announced through 65 infrastructural projects for rural areas and Roma neighbourhoods. In 2006 as a pilot initiative the National program for Education and qualification of Roma was launched, where 2 800 people participate at present. Through the programme “Employment through business support” of the Agency for Social Assistance, 310 Roma people are involved. The Agency conducts a training of

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93 State of the World' s Minorities , pp. 101-102

94 According to expert opinions, this puts additional burden to the MLSP which concentrates too many initiatives in diverse fields and it can affect negatively the effective implementation of all these otherwise worthwhile initiatives.

95 Stenographical report from plenary session No 192 of the National Assembly of RBulgaria, 24.11.2006

[www.parliament.bg](http://www.parliament.bg).

social workers (100 people have been trained) who will work in the Roma community. The ambition of the MLSP is to involve in the initiative mainly Roma people. Another measure for the enhancement of the participation of this minority group is to appoint Roma representatives in all structures for social assistance in the country in case they satisfy the educational requirements. The idea is to give them the function of mediators and to work among Roma community on raising awareness about the programs of the MLSP.

In July 2006 the Strategy for management of human resources in the State administration for the period 2006–2013 was adopted, containing planning measures for the integration of vulnerable groups in the process.<sup>96</sup>

Although the data show some progress in the field, in order to speak about achievements the sustainability of Roma employment as well as the perspectives for real career have to be further assessed. For example, the overall results of the programme “From social assistance to employment” for Roma, show low employment sustainability. Regular overall assessment of the programmes is needed in order to measure the outcome and impact of the policies.

Despite the efforts described above, unemployment remains one of the gravest problems for the Roma ethnoses. In the regions with concentrated Roma population 65% to 75% of people are still out of work. According to research data of ASSA-M Agency from December 2005, unemployment rate among Roma above 15 years old is 59,5 %.

As in other countries from SEE, in Bulgaria unemployment rates are far higher among Roma than in majority households: 60% of Roma (between 15-55 years of age) are unemployed, in comparison to 25% (between 15-55 years of age) from the majority of the population.<sup>97</sup> About 28% of Roma are employed in the informal sector in comparison to 5% from the majority of the population. Unemployed Roma women make up 71% and there are 49% of men of the same ethnic group, as for the rest of the population these rates are 28% of unemployment among women and 22% among men. The authors of the quoted report (see note 9) conclude that few of the measures of the National Action plans for the decade of Roma inclusion reflect the gender differences in labour market trends. They recommend the adoption and implementation of concrete, gender-sensitive measures. The Decade action plans are often weak in terms of concrete mechanisms for better cooperation with employers, in terms of integrating Roma into the workforce. Encouraging public dialogue on Roma employment, as planned in the Bulgarian national action plan, is particularly important in this respect.

The low level of education and professional training is the main contributing factors for unemployment and isolation. About 70% of Roma have no training and can only work in the most unprestigious jobs. 80% of them have a fourth-grade or lower educational level and have difficulties in finding any job given the enhanced requirements of today’s labor market. The Roma workforce will remain

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96 START – Bulletin of C.E.G.A Foundation – Issue 8/2006.

97 Data is from Figure 1-22 from the report “At Risk: Roma and the Displaced in Southeast Europe”, UNDP Bratislava, 2006.

unqualified and without training, which – inter alia – means that it will also remain non-competitive.<sup>98</sup>

There are cases of discrimination on behalf of employers as well, and such discrimination prevents the Roma people from taking certain job positions. The social distance between the Roma population and the other ethnic groups continues to grow. The Roma people themselves are convinced that they are subject to discrimination in the labor market merely by virtue of being Roma, and not because of their lack of training and/or education.

One of the strategies for the survival of the Roma people in their current grave situation is called labor force mobility. It is not uncommon for entire families to move as soon as they find better opportunities for subsistence in other settlements. Another negative trend – because of the high raise of the unemployment after 1990, Roma became dependent on the social assistance allowances and move to urban areas, where these payments are regular.<sup>99</sup>

In 2006, again the support of NGOs and international project and donors, were key for the provision of direct services for Roma employment, such as access to credits. With the support of USAID and Catholic Relief Services (regional office in Sofia) the project “Partnership for business development of Roma entrepreneurs in Bulgarian communities” was launched, aiming at increased access to financial services and resources in seven municipalities in the country. About 1000 small credits will be guaranteed (two microfinancing institutions provide small loans of 500 Euros for the period of 4-6 or 12 months) until March 2008 and there is a high interest towards this programme.

In this connection, according to expert opinions, in order to guarantee employment of Roma, it is necessary to create a special state fund. This fund must grant preferential loans and require their use for employment of Roma.

Another type of direct support is currently available thanks to the opening of two business centres under the UNDP supported “JOBS” program in Roma districts in Bulgaria in 2006. (Burgas and Pazardjik). The centre aims at creating the possibility for improving the qualification of people from the minorities, as well as to provide new jobs and funds for establishing their own businesses. The centre in Bourgas has been functioning for a year and a half before its official opening and until now 240 people from the minority community have completed qualification courses there. The second business centre was opened in late October 2006 in the Roma district Iztok in the town of Pazardzhik. The centre was functioning for almost two years before its current headquarter building was opened. For that period its team provided jobs to 123 people and 1330 consultations. These good practices and experience will be expanded in other locations in Bulgaria under the JOBS program.<sup>100</sup>

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98 The Roma population in Bulgaria: the new challenges (Analytical report), Friedrich Ebert Foundation – Sofia regional bureau, report presented in April 2007 in Sofia.

99 Police control and the use of ethnical profiles in, Center for the study of Democracy, text available at: <http://www.vitoshka-research.com/fileSrc.php?id=1967>.

100 [http://www.jobs-bg.org/minority\\_bg.htm](http://www.jobs-bg.org/minority_bg.htm).

Other NGO initiatives and project have also provided invaluable support for the promotion of Roma employment. Last but not least example of that is a project implemented by the Bulgarian Industrial Association and the National Roma Centre Sveti Georgi completed in 2006. The project, which was funded under EU's PHARE program, included 40 young high school and university graduates, and gave priority to Roma people and women, who were trained and acquired the qualification of Economist and Manager.<sup>101</sup>

In addition to the already formulated recommendations, the following recommendations can be made:

- There is an imperative need for the introduction of amendments to the regulatory framework in the direction of increasing the margin between welfare support payments and work remuneration (i.e. wages and salaries), which the Roma people receive when they are hired to work in accordance with various programs.
- The employment prospects for the Roma people should include their participation in the local bodies set up to promote the self-organization and encouragement of Roma people in the local communities.
- Enhanced control should be introduced to overcome the problems connected with the grey sector of the economy where many Roma people have found employment.
- New programmes and service packages should be created in order to reduce the unemployment rate among the Roma population or new components should be included in the programme entitled "From social welfare support to jobs and employment" (the mentioned programme named above "From social assistance to employment").
- The incentives granted to employers who hire long-term unemployed and provide possibilities for further training and retraining of their employees should be increased.
- More young people of Roma ethnic origin should be included in training courses for construction workers, employees for the service industry, etc., which should be connected with concrete engagements for signing contracts of employment that have been agreed with the employers in advance.<sup>102</sup>

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101 Data from START – Bulletin of C.E.G.A Foundation – Issue 1, 2007

102 Recommendations of the authors of the report "The Roma population in Bulgaria: the new challenges", Friedrich Ebert Foundation – Sofia regional bureau. More information at: [www.fes.bg](http://www.fes.bg).

# Human Rights in the Republic of Croatia in 2006

By Marta Vidaković Mukić

## Abstract

This article explores the situation with human rights in Croatia in general in 2006. and the progress in respecting of human rights regarding a year before. It is clear that the stagnation is noticeable regarding a year of 2005. The consequences of violation of human rights from earlier years are not completely reorganized. The housing and other existential problems of returnees (the housing, employment, electricity supply, returning of agricultural land) still haven't been resolved adequately, it hasn't been done enough for integrating of Romany students in school system, social status of so called new pensioners is worsened and slowness of Croatian courts is still major problem. Ethnically motivated violence and ethnic intolerance is not reduced, although public reactions against these manifestations are more frequently then in previous years.

The human rights in legal acts in Croatia are well covered. The Constitution of the Republic of Croatia edits human rights in details, in separate chapter (Protection of human rights and fundamental freedoms), in 55 articles, and it is systematized in two groups: (1) personal and political freedoms and rights and (2) economic, social and cultural rights. All classical human rights and freedoms are included, most of the second-generation rights and right to healthy living. From 08th October 1991 the Republic of Croatia is, by notification of succession, a party of all international treaties which were accepted by ex Yugoslavia (SFRJ). Until the end of 2006 Croatia ratified most of international instruments for protection of human rights. The principles of legally no obligatory international treaties are also implemented in positive legislation.

This paper aims to uncover the individual rights: (1) to free and obligatory primary education and equal accessibility to all kinds of secondary and higher education, right on non-discrimination in education on all levels and fields of education, phenomena of voluntary segregation of children concerning their ethnic affiliation, in east Slavonija; (2) on legal protection of individual rights

(access to law), access to effective legal protection, a right on effective court protection, legal remedies and the Constitutional lawsuit, national human rights institutions, non-judicial bodies (ombudsman institutions and their role), the problems in realization of right to access to law and court, (3) labour rights and violations of labour rights .

In this article is covered the situation of disadvantaged, marginalized and vulnerable groups: (1) the right to work - minorities and development of equal opportunities for employment, discrimination in employment and other violations of labour rights (birth discrimination, ethnic discrimination) , (2) the social rights of the pensioners who are the most vulnerable and most numerous group, according to criteria of poverty, age and health condition and among them those who have retired after 31st December 1998. (so called new pensioners).

**Keywords:** Human rights, legal protection of individual human rights, access to education, access to work, discrimination, national minorities, pensioners

## Introduction

### *Political and social situation*

#### *1.1. General data.*

The Republic of Croatia is situated in Southeast Europe, between Slovenia in the Northwest (border length 670 km), Hungary in the North (355 km), Serbia in the East (Vojvodina 241 km), Bosnia and Herzegovina in the South and East (1001 km) and Montenegro (25 km) in the Southeast. It has a land territory of 56.542 km<sup>2</sup> and 31.067 km<sup>2</sup> of Adriatic sea. According to the 2001 census, there are 4,437.460 people living in Croatia. The capital city is Zagreb (779.145 citizens).<sup>103</sup> Monetary unit is Kuna (1 EUR = 7,39 HRK).

According to census data (2001) Croats make up majority of population with 89,6%, and all other national minorities together make up 7,5% of population. Serbs are the largest minority community (4,54%), while other minorities are considerably fewer in number: Bosniacs (0,5%), Italians (0,4%), Hungarians (0,4%), Albanians (0,3%), Slovenians (0,3%), Czechs (0,2%), Roma (0,2%), and others with 0,1% or less.

According to official records<sup>104</sup> 87,93% of population declared themselves Roman Catholics, while members of all other religious communities<sup>105</sup> make up together religious minority at 6,40%<sup>106</sup>.

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103 Population census 2001, The State Institute for Statistics.

104 Population census 2001, The State Institute for Statistics.

105 Greek Catholic church (0.14%), Old-Catholic church (0.01%), Orthodox churches (Bulgarian, Montenegrin, Greek, Macedonian, Roman, Russian and Serbian) that are totally 4.42%, Islamic religious congregation (1,28%), Jew religious congregation (0.01%), Adventist church (0.07%), Baptist church (0.04%), Evangelical church (0.08%), Jehovah's Witnesses (0.14%), Calvinistic church (0.09%), Methodist church (0.00) – there are only 15 people, Christ Pentagostic church (0.01%) and other religions (0.11%)

*1.2. Political situation.*

The Republic of Croatia is a parliamentary democracy. The political system is based on apportionment of power between legislative, executive and judicial government. The Constitution determines that people choose their own representatives in the Parliament (national parliament) and local and regional representative bodies, with direct election. The right to local and regional autonomy in decision-making is guaranteed by the Constitution.

According to the Constitution, the Croatian Parliament has at least 100, and at most 160 representatives who, on the basis of general and equal electoral law, are elected directly by secret voting for a 4-year term. Current (fifth) assembly of the Croatian Parliament has 152 representatives who were elected on 23 November 2003. Fifteen political parties have representatives in this assembly. Croatian Democratic Community - HDZ has the largest number of representatives (63 or 42%), the Social Democratic Party of Croatia – SDP (31+3 independent or 22,4%), the Croatian Peoples Party – Liberal Democrats – HNS (11 or 7,3%), the Croatian Peasant Party – HSS (9 or 6%) and the Croatian Party of Right – HSP (7 or 4,6%). National minorities are represented by 8 representatives (5,2%); 4 representatives were elected from the party lists, and 4 representatives are independent. Out of 152 representatives only 33 (22%) are women.

The Government of the Republic of Croatia is minority one party government, which is supported by coalition partners of HDZ: the Croatian Social – Liberal Party (HSL) with 3 representatives, the Croatian Party of Pensioners (HUS) with 3 representatives and Independent Democratic Serbian Party (SDSS) also with 3 representatives, and other 5 representatives of national minorities. Croatian Party of Right – (HSP) quietly supports HDZ with 7 representatives, because they provide quorum if needed when voting takes place. The Government of the Republic of Croatia consists of the President (Stjepan Mesić), two vice president and 12 ministers. Out of 15 members of Government only 3 are women (one is vice president, and two are ministers).

The President of the Republic represents the Republic of Croatia in country and abroad; he is looking after regular and harmonized functioning and stability of government; he is responsible for defence of independence and territorial integrity of the Republic of Croatia. The President is elected directly by secret voting and serves a 5-year term on the basis of general and equal electoral law, allowing possibility of two mandates per person. The President is elected by simple majority of votes. The President of the Republic is Stjepan Mesić who is in his second term (elected in second term on 16th January 2005.).

The political situation in Croatia during 2006 can be considered stable. However, majority of the citizens are distrustful towards politicians, no matter of their party affiliation. The citizens are unfortunately indifferent towards politics as there is an obvious lack of implementation of laws due to the lack of both will and funds. Sadly, corruption (especially in politics) is considered a normal, acceptable occurrence.

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106 There are 2.99% of agnostics and atheists.

There were no cases of serious human rights violations recorded during 2006, but neither was any serious progress in respect of human rights in comparison to the previous year. The stagnation regarding the general human rights situation in Croatia over the past couple of years is noticeable. The consequences of human rights violations are not given due consideration, for example, housing and other existential problems of returnees (the housing, employment, electricity supply, returning of agricultural land) still haven't been resolved adequately, very little is being done to integrate Roma students in schools, social status of the so called new pensioners is getting worse and slow courts are still a huge problem. Ethnically motivated violence and ethnic intolerance have not been reduced, although public is voicing its concerns over these issues more frequently than in previous years.

Despite obvious problems in realisation of human rights, according to an evaluation by the Organization for European Security and Cooperation, Croatia has a stable political situation.<sup>107</sup> The Human Rights Watch is more critical in its evaluation.<sup>108</sup> It expressed its concerns over the still existing obstacles to human rights realisation, especially concerning the rights of Serbs who returned to Croatia: no progress has been made in realising tenancy rights of Croatian Serbs that have been taken away during and after the war. Furthermore, there are a number of issues requiring urgent solutions, including worrying increase in a number of cases of ethnically motivated violence and abuse of Croatian Serbs; inadequate representation of members of Serbian minority in the state administration, administration of justice, executive bodies and the local administration. This concern extends to a number of issues pointing to open discrimination of Serbs, including electricity supply of Serbian returnees, discrimination in repairing houses that belong to Serbs that were damaged or ruined during the war, and difficulties Serbs face when intending to regain their agricultural estates in one part of the country.

In its report on human rights in Croatia, U.S. Department of State generally evaluates that government has respected its citizen's rights but it points out that there were problems in certain areas.<sup>109</sup> The judiciary still has significant debts, although number of unsolved cases during the year has decreased. Blackmailing eyewitnesses is still a problem in war crime cases highlighted recently in the trial to a parliament representative Branimir Glavaš. The courts mainly end trials in

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107 Report about progress of The Republic of Croatia in fulfilling international obligations from 2001 to 9 June 2006 (Izvjješće o napretku Republike Hrvatske u ispunjavanju međunarodnih obveza od 2001. od 9. 06. 2006.) page 4. It says that: 'Mission notice constant improvement of democratic aura in Croatia in recent five years. It's noticeable when the subject is on freedom of press and taking part in public discussions about mandate related questions; preparedness of most of state and local bodies of government and institutions on reforms founded on international obligations and agreements, including fight against corruption; development of transparency in management, better acceptance of national minorities; increasing acceptance of roll in civil society and improvement of relations between police and wider public.'

108 In report: Croatia: decade of disappointment – Continued obstacles for integration of Serbian returnees, (Hrvatska: desetljeće razočaranja - Kontinuirane prepreke za reintegraciju srpskih povratnika), September 2006.

109 Country Reports on Human Rights Practices – 2006, Realised by the Bureau of Democracy, Human Rights, and Labour, March 6, 2007

absence of accused for war crimes, but some of the trials that include a large number of accused are still active. The government did little in ensuring to return the property confiscated from minority religious communities during Yugoslav communist regime and hasn't implemented the adopted housing programme regarding the Serb returnees who lost their tenancy rights. Social exclusion of some national minority's members, especially Serbs and Roma, is still a huge problem. The Constitutional Law on rights of national minorities is not implemented, especially regarding employment in public sector. Discrimination of women and violence over women is still a present problem. School authorities are continuing with segregation of Romanian students who attend schools that are below national educational standards. Trafficking is still a problem. However, on the more positive side during 2006 the government continued its cooperation with International Court Tribunal for ex Yugoslavia (ICTY) and re-confirmed its commitment to processing Croats suspected of committing war crimes.

### *1.3. Social situation.*

The social situation hasn't improved significantly in comparison to the previous year. Employment rate in Croatia is one of the lowest in Europe and long-term unemployment (people out of work for more than 12 months) is a big problem, only Poland and Slovakia have a worse record within the EU.<sup>110</sup>

There were 1.759.492 economically active people in 2006. (39,65% of total population).<sup>111</sup> There were 836.595 economically active women (47,55% of total economically active people). There were 1.100.086 pensioners (24,79% of total population). Ratio between pension users and insured persons is 1:1,40.

There were averagely 291.616 of unemployed (16,6% of total active people).<sup>112</sup> There were more unemployed women than unemployed men (175.097). In this group of unemployed people majority of them are 50 years old or more – 24,8%, or very young, in the age group 15 to 19 – 14,1%. Women and young people are in an extremely difficult situation in the labour market. Unemployment rate of women is higher for women (20,9%), and women's salaries are lower than men's. According to educational structure the most unemployed (35,9%) have finished vocational secondary schools which lasts up to 3 years, followed by those who finished 4 year secondary schools (26,2%), persons who didn't finish primary school or without school (6,6%), persons who finished university (4,1%) and 2 year college (3,1%).

The salaries of employed people are relatively low compared to costs of life, especially housing costs. Average basic salary per employed person in 2006 was 4.602 Kunas (around 622 Euro),<sup>113</sup> and cost of an average flat measuring 60 m<sup>2</sup> (heating, electricity, water, telephone, garbage) were 1239,99 Kunas (around 167,57 Euro). According to the records of the Union of independent syndicates of Croatia average salary covered only 74% of costs of living for a family of four.

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110 Report no. 37992 of World Bank: Croatia: Evaluation of life's standard (Hrvatska: Ocjena životnog standarda), January, 2007.

111 Information from Monthly statistic report 3/2007 of State Institute for Statistic.

112 Average unemployment rate in 2005 was 17.9%

113 Monthly statistic report 3/2007 of State Institute for Statistic.

An average pension according to the Pension insurance law,<sup>114</sup> based on which 94,8% of all pensioners are receiving pensions, was 1.903.99 kn<sup>115</sup> (around 257 Euro), and the rate of average pension in average salary was 40,21%. Those who obtained their right to pension before 31 December 1998 have higher than average pensions (around 2.092,71 Kunas or 282 Euro). Users who made their right to pension after 1 January 1999 have pensions amounting to 1.552, 94 Kunas (around 210 Euro).

According to very restrictive criteria of World Bank, around 11% of population is poor, and further 10% is at risk of getting poor. Small families (1-2 persons) and bigger families (more than 6 members) are poorer and confronted with bigger risk of poverty. Poverty is more frequent among households whose members are older persons; pensioners are twice as likely to get poor than any other group.

## Human rights in legal acts

### 1. *Constitutional regulations regarding human rights*

The Constitution of the Republic of Croatia deals with human rights in detail in a separate chapter (Protection of human rights and fundamental freedoms), including 55 articles, divided into two groups: (1) personal and political freedoms and rights and (2) economic, social and cultural rights. All classical human rights and freedoms are included, most of the second-generation rights and the right to a healthy living.

Common regulations (articles 14 – 20 of the Constitution) guarantee freedoms and rights proposed by international instruments, especially International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, European Convention on Human Rights. A number of rights are further extended, while protection of some other rights not protected by international conventions, is additionally guaranteed.

The Constitution determines that basic freedoms and rights can be restricted by law only, to insure protection of freedoms and rights of other people, and protection of legal order, public moral and health, while equality is the underlining principle (article 17). Constitutional regulations about the right to life, prohibition of torturing, cruel or humiliating treatment or punishing, about legal determination of criminal acts and freedom of thinking, and religion cannot be suspended, not even in case of imminent threat to security of state.

The right to appeal against first instance judicial and governing verdicts is a constitutional right that can be excluded only in cases determined by law, but only if other form of legal protection is provided. The individual governing acts must be based upon law and Constitution guaranties judicial control of legality of those acts.

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<sup>114</sup> This regulation is not used on former members of Croatian Parliament, judges of constitutional court of the Republic of Croatia, employed military personnel, police officers, authorised personnel and Croatian protectors.

<sup>115</sup> Croatian institute for Social Security: Statistic information.

Constitutional regulations about personal and political rights include classic freedoms and rights – a right to life, inviolability of personal freedom and personality, a right to lawfully trial, inviolability of home, freedom of thinking and thought expressing, freedom of association, electoral right, and one commitment – military service. The constitution also guaranties classic freedoms of conscience and religion, and free public manifestation of religion and other beliefs. Total abolition of death penalty originates from the guarantee to the right to life. Death penalty is banned even during war.

Human personality and dignity is protected by prohibition of every form of abuse or conducting medical or health experiments without permission. A right to righteous trial includes trials in criminal and civil procedure before law and independent and unbiased court, in reasonable time.

The constitution guaranties a right to public gathering and peaceful demonstration (article 42). Everyone has a right of free association to protect its own interests or to stand up for social, economic, political, national, cultural or other beliefs or goals. Upon these rights citizens can found, get involved or leave political parties, unions and other societies. This right is restricted by prohibition of violent threatening to the democratic constitutional system, independency, and territorial integrity of the Republic.

In economic and social rights, the ownership and the right to inheritance are guarantied to all citizens of Croatia, and foreigners can acquire ownership right under conditions determined by law. The ownership can be limited or taken away only by law in interest of state with compensation in line with market value. The entrepreneur's freedom and freedom of market is determined by the constitution as a foundation of economic structure of the Republic of Croatia and thereby the state provides for all entrepreneurs equal legal position and prohibits misuse of any kind of monopoly.

According to Constitutional regulations, everyone has a right to work, freedom to choose occupation and employment under equal conditions, of every working place and duty. Every employee has a right to be paid and to be able to provide for his family a free life with dignity. Employees can have a part in decision-making of the company (participation). The Constitution determines that law regulates employees' and their families' right to social security, and provisions regarding pregnancy, birth, motherhood and child care. The Republic provides help to fulfil basic needs to weak, powerless and others who need it due to unemployment or incapability to work. Special care is devoted for protection of disabled persons and their involvement in social life. Everyone has a guarantied right to health care according to law.

Family gets special protection by the Republic, while marriage and co-habiting are regulated by law. For the purpose of protection of children the Constitution prohibits child labour and determines that children can't be employed before legally determined age nor can they be forced to work especially in dangerous conditions. Youth, pregnant women and disabled persons have the right to have special protection at work.

Primary education is obligatory and free, and secondary and university education is equally available to everyone in accordance with their abilities. The Constitution allows for physical and legal persons founding of private schools and universities according to law regulations and autonomy of universities guaranties a way that university can independently make decisions about its structure and work in accordance with the law. The Constitution guaranties freedom of scientific, cultural and artistic creativity that is helped, supported and protected by the Republic. Protection of moral and material rights from scientific, cultural, intellectual and artistic creativity and work is guarantied, and the Republic also provides financial assistance to professional sports development.

Everyone has the right to a healthy life, and the Republic provides conditions for healthy environment, so everyone is obligated, within its own work and powers, to dedicate special care to health, nature and environment protection.

## *2. International conventions about human rights accepted by the Republic of Croatia*

As of 8 October 1991 the Republic of Croatia is, by notification of succession, a party of all international treaties which were accepted by ex Yugoslavia (SFRJ). By the end of 2006 it ratified many international instruments for protection of human rights. The principles of international treaties are implemented in practice in positive legislation in Croatia. The Republic of Croatia is a party to the following international treaties that were ratified or accepted by notification:

- International Covenant on Civil and Political Rights, 1966
- Facultative Protocol to the International Covenant on Civil and Political Rights, 1966
- Second Facultative Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty, 1989
- International Covenant on Economic, Social and Cultural Rights, 1966
- Convention on the Prevention and Punishment for the Crime of Genocide, 1948
- Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 1968
- Convention on Slavery, 1926 and the Protocol amending the Convention on Slavery, 1953
- Supplementary Convention on the Abolition of Slavery, Slave Trade and institutes and practices similar to slavery, 1956
- Convention on the Suppression of the Trafficking of Persons and the Exploitation of the Prostitution of Others, 1950
- Convention of the International Labour Organization (no. 29) concerning Forced or Compulsory Labour, 1930
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- Convention of the International Labour Organization (no. 102) on the Minimum Standards of Social Security, 1952
- Convention on the Status of Refugees, 1951

- Protocol on the Status of Refugees, 1967
- Convention on the Status of Stateless Persons, 1954
- Convention of the International Labour Organization (no. 87) on the Freedom of Association and the Protection of the Right to Organize, 1948
- Convention of the International Labour Organization (no. 98) on the Application of Principles of the Right to Organize and to Collective Bargaining, 1949
- Convention of the International Labour Organization (no. 105) on the Abolition of Forced Labour, 1957
- Convention of the International Labour Organization (no. 122) on Employment Policies, 1964
- Convention of the International Labour Organization (no. 135) on Workers' Representatives, 1971
- Convention of the International Labour Organization (no. 138) on the Minimum Age for Admission into Employment, 1973
- Convention on the Political Rights of Women, 1952
- Convention on the Nationality of Married Women, 1957
- Convention on Consent to Marriage, Minimum Age for Marriage and the Registration of Marriages, 1962
- Convention on the Rights of the Child, 1989
- Facultative Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000
- Facultative Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000
- Convention against Transnational Organized Crime, 2000
- Protocol for the Prevention, Suppression and Punishment for Trafficking Persons, especially Women and Children, 2000
- Protocol against the Trafficking of Migrants by land, sea and air, 2000
- Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Conflicts in the Field, 1949
- Geneva Convention for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949
- Geneva Convention on the Treatment of Prisoners of War, 1949
- Geneva Convention on the Protection of Civilians in time of War, 1949
- Protocol Additional to the Geneva Convention of 12 August 1949 on the Protection of Victims of International Armed Conflicts, 1977
- Protocol Additional to the Geneva Convention of 12 August 1949 on the Protection of Victims of Internal Armed Conflicts, 1977
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- International Convention on Suppression and Punishment for the Crime of Apartheid, 1973
- International Convention against Apartheid in Sport, 1985
- Convention on the Elimination of All Forms of Discrimination against Women, 1979

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- Additional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999
  - Convention of the International Labour Organization (no. 100) on Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951
  - UNESCO Convention against Discrimination in Education, 1960
  - Convention of the International Labour Organization (no. 111) concerning Discrimination in respect of Employment and Occupation, 1958
  - Convention (ETS no.5) on the Protection of Human Rights and Fundamental Freedoms, 1950
  - Protocol no. 1 to the European Convention on Human Rights (abbreviated title), 1952
  - Protocol no. 4 to the European Convention on Human Rights securing certain rights and freedoms, 1963
  - Protocol no. 6 to the European Convention on Human Rights on the abolition of the death penalty, 1983
  - Protocol no. 7 to the European Convention on Human Rights, 1984
  - Protocol no. 11 to the European Convention on Human Rights, 1994 on the amendments of the Control Mechanism established by the Convention
  - Protocol no. 12 European Convention on Human Rights, 2000
  - Protocol no. 13 to the European Convention on Human Rights, 2002 on the abolition of the death penalty in all circumstances
  - Protocol no. 14 to the European Convention on Human Rights, 2004 on the alteration of the control system of the Convention
  - European Convention (ETS no. 090) on the Suppression of Terrorism, 1977
  - European Convention (ETS no. 126) on the Prevention of Torture, Inhumane or Degrading Treatment or Punishment, 1987
  - Protocol 1 (ETS no. 151) to the European Convention on the Prevention of Torture, Inhumane or Degrading Treatment or Punishment, 1993
  - Protocol 2 (ETS no. 152) to the European Convention on the Prevention of Torture, Inhumane or Degrading Treatment or Punishment, 1993
  - European Charter (ETS no. 148) on Regional or Minority Languages, 1992
  - Framework Convention (ETS no. 157) on the Protection of National Minorities, 1995
  - European Agreement (ETS no. 161) on Persons Participating in Proceedings of the European Court of Human Rights, 1996
  - Convention on the Protection of Cultural Objects in the Event of an Armed Conflict, 1954, with Protocol I
  - Convention on the Prohibition of the Production and Creation of Reserves of Bacteriological (biological) and Toxic Weapons and their Destruction, 1972

- Convention on the Prohibition or Limitation of the Utilization of Specific Conventional Weapons with Traumatic Effects or Activities, regardless of the purpose, 1980, with five Protocols
- Convention on the Prohibition of the Utilization, Creation of Reserves, Production and Transport of Land Mines and their Destruction (Ottawa Convention), 1997
- Rome Statute of the International Criminal Court
- European Social Charter (ETS no. 35), 1961
- Additional Protocol (ETS no. 128) to the European Social Charter, 1988
- Protocol (ETS no. 142) amending the European Social Charter, 1991
- Additional Protocol (ETS no. 158) to the European Social Charter providing for a system of collective complaints, 1995
- Additional Protocol (ETS no. 168) to the Convention on the Protection of Human Rights and the Dignity of the Human Being with respect to Applications of Biology and Medicine on the prohibition of Cloning Human Beings, 1998
- General Agreement on Privileges and Immunities of the Council of Europe, 1949 (hereinafter General Agreement)
- Protocol to the General Agreement, 1952
- Second Protocol to the General Agreement, 1956
- Third Protocol to the General Agreement, 1959
- Fourth Protocol to the General Agreement, 1961
- Fifth Protocol to the General Agreement, 1990
- Sixth Protocol to the General Agreement, 1996

The Republic of Croatia has signed but is yet to ratify European Convention (ETS no. 160) on the Rights of the Child, 1996. and European Convention on Human Rights and Biomedicine (ETS no. 164), 1997.

### *3. The most important laws that regulate a number of human rights*

In addition to Constitutional provisions, legal position and protection of national and ethnical minorities are regulated by the Constitutional law on rights of national minorities,<sup>116</sup> international conventions, bilateral agreements, Law on usage of language and script of national minorities in the Republic of Croatia<sup>117</sup> and the Law on education in language and script of national minorities.<sup>118</sup> Implementation of the rights of minorities to be represented in the Croatian Parliament and local representative bodies is regulated by the Law on electing representatives in the Croatian Parliament <sup>119</sup> and the Law on changes and

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116 Official Gazette of the Republic of Croatia, no. 155/02.

117 Official Gazette of the Republic of Croatia, no. 51/00.

118 Official Gazette of the Republic of Croatia, no. 51/00.

119 Official Gazette of the Republic of Croatia, no. 116/99, 109/00, 53/03

amendment on electing members of units of local and regional governing bodies.<sup>120</sup>

All rights determined by international instruments and some other rights are guaranteed to national minorities by the Constitutional law. Range of freedoms and rights of members of national minorities in Croatia is wider than in other European countries. Members of national minorities are guaranteed: (1) use of their language and script, privately, officially and in public; (2) education in their own language and script; (3) use of their national symbols; (4) cultural autonomy by preserving, developing and expressing their own culture, and preserving and protection of their cultural tradition; (5) right to confess their religion and to found religious communities together with other members of that religion; (6) access to media and performing activities of public communication (accepting and spreading of information) in their own language and script; (7) self organizing and joining in order to achieve common interests; (8) representation in representatives' bodies on state and local level and in governing and judicial bodies; (9) participation in public life and governing in local matters through council and representatives of national minorities; (10) protection from every activity which endangers or can endanger their survival, and freedoms and rights.

The Law on state employees, and changes and amendments of the Law on local and regional self-government commitment of state bodies was adopted to carry out representation guarantees provided in the Constitutional law.

Units of local and regional self-government should make a strategy of employment that would, upon current rate of minorities representing among employees, insure future employment of adequate number of minorities' members. These two laws commit members of national minorities to refer to the Constitutional law during the process of applying for employment in state service, but they do not specify in which way state bodies should enable it.

Citizens' freedoms and rights are protected by the Penal law<sup>121</sup> (Head XI). Constitutional regulations on fundamental freedoms and rights are developed in it. Protected objects are personal and political freedoms and rights, and economic, social and cultural rights guaranteed by international instruments and the Constitution. It regulates: (1) crime acts of violation of fundamental political and civil rights of a citizen (violation of citizen's equality – article 106, violation of rights to petition appeals and legal memorandums – article 112, obstruction of printing, distributing of printed materials and emitting – article 113); (2) crime acts against freedom of thinking, conscience and religion (violation of thought expressing – article 107, violation of right of gathering and public protest – article 108, violation of right to assembly – article 109, violation of religious freedom – article 110); (3) crime acts which violates right to labour and other labour rights (violation of right to strike – article 111, violation of right to labour and other labour rights – article 114, violation of right to health and disability protection –

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120 Official Gazette of the Republic of Croatia, no. 53/03.

121 Official Gazette of the Republic of Croatia, no. 110/97, 27/98, 50/00, 129/00, 51/01, 105/04, 84/05 and 71/06.

article 115); (4) crime acts against electoral right of electors deciding violation – article 116, denying of electoral right – article 117, misuse of electoral right – article 118, violation of voting secrecy – article 119, destroying of electoral papers – article 120, electoral fraud – article 121); (5) crime acts of violation of personal and citizens rights (violation of home invulnerability – article 122, illegal search – article 123, illegal freedom deprivation – article 124, kidnapping – article 125, extortion of statement – article 126, abuse of positions of official or public authority – article 127, forcing – article 128, threat – article 129, violation of secrecy of letters and other shipments – article 130, unauthorized recording and tapping – article 131, unauthorized revelation of professional secret – article 132, unauthorized use of personal data – article 133, violation of peace of deceased – article 134).

It is significant that, after oppositional parties insisted, the Croatian Parliament added amendments to the Penal law, although incomplete and inconsistent, predicted in general regulations (article 89 – a meaning of legal expressions) regarding the crime of hatred defining it as any other crime act from Penal law, as acts committed from hatred towards other person because of their race, skin colour, sex, sex orientation, language, religion, political or other belief, national or social origin, property, birth, education, social status, age, health status or other characteristics.<sup>122</sup> Hatred as a qualifying circumstance is predicted only in murder as a criminal act within the Penal law. (Article 91).

General regulations prohibit some forms of discrimination – based on national, gender and sex affiliation. Prohibition of discrimination in area of labour and employment has been conducted most consistently. Article 2 of the Labour law determines that direct or indirect discrimination of a person who is looking for work or who is working is prohibited (worker, employee, clerk or other worker based on race, skin colour, sex, sex orientation, marital status, family obligations, age, language, religion, political or other belief, national or social origin, property, birth, social status, membership or non membership in political party, membership or non membership in union and physical or psychological difficulties).<sup>123</sup> The Law on state employees (article 6) determines a principle of prohibition of discrimination and favouring citizens upon age, nationality, ethnical and territorial belonging, racial origin, political or religious beliefs or affiliations, disability, education, social status, sex, marital or family status, sex orientation or some other reasons contrary to the Constitution and freedoms and rights protected by law.<sup>124</sup> Article 11 prohibits discrimination of state employees. Sex discrimination is prohibited by the Law on equality of sexes that determines general conditions for protection and promoting of equality of sexes as fundamental virtue of constitutional order of the Republic of Croatia, and it defines and regulates ways of protection from sex discrimination and creating of equal opportunities for women and men. There are regulations on prohibitions of discrimination in other laws: for example, the Law on Croatian radio and

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122 Official Gazette of the Republic of Croatia, no. 71/06.

123 Official Gazette of the Republic of Croatia, no. 137/04.

124 Official Gazette of the Republic of Croatia, no. 92/05.

television, the Law on electronic media, the Law on right to access information, the Law on civil service, the Law on execution of prison sentence and others.

## Individual rights

### *1. Human Rights and Education: Right to Education*

*1.1. Right to free and obligatory primary education and equal accessibility to all kinds of secondary and higher education.* – In Croatia Right to Education is a Constitutional right guaranteed by Article 65 of the Constitution that has been elaborated by laws and other regulations. Educational system in the Republic of Croatia consists of: preschool, primary education, secondary education and higher education. Most of educational institutions are in public ownership, but in larger towns there are primary and secondary schools as well as colleges in private ownership. Members of national minorities in the Republic of Croatia fulfil the Right to Education in their own language and script based on the Constitution, Constitutional Law, Educating and Educational act on language and script of national minorities and other statutory regulations which handle the way of realizing rights of national minority to education in their own language and script.<sup>125</sup>

Through existing legal framework the Right to Education of members of minorities in language and script of national minorities is realized for Italian, Serbian, Hungarian, Czech, Slovakian, Ukrainian, Russian, German, Austrian, Albanian and Macedonian national minorities. Educating and education are realized from preschool age to university education (kindergarten, primary and secondary school as well as university). For members of minorities who don't have any institutionally organized kind of educational system, language and script as well as cultural specific of minority, organization of summer and winter schools (correspondence school) and other experimental programs of education are provided.

