

# HUMAN RIGHTS IN SERBIA

2018



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LAW, PRACTICE AND INTERNATIONAL  
HUMAN RIGHTS STANDARDS

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The Belgrade Centre for Human Rights  
Kneza Miloša Str. 4, Belgrade,  
Tel/fax. (011) 308 5328, 344 7121  
e-mail: [bgcentar@bgcentar.org.rs](mailto:bgcentar@bgcentar.org.rs);  
[www.bgcentar.org.rs](http://www.bgcentar.org.rs)

*For the publisher*

Sonja Tošković

*Editor*

Dr. Vesna Petrović

*Translation*

Duška Tomanović

*Cover illustration*

Marija Janković

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HUMAN RIGHTS STANDARDS

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are solely those of the authors and contributors and do not necessarily  
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## Contents

Abbreviations.....	13
Preface.....	17
Introduction.....	19
Serbia's EU Accession Efforts and (Un)Democratic Conditions for the Realisation of Human Rights in Serbia in 2018 .....	21
1. Serbia's EU Accession Efforts .....	21
2. Exercise of Human Rights in Serbia in 2018 in the Absence of Dialogue and Democratic Procedures.....	25
I. HUMAN RIGHTS IN SERBIA'S LAW .....	31
1. Serbia's Obligations Deriving from UN Membership and Ratified International Human Rights Treaties .....	31
1.1. Universal Periodic Review (UPR).....	32
1.2. Serbia's Obligations to Treaty Committees .....	35
1.2.1. Cevdet Ayaz Case .....	36
2. Serbia's Obligations Arising from Council of Europe Membership.....	36
2.1. European Court of Human Rights and Serbia .....	36
2.2. Report of the Council of Europe Group of States against Corruption (GRECO).....	37
2.3. Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) ....	38
2.4. Other Council of Europe Conventions Binding on Serbia.....	40
3. Human Rights in National Legislation .....	41
3.1. Constitution and International Norms .....	41
3.2. Human Rights in the Serbian Constitution.....	42
3.3. Legal Remedies Provided by the Serbian Legal System .....	46
3.3.1. Ordinary and Extraordinary Legal Remedies in Serbia's Legal System .....	46
3.3.2. Constitutional Appeals.....	49

II. INDIVIDUAL RIGHTS . . . . .	52
1. Prohibition of Torture . . . . .	52
1.1. Introduction . . . . .	52
1.2. The Concepts of Torture and Inhuman and Degrading Treatment and Punishment in the National Legal System . . . . .	53
1.3. National Case-Law on Torture and Ill-Treatment . . . . .	54
1.4. Guarantees against Ill-Treatment – Rights to Third Party Notification, a Lawyer and an Independent Medical Examination . . . . .	55
1.5. Respect of the Non-Refoulement Principle . . . . .	56
2. Right to Liberty and Security of Person . . . . .	58
2.1. Legal Framework . . . . .	58
2.2. Major Developments with Respect to the Right to Liberty and Security in the Republic of Serbia in 2018 . . . . .	62
2.3. Measures Ensuring the Defendants’ Presence at Trials and Unhindered Conduct of Criminal Proceedings . . . . .	63
2.3.1. Damages for Unlawful Pre-Trial Detention . . . . .	64
2.4. Penal Policy and Its Effects on the Enjoyment of the Right to Liberty and Security of Person . . . . .	65
3. Equality before the Court and Fair Trial . . . . .	70
3.1. Fair Trials and Court Efficiency . . . . .	70
3.2. Public Character of Court Hearings . . . . .	70
3.3. Equality before the Law and Equal Legal Protection . . . . .	71
3.3.1. Legal Aid Act . . . . .	71
3.4. Case-Law Harmonisation . . . . .	73
3.5. Judicial Efficiency and Length of Proceedings . . . . .	75
3.6. Right to a Trial within a Reasonable Time . . . . .	77
3.7. Dismissal of Cases as Time Barred . . . . .	79
3.8. Presumption of Innocence and Other Guarantees for Criminal Defendants . . . . .	80
3.9. E-Justice . . . . .	82
4. Right to Privacy and Confidentiality of Correspondence . . . . .	82
4.1. Legal Framework . . . . .	82
4.2. Confidentiality of Correspondence – Legal Framework . . . . .	84



4.3. Retention of the Users' Data and Communication Data – Access to Retained Data. . . . .	85
4.4. Families and Family Life . . . . .	86
5. Personal Data Protection and Protection of Privacy. . . . .	90
5.1. Normative Framework . . . . .	90
5.2. New Personal Data Protection Act. . . . .	91
6. Right to Free Access to Information of Public Importance . . . . .	96
6.1. Amendments to the Free Access to Information of Public Importance Act. . . . .	96
6.2. Realisation of the Right to Free Access to Information of Public Importance . . . . .	98
7. Freedom of Thought, Conscience and Religion. . . . .	102
7.1. Legal Framework. . . . .	102
7.2. Financing of Religious Communities. . . . .	105
7.3. Activities of Religious Communities in Serbia. . . . .	108
7.4. The Relationship between the State and the Serbian Orthodox Church . . . . .	110
7.5. Right to Conscientious Objection . . . . .	112
8. Freedom of Peaceful Assembly. . . . .	113
8.1. Legal Framework. . . . .	113
8.1.1. Restrictions of the Freedom of Assembly . . . . .	114
8.1.2. Legal Remedies . . . . .	115
8.1.3. Responsibilities of the Assembly Organisers and Counter-Demonstrations . . . . .	116
8.1.4. The Role of the Police. . . . .	118
8.2. Right to Freedom of Peaceful Assembly in 2018 . . . . .	119
9. Freedom of Association . . . . .	123
9.1. Legal Framework. . . . .	123
9.1.1. Prohibition of Events of Neo-Nazi or Fascist Organisations . . . . .	124
9.2. CSOs' Activities and Status in Society in 2018. . . . .	125
9.2.1. Civil Sector Engagement in Public Debates and Establishment of New Pro-Government Civic Associations . . . . .	126
9.2.2. Anti-NGO Campaigns . . . . .	129
9.2.3. Campaigns against Humanitarian Foundations. . . . .	131
9.3. Association of Aliens . . . . .	132

10. Electoral Rights and Political Participation . . . . .	133
10.1. Legal Framework. . . . .	133
10.2. Local Elections in Serbia in 2018 – (Un)Fair and (Un)Democratic . . . . .	135
10.3. Participation in the Conduct of Public Affairs and Democratisation . . . . .	139
11. Right to Work . . . . .	140
11.1. Legal Framework. . . . .	140
11.2. European and International Labour Law Standards and Serbia’s Obligations . . . . .	143
11.3. Employment Rates in Serbia . . . . .	144
11.4. Unemployment Reduction Measures. . . . .	145
11.4.1. Youth Unemployment. . . . .	148
11.5. Labour Mobility. . . . .	149
11.6. Exercise and Protection of Workers’ Rights . . . . .	150
12. Right to Just and Favourable Conditions of Work. . . . .	153
12.1. Fair Wages and Minimum Cost of Labour . . . . .	153
12.2. Payment of Wages, Pensions and Overtime . . . . .	155
12.3. Right to Rest, Leisure and Limited Working Hours . . . . .	159
12.4. Occupational Safety and Health . . . . .	160
12.5. Freedom to Associate in Trade Unions . . . . .	162
12.6. Right to Strike . . . . .	164
13. Right to Social Security . . . . .	167
13.1. Legal Framework. . . . .	167
13.2. Poverty in Serbia . . . . .	171
13.3. Social Protection . . . . .	173
13.4. Protection Accorded to Family. . . . .	175
14. Right to Health . . . . .	178
14.1. Legal Framework. . . . .	178
14.2. Access to Health Care. . . . .	181
14.3. Right to a Healthy Environment. . . . .	184
14.3.1 State of the Environment . . . . .	186
III. HUMAN RIGHTS IN PRACTICE – SELECT TOPICS. . . . .	188
1. Serbia’s Judiciary in 2018. . . . .	188

1.1. Status of Courts and Prosecution Services under the 2006 Constitution and Serbian Law . . . . .	188
1.1.1. Organisation of Courts and Judicial Appointments . . . . .	188
1.1.2. Public Prosecution Services – Organisation and Appointment of Public Prosecutors and Deputy Public Prosecutors . . . . .	189
1.2. Constitutional Reform of the Judiciary – the Beginning or the End of Judicial Independence. . . . .	190
1.2.1. Fulfilment of the Chapter 23 Action Plan Activities Regarding the Judiciary . . . . .	198
1.3. Pressures on the Judiciary . . . . .	200
2. Media Freedoms (or Lack Thereof). . . . .	203
2.1. Assessments of the Media Situation in Serbia . . . . .	203
2.2. Preparation of the New Media Strategy – Modes of Cooperation between the Government and Media and Press Associations . . . . .	206
2.3. (Non-) Transparency of Data on Media . . . . .	208
2.4. Financing of Content of Public Interest. . . . .	209
2.5. Electronic Media Regulatory Authority (EMRA) . . . . .	212
2.6. Media Privatisation Effects . . . . .	213
2.7. Attacks and Threats against Journalists. . . . .	215
2.7.1. Lawsuits against and Trials of Journalists . . . . .	218
2.8. Unethical Conduct by Media and Journalists. . . . .	220
3. Independent Regulatory Authorities – Independent or Not? . . . . .	220
3.1. Commissioner for Information of Public Importance and Personal Data Protection . . . . .	221
3.1.1. Violations of the Right to Personal Data Protection . . . . .	224
3.2. Commissioner for the Protection of Equality. . . . .	227
3.3. Anti-Corruption Agency . . . . .	232
3.3.1. Preliminary Draft of the Anti-Corruption Act. . . . .	235
3.3.2. ACA Activities in 2018. . . . .	236
3.4. Protector of Citizens of the Republic of Serbia . . . . .	237
3.4.1. National Mechanism for the Prevention of Torture (NPM). . . . .	243
4. National Assembly – Collapse of Democratic Procedures. . . . .	244
4.1. Legislative Activities . . . . .	244
4.2. Oversight Role . . . . .	246
4.3. Disregard of the Independent Regulatory Authorities . . . . .	247
4.4. Election Role . . . . .	247

4.5. Filibustering . . . . .	248
5. Confrontation with the Past – Transitional Justice . . . . .	249
5.1. Judgments of the International Criminal Tribunal for the Former Yugoslavia (ICTY) . . . . .	249
5.2. Reactions to the Judgment against Šešelj. . . . .	251
5.3. War Crime Trials in Serbia in 2018 . . . . .	252
5.4. Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia. . . . .	254
5.5. Truth Commission (RECOM) – Transitional Justice Mechanism . . . . .	256
5.6. Institutional Reform, Vetting and Public Perceptions of War Criminals. . . . .	258
5.6.1. Public Promotions of War Criminals. . . . .	259
5.6.2. Denial of the Srebrenica Genocide by Serbian Prime Minister Ana Brnabić . . . . .	261
5.7. Attitude towards Victims – Reparations . . . . .	262
5.7.1. Administrative Reparations. . . . .	262
5.7.2. Judicial Reparations . . . . .	263
IV. PROTECTION AND REALISATION OF RIGHTS OF SPECIFIC CATEGORIES OF THE POPULATION . . . . .	265
1. Status of Roma. . . . .	265
1.1. Social Inclusion of Roma . . . . .	265
1.2. Roma-Related Recommendations of International Bodies. . . . .	268
1.3. Discrimination against Roma . . . . .	270
2. LGBTI Rights. . . . .	271
2.1. Normative Framework. . . . .	271
2.2. Discrimination against LGBTI Persons . . . . .	272
2.3. Trials . . . . .	275
2.4. Discrimination in the Serbian Education System . . . . .	276
2.5. Violence and Hate Crimes. . . . .	277
2.6. Events Organised by the LGBTI Population. . . . .	278
2.7. Status of Trans Persons. . . . .	279
2.8. People Living with HIV/AIDS . . . . .	280
2.9. Intersex Persons. . . . .	281

3. Human Rights of Persons with Disabilities .....	282
3.1. Legal Framework.....	282
3.2. Realisation of the Rights of Persons with Disabilities .....	283
3.2.1. Independent Living and Community Inclusion.....	286
3.2.2. Children with Disabilities .....	288
3.2.3. Inclusive Education.....	290
3.3. Equal Recognition before the Law and Legal Capacity of Persons with Disabilities .....	292
3.4. Accessibility .....	294
3.5. Work and Employment .....	296
3.6. Health Care and Social Protection.....	298
4. Status of National Minorities .....	299
4.1. Constitutional and Legislative Framework on the Protection of Minority Rights.....	299
4.2. National Minority Council Elections Held in 2018.....	302
4.3. Assessments of the Protection of National Minorities in Serbia by International Bodies .....	304
4.4. Realisation of Minority Rights .....	305
4.5. Funding of National Minorities .....	308
5. Women's Rights and Gender Equality .....	310
5.1. General overview.....	310
5.2. Equality and Non-Discrimination .....	311
5.3. Violence against Women .....	313
5.4. Women's Participation in Political and Public Life .....	317
Appendix I .....	319
Appendix II .....	326



## Abbreviations

2009–2017 Reports – BCHR Annual Reports on Human Rights in the Republic of Serbia

ADA – Administrative Disputes Act

AEAD – Act on the Election of Assembly Deputies

ANEM – Association of Independent Electronic Media

AP – Action Plan

APV – Autonomous Province of Vojvodina

BiH – Bosnia and Herzegovina

BIRN – Balkan Investigative Reporting Network

CaT – UN Committee against Torture

CC – Criminal Code

CC Decision – Constitutional Court Decision

CCA – Constitutional Court Act

CCJE – Consultative Council of European Judges

CCPE – Consultative Council of European Prosecutors

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

CESCR – Committee for Economic, Social and Cultural Rights

CeSID – Centre for Free Elections and Democracy

CINS – Centre of Investigative Journalism of Serbia

CoE – Council of Europe

Commissioner – Commissioner for Information of Public Importance and Personal Data Protection

CPA – Civil Procedure Act

CPC – Criminal Procedure Code

CPRD – UN Convention on the Rights of Persons with Disabilities

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

CSO – Civil society organisation

- EC – European Commission
- ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms
- ECmHR – European Commission of Human Rights
- ECtHR/ECHR – European Court of Human Rights
- EMRA – Electronic Media Regulatory Authority
- ESC – Revised European Social Charter
- EU – European Union
- FAIPIA – Free Access to Information of Public Importance Act
- FNRJ – Federal People’s Republic of Yugoslavia
- FREN – Foundation for the Advancement of Economics
- FRY – Federal Republic of Yugoslavia
- GAPA – General Administrative Procedure Act
- GDP – Gross Domestic Product
- HCA – Health Care Act
- HIA – Health Insurance Act
- HJC – High Judicial Council
- HLC – Humanitarian Law Center
- ICCPR – International Covenant on Civil and Political Rights
- ICESCR – International Covenant on Economic, Social and Cultural Rights
- ICTY – International Criminal Tribunal for the Former Yugoslavia
- IEP – Individual Education Plan
- IJAS – Independent Journalists’ Association of Serbia
- ILO – International Labor Organization
- IMF – International Monetary Fund
- IRMCT – International Residual Mechanism for Criminal Tribunals
- JAS – Journalists’ Association of Serbia
- JJA – Juvenile Justice Act
- LEA – Local Elections Act
- LGBTI – Lesbian, Gay, Bisexual, Transgender and Intersex Persons
- LSG – Local Self-Government
- LSV – League of Socialists of Vojvodina



- MDRI-S – Mental Disability Rights Initiative – Serbia
- MIA – Ministry of Internal Affairs
- NCNMA – National Councils of National Minorities Act
- NCPA – Non-Contentious Procedure Act
- NES – National Employment Service
- NGO – Non-government organisation
- NJRS – National Judicial Reform Strategy
- NMC – National Minority Council
- NPM – National Preventive Mechanism against Torture
- ODIHR – Office for Democratic Institutions and Human Rights
- OHCHR – Office of the United Nations Commissioner for Human Rights
- OSCE – Organization for Security and Cooperation in Europe
- PDIF – Pension and Disability Insurance Fund
- PDPA – Personal Data Protection Act
- PSEA – Penal Sanctions Enforcement Act
- REC – Republican Election Commission
- RHIF – Republican Health Insurance Fund
- RPPS – Republican Public Prosecution Service
- RS – Republic of Serbia
- RTS – Radio Television of Serbia
- RTV – Radio Television of Vojvodina
- SaM – Serbia and Montenegro
- Serbia 2018 Report – Commission Staff Working Document Serbia 2018 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2018 Communication on EU Enlargement Policy {COM(2018) 450 final
- SFRJ/SFRY – Socialist Federal Republic of Yugoslavia
- SIA – Security Intelligence Agency
- Sl. glasnik – Official Gazette (of the Socialist Republic of Serbia and, subsequently, the Republic of Serbia)
- Sl. list – Official Herald (of the SFRY, FRY and, subsequently, SaM)

- SNS – Serbian Progressive Party
- SOC – Serbian Orthodox Church
- SORS – Statistical Office of the Republic of Serbia
- SPC – State Prosecutorial Council
- SPS – Socialist Party of Serbia
- SRJ/FRY – Federal Republic of Yugoslavia
- SRS – Serbian Radical Party
- SWC – Social Work Centre
- SzS – Alliance for Serbia
- UN – United Nations
- UNDP – United Nations Development Programme
- UNESCO – United Nations Educational, Scientific and Cultural Organization
- UNHCR – United Nations High Commissioner for Refugees
- UNV – United Nations Volunteers
- UPR – Universal Periodic Review
- Venice Commission – European Commission for Democracy through Law of the Council of Europe
- WCIS – War Crimes Investigation Service
- WCPS – War Crimes Prosecution Service
- WPU – Witness Protection Unit
- YIHR – Youth Initiative for Human Rights
- YUCOM – Committee of Human Rights Lawyers

## Preface

We would like to express our gratitude in this Preface to all individuals involved in the timely preparation of this Report, who ensured that it comprise enough data and information relevant to a comprehensive analysis of the state of human rights in Serbia. This publication is the product of our team, comprising Kosana Beker, Milan Filipović, Vladica Ilić, Marina Kljaić, Nikola Kovačević, Bogdan Krasić, Jelena Krstić, Sofija Mandić, Luka Mihajlović, Meris Mušanović, Nataša Nikolić, Mihailo Pavlović, Vesna Petrović, Vida Petrović Škero, Dušan Pokuševski, Dragan Popović, Ivan Protić, Aleksa Radonjić, Lazar Stefanović, Bojan Stojanović, Miloš Stojković, Senka Škero, Višnja Šijačić, Marko Štambuk, Milana Todorović, Duška Tomanović, Ana Trifunović, Ana Trkulja, Sonja Tošković and Ivana Žanić.

We would also like to thank our many friends in the NGO sector, whose press releases and reactions to specific developments alerted both us and the public at large to the improvements and oversights of the state authorities regarding the respect for human rights. The information and insights they shared with us was extremely useful for our analysis of the human rights situation in Serbia.

Our partners in state authorities also helped us take stock of the difficulties they encountered in their endeavours to fully enforce national law and international standards. We were also greatly assisted by some judicial and media professionals, as well as private individuals, whose advice and actions helped deepen our understanding of the problems Serbia has faced regarding the respect for human rights and consolidation of democracy during the years-long transition of the national institutions and society on the whole.

We also enjoyed the understanding and assistance of international organisations with offices in Serbia, the representatives of which have always been willing to help us and provide us with information relevant to our mission.

Finally, we would like to express our gratitude to the OSCE Mission to Serbia for financially supporting the translation of this Report into English for the fifth consecutive year and thus helping us make it available to foreign readers. We perceive this support as appreciation of our years-long endeavours to regularly monitor the human rights situation in Serbia and contribute to its advancement. The views expressed in this Report are those of its authors and do not necessarily reflect the views of the OSCE Mission to Serbia.

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

Editor  
Vesna Petrović



## Introduction

This Report on Human Rights in Serbia analyses the Constitution and laws of the Republic of Serbia with respect to the civil and political rights guaranteed by international treaties binding on Serbia, in particular the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocols, the Revised European Social Charter (ESC) and standards established by the jurisprudence of the UN Human Rights Committee and the European Court of Human Rights (ECtHR). Where relevant, the Report also reviews Serbia's legislation with respect to standards established by specific International Labour Organisation (ILO) treaties and other international treaties dealing with specific human rights, such as the UN Convention against Torture, the UN Convention on the Rights of Persons with Disabilities, the UN Convention on the Rights of the Child, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention on the Elimination of All Forms of Racial Discrimination. The 2018 Report reviews legislation that was in force in 2018 but also comments laws that were adopted during the reporting period, irrespective of whether they entered into force.

The analyses of the draft regulations are aimed at alerting experts to any shortcomings or inconsistencies in them with a view to rectifying them before they are enacted by the National Assembly.

In addition to the domestic regulations, BCHR also analysed the state authorities' practices in enforcing provisions affecting the exercise of human rights, which was often a greater problem than the very text of the law. BCHR's associates have thus also been regularly monitoring news and information relating to human rights and reports by national and international human rights NGOs and perused information and press releases of guild and professional associations. We have also been regularly monitoring reports, press releases and recommendations of the Protector of Citizens, the Commissioner for Access to Information of Public Importance and Personal Data Protection, the Commissioner for the Protection of Equality and the Anti-Corruption Agency and analysing their impact on the practices of the public authorities. A part of our research was based on information forwarded by public authorities in response to our requests for access to information of public importance and on our analysis of the practices of administrative authorities and courts.

A number of sources were perused during the preparation of this Report, including articles published in the dailies *Danas*, *Politika*, *Večernje novosti*, *Blic*, *Srpski telegraf*, *Kurir*, *Alo* and *Informer*, and the weeklies *Vreme* and *Ilustrovana politika*.

The BCHR also used reports by news agencies *Beta*, *FoNet* and *Tanjug*, as well as by *TV N1* and *Radio Free Europe*. They perused information published by press associations IJAS, JAS and NDNV and the Coalition of Media Associations, as well as press releases of the Press Council. Reports by investigative reporting networks *BIRN*, *Krik* and *Cenzolovka*, and a number of portals, including *Insajder*, *B92*, *Peščanik*, *Istinomer*, *Raskrikavanje*, *Južne vesti*, *Autonomija*, *Javno*, *Dijalog*, *FNtragač*, *Radio 021*, *Radio Bum 93* and *Radnik*, also provided valuable insights.

The laws, which are still in force but were adopted before 2018, were analysed in the prior BCHR Annual Reports and are referenced for further perusal. Rather than providing final assessments, the Report mostly cites the information that appeared in the media or NGO reports and press releases during the reporting period.

# Serbia's EU Accession Efforts and (Un)Democratic Conditions for the Realisation of Human Rights in Serbia in 2018

## 1. Serbia's EU Accession Efforts

Expectations that the EU accession process would be the main driver of reform in many areas did not materialise in 2018 due to huge delays in the implementation of the action plans. Serbia opened talks on four Chapters in 2018 (Chapter 33 – Financial and budgetary provisions and Chapter 13 – Fisheries in June, and Chapter 17 – Economic and monetary policy and Chapter 18 – Statistics in December 2018). In sum, Serbia opened only 16 of the 35 Chapters and provisionally closed two of them. At the opening of the two new chapters in December, EU officials said that Serbia had made a step closer to the EU, but reiterated that the opening of other Chapters would ensue only if it demonstrated progress in the rule of law and normalisation of relations with Priština and that the number of new Chapters to be opened depended the most on the EU Member States' assessment of Serbia's progress in those areas.

The opening of the two Chapters most relevant to the rule of law – Chapter 23 – Judiciary and fundamental rights and Chapter 24 – Justice, freedom and security – at the Third EU-Serbia Intergovernmental Conference in July 2016 launched the alignment of a number of laws with the EU *acquis*. Serbia adopted Action Plans for these two Chapters and set ambitious deadlines for implementing them. Many of the deadlines were, however, exceeded and the government said in early 2018 that the Action Plans would be revised. The Head of the Serbian Negotiating Team confirmed as much, but it remained unclear whether only the deadlines would be changed or whether the Plans would be supplemented by new activities to address the issues identified during their implementation. The revisions, which the authorities said would be completed by the autumn, were still pending at the end of 2018.

The standstill in reforms and deteriorating situation in some areas were noted also by representatives of EU institutions. The European Commission, which monitors the implementation of the Chapter 23 and 24 Action Plans and reports to EU Member States on headway in these areas twice a year, issued an extremely unfavourable opinion of Serbia's progress in its November 2018 non-paper, in which it noted that tangible results were still difficult to demonstrate on areas such as judicial reform, including war crimes, or media freedom and the fight against corruption.

The EC concluded that commenting on ongoing investigations, indictments or judicial proceedings could constitute a form of undue political pressure or influ-

ence on the prosecution and the judiciary. It also said that Serbia had not provided information on the application of the government and parliament Codes of Conduct on restrictions of commenting judicial decisions and procedures, which were adopted in 2016 and 2017. It praised progress in the reduction of the courts' backlog and length of trials but noted lack of visible results in the fight against corruption. The EC also gave a negative assessment of the national war crimes prosecutorial strategy, noting it did not incorporate all the principles set out in the Chapter 23 Action Plan and criticised Serbia for failing to establish a comprehensive victim and witness protection system.

The EC said that the overall environment was still not conducive to the exercise of freedom of expression and media freedom and that cases of threats, intimidation and violence against journalists remained a concern. It noted that hate speech and discriminatory terminology were often tolerated in the media and rarely tackled by regulatory authorities or prosecutors. It also took note of increasing economic pressures on media outlets.

The European Parliament also assessed Serbia's progress in EU accession and implementing the reforms it bound itself to in late November 2018. In its Resolution, prepared by EP Rapporteur for Serbia David McAllister, the EP welcomed Serbia's headway in economic reform, but urged it to intensify its efforts in the areas of judicial reform, the fight against corruption and media freedoms. The EU adopted six of the eight amendments to the Resolution, notably those regarding the Savamala case,<sup>1</sup> the denial of the Srebrenica genocide by some government authorities, the preservation of protected areas and the construction of small hydropower plants on Stara Planina.

Such assessments of the situation in Serbia at the end of the year were concerning, in view of the European Commission's Strategy for a credible enlargement perspective for and enhanced EU engagement with the Western Balkans of February 2018, in which it reaffirmed the European future of the region and clearly told the Western Balkan countries that they now had a historic window of opportunity to firmly and unequivocally bind their future to the European Union. The assessment that Serbia had not made progress in several important fields brings into question the possibility of it joining the EU by 2025.

The Strategy clearly states that major efforts need to be invested in key reforms, such as the rule of law and fundamental rights, the fight against corruption and organised crime, and in strengthening the functioning of democratic institu-

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1 This case regards the illegal demolition of buildings in the heart of Belgrade in the night following the parliamentary elections in April 2016, when an organised motorised group of several dozen people in black uniforms and balaclavas effectively assumed control over the part of Belgrade called Savamala, applied physical force to remove the citizens from the buildings and vehicles in the area and tore down the buildings; the police did not react to the witnesses' reports. More in the *2016 Report*, I.5.2.10. No-one was brought to justice and no information was available on the architects or perpetrators of the incident at the end of 2018, two and a half years later.



tions, public administration and the economy. The EC expects of all Western Balkan states also to strengthen good neighbourly relations and resolve bilateral disputes, especially border disputes, and overcome the legacy of the past by achieving reconciliation and resolving open issues. It said that accession was and would remain a merit-based process fully dependent on the objective progress achieved by each country in the fulfilment of the set requirements.

Chapter 35 is also key to Serbia's further progress in EU accession. This Chapter in talks with Serbia is specific because it includes a mechanism for monitoring the implementation of agreements reached in the Belgrade-Priština dialogue. The EU's negotiating position in accession talks with Serbia envisages normalisation of relations with Priština and the respect and implementation of the Brussels agreements. The US administration, which had not played an active or open part in the EU-brokered talks, increasingly engaged on this issue in 2018. Acting Deputy Assistant Secretary at the US State Department Matthew Palmer visited the region in April 2018. After his meetings in Belgrade and Priština, Palmer said he expected of the two to continue their dialogue and normalise relations until the end of the year.

Palmer's expectations did not materialise. Quite the contrary. The Belgrade-Priština relations were fraught with incidents, recriminations and tensions throughout the year wherefore not much headway was made in the talks under EU auspices. Tensions rose already in January 2018, when Oliver Ivanović, the leader of the Kosovo Serb Civic Initiative "Freedom, Democracy, Justice" opposition party and a strong advocate of efforts to reconcile the two nations, was assassinated in Kosovska Mitrovica. Ivanović was called a traitor and wrecker of Serbian unity in a major smear campaign waged in Belgrade against him when he ran for Kosovska Mitrovica Mayor in the autumn of 2017. No light was shed on his assassination by the end of 2018. The Serbian authorities claimed they had opened an investigation but that the investigation authorities in Priština were uncooperative.

Cooperation was also lacking between the main Belgrade and Priština negotiators. The March 2018 talks at the technical level were not fruitful. Nor was the subsequent meeting of High Representative of the European Union for Foreign Affairs and Security Policy Federica Mogherini and Serbian and Kosovo Presidents Aleksandar Vučić and Hashim Thaçi. A new round of talks was held in July 2018, but the participants in the dialogue said they had made no headway. At the next meeting, held in Brussels on 7 September, Mogherini met separately with Vučić and Thaçi. The last meeting in 2018 was held in early November, but it, too, did not yield the expected results.

In early November 2018, the Kosovo authorities introduced 10% duties on all products imported from Serbia and Bosnia and Herzegovina, with the exception of international brand goods produced in these two countries. Several weeks later, they increased the duties to 100% and soon included goods of foreign companies manufactured in Serbia. Another decision by the Priština authorities also provoked an outcry in Serbia. In the absence of Serb MPs, the Kosovo parliament adopted

three laws initiating the process of transforming the Kosovo Security Forces into the Kosovo Army. Serbian politicians sharply criticised the decision, claiming it was in violation of the Brussels Agreement and the Stabilisation and Association Agreement. The Kosovo authorities justified all their moves by alleging Serbia was working against Kosovo's interests in the international arena, notably that it was waging an active diplomatic campaign to persuade countries to rescind their recognition of Kosovo's independence and prevent its membership in INTERPOL.

Regional cooperation is another issue EU officials have consistently insisted on. The fifth annual summit within the Berlin Process,<sup>2</sup> held in London in July 2018, focused on the security and political agenda. Western Balkan heads of state or government also met in Sofia in May 2018, for the first time since their summit in Thessaloniki in 2003. The EU-Western Balkans Summit provided the senior officials with the opportunity to meet directly, strengthen the region's ties with the EU and amongst themselves, given that the Summit focused on the following initiatives laid down in the Strategy: strengthening support to the rule of law and good governance; reinforcing engagement on security and migration; supporting socio-economic development and putting a special focus on youth; increasing connectivity; a Digital Agenda for the Western Balkans; and supporting reconciliation and good neighbourly relations in the Western Balkans.

Notwithstanding the relevance of regional cooperation to Serbia's accession-related efforts, its relations with its neighbours, however, remained burdened by a number of outstanding issues: border, succession, minorities, missing persons, confrontation with the past, disintegration processes in some Balkan countries, to name but a few. The year behind us was characterised by ups and downs in regional relations and grave tensions.

Although confrontation with the past was discussed at the London Summit, the authorities of the post-Yugoslav states appeared reluctant to genuinely support the condemnation of war crimes, in spite of the fact that over twenty years have passed since the conflicts in the ex-Yugoslavia ended. The fulfilment of Serbia's 2016 National War Crimes Prosecution Strategy remained pending in 2018. War crime trials took an unreasonably long time, the search for missing persons was inefficient and ineffective, and the legal framework for redressing victims of the wars in the 1990s remained unsatisfactory. Such an attitude towards transitional justice is inter alia attributed to the direct or indirect fire-branding in the 1990s by some of the politicians now in power. The increasingly frequent appearances of convicted war criminals at public events and in the media and their treatment as heroes and utter disregard of the victims and survivors were especially disconcerting, conveying the message that there was no reconciliation in the lands of the former Yugoslavia.

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2 The London summit was the fifth annual summit held within the Berlin Process, initiated by German Chancellor Angela Merkel in 2014 to improve relations among Western Balkan countries and facilitate their economic cooperation and accession-related endeavours.

## 2. *Exercise of Human Rights in Serbia in 2018 in the Absence of Dialogue and Democratic Procedures*

The establishment and consolidation of democracy and promotion of human rights in Serbia rest on building and strengthening institutions and independent regulatory authorities ensuring they serve to protect the rights of all of Serbia's residents, elimination of political influence on the functioning and work of state authorities, especially the judiciary, free and fair elections prerequisite for the realisation of the political rights of all citizens, and open democratic dialogue on key state policy issues, which presupposes free, professional and independent media. None of these conditions were fulfilled in 2018.

The amendment of the constitutional provisions on the judiciary, envisaged in the Chapter 23 Action Plan, was to have been completed by the end of 2017. The relevant Ministry, however, organised public consultations on the draft amendments only in mid-2017. The greatest doubts in the government's vows that the constitutional reform would preclude the influence of the executive and legislative authorities on the judiciary were sparked by the way in which the Justice Ministry representatives treated the members of professional judicial and prosecutorial associations and civil society activists and experts during the consultations on the constitutional reform. There was no real public debate and the proposed amendments to the constitutional provisions on the judiciary, authored by the Justice Ministry and finally published in late January 2018, confirmed that the government did not genuinely wish to put in place safeguards of full judicial independence, as corroborated by the criticisms voiced both by the representatives of the judicial authorities and civil society and numerous constitutional law experts and professors.

Forty CSOs, nearly a quarter of which were not registered with the Business Registers Agency, backed the Justice Ministry's constitutional amendments in March 2018. So did the new Association of Judges and Prosecutors, established in September 2018. The state's organisation of its own "non-government organisations", pursuing exclusively the goals of the state officials and ruling parties, is not a new phenomenon, but it acquired alarming proportions over the past few years. A large number of "NGOs" and media outlets and associations backing the government, which were launched in 2018, found various channels to access state budget funds – notably through non-transparent public Calls for Proposals for funds set aside for civil society projects and co-funding of media projects of public interest.

The goal of the reform is to amend the constitutional provisions on the judiciary in order to put in place constitutional guarantees of genuine judicial independence and eliminate all political influence on the judiciary, whilst ensuring full respect for the rule of law. Unfortunately, even after the legislator took on board the minimum standards in the Venice Commission's comments, the proposed constitutional amendments failed to put in place the safeguards of the independence of the judiciary and its immunity to political influence. The draft amendments were criti-

cised by law experts and numerous NGOs, which have been focusing on the judiciary for years, which called on the legislator to involve constitutional law professors and experts in their development. Their calls went unheeded and the Government forwarded the draft amendments to the National Assembly in late November and said that they would be adopted in the first half of 2019.

There were, however, justified concerns that the Assembly debate on the constitutional amendments would not result in their improvement, given the routine filibustering by the MPs of the ruling coalition, which commands an absolute majority in parliament. The main impression of the parliament's work in the reporting period is that the deputies did not seriously debate the laws or amendments they were adopting, wasting hours on discussing issues unrelated to the legislative duties of the topmost representative authority in the country, on political self-marketing and on hurling indecent insults at their political opponents. Parliamentary dialogue was drowned out by vehement and unfitting outbursts of some deputies.

The Speaker allowed the parliamentary majority to dominate and thus preclude normal democratic parliamentary dialogue, as the December session, at which the deputies were to vote in the 2019 Budget Act, drastically illustrated. The ruling coalition deputies abused the Assembly Rules of Procedure, preventing both the opposition deputies from commenting the draft and the public from hearing assessments of this crucial law directly affecting their lives, and prompting some opposition deputies to leave the session and present their amendments to the Draft 2019 Budget Act in the Assembly hallway.

The opposition was also prevented from elaborating its opinions on major political issues in the media, given that most of them and, notably, all the TV stations with nationwide coverage, were controlled by the government. On the other hand, the increase in the number of newspapers attacking and discrediting government opponents and critics, publishing false and unverified information on their front-pages and in their articles is alarming in view of the crucial role media play in informing the public and creating public opinion.

The capacity of the pro-EU and democratic opposition parties was extremely weakened because of the ruling parties' continuous attacks on them and lies spread publicly about their leaders and activities, the lack of an open public dialogue, and increasingly strong political pressures on the media, not to speak of steps taken to prevent them from waging fair and democratic election campaigns, as the 2018 local elections in Belgrade and some other Serbian cities demonstrated. Senior public officials intensively participated in the Belgrade election campaign, promoted their regular activities whilst campaigning and abused public resources. Many Serbian ministers, the Prime Minister and President Vučić, took part in the campaign; the latter headed the SNS election tickets at all the local elections in 2018, including the ones in Belgrade, and spoke at election rallies.

A number of opposition parties thus joined forces in the Alliance for Serbia (SzS) ahead of the Belgrade elections. Several civic groups and initiatives and trade

unions also joined the SzS, giving rise to hope that this new bloc would overcome the opposition's weaknesses and finally show that the parties rallied in it are willing and able to lead the country in the direction they are publicly espousing, notwithstanding the risks and popular discontent the reforms they are advocating entail.

This hope was strengthened also by the dissatisfaction voiced by thousands of citizens protesting every Saturday in December 2018. The protests, initiated by the SzS after one of its leaders, Borko Stefanović, was physically assaulted in Kruševac, grew into civic protests as more and more citizens took to the streets to protest against the government. The protests were organised over social media and their main feature was that they were attended by tens of thousands of people. It remained to be seen whether they would turn into serious political protests and force the authorities to rethink the way they rule Serbia. The protesters called for free and fair elections, threatening to boycott them unless their demands were met, a change in the way Serbia was governed, compliance with the Constitution and the law, and freedom of the press.

The media situation in 2018 can be described as alarming because the confrontation between the authorities and critically oriented media has never been this stark, except when Vučić was Milošević's Information Minister in the late 1990s. On the one hand, the strong monolithic government fully controlled most of the outlets, using them for its own political promotion, while on the other hand, the few media professionally doing their job were under constant pressure of the government, accused almost on a daily basis of being in the service of foreign interests, working against the state, et al. One hundred and two attacks on journalists, mostly those investigating organised crime and corruption, were registered in 2018, corroborating claims of growing risks to media independence and professionalism.

Tabloidisation of the media was another phenomenon with far-reaching consequences that came to a head in 2018. To make things worse, pro-government tabloids disseminated fear and panic in the public by front-paging, almost on a daily basis, reports of imminent attacks on Serbia by bogus enemies aiming to eliminate the Serbian nation, sensationalist reports about foreign and local conspiracies against Serbia, its people and politicians in power.

The promised clampdown on corruption was not publicly visible. The crucial prerequisites for the effective suppression of corruption is a satisfactory legal framework, which calls for a radical reform of the provisions on the competences and status of the Anti-Corruption Agency in order to ensure its substantial independence. The new law on the Anti-Corruption Agency was still pending at the end of 2018, although Justice Minister Nela Kuburović vowed back in October that it would be adopted by the end of that year, to address the deficiencies of the valid Act, identified in the national strategic documents five years ago. Experts qualified the preliminary draft presented in 2018 as a step backwards compared to the text presented in 2016. The implementation of the planned anti-corruption reform was also slowed

down by the non-adoption of the laws on the origin of property and on financing of political activities.

The authorities' routine failure to implement reform activities by the deadlines they themselves had set further undermined public trust in their genuine commitment to those reforms and in the already weak democratic institutions. An analysis of the authorities' reactions to the activities of independent institutions protecting human rights leads to the impression that the representatives of the ruling majority still do not understand that these authorities are not the representatives of the opposition, but mechanisms overseeing their work. This misunderstanding of the independent regulatory authorities' role has often resulted in problems they have faced in their endeavours to ensure the full exercise and protection of civil rights.

This was apparent in the authorities' constant criticisms of and attacks on the Commissioner for Access to Information of Public Importance and Personal Data Protection in 2018. Furthermore, although well aware that Commissioner Rodoljub Šabić's term in office was expiring in late December, the authorities failed to initiate the process of electing his successor by the end of 2018 despite prompt appeals to launch it on time. CSOs filed an initiative with the Assembly Culture and Information Committee to implement a competitive election process, which the stakeholders could participate in and monitor. In their open letter, they suggested the requirements the candidates needed to fulfil and how to verify their submissions, including, notably, integrity prerequisite for overseeing and supervising the work of other state authorities; non-affiliation with any political parties; proof that they had not violated any laws; proof of their familiarity with democratic standards; and relevant expertise and experience in personal data protection and access to information of public importance.

Some opposition parties and many NGOs feared a political yesman would be elected to run this independent institution. Although such an appointment would be in violation of the law, it would not come as a big surprise because party politicisation of public and administrative offices has become the rule in Serbia. Party membership appeared to be the main requirement for getting a job in the state administration and senior public officials were routinely provided with additional well-paid sinecures in management and supervisory boards of public companies at both the central and local levels. Large-scale appointments of unqualified party members and sympathisers have impinged on the professionalism of the state administration, further undermining the already weakened fledgling institutions that are to secure the professional and effective work of the state apparatus and ensure its stable functioning despite changes at the helm.

Not only do such practices weaken the state's capacities; they place a large number of citizens of Serbia at a disadvantage as well. These developments and the inequality deeply rooted in all walks of public and social life have reflected on the mindsets of young people, most of them unemployed and forced to live with their parents. Many of them are not interested in politics, see no future for themselves

in Serbia and plan on going abroad. Statistics for the past few years indicate that large numbers of Serbian nationals have emigrated in search of jobs and better living standards, and that many of them are highly educated young people, who cannot find a job in Serbia and fear what the future brings.

Although some economists positively assessed the reforms implemented by the Serbian Government, economic growth significantly lagged behind that of other countries in the region in 2018. Economic analysts attributed this to the weakness of the economic system and undue influence of political and other informal power centres on the economy. This has impinged on the living standards and a large share of Serbia's population was unable to make ends meet. Serbia still had a very high absolute poverty rate, as well as large shares of people at risk of poverty and social inclusion, both among the Roma population, especially in informal Roma settlements, and the general population. The statistical data indicating a mild drop in the poverty rate should be ascribed to Serbia's dwindling population rather than better living standards.

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In a nutshell, the main impression gained from the assessment of the social and political circumstances for the enjoyment and improvement of human rights in Serbia is that the situation did not change for the better and that 2018 was marked by lack of public dialogue, stifling of media freedoms, disregard of all critical opinions and undermining of some already achieved rights and freedoms. All this was accompanied by frequently ruthless attacks on anyone who had a different idea of the future of Serbia's society and was not prepared to unreservedly support the ruling structure's moves and decisions.





# I. HUMAN RIGHTS IN SERBIA'S LAW

## 1. Serbia's Obligations Deriving from UN Membership and Ratified International Human Rights Treaties

All major universal human rights treaties are binding on Serbia.<sup>1</sup> The only UN human rights convention Serbia has not ratified yet is the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which it had signed back in 2004. Serbia in 2010 ratified the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), the Convention for the Safeguarding of the Intangible Cultural Heritage and the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine.

With a view to improving the state authorities' coordination in the process of drafting periodic reports for UN Committees and the Universal Periodic Reviews, the Government of the Republic of Serbia in December 2014 enacted a decision forming a Council for the Monitoring of the Implementation of Recommendations of United Nations Human Rights Mechanisms.<sup>2</sup>

Serbian nationals are entitled to file individual complaints to all the UN Committees charged with monitoring the implementation of human rights conventions and considering such submissions, with the exception of the Committee on Economic, Social and Cultural Rights, given that Serbia has not ratified the Optional

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1 The International Covenant on Civil and Political Rights and its two Protocols, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination against Women and its Protocol, the Convention on the Rights of the Child and its two Protocols (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography), the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Protocol and the Convention on the Rights of Persons with Disabilities and its Protocol and Convention for the Protection of All Persons from Enforced Disappearance.

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

Protocol to the International Covenant on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child, because Serbia has not ratified Optional Protocol to the Convention on the Rights of the Child on a communications procedure. No individual complaints were filed against Serbia with UN Committees.

### *1.1. Universal Periodic Review (UPR)*

The Universal Periodic Review is a mechanism for monitoring respect for human rights in all UN Member States. UPRs, introduced in 2006, are submitted to the Human Rights Council and comprise three parts: the States' reports on human rights, the reports by the UN Office of the High Commissioner for Human Rights (OHCHR), which are based on the reports of the UN treaty bodies and Special Procedure reports, and a summary of information received from stakeholders, including NGOs, which is also prepared by the OHCHR.<sup>3</sup>

The UPR Report, adopted by the Serbian Government, was presented to the Human Rights Council by Serbia's delegation on 24 January 2018.<sup>4</sup> A number of NGOs submitted their shadow reports and recommendations to the OHCHR and some of their representatives attended the pre-session, held in Geneva in December 2017.

Eighty-six UN Member States applied for interactive dialogue with the Serbia's delegation and issued recommendations. The dialogue focused primarily on judicial reform, media freedoms, protection from domestic violence, improvement of the status of Roma, war crimes prosecution, et al.

During the presentation of its report, the Serbian delegation said it had been prepared by the representatives of Ministries and Government services, who had consulted with the representatives of all entities charged with implementing the Human Rights Council's prior recommendations, the parliamentary Committee for Human and Minority Rights and Gender Equality, independent regulatory authorities and civil society organisations.

Director of the Government Human and Minority Rights Office Suzana Pاونović said that a number of human rights-related laws, strategies and action plans had been adopted since the submission of the prior Report within the second UPR cycle in 2013. She said that Serbs and other non-Albanians in Kosovo faced numerous problems and challenges in exercising their human and minority rights and that the conditions were not in place for the return of internally displaced persons to Kosovo and called on the Human Rights Council to address these issues.<sup>5</sup>

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3 Serbia had submitted two UPR reports since 2006: the first in 2008, after which it accepted 18 recommendations, and the second in 2013, after which it accepted 139 recommendations by the Human Rights Council.

4 See: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/RSindex.aspx>.

5 See more in Serbian at: <https://www.vesti.rs/Kosovo/Delegacija-Srbije-pred-Savetom-UN-Na-Kosovu-i-Metohiji-se-ne-postuju-ljudska-prava.html>.

The final Report on Serbia of the Working Group for the Universal Periodic Review was adopted in June 2018. Serbia received 190 recommendations from UN Member States; it accepted 175 and noted 15 recommendations. During the review of the Report, the Serbian delegation supported recommendations to: strengthen the rule of law through constitutional amendments, as well as other reforms enhancing the independence and efficiency of the judiciary; take steps to improve judicial independence by limiting the scope for political influence over judicial appointments; continue the harmonisation of the Criminal Code with international law; strengthen the Office of the Protector of Citizen and the fight against discrimination (especially against LGBT persons, Roma, national minorities, persons with disabilities, et al); increase efforts to combat hate speech; continue promoting initiatives to empower women at the economic, political and social levels; improve the status of women and gender equality; prevent violence against women, domestic violence and violence against children; make further efforts to promote opportunities for education for all; step up efforts towards achieving inclusive education for all children; ensure effective integration of Roma and refugees into society.

Serbia did not accept the recommendation to ratify the UN Convention on the Rights of All Migrant Workers and Members of Their Families because, as it explained, there were no objective conditions to adopt this recommendation and national law guaranteed the same rights to migrant workers as it did to national workers.

As per the recommendation to adopt the Protocol to the International Covenant on Economic, Social and Cultural Rights, Serbia said that that would require amending national law, but that this was not a state priority. This view gives particular rise to concern given numerous reports saying that the exercise of these rights in Serbia is jeopardised; furthermore, Serbia's non-adoption of the Protocol precludes its nationals from filing individual complaints seeking the protection of these rights with the relevant UN Committee.<sup>6</sup> Serbia also failed to uphold the recommendation to ratify the Protocol to the Convention on the Rights of the Child on individual complaints, under the excuse that this would require amending national law.

With regards to the recommendation to initiate a vetting process to identify all government officials who have allegedly been involved in the commission of war crimes, Serbia said it cooperated with the ICTY, that the national courts tried war crimes and that it was unnecessary to conduct additional vetting.<sup>7</sup> It held a similar view with respect to the recommendation to conduct a full and public enquiry into the police and municipal authorities' alleged involvement in the Belgrade Waterfront night-time demolitions, the so-called Savamala case in the city centre in April 2016. The Savamala case occurred on election night in April 2016, when people with bal-

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6 The former Yugoslavia had signed and ratified the Covenant on 8 August 1967 and 2 June 1971 respectively.

7 More on Serbia's views on confrontation with the past and war crime trials in Chapter III.7.

aclavas illegally demolished buildings in the Belgrade Hercegovačka Street. Serbia said it saw no reason to single out individual cases and that the relevant authorities had undertaken all the measures provided by law.<sup>8</sup>

In response to two recommendations on media freedoms, to enhance editorial independence and media pluralism and enhance laws protecting freedom of expression, Serbia said that the Constitution of the Republic of Serbia guaranteed media freedoms and that no amendments to media laws were planned, since the ones adopted in 2014 were fully in compliance with EU law and international standards, that they governed editorial independence and that the measures for protecting media pluralism were being undertaken by the Ministry of Culture and Information and the Electronic Media Regulatory Authority.<sup>9</sup>

The state's response to the recommendation to refrain from prosecuting journalists, human rights defenders and other members of civil society as a means of deterring or discouraging them from freely expressing their opinions is particularly interesting. It said that the recommendation implied that the way that persons were "systemically and deliberately prosecuted when it is known they did not commit an offence, which is not true."<sup>10</sup>

The Government Council Monitoring the Implementation of the Recommendations of UN Human Rights Mechanisms held two sessions in 2018. At the April session, Council Chairwoman Suzana Paunović presented the report on the Council's work over the previous six months and familiarised the Council members with the procedure for reviewing the state's report within the third UPR cycle. The Report, in which Serbia notified the Committee of the implementation of its recommendations regarding Roma exclusion (paragraph 15), refugees and asylum seekers (paragraph 33) and the freedom of expression (paragraph 39), was also presented.<sup>11</sup>

The Council session held on 5 July 2018 was mostly devoted to the development of indicators for monitoring the implementation of the recommendations of UN human rights mechanisms and interlinking them with the Sustainable Development Goals. The CSOs' engagement in the work of the Council continued in 2018 and their representatives were for the first time given the opportunity to directly ask questions about the implementation of the recommendations and alert to the deficiencies in the answers Serbia was forwarding to the treaty bodies. Despite the commendable openness, the Council still has not become the place where CSOs can engage in an open dialogue on specific issues with the representatives of the relevant institutions.

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8 More on the Savamala case in: *2016 Report*, I.5.2.10.

9 More on media freedoms in Chapter III.2.

10 Serbia's responses are available at: <http://www.ljudskaprava.gov.rs/sr/node/161>.

11 The Report is available at: <http://www.ljudskaprava.gov.rs/sh/node/19968>.

## 1.2. Serbia's Obligations to Treaty Committees

States that have ratified conventions adopted under UN auspices are under the obligation to periodically report to the relevant Committees on the implementation of those international treaties and the fulfilment of recommendations they made in their Concluding observations in the previous cycles. UN Committees did not review any reports by Serbia in 2018.

On 27 July 2017, the Serbian Government adopted its fourth periodic report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. The Committee on the Elimination of Discrimination against Women in 2018 forwarded a list of issues<sup>12</sup> to Serbia in relation to its fourth periodic report and scheduled the review of it at its session slated for 17 February– 8 March 2019.

The Committee on the Rights of the Child reviewed Serbia's second and third reports on the implementation of the Convention on the Rights of the Child in January 2017. Serbia is to submit its combined fourth and fifth periodic reports to the Committee by 24 May 2022 and to include therein information on the follow-up to these Concluding observations.

The UN Human Rights Committee reviewed Serbia's Third Periodic Report on the Implementation of the International Covenant on Civil and Political Rights in March 2017 and issued its Concluding observations<sup>13</sup> the following month. It invited Serbia to submit its next periodic report by 21 March 2021.<sup>14</sup>

The Committee on the Elimination of Racial Discrimination adopted its Concluding observations in December 2017<sup>15</sup> on Serbia's second to fifth periodic reports, submitted in late November 2017. The Committee requested that Serbia provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 16 and 17 related to the enforcement of Article 54a of the Criminal Code and on detailed statistics on the number and nature of racist hate crimes reported, prosecutions and convictions and redress provided to victims racial hate crimes.

The Committee against Torture in its Concluding observations<sup>16</sup> issued after reviewing Serbia's second periodic report in 2015. Serbia is under the obligation to submit its third periodic report on the implementation of the Convention against Torture and the fulfilment of the other Committee recommendations by 15 May 2019.

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12 UN doc., CEDAW/C/SRB/Q/4, available at: <https://goo.gl/9GcX2z>.

13 See: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSRB%2fCO%2f3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSRB%2fCO%2f3&Lang=en).

14 As requested, Serbia notified the Committee within one year of the implementation of its recommendations regarding Roma exclusion (paragraph 15), refugees and asylum seekers (paragraph 33) and the freedom of expression (paragraph 39). The report is available at: <http://www.ljudskaprava.gov.rs/sh/node/19968>.

15 Available at: <https://goo.gl/XooksF>.

16 *Ibid.*

### 1.2.1. Cevdet Ayaz Case

The BCHR in 2018 continued pursuing before the UN Committee against Torture the case of Kurdish political activist Cevdet Ayaz, who had been extradited by Serbia to Turkey on 25 December 2017<sup>17</sup> despite the interim order requiring of Serbia to refrain from Ayaz's forced removal, which the UN Committee against Torture issued on 11 December 2017 at BCHR's request. At the end of the reporting period, Ayaz was serving a sentence of imprisonment in Turkey delivered on the basis of evidence obtained through his torture.

Apart from the proceedings before the Committee against Torture, in which Serbia commented the allegations in the communication at the Committee's request with an 11-month delay,<sup>18</sup> Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Nils Melzer also intervened in the Ayaz case.<sup>19</sup> On 28 December 2017, he sent an urgent letter to Serbian Foreign Minister Ivica Dačić asking for clarification of Ayaz's situation and requesting of Serbia to provide information on any measures taken to ensure that the deportation or transfer of Mr. Ayaz to Turkey would not put his personal security and integrity at risk. Dačić failed to reply to the Special Rapporteur's letter by the end of the reporting period. During his visit to Turkey in August 2018, Dačić publicly said that Serbia would not provide shelter to the enemies of the Turkish government.<sup>20</sup>

## 2. Serbia's Obligations Arising from Council of Europe Membership

### 2.1. European Court of Human Rights and Serbia

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was ratified by the State Union of Serbia and Montenegro (SaM) back in 2004. Serbian nationals may file applications with the European Court of Human Rights (ECtHR). Serbia used to top the list of countries against which applications were filed with the ECtHR. The number of such applications has decreased over the past few years.

The European Court of Human Rights dismissed or struck off the list 609 of the 629 applications against Serbia it reviewed in the first half of 2018. It delivered fi-

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17 CAT, Communication No. 857/2017.

18 Serbia responded to the communication on 9 December 2018, after it received the third reminder from the OHCHR Secretariat.

19 See: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23548>.

20 See the *Balkan Insight* report, available at: <http://www.balkaninsight.com/en/article/serbia-s-pledge-to-turkey-worries-human-rights-advocates-08-20-2018>.

nal judgments in 20 cases and communicated another 94 applications to Serbia. Most of the judgments, in which it found Serbia in breach of the ECHR, regarded length of court or administrative proceedings, i.e. violations of the right to a trial within a reasonable time.<sup>21</sup> In one judgment, the ECtHR found Serbia also in violation of the right to peaceful enjoyment of possessions<sup>22</sup> and in another it found that Serbia had not violated the applicant's right to the protection of his private and family life.<sup>23</sup>

A total of 1,841 applications against Serbia were pending before the ECtHR in mid-2018. Although their number was slightly higher than in 2017, it was still significantly lower than the number of applications pending before the ECtHR in the 2013–2015 period.

In 2018, Serbia earmarked around 18 million RSD for the just satisfaction of individuals in whose favour the ECtHR ruled.<sup>24</sup>

## *2.2. Report of the Council of Europe Group of States against Corruption (GRECO)*

Serbia has been a member of the Council of Europe Group of States against Corruption (GRECO) since April 2003. In March 2018, GRECO published its Serbia Compliance Report within the fourth round of evaluation: Corruption prevention in respect of members of parliament, judges and prosecutors,<sup>25</sup> i.e. Serbia's compliance with the GRECO recommendations issued back in July 2015. The Report was published following Serbia's authorisation.

The Justice Ministry's reaction to the Compliance Report raised quite a few eyebrows. It said on its website that nearly all the recommendations had already been implemented for the most part, as noted in the GRECO Report, and that they would be implemented fully by end October 2018.<sup>26</sup> However, GRECO said in its Report that Serbia had not implemented in a satisfactory manner any of its thirteen recommendations (notably, that it had implemented seven recommendations partly and did not implement at all six recommendations).<sup>27</sup>

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21 January–July 2018 data.

22 *Iseni v. Serbia*, App. No. 43326/11, delivered on 9 October 2018.

23 *Grujić v. Serbia*, App. No. 203/07, delivered on 28 August 2018.

24 As opposed to prior BCHR Annual Reports, which provided summaries of the ECtHR judgments against Serbia in the reporting period, this Report only gives an overview of the statistical data since the ECtHR judgements are translated into Serbian and published on the websites of the Protector of Citizens and the ECtHR (<http://www.zastupnik.gov.rs/> and <https://hudoc.echr.coe.int> respectively).

25 The Report is available at: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680792e56>.

26 See the *Vreme* report, available in Serbian at: <https://www.vreme.com/cms/view.php?id=1585259>.

27 See the *N1* report, available in Serbian at: <http://rs.n1info.com/a371858/Vesti/GRECO-Srbija-nije-primenila-nijednu-preporuku-o-korupciji.html>; <https://www.istinomer.rs/ocena/4059/Preporuke-GREKO-a-uglavnom-ispunjene>.

In its press release on the Compliance Report, GRECO specifically recommended that measures be taken to further improve the transparency of the parliamentary process, including through ensuring adequate timelines for submitting amendments and using the urgent procedure as an exception and not as a rule. It also referred to other recommendations of 2015 on strengthening the independence and role of the High Judicial Council and the State Prosecutorial Council; amending the procedures for the recruitment and promotion of judges, court presidents and prosecutors, in particular by excluding the National Assembly from this process. Finally, GRECO asked the Head of the Serbian delegation to provide a report on the progress in implementing all the pending recommendations as soon as possible, but at the latest by 31 October 2018.<sup>28</sup>

Justice Ministry State Secretary Radomir Ilić said on 28 October that Serbia would submit a report on the implementation of the 13 GRECO recommendations by the end of the month.<sup>29</sup> The very next day, Prime Minister Ana Brnabić said she hoped Serbia would submit the report on time and added that this was a major issue requiring a lot of work.<sup>30</sup> Serbia submitted the report to GRECO in late November 2018.<sup>31</sup>

### 2.3. *Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*

The SaM Assembly on 26 December 2003 also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.<sup>32</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) established under this Convention visits places of detention to ascertain how people deprived of liberty are treated, with a view to increasing their protection from potential torture or inhuman or degrading treatment.

The Delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out an *ad hoc* visit to Serbia from 31 May to 7 June 2017. The focus of the visit was to examine the treatment of persons deprived of liberty by the police and the practical

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28 See more at: <https://www.coe.int/en/web/greco/-/serbia-has-not-implemented-any-of-the-recommendations-on-preventing-corruption-among-parliamentarians-judges-and-prosecutors-says-council-of-europe-mo>.

29 See the *Dnevnik* report, available in Serbian at: <https://www.dnevnik.rs/hronika/srbija-predajee-izvestaj-greco-31-oktobra-28-10-2018>.

30 See the *Insajder* report, available in Serbian at: <https://goo.gl/HQGWiL>.

31 See the *RTV* report, available in Serbian at: [http://www.rtv.rs/sr\\_lat/drustvo/srbija-podnela-izvestaj-o-ispunjenosti-greko-preporuka\\_971904.html](http://www.rtv.rs/sr_lat/drustvo/srbija-podnela-izvestaj-o-ispunjenosti-greko-preporuka_971904.html).

32 *Sl. list SCG (International Treaties)*, 9/03.



application of safeguards surrounding their detention. It also looked into the manner in which complaints of ill-treatment of detained persons by police officers were handled, both disciplinary and criminal investigations and proceedings. The delegation visited police stations in Belgrade (Stari grad and Novi Beograd), Leskovac, Niš, Novi Sad, Pančevo and Pirot and prisons in Belgrade, Čuprija, Leskovac, Niš, Novi Sad, Prokuplje, Vranje and Pančevo. At the end of the visit, the delegation presented its preliminary observations to the Serbian authorities.