In preschool the so called active politic is realized according to Educating and Educational act on language and script of national minorities, meaning that classes are formed no matter how many pupils there are. School institutions that organise classes in language and script of minority are formed too. Classes follow unique plan and program of Croatian school system, but specific quality of minority is realised through studying of native language and additional contents in subjects: history, geography, musical and art education. In all models members of national minorities have obligatory program in Croatian language and script with their native language in equal number of classes. Religious instruction is organised according to valid lesson plan and program as well as agreement between religious community and Government of the Republic

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125 Official Gazette of the Republic of Croatia, no. 51/00.

of Croatia.<sup>126</sup> Learning minority's language as a language of social background in school institutions that mainly teach in Croatian language and script is only realised for Italian language.

Members of minorities have the right to organise institutions in their native language and script and Italian, Serbian, Czech and Hungarian national minorities realize that right.

In employment of teachers and professors for lessons in language of national minority, members of national minority have privilege. If there is a lack of qualified personnel it is possible to employ employees from ethnic homeland or members of other nationality who are obliged to be fluent in the language and script of related minority.

Government of the Republic of Croatia ensured through Ministry of Science, Education and Sport resources for manufacture of authorised textbooks and for translation and publishing of approved textbooks. For now, textbooks are translated and published only for lessons in primary schools and for cultivation of minority's language and culture. For secondary schools no textbooks for any minority have been translated. Ministry of Science, Education and Sport gave approval for the use of textbooks that are required for lessons in language and scripts of national minority imported from ethnic homelands.

#### *Primary schools.*

Primary education is compulsory and free in the Republic of Croatia in accord with the Constitution (Art. 65, 1.). According to the Law on Primary Education the primary education lasts eight years and it is compulsory and free for all children from age 6 to 15. This concerns all children with residence in the Republic of Croatia no matter what their nationality is.<sup>127</sup>

Existing system of primary schools allows all children on the territory of the Republic of Croatia regular primary education. At the end of the school year 2005/2006 there were 839 primary schools (central and independent), which had 1246 branch schools/departments in their structure.<sup>128</sup> At the beginning of the school year 2006/2007 number of primary schools, forms and pupils didn't significantly change in relation to beginning of the school year 2005/2006

During the school year 2005/2006 there were 387.952 pupils enrolled in primary schools (48,6% of them girls).<sup>129</sup> Observing pupils according to their age indicates that in regular schools there were only 2.7% pupils younger than 7 years. Upper boundary group of 15 years and older includes 0.5% pupils of which 89.6%

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126 Republic of Croatia concluded 4 contracts with Vatican (on cooperation in area of upbringing, culture and pastoral, on legal issues and economic issues), and Government of Croatia concluded contracts in areas from mutual interest with Serbian Orthodox Church in Croatia, Islamic community in Croatia, Evangelistic Church in Croatia and Reformed Christian Churches in Croatia, Evangelistic (Pentakostic) Church in Croatia, Christian Adventist Church in Croatia, Union of Baptists Churches in Croatia, Bulgarian Orthodox Church in Croatia, Croatian Old-catholic Church and Macedonian Orthodox Church in Croatia.

127 Official Gazette of the Republic of Croatia, no. 69/03 i 76/05.

128 Source: Ministry of Science, education and sport.

129 Source: State institute for statistics, Statistics information 2006.

attend 8th grade. Teacher/pupil ratio in regular education this school year is 1:13. In education of children and youth with difficulties in growth that ratio is 1:2,9. Women teachers make up 78.9% of a total number of teachers.

A total of 4.706 pupils attended classes in languages of national minorities: 333 in Czech, 1570 Italian, 202 Hungarian, 79 German and 2522 in Serbian language.

### *1.1.2. Secondary schools.*

Secondary education, after finishing primary education, allows everybody under equal conditions and in accordance to their abilities acquisition of knowledge and abilities for work and further education.

Secondary-school establishments and other legal persons perform secondary educational activities, and it includes different kinds and forms of educating and education, trainings and improvements defined by provisions of the Law on Secondary education and laws which define activity of individual kinds of secondary schools.<sup>130</sup>

At the end of the school year 2005/2006 there were 413 secondary schools which included 688 school units of different kind, depending on kind of syllabus which is 1.3% more then at the end of the school year 2004/2005. There were no significant changes in a number of forms. At the beginning of the school year 2006/2007 there were 414 secondary schools which included 693 school units of different kind, depending on kind of syllabus which is 1.5% more then at the beginning of the school year 2005/2006. There were no significant changes in a number of forms.

In school year 2005/2006 secondary schools were attended by 189.661 pupils. There were 50.4% of girls although unequally represented depending on the kind of secondary school. Art schools, for example, had 70% of girls enrolled, grammar schools 63%, technical and similar schools 49.5% and in industrial and vocational schools there were only 36.2% of girls. A total of 46.551 pupils finished secondary school during 2006, 50.9% of those were girls. Number of pupils in secondary schools in the school year 2006/2007 is fewer by 1.1% in comparison to the previous school year. Number of pupils decreased in schools educating youth with difficulties by 4.8%.

Out of the total number of pupils in regular education there are only 2.2% pupils who failed and have to repeat the year (in the first year 3.5%, in the second 2.5%, in the third 1.5% and in the forth 0.6%). According to ages it can be concluded that there are 98.7% of pupils aged between 14 and 18, appropriate age for secondary education. There are only 1.2% of pupils over 18 and 0.1% under 14 years and these are mostly pupils of secondary art schools (musical and dance).

In secondary schools in minority languages there were 2.173 pupils enrolled in classes in Czech, Hungarian, Serbian and Italian language in 13 schools. Classes in Czech are held in Grammar school in Daruvar, Hungarian is a part of educational and cultural centre of Hungarians of the Republic of Croatia in Osijek (general grammar school, secondary commercial school, secondary tourist school). Classes in Italian language are held in Italian secondary school for

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130 Official Gazette of the Republic of Croatia, no. 69/03 i 81/05.

different professions in Rijeka, Buje, Pula and Rovinj. Schools in Serbian language are the most represented (7), four in Vukovar two in Beli Manastir and one in Dalj.

In practice there is tolerance towards schools with classes in language of national minorities and especially in privileges connected with organization of work and registration of pupils in first form of secondary school. For pupils, who are educated in language and script of national minority, classes with small number of pupils are organized. On the occasion of planning quantitative restriction for registration in schools which organized lessons in Serbian language (Beli Manastir, Dalj and Vukovar), rule of the symmetric "offer" of educating programmes and classes is applied in the same volume for registration of pupils of Serbian national minority as well as Croatian pupils. Decision on elements and criteria for election of candidates for registration in secondary schools, registration concerning test score is made easier for pupils from national minorities, they can register with less than 10% points out of determined number for whole population. This decision concerns pupils of Roma national minority too, on the basis of National program for Roma. Pupils of Roma national minority who live in conditions that could influence his success in primary school can register in secondary school if he has up to 10% less points out of determined number for whole population, or if he passes an abilities-oriented exam in schools with this as the only condition.

#### *.Schools of Higher Education*

According to the Act on Scientific Activity and Higher Education, admission to study is based on public competition which is proclaimed by University, Polytechnic or School of Higher Education which realize study at least six months before beginning of the classes.<sup>131</sup> University, Polytechnic or School of Higher Education define the procedure of applicants' selection for admission in a way that guarantee equality of all applicants without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, social position, invalidity, sexual commitment or age. University, Polytechnic or School of Higher Education define criteria (success in previous education, type of finished education, success on qualification or other exam, special knowledge, skills or abilities and similar) based on which qualification and selection of applicants for admission then takes place. Students who study with support of authorized ministry don't pay for their education, while students who do not receive grants and part-time students pay for their education. Foreign citizens register to study under equal conditions as Croatian citizens, but according to a decision of authorized government body, School of Higher education institution can demand full or partial payment of tuition fees from them. Registration of foreign citizens can be limited or refused if it is study related to military or police education or other study in the interest of national security.

In the Republic of Croatia, there are six universities (in Zagreb, Rijeka, Split, Osijek, Zadar and Dubrovnik). There are a total of 103 Schools of Higher

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131 Official Gazette of the Republic of Croatia, no. 123/03, 105/04 i 174/04.

Education (out of that number there are 6 Polytechnic schools, 24 School of Higher Education, universities, art academies and higher denominational schools 73). In the academic year 2004/2005 there were was a total of 134 986 registered students.

In Schools of Higher education members of national minorities have classes in Croatian language, with exception of some Schools of Higher education in which classes are organised in language of minority. University in Rijeka, Higher teacher-training school in Pula implement studies of class teaching and preschool education in Italian language for Italian national minority. Study for teachers (class teaching) in Serbian language is implemented in Teacher training college in University in Zagreb.

#### *1.1.4. Constitutional Law on Education, Law on equal approach to education.*

This Law is the most consistently and the most completely implemented of all individual human rights laws. According to the Law on Primary Education, primary education is obligatory for all children between ages 7 - 15; all children who turned 6 by 31 March of current year are obligatory to start primary school in September. Parents who don't enrol their children on time in primary school, or parents whose children leave primary school before they turn 15 are breaking the law and in specific cases and under harder violation of parents duty, right to parenting can be removed.<sup>132</sup> Almost all parents (regardless of race or ethnic affiliation) hold to that obligation. Roma make an exception; most of Roma parents don't enrol their children in primary school and many tolerate or even encourage leaving school 12 or 13 (mostly female children).

There aren't statistic data about number of Roma children under school obligation as well as data about number of Roma children that never join primary education. There is only an evaluation of the Government of the Republic of Croatia<sup>133</sup> stating that about one third of Roma children never join the school system. There aren't any data either about how many Roma children leave primary school by the age of 15, how many, if any at all, legal or other procedures that centre for social welfare started regarding Roma parents whose children don't attend obligatory primary education, and there isn't a single familiar case of starting procedure of taking away the right to parenting for parents of Roma children who don't attend primary school.

Because of the absence of above mentioned data it can be concluded that free primary education isn't equally available to all Roma children, school authorities and centres for social welfare don't undertake any actions provided by Law to further help support their right to education or take any actions against parents who keep their children out of school. They too often hide behind the excuse that 'it's the way of Roma life and culture', which is completely unacceptable and untrue. Inaction and indifference towards Roma children isn't only a violation of their basic right to education of, but it also hampers their opportunities later in life.

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132 According to the Law on family (Official Gazette of the Republic of Croatia, no. 116/03,17/04 i 36/04).

133 Published on pages. 31 - 33. of National agenda for Romanies in 2003.

*1.2. Right to non-discrimination in education at all levels and fields of education.*

Right to non-discrimination in education at all levels and fields of education is normatively acknowledged to all and it's respected in practice. Only Roma make an exception. As well as denials of the Law and commitment on free primary education, which denies the possibility of further education, Roma pupils continue to be discriminated against and segregation based on race and minority affiliation<sup>134</sup> is applied in some primary schools in Medimurje and Varazdin county. Classes for Roma pupils are held in special, ethnically clean classrooms (in Orehovica, Macin, Kusanac, Podturena and Petrijanac – branch school in Srmac). For example, according to data of Managing board for social activities of Medimurje County, primary school in Macin in school year 2005/2006 11 classes from 1 to 4 year were formed including 247 registered pupils.<sup>135</sup> Out of that number there were 198 Roma pupils and 49 other pupils. Only Roma pupils were placed in seven classes and in additional four classes 35 Roma pupils were mixed with 49 other pupils. Similar practice is taking place in other mentioned schools.

It's interesting to mention that discrimination of Roma pupils extended to their teachers. Croatian Helsinki board received complaints from a teacher of Primary school in Strmac at the end of 2005 who complains that she, after years-long work in branch school attended by Romany pupils can't get transferred to a central school which is considerably closer to her place of living and she complained too on disparaging relation of school's principal to her because of her years-long work with Roma pupils only.

Even though most pupils, members of national minorities have classes in their native language or they have part of classes that is important for cultivation of their culture in native language, Roma children don't have classes in their own language. They have classes in Croatian.<sup>136</sup> Members of national minorities for Roma children special programs that establish their language and culture aren't organized neither as consultative forms of education in their language.

There was a problem in organization of classes in minority language and script with actual and voluntary segregation of children concerning their ethnic affiliation in east Slavonija (Vukovar). Non-government organizations, especially Nansen dialogue centre in Osijek warned about the problem of pupils' segregation who attend classes in Serbian language in special schools in Vukovar.<sup>137</sup> Segregation took place on parents and pupils' request to attend

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134 Problem of segregation of Roma students was publicly pointed out for the first time in 2001 in regular annual Report on work of Ombudsman for year of 2000

135 On the 05. 07. 2005.

136 Roma in Croatia don't speak unique language, not even in Medimurje County where Roma speak in two different Roma dialects

137 So far, high school students of two schools in Vukovar (the Technical school "Nikola Tesla" and the Third high school) studied in separate shifts, while students of Gymnasium and the First high school had separate school entrances.

classes in special schools (which are situated in different buildings), or at least in different shifts so that they don't attend classes in the same shift as other pupils. IDCM<sup>138</sup> warned about the problem of actual, voluntary segregation. Finally, from September this year, school year 2006/2007 practice of ethnic segregation was given up and for the first time after peaceful reintegration, after nine years, in Vukovar, in all school sessions in secondary schools, forms with pupils that attend classes in Croatian are together with those that attend classes in Serbian language and Cyrillic script.<sup>139</sup>

Conclusively, it is important to notice that only Roma are denied the Right to Education and are discriminated in some elementary schools. Taking into account the fact that a big number of Roma pupils never finish school, Roma pupils in secondary schools are very few in number, as well as in vocational schools. Unfortunately, the human rights of Roma pupils are still widely violated which is manifested in the lack of concrete measures for stop the discrimination (mostly occurring in regards to their race and ethnic affiliation) and segregation of Roma pupils.

## *2. Access to rights: National Human Rights Institutions in the Country*

### *2.1. The normative frame.*

Without possibility of effective legal protection, rights guaranteed by legal system are not possible to realize. Therefore, a right to legal protection of individual rights (access to law), especially a right to effective court protection, is a fundamental human right. In case of violation of individual human right, protection can be achieved in criminal, civil or administrative procedure. According to the UN Charter, the International pact on civil and political rights, the European Convention for protection human rights and basic freedoms, the Constitution of Republic of Croatia (article 18.) the right to appeal against single first instance administrative and court decision is guaranteed and can be excluded only in cases determined by law, but only if other legal protection is insured. Individual administrative decision must be founded on a legal provision, and the Constitution guarantees court the control of these acts. Against every single administrative or court decision a legal remedy is guaranteed, and against administrative decision court protection is guaranteed as well. In the end, every individual right is protected in court.

The process regulations (the Law on criminal procedure, the Law on civil procedure and the Law on general administrative procedure) are putting in order regular and exceptional legal remedies and conditions for their submission. Administrative procedure in courts (penal and civil) submitting regular legal remedies prevents validity of decision of process body. In criminal procedure, regular legal remedies are the appeal against sentence of first instance court, the appeal against second instance/appeal court sentence, and the appeal against court ruling. In civil procedure, regular legal remedies are the appeal against

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138 International Displacement Monitoring Center: "Croatia: Reforms come to late for most remaining ethnic Serb IDPs", 18 April 2006.

139 The news published ( Jutarnji list, Večernji list) 4 June 2006

verdict, the appeal against ruling, and the objection against a pay order. In administrative procedure regular legal remedies are the appeal against ruling and the appeal against conclusion. However, against the first instance ruling of ministries and other central bodies of the government administration an appeal can be submitted only when predicted by law. Against the rulings of the Croatian parliament and the Government appeals can't be submitted. In case when appeal is not allowed, one can start a lawsuit before the Administrative court of the Republic of Croatia.

The Croatian legal system, besides regular and exceptional legal remedies, knows also the Constitutional lawsuit as an additional procedure of protection of rights guaranteed by the Constitution, which are violated by penal court verdict, civil court verdict or administrative decision. According to the Law on Constitutional Court of the Republic of Croatia (article 62.), anyone can submit a constitutional lawsuit to the Constitutional court if he/she thinks that his/hers human rights and freedoms, or a right to local and regional self-government guaranteed by the Constitution are violated, or it was decided of his/hers rights and obligations or a lawsuit or suspicion on crime act, by a single act of central government or self-government bodies or by company with public authority. If a different type of legal protection is predicted for violation of constitutional rights, a constitutional lawsuit can be submitted only when these legal remedies have been exhausted. In administrative matters where administrative dispute is allowed or a revision in civil or extra-judicial procedure, legal procedure has been exhausted when these legal remedies have been all exhausted.

As non-judicial bodies, working in Croatia, there are three Ombudsman institutions: the Popular Ombudsman, the Ombudsman for children and the Ombudsman for equality of sexes. The Popular Ombudsman is dealing with individual cases of violation of citizens rights committed by the government administration bodies, bodies with public authorities or workers in these bodies, and he examines other issues of interest for protection of constitutional and legal rights based on other sources of knowledge (medias) which relates to improper work of administrative bodies or bodies with public authorities. The Ombudsman for children is a specialized institution which follows coordination of laws and other regulations in Croatia which relate to protection of rights and interests of children with regulations of the Constitution, the Convention on the Rights of the Child and other international documents which relate to protection of rights and interests of children; executing of commitments of the Republic of Croatia which come from the Convention on the Rights of the Child and other international documents; applying of all regulations which relate to protection of rights and interests of children; violations of individual rights of children and examines general manifestations and ways of violation of rights and interests of children; stands up for protection and promotion of rights and interests of children with special needs, suggests undertaking of measures to build whole system of protection and promotion of children's right and for preventing of harmful working which endanger their interests; informs public on condition of children's rights; meets and advises children on ways of achieving and protection of their rights and interests; cooperates with children, encourages them to speak and accepts their opinion; initiates and participates in public activities directed towards improvement of children's position and suggests measures to increase

their influence in society. Institution of the Ombudsman for equality of sexes is specialized institution, which works independently, and it follows execution of laws and other regulations that consider equality of sexes. The Ombudsman examines cases of violation of principle of equality of sexes, cases of discrimination towards individuals and groups committed by bodies of central government or self-government bodies or by companies with public authority and other physical persons and companies. Regulations determine that anyone can turn to the Ombudsman, and that Ombudsmen can examine violations of rights on their own initiative – *ex officio*. All three Ombudsmen are authorized to warn on violations of rights, to give suggestions, to request reports from administrative bodies and bodies with public authority, and to submit annual and exceptional reports to the Croatian parliament. They also have a right to initiate bringing of new or initiate changes in existing regulations.

### *2.2. Realization of right to access right*

Although a right to access court, including a right to access other bodies and institutions which make decisions on individual rights, is guaranteed at constitutional level, it is difficult to accomplish access to right in practice, especially to access the court.

At normative level, party in administrative process is protected in case of administration silence. However, there is no real protection when it is asked from the Administrative court of Republic of Croatia because of silence of appeal body. The Administrative court of Republic of Croatia doesn't, even in cases of repeatable silence of appeal body, conduct a procedure of full jurisdiction in which it replaces missing administrative decision with one of its own. The Administrative court also doesn't decide competently in cases of full jurisdiction when it repeatedly cancels second-instance administrative decisions. By this, The Administrative court puts people in a situation where they cannot realize their rights for years.

Although the efficiency of courts improved in 2006, in comparison to other years, other aspects of right to access administration of justice, like transparency, simplicity of procedures, availability of information and costs of legal protection have not shown positive improvements in 2006.

All regular courts<sup>140</sup> received<sup>141</sup> a total of 7,61% less cases in 2006<sup>142</sup> than in 2005 and they resolved 8,06% of cases more than in 2005, so the number of unsolved cases decrease by 38,91%. However, it is worth emphasizing that cases that have been received as new in previous years and in which decision has been cancelled in appeal procedure and they have been returned to court of first instance to retrial were enlisted in 2006 as new ones. This methodological procedure really hides in fact of the real timeframe for resolving of some cases, which are enlisted as new by adding a new registration number although they are old unsolved cases. There's been a significant increase in a number of solved cases only in some kind

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140 Municipal, county, mercantile, High mercantile, Administrative and Supreme court of Republic of Croatia.

141 There are 1.331.124 new cases, 1.766.265 solved cases, and 683.304 unsolved ones.

142 Source: Ministry of justice: Solved unsolved cases 2006.

of cases. The biggest increase is noted in cases of confiscation of real estate. Improvement of updates in real estate cases is not a surprise, regarding help and pressure of the European Union due to easier obtaining of real estates of citizens of the EU in Croatia.

Special reason for concern is the fact that in 2006 there was an extremely limited number of offers of free legal aid from the Croatia Lawyer's Chamber. Also, relationships between lawyers and clients were not improved in 2006. Lawyers provided little or no information regarding topical procedures, administrative and court procedure, or even basic information on the progress of a single procedure, or on the content of final decision. The availability of information does not exist even on those procedures declared to be in the interest of wider public.

Also, the Ombudsman's institutions have not been an effective instrument for protection of rights of individuals guaranteed by the Constitution, international documents and law. The reason of their inefficiency is partly the unwillingness of Ombudsmen to start disciplinary and other procedures against unscrupulous public employees, for what they are authorized by law. Croatian Ombudsmen rarely use media pressure to solve problems. In their rare public performances they are giving general statements and avoid pointing at the specific violations of human rights they have identified or violators themselves.

### *2.3. Participation of citizens and their influence on political decisions.*

Although the Constitution and law predicts referendum as a way of citizen's participation most important political issues, this way of people direct expression of will is not used in Croatia. Only one government referendum was held (25 April 1991) when citizens decided on independence of Croatia. Only a few local advisory referendums were held on the organization of entities for local self-government (municipality) in the nineties.

The citizen's influence on political decisions of central government bodies, especially decisions of Croatian parliament and Government is small. In the procedures of lawmaking, possibility of public debate is not predicted by the Croatian parliament and Government's code book, so public debate does not conduct in a way that citizens may be able to direct their opinions and remarks to the author of the proposal with his obligation to consider them and informing the publics on his standing.

The only way in which citizens may be able to influence political decisions are the groups for pressure and lobbyists. The lobbyists and groups for pressure who are legally working in Croatia are the NGOs, most often those that deal with promoting and protection of human rights. That means that a relatively small number of citizens is included in these activities.

In 2006, NGOs, especially Transparency International - Croatia, GONG, Iskorak and Kontra, Serbian Democratic Forum and Croatian Helsinki Committee conducted public debates and public campaigns for bringing the Law on political parties financing, the Law on changes and amendments of penal law, the Law on registered partnership, the Law on secrecy of information and the Law on changes and amendments of the Law on rights to access information.

The biggest success NGOs (Iskorak, Kontra and Serbian Democratic Forum) achieved was when Croatian parliament's board for human rights of national minorities voted, with reserve of representatives Croatian Democratic

Community (HDZ), for propositions on Penal law from legal team of Iskorak and Kontra, who introduced the term crime of hatred. Croatian parliament accepted suggested proposition of change in the Penal law.

In organization of Transparency International of Croatia, a round table was held in Zagreb with the subject of "Funding of political parties and elective campaigns". It was stated, that financing of political parties and campaigns is not transparent in Croatia because the three existing laws regulating these issues do not regulate ways of acquiring incomes or introduce any cost limits. Transparency International of Croatia announced its investigation of public opinion which showed that large majority of citizens, 89,5%, thought that it is necessary to precisely regulate the financing of political parties and campaigns in Croatia. 61,2% of citizens think that the main motive for donations is expectation of favours (business favours or the mandate buying) in return. Slightly less than fourth of surveyed people (24,2%) think that the donations are a consequence of good private relationship of individuals or good relations of leaders of companies and leaders of parties or candidates. 7,6% of surveyed people saw the main motives for donating in agreeing with political agenda of the party or the candidate. That is why the Transparency International presented its own proposition of the Law on financing of the political parties. This campaign attracted attention of common public on problems of political corruption and the dominant public opinion stated that it is necessary to have a law that will regulate this issue.

The Centre for Peace Studies in Zagreb organized a round table on proposition of the Law on intelligence - security system of the Republic of Croatia, after the Proposition passed its first reading in the parliament of Croatia. The Centre for Peace Studies evaluated that there is a large number debatable ranks in this proposition, and yet the broader public debate didn't take place. The remarks and opinions expressed on this debate have not been accepted. The Government adopted only the remark from earlier hearings that The Council for Civic Supervision of Security Services is given slightly bigger authorities than in original text.

After the Government's office for equality of sexes had finished a draft for proposal of National policy for promoting of equality of sexes 2006 – 2010 and forwarded it to the Working group which is entitled to make it, with deadline for reviving of only 3 days, The Female network of Croatia (whose coordinator Bojana Genov is also a member of mentioned Working group) reacted and sent an open letter to the Government's office for equality of sexes and vice president of Government Jadranka Kosor. The Female network of Croatia pointed out that in order to make such document, it is necessary to hold a public debate not only for its quality but to convert attention of public to it.

The Transparency International of Croatia conducted a research on appliance of the Law on access to information and informed general public that they sent a question form to 200 bodies of public power and that 141 of them answered, 70,5 %, whereof the 125 (62,5%) made it inside legal deadline of 15 days. This is the best response since September of 2004 when TIC started to send question forms to the bodies of public power to determine if they are carrying out the Law on access to information. 49,57 % of institutions answered on these question forms

in 2004 and in 2005 this percentage was 57,5%. The GONG and the TIC initiated changes of the Law, but the proposition of opposition parties to found Ombudsman for information did not pass in Parliament of Croatia.

The round table was held in Pula in organization of Institute for Democracy on the subject "Media freedom and human rights in Croatia in 2006 – Voice of Istria case ". This gathering was addressed by Ivo Banac, independent representative in Croatian Parliament; Andrea Feldman director of iDEMO; Snježana Matejčić, journalist of Voice of Istria and union representative.

The speakers pointed out problems in Croatian media through the case of journalist and editor of "Voice of Istria" being suspended in autumn of 2005, and recent suspension of journalist of HRT (Croatian radio and television) for a story on debatable speech of president Mesić from early nineties.

It is quoted that media freedoms are especially imperilled in smaller communities where business, political and interest of criminal milieu are put before the right on accurate information and where it is difficult to stand up to the monopolization of media. It is pointed out that a worrying number of 30% of citizens of Croatia are favouring censoring of media. This is a result of apathy, confusion and lethargy of citizens who are a convenience to the arbitrary rulings in favour of private interests.

On the drift of Iskorak and Kontra oppositional representatives board the Preposition on registered partnership to Croatian parliament, which proposes extension of rights to unisexual communities regarding to right given to them by current Law on unisexual communities. Based on this debate, legal team of societies Iskorak and Kontra spoke to public and state institutions demanding abolition of discrimination of unisex couples through Croatian legislature. The Croatian parliament hasn't accepted their proposition.

### *3. Disadvantaged, Marginalized and Vulnerable Groups*

The right to work - Minorities and development of equal opportunities for employment

The right to labour and freedom of labour, free choice of employment as well as equal availability of each job or duty under same conditions is guaranteed by the Constitution (article 54). The Constitution also guarantees the right to earnings to every employee that can insure him and his family free and dignified life (article 55.). Every employee has the right to a week long rest and paid summer vacation. The law also determines regulations regarding overtime work.

Constitutional rights are developed by the Law on labour<sup>143</sup> and The Law on state employees<sup>144</sup>, the Constitutional law on rights of national minorities, and collective contracts. Despite of good regulations, a right to labour and other rights connected to labour were most frequently violated in 2006.

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143 Official Gazette of the Republic of Croatia, no. 137/04

144 Official Gazette of the Republic of Croatia, no. 92/05.

### *3.1. Discrimination in employment*

#### *3.1.1. Discrimination based on birth.*

A right to labour was most frequently violated in employment by discriminating certain categories of job seekers based on age, birth and ethnic background. Percentage of women employees has been constant for the past five years - between 44,5% and 45,5% (in 2006 it was 45,1%). Almost half of women (47,8%) were employed in only 4 lines of work: retail trade, education, health care and social services.

Official statistics of employment movement are supporting the fact that sex (female) and age (over 40 years) make it difficult to find a job. Women make majority of unemployed in Croatia 60,6%. A research conducted by web portal "My Job" in February of 2006 on the sample of 1.134 people, tells us about wide age discrimination of job seekers, which affects young and old workers, but in either case more women than men. Although the employers, while advertising for job application, are careful not to give an advantage to men before women it does not stop them to discriminate women with family obligations in interviews.

Although a number of employed in 2006 who weren't working full time is irrelevant in comparison with European trends, for women rights the fact that from all employed in part time jobs, women are making the 68% is a significant figure.

According to statistics, total average monthly pay in 2006 was 4.602 Kunas. Women were paid less by 10,8% on average. The female average is "overthrowing" the total state average of pays so the men are earning more than state pay average.

The fact is that women are segregated in lines of work with lower salaries and within lines of work with lower salaries (horizontal plus vertical discrimination).

Discrimination of women in employment is often hidden, not immediately obvious, but it is there and can be directly and indirectly proven. Women are mainly employed in lower pay sectors (services, work intensive industry like a textile industry). They are disproportional majority in "part-time" jobs, and they are advancing slower than men (merely 6% of women are among top managers). Young women are a non-desirable workforce because of family commitments. Experiences of women, while looking for job, point out to prejudices that exist towards employment of women and it affects their advancing in career as well. Public policies and financially accessible social services that will ease up women's double burden (working and family) and ease up their reintegration in work after maternity leave are missing in Croatia.

#### *3.1.2. Ethnic discrimination.*

Official systematic research on discrimination of foreigners, refugees, asylum seekers and members of national minorities in employment was not conducted in Croatia.<sup>145</sup> Such research was not conducted in 2005 nor in 2006. Also, there is no

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<sup>145</sup> Research that would be conducted by bodies of public authorities or bodies entrusted with public authorities in areas of labour and employment

special body or institution that would research and be authorized to undertake certain measures in case of appearance of discrimination toward citizens of ethnical status of victim of discrimination. However, there are partial researches conducted in 2005 and 2006 on discrimination of members of national minorities, within which discrimination in employment was processed.<sup>146</sup> Especially interesting is the research conducted in September of 2006 by Serbian Democratic Forum on appliance of article 22. of the Constitutional law on the subject of (un)equal employment chance of national minorities.

During 2006 central and local government showed some sympathy in matters of suppression of discrimination in employment, especially members of the two most endangered ethnic minorities - Serbs and Roma. The central government bodies, especially The Government of Croatia is showing that it is aware of the necessity of equal employment of national minorities members in public sector, and its own tasks in suppression of discrimination in employment. However, not much has been done to improve the situation.

According to the report of OSCE Mission in Croatia, only in 2006 the Government took some direct and organizational steps to improve availability of statistical data on percentage of minorities members employed in public sector, but it had not founded a legal mechanism to implement the right of employment of national minorities.<sup>147</sup> A practice of encouraging minority candidates for employment to refer to their minorities status in process of employment still isn't established. Also, according to evaluation of OSCE, there is no system to help insure adequate representation of minorities in public establishments like schools, hospitals, municipal services and others.

There is no special or specialized non-judicial body In Croatia, which would protect labour rights and respond to braches of regulations in employment by non-state subjects (mercantile companies, craftsmen and others), including breach of prohibition of discrimination. In case of violations these rights are protected in civil judicial procedure before regular court of general jurisdiction. There are no records on how many of these civil procedures were conducted or started.

Taking into consideration the length of judicial processes and work disputes, which, according to process regulations, should be urgent, one would think there is no efficient and fast legal remedy for violation of individual right in employment or discrimination in the work place. A person who thinks that they are a victim of discrimination may sue his employer in municipal court and claim damages in civil process including damage reparation. The article 6. of the Law on labour states that if person who is seeking employment or a worker points out during the process some facts justifying a suspicion that employer breached regulations of the Law on prohibition of discrimination, the burden of proving

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146 For example, research on employment of minorities members in public sector, which are within the project "Promotion of European virtues against racism and xenophobia in local and regional level" conducted by the Coalition for protection and promotion of human rights and the Serbian democratic forum 2005; research of Open society of Croatia whose results, on position of national minorities in Croatia – legislation and practice, were published in report of Centre for Human Rights in Zagreb in April of 2005. The report was made by Tena Erceg

147 OSCE: Report on progress of Republic of Croatia in fulfillment of international obligations from 2001.g., from 9 July 2006

that there has not been discrimination lies on employer. If government body (local or state) is an employer who violated a right of employee or a seeker of employment by discrimination this person can turn to Ombudsman. However, Ombudsman institution is not effective in protecting from discrimination in employment. In Annual report of the State attorney for 2006, there were no cases of discrimination in employment because of ethnic belonging, nor did the State attorney ex offio examine any such cases, even though parliamentary representatives of Serbian national minority and the Council for national minorities have often warned on discrimination of Serbs in employment in government bodies and establishments and firms in public ownership in 2005.<sup>148</sup> The Ombudsman pointed out in the final statement of his report for 2005 that "complainants pointed out that they were subjects of discrimination because of their nationality only in a small number of cases" (most of those were complaints regarding employment, status issues, police treatment) and "that members of national minorities turn more to the foundations whose main task is care and protection of minorities than to the State attorney.

Regarding the length of judicial process with relatively high costs of lawyer services, plus regarding inefficiency of Ombudsman, individuals who were victims of ethnic discrimination, applied for free legal help to NGOs, most frequently minorities NGOs, especially Serbian Democratic Forum. However, there are no records on total number of victims of discrimination.

Discrimination of Serbs hasn't been systematically researched, but from partial researches conducted by Serbian Democratic Forum on employment of members of Serbian minority in government bodies, judicial bodies, local self-government bodies and public firms in state ownership, it is obvious that members of Serbian minority, except in the area of Eastern Slavonia, find employment with great difficulty in those bodies, and that they are significantly under represented regarding population percentage in specific towns.<sup>149</sup>

Data was gathered from 21 towns or municipalities that are territories of special government care, because all were engulfed by war. In all these towns and municipalities, except in one (Ilok 6,9%) Serbian minority had significant part of population before the war: from 26,4 % in Drniš to 92,2 % in Vrhovine. These towns and municipalities are in five traditional regions (Banovina plus Kordun; Lika; Dalmatia; West Slavonia; East Slavonia), but today they are part of counties: Karlovac county, Sisak – Moslavina county, Bjelovar-Bilogorje county, Požega-Slavonian county, Zadar county, Šibenik-Knin county, Lika-Senj county, Osijek-Baranja county and Vukovar-Srijem county.

Gathering of data on employment of minority members in public sector, bodies of government administration and in judiciary was attempted but it didn't succeed, because of non cooperativeness of government administrative bodies, especially the Central government office for administration, even though

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148 Ombudsman is also authorized to examine violations of constitutional and legal rights, but there have been no complaints submitted in this respect, but his familiarity with these violations is based on other sources (media and others) which relate to illegal practice of administration bodies or bodies with public authorities.

149 Research on appliace of article 22. of the Constitutional law on rights of national minorities in subject (un)equal chances with employment of minorities. Zagreb, September 2006.

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according to the Law on government employees it is authorized to hold records of government employees and has all their personal records.

However, The Central government office for administration has provided information, upon request from the Mission of OSCE in Croatia, that there were 52.000 employees in government bodies and bodies of regional self-government in May of 2006. Around 4% of them were members of national minorities. The Ministry of Justice has given the information that members of national minorities comprise a 5% of a total number of judges, and Serbs make up 2,4%.

Status of employment of Serbian minority in public services, according to the Serbian Democratic Forum, is visible in the following table:

*Percentage of Serbian minority in population and employment in public sector 2006.<sup>150</sup>*

Regions	Population				Employment			
	2001.	Index 1991=100	Serbs	Serbs %	Total employed	Index 1991=100	Serbs	%
<i>Banovina-Kordun</i>	41.995	57,5	9.339	22,2	1.651	34,4	48	2,9
<i>Lika</i>	7.222	50,7	2.663	22,2	1.381	34,4	58	4,2
<i>Dalmatinska zagora</i>	37.557	52,7	4.981	13,3	1.314	37,7	57	4,3
<i>Western Slavonija</i>	35.566	73,1	4.878	13,3	unknown	unknown	0	0
<i>Eastern Slavonija</i>	66.486	73,5	20.444	30,8	1.368	51,6	362	26,5
<i>Totally</i>	188.826	63,4	42.275	22,4	5.714	43,9	525	9,2

Issues of minorities' representation in judicial bodies and state repressive bodies are especially sensitive. Representation of minorities in police is proportionate to its population only in Podunavlje (Eastern Slavonija). Based on data, gathered by the Serbian Democratic Forum, there are more representatives of Serbs in police in Vukovar and Ilok, than according to census from 2001. Therefore, Serbian minority have 32,9% of the population in Vukovar, and it is represented by 40% in the Police, while there is 6,8% of Serb population in Ilok, and there are 18,4% of policemen of Serb nationality. Serbian community in Beli Manastir is slightly underrepresented (25% regarding 26,6% population) in police, but they are overrepresented on regional level (38,7% regarding 30,8% population).

Speaking of judiciary bodies in the area of Eastern Slavonia, members of Serbian community are underrepresented in Vukovar (17,6% regarding 32,9% population), and on the regional level (19,3%, regarding 30,8% population), but one cannot say they are excluded. Serbian national community is significantly represented in population in other areas of special government care, even in those

150 Source: Serbian democratic forum.

that were affected by big demographical changes in the nineties, but its representation in police and judiciary is low and sporadic.

One positive example is the first instance verdict (which is not valid yet) in favour of the victim of discrimination in employment. It was brought by Municipal court in Daruvar in favour of female prosecutor who hasn't been employed by local kindergarten because of her Serbian ethnic belonging. It will certainly influence on employers practice in employment positively.<sup>151</sup>

Discrimination of Roma in employment was not researched recently, so there is no updated statistics. The first partial research on employment of Roma was conducted in 2001.<sup>152</sup> According to this research, which was conducted by Roma females in area of city Zagreb on number of employed persons, out of 122 people, 63 of them were women, only 1% were employed in full-time work. According to records of "Institut Otvoreno Društvo" (Institute of Open Society), unemployment of Roma was 92%.<sup>153</sup> The Council of Europe brought a Report on realization of rights of Roma from September 2004, and it stated that, even though there are no official data on unemployment of Roma, other data indicate that numbers are high.<sup>154</sup> Roma make up 13,56% of all recipients of social help in Croatia, which means that more than 50% of Roma are relying on social help. Although there is no statistical data, one can realistically suppose that more than the 80% of Roma were unemployed in 2006.

The Government Office for national minorities in the National agenda for Roma from 2003 and Action plan for Decade on including of Roma from 2005 to 2015, stimulated activities for raising public awareness on Roma involvement in social and public life and, and he took steps in resolving difficulties of Roma in employment. Although the holistic report on realization of National agenda for Roma, from reports of Sisak-Moslavina County and Osijek-Baranja County some positive scores in employment of Roma can be seen. 87 Roma were employed in 2006 in Osijek-Baranja County on seasonal jobs and two had two year contracts. The contract on employment of 12 Roma was concluded between town Sisak and the Croatian Institute for Employment and the four town public firms on 4 September 2006 in Sisak. One member of Roma national minority was recently employed in the Croatian Institute for Employment in Bjelovar area office. It is planned to employ two more Roma advisers who would work on improvement of employment of Roma national minority.

### 3.2. *Labour rights*

#### 3.2.1. *Violations of labour rights.*

Findings of the State inspectorate - inspections of labour are showing that of all processed offences in part of labour relations, the majority relates to illegal

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151 The news published 24 January 2007 on portal [www.index.hr/clanak.aspx?id=337979](http://www.index.hr/clanak.aspx?id=337979).

152 Research was conducted by association of female Roma "Better future" and results were quoted in publication UNDP Poverty, unemployment and social exclusion, Zagreb, 2006.

153 Quoted in report of Tena Erceg: Position of national minorities in Republic of Croatia – legislation and practice, Centre for human rights, Zagreb, April 2005. (<http://www.human-rights.hr/dokumenti/polo Zajnm.htm>)

154 The Report on Roma Access to Employment by the Council of Europe, European Commission, September 2004

employment, including illegal employment of strangers, not giving salary receipts to workers, salaries and severance pays, illegal overtime and working nights, denial of a right to vacation, employment without prior concluding labour contract, half-time employment on fulltime jobs, employing on the basis of simulated (fictional) contracts, on counselling or others instead of labour contract, not applying or paying workers pension and health insurance.

Number of irregularities, which were discovered by the State inspectorate in area of labour relations, has constantly grown over the past three to four years. According to records of the State inspectorate<sup>155</sup>, which made 12.934 inspection controls<sup>156</sup> of realization of regulation in labour relations in 2005, there were 19.672 of discovered and processed offences. 5.419 illegally employed persons were found out in 2005, and 1.373 (25,34%) of them were foreigners without working permissions. Almost 6.400 inspection controls were conducted in the period from January to June of 2006 and 1.400 illegally employed workers were found out, 640 (45,71%) of them were foreigners without working permissions.

It is clear that employers who are illegally employing or avoiding performing activity/work by regulations are making this consciously, damaging state and workers, because low credibility of sanctions through offence procedures did not favour suppression of illegal work. However, according to the Law on changes and amendments of the Law on the Government inspectorate from 8 December 2005, the Government inspectorate got lawful possibility to promptly utter protective measures of forbidding performance of activity/work for the length of 30 or 60 days, with simultaneous sealing of business premises of such employers. Using this possibility, labour inspectors, from 1 January to June 2006, uttered working prohibitions for the length of 30 days to employers who were caught with immigrant workers (collectively 252) without working permissions or with inadequate working permission (collectively 12).

### *3.3. Marginalised groups*

#### *3.3.1. Roma*

Roma are extremely marginalized in Croatia. According to official records<sup>157</sup>, there are only 9.000 Roma in Croatia, but Roma themselves and official NGOs are emphasizing that the real number is far higher. It is estimated that there are between 30.000 and 40.000 Roma living in Croatia.<sup>158</sup> The fact that more than 2/3 of ethnic Roma declares themselves as members of majority population in official corresponding points to their marginal situation and fear from discrimination.

Massive unemployment is the problem that affects marginal and vulnerable situation of Roma the most, which is a consequence of no education and real lack of any qualifications. Unemployment is the reason for poverty, which is a characteristic of majority of the Romani families in Croatia. More than the 50%

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155 Published on page <http://www.inspektorat.hr/DesktopDefault.aspx?tabid=276&tabindex=3/DocumentID=1117>.

156 Less than 5% of registered employers in Croatia were embraced by control.

157 Source: State office for statistics, census of citizens, households and apartments 2001.

158 Source: U.S. Department of State, Country Report on Human Rights Practices in Croatia - 2006.

of Roma rely on social welfare. The Government Office for national minorities in the National agenda for Roma from 2003 and Action plan for Decade on including of Romany from 2005 to 2015, stimulated activities and carried out some measures on raising public awareness on the need to include Roma in social and public life, and measures on resolving difficulties of Roma in employment. Although the holistic report on realization of National agenda for Roma, from reports of Sisak-Moslavina County and Osijek-Baranja County some positive scores in employment of Roma can be seen. However, all these measures are "short term", timely and territorially limited, with small scope of socially endangered working capable Roma.

The most vulnerable are Roma children. They are the only group in Croatia which is directly isolated and discriminated in education system. Ethnic Roma children are denied the right to primary school, with lack of sympathy or care from school authorities and their parents who tolerate this treatment and their children's lack of education .

The undertaken measures were insufficient. The thing that can be evaluated positively is that kindergartens for Roma children were opened in 2006, and a six-month preparation program for school for children who do not attend kindergartens was organized in all Roma settlements in Međimurje. Regarding many Roma children, according to quotations of school authorities, they are not speaking Croatian language well enough, 15 Roma - school assistants who are talking the same Roma language as students were involved in school in the area of Međimurje with task of helping students to overcome school syllabuses.

The marginal situation of Roma is also reflected in their lifestyle. Although there are no records on conditions of residing of Roma upon data delivered to the Government of Croatia by County Offices for space/area arranging and which were published by the National agenda for Roma from 2003<sup>159</sup> the marginal situation of this ethnic community is clearly observable. It was estimated in National agenda for Roma that Roma communities were registered in 15 counties, in around 100 locations of different sizes, whereof 40 locations were outside of construction area, on 60 locations in clusters of objects within construction area of some settlement (part of settlement) and in more individual areas with one or two families. It is obvious that Roma are highly concentrated in certain areas.

According to reports of county offices for area regulation in 6 (out of 20 plus town Zagreb) counties Roma are living inside urban territory but without concentration in specific locations, most often in abandoned and devastated objects intended for destruction.<sup>160</sup> In 8 counties Roma are living in territories integrated in existing settlements, but on grounds intended for other purposes, not for living, so objects in which they are living are illegally built.<sup>161</sup> The problem

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159 In chapter "Spatial regulation ".

160 In Krapina-Zagorje, Požega-Slavonia, Zadar, Šibenik-Knin, Split-Dalmatia and Dubrovnik-Neretva County.

161 Zagreb, Karlovac, Bjelovar-Bilogorje, Brod-Posavina, Osijek-Baranja, Vukovar-Srijem, Istra and city of Zagreb.

of residing Roma in unsanitary conditions is specially expressed in 7 counties.<sup>162</sup> In these counties Roma are living concentrated in separate locations or in locations integrated in existing settlements. Therefore, there is segregation of Roma residing in these 7 counties.

Other records, on executed measures for suppressing of discrimination and excluding of Roma in areas for living predicted by National agenda for Roma, are not accessible.<sup>163</sup> According to Report on executing the National agenda for Roma in Osijek - Baranja county<sup>164</sup>, making of area plans in municipalities where Roma live were financed<sup>165</sup>, funds for recovery of wild scratchpads near Roma settlements were assigned to municipalities<sup>166</sup>, funds for improvement of communal infrastructure were provided<sup>167</sup>, property and legal relations were settled in areas owned by state on which Roma have objects<sup>168</sup>. Within the program of reconstruction of objects damaged in war a Roma settlement was reconstructed in Darda, although these objects have not been damaged in war.

### 3.3.2. Pensioners.

Pensioners are the a vulnerable but also the most numerous group, according to criteria of poverty, age and health condition in Croatia, and among them those who have retired after 31 December 1998 (so called new pensioners).

Until 31 December 2006,<sup>169</sup> 8.405 pensioners<sup>170</sup> who have realized a right to retirement after 31 December 1998 made averagely 2.092,71 Kn (282,80 Euros) of pension. The average retirement age of these pensioners was 2.293,51 Kunas, an average retirement of disabled people was 1.929,19 Kunas, and average family retirement was 1.714,06 Kunas. 21.118 of pensioners achieved retirement lower than 500,00 Kunas (average 306,96 Kn).

A consumer's basket<sup>171</sup> for household with 2 pensioners who live in their own apartment<sup>172</sup> in Zagreb cost 3.357,49 Kunas (453,71 Euros), meaning that two average retirements of pensioners who have retired before 31 December 1998 totalled at 124,66% and these pensioners were left with 827,93 Kunas (111,88

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162 Sisak-Moslavina, Varaždin, Koprivnica-Križevci, Primorje-Goranska, Lika-Senj, Virovitica-Podravina and Međimurje county

163 Office of Government of Republic of Croatia for national minorities rejected to deliver data on realization of National agenda for Roma and Action plan for Decade for including of Roma 2005 – 2015, despite of repeated appeals and despite fact that The Plan of report on implementation of National agenda for Roma was made.

164 Report is available on web page [www.obz.hr](http://www.obz.hr).

165 Municipalities Bilje, Jagodnjak, Kneževi vinogradi and Petlovac.

166 In towns Beli Manastir and Belišće and municipalities Bilje and Petlovac.

167 In Beli Manastir, Našice, Jagodnjak, Podgorač.

168 In Darda, Belišće, Bilje and Kneževi vinogradi.

169 Source: Statistic information of Croatian office for pension insurance, no. 4/2006.

170 Users of retirements from Croatian Army and Croatian defenders are not included in this number.

171 Includes minimal costs of food, hygiene, clothing, housing, transportation (public), culture, and additional health insurance.

172 According to data of Independent unions of Croatia.

Euros) after taking care of essential costs. However, two pensioners with average retirements that have retired after 31 December 1998 have not been able to take care of basic necessities. Their retirements had been sufficient only for a 92,49% consumer basket. The family was short of 252,11 Kunas to cover minimal life costs.

A situation of pensioner who is single and has retired after 31 December 1998 is tragic. Essential costs for single pensioner were 2422,50 Kunas. If a single pensioner had average retirement of 1.552,94 Kunas, he could cover only 64,10% of the most necessary life costs. Such pensioner was 869,56 Kunas (117,50 Euros) short.

Except significant worsening of situation of so-called new pensioners, The Law on retirement insurance created many other injustices and unconstitutionality.<sup>173</sup>

Beneficiaries of premature age retirements, realized upon this law, are divided in two unequal groups with three or even four subgroups of different amount of premature age retirements, all achieved with the equal number of years of working. In the beginning, the Law on retirement insurance made no difference regarding amount of guaranteed lowest retirement and premature age retirement because it applied principle upon which the right to guaranteed lowest retirement is element of solidarity between beneficiaries of retirements achieved with equal number of working years.

After changes and amendments to the Law in 2002 two new limitations for lowest retirement were included. The first limitation is 50% reducing of lowest retirement for every year of working above 30 years of working, which established an absurd rule that one who works longer and pays contributions in longer period is punished by smaller payments. Another additional reducing of lowest retirement is executed in a way that even the lowest retirement is additionally reduced by 0,34% for every calendar month before the person is 65 for men and 60 for women. That is why beneficiaries of premature age retirements that exercised their right before 17 December 2002 have more favourable retirements than beneficiaries who got their premature age retirements after that date, that is just a day later.

Beside already mentioned things, new pensioners have been disadvantaged by the fact that starting value for calculation of the amount of the lowest retirement was immediately lower than the amount of actual value of other retirements. Therefore, after 1 July 2005 the competent value of lowest retirement is determined at 46,92 Kn, while calculation of other retirements the competent value starting from 1 July 2005 is 48,39 Kn. The lowest retirement is additionally reduced by 50% for every year after 30 years of working for beneficiaries of lowest retirements. Because of all this, lowest retirements are falling behind average salaries, more than other retirements, so these differences will become bigger over time.

Comparing the lowest retirements guaranteed to all beneficiaries starting from 1 January 1999 or later (so called new retirements) to the limitations of highest

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173 Official Gazette of the Republic of Croatia, no. 102/98, 71/99, 127/00, 109/01, 147/02, 177/04, 92/05.

allowed retirements (introduced by new Law) only for beneficiaries of retirements after 1 January 1999 or later, one can notice that the amount of neither one of these retirements is close to the amount of investing (contribution) and proportional to number of years of pension working period with whom the single retirements is achieved.

The consequence of such a pension system is that average employee who has a salary lower than average (and this is the most numerous group of policy-holders in the Pension Fund of Croatia), is receiving a retirement which is lower than the current lowest, so he is given a protection by institution of "lowest retirement", which is humiliating.

Regarding mass violation of human rights and its consequences (extreme poverty of senior citizens plus their dependence on their children or social care and charitable establishments) it is astonishing that government institutions, social care or family, or NGOs for protection and promotion of human rights, or Ombudsman are not responding to these issues in an appropriate way. The struggle for pensioners' rights is left to the pensioner alone.

# **Human Rights in the Republic of Macedonia 2006**

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## **Abstract**

The Report on Human Rights in Macedonia – 2006, is a sublimation of the analyses associated with the promotion and protection of human rights and freedoms, as well as an attempt to draw general conclusions on the basis of the information and data available.

In the domestic legal system, human freedoms and rights represent a basic constitutional postulate. These rights are further recognized and regulated in numerous Laws adopted by the Macedonian Parliament. Provisions regulating certain aspects of human rights can be found in the Law on Public Servants, Criminal Code, Law on Education, Law on Labor Relations, Law on Police, Law on Local Self Government, Law on Equal Opportunities for Women and Men, Law on Religious Communities and Religious Groups, Law on Child Protection etc.

Although the Republic of Macedonia has adopted a significant list of legislative measures in regards to its international obligations concerning human rights, large gaps continue to exist in these legislative measures. In addition, there is a lack of implementation and enforcement of the legislation that has been developed, which is exacerbated by long waiting periods and trial delays in an understaffed and under-funded judiciary.

This report also, gives an overview on Macedonia's political situation in 2006. All Macedonian political parties share the view that Macedonia should become a member of the EU and NATO. Promotion of multi-ethnicity, political moderation, and tolerance are widely understood as being important

characteristics of Macedonian politics. The national political system is currently free from such threats to stability as insurgency or war. With regard to human rights, the government generally respected the human rights of its citizens. However, there were problems in some areas. Police abuse of suspects continued to be a problem, and there were allegations of police harassment of ethnic minorities, particularly members of the Roma community. Corruption and political pressure in the interior and justice ministries, the courts, and the public prosecutor's office impeded the investigation of some human rights abuse allegations and the process of bringing the accused to trial.

Concerning the social situation in Macedonia, unemployment rates have not improved much in the past years and those hovering consistently around 37% for the population. Despite government initiatives, such as the Law on Employment Promotion (2003) and the National Action Plan for Employment (NAPE) no noticeable reduction in the unemployment rate or positive trends in the labor market has not occurred nor the poverty was identified as a top priority issue in the protection of human rights and freedoms.

**Key words:** Macedonia; human rights; political situation; social situation.

## Introduction

### *Political and social situation*

#### *1.1. General information.*

The Republic of Macedonia is situated in southern Europe on the Balkan Peninsula. It covers an area of 25,713 square kilometres (the entire area of Macedonia covers approximately 66,000 square kilometres) and borders with Bulgaria to the east, Greece to the south, and Albania to the west and Serbia to the north. Macedonia has 850 kilometres of frontiers with its neighbours. The longest is the border with Greece - 262km, followed by 232km border with Serbia, 191km with Albania and 165km with Bulgaria.

The Republic of Macedonia has 2,022,547 inhabitants according to the 2002 census. Macedonia is a country with a multiethnic and multi-confessional population. According to the last official census, the ethnic composition of Macedonia's population is as follows<sup>174</sup>:

1. 64.18% Macedonians
2. 25.17% Albanians
3. 3.85% Turkish
4. 2.66% Roma
5. 1.78% Serbs
6. 0.84% Bosniak
7. 0.48% Vlach

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<sup>174</sup> Population data from, State Statistical Office of the Republic of Macedonia. Statistical Yearbook of the Republic of Macedonia. Skopje, 2003.

Orthodox Christianity and Islam are the two most prevailing religions. Nominally, 66 percent of the population is Macedonian Orthodox, 30 percent is Muslim, 1 percent is Roman Catholic, and 3 percent is of other faiths (largely various Protestant denominations). There is also a small Jewish community in Skopje.

The Macedonian language, written using Cyrillic alphabet, is the official language in the Republic of Macedonia. In the units of local self-government where the majority or a considerable number of the inhabitants belong to a nationality, in addition to the Macedonian language and Cyrillic alphabet, their language and alphabet are also in official use, in a manner stipulated by law. The capital of the Republic of Macedonia is Skopje.

### *1.2. Political situation.*

"The Republic of Macedonia is a sovereign, independent, democratic state." This sentence, being the initial sentence of the Constitution of the Republic of Macedonia, adopted on November 17, 1991, accurately defines the character of the state, from which its system of government derives.

Macedonia is a republic having a parliamentary democracy and a political system with a strict division into legislative, executive and judicial branches. Between 1945 and 1991 Macedonia was a sovereign republic within federal Yugoslavia. On 8 September 1991, following a referendum, Macedonia became a sovereign and independent state.

The administrative structure of the state is divided into 84 local self-governments (municipalities) plus the city of Skopje, which is a separate unit consisting of additional local self-governments. Political power in Macedonia is divided between the legislative, judicial and executive.

Legislative authority is vested in the unicameral Sobranie (parliament). The national elections held in Macedonia in July 2006 were a major event. The EU conditioned further progress in Macedonia's integration process on the regular conduct of parliamentary elections. Yet, during the first half of the election campaign there were a number of violent incidents, including attacks on campaign offices, fights among party activists, and shooting incidents. Most of these occurred in the northwest of the country and involved the ethnic-Albanian parties Democratic Union for Integration (DUI) and the Democratic Party of Albanians (DPA).

Clashes between party members or supporters during the election campaign provoked the EU and the USA again to call on party leadership to send a clear signal to their membership to refrain from the use of force. In the end, the elections held on 5 July 2006 were peaceful and fair, and international observers said that they "largely met international standards."

### *Results of the elections held on 5 July 2006*

The electoral coalition led by the VMRO-DPMNE secured 32.3 percent of the vote and 45 seats in the new parliament. On the other hand, the "Together for

Macedonia” coalition led by the SDSM won just 23.2 percent and 32 MPs. After much wrangling about DUI’s inclusion in the new coalition government, with DPA strongly objecting, a new government was formed led by Premier Nikola Gruevski and including the VMRO-DPMNE, DPA, the New Social Democratic Party (NSDP), the Democratic Renewal of Macedonia (DOM), the Party for European Future (PEF), and the Liberal Party (LP).

The Assembly consists of 120 MPs of which 36 are women. All MPs are elected through voting. The current legislature receives 40 MPs elected by the proportional representation model and 80 MPs are elected by the majority (first-past-the-post) model. The mandate of an MP is 4 years.

The executive power is officiated by the Government, respectively the Cabinet (the President of the Government and the Ministers). The new Prime Minister, Nikola Gruevski, was confirmed in office in August 2006 and presides over a multiethnic governing coalition (VMRO-DPMNE, the Democratic Party of Albanians (DPA) and the New Social Democratic Party (NSDP).

The Government of the Republic of Macedonia is composed of the Prime Minister, Nikola Gruevski, four deputy prime ministers and 18 ministers. Out of 23 government members only 3 are women (of which one is deputy prime minister and 2 are ministers).

The President of the Republic represents the country; respectively he is the representative of the whole country and is the Supreme Commander of the Armed Forces. The present president Branko Crvenkovski was elected for a five year term in April 2004 in elections that were generally free and fair. The President of the Republic exercises his/her rights and duties on the basis and within the framework of the Constitution and laws.

Political situation during 2006 has been stable. All Macedonian political parties share the view that Macedonia should become a member of the EU and NATO. There is a strong consensus among political groups and citizens that parliamentary democracy should be the basis of the country’s political system. Promotion of multi-ethnicity, political moderation, and tolerance are widely understood as being important characteristics of Macedonian politics. The national political system is currently free from such threats to stability as insurgency or war.

As far as human rights are concerned, the U.S. Department of State reports<sup>175</sup> that citizens’ rights are generally respected; however, there were problems in some areas. Police abuse of suspects continued to be a problem, and there were allegations of harassment of ethnic minorities by the police, particularly members of the Roma community. Corruption and political pressure in the interior and justice ministries, the courts, and the public prosecutor’s office impeded the investigation of some human rights abuse allegations and the process of bringing the accused to trial.

The country continued to be a transit and destination country for victims of trafficking in persons for sexual exploitation and labour. Social discrimination against ethnic minorities, particularly Roma, continued to be a problem.

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175 Country Reports on Human Rights Practices - 2006 Released by the Bureau of Democracy, Human Rights, and Labor, March 6, 2007

There was a slight overall improvement in the human rights situation compared to the previous year, including improved internal controls and professionalism of security forces and a decrease in the prevalence of interethnic discrimination.

### 1.3. Social situation.

The country's record regarding economic, social and cultural rights is corresponding to the economy growth. UNDP Early Warning Report for the first quarter of 2006 presents economy as the highest priority, due to the fact that it became the most worrying issue for people<sup>176</sup>. There were between 37.2% - 38% unemployed people in 2004. That amounts to 391,072 unemployed out of 2.06 million inhabitants, with 30% of the population living below the poverty line and an average salary of 190 Euros while the minimal wage is 30 Euros. Gray economy is estimated at the unbelievable 45% of the GDP of the country, and GDP per capita 6.767 US\$ with growth of 3.8.<sup>177</sup>

The average monthly salary for citizens in Macedonia is 12,270 Denars or 200 Euros (61.3 Denars = 1 Euro), while the average cost for a consumption basket of food and drinks for a family of four is 9,845 Denars, conversely 160 Euros a month.<sup>178</sup> When clothing, heating, electricity and housing costs are taken into account, the ability to support a family on one wage alone seems impossible. Unemployment rate has not changed since 2005 in Macedonia, when it was 37%. Minimum wage is set at 5,060 Denars, which is considerably lower than the cost of a basket of consumption goods for a family of four.

#### *Population and the employment (in thousands)*

	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Population	2020	2027	2032	2037
Economically active population	825	861	832	869
Employed	561	545	523	545
Unemployed	263	316	309	323
Economically inactive population	742	718	762	739
Unemployment rates	31.9%	36.7%	37.2%	36,7
Employment rates	35.8%	34.5%	32.8%	33,9

176 United Nations Development Programme. Early Warning Report Macedonia June 2006

177 Statistics data available from European Bank for Reconstruction and Development, national Statistical Office, the World Bank Institute

178 State Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights. Section

190 and section 195. Available online at: <http://www.ohchr.org/english/bodies/cescr/docs/E.C.12.MKD.1.pdf>

The table above shows that the unemployment rates have not improved much in the past years and are hovering consistently around 37% of the population. Unemployment rate of Roma in 2005 was approximately 79%, most startling is the unemployment rate of Roma women, which stood at 83% according to State party data. This rate varies - Albanians unemployment rate is 61.2%, for Turkish minority it stands at 58.2% and for Bosniaks at 60.3%.<sup>179</sup> Despite government initiatives, such as the Law on Employment Promotion (2003) and the National Action Plan for Employment (NAPE) no noticeable reduction in the unemployment rate or positive trends in the labour market have been noted neither has the poverty been identified as a top priority.

Workers in Macedonia continually work under conditions that are considered unacceptable under the law due to difficult economic situation in Macedonia. Even though the government comments on the increasing education of the labour force, there are very few jobs for well-educated youth to enter into. Therefore, many well-educated youth remain either unemployed or underemployed.

In addition, the influence of political parties in the public administration means job competitions are frequently not based on merit, but on one's political connections. This not only poses a problem for sustainability within public institutions, but also jeopardizes the effective delivery of essential social services by competent authorities and individuals. The problem of political patronage continues to put the development of Macedonia at risk and has led to corruption.

Although the country has ratified the European Social Charter and its Protocol No. 2, it is obvious from the statistics above that it cannot fulfill its obligations toward the legislation imposed by the document. The biggest problems lie in the fulfillment of the appropriate standard of living, labour-related rights, personal security, economic, social and cultural development and finally dignity and pursuit of happiness, this undermining the very concepts of the human rights system.

It is easy to conclude that current state of affairs in Macedonia is not promising. The lack of human rights system and culture remain to be serious problems. The survey of public opinion conducted by the UNDP, shows that some 42.5% of the population in the first half of 2006 in relation to individual financial situation perceive it worse than six months ago, 54.37% can buy only the absolutely necessary and 27.52% cannot buy even the absolutely necessary, while 57.8% of the population in May 2006 show great concern about the possibility of loosing their job.<sup>180</sup>

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179 Tilev, Dragan (Sector for European Integration). Macedonia: Current Challenges and the National Response to Poverty. Tirana, June 2005: "Western Balkans Forum on Social Inclusion and the Millennium Development Goals". [http://intra.rbec.undp.org/mdg\\_forum/Session3\\_FYRMacedonia\\_files/frame.htm](http://intra.rbec.undp.org/mdg_forum/Session3_FYRMacedonia_files/frame.htm) (accessed January 9, 2006).

180 United Nations Development Programme. Early Warning Report Macedonia June 2006

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## Human rights in legislation

### *1. Constitutional provisions on human rights*

The Constitution of Republic of Macedonia regulates human rights in the second chapter (Basic Freedoms and Rights of the Individual and Citizen), with 51 provisions which are systemized in 4 sections:

- Civil and political freedoms;
- Economic, social and cultural rights;
- Guarantees of basic freedoms and rights and
- Foundations for economic relations

The rights and freedoms guaranteed by the Constitution of the Republic of Macedonia, and further elaborated in the domestic legislation, are enjoyed by all citizens over whom the jurisdiction of the Republic of Macedonia extends. According to Article 9 of the Constitution,

"citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, color of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law."

In the domestic legal system, human freedoms and rights represent a basic constitutional postulate. As a rule, they are realized directly on the basis of the Constitution, while the conditions and manner of their realization may be prescribed by law only if explicit constitutional authorization for this exists, and only within the framework of such authorization.

The protection of human freedoms and rights is guaranteed in Article 50 of the Constitution of the Republic of Macedonia, according to which:

"Every citizen has the right to invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court of the Republic of Macedonia, through a procedure that is based upon the principles of priority and urgency."

Judicial protection of the legality of individual acts of the State administration, as well as of other institutions carrying out a public mandate, is guaranteed.

"A citizen has the right to be informed on human rights and basic freedoms, as well as actively to contribute, individually or jointly with others, to their promotion and protection."

"The human right to life is irrevocable. The death penalty shall not be imposed on any grounds whatsoever in the Republic of Macedonia."<sup>181</sup>

"The human right to physical and moral dignity is irrevocable. Any form of torture, or inhuman or humiliating conduct or punishment, is prohibited."<sup>182</sup>

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181 Article 10 of the Constitution of R Macedonia

182 Article 11 of the Constitution of R Macedonia

The freedoms and rights of the individual and citizen can be restricted only in cases determined by the Constitution. The freedoms and rights of the individual and citizen can be restricted during states of war or emergency, in accordance with the provisions of the Constitution. The restriction of freedoms and rights cannot discriminate on grounds of sex, race, color of skin, language, religion, national or social origin, property or social status.

The restriction of freedoms and rights cannot be applied to the right to life, the prohibition of torture, inhuman and humiliating treatment and punishment, the legal determination of punishable offences and sentences, as well as to the freedom of personal conviction, conscience, thought and religious confession (Art. 54).

Constitutional provisions on civil and political freedoms and rights guarantee basic rights and freedoms, such as: right to life, right to physical and moral dignity, right to freedom, presumption of innocence, right to appeal, freedom of speech, right to a fair trial, freedom of religious confessions, right to peaceful assembly, inviolability of home, right to movement and the defence of the Republic of Macedonia which is the right and duty of every citizen.

As far as the Constitutional provisions on economic, social and cultural rights are concerned, those guarantee: the right to ownership and inheritance, also foreign subjects may acquire the right to ownership of property under conditions determined by law, right to work, right to free choice of employment, protection at work, material assistance during temporary unemployment, the right to social security and social insurance<sup>183</sup>, the right to establish trade unions, the right to strike<sup>184</sup>, right to health care, etc.

The Republic provides particular care and protection for the family. Marriage, family and cohabitation are regulated by law. Parents have the right and duty to provide for the nurturing and education of their children. Children are responsible for the care of their old and inform parents. The Republic provides particular protection for parentless children and children without parental care (Article 40).

In the Republic of Macedonia everyone has a right to education. Education is accessible to everyone under equal conditions. Primary education is compulsory and free<sup>185</sup>. Citizens have a right to establish private schools at all levels of education under conditions determined by law (primary education being an exception). The autonomy of universities is guaranteed. The conditions of establishment, performance and termination of the activities of a university are regulated by law. The freedom of scholarly, artistic and other forms of creative

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183 Article 36 of the Constitution of R. Macedonia: "The Republic guarantees particular social security rights to veterans of the Anti-Fascist War and of all Macedonian national liberation wars, to war invalids to, to those expelled and imprisoned for the ideas of the separate identity of the Macedonian people and of Macedonian statehood, as well as to members of their families without means of material and social subsistence. The particular rights are regulated by law.

184 Article 38 p.2 of the Constitution of R. Macedonia: "The law may restrict the conditions for the exercise of the right to strike in the armed forces, the police and administrative bodies.

185 The current Government of R. Macedonia is working on making the secondary education compulsory.

work is guaranteed, including the rights derived from scholarly, artistic or other intellectual creative work.

The Republic should stimulate, assist and protect the development of scholarship, arts and culture. The Republic should stimulate and assist scientific and technological development as well as the technical education and sport.

All nationalities have a right freely to express, foster and develop their identity and national attributes. The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of the nationalities. Members of all nationalities have the right to establish institutions of culture and art, as well as scholarly and other associations for the expression, fostering and development of their identity. They also have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in the language of a nationality, the Macedonian language is also studied (Art. 48).<sup>186</sup>

Everyone has the right to a healthy environment to live in. The Republic of Macedonia provides conditions for the exercise of the right of citizens to a healthy environment. Therefore, everyone is obliged to promote and protect the environment.

## *2. International conventions on human rights to which Republic of Macedonia is a State Party*

Republic of Macedonia has ratified or acceded numerous conventions regarding human rights and as a state party is bound to observe and implement its provisions. Some of those conventions are:

- International Covenant on Civil and Political Rights (ICCPR);
- First Optional Protocol to the ICCPR;
- Second Optional Protocol to the ICCPR<sup>187</sup>;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Optional Protocol to CEDAW;
- Convention on the Rights of Child (CRC);
- Optional Protocol to CRC on the involvement of the children in armed conflict;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment;
- Optional Protocol to the Convention against Torture;<sup>188</sup>
- Convention relation to the Status of Refugees (1951);
- Protocol relating to the Status of Refugees;

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<sup>186</sup> Article 48 of the Constitution of R. Macedonia has been replaced with the VII Amendment, p.1

<sup>187</sup> Aiming the abolition of the death penalty

<sup>188</sup> Signed in 2006, but not yet ratified

- Convention related to the Status of Stateless Persons (1954);
- Rome Statute of the International Criminal Court;<sup>189</sup>
- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) 1950;
- Protocol No. 6 to the ECHR concerning the abolition of the death penalty in times of peace (1983);
- Protocol No.12 to the ECHR concerning the abolition of the death penalty in all circumstances;
- Framework Convention on the Protection of National Minorities;
- International Covenant on Economic, Social and Cultural Rights (CESCR);
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Paris, 20 October 2005;
- Convention against Discrimination in Education;
- Occupational Safety and Health Convention, 1981 (No. 155);
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144);
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143),
- Minimum Age Convention, 1973 (No. 138) Minimum age specified: 15 years;
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- International Covenant of Civil and Political Rights,
- Abolition of Forced Labour Convention, 1957 (No. 105);
- Social Security (Minimum Standards) Convention, 1952 (No. 102) has accepted Parts II to VI, VIII and X. Part VI is no longer applicable as a result of the ratification of Convention No. 121;
- Forced Labour Convention, 1930 (No. 29);
- European Social Charter;
- Protocol No. 2 to the European Social Charter;
- European Convention on the Prevention of Torture;
- European Charter for Regional and Minorities Languages.

### *3. Domestic legislation regulating human rights*

As elaborated previously basic human rights and freedoms are protected and guaranteed with the Constitution of the Republic of Macedonia. Those rights are further recognized and regulated in numerous Laws adopted by the Macedonian Parliament. Provisions regulating certain aspects of human rights can be found in the Law on Public Servants, Criminal Code, Law on Education, Law on Labour Relations, Law on Police, Law on Local Self Government, Law on Equal

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<sup>189</sup> The Parliament of RM on 05 June 2007 adopted the Law for cooperation between R. of Macedonia and the International Criminal Court

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Opportunities for Women and Men<sup>190</sup>, Law on Religious Communities and Religious Groups, Law on Child Protection etc.

Although the Republic of Macedonia has adopted a significant list of legislative measures in regards to its international obligations concerning human rights, large gaps continue to exist in these legislative measures. In addition, there is a lack of implementation and enforcement of the legislation that has been developed, which is exacerbated by long waiting periods and trial delays in an understaffed and under-funded judiciary.

NGO activists have been advocating for anti-discrimination legislation in Macedonia. This legislation would combine anti-discrimination references made in various texts of legislation into an all-encompassing legislation. Despite the drafting of an anti-discrimination law by the Helsinki Human Rights Committee of Macedonia in early 2005, the legislation has not been forwarded to procedure or adopted by the legislature. An all encompassing anti-discrimination law in Macedonia would be an important step towards protecting the economic, social and cultural rights of women and minorities in Macedonia who face the greatest obstacles in gaining equality in labour market, social security, health and education rights. A concrete definition of discrimination towards minorities and women is needed as well in the existing legislation of Macedonia, instead of a simple statement that discrimination is forbidden. For example, the current Law on Equal Opportunities of Women and Men does not include a definition of discrimination.<sup>191</sup> This is critical for the proper enforcement of such a law.

Despite of the government-led initiatives for adopting National Plan for Employment in 2004, National Plan for Reducing Poverty in 2002, Strategy for Development in Education in 2004, and the National Programme for the Development of Culture in 2003, the progress made is not worth mentioning. One of the possible reasons the Helsinki Committee mentions the Government's approach to the economic, social and cultural rights is because during 2005 these issues were not of top priority for the State, nor an issue of special interest.<sup>192</sup>

## **Individual rights**

### *1. Human Rights and Education: Right to Education*

#### *1.1 Legal provisions*

The Constitution of the Republic of Macedonia states in Article 44: "Everyone has a right to education. Education is accessible to everyone under equal conditions. Primary education is compulsory and free."

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190 Official Gazette of R of Macedonia No. 66/06 od 29.05.2006

191 This was also a recommendation made by the Committee on the Elimination of Discrimination against Women at the Thirty-fourth Session. See Committee on the Elimination of Discrimination against Women (CEDAW) Concluding comments on the former Yugoslav Republic of Macedonia, UN doc. CEDAW/MKD/CO/3, Article 10, 2006.

192 Report of the Helsinki Committee for Human Rights of the Republic of Macedonia on the human rights situation

This right has been implemented with various degrees of success with regard to different ethnic groups. The schooling system in the Republic of Macedonia is composed of: pre-school education, primary education, secondary education and tertiary education.

There are no legal limitations to learning in the minority languages as the minorities are recognized as having the right to study in their own language in primary and high schools. However, there are cases in Macedonia where conditions have not been created for minorities to learn and study in their own language. This is most common in the southern parts of Macedonia where a number of Turkish and Roma live and are forced to travel to other cities in order to have lectures in their own language, as the state does not facilitate for them to enjoy learning in their mother tongue despite this right being guaranteed by the Constitution of the Republic of Macedonia.

Most of the educational institutions are public. Citizens have a right to establish private schools at all levels of education, with the exception of primary education, under conditions determined by law.

A legal provision of the Macedonian legislation stipulates that there must be a minimum number of 25 pupils so that an education institution can open a new class for pupils in a particular school. This requirement is applicable to all communities despite belonging to a minority or majority community. There is one exception, which applies in rural areas – a class can be opened if there are 8-10 interested pupils to attend classes in that school. This applies to all communities as well. There is a huge demand from the minorities to learn or to attend lectures in mother tongue, but there is a significant lack of staff who speak minority languages as well as lack of space.

## *1.2. Practice*

*1.2.1 Pre-school Education.* - In the Republic of Macedonia out of 29.244 children aged between 6 months and 7 years, only 21.148 children or 72, 40% are included in some sort of pre-school education. The practice shows that the children who have not attended pre-school education face difficulties in the first year of their primary education.

*1.2.2. Primary Education.* - In the regular primary education at the end of the school year 2005/2006, 1005 schools were functioning, with 235 185 pupils enrolled and 14 917 teachers. In the special primary education (for the pupils with disabilities), by the end of the school year 2005/2006, 25 schools were functioning, with 1093 pupils enrolled and 251 teachers<sup>193</sup>. 16 schools for adults were functioning, with 851 pupils enrolled and 99 teachers. The primary art education is organized separately for the pupils who attend regular primary schools and have a talent for music and ballet. At the end of the school year there were 16 schools of this kind, with 2 954 pupils enrolled and 253 teachers.