In its Report<sup>33</sup> published in June 2018, the CPT said it had received excellent cooperation from the Serbian authorities and that it trusted that the Serbian authorities would concrete measures to address long-standing recommendations such as those concerning the use made of remand detention and tackling seriously the issue of ill-treatment by police officers.

The CPT said its delegation had received a significant number of allegations of physical ill-treatment of detained persons by police officers, notably in larger urban areas, perpetrated apparently to coerce suspects to admit to certain offences or to punish them. The CPT delegation gathered medical evidence and other documentation which were consistent with the allegations of ill-treatment made by detained persons in a number of cases.<sup>34</sup> It therefore recommended to the Serbian authorities to take determined action to combat police ill-treatment, which should include training for crime inspectors on appropriate interview and investigation techniques, and hold senior officers accountable for their line management responsibilities. It also recommended that Serbian authorities establish dedicated interview rooms with audio and/or video equipment for recording police interviews.

The CPT said that it was essential that “effective investigations into allegations of ill-treatment are undertaken and that criminal acts by the police are punished.” The CPT said that, ideally, ‘the Serbian authorities will establish an independent police complaints body’ but that it recognised that this was a longer-term objective and considered that, in the shorter term, the Serbian authorities should take action to reinforce the capabilities of the MIA’s Internal Control Sector (SUKP) and to end the practice of senior officers from the same organisational unit investigating subordinate officers accused of acts of ill-treatment. “As regards the effectiveness of prosecutorial investigations, the CPT found that preliminary criminal investigation activities frequently did not meet the requirements of thoroughness” and held that prosecutors should always conduct thorough investigative actions themselves. The CPT also examined a number of judicial decisions which revealed several problem areas such as the excessive length of proceedings, and the leniency of sentences.

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33 See: <https://rm.coe.int/16808b5ee7>.

34 The CPT said that the alleged physical ill-treatment consisted of slaps, punches, kicks and truncheon blows, strikes with various non-standard objects (such as baseball bats) and also several claims of criminal suspects being subjected to shocks from electrical discharge devices at the time of apprehension or during questioning.

In respect of safeguards against ill-treatment of persons deprived of their liberty by the police, the CPT delegation observed a number of shortcomings in relation to the delayed notification of custody, access to and poor performance by *ex officio* lawyers in preventing ill-treatment, and the lack of confidentiality of medical examinations of detained persons. It recommended the drawing up of a code of conduct for police interviews.

The CPT found that overcrowding remained a problem in the pre-trial sections of the visited prisons (with the exception of the District Prisons in Belgrade and Prokuplje) and said that remand prisoners did not have access to purposeful activities and were subject to numerous judicially-imposed restrictions throughout the pre-trial period. It recommended the Serbian authorities devise and implement a comprehensive regime of out-of-cell activities for remand prisoners and, as for juveniles on remand, that Serbia take immediate steps to offer educational and recreation activities tailored to them.<sup>35</sup>

The CPT highlighted the important role of prison health units and said it was essential that every newly admitted prisoner was properly interviewed and physically examined by a medical doctor within 24 hours of admission. It said steps had to be taken to ensure that there was systematic recording of all injuries and that the traumatic injury reports relating to injuries likely to have been caused by ill-treatment were automatically forwarded to the body empowered to conduct investigations. It qualified the introduction of such a procedure in the Belgrade and Novi Sad prisons as a positive development. The CPT also recommended that the Serbian authorities review the visiting arrangements at all remand detention units to ensure that prisoners receive at least three visits of one hour every month, as provided for in the 2014 CPC, and preferably the equivalent of one hour every week. It also said the Serbian authorities should institute a rule of open visits for all prisoners, with closed visits as the exception.

#### *2.4. Other Council of Europe Conventions Binding on Serbia*

The Framework Convention for the Protection of National Minorities was ratified back in 1998 by the then FRY. The Assembly of Serbia and Montenegro ratified the European Charter for Regional and Minority Languages.

Serbia ratified the Revised European Social Charter (ESC) in 2009. The nationals of Serbia are not entitled to file collective complaints to the European Committee of Social Rights under the ESC because Serbia has not agreed to the submission of such complaints. Serbia is also party to the CoE Convention on Action against Trafficking in Human Beings<sup>36</sup> and the CoE Convention on Laundering,

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35 The CPT said this was all the more important given that pre-trial detainees were locked in their cells for 22 or more hours a day for months.

36 *Sl. glasnik RS (International Treaties)*, 19/09.

Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. The National Assembly ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Council of Europe Framework Convention on the Value of Cultural Heritage for Society and European Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

### 3. Human Rights in National Legislation

#### 3.1. *Constitution and International Norms*

Under Article 16(2) of the Constitution, the generally accepted rules of international law and ratified international treaties shall be an integral part of the national legal system and applied directly. It is, however, unclear what the authors of the Constitution imply under “generally accepted rules of international law” – just the rules of international customary law or the general international law principles as well.

The constitutional provisions dealing with the hierarchy of legislation stipulate the compliance of the ratified international treaties with the Constitution (Art. 194(4)) and the compliance of laws and general enactments with ratified international treaties and generally accepted rules of international law (Art. 194(5)), which means that the hierarchy of the international legal norms differs. International customs and general international law principles (“generally accepted rules of international law”) have the same legal force as the Constitution, while the Constitution is hierarchically above the ratified international treaties. Laws and other general enactments are hierarchically below ratified international treaties, customs and general legal principles and have to be in compliance with them. Consequently, international law shall prevail in the event of a conflict between Serbian and international law, unless the ratified international treaty is in contravention of the Constitution.

This provision may raise the issue of Serbia's international accountability in the event it is not fulfilling its obligations under an international treaty because the latter is not in compliance with the Constitution. It is also disputable in view of Serbia's ambition to join the EU, as participants in expert debates on constitutional amendments have frequently noted. A similar view was taken also by the European Commission for Democracy through Law (Venice Commission), which alerted to this risk in its Opinion on the 2006 Constitution,<sup>37</sup> in which it stated that the Con-

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

stitution should be interpreted so as to avoid the collision of national regulations and international law rules binding on the state.<sup>38</sup>

The Constitution does not envisage transfer of powers to international organisations. Serbia's accession to the EU will require of it to amend its Constitution like many EU Member States have, i.e. to introduce a new provision allowing transfer of part of its sovereign powers to international or supranational organisations i.e. giving EU law supremacy over national law. It remains to be seen what views the state will take in the constitutional reform process, as it remained unclear until the end of 2017 whether it would opt for adopting a new Constitution or just amending the provisions on the judiciary.

This is particularly important in view of the fact that the practice of applying international treaties and customs before national courts, has not, however, been embraced. Accession to the EU legal system also means that Serbia will directly apply EU regulations, the enforcement of which is overseen and protected by the Court of Justice of the European Union. Therefore, judges in Serbia need to prepare on time and accept the standards and case-law of this Court, which rules on disputes between Member States and European institutions and interprets EU law to ensure its uniform application in all EU Member States.

### *3.2. Human Rights in the Serbian Constitution*

Section II of the 2006 Constitution of Serbia, comprising human and minority rights and freedoms (Arts. 18–81), is divided into three parts: I. Fundamental Principles (Arts. 18–22), II. Human Rights and Freedoms (Arts. 23–74) and III. Rights of Persons Belonging to National Minorities (Arts. 75–81).<sup>39</sup> Under the Constitution, provisions on human and minority rights shall be interpreted in accordance with the valid international standards and practices of international institutions monitoring their implementation (Art. 18(3)) and the courts shall rule pursuant to the Constitution, the law and other general enactments when so provided for by the law, generally recognised rules of international law and ratified international treaties (Art. 142).

The Constitution contains a broad catalogue of human rights but some human rights provisions are deficient or ambiguous. Experts have criticised some constitutional provisions on the protection of human rights ever since the valid Constitution was adopted.

As regards the rule of law and compliance with the separation of powers principle, the main problem of the constitutional provisions on the judiciary arises from

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

39 More on each right in Chapter II.

the influence they let the executive and legislative branches of government exert on the judiciary. Article 4 of the Constitution comprises provisions on the separation of powers and independence of the judiciary. A closer look at paragraphs 3 and 4 of this Article shows that they are mutually contradictory. Whereas paragraph 3 lays down that the relationship between the three branches shall be based on balance and mutual control, paragraph 4 explicitly states that the judiciary shall be independent. Furthermore, as noted in the Analysis of the Constitution,<sup>40</sup> performed by the working group charged with analysing the changes of the constitutional framework, paragraph 3 of Article 4 is not in compliance with paragraph 3 of Article 145 of the Constitution, under which “[C]ourt decisions shall be binding on everyone and may not be subject to extrajudicial control”.

In 2017, the Ministry of Justice launched consultations (which it initially tried to turn into a public debate) on amendments to the constitutional provisions on the judiciary. The Ministry in January 2018 published draft constitutional amendments, whose authors remained anonymous. Experts heavily criticised the draft.<sup>41</sup>

The constitutional reform should also focus on improving some other provisions nearly as important as those on the status of the judiciary, for instance the ones on human rights protection that are vague and allow different interpretations. Article 25, for instance, prescribes that “[N]obody may be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical and other experiments without their free consent.” This provision may be interpreted as allowing such actions as long as those subjected to them freely consent to them. The Constitution protects only individual aspects of the right to a private life (Arts. 40–42) and does not follow the standard introduced by Article 8 of the ECHR.

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

Furthermore, under Article 63 of the Constitution, *everyone* shall have the freedom to decide whether they shall procreate or not. This provision should, instead, specify that women are entitled to freely decide whether or not to have children.<sup>42</sup> The provision prohibiting slavery, status akin to slavery and forced labour in

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40 Available at: <http://www.mpravde.gov.rs/tekst/5847/radna-grupa-za-izradu-analize-izmene-ustav-nog-okvira.php>.

41 More on the judicial constitutional process in 2017 in the 2017 Report. More on the process in 2018 in Chapter III.1. of this Report.

42 ‘*Everyone*’ can be interpreted also as the church, the state or another institution and as depriving women of the right to freely decide whether or not to have children.

Article 26 of the Constitution needs also to include an explicit prohibition of debt bondage and sexual slavery in order to improve the efficiency of protection of the potential victims.

The prohibition of the freedom of assembly, one of the chief political freedoms, needs to be defined more precisely in the Constitution. Notably, the latter needs to specify which authority is charged with prohibiting assemblies and how the prohibition is regulated. Furthermore, the valid Constitution guarantees the freedom of assembly only to nationals, but not to non-nationals. Most European Constitutions guarantee the freedom of assembly to everyone.

The constitutional provisions on the right to legal aid (Art. 67) need to be aligned with the situation on the ground. Namely, legal aid (primarily free legal aid) is extended by civic associations, law school legal clinics and trade unions. The Constitution specifies that it shall be extended only by attorneydom, as an independent and autonomous service, and legal aid offices established in local self-government units in accordance with the law. In addition, the valid Constitution does not specify who is entitled to exercise this right.

In addition to the rights guaranteed to all citizens by the Constitution, persons belonging to national minorities shall be guaranteed special individual and collective rights which they may exercise individually and together with others. Some issues regarding the constitutional status of national minorities are, however, disputable or unregulated.

The Constitution defines the Republic of Serbia as the state of the Serbian people and all citizens who live in it (Art. 1), whereby it gives the majority population precedence over the national minorities. On the other hand, the Constitution somewhat rectifies the ethnic definition of the state, by laying down that sovereignty shall be vested in the citizens (Art. 2(1)). The Constitution should have mentioned multiculturalism as a value characterising Serbia as a political community in view of the fact that the 2011 Census<sup>43</sup> confirmed that over 20 ethnic groups live in Serbia.

The words “take part in decisions or decide ... themselves” in Article 75 of the Constitution on the essence of the right to minority self-governance need to be defined more precisely as the issue of the substance and quality of these rights remains open due to their vagueness and the failure of the authors of the Constitution to specify that they will be regulated by law.<sup>44</sup>

The authors of the constitutional amendments should also analyse the provisions restricting human rights and align them with the ECHR, under which a legitimate aim would have to be prerequisite for a human rights restriction to be acceptable.<sup>45</sup>

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43 The 2011 Census data on the ethnic breakdown of Serbia's population were published by the Statistical Office of the Republic of Serbia on 29 November 2012 and are available at: <http://media.popis2011.stat.rs/2012/Nacionalna%20pripadnost-Ethnicity.pdf>.

44 More on public engagement in Chapter II.10.

45 In its *Opinion on the Constitution of Serbia*, the Venice Commission commented Article 20 of the Constitution related to restrictions of human and minority rights (paras. 28-30 of the

Article 20 of the Constitution clearly and strictly defines the principle of proportionality, as well as the standards which courts in particular must adhere to when interpreting restrictions of human and minority rights. The standards for evaluating proportionality are in keeping with the case law of the European Court of Human Rights.<sup>46</sup>

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

The Constitution allows derogations of constitutionally guaranteed human and minority rights upon the proclamation of a state of war or a state of emergency (formal requirement) but only to the extent deemed necessary (substantive requirement).<sup>47</sup> This wording provides more leeway for derogations of human rights than the European Convention on Human Rights, which allows derogations “to the extent strictly required by the exigencies of the situation”. There are also some gaps in the constitutional list of rights that may not be derogated from (Art. 202(4)).<sup>48</sup>

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

The 2006 Constitution also missed the opportunity to define and regulate the security system clearly, which enabled the adoption of inconsistent and incomprehensive laws and by-laws resulting in the strengthening of personal and party control over the security institutions. Therefore, with a view to ensuring effective

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

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

47 Article 202(1) of the Constitution.

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

civilian oversight of the security sector, the amendments to the constitutional provisions on security are to provide for democratic and civilian control and oversight of the entire national security system, especially the Serbian army, police, intelligence agencies and other state authorities entitled to use force, and lay down that these issues shall be governed by a separate law.<sup>49</sup>

### *3.3. Legal Remedies Provided by the Serbian Legal System*

Article 2(3) of the ICCPR, Article 13 of the ECHR and some other international treaties impose upon the state the obligation to ensure legal remedies. Article 22 of the Constitution of Serbia sets out that everyone shall have the right to judicial protection in case any of their human or minority rights guaranteed by the Constitution have been violated or denied and the right to the elimination of the consequences of such a violation. It also provides everyone with the right to seek protection of their human rights and freedoms before international human rights protection bodies. Under international standards, states shall provide both effective remedies and the right to compensation or some specific legal remedies.<sup>50</sup> The Constitution guarantees the right to rehabilitation and compensation of damages to persons unlawfully or groundlessly deprived of liberty, detained or convicted for a punishable offence and compensation to persons who had suffered pecuniary or non-pecuniary damages inflicted on them by the unlawful or inappropriate work of the state authorities (Art. 35). Article 36 guarantees everyone the right to file an appeal or apply another legal remedy against any decisions on their rights. Apart from the Constitution, several other laws also envisage the rights to reparations, rehabilitation and compensation of damages. Court decisions may be re-examined only by the competent courts, in procedures prescribed by law (Art. 145(4)).

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

Citizens are guaranteed the right to appeal any decision of a first-instance civil court according to the Civil Procedure Act (hereinafter: CPA).<sup>51</sup> Article 367 of the CPA deals with appeals of judgments and Article 399 governs appeals of decisions. An appeal of a civil judgment must be lodged within 15 days from the day a copy of the judgment is delivered, with the exception of cases regarding promissory notes and checks, where the appeals have to be filed within eight days (Art. 367(1)). The eight-day deadline for appeal applies also to decisions on collective agreements, de-

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49 See: the Belgrade Centre for Security Police press release, available in Serbian at: <http://www.bezbednost.org/Vesti-iz-BCBP/6659/Sistem-bezbednosti-neophodno-je-definisati-i.shtml>.

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

51 *Sl. glasnik RS*, 72/11, 49/13 – CC Decision and 74/13 – CC Decision.



cisions on trespassing, first-instance decisions on small claims disputes and first-instance decisions on consumer disputes (Arts. 446(1), 452(2), 478(3) and 493(2)).

Article 368 of CPA lays down that an appeal of a first-instance judgment ordering a natural person to pay a claim where the principal does not exceed the equivalent value of 300 EUR in RSD, i.e. an entrepreneur or legal person to pay a claim where the principal does not exceed the equivalent value of 1000 EUR in RSD shall not stay the enforcement of the judgment. Although this provision does not infringe on the right to a legal remedy per se, it appears to prejudice the outcome of the appeals proceedings and to unnecessarily complicate the enforcement of the final court decisions in the event the appeals are upheld and the first-instance judgments are modified or overturned. The most drastic restriction of the right of appeal in the CPA is the prohibition of raising procedural legal objections in the appeals (Art. 372(2)). Civil appeals are reviewed by the next higher courts with real and territorial jurisdiction.

A motion for the review of a final judgment is an extraordinary legal remedy envisaged by the CPA (Art. 403). International human rights protection bodies generally treat such reviews as effective and ordinary legal remedies. Reviews are always allowed if so prescribed by another law; in the event the second-instance court modified the judgment and ruled on the parties' claims; in the event the second-instance court upheld the appeal, overturned the judgment and ruled on the parties' claims. The right to file a motion for a review, however, is limited by the CPA. The Act does not allow reviews of final judgments in property disputes in which the value of the claim of the subject matter of the dispute at issue does not exceed the equivalent value of 40,000 EUR at the average exchange rate of the National Bank of Serbia on the day the claim is filed (Art. 403(2 and 3)). Furthermore, a motion for a review may only be filed by a litigant's representative from among the ranks of lawyers (Art. 410(2(2))). Finally, a motion for a review may be filed only on points of law or procedure (Art. 407). Such motions may not in principle be filed with respect to incorrect findings of fact (Art. 407(2)). The motions for review are reviewed by the Supreme Court of Cassation.

The CPA exceptionally allows a review on points of law of a judgment that cannot be challenged in a review if, in the view of the Supreme Court of Cassation, such a review is necessary to rule on legal issues of general interest or in the interest of equality of the citizens, to align case law, and in case of the need to reinterpret the law (special review). A five-member judicial panel of the Supreme Court of Cassation rules on the admissibility of special reviews (Art. 405). This provision should minimise the already huge problem of discrepant case law, amounting to a violation of the right to a fair trial.

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

and which may result in the adoption of a decision more favourable for that party. Grounds for ordering a retrial also exist in the event the Constitutional Court found in its ruling on a constitutional appeal a violation or denial of a constitutionally guaranteed human or minority right or freedom in civil proceedings, which may result in the adoption of a more favourable decision for the applicant (Art. 426(1)(12)).

The CPA includes another extraordinary legal remedy, which is rarely, if ever, applied in practice – the motion for the judicial review of a final judgment. Such motions may be filed by the Republican Public Prosecutor with the Supreme Court of Cassation to challenge final decisions violating the law to the detriment of public interest (Art. 421). Importantly, the law does not include any provisions regulating the issue of public interest.

The Criminal Procedure Code (CPC)<sup>52</sup> envisages the right of appeal (Art. 432 of the CPC). An appeal may be lodged within 15 days from the day a copy of the judgment is delivered on the parties. The deadline may be extended at the request of the parties (Art. 432(2)). The appellants may claim substantive violations of the criminal procedure, violations of substantive criminal law, incorrect and insufficient findings of fact or challenge the penalties. The CPC also allows for retrials and the submission of motions for the protection of legality. The latter remedy primarily serves to reverse human rights violations in criminal proceedings established by the Constitutional Court of Serbia or the ECtHR. The CPC allows for initiating criminal proceedings regarding specific crimes by private citizens, whereas the proceedings related to other criminal offences prosecuted *ex officio* may be launched only by the public prosecutor. Only if the public prosecutor establishes no grounds for criminal prosecution may the injured party undertake prosecution (Art. 52 CPC). Although this has in practice led to situations in which the injured parties are deprived of the right to launch criminal proceedings due to the negligence or ill-will of the public prosecutor, restrictions of the private citizens' right to access criminal courts in the capacity of prosecutors are not considered a violation of the right to an effective legal remedy.

The CPC does not include a provision under which an international court decision may be grounds for a retrial. Article 485 of the CPC provides for the submission of a motion for the protection of legality in the event it is established by a decision of the ECtHR or the Constitutional Court that a human right or freedom of the defendant or another participant in the proceedings enshrined in the Constitution or the ECHR and the Protocols thereto had been violated or denied by the final judgment or a prior decision rendered in the course of the proceedings. This extraordinary legal remedy may be filed by the defendants via their legal counsels or by the Republican Public Prosecutor and it is ruled on by the Supreme Court of Cassation.

Provisions governing the right of appeal can be found both in the new General Administrative Procedure Act (GAPA)<sup>53</sup> and the Non-Contentious Procedure

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

53 *Sl. glasnik RS*, 18/16. This law came into force on 9 March and has been applied since 1 June 2017.

Act (NCPA),<sup>54</sup> under which parties to proceedings shall not be precluded from pursuing their claims, on which a final decision was rendered in a non-contentious procedure, in civil or administrative proceedings when such a right is recognised under this or another law.<sup>55</sup> Legal remedies may be filed against rulings issued by notaries public, in their capacity of court trustees, under the same circumstances and rules as court rulings.<sup>56</sup>

The Act on the Enforcement and Security of Claims<sup>57</sup> also envisages legal remedies. Parties to the proceedings may file an appeal and a complaint, within eight days from the day of service of the ruling. The filed appeal or complaint shall stay the enforcement of the ruling only in cases specified by the law. The court ruling on the appeal or complaint may not overturn the first-instance ruling and order a retrial. Reviews of final decisions are not allowed either.<sup>58</sup>

### *3.3.2. Constitutional Appeals*

Constitutional appeals may be filed against individual enactments or actions by state bodies or organisations vested with public powers and violating or denying human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have been exhausted or do not exist (Art. 170). The Constitutional Court Act exceptionally also allows the submission of constitutional appeals by applicants, whose right to a trial within a reasonable time has been violated or in the event the law excludes their right to judicial protection of their human and minority rights (Art. 82). This provision provides for filing of constitutional appeals after the exhaustion of all other effective legal remedies. The ECtHR emphasised that the constitutional appeal should be considered an effective remedy as of 7 August 2008, that being the date when the Serbian Constitutional Court's first decisions on the merits of the appeals had been published.<sup>59</sup>

The appellants may seek the protection of all human rights enshrined in the Constitution or another international instrument binding on the Republic of Serbia.<sup>60</sup> Interpretation of the Constitutional Court's case-law, however, leads to the conclusion that victims of legal lacunae or the failure of the National Assembly, as

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54 *Sl. glasnik SRS*, 25/82 and 48/88 and *Sl. glasnik RS*, 46/95 – other law, 18/05 – other law, 85/ 12, 45/13 – other law, 55/14, 6/15 and 106/15 – other law.

55 Article 27.

56 Article 30z.

57 *Sl. glasnik RS*, 106/16.

58 More on problems arising in enforcement in *2017 Report*, II.11.4.

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

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

the legislator, to legally regulate a particular field, cannot file constitutional appeals and seek the Court's protection on those grounds.<sup>61</sup>

All natural and legal domestic or foreign persons, who are holders of the constitutionally guaranteed human rights and freedoms, are entitled to file a constitutional appeal.<sup>62</sup> A constitutional appeal is not an *actio popularis*, and it needs to be noted that the potential appellant must have personally been the victim of a breach of a constitutionally guaranteed human right or freedom. Other persons (natural persons, state authorities or organisations charged with the monitoring and realisation of human rights) may file a constitutional appeal on behalf of a person whose right or freedom was violated only with his written consent.

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

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

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

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

The Criminal Procedure Code (CPC) provides for the submission of a motion for the protection of legality in the event the Constitutional Court found that a defendant's right had been violated during the criminal proceedings and that the violation affected the lawful and proper adjudication of the matter or that a constitutionally guaranteed human right or freedom of the defendant or another participant in the proceedings had been violated or denied. Under the Civil Procedure Act, the trial of a case in which a final decision had been delivered may be reopened on the motion of the party in the event the Constitutional Court found in its review of the constitutional appeal that the party's human or minority rights or freedoms enshrined in the Constitution had been violated in the civil proceedings, wherefore a decision more favourable for that party had not been delivered. Moving for retrial in such cases is not time-barred.

The Constitutional Court may overturn decisions of lower courts when it finds them in violation of human rights.<sup>63</sup> The Constitutional Court is entitled to award compensation for damages in its decisions finding violations of human rights in the event the appellants had claimed compensation in their constitutional appeals.<sup>64</sup>

In response to BCHR's request for data on the number of constitutional appeals filed with it and its rulings on them, the Constitutional Court referred it to its website, the search engine of which, however, does not allow access to such data.

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

64 See Article 33(3) of the Act Amending the CCA Act and Article 89(3) of the CCA.

## II. INDIVIDUAL RIGHTS

### 1. Prohibition of Torture

#### 1.1. Introduction

The Republic of Serbia is party to all major international treaties prohibiting torture and inhuman or degrading treatment of punishment.<sup>1</sup> Therefore, the legal framework, practice and progress in complying with the absolute prohibition of ill-treatment are subject to periodic reviews by universal and regional human rights bodies.<sup>2</sup>

Given that Serbia is an EU candidate country, headway in this field is also monitored by the European Commission (EC), within negotiations on Chapter 23 covering fundamental rights<sup>3</sup> and Chapter 24 covering asylum and migration.<sup>4</sup>

The constitutional framework is mostly in compliance with international standards. The prohibition of ill-treatment, and safeguards against it are laid down in Articles 25, 27, 28 and 29 of the Constitution.<sup>5</sup> The right to an obligatory and independent medical examination of persons deprived of liberty is the only guarantee not enshrined in the Constitution.

Article 39(3) of the Constitution prohibits the expulsion of aliens except under a decision taken in a procedure stipulated by the law and subject to appeal, provided

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1 European Convention on Human Rights, International Covenant on Civil and Political Rights, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

2 The United Nations Human Rights Committee (CCPR), the United Nations Committee against Torture (CAT), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

3 Measures related to the prohibition of ill-treatment are listed in the section “Fundamental Rights” (Chapters 3 and 3.1) of the Chapter 23 Action Plan, adopted in April 2016 and available at: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023%20Third%20draft%20-%20final1.pdf>.

4 Asylum issues are dealt with in Chapter 2 of the Chapter 24 Action Plan, adopted on 30 March 2015, available at: [http://www.bezbednost.org/upload/document/akcioni\\_plan\\_za\\_poglavlje\\_24\\_-\\_mart\\_2016\\_.pdf](http://www.bezbednost.org/upload/document/akcioni_plan_za_poglavlje_24_-_mart_2016_.pdf).

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

that they are under no risk of persecution based on their race, gender, religion, ethnic origin, nationality, membership in a social group, political opinion, or of a grave violation of their rights guaranteed by this Constitution in the territory they are to be expelled to. Therefore, it may be concluded that the Constitution lays down the principle of *non-refoulement* although it does not devote a separate article to it. The fact that it does not expressly set out that appeals of decisions on forced removal shall have automatic suspensive effect may give rise to problems in practice given that the provisions on this fundamental safeguard against *refoulement* vary from one law to another.

The prohibition of ill-treatment is explicitly laid down also in Article 33(1(7)) of the Police Act<sup>6</sup> and Article 6(2) of the Penal Sanctions Enforcement Act (PSEA).<sup>7</sup> *Refoulement* is expressly prohibited under Article 6(3) of the Asylum and Temporary Protection Act (ATPA)<sup>8</sup> and Article 83(3) of the Aliens Act.<sup>9</sup>

## 1.2. *The Concepts of Torture and Inhuman and Degrading Treatment and Punishment in the National Legal System*

Serbia has inadequately defined the offence incriminating torture as a separate criminal offence. The Criminal Code (CC)<sup>10</sup> still includes two practically overlapping articles incriminating torture: extortion of a confession (Art. 136) and ill-treatment and torture (Art. 137). Furthermore, no distinction is drawn between the simple and qualified forms of extortion of a confession (paragraphs 1 and 2 of Article 136) and the qualified form of torture and ill-treatment committed by an individual with the status of a public official (Article 137(2) in conjunction with paragraph 3 of that Article). The only apparent difference lies in the severity of the penalties laid down for practically identical offences. Extortion of a confession warrants up to ten years of imprisonment, while torture and ill-treatment warrant up to eight years of imprisonment. These provisions give rise to the risk of unequal treatment in identical situations.<sup>11</sup>

The definition of the crime of torture and ill-treatment is overbroad. Namely, under Serbian law, torture and other forms of ill-treatment may be perpetrated by anyone, whereas Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)<sup>12</sup> requires at least some form of involvement of a public official or a person acting in an official capacity for any form of ill-treatment to exist.<sup>13</sup>

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6 *Sl. glasnik RS*, 6/16 and 24/18.

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

8 *Sl. glasnik RS*, 24/18.

9 *Ibid.*

10 *Sl. glasnik RS*, 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16.

11 More in the 2017 Report, II.2.2.1.

12 *Sl. list SFRJ (International Treaties)*, 9/91.

13 The offence has to be either perpetrated directly by a public official or another person acting in an official capacity, or instigated by him, or perpetrated with his consent or acquiescence.

The problems regarding inadequate penalties and the risk of criminal prosecution becoming time-barred were not addressed in the reporting period. The penalties (maximum 10 years' imprisonment for extortion of a confession and maximum 8 years' imprisonment for torture and ill-treatment) are not proportionate to the gravity of the act of torture. On the other hand, the legislator has not eliminated the statute of limitations applying to torture, wherefore a number of cases became time-barred in practice.

In addition to the BCHR, these deficiencies have for years been alerted to by the UN Committee against Torture,<sup>14</sup> the UN Human Rights Committee,<sup>15</sup> the European Commission (EC)<sup>16</sup> and the European Committee for the Prevention of Torture.<sup>17</sup>

### *1.3. National Case-Law on Torture and Ill-Treatment<sup>18</sup>*

The impunity of public officials accused of torture or inhuman or degrading treatment, noted, *inter alia*, in the reports of the Committee against Torture<sup>19</sup> and the Human Rights Committee<sup>20</sup> in 2000, persisted in the reporting period. The latest report reiterating such a view was published by the CPT in June 2018; it found that the authorities had made no efforts or inadequate efforts to thoroughly investigate numerous credible allegations of ill-treatment.<sup>21</sup>

One of the main problems arises from the lack of the human, professional and technical capacities of the public prosecution services, as well as the inadequate legal provisions, which lack a precise definition of the prosecution services' mana-

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14 Concluding observations on the initial report of Serbia, CAT/C/SRB/CO/1, 19 January 2009, para. 5; and Concluding observations on the second periodic report of Serbia, CAT/C/SRB/CO/2\*, 3 June 2015, para. 8.

15 Concluding observations on the second periodic report of Serbia, CCPR/C/SRB/CO/2, 20 May 2011, para. 11; and Concluding observations on the third periodic report of Serbia, CCPR/C/SRB/CO/3, 10 April 2017, paras. 26–27.

16 “Serbia 2016 Report,” European Commission, SWD(2016) 361 final, Brussels, 2016, p. 61, and “Serbia 2018 Report,” European Commission, SWD(2018) 152 final, Brussels, 2018, p. 24.

17 Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017, CPT/Inf (2018) 21, paras. 24 and 28.

18 BCHR will not publish detailed statistical data in this Report since an electronic database on criminal proceedings against public officials, which will facilitate periodic publication of such statistical data, is under construction.

19 Concluding observations on the second periodic report of Serbia, CAT/C/SRB/CO/2\*, 3 June 2015, para. 10; and Concluding observations on the initial periodic report of Serbia, CAT/C/SRB/CO/1, 19 January 2009 para. 10.

20 Concluding observations on the third periodic report of Serbia, CCPR/C/SRB/CO/3, 10 April 2017, paras. 26–27; and Concluding observations on the initial periodic report of Serbia and Montenegro, CCPR/CO/81/SEMO, 12 August 2008, paras. 13–14.

21 Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017, CPT/Inf (2018) 21, pp. 3–5 and paras. 9–32.



gerial role vis-à-vis the police. In most proceedings initiated against police officers suspected of torture and ill-treatment or extortion of confessions, the prosecutors as a rule rely on the Ministry of Internal Affairs. The independence and impartiality of the investigations are undermined because “colleagues are investigating colleagues”.<sup>22</sup>

Therefore, it is obviously necessary to reintroduce the institute of subsidiary prosecution, abolished by the valid Criminal Procedure Code (CPC)<sup>23</sup> in the stage preceding the confirmation of the motion to indict.<sup>24</sup>

The introduction of summary proceedings for all crimes warranting up to eight years’ imprisonment by the CPC is also problematic.<sup>25</sup> In such proceedings, there is no obligation to conduct an investigation and the prosecutors are entitled to order the implementation of individual investigative actions.<sup>26</sup> This issue was alerted to both by CaT back in 2015<sup>27</sup> and by CPT in 2018.<sup>28</sup>

#### *1.4. Guarantees against Ill-Treatment – Rights to Third Party Notification, a Lawyer and an Independent Medical Examination*

Both CPT standards and Serbian legislation provide for three main guarantees against ill-treatment, i.e. three fundamental rights of all persons deprived of liberty by the police: the right to have the fact of their detention notified to a third party of their choice, the right of access to a lawyer, and the right to request a medical examination by a doctor of their choice.<sup>29</sup> These three rights are crucial for protecting these persons from the very outset of their deprivation of liberty, when the risk of ill-treatment by police officers is the greatest, given that the latter often resort to illicit means to collect as much evidence as they can. The importance of protecting the rights of persons deprived of liberty is also reflected in the fact that compliance with these procedural guarantees facilitates the preservation of any evidence of their ill-treatment (e.g. the description of the injuries by their doctor or *ex officio* lawyer) and the rapid identification of the perpetrator.

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22 More in the *2017 Report*, II.2.2.2.

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

24 Article 52 of the CPC, see more in the *2017 Report*, II.2.2.2, and in the CPT Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 May to 5 June 2015, CPT/Inf (2016) 21, para. 20.

25 Article 495, CPC.

26 More in the *2016 Report*, II.2.3.

27 Concluding observations on the second periodic report of Serbia, CAT/C/SRB/CO/2\*, 3 June 2015, para. 10.

28 Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017, CPT/Inf (2018) 21, paras. 24, 26 and 28.

29 CPT Standards – “Substantive” sections of the CPT’s General Reports, CPT/Inf/E (2002) 1 – Rev. 2006; Second General Report on the CPT’s Activities, CPT/Inf (92) 3, Strasbourg, 2007, para. 36; and 12<sup>th</sup> General Report on the CPT’s Activities, CPT/Inf (2002) 15, para. 40.

However, enjoyment of these three rights may be brought into question in Serbia not only because of the vague laws and by-laws, but also because of the inadequate practices of doctors to whom persons with visible traces of violence are brought. That said, the Memorandum of Cooperation, signed in November 2018 by the Serbian Bar Association and the Ministry of Justice and envisaging the establishment of a call centre for the appointment of *ex officio* lawyers throughout Serbia, is encouraging. This call centre is expected to narrow the scope for abuse, i.e. for cherry-picking lawyers not necessarily acting in the best interests of financially disadvantaged suspects and defendants. It is also expected to facilitate the resolution of the problem reiterated by the CPT in its 2018 Report: the passivity of *ex officio* lawyers (appointed to represent the interests of detainees who cannot afford a lawyer); numerous allegations of persons deprived of liberty that their *ex officio* lawyers had advised them to admit the crime they were accused of, that they ignored traces of torture and that they first met their clients when they were brought before a prosecutor or a judge.<sup>30</sup>

No steps were taken in the reporting period to amend Article 26.3 of the Instructions on the Treatment of People in Police Custody,<sup>31</sup> under which police officers must attend the medical examinations of all persons in police custody (and pre-trial detention), which definitely deprives such examinations of any independence and impartiality, in situations when the doctors are to describe the injuries sustained during or after deprivation of liberty and give their assessments of how and when they were inflicted. Furthermore, the CPT concluded that, in scores of cases, the examinations of persons ordered into pre-trial detention after police custody were superficial and that the doctors continued to describe the injuries found on the inmates in a superficial manner. The doctors rarely take the statements of inmates with injuries and, in the vast majority of cases, do not indicate any causal link between one or more objective medical findings and the statements of the person concerned. In its 2018 Report, the CPT said that, “[I]n none of the other prison establishments visited were injuries observed on newly admitted prisoners being properly recorded or reported to prosecutorial and judicial authorities.”<sup>32</sup>

### 1.5. *Respect of the Non-Refoulement Principle*

In terms of international human rights law, the principle of *non-refoulement* entails the prohibition of returning anyone to a country (of origin or a third country) where he is at risk of treatment in contravention of the prohibition of torture or

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30 Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017, CPT/Inf (2018) 21, p. 4 and paras. 10, 35 and 36.

31 *Sl. glasnik RS*, 101/05, 63/09– CC decision and 92/11.

32 Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017, CPT/Inf (2018) 21, pp. 4–5 and paras. 10, 12, 37, 57–62.

inhuman or degrading treatment or punishment. Therefore, the principle of *non-refoulement* also has the character of *jus cogens* and imposes upon states the obligation to perform rigorous scrutiny in order to ascertain whether there is a risk of treatment in contravention of Article 3 in the country of return every time they implement a procedure that may ultimately result in a decision to expel a person to such a country.<sup>33</sup>

Unfortunately, hardly any of the national procedures that may ultimately result in forced removal envisage safeguards against *refoulement* or, on the other hand, the authorities conducting such procedures do not review the risks of ill-treatment with the requisite scrutiny.<sup>34</sup>

The new Asylum and Temporary Protection Act (ATPA) entered into force in June 2018 and the new Aliens Act entered into force in October 2018. The ATPA introduces a novelty with respect to the safe third country concept,<sup>35</sup> which may be applied only in the event the third country provides the asylum seeker access to its territory and the asylum procedure pursuant to a document (issued by the Asylum Office) notifying its relevant authorities that his application had not been reviewed on the merits in Serbia.<sup>36</sup>

The new Aliens Act introduces a novelty regarding decisions denying aliens entry into Serbia on various grounds, which are enumerated in Article 15(1). The fact that the appeals of such decisions do not have suspensive effect may give rise to problems in the future. The question arises how and with whom an alien, denied entry in a summary procedure and located in the neighbouring country, will file such an appeal and how he will be able to promptly alert to the risk of *refoulement*. Paragraph 3 of this Article, however, does lay down that aliens not fulfilling the requirements to enter Serbia may nevertheless be allowed to access its territory on humanitarian grounds, if their entry is in the interest of the Republic of Serbia, or if so required under Serbia's international obligations.

There are concerns that the Serbian border police still lack the capacity to adequately review all circumstances that may indicate the existence of the risk of *refoulement*. The best solution would be to amend Article 15 and lay down that appeals shall have suspensive effect. On the other hand, the Aliens Act provides for appeals of rulings ordering the aliens' forced removal from the country with suspensive effect in the event they would face the risk of *refoulement*.<sup>37</sup> It is, however, too early to assess the initial effects of the Aliens Act and, notably, how the police

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33 *J.K. and Others v. Sweden*, App. No. 59166/12, (2016), para. 83, and *E.G. v. Sweden*, App. No. 43611/11, (2016), para. 115.

34 *Ibid.*

35 More on the problems that had occurred while the prior Asylum Act was in force in the 2017 Report, II.2.2.4 and BCHR's Asylum Reports, available at: [www.azil.rs](http://www.azil.rs).

36 Article 45, ATPA.

37 Article 83(3), Aliens Act.

dealing with the aliens' status issues assess risks of *refoulement* given that this law entered into force in October 2018.<sup>38</sup>

## 2. Right to Liberty and Security of Person

### 2.1. Legal Framework

The Republic of Serbia is a signatory of international treaties protecting the right to liberty and security of people from unlawful and arbitrary deprivation of liberty. The International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) enumerate all the situations in which deprivation of liberty is justified, as well as the requirements that must be fulfilled for the lawful restriction of this right (Art. 9 of the ICCPR and Art. 5 of the ECHR).

In its interpretation of Article 5 of the ECHR, the European Court of Human Rights found that, in addition to refraining from actively violating the right to liberty and security of person, states also have the duty to take the requisite measures to secure everyone within their jurisdiction protection from unlawful deprivation of liberty. The competent state authorities are thus under the obligation to take measures to ensure the effective protection of vulnerable persons, including reasonable measures to prevent deprivation of liberty which the authorities knew or ought to have known about. The state is responsible under the Convention for the deprivation of liberty of people by private individuals perpetrated with the acquiescence or connivance of its authorities or for not ending such situations.<sup>39</sup>

Articles 27–31 of the Constitution of the Republic of Serbia<sup>40</sup> guarantee the right to liberty and security of person. As opposed to most of the other rights it enshrines, the Constitution does not lay down the grounds for restricting the right to liberty and security of person; Article 27 merely sets out that deprivation of liberty shall be allowed on the grounds and in a procedure stipulated by the law. However, the law may restrict the right to liberty and security only on the grounds and in a procedure not in contravention of ratified international treaties, given that Article 194 of the Constitution lays down that ratified international treaties and generally

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38 The consequences of implementing the prior Aliens Act are elaborated in the *2017 Report*, II.2.2.4 and BCHR's *Asylum Reports*, available at: [www.azil.rs](http://www.azil.rs).

39 See the ECtHR judgments in the cases of *El-Masri v. the former Yugoslav Republic of Macedonia*, App. No. 39630/09; *Storck v. Germany*, App. No. 61603/00; *Riera Blume and Others v. Spain*, App. No. 37680/97; *Rantsev v. Cyprus and Russia*, App. No. 25965/04 and *Medova v. Russia*, App. No. 25385/04.

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

recognised rules of international law are part of Serbia's legal order and that Serbian laws may not be in contravention of them.

Under the Constitution, persons deprived of liberty by a state authority shall be notified immediately and in a language they understand of the reasons for their deprivation of liberty, the charges against them and their rights, including the right to notify a person of their choice of their deprivation of liberty without delay. The Constitution also guarantees everyone deprived of liberty the right to appeal their deprivation of liberty with the court, which is under the obligation to urgently rule on the lawfulness of the deprivation of liberty and order release in the event it finds that the deprivation of liberty is unlawful. Persons deprived of liberty in the absence of a court decision must be brought before the competent court without delay but not later than 48 hours, or released. Persons deprived of liberty in the absence of a court decision shall immediately be told that they have the right to remain silent and the right to be questioned in the presence of their defence lawyer of their own choosing or a lawyer who will extend them legal aid free of charge in the event they cannot afford one.

Under Article 30 of the Constitution, the court may order pre-trial detention of a person reasonably suspected of committing a crime and if his pre-trial detention is necessary to conduct criminal proceedings. The Constitution guarantees the right of that person to be questioned during the hearing on pre-trial detention. In the event that his pre-trial detention was ordered without hearing him first, he must be brought before the competent judge within 48 hours from the moment of deprivation of liberty and the judge shall review the pre-trial detention order. A reasoned and written court decision ordering pre-trial detention must be served on the detainee within 12 hours from the moment of detention; the court is under the obligation to rule on an appeal of the pre-trial detention order within 48 hours from the moment of its submission. Under the Constitution, the court is under the obligation to keep the duration of pre-trial detention of the defendant to a minimum, taking into account the grounds for pre-trial detention. Pre-trial detention during investigation may not exceed six months. The detainee must be released as soon as the grounds for his pre-trial detention have ceased to exist.

Restrictions of the right to liberty and security are provided in a set of criminal law regulations, as well as in laws governing some other procedures.

The Criminal Code (CC)<sup>41</sup> envisages terms of imprisonment (that may be enforced in a penitentiary or in the convict's home),<sup>42</sup> and other measures restricting the right to liberty and security of convicted felons and individuals who committed a crime in a state of diminished capacity (security measures of mandatory psychi-

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41 *Sl. glasnik RS*, 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16.

42 Article 45, CC.

atric treatment and institutionalisation, and of mandatory treatment of alcohol and substance abuse).<sup>43</sup> The Juvenile Justice Act (JJA)<sup>44</sup> lays down the requirements for ordering juvenile imprisonment and individual measures involving the deprivation of liberty of juvenile criminal offenders (e.g. their referral to a juvenile home or to a specialised treatment and rehabilitation institution).<sup>45</sup> The Criminal Procedure Code (CPC)<sup>46</sup> sets out a number of measures restricting the freedom of movement, primarily of suspects;<sup>47</sup> some of these measures amount to deprivation of liberty (e.g. pre-trial detention, house arrest – with or without electronic surveillance, maximum 48-hour police custody of suspects).<sup>48</sup> Apart from police arrests, the CPC provides for the institute of citizen's arrest, authorising anyone to arrest a person they catch committing a crime prosecuted *ex officio*.<sup>49</sup>

The police have other important powers interfering in the right to liberty and security in addition to the ones vested in them with respect to preliminary investigation proceedings. For instance, the Police Act<sup>50</sup> authorises the police to bring individuals in,<sup>51</sup> hold them in custody and temporarily restrict their freedom of movement;<sup>52</sup> the Misdemeanour Act<sup>53</sup> allows the police to bring individuals in and hold them in custody;<sup>54</sup> the Road Traffic Safety Act<sup>55</sup> entitles the police to hold drivers under the influence of alcohol or psychoactive substances for up to 12 hours and drivers caught committing a misdemeanour and expressing the intention of continuing to commit it for up to 24 hours.<sup>56</sup> The Police Act and the Act on the Protection of Persons with Mental Disabilities govern the mandatory hospitalisation of persons with mental disabilities in the relevant health institu-

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43 See Arts. 81–84, CC. Articles 83 and 84 on the latter two security measures are entitled *Mandatory Treatment of Alcoholics* and *Mandatory Treatment of Drug Addicts*. Not only do these titles amount to labelling; they also fail to reflect the actual content of the measures, the purpose of which is to eliminate the circumstances or conditions potentially influencing the offenders to commit criminal offences in the future (Art. 78, CC). The BCHR therefore suggests that the titles of these articles be rephrased into *Mandatory Treatment of the Alcohol Use Disorder* and *Mandatory Treatment of Substance Use Disorder*.

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

45 See Articles 21–23 and 28–32, JJA.

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

47 See, e.g. Articles 288–290, CPC.

48 See Articles 208–223 and 294, CPC.

49 Article 292, CPC.

50 *Sl. glasnik RS*, 6/16.

51 Communal policemen are entitled to take individuals, whose identity they cannot establish, to the police for identification. See Article 20 of the Communal Police Act, *Sl. glasnik RS*, 51/09.

52 Articles 82–90, Police Act.

53 *Sl. glasnik RS*, 65/13, 13/16 and 98/16 – CC Decision.

54 Articles 190–193, Misdemeanour Act.

55 *Sl. glasnik RS*, 41/09, 53/10, 101/11, 32/13 – CC Decision, 55/14, 96/15 – other law and 9/16 – CC Decision.

56 Articles 283 and 284, Road Traffic Safety Act.

tions.<sup>57</sup> The Domestic Violence Act<sup>58</sup> authorises police officers to bring in domestic violence suspects to the relevant police units and hold them in custody for up to eight hours.<sup>59</sup>

The Aliens Act<sup>60</sup> provides for the deprivation of liberty of aliens in the MIA-run Aliens Shelter, pending their return or forced removal. Such deprivation of liberty may last up to 90 days and may be extended another 90 days.<sup>61</sup> Similarly, the Asylum and Temporary Protection Act (APTA)<sup>62</sup> allows the deprivation of asylum seekers in the Aliens Shelter for up to three months; their detention may be extended another three months.

The national legislation and its implementation suffer from numerous deficiencies with respect to compliance with the aforementioned constitutional guarantees and safeguards laid down in the ratified international treaties. For example, although the Constitution guarantees the right of people to be questioned before the *decision* on their pre-trial detention is taken,<sup>63</sup> judges have in practice been extending pre-trial detention without questioning them about the reasons for extending their pre-trial detention, although they are available to the court. The reason for such an unconstitutional practice may lie in the distinction between the concepts of *ordering and extending* pre-trial detention in the text of the CPC<sup>64</sup> and its misinterpretation to the effect that the courts are only under the obligation to hear the detainees the first time they order their pre-trial detention<sup>65</sup> (although extension of pre-trial detention amounts to ordering it for a new period of time). Furthermore, judges have not always listed the substantive law grounds for 48-hour custody in their rulings, only the reasons for ordering pre-trial detention – which are the grounds for the arrest but not the only grounds for keeping the suspects in custody for 48 hours (from the moment of arrest until they are brought before a judge).

Lots of problems have arisen with respect to non-compliance of the law with the constitutional guarantee, under which persons deprived of liberty in the absence of a court order must be brought before the competent court without delay, within 48 hours at most. For instance, the Act on the Protection of Persons with Mental Disabilities provides for the deprivation of liberty of persons subject to involuntary hospitalisation for up to four or five days in the absence of a court

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57 See Article 56 of the Police Act and Articles 21–37 of the Act on the Protection of Persons with Mental Disabilities, *Sl. glasnik RS*, 45/13.

58 *Sl. glasnik RS*, 94/16.

59 Article 14, Domestic Violence Act.

60 *Sl. glasnik RS*, 24/18.

61 Articles 87–88 of the Aliens Act.

62 *Sl. glasnik RS*, 24/18.

63 Article 30(2), Constitution of the Republic of Serbia.

64 Article 214(1), CPC.

65 Article 212(2) of the CPC lays down that the court shall question the accused about the reasons for ordering his pre-trial detention before rendering a ruling *ordering* pre-trial detention.

order.<sup>66</sup> Furthermore, the Aliens Act and the ATPA allow persons detained in the Aliens Shelter to file a lawsuit (Aliens Act) or an appeal (ATPA) contesting their deprivation of liberty; neither of these two laws, however, impose upon the courts the obligation to review the decisions on the deprivation of liberty of aliens and asylum seekers. Therefore, these laws allow for the deprivation of liberty of aliens and asylum seekers in the absence of a court order; such deprivation of liberty, which is in contravention of the Constitution, occurs frequently in practice and often lasts well beyond 48 hours.

And, finally, national law (specifically, the Aliens Act, ATPA and the Border Control Act<sup>67</sup>) does not regulate the deprivation of liberty of aliens and asylum seekers in the airport transit zone. Aliens who, in the view of the police officers, do not fulfil the requirements to enter Serbia and are to be returned to their country of origin or a third country, are detained in the transit zone of the Belgrade airport for periods lasting between several hours and several days. They are not treated as persons deprived of liberty either by the law or by the police officers (they are not served with detention orders or informed of the rights of persons deprived of liberty, the courts do not review the decisions ordering their deprivation of liberty in the airport transit zone, etc.), although their detention in the airport transit zone fulfils all the requirements to be considered deprivation of liberty.<sup>68</sup>

## 2.2. *Major Developments with Respect to the Right to Liberty and Security in the Republic of Serbia in 2018*

*Large-Scale Arrest Campaigns.* – The police continued with their campaigns of arresting large numbers of persons suspected of committing various crimes in 2018. For instance, in late April, the police arrested 41 people suspected of drug-related crimes in “a number of separate campaigns” across Serbia, notably in Kikinda, Novi Sad, Sremska Mitrovica, Pančevo, Belgrade, Smederevo, Bor, Jagodina, Vranje and Pirot.<sup>69</sup>

Another 41 people suspected of various crimes – sexual intercourse with a child, prohibited sexual acts, domestic violence, sexual harassment, neglect and abuse of minors – were arrested in early May 2018, again across Serbia. These arrests were made in Subotica, Sombor, Kikinda, Novi Sad, Pančevo, Belgrade, Smederevo, Požarevac, Bor, Zaječar, Valjevo, Užice, Kragujevac, Kraljevo, Niš, Prokuplje, Leskovac, Vranje and Novi Pazar.<sup>70</sup>

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66 See Articles 25–29 of the Act on the Protection of Persons with Mental Disabilities.

67 *Sl. glasnik RS*, 24/18.

68 See the ECtHR judgment in the case of *Riad and Idiab v. Belgium*, App. Nos. 29787/03 and 29810/03.

69 More is available in Serbian at: <https://goo.gl/CfLvqD>.

70 More is available in Serbian at: <https://goo.gl/G93FX5>.



Simultaneous arrests of large numbers of persons across the country, who are not interconnected as accomplices or members of an organised (crime) group, within one and the same police campaign may indicate that the police and prosecution services had for some time been aware of the reasons to order the pre-trial detention of some of these people (that they had been planning and organising an escape, destroying traces and evidence of their crimes, influencing witnesses, accomplices and accessories after the fact, planning to commit the crimes again or complete their commission, et al), but had not deprived them of liberty until the moment to launch the police arrest campaign came. Apart from undermining the likelihood of successfully completing the investigations and criminal proceedings, such timing also jeopardised public order and the public interest of protecting the citizens' rights by the prevention of new crimes.

*Months-long deprivation of liberty for causing panic via Facebook.* – In mid-June 2018, one man appealed to his Facebook friends not to drink the Belgrade tap water because it was cancerous. His appeal was quickly reposted by the social networks and Internet editions of some online media and he was arrested on the suspicion of causing panic and disorder.<sup>71</sup> The pre-trial detention order, to prevent him from committing the crime again, was replaced by house arrest 13 days later; the latter order has been repeatedly extended on the same grounds (to prevent his “access to a computer and the Internet”<sup>72</sup>), although the other people living in the apartment were using their computers and the Internet freely. Justification of this months-long deprivation of liberty is especially disputable given that the man deleted his post the same day and expressed remorse for posting it, and that he concluded a plea bargain with the prosecutor in early August 2018.<sup>73</sup>

### *2.3. Measures Ensuring the Defendants' Presence at Trials and Unhindered Conduct of Criminal Proceedings*

The BCHR in 2018 continued performing its regular activities aimed at improving the status of persons deprived of liberty and reducing the overcrowding of the penitentiaries, which involved the monitoring of the judicial authorities' practices in order measures to ensure the presence of the defendants and the unhindered conduct of criminal proceedings (Arts 188–223 of the CPC), as well as those regarding the deferral of criminal prosecution (Arts. 283–284 of the CPC) and plea bargains (Arts 313–319 of the CPC).

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71 Article 343, CC.

72 Excerpt from the judgment of the XY Court in Belgrade, Ref. No. KPP PO3. br. 22/18, 27, September 2018.

73 More is available in Serbian at: <http://www.yucom.org.rs/zbog-fejsbuk-objave-lisen-slobode-vec-cetiri-meseca/>.

*Comparative Overview of Defendants Ordered Pre-Trial Detention and Alternatives to Pre-Trial Detention Ensuring Their Presence and Unhindered Conduct of Criminal Proceedings from 2015 to 30 June 2018<sup>74</sup>*

Measures	2015	2016	2017	1 Jan – 30 June 2018
Pre-Trial Detention	4,549	5,634	6,754	3,017
Bail	29	31	33	13
House Arrest	295 (152 of which under electronic surveillance)	428 (215 of which under electronic surveillance)	760 (544 of which under electronic surveillance)	329 (231 of which under electronic surveillance)
Prohibition of Leaving One's Place of Residence	426	612	512	226
Restraining Order	276	372	1,029	877

*Number of Defendants in Pre-Trial Detention at the End of the Year<sup>75</sup>*

2014	2015	2016	2017
1,593	1,539	1,736	1,577

*2.3.1. Damages for Unlawful Pre-Trial Detention*

The following Table provides an overview of the data on damages for unlawful pre-trial detention granted by the Ministry of Justice Damages Commission and obtained in response to BCHR's request for access to information of public importance:

Year	No. of filed claims	No. of claims reviewed by the Commission	No. of settlements	Total amounts of damages awarded in settlements (in RSD)
2014	913	208	19	1,669,000
Until 30 June 2015	450	172	20	1,939,500

74 The data reflect the case-law of over 90% Basic and Higher Courts that responded to BCHR's request for access to information of public importance. Some courts explained that they were unable to respond to BCHR's request because they did not have an automated system facilitating retrieval of statistical data or the manpower. Lack of human resources was, for instance, quoted as the reason by the President of the Novi Sad Higher Court, who said that the court security guards also worked in the Registry.

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

Year	No. of filed claims	No. of claims reviewed by the Commission	No. of settlements	Total amounts of damages awarded in settlements (in RSD)
2016	940	243	61	15,485,000
2017	815	235	38	10,747,500
2018	787	257	69	14,418,000
Total	3,905	1,115	207	44,259,000 (circa € 370,000)

The above Table shows that 3,905 damage claims for unlawful deprivation of liberty were filed with the Justice Ministry Damages Commission in the 2014–2018 period, that the Commission reviewed 1.115 claims and concluded settlements with 207 of the claimants.

The number of days of unlawful deprivation of liberty cannot be precisely ascertained, since the Commission has not kept such records since 2014.

The available data do, however, show that the Damages Commission paid a total of 44,259,000 RSD (or around € 370,000 in damages in the 2014–2018 period.

As far as damage claims over wrongful detention ruled on by civil courts are concerned, the Solicitor General Offices' data show that 632.485.716 RSD (around 5.300.000 EUR) were awarded by the courts from 1 November 2013 to 31 December 2018.

Sixty-five judgments upholding damage claims over unlawful deprivation of liberty became final in 2018. The plaintiffs had been deprived of liberty for a total of 10.500 days and were altogether awarded 38.508.220 RSD (around 326,000 EUR).

#### *2.4. Penal Policy and Its Effects on the Enjoyment of the Right to Liberty and Security of Person*

A number of Serbian penitentiaries were still overcrowded in 2018. During its visit to the Niš penitentiary in late June, BCHR established it incarcerated 200 more people than it had the capacity to on 31 May 2018. During its visit to the Sremska Mitrovica penitentiary in October, the BCHR found that it held around 530 more prisoners that it had the capacity to under the standards provided by law.

The new penitentiary in Pančevo, which can hold around 500 persons deprived of liberty (300 convicted and 200 remanded prisoners), opened on 1 October 2018. The construction of this penitentiary cost €23 million.<sup>76</sup> At the opening ceremony, the Justice Minister said that the problem of overcrowding was much smaller

<sup>76</sup> See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/drustvo/otvoren-novi-zatvor-u-pancevu-po-evropskim-standardima/npq13ft>.

than it used to be and that the ratio of beds to inmates now stood at 100:106.<sup>77</sup> Although all inmates from the Pančevo District Prisons were transferred to the new penitentiary by early November,<sup>78</sup> no amendments were made by the end of the year to the Rulebook on Assignment of Criminal and Misdemeanour Convicts and Remanded Prisoners to Penitentiaries<sup>79</sup> to specify which categories of persons deprived of liberty were to be transferred to the new penitentiary in Pančevo. The reconstruction of the women's penitentiary in Požarevac, launched in 2017, was to be completed by end May 2019. The building of a new pavilion with 216 beds and the reconstruction of the 7<sup>th</sup> pavilion of the Požarevac – Zabela establishment were also under way.<sup>80</sup>

In its June 2018 Report on the visit to Serbia, the CPT said that overcrowding remained a problem in the nine pre-trial sections of the establishments visited. The CPT noted that the recent expansion of the prison estate combined with the further development of the probation system has produced positive results in tackling overcrowding. Thus, the overall prison population has remained stable at 10,600 inmates since June 2015 while the capacity of the prison estate has increased by nearly 10% to 9,800 places. The proportion of pre-trial detainees remains at 15% of the prison population and at the time of the visit stood at 1,600. The situation was worsened by the fact that pre-trial detainees were locked in their cells for 22 or more hours a day for months on end, with no access to purposeful activities and numerous judicially-imposed restrictions throughout the pre-trial period. The CPT described such a regime as a relic of the past and recommended the Serbian authorities devise and implement a comprehensive regime of out-of-cell activities for remand prisoners and called for fundamental changes to the current concept of remand detention.<sup>81</sup>

*Statistical Data on Terms of Imprisonment Imposed in the 2013–2017 Period*<sup>82</sup>

Duration	2013	2014	2015	2016	2017	Total
1–3 Months	1,947	2,529	1,194	1,293	950	7,913
3–6 Months	3,003	3,772	2,116	2,269	2,000	13,160

77 See the *RTS* report, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/drustvo/3274835/otvaren-novi-zatvor-u-pancevu.html>.

78 See the *RTS* report, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/drustvo/3312254/useljen-novi-zatvor-u-pancevu.html>.

79 *Sl. glasnik RS*, 31/15.

80 See more in Serbian at: <https://www.ekapija.com/news/1994532/nice-novi-zenski-paviljon-u-kazneno-popravnomo-zavodu-u-pozarevcu-zavrsetak-celokupnog>.