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<sup>193</sup> Education data from, State Statistical Office of the Republic of Macedonia. Statistical Yearbook of the Republic of Macedonia

1.2.3. *Secondary Education.* – There were 101 schools for regular secondary education with 93908 students enrolled and 6136 professors, of which 5 private schools with 1031 students attending and 145 professors. There were 4 for special secondary education (for the students with disabilities), with 317 students attending and 79 professors. The religious secondary education is being carried out in 2 schools (Orthodox religious school and Muslim religious school) with 253 students enrolled and 40 professors<sup>194</sup>.

1.2.4. *Tertiary Education.* - According to the official State data the number of enrolled students at the University in Skopje, Bitola and Tetovo (South Eastern European University) at the beginning of winter semester in the academic year 2006/2007 was 57 011. This shows an increase of 17.8% in comparison to the previous academic year or 8 625 students more. From the total number of enrolled students, the participation of female students is 55% or 31 052 persons. There were 15 527 freshmen, from whom 13 771 were full-time students and 1756 part-time students<sup>195</sup>. The number of students enrolled in private universities is not complete.

1.2.5. *Private institutions.* – There are a number of private secondary institutions and private tertiary institutions in the Republic of Macedonia where instruction is carried out in English. These are the “Nova” Private American High School – Skopje and the American International School of Macedonia – Skopje. There is one private high school in a minority language. In 1996 the first private high school education institution - the College “Yahya Kemal” in Skopje was founded. Later, other branches of this high school were opened in Gostivar and Struga. The college is a private school funded by a Turkish institution, and has instruction in Macedonian, Albanian and Turkish. The private tertiary institution is the South Eastern European University in Tetovo. Instruction is given in Albanian, Macedonian and English.

1.2.6. *Minorities.* – The state has not done much to advance representation of Turkish and Roma communities in education. The Turkish in Eastern Macedonia are making requests to attend schools in their own language in primary schools. However, up until now the state has not undertaken any measures to respond to this request. This also applies to Roma population. A major stumbling block seems to be the insufficient number of professors who can teach in minority languages. Instead, these children are indirectly forced to study in Macedonian. Despite the obligation of the state according to the Constitution and the laws, to create equal conditions for all children, regardless of their nationality and religion these laws are not fully implemented. There have been many requests by the Turkish and Roma community members to solve the problems of access to education in their mother tongues, but the state institutions have been very slow to respond to such requests.

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194 The State Statistical Office of the Republic of Macedonia. Statistical Yearbook of the Republic of Macedonia

195 The State Statistical Office of the Republic of Macedonia. Statistical Yearbook of the Republic of Macedonia

The Turkish community faces major problems in the field of education. For example no new books have been published in Turkish, but rather it is a general practice to continuously republish old books. For instance, the book “Alphabet” was published 24 years ago. In addition, the book for the Turkish language for second class students in primary school was published during the rule of the former Yugoslavia.

Even though, as stated previously education is mandatory through the eighth grade or to the age of 16 some children do not enter the educational system at all. The Ministry of Education reported that 95 percent of children were enrolled in school; no official data was available on school attendance or the number of children who did not access to education. The First Embassy for Children reported a number of 18.000 children in the Republic of Macedonia not attending school, which is a quite disturbing figure.

One of the biggest problems in Macedonia is the high dropout rate of Roma and Albanian girls who live in rural areas. It is not unusual for girls to stop attending school by the age of 14. This is due to traditional beliefs that girls do not need an education. For Roma girls the statistics are the most staggering. In primary education the ratio of girls to boys for Roma is 0.87, and for secondary school the ratio decreases to 0.51.<sup>196</sup> State Statistical Office states that the dropout rate from primary to secondary school is 18%. Furthermore, the same census indicated the illiteracy rate among Turks was 8% and over 20% for Roma.<sup>197</sup> 39% of Romani women have incomplete or no education at all<sup>198</sup>. Therefore, despite ‘free’ compulsory education there are tremendous obstacles for girls and those in the minority communities in exercising their right to education. The percent of educated Roma is incredibly small. After graduating elementary school, the number of Roma students that enroll in high school is very low.

Through some projects (Roma Decade “Education for All” under UNESCO), the Bureau of Education Development makes efforts to increase the number of students in secondary education (especially among the Roma population and in the rural areas). By educating parents, expert teams work on raising the awareness of the importance of education.

Following elementary education most Turkish look forward to continuing their studies in high school, but limited Turkish language classes in high schools have resulted in reduced numbers of Turkish students. In Gostivar, Debar, Zhupa, Skopje and eastern Macedonia (as in Radovish) there is a big demand that new classes in Turkish language be opened. In Radovish, Turkish students can study in their own mother tongue only during their first four years of primary education – after that they are indirectly forced to attend school in Macedonian language. Furthermore, there are no books in the Turkish language at all for first and second year students in secondary schools. This problem is exacerbated by the

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196 Ibid.

197 State Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

Section 779. Available online at: <http://www.ohchr.org/english/bodies/ceschr/docs/E.C.12.MKD.1.pdf>

198 UNDP statistics available at: [www.undp.org](http://www.undp.org)

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fact that the Ministry of Education and Science does not have any staff (Turkish experts) that can help create solutions to these problems.

There are 40 students per class in high schools in Gostivar, and schools with a smaller number of students per class work in three shifts. Additionally, Albanians in western Macedonia are faced with a complete lack of secondary schools due to a significant increase in the number of students. The state is slow in responding to this.

Similarly, although great in numbers, Albanians were highly discriminated against in Bitola in September 2003, when they requested secondary school classes in Albanian language. They were forced to attend classes in Macedonian. Macedonian high school students from all over Macedonia, with the support of their professors and a few political parties protested in September 2003 demanding the state not to allow Albanians to attend classes in their mother tongue. Due to the highly politicized environment in Bitola during these protests, the Ministry of Education abandoned its decision, and the Albanian students in Bitola are still attending classes in Macedonian.

The number of young Albanians who continue their studies every year is increasing both in the country and abroad. But the percentage of educated Turks with high school or college degrees is very small. The current proportion of Turkish students in higher education in the country is 4%. This is a reason why many Turkish students leave the country and study abroad (mostly in Turkey) because they cannot obtain training in their national language, but only in Macedonian or Albanian. The state has not undertaken any concrete activities to hire and develop additional Turkish or Roma language speaking staff for primary and secondary schools. The existing Department for Turkish Language in the Faculty of Philosophy in Skopje lacks staff and technical expertise. Also, there are reports of continuous discrimination regarding high school and undergraduate scholarships awarded by the Ministry of Education of the Republic of Macedonia. In higher tertiary education some positive measures have been taken towards solving the problem of the lack of minority education opportunities. This is due largely to the difficulties that minorities encountered when applying to the University of Skopje and the University of Bitola. Both of these institutions hold lectures in Macedonian language and as a direct consequence some minorities had insufficient proficiency in the Macedonian language and experienced discrimination by the professional staff. The University of Bitola does not provide any studies of the minority languages nor in the language of minorities. On the other hand, the University of Skopje provides specialized departments in the study of two minority languages – there are both, Albanian and Turkish Courses within the Philology Faculty of the University of Ss. Cyril and Methodius in Skopje.

Until recently, the University of Bitola and the University of Cyril and Methodius in Skopje were the only two university options available to citizens of Macedonia. Changes to the Law on Higher Education recognized the right of minorities to found private higher education institutions. With the help of the international community, the South Eastern European University in Tetovo was founded and later the government legalized the State University in Tetova, which holds

lectures in Albanian language. This primarily aided the problem of tertiary education for the Albanian minority since SEE University provided education in Albanian, Macedonian and the English language. Some problems have not been resolved with this solution considering the high tuition fees that students must pay, which is particularly difficult for minorities who are often worse off than most. Another problem was the need for good knowledge and understanding of the English language, which is not a precondition in the less expensive state run universities.

The government has tried in the past to find ways to offer some benefits to national minorities for enrolling at faculties through passing a bill that would establish a quota for minorities to enrol in high schools and universities. Unfortunately, this bill did not improve anything regarding the number of Roma that enrolled in faculties. In addition, this benefit was possibly “misused” by non-Roma individuals who upon enrolment declared themselves Roma or Vlachs in order to gain admission. The government did not establish an efficient identification system where students would have to bare proof of their nationality thus making it impossible to keep track of the real number of minority students enrolling. More significantly, the number of Roma in relation to all other nationalities in Macedonia has stagnated regarding achievements and developing their educational and cultural rights in this regard.

#### *1.2.7. Educational facilities.*

The government has admitted to the decaying state of educational facilities in Macedonia. They are in terrible condition and dangerous for attending students. Given the attention prisons have received in recent years, many schools do not meet or surpass current conditions of Macedonia’s prisons. In schools it is common to have students using broken desks, in classrooms with insufficient heating or no heating at all, incorrectly attached light fixtures and dangling electrical wires, holes in classroom walls, peeling paint, cracked foundations, collapsed ceilings, unsanitary conditions, garbage on floors and throughout the schoolyard, damp walls and ceilings. In addition, there is a lack of space, materials and supplies for teachers and students.

As for the expenditures for education, the Macedonian government is putting aside only 4% of the GDP. If we add to it the extra budget secured from different donations and mortgages this percentage raises up to 5,2% (according to the Ministry for Education and Science). In comparison, countries of OECD put aside around 6% of their GDP towards education.

Some obstacles remain in regard to the promotion of understanding, tolerance and friendship among all ethnic groups in Macedonia. Most schools in Macedonia operate using a shift system due to the lack of classrooms and space in schools. However, there are schools in the Western region of Macedonia (primary and secondary) that apply a shift system in which Albanians and Turkish minority pupils attend classes in separate shifts from the ethnic-Macedonian pupils. This is due to high tension and disputes between students. However, this organizational method based on ethnicity is not necessarily a common practice, as there are schools where this method is not used.

*1.2.8. Report of the Ombudsman.* – The Ombudsman of the Republic of Macedonia reports that the complaints about the realization of the rights in the field of university education in the reporting period were decreasing compared to previous years.

Still, the Ombudsman cannot report the overall situation as satisfactory having in mind a high number of citizens' complaints about various institutions' work and decisions.

Research undertaken by the Ombudsman showed that although children with special needs have been provided with access to education process, this group of children still have obstacles in being included in the elementary education. This information was preceded to the Ministry of Education and Science and the Government of Macedonia, with a request for undertaking appropriate measures. In theory education is free and compulsory at the primary level, but materials and books are not free and so participation is still an obstacle for minority communities like Turkish and Roma who are usually worse off than most. Therefore, the Ombudsman requested the Ministry of Education and Science and the Government to make legal provisions aimed to financially assist the poor and the schools. The Ministry of Education and Science agreed to allocate financial means for this purpose.

*1.2.9. Human rights education.*

Human rights education is occasionally implemented in Macedonia. However, majority is organised through NGOs and supported by international donors. Introduction of tolerant and ethnically inclusive educational materials have been a positive improvement.

*2. Access to Rights*

*National Human Rights Institutions in the Country*

As stated before the protection of human freedoms and rights is guaranteed in Article 50 of the Constitution of the Republic of Macedonia, according to which: "Every citizen has the right to invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court of the Republic of Macedonia, through a procedure that is based upon the principles of priority and urgency."

The country has a three-tiered court system composed of trial courts, appeal courts, and the Supreme Court. The Constitutional Court is not considered part of the judicial branch and deals with matters of constitutional interpretation and certain human rights protection issues.

The exercise of the judicial function is crucial for an efficient realization of this form of protection, especially its independence and autonomy. A number of provisions in the Law on Courts guarantee the independence of the courts in performing their judicial function.

Besides the regular courts, direct protection of the freedoms and rights of citizens can be realized also before the Constitutional Court of the Republic of Macedonia.

The procedure for protection of the freedoms and rights before the Constitutional Court is regulated by the rules of procedure of the Constitutional Court, according to which the citizen may demand protection of his freedoms and rights before the Constitutional Court within two months from the day the effective decision is delivered, i.e. from the day when a person learns that a violation has been committed, but not later than five years from the day when it was committed. As a rule, the Constitutional Court decides on the basis of a public hearing in which the participants in the procedure and the People's Ombudsman participate. With a decision on the protection of freedoms and rights, the Constitutional Court shall determine whether they have been violated, and depending upon this, it shall revoke the individual act, prohibit the action causing violence, or it shall reject the demand. The Constitutional Court may make a decision to suspend an individual act or action pending the final decision.

Apart from the direct constitutional and judicial protection, and within the framework of its basic competence (control of constitutionality and legality), the Constitutional Court ensures permanently a so-called abstract protection of human rights through the possibility to annul or revoke provisions of the laws and by-laws which are in contradiction to the Constitution, i.e. by which the constitutionally guaranteed rights are violated.

Regardless of the fact that the law provides for an independent judiciary, the US State Department reported that the judiciary was weak, at times inefficient, and occasionally influenced by political pressure, intimidation, and corruption. The government also used its budgetary authority and modest allocations to the court system as instruments to exert control over the judiciary. Programs for witness protection began to operate with limited capacity during the year. A law enforcement agent successfully testified as a protected witness in a drug smuggling case, and the police also provided protection for a victim of trafficking who testified in court during the year.

In 2006 the government concentrated its efforts on judicial reform and budgetary resources to the judiciary slightly increased from 2005. A law was passed to found an Academy for Training of Judges and Prosecutors, and candidates for a basic court will have to complete a training course at the new academy. A Law on Mediation was adopted in May to lower the backlog of unsolved cases, and sixty mediators were appointed. In May, new Laws on Courts, Judicial Council, Misdemeanors and Administrative Disputes were passed. Despite these reform efforts, inefficiency of the judiciary remained a major problem in 2006. There are hundreds of thousands of untried cases. The courts are burdened with administrative work and are also expected to deal with a high number of misdemeanor and decided cases that require law enforcement. Out of five judgments against Macedonia before the European Court of Human Rights in 2006, four noted violations related to the length of judiciary proceedings. Macedonia's rating for judicial framework and independence remains at 3.75.

### *2.1. Ombudsman.*

People's Attorney (Ombudsman) is established through the Constitution in order to act in case of violation of constitutional and lawful rights of citizens by agencies of the state administration or by other bodies and organizations that

have public authorization. The Ombudsman is elected by the Assembly of the Republic of Macedonia for a period of eight years, with the right to a second term. According to the Law on the Ombudsman, the Ombudsman has one or more deputies who are elected and dismissed by the Assembly of the Republic of Macedonia, upon his/her proposal, for a term of eight years, with the right to a second term. The Parliament of the Republic of Macedonia elects and dismisses the Ombudsman and his deputies with a majority vote of the total number of delegates, requiring a majority of votes from the total number of delegates belonging to non-majority communities in the Republic of Macedonia.

Responsibilities of the Ombudsman are proposed in the frame of the Constitution and the Law on the Ombudsman. During 2006, the Ombudsman assisted 758 citizens after conducted procedures, confirmed violations and addressed interventions<sup>199</sup>. The largest number of complaints came from the following fields: judiciary 793 or 25,78%; in the field of protection of rights during police procedures and other Interior affairs 500 or 16,25%; property rights 327 or 10,63%; labor relations 326 or 10,60%; in the field of social rights 197, respectively 6,40%; in the field of pension and disability insurance 185 or 6,01%; in the field of urban planning and construction building 157 or 5,10%; in the field of protection of consumer rights (communal and other taxes) 100 or 3,25%; in protection of the children's rights 86 or 2,80%; accommodation relations 80 or 2,60%; in health protection 59 or 1,92%; in the field of education, science, culture and sport 33 or 1,07%; in the field of finances and financial issues 24 or 0,78%; in the field of environment protection 20 or 0,65%; then in the field of discrimination 10 or 0,33%; rights of military personnel and military conscripts 5 or 0,16%; rights of minority communities 1 or 0,03%; as well as in other fields in which 136 or 4,45% complaints were submitted. (Review no. 1, p.12 and Graph no.4, p 10)

The number of submitted complaints shows no significant changes in comparison to previous years. The largest number of complaints refers to inefficiency of courts, meaning the delay of judicial procedures.

The independent office of the European Network of Ombudsmen for Children (ENOC) is established in Macedonia with a task of promoting children's rights and encouraging the implementation of the UN Convention on the Rights of the Child.

## 2.2. *Permanent Survey Commission.*

The Parliament of the Republic of Macedonia established the Permanent Survey Commission for the protection of freedoms and rights of citizens (Art. 76 (4) of the Constitution). The Commission's responsibility includes uncovering violations of freedoms and rights of citizens incurred by public offices employees. In its work, the Commission cooperates with scientific and professional organizations, relevant foreign and international bodies, as well as with the relevant working bodies of the Parliament.

By a Decision of the Government of the Republic of Macedonia adopted in January 1997, a Department for Gender Equality Promotion (DGEP) was

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199 The Report of the Ombudsman of RM for year 2006

established, within the Ministry of Labour and Social Policy. The basic function of the DGEP is to positively encourage and promote gender equality, in accordance with international conventions. The DGEP fulfills this function by initiating specific activities under the National Gender Equality Action Plan that the Government of the Republic of Macedonia adopted in 1999. The Law on Equality, implemented in May, for purposes of gender mainstreaming in the local policy and advancement of the position of women at local levels established 10 (ten) Gender Equality Committees in 10 cities in the country.<sup>200</sup>

### *3. Disadvantaged, Marginalized and Vulnerable Groups*

The right to work - Minorities and development of equal opportunities for employment

#### *3.1 Legal provisions.*

In accordance with the Constitution of the Republic of Macedonia (Art. 32(1)) everyone has the right to work, free choice of employment, protection at work and material assistance during temporary unemployment, and every job is open to all under equal conditions, i.e. without any discrimination, including gender based discrimination.

In pursuance of these constitutional provisions, several laws have been adopted and collective agreements have been concluded, including the following: Law on Labour Relations, Law on Employment and Insurance in Case of Unemployment, Law on Employment Promotion.

Two Collective Agreements have been concluded at national level: General Collective Agreement for the Economic Branches in the Republic of Macedonia and the General Collective Agreement for Public Services, Public Enterprises, State Bodies, Local Self-Government Bodies and Other Legal Entities Performing Non-Economic Activities. Almost all branch collective agreements have been concluded, based on these two collective agreements.

Issues pertaining to labour relations are regulated by the Law on Labour Relations adopted in 1993, which has been amended and supplemented on several occasions within the framework of reforms in the area of labour market and under other projects. Issues in this area are also regulated in several other legislative documents, collective agreements and employment contracts.

In accordance with the Stabilization and Association Agreement that the Republic of Macedonia and the EU signed on 9 April 2001, the Government of the Republic of Macedonia adopted a Program for approximation of the legislation of the Republic of Macedonia with that of the EU. These documents refer to labour related Directives which should provide direction in which national legislation needs to move, defining in addition, the schedule and stages for harmonization of the national legislation with the EC Directives. During the first stage several labour regulations were harmonized with several directives of the EC: Council Directive 75/117/EEC on the principle of equal pay for men and women,

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<sup>200</sup> These Gender Equality Committees have been established in accordance with the Statute of the Local Self-Government

Directive 76/207/EEC on the equal access to work, education and equal conditions for work and to a certain extent with Directive 97/80/EEC on the burden of proof in cases of discrimination. These Directives relate to the Law on Labour Relations and some of them apply to other labour related laws.

Hence, Article 8(a) of the Law on Labour Relations (Official Gazette of the Republic of Macedonia No. 25/2003) sets forth that the employer must not place the employment seeking person or the employee in an unequal legal position on grounds of race, color of skin, gender, age, health status, i.e. disability, religion, political or other belief, membership of trade unions, national or social origin, family status, property status or on grounds of other personal circumstances.

Man and women must be ensured equal opportunities and equal treatment in employment, promotion, insurance at work, working hours and employment contract termination. Furthermore, according to Article 70(a) of the Law on Labour Relations, another Article 70(a) is added (Official Gazette of the Republic of Macedonia No. 25/2003) which reads as follows:

*“In respect of equal jobs with equal demands of job performance, the employer shall be obliged to pay employees equal salary regardless of the gender.”*

The provisions of the employment contracts and the provisions of the collective agreements, which run contrary to paragraph 1 of this Article, shall be deemed null and void.

“According to the Law on Labour Relations, i.e. Article 58 of Section 4 of this Law entitled ‘Special protection of Women, Juveniles and Disabled Employees’, female employees have the right to nine months continual leave from work during pregnancy, delivery and maternity, and one year leave for birth of more than one child (twins, triples etc).”<sup>201</sup> However, once again this provision in law has not been implemented well in practice. Women are often dismissed when they become pregnant or during maternity leave in Macedonia.

### *3.2. Practice.*

Unemployment is a persistent problem in Macedonia, with the unemployment rate hovering consistently around 37% of the population. For Roma the unemployment rate in 2005 was approximately 79%, while the most worrying is the unemployment rate for Roma women - 83% according to State party data. This rate varies for different minorities, and for example, Albanians’ unemployment rate is 61.2%, Turks 58.2% and Bosniaks 60.3%.<sup>202</sup>

Equal work for equal pay is not the reality in Macedonia. Women either work longer hours, or they work similar hours with lower pay for doing similar work. In addition, women are disproportionately employed in jobs that are stereotyped as ‘female roles’, including cashiers, cleaners, childcare providers and teachers.

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201 State Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights. Section 261. Available online at: <http://www.ohchr.org/english/bodies/cescr/docs/E.C.12.MKD.1.pdf>

202 Tilev, Dragan (Sector for European Integration). Macedonia: Current Challenges and the National Response to Poverty. Tirana, June 2005: “Western Balkans Forum on Social Inclusion and the Millennium Development Goals”. [http://intra.rbec.undp.org/mdg\\_forum/Session3\\_FYRMacedonia\\_files/frame.htm](http://intra.rbec.undp.org/mdg_forum/Session3_FYRMacedonia_files/frame.htm) (accessed January 9, 2006).

These types of jobs are typically seen as less difficult and therefore paid less than jobs traditionally assumed to be “male”.

In terms of fair wages, it is common practice for employers to pay employees in cash without a pay slip. These transactions come every month when the employer visits the work site with a large plastic bag filled with cash. The workers are deducted no pay for social insurance, or taxes. Therefore, each employee is paid under the table and the appropriate authorities have no idea how many people work at a given site. This leaves them in an insecure position. If the Labour Inspectorate did conduct an investigation, which they do not, they would learn that employees are paid without record and most have no idea of how much they will be paid each month or how their salaries are determined. Employers frequently deduct pay for arbitrary reasons (eg. Inventory shortfalls) without explanation.<sup>203</sup> Since there are no set criteria for dispute resolution and/or dismissal in most workplaces, the whole process is made that much more difficult.

For example, the conditions and poor pay of female textile workers in Macedonia are a huge problem, however, there have been no improvement regarding this issue. This is primarily due to the fact that the textile industry is a major employer in central Macedonia and the government fears further job losses should they impose proper labour and workplace inspections.

The ministry has failed to address publicly or to report thoroughly on the problems relating to the lack of enforcement of labour conditions set out in law. This includes no payment of overtime work, lack of adequate breaks and reasonable working hours and arbitrary dismissals.

There is a lack of transparent and objective criteria for selecting qualified employees for the public service. The lack of standards amongst the government has meant that there is no leading example for the firms in the private sector or state-owned companies to do the same. Employment is based more on personal connections and in the public service on political party affiliation. This accounts for the large turnover of people following elections in public institutions.

It is common for workers in Macedonia to work far more than 40 hours a week and not be paid overtime. Monthly salaries are fixed with no adherence to the 135% overtime rate set out in the Law on Labour Relations. In addition, salaries are established monthly making it more difficult to calculate overtime for extra hours worked.

However, high unemployment and difficult economic conditions lead many people to accept work that does not comply with legal guidelines. In particular, small retail businesses often require employees to work well beyond the legal limits.

The Ministry of Labour and Social Policy did not strictly enforce laws and regulations on worker safety. While workers have the legal right to remove

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203 Association for Democratic Initiatives. Human Rights Monitoring Observations. Macedonia, August 2005 – March 2006. For specific references to the textile industry in Macedonia see also Clean Clothes Campaign - Evangelische Akademie Meißen. Workers' Voices: The situation of women in the Eastern European and Turkish garment industries. Germany, 2005. pp.19-21.

themselves from situations that endanger their health or safety without jeopardy to their future employment, employers did not always respect this right in practice.

Furthermore, within the past year the State has taken steps that enhance the power of dismissal for the employer while limiting the previous protections enjoyed by workers in the Law on Labour Relations.

Some of the derogations in the Law on Labour Relations include the ability of the employer to dismiss workers without reason due to economic, structural, operational, or technological issues. Also, there is a reduced notification period for the employer when they dismiss workers due to business reasons. The employer is not required to provide assistance to workers to find employment following a dismissal. The employer no longer has to attempt to alleviate the negative consequences as a result of laying-off workers. There are no longer any special provisions for workers dismissed after working 25 years or 20 years with the same employer. Last but not least, employers no longer have set criteria or mechanisms to determine which workers will be dismissed for business reasons and the employer is no longer obliged to hire back the dismissed worker even when the same position is vacant and the business situation has improved after lay-offs. These are all recent changes that once, in theory, provided employees the right to work and right to fair remuneration protection.

Equitable representation of the minorities on all the levels of government, as stipulated in the Ohrid Framework Agreement (OFA) was introduced. As a result of the undertaken reforms, percentage of minorities working in the administration was raised from 16.7% to 20.5%, in July 2005 and in the case of Albanians the previous 11.6% went up to 15.3% in the same period.<sup>204</sup>

The Ombudsman submitted a report for 2006 that contains data on adequate and equitable representation, including gender representation. For instance, there is a total of 29 employees at the Constitutional Court of Republic of Macedonia (21 female and 8 male) of whom 86,2% are Macedonians and 13,8% are Albanians. There are 583 employees within the Government of RM (expert service) (301 female and 282 male) of whom 82,3% are Macedonians, 11,1% are Albanians, 1,7% are Turks, 0,7% are Roma, 1,4% are Serbs, 1,5% are Vlah and 1,2% others. A total of 279 employees works at the Ministry of Labour and Social Policy (161 female and 118 male) of whom 77,1% are Macedonians, 14,7% are Albanians, 0,4% are Turks, 1,1% are Roma, 2,9% are Serbs, 2,2% are Vlachs, 1,4% are Bosniaks and 0,4% belong to other minorities. A total of 176 employees works at the Ministry of Health (114 female and 62 male) of whom 75,6% are Macedonians, 19,9% are Albanians, 0,6% are Turks, 0,6% are Roma, 1,7% are Serbs, 0,6% are Vlachs and 1,1% belong to other minorities. At the Supreme Court of RM out of a total of 88 employees (59 female and 29 male), 86,4% are Macedonians, 6,8% are Albanians, 1,1% are Turks, 3,4% are Serbs and 2,3% are Vlachs. Out of a total of 2955 employees within the Local Self-Government Units (1114 female and 1841 males) there are 81,7% are Macedonians, 12,9% are

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Albanians, 1.9% Turks, 0.7% are Roma, 1.4 are Serbs, 0.4% are Vlahs, 0.1% are Bosniaks and 0.8% others<sup>205</sup>. From the abovementioned data we calculated a figure of 44.344<sup>206</sup> total number of employees, of whom 15.429, or 34.79% are female and 65.21% are male. From the total number of employees in administration, 84.71% were Macedonians, 10.26% Albanians, 0.87% Turks, 0.64% Roma, 1.99% Serbs, 0.5% Vlah, 0.27% Bosniaks and 0.76% others. According to those figures the issue of adequate and equitable representation seems to be worst than in the previous (2005) reporting year, but since this is incomplete data no conclusions shall be drawn.

### *3.2.1. Roma non-majority community.*

One of the cross-cutting issues is that of the Roma minority, being a community which due to a complex variety of factors does not enjoy its rights. Roma suffer from the highest rates of unemployment in the country, educational exclusion, high infant mortality rates and the highest rates of poverty. Minorities in general continue to be underrepresented in governmental and private institutions.

As the census results are quite questionable, therefore the Roma share of the total population is also indeterminable. According to the results, 2.66% of the total population is Roma, or 53.879 persons, however there are estimates of 80.000 to 135.000<sup>207</sup>. In connection to the above mentioned equitable representation mechanisms adopted by the government, the Roma community is the only community whose representation did not change at all during 2005. In 2006 the Roma representation went up to 0.64% in comparison to the previous year when it was 0.53%.

One of the biggest concerns is the education, as many Roma children drop out of school during the primary education years, leading to poverty and restricted chances for employment.<sup>208</sup>

Women of minority communities and Romani women are the most vulnerable and have the greatest difficulty enjoying their economic, social and cultural rights. For instance, women have greater levels of unemployment and are paid less than their male counterparts. Also, Roma girls have high rates of dropout with few completing grades past primary school. This is somewhat due to tradition but also education costs and discrimination faced by Roma in public schools by teachers and directors.

In the smaller cities and towns of Macedonia it is common to see Roma children begging in the streets. Another concern for children in Macedonia is the reported

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205 For more details on the employment representation in different fields check the Annual Report 2006/ Ombudsman of the Republic of Macedonia

206 This figure is not complete due to the fact that requested data was not received from: the Foreign Agency in the Republic of Macedonia, Protection and Rescue Agency, State Reserves Agency, Security Personnel Training Agency, Fund of the Deposits Insurance, PE Stock Exchange "Agro Berza" Skopje and the PE for water supply "Dojransko Ezero"

207 Professor Divina Lakinska, Zaklina Durmis, Azbija Memedova and Ljativ Demir. Needs Assessment for the Roma Educational Rund, Macedonia November 2004. World Bank, 5

208 See more in III.1.2.6.

1000 street children in Macedonia.<sup>209</sup> These children are largely Roma, and live in the city of Skopje where they beg, sell goods like cigarettes at intersections, wash windshields. In order to meet their daily needs they can frequently be seen rummaging through dumpsters for food and searching for scrap metal to sell or build a temporary shelter. Roma children continue to be one of the most vulnerable groups in Macedonia's society.

Child marriage is a common practice within the Romani community. It was difficult to estimate the extent of underage marriage in the Romani community because such marriages are frequently not registered. A survey of 960 Romani women in 2005 by a local NGO found that 54 percent had given birth to their first child by the age of 18, while 3 percent had given birth between the ages of 12 and 14.

Although infant mortality has decreased considerably in Macedonia since 1960, there is concern of the infant mortality rate among Roma. There are nearly a quarter of births of Roma children that take place in the home, which gives an idea of why infant mortality rates among Roma are twice that of the majority population. Furthermore, Roma choose to give birth at home due to poverty and lack of financial means to afford hospital costs, but also due to discrimination they face while receiving medical care. Data from UNICEF reports that mortality rates for Roma children are almost double those of the general population.

The international community, including EUPOL Proxima, OSCE, IOM, UNICEF and OPDAT/ICITAP, is aware that there were several cases in the regions of Gostivar, Bitola and Kicevo in 2003 and 2004 where Roma children were victims of 'internal trafficking'.<sup>210</sup> The figure for victims of trafficking is believed to be much higher because the government of Macedonia has been reluctant to pursue and acknowledge internally trafficked persons and have no official statistics on this matter.

Over 2000 refugees remain in Macedonia as a result of the 1999 Kosovo conflict.<sup>211</sup> In addition, there are a significant number of Roma people without effective citizenship in Macedonia despite having lived in Macedonia most of their lives, this being a result of the citizenship crisis stemming from the dissolution of the former Yugoslavia. Also, it is difficult to ascertain accurate figures on the latter issue because of the lack of disaggregated data and debated size of the Roma population in Macedonia. Regardless, Roma without citizenship are denied social security, healthcare, access to employment and educational rights since they lack vital identity documents. Furthermore, those without valid identity documents have additional difficulty attaining such documents since they cannot

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209 Dejan Georgievski, (ed). One Thousand Homeless Children Grow Up on the Streets. Skopje, Utrinski Vesnik, 24 November 2005. Available online at: <http://see.oneworld.net/article/view/122822/1>

210 UNICEF/UNOHCHR/OSCE ODIHR. Trafficking in Human Beings in South Eastern Europe. Sarajevo, United Nations Development Programme, 2005, pp. 110.

211 UNHCR. Estimate of Refugees and Displaced Persons still seeking solutions in South-Eastern Europe. Sarajevo, December 2005. [http://www.unhcr.ba/maps/03/SEE\\_EstimateOfRefIDPs\\_MapA3LC\\_31dec05.pdf](http://www.unhcr.ba/maps/03/SEE_EstimateOfRefIDPs_MapA3LC_31dec05.pdf) (accessed April 15, 2006).

claim a permanent address because they are more likely to live in temporary dwellings and by custom travel frequently. Therefore, this lack of recognition by the relevant authorities legitimates continued discrimination against Roma people by the public.

If we look at the poverty rates among Roma the figures are even more shocking. In a comprehensive study conducted by the UNDP, 89% of Roma live under the relative income-based poverty rate (compared to 39% of the majority population in close proximity to Roma) and 79% (compared to 34%) live under the relative expenditure-based poverty rate. In terms of the poverty line of \$4.30 (PPP) per day, 52% of Roma (compared to 14% of non-Roma living in close proximity to Roma) fall below this line based on income, while 33% of Roma (compared to 10% of non-Roma in close proximity to Roma) fall below based on expenditure.<sup>212</sup>

According to UNDP research, 22% of Roma have been denied access to state healthcare because they lack documents. Furthermore, prescription drug costs, fees for tests and examinations create additional obstacles for Roma in accessing healthcare.<sup>213</sup> As a result the same source indicates that 23% of non-Roma and 29% of Roma suffer from chronic illnesses in Macedonia.

When we examine the housing statistics for Roma we also find large disparities between Roma and majority population living in close proximity to Roma. For example, in the majority population living in close proximity to Roma the average square meters per household member is 26, but among Roma the average is 12 square meters per household member. Included in this survey by the UNDP is that 36% of Roma live in slums/ruined houses (no access to secure housing), while 5% of the majority population living close proximity to Roma did not have access to secure housing. Finally, the same statistical data showed that 79% of Roma did not have access to essential medication and 59% did not have access to improved sanitation. Compared to the majority population living in close proximity to Roma regarding the same issues the results were 42% and 12% respectively.<sup>214</sup>

In order to contribute to full emancipation and integration of the Roma in society, the Republic of Macedonia is one of the countries included in the international project “Roma Inclusion Decade 2005-2015”. The Ministry of Labour and Social Policy is the Ministry in charge of the government activities for the Roma Decade. In this respect, the National Strategy and the Action Plans for the Roma in a number of areas including education, employment, healthcare and housing have been prepared.

Through the EU-funded project, a Roma Representative Body was created to lobby on behalf of the Roma community, thereby increasing the awareness of the government and public institutions about the challenges and needs of the

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212 United Nations Development Programme (UNDP). *Faces of Poverty, Faces of Hope: Vulnerability Profiles for Decade of Roma Inclusion Countries*. Bratislava, 2005. Available online at: <http://vulnerability.undp.sk>

213 United Nations Development Programme (UNDP). *Faces of Poverty, Faces of Hope: Vulnerability Profiles for Decade of Roma Inclusion Countries*. Bratislava, 2005. Available online at: <http://vulnerability.undp.sk>

214 Ibid.

community. Through a partnership with Roma NGOs and the municipality, Roma community leaders were actively involved in all workshops and training sessions organised under the project. To provide background research, some 300 families participated in a questionnaire on their needs and problems with respect to housing, employment, education and health. As a result, the Municipality of Bitola has adopted a Roma Strategy 2006/2010 making the improvement of the situation of the Roma community a priority for the municipality. This is based on the National Strategy for Roma 2005–15.

# Human Rights in Montenegro in 2006

By Siniša Bjeković & Nenad Koprivica

## Abstract

This text represents a brief analysis of the situation concerning human rights in Montenegro in 2006. The introduction includes a general context and social situation in Montenegro, which represents a social base for respect and protection of human rights. Although it's not possible to speak about a level of promotion and protection of human rights as it was during the last decade of the previous century, it is to say that transitional period still entails all the characteristics of the society that undergoes the revival of institutions and general social, cultural and legal reform. That inevitably includes a need to focus on the institutional and legal reforms of the human rights system as well as on a change of institutional involvement and social awareness in comprehension of human rights.

Having acquired its independence Montenegro has particularly emphasized the obligation of maintaining the attained level of respect and protection of human rights as well as their improvement in a new state legal framework, which is included in the inaugural legal and political acts following the constitution of a new state.

The major obstacle in internal implementation is the absence of constitution, which causes many deficiencies in protection of human rights on the institutional level as well as in regard to process legal norms in the procedure before the government bodies.

The following problem includes rigid and anachronous legislation in some social fields such as religion freedom, protection of personal data, etc. The existing legislation in Montenegro mainly provides legal foundation, however in practical

meaning it has neither found a proper base for more complete implementation of standards in the field of human rights nor are those being implemented in compliance with the accepted obligations (example of judicial institutions and implementation of European law).

The system of security and protection of fundamental human values (life and body) still burdens the society by a number of unsolved cases of violence over some public persons while the justice is undergoing some major reforms in organizational and structural filed. Debates on the new constitution prove clear ambitions for higher degree of independence of courts, in particular in the field of protection from political influence in election of judges and in financing of courts. On the other hand, there are many activities regarding education and training in judicial bodies and in management of old cases, which burden the deadlines for prompt case management that is a right to a trial within reasonable time.

According to estimations of many non-governmental organizations in Montenegro, a particular problem includes a strong influence of entrepreneurial lobbies that influence decision making in some vital development cases. Such pressure is demonstrated in solving some property ownership matters and in particular, restitution procedures, which is restitution of a land to the previous owners whose land had been confiscated during the period of communist regime.

The level of minority rights is being gradually adjusted with the Framework Convention on Minority Rights although that process goes along with constitutional obstructions, which is again a result of absence of the highest state-legal act in Montenegro. In line with that, it also results in a lack of regulations that would regulate the issue of official language(s) that is/are in use in Montenegro.

## **Introduction**

### *Political and social situation*

The system of human rights in Montenegro has same specifications as in previous years - there are no mass and systematic violations of human rights, but certain number of individual cases is present and their significance is intriguing both local publics and world publics attention. The post conflict society like the one in Montenegro is still facing consequences of activities in 90-ies and when one is talking about human rights, the most frequent impression is one of scantiness of effective and efficient legal remedies of their protection. The Montenegrin society, as group of different political and social participants, most often unilaterally reacts on violations of human rights manifestations and only in small number of cases the problems are identified as problems of the system.