81 Available at: <https://rm.coe.int/16808b5ee7>.

82 See the Statistical Office of the Republic of Serbia website: [www.stat.gov.rs](http://www.stat.gov.rs).

*Individual Rights*

Duration	2013	2014	2015	2016	2017	Total
6–12 Months	2,728	3,184	2,422	2,423	2,199	12,957
1–2 Years	1,536	1,631	1,438	1,520	1,448	7,573
2–3 Years	993	947	875	930	770	4,515
3–5 Years	665	677	550	705	628	3,227
5–10 Years	260	191	171	192	156	969
10–15 Years	48	59	34	49	38	228
15–20 Years	14	23	3	24	18	80
30–40 Years	9	11	13	9	11	53
40 Years	1	2	4	5	2	14
Total	11,204	13,026	8,820	9,419	8,220	50,689

*Statistical Data on the Number of Convicts Admitted to Penitentiaries  
to Serve Their Terms of Imprisonment in the 2014–2017 Period<sup>83</sup>*

Duration	2014	2015	2016	2017	Total
> 3 Months	1,455	1,365	1,246	1,007	5,073
3–6 Months	1,429	1,377	1,123	1,216	5,145
6–12 Months	1,263	1,353	1,190	1,151	4,957
1–2 Years	1,083	934	1,037	1,048	4,102
2–3 Years	693	675	678	716	2,762
3–5 Years	755	633	763	736	2,887
5–10 Years	328	331	340	290	1,289
10–15 Years	67	49	54	70	240
15–20 Years	38	18	21	19	96
30–40 Years	/	24	15	18	57
40 Years	7,111	6,759	6,467	6,271	26,608

<sup>83</sup> The data were obtained from the Penal Sanctions Enforcement Administration in response to BCHR's request for access to information of public importance.

*Number of Inmates in Serbian Penitentiaries at the End of the Year<sup>84</sup>*

Year	2014	2015	2016	2017
Convicted prisoners	7,737	7,670	7,958	8,081
Remanded prisoners	1,593	1,539	1,736	1,577
Security measures	387	425	489	549
Juvenile prison	14	17	19	20
Correctional measures	228	194	200	192
Inmates Serving Misdemeanour Prison Sentences	329	219	267	349
Total	10,288	10,064	10,669	10,768

*Number of Conditional Sentences (with or without protective supervision) Imposed in the 2013–2017 Period<sup>85</sup>*

2013	2014	2015	2016	2017
17,152	18,307	19,290	17,514	17,948

*Number of Conditional Sentences under Protective Supervision Imposed in the 2014–2018 Period<sup>86</sup>*

2014	2015	2016	2017	2018
29	57	42	31	22

*Community Service Sentences Imposed in the 2014–2018 Period<sup>87</sup>*

Year	2014	2015	2016	2017	2018
Number of imposed sentences	371	353	329	391	309
Number of served sentences	351	285	127	280	238

84 *Ibid.*

85 See the SORS website: [www.stat.gov.rs](http://www.stat.gov.rs).

86 Data obtained from Basic and Higher Courts and the Penal Sanctions Enforcement Administration in response to requests for access to information of public importance.

87 Data obtained from the Penal Sanctions Enforcement Administration and the Basic and Higher Courts in response to requests for access to information of public importance.

*Number of Home Incarceration Sentences  
Imposed in the 2014–30 June 2018 Period<sup>88</sup>*

2014	2015	2016	2017	1 Jan – 1 June 2018
627	1,567	2,411	2,311	1,193

*Number of Parole Decisions in the 2014–2017 Period<sup>89</sup>*

2014	2015	2016	2017
1,243	1,583	1,539	1,560

*Number of Early Release Decisions in the 2014–2017 Period<sup>90</sup>*

2014	2015	2016	2017
20	10	45	21

The above statistical data lead to the conclusion that national courts prefer sentencing convicted felons to short prison sentences rather than to alternative sanctions. They imposed a total of 50.689 prison sentences in the 2013–2017 period. Of this number, 34.030 (circa 67%) of the convicts were sentenced to terms of imprisonment not exceeding one year, 7.573 (around 15%) to sentences not exceeding two years' imprisonment and 4.515 (around 9%) to prison sentences not exceeding three years. On the other hand, the courts imposed 7.641 home incarceration sentences and community service in 1.792 cases.

In the light of the above statistics and the fact that home incarceration may be imposed for offences warranting up to one year imprisonment<sup>91</sup> and that community service may be imposed for offences warranting up to three years' imprisonment<sup>92</sup>, these numbers show that the judicial authorities have been imposing alternatives to incarceration extremely rarely although they had thousands of opportunities to opt for them.

The data indicate a mild increase in the number of releases on parole and a fluctuation of the number of early releases from one year to another.

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88 *Ibid.*

89 Data obtained from the Penal Sanctions Enforcement Administration in response to a request for access to information of public importance.

90 *Ibid.*

91 Article 45(5), CC.

92 Article 52, CC.

### 3. Equality before the Court and Fair Trial

#### 3.1. *Fair Trials and Court Efficiency*

Article 14 of the ICCPR and several articles of the ECHR (Arts. 6 and 7 and Arts. 2, 3 and 4 of Protocol No. 7 to the ECHR) guarantee equality before the courts, which entails numerous procedural safeguards in civil and criminal proceedings and the right to have court decisions reviewed by higher courts. The requirement regarding the independence and impartiality of the judiciary shall derive also from Article 47 of the EU Charter of Fundamental Rights when Serbia joins the EU.

Articles 32–36 of the Constitution of the Republic of Serbia govern the right to a fair trial. Under these provisions, everyone is entitled to a public hearing before an independent and impartial tribunal within a reasonable time, which shall deliver a judgement on their rights and obligations.

#### 3.2. *Public Character of Court Hearings*

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

The public character of court hearings is a general rule in national criminal, civil, misdemeanour and administrative law, as is the exclusion of the public from all proceedings involving minors. All procedural laws lay down that the rulings excluding the public must be reasoned and made public.<sup>93</sup> Reasonings of rulings excluding the public must be of a quality justifying derogation from the general rule on the public character of hearings<sup>94</sup> and satisfy the proportionality requirement. Civil and criminal law sets out that the enacting clauses of the judgments shall always be read out publicly, whether or not the public had been excluded from the proceedings, but allows the courts to decide whether to exclude the public from the reading of their reasoning.<sup>95</sup>

The application of the principle of the public character of hearings has been significantly limited in practice by the lack of publicly available information on trial schedules. Most courts do not promptly publish the trial schedules, the numbers of the cases or the names of the judges hearing them.

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93 More in the *2016 Report*, I.4.7.

94 Article 6 of the ECHR.

95 Article 353 of the Civil Procedure Act and Article 425 of the Criminal Procedure Code.



### 3.3. Equality before the Law and Equal Legal Protection

The Constitution guarantees everyone the right to legal assistance (Art. 67) and equal legal protection without discrimination (Art. 21). The free legal aid system was, however, still not operational, although its establishment has for years been on the decision-makers' priority list, apparently declaratively.

In November 2018, the National Assembly adopted amendments to Article 204 of the CPA<sup>96</sup> proposed by the Government, under which a party that has obtained the property or right which is the subject of litigation may enter the proceedings instead of the plaintiff with the latter's written consent submitted to the court, but a party that has obtained the property or right which is the subject of litigation still requires the consent of both the plaintiff and the defendant to enter the proceedings instead of the defendant. The legislator explained that the amendment was proposed in line with the Non-Performing Loans Strategy to address the issue of the sale of non-performing loans by banks, in the event litigation on the loan initiated by the bank was under way since the buyer of the loan originally could not join the lawsuit without the consent of both parties to the proceedings. Therefore, the legislator proposed that the CPA be amended to facilitate the loan buyers' entry into the ongoing proceedings. The new provisions eliminate the equality of the parties to the proceedings and provide the plaintiffs with a much greater advantage than the defendants, and not just in cases of banks and non-performing loans. The equality of the parties to the proceedings in a procedural law was disrupted because of one kind of plaintiff. The failure to discuss the amendments with the European Commission, in order to ensure their compliance with the *acquis* because they are negligible, is unacceptable given their effects.

#### 3.3.1. Legal Aid Act

The lack of an adequate free legal aid system is one of the problems undermining the fairness of proceedings in Serbia. The Government of the Republic of Serbia adopted the Strategy on the Development of a Free Legal Aid System in the Republic of Serbia for the 2011–2013 Period.<sup>97</sup> It subsequently adopted the 2013–2018 Judicial Reform Strategy,<sup>98</sup> envisaging the adoption of both the Action Plan for its implementation and a law comprehensively governing free legal aid.

Serbia was the only country in Europe that did not have a law on free legal aid; some laws included provisions on free legal aid but they provided for only specific forms of legal aid. In November 2018, the National Assembly adopted the Legal Aid Act<sup>99</sup> after a twelve-year delay. The Act will be applied as of 1 October 2019.

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96 *Sl. glasnik RS*, 87/18.

97 Available at: [https://arhiva.mpravde.gov.rs/images/Strategy%20for%20free%20legal%20aid%20system%20development%20in%20Republic%20of%20Serbia\\_180411.pdf](https://arhiva.mpravde.gov.rs/images/Strategy%20for%20free%20legal%20aid%20system%20development%20in%20Republic%20of%20Serbia_180411.pdf).

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

99 *Sl. glasnik RS*, 87/18.

Under the Legal Aid Act, the Ministry of Justice shall maintain the Register of Legal Aid Providers, a nationwide public electronic database. Unregistered natural and legal persons extending legal aid shall be fined between 5,000 and 100,000 RSD and between 50,000 and 500,000 RSD respectively.<sup>100</sup> All legal aid providers shall be registered in the Register and shall account for their work to the Ministry of Justice; lawyers shall be subject to disciplinary proceedings before their bar associations. Lawyers extending legal aid shall be paid fees set by the state and associations shall be compensated through donations and projects.

During the public debate on the Preliminary Draft, bar associations and CSOs extending legal aid to date expressed their dissatisfaction with the provisions entitling only lawyers and city/municipal legal aid departments to extend legal aid and limiting the direct provision of legal aid by associations to asylum and anti-discrimination proceedings. The NGOs submitted their comments and sought the amendment of this Article.<sup>101</sup>

To date, indigent citizens unable to afford a lawyer have been extended legal aid by NGOs, law clinics and local self-government units. This is why the NGOs held that they should be allowed to continue doing so by the Legal Aid Act as well. The bar associations sharply opposed the idea,<sup>102</sup> referring to Article 67 of the Constitution, under which legal aid shall be extended by lawyers and legal aid departments of local self-government units.<sup>103</sup>

The Legal Aid Act allows civic associations to extend legal aid if they have lawyers on staff, in the event that the procedural laws lay down that the parties must be represented by a lawyer. This provision was criticised, particularly in the light of the fact that the Civil Procedure Act allows natural persons to be represented by a lawyer, relative, spouse, a representative of the local self-government unit free legal

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100 The law practically prohibits, under threat of fine, the extension of legal aid, primarily in the form of legal advice and preparation of submissions, by all law graduates. The state's intention to introduce a general prohibition of the provision of any form of legal aid by law graduates, who are not on the list of legal aid providers and are not seeking compensation from the state for their legal advice, is incomprehensible.

101 They held that the Preliminary Draft limited civic associations to extending legal advice only under the Asylum and Anti-Discrimination Acts, whilst disregarding other laws allowing them to provide such services. The table of comments is available in Serbian at: <https://goo.gl/rM8z7A>.

102 Several representatives of the Belgrade Bar Association threatened they would go on strike if the lawyers' views were not taken on board and that they would file an initiative with the Constitutional Court to examine the constitutionality of the draft law when it was submitted to parliament for adoption.

103 The associations claimed that this Article of the Constitution had to be interpreted in accordance with the aim it pursued: to mitigate the financial inequalities among citizens and facilitate access to justice. The Constitution also provides for the restriction of a civil right only if and to the extent necessary to achieve a democratic interest. It is unclear which interest is violated by providing NGOs with the possibility of extending legal aid if they are qualified for legal representation.

aid department who passed the Bar, a representative of a trade union who passed the Bar and is employed in their company in labour disputes, and legal persons to be represented by lawyers and their employees who are law graduates who passed the Bar.<sup>104</sup> Under the General Administrative Procedure Act, parties may be represented by any person with legal capacity, with the exception of persons engaged in unlicensed legal practice.<sup>105</sup>

Civic associations extending legal aid to date emphasised during the debate that free legal advice and preparation of submissions accounted for the vast majority of legal aid services, and that only rarely did the clients need to be represented in court or in dealings with state authorities. Furthermore, practice has demonstrated a great need for legal aid, corroborated by the data on the number, breakdown and socio-economic status of the population and the increasing need for judicial protection, especially of “vulnerable groups”. They called on the state to allocate responsibility for extending legal aid to all interested service providers in the best interest of Serbia’s citizens.<sup>106</sup>

The Act was also criticised as unsustainable. Namely, under this law, legal aid providers shall be compensated for their services from the Serbian budget, as well as donations and project funding. Therefore, allocation of sufficient funding for this purpose in the state budget will be the main requirement for the enforcement of this law. The legislator explained<sup>107</sup> that additional funds needed to be secured for the enforcement of the law, which could be grouped into two categories: a) funds for professional and administrative affairs and other concomitant costs, and b) funds to compensate legal aid service providers. The legislator estimated the requisite funds by referring to the data in the Serbian Free Legal Aid Fiscal Impact Analysis, which the World Bank prepared for the Justice Ministry back in 2013.<sup>108</sup>

### 3.4. *Case-Law Harmonisation*

The constitutional principle, under which everyone shall be equal before the law, is violated by non-aligned case law. Divergent judicial assessments are possible and normal, but this divergence cannot be of such proportions so as to result in totally different decisions regarding identical or nearly identical facts. In order to

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104 Article 85, CPA.

105 The question arises whether the Bar Association will contest this Article as well, as it allows non-lawyers to represent parties and take legal actions that will have the same effect as if they had been taken by the parties themselves.

106 The Act also discriminates against law graduates depending on where they work. It is unclear why law graduates working in local self-government units are allowed to extend legal aid and issue rulings granting legal aid, but law graduates working in social work centres, courts, prosecution services or civic associations are not.

107 The statement of justification of the law is available in Serbian at: <https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>.

108 Available at: <https://goo.gl/VXKdTg>.

preclude this, the courts have to deliver thoroughly reasoned judgments in every single case and thus provide the parties with the right to reasoned court decisions.

The Supreme Court of Cassation and the Appellate Courts play a crucial role in harmonising the case law. The amendments to the Act on the Organisation of Courts aim to address this problem by envisaging joint sessions of the Appellate Courts and their notification of the Supreme Court of Cassation of disputable issues relevant to the work of the courts.<sup>109</sup> A database facilitating the courts' insight in decisions delivered by other courts<sup>110</sup> and their perusal of the available and user-friendly website with European Court of Human Rights case-law would contribute to case-law harmonisation.

The Chapter 23 Action Plan envisages a number of activities to be undertaken by the end of 2016, with a view to aligning the case-law. Some of them – such as the analysis of the normative framework governing the issues of binding case law, right to a legal remedy and jurisdiction for ruling on legal remedies, publication of court judgements and legal views taking into account the opinions of the Venice Commission, and changes of the normative framework governing these issues – were not implemented by the set deadlines. The 4/2016 Report on the Implementation of the Chapter 23 Action Plan<sup>111</sup> ascribed the failure to implement the activities to the need to appoint new Working Group members and for it to start work, due to the changes in the top echelons of the Ministry of Justice, the High Judicial Council and the State Prosecutorial Council. These activities remained outstanding in 2018 as well. The 2/2018 Report on the Implementation of the Chapter 23 Action Plan said that case-law activities envisaged in the Supreme Court of Cassation Activity Plan and the Agreement of the Appellate Courts Presidents were conducted during the year but that the legal amendments providing for the binding effect of the case-law were not adopted. The Report said the Supreme Court of Cassation and Appellate Courts judges continued holding regular meetings on civil and criminal matters with a view to aligning the case-law.<sup>112</sup>

In its latest Opinion No. 921/2018 on the Draft Amendments to the Constitutional Provisions on the Judiciary of 25 June 2018,<sup>113</sup> the Venice Commission said that careful consideration had to be given as to how a uniform application of the law was to be guaranteed as this difficult question touched upon the internal

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

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

111 The 4/2016 Report on the Implementation of the Chapter 23 Action Plan, available at: <https://www.mpravde.gov.rs/files/Report%20no.%204-2016%20on%20implementation%20of%20Acti%20on%20plan%20for%20Chapter%2023.pdf>.

112 See the 2/2018 Report on the Implementation of the Action Plan for Chapter 23, pp 272–273, available at: <https://www.mpravde.gov.rs/files/Report%20no.%202-2018%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>.

113 Paragraphs 28–36, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)011-e).

independence of judges. It noted that the European Court of Human Rights held that conflicting court decisions or judgments were an inherent trait of any judicial system which was based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction.

Conflicting decisions rendered at last instance, according to the ECtHR, are in breach of the fair-trial requirement when several conditions come together.<sup>114</sup> The Draft Constitutional Amendments and the 2013–2018 National Judicial Reform Strategy<sup>115</sup> propose the creation of a separate body to deal with this issue, but the Venice Commission expressed strong reservations with respect to any body outside the judiciary assuming such tasks and emphasised that case law sharing by, for instance, case law departments in last instance courts (which can also be established in lower courts) would be the better choice. The Venice Commission suggested that the Supreme Court ensure uniform application of the law by the courts through its case-law. The Venice Commission also noted that if the legislature was not satisfied with the interpretation of the law by the courts, it could change the law to that effect.

### *3.5. Judicial Efficiency and Length of Proceedings*

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

This prompted the Supreme Court of Cassation (SCC) to adopt the Amended Backlog Reduction Programme for the 2016–2020 period<sup>116</sup> in August 2016.<sup>117</sup> The extent to which the envisaged measures improved protection of the right to a trial within a reasonable time was still unclear at the end of the year. According to SCC's data, a large number of cases alleging violations of the right to a trial within a reasonable time were filed in the first half of 2018, more than in all of 2017. A total of 41,624 cases concerning the right to a trial within a reasonable time were processed in that period; 11,747 of them were still pending in June 2018. Most of the cases concerned enforcement of final court decisions (the enforcement of labour-related claims was terminated under the imperative norms of the Privatisation Act).<sup>118</sup>

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114 See the ECtHR judgment in the case of *Cupara v. Serbia*, App. No. 34683/08.

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

116 Available at: <http://www.vk.sud.rs/sites/default/files/files/ResavanjeStarihPredmeta/Unified%20Backlog%20Reduction%20Plan%20Final%20Translation%20ENG.pdf>.

117 More in the *2016 Report*, II.4.4.2.

118 Supreme Court of Cassation Semi-Annual Report on the Work of Courts (January-June 2018), available in Serbian at: <https://www.vk.sud.rs/sites/default/files/attachments/KNJIGA%20KONACNA-SRPSKI%20%28%29.pdf>.

At its meeting in May 2018, the Working Group Monitoring the Implementation of the Backlog Reduction Programme concluded that the Serbian courts still had large backlogs and were not achieving the planned objectives and that the problems had to be identified.<sup>119</sup> The Supreme Court of Cassation said in its Semi-Annual Report on the Work of Courts that 2,842 judges had completed 176,202 cases pending over two years in the first six months of the year (88,448 of which did not concern enforcement of court decisions).

According to this report, 1,400 cases in all fields except enforcement of claims had been pending for over 10 years at the end of June 2018. The share of such “old” cases in the total number of pending cases before Basic Courts stood at 23.49% and they accounted for 13.65% of cases processed by these courts. The Supreme Court of Cassation estimated that, at this rate, the number of “old” cases dealt with by the end of the year would equal the number of those completed in 2017, provided that the 133 judicial vacancies in the Basic Courts created in the meantime were filled. The SCC said that backlog clearance was exacerbated by the lack of judges, 412 altogether, due to the Constitutional Court’s ban on employment of new judges and harmonisation of regulations on judicial appointments.

In its Conclusion<sup>120</sup> after its meeting in September 2018, the Working Group Monitoring the Implementation of the Backlog Reduction Programme noted that the strategic goals of backlog reduction had not been fully implemented. It therefore asked the Ministry of Justice to change the definition of “old” cases in the Court Rules of Procedure to denote cases pending over three years rather than over two years from the day of filing.

Supreme Court of Cassation President Dragomir Milojević said that both the efficiency and quality of the judiciary have improved significantly. He noted that most court decisions had been upheld on appeal and only 19% of them quashed. He said that criticisms of the courts’ slowness were unjustified and attributed them to subjective impressions and sensationalist attitudes towards the judiciary; he, however, conceded that there were 1,578 cases, which have been pending in Serbian courts for over ten years, and said it was impermissible to have even one case pending for so long.<sup>121</sup>

Mediation is one of the measures that can help relieve the judiciary of its backlog. In June 2017, the SCC President and Justice Minister enacted the Guidelines for Enhancing the Use of Mediation in the Republic of Serbia.<sup>122</sup> The Guidelines qualified as unsatisfactory the results of the enforcement of the Act on Mediation in Dispute Resolution,<sup>123</sup> which came into effect on 1 January 2015, and said

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119 The 2/2018 Report on the Implementation of the Chapter 23 Action Plan, 1.3.6.5.

120 Available in Serbian at: <https://www.vk.sud.rs/sites/default/files/attachments/Zakljuci-10-09.pdf>.

121 More in the *Politika* report, available in Serbian at: <https://goo.gl/kDXwbT>.

122 The Guidelines are available at: <https://www.mpravde.gov.rs/files/20170628%20Joint%20Guidelines%20for%20Enhancing%20the%20Use%20of%20Mediation%20SCC%20MoJ%20HCC.PDF>.

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

that systemic measures needed to be enacted to ensure that courts, too, substantially supported mediation as an alternative mode of dispute resolution. The Guidelines set out 22 measures for enhancing the use of mediation. Mediation is not mandatory in Serbia and the courts offer it in case the parties wish to take matters into their own hands, rejecting a judge's verdict. It is used mainly in cases that concern property rights; family relations, such as inheritance, divorce or co-ownership; but also in commercial and financial issues, such as debt restructuring.

This form of alternative dispute resolution has not yet genuinely been embraced, despite attempts to popularise it. At the opening of the Mediation Info Service in the Belgrade Economic Court, the Justice Minister said that around 250 cases had been dealt with by mediation in the first half of the year,<sup>124</sup> but the Justice Ministry did not publish on its website a semi-annual report on the number of cases closed in this manner, although it is under the obligation to submit semi-annual reports within the Chapter 23 negotiation processes.

The 2/2018 Report on the Implementation of the Chapter 23 Action Plan noted headway in the development of the mediation system. It said that 12 organisations had been licenced to train mediators since the law came into effect, that 1,184 people had completed the basic training and that 567 persons had completed specialised training in mediation. As of end June 2018, 716 mediators, most of them from the ranks of lawyers, were registered in Serbia. The Report, however, noted that mediation was still mostly available in cities – 44.4% of the mediators were concentrated in Belgrade and the rest were working in other large Serbian cities.<sup>125</sup>

### 3.6. *Right to a Trial within a Reasonable Time*

The backlog courts have been struggling under have led to violations of the right to a trial within a reasonable time. Under the Constitution, everyone is entitled to a public hearing *within a reasonable time* before an independent and impartial tribunal already established by the law, which shall hear and pronounce a judgment on their rights and obligations, grounds for suspicion that led to the initiation of the proceedings and charges against them.<sup>126</sup>

The National Judicial Reform Strategy envisages measures for addressing the problem, including the identification and reassignment of the backlog, electronic case management, horizontal reallocation of judges and court staff whilst respecting the constitutional guarantees and with adequate stimulation; resolution of a significant number of cases by enforcement agents and notaries public, amendments of substantive and procedural laws in order to improve the efficiency and legal certainty.

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124 More is available in Serbian at: <https://www.mpravde.gov.rs/vest/21212/otvorena-info-sluzba-medijacije-u-privrednom-sudu-u-beogradu-.php>.

125 See pp. 204–217 of the Report, available at: <https://www.mpravde.gov.rs/files/Report%20no.%202–2018%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>.

126 Article 32(1).

The Act on the Protection of the Right to a Trial within a Reasonable Time came into force on 1 January 2016.<sup>127</sup> This law provides for the judicial protection of the right to a trial within a reasonable time of all parties to the proceedings, apart from the public prosecutors. Proceedings on violations of this right are urgent and free of charge. Parties that prove within the statutory timeframe that their right to a trial within a reasonable time had been violated are entitled to just satisfaction. The Act provides for three types of just satisfaction: right to pecuniary compensation, right to the publication of a written statement by the Solicitor General's Office finding a violation of the party's right to a trial within a reasonable time and the right to the publication of the judgment finding a violation of this right. Parties are entitled to file claims seeking financial compensation (ranging from 300 to 3000 Euro) within a year from the day they acquire the right to just satisfaction.

Although the Act has been in force for two years now, no conclusion could be drawn on the extent to which it has addressed one of the greatest challenges regarding respect for the right to a fair trial.<sup>128</sup> However, although damages are paid pursuant to court decisions rendered in accordance with this Act and the decisions of the Constitutional Court, the state has confronted a new problem: the awarded damages are so low that the persons granted it still have the status of victim because of a violation of their right to a trial within a reasonable time. For instance, the Constitutional Court awarded €800 of damages to an applicant, who claimed a violation of his right to a fair trial because the court proceedings in which he demanded the payment of his salary arrears took 11 years. The applicant complained to the ECtHR, which held that he had not lost his status as a victim given the duration of the proceedings and because the sum awarded to him did not amount to appropriate redress for the violation suffered. The ECtHR found Serbia in violation of Article 6(1) of the Convention and indicated it pay the applicant €3,100 in respect of pecuniary damage.<sup>129</sup>

Given that the ECtHR has taken such a view in other similar cases against Serbia as well, it may be concluded that the provisions of the Act on the Protection of the Right to a Trial within a Reasonable Time should be construed and enforced in the light of ECtHR case-law and that the victims of the violation of the right to a trial within a reasonable time should be provided with sufficient redress at the domestic level rather than in Strasbourg given that the ECtHR has held that once the Serbian Constitutional Court finds that the applicants' right to the determination

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

128 Eight of the 26 judgments in which the ECtHR found Serbia in violation of the ECHR in 2017 regarded violations of the right to a trial within a reasonable time. See more at: [https://echr.coe.int/Documents/Stats\\_violation\\_2017\\_ENG.pdf](https://echr.coe.int/Documents/Stats_violation_2017_ENG.pdf).

129 See the ECtHR judgment in the case of *Milovanović v Serbia* of 19 December 2017, App. No. 19222/16.



of their claim within a reasonable time had been violated – thereby acknowledging the breach complained of and, effectively, satisfying the first condition laid down in the Court’s case law, “[T]he applicants’ victim status then depends on whether the redress afforded was adequate and sufficient, having regard to just satisfaction as provided for under Article 41 of the Convention.”<sup>130</sup>

### 3.7. *Dismissal of Cases as Time Barred*

Dismissal of cases due to the expiry of the statute of limitations is another major problem the Serbian judiciary has been facing for years now. According to the SCC’s Semi-Annual Report on the Work of Courts, a total of 49,613 cases (48,212 of which in Misdemeanour Courts) were dismissed as out of time in the first half of 2018.

Court and prosecutorial inefficiency are cited as the main reason for the dismissal of cases because the statute of limitations expired. This problem is exacerbated by abuses of the right to a defence, notably trial adjournments, numerous evidentiary motions and ill-founded motions to recuse the judges or the prosecutors. The judges and prosecutors, however, claim that they are not intentionally protracting the proceedings and that they last so long because of the courts’ and prosecution services’ huge workloads. Representatives of the Association of Prosecutors of Serbia claimed that prosecution services lacked deputy public prosecutors to conduct investigations and effectively and efficiently control the work of the police. The following two high-profile cases illustrate their point well: the persons who ordered and conducted the Savamala demolition in 2016 remained unidentified and only one police officer was punished for lack of diligence;<sup>131</sup> no indictment was filed in the Jelena Marjanović murder.<sup>132</sup>

The consequences of the dismissal of cases as time barred are borne by the tax-payers. Under the Criminal Procedure Code and the Misdemeanour Act, the courts that conducted the proceedings are under the obligation to compensate the costs and expenses sustained by the parties, whose criminal or misdemeanour cases have been dismissed as out of time. Considering the length of, above all, the criminal proceedings and the gravity of the crimes the defendants had been charged with, the state pays them huge amounts of money in respect of the costs of their defence counsels every year.

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130 See, e.g. paragraph 23 of the ECtHR judgment in the case of *Hrustić and Others v. Serbia* of 9 January 2018, App. No. 8647/16.

131 See the *2017 Report*, II.12.4. and the *NI* report at: <http://rs.n1info.com/English/NEWS/a386266/Belgrade-policeman-pleads-out-of-Savamala-case.html>.

132 See the *Blic* reports, available in Serbian at: <https://www.blic.rs/vesti/hronika/ubistvo-jelene-marjanovic-apelacioni-sud-ponistio-optuznicu-protiv-zorana-marjanovica/6tl2qvw> and <https://www.blic.rs/vesti/hronika/obrt-sta-ce-biti-sa-optuznicom-protiv-zorana-marjanovica/e1z2r7m>.

### 3.8. *Presumption of Innocence and Other Guarantees for Criminal Defendants*

Three forms of offences are punishable under Serbian law: criminal offences, misdemeanours and economic offences. Under Article 33(8) of the Constitution, all natural persons charged with punishable offences shall enjoy all the rights afforded to criminal defendants. The Constitution and other relevant laws are in compliance with international standards with regard to the following rights guaranteed criminal defendants under Article 6 of the ECHR: to be presumed innocent, to be informed promptly, in a language which they understand and in detail, of the nature and cause of the accusations against them, to have the free assistance of an interpreter if they cannot understand or speak the language used in court, to defend themselves in person or through legal assistance of their own choosing, to examine or have examined witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. There are, however, problems in ensuring these procedural safeguards in practice.

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

Given that violations of the presumption of innocence are not incriminated, the problem of the respect of this safeguard rests on the moral and political responsibility of the media and public figures, which may give rise to problems in societies such as Serbia's, lacking legal culture and general awareness of the importance of respecting human rights.

This issue is also dealt with in the Chapter 23 Action Plan, which aims to raise awareness that judicial independence is undermined by criticisms of court decisions, as well as violations of the presumption of innocence, especially by politicians.

Under Article 73 of the Public Information and Media Act,<sup>133</sup> the media may not qualify anyone as the perpetrator of a punishable offence or declare anyone guilty of or liable for an offence prior to a final court decision. A misdemeanour fine ranging between 50,000 and 150,000 RSD shall be levied against the Chief Editor of the outlet that violates this provision.<sup>134</sup> The Chapter 23 Action Plan envisages the more efficient prosecution of misdemeanours at the request of the ministry charged with the media and information and the keeping of precise statistics on such proceedings by the Supreme Court of Cassation.<sup>135</sup>

According to the 2/2018 Report on the Implementation of the Chapter 23 Action Plan, neither the Misdemeanour Courts nor the Misdemeanour Appellate

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133 *Sl. glasnik RS*, 83/14, 58/15 and 12/16 – authentic interpretation.

134 Article 140 Public Information and Media Act.

135 Chapter 23 Action Plan, p. 42, available at: <https://mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>.

Court had any cases claiming violations of Article 73 of the Public Information and Media Act in the first half of the year.

The Chapter 23 Action Plan envisages the organisation of various workshops for journalists to raise their awareness of European standards and national norms on respect for court decisions and reporting on court proceedings. However, although no such workshops have been reported since June 2017, the 2/2018 Report on the Implementation of the Chapter 23 Action Plan stated that this activity was being successfully implemented.

The press and public figures violated the presumption of innocence in 2018 as well. The Judges' Association of Serbia, for instance, reacted to a comment Chairman of the Commission Investigating Murders of Journalists Veran Matić made about the trial of the assassins of Slavko Ćuruvija, claiming he had violated the presumption of innocence and exerted undue influence on the court.<sup>136</sup> The Chairman of the Belgrade Bar Association even filed an initiative requesting that violation of the presumption of innocence be qualified as a criminal offence warranting up to three years' imprisonment and a fine.<sup>137</sup>

In January 2016, the Serbian Government issued a conclusion adopting the Code of Conduct of the members of government regulating the commenting of court decisions and proceedings, also envisaged by the Chapter 23 Action Plan.<sup>138</sup> The Code of Conduct of the People's Deputies was adopted in July 2017.<sup>139</sup> However, although such behaviour is prohibited by the parliamentary and government Codes of Conduct, the public in 2018 frequently had the opportunity hear MPs and Government members violating the right to presumption of innocence. In view of the fact that neither Code lays down penalties for non-compliance, the many violations of their provisions went unpunished. The Judges' Association of Serbia condemned such violations on a number of occasions during the year. It for instance, called on the High Judicial Council to react to the statements about a judge and her ruling made by a representative of the Serbian Progressive Party at a press conference in Šabac in May 2018, qualifying them as continuous pressures on the judiciary<sup>140</sup> and to the statement of Valjevo Mayor, who said that "some judges should be removed from the judicial system because they belong to a specific political option."<sup>141</sup> The Judges' Association said such forms of pressure had to stop to enable all citizens of Serbia to avail themselves of prompt and fair judicial protection if they find themselves in court, which is possible only if the judges are independent and impartial.

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136 See the *Insajder* report, available in Serbian at: <https://goo.gl/hz7MMk>.

137 See the *Novi magazin* report, available in Serbian at: <http://www.novimagazin.rs/vesti/burna-rasprava-o-novinarstvu-i-pitanju-krsenja-pretpostavke-nevinosti>.

138 See more in *Report 2016*, I.4.9.

139 *Sl. glasnik RS*, 71/17.

140 The press release is available in Serbian at: <http://www.sudije.rs/index.php/aktuelnosti/saopstenja-za-javnost/402-2018-06-05-09-09-24.html>.

141 See the *N1* report, available in Serbian at: <https://goo.gl/yCc3p8>.

### 3.9. E-Justice

The digitalisation of the judiciary and introduction of ICT tools in its work significantly contribute both to the efficiency and transparency of the judiciary.

The 2013–2018 National Judicial Reform Strategy<sup>142</sup> and the Chapter 23 Action Plan envisage the establishment of a nationwide e-judicial system, as a tool for improving the efficiency and transparency of the entire judicial process and building on the existing electronic case management system. The availability of reliable and uniform judicial statistics and introduction of a system for monitoring the length of trials is another goal set out in these documents. Steps were taken in 2018 to digitalise the court system, in order to facilitate their operations and reduce the length of proceedings.<sup>143</sup>

Apart from the existence of different case management programmes, each of which has its limitations, the problem also lies in the lack of staff qualified for entering the data in the programmes.

A case weighting programme, prerequisite for including case complexity among the assignment criteria, was not introduced in 2018 either, wherefore a number of other Chapter 23 Action Plan activities were not implemented in the reporting period.<sup>144</sup> This activity was to have been implemented in the latter half of 2016; the working group for evaluating the complexity of the cases held its last meeting on 27 September 2017. Another outstanding activity foreseen in the Action Plan and aiming at achieving the above goals involves the amendment of the part of the Court Rules of Procedure dealing with the criteria for defining data input pursuant to a pre-defined list of data that must be entered to allow for the monitoring of the statistical parameters of judicial efficiency. The establishment of the system, involving the assignment of a single reference number to a case until a final decision on it is rendered is also planned. The assignment of single case reference numbers would, *inter alia*, address the problem of inflating the number of cases in the records. The legislator did not amend the articles of the Judges' Act on the random allocation of cases, to facilitate the implementation of the case weighting programme.

## 4. Right to Privacy and Confidentiality of Correspondence

### 4.1. Legal Framework

The ECHR and the ICCPR guarantee the right to privacy, which includes the protection of family life, home and correspondence. The ICCPR also guarantees the right to protection of honour and reputation. Although this right is not explicitly

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

143 See more in Serbian at: <https://goo.gl/S3UMeo>.

144 The 2/2018 Report on the Implementation of the Chapter 23 Action Plan, p. 78.

listed in the ECHR, the European Court of Human Rights (ECtHR) acknowledged a similar interpretation of the concept of privacy in its judgments.<sup>145</sup> According to ECtHR case law, privacy encompasses, inter alia, the physical and the moral integrity of a person, sexual orientation,<sup>146</sup> relationships with other people, including both business and professional relationships.<sup>147</sup> The ECtHR accepts a wider interpretation of the concept of privacy and considers that the content of this right cannot be pre-determined in an exhaustive manner.<sup>148</sup>

Serbia is also a signatory of the CoE Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data,<sup>149</sup> The States Parties to the Convention are obliged to undertake the necessary measures to ensure the legal protection of fundamental human rights with regard to the automatic processing of personal data. The Additional Protocol to the Convention, which Serbia also ratified,<sup>150</sup> obliges states to establish oversight authorities and regulates in greater detail the trans-border flow of the personal data to a recipient, which is not subject to the jurisdiction of a party to the Convention.

The Constitution of Serbia guarantees the inviolability of physical and mental integrity (Art. 25), inviolability of the home (Art. 40), and confidentiality of letters and other means of communication (Art. 41). Although the Constitution does not include an explicit provision on the respect for the right to private life, the Constitutional Court of Serbia is of the view that this right is an integral part of the constitutional right to dignity and the free development of the personality,<sup>151</sup> enshrined in Article 23 of the Constitution.

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

The Constitution includes a general provision prescribing that personal data collection, retention, processing and use shall be regulated by the law and explicitly lays down that the use of personal data for any other purpose save the one they were collected for shall be prohibited and punishable as stipulated by the law, unless such use is necessary to conduct criminal proceedings or protect the security of the Republic of Serbia. Under the Constitution, everyone shall be entitled to be notified of

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145 See *Pfeifer v. Austria*, ECtHR, App. No. 10802/84, 25 February 2007 and *London and Others v. France*, ECtHR, App. Nos. 21279/02 and 36448/02 (2007).

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

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

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

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

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

151 CC Decision No. UŽ-3238/2011, p. 9.

the personal data collected about them, in accordance with the law, and the right to court protection in case of their abuse (Art. 42).

The Criminal Code incriminates specific forms of violations of the right to privacy in Articles 139–146, dealing with: inviolability of the home, unlawful search, unauthorised disclosure of secrets, violations of the confidentiality of letters and other mail, unauthorised wiretapping, recording and photographing, and unauthorised publication of another's text, portrait or recording. The Criminal Code incriminates disclosure or dissemination of information about someone's family circumstances that may harm his honour or reputation (Art. 172).

#### 4.2. Confidentiality of Correspondence – Legal Framework

Article 41 of the Constitution guarantees the right to confidentiality of letters and other means of communication and allows for derogations from this right only on the order of the court and if such derogations are necessary to conduct criminal proceedings or protect the security of the state in the manner prescribed by the law. State interference in the confidentiality of correspondence and other means of communication may be only temporary. The Constitution, unfortunately, does not specify that measures infringing on the confidentiality of communication must be necessary in a democratic society. The Constitutional Court has, however, introduced this standard in the Serbian legal system by referring to Article 8 of the ECHR and ECtHR's case law in its Decision.<sup>152</sup>

Provisions of laws<sup>153</sup> governing the surveillance of communications have been the subject of many polemics in the recent years. The Constitutional Court of Serbia has in the recent years declared unconstitutional the provisions of the Act on the Military Security Agency and the Military Intelligence Agency, the Electronic Communications Act and the Security Information Agency Act that were not in compliance with the constitutionally proclaimed right to confidentiality of letters and other means of communication.<sup>154</sup> Furthermore the National Assembly brought the impugned provisions of the Criminal Procedure Code in conformity with the Constitution on its own motion, without waiting for the Constitutional Court to rule on their constitutionality.

The protection of the right to privacy has been addressed by EU authorities as well. Following a series of terrorist attacks in London and Madrid, the European Union in 2006 adopted the Data Retention Directive 2006/24/EC,<sup>155</sup> which, *inter alia*,

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152 CC Decision IUz 1245/10.

153 The Act on the Military Security Agency and the Military Intelligence Agency (*Sl. glasnik RS*, 88/09 and 55/12 – CC Decision); the Electronic Communications Act (*Sl. glasnik RS*, 44/10, 60/13 – CC Decision and 62/14); the Criminal Procedure Code (*Sl. glasnik RS*, 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14) and the Security Information Agency Act (*Sl. glasnik RS*, 42/02, 111/09, 104/13, 65/14 – CC Decision and 66/14).

154 See the 2014 Report, II.6.4.

155 Available at: <https://goo.gl/bTtRHc>.

lays down the operators' obligation to retain data on their users' communications, enabling the state authorities to access the data of all electronic communication users at any time. In April 2014, the EU Court of Justice declared Directive 2006/24/EC invalid and took the view that retention of communication data under the Directive interfered in a particularly serious manner with the fundamental rights to respect for private life and to the protection of personal data.<sup>156</sup>

#### 4.3. *Retention of the Users' Data and Communication Data – Access to Retained Data*

The Preliminary Draft Electronic Communications Act endorsed by the Government in October 2017 was not submitted to parliament for adoption by end of the 2018, although a representative of the Ministry of Trade, Tourism and Telecommunications earlier vowed it would be adopted in the autumn of 2018.<sup>157</sup> The latest version of the Preliminary Draft is available on the website of the Ministry, which specifies that its authors took into account the suggestions made during the public debate held in late 2016.<sup>158</sup> The Preliminary Draft includes a number of provisions aligning national law with the EU regulatory framework on electronic communications and aimed at developing the electronic communications market: technology and service neutral spectrum usage rights, joint spectrum usage and leasing, cross-border data transmission, user contract digitisation, number transfer service in one workday, et al.

However, although the Preliminary Draft Act largely aligns the national provisions with the *acquis*, attention needs to be paid to several issues directly affecting the right to privacy. Namely, the Preliminary Draft states that data retention shall be governed by a separate law. The Preliminary Draft includes a number of provisions which explicitly state that data retention shall be governed by a separate law. For instance, Article 145 of the Preliminary Draft lays down that wiretapping, recording, retaining and all forms of interception and surveillance of electronic communications and related electronic traffic data shall be prohibited with a view to ensuring the confidentiality of electronic communications and related electronic traffic data in public communication networks and publicly available electronic communication services, except in cases prescribed by the law *governing the lawful interception and retention of data*. Article 140, on data location processing allows operators of public communication networks and publicly available electronic communication services extending value added services to process end user location data other than traffic data, provided that the persons the data relate to are rendered unidentifiable or with

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156 See: 2017 Report, II 5.2.

157 See the *Nova ekonomija* report of 31 August 2018, available in Serbian at: <https://novaekonomija.rs/vesti/vesti-iz-zemlje/srbija-na-jesen-dobija-novi-zakon-o-elektronskim-komunikacijama>.

158 The Preliminary Draft Electronic Communications Act is available in Serbian at: <https://goo.gl/ff6KjV>.

their prior consent, to the extent and within the timeframe necessary for that purpose; paragraph 2 of this Article, however, lays down that this provision *shall not apply to location data retained in accordance with the law governing data retention*. Furthermore, in its transitional and final provisions (Art. 165), the Preliminary Draft lays down that the provisions of the valid Electronic Communications Act on retention of data shall be in effect until the separate law regulating the matter is adopted.

The deadline by which such the separate law is to be adopted has not been defined, which means that the disputable provisions of the valid Act and the Rulebook will be in force even after the new law on electronic communications is enacted.<sup>159</sup> Furthermore, in view of the legislator's practice to date and intentions, there are concerns that this law on interception of electronic communications and data retention will mirror the valid provisions or even reduce the existing level of guaranteed rights and vest the state authorities with powers to interfere in the privacy of Serbia's population to an even greater extent.

In July 2018, the Regulatory Agency for Electronic Communications and Postal Services (RATEL) adopted the Rulebook on General Requirements for Performing Electronic Communications Activities under the General Authorisation Regime pursuant to Articles 8 and 38 of the Electronic Communications Act.<sup>160</sup> The Rulebook sets out in detail the general requirements for performing electronic communication activities and specifies the terms and conditions for conducting all or individual electronic communication activities under the general authorisation regime, and lays down the relevant forms. The Rulebook does not bring anything new to the protection of privacy and confidentiality of correspondence. Articles 33 and 36 essentially copy-paste the provisions in the Act or refer to them.

#### 4.4. Families and Family Life

According to the ECtHR, family life is interpreted in terms of the actual existence of close personal ties.<sup>161</sup> It comprises a series of relationships, such as marriage, children, parent-child relationships,<sup>162</sup> and unmarried couples living with their children.<sup>163</sup> Even the possibility of establishing a family life may be sufficient to invoke protection under Article 8.<sup>164</sup> Other relationships that have been found to be protected by Article 8 include relationships between siblings, uncles/aunts and nieces/nephews,<sup>165</sup> adoptive parents and adopted children, and grandparents and grandchildren.<sup>166</sup> Moreover, a family relationship may also exist in situations where there

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159 See more in the 2017 Report, II.5.3.

160 *Sl. glasnik RS*, 58/18.

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

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

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

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

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

166 See *Bronda v. Italy*, ECtHR, App. No. 22430/93 (1998).



is no blood kinship, in which cases other criteria are to be taken into account, such as the existence of a genuine family life, strong personal relations and the duration of the relationship.<sup>167</sup>

The Constitution does not include a provision protecting the family within the right to privacy and merely deals with the family from the aspect of society as a whole. Under Article 66(1), “families, mothers, single parents and children (...) shall enjoy special protection.”

Article 63 of the Constitution guarantees the right to freely decide whether or not to have children. The fact that this right is guaranteed “to all” is disputable. The question arises how one can guarantee this right to the prospective father, if the mother decides not to have the baby (a right she is guaranteed under this Article).

The Constitution guarantees everyone the right to freely enter and dissolve a marriage and prescribes that entry into and the duration and dissolution of a marriage are based on spousal equality (Art. 62). The Constitution also lays down that a marriage is valid only with the freely given consent of a man and woman, whereby it effectively renders any legislation allowing homosexual marriages unconstitutional. Although the regulation of this issue is within the jurisdiction of states, the question arises whether it had been necessary to establish it as a constitutional principle, thus impeding any legislative changes. This solution is particularly problematic in cases in which one spouse had undergone a sex change, such as a case the Constitutional Court reviewed.<sup>168</sup> These cases also give rise to the problem of recognising the parental rights of the person who had undergone a sex change.

The procedure of entering a marriage in Serbia is administrative in character and relatively simple. Although the Family Act legally equated marital and extramarital unions, numerous regulations governing individual rights arising from family relations have not been brought in conformity with this legal norm yet.

The provisions of the Family Act<sup>169</sup> are in accordance with international standards in terms of the right to privacy. The Act prescribes that everyone has the right to the respect of family life (Art. 2(1)). It also guarantees the children’s right to maintain personal relationships with the parents they are not living with, unless there are reasons for partly or fully depriving those parents of parental rights or in case of domestic violence (Art. 61). The children are also afforded the right to maintain personal relationships with other relatives they are particularly close to (Art. 61 (5)). The Family Act is also the first law in Serbia that takes into account the parents’ interests in their children’s education, as it entitles them to provide their children with education in keeping with their ethical and religious convictions (Art. 71).

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167 See *X., Y. and Z. v. the United Kingdom*, ECtHR, App. No. 21830/93 (1997). In its judgment in the case *Schalk and Kopf v. Austria*, ECtHR, App. No. 30141/04 (2010), the ECtHR for the first time took the view that a stable relationship between two persons of the same sex living together fell under the scope of family life protected under Article 8.

168 CC Decision UŽ-3238/2011.

169 *Sl. glasnik RS*, 18/05 and 72/11.

The drafting of the Civil Code entered its 12<sup>th</sup> year. In the area of family law, the provisions defining marriage and surrogacy provoked the most debates. Namely, the Preliminary Draft<sup>170</sup> provides a traditional definition of marriage but it also suggests the need to comprehensively review the possibility of regulating same-sex unions that would be governed by a separate law. The Preliminary Draft also defines surrogacy and its forms, the elements of surrogacy contracts and who is and is not entitled to conclude such contracts, abortions of surrogate mothers, etc. The Preliminary Draft, however, includes a footnote specifying that these articles are formulated as an illustration of provisions to be included in the Civil Code if the possibilities of assisted reproductive technology and surrogacy are upheld in the public debate, in which experts specialising in various areas and professions will actively take part and that these issues, especially surrogacy, can be regulated by a separate law.

In August 2018, the European Court of Human Rights delivered its judgment in the case of *Grujić v. Serbia*.<sup>171</sup> The applicant had complained that the Serbian authorities had failed to apply the domestic law in a way which could have effectively secured his contact rights and that they should have taken more steps to help him re-establish meaningful contact with his children, who were in the custody of their mother. Namely, the Stara Pazova Municipal Court on 27 December 2005 issued an interim contact order giving the applicant contact with the children every other weekend and during the first half of the summer and winter school holidays. Fourteen attempts at enforcement carried out by a court bailiff in the presence of the applicant were made, and, on one occasion, a police officer was also present. The enforcement court held two hearings at which it heard both children and it regularly requested the Social Work Centre's recommendations and opinions. The Stara Pazova Municipal Court found the mother guilty of non-compliance with the interim contact order in criminal proceedings and ordered her to pay a fine.

The ECtHR first noted that the essential object of Article 8 was to protect an individual against arbitrary action by the public authorities and that there are positive obligations inherent in effective respect for family life. It went on to say that, in both contexts, regard had to be had to the fair balance that had to be struck between the competing interests of the individual and of the community as a whole, and that the State enjoyed a certain margin of appreciation in both contexts. The Court said that, where the measures at issue concerned disputes between parents over their children, it was not for it to substitute itself for the competent domestic authorities in regulating contact questions, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation. It said that the obligation of the national authorities to take measures to facilitate contact by a non-custodial parent with children after divorce was not, however, absolute, that access may not be possible immediately and may require preparatory measures to be taken. It noted that the nature and extent of such preparation de-

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170 The Preliminary Draft of the Civil Code is available in Serbian at: <https://www.mpravde.gov.rs/files/NACRT.pdf>.

171 *Grujić v. Serbia*, ECtHR, App. No. 203/07 (2018).

pending on the circumstances of each case, but the understanding and cooperation of all concerned would always be an important ingredient. “Whilst national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention.” The Court went on to say that “[W]here contact with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them. What is decisive is whether the national authorities have taken all necessary steps to facilitate contact as can reasonably be demanded in the special circumstances of each case.”

In examining whether non-enforcement of the access arrangements ordered by the domestic court amounted to a lack of respect for the applicant’s family life, the Court had to strike a balance between the various interests involved in the present case, namely the interests of the applicant’s children and their mother, those of the applicant himself and the general interest in ensuring respect for the rule of law. In its view, “lack of cooperation between parents who have separated is not a circumstance which can in itself exempt the authorities from their positive obligations under Article 8. It rather imposes on the authorities an obligation to take measures that would reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the child. [...] Lastly, the child’s best interests must be the primary consideration and may, depending on their nature and seriousness, override those of the parents [...]”

The Court did not find a violation of Article 8 of the ECHR in this case, as it held that the domestic authorities generally did act diligently in this case despite periods of inactivity.

Despite the enhanced supervision of the execution of the judgment in the case of *Zorica Jovanović v. Serbia* by the Council of Europe Committee of Ministers, the Republic of Serbia failed to enforce the part of the ECtHR’s judgment on the forming of a mechanism to establish the fate of the new-borns believed to have gone missing from maternity wards in Serbia. During its review of Serbia’s enforcement of this ECtHR judgment in June 2018, the Council of Europe Committee of Ministers<sup>172</sup> said it deeply deplored that, despite the Committee’s repeated calls, the Serbian authorities had failed to adopt the measures required by the Court’s judgment to secure the establishment of a mechanism aimed at providing individual redress to all parents of “missing” babies and invited the authorities to provide information by 1 October 2018 on the measures taken to adopt the draft law aimed at introducing the above mechanism.

Serbia failed to submit a report to the CoE by 1 October 2018. Nor was the draft law on missing babies<sup>173</sup> adopted by the National Assembly.<sup>174</sup> The grave defi-

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172 Available at: <http://hudoc.exec.coe.int/eng?i=004-7011>.

173 The Preliminary Draft Act is available in Serbian at: <https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>.

174 See the *NI* report of 2 October 2018, available in Serbian at: <http://rs.n1info.com/a424761/Vesti/Rok-za-izvestaj-istekao-Srbija-jos-cuti-o-nestalim-bebama.html>.

ciencies of the Draft Act will bring into question the effectiveness of the mechanism if this law is adopted in the present form. Namely, it states that its purpose is to establish the truth about the status of new-borns who went missing from maternity wards on the basis of evidence presented and data collected in court proceedings by state and other authorities, parents and third parties. However, experts have voiced doubts about the sincerity of the state's intention to shed light on the fate of the missing babies given that the draft law lays down that the applicants shall propose evidence on which they base their allegations in their motions initiating the procedure, but does not lay down anywhere the state's obligation to conduct an investigation.

In February 2018, the Kikinda Basic Court delivered a judgment in a "missing baby" case (Case 2 P. 490/17) in which it found in favour of the father, who had filed the lawsuit, and ordered he be paid €10,000 in damages.<sup>175</sup> The Court found that the State was responsible for redressing the plaintiff, because the state authorities, the Ministry of Internal Affairs and the relevant public prosecution service had failed to fulfil their obligation to investigate and clarify why his son, who was born in term, was referred to the Neonatology Institute without his mother, and the circumstances of his alleged death and why his body was not released to the parents to bury it. The Court further said that the plaintiff had been denied the freedom to enjoy family life with his child, that he suffered mental anguish because he did not know what had actually happened and that he received no satisfaction that could alleviate his anguish. The Court referred to the ECtHR's judgment in the case of *Jovanović v. Serbia* and the ECtHR's order to Serbia to establish a mechanism to provide individual redress in a situation such as, or sufficiently similar to, the applicant's. The Kikinda Court held that the plaintiff was not under the obligation to wait for the adoption of such a law and, therefore, upheld his claim for damages. Interestingly, Serbia notified the Council of Europe of this judgment as a good practice example of how the ECtHR judgment impacted on domestic case-law.<sup>176</sup> The state's position on this issue remains questionable given that the Solicitor General appealed the Kikinda Court's judgment (albeit too late, wherefore the Novi Sad Appeals Court dismissed it in a ruling No. Gž. 1234/18).

## 5. Personal Data Protection and Protection of Privacy

### 5.1. Normative Framework

Article 42 of the Constitution of the Republic of Serbia guarantees the protection of personal data and sets out that the collection, storage, processing and use of personal data shall be governed by the law. It further lays down that the use of

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175 See the *Politika* report of 11 March 2018, available in Serbian at: <http://www.politika.rs/sr/clanak/400296/Prva-odsteta-u-Srbiji-za-nestalu-bebu>.

176 Available at: <https://goo.gl/yLWD58>.

personal data for any purpose other than the one they were collected for shall be prohibited and punishable in accordance with the law, unless such use is necessary to conduct criminal proceedings or protect the security of the Republic of Serbia, in a manner stipulated by the law. Everyone is entitled to be informed about the personal data collected about him, in accordance with the law, and to court protection in case of their abuse.

However, the reactions of the state, with the exception of the Commissioner for Access to Information and Personal Data Protection (Commissioner),<sup>177</sup> to numerous violations of this right and its frequent failure to protect it continued to give rise to concern in the reporting period.

## 5.2. *New Personal Data Protection Act*

The Chapter 23 Action Plan envisages the preparation of a new Personal Data Protection Act in accordance with the Model Act prepared by the Commissioner and by-laws governing in detail the enforcement of that law and raising the capacities of the Commissioner's staff pursuant to the valid rulebook on the staffing and internal organisation of his Office, as well as an analysis of the needs to strengthen the Office's staffing capacities in view of its new competences.

The new Personal Data Protection Act, which was to have been enacted in Q4 2015 under the Chapter 23 Action Plan, was at long last adopted in 2018. The European Commission sent its opinion on the Preliminary Draft to the Ministry of Justice, which failed to publish it for months, in contravention of the rights of the public and citizens of Serbia.<sup>178</sup> The Ministry merely said on its website that the Preliminary Draft was the "the text that was amended to reflect the comments of the European Commission and Eurojust" and that the EC had given opinions in official electronic correspondence rather than in a single document. The NGO Partners for Democratic Changes, however, received a copy of the two documents from the Ministry of European Integration in response to its request for access to information of public importance.<sup>179</sup> However, the last (third) version of the Preliminary Draft, endorsed by the Serbian Government in September 2018, did not take on board the EC's substantial criticisms of the way the Preliminary Draft is conceptualised.

The National Assembly adopted the new Personal Data Protection Act (PD-PA)<sup>180</sup> on 9 November 2018. The legislator specified the following two key reasons

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177 More on the work of the Commissioner for Access to Information and Personal Data Protection in III.3.

178 The Commissioner's press release of 6 August 2018 is available in Serbian at: <https://www.poverenik.rs/sr-yu/saopstenja>.

179 See the *Insajder report* of 15 August 2018, available in Serbian at: <https://insajder.net/sr/sajt/vazno/11936/Mi%C5%A1ljenje-EK-o-Nacrtu-zakona-o-za%C5%A1titi-podataka-o-li%C4%8Dnosti-%E2%80%93-dokument-za-koji-je-Ministarstvo-mesecima-tvrđilo-da-ne-postoji.htm>.

180 *Sl. glasnik RS*, 87/18.

for its adoption in the statement of justification: first, the legal framework for personal data protection (valid until November 2018) was unable to adequately ensure the unobstructed exercise of this right in all areas and, second, Serbia as an EU candidate country has an international obligation to harmonise its national law with the *acquis*.

The legislator said that the prior law suffered from a number of deficiencies, notably, it inadequately regulated the procedure for realising the right to personal data protection and the procedure for transferring personal data to other countries and international organisations; it did not fully regulate accountability for violations of the right to personal data protection and non-fulfilment of obligations prescribed by the law; and it inadequately regulated data security. The new law governs the general regime of processing personal data, such as the principles of processing, the rights of the data subjects, protection, restrictions, obligations of controllers and processors, transfer of data to other states and international organisations, the status of the Commissioner, legal safeguards, accountability and sanctions.

The general impression is that the Act, for the most part, copy-pastes the provisions of the General Data Protection Regulation (GDPR),<sup>181</sup> which entered into force in May 2018, and the EU Directive (EU) on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, (EU Directive).<sup>182</sup> The authors of the law did not take into account the specificities of the Serbian legal system and the context in which these provisions are to be enforced. Furthermore, even legal professionals have trouble following the text of the law, suffering from overly long, cumbersome and referencing provisions, which is in contravention of one of the main principles of the rule of law: that a legal norm must always be formulated clearly and precisely and its application must be foreseeable for those subject to it.

Given the extensiveness of the law and the major novelties it brings, the text below will focus on its main shortcomings and provisions that may give rise to problems in the understanding of the obligations of the data controllers and in the oversight activities of the Commissioner in practice. Namely, the purpose of the law is to regulate the general regime of personal data processing in line with EU law and it is essentially a translation of the GDPR. The legislator intended to cover the provisions of the EU Directive as well.

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181 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

182 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977.

However, it needs to be borne in mind that both the GDPR and the EU Directive reflect the jurisdictions of the EU and the Member States in the fields of internal affairs and security and that their mere transposition into Serbian law will not generate the same effects. For instance, Article 1(2) of the Act lays down that this law shall in particular “regulate the protection of natural persons with regard to the processing of personal data by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data,” although this type of data processing is usually regulated separately from the general processing regime and is in most cases exempted from the general rules.

Although one of the main goals of the GDPR, on which the legislator based the new PDPA, is to enable citizens to restore control over their data and provide them with clear rules and procedures for realising their rights, the part of the PDPA governing the rights of citizens includes the greatest numbers of exceptions and limitations of the rights with regard to specific types of processing. On the other hand, this kind of regulation gives rise to problems of all other controllers/persons subject to the law (including businesses, health, welfare and educational institutions, etc.) because it exacerbates their understanding of their obligations. Furthermore, the Act does not specify which individual authorities these provisions apply to, which, coupled with the incomprehensibility of the text, leaves a number of open issues and ambiguities. For instance, the law allows the authorities to themselves lay down the data storage periods if they are not specified in the law. Given the hitherto practice, in which data were stored in the absence of clearly defined periods or in timeframes unlawfully set in by-laws, it may be presumed that such a practice will continue. Although civil society warned the Ministry of Justice of these problems during the public debate, the Ministry did not change these provisions.<sup>183</sup>

Article 40 of the Preliminary Draft, which was debated in late 2017, explicitly set out that the citizens’ rights regarding insight in, deletion and alteration of data and other measures of control of the processing of their data could be restricted by the law if so required for the protection of national security, defence, public safety, the rights and freedoms of others, etc. However, this important constitutional safeguard was deleted from the final version of the law. Namely, under Article 42 of the Constitution “the collection, storage, processing and use of personal data shall be governed by the law” and “everyone shall have the right to be informed about personal data collected about them, in accordance with the law, and the right to court protection in case of their abuse.”

Under Article 23 of the GDPR, restrictions of the right to personal data protection may be imposed only by legislative measures. Given that the guarantee was omitted only in the text submitted to parliament for adoption, the Commissioner

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183 NGOs’ Letter to the Ministry of Justice, available in Serbian at: <https://resursi.sharefoundation.info/wp-content/uploads/2018/08/Zajedni%C4%8Dki-komentar-na-Nacrt-ZZPL.pdf>.

was left with only one option: to appeal to the MPs and warn them that the adoption of such a law would be unconstitutional and greatly undermine legal certainty and the rule of law,<sup>184</sup> albeit to no avail. Consequently, state authorities and private companies handling personal data can restrict the citizens' rights without explicit legal authority to do so and at their own discretion. NGOs also publicly alerted to this risk.<sup>185</sup>

With respect to the PDPA safeguards, the Commissioner alerted in his Opinion on the Preliminary Draft that the legislator did not take into account the *ne bis in idem* rule and thus undermined legal certainty.<sup>186</sup> Under Article 78 of the PDPA, the Commissioner shall review complaints by data subjects, establish whether the PDPA was violated, and notify the complainants of the course and results of the complaints review procedure conducted pursuant to Article 82 of the Act on the right to file a complaint with the Commissioner.

Under Article 82(2) of the Act, the Commissioner shall notify the complainants of the course and results of the procedure and their right to initiate an administrative dispute. Therefore, the Commissioner is to rule on any violations of the data subjects' rights and the obligations of the controllers in such procedures. The Commissioner's rulings may be contested before the Administrative Court. Article 84 allows data subjects to initiate civil proceedings in the event they believe their rights under the PDPA have been violated by the processing of their personal data on the part of the controllers or processors in contravention of the PDPA, which amounts to an identical situation as the one dealt with in the prior Article.

The authorities conducting the proceedings (Commissioner, Administrative Court, a Higher Court) are not under an obligation to notify each other of the proceedings or check whether they, too, are conducting proceedings on the same matter. A proceeding before a court of general jurisdiction is not dependent on a proceeding before a court of special jurisdiction, such as the Administrative Court. This not only brings into question legal certainty in abstract terms, but in individual, concrete terms as well. It has to be emphasised that legal uncertainty exists independently of the operative clauses of the authorities' decisions given that their statements of justification and interpretations of individual decisions can be different, even mutually contradictory.

Although both the Commissioner and NGOs have in the past been alerting to the need to regulate processing of personal data collected by means of video surveillance, as the Commissioner emphasised in his Opinion on the Preliminary Draft,

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184 Commissioner's letter to the National Assembly of 22 October 2018, available in Serbian at: <https://www.poverenik.rs/images/stories/dokumentacija-nova/pismaorganima/pismoposlancimaZZPLCL40.pdf>.

185 NGOs' press release of 18 October 2018, available in Serbian at: <http://www.partners-serbia.org/zadrzati-ustavnu-garanciju-prava-gradana-u-novom-zakonu-o-zastiti-podataka-o-licnosti/>.

186 Commissioner's opinion, available in Serbian at: [https://www.poverenik.rs/images/stories/dokumentacija-nova/misljenja2018/Nacr\\_ZZPL-MPravde.pdf](https://www.poverenik.rs/images/stories/dokumentacija-nova/misljenja2018/Nacr_ZZPL-MPravde.pdf).



this issue is not dealt with at all in the new Personal Data Protection Act. The legislator explained in the statement of justification that the PDPA was a systemic law and should include provisions general in character whereas other laws with provisions on personal data processing should align them with the general provisions; that processing of personal data collected by means of video surveillance should definitely be governed by the law, but not by the PDPA, and that regulation of this issue by the PDPA would require consultations with other authorities dealing with specific issues (video surveillance of offices, residential buildings, et al) and governing the matter in greater detail (e.g. records, storage, access, et al); that regulation of the processing of personal data collected by means of video surveillance video surveillance by the PDPA would definitely open the issue of regulating in greater detail personal data protection in many other areas, such as work, health, education records, et al, which cannot be regulated only by the PDPA; and, that EU regulations do not include such provisions and that they are beyond the scope of the Act.

The fact that the GDPR does not govern processing of personal data collected by means of video surveillance is not a valid argument. The PDPA's primary purpose should be to govern the protection of the right to personal data protection of Serbia's citizens, which has been gravely jeopardised in Serbia in the recent years; that should have been the legislator's first and foremost objective. Comparative law indicates that the fact that the GDPR does not govern the issue is not an obstacle to regulating it by the law on personal data protection: the German law adopted after the GDPR was enacted includes provisions on processing of personal data collected by means of video surveillance. The necessity of consulting authorities dealing with specific issues is not a strong argument either. With the reservation that the legislator did not elaborate the issue in the statement of justification, it goes without saying that such consultations should have been held, because it is necessary to consult with all the relevant stakeholders during the legislation process and their absence may not be used as an excuse. Last but not the least, had the legislator included the provisions on video surveillance proposed by the Commissioner in his Model Act,<sup>187</sup> the issue would have been regulated in general terms and there would be no need to amend numerous sectoral laws.

Attention also needs to be drawn to Articles 99 and 100 of the PDPA, under which by-laws envisaged by this Act must be enacted within nine months from the day it enters into force, whereas the other laws have to be aligned with it by the end of 2010. This gives rise to major concerns given that the non-adoption of or drastic delays in adopting by-laws have become the rule and obstructed the full realisation of rights, especially in view of the complexity of the PDPA and the novelties it brings. On the other hand, the deadline for aligning the other laws with the PDPA does not appear realistic either, if one bears in mind that its predecessor was adopted in 2008 and that many laws were not harmonised with it for an entire decade.

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187 The Model Personal Data Protection Act drafted by the Commissioner is available at: <http://www.poverenik.org.rs/en/model-zakona-o-zastiti-podatakao-licnosti.htm>.

The situation the Commissioner alerted to arose the first day the PDPA entered into force, wherefore he issued a press release clarifying the obligations of the data controllers.<sup>188</sup> Under Article 98 of the PDPA, the Central Registry of Personal Data Filing Systems, established under the prior law, shall no longer be kept as of the day the new PDPA enters into force and the Central Registry and data in it shall be treated in accordance with regulations on archives. Given that the new PDPA does not revoke any of the provisions in the prior law regarding the data controllers' obligations on establishing or registering established personal data filing systems and that the enforcement of the new PDPA has been postponed for nine months, the Commissioner warned that the controllers were still under the obligation to establish, keep and update processing records, notify the Commissioner of their intentions to establish filing systems before they start processing the data or establish the filing system, and submit to the Commissioner records of their filing systems and changes in those records.

## 6. Right to Free Access to Information of Public Importance

### 6.1. *Amendments to the Free Access to Information of Public Importance Act*

Although the valid Free Access to Information of Public Importance Act (FAIPIA)<sup>189</sup> was lauded as one of the best laws in this field at the time it was adopted, there have been problems in its enforcement, which were alerted to by the Commissioner for Information of Public Importance and Personal Data Protection (Commissioner) as well, wherefore, the Chapter 23 Action Plan laid down the obligation to amend the FAIPIA by the end of 2016. The designated Ministry of State Administration and Local Self-Governments formed a working group to draft the amendments. Although the Ministry said in September 2017 that the amendments would be submitted to the parliament for adoption by the end of the year, the Preliminary Draft was publicly presented only in March 2018.

In his Opinion on the Preliminary Draft, which he forwarded to the Ministry, the Commissioner said that the proposed amendments would not improve the law or eliminate the legal uncertainty or the obstacles identified in practice and that they needed to be substantially changed to achieve the declared goals.<sup>190</sup> He noted that the Preliminary Draft extensively relied on the Analysis of the Enforcement of

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188 The Commissioner's press release is available in Serbian at: <https://www.poverenik.rs/sr/саопштења>.

189 *Sl. glasnik RS*, 120/04, 54/07, 104/09 and 36/10.

190 The Commissioner's Opinion of 11 April 2018 is available in Serbian at: <https://www.poverenik.rs/sr/>.

the Free Access to Information of Public Importance Act (Analysis) prepared by the Ministry of Justice, which qualified the Commissioner as a “partner institution” in its preparation,<sup>191</sup> although he had actually not been consulted about it; furthermore, the Justice Ministry did not communicate the Analysis either to him or the Ministry of State Administration and Local Self-Governments, which is tasked with monitoring the enforcement of this law.

The Commissioner asked the Prime Minister and Justice Minister for an explanation of the range of errors and criticisms of his work in the Analysis,<sup>192</sup> albeit to no avail. Instead, the Prime Minister said in one of her speeches that the Commissioner was “uncooperative” and that she “does not know whether he has been invited to take part in the working group drafting the amendments, but that he had earlier refused to participate in the drafting of the Personal Data Protection Act.”<sup>193</sup> The Commissioner explained that he could not be a member of the working group because the Commissioner was an independent institution, which should not and could not formally involve itself in working groups formed by the executive authorities and thus bring its independence into question. He added that he had never refused a Government or ministry request for a meeting or consultations with him or to give his opinion.<sup>194</sup>

Experts, media and the Commissioner made a number of comments of the Preliminary Draft during the public debate that opened in the spring of 2018. They commended the amendments which expand the scope of persons subject to the Act; impose stricter fines for breaches of the Act; provide a clearer definition of the abuse of the right to free access to information; expand the powers of the Commissioner and allow him to render his opinions on laws regarding the public’s right to know.<sup>195</sup> The relevant Ministry also received a large number of criticisms of the text. One of those reiterated the most concerned the provisions exempting for-profit corporations (erstwhile state companies) availing themselves of significant state and public resources from the law because these provisions risk to substantially restrict the already difficult realisation of the right to free access to information.<sup>196</sup>

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191 Serbian Government Report 4/2017 on the Implementation of the Chapter 23 Action Plan, part 2.2.5.1, available at: <https://www.mpravde.gov.rs/files/Report%20no.%204–2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>.

192 See the Commissioner’s press release of 13 March 2018, available in Serbian at: <https://www.poverenik.rs/sr>.

193 See the Commissioner’s press release of 20 April 2018, available in Serbian at: <https://www.poverenik.rs/sr>.

194 See the Commissioner’s press release of 20 April 2018, available in Serbian at: <https://www.poverenik.rs/sr>.

195 More is available in Serbian at: <http://www.partners-serbia.org/wp-content/uploads/2018/05/Komentari-na-Nacrt-Zakona-o-slobodnom-pristupu-informacijama-od-javnog-zna%C4%8Daja.pdf>.

196 This would mean that the FAIPIA would no longer apply to companies such as Serbian Railways, Corridors of Serbia, DIPOS (the company leasing state-owned real property), or Serbi-

Another provision in the Preliminary Draft that met with criticisms of the Commissioner and many civil society organisations is the one allowing public authorities to contest the Commissioner's rulings by initiating administrative disputes against them. The legislator did not explain why this provision was introduced. Namely, under the FAIPIA as it stands now, persons denied access to information of public importance by public authorities may complain with the Commissioner, and, contest his rulings in favour of the authorities before the Administrative Court. Under the Preliminary Draft, the public authorities, which had denied access to information of public importance, may also contest the Commissioner's rulings in favour of the complainants before the Administrative Court.<sup>197</sup> Such a practice would undoubtedly prolong, by several months, the time until the public authorities provide access to the documents and information they have been concealing from the public without good cause. A similar view was taken by the Administrative Court, which warned that providing public authorities with the possibility of initiating administrative disputes against the Commissioner's binding, final and enforceable rulings was not in compliance with the principle of legality.<sup>198</sup>

Over 80 civil society organisations, media associations and outlets launched the initiative defending the public's right to know "Defend the Right to Information – I Won't Let Public be Private", alerting to the harmful provision exempting companies registered as for-profit corporations and availing themselves of substantial public property from the obligation to provide access to information of public importance.<sup>199</sup>

## *6.2. Realisation of the Right to Free Access to Information of Public Importance*

The Commissioner in 2018 frequently faced difficulties in his work, which can be attributed to obvious lack of knowledge and, primarily, lack of political will to enforce his rulings regarding access to information. This is reflected the most in the state authorities' lack of reaction to the Commissioner's rulings, many of which are

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an Electric Grids. More in Transparency Serbia's press release of 23 March 2018, available in Serbian at: <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/9908-sporije-do-informacija-o-radu-vlasti>.

197 Initiation of administrative disputes does not stay the enforcement of rulings, wherefore public authorities can be expected to always ask the courts to stay the enforcement of the Commissioner's rulings pending their decision. This would allow the public authorities, which have already been ignoring the Commissioner's binding rulings in some cases, in violation of the FAIPIA, not to act on them legally, during the court proceedings.

198 See the Administrative Court's views on the Preliminary Draft of 19 April 2018, available in Serbian at: <http://www.up.sud.rs/uploads/useruploads/Documents/min.dr%C5%BEavne%20uprave%20i%20lokalne%20samouprave.pdf>, and Transparency Serbia's press release of 11 May 2018, available in Serbian at: <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/9986-upravni-sud-protiv-toga-da-organi-vlasti-pokrecu-postupak-protiv-resenja-poverenika>.

199 The text of the Initiative and list of organisations and media outlets that supported it are available in Serbian at: <http://odbrani.pravona.info/podrska.php>.

ignored, resulting in many cases in the expiry of the statute of limitations and the Commissioner's inability to take further steps. The growing number of complaints filed with the Commissioner demonstrate the public's trust in the work of this independent authority. However, the large number of complaints filed with the Commissioner and the inability of his Office to rule on all of them within the statutory framework are a direct consequence of the authorities' lack of liability for violations of the complainants' rights. Problems in exercising the right to know still exist; the Savamala and Helicopter cases are just two of the many illustrations of this devastating fact.<sup>200</sup>

The situation in this field deteriorated in 2018. Some of the many examples corroborating this assessment are particularly concerning, because they regard the state authorities, whose fulfilment of their legal obligations would demonstrate their respect for the institution of the Commissioner and willingness to provide access to information about their work. One striking example is the ruling the Commissioner issued against the Justice Ministry, requiring of it to provide the Belgrade-based SHARE Foundation, within three days, with information about the €71,136 spent on the development of the new Personal Data Protection Act, i.e. the contracts with the working group members and other experts, their fees, obligations and deadlines for drafting the PDPA and the performance evaluation report. The Justice Ministry, however, did not provide such access to the complainant or explain to the Commissioner why it ignored the request, whereby it violated the FAIPIA. The Commissioner qualified as concerning the fact that a complaint had to be lodged with him over denial of access to such information, which was obviously a matter of public interest.<sup>201</sup>

The Commissioner also issued a ruling in favour of the portal *Pištaljka* (Whistle-blower) and *NI* TV station, ordering the Belgrade City Administration to provide them, within five days, with access to the documentation on the public procurement of the Christmas tree and decorations.<sup>202</sup> He noted that the City Administration had not explained why it had denied the complainants access to this information and that it had not only violated the FAIPIA but also fuelled public doubts about the legitimacy of the said public procurement.<sup>203</sup>

In July 2018, the Commissioner filed a motion with the Constitutional Court of Serbia to review the constitutionality of Article 45(4) of the Competition Protection Act.<sup>204</sup> Under this provision, data "protected" by the Competition Protection Committee "shall not have the status of information of public importance in terms of the law governing free access to information of public importance." The Commissioner held that such a provision could lead to the conclusion that the goal was to fully deny public

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200 More on the Savamala and Helicopter cases in the *2017 Report*, III.4.2.

201 See the *NI* report of 14 February 2018, available in Serbian at: <http://rs.n1info.com/a364424/Vesti/Vesti/Sabic-Dostaviti-podatke-o-utrosku-71.000-na-izradu-zakona.html>.

202 Public Procurement No. JN 7/2017.

203 More in the Commissioner's press release of 20 February 2018, available in Serbian at: <https://www.poverenik.rs/sr-yu/saopstenja>.

204 *Sl. glasnik RS*, 51/09 and 95/13.

access to specific information, which was absolutely in contravention of the FAIPIA. The Commissioner opined that the right to access information could not be denied a priori and that the possibility of restricting it should be assessed in each individual case. Furthermore, the provision amounts to a conflict of the law and brings into question the integrity of the legal system, opens space for abuse, pursuit of illegitimate interests and corruption and causes dilemmas among authorities enforcing it.

The Commissioner mentioned the case of the Smederevo Steel Mill contract with the Belgrade-based HPK Management and the Amsterdam-based HPK Engineering B.V. where the Ministry of Economy referred to the impugned provision to deny access to the contract to the complainant, Transparency Serbia, and the Commissioner, who ruled in the latter's favour. No information on the contract, the parties to the contract or its effects have been made public although over three years have passed since it was concluded, despite the Commissioner's ruling and although the relevant authorities had vowed to make it public (in the meantime, a Chinese company bought the Smederevo Steel Mill).

In 2018, the Commissioner asked the Constitutional Court to review several amendments to the Defence Act and the Security Intelligence Agency Act adopted in May 2018,<sup>205</sup> which practically exempt the Ministry of Defence, the Army and the Security Intelligence Agency (BIA) from the FAIPIA and the Classified Information Act. The Commissioner has held that the impugned amendments, under which the Government shall "regulate in detail" data which shall be "protected" or "cannot be made publicly available" at the proposal of the Defence Ministry and those classifying some BIA documents by type rather than content, are in contravention of the provisions of both the FAIPIA and the Classified Information Act and undermine the integrity of the legal system, and that they are in contravention of Article 51 of the Serbian Constitution, under which the right to access information held by state authorities shall be exercised in accordance with the law. The Commissioner said that the impugned provision of Article 102 of the Defence Act was not in compliance with Article 41 of the Constitution, under which the Army of Serbia shall be subject to democratic and civilian oversight, because it provides for restriction and even denial of the public's rights beyond the criteria and requirements set in the FAIPIA and the Classified Information Act.<sup>206</sup>

The Serbian Government remained unwilling to fulfil its legal obligation and directly ensure the enforcement of the Commissioner's rulings when he was unable to do so by applying the measures available to him in 2018 as well.<sup>207</sup> The Commissioner received a number of requests in 2018, asking him to fine public authorities that had failed to act in accordance with his rulings. In May 2018, he submitted

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205 See the Commissioner's press release of 14 June 2018, available in Serbian at: <https://www.poverenik.rs/sr/саопштења>.

206 Available in Serbian at: <https://www.poverenik.rs/sr/саопштења>.

207 The Government did not act on any of the Commissioner's 43 requests to ensure the enforcement of his rulings in 2017.

eight requests to the Serbian Government to fulfil its legal obligation and enforce his rulings pursuant to Article 28(4) of the FAIPIA.<sup>208</sup> The public authorities' failure to act on the Commissioner's rulings and the Government's failure to ensure their enforcement demonstrates that the mechanism is effectively blocked and rendered meaningless. The Commissioner also noted that the substantial increase in the fines under the new General Administrative Procedure Act (GAPA) was expected to result in greater discipline and enforcement of his rulings i.e. realisation of the public's right to access information of public importance, but that the opposite happened – absolute unresponsiveness of the competent authorities.<sup>209</sup>

Initiation of proceedings against the Commissioner's decisions is one of the ways to preclude his facilitation of access to information of public importance. The Commissioner has for several years now been alerting to this frequent practice. For instance, the Republican Public Prosecution Service (RPPS) in late April 2018 filed a lawsuit with the Administrative Court, seeking the annulment of the Commissioner's ruling ordering the Higher Public Prosecution Service to provide the Centre for Investigative Journalism (CINS) with access to information about the proceedings against former Belgrade Mayor (now Finance Minister) Siniša Mali.<sup>210</sup> Although the RPPS initially notified the Commissioner that it would not file a lawsuit, he received a new letter five days later, notifying him that it had filed the lawsuit after "the re-examination of the case file" and after the "Higher Public Prosecution Service supplemented the initiative". This is the 32<sup>nd</sup> lawsuit the RPPS has filed against the Commissioner's rulings in the past few years.<sup>211</sup>

In August 2018, the Administrative Court dismissed one such claim filed by the RPPS, which sought the annulment of the Commissioner's ruling ordering access to the resume of the prosecutor in the Savamala case, with his personal data, such as his address, personal identification number, name of parent, date of birth and other data irrelevant to his office blacked out in advance. The RPPS claimed that access to the resume would be in "violation of the law and jeopardise public interests", although the resumes of public officials should be publicly available. The Commissioner qualified the judgment as expected and logical but added that the lawsuit against him was unfortunately yet another illustration of the numerous attempts to discredit and disqualify the actions and enactments of this independent institution.<sup>212</sup>

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208 These rulings concerned access to information held by Air Serbia (on donations, sponsorship, financial subsidies, fees, benefits, bonuses et al), the Ministry of Internal Affairs (on the Police Directorate's report to the prosecution service on the Savamala case), the work of the Ministry of Mining and Energy, etc. See the Commissioner's press release of 25 May 2018, available in Serbian at: <https://www.poverenik.rs/sr/caoпштења>.

209 See the Commissioner's press release of 1 March 2018, available in Serbian at: <https://www.poverenik.rs/sr/caoпштења>.

210 More in the *2017 Report*, III.4.4.2.

211 See the CINS press release of 25 June 2018, available in Serbian at: <https://www.cins.rs/srpski/news/article/umesto-informacija-o-sinisi-malom-tuzba-protiv-poverenika>.

212 Administrative Court judgement No. 3826/17 of 10 July 2018. See more in the Commissioner's press release of 8 August 2018, available in Serbian at: <https://www.poverenik.rs/sr/caoпштења>.

## 7. Freedom of Thought, Conscience and Religion

### 7.1. Legal Framework

The right to freedom of thought, conscience and religion is enshrined in Article 9 of the ECHR and Article 18 of the ICCPR. The Constitution of Serbia states that Serbia is a secular state and prohibits the establishment of a state religion (Art. 11), regulates the issue of individual religious freedoms and freedom of thought and explicitly guarantees the right to stand by and change one's religion or belief and the right to manifest one's religion in religious worship, observance, practice and teaching and to manifest religious beliefs in private or public (Art. 43). The freedom of manifesting one's religion or beliefs is not subject to any restrictions, which means that the freedom of thought and religious and other beliefs is absolutely protected.<sup>213</sup>

The Constitution guarantees the equality of all religious communities, the freedom of religious organisation and collective manifestation of religion and the autonomy of religious communities (Art. 44). Paragraph 3 of this Article lays down that the Constitutional Court may ban a religious community only if its activities infringe the right to life, right to mental and physical health, the rights of the child, the right to personal and family integrity, public safety and order, or if it incites religious, ethnic or racial intolerance. It is unclear why a religious community may be prohibited only if it jeopardises the enumerated rights. Furthermore, this provision is in contravention of Article 43(4) of the Constitution, which provides for the restriction of the freedom of manifesting one's religion or beliefs in order to protect all the rights and freedoms guaranteed by the Constitution.<sup>214</sup>

The Anti-Discrimination Act also prohibits religious discrimination. Under the Anti-Discrimination Act, religious discrimination shall occur when the principle of freedom of professing one's religious beliefs is breached, i.e. in the event a person or a group are denied the right to adopt, maintain, express or change their religious beliefs, or the right to privately or publicly express or act in accordance with their beliefs (Art. 18).

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213 The European Court of Human Rights has repeatedly reiterated that the freedom of holding a (religious or other) belief is a so-called *forum internum* (internal freedom) and that the freedom to change one's religious or other beliefs is absolute and may not be subjected to limitations of any kind. See the ECtHR judgments in the cases of *Ivanova v. Bulgaria*, App. No. 52435/99, (2007), para. 79 and *Mockute v. Lithuania*, App. No. 66490/09, (2018), para. 119. More on Article 9 of the ECHR in: *Guide on Article 9 of the European Convention on Human Rights: Freedom of thought, conscience and religion*, Council of Europe/European Court of Human Rights, 2018, available at: [https://www.echr.coe.int/Documents/Guide\\_Art\\_9\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf).

214 If the activities of a religious community inciting religious, ethnic or racial intolerance are grounds for its prohibition, it is unclear why these personal features are singled out. For instance, a religious community cannot be banned for inciting intolerance on grounds of sexual orientation or disability. Furthermore, this provision is not in accordance with Article 49 of the Constitution, which prohibits any incitement or encouragement of racial, ethnic, religious or other *inequality, hate and intolerance*.



The Act on Churches and Religious Communities<sup>215</sup> guarantees the equality of all religious communities before the law (Art. 6). The Justice Ministry's Administration for Cooperation with Churches and Religious Communities is tasked with state administration affairs regarding the freedom of religion and the relationship between the church and the state, including, inter alia, the registration of religious communities. The Act on Churches and Religious Communities distinguishes between four categories of churches. The first group comprises the traditional churches and religious communities granted that status under various laws passed in the Kingdom of Serbia (Kingdom of Serbs, Croats and Slovenes, later Kingdom of Yugoslavia).<sup>216</sup> The second group comprises confessional communities, the legal status of which was regulated by application submitted in accordance with the federal Act on the Legal Status of Religious Communities<sup>217</sup> and the republican Act on Legal Status of Religious Communities.<sup>218</sup> The third group includes new religious organisations. The fourth group, which the Act does not define but establishes implicitly, comprises all those unregistered religious communities.<sup>219</sup>

In addition to the traditional churches, another 22 religious organisations officially exist in Serbia. Numerous other small religious communities, estimated at as many as 100, also exist in Serbia. Small religious communities have often complained of discrimination and of being equated with sects. They are also critical of the obligation that they have to declare their religious beliefs on registration and quote this as the reason why most of them have not officially been registered.<sup>220</sup> All initiatives claiming discrimination filed with the Constitutional Court since the adoption of the Act were dismissed on the merits or as inadmissible.<sup>221</sup>

The ECtHR has held that the obligation of the religious communities to outline their religious teaching during registration does not amount to a breach of the rights enshrined in the ECHR per se, because the state has a justified interest to

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

216 The Serbian Orthodox Church, the Roman Catholic Church, the Slovak Lutheran Church, Reformed Church, Evangelical Christian Church and the Islamic and Jewish communities.

217 *Sl. list FNRJ*, 22/53 and *Sl. list SFRJ*, 10/65.

218 *Sl. glasnik SRS*, 44/77, 12/78, 12/80 and 45/85.

219 A comprehensive overview of the problematic provisions in the Act on Churches and Religious Communities is available in the *2011 Report*, I.4.

220 Under the Rulebook on the Register of Churches and Religious Communities (*Sl. glasnik RS*, 64/06), religious organisations founded by 100 or more individuals may be entered in the Register. All religious organisations apart from traditional ones must also submit their statutes or other written documents describing their organisational and management structure, rights and obligations of their members, procedures for founding and dissolving the organisational units, a list of organisational units with the status of legal person and other relevant data. The obligation to submit an outline of religious teachings, religious rites, religious goals and basic activities is particularly problematic as it allows administrative authorities to assess the quality of religious teaching and its goals.

221 See the Constitutional Court's decision No. I Uz 455/2011 of 16 January 2013. More in the *2014 Report* III.8.2. and the *2013 Report* II.8.2.

examine whether the goals and activities of the religious communities are in accordance with the law.<sup>222</sup> On the other hand, a restriction of the freedom of religion may be at issue in the event the refusal to register a religious community is exclusively based on the non-conformity of the religious teaching with the morals of the dominant religion (or the state).

In its Serbia 2018 Report, the European Commission said that freedom of thought, conscience and religion was generally respected and that religiously motivated incidents had continued to decrease but that the lack of transparency and consistency in the registration process of religious communities remained one of the main obstacles preventing some religious groups from exercising their rights.<sup>223</sup> In its Serbia 2017 International Religious Freedom Report, the State Department said that some minority religious groups also protested the registration process, which smaller religious groups said was difficult and costly to fulfil, rendering them without property rights, tax exemptions, and legal status.<sup>224</sup> Given that religious communities existed and acted as organisations in some historical periods, the ECtHR has repeatedly emphasised that Article 9 of the ECHR (freedom of thought, conscience and religion) must be seen in the light of Article 11 of the Convention (freedom of assembly and association) and in light of Article 6 (right to a fair trial) because one of the means of exercising the right to manifest one's religion, especially for a religious community, in its collective dimension, is the possibility of ensuring judicial protection of the community, its members and its assets. The Court has held that there is a risk of violating the freedom of religion of a religious community or its members if the state refuses to recognise the legal status of the religious community.<sup>225</sup>

Religious instruction was introduced in schools as an elective subject in 2001. It is governed by the Decree on Religious Instruction and Instruction in the Alternative Subject in Primary and Secondary Schools.<sup>226</sup> The Constitutional Court has held that religious instruction as an elective subject (but provided just by traditional churches and religious communities) is in compliance with the constitutionally guaranteed freedom of thought, conscience and religion and does not violate the principle of the secularity of the state.<sup>227</sup> On the other hand, religious instruction as

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222 See the ECtHR's judgments in the case of *Metropolitan Church of Bessarabia and Others v. Moldova*, App. 45701/99, (2002), paras. 105 and 125; *Methodiev and Others v. Bulgaria*, App. 58088/08, (2017), paras. 40 and 45.

223 Commission Staff Working Document Serbia 2018 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2018 Communication on EU Enlargement Policy [COM(2018) 450 final], hereinafter Serbia 2018 Report, p. 24, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

224 The Report is available at: <https://www.state.gov/documents/organization/281200.pdf>.

225 See the ECtHR judgments in the cases of *Metropolitan Church of Bessarabia and Others v. Moldova*, App. No. 45701/99, (2002), para. 105 and *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, App. No. 40825/98, 2008, para. 62.

226 *Sl. glasnik RS*, 46/01.

227 See the CC Decision of 4 November 2003 (cases IU 177/01, IU 213/2002 and IU 214/2002).

an elective school subject in the state primary and secondary school system facilitates the parents' right to ensure their children education and teaching in conformity with their own religious and philosophical convictions.<sup>228</sup>

## 7.2. Financing of Religious Communities

The Act on Churches and Religious Communities allows the state to extend financial aid to churches and religious communities.<sup>229</sup> The state may grant churches and religious communities funding from the state budget. The 2018 Budget Act<sup>230</sup> earmarked over one billion RSD for the work of the Directorate for Cooperation with Churches and Religious Communities. Of that sum, 62 million RSD were designated to support the work of priests and clerical officers and 260 million RSD for covering their pension, disability and health insurance contributions; 63.5 million RSD were earmarked for supporting the priests and monks in Kosovo and 186 million RSD for the protection of religious, cultural and national identity, while 211 million RSD were to be spent on the construction and renovation of religious facilities.

The principle of neutrality does not prohibit such a practice as long as it is conducted at least approximately in proportion to the size of the religious community at issue and the number of its believers. A large share of budget funding allocated to aid churches and religious communities is clearly extended to the Serbian Orthodox Church (SOC), given that the vast majority of Serbia's citizens are Serbian Orthodox, or at least declare themselves as such. Religious communities are allocated funding in proportion to the number of their believers according to the Census – most of the funding goes to the Serbian Orthodox Church (87.7%), the Roman Catholic Church (around 5%) and the Islamic Community (around 3%).

Another way the state extends aid to churches is by subsidising the pension, social and health insurance of the priests and clerical officers.<sup>231</sup> Under Article 2(1) of the Decree on the Payment of Pension, Disability and Insurance Contributions for Priests and Clerical Officers,<sup>232</sup> the funds for these contributions shall be secured in the state budget and equal the minimum monthly contribution base laid down in Article 38 of the Mandatory Social Insurance Contributions Act.<sup>233</sup> The difference between the minimum monthly contribution base and the set base shall be covered by the churches or religious communities, in accordance with the law (Art. 2(2) of the Decree).

Under the Act on Churches and Religious Communities, churches and religious communities may also be exempted from paying taxes (Art. 30). Under the

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228 This right is enshrined in Article 2 of the Protocol to the ECHR and Article 18(4) of the ICCPR.

229 Article 28(2).

230 *Sl. glasnik RS*, 113/17.

231 Article 29 (2 and 3).

232 *Sl. glasnik RS*, 46/12.

233 *Sl. glasnik RS*, 84/04, 61/05, 62/06, 5/09, 52/11, 101/11, 7/12, 8/13, 47/13, 108/13, 6/14, 57/14, 68/14 – other law, 5/15, 112/15, 5/16, 7/17, 113/17 and 7/18.

Value Added Tax Act,<sup>234</sup> registered churches and religious communities are exempted from paying taxes on services religious in character. They are also exempted from paying taxes on their main religious activities and are entitled to reclaim VAT on the goods they use in religious services. Whereas both traditional and other confessional and registered churches and religious communities are exempted from paying tax on property (which is designated for and is used only for religious activities),<sup>235</sup> only traditional churches and religious communities are exempted from paying VAT.<sup>236</sup>

This practice has met with criticism in view of their quite high revenues. The civic association Atheists of Serbia claims that the SOC receives seven million EUR from the state budget every year, under budget line 481 designated for funding civil society organisations.<sup>237</sup> In November 2018, the SOC Patriarchate Management Office submitted a request to the Prime Minister to grant the Church one million EUR because of its financial difficulties and inability to cover the pension, disability and health insurance dues for their staff and the relevant taxes. The Government granted the request and decided that the money should be covered from the state budget under the NGO subsidies heading.<sup>238</sup>

The budget of the Administration for Cooperation with Churches and Religious Communities shows that NGOs religious in character have been allocated slightly over 731 million RSD under budget line 481. The budget of the Kosovo and Metohija Office designated 81 million RSD for the protection of cultural heritage, support to the SOC and cultural activities.<sup>239</sup> The Administration for Cooperation with the Diaspora and Serbs in the Region budget allocated 100 million RSD for the preservation of the national and cultural identity of Serbs abroad and in the region.<sup>240</sup> The Ministry of Culture and Information budget allocated 80 million RSD for the reconstruction and protection of the Chilandar Monastery. A total of 7,290,052,000 RSD were allocated under budget line 481. In sum, NGOs focusing on religious issues were granted around 14% of the budget funds designated for NGOs.

The registered Jewish Communities in Serbia have an additional source of budget funding under the Act on the Redress of Intestate Jewish Holocaust Victims.<sup>241</sup> Under Article 9(1) of this Act, the Federation of Jewish Communities shall

234 *Sl. glasnik RS*, 84/04, 86/04 – corr., 61/05, 61/07, 93/12, 108/13, 6/14, 68/14 – other law, 142/14, 5/15 – 83/15, 5/16, 108/16, 7/17, 113/17, 13/18 and 30/18.

235 Article 12(1(3)), Property Tax Act.

236 Article 55, Value Added Tax Act.

237 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/drustvo/ateisti-srbije-kadbi-drzava-uvela-porez-crkvi-u-srbiji-ne-bi-bilo-ni-5000-vernika/4l3cc9t>.

238 More in the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/drustvo/crkva-molila-za-pomoc-vlada-daje-spc-milion-evra-zbog-teske-finansijske-situacije/19v4dk1>.

239 More on the decisions on the allocation on the funds is available in Serbian at: <http://www.kim.gov.rs/konkursi2018.php>.

240 See the decisions on the co-funding of projects contributing to the preservation and strengthening of ties between Serbia and the Serbs in the region (No. 71–295/30–2018/01) and between Serbia and the diaspora (No. 72–237/30–2018/01).

241 *Sl. glasnik RS*, 13/16.

be provided with financial support from the state budget. The annual restitution amount of €950,000 is to be paid over a period of 25 years as of 1 January 2017 (Art. 9(2)). Property and income in the form of financial support pursuant to this law are not subject to any tax, administrative or court fees or fees of state authorities and organisations (Art. 10(2)). Article 22 of the Act lists the activities that may be financed by these funds. Clashes over control of how the money is spent broke out in the Federation of Jewish Communities in mid-2018.<sup>242</sup>

Another potential source of income of churches and religious communities is the property returned to them in the restitution procedure. Restitution is governed by the Act on the Restitution of Property to Churches and Religious Communities.<sup>243</sup> The Act provides for the restitution of real estate and movable property of cultural, historical or artistic relevance that had been in the possession of the churches and religious communities at the time it was taken away, but only since 1945. The right to restitution is afforded churches and religious communities, i.e. their legal successors in accordance with the valid enactments of churches and religious communities. If this provision is interpreted in accordance with the Act on Churches and Religious Communities, then this right is limited only to registered churches and religious communities in view of the fact that only they have the status of legal persons.<sup>244</sup>

Restitution Agency Director Strahinja Sekulić said that the restitution of property to churches and religious communities was about to be finalised and that over 90% of the cases have been closed. The most property was restituted to the SOC: 55,426 hectares of land and 49,477 square meters of buildings. The Roman Catholic Church took second place on the list. Most Protestant Christian churches filed a much smaller number of applications and have been restituted almost all their property. Only the Islamic Community has not been restituted any property, due to the existence of two competing Communities – the Islamic Community of Serbia and the Islamic Community in Serbia – which filed applications for the restitution of identical property.<sup>245</sup> The Restitution Agency said it would render its first rulings on restitution of property to the Islamic Community by the end of the year, but it did not specify which one.<sup>246</sup> Serbia was praised in the European Parliament for returning property seized during the Holocaust.

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242 Apart from the €950,000 it receives annually, the Federation of Jewish Community also derives income from the lease of numerous facilities returned to it under the Act (69 facilities in Subotica, Zemun and Belgrade). More in the *Večernje novosti* report, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:733917-RAZDOR-ZBOG-RES-TITUCIJE-Rasplamsao-se-sukob-u-jevrejskoj-zajednici>.

243 *Sl. glasnik RS*, 46/06.

244 A detailed analysis of the Act is available in the *2011 Report*, I.4.8.4.

245 The reason lies in the inability to determine which of them is a traditional religious community and successor of the pre-WWII Islamic community. More in the *Večernje novosti* report, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:730944-Beograd-i-Pazar-traze-iste-nekretnine>.

246 More in the *Politika* report, available in Serbian at: <http://www.politika.rs/sr/clanak/414387/ Crkvama-vraceno-90-odsto-oduzete-imovine>.

Verified and accredited religious educational institutions are entitled to budget funding proportionate to the size of their congregations.<sup>247</sup> The Act also allows the authorities to subsidise cultural and scientific institutions and programmes of churches and religious communities.<sup>248</sup>

Churches and religious communities have also been raising funds from donors; these funds may be tax-exempted. Churches and religious communities also earn revenue from extending church and religious services that are not subject to tax.

### 7.3. *Activities of Religious Communities in Serbia*

The introduction of religious education in Serbian primary and secondary schools is in compliance with the realisation of the freedom of thought, conscience and religion, but the religious communities' views may result in a conflict between their religious instruction and other constitutionally guaranteed rights and freedoms, especially the right to an abortion (under Article 63 of the Constitution), the rights of LGBT persons and prohibition of discrimination on grounds of sexual orientation. For instance, during their religious instruction class in May 2018, seventh graders in one Belgrade school were shown a film criticising the right to an abortion, with the blessing of the Bishop of the Srem Diocese of the Serbian Orthodox Church.<sup>249</sup>

The conflict between the Serbian Orthodox Church and the Montenegrin Orthodox Church and Government continued in 2018. The Montenegrin Orthodox Church was established in 1993 and acquired legal personality in 2000 under Montenegrin law, but is still not recognised as a canonical church. This religious community repeatedly tried to register under the Serbian Act on Churches and Religious Communities, but without success. The property of the Serbian Orthodox Church in Montenegro is one of the points of contention between it and the Montenegrin Orthodox Church.<sup>250</sup> In his comment of the Montenegrin Government's intention to seize the property of the SOC Metropolitanate of Montenegro and the Littoral, Patriarch Irinej compared the status of the Serbian Orthodox Church and "Serbian people" in Montenegro with the one they had in the Otto-

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247 Article 36(2).

248 Article 44.

249 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/verska-edukacija-o-abortusu-nesporna-za-drzavu-srbiju/>.

250 Back in 2015, the Venice Commission criticised the Montenegrin Draft Act on the Freedom of Religion, which provided for the confiscation of church property (Opinion 820/2015). However, the Opinion was never discussed at the Venice Commission's plenary session because the Montenegrin Human and Minority Rights Ministry withdrew the draft from the procedure. See the *Dnevnik* report, available in Serbian at: <https://www.dnevnik.rs/politika/venecijanska-komisi-ja-sprecila-crnogorsku-vlast-da-otme-imovinu-spc-13-09-2018>.

man Empire and the WWII Independent State of Croatia, which can be interpreted as hate speech.<sup>251</sup>

The illegal construction and expansion of the College of Islamic Studies in Novi Pazar, funded by the Islamic Community in Serbia, is obviously in violation of Serbian law. The Novi Pazar local government issued rulings ordering the suspension of the works and the demolition of the illegally built part of the College building over the past year and a half. The police refused to facilitate the enforcement of the demolition order “for security reasons”. Two criminal reports, for illegal construction and construction on a public area, were filed as well.<sup>252</sup> Defending the illegal construction, Muamer Zukorlić<sup>253</sup> said that the Islamic Community had repeatedly filed construction permit applications with the city construction authorities over the past 23 years, albeit unsuccessfully. He warned that no-one was allowed to demolish the building, remarking that “lawlessness breeds lawlessness”.<sup>254</sup>

The reconstruction of the Arab Mosque<sup>255</sup> in Novi Pazar is another illustration of the stand-off between the Islamic Community in Serbia and the relevant state authorities.<sup>256</sup> In mid-May 2018, the Novi Pazar city construction inspectors notified the Republican Construction Inspection that the roof on the Mosque had been taken off. The Republican Construction Inspection ordered the suspension of the works. On 31 May 2018, the Republican Institute for the Protection of Monuments issued a ruling prohibiting the Islamic Community in Serbia from performing any works on the roof construction.<sup>257</sup> The Institute issued a ruling prohibiting the demolition of the remnants of the Arab Mosque walls and the minaret, but the remnants of the Mosque walls were razed in mid-September 2018. Given that the Institute had set the conditions for the reconstruction of the Mosque, it could have been conducted in accordance with the law but the Islamic Community in Serbia proceeded with its illegal construction works and demolished a monument of exceptional historical importance.<sup>258</sup>

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251 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/irinej-teze-nego-utursko-vreme/>.

252 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/uzmi-ago-koliko-ti-drago/>.

253 Former Islamic Community in Serbia leader Muamer Zukorlić stepped down from his religious office in 2016, when he was elected MP. He now also chairs the parliamentary Committee for Education, Science, Technological Development and Information Society and is the leader of the Justice and Reconciliation Party.

254 More in the *Krik* report, available in Serbian at: [https://imovinapoliticara.krik.rs/display/disp6/profil.php?disp\\_id=67](https://imovinapoliticara.krik.rs/display/disp6/profil.php?disp_id=67)

255 First written records of the Arab Mosque date back to the 16<sup>th</sup> century.

256 More in the *Danas* report, available in Serbian at: <https://www.danas.rs/kultura/obnova-arap-dzamiye-podelila-javnost/>.

257 More in the *N1* report, available in Serbian at: <http://rs.n1info.com/a420984/Vesti/Srusena-jedna-od-najstarijih-dzamiya-u-Novom-Pazaru.html>.

258 More in the *Insajder* report, available in Serbian at: <https://goo.gl/bJaCFf>.

#### 7.4. *The Relationship between the State and the Serbian Orthodox Church*

Statistical Office of Serbia data show that Serbia's population stands at 7,001,444.<sup>259</sup> According to the 2011 Census, most citizens declared themselves as Serbian Orthodox Christians (84.59%), Roman Catholics (4.97%), Moslems (3.10%) and Protestants (0.99%); 220,735 (3.07%) declined to declare their faith, while 80,053 (1.11%) said they were atheists.<sup>260</sup>

From the legal point of view, the state's relationship with the Serbian Orthodox Church is identical to its relationship with other religious communities. However, Article 11(2) of the Act on Churches and Religious Communities includes a provision stating that the SOC plays an exceptional historic, nation-building and civilisation-building role in the forming, preservation and development of the Serbian national identity, but makes no such references to other religious communities. It remains unclear why the legislator decided to include such a provision, which has the character of a principle and produces no legal consequences, in the part of the Act in which all other provisions play an entirely different role – they recognise the legal personality of religious communities that acquired the status in accordance with laws that are no longer in effect.<sup>261</sup>

Given that the vast majority of Serbia's population have declared themselves as Serbian Orthodox Christians and that they also account for the majority of the population, the political leaders have traditionally been extremely reverential towards the Serbian Orthodox Church, often seeking its support for key state decisions.<sup>262</sup> Although the Serbian Constitution lays down that Serbia is a secular state and prohibits the establishment of a state religion (in Art. 11), the Serbian Orthodox Church and its dignitaries have often voiced their opinions on major state issues having nothing to do with church or religion, while state officials have made a point of attending the SOC liturgies.<sup>263</sup>

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259 See the Statistical Office of Serbia data of 1 January 2018, available at: <http://www.stat.gov.rs/en-US/oblasti/stanovnistvo/infografika>.

260 *Religion, Mother Tongue and Ethnicity*, Statistical Office of the Republic of Serbia, Belgrade, 2013, pp. 46–47, available at: [http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Knjiga4\\_Veroispovest.pdf](http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Knjiga4_Veroispovest.pdf).

261 In his 2011 Report, the Special Rapporteur on freedom of religion or belief referred that, in many cases, “general reference is made to the cultural heritage of the country in which some religious denominations are said to have played predominant roles. While this might be historically correct, one has to wonder why such a historical reference should be reflected in a legal text or even in a Constitution. Reference to the predominant historical role of one particular religion can easily become a pretext for a discriminatory treatment of the adherents to other religions or beliefs. There are numerous examples indicating that this is actually the case.” (para. 62). See more at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/175/41/PDF/G1117541.pdf>.

262 See, e.g., the RTS report, available in Serbian at: <http://www.rts.rs/page/stories/ci/story/124/drustvo/2997621/patrijarh-irinej-blagodarimo-gospodu-na-vucicu.html>.

263 The Serbian Orthodox Church has frequently voiced its views on issues falling under the jurisdiction of the state authorities, especially on the status of Kosovo and Metohija. See the *Danas* and *Blic* reports, available in Serbian at: <https://www.danas.rs/politika/irinej-ne-smemo-da>



The church dignitaries' expression of their views on major political and societal issues is not in contravention of the principle of the secularity of the state. The problem lies in the fact that senior state officials consciously and visibly attach major importance to the SOC and its views.<sup>264</sup> Given that the majority of Serbia's population consider themselves Serbian Orthodox just because they are ethnic Serbs,<sup>265</sup> the question arises how this relationship between the state and the SOC affects Serbia's nationals who do not perceive themselves as Serbian Orthodox.

Philanthropy (*Čovekoljublje*) is the main SOC charity. This voluntary foundation extends childcare services and provides assistance to the elderly and the ill with its mobile medical house call unit. Its programme of assistance to people living with HIV and terminally ill people had earlier been funded by the Delegation of the European Union to Serbia.<sup>266</sup> Philanthropy is also engaged in extending humanitarian aid (e.g. to the Golobok villagers<sup>267</sup>), implementing health and welfare programmes (e.g. in the Negotin Home for Children and Youths with Disabilities "Stanko Paunović"<sup>268</sup>), agriculture and education. A charity by the name of *Versko dobrotvorno starateljstvo*, which also operates under SOC's auspices, extends family counselling and specialist medical services and organises foreign language classes.<sup>269</sup> *Zemlja živih*, a therapeutic community focusing on the psychosocial rehabilitation of drug addicts, and the humanitarian organisation *Majka devet Jugovića*, established to help Serbs in Kosovo also operate under the auspices of the SOC.<sup>270</sup>

Although a number of charities operate under the auspices of the SOC, some analysts believe that the SOC is insufficiently active in this area and note that, al-

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im-damo-kosovo/; and <https://www.blic.rs/vesti/drustvo/crkva-iznela-konacan-stav-o-kim-ni-priznanje-ni-podela-drzavnici-ne-smeju-da-popuste/13p4e82>. Senior state and SOC officials also frequently held meetings to discuss state policies. See, e.g. the *Politika* report, available in Serbian at: <http://www.politika.rs/scc/clanak/413646/Патријарси-Јован-Десети-и-Иринеј-код-Вучића>. The Islamic Community of Serbia has also publicly voiced its views on the Kosovo issue, see, e.g. the *Telegraf* report Available in Serbian at: <https://www.telegraf.rs/vesti/politika/2939961-muftija-beogradski-kosovo-je-kolevka-srbije>.

264 This view was also expressed by the Special Rapporteur in the field of cultural rights in her Report on her 2018 mission to Serbia and Kosovo, para. 29, available at: <https://digitallibrary.un.org/record/1477642>.

265 See, e.g., the statement by Belgrade Law School Professor Sima Avramović, that the religious identity of Serbia's Orthodox population is defined by its religious tradition, culture and *ethnic affiliation*. More in, "Religious Education in Public Schools and Religion Identity in Post-Communist Serbia," *Law School Annals*, Belgrade, 2016, p. 25.

266 Data accessed on Philanthropy's website <http://www.covekoljublje.org/ocove.html>.

267 See: <http://www.covekoljublje.org/en/news/17/2018/09/12/philanthropy-and-act-alliance-helping-a-village-of-golobok.html>.

268 See: <http://www.covekoljublje.org/en/news/17/2018/10/02/philanthropy-in-home-for-children-and-youth-stanko-paunovic-in-negotin.html>.

269 More about the work of this organisation is available in Serbian at: <http://starateljstvo.rs/raspored-aktivnosti-vds-a-za-2017-2018-godinu/>.

270 Data accessed on the following website: <http://www.orthodox-christianity.org/orthodoxy/churches/serbia/serborgs/>.

though the SOC often underlines that 85% of Serbia's population are Serb Orthodox Christians, it does not care about their social problems. As opposed to abortion, religious instruction or homosexuality, on which it has regularly stated its views, the SOC has never publicly addressed the social problems of the citizens. Nor do they feature in the Patriarch's epistles. The SOC has not reacted publicly to hunger strikes, protests caused by grave social problems, welfare cuts, closure of soup kitchens, public officials' hate speech, the immorality of reality shows, etc.<sup>271</sup>

### 7.5. *Right to Conscientious Objection*

Although international treaties do not explicitly refer to the right of conscientious objection, it is inferred from the right to freedom of thought, conscience and religion.<sup>272</sup> The right to conscientious objection is recognised in CoE Parliamentary Assembly and Committee of Ministers recommendations and resolutions.<sup>273</sup> Mandatory military service was abolished in Serbia in 2011.

The idea to reintroduce mandatory military service, launched in early 2017, was frequently mentioned in 2018, including by the Serbian President.<sup>274</sup> The Ministry of Defence holds that it was never abolished, just suspended in 2011. On the order of the Serbian President and Supreme Commander of the Serbian Army, the Ministry of Defence started developing a study on all the modalities and possibilities of reinstating mandatory military service.<sup>275</sup> Army and Defence Ministry officials have described mandatory military service as the future of the Serbian Army.<sup>276</sup>

Although mandatory military service was abolished back in 2011, Serbian courts ruled on the issue of conscientious objection in 2017. The Požarevac Higher Court upheld the application for rehabilitation<sup>277</sup> of an applicant, a Jehovah's Witness,

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271 More is available in Serbian at: <http://voice.org.rs/mocna-korporacija-srpska-pravoslavna-crkva/>.

272 Article 18 ICCPR and Article 9 ECHR. Although the ICCPR does not explicitly refer to the right to conscientious objection, the Human Rights Committee believes that such a right can be derived from Article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.

273 More on the right to conscientious objection in the *2010 Report*, II.4.8.5.

274 See the *B92* and *N1* reports, available in Serbian at: [http://www.b92.net/bbc/index.php?yyyy=2018&mm=08&dd=23&nav\\_id=1434397](http://www.b92.net/bbc/index.php?yyyy=2018&mm=08&dd=23&nav_id=1434397) and <http://rs.n1info.com/a413546/Vesti/Uvodjenje-vojnog-roka.html>.

275 See the *N1* report, available in Serbian at: <http://rs.n1info.com/a413752/Vesti/Ministarstvo-od-brane-Radi-se-studija-o-vracanju-vojnog-roka.html>.

276 See the *Večernje novosti* and *Danas* reports, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/ekonomija/aktuelno.239.html:752242-Mojsilovic-Buducnost-nase-vojske-je-obavezni-vojni-rok> and <https://www.danas.rs/drustvo/vulin-uvodjenje-vojnog-roka-kosta-manje-od-700-miliona-evra/>.

277 Article 1(1) of the Rehabilitation Act (*Sl. glasnik RS*, 92/11) lays down that the Act shall govern the rehabilitation and legal consequences of the rehabilitation of individuals deprived of life, liberty or other rights for political, *religious*, national or ideological reasons.

who had been found guilty under criminal law for refusing to carry and fire weapons in 1979 although he pleaded conscientious objection. The Court said that the right to conscientious objection is part of the right to freedom of thought, conscience and religion and that individuals who plead conscientious objection and refuse to carry weapons are entitled to be exempt from serving the army under arms.<sup>278</sup>

## 8. Freedom of Peaceful Assembly

### 8.1. *Legal Framework*

The Republic of Serbia is bound by international documents to protect, respect and ensure the freedom of assembly. This freedom is enshrined in the Universal Declaration of Human Rights (Art. 20), the European Convention on Human Rights (Art. 11) and the International Covenant on Civil and Political Rights (Art. 21).

The freedom of peaceful assembly is also guaranteed by Article 54 of the Serbian Constitution. The Constitution, however, does not explicitly guarantee this right to aliens or stateless persons. The ECHR includes a separate article allowing restrictions of the activity of aliens,<sup>279</sup> but only with respect to political activity, wherefore this provision could justify the ban on political assemblies organised by aliens. Assemblies are not necessarily always political and the general exclusion of aliens from the exercise of the right to freedom of assembly, like the one in the Constitution, is unwarranted.

Article 54 of the Constitution lays down that freedom of assembly may be restricted by the law only if necessary to protect public health, morals, rights of others or the security of the Republic of Serbia. Freedom of assembly may not be restricted by law on any other grounds except those set out in the Constitution. The grounds for restrictions of this freedom constitute legal standards that are interpreted in every individual case.

Exercise of the freedom of assembly is governed in detail by the Public Assembly Act,<sup>280</sup> which was adopted in January 2016, after the Serbian Constitutional Court had declared its predecessor unconstitutional in its entirety.<sup>281</sup> Deficiencies of this Act were identified both during the public debate and after it entered into force.

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278 Higher Court Ruling No. Reh 6/2017(2016) of 12 October 2017. The Kragujevac Appellate Court delivered a similar judgment Rehž 30/2017 of 17 May 2017.

279 Article 16 of the ECHR – Restriction on the political activity of aliens: Nothing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

280 *Sl. glasnik RS*, 6/16, a thorough analysis of the Public Assembly Act is available in the *2016 Report*, II.9.2.

281 Decision IUz 204/13 of 9 April 2015.

### *8.1.1. Restrictions of the Freedom of Assembly*

The Public Assembly Act guarantees the freedom of assembly to everyone and does not lay down any restrictions of this freedom on grounds of nationality (Art. 1). However, the prohibition of assemblies staged by the Serbian branch of the Chinese Falun Dafa (Falun Gong) movement may amount to the competent authorities' arbitrary and discriminatory treatment of aliens with respect to their freedom of assembly both under the valid Act and its predecessor. Falun Dafa's assemblies were for the first time prohibited in Serbia back in 2014, without an explicit explanation.<sup>282</sup> The members of this movement, who had travelled from other countries to Serbia to attend the events, were remanded in custody and deported. The events staged by this organisation were banned in 2016 and 2017 as well.

It was only in late 2017 that the Constitutional Court upheld the constitutional appeal of the bans, finding a violation of Falun Dafa's right to a legal remedy under Article 36(2) of the Serbian Constitution in conjunction with Article 54 of the Constitution enshrining the freedom of assembly.<sup>283</sup> The Constitutional Court's decision, however, did not improve the situation – 12 events Falun Dafa notified in Belgrade and other Serbian cities were subsequently prohibited as well. All MIA decisions banning the events contained the same explanation –to preclude clashes between Falun Dafa sympathisers and Chinese nationals temporarily working in Serbia, who were expected to rally to welcome the visiting Chinese officials.

The Public Assembly Act restricts the freedom of assembly in an abstract manner. Article 6(1) lays down that assemblies may be held anywhere, except at venues next to dangerous sites, the specific features or purpose of which render them a potential threat to the safety of humans and property, public health, morals, rights of others or national security. Such venues include areas in front of health institutions, kindergartens and schools and buildings of strategic or particular relevance to Serbia's defence and security (Art. 6(2)). Article 6(3) of the Act also prohibits assemblies at venues where their holding would violate human and minority rights and freedoms of others, undermine morals and at venues closed to the public.

The Act leaves the identification of inappropriate venues to local self-government units, which are under the obligation to pass enactments listing such venues within 60 days from the day the Act takes effect, which may result in unlawful restrictions of the freedom of assembly. Although the deadline for the adoption of such enactments expired over two years ago, only 11 Serbian municipalities<sup>284</sup> have to date specified venues at which public assemblies may not be held. One of them is the Municipality of Negotin, which prohibited all assemblies in front of the town hall, which is in contravention of the Public Assembly Act.

Under the Public Assembly Act, outdoor assemblies must be notified to the relevant MIA units. The Act imposes excessive obligations on the organisers, be-

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282 See the *2016 Report*, II.9.1.

283 CC Decision Už- 3048/2015 of 26 October 2017, available in Serbian at: <https://bit.ly/2RmQ1I0>.

284 According to a search of the Paragraf Lex database.

cause their notices must include numerous data and accompanying documents they do not necessarily possess and the submission of incomplete notices may result in the prohibition of the assemblies.

The Public Assembly Act permits the organisation of spontaneous (unnotified) assemblies and processions. However, its definition of a “spontaneous assembly” is extremely vague. The Act defines such assemblies as those that have no organisers, that take place indoors or outdoors and in immediate response to specific events, and at which the assembly participants express their views or opinions on those events.

The practice of holding spontaneous assemblies and the MIA’s interpretation of a spontaneous assembly under the Act indicates lack of understanding of this form of assembly. Furthermore, the Act levies misdemeanour fines against organisers who fail to notify their assemblies (in case their events do not fulfil the spontaneous assembly requirements). YUCOM’s data show that the failure to notify an assembly has been the most frequent reason for filing misdemeanour reports against organisers of public assemblies since the Public Assembly Act entered into force.<sup>285</sup>

The Public Assembly Act does not recognise any less restrictive measures than the prohibition of public assemblies not organised or conducted in accordance with the law. The Act does not provide for restrictions of the freedom of assembly proportionate to the purpose of the restrictions; nor does it specify that the restrictions are to be necessary in a democratic society, the legal standard (laid down in Article 11 of the ECHR) the Constitutional Court highlighted in its decision declaring the prior Act unconstitutional. Under Article 20(3) of the Constitution, when restricting human and minority rights, state authorities shall consider the substance of the right at issue, the relevance, purpose, character and extent of the restriction, and whether the purpose may be achieved by less restrictive measures.

### *8.1.2. Legal Remedies*

The 2016 Public Assembly Act was to have provided effective legal remedies for challenging rulings restricting the freedom of assembly, i.e. extended the deadlines for submitting notices and shortening those by which the authorities are to rule on the appeals in order to ensure that the final decision is rendered before the scheduled date of the event.

Appeals of such rulings may be filed with the Ministry of Internal Affairs within 24 hours from the time of service. This deadline is much too short given that the appellants need to submit additional evidence together with their appeals. Furthermore, the Public Assembly Act lays down that the MIA shall rule on appeals within 24 hours (Art. 16), which is an extremely short period of time for reviewing the entire appeal. The MIA’s decisions on appeal may be contested in an administrative dispute before the Administrative Court. The Act, however, does not specify

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285 As YUCOM told BCHR on 1 December 2018.

the deadline by which the Administrative Court must rule on the claim, which may again result in the *post hoc* character of the legal remedies and, thus, their ineffectiveness. The deficiencies of the prior law have thus not been eliminated in the new Act, as the Human Rights Committee also noted in 2017.

Organisers may file constitutional appeals against final decisions prohibiting their assemblies or in the event they have no effective legal remedies at their disposal.

### *8.1.3. Responsibilities of the Assembly Organisers and Counter-Demonstrations*

The Public Assembly Act lays down draconic fines to be imposed organisers and leaders of public assemblies defaulting on their statutory obligations. This, too, prompted the Human Rights Committee to recommend the review of the application of this law in its 2017 Concluding observations. Legal and natural persons, organisers of public assemblies, shall be fined between 1 and 1.5 million and 100 and 120 thousand RSD respectively in the event they hold their assemblies at the venues and times other than those specified in their notices; fail to notify the public of the prohibition of their assemblies; fail to engage stewards or ensure law and order during the assemblies or during the arrival or departure of the participants; fail to manage or monitor their assemblies; fail to facilitate the unimpeded movement of ambulances, police and firemen; fail to act on the orders of the competent authority (police unit); fail to disperse their assemblies in case of an immediate threat to the safety of people and property and notify the police thereof (Art. 21). In addition to assembly organisers, the Act recognises other categories of persons liable for the security of the assemblies, notably, the assembly leaders, who may be designated as such by the organisers, and the stewards, whose roles are not specified in detail in the Act.