Conscience of accelerated integration processes aspired by Montenegro is created by government authorities. These processes are at the same time supported by respect of human rights, the rule of law and legal state as basic functional postulates of one member state. The Government and Parliament of Montenegro have, immediately after the referendum upon which independency was proclaimed, declaratively taken stand on respecting of reached level of democracy and human rights and accepting values upon these universal values are based on.

Therefore, The Government of Montenegro, on its session from 11.05.2006, adopted Declaration on relations with organization of United Nations after conducting referendum on legal status of state according to principle from the Universal Declaration of UN on human rights, that the will of people is basis of state authority, and that republic of Montenegro will, after positive decision of citizens on referendum, as soon as possible seek membership in United Nations and in specialized agencies of UN. The Government of Montenegro, decisive to respect previously taken international obligations, also made commitment to carry out all UN documents signed in State Community of Serbia and Montenegro – The Chart of UN, the Universal Declaration on human rights, the conventions, treaties and other UN documents. The government expressed willingness to accept initial reports on respecting of UN conventions within State Community as initial reports of Republic of Montenegro as the independent state, and to submit all remaining reports to UN bodies timely, with emphasized decisiveness to, according to basic principles of UN and principles upon which lay the foundations of modern democracies, continue to carry out and promote policy of full respect of human rights and fundamental freedoms of all citizens, no matter of their sex, colour, religion, language, political, national, racial or class affiliation or other personal characteristics.

Finally, expressing devotion to promotion of maintainable development on global level, the Government committed itself to continue with intensive activities on construction of Montenegro as ecological state so it would be able to ensure social, economic, political and cultural development to its citizens upon principles of viability, with special support for full implementation of Millennium development goals toward extinction of poverty, and in that way contributing to better life to its citizens and general stability.

Immediately after gaining independence, the Parliament of Montenegro proclaimed Declaration of independent Republic of Montenegro on session on 03.06.2006. This declaration states that Montenegro as independent state with full international legal subjectivity will continue to build itself as civic state, multinational, multiethnic, multicultural and multi religious society, based on respect and protection of human rights and freedoms, rights of minorities, the principles of parliamentary democracy, the rules of law and market economy, which will be upgraded by bringing of new Constitution of the Republic of Montenegro. Meanwhile, the state accepts principles determined in documents of United Nations, the European Council, the Organization for European Security and Cooperation and other international organizations, with commitment to start procedure for full time membership in these organizations as soon as possible. The acceptance of Declaration means also acceptance and succession of rights and obligations from previous arrangement with the European Union, the United Nations, the European Council, the Organization for European Security and

Cooperation and other international organizations, which relate to the Montenegro and which are compatible to its legal system.

Quoted documents, although formally less obligatory, brought Montenegro to specific legal regime which begin after independence, and which relates status of basic rights and freedoms, as well as jurisdiction of international court and court – like bodies in consideration of obligations of Montenegro which originate from former mutual state of Montenegro and Serbia. Therefore, the reason for which these documents are enlisted in this text is practical and useful, because it points out to Montenegro commitment to preserve reached level of human rights and freedoms and legal obligations in its legal system in formal and in material way.

## Human rights in legislation

*The right to live.* - In context of state's negative duty to uphold from acts where individuals are cooped by authorities, there are no cases of depraving of life or missing people. However, beside negative obligation, state also has positive obligation to prevent endangering of life under its jurisdiction, not only in applying meanings of force but in other procedures as well. This principle is confirmed through several verdicts of the European court for human rights which quotes that article 2. of the European Convention doesn't solely prescribe obligation of upholding from acts which endanger life, but also positive obligations, or measures which preserve life of people under state jurisdiction<sup>215</sup>. The court also determines that these measures can interpret from the point of view of people protection from dangerous and hazardous materials like ones in nuclear and chemical factories and other substances risky for life of people.

The consequences of war in countries in surrounding are still visible in Montenegrin society. It primary relates to violent behaviour and certain amount of illegal arms and explosive devices which are still used by criminal groups. The state undertook several measures on preventing or restricting possession and usage of explosive devices and illegal and legal arms owned by physical subjects. Some of these measures gave results (like Strategy for reducing and control of light arms owned by citizens), but it is a fact that some part of explosive materials and arms is still used in conflicts between criminal groups and in blackmails where they threat people and their families to gain material wealth.

In one case in Nikšić surrounding (second biggest town in Montenegro) there's been explosion in storehouse which had been previously used by military, and in the moment of incident it was used by private company. The explosion caused big material damage in wider area, and causes of this, and eventual responsibility for damage are still being investigated. The authorities undertook measures to take care for population which lost their houses, and procedure for establishing responsibility is initiated against owner of company at the same time. Regarding the fact that newspapers incline that owner possessed suitable documentation to store and manipulate explosives in those facilities, there is an open issue of

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215 L.C.B. vs Great Britain, verdict from 09.June.1988, § 36

Oneryildiz vs Turkey, verdict from 30.November.2004, § 71

transferred public authorities and risk assessment which has been done in procedure of giving consent for this facility, which was in jurisdiction of government bodies and companies which are dealing in risk assessment.

Regarding the number of committed murders, according police reports, number of solved cases is within statistical characteristics in region. However, degree of seriousness of unsolved murders, motives, ways of performing and especially obviously good organizing of perpetrators are showing weak reaction of state in general towards these manifestations. Montenegrin society is still burdened with certain number of unsolved homicides and violent behaviours, for example the homicide of police officer Srđan Vojičić who was in official escort of known Montenegrin writer Jevrem Brković. An assault on writer and this homicide coincided with publishing of book about known persons from Montenegrin public life. Although an official investigation was conducted, there were no new details regarding this homicide. Regarding homicide of high police official Slavoljub Šćekić, court procedure is in place with unknown outcome, although there is a group accused for this act.

*Prohibition of torturing and cruel and inhuman treatment and punishing.*

Acts of police in terms of usage of force and other police authorities are causing special attention of public and expert institutions in longer time. Serious reserves were expressed in several cases. Special attention was drawn by police action called „Orlov let“ (Eagles flight) where police authorities were applied towards group of Albanians under suspicion that they committed an act of criminal conspiracy with intention of performing terrorist acts in Montenegro. Families of indicted persons, as well as direct witnesses of operate measures of police are pointing on exceeding of authorities and compulsion in process of obtaining of evidence, and few indicted persons supported that with medical records. Official Montenegrin authorities have conducted an inter investigation of all case and they concluded that there was no excessive usage of force towards indicted persons in phase of procedure before the end of investigation. Families and defenders of indicted are still insisting on demands that degree of police torture should be determined towards indicted as well as towards their families during wide police action, and supporting that with evidences which confirms that.

The way in which this police action has been conducted was justified by degree of public jeopardy and facts revealed by police investigation. How much force was really applied in this case will be found out on trial which is scheduled for middle of this year and where all these details will be mentioned, having in mind that defenders of the indicted already announced their requests for exemption of some evidence which were obtained illegally. We remind that Montenegrin penal law prohibits obtaining evidence by force and compulsion.

Validity of new Law on police created conditions for much greater citizen's control over police work and intern control conducted in disciplinary procedure and procedure of determining of violation of Codex of professional ethics. In these procedures, this law regulates participation of representatives of civil sector which should obtain bigger degree of independence in measuring of actions conducted by police. The fact is that one number of cases was really presented to these bodies and that certain number of police officials was held responsible for

illegal actions and behaviour which is not in accordance with codex of professional ethics.

Media reports are still reporting about complains of Montenegro citizens on force usage in police actions, but number of these cases is smaller then in previous years. These cases are most often related to so call bringing for informative talk during which police should collect information from citizens. However, this situation is really used in a way that this informative talk is transformed in interrogation of indicted, without informing him/her on that, which is opposite to standard from article 5. and 6. of the European convention.

Speaking of penal and court processing of acts which originate from exceeding of official authorities than this number is completely negligible.

In terms of accommodation and curing of mentally ill persons and persons who are addicted to drugs it is visible that institutions are very weak in money and in accommodation capacity, which leads to conclusion that their treatment have to be improved. The first institutionalized facility for accommodation of these persons is being built very close to capital and it is a result of initiative of the City office for fight against drugs. Previous relation towards this category of persons has not been adequate, because they were or neglected or their treatment was performed in facilities for accommodation of mentally ill persons.

The conditions for accommodation of temporarily arrested persons and persons who are serving prison punishment are still not on required level, although the construction of additional capacities which should be functional until the end of 2007. is in progress. Special attention in work of civil sector and international organizations was devoted to rooms for detention in police stations which had most complains.

*Prohibition of slavery and forced work.*

There are no indications that this problem is present in Montenegro in a way that it endangers fundamental human rights and their protection. After some sporadic ways of compulsive work which have been registered in past period and decisive institutional and operative action of government bodies, this manifestation was stopped. These cases relied on misuse of citizens from eastern countries whose passports were taken away in order to keep them on work in construction business, which was classic way of compulsive work. In specific case, perpetrators were discovered and very quickly processed by Montenegrin justice.

*Right on freedom and safety.*

With abolishment of institute of police custody and reduction of conditions for ordering of detention during investigation procedure legal suppositions for ordering of detention were made only in extraordinary cases. Police detention has been limited on 48 hours, after which person has to be brought before investigation judge and where judge has to decide about his/hers further staying in custody. This measure of securing of indicted in investigation phase and in procedure before the end of trial is lot less used now. Sadly, there is still strong conscience of detention as punishment, instead of a measure and it is considered that way in public and in some cases before court as well. Since law knows other institutes like guaranty or measures of surveillance over indicted such as

prohibition of leaving a place of living, prohibition of visiting certain place or area, obligation of indicted to report occasionally to specific government body, prohibition of meeting with certain individuals, temporary deprivation of passport, it is not clear why courts doesn't use them more in practice. With that an institute of detention would be used more restrictedly and would be sentenced only in extraordinary cases as the law determines it.

After few years of appliance of new penal legislature an amendments have been made in part which regulates longitude of detention time, especially the one which relies on juveniles in phase of procedure preparation. Special problem for this category is scantiness of correction facilities where disciplinary measures are conducted, and scantiness of institutional capacities in the area of juvenile judiciary. The beginning of transformation of existing facility, which did not suit for accommodation of juveniles, is planed for the first half of 2007. At the same time, a series of initiatives have been started for opening of institutions for daily accommodation of juveniles in conflict with law.

*Right to fair and just trial.*

The overload of Montenegrin courts and significant number of fall behind cases from previous years are the basic characteristics of judicial institutions. The most overloaded courts are in capital because of increase of population and because of the fact that there are the most important state institutions and it is a centre of government administration.

The most common appeal on judicial work refers to deadlines in which cases are conducted, as to some phases where, in opinion of parties, it comes to significant violations of right to fair and just trial. In evaluation of reasons, judicial branch of government shares opinion with citizens that there are objective and subjective mistakes in work. After many years of inertia, they started to intensively work on determination of subjective weaknesses in Montenegro, and on taking actions against responsible judges. After few controls done by the Supreme Court, certain numbers of judges were released and bigger involvement was asked from court presidents on surveillance of work and analysis of results.

The largest number of complains on judicial work has been found out in part of civil matter which is most complex part of judicial jurisdiction. These trend has been also registered in complains which were submitted to Montenegrin ombudsman.

Although some shifts were made in creating material prepositions to court's work, a problem of conditions under which Montenegrin courts are working is still visible. It relies on business premises, as on other prepositions for undisturbed work of courts, such as shortage of expert literature, legal practice and systematic communication with other branches of judiciary. Regarding the lat remark, one can even say that there is some kind of open conflict which can be seen in statements of highest judicial bodies. Last events have opened a question of inner relations within judicial government. For distinction of some other institutions, one can say that this process of opinion exchange was approached with lot more honesty and self-criticism, despite the fact that in some moments discussions on conditions in judiciary on national level could look like internal conflict.

The organization of courts in Montenegro is not finished from aspect of their organizational and functional role in judicial system. The reorganization of magistrate's courts has not been finished despite an obvious discord with international practice that they in their function bring decisions which significantly influence rights and freedoms of citizens. Their position, their way of election and dismissing of judges, procedure which they conduct, the height of punishment, as many other elements are saying in favour of hypothesis that it is clear that those are judicial procedures which have been conducted by bodies with lack of independence and objectiveness in accordance with conventional law.

Next problem can be availability of court in terms of height of court fees prescribed in Montenegro. Their height is not in accordance with standard and possibilities of larger number of population, although the reducing of court fees could result with "overflow" of litigation which also was and still is a part of mental structure of population. The fees determined for lawyer's activity are also big and they can be a problem in availability of court. Problem is also non existence of regulations on free legal aid which would make possible for most endangered categories to have procedure before court in order to protect their rights.

Examples have been recorded in penal matters that correctional facilities are obstructing indicted right to talk to their defenders and obstructing confidential conversation between client and defender.

Regarding procedure lasting in front of the court, the most common examples rely to long investigation and debts of cases which are active for more than twenty years. In order to overcome these problems, the state has directed its attention on methods which increase efficiency of courts, and at the same time legal presumptions were made to finish cases in reasonable term (new civil process legislature). New text of law is in preparation and it should make possible efficient and working legal remedy in case of irrationally long duration of court procedure.

Beside these measures, last normative actions are made in penal legislature, which should promote principle of opportunity and delayed penal procedure in cases when it is evaluated that this measure would be useful for perpetrator and victim of crime act. An assumption of innocence is most often respected by judicial institutions.

Special problem is disrespect of court decisions and shortage of instruments to conduct decisions, especially when administrative bodies are involved in its carrying out. An example of obstruction of court decisions is open criticism and diminishing of court decisions made often by state and local authorities, or their bosses. One of classic examples is obstruction of notes of restitution which is conducted in procedure of execution of Law on restitution of property rights and compensation, where, despite of court decisions on prohibition of transferring disputable property, traffic of immobility's is made or property is used before final court decision in a way which is opposite to court prohibition.

#### *Right to privacy.*

Right to privacy still hasn't got its own direct and normative expression and one can expect that this problem will be regulated by bringing of Law on protection

of persons information and Law on secrecy of data. Today, privacy is most often violated by placing information through media and other forms of public informing, and it is obvious that sources are official records of state bodies. Special problem are reports on court procedures in which, beside violation of right to privacy, violation of innocence presumption is made.

Certain number of citizens and public figures expressed its suspicion that they are under special treatment by security services because of their public work. Although, individual cases got deserved publicity in media, reaction of state bodies was very rigid and it really represented rude denying and rejecting of responsibility. It is very difficult to evaluate and to prove responsibility for specific cases in these situations, but manifestation and ways of communicating of state bodies with public, made pretty negative picture in context of Montenegrin happenings.

*Freedom of thought, conscience and religion.*

Condition in Montenegro is still complicated because of serious institutional conflict of orthodox churches. The intensity of this conflict is straitening and it seriously threatens to destabilize wider community. Conflict is even wider with making of new constitutions in which every religious group asks appropriate treatment. Past monopolistic position of one religious group (Serbian Orthodox Church, Mitropolija crnogorsko primorska) led to aggressive conducts of Montenegrin Orthodox Church and requests for restitution of religious facilities. This conflict creates repercussions in ethnical relations and it leads to tensions in this area. It is obvious that constitution has to predict religious freedom no matter of which religion or group it represents, while the state would have function of upgrading ecumenical dialogue and religious tolerance. In the conflict of these groups less attention is devoted to some smaller religious groups which have expressed discontent with its status in past years. Speaking of relations among so called large religious groups (Roman Catholic, Islamic and Orthodox) then one can say that generally there is a high degree of inter confessional harmony.

*Freedom of expression.*

Last year has been marked with very high degree of media's freedom, and only one case of punishment of columnist of daily newspaper „Dan“ was recorded, because of text which, by court, insults reputation of one group and it mocks them in public, which represents violation of citizens equality.

A suitable solution in area of radio-diffusion, which would satisfy freedom of press, and at the same time would make activity of informing profitable and sustainable, has not been found. Therefore, conflicts happen very often when regulatory bodies insist on paying off obligations and media justify their behaviour with a need to exist. Truth is that media space of Montenegro has widened and that ways of regulating their rights and obligations represent a challenge to legislators and regulating body.

Judging by numerous complains from NGO (non-government organization), the basic problem in Montenegro is still unavailability of large number of information which is in possession of government bodies and bodies of local self-government. Unlike the starting period, considerable amount of usage of information is present, especially when the Administrative court showed large degree of

efficiency and most often resolved cases in favour of seeker of information in administrative procedures.

Specific problem showed up with participation of NGO sector in governing with national radio-diffuse service. According to existing legislature, members of the Council of Montenegro Television are appointed by (along others) organization of civil sector, and parliament confirms this appointment. After over 600 organizations have appointed candidate of NGO sector parliament refused to approve this candidate by majority of votes and that blocked process of election. Numerous reactions which followed had a goal to clarify role of parliament as protocol one in terms of announcing or verification of already elected members, but formal obstruction prevented representative of civil sector in his work. It is interesting that during discussion about the candidate, no one explained reasons of this stand, which furthermore contributed to negative image of parliament in whole procedure.

*Right to undisturbed enjoyment of property.*

Right to undisturbed enjoyment of property is in focus of important state issues in Montenegro. It is not only ideological, but also deeply practical issue which reflects in right of citizens to manipulate their gained property without limitation, beside those predicted by the constitution and laws. Execution of the Law on restitution of property rights and compensating to owner brought conflict of general developmental plans, unlimited freedoms of investment construction and right of citizens in focus. In this situation, examples of illegal manipulation or obstructions of the law done by bodies of local self-government to potential users of this right are being pointed out almost every day. The law regulates commitment of notification on prohibition of manipulation with property until the end of restitution procedure. But even with administrative and court limitations this right is often bypassed, and court decisions remain without influence to bodies which are still performing property authorities without limitations. The most common example of obstruction is traffic of lands which are object of restitution, even when administrative or court prohibition on selling or manipulation of this property exists.

In same procedure, obligation of local self-government bodies was to form commissions to conduct procedure of restitution. At first time, many municipalities have been late with forming these working bodies, and after that there was big amount of problems in their work, because of what there were many personal innovations or occasional stoppage in work of these bodies.

A concept of human rights still isn't fully functional in Montenegrin law and especially in work of courts, so it will be interesting to see what will happen when person with interest submit lawsuit for protection of right to undisturbed enjoyment of property when object of protection would be expressed in claim for social help, pension, the loss of clients trust in work of some specific areas like practice of law and so on.

How big are these limitations in area of protection of right to undisturbed enjoyment of property is the question about which the courts will decide on

national and in international level, especially if one have in mind cases like *Kopecký vs Slovakia*<sup>216</sup> where in merit has been decided on the basis of real possession of property instead of formal relationship between bearer of property title and mobile thing (gold coin) which was demanded by owner. In Montenegrin case it is certain that it is a property which was taken away without compensation or with inadequate compensation in money. That has been corrected by the Law in favour of previous owners. Since there is legal basis and identified owner, it is justified to expect permission of such demands before the European court after exhaustion of all legal remedies before national courts in Montenegro.

### *Economic and social rights.*

This segment is, as anywhere in world, significantly less protected than other rights and very often followed by absolute ignorance on the level of state. One can not deny that state bodies have designed plans for large number of strategic measures for sustaining of economic and social sustainability of most endangered groups. The problem is always a lack of political will in realization of plans, as a lack of financial means for realization of strategy which applies on state level.

In control phase of working legislature one can notice more restrictive attitude of inspection bodies who work on surveillance over employers, and in area of some social categories like protection on work, lot more attention is committed to prevention then to repression, which, for the time being, gives modest results.

Problem with economical and social rights is in the first place conceptual and it looks for an answer to question of how much is the state ready to fulfil criteria which membership in European integrations demands. Lasting concept of absolute freedom of market is totally misleading because its promoters turned overnight in promoters for protection of minimum of social endurance, but only until the limit where big business is not in jeopardy. A term of neo liberal economy and individualism is reduced to banality so it is often forgotten that even in cradle of this doctrine – USA – state interest and stability of the country have advantage of any other single goal. European integrations are there also. With one simple look of jurisdiction and legislature in Union, it is possible to discover many protection instruments which regulate not limitations but opposite – improvements of starting position of all subjects on unique economical and social market.

The benefit from new legal structure can be concluded in many initiatives which are directly addressed on work of state bodies and direct responsibility for implementation of international standards is on them. New status attracted attention of potential investors and additionally stimulated decision makers to choose carefully concept of development, which is officially promoted as sustainable development synchronized with international standards.

The basic obstacles in this concept could be unrealistically planed politics, unlimited and uncontrolled sale of national resources without strategy: »what after that«, social image of population and vulnerable groups, and lack of stable market

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216 *Kopecký vs Slovakia* (application No 44912/98), verdict of the Great council of European court for human rights from 8.september, 2004.

where Montenegrin strategic products would be placed in area of industrial and agricultural production and tourist services.

## **Individual human rights**

### *1. Human Rights and Education: Right to Education*

#### *1.1. Legislation.*

Normative frame that regulates Right to Education in Montenegro was founded on principles of International law and constitutional norms<sup>217</sup>, which in Article 62. decrees that everybody has right to education under equal conditions, in which process of elementary education is obligatory with school fee to be paid. Constitution also decrees universities' autonomy.

Educational process and educational institutions' reform in Montenegro, at the beginning of new millennium included all levels of education with intention to get previous educational system that was based on anachronic, idealistic and sometimes retrograde principles in accordance with modern educational systems. Systematic Common Right to Education<sup>218</sup> decrees basic aims of education: providing possibilities for universal development of individual, no matter on sex, age, social and cultural origin, national and religious affiliation and physical and psychical constitution; contention of need, interest, wish and ambition of individual for life time learning; allowing choice of educational programmes on all levels of education; development of consciousness, need and abilities for preservation and promotion of human rights, constitutional state, natural and social environment, multiethnicity and dissimilarity; bringing up consciousness about state affiliation, Montenegro and it's culture, tradition and history; allowing individual, in accordance with his/hers possibilities involvement and participation on all levels of work and activities; growth of consciousness about national affiliation, culture, history and tradition; contribution of getting into process of European integrations.

By analyzing these decrees, completely different approach in education is observed, which is, now, mostly deprived of collective understanding of education's roll and completely dedicated to individual person's needs in making their own future. Law decrees autonomy of educational institutions and prohibition of political organization and activities of educational institutions as a kind of depoliticization of institutions and educational process aiming to secure autonomy guaranteed by the Constitution. In realization of Right to Education citizens of the Republic are equal, no matter of their national affiliation, race, sex, language, religion, social origin or other personal characteristic.

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217 The Constitution of the Montenegro ('Official gazette' no.48/92)

218 'Official gazette RMN' no. 64/02 and 31/05

Classes in educational institution are on language that is in official use in the state. In municipalities in which most or significant part of citizens are members of national or ethnic groups, classes are on language of members of national or ethnic groups, as well as in official language. School is obligated to support student who doesn't have classes on his/her mother language with learning language in which classes are.

For decision-making in professional questions and for professional help in procedure of decision making and preparation of regulations concerning education Council for common education, Council for professional education and Council for education of adults have been founded. These bodies consist of representatives of different social structures (government bodies, academic institutions, trade organizations) where is taken care about ethnical presence, competence and trade presence of particular interest groups (employees, union, etc.). Stated councils have wide authorisation and essential influence on decisions made by government bodies.

On the occasion of establishment of educational institutions' system in the state following criteria are used: children's number and growth on specific area; specific qualities of the area; developing of specific qualities of the area in which they are being founded; providing equal conditions for gaining educational and financial possibility of state.

Founder of public institution can be the Republic, or local self-government. Private institution can be founded by local and foreign legal and physical person. Exception or freedom limitation on foundation of these institutions is norm according which elementary school can not be founded by foreign legal or physical person.

And other legal texts (Elementary education law; Gymnasium law; Professional education law; High school law) refer on concept of individual development that is heading for freedom of every person and preparation for participation in participative process of making decisions on all levels of authority.

It is interesting that University education law in its decrees about university education aims doesn't include concepts like standards of democracy, rule of law and respect for human rights, equal accessibility on university education etc. Even though this deficiency can be justified by argument that Common law on education include this, general impression is that stated principles needed to be included in legal act that treats highest, academic level of education in the state.

### *1.2. Practice.*

Dispersion of educational institutions is extending, which can be seen in big number of private universities, recently open. This is completely new occurrence and that's why it is to be seen if that expansion will answer with improvement of educational profile or education will be subordinated exclusively for commercial cause. Either way healthy competition can give positive impulse to new quality on education in Montenegro.

Education about human rights gets completely different image and subject, itself, with the same name is easily 'taking' place on other universities beside Low

University where it was developed as optional subject. That is why now in different names and subjects (civil education, basic of human rights and freedom, philosophy) themes from field of human rights are formally taught on all levels of education, and on universities a lot of attention is given, not only to ordinary forms of getting knowledge, but to, so called clinical education which combines theory and practice. Besides professors on universities in this form of education as outside lectures, representatives of judiciary, media and other social institutions, as well as many lectures from bigger offer of international cooperation are engaged. It has to be said that this kind of academic base contributed with much bigger interest and engagement of students, as well as much better preparation for involvement in different institutions which study promotion and protection of human rights after getting academic vocation.

Teachers that are teaching educative function in stated or related subjects on a level of secondary education go through training which is organized by relevant ministry of education in cooperation with NGO Agency for local democracy, where they get basic methodological and professionally theoretical knowledge about concept of human rights and its roll in different teaching disciplines. At the some time this kind of informal education brought new quality concerning the fact that because of lack of capacity and material resources new kind of education of employees in education appeared, which is accepted very well. On that way civil sector gave new impulse to quality of education and achievement of decreed aims.

Next important step out which was done as a result of civil sector is foundation of so called pupils' parliaments which represent specific kind of pupils' participation and preparation for involvement of pupils in democratic participative processes. Beside the 'elector' model in which pupils are actively involved in election of their representatives in parliaments it's very important fact that in that kind of education pupils are engaged on solution of all problems which appear in sphere of elementary education. Project is initiated and developed as a part of NGO 'Centre for child rights of Montenegro' (CPDCG), which beside these activities, for a few years is doing monitoring and report of condition of children rights in Montenegro. Last report of this NGO served as a base for analyse of rights to education which is used in this text<sup>219</sup>.

Scientific-research activity has been for a long time on a very low level of development, and state, literally keeps to itself. Means are, as a rule, projected in a very limited amounts and that, planned amounts don't get realized. Activity of scientific-research institutions was mainly turned into servicing that are done in laboratories of state's scientific-research institutions which during that don't have character of scientific or educational work. Engaging faculty members on this kind work is waste of teaching procedure, but it is often the only way of additional income for universities.

From that kind of ambient it is hard to talk about scientific work and right to enjoy in results of scientific work, and because of the fact that constant labour

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219 Report of monitoring of condition of children's rights in Montenegro, Centre for child's right of Montenegro, 2006

drain from the national University was a reason for weakening of personal base for scientific work.

Using inputs from above stated Report CPDCG, certain indicators that are used in this material can give picture about condition of rights to education in lower levels of education. According this material there is still a need for further material investments, even though period of last few years can be characterized as one of the best in last decade. One of the problems in education is uneven growth of state that is responsible for migrations of population and it doesn't allow planning of growth of education on a longer term. Particular educational institutions are, because of stated problem overloaded with number of pupils, which is reflected on quality of classes and individual work with pupils as aims of education. New trend is significant increase of number of registered students on universities in Montenegro (2004/2005 there were 11 011 new students and this number for 2005/2006 is even bigger).

When we talk about educational institutions and approach to education it is necessary to state specific problem of rationalization of school's institutions system which includes abolition of non rentable schools and sending pupils into closest educational institutions which continue with work. This problem opens at least two questions which involve possibility of students from rural and undeveloped areas to adjust their journey to school with their obligations, mainly because of the fact that bigger part of Montenegro is mounting area in which road infrastructure is very bad and weather conditions, mostly in winter are normal life of all population making impossible. Second problem is that it will, by sending children (pupils) in urban area or areas with better communication reflect on migrations of population and abandoning of houses in village as one of the most crucial questions for complete development of the state.

Question for development of educational strategy meaning developing needs of Montenegro is asking for peculiar balance. Present unit of registered on universities in Montenegro and mostly orientation of future students and academic citizens are in discordance with growing needs. Any kind of 'coercive' directing to institutions that are educating deficit personnel wouldn't be in order with right to freedom on free choice of education and profession, but plan measures of the state should be like that to point and animate part of students' population on professions that aren't popular when choosing university.

## *2. Access to rights: National Human Rights Institutions in the country*

### *2.1 Constitutional-legal protection*

- even though significant number of regulations that were brought in last few years in Montenegro achieved very high standards in the field of basic human rights and freedoms, there is indisputable impression that lack of the constitution, or validity of now completely anachronic and overcome constitutional acts fully contributed to legal insecurity and very different understanding some of basic human values, from official government as well as from parliamentary opposition. Present constitution consists of rather qualitative level of decreed (but not protected) minority lows, while one number of human rights was completely

ignored (for example right to legal trial) or it was differently defined concerning norm in international law. At the same time, one number of decrees went one step further and improved normative legal term concerning norms decreed by constitution.

From the point of constitutional and legal protection it is to be said that constitutional appeal as a mean of law that is basically not effective, inefficient and hasn't got any serious influence on state of complainant as a potential victim of human rights' violation is still kept. It's public opinion that the action of the Constitutional court itself when it's valuating constitution of the law and other enactment hasn't got that kind of authority concerning body that was brought by decree, neither are decisions of the Constitutional court on time concerning expected demand of justice. On the other hand the Constitutional court had often in its work chance to announce itself as incompetent in those cases when concrete act by the law couldn't be subject of its activity, even though content-related subject belonged to human rights domain quarantined by the law, and in formal sense it did the base which contented needed form for procedure. New constitutional engagement (that still doesn't exist in clear normative form) has to be done in order to finally establish not only position, but formally legal, process roll of the Constitutional court in domain of by the law guaranteed human rights and freedoms which by now was absolutely not the case. Comparing this legal recourse with ones that were subject of valuation of European court for human rights it can be said that example of Slovenian constitutional appeal is the case *Lukenda vs. Slovenia*<sup>220</sup>. Having in mind similar solution in constitutions of Montenegro and Slovenia concerning constitutional appeal, and subsection of European court that the constitutional appeal in Slovenia doesn't have guarantee of effective legal remedy in terms of the Article 13. European conventions about basic human rights and freedoms it can be concluded that in Montenegro's legislation this legal remedy can't have major significant to victim of violation of human rights decreed by the constitution.

### *2.3. The Protector of human rights and freedoms in Montenegro.*

Institution of the Protector of human rights and freedoms (that was founded by the law in 2003<sup>221</sup>, and after what the first Ombudsman in Montenegro was appointed) is gradually winning scope for work but its influence and capacity is still insufficient to force the impression of crucial factor in protection of human rights. On the other hand number and characteristics of the cases before national ombudsman is still showing wide lack of knowledge of human rights and roll of institution in their protection. According to institutional work analysis it is concluded that there is reason for satisfaction, at least concerning processed cases. Statistic says that the highest number of ombudsman's recommendations is respected so there is open question: how much did the citizens use this possibility, or how big is the trust of the citizens in this institution. From this distance in time it would be rather said that the citizens hardly use this possibility

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220 Application no. 23032/02 and final verdict from 06.01.2006, 65

221 Protector of human rights and freedoms in Montenegro act ('Official gazette of the RMN' no.41/03)

and when they do, they do it without knowing the purpose of its work and its relation with legislative body.

On the other hand, intervention of the Protector in different fields in form of specific reports and other formation of activities when it is acting according to *ex officio*, came across lot bigger attention of the public than it was the result itself as regards of decline of possible violation of citizen's human rights. In other terms, one number of these initiatives was realized but only when it corresponded with agendum of reforms in domain of executive authority or it was result of common activity with referent international organizations. So, position of the Protector is still far from where it should and must have been in the state and society.

#### *2.4. Institutions of judiciary and court protection.*

Reform of judiciary in Montenegro that was started few years ago had several aims, few among others were to make justice efficient and timely, judicial institutions independent and protected from any influences on work and decisions, and to make election of judges so that this function can be accessible only to candidates that fulfil requirements of competence, professionalism and absolute independence (not control absence).

In institutional sense reform was partly finished (not only in case of misdemeanour legislation which is in complete discordance with standards of Convention) with establishment of new structure of the courts and with suitable partition of authority between essential and superior courts, commercial courts, Administrative, Appellate and the Supreme court of the Republic of Montenegro. Election of judges is process that is divided on the highest body of judiciary (Judicial Council) as proponent and state parliament which makes election of judges. In this division of authority past experience talks about dominance of legislative authority which is to be seen in blockade of judges' election (with mostly undefined but evidently political motives and need for control of judiciary), stalling of procedures which has direct influence on update and quality of courts and other kinds of judicial institutions' obstruction. This normally has influence on demands of clients in court proceedings and is reason for them to be late even when decisions about rights and commitments of citizens are to be decided. Beside these problems, subjective problems in activity of some judges and courts, in general are evident. Like that, inexplicably, there are proceedings which have been lasting for over than thirty years and in media examples for that in frame of one subject for twenty years changed the same or even higher number of judges was released. Concrete litigation was connected to decision about tenancy rights which should make top-priority concerning other subjects, all the more so that kind of litigations were result of rights based on activity in earlier social system. Need for specific attention in procedure of national authorities in these litigations, European court for human rights through its practice apostrophized<sup>222</sup>.

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222 Venice Commission: "Can Excessive Length of Proceedings Be Remedied", Council of Europe Publishing, 2007, pg. 18

Regarding use of Conventional law it is to be said that in Montenegro big number of seminars and other kind of education was organized, sometimes without some systematic and fixed model, but decisions of international documents are still not in use in procedures before national courts or it is done only sporadically. One part of legal texts is directly appealed to duty of implementation of conventional law (like Education of judicial performers), while during recent changes in Civil procedure law from December 2006 possibility for no regular legal expedient was predicted – review of procedures, as it was by finality verdict of the European court for human rights unequally decided according decision of local court, and violation of rights can't be corrected on other way.

This amendment was done upon Recommendation no. R (2000)2 Committee of Ministers to countries members about reconsideration or reopening of specific subjects no local level upon verdict of the European court for human rights, adopted by Committee of Ministers on 19.01.2000. on 694. meeting of Ministries' deputies. Stated Recommendation appeals on obligation of contractors to submit the finality verdict of the European court for human rights in every case in which they are involved and that Committee of Ministers supervise its execution. Having in mind that under specific circumstances these obligations can include adoption of measures, beside equitable compensation that is determined by the Court upon Article 41 of Convention and/or common measures, there is a need, as much as it is possible for insuring return of injured party in the same position as it was before violation of the Convention (*restitutio in integrum*). It's important to state that *restitutio in integrum* (return in previous position) in Montenegro's legislation doesn't have some meaning; this legal syntagm is used for name of legal remedy that is used during procedure, while legal expedient was scheduled in amendment of civil procedure, no regular legal remedy that can be used against finality court verdicts.

Access to justice is closely connected with amount of court fees which are for Montenegro rather high. Institute of free legal help hasn't started working completely nor there is special decree with which to regulate way of giving and to define possible users of this system. Practice of law, as a part of judiciary as well has high fees which can be reason for abstinence of parties in court proceedings. Finally, beside numerous attempts to update courts' work and to implement pilot projects in some courts, subject behind the schedule are still burdening court institutions and mostly those citizens that are instructed to realize their citizens' rights and obligations through court proceeding. For now, suitable legal remedy which would compensate damage in cases of not timely and inefficient justice as a result of court proceeding that is lasting for a long time doesn't exist.

### *3. Disadvantaged, Marginalized and Vulnerable Groups*

Montenegro, in its approach to reforms in all areas, has secured normative legal base which prohibits discrimination upon any basis. Existing penal legislature protected this principle with penal responsibility regarding eventual perpetrators. An article 443 of existing Penal law regulated that crime act is racial and other discrimination toward person who upon difference in race, colour of skin,

nationality, ethnic origin or some other personal property violates basic human rights and freedoms guaranteed by commonly accepted rules of international law and ratified international contracts by Serbia and Montenegro, and can be punished by prison sentence from 6 months to 5 years. With same punishment will be punished person who makes persecution of organizations or individuals because of their commitment to equality of people. The one who spreads ideas of superiority of one race over the other or propagandize racial hatred or stimulates racial discrimination be punished by prison sentence from 3 months to 3 years.

However, there are obvious cases of discrimination which are based upon political membership, sex, ethnical belonging and especially economic power.

The principle of political discrimination becomes an unwritten rule in relations of political factors in Montenegro, which is to some degree relativistic in work of state parliament. However, when it relates to executive government in state and local level, situation is completely clear, and picture is very negative.

Conclusion on discrimination upon ethnic belonging is made from constitutional principle on proportional representation of ethnic groups in state bodies which isn't carried out, although in some professions that principle has to be viewed from professional angle and requests of expertise and filling up conditions for work in certain branches (courts, district attorneys). It is upon the state to create conditions to get personnel from minority ethnic groups in these professions. That would make double benefit: a concept of proportional representation of ethnic groups and acquiring of additional trust of these groups in work of state bodies.

Proportional representation of minority members in state services (courts, district attorneys, government administration), which we already mentioned, still isn't achieved, nor serious analysis is conducted in that direction which would lead to eventual improvement of representation. The scantiness of evidence in area of employment and work in these bodies is making impossible to get inputs for general analysis of this issue. Beside that, it is very important to create system which will provide making personnel from minority population and their surveillance on long runs. This would actively include state in agenda of satisfying of constitutional guaranties. This also means material investments in personnel and no less active relation and suitable development politic which would prevent personnel from leaving from poor areas where parts of minorities live, especially in so called marginal areas of Montenegro.

Discussion about new constitution showed that there are series of open issues in terms of elimination of discrimination as manifestation and all of its forms. The anti – discriminatory law, which is still in phase of bringing, is offered as possible solution to this problem.

Thanks to relatively stable security situation in Montenegro, inter-ethnic harmony and tolerance has been preserved. One should say that most of problems in Montenegro appears as reflection to happenings in region. After referendum in May, position of minorities is straightened with a fact that they significantly contributed to independence. Regrettably, there are circles in Montenegro which maliciously interpret this relationship toward state and they use it in day to day political fight with people who think differently. Montenegro

is really specific state where ethnic diversity is at the same time advantage and disadvantage, dependant of point of view of diverse political factors.

Bringing of the Law on minority rights and freedoms<sup>223</sup> gave new positive impulse before referendum, but decision of the Constitutional court on suspension of certain regulations on political representation of minorities was step back in the process of returning of their trust in state. Because of that, in the procedure of bringing of new constitution, there are more and more claims for constitutional guaranties, which should keep level of gained rights and provide bigger degree of participation of minorities in decision making and participation in public job proportionally to number of their members in total population structure.

The most of open issues regarding minority's rights relies to political representation (participation in decision making), education, identity preservation, integration in social currents, usage of official language and model of protection of guarantied rights which will provide their genuine implementation in national and international law. Absolutely all minority communities in Montenegro do not dispute their loyalty to the state, while question of dichotomy which reflects in dual identity of majority nation (Montenegrin/Serb) still causes numerous controversies and dilemmas about ways of resolving future status in constitutional and legal structure of state. Some of quoted areas like education score positive movements, while solution for problems related to official usage of minority's language could be expected only after bringing of special law which will open the way for official usage of minority's language in state bodies as well, and not only on the level of local self-government like now. In this moment series of laws determines usage of minority's language in procedure before courts and state bodies, but there is no document which would in details determine minority groups and languages which would be equal in usage before these bodies. Na On the level of local self-government this issue is relatively well resolved in normative sense by statutory regulations (statutes of municipalities) which regulate right on official usage of mother language to members of minorities.

The Law on rights and freedoms of minorities guarantee, in general, to minorities and their members, beside rights proscribed by generally accepted international rules and ratified international treaties, full enjoyment of rights which can not be less then already achieved, under equal conditions with intention of providing their real equality with other citizens. Also, the Law gives guaranties to minorities and their members a right to expression, preservation, development, carrying and public expression of national, ethnic, cultural, religious and language identity, as a part of their tradition. The Law regulates commitment of state bodies on providing of protection to cultural inheritance of minorities and their members. With intention to preserve and develop national or ethnic identity, minorities and their members have a right to found institutions, societies and NGO-s in all areas of social life.

The state participates in financing of these organizations, in accordance with its financial possibilities.

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223 Official Gazette of Republic of Montenegro, No. 31/06.

Minority members have guaranteed right to express themselves nationally independently and freely, right to free choice and usage of personal and family name and names of their children, and a right to enlist those names in official evidence books and private identification cards in their language and letter. Minorities and their members have a right to use their language and letter.

In units of local self-government where members of minorities are majority or significant part of population, according to results of last census (2003.), a language of that minority is also in official usage. An official usage of minority's language in this sense means especially: usage of language in administrative and court procedure, with issuing of public documents and conducting official evidences, on voters ballot and other election material and in work of representatives bodies.

In territories of bodies of local self-government, the names of bodies which perform public authority, the name of unit of local self-government, the name of settled places, squares and streets, institutions, business and other companies and landmarks are also written in language and letter of minority.

Freedom of informing is provided to minorities and their members on the level of standards which are constituted in international documents on human rights and freedoms. Minority members have a right to free founding of medias and undisturbed work based on: freedom of opinion expression, investigation, gathering, expansion, publishing and receiving of information, free approach to all sources of information, protection of personality and dignity and free flow of information.

Minorities and their members have a right to education in their language and on appropriate representation of their language in general and expert education, dependent from number of students and financial opportunities of the Republic.

Minorities and their members have a right to found and keep free and peace relations across borders with mother state and with compatriots who live in other states, especially with those with whom they have common ethnic, cultural, language or religious identity. Minorities and their members, with intention of upgrading freedoms and rights, can found a council. Minority can choose only one council.

Couples of very significant institutions and bodies are engaged with protection of rights and improvement of minority's position in Montenegro. The constitution defined a body – The council for protection of rights of members of minorities and ethnic groups of the Republic, whose mission is preservation and protection of national, ethnic, cultural, language and religious identity of minority's members. The president of Montenegro is managing this body. This body constitutes of, apart from political representatives, religious leaders and independent intellectuals from minorities. In its past work, this Republic council hasn't justified its function, regarding the fact that they met rarely and it had no influence on improvement and protection of minority's rights<sup>224</sup>.

There is a permanent working body in the Assembly of Republic of Montenegro – the Committee for human rights and freedoms. This Committee examines

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224 The first state report of Montenegro within commitments determined in General convention on Minority's protection.

issues, especially normative suggestions, from area of human and minority's rights, and it presents its stand to the Assembly. The Ministry for protection of members of national and ethnic groups has constituted in 1998 after parliamentary elections and constitution of new government. With new organizational structure of the Government of Montenegro in 2006, this ministry changes name in the Ministry for protection of human and minority rights. Series of very quality and active NGO-s and organizations works in Montenegro and they deal with problematic of protection of minority's rights and improvement of position for minority's communities in Montenegrin society.

Within international cooperation Montenegro has developed intensive communication with the Council of Europe regarding minority's rights carried right trough support of experts of the Council of Europe in preparation of the Law on Minority's rights and freedoms, and visit of Montenegrin experts to the Council of Europe and organization of many seminars and gatherings on the subject of protection of human rights and fundamental freedoms, with special review on rights and freedoms of minority nations.

With intension of solving problems which burden states relation toward minorities, the Government of Montenegro has planed development of special programs and specialized performers fro work with marginalized groups, especially Romany, trough „Strategy of employment 2007-2010“. Special significance for upgrading of full and effective equality in economic life of Romany population is creating and conducting of special projects and programs in area of employment. The project “Romanies visible on the market of work” had a goal to achieve results in educational status, making interest to apply to the Bureau of work, motivation and potential for involvement in programs of active politics of employment of Romany population, as in collecting data on personal ID-s, which was organized as public work. Executive partner for public work was the Foundation for scholarship of Romanies<sup>225</sup> which worked in cooperation with local Romany organizations, members of coalition NGO “Romany circle”. The Foundation, as an employer, in cooperation with the Institute for employment, has hired 27 survey persons out of which 25 were Romanies who were trained to conduct a survey. The project lasted for 2 months and expectations were to increase informing on active policy of employment of at least 3000 members of Romany population. The Government of Republic of Montenegro has in 2001. adopted the Decision on founding of Center for preservation and development of members of culture of national and ethnical groups. This significant institution for preservation and of culture of national and ethnical groups still hasn't started working.

Violation of human rights is not expressed on level of system. Violation of human rights has been reduced; comparing it with early period, especially with one which collides with submitting of the First state report on appliance of the Framework convention in state community Serbia and Montenegro. It is confirmed with test results of NGO-s for protection of human rights which registered significantly smaller number of violation of rights and discrimination.

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225 NGO with residence in Podgorica

Probation of public opinion, conducted periodically by the Centre for democracy and human rights<sup>226</sup> tell us that, regarding early period, ethnic distance is slightly increased toward all minorities, but it is still biggest toward Albanians and Romanies. With intention carrying right of citizens to be informed in their own language, according to law, the commitment of the Republic is predicted to provide part of financial means for informing in Albanian and languages of other national and ethnic groups in areas significant for progress of science and education, development of culture and for informing of persons with damaged sight and hearing. On that basis, republic public radio-diffuse services, "Radio Crne Gore" (Radio of Montenegro) and "Televizija Crne Gore" (Television of Montenegro), have an obligation to produce and broadcast programs in languages of national minorities, and one part of that broadcast is financed by the Republic (article 10.). Article 11. subsection 2. of the Law explicitly regulates that way and conditions of providing funds from the Budget of the Republic must not influence editorial independence of Radio-television of Montenegro (RTCG). The Council of RTCG (national public service) within its jurisdiction appoints and dismisses the Committee for program contents in Albanian and languages of other national and ethnic groups. The Committee follows obeying of program principles and realization of program content which is of interest for members of national and ethnic groups and it gives to the Council of RTCG consent to a contract with administrative body in charge for public informing for providing funds for production of program contents financed by funds predicted by the budget of the Republic.

Also, units of local self-government have legal obligation to provide funds for informing in languages of minorities in programs of local public radio-diffuse service. Program contents devoted to minorities are not adequately developed by local broadcasters. Evaluations of civil society and some government bodies are that it is necessary to complement criteria for distribution of funds from radio and TV subscribe (out of which complete public and private media space in Montenegro is partly financed) and therefore motivate local broadcasters to produce program specially devoted to minority's members and promoting of equality.

Within informing of national minority's members, biggest number in printed media in Montenegro is published in Albanian language, and represented languages are Croatian („Hrvatski glasnik“), Romany („Informativni centar“) and Bosniak language („Bošnjačke novine“, „Forum“). Publishing of printed media is often conditioned by economic possibilities so their periodic of publishing is changeable although the state gives them some support. „Koha javore“ is printed media in Albanian language published by public newspaper "Pobjeda" once per month in u number of 10.000 copies printed, and it is regularly co financed by the Montenegrin Ministry of culture, sport and medias. The rest of printed media in Albanian language is mainly published by NGO-s with different periodic dependable of financial means of editor.

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226 NGO with residence in Podgorica

The public radio-diffuse service broadcasts daily informative shows in Albanian language on radio and television with stories from different areas of social life. Beside state owned broadcasters, few local and private broadcasters also broadcasts program in Albanian language as contribution to informing and cultural life of Albanian population in Montenegro.

Informing of Romany population in Montenegro is carried out trough programs of public radio-diffuse service of Republic. The Montenegro Radio per year broadcasts in two languages 24 stories designed for Romanies and they last 30 minutes. They are prepared by Romany journalists who have finished journalist school of the Institute for medias (local NGO). The Government of Montenegro adopted the Action plan for implementation of "Decade for Romany involvement 2005-2015".

Regardless to quoted qualitative shifts, there is partial reserve regarding involvement of members of minorities in preparation of other kinds of programs (educational, documentary and so on) or bigger activation of existing desks who deal with minority's issues in this business.

The Protector of human rights and freedoms has in 2005, upon its own initiative, started inquiry regarding violation of right of Albanian nationality members in Montenegro on registration of personal name in official books and other public documents in their language and letter. After conducted inquiry, The Protector came to knowledge that registration of personal name in official books and other public documents in their language and letter is not adequately provided for Albanian nationality members in accordance with national legislature and international law. The Protector noticed that the right of members of Albanian nationality u Montenegro to use their names in their language and to register personal name or names of their children in official books and other public documents in their language and letter is not denied. It has been noticed that mistakes were done during the enlistment in official books in Albanian language. These mistakes in incorrect enlistment of some names were done because of specific quality of Albanian language and letter. Some names were incorrectly enlisted during electronic processing of data because of punctuate incompleteness, which is inadequacy in program. Their conclusion was that these errors were consequence of technical problems, because there wasn't some letters characteristic for Albanian letter on computers and other equipment. The Protector sent certain recommendations to the state bodies and bodies of local self-government in order to make obeying of legal norms possible in adequate way.

While achieving principles of multiculturalism and ethnic tolerance in Montenegro, new reformed educational programs contain one important innovation, and it's their openness. With these changes, it's made possible for school and local community to suggest and edit 15 to 20% of educational program with their needs and specific qualities.

Education of other minorities (beside Albanian), Bosnians, Muslims and Croats in Montenegro is a component of unique education system which applies in majority concept and it is realized trough common subject programs, because their speaking language is in terms of understanding and communication same as the one that majority population uses. From aspect of diversity of mother

language of national minorities in Montenegro, two minority national communities are recognizable: Albanians and Romanians. Beside integrated contents in regular subject programs, minority communities have an extra opportunity to suggest and edit 20% of total additional content which is of interest to their schooling and which will be studied in accordance to their closer needs and interests.

Series of legal regulations directs to a right of minority participation in procedure of decision making on all level which concern their rights and status in Montenegro. This participative process is referring to consultations and suggestions within bringing of planed documents, performing public works, budget planning, living environment and other areas. The process itself is relevant to not only areas of social life but actual ways of influence on work of body which carries out these processes as well.

It very often comes to opposite attitudes in bringing of important decisions, as in issue of possibility of influence on decision making and in quality of decisions. There are requests for announcement of autonomy status of local self-government organizations in parts of Montenegro populated with Albanians (request for organizing independent municipality instead of town municipality within the capital), which would provide direct decision crating from local population and chosen political representatives. There was no reorganization and new territorial separation so far, although political demands of part of Albanian population are still very intensive.

#### *Health and social care.*

The capacities of social care are still falling behind of needs of citizens and budget frame is not even close to satisfy all needs. Therefore, large numbers of users of services are oriented towards private practice which is pretty expensive and represents additional expense beside obligatory contribution which is determined by law. This characteristic is same for all branches of medicine and for pharmacy where more and more users are obtaining medications at their own expense, even during hospital treatments.

Social protection of some categories of population like children, women and older persons is regulated, strategies have been brought, but their realization is partly, and sometimes completely, ignored. An example is the Strategy on protection of child's right from 2003. for which realization, until recently, single cent has not been provided.

Finally, deregulation of market and lack of social strategy on citizen's standard protection have caused so called electric impact which directly hit most citizens of Montenegro. It was clear indicator of risk of absolute freedom of market and passive role of the state. After ways of protests, the Government amortized effects of this impact and pressure to most socially endangered citizens to some degree, but it hasn't defined strategy of further development of energy sector which is closely connected to privatization of its largest part. The general impression is that it would additionally complicate social image of Montenegro in existing ambient.

All mentioned issues should be observed in context of fact that Montenegro has approached to the General convention for protection of minority's rights even before it formally become a member of the Council of Europe, which makes its obligation even bigger, because it did it on its own initiative as a state.

# Human Rights in Serbia 2006

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## Abstract

The tumultuous political events affected the state of human rights in Serbia in 2006. The disintegration of the State Union of Serbia and Montenegro upset the legal system.

The National Assembly unanimously approved the draft Constitution at its 30 September session; the draft was upheld by the necessary majority at a two-day referendum on 28-29 November and the Assembly promulgated the Constitution on 8 November. However, the adoption of the new Constitution was possible only after a large number of major political and moral compromises.

The substandard work of institutions charged with the protection of human rights still poses a major problem with respect to the protection and realisation of human rights. The public prosecutors rarely spoke up about human rights violations in 2006. The police investigations were long and did not yield satisfactory results. Court proceedings were also impermissibly long. The failure to launch proceedings over human rights and humanitarian law violations committed in the past, during the former regime and the wars in the former Yugoslavia, remained the key obstacle to the respect of democratic values and the establishment of the rule of law.

### *Right to education.*

Primary and secondary education are free of charge. In addition, primary education is mandatory. According to the Constitution, all citizens have equal access to tertiary education. Although the school is obligatory and free of charge until 15 years of age, in practice all the schoolbooks must be bought by parents, which is a huge burden for some families. One of the big problems that negatively affect the quality of education is poor state of many of the school

buildings. The Primary School Act regulates also special education of children with developmental problems. Education of Roma children remains one of the biggest problems.

*National human rights institutions.*

The relevant laws provide for establishing the institute of ombudsperson at three levels in the Republic of Serbia: at the state level, at the level of the Autonomous Province of Vojvodina and at the local self-government level. At the state level, however, the ombudsperson (Protector of Citizens) was not elected by end of 2006. Under the Constitutional Act, the Protector of Citizens shall be elected at the first session of the Assembly to be convoked after the January 2007 parliamentary elections.

*Disadvantaged, marginalized and vulnerable groups.*

Roma people remain the most vulnerable group in Serbia. As for persons with disabilities, a step in the right direction was the adoption in April 2006 of the Act on the Prevention of Discrimination against Persons with Disabilities. Refugees and IDP's still face a lot of problems in practice. Regarding the status of women, despite public calls for its improvement their position continues to deteriorate.

## **Introduction**

*Political situation and social situation*

*1.1. Political situation.*

Serbia entered 2006 as a member-state of the State Union of Serbia and Montenegro (SaM), the name that replaced the former name of the country - Federal Republic of Yugoslavia - in 2003. The SaM, the member-states of which never fully amended their laws in compliance with the main SaM documents, the Constitutional Charter and the Charter on Human and Minority Rights and Civil Liberties, was dissolved after majority of Montenegro's citizens voted for the republic's independence on 21 May 2006.

Serbia thus again became an independent state for the first time since 1918 although its population did not have any say on the issue. Montenegro's departure was one of the last effects of the fatal choice Serbia's citizens made in the late 1980s, when they supported Milošević: one after another, all the federal units of the then Yugoslavia broke away from Serbia, the government of which had tried to maintain the illusion of Yugoslavia as long as it could. In 2006, it was the turn of the Montenegrin leadership, mostly comprising Milošević's former close political allies, the same ones who in the nineties helped him launch armed conflicts in an attempt to seize territory.

The government that came into power in Serbia in early 2004 with the support of Milošević's once omnipotent Socialist Party of Serbia (SPS), was all but ready for Montenegro's independence. Consciously or unconsciously, it made no moves to hold on to any of the normative enactments of the former State Union. Its

omission to incorporate the Charter on Human and Minority Rights and Liberties in Serbia's normative system was the most glaring flaw it made in terms of human rights. Until the new Constitution of Serbia was adopted on 8 November 2006, only the meagre articles on human rights in the 1990 Serbian Constitution were in force in Serbia after SaM disintegrated.

As all historical opportunities to replace the 1990 Constitution, adopted at the climax of Milošević's popularity, by convoking a constitutional assembly after the democratic changes in 2000 had been missed, the authorities were forced to apply the difficult amendment procedure envisaged by the Milošević Constitution. Under the procedure, the draft Constitution had to win two-thirds parliamentary support, be upheld by over 50% of Serbia's electorate at a referendum, and then be promulgated by a qualified majority in the Assembly. This feat was carried out in the following manner: the National Assembly unanimously approved the draft Constitution at its 30 September session; the draft was upheld by the necessary majority at a two-day referendum on 28-29 November and the Assembly promulgated the Constitution on 8 November.

The feat entailed a large number of major political and moral compromises. Although various draft constitutions drawn up by political parties, NGOs, expert groups and individuals<sup>227</sup> had been presented in Serbia over the years, the final draft was designed behind closed doors by two experts, one of whom represented the Government and the other the President of Serbia. Who, if anyone, had helped them and whom, if anyone, they consulted remains unknown. The National Assembly did not even hold a debate on the draft – the general impression is that the vast majority of deputies voted for the draft without even having read it. The referendum on the draft Constitution simply had to succeed. Although referenda and elections in Serbia are normally held in one day, this plebiscite lasted two days. As the second voting day was about to end, it appeared that the 50%+1 turnout requirement would not be fulfilled. Moreover, the electoral rolls did not include the names of Kosovo Albanians, who had boycotted all elections and censuses in Serbia in the past twenty years. Their inclusion in the electoral rolls would have considerably increased the already steep 50%+1 turnout requirement.

The impression, yet to be corroborated by insight into documents, is that both the democratic political elite in Serbia and the international community personified by international organisations active in Serbia were for overcoming the obstacle set by the former Constitution. To muster the qualified majority in the Assembly, concessions had to be made to the extreme rightists, above all the Serbian Radical Party (SRS), which held nearly one-third of the seats in parliament. The numerous irregularities were ignored. Many had also gained the impression that even the local and foreign observers had not monitored the referendum with the alacrity they usually demonstrate when observing 'ordinary' elections.

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227 Including the Belgrade Centre for Human Rights, see *Ustavna rešenja za Srbiju i Jugoslaviju – Constitutional Reform in Serbia and Yugoslavia*, Beograd, 2001.

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The most manifest concession made to the nationalist right is evident in the very Preamble to the Constitution, according to which:

Considering the state tradition of the Serbian people and equality of all citizens and ethnic communities in Serbia, and

Considering that the Province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a substantial autonomy within the sovereign state of Serbia and that the constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations derive from this status of the Province of Kosovo and Metohija,

This tendency is visible by a mere comparison of the operational provisions in the 2006 and 1990 Constitutions. Serbia is no longer a state of all its citizens but a “state of the Serbian people and all citizens living in it” (Art. 1). Under the new Constitution, only the Cyrillic script shall be in official use (Art. 10). In these respects, the new Constitution is more “national” than Milošević’s.

With respect to provisions on human rights, the 2006 Constitution is doubtlessly a step backward from the Constitutional Charter of Serbia and Montenegro, if for no other reason than because many of them have been formulated ambiguously and ineptly. In terms of human rights, the Constitution is more comprehensive and modern than Milošević’s; it was, however, too early to assess its effects by the time this Report went into print. The interpretation of these provisions in practice shall be of major importance in view of their lack of clarity and ambiguities.

Parliamentary elections were called on 21 January 2007 as soon as the new Constitution was adopted. At the elections, the ultra-nationalistic Serbian Radical Party won 81 seat in the Parliament, Democratic Party won 60, Democratic Party of Serbia and New Serbia 33, G17 plus won 19, SPS 16, the coalition LDP-LSV-GSS-SDU won 15. Other parties, most of them minority parties, won from 1 to 3 seats. Only around 20% of all MPs are women.

It took almost 4 months for the new government to be formed. The new government consists of a coalition of Democratic Party, Democratic Party of Serbia – New Serbia and G17 plus.

The new parliamentarians and the new government will have to face most of the problems, which the outgoing authorities and political elite could not or would not resolve. Two of them are interlinked: in May 2006, the EU suspended Stabilisation and Association Agreement talks with Serbia (SaM at the time) because the Serbian authorities had failed to extradite one of the main ICTY indictees, former Bosnian Serb army commander Ratko Mladić. The government’s expectations that the talks would continue even if it did not hand Mladić over to The Hague fell through, because it was yet again proven that Mladić had been in Serbia and free at the time the authorities were claiming they could not find him.

Another major and traumatic outstanding issue is the fate of Kosovo and Metohija. Under UN Security Council Resolution 1244 that ended the NATO air strikes on Yugoslavia in 1999, Kosovo and Metohija is still legally a part of Serbia although under international administration, wherefore Serbian authorities exercise no real powers there. The international community started taking decisive steps towards definitely resolving the Kosovo issue in late 2005, when it decided to open talks on Kosovo's final status. The UN Secretary General appointed former Finnish President Martti Ahtisaari his special representative and charged him with mediating between the authorities in Serbia and the representatives of the provisional Kosovo institutions controlled by the Kosovo Albanians and proposing a solution acceptable to both sides. No agreement was achieved at the meetings between Belgrade representatives and the Kosovo Albanian leaders. Ahtisaari is expected to present his plan for the resolution of the Kosovo issue in early 2007. His proposal is to help the Contact Group, comprising representatives of the major world powers, and, ultimately, the UN Security Council reach a decision on Kosovo's final status.

Serbia's NGOs, which had been generally commended for democratising the country (a view not shared by all of the country's political elite), operated in better circumstances than before 2000, albeit a modern law regulating the status of civil society organisations still had not been adopted by the end of 2006 although work on a draft law on NGOs began in 2001 (and the authorities in 2006 brought in the representatives of the stakeholders to take part in the drafting). As the nationalist right increased its influence, the media anti-NGO campaign gained in momentum, targeting advocates of human rights and cooperation with the ICTY. Just like before 5 October 2000, they were again accused of betraying the nation and "unpatriotic" cooperation with foreign organisations.

### *1.2. Social Situation.*

Serbia was still ranked amongst the seven countries with the highest unemployment rates in the world in 2006. Media reported on suicides of people who had lost their jobs. Strikes were frequent. The growth of poverty abated slightly.

#### *1.2.1 Unemployment.*

According to official National Employment Bureau data, Serbia had 911,735 unemployed in June (Večernje novosti, 26 September, p. 30), an unemployment rate none of the countries in transition ever faced (BETA, 30 January).

However, according to surveys of the labour force conducted under ILO standards, 170,000 of these people are actually employed (Blic, 6 July, p. 8). Labour, Employment and Social Policy Minister Slobodan Lalović, however, claimed that many people were working on the black market and that the real number of unemployed citizens stood at 550,000 (Blic, 6 July, p. 8). Employment data show that 180,000 people are employed and working but not receiving any remuneration. These figures have prompted some economists to assess that the unemployment rate stood at as much as 33.4% (Politika, 4 March, p. 1). The fact that more than one-fourth of the unemployed are in their prime, between 30 and 40 years of age (Večernje novosti, 26 May, p. 7), and that one third of the

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unemployed are under 30 years of age (Blic, 22 March, p. 12) gives rise to serious concern.

The Government vowed to cover the pension insurance contributions of all workers whose employers had failed to pay these contributions in the period 1 January 1991 – 31 December 2003. A total of 308,960 applications were submitted to state bodies by such workers and the Government paid their pension insurance contributions by early 2006 (Danas, 17 January, p. 1).

### *1.2.2. Living Standard.*

Statistics show that the average salary in Serbia stood at 23,148 dinars in November (Večernje novosti, 21 December, p. 9) and that an average household spent 38% of its total income on food (Danas, 2 October, p. 10). A family of four had to spend 52,077 dinars to cover the main living expenses every month, i.e. double the average salary (Blic, 19 December, p. 8). However, the differences in salaries by region and branch of industry are extremely big (Večernje novosti, 21 December, p. 9).

The 1.3 million pensioners with an average pension of 13,465 dinars also face everyday challenges to make ends meet. Even greater is the plight of 200,000 retired farmers, whom the state still owes ten 2,000-dinar monthly pensions (Politika, 4 November, p. 5).

Over 800,000 people in Serbia live below the poverty line. According to the World Bank, the number of poor people in Serbia fell from 9.8% in 2003 to 9.1% in 2006 (Danas, 2 October, p. 10). Those living on less than 6,500 dinars a month are considered poor (Danas, 13 July, p. 6).

World Bank data show that 650,000 of Serbia's children are poor, while some local sources claim that the number of poor children does not exceed 200,000. Around half a million people in Serbia receive child benefits and 50,000 families are on welfare (Danas, 20 April, p. 8).

## **Human rights in legislation**

### *1. Constitutional Provisions*

The state of human rights in Serbia was largely affected by the turbulent political events that marked 2006. The dissolution of the State Union of Serbia and Montenegro caused quite a turmoil in the legal systems of the two former member-states. Although Serbia is the legal successor of the State Union under the Constitutional Charter as Montenegro had left the State Union, the issue of former SaM legislation should be regulated by law to ensure legal security. Such a law ought to precisely regulate the transfer of powers from the former State Union to the bodies of the Republic of Serbia. In addition, such a law ought to clearly state which former SaM laws are no longer valid (some have become meaningless when the State Union and its institutions dissolved) and which will

apply in Serbia and to what extent. A draft law regulating these issues was submitted to the National Assembly in June 2006, but was not adopted by the end of the year. Some of these issues were partly regulated by the National Assembly Decision on the Obligations of the State Bodies of the Republic of Serbia Regarding the Exercise of Powers of the Republic of Serbia as the Successor of the State Union of Serbia and Montenegro and the Government Decree on the Status of Specific SaM Institutions and Services.

Until SaM broke up, the Charter on Human and Minority Rights and Civil Liberties (HR Charter), a composite part of the SaM Constitutional Charter, was the highest legislation in the State Union, and all other laws, including the member states' Constitutions, had to be in accordance with the Charter. Unfortunately, the member states had failed to harmonise their legislation with the Charter. The HR Charter provided a much better catalogue of human rights than the 1990 Constitution of Serbia, which was still in force at the time the State Union dissolved.<sup>228</sup> Hence, when the State Union disintegrated, the question arose which catalogue would apply to the citizens of Serbia. This issue has actually never been resolved. The abovementioned draft law on the application of the laws of the former State Union was never adopted. Had it been, the Charter would have ranked as a law of the Republic of Serbia, i.e. it would not have had the legal effect of the Constitution and would therefore have had to be harmonised with the Constitution. Moreover, the draft law even explicitly envisaged that the provisions of the Charter not in accordance with the Constitution would not be applied. This provision was, of course, problematic as the 1990 Constitution regulated human rights in a much more restrictive fashion than the Charter, wherefore much of the Charter could have been qualified "as not in accordance with the Constitution" and citizens would have enjoyed less human rights protection.

This problem was, however, to a large extent addressed by the adoption of the new Constitution of the Republic of Serbia. Notwithstanding all the criticisms of the manner in which it was adopted, the new Constitution includes a more modern and extensive catalogue of human rights than the old Constitution and many of the HR Charter provisions. However, probably because of the speed with which it was adopted or for other reasons, some human rights provisions in the new Constitution are deficient or ambiguous, while others, enshrined by the HR Charter, have been left out. It remains unclear why the authors of the Constitution had decided against a more straightforward incorporation of the Charter provisions, some of which had needed merely slight improvement, given the excellent expert appraisal of the Charter and the fact that it had already been applied in Serbia for three years. The Constitution, however, leaves room for correcting some shortcomings in provisions on human rights in practice. Under Art. 18(3), provisions on human and minority rights shall be interpreted to the

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228 The HR Charter represented great progress in the field of normative regulation of human rights. The final draft of the Charter was evaluated as "excellent" by the CoE European Commission for Democracy through Law (the Venice Commission). See Venice Commission for Democracy Through Law, "Comments on the Draft Charter on Human and Minority Rights and Civil Liberties" (Opinion No. 234/03), by Mr Jan E. Helgesen of 2 April 2003 on [www.venice.coe.int/docs/2003/CDL\(2003\)010fin-e.html](http://www.venice.coe.int/docs/2003/CDL(2003)010fin-e.html).

benefit of promoting values of a democratic society, pursuant to valid international standards regarding human and minority rights, as well as the practice of international institutions supervising their implementation. This implies that the views of the e.g. ECtHR or UN Human Rights Committee must be taken into account when interpreting human rights provisions. It may be presumed that an interpretation taking into account views of international human rights protection bodies (which is the obligation of those interpreting these provisions under the Constitution) will be to the benefit of promoting human rights.

The new Constitution introduces into the legal system of Serbia the institute of constitutional appeal as a human rights protection mechanism. The effectiveness of this legal remedy may, however, be brought into question if the Constitutional Court is established with delay, which is not inconceivable given the extremely complicated procedure for appointing judges to this Court.

Although the Constitution contains better provisions on human rights than its predecessor, its legitimacy nonetheless remains dubious given the absence of public debate prior to its adoption.

## *2. Legal system and laws relevant to human rights*

The administrative, appellate and misdemeanour courts that are to be formed as a part of the reform of the judicial system were to have begun operating on 1 January 2007. However, these courts were not established by the end of the year; the draft law submitted to parliament for adoption in June 2006 and moving the deadline to June 2007 had not been adopted. Therefore, these courts were not able to begin work on time. The unclear and general provisions of the Constitutional Act on the Implementation of the Constitution allow for postponing the establishing of the new courts again; this will additionally put off the reform of the judicial system, a prerequisite for improving the court protection of human rights.

Legislation of Serbia does not envisage an effective legal remedy against unreasonably long trials, i.e. violations of the right to a trial within reasonable time guaranteed by Article 6 (para. 1) of the European Convention on Human Rights. This remains one of the chief problems Serbia's courts face with respect to the right to a fair trial. The Supervisory Board within the Supreme Court of Serbia is authorised insight in cases not resolved within reasonable time, but it is not empowered to award compensation of damages.

With respect to the freedom of association, Serbia again failed to pass a law on associations of citizens in 2006 and legal insecurity still characterises the work of national and international NGOs.

There are still no laws on the opening of state security files, an issue of relevance in terms of the right to privacy. Notwithstanding frequent declarations of the will to address this issue, political elites are still not ready to begin seriously regulating it, although it has greatly burdened the country's public and political life and allowed for manipulations. The Serbian Government 2001 Decree allowing insight in the secret files was declared unconstitutional. However, opening of secret files infringes on the very essence of the right to privacy and ought to be

regulated by law, not by decrees. Such a law also needs to reconcile two extremely important needs of Serbia's society – to confront the totalitarian past and rectify the effects of serious human rights violations and simultaneously protect the right to privacy and other important individual rights.

Legal regulation of the responsibility of people who had violated human rights in the past is closely linked to insight in state security files. The Serbian law on lustration (Act on the Responsibility for Violations of Human Rights) has not been implemented at all. Instead of vetting the judiciary in accordance with this Act, the Constitutional Act on the Implementation of the New Constitution envisages the re-election of all judges in Serbia.

Other segments of the security services have not been reformed either. Their work is regulated by anachronous provisions not providing for real and serious oversight. In addition, the question of implementing former SaM regulations on security services arose after the dissolution of the State Union. Serbia currently has five security services. Four are working within the Ministries of Defence and Foreign Affairs, which have not been incorporated in the republican legal system, and are operating in accordance with interim regulations until a law on them is passed. Such a law was not passed before the end of 2006 for political reasons.

Two laws relating to the church were passed in 2006. The Act on Churches and Religious Communities affords religious communities an extremely high degree of autonomy, but many of its provisions violate the principle of separation of the church and the state. Moreover, although it declares that all religious communities are equal, the Act does not abide by that principle and divides the religious communities into four groups; the so-called traditional churches enjoy the most favoured status. As per the Act on the Restitution of Property to Churches and Religious Communities, its main flaw is that it puts religious communities in a more favourable position vis-à-vis other, notably, natural persons, whose property the state had taken away on various grounds.

The adoption of the Act on Prevention of Discrimination against Persons with Disabilities ought to be commended. Serbia, however, still lacks a general anti-discrimination law defining the main legal terms, rules and standards binding on the courts and special mechanisms for protecting victims of discrimination.

## **Individual rights**

### *1. Human rights and Education: Right to Education*

#### *1.1. Legal provisions.*

Under the Serbian Constitution, everyone shall have the right to education. Article 71 sets out that primary and secondary education shall be free of charge. In addition, primary education shall be mandatory. Under the Constitution, all citizens shall have equal access to tertiary education; the state shall provide free tertiary education to successful and talented students, who are unable to pay the tuition, in accordance with the law. This provision falls short of the right to

education standard that had been set by the 1990 Constitution, under which the right to free education was exercised at all levels of regular education.

The Primary Education Act (Sl. glasnik RS, 62/03, 64/03, 58/04) allows private persons to found primary schools.

In 2004, an Act on Amendments to the Education Act was passed, annulling many of the Act's reformist provisions (Sl. glasnik RS, 58/04). The amendments abolished special Councils – for Education, Professional Training, Harmonisation of Stands on Education – and set up a National Education Council. The composition of this new Council is disputable, especially the provision prescribing that one Council member shall be appointed from amongst the ranks of the Serbian Orthodox Church and another from amongst the ranks of all other “traditional religious communities and churches” (Art. 11 (3, items 7 and 8)). The provision under which only one member from amongst the ranks of all national minorities is appointed to the 42-member National Council also gives rise to concern. Mandatory education is again reduced to eight years and the teaching licences have been abolished. Provisions allowing pupils to master the curriculum and pass a grade more easily were also abolished (Art. 101 (2, 4, 8 and 9)). Concern also arises over the provisions that replaced the ethnically neutral provisions in the initial Act.<sup>229</sup>

In addition, the Act on Amendments to the Act on Elementary Schools (Sl. glasnik RS, 22/02) and the Act on Amendments to the Act on Secondary Schools (Sl. glasnik RS, 23/02) were passed in 2002.

Changes and amendments mainly refer to the status, organisation, plan and programme of religious education and education in the other optional subject designated by the Minister of Education, determining the professional, administrative and inspection supervision, as well as the area of responsibility of school boards and parental councils. School boards, i.e. the school management bodies comprise school staff, parent and local self-administration representatives (Art. 118 (2), Act on Elementary Schools; Art. 89 (2), Act on Secondary Schools, Sl. glasnik RS, 50/92, 53/93, 67/93, 48/94, 24/96, 23/02). The intention of the legislator was to create a partnership and harmonised opinions of those groups that have a natural interest in participating in education. One of the powers of the school board is to nominate school principals based on the prior opinion of the teachers' council. The current practice (after the amendments came into force) shows that the opinions of the teachers' councils have mostly been disregarded in the nomination of school principals.<sup>230</sup>

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229 See provisions on education objectives: Article 3 (5 and 11).

230 When there is a reference to the right to education we usually think about children as beneficiaries of education or about parents who have the right to bring up their children in accordance with their religious and philosophical beliefs (Art. 2, Protocol No. 1 to the ECHR). Teachers are most often and easily forgotten in the process. Although they are not the only ones concerned by the life and organisation of the school, the issue of electing school principals is primarily of their concern and interest. This is particularly important since the Act Amending the Act on Secondary Schools envisages that Parental Councils are to deal with issues related to school life (Art. 90a). Election of the school principal is of greater relevance to the life of school as a collective; therefore this power should be fully granted to the Teachers' Council. School would then become a truly democratised and depoliticised institution.

Education laws comprise provisions protecting groups and individuals from discrimination and protection from physical punishment and verbal abuse of students. Article 7 of the Act on Elementary Schools and Article 8 of the Act on Secondary Schools envisage the following:

All activities threatening or degrading groups and individuals on the grounds of race, national, language, religious affiliation, sex or political conviction, as well as instigating such activities is strictly prohibited in the school.

Physical punishment and verbal abuse of a student's person is prohibited in the school.

In this way the laws underline the provisions of the Convention on the Rights of the Child related to non-discrimination, protection from abuse and school discipline in terms of the way it can be exercised (Arts. 2, 19 (1) and 28 (2), Convention on the Rights of the Child; for prohibition of physical punishment see *Campbell and Cosans v. United Kingdom*, ECtHR, App. No. 7511/76, 7743/76 (1982)).<sup>231</sup> 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 Elementary Schools; Art. 80 (1), Act on Secondary Schools). This is also the grounds for dismissal of school principals who do not take appropriate action in cases of improper conduct of teachers (Art. 88 (3), Act on Secondary Schools), and sanctions have also been prescribed for the school, which is obliged to pay a fine for the offence if it fails to take action against such conduct (Art. 109 (11 and 12), Act on Elementary Schools and Art. 140 (1 and 2) Act on Secondary Schools).