Such cumulative punishment of various actors of an assembly involving sky-high fines amounts to the state's disproportionate interference in the freedom of assembly. Furthermore, misdemeanour proceedings have frequently been used to intimidate organisers of assemblies promoting views critical of the ruling political parties or raising controversial issues.<sup>286</sup>

Under international standards, organisers, leaders and stewards have a responsibility to make reasonable efforts to comply with legal requirements and to ensure that their assemblies are peaceful, but they should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so. The organisers should not be liable for the actions of individual participants or of stewards not acting in accordance with the regulations and orders of the competent authorities. Instead, individual liability should arise for any steward or participant if they commit an offence or fail to carry out the lawful directions of law enforcement officials.<sup>287</sup>

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286 See the 2016 Report, II.9.2.2.

287 *Guidelines on Freedom of Peaceful Assembly*, OSCE/ODIHR and Venice Commission, Warsaw/Strasbourg 2010, para. 197.

Numerous spontaneous protests under the slogan “Against Dictatorship” were held across Serbia in the days leading up to and after the presidential elections in April 2017. The police filed a misdemeanour report against two students of the Belgrade Drama Arts College (FDU), whom they identified as organisers of one such assembly (because they were coordinating the procession), charging them with the failure to notify the police of the assembly,<sup>288</sup> although the Public Assembly Act permits unnotified assemblies held in immediate response to a specific event.

Six separate proceedings for the same misdemeanour, committed on different days, were filed in the meantime against one of the FDU students. The hearings were frequently adjourned due to the absence of the judges or the witnesses – police officers. A number of proceedings were launched also against the students of the Belgrade College of Political Sciences. Most of the proceedings initiated against the participants in the “Against Dictatorship” protest were still pending before the Belgrade Misdemeanour Court at the end of the reporting period, leaving the impression that the trials were intentionally adjourned both to maintain constant pressure on the defendants and the actual organisers of the protest, and to deter them from organising or participating in new protests.

YUCOM data show that the holding of spontaneous assemblies, i.e. assemblies not notified in advance, was the reason for nearly all the misdemeanour proceedings initiated since the Public Assembly Act entered into force. The introduction of spontaneous assemblies by the Public Assembly Act did not result in the improvement of the situation in practice, but rather to its deterioration. Spontaneous assemblies were not envisaged by the prior law, but were mostly tolerated.

The Act does not govern the issue of dissenting and simultaneous assemblies at all. At the public debate on the draft, the MIA said that counter-demonstrations should not be allowed, notably that the assembly that was first notified should be allowed to proceed and that all other events subsequently scheduled at the same time and the same place should be prohibited. Although this position most probably aims to protect the participants of one assembly from the participants of the counter-demonstration, it should not be applied in practice, because the fact that one assembly was notified before another cannot constitute legitimate grounds for prohibiting the latter.

In 2018, the authorities on two occasions banned counter-demonstrations scheduled after the initial events or all events scheduled for the same day. In May 2018, the police prohibited all events scheduled in response to the Mirëdita – Good Day festival of Serbian and Albanian culture and reconciliation, held in Belgrade every year. Despite the ban, protesters, mostly SRS members and sympathisers, rallied and tried to break through the police cordon.<sup>289</sup> The police employed minimum

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288 MIA Stari grad Police Station, Reg. No. 3–101-0559/17, misdemeanour report filed with the Belgrade Misdemeanour Court, as BCHR was told by YUCOM.

289 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/drustvo/mirdita-iza-kordona-protest-ispred-czkd-zbog-festivala-ekstremni-desnicari-se-koskali/eb368ne>.

force to prevent violence and the festival was held. They also prohibited all events in the Vojvodina town of Hrtkovci on the day the Serbian Radical Party scheduled its rally there. The SRS rally was banned as well.

On the other hand, the judiciary demonstrated lack of will to align its practice with the Constitution and international standards. Namely, in the absence of a statutory deadline by which it is to rule on claims filed by organisers of public assemblies prohibited by the police and extend them judicial protection, the Administrative Court in most cases ruled on such claims months after the day the events had been scheduled for.

The Administrative Court exceptionally delivered two of its decisions promptly. Both concerned the organisation of the SRS rally in Hrtkovci scheduled for 6 May 2018. To recall, SRS leader Vojislav Šešelj held a speech in Hrtkovci in 1992, during which he instigated the deportation of the local Croatian population, for which he was found guilty by the ICTY.<sup>290</sup> The Ministry of Internal Affairs decided to ban the event. After the MIA dismissed the SRS appeal, SRS filed a claim with the Administrative Court. The Administrative Court reversed the MIA decision because of the deficiencies in the SRS notice. SRS eliminated the shortcomings and again notified the MIA of its rally, which the MIA again banned. The SRS filed a new claim with the Administrative Court, which dismissed it and upheld the MIA decision. The leader of the League of Social-Democrats of Vojvodina said that his party would organise counter-demonstrations on the same day to demonstrate their solidarity with the Hrtkovci residents, but the police prohibited all rallies scheduled for that day.<sup>291</sup>

#### 8.1.4. *The Role of the Police*

The Public Assembly Act makes no mention of the obligation of the police to ensure the free holding of assemblies and the protection of their participants. Plain-clothes policemen secure high-risk events and those attended by senior officials. The question that arises in practice regards the police's apparent arbitrary exercise of its power to make video and audio recordings of participants in events. On the other hand, the Personal Data Protection Act<sup>292</sup> lays down an exhaustive list of grounds on which the authorities are allowed to process the personal data of data subjects without their consent: in order to fulfil their duties, protect national security, prevent crime, identify perpetrators of criminal offences, for the purpose of investigation, criminal prosecution, etc.

Article 52(2) of the Police Act entitles police officers to make audio and video recordings of public assemblies, where there are risks to the lives or health of people or property damage. They are under the obligation to notify the public of the intention to make footage of an assembly, unless they are engaged in covert surveillance

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290 More in Chapter III.5.

291 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/politika/stefanovic-skupovi-u-hrtkovcima-zabranjeni-zbog-bezbednosti/1kqsfcz>.

292 *Sl. glasnik RS*, 97/08, 104/09 – other law, 68/12 – CC Decision and 107/12.



under the Criminal Procedure Code (Art. 52(5)). The footage must be destroyed within one year in the event it cannot be used in proceedings (Art. 52(7)). The manner in which the police shall notify the public of the intention to record assemblies shall be prescribed by the police minister (Art. 52(8)). However, as opposed to its predecessor, the new Rulebook on Implementation of Individual Police Activities<sup>293</sup> does not govern the recording of public assemblies at all.

No criminal proceedings were instituted with respect to over 30 criminal reports filed by the organisers of the “Let’s Not Give (Drown) Belgrade” events because of threats against them on social media.<sup>294</sup> They also filed a criminal report with the Belgrade First Basic Public Prosecution Service and a complaint against the police to the Protector of Citizens. In March 2017, the Ministry of Internal Affairs notified the Protector of Citizens that it had not identified any irregularities in the work of the officers securing the event, to whom the participants had reported their safety concerns.

The Protector of Citizens expressed concern that individuals went unpunished for impersonating the police and provoking them.<sup>295</sup> He noted that the police officer had been ordered by his superior not to take any measures against the individual who had tried to ID the participant in the rally by force and that the statements by the police officers on duty at the time were inconsistent. The Protector of Citizens did not find that the police officers’ (in)actions in this case were unlawful despite his opinion that the MIA’s actions during the procedure initiated pursuant to the complaint filed with the Protector of Citizens were not in keeping with good governance principles. On the other hand, over 30 misdemeanour proceedings have to date been initiated against the “Let’s Not Give (Drown) Belgrade” activists who took part in the 2016 and 2017 protests. The first judgments against them were delivered in 2018, and they were fined a total of 180,000 RSD. The money was successfully raised in June 2018, after the movement appealed to the public for help.<sup>296</sup>

## 8.2. *Right to Freedom of Peaceful Assembly in 2018*

Serbian citizens amply exercised their freedom of assembly in 2018. They mostly rallied to protest against central and local government decisions regarding urban planning, environmental and social policies and forced evictions of families not provided with adequate alternative housing.

Spontaneous protests against the price of fuel were staged by drivers across Serbia in June 2018. The police filed numerous misdemeanour reports against ran-

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293 *Sl. glasnik RS*, 6/16, 24/18 and 87/18.

294 More on the rallies organised by “Let’s Not Give (Drown) Belgrade” in the *2017 Report*, II.8.3.

295 Protector of Citizens letter to the complainant Ref. No. 13–43–1397/17 of 29 November 2017.

296 See the movement’s press release, available in Serbian at: <https://nedavimobeograd.rs/sredstva-za-placanje-kazni-za-organizovanje-protesta-uspesno-prikupljena-ocekuju-se-nove-presude/?script=lat>.

domly selected participants of the road blocks, charging them with traffic offences. Traffic offence reports were filed against three residents of the village Lipar at Kula although they clearly told the police that had hauled them in for blocking the traffic that a protest was at issue.<sup>297</sup> Such reports amounted to gross violations of the Public Assembly Act, perpetrated with the aim of intimidating the citizens and deterring future protests. Pro-government media and police minister Nebojša Stefanović accused the protesters of staging the protests qualified as political to topple Serbian President Aleksandar Vučić.<sup>298</sup>

Numerous pro-environment rallies were staged in 2018 as well. The residents of several villages on Stara Planina mountain in September 2018 organised a series of protests “Defend the Stara Planina Rivers”. This grassroots initiative opposed the construction of small hydropower plants (SHPPs) that would change the course of the rivers or dry them out.<sup>299</sup> Residents of the Temska village and activists defending the mountain rivers in August 2018 staged an “environmental rebellion” to return the Rudina River to its old river bed after an investor built an SHPP at the river source, four kilometres upstream.<sup>300</sup>

A protest under the slogan “Say No to SHPPs” was held in Pirot in early September. The organisers wanted to alert the public to the disappearance of rivers due to the increasing construction of SHPPs and force the Pirot authorities to abandon their plan providing for the construction of 58 SHPPs on Stara Planina.<sup>301</sup>

The anti-SHPP protest held in the heart of Babušnica in October rallied over 200 people, including green activists from Pirot, Niš, Belgrade and Novi Sad, and the Rakita villagers directly affected by the construction of an SHPP there. They sent a message to the local and Belgrade authorities that they would not abandon their struggle to preserve their rivers, and that they would go to all sites where construction machines were deployed and physically prevent the works. The Rakita residents and the Stara Planina activists prevented the construction of an SHPP in that village several days earlier.<sup>302</sup>

The Rakita villagers and the private security guards engaged by the investor clashed when the investor continued with the construction of the SHPP on the Raki-

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297 More is available in Serbian at: <http://www.autonomija.info/voice-prijave-protiv-organizatora-blokada-da-sirotninji-vise-ne-padne-na-pamet-da-protestuje.html>.

298 See the Civic Initiatives analysis, available in Serbian at: <https://www.gradjanske.org/wp-content/uploads/2018/12/Analiza-suzavanje-prostora.pdf>.

299 See more at: <https://balkangreenenergynews.com/thousands-rally-against-small-hydropower-plants-on-mt-stara-planina>.

300 See the *Balkan Insight* report, available at: <http://www.balkaninsight.com/en/article/serbia-s-greens-mobilise-against-threat-to-mountain-rivers-09-17-2018>.

301 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a416882/Protest-u-Pirotu-protiv-mini-hidroelektrana.html>.

302 The Babušnica 2012 local plan provided for the construction of SHPPs at 13 locations. See the *Južne vesti* report, available in Serbian at: <https://www.juznevesti.com/Drushtvo/Protestom-protiv-MHE-i-u-Babusnici-porucili-da-ne-odustaju-od-odbrane-reka.sr.html>.

ta River and the villagers said they would stand vigil round the clock at the construction site.<sup>303</sup> The few police on the scene were unable to contain a mass brawl that broke out between the villagers and activists and the investor's security guards on 25 December 2018. One person was injured.<sup>304</sup>

Misdemeanour proceedings were instituted against participants in a banned several-day rally in a Belgrade suburb (Petlovo brdo), who were protesting against the city authorities' plans to cut the pine trees in the nearby park.

Residents of the Belgrade suburb Stepa Stepanović started organising rallies in June 2018, protesting against the city authorities' decision to let the Serbian Orthodox Church build a church at the site at which an outpatient health clinic was initially to have been built. They said that the police threatened to haul them in but that they would persevere in their protests.<sup>305</sup> The organisers scheduled a rally on the Slavija roundabout in the heart of Belgrade for 14 July 2018 but the police banned it because it would disrupt traffic and the risk of the drivers clashing with the protesters. The MIA upheld the protesters' appeal and the rally was held.

Similar reasons provoked months-long protests and spontaneous assemblies in Požega, when the local authorities decided to spend the budget funds to buy an illegally constructed building owned by the husband and brother in law of the town Mayor (member of the Serbian Progressive Party). The municipal officials reacted by filing reports against the participants for insulting them. Some participants also received threat letters.<sup>306</sup> None of the state institutions reacted to these developments apart from the Commissioner for Information of Public Importance and Personal Data Protection, who initiated an oversight exercise after the personal data of the protest participants in the records of the Social Work Centre were published on Facebook.<sup>307</sup>

In the latter half of 2018, the initiative Moms are the Law! organised numerous protests called Moms are Angry! against the provisions of the Act on Financial Support for Children with Families lowering the level of social rights of pregnant women, young mothers and mothers of children with disabilities.<sup>308</sup> The protests were staged in response to the decisions by local authorities allocating monthly benefits in the amount of 1,000 RSD (less than €10) to women on maternity leave.

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303 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a433855/Protest-protiv-MHE-mestani-sela-Rakita-vratili-reku-u-korito.html>.

304 See the *Južne vesti* report, available in Serbian at: <https://www.juznevesti.com/Hronika/Tuca-aktivista-i-mestana-Rakite-sa-obezbedjenjem-gradilista-mini-hidroelektrane.sr.html>.

305 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a400223/Protest-stanara-u-naselju-Stepa-Stepanovic.html>.

306 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/upozegi-se-danas-odrzava-sesti-protest-protiv-lokalne-vlasti/>.

307 See the SHARE Foundation report, available at: <https://resursi.sharefoundation.info/en/resource/monitoring-of-digital-rights-and-freedoms-in-serbia-in-2018-year-of-privacy-breaches/>.

308 See the *BizLife* report, available at: <https://www.bizlife.rs/en/in-focus/news-of-the-day/angry-moms-in-front-of-the-government-we-are-not-stupid-we-read-between-the-lines/>.

Furthermore, under the Act, mothers of children with disabilities are no longer entitled to both domiciliary care allowances and special childcare leave pay and have to choose between the two.

The protests organised every Saturday in December 2018 because of the physical assault on opposition leader of the Alliance for Serbia (SzS) Borko Stefanović in Kruševac rallied the greatest numbers of citizens.<sup>309</sup> After the rally in Kruševac, a large protest under the slogan “Stop to Bloody Shirts” was staged in Belgrade. The participants (the organisers estimated over 10,000 of them) walked the streets of central Belgrade on 8 December blowing their whistles and banging drums. Some protesters wore yellow vests like the ones that became the symbol of the anti-Government protests in France. Interior Minister Nebojša Stefanović said on *TV Pink* that the police estimated the number of protesters at “between 1,500 and 1,600”.<sup>310</sup>

The report on the protest by a reporter of *Studio B*, the TV station that focuses on city issues, was a drastic example of biased and unprofessional coverage of this public assembly. She not only downplayed the number of participants, but also voiced a number of lies, saying the participants had advocated lynch, rape and violence. Her report provoked a public outcry, especially among press associations, which qualified her work as unprofessional and untrue, provoking sharp polemics between Studio B’s management, which defended her, and other media professionals.<sup>311</sup>

The protest organised a week later without incident was attended by many more people. The participants in the procession carried banners saying “Stop to Bloody Shirts”, “One out of Five Million”, “It’s Begun”, et al. Representatives of several opposition parties (Vuk Jeremić, Dragan Đilas, Borko Stefanović, Janko Veselinović, Miloš Jovanović, Boško Obradović) were among the protesters. Activist Jelena Anasonović set the following demands to Serbian President Aleksandar Vučić: to identify the killers of Kosovo Serb leader Oliver Ivanović and the architects of the assassination attempt on Borko Stefanović in Kruševac, the masterminds and perpetrators of all assaults on journalists and political and civil society activists, as well as citizens not toing the government line.

The slogans “Let’s Count Ourselves” and “One out of Five Million” were inspired by the claims of pro-government media and state officials that only a small number of participants had rallied at the previous protest and by Vučić’s statement

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309 Borko Stefanović, leader of Serbia’s Left, and an activist of that party, Boban Jovanović, were assaulted by masked men armed with baseball bats and metal rods just before the Alliance for Change panel discussion in Kruševac on 23 November. Stefanović sustained grave head injuries, Jovanović’s teeth were broken; three other people were also injured. A protest was organised in Kruševac a week later, at which the SzS called on the citizens to oppose organised violence in Serbia. See the *NI* report, available at: <http://rs.n1info.com/English/NEWS/a438363/Serbian-opposition-leader-brutally-beaten.html>.

310 See the *Politika* report, available in Serbian at: <http://www.politika.rs/sr/clanak/417643/Protest-u-Beogradu-Dilas-i-Stefanovic-na-celu>.

311 See the *Balkan Insight* report, available at: <http://www.balkaninsight.com/en/article/first-protest-only-beginning-serbian-opposition-said-12-10-2018>.

that he would not fulfil any of the opposition's demands, even if five million people went to the streets.<sup>312</sup>

More and more citizens attended the protests, organised every Saturday until the end of the year, at which the organisers reiterated their demands. The protests were organised over social media and their main feature was that they were civic in character and attended by tens of thousands of people. It remained to be seen whether they would turn into serious political protests and force the authorities to rethink the way they rule Serbia.

## 9. Freedom of Association

### 9.1. *Legal Framework*

The International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) guarantee everyone the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. Both of these international documents allow the States Parties to impose lawful restrictions on the exercise of these rights by members of the armed forces and the police, while the ECHR also allows them to impose such restrictions on members of the administration of the State.

The Constitution of Serbia guarantees the freedom to join and form political, trade union and all other forms of associations (Art. 55). The Constitution lays down that associations shall be formed by entry in a register, in accordance with the law, and that they shall not require prior consent. The Constitution also prohibits political party membership of Constitutional Court judges, public prosecutors, the Protector of Citizens and army and police staff, but not their membership of guild and professional associations.

Freedom of association may be restricted in the event such restrictions are prescribed by law, necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others (Art. 11(2), ECHR). Art. 22(2) of the ICCPR lays down that freedom of association may be restricted in the interest of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The Constitution specifies that the Constitutional Court may ban only associations the activities of which are aimed at the violent change of the

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312 See the *NI* report, available at: <http://rs.n1info.com/English/NEWS/a446726/FT-says-thousands-join-anti-government-protest-in-Serbia.html>.

constitutional order, violation of guaranteed human and minority rights or incitement to racial, ethnic or religious hate.

The Act on Associations,<sup>313</sup> which was adopted after years of NGO lobbying, lays down a legal framework that is for the most part extremely liberal and in compliance with the highest European standards.<sup>314</sup>

The Act on Associations defines an association as a voluntary and non-government non-profit organisation based on the freedom of association of two or more natural or legal persons established to achieve and promote a specific common or general goal or interest not prohibited by the Constitution or the law. The Act applies subsidiarily, as a *lex generalis*, to other associations the activities of which are governed by other laws (e.g. religious communities, trade unions, political parties, etc.).

An association of citizens may be established by at least three natural or legal persons, which acquire the status of legal person by registration with the Business Registers Agency.<sup>315</sup> Registration is the condition an association has to fulfil to acquire the status of a legal person but it does not have to register to work. A Registrar's decision may be challenged with the Ministry.<sup>316</sup> Associations must specify how their assemblies make decisions in their Articles of Association.

Associations may engage in economic activities. An association may use its assets only to pursue its goals. The Act on Associations lays down that funds will be earmarked in the budget of the Republic of Serbia to encourage the implementation of programmes of public interest or cover the funds an association lacks to implement them. The Act on Associations entitles legal and natural persons making contributions and donations to associations to tax exemption.

The Act on Associations further allows the prohibition of associations in the event their goals and activities are aimed at undermining the territorial integrity of the Republic of Serbia, incitement of inequality, hate or intolerance on grounds of race, ethnicity, religious or other affiliation or orientation, as well as of gender, sex, physical, psychological or other features or abilities.

The Act prohibits the public use of visual symbols and insignia of prohibited associations (Art. 50(5)). The Act's penal provisions, however, do not lay down any penalties for non-compliance with this prohibition.<sup>317</sup>

### 9.1.1. Prohibition of Events of Neo-Nazi or Fascist Organisations

The Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia<sup>318</sup> further bans the activities of organ-

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313 *Sl. glasnik RS*, 51/09 and 99/11 – other law.

314 See the Civic Initiatives' *Guide to the Implementation of the Act on Associations*, Belgrade 2009, available in Serbian at: <https://www.gradjanske.org/vodic-za-primenu-zakona-o-udruzenjima/>.

315 *Sl. glasnik RS*, 99/11 and 83/14.

316 More on the complaints procedure in the *2016 Report*, II.10.2.

317 See a detailed analysis of the Act in the *2010 Report*, I.4.11 and in the *2017 Report*, II.9.

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

isations reaffirming neo-Nazi and Fascist ideas in their Articles of Association and programmes. Under the Act, a procedure may be initiated to delete from the Register a registered organisation or association advocating neo-Nazi or Fascist goals and disregarding the prohibitions in the Act (Art. 2(2)).<sup>319</sup> The procedure for prohibiting an association is initiated on the motion of the Government, the Republican Public Prosecutor, the ministry charged with administration affairs, the ministry charged with the field in which the association is pursuing its goals or the registration authority – the Business Registers Agency.

The Act, however, needs to be elaborated in greater detail with respect to the misdemeanour penalties imposed on associations and it needs to define the concept “neo-Nazi and Fascist ideas and insignia”. Despite the relatively good legal framework, which has potential to pre-empt propagation of neo-Nazi and Fascist ideas, associations aiming at inciting national, racial, religious and other hate and intolerance or limiting the rights and freedoms of others nevertheless exist in Serbia.

A rally in support of the rehabilitation of Milan Nedić, the Prime Minister of the quisling Serbian Government in WWII, was organised in Belgrade in February 2018. The participants in the rally chanted slogans and made Nazi salutes. The large numbers of police in riot gear deployed to ensure that there were no incidents between the Nedić sympathisers and supporters of anti-Fascist organisations and political parties did not react to blatant violations of the Act.<sup>320</sup>

## 9.2. CSOs’ Activities and Status in Society in 2018

Not enough support has been extended to the development of public engagement and the promotion of a democratic political culture in the nine years since the adoption of the Act on Associations. Restrictive media and judicial laws and rampant corruption exacerbated the relations between the government and the civil sector, and led to a loss of public trust in democratic processes and those leading them.<sup>321</sup>

Although NGOs have been implementing numerous projects directly or indirectly improving the lives of citizens, only a small share of the population appears to perceive these as positive or beneficial, due to the years-long anti-NGO campaign by some media and public figures. A survey conducted by CRTA shows that public trust in CSOs has been falling: only one third of the citizens fully understand their role, another third describes them as international organisations and the rest perceive them as anti-Government organisations.

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319 The Act, therefore, does not introduce fresh grounds for the prohibition of an association, but grounds for initiating the procedure for deleting it from the Register. This statutory penalty borders on the absurd given that most of the organisations are unregistered.

320 See the *Balkan Insight* report, available at: <http://www.balkaninsight.com/en/article/serbians-on-social-networks-mock-nazi-saluting-at-nedic-rally-02-05-2018>.

321 See the Civic Initiatives analysis, available in Serbian at: <https://www.gradjanske.org/wp-content/uploads/2018/12/Analiza-suzavanje-prostora.pdf>.

The establishment of CSOs, tasked with extending support to the government, acquired concerning proportions in the past few years. Prosecutors and other authorities have failed to react to strong arguments about corruption in the allocation of public resources to them.<sup>322</sup> The creation of a parallel civil sector has facilitated the simulation of public debates and the entire public engagement process, risking to gravely undermine public trust in democratic processes and institutions.

### *9.2.1. Civil Sector Engagement in Public Debates and Establishment of New Pro-Government Civic Associations*

In 2018, the executive continued with its policy of essentially excluding experts and professionals from public debates on major legislative amendments. Even where the public was formally engaged, its suggestions, proposals and objections were mostly not taken into account, which did not stop the Government from alleging in its reports that the draft legislation was informed by public consultation. The practice of adopting laws under an urgent procedure was replaced by simulations of public debates on draft laws.

In July 2018, the Justice Ministry opened a public debate on the Legal Aid Act, but left the stakeholders with next to no time for commenting the preliminary draft. Notwithstanding the short deadline and the fact that the debate was launched during the summer, traditionally reserved for annual vacations, the CSOs responded to the challenge and forwarded to the Ministry a number of comments on the substantive deficiencies of the draft, notably the provisions on who could extend and benefit from legal aid. The Justice Ministry took some of the comments on board, but unfortunately did not amend the extremely restrictive welfare eligibility requirements.

CSOs and judicial and prosecutorial organisations rallied in 2017 and prevented the authorities' attempt to simulate consultations on the amendments to the constitutional provisions on the judiciary. The Government was forced to publish the draft amendments and organise a public debate on them before forwarding it to the Venice Commission for comment.<sup>323</sup>

CSOs and guild associations soon abandoned the short and fruitless public debate the authorities organised after publishing the draft amendments in January 2018 in response to the inappropriate conduct of Justice Ministry officials and their insults of judges, prosecutors and experts.<sup>324</sup>

The Justice Ministry received over 35 documents commenting the draft amendments from CSOs, law professors, lawyers and other individuals. None of

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322 More on the unlawful allocation of funding by the Labour Ministry in 2014 is available in Serbian at: <https://www.gradjanske.org/udruzenja-gradana-preduzela-nove-korake-u-slucaju-viulin/>.

323 More in the *2017 Report*, III.1.

324 See more in Serbian at: <http://rs.n1info.com/Vesti/a366019/Ministarstvo-pravde-Napustanje-skupa-u-Novom-Sadu-planirano.html>.



their suggestions were taken on board although the report on the public debate states that most of them were upheld in their entirety or in part.<sup>325</sup>

The Government's draft amendments did get the support of newly-established associations, including associations of bakers, shoemakers and hair dressers, as well as organisations represented by state officials, such as the Director of the Restitution Agency; nearly a quarter of the organisations that had signed the initiative could not be found either in any registers of the Serbian institutions or.<sup>326</sup>

The Association of Judges and Prosecutors of Serbia, set up in September 2018, publicly distanced itself from the judicial and prosecutorial associations that have been active for over a decade now and called for a "new and constructive approach" to judicial reform.<sup>327</sup> It supported the constitutional amendments proposed by the Justice Ministry. It held that "mutual checks and balances" would be ensured by the provision under which judges would not account for the majority of members of the body appointing them and that the amendments ensured "the profession's decisive influence on judicial appointments".<sup>328</sup>

Given that the harshest criticisms of the authorities concerned their stifling of media freedoms, they naturally attempted to dampen them and find supporters for their views, wherefore new organisations appeared in this area as well.<sup>329</sup> For instance, the Ministry of Labour, Employment and Veteran and Social Issues allocated all the envisaged funding for assisting the elderly, €90,000, to the Public Policy Institute, although it had received project proposals from 17 organisations, most of which have for years focused on this area, in response to its Call for Proposal.<sup>330</sup> The Call for Proposals<sup>331</sup> did not specify that all the money would be granted to a single organisation, an extremely unusual precedent in the allocation of public funding.

The authorities made similar peculiar decisions on co-funding media content of public interest.<sup>332</sup> For instance, no representatives of any relevant press or media

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325 More on the amendments to the constitutional provisions on the judiciary in Chapter III.1.

326 See the *Insajder* report, available in Serbian at: <https://insajder.net/sr/sajt/tema/10398/>.

327 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/drustvo/formirano-no-vo-udruzenje-sudija-i-tuzilaca-srbije/etxdf49>.

328 See the *Informer* report, available in Serbian at: <https://informer.rs/vesti/drustvo/404701/udruzenje-sudija-tuzilaca-kazite-javno-vrsi-politicki-uticaj-pravosudje>.

329 One of them is the Public Policy Institute, which presented its quarterly report on the media Mediameter in Brussels in December 2017. The conclusions of its analysts were in stark contrast with the conclusions of all relevant international and domestic organisations focusing on the freedom of expression. See more on the Mediameter at: [https://www.ijp.rs/from-institut/news/quarterly-mediometer-presented-in-european-parliament\\_83/](https://www.ijp.rs/from-institut/news/quarterly-mediometer-presented-in-european-parliament_83/).

330 The Ministry decision is available in Serbian at: [https://www.minrzs.gov.rs/files/odluka\\_o\\_finansiranju\\_projekta\\_na\\_konkursu\\_za\\_unapredjenje\\_sistema\\_socijalne\\_zastite\\_u\\_republici\\_sr-biji\\_u\\_2018.\\_godini.pdf](https://www.minrzs.gov.rs/files/odluka_o_finansiranju_projekta_na_konkursu_za_unapredjenje_sistema_socijalne_zastite_u_republici_sr-biji_u_2018._godini.pdf).

331 The Ministry Call for Proposals is available in Serbian at: <https://www.minrzs.gov.rs/konkursi-8143.html>.

332 More in Chapter III.2.

associations sat on the Belgrade City Commission allocating such funding in 2017 for the third year running. Instead, the Commission was made up of representatives of little-known organisations, such as the association of radio stations RAB, association of travel reporters Fijet and the association of sports reporters.<sup>333</sup> Representatives of obscure and newly-established associations dominated in the commissions formed by the Ministry of Culture and Information as well, prompting the representatives of IJAS, NDNV, ANEM and Local Press to withdraw their members from the Ministry commissions in May 2018.<sup>334</sup> The Association of Niš Journalists and PROUNS boasted the most members in the Ministry commissions.<sup>335</sup>

In 2018, the Belgrade City commission granted the most funding – five million RSD – to a company owned by an SNS councillor for organising the Belgrade Dance Festival.<sup>336</sup> The Serbian Association of Ballet Artists, on the other hand, was granted just 150,000 RSD for its international Festival of Choreographic Miniatures.<sup>337</sup> An analysis by the Independent Cultural Scene of Serbia (NKSS) showed that nearly one-third of the funding was granted either to organisations not registered as dealing with culture or reregistered as such just several days before the Call for Proposals was published. One of them was the association run by Isidora Bjelica and Nebojša Pajkić, which was granted 350,000 RSD, although it is registered to “protect human rights in the field of food”.<sup>338</sup> Fashion designer Suzana Perić, a close friend of the Belgrade Culture Secretary, who has been supportive of the authorities in her public appearances, was granted 400,000 RSD for celebrating her 20<sup>th</sup> work anniversary.<sup>339</sup>

Genuine NGOs actively advocated the adoption of new and improvement of valid laws in 2018, notably the Social Protection, Free Access to Information of Public Importance and Personal Data Protection Acts. They, inter alia, voiced their concerns about the new Act on Financial Support for Families with Children, given the legislator’s clear tendency to substantially reduce the achieved level of social rights and safeguards of other civil and political rights. NGOs filed an initiative disputing several provisions of this Act with the Constitutional Court in September 2018, claiming that these provisions were also in contravention of the ECHR, ICESCR, the

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333 More in the *Danas* report, available in Serbian at: <https://www.danas.rs/politika/nepoznati-eksperti-dele-milione-medijima-bliskim-vlasti/>.

334 See the IJAS press release, available in Serbian at: <http://nuns.rs/info/statements/36150/udruzenja-se-povlace-iz-republickih-komisija-i-zahtevaju-formiranje-novih.html>.

335 See the *Cenzolovka* report, available in Serbian at: <https://www.cenzolovka.rs/drzava-i-mediji/medijski-konkursi-svima-pomalo-a-nekima-malo-vise/>.

336 See the SEECult report, available in Serbian at: <http://www.seecult.org/vest/sta-beograd-podrzava-u-kulturi-u-2018>.

337 *Ibid.*

338 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a377604/Vesti/Kultura/Sumnjivim-organizacijama-novac-na-konkursu-za-kulturu.html>.

339 *Ibid.*

UN Convention on the Rights of the Child and the European Social Charter.<sup>340</sup> The Draft Social Protection Act, on the other hand, legalised the Decree on the Measures for the Social Inclusion of Welfare Beneficiaries, which the Protector of Citizens contested before the Constitutional Court four years ago. His initiative that the Court review the constitutionality of the Decree was still pending at the end of the reporting period.

### 9.2.2. Anti-NGO Campaigns

Media campaigns against NGOs branded “foreign mercenaries” continued in 2018. Women in Black sued the Chief Editor of the tabloid *Informer* for publishing an article claiming that they were the most infamous “foreign mercenaries” in 2016.<sup>341</sup> This NGO, well-known for its anti-war, anti-Fascist, anti-militarist and feminist activism, claimed that the article intentionally included inaccurate data on the modes and amounts of funding it received. The Belgrade Appellate Court in August 2018 upheld the Higher Court’s judgment exonerating the *Informer* Chief Editor.

Other pro-government tabloids waged anti-NGO campaigns just as fervently. *Srpski telegraf* published a story in February 2018 claiming George Soros was trying to bring Serbia under his heel by taking over the Serbian Academy of Arts and Sciences and the judiciary, with the help of NGOs. This tabloid also published an article on Soros’ “secret plan” of staging violent riots and demonstrations throughout Serbia and the infiltration of NGOs in the judiciary through the constitutional amendments in order to “take it over.”<sup>342</sup>

Organisations advocating the prosecution of war crimes and confrontation with the past continued to be under great pressure in 2018. In late 2018, the Misdemeanour Appellate Court upheld the first-instance judgment ordering Youth Initiative for Human Rights (YIHR) activists to pay 50,000 RSD fines each for disrupting public law and order. As BCHR wrote in its *2017 Report*,<sup>343</sup> YIHR activists in mid-January 2017 showed up at an SNS panel discussion in which Veselin Šljivančanin, who was convicted for war crimes by the ICTY, was taking part and held up a banner saying “War criminals should shut up so we can talk about the victims”. The event was discontinued and YIHR activists assaulted. Several days later, a group of people posted messages calling YIHR traitors and Soros’ mercenaries on the front door of the NGO’s office. Despite the fact that YIHR activists were physically assault-

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340 More is available in Serbian at: [https://dnevna.gov.rs/2018/12/20/drzava-ukinula-nemavise-naknade-za-decu-sa-invaliditetom-i-njihove-roditelje/?fbclid=IwAR2p5IwyEpQ7xhBFm-6l36tIpD9cRJ6RJ9ztHfSqO\\_7Z8rYUkwoAfq2OhUQ](https://dnevna.gov.rs/2018/12/20/drzava-ukinula-nemavise-naknade-za-decu-sa-invaliditetom-i-njihove-roditelje/?fbclid=IwAR2p5IwyEpQ7xhBFm-6l36tIpD9cRJ6RJ9ztHfSqO_7Z8rYUkwoAfq2OhUQ).

341 The *Informer* report is available in Serbian at: <http://informer.rs/vesti/politika/299170/zencrnom-najveci-strani-placenicizapad-dao-1-587-596-evra-optuzuju-srbiju-ratne-zlocine>.

342 See the report, available in Serbian at: <https://www.republika.rs/vesti/tema-dana/41889/krece-napad-srbiju-sorosev-krvavi-plan-tri-faze>.

343 More in the *2017 Report*, III.7.

ed, the court found them guilty of disrupting public law and order and fined them 50,000 RSD each. The Misdemeanour Appellate Court said that the fact they had been assaulted was irrelevant to the Court and its judgment.<sup>344</sup>

Civil society organisations, especially those focusing on confrontation with the past and reconciliation, were often the target of physical assaults by rightists. Attempts to obstruct the Kosovo Culture Festival “Mirëdita erdita – Good Day” occurred in May 2018, when protesters, mostly Serbian Radical Party members and sympathisers, tried to break through the police cordon and interrupt the festival.<sup>345</sup>

Just two months earlier, during the Belgrade city election campaign, members of the organisation Consecrators rallied in front of the Human Rights House and put up posters calling the CSOs headquartered in it “Foreign Agents” and “Closed as of 4 March”.<sup>346</sup> A criminal complaint against the Consecrators was filed after the incident, accusing them of racial and other discrimination (Article 387(2) of the CC) and persecuting organisations advocating equality of people.

Investigations of threats against human rights organisations were either slow or not conducted at all. For instance, the Committee of Human Rights Lawyers (YU-COM) filed a criminal report because of the phone threats by unidentified individuals and tweets by the prohibited organisation *Obraz* in response to its public invitation to celebrate its 20<sup>th</sup> work anniversary in October 2017. The prosecution did not make any progress by the end of the year in investigating the criminal report alleging endangerment of safety and persecution of organisations or individuals for advocating equality of people.

Senior public and party officials continued criticising the work of NGOs as well. Such reactions ensued after CSOs focusing on human rights and confrontation with the past sent an open letter to European High Representative for Foreign Affairs and Security Policy Federica Mogherini in August 2018, calling on the EU to declare itself against ethnic swaps of territory and redrawing of the border between Serbia and Kosovo.<sup>347</sup> The open letter prompted a smear campaign by public officials and pro-government media against the most eminent female human rights defenders.<sup>348</sup> The Serbian President said there were no differences in the views of

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344 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/sud-potvrdio-presudu-aktivistima-inicijative-mladih/>.

345 See the *Insajder* report, available in Serbian at: <https://insajder.net/sr/sajt/tema/5476/>.

346 See the *N1* report, available in Serbian at: <http://rs.n1info.com/Vesti/a366756/Zavetnici-ponovo-lepili-plakate-na-Kucu-ljudskih-prava.html>.

347 See more at: <https://www.gradjanske.org/en/civil-society-organizations-from-serbia-and-kosovo-against-the-division-of-kosovo/>.

348 The pro-government tabloid *Srpski telegraf* headlined the article on the open letter “These Hags are Evil!” and published the photographs of well-known human rights defenders Nataša Kandić, Sonja Biserko, Vesna Pešić and Maje Stojanović, whom it accused of treason. See more in Serbian at: <https://www.republika.rs/vesti/srbija/79681/ove-babe-zlo-kandiceva-biserkova-traze-brisela-spreci-podelu-kosova-evo-sta-tome-kazu-sagovornici-srpskog-telegrafa>.

NGOs and ultra-right politicians in Serbia.<sup>349</sup> Deputy Prime Minister Zorana Mihajlović accused the opposition, some NGOs and part of the Serbian Orthodox Church of attacking Aleksandar Vučić because they were against his efforts to introduce order in Serbia.<sup>350</sup>

The statements made by Security Intelligence Agency (BIA) officer Marko Parezanović at a conference organised by the rightist organisation National Avant-garde in October 2018 were condemned by the civil sector and general public. Parezanović said that the “clandestine activities of the foreign factors posed the greatest threat to Serbia, with people in opposition parties and some media and NGOs playing destructive and subversive roles.”<sup>351</sup> CSO representatives qualified these remarks as dangerous speculations and abuse of an institution such as BIA.<sup>352</sup>

### 9.2.3. Campaigns against Humanitarian Foundations

The campaigns mounted by pro-government media and public officials against humanitarian foundations were particularly concerning, as they undermined public trust in philanthropy and charities and caused immeasurable damage to beneficiaries of humanitarian aid and the very idea of solidarity and philanthropy.

Charities, the activities of which demonstrated the failure of state institutions to fulfil their obligations, bore the brunt of the accusations. One of them was “Support Life”, a foundation set up by popular actor and fierce critic of the ruling parties Sergej Trifunović to raise funds for the medical treatment of children abroad. In September 2018, the foundation raised €190,000 for the treatment of four-year-old Dušan Todorović. In response to public pressures, the Serbian Government said it would cover the boy’s treatment, but agreed with the foundation’s suggestion to spend the money on the treatment of another five children.

Several days later, *Srpski telegraf* front-paged an article on the alleged (and untrue) embezzlement of the funds Support Life had raised and published a bogus statement by the mother of the sick child.<sup>353</sup> Referring to this article, Health Minister Zlatibor Lončar accused the foundation of gambling with the money it raised by putting it in investment funds and requested an audit of its work.<sup>354</sup> Health Ministry

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349 See the B92 report, available in Serbian at: [https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=08&dd=07&nav\\_category=640&nav\\_id=1428067](https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=08&dd=07&nav_category=640&nav_id=1428067).

350 See the *Srpski telegraf* report, available in Serbian at: <https://www.telegraf.rs/vesti/politika/2982811-mihajlovic-ostro-o-opoziciji-nvo-navijackim-grupama-i-spc-napadi-na-vucica-su-otpor-uredjenju-srbije>.

351 See more at: <https://mappingmediafreedom.ushahidi.io/posts/22784>.

352 See the NI report, available in Serbian at: <http://rs.n1info.com/a426348/Vesti/Dragan-Popovici-Vesna-Maliscic-o-BIA-i-spoljnom-faktoru.html>.

353 See the NI report, available in Serbian at: <http://rs.n1info.com/Vesti/a421321/Tabloid-napao-Sergeja-Trifunovica-i-Fondaciju-Podrzi-zivot.html>.

354 See the NI report, available in Serbian at: <http://rs.n1info.com/a425091/Vesti/Loncar-na-javio-kontrolu-humanitarnih-organizacija.html>.

official and chairman of the organisation “Council for Monitoring, Human Rights and Fight against Corruption – Transparency” filed a criminal report against the foundation, accusing Sergej Trifunović of embezzlement. This story was given huge publicity in the pro-government media.<sup>355</sup> SNS deputies continued accusing the foundation of embezzlement in the National Assembly as well.<sup>356</sup> For a change, the Belgrade Higher Prosecution Service reacted promptly, and the crime police entered the foundation 10 days later to check its operations.<sup>357</sup> Prime Minister Ana Brnabić joined in the attacks on Trifunović, accusing him of turning the treatment of children into a political struggle.<sup>358</sup>

The NGO Civic Initiatives issued a press release demanding of the Serbian Government to react urgently. It specified that a large number of foundations and associations were investing huge efforts in developing philanthropy and that they primarily filled the deep gaps in the national health and welfare system. It went on to say that these efforts provided a life of dignity to the most vulnerable citizens of Serbia and should not be jeopardised by anything, especially not fake news and propaganda.<sup>359</sup>

Other humanitarian foundations and their founders were also the targets of politically motivated attacks. One of them was the founder of the foundation Tijana Jurić, Igor Jurić, after he criticised the MPs of the ruling majority for refusing to include the initiative on life imprisonment for child killers, which had been signed by 160,000 citizens. Namely, Serbian tabloids front-paged a story that first appeared on a Croatian portal about the criminal prosecution of Jurić for stealing petrol 10 years ago.<sup>360</sup>

### 9.3. Association of Aliens

The Act on Associations allows aliens to establish local associations provided that at least one of the founders resides or is headquartered in the territory of the Republic of Serbia. Under the Act, a foreign association shall denote an association headquartered in another state, established under that state’s regulations to achieve a joint or common interest or goal, the activities of which are not aimed at making profit. A foreign association may pursue activities in Serbia in the event

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355 See the *Pink* report, available in Serbian at: <http://pink.rs/politika/92170/trazi-se-pokretanje-istrage-o-obrtanju-novca-da-li-su-graani-sms-porukama-investirali-sergeja-trifunovica-ili-davali-novac-za-bolesnu-decu>; <https://informer.rs/vesti/hronika/402588/ovo-zatvor-sergej-obrtanov-novac-bolesne-dece>.

356 See the *B92* report, available in Serbian at: [https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=10&dd=12&nav\\_category=12&nav\\_id=1455085](https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=10&dd=12&nav_category=12&nav_id=1455085).

357 See the *B92* report, available in Serbian at: [https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=10&dd=11&nav\\_category=12&nav\\_id=1454850](https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=10&dd=11&nav_category=12&nav_id=1454850).

358 See the *B92* report, available in Serbian at: [https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=10&dd=11&nav\\_category=11&nav\\_id=1454566](https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=10&dd=11&nav_category=11&nav_id=1454566).

359 See more in Serbian at: <https://www.gradjanske.org/vlada-da-zauzme-stav-o-filantropiji/>.

360 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a430155/Vesti/Napad-hrvatskih-i-srpskih-medija-na-Igora-Jurica.html>.

it establishes a representative office entered in a separate register of the Business Registers Agency.

The representative office of a foreign association is entitled to operate freely in the territory of the Republic of Serbia provided that its goals and activities are not in contravention of the Constitution or laws of the Republic of Serbia, international treaties acceded to by the Republic of Serbia or other regulations. The Constitutional Court shall decide on the prohibition of a foreign association on the motion of the same authorities entitled to seek the prohibition of a national association.

## 10. Electoral Rights and Political Participation

### 10.1. Legal Framework

In addition to the right to vote, the ICCPR and the ECHR acknowledge the rights of citizens to be elected. These rights may be restricted. The ICCPR insists the restrictions cannot be unreasonable, while the ECtHR found that the right of a citizen to be elected may be subjected to qualification requirements as long as they are not discriminatory.<sup>361</sup>

The Constitution proclaims the sovereignty of the people, and that suffrage is universal and equal (Arts. 2 and 52). Every adult citizen with a working capacity shall be entitled to vote and to be elected (Art. 52(1)). The Constitution guarantees all citizens the right to participate in the administration of public affairs, to employment in public services and to hold public office under equal conditions (Art. 53).

The electoral procedures are governed in detail by the Act on the Election of Assembly Deputies (AEAD),<sup>362</sup> the Local Elections Act (LEA),<sup>363</sup> the Act on the Election of the President of the Republic,<sup>364</sup> and the Decision on the Election of AP Vojvodina Assembly Deputies (DEV D).<sup>365</sup>

Some provisions of these election laws have been criticised for years because they limit the citizens' right to vote and be elected.<sup>366</sup> Experts agree that these laws need to undergo serious reform in order to eliminate their deficiencies. The below text outlines some of these shortcomings.

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361 See the judgments in the following cases: *Gitonas v. Greece*, ECtHR, App. Nos. 18747/91, 19376/92, 19379/92, 28208/95 and 27755/95 (1997); *Fryske Nasjonale Partij v. The Netherlands* ECmHR, App. No. 11100/84 (1985) and *Tanase v. Moldova*, ECtHR, App. No. 7/08 (2010).

362 *Sl. glasnik RS*, 35/00, 57/03 – CC Decision, 72/03 – other law, 75/03 – corr. of other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – CC Decision, 36/11 and 104/09 – other law.

363 *Sl. glasnik RS*, 129/07, 34/10 and 54/11.

364 *Sl. glasnik RS*, 111/07 and 104/09 – other law.

365 *Sl. list AP Vojvodine*, 12/04, 20/08, 5/09, 18/09 and 23/10.

366 See, e.g., the NI report, available in Serbian at: <http://rs.n1info.com/Vesti/a372705/Izborni-za-kon-da-li-je-vreme-za-promene.html>.

The legal provisions, under which the bodies charged with the conduct of elections are accountable to the body that appointed them (Art. 28 (2), AEAD and Art. 11 (3), LEA) are disputable. Since municipal election commission members are appointed by the municipal assemblies, the inclusion of representatives of political parties in some municipal commissions has been deemed membership on the basis of the political balance in the respective municipality, and resulted in those commissions taking decisions along political lines.

Election laws provide for a basic legal remedy that ensures legal protection in the electoral process – the complaint that shall be filed with the Republican Electoral Commission. However, such complaints may be filed within 24–48 hours from the moment of the impugned decisions, actions or non-actions.

The electoral statutes provide also for the possibility of appealing the decisions of the competent electoral commissions to dismiss or reject a complaint: such appeals are filed with the Administrative Courts through the competent electoral commissions. The laws prescribe that procedures before courts are urgent – decisions are to be taken within 48 hours. The short deadline laid down in this provision was also frequently criticised.

Criticisms were also voiced about the inaccuracies in the voter registers, which include the names of deceased voters and those who changed their place of residence, as well as the lack of access to a nationwide voter register. Whether a person may vote and be elected to a public office depends on whether he is entered in the voter registers. A nationwide register of the nationals of the Republic of Serbia with the right to vote is supposed to be created under the Act on a Single Voter Register.<sup>367</sup> However, although the goal of the Act is to facilitate the establishment of a precise, updated and nationwide register of all voters in Serbia and thus allow all voters to vote anywhere in Serbia on election-day, such a register was not established until the end of 2018.

Complaints about the updatedness of the voter registers are frequent before every election cycle in Serbia.<sup>368</sup> Although the law provides for lists to be disclosed at the municipal level, the relevant ministry in 2016 issued an instruction that allowed only individual checking of records using one's personal identification number. This lack of public scrutiny limited the transparency of the voter registration process and amplified concerns about the overall accuracy of the voter register.<sup>369</sup>

Although surveys show participation in elections is the most frequent mode of public engagement in democratic processes,<sup>370</sup> the problems surrounding voter

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367 *Sl. glasnik RS*, 104/09 and 99/11.

368 For instance, despite previous OSCE/ODIHR recommendations, voter lists were not displayed for public scrutiny before the 2016 early parliamentary elections or the 2017 presidential elections.

369 More on the deficiencies of the Serbian election laws and election process in CRTA's publication, available in Serbian at: [http://crt.rs/wp-content/uploads/2018/11/Prvi-deo\\_Izbori-u-Srbiji-demokratija-zamagljena-kampanjom.pdf](http://crt.rs/wp-content/uploads/2018/11/Prvi-deo_Izbori-u-Srbiji-demokratija-zamagljena-kampanjom.pdf).

370 See more at: <http://crt.rs/wp-content/uploads/2018/02/Audit-of-political-engagement-Serbia-2017.pdf>.



registers, increasingly frequent early elections, indications of vote abuse, aggressive campaigns and commonplace pressures on voters, as well as the errors and problems in the work of the election administration contributed to dwindling public trust in the electoral process and free and fair elections.

### 10.2. Local Elections in Serbia in 2018 – (Un)Fair and (Un)Democratic

Regular and early elections were held in a number of Serbian municipalities in Serbia; the former were held in Belgrade, Lučani, Bor, Aranđelovac, Sevojno and Majdanpek and the latter in Kula, Doljevac and Kladovo. The opposition decided not to take part in the early elections, since, as a rule, the reasons for calling them were unclear. The CRTA Monitoring Mission's findings indicated that they may have been called illegally, wherefore this organisation filed an initiative with the Constitutional Court to review the constitutionality and legality of the Government decision dissolving the Kula, Doljevac and Kladovo local governments and forming caretaker governments in these municipalities.<sup>371</sup> Such an initiative was also filed by the opposition Alliance for Changes, which claimed that the Government had violated Article 12 of the Serbian Constitution and Article 85 of the Local Self-Governments Act and called on the Constitutional Court to order the suspension of all election-related activities pending its decision.<sup>372</sup> There were no observers at the local elections in these three municipalities since the municipal election commissions had made no provision for monitoring in their enactments.

The early elections in Kula, the fourth in the last 13 years, were called after the Mayor resigned, although most opposition parties thought they were unnecessary.<sup>373</sup> The early elections were called in Doljevac for the same reason, where Mayor Goran Ljubić Međarac stepped down after an opposition councillor criticised him, although the SNS commands a stable majority in the local parliament.<sup>374</sup> The report that Kladovo Mayor stepped down was never officially published. The Socialist Party of Serbia issued a press release about an incident that occurred during the Kladovo early elections, held on the same day as the elections in Kula, Doljevac and Lučani, because its local official Perica Panković was taken into custody by the police.<sup>375</sup>

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371 More is available in Serbian at: <http://crt.rs/wp-content/uploads/2018/12/Izve%C5%A1taj-0-kampanji-Lokalni-izbori-2018.pdf>.

372 See the B92 report, available in Serbian at: [https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=11&dd=09&nav\\_category=11&nav\\_id=1467407](https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=11&dd=09&nav_category=11&nav_id=1467407).

373 SNS official Velibor Milojević, who was elected Kula Mayor in the summer of 2018, resigned several months later, although the SNS boasts a two-thirds majority in the municipal assembly. The reasons why he resigned were not made public. Nor was it possible to read the text of his resignation. See the N1 report, available in Serbian at: <http://rs.n1info.com/Vesti/a442878/Kula-se-sprema-za-vanredne-izbore-nije-jasno-zasto.html>.

374 See the *Južne vesti* report, available in Serbian at: <https://www.juznevesti.com/Politika/Predsednik-Opstine-Doljevac-podneo-ostavku.sr.html>.

375 See the *Mondo* report, available in Serbian at: <http://mondo.rs/a1152993/Info/Srbija/Lokalni-izbori-Kula-Doljevac-Lucani-i-Kladovo.html>.

Most of the irregularities and incidents were registered during the elections in Lučani, in which the opposition bloc Alliance for Serbia (SzS) took part. Led by one of the SzS leaders, Boško Obradović, SzS representatives and sympathisers entered the Guča police station to protest against the custody of People's Party senior official Lazar Đurović, who was being interrogated by the police. The opposition activists posted video footage of his altercation with MIA State Secretary Dijana Hrkalović, who was at the station, on the social networks. Serbian police minister Nebojša Stefanović, a senior SNS official, offered his resignation because he had ordered the State Secretary to go to the police station.<sup>376</sup>

The standards of free and fair elections were not reflected in the atmosphere in this municipality on election-day. The CRTA Monitoring Mission registered major irregularities at 11 out of 43 polling stations: voters were allowed to cast their ballots although they did not produce their IDs, the secrecy of voting was violated, the polling committees did not use the UV lamps and invisible spray and parallel voter lists were kept. A number of cars with licence plates of other towns (Pančevo, Novi Sad, Vršac, Beograd, Kosovska Mitrovica) and cars without licence plates were deployed at almost all the polling stations in the municipality, and the unidentified individuals in them were communicating with the polling committee members. Unidentified individuals ID-ed the voters in Kotraž.

CRTA's mobile monitoring teams were assaulted and their car tires slashed at the Grab polling station. In its report, CRTA said that the Lučani elections were characterised by the campaigning of senior state officials (ministers, directors of public companies and services), abuse of public resources and threats and pressures against the voters. The SNS used public company staff in their campaign. There were grounds to believe that the humanitarian drives organised by the municipalities during the election campaigns served to promote the parties in power.<sup>377</sup>

The regular Belgrade city elections in March 2018 attracted the most attention.<sup>378</sup> Although local in character, these elections were of major political importance, given that Belgrade is the capital of and the largest city in Serbia and nearly a quarter of all voters live in it.<sup>379</sup> The organisations that monitored the campaigns

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376 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a444718/Stefanovic-o-Hrkalovic-i-Lucanima.html>.

377 The report on the elections in the four Serbian municipalities held in December 2018 is available in Serbian at: <http://crt.rs/wp-content/uploads/2018/12/Izve%C5%A1taj-o-kampanji-Lokalni-izbori-2018.pdf>.

378 The regular Belgrade local elections were held in May 2012 and coincided with the presidential and parliamentary elections and local elections in other municipalities. The change at the helm of the state was not replicated at the city level, because the coalition led by the Democratic Party won the Belgrade elections and appointed Dragan Đilas Mayor. However, the Mayor was ousted in September 2013 and the Serbian Government appointed a caretaker government, which ruled Belgrade until March 2014, when the SNS won the early elections and appointed Siniša Mali Mayor.

379 Over 1.5 million voters voted at 1,185 polling stations in the 17 Belgrade municipalities. The Belgrade authorities earmarked 37,430,444 RSD for the elections.

and media and regulatory authorities said they were neither fair nor democratic. The campaigns were characterised by recriminations and speculations of abuse.<sup>380</sup>

The Belgrade City Election Commission issued accreditations to the local election observers with a 25-day delay, although it concluded that the Centre for Free Elections and Democracy (CeSID) and CRTA fulfilled the requirements to monitor the vote back on 17 January. Therefore, neither the observers nor the media monitored the first month of the Commission's work. Unfortunately, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) did not have its observers at these elections, since ODIHR does not monitor local elections.

The opposition claimed that the number of voters in the Belgrade municipalities had increased significantly because SNS voters living in other parts of Serbia had registered as residents of Belgrade.<sup>381</sup> A good illustration of the problems with voter registers and rights is the fact that Bosnian Serb President Milorad Dodik voted in the elections, on account of dual citizenship.<sup>382</sup> The election campaign was marked by assaults on various candidates and new forms of intimidation, such as walling in political opponents in order to provoke an incident.<sup>383</sup>

Senior public officials intensively participated in the Belgrade election campaign,<sup>384</sup> promoted their regular activities whilst campaigning and abused public resources. Many Serbian ministers, the Prime Minister and, of course, President Vučić, took part in the campaign; the latter headed the SNS election tickets at all the local elections in 2018, including the ones in Belgrade, and spoke at election rallies.

Under the Electronic Media Act, the Electronic Media Regulatory Authority (EMRA) is charged with monitoring electronic media coverage of election activities. This Authority, however, issued only one press release on the elections. It did not make any public statements about the reports filed by individual citizens or political entities, although over 300 complaints alleging discrimination against candidates and untrue or partial reporting by electronic media were registered.<sup>385</sup>

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380 More in the CRTA report, available at: <http://crt.rs/wp-content/uploads/2018/03/CRTA-observation-mission-First-Interim-Report-Belgrade-elections-Summary.pdf>.

381 CRTA collected data on the number of voters in Belgrade municipalities from October 2017 to February 2018. It complained to the Commissioner for Information of Public Importance that specific municipalities, (e.g. Voždovac, Zemun, Lazarevac, Rakovica and Sopot) had not provided it access to the requested information.

382 See more at: <http://www.balkaninsight.com/en/article/dodik-s-friendship-doesn-t-bring-votes-to-serbian-politicians-03-05-2018>.

383 Such an unprecedented method of pressuring political opponents was applied in Belgrade five times, notably against the candidates running on Let's Not Give (Drown) Belgrade and Dragan Dilas' tickets. CRTA registered a number of incidents, intimidation and violations of Article 54 of the Serbian Constitution enshrining the freedom of assembly. See more at: [http://crt.rs/wp-content/uploads/2018/08/CRTA\\_Belgrade-elections-final-report.pdf](http://crt.rs/wp-content/uploads/2018/08/CRTA_Belgrade-elections-final-report.pdf).

384 CRTA filed a total of 35 complaints with the Anti-Corruption Agency regarding the undue engagement of senior public officials in the campaign, their abuse of public resources, et al, and four reports with the communal and school inspectorates. *Ibid.*, p. 8.

385 CRTA's analysis of media reports on the elections showed that officials of the ruling parties appeared four times as much as opposition figures in the 1 October 2017–15 January 2018 period.

The Anti-Corruption Agency is charged with monitoring the involvement of public officials in election campaigns and financing of campaigns, but, like the EMRA, it lay low during the Belgrade elections. It did not even try to influence the conduct of the candidates or ensure a level playing field. It did not recommend the initiation of any proceedings for violations of the Act on the Financing of Political Activities and the Anti-Corruption Agency Act. It failed to react even to documented proof of abuse of public resources and public offices the domestic monitoring missions filed with it.

As CRTA noted, “controversial” tickets were again proclaimed in this election process, giving rise to reasonable grounds for suspicion that they unlawfully ran in the elections or deliberately avoided/ignored the election rules and procedures, thus misguiding the voters.<sup>386</sup>

Election observers noted a number of irregularities on election-day as well: keeping of parallel records of voters in front and inside the polling stations, use of cell phones and photographing at polling stations, the committees’ failure to ID the voters before letting them vote or to use UV lamps and invisible spray, violations of the secrecy of voting, organised transport of voters to the polling stations, etc.<sup>387</sup>

During the Belgrade elections, CRTA registered reports by scores of citizens, complaining that the SNS election headquarters had called them up on their cell phones and harassed them, which may be indication of abuse of their personal data. CRTA also registered activities precluding the candidates from campaigning in public areas, as well as cases of intimidation and physical violence.<sup>388</sup>

Furthermore, CRTA registered pressures on voters and indirect vote buying. For instance, voters were provided with humanitarian assistance in exchange for their votes. Long-term observers across Belgrade reported attempts to buy the citizens’ votes by offering them food packages (vegetable oil, sugar, flour and spam), hygiene packages, free check-ups or free programmes organised by the municipalities or ruling parties.<sup>389</sup>

Local elections in Bor, Arandelovac and Sevojno were held on the same day as the local elections in Belgrade. A coalition of opposition parties warned about the obstructions of the electoral process by people in vehicles without licence plates, jeeps and minibuses and cars from Kladovo, Negotin, Požarevac, Žagubica and Kosovo and demanded the resignation of the Bor police chief.<sup>390</sup> The Minister of

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The disproportion was even greater if one looks just at coverage by TV stations, which 82% of the citizens get their information from: public officials appeared seven times more frequently in the prime time news on six TV stations (five with national coverage + *NI*) than the opposition figures. *Ibid.*, p. 13.

386 *Ibid.*, p. 31.

387 See the CRTA report, available in Serbian at: [http://crta.rs/wp-content/uploads/2018/11/Prvi-deo\\_Izbori-u-Srbiji-demokratija-zamagljena-kampanjom.pdf](http://crta.rs/wp-content/uploads/2018/11/Prvi-deo_Izbori-u-Srbiji-demokratija-zamagljena-kampanjom.pdf).

388 *Ibid.*, p. 39.

389 *Ibid.*, p. 40.

390 More is available in Serbian at: <https://www.bor030.net/koalicija-mi-ili-oni-ujedinjeni-za-bor-drzava-pala-na-ispitu-u-nedelju-4-marta-video>.

Internal Affairs denied their allegations, adding that there was no ban on driving a jeep through the city, but that anyone driving a vehicle without licence plates would be punished. He claimed that the police had toured the town ten times on election-day.<sup>391</sup>

After the elections held on 16 December 2018, the Alliance for Serbia published its data on election irregularities and said it would not run in the next elections under such conditions.<sup>392</sup> It reiterated its demands at a civic protest organised in Belgrade.<sup>393</sup>

### *10.3. Participation in the Conduct of Public Affairs and Democratisation*

The constitutional provision provides concrete principal guarantees of direct democracy and prescribes the popular initiative for adoption of legislation and for amending the Constitution. In Serbia, the right to propose a law, another regulation or general enactment belongs to 30,000 voters (Art. 107). The proposal to change the Serbian Constitution may be submitted by at least 150,000 voters.

The Constitution of Serbia also recognises popular initiative as an instrument for achieving Article 2(2) of the Constitution vesting sovereignty in the people. Under the Constitution, the National Assembly shall call a referendum at the request of the majority of all national deputies or at least 100,000 voters. The Constitution lays down which issues may not be decided at referenda: obligations arising from international treaties, laws relating to human and minority rights and freedoms, tax and other finance-related laws, the budget and annual statements of accounts, introduction of a state of emergency, amnesty and the National Assembly powers related to elections (Art. 108).

Referendums and popular initiatives are governed in greater detail by the restrictive Referendum and Popular Initiative Act,<sup>394</sup> which does not mention all types of referendums mentioned in the Constitution of Serbia. Although the Constitutional Act on the Implementation of the Constitution envisaged the harmonisation of this law with the Constitution by 2009, a new law on referendums and popular initiatives has not been passed yet although the Venice Commission recommended as much in its 2010 Opinion.<sup>395</sup> The Act lays down an extremely restrictive deadline

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391 More is available in Serbian at: <https://www.bor030.net/stefanovic-potpuna-izmislijotina-da-policija-u-boru-nije-reagovala-u-toku-izbornog-dana>.

392 See the *NI* report, available in Serbian at: <http://rs.n1info.com/English/NEWS/a445110/Serbian-opposition-to-boycott-elections-until-demands-are-met.html>.

393 More on the protests and rallies in Chapter II.8.

394 The Referendum and Popular Initiative Act was adopted back in 1994 and amended only once, in 1998. *Sl. glasnik RS*, 48/94 and 11/98.

395 See Venice Commission Opinion on the Draft Law on Referendum and Civil Initiative of Serbia, CDL-AD(2010)006 of 15 March 2010, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)006-e).

for collecting signatures supporting a popular initiative (seven days), but does not provide strong guarantees that the Assembly will discuss such an initiative.<sup>396</sup>

Direct public engagement in local governance is governed by the Act on Local Self-Governments,<sup>397</sup> which provides for civil initiatives, citizens' assemblies and referendums as forms of civil engagement at the local level (in Arts. 67–71).

The institute of popular initiative needs to be governed by a separate law to facilitate public engagement in democratic processes and greater transparency of the institutions. Practice has shown that public engagement is mostly realised at elections, but that citizens do not participate actively in the social and political life of the country in between elections.

A Referendum and Civil Initiative Act was drafted in 2009 and commented by the Venice Commission, but never submitted to parliament for adoption.<sup>398</sup> A Model Popular Initiative Act was drafted by a coalition of NGOs. Neither the Model Act nor the several conferences organised by CSOs, at which the weaknesses of the valid Act were analysed and suggestions on how to improve the law in this field were made, prompted any reaction of the executive or legislative authorities.<sup>399</sup>

The Draft commented by the Venice Commission extends the deadline for collecting signatures to 90 days. It includes the obligation of the initiating committee to report the implementation of the civil initiative to the police before it starts collecting signatures for it. The Draft also allows the Assembly to decide whether or not to accept the initiative before the signatures are collected, i.e. to dismiss it immediately.<sup>400</sup>

## 11. Right to Work

### 11.1. Legal Framework

Serbia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Revised European Social Charter (ESC). It is also a mem-

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396 According to CRTA's data, none of the popular initiatives submitted in the past 16 years have been reviewed by a plenary session of the National Assembly. Only three popular initiatives and three draft laws submitted for adoption by citizens (two in 2007 and one in 2008) are posted on the Assembly website. More in CRTA's analysis, available in Serbian at: [http://crta.rs/wp-content/uploads/2018/03/Finalno\\_03-narodna-inicijativa-NOVO.pdf](http://crta.rs/wp-content/uploads/2018/03/Finalno_03-narodna-inicijativa-NOVO.pdf).

397 *Sl. glasnik RS*, 129/07 and 83/14 – other law.

398 See Venice Commission Opinion on the Draft Law on Referendum and Civil Initiative of Serbia, CDL-AD(2010)006 of 15 March 2010, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)006-e).

399 See more in Serbian at: [http://www.yucom.org.rs/upload/vestgalerija\\_81\\_4/1292926269\\_GS0-Konferencija\\_08122010.pdf](http://www.yucom.org.rs/upload/vestgalerija_81_4/1292926269_GS0-Konferencija_08122010.pdf).

400 See more in Serbian at: [http://crta.rs/wp-content/uploads/2018/03/Finalno\\_03-narodna-inicijativa-NOVO.pdf](http://crta.rs/wp-content/uploads/2018/03/Finalno_03-narodna-inicijativa-NOVO.pdf).

ber of the International Labor Organization (ILO) and a signatory of a large number of conventions adopted under the auspices of this organisation.<sup>401</sup>

At its last session in January 2018, held within the third cycle of the Universal Periodic Review, the UN Human Rights Council recommended to Serbia to sign and ratify the Optional Protocol to the ICESCR,<sup>402</sup> which would allow the submission of individual applications to the Committee on Economic, Cultural and Social Rights. Serbia did not accept the recommendation because, as it said in its official response, “[A]ccession to the Protocol would require amendments to the relevant national legislation, which is not a priority in the current situation.”<sup>403</sup> Back in 2014, the Committee on Economic, Social and Cultural Rights expressed its concern and regret because of the deficiencies in Serbia’s reporting and provision of information.<sup>404</sup> By refusing to fulfil the recommendation, Serbia again missed the opportunity to provide individuals claiming violations of any of their economic, social and cultural rights with the right to submit communications to this Committee one year after the exhaustion of domestic remedies.

Article 60 of the Constitution guarantees everyone the right to work and lays down that everyone shall be entitled to free choice of occupation, dignity at work, safe and healthy working conditions, the requisite protection at work, limited working hours, daily and weekly rests, paid annual leave, fair remuneration and protection in cases of termination of employment. Furthermore, the Constitution extends special protection at work to women, youths and persons with disabilities. The Constitution prohibits all forms of discrimination, including discrimination in the enjoyment of the right to work and work-related rights. The Constitution does stipulate the state’s obligation to ensure that everyone can earn a livelihood by work, which is the main purpose of the right to work.<sup>405</sup>

Labour law is regulated primarily by the Labour Act<sup>406</sup> and the Employment and Unemployment Insurance Act.<sup>407</sup>

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401 Serbia has to date adopted 77 ILO Conventions.

402 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, A/RES/63/117, 10 December 2008. See: [https://www.ohchr.org/Documents/HRBodies/CESCR/OProtocol\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/CESCR/OProtocol_en.pdf).

403 Response of the Republic of Serbia to the Recommendations from UN Member States received in the Third Cycle of Universal Periodic Review, Belgrade, April 2018, available at: <http://www.ljudskaprava.gov.rs/sh/node/19860>.

404 The Committee stated in its report that Serbia “was not able to provide information about the cases of direct applicability of the Covenant before the courts in the State party and the available remedies for individuals claiming a violation of their economic, social and cultural rights.” See: Concluding observations on the second periodic report of Serbia, UN Economic and Social Council (ECOSOC), 10 July 2014, E/C.12/SRB/CO/2, available at: <http://www.refworld.org/docid/53fdbbb64.html>.

405 Article 4 of the ESC guarantees the right to a fair remuneration. See *Digest of the Case Law of the European Committee of Social Rights*, pp. 44–48 and General Comment No. 18, paragraph 1.

406 *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13, 75/14 and 13/17 – CC Decision and 113/17.

407 *Sl. glasnik RS*, 36/09, 88/10 and 38/15.

The National Assembly adopted the amendments to the 2005 Labour Act under an urgent procedure in July 2014.<sup>408</sup> One of the reasons quoted for the adoption of the amendments to the Labour Act under an urgent procedure was that they ensured the fulfilment of Serbia's obligations to international financial organisations, and alignment of the law with EU regulations in accordance with the obligations assumed in the National Programme for the Adoption of the EU *acquis*.<sup>409</sup> In late 2017, the National Assembly again adopted a number of other laws without practically discussing them at all. The adoption of the amendments to the Labour Act, the Employment and Unemployment Insurance Act and the new Acts on Financial Support for Families with Children and Public Service Staff Act was overshadowed by the debate on the 2018 Budget Act.<sup>410</sup>

Although the authorities said a new Labour Act would be adopted by the end of 2018,<sup>411</sup> the National Assembly adopted only amendments to the Labour Act<sup>412</sup> at the very end of 2017, which came into force on 25 December 2017. These amendments introduce, notably, the obligation of employers to register new workers for mandatory social insurance before they start working and to keep daily records of staff overtime.

The National Assembly in 2018 adopted the so-called Seasonal Workers Act.<sup>413</sup> Some of its provisions were criticised by experts.<sup>414</sup> Notably, the Act allows employers to engage seasonal workers but does not insist on them signing any contracts with the workers, thus depriving them of any work-related protection.<sup>415</sup> This law does not improve the status of seasonal workers. It obliges the employers to apply the Labour Act provisions on temporary work. The work norms are set by the employers and the number of hours worked is not registered anywhere. The law does not obligate the employers to keep any records. The wages are set against the minimum hourly rate, although seasonal workers can work more hours but be paid the minimum wage. Under Article 22(3) of the Act, labour inspectors may require of employers to prove that they have in place all the working conditions in accordance with the law, which is in contravention of the very character of hiring seasonal workers without concluding written contracts with them.

The Seasonal Workers Act commendably lays down that seasonal workers shall not be deleted from the unemployment records and shall continue receiving unemployment benefits and/or financial aid (Art. 9(2 and 3)), which may encour-

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408 More in the *2014 Report*, III.13.2.

409 See the *Blic* report available in Serbian at: <http://www.blic.rs/Vesti/Ekonomija/480492/Obrazlozjenje-Izmene-Zakona-o-radu-doprinece-smanjenu-rada-na-crno>.

410 More is available in Serbian at: <https://pecanik.net/re-kapitulacija-2017/>.

411 More on the new Labour Act in the *2017 Report*, III.13.1.

412 *Sl. glasnik RS*, 113/17.

413 *Sl. glasnik RS*, 50/18.

414 More is available in Serbian at: <https://pecanik.net/nema-dna/>.

415 The rule is to conclude written contracts on any work given that such contracts are the only evidence in case of a dispute and ensure the legal certainty of the parties to the contract.



age impoverished layers of the population to seek seasonal jobs. Article 15 – under which seasonal work cannot extend over 180 days in a calendar year and employers cannot hire the same worker on seasonal and temporary for more than 120 work-days in a calendar year in altogether – may preclude abuse.

### *11.2. European and International Labour Law Standards and Serbia's Obligations*

The Employment and Social Reform Programme in the EU Accession Process (ESRP), developed by the Serbian Government at the invitation of the European Commission, pursuant to the 2013–2014 EU Enlargement Strategy, and which all candidate countries are to prepare, is particularly relevant. The implementation of the ESRP will be a strategic process, modelled after the Europe 2020 strategy that is implemented by the EU Member States, and it will accompany the EU accession process as the key mechanism for dialogue on the Republic of Serbia's social policy and employment priorities in the European integration process.

In its Serbia 2018 Report, the European Commission said that Serbia was moderately prepared in the area of social policy and employment. It said that some progress had been made in further aligning the relevant legislation with the *acquis*, mainly in the area of occupational health and safety, and the functioning of social dialogue and that active labour market policies have been consolidated albeit with very limited coverage of the unemployed. The EC recommended that Serbia increase financial and institutional resources for employment and social policies to more systematically target the young, women and long-term unemployed; improve the adequacy of the social benefit system to provide more effective support for parts of the population most in need; and significantly strengthen the bipartite and tripartite social dialogue at all levels.

The EC went on to say that the Labour Act adopted in 2014 remained only partially aligned with the *acquis*. Legislative work has stalled in areas such as the right to strike, the legal framework for the operation of private employment agencies and seasonal work. The EC also noted that Serbia had adopted some laws and by-laws on labour but that it needed to significantly reduce the share of undeclared work, which stood at 21.8 % in Q3 2017 (down by 2.3% year on year). The EC observed that labour inspectorate activities have been intensified, notably in relation to combating undeclared work but that its capacities needed to be further strengthened including by filling vacancies and providing the necessary equipment and training. It also noted that the first report on the implementation of Serbia's Economic and Social Reform Programme was still pending.<sup>416</sup>

In December 2017, the European Committee of Social Rights adopted its sixth periodic report on the implementation of the Revised European Social Charter

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416 Serbia 2018 Report, European Commission, April 2018, p. 72, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

in the 2012–2015 period. The Report focuses on the implementation of the ESC provisions on the right to safe and healthy working conditions (Art. 3), the right to protection of health (Art. 11), the right to social security (Art. 12), the right to social and medical assistance (Art. 13), to benefit from social welfare services (Art. 14), the right of elderly persons to social protection (Art. 23) and the right to protection against poverty and social exclusion (Art. 30). The Committee found that Serbia had fulfilled six of the 19 obligations the fulfilment of which it reviewed; it sought further clarification with respect to seven obligations and found Serbia in violation of six of its obligations.

Serbia yet again failed to adopt its Action Plan for Chapter 19 – Social policy and employment in the reporting period, although three years have passed since the Chapter 19 Screening Report was published.

### *11.3. Employment Rates in Serbia*

In its Serbia 2018 Report, the EC noted that youth unemployment had dropped but remained high and that severe challenges regarding the integration of long-term unemployed, redundant workers and young people into the labour market still remained. It noted that access to the labour market was particularly difficult for Roma, women, persons with disabilities and youth, especially with secondary education, and that budget allocations for active labour market policies were too low to cover the number of job-seekers. It noted that only one sixth of registered unemployed (617,000 in December 2017) benefitted from a measure, and that only 20,000 job-seekers benefitted from a longer training or work measure.<sup>417</sup>

According to the Statistical Office Labour Force Survey (LFS) for Q2 2018,<sup>418</sup> the employment rate of the population over 15 years of age stood at 48.6% and the unemployment rate at 11.9%, while the inactivity rate stood at 44.8%. The activity rate of the population over 15 years of age stood at 55.2% (63.6% among men and 47.3% among women). The highest activity rates were registered in the Belgrade (57.2%) and in the Šumadija and West Serbia Region (56.2%). The employment rate of the population over 15 years of age stood at 48.6% (56.4% among men and 41.4% among women). It was the highest in the Belgrade Region (51.5%), and in the Šumadija and West Serbia Region (49.1%). The informal employment rate in all areas stood at 21.0%; 60% of informal employment was registered in the agriculture sector.<sup>419</sup> The unemployment rate of the population over 15 stood at 11.9% (11.3% among men and 12.6% among women). It was the highest in the South and East Serbia Region (15.6%) and the lowest in the Vojvodina Region (10.0%). It stood at 12.6% in the Šumadija and West Serbia Region and at 10.1% in the Belgrade Region.

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417 *Ibid.*, p. 73.

418 More is available in Serbian at: <http://publikacije.stat.gov.rs/G2018/Pdf/G20181232.pdf>.

419 The Labour Force Survey defines informally employed workers as those working without written contracts, self-employed in unregistered businesses, as well as contributing family workers.

Although the data are presented as revolutionary compared with the preceding period and officials emphasise that unemployment in the Republic of Serbia has reached its historical record low, the employment rate increased by a mere 0.4% year on year. The methodology used for calculating employment<sup>420</sup> should also be borne in mind, as should the fact that official statistics do not register the increasing number of people, who have emigrated from Serbia but remain registered as residing in it and have been struck off the National Employment Service (NES) records because they failed to report to the NES regularly.

According to the LFS, the number of employed people generally remained the same year on year: the number of employed people with lower education levels fell by 33,500, while the number of highly educated people grew by 41,200.<sup>421</sup>

Although the LFS preface says that the data obtained through the LFS are comparable with those of other countries in terms of methodology and content and are forwarded to Eurostat, data on Serbia are not available on Eurostat's website<sup>422</sup>; nor do the LFS data allow the monitoring of some of the indicators monitored by Eurostat (e.g. labour market transitions, underemployment, quality of employment).<sup>423</sup>

On the other hand, the Foundation for the Advancement of Economics (FREN) paints a much different picture of the situation in the labour market in its Quarterly Monitor.<sup>424</sup> Cross-referencing of LFS parameters with those on economic growth reveals an inconsistency, because economic growth should be much higher if employment grew as much as LFS says. Namely, official statistics do not recognise as unemployed the people who have no job or income. According to the SORS methodology, unemployed persons are those who are of working age (between 15 and 64 years old) and are actively looking for a job. "Actively" means that they are registered with the National Employment Service (NES) and report to their NES counsellors at specific intervals, on a particular day every month. They are automatically deleted from the NES records and lose the status of unemployed if they report either before or after that day. This is why the number of registered unemployed people has been falling.

#### *11.4. Unemployment Reduction Measures*

The amendments to the Employment and Unemployment Insurance Act,<sup>425</sup> adopted in late 2017, introduce a new method for calculating unemployment benefits and, as the legislator claims, aim to regulate the work of private employment

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420 See the 2016 and 2017 Reports, III.13.2.

421 More is available in Serbian at: <http://publikacije.stat.gov.rs/G2018/Pdf/G20181232.pdf>.

422 See: <http://ec.europa.eu/eurostat/web/lfs/data/database>.

423 Sarita Bradaš, Analysis "Statistics and Decent Work", Centre for Democracy Foundation, available at: <http://www.centaronline.org/en/publication/1766/statistics-and-decent-work>.

424 Available at: [http://www.fren.org.rs/sites/default/files/qm/T3\\_32.pdf](http://www.fren.org.rs/sites/default/files/qm/T3_32.pdf).

425 *Sl. glasnik RS*, 36/09, 88/10, 38/15 and 113/17.

agencies.<sup>426</sup> To recall, the EU called on Serbia to act on the EU recommendation to adopt a legislative framework on the work of private employment agencies (an obligation it also has under ILO Convention No. 181 Concerning Private Employment Agencies).

All the amendments entered into force seven days after the Act was adopted, except for Article 70, which comes into force on 1 January 2019. Article 52 on active employment policy measures now lays down that the additional education and training measures organised by NES at the request of employers shall be covered both by the employers and by NES, not just the employers, in the amount of available funds pursuant to a general enactment, while the costs of additional education and training for the labour market shall be covered by NES. Under the Act, additional training required by employers may be covered by NES depending on the availability of funds, at the request of the body tasked with economic development and with the consent of the minister charged with employment.

Article 69 on unemployment benefits has been amended – the monthly amount now equals the product of multiplying the daily financial benefit with the number of calendar days in the month the right is exercised and the benefit is paid. The daily financial benefit is the product of multiplying the base daily benefit with the personal co-efficient. The daily base benefit comprises the health and pension and disability insurance and stands at 1,000 RSD. The personal co-efficient is the ratio of the total wage or compensation, insurance base and amount of the contracted compensation in the last 12 months preceding the month when the worker stopped working and the average annual personal wage paid in the Republic of Serbia. The monthly benefit is set in proportion to the number of calendar days in the month the right is exercised and the benefit is paid; it cannot be lower than 22,390 RSD or higher than 51,905 RSD. The Act, however, does not expressly specify that these are gross amounts and that the jobless receive much less in practice.<sup>427</sup>

Under Article 70, the NES is under the obligation to publish on its website the daily benefit base and the highest and lowest monthly amounts, now aligned with the annual consumer prices in the preceding calendar year according to Statistical Office data, within seven days from the day of publication of the consumer price index. The aligned amounts shall apply as of the first day of the following month. The Act now also lays down that the unemployed shall be deleted from the NES records if they fail to fulfil their obligations to the NES, which are listed in Article 87, without good reason; this Article now includes a provision under which the unemployed shall be deleted from the NES records if they fail to inform the NES of all changes affecting their rights or obligations under this law within five days.<sup>428</sup>

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426 More in Serbian at: <https://www.paragraf.rs/dnevne-vesti/051217/051217-vest20.html>.

427 More in Serbian at: <http://foruminfo.rs/od-1-januara-novi-nacin-obracuna-novcane-naknade-za-nezaposlene/>.

428 More in Serbian at: <http://www.kss.org.rs/news/2018/02/src/1802-novine-o-zakonu-o-zaposljava-vanju-i-osiguranju-za-slucaj-nezaposlenosti.pdf>.

The National Employment Strategy for the 2011–2020 Period,<sup>429</sup> which provides the long-term framework for designing employment policies, is operationalised by the adoption and implementation of annual National Action Plans.

The 2018 National Employment Action Plan<sup>430</sup> envisages special measures. Local self-governments enact their local employment action plans, defining the local employment policy goals and priorities, pursuant to the Employment and Unemployment Insurance Act and the National Employment Action Plans and implement active employment policy measures at the local level.

According to the National Employment Action Plan, the following categories of difficult to employ job seekers shall be given priority in coverage by active employment policy measures in 2018: job-seekers under 30 and over 50, redundant workers, unskilled and low-skilled workers, persons with disabilities, Roma, able-bodied welfare beneficiaries, those looking for a job over 12 months, especially those looking for a job over 18 months, job-seekers under 30 who have the status of children without parental care or victims of domestic violence. Particular priority shall be given to job-seekers simultaneously facing multiple employment challenges. Special packages of services have been prepared to intensify activities to improve the status of youths, surplus labour, unskilled or low-skilled workers, the long-term unemployed and persons with disabilities.

The 2017–2019 Economic Reform Programme<sup>431</sup> aims at improving the counselling methods and techniques, which is crucial for assessing the employability of every individual job-seeker based on his features (degree of education, years of service, additional skills and knowledge, gender, et al), as well as the features of the labour market, with a view to including them in the active employment policies.

In 2018, the main employment policy priorities included: improvement of the labour market conditions and labour market institutions; encouragement of employment and inclusion of difficult to employ job-seekers in the labour market; support to the regional and local employment policies; and, improvement of the quality of the labour force and investments in human capital. A total of 3.65 billion RSD were set aside for implementing the planned programmes and active policy measures for job-seekers and 550 million RSD were set aside for the vocational rehabilitation and employment of persons with disabilities in the Budget Fund for the Vocational Rehabilitation and Employment of Persons with Disabilities. Furthermore, NES received a grant of 554 million RSD within the IPA 2013 programme cycle to implement active employment policy measures. In addition, 750 million RSD were earmarked in the Vojvodina and local self-government budgets for implementing the active employment policy measures laid down in their employment action plans. Private sector employers, primarily micro, small and medium sized enterprises, were entitled to one-off subsidies for hiring difficult to employ job-seekers.<sup>432</sup>

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429 *Sl. glasnik RS*, 37/11.

430 *Sl. glasnik RS*, 120/17.

431 See: [http://www.mfin.gov.rs/UserFiles/File/strategije/ERP%202017%20-%202019%20final\\_Eng.pdf](http://www.mfin.gov.rs/UserFiles/File/strategije/ERP%202017%20-%202019%20final_Eng.pdf).

432 More in Serbian at: <http://www.poslodavci.rs/usvojen-nacionalni-akcioni-plan-zaposljavanja/>.

In 2018, the Serbian Government continued with its practice of subsidising foreign investors despite criticisms by domestic businesses.<sup>433</sup> The state allocated an additional €10 million for subsidising domestic and foreign investors in 2018. The Call for Proposals was published in June and investors employing up to 100 workers were eligible to apply. Subsidies were also given for major investment projects of *particular state relevance* for which CfPs were not published. Priority was given to production- and export-oriented domestic companies.<sup>434</sup>

The allocation of subsidies was insufficiently transparent.<sup>435</sup> Some media reported that the Serbian authorities were planning on reviewing the system of subsidising foreign investors and would grant them funding only for innovations and new technologies rather than for every new job they created. These media reports were not confirmed officially.<sup>436</sup> The conclusion that the state's subsidies to foreign investors have done more harm than good has prevailed in the public because the subsidies have encouraged the opening of jobs for the least skilled workers rather than strengthened economic activity and increased wages. In result, Serbia has been advertised as a country of cheap labour.<sup>437</sup>

Despite the political points for attracting foreign investors the authorities have been collecting for years, there was still no register of all the new jobs they created. Nor was there mention that such a register would be set up soon.

#### 11.4.1. Youth Unemployment

Youth unemployment was still a major problem in Serbia, as the EC noted in its Serbia 2018 Report as well.<sup>438</sup> Serbia was still ranked 12<sup>th</sup> out of 63 countries on the *Trading Economics* list. According to this source, youth unemployment stood at 27.9% in June 2018.<sup>439</sup> The LFS Q2 2018 data indicate that the employment rate of the 15–24 age category increased by 21,600 and reached 157,000, while the number of unemployed and inactive people in this age category dropped (by 12,100 and 12,300 respectively), to 59,400 and 512,100 respectively. Notwithstanding, the youth unemployment rate – standing at 27.5% – was still high vis-à-vis the total population.<sup>440</sup>

The National Youth Council of Serbia's Shadow Report on Youth in Serbia, which used the NES data on youth unemployment (123,686 or 21.36% of all

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433 Although domestic investors have had better access to subsidies for creating new jobs for three years now, only 12 companies entered into such a project last year. Bekament and Alfa plam were the first two domestic investors to have availed themselves of such subsidies.

434 More in Serbian at: <https://www.blic.rs/biznis/privreda-i-finansije/subvencije-samo-12-domacih-kompanija-prosle-godine-dobile-podsticaje-za-novootvoreno/4k05dbj>.

435 More in the *2017 Report*, III.13.4.

436 More in Serbian at: <https://www.dw.com/sr/kraj-doktrine-subvencija/a-43494591>.

437 More in Serbian at: <https://pescanik.net/strane-investicije-i-domace-insinuacije/>.

438 Serbia 2018 Report, 3.1.

439 See: <https://tradingeconomics.com/country-list/youth-unemployment-rate>.

440 More in Serbian at: <http://publikacije.stat.gov.rs/G2018/Pdf/G20181232.pdf>.

job-seekers in June 2018), showed that youths between 15 and 30 years of age accounted for over a fifth of job-seekers in Serbia.<sup>441</sup>

Youths continued emigrating from Serbia in 2018. According to the survey “Why People Want to Leave Serbia”, conducted by the organisation “Srbija 21” in June and July 2018, 22% of Serbia’s citizens were considering emigration; better living standards, better paying jobs and the situation in the country were quoted as the main reasons. Most of those thinking of emigrating were between 18 and 29 years old – they accounted for 34% or 450,000 of the population.<sup>442</sup>

### 11.5. Labour Mobility

In Chapter 2: Freedom of movement for workers of its Serbia 2018 Report, the European Commission noted that no new legislation on access to the labour market had been adopted and recommended that Serbia further simplify procedures for issuing work permits to EU citizens, who are currently covered by rules for third country nationals.<sup>443</sup> The EC also said there had been no progress on preparations for joining EURES (the European network of employment services) or on the European Health Insurance Card.<sup>444</sup>

The Temporary Service Abroad Act<sup>445</sup> was amended in 2018 to prevent employers from presenting the workers deployed abroad as working in Serbia. The amendments to the Act were adopted under an urgent procedure and without a public debate. The legislator explained that there was no need to hold a public debate because the amendments were not substantial and merely abolished the redundant procedures that had impeded the work of the employers and the Labour Ministry, which had faced numerous problems in receiving, processing and analysing notices of workers deployed abroad.

The abolition of the employers’ obligation to submit notices on the workers they deployed abroad to the Labour Ministry, which the Ministry posted on its website, brings into question the achievement of this goal, given that the public no longer has insight in which companies are deploying workers abroad and on what grounds and whether they are violating the law.<sup>446</sup> The legislator explained the obligation was

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441 Shadow Report on the Status and Needs of Youths in the Republic of Serbia – 2018, National Youth Council of Serbia, Belgrade, 2018, available in Serbian at: <https://goo.gl/C1d8MG>.

442 More in Serbian at: <http://rs.n1info.com/a427830/Vesti/Istrazivanje-34-odsto-mladih-do-29-godina-razmislja-da-ode-iz-Srbije.html>.

443 EU citizens will have fully free access to the labour market (without a work permit) only from the date of Serbia’s accession to the EU.

444 Serbia 2018 Report, 6.28.

445 *Sl. glasnik RS*, 91/15 and 50/18.

446 The notices the employers submitted to the Ministry were crucial for alerting to abuses of this Act, which *radnik.rs* repeatedly wrote about. *Radnik.rs* posted a report on the company Maxikong, registered for manufacturing motor vehicles but deploying workers to the IKEA furniture factory in Slovakia. The notices included data on the employers abroad and the contact per-

abolished because the Mandatory Social Insurance Central Registry (CROSO) had the data on workers on temporary service abroad and that the labour inspectors had access to CROSO data.<sup>447</sup>

The Temporary Service Abroad Act initially did not impose any restrictions on companies intending to deploy their workers abroad. Now, they can only deploy workers who have been working for them for at least three months. This restriction does not apply to companies deploying workers, who will be engaged in the company's main line of business (registered in the Business Registers Agency) and to companies deploying less than 20% of their staff.

The Act does not apply to professional employment agencies, which must be licenced to lease workers to other employers. This has resulted in abuse: agencies deployed the leased workers practically the day after they were established, thus legally avoiding the licencing procedure requiring both time and money.<sup>448</sup>

The 2018 amendments to the Aliens Employment Act<sup>449</sup> cut the duration of the work permit issuance procedure (implementation of the resident labour market test) from one month to ten days. They also introduce the possibility of issuing 45-day temporary work permits without conducting the labour market test, when issuance of such a permit is in the state's particular interest or its international obligation. The Rulebook on Work Permits lays down that the application for the implementation of the labour market test shall be submitted between 60 and 10 days before the work permit is due to be issued.

### 11.6. Exercise and Protection of Workers' Rights

A worker is entitled to complain against a violation or denial of his employment rights to the labour inspection (Arts. 268–272, LA), launch proceedings before the competent court (Art. 195, LA) or require the arbitration of the disputed issues together with the employer (Art. 194, LA). The provisions of the Peaceful Settlement of Labour Disputes Act apply to individual and collective labour disputes.<sup>450</sup>

Under Articles 187 and 188 of the Labour Act, employers may not dismiss pregnant workers, workers on maternity leave and workers on childcare leave. Nor

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sons there. Worker leasing agencies were often listed as the employers of workers deployed in Slovakia and their owners were listed as the contact persons. *Radnik.rs* reported the defaulting companies to the labour inspectors on the basis of the data in the notices. The abolition of this obligation precludes civil oversight of the work of companies deploying their workers for temporary service abroad.

447 The Ministry even calculated that the new law would save the employers 1,037 RSD and 2.6 workhours a month on average. More in Serbian at: <http://radnik.rs/2018/06/privremeni-rad-u-inostranstvu-po-novim-pravilima/>.

448 *Ibid.*

449 *Sl. glasnik RS*, 128/14, 113/217 and 50/18.

450 *Sl. glasnik RS*, 125/04 and 104/09.



may they dismiss or otherwise place workers in an unfavourable position on account of their status or activities in the capacity of representatives of employees, trade union membership or participation in union activities. In the event of a dispute, the employer bears the burden of proving that an employee has not been dismissed on any of those grounds.<sup>451</sup>

The International Labour Organization (ILO) set for its member states the general principles and guidelines for resolving labour disputes, which primarily promote collective bargaining and settlement of labour disputes by assisting the parties to themselves resolve their disputes or ask arbiters for help in resolving their disputes. The Republic of Serbia has not, however, ratified all the conventions and recommendations on the settlement of labour disputes in keeping with international standards. Notably, it has not ratified the Collective Bargaining Conventions 151 and 154 although their relevance is emphasised also in the Serbia Decent Work Country Programme Document 2013–2017.<sup>452</sup> The Programme Document underlines the necessity of assisting the social partners to effectively realise the right to collective bargaining in both the private and the public sectors through the implementation of coordinated collective bargaining structures and mechanisms, whilst noting that participatory governance will add legitimacy to the decision-making process.

The authors of the Analysis of the Effects of the Enforcement of the Labour Act Amendments qualified the Labour Act provisions on the protection of workers' rights as extremely poor and as discouraging the workers from seeking court protection.

The Labour Act provides for the initiation of arbitration proceedings over dismissals. Workers may initiate such proceedings by filing a motion in writing within 24 hours from the moment they are served the decision terminating their employment. Arbitration proceedings may also be launched with respect to collective disputes that arose during collective bargaining or the enforcement of collective agreements (Arts. 254, 255 and 265).

The 2018 amendments to the Peaceful Settlement of Labour Disputes Act<sup>453</sup> extend the jurisdiction of the Republican Agency for the Peaceful Settlement of Labour Disputes to consider disputes regarding both the payment of minimum wages and the payment of full wages, compensations and redundancies. This means that all public sector staff are now entitled to claim their right to the payment of their wages, compensations and other dues.

As per collective labour disputes, the Agency's jurisdiction now also extends to establishing which trade unions are representative and to disputes on the definition of essential services during strikes. Individual labour disputes can now pertain

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451 See: M. Reljanović, B. Ružić, A. Petrović, *Analysis of the Effects of the Enforcement of the Labour Act Amendments*, Centre for Democracy Foundation, Belgrade, 2016, available in Serbian at: <http://www.centaronline.org/userfiles/files/publikacije/fcd-analiza-efekata-primene-izmena-idopuna-zakona-o-radu.pdf>.

452 Available at: <http://www.ilo.org/public/english/bureau/program/dwcp/download/serbia.pdf>.

453 *Sl. glasnik RS*, 125/04, 104/09 and 50/18.

to working hours and duration of annual leave. Under the amended Act, the arbiters' rulings are enforceable instruments. The Act provides for a procedure for recusing conciliators and arbiters.

The provisions of the Act on parties to the dispute engaged in activities of general interest have also been amended. These parties are under the obligation to engage in the peaceful settlement of collective disputes with respect to the exercise of the right to determine the representativeness of trade unions in companies and essential services during strikes launched in accordance with the law. The parties are to initiate the peaceful labour dispute settlement procedure concerning activities of general interest within three *workdays* from the day the dispute occurred.

Under the amendments, the agreement signed by the parties to the dispute shall be grounds for amending the collective agreement or shall have the effect of an enforceable instrument.<sup>454</sup>

Practice has shown that agreements are the only successful way for settling disputes on mobbing, discrimination and harassment at work. Under the adopted amendments, such disputes shall be considered completed before the Agency only if an agreement has been concluded. Otherwise, the Agency shall discontinue review of the dispute and refer the parties to claim their rights before the court, pursuant to the relevant law.<sup>455</sup>

The amendments unfortunately did not address the deficiency BCHR had earlier alerted to: the lack of second-instance proceedings, which is absolutely unacceptable from the perspective of the right to a legal remedy and access to justice, the legislator's decision to opt for arbitration rather than mediation on individual disputes, and the open issue of the enforceability of the arbiters' decisions.

No amendments to the Labour Act provisions on labour disputes were made despite public criticisms of the short deadlines.<sup>456</sup>

It may be concluded that steps need to be made urgently to build the capacity of the labour inspectorates, as the European Commission and the UN Committee on Economic, Social and Cultural Rights also noted.<sup>457</sup>

Workers may claim their work-related rights also in administrative proceedings before the labour inspectorate. The long overdue Rulebook on Internal Over-

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454 Given that collective disputes usually take more than the legally prescribed 30 days because of their complexity, the Act now allows the parties to the dispute to request the extension of the deadline by another 30 days.

455 See the RTS report in Serbian at: <http://www.rts.rs/page/stories/sr/story/13/ekonomija/3180082/puna-zarada-ali-i-plata-ubuduće-u-alternativnom-postupku.html>.

456 More in the 2017 Report, III.13.6.1.

457 In its Concluding Observations on Serbia's 2<sup>nd</sup> Periodic Report on the implementation of the International Covenant on Economic, Social and Cultural Rights, the UN Committee on Economic, Social and Cultural Rights noted with concern the limited effectiveness of the Labour Inspectorate. The Concluding Observations are available at: <http://www.refworld.org/type,CONCOBSERVATIONS,,,53fdbbb64,0.html>.

sight of Inspection in the Fields of Labour, Safety and Health at Work and Social Protection,<sup>458</sup> finally adopted in late 2017, governs internal oversight of the work of inspectors, with a view to supporting and encouraging their proper and quality work and eliminating any unlawfulness, lack of diligence or unprofessionalism in their work, but it suffers from specific deficiencies. Inspectors found to be working unlawfully and improperly shall be subject to disciplinary proceedings under the State Administration Act if the head of the controllers deems it justified and necessary; the controllers are thus effectively deprived of the right to act independently.

The Rulebook lays down that internal oversight shall be performed by controllers, but does not include any provisions on the requirements they have to fulfil, how they are appointed and by whom, the duration of their terms in office, who they account to, how internal oversight is organised, et al. The goals of internal oversight are consistently rendered absurd by the “penalties” for defaulting inspectors.<sup>459</sup>

## 12. Right to Just and Favourable Conditions of Work

### 12.1. Fair Wages and Minimum Cost of Labour

Serbia is a signatory of the ILO Minimum Wage Fixing Convention (No. 131) and the ILO Equal Remuneration Convention (No. 100), but has not yet ratified ILO Minimum Wage-Fixing Machinery Convention (No. 26) and the ILO Minimum Wage Fixing Machinery (Agriculture) Convention (No. 99).

The Constitution guarantees the right of workers to a fair remuneration for their work (Art. 60(4)), although it does not include a provision explicitly prescribing equal remuneration for work of equal value. The Labour Act prescribes that an appropriate wage shall be fixed in keeping with the law, a general enactment or an employment contract and that workers shall be guaranteed equal wages for the same work or work of the same value, adding that the employment contracts violating this principle shall be deemed null and void. The Act defines work of the same value as work requiring the same qualifications, abilities, responsibility and physical and intellectual work.

Under Article 112 of the Labour Act, the Social-Economic Council<sup>460</sup> established for the territory of the Republic of Serbia shall issue a decision setting the minimum cost of labour for the following calendar year, by 15 September of the current year at the latest. The hourly rate shall apply as of 1 January of the following cal-

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458 *Sl. glasnik RS*, 118/17.

459 More is available in Serbian at: <https://pecscanik.net/unutrasnja-kontrola-ali-kakva/>.

460 The Social-Economic Council comprises 18 members; six members of the representative trade unions, six members of representative associations of employers and six representatives of the Serbian Government.

endar year. The law may be amended to specify when the minimum cost of labour has to be increased to reflect the inflation rate, changes in consumer basket prices, et al. The Social-Economic Council sets the minimum cost of labour per hour, which serves as the basis for setting the minimum wage (minimum cost of labour multiplied by the number of working hours in a given month). The following criteria shall be taken into account during the determination of the minimum cost of labour: the existential and social needs of workers and their families expressed in the value of the minimum consumer basket, the employment rate and unemployment rate trend, the GDP growth rate, the consumer price trends, national productivity and average wage rates. However, the minimum cost of labour is in practice usually set in negotiations between employers and trade unions and the agreed amount is fitted into the listed parameters.<sup>461</sup> The Serbian Government sets the cost in the event the Economic-Social Council fails to reach agreement on it.

In September 2018, the Social-Economic Council set the minimum cost of labour per hour at 155 RSD i.e. the minimum monthly wage at 27,022 RSD. Not all Social-Economic Council members were pleased with the 8.6% increase in the minimum hourly wage; the trade unions had called for a 10% increase.<sup>462</sup>

Around 36,000 RSD (or one and a half minimum wages) were needed to fill the minimum consumer basket. As filling it would require increasing the minimum hourly wage to over 200 RSD, a goal that cannot be achieved rapidly, the trade unions, employers and Government representatives agreed to raise the minimum cost of labour to the amount covering the minimum consumer basket over the next three years.<sup>463</sup>

Under the Labour Act, employers cannot sign contracts with workers offering them the minimum wage. Namely, employers are entitled to pay minimum wages when they do not have the funds to pay the full (contracted) wages to their workers. The minimum wage option should be available to employers facing financial difficulties. Rather than eliminating it, it should be limited to extraordinary situations, especially given that the provision prohibiting employers from hiring workers for a minimum wage is often rendered senseless in practice, since the employers as a rule offer wages minimally higher than the legal minimum for many jobs.<sup>464</sup>

The average monthly wage fluctuated in 2018 – it was the highest in May (50,377 RSD) and in January (50,048). It was the lowest in February (47,819 RSD); it stood at 49,400 RSD in March and at 49,117 RSD in April. The average wage did not suffice to fill the average consumer basket at any point in time, but it did cover the costs of the minimum consumer basket. Statistical data show that around 1.4 average wages were needed for the average consumer basket, even when the latter did

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461 See Mario Reljanović's article "Minimum Price of Dignity", available in Serbian at: <http://pescanik.net/minimalna-cena-dostojanstva/>.

462 More is available in Serbian at: <http://rs.n1info.com/a418811/Biznis/Minimalna-cena-rada.html>.

463 More is available in Serbian at: [https://www.b92.net/biz/vesti/srbija.php?yyyy=2018&mm=09&dd=12&nav\\_id=1442883](https://www.b92.net/biz/vesti/srbija.php?yyyy=2018&mm=09&dd=12&nav_id=1442883).

464 More is available in Serbian at: <https://pescanik.net/opet-je-ono-doba-godine/>.

not exceed 50,000 RSD (January-May 2018). The price of the average consumer basket was 800 RSD higher than the average wage in April 2018. The average consumer basket cost 69,896 RS in January, 70,169 RSD in February and 70,292 RSD in March, and peaked in April 2018, when it cost 70,688 RSD.<sup>465</sup>

Under the 2017 amendments to the Mandatory Social Insurance Contributions Act,<sup>466</sup> the untaxable part of the wages increased from 11,790 RSD to 15,000 RSD as of 1 January 2018. However, large fiscal charges related to doing business remained one of the key reasons why the business sector estimated that as many as 29% of the companies and entrepreneurs opted for operating in the grey zone.

## *12.2. Payment of Wages, Pensions and Overtime*

Employers must pay wages to their workers within one month from the month they earned them at the latest, but many employers pay their workers neither their wages nor the contributions. Under the 2014 amendments to the Labour Act, the statements of account of earnings, and/or of compensations of earnings the employers are under the obligation to pay and hand over to their workers shall constitute enforceable instruments, wherefore the courts may order the garnishment of the unpaid earnings from the company accounts and their payment to the workers (Art. 121(5) LA).<sup>467</sup> Most employers have, however, been failing to issue payslips to their workers or have been issuing them payslips that do not include all the requisite information. Steps have to be taken to put an end to such violations of the law, all the more since this mechanism facilitates the effective realisation of the workers' right to be paid their wages. Article 123 of the Labour Act is in collision with the provisions of the Act on Enforcement and Security of Claims on the garnishment of wages and compensations of wage under final court decisions.<sup>468</sup>

The provisions on workers' claims in bankruptcy cases have not been changed substantially and the claims are still paid by the Solidarity Fund. The terminology has been aligned with the one used in the Bankruptcy Act<sup>469</sup> and the other amended provisions of the Labour Act. The Act now commendably extends the deadline within which workers may file claims, from 15 to 45 days, which will facilitate the realisation of this right.

Employers in Serbia are not under the obligation to pay the workers their wages to their bank accounts; they can pay them in cash as well, in which case the

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465 More is available in Serbian at: <https://www.ekapija.com/news/2206563/prosecna-plata-u-srbiji-puni-samo-minimalnu-potrosacku-korpu>.

466 *Sl. glasnik RS*, 84/04, 61/05, 62/06, 5/09, 52/11, 101/11, 7/12, 8/13, 47/13, 108/13, 6/14, 5/15, 112/15, 5/16, 7/17 and 113/17.

467 This is, however, possible only if there is money in the company accounts; otherwise, if the companies go bankrupt, the workers have to wait to be paid out of the bankruptcy estate.

468 See: *2017 Report*, II.14.2.

469 *Sl. glasnik RS*, 104/09, 99/11 – other law, 71/12 – CC Decision, 83/14 and 113/17.

workers have no written proof of how much they were paid or that they were paid at all. The Ministry of Labour, Employment and Veteran and Social Issues is of the opinion that the Labour Act does not specify whether the employers have to pay the wages to the workers' bank accounts or can pay them in cash as well. In the Ministry's view, the employers are free to pay the workers their net wages in cash, once they have paid their taxes and contributions; in such cases, they should provide them with statements of account of earnings, and/or of compensations of earnings, which are enforceable instruments. The workers should sign receipt of the statements of account of earnings, and/or of compensations of earnings, thus providing the employers with proof that they had paid the wages given that they did not pay the wages to the workers' bank accounts. In the view of the Ministry of Labour, Employment and Veteran and Social Issues, workers are entitled to challenge in court the lawfulness of the way in which their wages are calculated, regardless of the way they are paid, in cash or to their bank accounts. However, workers without proof of payment cannot prove their employers had paid them less than specified in the employment contracts. The statements of account of earnings are the only proof that the workers have been paid their wages and they are under the obligation to sign them even when the specified amounts are inaccurate, i.e. higher than the amounts they are paid in cash.<sup>470</sup>

The number of workers whose outstanding wage claims were confirmed by final court judgments increased in 2018. In addition to the 9,000 former workers of the Niš company Srbijatrans, they included army reservists owed per diems mobilised in 1999,<sup>471</sup> and 5,500 former workers of bankrupt companies in Kikinda, Čoka, Zrenjanin, Pančevo, Bačka Palanka and Kula.<sup>472</sup> What all of them have in common is that their right to payment of outstanding wages was upheld by the decisions of the Constitutional Court of Serbia,<sup>473</sup> as well as the European Court of Human Rights, which ruled in favour of workers in Serbia, who have not been paid their outstanding wages despite final and enforceable decisions of the domestic courts in their favour. The claims exceed 50 million EUR in total, which the state needs to pay the workers pursuant to ECtHR judgments; the overdue wages of former socially-owned and state companies not covered from the bankruptcy estate are to be covered by the Serbian Government. Over 800 former workers of the meat plant Čoka and around 100 workers of the former Kikinda socially-owned company Trikotaža have been waiting for the payment of their wages for over a decade now.

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470 More is available in Serbian at: <http://radnik.rs/2018/09/isplata-plate-na-ruke-dozvoljena-u-srbiji-zabranjena-u-hrvatskoj/>.

471 See: *Vučković and others v Serbia*, ECtHR, App. No. 17153/11, judgment 28. August 2012 and *Kačapor and others v. Serbia*, ECtHR, App. Nos. 2269/06, 3041/06, 342/06, 3043/06, 3045/06 and 3046/06, judgment 15. January 2008.

472 See the *Večernje novosti* report, available in Serbian at: <http://www.novosti.rs/vesti/srbija.73.html:726856-Na-vidiku-zaostale-plate>.

473 More on the Constitutional Court of Serbia decisions in the *2017 Report*, III.14.2.

The outstanding wages of the former workers of bankrupt companies in Niš with Constitutional Court decisions in their favour, remained unpaid in 2018, despite numerous promises by government representatives that these claims would be settled. In July 2018, these workers appealed to Serbian Prime Minister Ana Brnabić, the Delegation of the European Union to Serbia and the Russian and US Embassies, to help them exercise their right.<sup>474</sup>

To recall, the then Prime Minister Aleksandar Vučić said there was money in the budget and promised the former workers of bankrupt socially-owned companies in Niš that their outstanding wages would be paid by the end of the year and those of workers in other cities a bit later. He reneged on his promise and all most of the former workers got was one-off welfare equalling the minimum wage. In February 2017, Vučić said there was no money in the budget and that the state would pay the outstanding wages “commensurate to its capacity”.<sup>475</sup> In late 2017, Government officials said that the state did not even have a register of former workers of bankrupt socially-owned companies it owed wages to, although state commissions had been formed since 2014 and the public was reassured that they were working hard on establishing such a register.<sup>476</sup>

In late 2014, the National Assembly adopted two laws<sup>477</sup> reducing the wages of public sector staff and pensions. These austerity measures further impoverished Serbia’s population, especially if one takes into account the large numbers of workers in the public sector and the high share of pensioners.<sup>478</sup> The Government explained its austerity measures by the need to ensure stability of public finances, primarily to return Serbia to sustainable fiscal deficit levels and a falling debt-to-GDP path, and, thus, macroeconomic stability.<sup>479</sup>

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474 More is available in Serbian at: <http://www.021.rs/story/Info/Srbija/191881/Radnici-propalih-firmi-udruzeno-do-plata.html>.

475 See the *Danas* report, available in Serbian at: [http://www.danas.rs/ekonomija.4.html?news\\_id=355345&title=Dr%C5%BEavi+sti%C5%BEe+novih+4%2C5+milijardi+dinara+da+plati+po+presudama](http://www.danas.rs/ekonomija.4.html?news_id=355345&title=Dr%C5%BEavi+sti%C5%BEe+novih+4%2C5+milijardi+dinara+da+plati+po+presudama).

476 More on bankrupt socially-owned companies and prior arrangements for paying debts to workers in the *2016 Report*, III.14.1.3 and the *2016 Report*, III.14.2.

477 Act on the Temporary Regulation of the Bases for the Calculation and Payment of Salaries, Wages and Other Regular Income of Beneficiaries of Public Funds and Act on the Temporary Regulation of Pension Payments, *Sl. glasnik RS*, 116/14.

478 Pensions above 25,000 RSD were cut by 22%, while public sector wages were linearly cut by 10%. The laws came into force in November 2014 and were to remain in effect until the end of 2017. Full-time workers with net wages under 25,000 RSD were not affected. Workers, whose net wages would fall below 25,000 RSD if they were cut, were paid 25,000 RSD. The wages of part-time workers were set in proportion to their working hours and their reduction was commensurate to the cut of the wages they would suffer if they worked full time in the given month.

479 Although the wage cuts are not in contravention of the law, the legitimacy of the decision has been challenged by a number of experts, who are of the view that the authorities should have instead opted for the dismissal of surplus labour, which would have resulted in major savings, or for a combination of dismissals and wage cut measures. More in an article by Sofija Mandić, 23 September 2014, available in Serbian at: <http://pescanik.net/nema-mira-za-gradane-srbije/>.

The Social-Economic Council, comprising representatives of the Government, employers and trade unions, backed the initiative of the Association of Independent Trade Unions of Serbia, to repeal the Act on the Temporary Regulation of the Bases for the Calculation and Payment of Salaries, Wages and Other Regular Income of Beneficiaries of Public Funds. The Finance Minister said that the plan was to phase out the enforcement of the provisions of the Act obligating public and public utility companies to pay the money they saved by reducing wages into the state budget. Finance Minister Siniša Mali said that public sector wages would be increased in stages and that the state and the IMF agreed on the scope of the increase. The specific data he said would be published by end October were still not publicly available at the time this Report was published.<sup>480</sup>

As opposed to wages, which are calculated on a monthly basis, pensions are an acquired right. The European Court of Human Rights treats pension and disability insurance payments as possessions in the meaning of Article 1 of Protocol 1 to the ECHR. Like the ECHR, the Constitution of the Republic of Serbia (Art. 58) guarantees the peaceful enjoyment of possessions and other property rights acquired under the law, and prohibits interference in the enjoyment of human rights, one of which is the right to pension insurance.

An initiative to review the constitutionality of the law cutting the pensions was filed with the Constitutional Court of the Republic of Serbia. In the reasoning of its decision, the Constitutional Court said that the adoption of the law was justified because: it contributed to maintaining the financial sustainability of the pension system, ensuring the regular payment of pensions; most of the pensioners were not struck by the austerity measures; the Constitution did not guarantee the amounts of the pensions; and, measures temporary in character were at issue.<sup>481</sup> The Act on the Temporary Regulation of Pension Payments was voided in 2018.

Notwithstanding the Government's announcements of unprecedented GDP growth, economic experts warned that the situation in Serbia was very different in reality, especially when it was compared with the situation in other European countries. Eurostat's latest data put Serbia at the very bottom of the list of East European countries with respect to GDP per capita i.e. purchasing power parity. Namely, Serbia stood at 37% of the EU average, with only Albania and Bosnia and Herzegovina registering lower GDP per capita and lower real per capita consumption (Albania stands at 29% and BiH at 32% of the European average). Serbia's results were even worse when compared against the 2012 data. Apart from Albania, which recorded a fall, Serbia was the only country which did not register any growth from 2012 to 2017.<sup>482</sup>

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480 More is available in Serbian at: <https://www.alo.rs/vesti/ekonomija/mali-otkrio-sve-o-povecanju-plata-gradana-srbije-oktobar-je-kljucan-mesec/190326/vest>.

481 Decision of the Constitutional Court, 23, September 2015 No. IY3-531/2014.

482 More is available in Serbian at: <http://voice.org.rs/srbija-ekonomski-stagnira-od-standarda-eu-udaljena-najmanje-50-godina/>.



Under the Labour Act, a worker is under the obligation to work overtime in the event of a *force majeure*, an unexpected increase in the volume of work and in other instances when it is necessary to complete unplanned work (Art. 54).<sup>483</sup>

### 12.3. Right to Rest, Leisure and Limited Working Hours

Serbia ratified nearly all ILO conventions regarding weekly rest and paid leave. Serbia withdrew from ILO Holidays with Pay Convention (No. 52) and Holidays with Pay (Agriculture) Convention (No. 101). Serbia never ratified ILO Hours of Work (Commerce and Offices) Convention (No. 30) or the Forty-Hour Week Convention (No. 47). Article 60(4) of the Constitution explicitly guarantees the right to limited working hours, daily and weekly rest, and paid annual holidays.

According to the Labour Act, workers are legally entitled to a break during working hours and to daily, weekly and annual holidays, as well as to paid and unpaid leave in keeping with the law. Workers may not be deprived of these rights. Specific problems may arise in the interpretation of Labour Act provisions on annual leaves of workers who changed jobs and on the moment when they gain the right to annual leave.<sup>484</sup>

The right to paid leave to attend to an immediate family member is not equally accessible to spouses and common-law partners, given that Article 77 of the Labour Act defines only spouses, children, siblings, parents, adoptive parents and adopted children and guardians, but not common-law partners, as immediate family members. Paragraph 5 of the Article lays down that employers may grant leave to their workers to look after other members of their family households for a period of time specified in their decision; the right to paid leave to look after other family members and for longer periods of time must be specified in the employers' general enactments and their employment contracts with the workers. Employers thus effectively have the discretion to decide on whether or not to grant paid or unpaid leave to their workers in common-law unions.<sup>485</sup> The mere fact that the legislator left it to the employers' discretion to extend the list of immediate family members to include common-law partners in their general enactments (collective agreements, operational rules) or employment contracts does not suffice to eliminate the discriminatory effect of this provision.<sup>486</sup>

Several cases of workers complaining of violations of their right to a break during working hours for reasons not specified in the Labour Act were registered in 2018. Namely, some companies issued their workers warnings for violating work discipline because they took breaks during work, to go to the toilet.<sup>487</sup> Under the La-

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483 More in: *2017 Report*, II.14.2.

484 More in the *2015 Report*, II.13.2.

485 More is available in Serbian at: <https://pecscanik.net/zakon-o-radu-vs-vanbracna-zajednica/>.

486 *Ibid.*

487 More is available in Serbian at: <https://pecscanik.net/jos-par-reci-o-poslodavcima/>.

bour Act, such warnings may be issued only to underperforming workers and those who have violated work discipline. These cases were registered in foreign companies granted state subsidies for employing local workers.

According to European standards, a worker is also entitled to paid leave during public holidays (Art. 2(2), ESC) and work performed on a public holiday should be paid at least double the usual rate.<sup>488</sup> Under Article 108 of the Labour Act, a worker shall be entitled to an increase in pay for work during a public holiday amounting to a minimum 110% of the wage base.

#### *12.4. Occupational Safety and Health*

Serbia has ratified two ILO Conventions that are the most relevant in respect of occupational safety and health: Convention No. 187 on a Promotional Framework for Occupational Safety and Health<sup>489</sup> and Convention No. 167 on Safety and Health in Construction<sup>490</sup> The ESC specifically guarantees the right to safe and healthy working conditions in Article 3.<sup>491</sup>

In its latest report of late December 2017, the European Committee of Social Rights reviewed Serbia's compliance with its obligations under Article 3 of the European Social Charter (Revised) regarding the right to safe and healthy working conditions. With respect to paragraph 1, obligating states to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment, the Committee found that Serbia fulfilled these obligations and sought additional information. As per Serbia's obligations under paragraph 2 (to issue safety and health regulations), the Committee found that the situation in Serbia was not in accordance with this ESC provision because it had not established that the level of protection from ionising radiation was adequate and because workers in agriculture were not covered by occupational safety and health regulations. The Committee further found that Serbia complied with its obligations under paragraphs 3 and 4 of Article 3 and sought additional information from it. It may be concluded that the greatest problem lies in the fact that Serbia has continued with its years-long practice of failing to communicate the requisite information to this Committee.

In its Serbia 2018 Report, the European Commission noted that Serbia had adopted a number of by-laws and rulebooks, relating to the prevention of sharp injuries in the hospital and healthcare sector, protection of health of pregnant workers and workers who have recently given birth or are breastfeeding, and protection of young people at work.<sup>492</sup>

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488 *Conclusions XVIII-1, Croatia*, p. 116.

489 *Sl. glasnik RS (International Treaties)*, 42/09.

490 *Ibid.*

491 More in *Digest of the Case Law of the European Committee of Social Rights*, pp. 35-43.

492 Serbia 2018 Report, European Commission, April 2018, 6.28.

Major amendments to the Occupational Health and Safety Act were adopted in November 2015.<sup>493</sup> A new Occupational Health and Safety Act and Strategy, developed for nearly two years by working groups, were not completed by the end of 2018. According to a representative of the Labour Inspectorate, the working groups continued working on the text but the adoption of the new law was not expected before the latter half of 2019.<sup>494</sup>

In response to a request made in 2017 by a Chinese company, Hesteel Serbia, that the Serbian authorities step up oversight of sick leave in this company,<sup>495</sup> Prime Minister Ana Brnabić said that the Government would address the sick leave abuse problem in tandem with the trade unions and the Social-Economic Council, with a view to protecting both the domestic and foreign investors and the workers.<sup>496</sup> The Serbian Chamber of Commerce also reacted, and submitted an initiative with the Ministry of Labour, Employment and Veteran and Social Issues to amend Article 103 of the Labour Act to allow employers to seek reports from health institutions to verify whether the sick leave of each worker is justified “in the event the percentage of workers taking sick leave in one month exceeds 10%”.

According to the amendment proposed by the Serbian Chamber of Commerce,<sup>497</sup> employers will be entitled to dismiss workers found to have abused the right to sick leave and request of the Ministry of Health to initiate disciplinary proceedings against doctors issuing sickness certificates without good cause.<sup>498</sup> Notwithstanding the need to boost oversight in this area, the clear priority given to employers over the protection of the workers’ rights in the draft amendment and the fact that the relevant ministry plans on involving the Chamber of Commerce in the drafting the new labour law, although it represents only the rights of employers, give rise to concern.

No register of injuries at work and occupational diseases is in place yet. Software for registering injuries at work was developed for the Ministry of Health in 2013 and training in its use was organised for occupational physicians but it has been rarely used in practice for incomprehensible reasons. What is particularly concerning is that occupational medicine services will apparently die out; no doctor

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493 *Sl. glasnik RS*, 91/15.