The laws for the first time separate the management and professional and pedagogical supervision in schools. Salaries, compensations and other income of educational staff, as well as the funds for joint consumption, are centralised and streamlined through the Ministry of Education. Also, the laws explicitly allow schools to generate their own income from donations, sponsorships, contracts and other legal affairs. The municipal or town authorities fund the further professional development of teachers and associates, investment and regular maintenance, equipment, material costs and depreciation in keeping with the law, transport of students living more than 4 km away from the school, if there is no other school in their vicinity. Transport is provided for students with developmental disabilities regardless of the distance between their house and school. Changes and amendments to the Act on Elementary Schools have introduced a provision pursuant to which “the municipality or town in the territory of which the parent of the student has residence keeps records of children categorised and enrolled in an appropriate school, covers the cost of transport, food and accommodation of students if there are no appropriate schools in that particular municipality” (Art. 85 (9)). The problem, however, remains how this obligation will be met by poorer municipalities, which cannot allocate the necessary funds from their budgets. Although stipulated by law, this obligation has not been met in poor municipalities (usually rural communities), where the problem of long distances between schools and homes is the most acute. The Act does not envisage organising specialised school buses, not even in

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231 Re corporal punishment of minors see also the case *Tyrer v. United Kingdom* (ECtHR, App. No. 5856/72 (1978)).

municipalities with a small and dispersed population. For these settlements, as well as for settlements with very small number of children of primary school age, the legislator envisages establishing of so-called branch schools, with combined classes. The Act contains the category “combined class” for lower elementary school grades (grades 1–4), in which children in two grades study together (in this case the class has 20 pupils) or children in three or four grades study together (in classes of 15 pupils each). The quality of work in combined classes, located in old and poorly equipped buildings (frequently without toilet facilities and running water, library, kitchen, proper classrooms and similar rooms), is rather low and has a de-motivating effect on pupils.

The laws have detailed and improved regulations on professional advancement, certificates and development of teachers, associates and child minders.

The Act does not envisage penal provisions for municipal authorities, nor for the Ministry of Education, should they fail to ensure that students are able to attend school under conditions stipulated by this Act, but it does envisage sanctions for parents.

#### *Higher education.*

As opposed to the 1990 Constitution, Article 72 of the new Constitution explicitly guarantees the autonomy of the universities, colleges and scientific institutions. Under 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 (Sl. glasnik RS, 76/05). The Act, in drafting for several years, introduces a large number of new and modern provisions. In its introductory provisions, it says that higher education is of special relevance to the Republic of Serbia and part of international, notably European education, science and arts (Art. 2). Higher education is based inter alia on the principles of academic freedoms, autonomy, respect of human rights and civil liberties, including prohibition of all forms of discrimination, participation of students in management and decision making, especially on issues of relevance to quality of instruction (Art. 4). The Act explicitly prescribes the equality of higher education institutions notwithstanding their ownership i.e. who their founders are (Art. 4, para. 1, item 9). In several provisions, the Act especially insists on prohibition of discrimination. The most explicit prohibition of discrimination is found in Article 8 (1), under which:

All persons with secondary education, notwithstanding their race, colour of skin, gender, sexual orientation, ethnic, national or social origin, language, religion, political or other convictions, status acquired by birth, existence of a sensory or motoric disability or financial status have the right to high education.

Although the Act can be criticised on some minor points and there are doubts that there is readiness to implement it rapidly and efficiently, it can be generally assessed as good from the viewpoint of human rights.

#### *1.3. Practice.*

Although the school is obligatory and free of charge until 15 years of age, in practice all the schoolbooks must be bought by parents, which is a huge burden

for some families. One of the big problems that negatively affect the quality of education is poor state of many of the school buildings. US State Department's report on human rights in Serbia in 2006 refers to a government survey which found that a number of children attending school is very high - approximately 99.8 percent; however, the government acknowledged that the survey missed many transient Roma.

#### *1.4. Roma children.*

Education of Roma children remains one of the biggest problems. According to a UNICEF survey, only 13% of Roma children finish primary school and almost 90% of Roma people over 15 years of age are illiterate. Most often, the reasons why the Roma children leave the school is marrying at an early age, bad economic situation which forces Roma children to work. Another possible reason is the fact that Roma children are not accepted by other children. It often happens that Roma children are placed in schools for children with emotional disabilities because they show bad results on standardized pre-school tests. However, bad results are not due to their mental disabilities, but to the fact that they do not speak well (if at all) Serbian language, and also cultural background sometimes make the tests difficult for them. Due to the lack of primary schooling, many of the Roma children do not learn to speak Serbian, which puts them in a disadvantaged position later in life.

#### *1.5. Right to education of disabled persons.*

Persons with developmental problems, adults and persons with special abilities have the right to education conformed to their special educational needs (Art. 4 of the Act on Bases of the Education System). Instruction in sign language and with the help of sign language means of communication is provided for the education of persons using sign language (Art. 7). Special education of children with developmental problems is regulated by Chapter VII of the Serbian Primary School Act. The Act regulates so-called classification of children with developmental problems, funding of this form of education and forms of their kindergarten education. In terms of the Act, children with developmental problems are children with physical disorders, mentally disabled children and children with multiple developmental disorders. Physical disorders comprise sensory disabilities, i.e. sight or hearing impairments. The Act classifies mental disabilities into four groups (mild, moderate, profound and severe). Classification of children is as a rule conducted before they are enrolled in primary schools, but may be conducted during schooling as well. It serves to determine a child's ability to acquire primary education and the type of school the child is to be enrolled in. The decision thereof is passed by the competent Classification Commission and can be appealed by the parents. Under these provisions, the parents' role in choosing the manner in which their child will be schooled is minimal, which is especially disadvantageous where children with physical disorders are concerned.

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2. *Access to rights: National Human Rights Institutions in the country*

2.1. *Legal norms.*

The institute of Ombudsperson has to date been established at three levels in the Republic of Serbia: at the state level, at the level of the Autonomous Province of Vojvodina and at the local self-government level. In addition to Ombudspersons with general jurisdiction, an Ombudsperson with special jurisdiction is to be established soon in Serbia as the Ministry of Labour, Employment and Social Policy submitted to the National Assembly a draft Act on the Protector of the Rights of the Child. The draft Act on Prohibition of Discrimination against Persons with Disabilities had also initially foreseen an Ombudsperson for the protection of rights of persons with disabilities but these provisions were left out of the final version of the law.

The introduction of the institute of Ombudsperson in a legal system is preceded by its constitutional or legal regulation. The Ombudsperson was introduced at different levels in Serbia by law or under decisions of competent authorities and regulated at the constitutional level for the first time by the 2006 Constitution. The idea to partly regulate the institute by Constitution as well is a good one, as the Ombudsperson can thus draw on the authority and legal force of the highest law of the state. On the other hand, the Constitution has failed to ensure the future Ombudsperson the best guarantees of independence and status.

The lack of provisions on the Ombudsperson in the previous Constitution had inevitably led to questions about his status in republican legislation. The proposer of the republican law, the Ministry of State Administration and Local Government disregarded legal experts' opinions and did not stipulate the election of the Ombudsperson (Protector of Citizens) by an absolute or qualified majority, but merely by a relative majority of votes in the Assembly. The authors of the law argued that the then Constitution explicitly listed what issues the Assembly had to adopt by a qualified majority and, as the Ombudsperson was not mentioned amongst them, they were not willing to submit an unconstitutional law for adoption. Unfortunately, either intentionally or unintentionally, the new Constitution does not rectify this shortcoming and does not stipulate a special qualified majority for the election of the Ombudsperson at the level of the Republic of Serbia.

2.2. *Ombudsperson at the Level of the Republic of Serbia.*

The National Assembly of the Republic of Serbia passed the Act on Protector of Citizens on 14 September 2005 (Sl. glasnik RS, 79/05). The Government accepted some of the recommendations made by international and non-governmental organisations, but had in some areas deviated from specific key principles vital for ensuring the Ombudsperson's independence and impartiality.

2.2.1 *Vojvodina.*

The Autonomous Province of Vojvodina was entitled to independently establish and regulate the position and organisation of the provincial Ombudsperson under the Act Establishing Particular Jurisdiction of the Autonomous Province of

Vojvodina (Art. 56, Sl. glasnik RS, 6/02)<sup>232</sup> and the Vojvodina Statute.<sup>233</sup> At its 23 December 2002 session, the AP of Vojvodina Assembly adopted a Decision on the Provincial Ombudsperson<sup>234</sup> and on 24 September 2003 elected dr Petar Teofilović its first Provincial Ombudsman, who began processing complaints in mid-January 2004.<sup>235</sup> The Ombudsman is headquartered in Novi Sad and has two local offices in Subotica (as of 10 January 2004) and Pančevo (as of 10 January 2005).

The provincial Ombudsman is duty bound to present annual and ad hoc reports to the Vojvodina Assembly, but the Assembly Rules of Procedure still lack provisions on the report submission procedure.

### *2.2.2. Ombudspersons at the Local Level.*

The Act on Local Self-Government entitles all municipalities to pass decisions on establishing municipal ombudspersons.

Municipal decisions on establishing the office of Ombudsperson vary. Most require of the complainants to exhaust all legal remedies before they address the Ombudsperson, which is odd in view of the fact that the institute has been introduced inter alia to forestall problems and mediate. As Ombudsperson's decisions and recommendations are not legally binding and are not enforceable like convictions or final administrative decisions, the question arises as to what the Ombudsperson's powers will be if s/he acts against a conviction or final decision of an administrative court. Nearly all municipal decisions state that the Ombudsperson shall operate independently and autonomously but do not include provisions ensuring such independence. The decisions frequently make the Ombudsperson accountable for his work to the president of the municipality or the municipal assembly, which essentially negates the idea of efficiency of the institution. Under most decisions, municipal Ombudsmen are nominated and dismissed at the proposal of the mayors. Some municipalities stipulate the election of the Ombudsperson by a relative majority of councillors, wherefore there is no need for a consensus on the candidate and the ruling party/coalition can thus elect a person who is not necessarily politically independent and impartial. Although some decisions allow for the establishing of a professional service or assistant to support the Ombudsperson, most entrust the administrative and technical support to the municipal administration, again placing the Ombudsperson in an unfavourable position.

### *2.3.1. State level.*

On 7 April 2006, the Serbian Government endorsed the Plan for the Implementation of European Partnership Priorities. The section relating to the reform of the state administration lists as a short-term priority "implementation of legislation for the establishment of the Office of the Protector of Citizens", which will be in the purview of the Ministry of State Administration and Local

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232 Art. 56, Sl. glasnik RS, 6/02

233 Art. 21 (1.1).

234 Sl. list AP Vojvodine, 23/02, came into effect on 8 January 2003.

235 Sl. list AP Vojvodine, 15/03

Self-Government. The Plan sets out that it is necessary to elect the Protector of Citizens and his/her deputies, establish the office and provide the necessary prerequisites for it to begin work. The Government had earmarked 30,856 million dinars for the Office in 2006 budget. The Plan notes that talks are under way with the OSCE Mission in Serbia to support the founding and work of the institution of Protector of Citizens. Under the Plan, these activities were to have been implemented by the second quarter of 2006 or by the fourth quarter of 2006 at the latest.

Unfortunately, both the deadline in the Plan, and the deadline in the Act, under which the first Protector of Citizens was to have been elected within six months from the day the Act came into effect (Art. 39), were exceeded. Neither serious preparations nor consultations on the best candidate for the office were made by the time the deadline set by the Act expired on 24 March 2006. Under the Act, only MP caucuses are authorised to nominate a Protector of Citizens, which precludes NGOs, professional associations and other institutions from directly fielding candidates. The Constitutional Issues Committee of the Assembly upholds the nominees by a majority of votes and submits the candidacies to the Assembly.

The provision under which the Protector of Citizens is elected by a majority of deputies present at the session had met with serious and argued criticism of international organisations and Serbian NGOs.<sup>236</sup> They were concerned that such manner of election would enable two or more political parties to elect a Protector of their choice through skilful political maneuvering. Such suspicions were corroborated already during the first attempt to elect the Protector. Be it due to the irresponsibility of the parliamentary political parties, their disregard for the democratic importance of the institution of Ombudsperson or insufficient preparations and consultations, only one candidate, fielded by the Democratic Party of Serbia (DSS), was proposed at the Constitutional Issues Committee session on 3 April 2006. The session was attended only by the Committee members of the ruling parties, but not by the Committee members from the ranks of the SRS and the DS (the latter had been boycotting the parliament since October 2005). The DSS nominee won the majority of votes at the Committee session and the Committee asked the Assembly to vote for him in an urgent parliamentary procedure.

A group of 15 NGOs on 4 April expressed its dissatisfaction with the way the first candidate for the post of Protector of Citizens was fielded, maintaining that

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236 Broad Assembly consensus on the Protector of Citizens is vital in order to ensure public support for his or her independence and autonomy. As the Protector lacks significant powers and his or her decisions are not binding, his or her election by a majority of present deputies, rather than by a qualified or two-thirds majority, may bring his or her authority into question in the eyes of administrative bodies. Experts' recommendations that the nominee have the support of two thirds of the Constitutional Issue Committee member or even of both the Administrative and Constitutional Issues Committees. See similar recommendation in e.g. Joint Opinion on the Draft Law on the Ombudsperson of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe, Opinion No. 318/2004, CDL-AD(2004)041, adopted on 6 December 2004. See also BCHR Comments at [www.bgcentar.org.yu](http://www.bgcentar.org.yu).

such election, without a debate or broader support from expert circles and the public, had seriously brought into question the independence and authority of the institution. The NGOs expressed doubts whether the candidate fulfilled all legal requirements for the job and reminded deputies it was vital for a state lacking strong democratic foundations to appoint to this office an impartial and independent candidate of high integrity and a flawless reputation. They appealed for the postponement of the election of the Protector and demanded that the nomination of candidates for the office be conducted in keeping with highest democratic standards and without delay. The DSS candidate withdrew his candidacy on 5 April and the Assembly Speaker invited all MP caucuses to nominate their candidates. The Protector was not elected by the end of 2006. Under the Constitutional Act, the Protector of Citizens shall be elected at the first session of the Assembly to be convoked after the January 2007 parliamentary elections. In absence of any consultations with the civil sector, the public has no access to information on whether there are any candidates for the office and whether political parties have devoted enough attention to the election of the first Ombudsperson.

### *2.3.2. Vojvodina.*

The Decision on the Provincial Ombudsman provides a large number of guarantees of independence, but the Office has encountered operational and financial problems.

The Ombudsman has from the start confronted various problems, most of which can be attributed to the competent authorities' insufficient awareness of the status, role and tasks of the institution, inadequate planning or inertia.

The normative status of the institution and its non-incorporation in the provincial government system are the gravest problems the institution faces. Although the Decision on the Provincial Ombudsman was passed back in December 2003, only the Decision on Provincial Administration includes provisions related to the status of the Ombudsman, while other regulations affecting the normal operation of the institution have not been amended yet. This has led to different interpretations of the role of the Ombudsman in the system and its relations with other bodies. Although specific funds have been allocated for the Ombudsman in the Vojvodina provincial budget and the Ombudsman's Office proposes its own budget, there are no regulations on how that budget should be set, wherefore the competent bodies apply inadequate regulations, the ones pertaining to the funding of the Executive Council. The initial misunderstandings were subsequently overcome, but the Ombudsman faced financial problems on a number of occasions.

Notwithstanding the Internal Organisation and Job Systematisation Regulations, the Vojvodina Ombudsman faces the problems of understaffing, lack of office space, equipment and official vehicles. For instance, many activities the Office conducts in the field hinge on the good will of the executive authorities to lend it their official vehicles, the very authorities whose work the Ombudsman is to monitor and whom he should be independent of.

*2.3.3. Local level.*

To date, local Ombudspersons have been established in the city of Belgrade and the municipalities of Bačka Topola, Sombor, Zrenjanin, Šabac, Niš, Kragujevac, Grocka, Rakovica, Vladičin Han and Subotica..

The main problems faced by municipal Ombudsmen stem from the lack of awareness of local authorities and citizens of their role, nature and powers. Such lack of awareness came to the fore when the Belgrade Ombudsperson was being elected. In January 2006, the Belgrade City Assembly passed a Decision on the City Ombudsperson. Under the Decision, one of the job requirements included the bar exam, as, in the opinion of the city authorities, the Ombudsperson ought to represent citizens in proceedings against administrative bodies, which is a total misinterpretation of the role of the Ombudsperson. A problem emerged also during the procedure in which the first Ombudsperson was elected - the competent bodies advertised the job in the newspapers, a move viewed by some as disparagement of the institution and by others as the city authorities' wish to be transparent.

Some municipalities have failed to allocate special funds or a budget for their Ombudspersons, who need to apply to the local administration for funds; as the decisions do not specify the funding mechanisms and procedures, the Ombudsmen are essentially dependent on the bodies the work of which they ought to control and criticise.

*2.5. Commissioner for Information of Public Importance.*

The Serbia and Montenegro Charter on Human and Minority Rights and Civil Liberties had ranked the right to free access to information of public importance within the fundamental human rights in Article 29 (2). When the state community disintegrated, this right found itself in a legal vacuum for a while.

The new Constitution of the Republic of Serbia (Sl. glasnik RS, 98/06) regulates the freedom of access to information under a partly unusual (and inappropriate) title Right to Information. Article 51 (1) of the Constitution guarantees persons within the state's jurisdiction the right to receive true, full and prompt information on issues of public importance and envisages the corresponding duty of the media to enable the exercise of this right. The formulation of the provision is "left hanging" as it corresponds neither to the freedom of expression, from which the freedom of access to information derives (Art. 46 (1) of the Constitution), nor to the right to participation in the administration of public affairs (Art. 53), as this sui generis right may be qualified as the expression of participative democracy. The freedom of access to information in the true sense of the word is regulated by paragraph 2 of Article 51, although this definition of the bodies from which information may be requested is much more restrictive than the one in the Act on Free Access to Information of Public Importance.

Experts expressed concern over the objective of the provision in Article 5 (1) of the Constitutional Act on the Implementation of the Constitution, under which the new Parliament will at its first session harmonise with the Constitution "the law regulating the realisation of the right of citizens to information and appoint... the authority charged with monitoring the realisation of the public's right to information...". This provision is extremely vague and allows for various interpretations even prima facie. Moreover, there is clearly no need to harmonise

the Access to Information Act with the Constitution as the provision on access to information was included in the draft after the Commissioner intervened. Moreover, the provision reduces the current administrative powers of the Access to Information Commissioner regarding the implementation of the Act to the mere monitoring of the realisation of this right, normally an Ombudsman's competence. The current Commissioner believes the authors of the Constitutional Act included the provision to "repudiate the very institution of Commissioner".<sup>237</sup>

The Serbian Assembly passed the Act on Free Access to Information of Public Importance on 5 November 2004 and it came into effect on 13 November 2004 (Sl. glasnik RS, 120/04). Serbia thus joined the group of 68 countries (as of November 2006)<sup>238</sup> that recognise the right to access information held by public authorities.

Article 2 of the Act defines information of public importance as information held by a public authority created during its work or related to its work and regarding anything the public has a justified interest to know. It is, however, unclear why the legislator opted for defining information of public importance rather than for accepting the internationally acknowledged standards and regulating access to official documents.<sup>239</sup>

The Act commendably includes the National Assembly and courts within the list of authorities that must provide access to information, although the CoE Committee of Ministers' Recommendation R (2002) 2 allows member-states to prescribe a somewhat different legal regime for these bodies. The legislator however failed to expand the scope of the Act to include natural persons entrusted with the exercise of administrative public powers (Art. 3).<sup>240</sup>

The formulation of the provision in Article 4 in conjunction with Article 2 introduces the justified interest clause. This clause may not be derogated from only if information regarding the risk to i.e. protection of the population's health or environment is at issue. In all other circumstances, the public authority may disregard the clause, whereupon it must take into account also the provisions in Articles 5, 8, 9, 13, 14 and 15, paragraph 4, of the Act and establish whether the public has the justified interest to know the information in each specific case.

Article 5 of the Act affords everyone the right to know whether a public authority holds specific information, to have access to the information by insight in the document that contains it, and to be issued a copy of the document, i.e. to have a copy of the document s/he requested forwarded to him or her by post, fax, electronic mail or in another manner. Article 6 stipulates that the rights in the Act may be exercised by all natural and legal persons under equal conditions, while Article 7 prohibits the discrimination of journalists and media in the exercise of

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237 "If I'm really such a nuisance, they could have resolved the issue in another way", Blic, 10 November 2006, p. 4.

238 David Banisar, *Freedom of Information and Access to Government Records Law Around the World 2006*, <http://www.freedominfo.org/countries/index.htm>

239 See Committee of Ministers Recommendation R (2002) 2 on access to official documents.

240 Ibid.

the right to access information.<sup>241</sup> The Act contains progressive norms in paragraph 8 of Article 16 (allowing for a person unable to access information without an escort to be assisted by an escort when accessing an official document), Article 17 (4) (allowing for exemptions from the obligation to reimburse the necessary costs of document reproduction and forwarding), Article 18 (4) (obliging the public authority to enable access i.e. copy the document in the language in which the request for access to information was made, even if the language in the specific case is not the official language of the authority, if the public authority is in possession of a document with the required information in the language in which the request was submitted). However, the provision in paragraph 2 of Article 18 diminishes the importance of these liberal provisions by limiting the right of the applicant to freely choose the medium in which s/he will be issued a copy of the document (in writing, audio, video, digital or another form).

Access to information of public importance is guided by the principle that exemptions from the exercise of this freedom must be established clearly and precisely. Provisions in Article 9 setting conditions under which free access to information can be denied fall short of internationally recognised standards in that respect. For instance, the provision in paragraph 1 allows a public authority not to provide access to information if such access would endanger “another vital interest of a person”. The public authority is thus given excessive discretionary power to interpret what falls within the scope of that phrase. The same applies to the following formulations “seriously imperil international relations” (paragraph 3) - because each state activity can ultimately be linked to its international relations; and “substantially undermine the government’s ability to manage national economic processes or significantly impede the fulfilment of justified economic interests” (paragraph 4). The provision in paragraph 5 is especially controversial given that Serbia still lacks complementary legislation that regulates the classification of secrets, wherefore public authorities’ access to information officers do not have a mechanism to help them assess whether the required information is classified.

The lack of complementary legislation is evident also with respect to the application of Article 14 of the Act, which allows for withholding access to information that would violate another person’s right to privacy. The Data Protection Act adopted in May 1998 by the then FRY Federal Assembly, on the one hand, deviates significantly from contemporary standards applied in this area; on the other hand, even the authorities, which are to apply it, are unaware of its

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241 The fact that the government favours specific media in contravention of this legal provision drew public attention with respect to an official memo on the conversation the Police Minister and the Director of the Security Intelligence Agency (BIA) had with the prime accused in the trial of Zoran Đinđić’s assassins the night he turned himself in; the copy of the alleged document was published in the daily Press just before the Police Minister forwarded it to the journalist of RTV B92, who had filed the request to access this piece of information of public importance.

existence. The necessity to enact a new law on the protection of personal data arises also from the facts that Serbia ratified the CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data<sup>242</sup> and that the new Constitution regulates this right in Article 42.

Under Article 15, the request for access to information is filed in writing and the applicant need not list the reasons therefore (paragraphs 1 and 4). The public authority is obliged to provide access to information also on the basis of an oral request registered in the minutes (paragraph 7).

The Act lays down a dual regime of deadlines within which the access to information requests must be met. Under the general regime, the authority is duty-bound to act on the request without delay, within a maximum of 15 days from the day it was filed; this deadline may be extended to a maximum of 40 days from the day of filing for justified reasons but the authority must notify the applicant thereof as soon as it establishes that it is unable to fulfil the request within the original deadline (Article 16 (1 and 3)). A special regime applies to “privileged information” regarding the risk i.e. protection of public health and the environment, when the authority must provide access to information within 48 hours (Art. 16 (2)). The length of the initial 15-day deadline was heavily criticised by the media, which, as a rule, need access to information immediately.

Under the Act, insight in a document comprising the requested information is free, while the public authority shall charge the applicant only the necessary costs of duplication and shipment of the copy of the document (Art. 17 (1 and 2)).<sup>243</sup> Hitherto, only a few public authorities have charged the applicants, although some have charged fees exceeding the necessary costs several times over.<sup>244</sup>

Article 22 regulates the right to a complaint. The clauses in paragraphs 1.1 and 2 are interesting with respect to the application of these provisions. The former affords the applicant the right to complain if the authority refuses to notify him or her about whether it possesses the required information or to provide insight in the document containing the information or to issue or forward him or her a copy of the document, or fails to do so within the prescribed deadline. Article 46 (1(6)) qualifies the failure of a public authority to provide access to the required information as a misdemeanour. In fact, most complaints the Commissioner received in 2005 regarded this very issue.<sup>245</sup> The provision in Article 22 (2) exempts the six topmost state bodies from the jurisdiction of the Commissioner and their failure to provide access to information can be challenged only by filing administrative complaints to the Supreme Court of Serbia. This provision groundlessly reduces the powers of the Commissioner, weakens the transparency of these institutions and deters the citizens from seeking information from them given the costs and duration of court proceedings. Hence, an initiative has been

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242 Act on the Ratification of the 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 - Međunarodni ugovori, 11/2005.

243 As envisaged by the Act, a price list was adopted by the Decree on Reimbursement of Necessary Costs of Duplicating Documents with Information of Public Importance, Sl. glasnik RS, 120/04

244 Report on the Implementation of the Act on Free Access to Information of Public Importance, Commissioner for Information of Public Importance of the Republic of Serbia, March 2006, p. 18.

245 Ibid.

launched to pass an Act amending the Act on Free Access to Information of Public Importance which would revoke the provisions in Article 22 (2 and 3).<sup>246</sup> Another important initiative on amending the Act regards the introduction of the institute of the so-called “whistle-blower”, which would afford protection to persons who breach confidentiality and allow access to a document if there is an overriding justified interest therefor (e.g. if the document contains information on a crime, corruption, et al).<sup>247</sup>

Provisions regarding access to information in other, notably procedural laws, also affect the implementation of the Access to Information Act. Most of these laws regulate insight in case files but the person, who wishes to exercise this right, must prove s/he has a legal interest in accessing such information. The Police Act also contains provisions negating the freedom of access to information (Art. 5, Sl. glasnik RS, 101/2005), as does the draft Act on Foreign Investments (Art. 28(4)). The provision in the latter draft law, which explicitly envisages that information on investments shall not be publicly available within the meaning of the law on access to information, is, ironically, laid down in an article entitled “Efficient Communication”. On the other hand, the State Administration Act (Sl. glasnik RS, 79/2005) and the Civil Service Act (Sl. glasnik RS, 79/2005, 81/2005 and 83/2005) are rare laws the provisions of which (Art. 11(2) and Art. 8 respectively) oblige the state authorities i.e. state employees to provide the public with information about their work in keeping with the provisions in the law regulating free access to information of public importance. The Joint Declaration adopted on 6 December 2004 by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression needs to be mentioned in this respect as it includes a principle envisaging that the access to information law should, to the extent of any inconsistency, prevail over other legislation.

The Act on Free Access to Information of Public importance establishes the institute of Commissioner, a second-instance authority vis-à-vis the public authority bodies, which are duty-bound to provide required access to information, and empowered to undertake a number of other measures required for the proper and efficient implementation of the law. The Commissioner and Deputy Commissioner are appointed to seven-year terms in office by the National Assembly and may be re-appointed (Arts. 30 and 33). The Commissioner is an autonomous and independent institute; this status is additionally guaranteed by the provision on remuneration equalling that of a Supreme Court judge (Art. 32 (1 and 3)).

However, the authorities' commitment to the free access to information is best reflected by the fact that the competent Government bodies provided the Commissioner with the offices, basic equipment and other material and technical

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246 Application of the Act on Free Access to Information of Public Importance – Monitoring Report, Fund for an Open Society, Belgrade, June 2006, p. 18.

247 Ibid.

facilities he needed six months after he was appointed, wherefore he only began to work in July 2005. His office is to have 21 employees, but only 6 persons are employed at the moment as the premises designated to the Commissioner are too small. Only three of them are processing the cases; the Commissioner's Office reported it was having problems dealing with the huge backlog back in March 2006.<sup>248</sup> When the National Assembly Administrative Committee was due to adopt the book of regulations regarding the Commissioner's Office job systematisation in September 2006, the SDPO deputy Tomislav Kitanović walked out of the session in demonstration, leaving the Committee without a quorum and explaining he was "generally against the interminable increase in administration". The book of regulation was thus not adopted.<sup>249</sup>

The Government took an especially critical view of the Commissioner after he ordered the BIA to comply with the request for information filed by the NGO Youth Initiative for Human Rights (YIHR), which had asked how many wiretapping requests had been filed and how many people were wiretapped in accordance with such requests in 2005. The Supreme Court of Serbia dismissed the BIA administrative complaint challenging the Commissioner's order. This event prompted Justice Minister Zoran Stojković to accuse the Commissioner of working against the state.<sup>250</sup> As BIA failed to comply with the Commissioner's order even after the Supreme Court decision, conditions in Article 28(2) of the Act on Free Access to Information of Public Importance were met and the Government of the Republic of Serbia was to have executed the Commissioner's decision. True to form, however, the Government again failed to fulfil this legal obligation.<sup>251</sup>

The authorities' disputable attitude towards the application of the Act, above all of the executive, is also exemplified by the lack of supervision of its implementation. Under Art. 45, the implementation of the Act is to be supervised by the Serbian Culture and Information Ministry, which is also charged with initiating misdemeanour proceedings against authorities breaching its norms. The Commissioner's Office submitted 222 cases containing elements of a misdemeanour to the Ministry in the period between 27 September 2005 - 27 February 2006,<sup>252</sup> but no misdemeanour charges have been filed.<sup>253</sup> This is one of the reasons why the initiative to amend the Act includes the suggestion that the jurisdiction of supervising its implementation be transferred to the State Administration and Local Self-Government Ministry.

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248 Report on the Implementation of the Act on Free Access to Information of Public Importance, Commissioner for Information of Public Importance of the Republic of Serbia, March 2006, pp. 5, 6 and 15.

249 "Kitanović: Commissioner Šabić is Amassing Administration", *Danas*, 19 September 2006, p. 5.

250 "Who BIA is Wiretapping is a State Secret", *Blic*, 5 June 2006, p. 8.

251 Report on the Implementation of the Act on Free Access to Information of Public Importance, Commissioner for Information of Public Importance of the Republic of Serbia, March 2006, p. 14.

252 Report on the Implementation of the Act on Free Access to Information of Public Importance, Commissioner for Information of Public Importance of the Republic of Serbia, March 2006, p. 13.

253 "Substandard Implementation of the Information Law", B92, 30 June 2006.

Only 46 state bodies have fulfilled the legal obligation to draft and publish information directories on their work.<sup>254</sup> Of the 18 Government ministries, 11 have published information directories; the Government, which belongs to the category of the so-called topmost state bodies in terms of Art. 22 (2), has also failed to publish such a directory. The Commissioner assessed that the Ministries of Culture, Capital Investments, alongside the Ministries of Justice, Mining and Energy, Trade, Tourism and Services and Foreign Economic Relations had the greatest problems complying with the Act, as they had inter alia failed to publish information directories on their work within the legal deadlines. Culture and Information Minister Kojadinović on that occasion said: “We have held press conferences at which we publicised what the Ministry has been doing...What more need we do now, publish brochures on our work, spend money for no reason?”<sup>255</sup> while the Capital Investments Minister said: “Well, I'm not writing a directory, that is the job of specific services, they should be addressed and no problem. But, there are so many various controllers and agencies and associations and all kinds of people, believe me, I could spend all day every day receiving them. They're really overdoing it.”<sup>256</sup>

The vast majority of state bodies have failed to train their staff in the implementation of the Act, as envisaged by Art. 42. In its Report for Serbia, the CoE Group of Countries against Corruption (GRECO) in June 2006 noted this shortcoming and recommended that public authorities provide civil servants with training regarding the public's right under the Act on Free Access to Information.<sup>257</sup>

The fulfilment of the obligation in Article 43, which obliges the public authorities to submit to the Commissioner annual reports on the implementation of the Act, has also been substandard. Although the register of entities obliged to implement the Act has not been set up yet, it is presumed that several thousand bodies ought to be included in it; of that number, only 310 state bodies fulfilled the obligation although the Commissioner extended the initial deadline for submitting the reports.

To conclude, the realisation of the right to freely access information in Serbia is facing serious challenges. Full and high-quality implementation of the Act on the Free Access to Information of Public Importance calls for the fulfilment of a number of requirements encompassing a broad spectrum of measures – from political and legal to administrative, material and technical. Such great resistance to the freedom of access to information and the Act enabling the exercise of this freedom comes as no surprise when the problem is viewed through the prism of the fact that this Act introduces the concept of good governance and

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254 Report on the Implementation of the Act on Free Access to Information of Public Importance, Commissioner for Information of Public Importance of the Republic of Serbia, March 2006, p 21.

255 “Media Minister Hiding Information”, Blic, 15 April 2006, p. 2.

256 “Undisciplined Ministers”, B92, 19 April 2006.

257 “Evaluation Report on the Republic of Serbia – Joint First and Second Evaluation Round”, GRECO, Strasbourg, 12 – 23 June 2006, [http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-1\(2005\)1rev\\_Serbia\\_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-1(2005)1rev_Serbia_EN.pdf)

transparency of work of public authorities that is to counter the deeply rooted tradition of secrecy shrouding the running of state affairs and ruling people.

#### *4. Disadvantaged, Marginalized and Vulnerable Groups*

##### *The right to work – Minorities and development of equal opportunities for employment*

###### *3.1. Act on Prevention of Discrimination against Persons with Disabilities.*

The Serbian Assembly in April 2006 adopted the Act on the Prevention of Discrimination against Persons with Disabilities (Sl. glasnik RS, 33/06). The Act inter alia obliges state bodies to provide persons with disabilities access to public services and facilities and prohibits discrimination in specific areas, such as employment, health and education (Arts. 11-31). It includes significant provisions obliging state and local self-government bodies to undertake special measures to encourage equality of persons with disabilities (Arts. 32-38). Although the Act defines these measures only in the most general terms (as they need to be defined in much greater detail in each specific case), it entitles persons with disabilities to sue the competent institutions that have failed to introduce such measures.

The most relevant provisions in the Act are the ones introducing special regulations in civil suits initiated for the protection from discrimination on grounds of disability (Arts. 39-45). The plaintiffs are entitled to ask the court to prohibit an act that may result in discrimination, to prohibit the further commission or repetition of an act of discrimination, to order the defendant to take action to eliminate the effects of discriminatory treatment, to establish that the defendant treated the plaintiff in a discriminatory manner and to order the compensation of material and non-material damages (Arts. 42 and 43). With regard to these disputes, the Act also introduces special rules on the territorial jurisdiction of courts, allows for revision and sets conditions for the introduction of interim measures in such disputes.

###### *3.2. Right to Work.*

The right to work implies the right to employment, the right to the freedom of choice of work, i.e. prohibition of forced labour and the prohibition of arbitrary dismissal.

Serbia is a member of the ILO and a signatory of 69 conventions under ILO auspices, including the Employment Policy Convention (No. 122) and the Discrimination Convention (No. 111).

The Constitution guarantees the right to work and free choice of occupation in Article 60. Under the Constitution, everyone shall have the right to fair and favourable working conditions and equal access to all jobs. The new Constitution does not include a provision contained in the prior constitutional enactments, under which the state was obliged to ensure that everyone can gain his living by work, which is the main purpose of the right to work.

Labour law is regulated in greater detail by laws.

The Labour Act devotes a number of provisions to the termination of employment against the will of the employee. The new Act expands the provisions prohibiting dismissal of specific categories of employees. Apart from banning the dismissal of employees during pregnancy, maternity or child care

leave, the Act also prohibits the dismissal of the representatives of employees during their terms in office and in the subsequent year, if the representative of the employees has acted in keeping with the law, general enactment and the employment contract. This is in keeping with both with the Committee's principle of free trade unionist activities and ILO Convention 135 on workers' representatives.

In Article 284 (2), the Labour Act prescribes that the General Collective Agreement shall cease to be valid six months from the day the Act comes into force. As the Act came into force on 23 March 2005, the deadline expired on 23 September 2005. The new General Collective Agreement was not passed and no such Agreement is currently in force in Serbia.

Employment is regulated in detail by the Employment and Unemployment Insurance Act (Sl. glasnik RS, 71/03). This law establishes the National Employment Agency, which is obliged to provide its services to job-seekers free of charge. Job-seekers may seek the assistance of private employment agencies when looking for a job. Private employment agencies may charge only employers for their services.

The Act also regulates the issues of training and additional training of job-seekers, the employment programme for persons with physical or psychological disabilities (Art. 50) and most of the other issues the Committee for Economic, Social and Cultural Rights qualified in its practice as relevant to Article 6 of the Covenant.

### *3.3. Right to Social Security.*

Under Article 69 of the Constitution, citizens and families in need of welfare to overcome their social and existential difficulties and begin providing subsistence for themselves shall have the right to social protection, the provision of which shall be based on the principles of social justice, humanity and respect for human dignity. The Constitution also guarantees the rights of the employed and their families to social protection and insurance, the right to compensation of salary in case of temporary inability to work and to temporary unemployment benefits. The Constitution also affords special social protection to specific categories of the population and obliges the state to establish various types of social insurance funds. Article 70 of the Constitution specifically guarantees the right to pension insurance.

Social security comprises pension, disability, health and unemployment insurance. The issues are regulated by a number of laws.

Social insurance against old age and disability is regulated by the Pension and Disability Insurance Act (Sl. glasnik RS, 34/03, 64/04, 84/04, 85/05).

Insurance against old age implies the right to an old-age pension. An insured person becomes eligible for an old-age pension when s/he has cumulatively fulfilled the requirements in terms of age and years of service. The Act amending the Serbian Pension and Disability Insurance Act passed in 2005 prescribes that the insured person becomes eligible for an old-age pension at the age of 65 (for men) and 60 (for women) and at least 15 years of service, or 40 (35) years of service and at least 53 years of age (Art. 19) or 45 years of service. The amendments thus move up the age limit but reduce the required duration of service.