494 More in Serbian is available at: <http://www.centaronline.org/sr/dogadjaj/11845/okrugli-sto-bez-bednost-i-zdravlje-na-radu>.

495 See the 2017 *Report*, III.14.4.

496 The Prime Minister said that this problem has existed in Serbia for years and that data indicated that only 30% of the workers were actually working in factories during seasonal work surges. More is available in Serbian at: <https://novaekonomija.rs/vesti/vesti-iz-zemlje/brnabi%C4%87-vlada-%C4%87e-re%C5%A1iti-zloupotrebe-bolovanja>.

497 See more in Serbian at: <http://www.rpk-subotica.org.rs/uploads/editor/dopis%20Zoranu%20Djordjevicu-Inicijativa%20za%20izmenu%20clana%20103.%20Zakona%20o%20radu.pdf>.

498 Under Article 103 of the Labour Act, employers suspecting abuse of sick leave are entitled to request of the relevant health authority to establish the health status of the worker at issue, in accordance with the law.

has been granted specialisation in occupational medicine for years now, despite the shortage of experts in this area.

The only Labour Inspectorate data available at the end of the reporting period were the reports published by individual media indicating that 26 workers lost their lives since the beginning of the year. Five construction workers, most of whom were undeclared, succumbed to their work-related injuries in Belgrade during the last week of August and the first week of September alone.<sup>499</sup> At the time this Report was prepared, the only data available on the website of the Occupational Safety and Health Administration concerned the work-related injuries and deaths registered in 2017.<sup>500</sup> In that period, the Administration registered a total of 10,213 injuries, nine of which were fatal and 898 of which were grave. The greatest number of injuries were registered in the processing industry (23.81%), the health and social protection sector (10.36%), wholesale and retail trade, transportation and warehousing sectors. Most of the injuries were ascribed to non-compliance with the special occupational safety regulations (39.58%), work performed in contravention of the occupational safety regulations (21.72%), and defectiveness, slipperiness and obstruction of passageways and working areas (12.79%).<sup>501</sup>

As of mid-2018, the Ministry of Labour, Employment and Veteran and Social Issues commendably started publishing the names of employers not declaring the workers they hire.<sup>502</sup> This move was prompted by the death of a worker, who had been working on construction sites undeclared for nine years. His death prompted ad hoc inspections of all construction sites in Belgrade, during which the inspectors identified over 60 undeclared workers. The Labour Minister said the Labour Act would be amended to include more rigorous penalties against employers violating the law and that the Ministry would publish the data obtained by labour inspectors in the field – where they performed checks, which companies did not declare the workers they hired and how many, et al.<sup>503</sup>

### 12.5. Freedom to Associate in Trade Unions

The freedom to associate in trade unions is the only trade union freedom guaranteed by all four general human rights protection instruments ratified by the Republic of Serbia – Article 22 of the ICCPR, Article 11 of the ECHR, Article 8 of the ICESCR and Articles 5 and 6 of the ESC. This freedom entails the right to

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499 More is available in Serbian at: <https://www.kurir.rs/vesti/drustvo/3112159/od-pocetka-godine-poginula-24-radnika-cak-trecina-poginulih-na-gradilistu>.

500 More is available in Serbian at: [http://www.minrzs.gov.rs/files/izvestaj\\_o\\_radu\\_uprave\\_za\\_2017.pdf](http://www.minrzs.gov.rs/files/izvestaj_o_radu_uprave_za_2017.pdf).

501 *Ibid.*

502 See the *Večernje novosti* report, available in Serbian at: <http://www.novosti.rs/vesti/naslovnadrustvo/aktuelno.290.html:747543-Djordjevic-Ko-zaposljava-na-crno-bice-na-stubu-srama>.

503 *Ibid.*

establish a trade union and join it of one's own free will, the right to establish associations, national and international alliances of trade unions and the right of trade unions to act independently, without interference from the state. Serbia has also signed ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, ILO Convention No. 11 Concerning Right of Association (Agriculture),<sup>504</sup> ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively<sup>505</sup> and ILO Convention No. 135 Concerning Workers' Representatives. Article 5 of the Revised European Social Charter<sup>506</sup>, ratified by Serbia in 2009, enshrines the right of workers and employers to organise, which entails the right to form local, national or international organisations for the protection of their economic and social interests.

Article 55 of the Constitution guarantees the freedom of association in trade unions. Trade unions may be established by registration with the competent state authority pursuant to the law and do not require prior approval. The Constitutional Court is the only authority entitled to prohibit the work of any association, including a trade union, and only in the cases explicitly laid down in paragraph 4 of Article 55. The exercise of the freedom to organise in a trade union is governed in greater detail by the Labour Act, the law regulating the association of citizens and the by-laws. The Labour Act defines a trade union as an autonomous, democratic and independent organisation of workers associating in it of their own will to advocate, represent, promote and protect their professional, labour-related, economic, social, cultural and other individual and collective interests (Art. 6). Article 206 of the Act guarantees workers the freedom of organising in trade unions. Trade unions shall be established by entry in a register and do not require prior consent. The register shall be kept by the ministry charged with labour affairs. The trade union registration procedure is governed by the Rulebook on the Registration of Trade Unions.<sup>507</sup> Under Article 7 of the Rulebook, an organisation shall be deleted from the register, inter alia, pursuant to a final decision prohibiting the work of a trade union (Art 7(2) of the Rulebook)<sup>508</sup>. Under the Act on Associations, only the Constitutional Court may render a decision to ban any association (Art. 50(1)).<sup>509</sup>

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504 *Sl. novine Kraljevine Jugoslavije*, 44–XVI/30.

505 *Sl. list FNRJ (Addendum)*, 11/58.

506 *Sl. glasnik RS*, 42/09.

507 *Sl. glasnik RS*, 50/05 and 10/10.

508 Article 4 of the ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise explicitly prohibits the dissolution and suspension of work of a trade union by the administrative authorities. According to the ILO Committee on Freedom of Association, this is the most extreme form of interference in the independent operations of trade unions by public authorities.

509 The provisions, which had allowed *municipal administrative bodies* charged with internal affairs to render decisions prohibiting the work of trade unions, were abolished by the adoption of the Act on Associations.

In its Serbia 2018 Report, the European Commission said that social dialogue remained weak, in particular regarding the involvement of the social partners in policy developments relevant to them. It noted that collective agreements were mainly concluded in the public sector, whereas company level bargaining was dominant in the private sector, but that no aggregate figures were available. It said that four sectoral collective agreements had been signed in mid-2018 (musicians and performing artists, agriculture, construction, chemicals and non-metal industry) and that two, on musicians and performing artists and on agriculture, were already in force, but that the others had been cancelled by the employers. The EC said that the legal framework needed to be adjusted and the capacity of social partners strengthened in order to foster the use of collective bargaining. It noted that no progress had been made regarding the tripartite dialogue and that the budgetary allocation for the Economic and Social Council doubled in 2017.<sup>510</sup>

Some trade unions have for years been criticised for their overly close relations with the authorities. This view is corroborated by the appearance of the Minister of Labour, Employment and Veteran and Social Issues at the 2018 May Day protest staged by some trade unions. Some participants in the protest qualified his appearance as ultimate cynicism. The police took into custody two of the activists, who had tried to ask him unpleasant questions.<sup>511</sup>

## *12.6. Right to Strike*

The right to strike is guaranteed by Article 61 of the Constitution. Workers are entitled to stage strikes in accordance with the law and the collective agreement. The right to strike may be restricted only by law and in accordance with the type and nature of activity.

Under the Strike Act,<sup>512</sup> the right to strike is limited by the obligation of the strikers' committee and workers participating in a strike to organise and conduct a strike in a manner ensuring that the safety of people and property and people's health are not jeopardised, that direct pecuniary damage is not inflicted and that work may continue upon the termination of strike. Besides that general restriction, a special strike regime is also established: "in public services or other services where work stoppages could, due to the nature of the service, endanger public health or life, or cause major damage" (Art. 9(1)).<sup>513</sup>

The Preliminary Draft of the Strike Act proposed by the Ministry of Labour, Employment and Veteran and Social Issues largely copy-pastes the valid Strike Act

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510 Serbia 2018 Report, 6.19.

511 More is available in Serbian at: <http://levisamitsrbije.org/prvomajski-sukob-sa-ministrom-dor-devicem/> and: <http://levisamitsrbije.org/prvomajski-proglas-levog-samita-srbije-2/>.

512 *Sl. list SRJ* 29/96 and *Sl. glasnik RS*, 101/05 – other law and 103/12 – CC Decision.

513 More on the right to strike in the *2011 Report*, I.4.17.4.3.

adopted back in 1996.<sup>514</sup> Like the 1996 Act, it lacks a precise definition of companies and institutions that must continue providing essential services during a strike and how the employers and workers on strike define these essential services. It lays down that workers on strike are not entitled to their wages during the strike, only to the payment of their contributions. A strike shall be considered valid only if it is organised by the majority of the company workers or a trade union. Experts have criticised this provision in the valid Strike Act the most because it effectively restricts the right to strike as it qualifies as legitimate strikes organised by a trade union rallying 2% of the workers but not strikes organised by 30% of the workers, who are not members of a trade union. If a strike is organised by less than half of the workers and the trade union does not support it, the workers may end up losing their jobs because they organised an illegal strike. Trade unions think that the solution would be to lower the threshold of the number of workers whose strike is considered legitimate to e.g. 10–15 percent, whether or not they organised it as part of a trade union.<sup>515</sup>

Under the Preliminary Draft, strikes may be organised in companies performing “activities of general interest” provided they continue providing essential services; activities of general interest denote activities in the fields of electricity and water supply, transportation, provision of information, PTT services, public utility services, food production, health and veterinary protection, education, social care of children and welfare. The Ministry did not uphold the employers’ suggestion to extend the list of activities of general interest to include primary agricultural protection, animal husbandry, the chemical industry and mining. As opposed to the valid Strike Act, under which the essential services shall be defined by the employers, the Preliminary Draft lays down that they shall be defined in a collective agreement or in an agreement between the strike committee and the employer. In the event the latter two do not come to an agreement, the case shall be brought before the Agency for the Peaceful Settlement of Labour Disputes. Under the amendments to the Peaceful Settlement of Labour Disputes Act,<sup>516</sup> a strike may not be launched in companies performing activities of general interest in the absence of an agreement on essential services; in the event the employer and the workers cannot agree on these essential services, they shall be defined by the Agency’s Arbitration Council, within 30 days. This practically defeats the purpose of the right to strike.<sup>517</sup>

As noted above, the Preliminary Draft does not entitle workers to receive their wages while they are on strike, only to the payment of their contributions. Trade union representatives are of the view that the law must impose an obligation on the employers to pay wages to workers who organised the strike organised because of their outstanding wages; as it stands now, the provision benefits irrespon-

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514 More is available in Serbian at: <https://www.paragraf.rs/dnevne-vesti/250418/250418-vest16.html>.

515 More is available in Serbian at: <http://radnik.rs/2018/05/novi-a-stari-zakon-o-strajku/>.

516 *Sl. glasnik RS*, 125/04, 104/09 and 50/18.

517 More is available in Serbian at: <http://radnik.rs/2018/05/novi-a-stari-zakon-o-strajku/>.

sible employers not paying wages, because they will not be under the obligation to pay them during the strike either. Under the Preliminary Draft, the strike committee shall notify the employer of the strike at least three days in advance, or at least ten days in advance in case the company or institution is performing activities of general interest. The employers are under the obligation to open negotiations with the strike committees within two days from the day they are notified of the strike. Trade union representatives criticised this provision because the Preliminary Draft does not envisage a penalty for employers who fail to open negotiations with the workers on strike.<sup>518</sup>

Under the Preliminary Draft, the workers may stage their strike outside the workplace, pursuant to the law on the freedom of assembly. The Preliminary Draft commendably lays down that members of the strike committee may not be involved in providing essential services without the consent of the strike committee. The representatives of employers insisted that the law include the social peace clause, under which workers are not entitled to go on strike if the employer complies with the provisions of the collective agreement. This was the reason why the way in which the 2017 strike in FIAT ended was criticised, because it was in contravention of international standards and amounted to the workers waiving their right to strike.<sup>519</sup>

The 2018 teachers strike was organised by their four trade unions. Circa 2,000 teachers rallied to protest against the new pay grades in the public sector, which they considered unfair. The representatives of school TUs said that the pay grades opened space for political control over teachers and their promotion.<sup>520</sup>

Strikes were also organised in 2018 by the staff of the public company Serbian Post<sup>521</sup> and by workers of the factory *Magna seating* in Odžaci because their September wages had been cut by up to 10,000 RSD without explanation.<sup>522</sup> The Belgrade National Theatre staff organised a strike demanding the dismissal of their Director,<sup>523</sup> while lawyers organised a strike protesting against the murder of their colleague and insufficient protection of their profession.<sup>524</sup> War veterans organised a strike demanding the payment of their outstanding per diems,<sup>525</sup> Kraljevo Hospital

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518 *Ibid.*

519 See the 2017 Report, III.14.6.

520 More in Serbian at: <http://levisamitsrbije.org/borba-za-prosvetu-je-borba-za-bolju-buducnost-svih-nas/>.

521 More in Serbian at: <http://ozonpress.net/drustvo/strajk-u-posti-vlast-namerno-unistava-postu-radnici-zabrinuti/>.

522 More in Serbian at: <http://rs.n1info.com/a425665/Biznis/Radnici-Magna-seatinga-u-Odzaci-ma-prekinuli-strajk.html>.

523 More in Serbian at: <https://www.blic.rs/kultura/vesti/muk-na-sceni-veceras-strajk-upozorenja-u-narodnom-pozoristu-upravnik-dejan-savic/zg1w1cp>.

524 More in Serbian at: <http://mondo.rs/a1121890/Info/Drustvo/Advokati-od-danas-u-strajku-zbog-ubistva-Ognjanovica.html>.

525 More in Serbian at: <https://www.blic.rs/vesti/drustvo/borci-strajkuju-gladju-ucesnici-ratovatr-za-ostavke-zbog-neispunjenih-obecanja/5rdr7r4>.



doctors and medical staff protested against the non-payment of their wages,<sup>526</sup> cab drivers protested against the introduction of an uber-like service Car:Go,<sup>527</sup> etc.

## 13. Right to Social Security

### *13.1. Legal Framework*

Under Article 69 of the Constitution, citizens and families in need of welfare to overcome their social and existential difficulties and begin providing subsistence for themselves shall be entitled to social protection, the provision of which shall be based on the principles of social justice, humanity and respect for human dignity. In its Opinion on the Constitution of Serbia, the Venice Commission commented that social protection was not granted generally but only to citizens and families by the Constitution.<sup>528</sup>

The Constitution also guarantees the rights of the employed and their families to social protection and insurance, the right to compensation of salary in case of temporary inability to work and to temporary unemployment allowances. The Constitution also affords special social protection to specific categories of the population and obliges the state to establish various types of social insurance funds. Article 70 of the Constitution specifically guarantees the right to pension insurance.

During the latest reporting period on the implementation of the European Social Charter in Serbia, the European Committee of Social Rights monitored the exercise of the right to social security (Art. 12), the right to social and medical assistance (Art. 13), the right to benefit from social welfare services (Art. 14), the right of elderly persons to social protection (Art. 23) and the right to protection against poverty and social exclusion (Art. 30).

With regard to Article 12(1), the Committee rendered a similar conclusion as in 2013, during the previous reporting period, that the duration of payment of unemployment benefits was too short, at least with respect to persons with up to five years' insurance, who were only entitled to three months of unemployment benefits. The Committee held that the situation in Serbia was in conformity with Article 12(2) on the obligation to maintain a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security. As per Serbia's obligation to endeavour to raise progressively the system of social security to a higher level under paragraph 3 of this Article, the Committee

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526 More in Serbian at: <http://rs.n1info.com/a400942/Vesti/Strajk-lekara-i-medicinskog-osoblja-u-Kraljevu.html>.

527 More in Serbian at: <http://mondo.rs/a1102917/Info/Drustvo/Strajk-taksista-u-centru-Beograda.html>.

528 See Venice Commission, *Opinion on the Constitution of Serbia*, Opinion No. 405/2006, CDL-AD (2007)004, para. 41.

deferred its conclusion pending receipt of the information requested. It concluded that the situation in Serbia was not in conformity with Article 12(4) of the Charter on the ground that equal treatment with regard to access to family benefits was not guaranteed to nationals of all other States Parties.

The Committee concluded that the situation in Serbia regarding its obligation to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition, was not in conformity with Article 13(1) of the Charter on the ground that the level of social assistance paid to a single person without resources was not adequate. The Committee concluded that the situation in Serbia was in conformity with Article 13(2) of the Charter on non-discrimination in the exercise of social and political rights. After reviewing paragraph 3 of Article 13, the Committee deferred its conclusion pending receipt of the required information on Serbia's fulfilment of the obligation to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want.

The Committee deferred its conclusion pending receipt of the information required regarding the entire Article 14, under which Serbia is under the obligation to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment and to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

The Committee concluded that the situation in Serbia was not in conformity with Article 23 of the Charter on the ground that adequate resources were not guaranteed. Under this Article of the European Social Charter, with a view to ensuring the effective exercise of the right of elderly persons to social protection, States Parties are under the obligation to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular: to enable elderly persons to remain full members of society for as long as possible, by means of: (a) adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life. (b) provision of information about services and facilities available for elderly persons and their opportunities to make use of them; to enable elderly persons to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of: (a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing; (b) the health care and the services necessitated by their state; and, to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution. The Committee considered that Ser-

bia had not ensured adequate resources for securing the above mentioned rights of the elderly in Serbia, indicating that social care of elderly persons was not enabled adequately in any respect.

The Committee reached a similar conclusion with respect to Serbia's obligation to take measures to ensure the effective exercise of the right to protection against poverty and social exclusion. Under Article 30 of the European Social Charter, States Parties are under the obligation to take measures within the framework of an overall and coordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance; and, review these measures with a view to their adaptation if necessary. The Committee concluded that the situation in Serbia was not in conformity with Article 30 on the ground that there was no adequate overall and coordinated approach to combating poverty and social exclusion.<sup>529</sup>

In the section on social policy in its Serbia 2018 Report, the European Commission noted that there were no developments as regards the European Social Fund. As per social inclusion and protection, it drew particular attention to the large share of the population living in poverty or at risk of poverty.<sup>530</sup> The share of people at risk of poverty or social exclusion was the highest among all countries conducting statistics on income and living conditions (SILC) and stood at 38.7% (SILC 2017). The EC said that quality of service needed to improve, and that oversight and regulatory mechanisms, monitoring and evaluation should be strengthened. It noted that no progress had been made in the local-level social care services or de-institutionalisation process and concluded that the system of earmarked transfers introduced by the Social Protection Act needed to be implemented more systematically and transparently.<sup>531</sup>

Social insurance comprises pension, disability, health and unemployment insurance. Social protection and social security are provided in the Republic of Serbia through social insurance and various financial benefits and services within the system of social, child and veteran-disability protection.

Social insurance against old age and disability is regulated by the Pension and Disability Insurance Act<sup>532</sup> and the Act on Voluntary Pension Funds and Pension Plans.<sup>533</sup> Mandatory insurance encompasses all employees, individual entrepreneurs

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529 See more at: <https://goo.gl/p6wZKk>.

530 The EC quoted the Social Inclusion and Poverty Reduction Unit statistics, according to which 7.3% of the population were considered to live in absolute poverty, 25.5 % (some 1.8 million people) were at risk of poverty, and around half a million people were unable to meet basic subsistence needs.

531 Serbia 2018 Report, European Commission, April 2018, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

532 *Sl. glasnik RS*, 34/03, 64/04 – CC Decision, 84/04 – other law, 85/05, 101/05 – other law, 63/06 – CC Decision, 5/09, 107/09, 101/10, 93/12, 62/13, 108/13, 75/14, 142/14 and 73/18.

533 *Sl. glasnik RS*, 85/05 and 31/11.

and farmers. This insurance ensures the rights of the insured persons in old age, or in the event of disability, death or corporal injury caused by a work-related accident or occupational disease.

The amendments to the Pension and Disability Insurance Act were adopted in September.<sup>534</sup> The amendments raise the pensionable age threshold for both women and men; set stricter disability pension requirements (100% disability rating); permanently reduce early pensions; set stricter family pension requirements; align the pension growth policy with the budget possibilities; reform the pension administration to cut administrative fees; introduce more efficient oversight and collection of pension and disability insurance contributions, etc.

The change in the method of calculating the amount of reduced pensions of early retirees under the accelerated pension plan has resulted in a fairer calculation of the age pensions of these people. The method of calculating the last year of service has been changed to reduce the number of interim decisions of the Republican Pension and Disability Insurance Fund, in order to improve the Fund's efficiency, increase legal security and cut administrative fees. The validity of the interim decisions, issued in the absence of all the requisite information for the issuance of final decisions, cannot exceed three years.

The Pension and Disability Insurance Fund can no longer collect overdue pension and disability insurance contributions by withholding one-third of the pension of retirees, who defaulted on their obligation to pay their own pension and disability insurance contributions. This amendment brings order to the competences of the institutions, because the Tax Administration is tasked with overseeing and collecting social insurance contributions. Retirees will now receive pensions reflecting the contributions they paid, because the pensions are set in accordance with the duration and amount of contribution payments.

The employers now have fewer obligations regarding the various applications they have to fill and submit to the Republican Pension and Disability Insurance Fund. The amendments reflect the pension administration deadlines envisaged in the Government strategies on public administration reform and reducing administrative burdens. Pensioners may receive additional funds, depending on the economic developments and the budget, but the funds may not exceed 0.3% of the GDP per annum. The Government is charged with defining the conditions, amounts and schedule of the payment of these funds. The amendments also allow the exceptional disbursement of Fund funds to retirees, in the amount set by the Government.

The legislator held that there was no longer a need to apply the Act on the Temporary Regulation of Pension Payments<sup>535</sup> and it ceased to have effect on 1 October 2018. The funds to be paid out under these amendments were secured in the Republican Pension and Disability Insurance Fund 2018 Financial Plan: 615,580 billion RSD for 2018, 638,780 billion RSD for 2019, and 638,780 billion RSD for 2020.

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534 *Sl. glasnik RS*, 73/18.

535 *Sl. glasnik RS*, 116/14 and 99/16.

Experts were the most critical of the amendments abolishing the pension adjustment formula and granting the Government excessive powers regarding such a sensitive issue, namely, to decide on the pension adjustment percentage every year.<sup>536</sup> The Fiscal Council, which called for the withdrawal of the draft from the parliamentary procedure, warned that it was violating the principles of an accountable social policy and that the abolition of the pension adjustment formula meant abandoning good European practices and degrading the Serbian pension system to the level of the most unstable pension systems.

It explained that the practice of adjusting the pensions according to a formula based on the combination of price and wage trends and economic growth dominated in Europe and that it had been applied in Serbia for decades, since the introduction of the public pension system. The abandonment of this tried and tested objective pension adjustment formula would, in its view, impinge on the predictability of the pension system and exacerbate insecurity among workers who are paying their contributions but are unable to make even gross estimates of their future incomes. Most associations of pensioners were also for the preservation of the old formula. They even suggested reducing the guaranteed minimum increase vis-a-vis economic growth from four to two percent, a solution which was qualified as realistic by the Fiscal Council.

The data of the Republican Pension and Disability Insurance Fund show that Serbia had 1,712,245 pensioners on 31 July 2018. The problem is that the ratio of retirees and workers has been registering a negative trend since 2000. In 2000, Serbia had circa 1.5 million pensioners and around 2.7 million pension contribution payers, i.e. 1.8 workers per retiree, whereas, in 2017, when Serbia had 2,102,489 pensioner contribution payers, the ratio stood at 1.2 workers per retiree.<sup>537</sup>

### *13.2. Poverty in Serbia*

In 2015, the Serbian Government formed an Inter-Sectoral Working Group for the Implementation of the UN 2030 Agenda for Sustainable Development.<sup>538</sup> In 2018, this Inter-Sectoral Group adopted a report entitled Serbia and UN Agenda 2030,<sup>539</sup> in which it mapped the national strategic framework vis-à-vis the Sustainable Development Goals. The report does not envisage any new measures or publish more recent data than the available 2016 data; it merely cross-references the UN goals and the national strategic documents and declaratively confirms commitment

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536 Before the adoption of the Act on the Temporary Regulation of Pension Payments, the pensions were adjusted according to the formula, to reflect price and economic growth.

537 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/sta-donosi-novi-zakon-o-penzijskom-i-invalidskom-osiguranju/>.

538 See: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

539 Available at: [https://rsjp.gov.rs/EN/wp-content/uploads/2018/07/Agenda\\_2030\\_i\\_Srbija\\_-\\_Report\\_ENGLISH\\_2802.pdf](https://rsjp.gov.rs/EN/wp-content/uploads/2018/07/Agenda_2030_i_Srbija_-_Report_ENGLISH_2802.pdf).

to SDG 1 – End poverty in all its forms, given that the valid documents already envisage this goal.

The latest available data show that a quarter of Serbia's population was at risk of poverty and that half a million, i.e. 7.2%, were below the absolute poverty line of 12,045 RSD a month; 268,000 citizens in the reporting period received welfare benefits and around 35,000, a third of whom were children, got their daily meals in soup kitchens.<sup>540</sup>

The highest at risk of poverty rate was registered among individuals living in households comprising two adults and three or more dependent children (49.8%) and individuals under 65 years of age who were living alone (40.1%). When the at risk of poverty rate is broken down by work status, the unemployed, of course, accounted for most of the adults at greatest risk of poverty (49%); this rate was the lowest among the employed (9%). As many as one-third of the self-employed and 15.4% of the pensioners were at risk of poverty. Furthermore, 37.7% of the households could not simultaneously afford at least three of the following nine items: adequate heating, washing machine, car, telephone, colour TV, meal of meat, chicken or fish (or vegetarian equivalent) every other day, a one-week holiday away from home for all household members at least once a year, settlement of an unexpected expense in the amount of 10,000 RSD, regular payment of rent, mortgage or other loans or utility bills for their current home.<sup>541</sup>

Nearly half of Serbia's citizens over 75 years of age are unable to satisfy their material needs; their share is much higher than in EU countries. Whereas the material deprivation rate of the population, especially women, in the EU decreases with age, it increases in Serbia. Over a quarter of Serbia's population over 65 cannot afford to buy two pairs of footwear each season and one-third cannot afford new clothes. A quarter of them cannot afford to have a drink or a meal with their friends at least once a month and less than half of the elderly in Serbia meet up with their friends once a week. The elderly in Serbia qualify their state of health worse than their EU peers. A significant share of the elderly, especially women, did not satisfy their health needs, i.e. did not go to see a doctor when they needed to or were not properly diagnosed or treated. Poverty has been on the rise even among the employed, especially the self-employed; the at risk of financial poverty rate among the self-employed is more than three times higher than among those working for others (32.4% v. 9.0%).<sup>542</sup>

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540 See more at: <http://sociojalnouljucivanje.gov.rs/en/social-inclusion-in-rs/statistics/absolute-poverty/>.

541 Material deprivation denotes the enforced inability of an individual or a household to afford the basic goods or services considered by most people to be desirable or even necessary to lead an adequate life. See the *Biznis i finansije* report, available in Serbian at: <http://bif.rs/2018/05/gde-je-granica-siromasenja-u-srbiji-kad-zdravlje-obrazovanje-postanu-luskuz/>.

542 See the *N1* report, available in Serbian at: <http://rs.n1info.com/a428390/Vesti/Evropska-mreza-protiv-siromastva-Srbija-o-siromastvu.html>.

Around 30% of the children in Serbia are at the brink of poverty, while another 10% live under the absolute poverty line. According to the data of the UNICEF office in Serbia, 20% of the children in Serbia have not received all of their vaccinations, nearly one-third of the children under five are malnourished, around 50% of the children between three and five years of age do not attend kindergarten and nearly one-third of the children under five do not have even three children's books at home. UNICEF also said that nearly 60% of girls in Roma settlements married before they turned 18, as opposed to 7% of the girls in the general population.<sup>543</sup>

### *13.3. Social Protection*

Reduction of extreme poverty and part of the social protection not covered by social insurance is realised in Serbia through social and child protection, governed by two laws: the Social Protection Act<sup>544</sup> and the Act on Financial Support for Families with Children<sup>545</sup>. The Social Protection Act governs rights to welfare benefits targeting the poor (financial aid, increased financial aid, and one-off financial aid), long-term domiciliary care and assistance allowances, job skills training allowances, social protection services, as well regulatory and control mechanisms in the field of social protection.

Social protection services include assessment and planning services, everyday community services, independent living support services, counselling-therapeutic and social-educational services and placement services. The Act on Financial Support for Families with Children governs the rights to financial aid for poor families with children (child benefits) and aid aimed at balancing work and parenthood and supporting childbearing (maternity and parental benefits).

The preliminary draft amendments to the Social Protection Act were publicly presented by the Ministry of Labour, Employment and Veteran and Social Issues. Civil society organisations submitted to the Ministry their Initiative to withdraw the text from the public debate, because, in their view, the proposed amendments were directly in contravention of the Serbian Constitution, the Chapter 23 Action Plan and the relevant international conventions. They criticised the amendment drafting process as non-transparent because the relevant stakeholders and CSOs dealing with social protection were not involved in it, and claimed that the proposed amendments gravely jeopardised the interests of welfare beneficiaries, restricted fundamental human rights and centralised the social protection system in contravention of the European Commission's recommendation to the contrary. Furthermore, in their

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543 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a437320/Vesti/Unicef-Oko-30-odsto-dece-u-Srbiji-zivi-na-ivici-siromastva.html>.

544 *Sl. glasnik RS*, 24/11.

545 *Sl. glasnik RS*, 16/02, 115/05, 107/09, 113/17 and 50/18. The amendments entered into force on 1 January 2018 and have been applied as of 1 July 2018.

view, the preliminary draft amendments inadequately governed the matter and were not in line with other regulations or the obligations Serbia undertook when it ratified international treaties guaranteeing fundamental human rights.<sup>546</sup>

The Initiative authors emphasised that the amendments restricted the right to financial welfare benefits only to individuals with work capacity who did not refuse, inter alia, to engage in public works in the previous six months, which was in contravention of the guarantees under Article 20 of the Serbian Constitution, lowered the attained level of human rights and was in breach of Serbia's international obligations to prevent forced labour and discrimination. They also warned that the proposed amendments provided the minister with the possibility of enacting numerous by-laws without first prescribing the basic concepts and requirements, which was in contravention of the fundamental principles of legal certainty and could result in the subsequent curtailment of the rights of financial welfare beneficiaries.

Contrary to the European Commission's recommendation to decentralise the social protection system, the amendments do not allow local self-governments either to appoint or dismiss the Social Work Centre directors without the prior consent of the relevant ministry. The draft amendments lay down that financial welfare beneficiaries must regularly attend school and fulfil their school-related obligations. In the view of the authors of the Initiative, these requirements are in contravention of the regulations governing the education system and the principle of the best interests of the child under Article 3(1) of the Convention on the Rights of the Child.

The powers of the Social Work Centres regarding the collection of data on the beneficiaries were qualified as excessive and as creating the risk of disproportionate interference in civil rights and of violations of the right to privacy under Article 8 of the ECHR. The Preliminary Draft failed to abolish the valid limitation on the payment of financial welfare benefits granted to individuals with work capacity to just nine months a year. Such suspensions push the welfare beneficiaries into deeper poverty, drastically exacerbating their living conditions and risking to render them homeless.

As the authors of the Initiative warned, the Preliminary Draft does not provide for a nationwide toll free 24/7 helpline service or a shelter for victims of violence, especially women and their children; it does not provide for specific support and protection to children victims of domestic violence or inter-sectoral support services for victims of sexual violence (centre for victims of sexual violence). They called on the Ministry to act in accordance with Article 77 of the State Administration Act, which lays down the obligation of state administration authorities to facilitate public engagement in the drafting of laws, other regulations and enactments.<sup>547</sup>

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546 See the *Euroactiv* report, available in Serbian at: <http://www.euractiv.rs/ljudska-prava/12931-vie-od-500-zahteva-za-povlaenje-predloenih-izmena-zakona-o-socijalnoj-zatiti>.

547 The Initiative is available in Serbian at: <https://ukljucise.tragfondacija.org/>.



The Preliminary Draft was ultimately withdrawn from the public debate in response to widespread criticisms.

The Preliminary Draft Act on Social Entrepreneurship, which further governs social security and inclusion, was publicly presented in 2018. CSOs rallied and launched an Initiative regarding this text as well, calling for its withdrawal from the parliamentary procedure, primarily because it restricted the concept of social entrepreneurship exclusively to work integration, whilst neglecting its other social functions, in contravention of the practices of most European countries.

Furthermore, in their view, the Preliminary Draft does not recognise associations, foundations and cooperatives, which are employing almost 10,000 people to perform socio-entrepreneurial activities. The authors of the Initiative said that, rather than laying down the forms of social enterprises, the law should prescribe the conditions under which the existing legal entities can be identified as work integration social enterprises. During the public debate, they called on the Government and the Ministry of Labour, Employment and Veteran and Social Issues to rename the law and improve its provisions and offered suggestions on how it could be improved.

The Initiative signatories suggested that the law be called “Act on Work Integration Social Enterprises” to better reflect the matter it governs. This would facilitate legal and institutional support to the vulnerable groups’ inclusion in the labour market. The authors of the Initiative emphasised that social enterprises were private initiatives addressing social problems in a market-based manner. As opposed to the practice in Serbia to date, the Preliminary Draft Act allows local self-governments and provinces to establish social enterprises, which directly encroaches on the character of social entrepreneurship.<sup>548</sup>

#### *13.4. Protection Accorded to Family*

Apart from the ICESCR, Serbia is a signatory of the Convention on the Rights of the Child, the Optional Protocol to the Convention on Sale of Children, Child Prostitution and Pornography, and the ILO Conventions on Maternity Protection (No. 3); Medical Examination of Young Persons (Sea) (No. 16), Underground Work (Women) (No. 45), Night Work (Women) (Revised) (No. 89), Night Work of Young Persons (Industry) (Revised), (No. 90), Maternity Protection (Revised) (No. 103), Minimum Age (No. 138), Workers with Family Responsibilities (No. 156), Worst Forms of Child Labour (No. 182) and on Maternity Protection (No. 183).

By ratifying the ESC, Serbia undertook also to fulfil the obligations regarding the full protection of children and young people (Art. 7) and the right of employed women to protection of maternity by defining the legal minimum obligations of em-

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548 The Initiative is available in Serbian at: <https://solidarnaekonomija.rs/podrska/>.

ployers towards pregnant women (Art. 8). Furthermore, it undertook to promote the economic, legal and social protection of family life by such means as social and family benefits (Art. 16) and to take measures to ensure the protection of children and young people from negligence and violence, provide them with free education and provide special aid to young people deprived of their family's support (Art. 17).

In its third report on Serbia, the European Committee of Social Rights reviewed Serbia's fulfilment of its obligations under Article 8 of the ESC – Right of employed women to protection of maternity.

Article 66 of the Constitution guarantees special protection to the family and the child, mothers and single parents. In paragraph 2 of this Article, it guarantees support and protection to mothers before and after childbirth and, in paragraph 3 of this Article, it guarantees special protection to children without parental care and children with physical or intellectual disabilities. The Constitution prohibits employment of children under 15; minors over 15 are prohibited from performing jobs that may adversely affect their health or morals. Article 64 of the Constitution is devoted to the rights of the child.

Pregnant women and women with children under the age of three may not work overtime or at night. Exceptionally, a woman with a child over the age of two may work at night but only if she specifically requests this in writing. Single parents with a child under seven or a severely disabled child may work overtime or at night only if they submit a written request to this effect (Art. 68, Labour Act).

If the condition of a child requires special care or if it suffers from a severe disability, one of the parents has the right to additional leave. One of the parents may choose between leave and working only half-time, for 5 years maximum (Art. 96, Labour Act). Under the Labour Act, one parent may take leave from work until the child's third birthday and his labour rights and duties will remain dormant during this period (Art. 100 (2), Labour Act).

The implementation of the amendments to the Act on Financial Support for Families with Children, which entered into force on 1 July 2018, especially its problematic provisions, elicited dissatisfaction.<sup>549</sup> This Act violates ILO Convention on Maternity Protection (No. 183), under which the cash benefit paid during maternity leave should be at least two-thirds of a woman's previous earnings. The Act, however, lays down that the cash benefit will be calculated on the basis of the average wage the parent earned in the preceding 18 months.<sup>550</sup>

Participants in the protest organised against this Act called for the urgent amendment of the impugned provisions and the dismissal of Labour Minister Zoran

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549 More on the criticisms of the Act in the *2017 Report*, III.15.3 and 15.4.

550 This means that people, who have worked for e.g. six months and earned the average national wage (circa 40,000 RSD), will now receive a third of the maternity or childcare leave than they would have under the prior law, i.e. half the sum specified as minimum in ILO Convention 183. The benefit will practically amount to half the set minimum wage, because people will have to work for 18 months in a row to qualify for benefits equalling their wages.

Dorđević.<sup>551</sup> Experts agreed that the controversial provisions of the Act on the calculation of maternity benefits would impinge on a great number of pregnant women and young mothers in Serbia. Under these provisions, young mothers may receive monthly maternity benefits under 1,000 RSD, which definitely degrades and puts at risk the entire family, which is expected to nourish a new-born with that money.

The relevant Ministry did not ensure the mutual conformity of the regulations within its jurisdiction when it was drafting the law. The issues of balancing work and parenthood, as regulated by the Strategy for Encouraging Childbirth,<sup>552</sup> i.e. balancing work and family life, as governed by EU law, cannot be addressed by individual solutions, either in the area of labour or the area of social rights. Experts warned that the adoption of these amendments should have been preceded or coincided with the adoption of relevant amendments to the Labour Act, which provides for atypical forms of work, such as work outside employment, occasional and temporary work, service contracts, et al, which do not enjoy the same protection as typical forms of work under the labour law.<sup>553</sup>

In response to the appeals to eliminate the negative effects of the Act on Family Support for Families with Children, the Ministry of Labour, Employment and Veteran and Social Issues said that it could not establish whether and how many pregnant women and young mothers were negatively affected by its implementation. Maternity benefits are designated for working women using maternity leave in accordance with the law to care for their babies, especially women who are actually working, have concluded employment contracts and spent a specific period of time working before going on maternity leave. The statement made on the public service broadcaster by a Labour Ministry representative – “No employer will hire a women who plans on going on pregnancy leave as soon as she signs the contract; they need women who will work, not women who will take pregnancy leave the day after they start their new job” – left the public with the impression that she was speaking on behalf of the entire Ministry. Let alone that such a view is not in conformity with the state’s endeavours to increase the birth rate and facilitate balance of work and family life.<sup>554</sup>

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551 See the *Bebac* press release, available in Serbian at: <https://www.bebac.com/vesti/bebac-ministru-djordjevicu-zahtevamo-vasu-hitnu-i-neopozivu-ostavku>.

552 Adopted on 16 March 2018 in response to population ageing and the fall in birth rates and in the overall population. Fertility rates (number of children per woman) have been decreasing steadily in the last decades; in 2016, the overall fertility rate in Serbia was 1.46 (EU-28 average: 1.6). One of the Strategy’s priority goals is to “decrease the financial burden of parenthood” by the provision of adequate financial support to parents. See more in Serbia: Changes in financial support for families with children, ESPN Flash Report 2018/50 at: <https://ec.europa.eu/social/BlobServlet?docId=19978&langId=en>.

553 See the *Bebac* press release, available in Serbian at: <https://www.bebac.com/vesti/bebac-u-150-minuta-drzava-te-kaznjava-kad-zatrudnis?tema=aktuelno>.

554 See the *Bebac* press release, available in Serbian at: <https://www.bebac.com/vesti/drzava-porucuje-izdrzite-s-prvim-detetom-pa-ce-s-drugim-bitilakse>.

## 14. Right to Health

### 14.1. Legal Framework

The right to physical and mental health is enshrined in Article 12 of the IC-ESCR.<sup>555</sup> The right to health care guarantees everyone access to the relevant facilities and services for the diagnosis, treatment and prevention of illnesses. Health is a fundamental human right indispensable for the exercise of other human rights, wherefore the states are under the obligation to secure everyone the availability of and unobstructed access to acceptable and quality health care.<sup>556</sup>

The Serbian Constitution guarantees the right to healthcare and entitles children, pregnant women, mothers on maternity leave, single parents of children under seven and the elderly to free medical care even if they are not beneficiaries of mandatory health insurance. The Constitution obliges the state to assist the development of health and physical culture. It also obliges the state to establish a health insurance fund.

Mandatory and voluntary health insurance is regulated by the Health Insurance Act.<sup>557</sup> The Republican Health Insurance Fund (RHIF) is charged with managing and ensuring mandatory health insurance, while voluntary health insurance may be provided by private insurance and special health insurance investment funds, the organisation and activities of which are to be regulated by a separate law.

Under the Health Care Act,<sup>558</sup> healthcare shall comprise curative, preventive, and rehabilitative care funded from the health insurance funds, the state budget and by beneficiaries in cases specified by the law (co-payments). Healthcare may be fully covered from insurance funds or co-paid by the insured persons. Article 45 of the Health Insurance Act enumerates all the cases in which the insured persons must cover part of the medical costs and sets the amounts in percentages. Specific categories are exempted from co-paying (war military and civilian invalids, other persons with disabilities, blood donors, et al).

Although the Serbian Government said new laws on health insurance and health care would be adopted by the end of 2018, their drafts were not submitted to the National Assembly for adoption by the end of the reporting period.<sup>559</sup>

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555 More on the standard in General Comment No. 14, UN doc. E/C 12/2000/4.

556 CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), available at: <http://www.refworld.org/pdfid/4538838d0.pdf>.

557 *Sl. glasnik RS*, 107/05, 109/05 – corr., 57/11, 110/12 – CC Decision, 119/12, 99/14, 123/14, 126/14 – CC Decision, 106/15 and 10/16 – other law.

558 *Sl. glasnik RS*, 107/05, 72/09 – other law, 88/10, 99/10, 57/11, 119/12, 45/13 – other law, 93/14, 96/15, 106/15 and 113/17 – other law.

559 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/drustvo/novi-zakon-o-zdravstvenom-osiguranju-donosi-sest-vaznih-promena/cdn05he>.

The National Assembly in 2018 adopted the Human Organ Transplantation Act,<sup>560</sup> the Human Cells and Tissues Act,<sup>561</sup> and amendments to the Psychoactive Substances Act.<sup>562</sup>

Under the Human Organ Transplantation Act, citizens who do not want to donate their organs must declare as much in writing or orally to the Biomedicine Administration, which is to be established in Belgrade. Under this law, the organs of deceased adults with legal capacity may be removed for transplantation provided that they had not objected to such removal orally or in writing before they died and that their parents, spouses, common-law partners or adult children did not explicitly object to such removal at the time of their death. Pursuant to the Act, removal of organs from deceased minors deprived of parental care and deceased adults, who had been partly or fully deprived of legal capacity pursuant to a decision of the competent authority, shall be permitted only with the consent of the health institution's ethical committee, which is formed in accordance with the law governing healthcare. The Act envisages the forming of a nationwide waiting list of human organ recipients; all persons with indication of organ transplantation i.e. whose organ transplantation is medically justified will be included in it without discrimination and under equal terms.<sup>563</sup>

The Human Cells and Tissues Act specifies which health institutions may apply for performing activities in this area, the requirements to be fulfilled by human tissue banks, and provides for the establishment of a register of stem cell donors. The Act simplifies the human tissue use consent procedure whilst avoiding unnecessary financial costs of maintaining the register. Under the Act, tissues of deceased adults with legal capacity may be removed for use provided that they had not objected to such removal and use in writing or orally before they had died and that their parents, spouses, common-law partners or adult children did not explicitly object to such removal and use at the time of their death. The removal of tissues from deceased minors is permitted with the consent of both parents, whereas the removal of tissues from deceased minors without parental case is permitted with the consent of the health institution's ethical committee. Pursuant to the Act, the donation and reception of human cells and tissues shall be guided by the priority interests of preserving life and health and the protection of the fundamental human rights and dignity of the donors and recipients. Under the law, the dignity of the deceased and the members of their families shall be respected during the procurement of human cells and tissues from deceased donors and all measures shall be taken to restore the physical appearance of the deceased donors.

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560 *Sl. glasnik RS*, 57/18.

561 *Ibid.*

562 *Ibid.*

563 About reaction on this law see the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a406472/Usvojen-set-zakona-iz-oblasti-zdravstva.html> and <https://www.danas.rs/drustvo/treba-li-svako-rodjenjem-da-postane-donor-organa/>.

The Psychoactive Substances Act was primarily amended with a view to improving the early-warning system on new psychoactive substances; this law now provides for the establishment of groups monitoring drugs and drug dependence within the Ministry of Health's Sector for Medications and Medical Devices.

In the last reporting period, the Committee of Social Rights reviewed Serbia's fulfilment of its obligations under Article 11 of the Revised European Social Charter on the right to protection of health. It said that there were significant gaps in information provided in relation to the specific requirements of Article 11(1) and that Serbia's report did not contain any information on health care indicators (death rate, infant mortality rate and maternal mortality rate). It noted that, according to WHO, life expectancy at birth in 2015 (average for both sexes) was 75.6, which was below that of other European countries (for example, the EU-28 average for the same year was 80.6). The Committee also sought information on the administrative structures responsible for the proper implementation of the regulatory framework and measures/programmes carried out to ensure their implementation, which Serbia had not submitted. The Committee recalled that "cost of health care must not represent an excessively heavy burden for the individual" and that "[O]ut-of-pocket payments should not be the main source of funding of the health system. Steps must be taken to reduce the financial burden on patients from the most disadvantaged sections of the community [...]." The Committee asked for information on the total expenditure on health as a percentage of GDP and information on the proportion of out-of-pocket payments for health care. For all these reasons, the Committee deferred its conclusion pending the receipt of the information requested.<sup>564</sup>

In the section devoted to Chapter 28 on Consumer and health protection of its Serbia 2018 Report, the European Commission, said that the national legislation on healthcare was partly aligned with the *acquis*, but that there had been no progress in ensuring the sustainability of the public health fund. It said that the national plan for human resources in the health sector was still not implemented, with an increased number of physicians leaving the country. The EC said that the EU-funded centralised electronic health record system was still not used and that compliance with EU Health Indicators was not yet ensured. The EC qualified the progress on aligning with the *acquis* on blood, tissues, cells and organs as limited, following the adoption of a law on transfusion medicine and on bio-medically supported fertilisation, both designed to be fully aligned with the *acquis*.<sup>565</sup>

The EC noted that surveillance and response capacities on serious cross-border health threats, including communicable diseases, remained limited and required modernisation and that a centralised health information and com-

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564 See: <http://hudoc.esc.coe.int/eng?i=2017/def/SRB/11/1/EN>.

565 These laws will apply as of January 2019.

munication system was yet to be implemented. It said that no progress had been made in harmonising with the Directive on the application of patients' rights in cross-border healthcare.

The EC said in its Report that more attention needed to be given to effective, sustainable financing of disease-specific strategies, including the national HIV/AIDS strategy and awareness-raising, particularly on the importance of child vaccination and that additional work was needed on surveillance of antimicrobial resistance and quality control and standardisation of laboratories. The EC noted that prescribing of antibiotics needed to be strictly controlled to strengthen the fight against anti-microbial resistance. The authors of the Report said that health promotion regarding non-communicable diseases was still not advanced and that national cancer screening for colorectal, breast and cervical cancers was slowly progressing, but was still only sporadic and not performed in a systematic manner in many regions of the country. They noted that there had been no progress in the development of community-based mental health services. With regard to health inequalities, the EC said that access to healthcare services needed to be improved for people with disabilities, people living with HIV, children and adults using drugs, prisoners, women in prostitution, LGBTI people, internally displaced persons and Roma.<sup>566</sup>

#### *14.2. Access to Health Care*

According to the most recent available data, Serbia's health system scored 673 of 1000 points and ranked 20<sup>th</sup> on the list of 35 states on the 2017 Euro Health Consumer Index (EHCI).<sup>567</sup> Serbia's progress in this area can mostly be attributed to the introduction of the Integrated Health Information System (IHIS) in 2016, but serious problems in its work persisted even two years after it was launched. Patients frequently had difficulties accessing specialists, notably, scheduling appointments through the system. Furthermore, not all hospitals are covered by IHIS and not all out-patient health clinics have the technology for applying it; nor have all the users been trained in using it.<sup>568</sup> The clinical centres' and hospitals' inability to provide these services has cost the state nearly four million RSD; this is the amount the Republican Health Insurance Fund (RHIF) paid out under the Rulebook on the Exercise of Mandatory Health Insurance Rights to refund citizens, who had been issued certificates by the state health institutions that they could not extend them the required services within 30 days and availed themselves of such services in private health institutions or laboratories. The refunding procedure is extremely complicated and health institutions are reluctant to issue the citizens the said certificates.

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566 See: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

567 See: <https://healthpowerhouse.com/files/EHCI-2017/EHCI-2017-report.pdf>.

568 See the *Radio Free Europe* report, available in Serbian at: <https://www.slobodnaevropa.org/a/srbija-zdravstvo/29141888.html>.

Furthermore, the patients pay the private examinations themselves and then have to wait for the RHIF to uphold their applications and refund them.<sup>569</sup>

The owner of the company Makler, which has been selling laboratory equipment in Serbia for several decades now, said that company analyses showed that the number of blood tests performed by private laboratories now equalled 50% of the blood tests performed by state health institutions.<sup>570</sup>

Despite more and more talk of the funds many citizens have been spending on private healthcare, the latter is still not integrated with the state health sector, although the idea was launched a long time ago<sup>571</sup> and World Bank data indicate that out-of-pocket expenditure accounts for 40% of healthcare expenditure. The remaining 60% are covered by the RHIF, which the citizens also participate in, by paying their mandatory health insurance contributions; a part is covered from the state budget.<sup>572</sup> Minor headway was made by including the private health sector, but only for cataract operations (due to the large number of patients on the waiting lists) and in vitro fertilisation.

A survey conducted by the Vojvodina Ombudsman showed that nearly three quarters of the respondents had failed to schedule appointments with specialists within a month of referral. The survey showed patients had to wait a long time to schedule all of their appointments, often too late to prevent the further deterioration of their health. People suffering from malignant and chronic diseases, pregnant women, as well as children, have faced the gravest problems.

The greatest number of complaints of the violations of the right to healthcare pertained precisely to the difficulties in scheduling appointments with specialists and the health institutions' refusal to issue certificates confirming that specialist examinations could not be scheduled within the following thirty days; such certificates are prerequisite for seeking a refund of the costs of private healthcare services.<sup>573</sup> Two-thirds of the respondents said they had not even tried to obtain such a certificate, while the rest had not even been aware of the possibility. The devastating fact is that some respondents said they had decided against complaining, fearing they would later have greater difficulty in getting an appointment. Some respondents, who had requested the certificates, said the institutions told them that there was a

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569 See the *Radio 021* report, available in Serbian at: <http://www.021.rs/story/Info/Srbija/186969/Gradjani-nemaju-novca-za-preglede-kod-privatnika-i-ne-veruju-da-ce-im-RFZO-refundirati-troskove.html>.

570 See the *Biznis i finansije* report, available in Serbian at: <http://bif.rs/2018/01/trziste-medicinske-opreme-u-srbiji-rastu-ulaganja-u-kupovinu-ali-je-problem-odrzavanje/>.

571 Suggestions to change the health insurance system, reform the health system and allow patients to choose their doctors and type of insurance were first made back in the 1990s.

572 See the *Radio Free Europe* report, available in Serbian at: <https://www.slobodnaevropa.org/a/srbija-zdravstvo/29141888.html>.

573 The survey showed that many health institutions had not issued any certificates in the period covered by the survey, that some had issued them but did not have records of their number, while some had not even been aware of this obligation.



waiting list and that they were not entitled to a refund. Ten percent of those who had requested the certificates did not get them. Nearly ten percent of all the respondents unable to schedule an appointment with a specialist in a state health institution said they had not undergone the examination because they could not afford to see a private doctor.<sup>574</sup>

Treatment of patients, especially children, suffering from rare diseases has been plaguing Serbia for years now, since its health system lacks the funding, equipment and medications for treating such diseases. Humanitarian drives to raise funds for treatment abroad, including through text messages, continued in the reporting period, eliciting criticisms that it was the state's to provide treatment to these people. The situation improved to an extent since the Budget Fund for the treatment of diseases, conditions or injuries that cannot be successfully treated in the Republic of Serbia was established, but there is room for improvement. Around 500 children were sent abroad to be diagnosed and treated since the Budget Fund was set up. The problem is that the procedure for approving the funds can take months and that time is often of the essence in the treatment of grave and rare diseases.<sup>575</sup>

Despite the unwritten rule among medical staff not to publicly talk of the shortage of medications, equipment and medical supplies, state health institutions are short of medications, equipment and medical supplies, as patients confirm. A major discrepancy is visible when the data on the number of patients of state clinics and hospitals are compared with those on the quantities of procured and delivered medications and medical supplies.<sup>576</sup>

In the view of the above-mentioned owner of Makler, the Ministry of Health spends most of the budget funds on buying capital medical equipment (MRI and other scanners, angiography systems, etc.) fulfilling the current needs of the Serbian health system, but the problem lies in its subsequent non-maintenance. If such equipment breaks down, it is usually not operational for months, until the spare parts are procured or it is repaired. The quality of the procured medical equipment is also problematic, since the Public Procurement Act does not include a provision on quality weighting.<sup>577</sup>

The number of specialist doctors in a healthcare system is one of the criteria of healthcare accessibility. Health workers continued emigrating on a large scale in 2018; between two and three thousand doctors and nurses again applied for the certificates they need to work abroad in the year behind us. Many found jobs in Germany, but quite a few nurses and technicians also moved to Ireland, Austria,

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574 The entire survey is available in Serbian at: [https://www.ombudsmanapv.org/riv/attachments/article/2005/Istrazivanje\\_RFZO\\_ombudsman\\_sajt.pdf](https://www.ombudsmanapv.org/riv/attachments/article/2005/Istrazivanje_RFZO_ombudsman_sajt.pdf).

575 See the *Danas* report, available in Serbian at: <https://goo.gl/EJ98jM>.

576 See the *Južne vesti* report, available in Serbian at: <https://www.juznevesti.com/Drushtvo/Tiha-pobuna-lekara-niskog-GAK-a-zbog-nedostatka-lekova-i-aparata.sr.html>.

577 See the *Biznis i finansije* report, available in Serbian at: <http://bif.rs/2018/01/trziste-medicinske-opreme-u-srbiji-rastu-ulaganja-u-kupovinu-ali-je-problem-odrzavanje/>.

Italy, et al. Most of them said they were leaving Serbia because of low salaries and living standards.<sup>578</sup> The statistical data published in the above-mentioned survey of the Vojvodina Ombudsman show that Vojvodina lacked the following specialists the most: cardiologists, ophthalmologists, surgeons, orthopaedists, radiologists, as well as oncologists, physiatrists, vascular surgeons, otorhinolaryngologists, endocrinologists, gastroenterologists and urologists.<sup>579</sup> Statistics show that there are 0.21 doctors per 10,000 citizens, i.e. two times less than in some developed European countries.<sup>580</sup>

A survey conducted by the Serbian Public Health Institute “Dr Milan Jovanović Batut” showed that as many as 25% of the nurses wanted to find a job abroad over the next five years. According to another study, three quarters of the doctors in Serbia have seriously considered emigrating abroad, around 60% of them because of the poor working conditions and low wages. Fewer were thinking of finding a job abroad because of the political situation in the country or the party employment practice.<sup>581</sup>

### 14.3. Right to a Healthy Environment

Given that Article 11 of the ESC lays down that States Parties shall undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed to prevent as far as possible epidemic, endemic and other diseases, as well as accidents with a view to ensuring the effective exercise of the right to protection of health, states should undertake, inter alia, measures ensuring protection from air and water pollution and the adverse effects of radiation and food control measures. This is why right to a healthy environment is considered an integral part of the right to life and the right to health.<sup>582</sup>

The Serbian Constitution guarantees the right to a healthy environment in the section on fundamental human rights and freedoms.<sup>583</sup> Under Article 74(1) of the Constitution, “[E]veryone shall have the right to healthy environment and the right to timely and full information about the state of environment.” Paragraph 2 introduces the obligation of everyone, especially the Republic of Serbia and the autonomous provinces, to protect the environment. The obligation to protect the environment is general in character – paragraph 3 of this Article lays down that everyone has the duty to preserve and improve the environment.

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578 See the *N1* report, available in Serbian at: <http://rs.n1info.com/Vesti/a407458/Pet-do-12h-Odlazi-na-hiljade-najiskusnijih-medicinskih-sestara-i-tehnicara-iz-Srbije.html>.

579 The survey is available in Serbian at: [https://www.ombudsmanapv.org/riv/attachments/article/2005/Istrazivanje\\_RFZO\\_ombudsman\\_sajt.pdf](https://www.ombudsmanapv.org/riv/attachments/article/2005/Istrazivanje_RFZO_ombudsman_sajt.pdf).

580 See the *N1* report, available in Serbian at: <http://rs.n1info.com/a233729/Vesti/Vesti/Kvalitet-srpskog-zdravstvenog-sistema.html>.

581 See: <https://goo.gl/SWVN81>.

582 V. Dimitrijević, D. Popović, T. Papić, V. Petrović, *International Human Rights Law*, Belgrade Centre for Human Rights, Belgrade, p. 336.

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

The Environmental Protection Act<sup>584</sup> is the main environmental law, governing the integral environment protection system facilitating the exercise of the human rights to life and development in a healthy environment and the balance between economic development and the environment in the Republic of Serbia. Other systemic laws governing environmental protection include the Environmental Impact Assessment Act,<sup>585</sup> the Strategic Environmental Impact Assessment Act,<sup>586</sup> and the Act on Integrated Environmental Pollution Prevention and Control.<sup>587</sup> Environmental protection is governed also by a number of other laws and by-laws regulating individual areas, such as protection of air and nature, protection from non-ionising radiation and environmental noise, as well as regulations on chemicals, biocidal products, waste management, etc.

The reporting period was characterised by intensive legislative activities, primarily prompted by the EU accession process and the need to open talks on Chapter 27, which is often described as the most challenging and expensive chapter. In its 2018 Work Plan,<sup>588</sup> the Government envisaged the drafting of a number of laws and by-laws and ratification of international agreements. They include the development of, inter alia, the Draft Act on Climate Change transposing Regulation 525/2013 on a mechanism for monitoring and reporting greenhouse gas emissions and Directive 528/2012/EU on establishing a scheme for greenhouse gas emission allowance trading; the Draft Act Amending the Strategic Environmental Impact Assessment Act with a view to aligning it with Directive 2001/42/EC; the Draft Act on Biocidal Products to align national law with EU Biocidal Products Regulation 528/2012/EU; the Draft Act Amending the Environmental Impact Assessment Act with a view to aligning this law with Directive 2014/52/EU amending Directive 2011/92/EU; the Draft Act Amending the Air Protection Act, governing air quality management and defining air quality protection and improvement measures and the procedure for controlling the quality of air as a natural value of general interest enjoying special protection; the Draft Act Amending the Act on Protection from Environmental Noise including the changes in competences, new assessment methods for noise indicators defined in Annex II to Directive 2002/49/EC, reporting mechanisms, introduction of the polluter pays principle and compliance deadlines.

Of the listed draft laws, the Environmental Protection Ministry in 2018 drafted the Preliminary Draft of the Climate Change Act and conducted a public debate on it in six Serbian cities. It also drafted the Preliminary Draft of the Biocidal Products Act and organised a public debate on it. It formed a working group to prepare

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584 *Sl. glasnik RS*, 135/04, 36/09, 36/09 – other law, 72/09 – other law, 43/11 – CC Decision and 14/16.

585 *Sl. glasnik RS*, 135/04 and 88/10.

586 *Ibid.*

587 *Sl. glasnik RS*, 135/04 and 25/15.

588 Serbian Government 2018 Work Plan, Belgrade, available in Serbian at: [www.gs.gov.rs/doc/PLAN\\_RADAVA\\_VLADE\\_2018.pdf](http://www.gs.gov.rs/doc/PLAN_RADAVA_VLADE_2018.pdf).

the amendments to the Strategic Environmental Impact Assessment Act and a working group to draft the amendments to the Environmental Impact Assessment Act.

Civil society representatives were engaged in the working groups developing the drafts and took an active part in the public debates. The Environmental Protection Ministry organised six public debates on the Preliminary Draft of the Climate Change Act, in Novi Sad, Kragujevac, Belgrade, Niš, Pirot and Prijepolje, and one public debate on the Preliminary Draft of the Biocidal Products Act, in Belgrade.