Insurance against disability implies the right to a disability pension. The cause of the disability has no significance in the determination of the disability itself but does have an effect on eligibility for certain rights and their scope.

A disabled person has the right to a disability pension and other rights on the basis of his remaining ability to work, the right to retraining or acquiring additional qualifications, the right to be assigned to an appropriate full-time job, and the right to financial benefits. In order to provide at least minimum means of living for those who have only a few years of employment and/or received very low wages when they worked, the Act on Pension and Disability Insurance (Arts. 25 and 26) prescribes the lowest old age and disability pensions.

The right to a disability pension is acquired by an insurant, who has become totally incapacitated for work due to health changes caused by a work-related injury, occupational disease, injury outside of work or a disease that cannot be cured by treatment or medical rehabilitation (Art. 21). Right to a disability pension in the event of an injury or disease unrelated to work is acquired when a person becomes incapacitated for work before fulfilling the old age pension requirements or after five years of service. If disability occurs before the person turned 20 due to an injury or disease unrelated to work, the insurant is eligible for a disability pension after one year of service; persons in this category and aged between 25 and 30 are eligible for pension after 2 or 3 years of service. The Serbian Labour Act binds the employer to provide a person with a work-related disability a job which she/he can perform, in keeping with the pension and disability insurance regulations (Art. 78). A significant shortcoming of the new Pension and Disability Insurance Act is that it does not mention re-qualification or reassignment to another job of an employee who has suffered significant decrease of the ability to work due to a work-related injury or occupational disease, i.e. an injury or disease unrelated to work.

#### *3.4. Roma.*

Roma, who account for between 108,000 (2002 census figures) and 800,000 (Roma organisations' estimates) of the population, are the most vulnerable ethnic group in Serbia. Only one in 100 Roma lives to see 60 and the average lifespan of Roma stands at 40.

The social and economic status of Roma in Serbia is best illustrated by data showing that they are the only residents of the over 600 favelas in Serbia and that 90% of them are unemployed (Vreme, 4 May, p. 38). Because of the fact that the vast majority of Roma population does not have education, most of them not even the primary education, their access to jobs is very limited.

#### *3.5. Refugees and IDPs.*

According to official figures of the Office of the UN High Commissioner for Refugees (UNHCR), approximately 207,000 IDPs resided in Serbia, mainly Serbs, Roma, and Bosniaks who left Kosovo as a result of the events of 1999. Many of the IDPs live in collective centres (approximately 6,700 IDPs) and temporary accommodations, some of them in very poor conditions.

In order to obtain permanent resident status in Serbia and thus acquire local identification documents, which is a prerequisite for access to health insurance,

social welfare, and public schools, IDPs from Kosovo must deregister from their previous address in Kosovo.

### *3.6. Gender equality.*

Despite public calls for improving the status of women in Serbia, their position continues to deteriorate. According to the National Employment Agency data, 54% of the unemployed in 2005 were women, whose share in the employed population has fallen from 47.5% to 45.8%. Moreover, women account for 80% of employees in the textile and leather industries, health, social welfare, education, where the average salaries are two-thirds of those in other branches. Only 11% of the deputies in the National Assembly in 2006 were women. Women hold only 14% of the senior offices in state administration (Politika, 12 January, p. 1 and 15 and Danas, Forum, January, p. 5F).. Women are legally entitled to equal pay for equal work; however, according to the data of the International Helsinki Federation for Human Rights, reproduced in the report of the US State Department, women's average wage was 11 percent lower than that of men.

### *3.7. Discrimination against Persons with Disabilities.*

More than 700,000 residents of Serbia suffer from some form of disability. Only 13% of them are employed, three times less than in Europe (Politika, 25 October, p. 10). Over 80% of these 13% have at least high school diplomas (Večernje novosti, 23 July, p. 15).

Only 15% of children with special needs attend school (Vreme, 23 September, p. 70).

The difficulties persons with disabilities face prompted the Serbian National Assembly to adopt the Act on the Prevention of Discrimination against Persons with Disabilities in April. The Act prescribes fines for those discriminating against persons with disabilities who wish to enrol in kindergarten, schools or college, find a job or use public transport. The fines range between 5 and 50 thousand dinars for natural persons and between 10 and 500 thousand dinars for legal persons (Politika, 18 April, p. 8).

### *3.8. Rights of Persons with Disabilities.*

Facilities for education and care of persons with disabilities are nonexistent or inadequate, and the government did not do anything to address the problem. Lack of adequate facilities makes it difficult for persons with disabilities to obtain employment.

Unemployment remained a serious problem for persons with disabilities. A study released by the Center for Development of Inclusion and the Center for Study of Alternatives and quoted in the US State Department's report found that 87 percent of persons with disabilities were unemployed, while 70 percent lived in poverty. The study also found that there is a difference between male and female persons with disabilities – in the group of persons with disabilities there is a greater percentage of women who are dependent on public assistance compared to men with disabilities.

Provisions regulating the rights of persons with disabilities are extremely diverse and dispersed in many laws and subsidiary legislation. Although legislators have focussed on improving legislation in this area in the recent years, the existing

provisions are still largely inadequate and often insufficient. The National Assembly in 2006 adopted the extremely important Act on Prevention of Discrimination against Persons with Disabilities.<sup>258</sup> A law on the professional rehabilitation and employment of persons with disabilities has not been adopted yet however.

As opposed to the 1990 Constitution, the new Constitution does not include provisions obliging the state to organise special and professional training for partly disabled persons (Art. 39). Employment and professional rehabilitation of the disabled are also regulated by the Serbian Employment and Unemployment Insurance Act (Sl. glasnik RS, 71/03, 83/04) and the Social Welfare Act (Sl. glasnik RS, 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/01) and the Act on Professional Training and Employment of Disabled Persons (Sl. glasnik RS, 25/96, 101/05). However, the provisions in the Act are insufficient as they invoke other laws which are actually non-existent.

The Serbian Employment and Unemployment Insurance Act prescribes the Government's obligation to pass an Active Employment Policy Programme which the Social Economic Council has rendered an opinion on. The Programme is to devote special attention to the employment and professional rehabilitation of persons with disabilities or lesser working ability.

The Act on Professional Training and Employment of Persons with Disabilities regulates the founding and working conditions of companies providing professional rehabilitation and employment to persons with disabilities. Under the Act, a person with a disability cannot sign an employment contract with the company whilst undergoing professional training. Jobs offered by such companies to disabled persons need not be advertised by the National Employment Agency or the employment agencies. Such companies are granted specific subsidies from the Serbian budget. The 2005 amendments<sup>259</sup> have increased several times over the extremely low fines imposed on companies and responsible persons abusing the rights guaranteed by the Act.

The Rulebook on Rights of Unemployed Persons (Sl. glasnik RS, 35/97, 39/97, 52/97, 22/98, 8/00, 29/00, 49/01, 28/02) prescribes that persons with disabilities shall be given priority in employment and professional orientation programmes, employment preparations and educational programmes. The state budget subsidises 80% of the average net wage of an employee with a disability during the first 12 months of employment.

### *3.9. Special Protection of the Family and the Child.*

The year 2006 was characterised by more systematic and frequent reporting on domestic violence and sexual abuse of children, a trend that began in 2005 and that put these problems, which had been ignored and swept under the carpet for decades, into the public limelight.

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<sup>258</sup> Sl. glasnik RS, 33/06.

<sup>259</sup> Amendments to the Act setting fines for commercial offences and misdemeanours (Sl. glasnik RS, 101/05), Art. 83.

Some of the Government moves did not follow its declarative vows that its priority was to ensure greater care of the family and the child. It first deprived children suffering from diabetes of necessary quantities of insulin and syringes free of charge, and subsequently decreed that at-risk pregnant women would from now on have to pay for the prenatal medications they needed to carry their babies to full term (Vreme, 2 February, p. 34). It also decided to stop fully reimbursing the salaries of pregnant women unable to work, cutting the payments down to 65% of the base salary under the explanation that the Republican Health Bureau needed to cut costs, above all by curtailing non-medical expenses (Politika, 2 February, p. 9 and Danas, 3 February, p. 6).

In March the Ministry of Labour, Employment and Social Policy and the NGO Children's Rights Center released results of a survey quoted in the US State Department's report, that showed Roma children, children from poor, rural communities and foster families were at the highest risk for child labour abuse, including begging, theft, prostitution, dealing narcotics and hard physical labour.

# Status of Transitional Justice in the Region

By Igor Bandović & Jovan Nicić

## Abstract

The article deals with the status of transitional justice in former Yugoslavia showing the progress, failures, obstacles and the perspectives of the transitional justice processes in each particular country which was affected by the armed conflicts during the 90's. Transitional justice is examined through the four pillars of transitional justice: prosecutions, reparations, truth seeking efforts and institutional reform and the mechanisms which has been established in order to deal with the specific problems of every pillar. The article further traces the initiatives which were taken by the government and non government bodies, their successes and failures. At the end, the article provides the conclusions which should be taken as recommendations for further development of the transitional justice efforts in the region.

### *1. War Crimes Trials*

The UN Security Council resolutions number 1503 and 1534 as of 28 August 2003 determine a completion strategy of the International Criminal Tribunal for the Former Yugoslavia (ICTY). Since the Tribunal began, 161 persons have been charged and proceedings against 94 accused have been concluded. The ICTY Completion Strategy provides that all investigations shall be completed by the end of 2004, all trial activities at first instance by the end of 2008, and all appeal proceedings by the end of 2010. One of the basic elements of this strategy is the transfer of cases from the ICTY to national jurisdictions in the region. Namely, the ICTY has decided to restrict its prosecutions to those involving "high level" perpetrators, thus leaving the prosecution of mid-level and low level perpetrators to the local judiciaries. In that way, war crimes trials before national courts should

become one of the most significant instruments for dealing with the past in these areas. With respect to that, the national courts are expected to initiate new proceedings, independent of the transfer of cases from the Tribunal in The Hague. For this reason, in 2002 and 2003 in Bosnia and Herzegovina, Croatia and Serbia, laws were enacted in order to establish special departments of the judicial organs which will take part in the procedures of this type. Namely, in Bosnia and Herzegovina and in Serbia, war crimes prosecutors and war crimes chambers were established, while in Croatia four investigation departments were established with the county courts in Zagreb, Rijeka, Osijek and Split.

By the end of 2006, the Tribunal referred its first cases against low to mid-level accused to national jurisdictions pursuant to rule 11 bis of the ICTY's Rules of Procedure and Evidence. The cases of ten accused have been transferred following referral under Rule 11 bis: seven accused have been transferred to Bosnia and Herzegovina, two to Croatia and one to Serbia.<sup>260</sup> It is important to note here that cases where the ICTY has issued a formal indictment will be transferred under the 11 bis rule, but cases with no formal indictment may be transferred as well directly from the Office of the ICTY's Prosecutor to the domestic Prosecutor's offices. The latter procedure will apply in those cases where the ICTY has determined that the accused suspects are not highlevel perpetrators. The transfer of the "Zvornik" case to the Serbian War Crimes Prosecutor's Office is an example of a transfer in this latter category, and it required further investigation and indictment on the local level.<sup>261</sup>

On the other hand, domestic prosecutions have been structured differently in each local setting; likewise, different problems have been encountered in each, although some challenges such as those associated with the implementation of the institute of command responsibility, extradition, witness/victims protection and legal representation are common to all.

## 2. *Command Responsibility*

The question whether it is possible to conduct trials on the basis of command responsibility for the crimes committed during armed conflicts in the territory of the former Yugoslavia before the national courts is raised quite frequently by the general and expert public in the region. Those who view the ICTY as being political and illegal often argue that the command responsibility is an objective responsibility which, as such, cannot have its place in the modern criminal law. However, a closer analysis can show that it is a form of an individual criminal

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260 Radovan Stanković (to Bosnia and Herzegovina on 29 September 2005) and Gojko Janković (to Bosnia and Herzegovina on 8 December 2005); Rahim Ademi and Mirko Norac (to Croatia on 1 November 2005); Željko Mejakić, Momčilo Gruban, Dušan Fuštar and Duško Knežević (to Bosnia and Herzegovina on 9 May 2006); Paško Ljubičić (transfer to Bosnia and Herzegovina is imminent) and Vladimir Kovačević aka Rambo (to Serbia on 17 November 2006) <http://www.un.org/icty/rappannu-e/2006/AR06.pdf>

261 Six defendants are charged with the violation of Protocol II of the Geneva Convention and with war crimes against civilians under section 142 of the SFRY Criminal Code. The charges stem from the murder of nineteen Muslims at the Celopek Cultural Center in Zvornik and with the expulsion of 1,822 civilians from Kozluk (village near Zvornik) to Hungary.

## Status of Transitional Justice in the Region

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responsibility, the elements of which can be found in the criminal laws of the countries in the region. In the first place, it should be pointed out that in 1978 SFRY ratified the Additional Protocol I to the Geneva Conventions, including provisions on the responsibility of the superiors, i.e. command responsibility. Bearing in mind that, pursuant to the SFRY Constitution and the later constitutions of the states that emerged from SFRY, the ratified international agreements are an integral part of the national legal system, it is clear that on the given basis the command responsibility could be applied. If this argument should not be accepted for the reason that all criminal acts (although this is an issue of responsibility) and the punishment of criminal acts must be provided in the law, we need to take into account the provisions of the general part of criminal law. Namely, the criminal laws of the countries in the region provide that crimes, apart from being committed by deeds, can also be committed by doing nothing, i.e. by a failure to act, which refers to both, criminal acts against the humanity and international law, in other words war crimes. Apart from that, provisions concerning crimes committed in a group contain the formulation “in case two or more persons by taking part in the commission of the act, or in any other way, commit a crime”. Thus, besides a direct participation in the commission, a joint commission can take place if a person in any other way contributes to the commission of a criminal act. Application of the provision on the commission of a crime by a failure to act in relation to the criminal deeds of war crimes is a way in which command responsibility could be applied before the national courts. It is not necessary to introduce command responsibility as a special criminal act, since the opinion that this type of responsibility has never existed is growing stronger, which could render its application to the crimes committed during the wars in the former Yugoslavia impossible.

### *3. Regional Cooperation and Extradition*

In a large number of cases, the war crime was committed in one state and the perpetrators and/or witnesses are located in another. In all the states that were established on the territory of the former Yugoslavia there is a constitutional ban on extraditing own citizens to other states. These facts increase the need for cooperation between states when it comes to prosecuting war crimes in all the phases of criminal procedure<sup>262</sup>. In that sense, over the previous years, the great progress was made in regional cooperation on the issue. For instance, during 2006, two very important agreements were concluded. The Chief State Attorney of Croatia and Supreme State Prosecutor of Montenegro concluded a Memorandum on cooperation in the prosecution of perpetrators of war crimes, crimes against humanity and genocide. The same agreement was concluded among the Chief State Attorney of Croatia and War Crimes Prosecutor of Serbia. The greatest significance of these agreements lies in the fact that they will help the discontinuance with the practice of impunity. Under the agreements, the Croatian State Attorney shall cede to the Montenegrin Supreme State Prosecutor’s Office

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262 See Ivo Josipovic, UNDP Transitional Justice Policy Paper “War crimes trials in countries on the territory of the former Yugoslavia”

and Serbian War Crimes Prosecutor's Office all cases in which it has found enough evidence against war crime suspects who are nationals of Montenegro/Serbia and residing in Montenegro/Serbia. Although agreements on bilateral cooperation exist, it would be convenient to standardise and stabilise this cooperation. The best way to achieve this would be through a multilateral interstate treaty, through which the states of this region would resolve matters pertaining to cooperation in prosecuting war crimes in a comprehensive and standardised manner.<sup>263</sup>

#### *4. Witness/Victims Protection and Legal Representation*

Concerning witness protection in the course of and in connection with war crimes trials in the region, there are adequate mechanisms envisaged by international instruments and by domestic laws. These mechanisms are prescribed by criminal procedure codes, laws on the police, witness protection acts etc. These measures include, for example: trials or parts of trials closed to the public; giving testimony by means of video link; maintaining the anonymity of witnesses; measures for protecting the integrity and dignity of witnesses etc.

The states of this region each have relatively high quality witness protection acts. However, their lack of experience in the implementation of these acts and of adequately trained staff, as well as certain objective circumstances (small local environments for instance) give rise to the claim that there are no sufficiently good witness protection programmes. Having in mind all mentioned, the national laws and practice should be harmonised with those of the countries that have successful witness protection programmes. Also, certain witness protection programmes should be established on the regional level. What is also necessary on the regional level is to educate staff for the implementation of protection measures.

The other interesting question is the participation of victims and their families in war crimes trials. The laws of the countries of the region make it possible for a victim to participate in the status of the injured party, with the right to propose evidence, witness interrogation and undertaking other activities. However, injured parties rarely participate in war crimes trials. That is why national laws should be altered in order to enable victims to participate in court proceedings and realise their interests. In all states of the region victims could be represented by human rights organisations pro bono.<sup>264</sup>

#### *5. War Crimes Trials in Bosnia and Herzegovina*

During the armed conflicts in the former Yugoslavia between 1991 and 1999, the largest number of atrocities took place in Bosnia and Herzegovina. For this reason, the war crimes prosecutions are perhaps more challenging there than in any other part of the former Yugoslavia. In 2004, the War Crimes Chamber

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263 See Ivo Josipovic, UNDP Transitional Justice Policy Paper "War crimes trials in countries on the territory of the former Yugoslavia"

264 This is the case in Serbia, where Humanitarian Law Center acts as victims' legal representative.

## Status of Transitional Justice in the Region

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within the State Court of Bosnia and Herzegovina was established. The first trial before this chamber began in September 2005. This Court deals with three types of cases: 1) those which will be transferred from the ICTY where indictments have already been raised; 2) those which will be transferred without indictments; and 3) those which were initiated before the local courts.

On 9 May 2006 the first local trial before this court for the Srebrenica genocide started (Mitrović and others case). The eleven accused are charged in the indictment with criminal offence of genocide. Also, on 14th November 2006, Radovan Stanković was sentenced to 16 years of imprisonment for the war crimes, rape and detention of at least nine Muslim women in Foča. This is the first case that ICTY transferred to the State Court of Bosnia and Herzegovina.

On the other hand, it is clear that the vast majority of the war crimes cases in Bosnia and Herzegovina is and will be handled by the sixteen cantonal and district courts, as well as by the Basic Court in Brcko District. Unfortunately, local courts have traditionally been poorly funded and poorly equipped. It is due to these difficulties that the local courts are characterised as the “weakest link” in the plans for war crimes prosecutions in Bosnia and Herzegovina. However, there has been a marked increase in the number of war crimes prosecutions in the past year and as of the end of 2006, there were around 30 trials under way although only two cases were reported in Republic of Srpska.

### *6. War Crimes Trials in Croatia*

Steps towards the professional and unbiased war crime trials have been made in recent years at the highest judicial instances in the Republic of Croatia. Despite establishing the four Centers for Investigation of War Crimes (in Osijek, Rijeka, Split and Zagreb), war crimes trials in Croatia are being held according to the local competence - at the County Courts - which multiplies the issues related to availability of court personnel and technical facilities, not to mention the exposure of the courts to the pressure within the local communities. Also, one of the remaining problems is the fact that the war crime trials in Croatia are still held, to a great extent, in absence of the accused.

On the other hand, political support that the Croatian Parliament provided to the State Attorney's Office of the Republic of Croatia, with a significant and not-quite encouraging reluctance, for initiating the investigation procedures against Branimir Glavaš, the Parliament representative and Osijek Defence Commander during 1991/92, and ordering his detention due to suspicion that he had committed a war crime against civilians, is probably one of the turning-points in war crime trials in Croatia.<sup>265</sup>

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265 For more information on War Crimes Trials in Croatia see “Monitoring War Crimes Trials: Summarized Findings on War Crimes Trials in Republic of Croatia for 2006”, [http://www.centar-zamir.hr/pdf/wc\\_Annual%20Report%202006.pdf](http://www.centar-zamir.hr/pdf/wc_Annual%20Report%202006.pdf).

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## 7. *War Crimes Trials in Serbia*

Some headway has been made in the war crimes trials in Serbia in 2006, although they were still plagued by the same problems as before. Notably, investigations of war crimes are still obstructed. Moreover, no indictments have been issued against former high ranking officials despite evidence against them.

The reversal of the first War Crimes Chamber verdict in the Ovčara case by the Supreme Court of Serbia on 14 December 2006 caused much polemic in Serbia.<sup>266</sup> Croatian officials, the representative of the US Embassy in Belgrade and a large number of local NGOs following the trial voiced their disappointment with the decision. According to the Humanitarian Law Centre (HLC), which represented the families of the victims, the Supreme Court decision was “legally and factually groundless<sup>267</sup>” The HLC concluded that the Supreme Court had remained true to its practice of quashing all first-instance war crime convictions and ordering retrials. When the Supreme Court decision was announced, the War Crimes Prosecutor’s Office stated that it did “not consider the Ovčara case closed yet” and that it was investigating several other people suspected of involvement in the crime. The Office vowed it would persist in its struggle to attain truth and justice.

The Serbian War Crimes Prosecutor’s Office filed two important indictments regarding crimes committed during the armed conflict in Kosovo in 1999. On 25 April 2006, it charged eight former and active police and state security officers with killing 48 members of the Beriša family in Suva Reka in Kosovo on 26 March 1999. The trial before the Belgrade District Court War Crimes Chamber began on 2 October 2006. This trial is the first in connection to the mass graves discovered in Serbia, notably the ones in Batajnica. Moreover, this is the first time indictments have been filed in Serbia against MIA officers, who had held senior positions during the Kosovo conflict.

In August 2006 the War Crimes Prosecutor’s Office also raised an indictment against two members of the special Serbian police units accusing them of complicity in the murder of the three Kosovo Albanian brothers Bitiqi. Unfortunately, neither the perpetrators of the crime nor the ones who ordered it have been identified or indicted yet. There is evidence indicating that the crime was ordered by the then Serbian chief of police Vlastimir Đorđević, who is at large.

It should be noted that the War Crimes Chamber of the Belgrade District Court passed three first instance judgments for war crimes in 2006. Milan Bulić was convicted to eight years in jail on 30 January 2006 for participating in the torture of 200 Croatian POWs at the Ovčara farm in Vukovar on 20 November 1991.

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266 The War Crimes Chamber of the Belgrade District Court on 12 December 2005 found 14 members of the Vukovar Territorial Defence units and the Leva sudoperica volunteers guilty of the war crime against POWs. These men were charged with killing over 200 members of the Croatian armed forces and civilians at the Ovčara farm near Vukovar in Croatia on 20 November 1991.

267 See HLC statement of 15 December 2006 entitled “The Supreme Court of the Republic of Serbia illegally overturned the first instance ruling in the Ovčara case”

[http://www.hlc.org.yu/english/War\\_Crimes\\_Trials\\_Before\\_National\\_Courts/Croatia/index.php?file=1569.html](http://www.hlc.org.yu/english/War_Crimes_Trials_Before_National_Courts/Croatia/index.php?file=1569.html).

On 6 September 2006, the Chamber also convicted Saša Radak to 20 years in prison for the war crimes he committed at Ovčara. On 18 September 2006, the Chamber found Kosovo Albanian Anton Lekaj guilty of killing and involvement in the unlawful detention, abuse and rape of a number of Roma and Albanians in Đakovica in June 1999 and sentenced him to 13 years in prison.

### *8. Reparations*

According to the definition of the UN Secretary General, states facing widespread human rights violations are obliged not only to act against the perpetrators but to remedy the victims as well, by providing them with reparation. Victim reparation programmes can effectively complement the work of the courts and truth commissions and help create conditions for reconciliation and restore the trust of the victims. In addition to material compensation, reparations include non-material elements, such as restoration of the victims' lawful rights, rehabilitation programmes for victims and symbolic measures, such as official apologies, monuments and memorial services.

However, the countries in the region didn't make significant headway in the area of material and symbolic reparations in previous years. The most important event in the field of reparations in 2006 was the end of the hearing in the International Court of Justice in The Hague on Bosnia-Herzegovina's genocide suit against Serbia and Montenegro. Namely, Bosnia and Herzegovina in 1993 charged the then Federal Republic of Yugoslavia with violating the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. On 26 February 2007, the International Court of Justice delivered the judgment in this case. The Court found that Serbia had violated its obligation under the Genocide Convention to prevent genocide in Srebrenica, as well as that it had violated its obligations under the Convention by having failed fully to co-operate with the ICTY. In that sense, the Court ordered Serbia to stop its continued breach of the Genocide Convention by doing all in its power to arrest the perpetrators of this crime and to actively cooperate with the ICTY. The Court also suggested that though Serbia was not liable to pay reparations, its involvement in the genocide and its breach of the convention would best be rectified by symbolic reparations on the part of the Government of Serbia.

The day after, on 27 February 2006, the Government of the Republic of Srpska expressed its deepest regrets for crimes committed against non-Serbs during the past war in Bosnia and Herzegovina and condemned strongly everyone who took the part in it.

As per material reparations awarded in Serbia, the Humanitarian Law Centre on 16 November 2006 filed a lawsuit with the Belgrade First Municipal Court on behalf of 19 women and minors from Vukovar, nationals of Croatia, whom the JNA troops interned in camps in Begejci and Sremska Mitrovica prison in Vojvodina after the fall of Vukovar on 20 November 1991. The interned civilians were tortured on a daily basis. The living conditions in both camps were

inhuman<sup>268</sup>. In transitional societies, legitimacy is constituted on new premises and values replacing those of the previous undemocratic regime. The period of transition is qualified by establishing new values and structures to uphold them (by building institutions and adequate legal and political instruments). The speed, efficiency and quality of the process varies from one country to another, depending above all on the inherited problems and capacity of the state authorities to shape and manage the transformation – their ability to legitimize themselves as the ruling authority in a country in transition.

### *9. Truth Seeking*

Truth seeking efforts in former Yugoslav states have been developed through alternative models of pursuit of the truth. The truth commission's efforts which were discussed on the national and regional level in countries in the region were lacking concrete steps, political will and the implementation. However, some recent initiatives on the establishment of local commissions like the Sarajevo Commission indicate the possibility that this form of truth seeking models have not been totally abandoned.

The first attempt to establish a truth commission was taken by then President of Federal Republic of Yugoslavia, Vojislav Koštunica by decree on 29 March 2001. The Yugoslav truth and Reconciliation Commission, which was its official name, from the beginning suffered from serious shortcomings: it never gained legitimacy in Serbia, the design; mandate and the composition were just the opposite of what is considered effective transitional justice mechanism. This commission never released any report and de facto was disbanded after the adoption of Constitutional Charter of State Union of Serbia and Montenegro in February 2003.

The idea to form the truth commission has existed in Bosnia and Herzegovina for a long time. The first discussions dated in 1997 and according to the UNDP's "Transitional Justice Assessment Survey of Conditions in former Yugoslavia" the most serious initiative was headed by Jakob Finci, president of Association Citizens for Truth and Reconciliation. Although with strong support of international organizations and various foreign aid agencies involved in consultation process, the state commission has not been established. Yet, truth commission model was implemented for the Sarajevo Commission which was initiated in 2004 and established in May 2006 by the Council of Ministers of Bosnia and Herzegovina. The Commission was officially titled "State Commission for the Investigation of Truth on Victimization of Serbs, Croats, Bosniaks, Jews and Others during the Period 1992-1995 in Sarajevo". The commission members were appointed in June 2006, but by the end of 2006 they have not produced a single report or had any visible activities publicly announced.

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268 See HLC statement of 16 November 2006 entitled "Lawsuit against the Republic of Serbia for unlawful transfer of civilians to camps on the territory of Vojvodina after the fall of Vukovar in 1991"

[http://www.hlc.org.yu/english/War\\_Crimes\\_Trials\\_Before\\_National\\_Courts/Serbia/index.php?file=1562.html](http://www.hlc.org.yu/english/War_Crimes_Trials_Before_National_Courts/Serbia/index.php?file=1562.html)

Transitional Justice: Assessment Survey of Conditions in Former Yugoslavia, UNDP Serbia, Belgrade 2006, page 111-112.

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According to some media reports, the mandate of the Commission is not clear and the Commission functioning depends on the funds which has not been approved and transferred<sup>269</sup>. In other former Yugoslav territories there weren't serious initiatives which would lead to the establishment of a truth commission.

Alternative forms of truth seeking efforts, the most of all, the documentation and the issue of missing persons were mostly developed by the civil society organizations, their networks and victim's organizations in recent years. In addition, several governmental agencies have been set up for the documentation purposes in recent years.

There are two official bodies for the investigation of war crimes in Bosnia and Herzegovina: The War Crimes Commission which was created by the Presidency of the Republic of Bosnia and Herzegovina on 28 April 1992, but after the Dayton Peace Agreement was transformed to the Centre for Research and Documentation, non-governmental organization, and the Documentation Centre, which is the official body of Republika Srpska. NGO documentation in Bosnia and Herzegovina is mostly related to the work of The Centre for Research and Documentation, headed by Mirsad Tokača. So far, the Centre identified 97 901 killed during the war whose names are known.<sup>270</sup>

The Croatian government documentation results are a joint effort of the four different ministries and office for cooperation with the ICTY.<sup>271</sup>

The Croatian Helsinki Committee was investigating and collecting documentation on human rights abuses and violations of international humanitarian law during the operation "Storm" and "Flash". The documentation work of the NGO's in Croatia has been enriched with the creation of consortium "Documenta - Center for Dealing with Past" which consist of Centre for Peace, Nonviolence and Human Rights, Osijek; Centre for Peace Studies; Civic Council for Human Rights and Croatian Helsinki Committee from Zagreb.

Most of the documentation in Kosovo about the human rights violations about the violent past on this territory was gathered by the nongovernmental organizations, especially the Council for Defense of Human Rights and Freedoms in Priština and the Kosovo Research and Documentation Centre (KODI).

One of the most prominent NGO's in documentation of war crimes in the former Yugoslavia is Belgrade based Humanitarian Law Centre (HLC). HLC has gathered significant documentation on war crimes committed in Bosnia and Herzegovina, Croatia and Kosovo, but also has been documenting cases of human rights violations of citizens in Serbia, especially in the cases of police torture and misconduct.

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269 No Progress for Sarajevo Truth Commission, BIRN Justice Report, Balkan Investigative and Reporting Network, <http://www.birn.eu.com/en/71/10/2344/>, accessed on March 17th 2007.

270 The Status of database by the Centre,

[http://www.idc.org.ba/aboutus/Overview\\_of\\_jobs\\_according\\_to\\_%20centers.htm](http://www.idc.org.ba/aboutus/Overview_of_jobs_according_to_%20centers.htm). Accessed in 17 March 2007.

271 According to the "Summary Report regarding Local, Regional and International Documentation of War Crimes and Human Rights Violations in the former Yugoslavia, commissioned by the Djordje Djordjevic for the International Centre for Transitional Justice, New York, 2002.

The other NGO “The Centre for Collecting Documents and Information Veritas” has specialized in collecting data on the human rights abuses that were committed against Serbian population in Croatia.

### *10. Regional Initiatives*

The most valuable initiative that was taken in the area of truth telling efforts on behalf of civil society organizations was the creation of “Regional NGO Network” in 2004, in order to document the truth about the events of the 1990’s, end impunity for gross violations of human rights and bring justice to the victims. During the 2006, the Network which consist of Research and Documentation Centre in Sarajevo, the Humanitarian Law Centre in Belgrade and Documenta-Center for Dealing with Past in Zagreb organize numerous events throughout the Balkans, both regionally and locally and remain the most active nongovernmental actor in the region. One of the biggest events was regional conference “Establishing the Truth in Post Conflict Period: Initiatives and Perspectives in Western Balkan” held in Sarajevo on 5th and 6th May 2006.

### *11. Missing persons*

The problem of missing persons in the aftermath of wars in former Yugoslavia remained the most challenging question to be address by the national and international actors involved in the truth seeking processes about the violent conflicts from the 90’s. According to the data of International Commission on Missing Persons (ICMP) of the

40,000 persons originally missing in the region from the conflicts, it is estimated that as of the year 2006, approximately 20,000 were still unaccounted for, of which 15,000 are unaccounted for in Bosnia and Herzegovina, 2,500 are missing in Croatia and 2,500 are missing from the conflict in Kosovo.<sup>272</sup>

Official governmental body of Republic of Serbia in charge for the fate of missing persons is Commission on Missing Persons of the Republic of Serbia. In Kosovo, the UNMIK Office of Missing Persons and Forensics (OMPF) is responsible for the problem of missing persons.

In this area of truth-seeking efforts significant progress has been made in 2006, when Office for Detained and Missing Persons of the Republic of Croatia presented the unified list of missing persons during the conflict in Croatia especially due to the fact that government of Serbia publicly accepted and agreed with the list.

The Law on Missing Persons in Bosnia and Herzegovina has been initiated by the associations of families of missing persons and passed in 2006. Although there are still some technical and financial difficulties to be resolved, this is a unique legislation and first of its kind in the world which could be modeled elsewhere in the post conflict societies.

Establishing the Missing Persons Institute which started in 2005 is only a significant step forward, because the Institute is a merger of the two parallel entity

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272 [www.ic-mp.org](http://www.ic-mp.org)

levels of the missing persons organizations: The Federation for Tracing the Missing Persons and the Office for Tracing the Missing and Detained Persons of Republika Srpska.

## *12. Institutional Reform/Vetting/Lustration*

The most comprehensive research on vetting/lustration policies in the region was carried out by the non governmental Centre for Democracy and Reconciliation in South Eastern Europe (CDRSEE). According to CDRSEE:

*“The basic finding of the research within the framework of this project is that lustration of public officials who were active in the time of one-party rule in the countries of the Western Balkans, essentially did not take place. This is a serious failure, since the absence of lustration encouraged political arbitrariness, especially in the time immediately after the demise of one-party rule in the region”.*<sup>273</sup>

Although none of the countries imposed their public officials to the lustration processes, some forms of vetting processes and institutional reform have taken place in the countries in the region.

In Bosnia and Herzegovina, institutional reform has focused on the reform of police, judiciary and military personnel with limited results due to the complexity of the state structure, different actors which were forcing the reforms and sometimes unclear criteria to review the past records of public officials.

The reform of the judiciary was carried out by the independent commission and was completed in September 2004.<sup>274</sup> Around 1600 judges passed the vetting procedure.

There have been a number of attempts at police reform by the UN Mission in Bosnia and Herzegovina. One of the most important criteria for de-certification procedure was war crime record of police officers, but also unclear property status, forged diplomas, criminal record etc. However, only 4% of the police officers were decertified under these criteria.<sup>275</sup> The question of police reform is connected to the integration of police forces of the entities. The Office of High Representative has been involved in this issue, but no progress has been made due to the fact that government of Republika Srpska considers Police Reform Directorate<sup>276</sup> illegitimate. Thus, the question of police reform and its integration is highly influenced by political tensions between the entities in Bosnia and Herzegovina.

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273 *Disclosing Hidden History, Lustration in Western Balkans*” A Project Documentation, Edited by Magarditsch Hatschikjan, Dusan Reljic and Nenad Šebek, [www.lustration.net](http://www.lustration.net), Accessed on 16 March 2007.

274 “Transitional Justice: Assessment Survey of the Conditions in Former Yugoslavia”, UNDP Serbia, Belgrade 2006, p. 101.

275 “Transitional Justice: Assessment Survey of the Conditions in Former Yugoslavia”, UNDP Serbia, Belgrade 2006, p. 102.

276 The Police Reform Directorate was created in January 2006 as a result of the October 2005 Political Agreement of the Council of Ministers.

Military reform was carried out by the NATO-led SFOR, which reviewed the personnel for the General Staff of the future army of Bosnia and Herzegovina. Allegations of war crimes were one of the reasons why four generals were banned from being appointed. After NATO reduce its conditions for Partnership for Peace (the major condition which was dropped down was full cooperation with ICTY) and invited the Bosnia and Herzegovina to join.

In Croatia, institutional reform was proposed in the form of lustration draft law in 1998, by the scope of the law was limited to the communist era. Since the draft law was initiated by the extreme nationalist Croatian Party of Rights, ratio of this proposal would have been hardly connected to the comparative lustration procedures in Eastern Europe. No other political party supported the initiative and there were no serious attempts in this direction.

The Serbian National Assembly passed a lustration in May 2003.<sup>277</sup> The obstructions which followed the implementation of Law by the parties of the Milosevic regime and Democratic Party of Serbia from the beginning resulted in fact that Law has not been implemented yet.

The new Constitution which was confirmed by the referendum in September 2006, leaves space for potential vetting function for the judiciary, as it would change the process by which judges and members of the Supreme Court are appointed. However, strong resistance from the judicial institutions and judges' associations against reappointing procedure will be the most challenging issue to deal with.

### *13. Conclusion*

The legacy of gross violations of human rights and international humanitarian law during the conflicts of 1991-1999 in the former Yugoslavia has had a lasting impact on the region. Cooperation has been difficult among the new states that emerged out of the former Yugoslavia. Only by democratizing and strengthening the rule of law will the region move forward towards sustainable peace and development. The democratic processes that commenced after 2000 in most of the countries of the region have bolstered their fragile institutions and enhanced their security and stability. At the same time, efforts have gathered pace to strengthen legal processes and bring the perpetrators of war crimes to justice.

Early transitional justice initiatives were mostly driven by international actors, as is the case with the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 by the UN, an ad hoc court responsible for trying high-ranking perpetrators of war crimes. The ICTY process was essential for encouraging domestic prosecutions by local courts, thereby promoting truth and responsibility in the region. Civil society organizations have also played a vital role in advocacy and documentation.

However, transitional justice initiatives have lacked stronger governmental support, and political will has remained an obstacle to their implementation. Dealing with the past in the countries of the region remains a sensitive issue, and

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<sup>277</sup> "Accountability for Human Rights Violations Act", Official Gazette of the Republic of Serbia, no 58/2003; correction in no 61/2003

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governments are reluctant to approach these problems. Unresolved issues remain throughout the region such as judicial reform, the continued impunity of war crimes perpetrators, the limited number of war crimes trials conducted, the lack of transparency on the part of governments, and the lack of civil control of security forces. These problems are often coupled with lingering nationalist attitudes.

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