Only a few of the many comments on the Preliminary Draft of the Climate Change Act experts and CSOs sent to the Ministry were upheld. The Ministry received 196 comments during the public debate on this draft law, 119 from CSOs. Only nine of their suggestions were upheld fully, while 14 were upheld partly and 96 were dismissed. Therefore, over 80% of the CSOs' suggestions were dismissed. The analysis of the quality of these comments and the Ministry's explanations in the Report on the Public Debate on the Preliminary Draft of the Climate Change Act<sup>589</sup> leads to the conclusion that the vast majority of the CSOs' comments did not significantly contribute to the improvement of the text of the Preliminary Draft.

The Draft Radiation and Nuclear Safety and Security Act was submitted to parliament for adoption in November 2018; the ruling coalition suggested its adoption under an urgent procedure.<sup>590</sup> No public debate was held on this draft law; only a public hearing was organised on it by the National Assembly Environmental Protection Committee.

### 14.3.1 State of the Environment

The illegal dangerous waste dump sites, notably in Obrenovac, Novi Sad, Pančevo, Bavanište, etc., caused the gravest concerns in terms of environmental protection in 2018. Indications of inadequate treatment of dangerous waste were confirmed when the Environmental Protection Ministry started publishing the locations of the dangerous waste dumps, where no one had expected them; at some sites, hundreds of tons of dangerous waste had been dumped.<sup>591</sup> The prosecutors filed indictments against those accountable.<sup>592</sup>

Experts, as well as ordinary citizens, were alarmed by the risks to the ecosystem posed by the construction of small hydro-power plants (SHPPs), especially in protected areas such as the Stara Planina Nature Park, and staged protests.<sup>593</sup> They

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589 The Report is available in Serbian at: <https://goo.gl/VCNJ6E>.

590 The Draft Act is available in Serbian at: <https://goo.gl/c49H7J>.

591 See the RTS report, available in Serbian at: [www.rts.rs/page/tv/sr/story/21/rts-2/3219614/zivotna-sredina-i-zdravlje-gomilanje-opasnog-otpada.html](http://www.rts.rs/page/tv/sr/story/21/rts-2/3219614/zivotna-sredina-i-zdravlje-gomilanje-opasnog-otpada.html).

592 The Serbian courts in 2018 ruled on several cases in which it found defendants guilty of dumping hazardous waste and sentenced them to prison and fines, see, e.g. the *Večernje novosti* report, available in Serbian at: <https://goo.gl/X1cC7K>.

593 See: <https://balkangreenenergynews.com/thousands-rally-against-small-hydropower-plants-on-mt-stara-planina/>

brought into question the SHPP environmental impact assessments, which gave rise to doubts that these projects had received the green light from the Ministry upheld although the authors of the studies had not conducted the required research.<sup>594</sup>

For example, the Environmental Protection Ministry approved the Environmental Impact Assessment Study concerning the construction of the SHPP Pakleštica on the Visočica River in July 2017, but decided to review the Study in the light of new evidence in January 2018. It referred to the Expert Supervision Report of the Nature Conservation Institute of Serbia<sup>595</sup> that contained facts significantly differing from those published in the Study and said that it would not have approved the Study had it been aware of them. The investor sued the Ministry and the Administrative Court annulled the Ministry ruling on the re-examination of the Study on 17 April 2018. The Ministry issued a press release, saying that it had requested of the “Supreme Court of Cassation to overturn the Administrative Court decision and remit the case back to it for review or modify it,” so as to enable the Ministry to re-examine the Study and take into account the decisive facts and render a correct decision in accordance with the law.<sup>596</sup>

In less than six months, on 26 September 2018, the Supreme Court of Cassation ruled on the case and modified the Administrative Court decision in favour of the Ministry.<sup>597</sup> It found that the Administrative Court had made major procedural errors and that the Ministry was correct to decide to re-examine the Study because the Nature Conservation Institute of Serbia had found in its Expert Supervision Report that protected species (brown trout and noble crayfish) lived in the Visočica River, and that these findings significantly differed from those in the initial Study and would have led to a different decision had they been known earlier.<sup>598</sup>

Public protests were regularly staged against the illegal buildings on the Sava River embankment in Belgrade and the traffic along it, because 16 of the 99 radial collector wells supplying Belgrade with water are located in this area.<sup>599</sup> The major supermarkets started charging their customers for the plastic bags; estimates are that the use of plastic bags has fallen more than 60%.<sup>600</sup>

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594 See the *Insajder* report, available in Serbian at: <https://goo.gl/P11ZDZ>.

595 Expert Supervision Report of the Nature Conservation Institute of 10–12 July 2017.

596 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a411165/Vesti/Mestani-Stare-planine-uporni-nece-mini-hidroelektranu.html>.

597 Supreme Court of Cassation judgment Uzp 189/2018 of 26 September 2018, available in Serbian at: <https://www.vk.sud.rs/sr-lat/uzp-1892018-ponavljanje-upravnog-postupka>.

598 See the *Južne vesti* repor. Available in Serbian at: [www.juznevesti.com/Drushtvo/Zabranjena-gradnja-MHE-na-Visocici-Kasacioni-sud-ponistio-presudu-Ustavnog-suda.sr.html](http://www.juznevesti.com/Drushtvo/Zabranjena-gradnja-MHE-na-Visocici-Kasacioni-sud-ponistio-presudu-Ustavnog-suda.sr.html).

599 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a394607/Vesti/Savski-nasip-i-posledice-gradnje-vikendica-i-sojenica.html>.

600 See the *RTS* report, available in Serbian at: [www.rts.rs/page/stories/sr/story/125/drustvo/3222877/naplata-plasticnih-kesa-prepolovljava-njihovu-upotrebu.html](http://www.rts.rs/page/stories/sr/story/125/drustvo/3222877/naplata-plasticnih-kesa-prepolovljava-njihovu-upotrebu.html).

### III.

## HUMAN RIGHTS IN PRACTICE – SELECT TOPICS

### 1. Serbia's Judiciary in 2018

Under the Constitution, rule of law shall be exercised in Serbia through free and direct elections, constitutional guarantees of human and minority rights, separation of powers, an independent judiciary and the authorities' observance of the Constitution and the law.<sup>1</sup> Under Article 4 of the Constitution, the government system shall be based on the separation of powers into the legislative, executive and judiciary and the relations between the three branches shall be based on balance and mutual control. The same Article proclaims that the judiciary shall be independent.

#### *1.1. Status of Courts and Prosecution Services under the 2006 Constitution and Serbian Law*

##### *1.1.1. Organisation of Courts and Judicial Appointments*

Judicial powers in the Republic of Serbia are vested in courts of general and special jurisdiction. As of 1 January 2014,<sup>2</sup> the national court network is comprised of the Supreme Court of Cassation, four Appellate Courts, 25 Higher Courts and 66 Basic Courts – courts of general jurisdiction and the Economic Appellate Court, 16 Economic Courts, the Administrative Court, the Misdemeanour Appellate Court and 44 Misdemeanour Courts – courts of special jurisdiction.

Organised crime and war crime proceedings are conducted before special departments of the Belgrade Higher Court, while appeals of their decisions are reviewed by the Belgrade Appeals Court.

Under the Serbian Constitution, judges shall be appointed by the National Assembly and the High Judicial Council. The Constitution retained the principle of permanent judicial tenure, but introduced the rule that judges shall first be elected to three-year probation periods and shall thereupon be appointed to permanent ju-

1 Article 3.

2 Act on the Seats and Jurisdictions of Courts and the Public Prosecution Services, *Sl. glasnik RS*, 101/13, in force since 1 January 2014.

dicial offices. The first-time judges are nominated by the High Judicial Council and elected by the National Assembly, while the High Judicial Council appoints judges on permanent tenure.<sup>3</sup>

Under the Constitution, eight of the 11 HJC members are elected by the National Assembly. The HJC's other three members include the President of the Supreme Court of Cassation, the Justice Minister and the chairperson of the Assembly committee charged with the judiciary, who are members *ex officio*. The eight members comprise six judges on permanent tenure and two eminent legal professionals with at least 15 years of professional experience, notably an attorney at law and a law school professor. The influence of the National Assembly is thus dominant, because it elects eight of the eleven members directly and the *ex officio* members (the Justice Minister, the President of the Supreme Court of Cassation and the Chairperson of the Assembly Judiciary Committee) indirectly given that they had previously been elected to office. With the exception of *ex officio* members, the other HJC members are appointed to five-year terms in office.<sup>4</sup>

The Act Amending the Act on Judges, adopted under an urgent procedure in May 2017,<sup>5</sup> amends the provisions on the duration of the terms in office of court presidents. Court presidents serving their five-year terms in office under the Act on Judges valid at the time of their election<sup>6</sup> shall continue working until their terms in office expire and are eligible for re-election, to a four-year term in office.<sup>7</sup> Article 74 of the Act on Judges was also amended: court presidents, who fulfil the retirement requirements whilst in office, shall continue serving as court president until their terms in office expire.<sup>8</sup>

### *1.1.2. Public Prosecution Services – Organisation and Appointment of Public Prosecutors and Deputy Public Prosecutors*

Under the Constitution, the public prosecution services shall be autonomous state authorities charged with prosecuting the perpetrators of criminal and other punishable offences and taking measures in order to protect constitutionality and legality.<sup>9</sup> The autonomy of public prosecutors and deputy public prosecutors shall be secured and guaranteed by the State Prosecutorial Council, an autonomous authority established under the Constitution.<sup>10</sup>

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3 Articles 146 and 147 of the Constitution. The Screening Report suggests the review of this provision as its authors are of the opinion that the probation period is very long.

4 Article 153 of the Constitution.

5 *Sl. glasnik RS*, 47/17.

6 *Sl. glasnik RS*, 116/08, 58/09 – CC Decision, 104/09, 101/10, 8/12 – CC Decision, 121/12, 124/12 – CC Decision, 101/13, 108/13 – other law, 111/14 – US, 117/14, 40/15, 63/15 – CC Decision, 106/15 and 63/16 – CC Decision.

7 Article 3 of the Act Amending the Act on Judges, *Sl. glasnik RS*, 47/17.

8 Article 2, Act Amending the Act on Judges.

9 Constitution, Articles 156–165.

10 Constitution, Article 164.

The Serbian public prosecution services comprise the Republican Public Prosecution Service (RPPS), four Appeals Public Prosecution Services (APPS), 26 Higher Public Prosecution Services (HPPS) and 34 Basic Public Prosecution Services (BPPS). There are also two public prosecution services with special jurisdiction – the Organised Crime Prosecution Service (OCPS) and the War Crimes Prosecution Service (WCPS), both of which have jurisdiction over the entire territory of Serbia. In addition, the Belgrade HPPS has a Cybercrime Department, which also has jurisdiction over the entire territory of Serbia.

The Republican Public Prosecutor is nominated by the Government with the consent of the relevant National Assembly Committee and elected to a six-year renewable term in office by the National Assembly.<sup>11</sup> Deputy public prosecutors shall stand in for the public prosecutors in exercising prosecutorial duties and shall be obliged to act according to their instructions. Deputy public prosecutors appointed for the first time are nominated by the SPC and elected to three-year terms in office by the National Assembly. Thereinafter, the SPC appoints the deputy public prosecutors on permanent tenure to the PPS they are working in or to another PPS.<sup>12</sup>

The appointment of prosecutors is governed by the Public Prosecution Services Act.<sup>13</sup> The National Assembly elects public prosecutors from among the candidates on the list proposed by the Government. This list is composed by the SPC, which forwards it to the Government for endorsement. In the event the SPC nominates only one candidate to the Government, the Government may send the list back to the SPC.

## *1.2. Constitutional Reform of the Judiciary – the Beginning or the End of Judicial Independence*

Various obstacles preclude the systematic enforcement of the constitutional guarantee of judicial independence and prosecutorial autonomy. Attempts to reform the Serbian judiciary have been ongoing for over a decade now, but its effects have not led to judicial independence or facilitated access to justice. Rather, the judicial reforms to date have undermined the stability of the system and caused apprehension about the pending changes. The changes in the judicial system were on the public agenda throughout 2018, but their ultimate goals and methods remained a mystery for the most part. All this, coupled with the systematic exclusion of the judiciary from the debate on the requisite reforms, has instilled constant apprehension and uncertainty among judicial officials and staff.<sup>14</sup>

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11 See more at: <https://goo.gl/7u6nJ2>.

12 Constitution, Article 159.

13 *Sl. glasnik RS*, 116/08, 104/09, 101/10, 78/11 – other law, 101/11, 38/12 – CC Decision, 121/12, 101/13, 111/14 – CC Decision, 117/14 and 106/15.

14 The first judicial reform was implemented in 2009 and involved the general election/appointment of judges. More on the shortcomings and irregularities of the process in BCHR's prior



The latest attempt to reform the judiciary involved the drafting of amendments to the Constitution, notably its provisions governing the judicial system and the status of judges and prosecutors. This reform was initiated by the Venice Commission's Opinion on Serbia's 2006 Constitution<sup>15</sup> and its conclusion that the provisions in the 2006 Constitution allowed the parliament and government to exert excessive influence on the judiciary. By integrating the Venice Commission's recommendations in the Chapter 23 Action Plan, Serbia committed itself to amending the Constitution and eliminating the obstacles to judicial independence and autonomy.

The National Judicial Reform Strategy (NJRS) and its Action Plan envisage preparatory activities for amending the Constitution to exclude the National Assembly from the process of electing court presidents, judges, public prosecutors and deputy public prosecutors, as well as members of the High Judicial Council (HJC) and the State Prosecutorial Council (SPC). Representatives of the executive and legislative authorities are no longer to sit on the HJC and SPC. Under the Action Plan, Judicial Academy attendance will no longer be a mandatory requirement to be fulfilled to be appointed judge for the first time. With a view to fulfilling these tasks, the NJRS Implementation Commission formed a working group tasked with analysing the constitutional framework. The working group drafted a legal analysis of the constitutional framework on the judiciary in the Republic of Serbia in 2014.<sup>16</sup>

The Chapter 23 Action Plan envisages a number of activities to be taken with a view to amending the Constitution, notably, that the proposal to amend the Constitution be upheld by the National Assembly in the third quarter of 2016, that the amendments be drafted and publicly debated by the end of 2016, that they be submitted to the Venice Commission for comment in early 2017 and adopted by the end of 2017.<sup>17</sup>

It was clear back in 2017 that the deadlines set for amending the Constitution would be exceeded. At the time, Serbian Government officials insisted that the quality of the reform was more important than the speed at which it was implemented.<sup>18</sup> In mid-2017, the Justice Ministry launched the so-called public consultations on the constitutional amendments, in which only associations and individuals, who had submitted their suggestions on the amendments in writing, could take part. The Justice Ministry, which had initiated the consultations, did not offer any framework for discussion – either draft amendments or a debate on open and controversial issues. The public consultations held in a number of Serbian cities in 2017 did not comprise any discussions or exchanges of arguments on how to eliminate political influence

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annual reports, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/publikacije/izvestaji-o-stanju-ljudskih-prava-3/>.

15 See the Venice Commission's Opinion No. 405/2006 on the Constitution of Serbia, CDL-AD (2007) 004, pp. 15–17, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)004-e).

16 The draft is available in Serbian at: [http://www.mpravde.gov.rs/files/analiza%20Ustava%20\(2\).doc](http://www.mpravde.gov.rs/files/analiza%20Ustava%20(2).doc).

17 Chapter 23 Action Plan, p. 31.

18 See the *Insajder* report, available in Serbian at: <https://insajder.net/sr/sajt/tema/7786/>.

on the judiciary. The representatives of the executive used them to express their intolerance and aversion to the separation of powers idea, and refute the need to establish an independent judiciary and autonomous prosecution services in Serbia. The absence of a text that could be discussed and personal insults hurled at judicial and civil society representatives taking part in the discussions prompted most of them to withdraw from the consultations in October 2017.<sup>19</sup>

The Justice Ministry on 22 January 2018 published the working version of the constitutional amendments, which it claimed were the result of the public consultations in 2017. The atmosphere in which the round tables that followed were held resembled the one during the 2017 consultations, wherefore most civil society stakeholders again walked out of them and limited their communication with the Justice Ministry to the submission of their suggestions in writing.

The highest judicial institutions, law professors, judicial associations and human rights organisations voiced numerous objections alerting to the formal and substantive deficiencies of the constitutional amendment procedure the Justice Ministry spearheaded in 2017 and 2018. They said that the proposed amendments did not reflect the activities and goals set in the Chapter 23 Action Plan; that they were not informed by the draft legal analysis of the constitutional framework on the judiciary or the analyses by experts and associations submitted in 2017; that they were not reasoned and that their authors were unknown; that they were presented publicly by an authority not entitled to propose amendments to the Constitution (under Article 203 of the Constitution, amendments to the Constitution may be proposed only by the Serbian Government, at least one-third of the MPs or 150,000 or more voters); and that the constitutional amendment procedure had not been initiated in accordance with the Constitution, by a decision of two-thirds of the MPs before the working version was published.

The main objection to the provisions in the working version was that they did not eliminate political influence on the judiciary, just relocated it. The text presented by the Justice Ministry in January 2018 envisaged the formal transfer of the appointment of new judges and deputy public prosecutors from the National Assembly to the High Judicial Council (HJC) and the State Prosecutorial Council (SPC), but essentially transferred it to the Judicial Academy. The preliminary decisions on who could become a judge or deputy public prosecutor would be taken by the Academy, when it decided on applications for its training (as only law graduates, who completed the Judicial Academy, would qualify for office in courts and prosecution services). Further concerns were caused by the fact that independence of the Academy, or any other institution with such powers, is not guaranteed by Serbian law.

The transfer of the appointment of judges and deputy public prosecutors from the National Assembly to the HJC and SPC was rendered meaningless not only by the new role of the Judicial Academy envisaged by the amendments, but by the proposed composition and system of work of the two Councils as well. Their role

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19 More on the process in the *2017 Report*, III.1.

in the appointment of judges and deputy public prosecutors thus boiled down to a protocolary rather than a substantive one.

None of the law experts agreed with the provision under which the National Assembly would elect half (five) of the HJC members (so-called eminent lawyers) and judges would account for the other half. They qualified as unjustified the provisions prohibiting the appointment of the HJC chairman from the ranks of judges and allowing the chairman (appointed from the ranks of eminent lawyers) to have the casting vote in the event of a tie. The proposed composition of the SPC was also criticised since, under the amendments, it could take decisions not supported by any members from the ranks of prosecutors (accounting for four of the 11 SPC members). The experts also criticised the amendments because they undermined the prohibition of the transfer of judges, violated the judges' and prosecutors' freedom of association in expert associations due to the ban on discharging "private functions", and entitled the Justice Minister to initiate disciplinary proceedings against judges and proceedings to dismiss judges and public prosecutors.<sup>20</sup>

Civil society organisations filed a number of submissions to the Justice Ministry in February and March 2018, elaborating in detail their objections and alerting to the possible consequences of the draft amendments.<sup>21</sup> The representatives of the Judges' Association of Serbia, Association of Public Prosecutors and Deputy Public Prosecutors, Judicial Research Centre, Association of Judicial and Prosecutorial Assistants, the Association of Judicial Advisers, the Lawyers' Committee for Human Rights (YUCOM) and BCHR published an open letter to the National Assembly, Justice Ministry and Serbian Government, calling on them to abandon the proposed amendments and draft new ones, and comply with the constitutional procedure and the principles of modern constitutional democratic states.<sup>22</sup>

In April 2018, the Justice Ministry published a new text, which differed from the previous one only slightly and which it called the Preliminary Draft Constitutional Amendments.<sup>23</sup> The mechanisms of legislative and executive influence on the judiciary, above all the provisions on the Councils and the preliminary selection of future judges and deputy public prosecutors by the Judicial Academy, remained the same. The authors of the amendments did not take into account either the suggestions of the Association of Public Prosecutors and Deputy Public Prosecutors<sup>24</sup> or of the Judges' Association of Serbia,<sup>25</sup> or, for that matter, any of the numerous sugges-

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20 See more in: *Testimony – Preparation for the Changes to the 2006 Constitutional and Legal Profession*, Judge's Association of Serbia, Belgrade, September, 2018.

21 Available in Serbian at: <https://www.mpravde.gov.rs/tekst/18323/komentari-na-radni-tekst-amandmana-ministarstva-pravde-na-ustav-republike-srbije.php>.

22 See more at: <http://mojustav.rs/category/constitutional-changes/>.

23 The texts of all the versions of the proposed amendments had been posted on the Justice Ministry's website but only the fourth version was available on it in December 2018.

24 Available in Serbian at: <https://www.uts.org.rs/kratke-vesti/1339-predlozi-za-izmenu-ustava-republike-srbije-u-delu-koji-se-odnosi-na-pravosudje>.

25 Comments of the working version of the constitutional amendments are available in Serbian at: <https://goo.gl/UyBYUr>.

tions made by expert and guild associations or organisations focusing on rule of law and human rights. The second text even made several steps backwards; it retained the election of the public prosecutors by the National Assembly and allowed the Assembly to dissolve the Councils if they were unable to render decisions.

The Justice Ministry asked the European Commission for Democracy through Law (Venice Commission) to give its opinion on the Preliminary Draft, despite repeated warnings at home that the authors of the text were unknown, that the draft amendments were not reasoned and that they had not been developed in compliance with the procedure provided by the Constitution.

The Venice Commission made 44 recommendations on the 29 constitutional amendments in its Opinion on the draft amendments to the constitutional provisions on the judiciary<sup>26</sup> of June 2018. It explicitly praised only the abolition of the three-year probationary period for first-time judges. The Justice Ministry, however, kept on saying that the Venice Commission had given a positive assessment of the Preliminary Draft,<sup>27</sup> while experts drew attention to its critical views, especially its insistence on the depoliticisation of the judiciary and strengthening of its independence and its statement that “there are a number of outstanding issues that should be addressed in this important process of amending the Constitution of Serbia.” The Venice Commission highlighted the following issues: composition of the HJC and SPC and the role of the National Assembly; dissolution of the HJC; dismissal for incompetence; method to ensure the uniform application of laws (role of case-law); election of public prosecutors and deputy public prosecutors.

The Venice Commission said that having a national judicial academy was welcome and not unusual by any means. “Hence, the Academy’s role as a sole gatekeeper to the judiciary seems well founded with the aspiration and commitment to strengthen the calibre and professionalism of judicial and prosecutorial training, but it would be advisable to protect the Academy from possible undue influence by providing it with a firm status within the Constitution.” The Venice Commission was concerned to learn that the constitutional amendment process had begun with a public consultation process marred by an acrimonious environment and encouraged the Serbian authorities “to spare no efforts in creating a constructive and positive environment”.

In May and June 2018, the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE) issued their opinions<sup>28</sup> on the draft amendments to the Serbian Constitution, in which they alerted to similar issues as the Venice Commission. Both of these Councils agreed that HJC and SPC members should not be elected by or depend on the political majority and alerted to the problematic provisions on the dissolution of the HJC and SPC. The

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26 Opinion No. 921/2018, CDL-AD(2018)011, available at: <https://goo.gl/a3WEfE>.

27 See the Justice Ministry’s press release at: <https://www.mpravde.gov.rs/en/vest/19922/kuburovic-the-ministry-of-justice-satisfied-with-the-venice-commissions-opinion.php>.

28 Available at: <https://goo.gl/2EGmnA> and <https://goo.gl/BBJAds> respectively.

CCJE proposed that the HJC have an odd number of members, which would greatly preclude the difficulties in adopting decisions in case of differences in opinion. The CCPE underlined that the independence of prosecutors had to be guaranteed by law, at the highest possible level, in a manner similar to that of judges and recommended that most of the Prosecutorial Council members be recruited from the ranks of prosecutors.

The Justice Ministry published the third version of the draft amendments in September, which it alleged was in compliance with the Venice Commission's comments. After yet another round table on the constitutional amendments, it published the fourth version of the Preliminary Draft, reportedly taking on board the experts' recommendations, and forwarded it to the Venice Commission for comment.

The Justice Ministry said in October that the Venice Commission reviewed the fourth draft at its 116<sup>th</sup> session and found it was compatible with its recommendations.<sup>29</sup> The Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, the Judges' Association of Serbia, YUCOM, the Judicial Research Centre, BCHR, the European Movement in Serbia and Transparency Serbia issued a joint press release specifying that the Justice Ministry had misinformed the public and that the Venice Commission's Secretariat, i.e. its administrative body, issued a summary conclusion on the compliance of the latest version with the VC's Opinion and that the Venice Commission merely took note of the Secretariat's conclusion, rather than vote or decide on it.<sup>30</sup>

The disagreements between the Justice Ministry and experts on what the Venice Commission said caused a lot of confusion in the public, which still lays a lot of store on the authority and expertise of international bodies focusing on the rule of law to get a grasp of the government's successes and failures. They also reflect the two-year dispute on the real intentions and scope of the proposed constitutional changes. In addition to the deep divisions between the executive and law experts on key procedural and substantive issues concerning the constitutional amendments, the 2018 developments also demonstrated the inability of European institutions to promptly and meaningfully react to Serbia's violation of its EU-related obligations. The Judges' Association of Serbia prepared a comparative overview of the draft amendments and the Venice Commission's recommendations clearly showing which of the recommendations were (not) taken on board by the authors of the draft amendments.<sup>31</sup>

The constitutional amendment process greatly exhausted the resources of civil society, which was forced to incessantly react to the new versions of the draft

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29 See more at: <https://www.mpravde.gov.rs/en/vest/21481/venice-commission-unanimously-in-support-of-the-constitutional-amendments.php>.

30 See: [http://en.yucom.org.rs/wp-content/uploads/2018/10/Venice-Comission\\_request-for-clarification.pdf](http://en.yucom.org.rs/wp-content/uploads/2018/10/Venice-Comission_request-for-clarification.pdf).

31 The comparative overview is available in Serbian at: [http://www.sudije.rs/images/2018\\_09\\_JAS\\_tabela\\_VK\\_CCJE\\_AP.pdf](http://www.sudije.rs/images/2018_09_JAS_tabela_VK_CCJE_AP.pdf).

amendments and reiterate its arguments publicly over and over again. The media reports boiled down to repeating the views of the two deeply entrenched sides. In the absence of a genuine and thorough public debate, such a climate does not encourage the citizens to inform themselves in greater detail of the constitutional amendments, which they will ultimately vote on at a referendum.

The Government forwarded the Draft Amendments to the National Assembly for adoption (by a two-thirds majority). Thereafter, the relevant Assembly Committee is to draft the enactment on the amendment of the Constitution, which must be supported by a two-thirds majority of the deputies as well.

In the autumn of 2018, the Judges' Association of Serbia (JAS) issued a press release calling on experts to rally round the general interest of preserving the principles of the separation of powers, judicial independence and rule of law and clearly speak out against the constitutional amendments undermining the achieved level of rule of law both in terms of their content and the manner in which they were drafted. It called on the Government to organise a meaningful and broad public debate and on the National Assembly to instruct the relevant parliamentary committee to form a working group to draft the enactment on the amendment of the Constitution. In JAS' view, this group should include the most eminent constitutional law professors, representatives of judicial institutions, and authentic guild and non-government organisations and its text should be subject to a broad public debate.<sup>32</sup>

The JAS issued the call because the Justice Ministry, which had changed the text of the draft constitutional amendments four times, had shown no willingness to uphold the suggestions made by experts and academia throughout the process. The latest version of the draft amendments, which were endorsed by the Government, is an improvement over the prior ones, as it does not provide for probationary terms in office of first-time judges and deputy public prosecutors. It, however, does not achieve the goal of the constitutional reform, because: it does not define the substance of judicial power; it undermines the guarantee of non-transferability of judges and deprives judges of the opportunity to appeal decisions transferring them to other courts; and it allows the Constitutional Court, which is not part of the regular court system, to review all court decisions.

The executive authorities also showed no willingness to relinquish the executive's and legislature's control over the appointment of judges and public prosecutors and deputy public prosecutors. Namely, although, under the draft amendments submitted to the parliament upon endorsement by the Government, the Government and National Assembly will not themselves appoint judges, public prosecutors and deputy public prosecutors (with the exception of the Supreme Public Prosecutor), the legislative and executive authorities will still be able to influence the composition and work of the High Judicial Council (HJC) and the High Prosecutorial

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32 See more in Serbian at: <https://www.pravniportal.com/saopstenje-drustva-sudija-srbije-povodom-nacrta-amandmana-na-ustav-republike-srbije/>.

Council (HPC) since five of the HJC's ten members will be elected by the National Assembly from among eminent lawyers, while the HPC's eleven members will comprise four deputy public prosecutors elected by public prosecutors, five eminent lawyers elected by the National Assembly, the Supreme Public Prosecutor and the Minister of Justice.

However, under the draft amendments, in the event the National Assembly fails to elect all five non-judicial members of the HJC within 60 days and the five HPC members from the ranks of lawyers within 10 days, they shall be elected from among all candidates fulfilling the requirements by a majority vote of a commission comprising the Assembly Speaker, the Constitutional Court President, the Supreme Court President, the Supreme Public Prosecutor and the Protector of Citizens. Therefore, the amendments allow for the election of eminent lawyers not by a two-thirds majority of MPs, but by a Commission composed of three state officials (the Assembly Speaker, the Supreme Public Prosecutor and the Protector of Citizens) who are elected by the parliamentary (political) majority. The amendments thus introduce a new organ in Serbia's legal system, which will be charged exclusively with the appointment of non-judicial/non-prosecutorial members of the Judicial and Prosecutorial Councils and to which they transfer the competence of the National Assembly.

The provisions on the appointment of first-time judges and deputy public prosecutors were also criticised because they stipulate that only candidates with completed Judicial Academy training qualify for those offices. These provisions are lacking because the Judicial Academy is not an independent institution and because they preclude judicial and prosecutorial assistants, who have not attended it, from becoming judges and prosecutors.

A provision of the Constitution which is extremely important for judicial independence and regards the Constitutional Court, was not subject to amendment. Namely, the Constitution and the Constitutional Court Act (hereinafter: CCA)<sup>33</sup> failed to lay down clear and efficient rules on the appointment of the Constitutional Court judges or proper guarantees of the Court's independence. Under the valid Constitution, the Constitutional Court shall comprise 15 judges, five of whom are appointed by the President of Serbia from among candidates nominated by the National Assembly and five of whom are elected by the National Assembly from among candidates nominated by the President of Serbia. Therefore, two-thirds (10 out of 15) Constitutional Court judges are appointed/elected by the executive and legislative authorities, and legal professionals have absolutely no say in the process. These provisions bring into question the independence of the Constitutional Court judges from the representatives of the executive and legislative authorities who had nominated or appointed/elected them, undermine public trust in the impartiality of that Court and render meaningless the planned judicial reform.

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33 *Sl. glasnik RS*, 109/07, 99/11, 18/13 – CC Decision, 103/15 and 40/15 – other law.

This is particularly important in view of the Constitutional Court's jurisdiction. Although it is not part of the regular court system, in the event it finds that the challenged individual enactment or action violated or denied a human or minority right or freedom enshrined in the Constitution, it is entitled to repeal the individual enactment, including a court decision, prohibit the further commission of the action or order another measure to reverse the negative effects of the violation or denial of the guaranteed rights and freedoms, and award just satisfaction to the applicant (Art. 89, CCA).

The Constitutional Court has practically assumed the role of the court of last instance by applying this provision since it rules on whether the law was properly applied and issues orders not related merely to the elimination of the human rights violations it finds. The case law of the Constitutional Court, which has been overturning numerous court decisions, demonstrates that its jurisdiction has expanded, wherefore Constitutional Court judges must also be secured guarantees of judicial independence.

On the other hand, procedural laws provide for retrials in the event the Constitutional Court or the European Court of Human Rights finds a human rights violation.

### *1.2.1. Fulfilment of the Chapter 23 Action Plan Activities Regarding the Judiciary*

The Action Plan for Chapter 23 – judiciary and fundamental rights was adopted by the Serbian Government<sup>34</sup> on 27 April 2016, seven months after the European Commission confirmed it. The Chapter 23 Negotiating Group is chaired by the Justice Ministry, notably its Assistant Minister Čedomir Backović.

The Action Plan activities regarding the judiciary are divided into four large groups: independence, impartiality and accountability; professionalism; competence and efficiency; and war crimes. As stated in the narrative part of the Action Plan, its authors endeavoured, in particular, to include and sublime the key activities envisaged by the NJRS Action Plan, with a view to ensuring the coherence of these documents and facilitating the implementation of the reform.

In December 2015, the Serbian Government formed the Chapter 23 Action Plan Implementation Council to extend expert support to the Chapter 23 Negotiating Team. The Council is charged with monitoring the implementation of the Action Plan activities on a daily basis, alerting to any delays or problems in its implementation and coordinating the reporting process. In practice, it collects information from over 50 institutions implementing the Action Plan.

The Council published two reports on the implementation of the Chapter 23 Action Plan in 2018.<sup>35</sup> In the 2/2018 Report, it, *inter alia*, specified that the follow-

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34 The caretaker Government, since the early parliamentary elections were held on 24 April 2016 and the new Government had not been formed yet.

35 Available at: <https://www.mpravde.gov.rs/files/Report>.



ing constitutional amendment activities had not been implemented by the specified deadlines: preparation of an enactment on the amendment of the Constitution and its adoption by the National Assembly and the adoption of the Constitutional Act. The Report provided only a brief overview of the intensive constitutional amendment activities, describing the March 2018 consultations, during which the Ministry collected over 30 submissions regarding the first working version of the amendments, as the key activity. The authors of the Report, however, did not provide more information on the subsequent versions, why they were prepared or the various public discussions on constitutional amendments. They even failed to provide basic information on the recommendations made by the Venice Commission in its Opinion and on the opinions of the CCJE and CCPE.

The 2/2018 Report said that a special report would be published on the amendment development process, together with detailed explanations of why the submitted suggestions were or were not accepted. Such a report was not publicly available by the end of the reporting period.

Judicial independence is definitely affected by its financial dependence on other government branches. The transfer of financial administration powers from the Justice Ministry to the High Judicial Council and the State Prosecutorial Council, which was to have been completed in the second quarter of 2016 under the Chapter 23 Action Plan, remained pending in 2018. The National Assembly amended the Act on the Organisation of Courts three times, each time just the provision on the transfer of the budget-related powers (in December 2017, from 1 January 2018 to 1 January 2019).<sup>36</sup>

The National Assembly in late 2018 again amended the Act on the Organisation of Courts<sup>37</sup> at the Government's request, moving the deadline for transferring the budget-related powers from the Ministry of Justice to the High Judicial Council for another year, to 1 January 2020. The legislator explained that the drafting of the amendments to the Constitution was under way and that the judicial laws would have to be brought in line with them. Since the amendment to the Act was negligible in scope, it was adopted under an urgent procedure, without cooperation with the European Commission aimed at ensuring its compliance with the EU *acquis*. Such a conclusion is unacceptable, given that the implementation of this provision, one of the chief guarantees of judicial independence – its financial independence – has been a dead letter for four years running.

In November 2018, the Constitutional Court issued a decision,<sup>38</sup> in which it found that the provision in Article 32 of the Act Amending the Act on the Organisation of Courts<sup>39</sup> (transferring the Justice Ministry's powers, including budget-related powers, to the HJC and SPC), was unconstitutional. The initiative to review the consti-

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36 *Sl. glasnik RS*, 113/17.

37 *Sl. glasnik RS*, 87/18.

38 *Sl. glasnik RS*, 88/18.

39 *Sl. glasnik RS*, 101/13, 13/16, 108/16 and 113/17.

tutionality of the Act on the Organisation of Courts and the one amending it, was filed with the Constitutional Court by SNS Chief Whip Aleksandar Martinović in 2016.

### *1.3. Pressures on the Judiciary*

State officials and politicians continued making statements questioning the integrity, independence and autonomy of the judiciary in 2018. Such statements, most of which concerned criminal proceedings, undermined public trust in the judiciary and were in breach of the presumption of innocence of the defendants.<sup>40</sup>

As far as political pressures on public prosecution services are concerned, the Chapter 23 Action Plan provides for the development of a clear procedure by which the SPC will publicly respond to cases of political influence on the work of public prosecution services. Although this activity was to have been implemented in the third quarter of 2016, the new SPC Rules of Procedure were adopted only in March 2017.<sup>41</sup> The Rules of Procedure, inter alia, lay down that the SPC shall alert the public to political or other undue influence on the work of the public prosecution services once a year or more often, if necessary. They also set out that the SPC Deputy Chairperson shall alert the SPC of the existence of political or other undue influence on the work of the public prosecution services and that he shall in such cases act in the capacity of Commissioner for Autonomy.

The Commissioner for Autonomy of Prosecutors has to date found that political pressure was exerted on the work of public prosecutors and deputy public prosecutors on several occasions. His reports and recommendations, as well as other enactments of relevance to his work, are publicly available.<sup>42</sup>

In October 2016, the HJC adopted a decision amending its Rules of Procedure<sup>43</sup> pursuant to the Chapter 23 Action Plan. The Rulebook lays down the procedure for the HJC's public reactions to political influence on the work of courts.<sup>44</sup>

The High Judicial Council frequently condemned the increasing attacks on judicial independence in 2018. Expert and civic associations also alerted in their press releases and reports to problematic statements by politicians and other public figures, whose comments could be construed as pressures on the courts and prosecutors. In its Report on Compliance with the Government and Parliamentary Codes of Conduct regarding commenting of court decisions and proceedings<sup>45</sup> published in May 2018, YUCOM analysed the statements by Government members before and after their Code came into effect and the MPs' statements after the parliamentary

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40 More in the *2017 Report*, III.1.1.6.

41 *Sl. glasnik RS*, 29/17 and 46/17.

42 Available in Serbian at: <http://www.dvt.jt.rs/poverenik-za-samostalnost/>.

43 *Sl. glasnik RS*, 91/16.

44 More in the *2016 Report*, I.5.2.9.

45 Available in Serbian at: <https://goo.gl/uX9nnY>.

Code entered into force. It concluded that the adoption of the Codes had not yielded any major results in practice, since the number of statements in violation of the Codes was the same if not greater since their entry into force.

Although the establishment of mechanisms to put an end to the creation of a climate undermining public trust in the judiciary continued in 2018, the many public statements testified that Serbia still lacked a culture of respect for independent and impartial courts, prerequisite for the realisation of the rule of law.

The HJC reacted to a comment made by opposition leader Saša Janković at a news conference when the trial of people indicted for organising the protest in the wake of the presidential elections in Serbia (known as “the protest against dictatorship”) began before the Belgrade Misdemeanour Court. Janković said that those trying young people today would not qualify for public office.<sup>46</sup> The HJC said such a statement jeopardised the independence and autonomy of courts and judges and amounted to a direct threat and pressures against judges trying these cases, given that they were still pending.<sup>47</sup> The Association of Misdemeanour Judges of Serbia also issued a press release, sharply protesting against the statement and qualifying it as an attempt of wrongful and undue influence on the work of misdemeanour judges.<sup>48</sup>

At a news conference held in May 2018, a representative of the local SNS board voiced a number of accusations against the Šabac Basic Court judge, who delivered the first-instance judgment acquitting the town’s Mayor Nebojša Zelenović, charged with squandering budget funds.<sup>49</sup> His statements prompted reactions both from the High Judicial Council<sup>50</sup> and the Judges’ Association of Serbia,<sup>51</sup> which qualified them as a direct attack both on the judge, who had delivered the first-instance judgment and the judges who would be reviewing the case on appeal, and on the entire judiciary. They alerted to the fact that a final decision had not been taken in this criminal case and that the political officials had violated the defendant’s right to presumption of innocence, instilled fear and insecurity in the judges and undermined public trust in the judges.

The comment Chairman of the Commission charged with investigating the murders of journalists Veran Matić made about the first-instance decision in the Čuruvija case to the portal Cenzolovka in mid-2018 provoked a major public polemic. His statement, that he had “a strong impression that the judicial panel trying this case did not want to try it or was forced to deliver a predetermined acquittal

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46 See more in Serbian at: <https://pokretslobodnih.rs/novosti/vesti/nastavak-progona-mladosti-ko-ja-je-rekla-ne-diktaturi>.

47 Available in Serbian at: <https://goo.gl/1W3Lhm>.

48 Available in Serbian at: <https://www.usudprek.org.rs/news/saopstenje-glavnog-odbora-udruzen-ja-sudija-prekrsajnih-sudova-republike-srbije---protest.html>.

49 See more at: <https://www.youtube.com/watch?v=fcKMEVJ9K3c>.

50 Available in Serbian at: <https://goo.gl/BA4Nhm>.

51 See more at: <http://www.sudije.rs/index.php/en/aktuelnosti/saopstenja-za-javnost.html>.

decision,<sup>52</sup> led the HJC to issue a press release accusing him of undermining judicial independence and autonomy and qualifying his statement as a direct threat and pressure against the judicial panel trying this criminal case, especially when one bears in mind that he is the Chairman of the Commission investigating the murders of journalists.<sup>53</sup> His comment also met with the condemnation of the Judges' Association of Serbia<sup>54</sup> and Belgrade Bar Association,<sup>55</sup> which described it as clear pressure on the court and violation of the presumption of innocence of the defendants in a criminal case in which a final judgment has not been delivered.

Matić issued a press release addressed to the HJC, in which he said that public trust in the court system could not be undermined since it did not exist in the first place. He said that the “many acquittals of grave criminals, bludgeoners and swindlers dissolved public trust in judges. The public was first surprised, then confused, but understands everything now.”<sup>56</sup> Matić responded also to the allegations by the Judges' Association of Serbia and the Belgrade Bar Association.<sup>57</sup>

The deep divisions between the judges and lawyers, on the one hand, and the journalists, on the other, on the red line the press may not cross in reporting on ongoing cases continued at a round table “Journalism and the Presumption of Innocence” organised in the JAS Press Centre.<sup>58</sup>

The debate lasted until the end of the year. Supreme Court of Cassation President Milojević said in December that ordinary citizens and journalists were entitled to voice their opinions on and comment trials in progress, but that the latter had to strike a balance between respect for the presumption of innocence and the right of the public to know. The Belgrade Bar Association, for its part, called for the introduction of a three-year term of imprisonment for commenting ongoing proceedings and violating the presumption of innocence, which would also apply to journalists.<sup>59</sup>

The Judges' Association of Serbia issued a press release in August 2018 and called on the HJC to react to a statement Valjevo Mayor Dr Slobodan Gvozdenović made on TV, that “some judges should be removed from the judicial system because they belong to a specific political option,” that some judges had been installed by financial moguls and that judges publicly commenting the situation in the judiciary

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52 See the *Cenzolovka* report, available in Serbian at: <https://www.cenzolovka.rs/pritisci-i-napadi/matic-sudsko-vece-pojedinim-odlukama-pokazuje-jasnu-nameru-da-oslobodi-optuzene-za-ubistvo-curuvije/>.

53 More in Serbian at: <https://goo.gl/jw9azD>.

54 More in Serbian at: <http://www.sudije.rs/index.php/aktuelnosti/saopstenja-za-javnost/408-2018-07-02-14-33-09.html>.

55 More in Serbian at: <https://akb.org.rs/vesti/saopstenje-2/>.

56 See the *B92* report, available in Serbian at: <https://goo.gl/Ah3xAS>.

57 See the *Insajder* report, available in Serbian at: <https://insajder.net/sr/sajt/vazno/11693/>.

58 The footage of the round table is available at: <https://www.youtube.com/watch?v=JXYGSIZLGI4>.

59 See the *Insajder* report, available in Serbian at: <https://goo.gl/GuotZv>.

should instead run for political office. The JAS said Gvozdenović had disparaged judges and undermined judicial independence and public trust in the judiciary.<sup>60</sup>

The work of the judiciary was commented in 2018 also by Interior Minister Nebojša Stefanović, who said that the police were discouraged by the courts' lenient penal policy. He appealed to the judges to be brave and impose harsher sentences, adding: "The work of the police and prosecutors is futile if the courts are not courageous enough. Courts deliver the judgments they see fit because they are independent, but they must take justice into account, because justice is the purpose of their existence. If the citizens do not see justice being done, the question arises whether the courts are adequately fulfilling their obligations."<sup>61</sup>

## 2. Media Freedoms (or Lack Thereof)

### 2.1. *Assessments of the Media Situation in Serbia*

The media situation in Serbia has never been worse since 1998, when President Vučić was Serbian Information Minister. It thus came as no surprise that the European Commission issued its most critical assessment of the state of media freedoms to date in its Serbia 2018 Report.<sup>62</sup> It said that while Serbia had some level of preparation concerning freedom of expression, there had been no progress over the reporting period, increasingly a matter of concern. It said that the overall environment still was "not conducive to the exercise of this right" and again singled out as problematic threats, intimidation and violence against journalists, project co-funding of media content, public service broadcasters and the status of the Electronic Media Regulatory Authority (EMRA).

Although the EC mostly reiterated the observations it had made over the previous years, its assessments of the problems were the most specific and critical yet.<sup>63</sup> This may be ascribed to the fact that press and media associations were much more active in the reporting period, met more often with European officials and openly alerted to the problems they faced. For instance, a number of Serbian journalists appeared at the EU-Western Balkans Media Days in Tirana in November 2017, which was attended also by EU Commissioner for European Neighbourhood Policy and Enlargement Johannes Hahn. Representatives of press and media associations, as well as CSOs, took the opportunity to draw his attention to the drastic state of media

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60 Available in Serbian at: <http://www.sudije.rs/index.php/aktuelnosti/saopstenja-za-javnost/425-2018-08-31-11-04-58.html>.

61 See the B92 report, available in Serbian at: <https://goo.gl/Yts1Mh>.

62 Serbia 2018 Report, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

63 More in the *NI* report, available in Serbian at: <https://bit.ly/2B4C7B5>.

freedoms in Serbia. This was one of the crucial events that apparently informed the EC Report and probably prompted the Government to involve itself more in addressing the plethora of media problems.

The authors of the EC 2019 Serbia Progress Report will likely take into account the Shadow Report on the Implementation of the Chapter 23 Action Plan<sup>64</sup> submitted to the Delegation of the EU to Serbia in late December 2018. The Report, prepared by the Balkan Investigative Reporting Network (BIRN) in cooperation with the Independent Journalists of Serbia (IJAS) and the Slavko Ćuruvija Foundation, alerted to the decline in freedom of expression and media pluralism in Serbia, citing absence of social, political and economic conditions conducive to the development of a professional and sustainable media sector. It qualified abuses of funding, lack of pluralism in terms of content, an unclear legislative framework and administrative pressure on independent media as some of the most concerning issues.<sup>65</sup>

Following concerns about the state of media freedoms in Serbia expressed by both Serbian journalists and media organisations, as well as international organisations and institutions, an international joint fact-finding mission comprised of representatives from the European Federation of Journalists (EFJ), the International Press Institute (IPI) and the South East Europe Media Organisation (SEEMO), visited Serbia in January 2018. It met with the representatives of media and press associations, the Government and President Aleksandar Vučić.<sup>66</sup> EFJ President Morgens Blicher Bjeregord said at a news conference that he was extremely worried about the situation in the media and attacks on journalists. The EFJ strongly recommended that officials at all levels of government in Serbia send a clear signal – without any conditions – condemning all attacks on journalists and undertake efforts to resolve past cases of violence against journalists. It also urged an improvement in the field of social dialogue, or its introduction where it was missing; faster access of journalists to information of public importance; the strengthening of the Press Council; and it urged the Ministry of Culture and Information to ensure that the public consultation of a new media strategy took place in a transparent and visible way both offline and online as well as across the country.<sup>67</sup>

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64 The Shadow Report is available at: <https://kazitrazi.rs/wp-content/uploads/2018/11/Shadow-report-action-plan-for-negotiating-chapter-23-2018.pdf>.

65 See the *Balkan Insight* report at: <http://www.balkaninsight.com/en/article/birn-report-notes-diminishing-media-freedoms-in-serbia-12-12-2018>.

66 The President's adviser Suzana Vasiljević protested against the EFJ's failure to request a meeting with the President, accusing the press associations of intentionally leaving him out of the visit program. IJAS issued a press release saying that the EFJ had taken into account the constitutional and legal powers of the state officials when it was planning the visit and the meetings with state officials and consequently requested meetings with the Prime Minister, and the Ministers of Justice, Police and Culture and Information. IJAS qualified the EFJ's approach as fully acceptable

67 See more at: <https://www.balcanicaucaso.org/eng/Short-news/EFJ-mission-to-Serbia-recommendations-for-media-freedom>.

Reporters without Borders said that the situation in the media in Serbia was the worst in the Balkans and that media frequently resorted to hate speech.<sup>68</sup> Serbia ranked 76th on the 2018 World Press Freedom Index; it slid 10 places over 2017 and a total of 17 places over 2016, i.e. the most of all 180 countries on the Index. Reporters without Borders concluded that “Serbia has become a country where it is unsafe to be a journalist” and that it “utterly fails to meet EU press freedom standards”.<sup>69</sup>

In its Nations in Transit 2018 report, Freedom House said that Serbia’s independent media rating declined from 4.50 to 4.75 as a result of continuing purges of independent journalists, a stifling atmosphere for critical media, and financial and other pressures on the few remaining independent outlets.<sup>70</sup>

After a series of attacks by the Serbian President, Vojvodina Government members, the Culture and Information Ministry and leaders of the ruling party on the daily *Danas*, which published a caricature by Predrag Koraksić Corax, International Press Institute (IPI) Head of Advocacy Ravi Prasad said the media situation in Serbia was rapidly deteriorating.<sup>71</sup>

Serbian officials dismissed the criticisms of international and domestic press associations. In a letter published by the *EU Observer*, President Aleksandar Vučić denied media freedoms were stifled in Serbia and that the state was monopolising the media. He said his Government was the first to let go of media ownership after many years and many reforms.<sup>72</sup>

Vučić also claimed only two dailies and one TV station did not censor his speeches and that all media were under the control of opposition leader Dragan Đilas, and that United Group bought the company Direct Media, despite the fact that Đilas has not been the owner of Direct Media since 2014.<sup>73</sup> Vučić also complained he did not appear enough on the public service broadcaster, although a press clipping agency survey showed he had featured on RTS 181.5 hours, i.e. 7.5 days until mid-November 2018 (discounting rebroadcasts). These statistics did not cover the ad hoc press conferences he frequently organised.<sup>74</sup>

Prime Minister Ana Brnabić held a similar view. She said she was absolutely sure no pressures were being put on the media, specifying that the Serbian “media had been fully controlled” until 2011, whereas the debate now was open.<sup>75</sup> Culture

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68 See more at: <https://rsf.org/en/serbia>.

69 *Ibid.*

70 On a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. See more at: <https://freedomhouse.org/report/nations-transit/2018/serbia>.

71 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/stanje-u-mediji-ma-u-srbiji-se-ubrzano-pogorsava/>.

72 See more at: <https://euobserver.com/opinion/143289>.

73 See the *Insajder* report, available in Serbian at: <https://insajder.net/sr/sajt/vazno/11532/>.

74 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/vucic-u-toku-2018-godine-na-rts-bio-1815-sati/>.

75 More in the *Politika* report, available in Serbian at: <http://www.politika.rs/sr/clanak/406273/Premijerka-Srbije-Vlast-do-2011-potpuno-kontrolisala-medije-danas-postoji-otvorena-debata>.

and Information Minister Vladan Vukosavljević concurred, saying that media freedoms in Serbia were neither deteriorating nor stagnating.<sup>76</sup>

All these conflicting statements demonstrate how deeply divided opinions on media freedoms are and the extent to which Serbian authorities ignore the views of press associations and international bodies concerned with media freedoms and the protection of journalists.

## *2.2. Preparation of the New Media Strategy – Modes of Cooperation between the Government and Media and Press Associations*

The prior Media Strategy expired back in late 2016. A new one defining the direction of the strategic development of the media scene over the next five years was not adopted in the reporting period. The National Programme for the Adoption of the Acquis (third revision)<sup>77</sup> said that the Ministry of Culture and Information formed a working group to develop the Public Information System Development Strategy until 2023 and that the Draft Strategy would be submitted to the Government for adoption in Q2 2018. The working group charged with drafting the Media Strategy was formed in July 2017;<sup>78</sup> it initially comprised representatives of the Journalists' Association of Serbia (JAS), the Coalition of Press and Media Associations (Association of Independent Electronic Media (ANEM), IJAS, Independent Association of Vojvodina Journalists (NDNV), Local Press and the Association of Online Media (AOM)) and the Association of Media. All of them walked out of the working group for various reasons in October 2017.<sup>79</sup> Although Culture and Information Ministry State Secretary Aleksandar Gajović clearly did not enjoy the media community's support in developing the strategy, the "rump" working group continued drafting the text of the strategy.

It became apparent that the work on the new media strategy was blocked in early 2018. The Coalition of Press and Media Associations called for Gajović's resignation after he expressed doubts about the veracity of reports of attacks against journalists.<sup>80</sup> Media associations sharply reacted to the announcement of the Culture and Information Ministry in early April that a public debate would open on the Preliminary Draft Public Information Development Strategy.<sup>81</sup> Their pressures on the

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76 See the *NI* report, available at: <http://rs.n1info.com/English/NEWS/a386244/Freedom-of-Freedom-of-media-in-Serbia-is-not-deteriorating.html>.

77 Available at: [http://www.mei.gov.rs/upload/documents/nacionalna\\_dokumenta/npaa/third\\_revision\\_npaa\\_18.pdf](http://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/third_revision_npaa_18.pdf).

78 See the *2017 Report*, III.5.2.

79 The Minister in February said that 90% of the strategy had been completed and that it would be adopted soon. More in the *B92* report, available at: [https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=02&dd=07&nav\\_id=103441](https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=02&dd=07&nav_id=103441).

80 The IJAS statement is available in Serbian at: <http://www.nuns.rs/info/statements/34510/trazi-mo-smenu-drzavnog-sekretara-za-medije-aleksandra-gajovica.html>.

81 More in the IJAS report, available in Serbian at: <http://www.nuns.rs/info/statements/35588/udruzenja-nametanje-nelegitimne-strategije.html>. The Media Coalition said it was continuously



Serbian Government forced the latter to invite them to re-join the working group. The Government and President decided in April 2018 to relaunch the development of the media strategy and form a new working group, with the OSCE Mission to Serbia playing the role of facilitator. Its decision was motivated by the lack of inclusion (since nearly all representatives of press and media associations had left the prior working group) and non-compliance with the Planning System Act.

The new working group charged with drafting the Media Strategy was formed in June 2018.<sup>82</sup> The press and media associations conditioned their participation by the resolution of the urgent media sector problems in parallel with the development of the new strategy. In result, a Coordination Group, comprising representatives of the Government and the media and press associations, and a Team for Dialogue, charged with mapping and addressing the gravest problems in the media sector, were formed. The press and media associations in the Team forwarded a list of 13 demands<sup>83</sup> to the Coordination Group and requested that the Team and Group meet as soon as possible. After the government did not respond, they sent a letter<sup>84</sup> to international organisations, providing an overview of the deteriorating situation and warning that nothing was being done to address the problems in the media field, which were a consequence of non-compliance with the laws rather than their imperfections. The media and press associations reiterated their demands in October. The Prime Minister said they should not have written to international organisations but discussed the issues with the government, which they had been trying to do for months.

Media experts and associations criticised not only the executive government's attitude towards the media and insufficient inclusivity of the drafting process, but some of the solutions in the strategy: those providing for the multiplication of public media services on the territorial principle (the strategy mentions regional public media services, in addition to those at the national and provincial levels) and by various types of media (print and Internet media and news agencies); and, the introduction of the possibility of public-private partnerships in the media sphere, which would strengthen the state's role in the media. These measures essentially mask the tendency to "legalise" the actual state of affairs. Namely, influential dailies (*Politika* and *Večernje novosti*) have not been privatised (although the deadlines expired a long time), whereas the state news agency *Tanjug*, although legally non-existent, continued operating.

Some Ministry representatives continued advocating such ideas at the end of the year,<sup>85</sup> although representatives of press and media associations, who account-

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working with media experts and CSOs on a document in which they would offer solutions to the key media problems in Serbia and which would serve as an alternative media strategy.

82 The Working Group comprises nine media and eight government representatives. More in the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a397283/Formirana-Radna-grupa-za-izradu-medijske-strategije.html>.

83 Available at: [https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=08&dd=19&nav\\_id=104890](https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=08&dd=19&nav_id=104890).

84 Available at: <https://pescanik.net/media-freedom-in-serbia-today/>.

85 See the interview Gajović gave to *Večernje novosti*, available in Serbian at: <https://bit.ly/2TaYNXq>.

ed for the majority of the working group, were decisively against strengthening the state's role in the media, especially in this way. The dissent on state involvement in the media has been ongoing for nearly 20 years now. Hopes that an end had been put to it with the adoption of the Media Strategy in 2011 and the media laws in 2014 and that the idea prevailed that the state (in the broadest sense) had to relinquish its stake in all media (with the exception of public service broadcasters, publishers of media in minority languages and the institution charged with informing the population in Kosovo – under Article 16 of the Public Information and Media Act) were in vain. Had such an approach prevailed, it would have precluded the possibility of influencing the outlets' editorial policies and ensured a level playing ground for all media. The Ministry representatives' views indicated that the debate was still ongoing. Given that the Ministry had a final say on the text of the Media Strategy, the possibility of it containing the impugned solutions could not be ruled out. In late December, the Prime Minister said that the working group would submit the text of the Draft Media Strategy to the Government by the end of the year and that the public debate on it would begin in January 2019.<sup>86</sup>

The Media Strategy was also criticised for the way it regulated the cable and satellite TV channel market. The state obviously attempted to relativise the so-called country of origin principle, one of the fundamental principles of the EU audiovisual policy and the CoE Convention on Transfrontier Television (which Serbia ratified). Under this principle, media service providers licenced in one country need not apply for a licence in other countries. The Serbian Electronic Media Act also includes this principle, which is further strengthened and promoted in the revised EU Directive on Audiovisual Media Services.

Furthermore, this set of measures is problematic from the perspective of media pluralism, because it can impinge on the broadcasting of influential TV channels, such as *NI* and *Al Jazeera*, which, although not licenced to provide media services in Serbia, are freely rebroadcast on Serbian and other Western Balkan cable networks. The authorities are apparently also striving to regulate media services on new media platforms (such as NETFLIX, HBO et al) by law, which is an extremely dangerous measure that may seriously jeopardise media pluralism because of the government's overall tendency to (over)regulate and increase its influence.

### 2.3. (Non-) Transparency of Data on Media

The relevant registers need to be improved to facilitate public access to all important media-related information and obtain a realistic assessment of the relevance of the information these outlets are publishing, as well as of the extent to which the funding the state (in the broadest sense) grants outlets impacts on their editorial independence and media pluralism.

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86 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/drustvo/brnabic-medijska-strategija-donosi-promene-koje-ce-nekima-manje-a-nekima-vise/968ng1j>.

The non-transparency of the state subsidies to media is merely one of the problems reflecting lack of public access to media-related information and can partly be attributed to the deficiencies of the Media Register. The establishment of such a register raised hopes that all information about the outlets would finally be publicly available in one place. These expectations, however, did not fully materialise, since the Register does not include all the requisite data on the outlets. For instance, a Study conducted by the Media Association showed that nearly seven percent of the 2,034 media in the Media Register on 1 February 2018 did not include a specification of what kind of outlet they were (print, radio, Internet portal, etc.) – as many as 123 outlets were registered as “undefined” and another 16 as “other”.<sup>87</sup>

Furthermore, the data in the Register are not regularly updated and the credibility of information, particularly of information forwarded by the outlets themselves (e.g. on the number of sold copies), is questionable. The data in the Register cannot even give an idea of how much public funding is granted to the outlets. In sum, assessments are that not much headway had been made in ensuring the proclaimed transparency of data on media during the validity of the prior Strategy.<sup>88</sup>

The Central Register of Real Owners Act,<sup>89</sup> adopted in 2018, does not directly apply to media ownership. This law primarily aims to facilitate the fight against money laundering and financing of terrorism. It will indirectly concern the media sector because the Register will include data on natural persons who own outlets. The real effects of the Act will not be visible before mid-2019 as it provides for the establishment of the Register of Real Owners by end 2018 and the submission of data by legal persons by 31 January 2019.

#### *2.4. Financing of Content of Public Interest*

Nothing changed in the field of media project co-financing in 2018. The system, although well-conceived, suffers from many shortcomings precluding the fulfilment of its actual purpose – to fund media content of public interest. Instead, it has mostly served as a tool for funding pro-government media, including those not hesitating from massively violating professional ethics, for which they were hardly ever penalised.

The assessments of foreign experts were similar. During his visit to Serbia in February 2018, CoE Commissioner for Human Rights Nils Muižnieks noted many concerns about the deteriorating situation for the work of journalists and media since his previous visit, as well as some serious challenges in the implementation of the project-based funding of media. “Lack of transparency, politically motivated

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87 More is available in Serbian at: <http://asmedi.org/misc/PravaMeraMedija.pdf>.

88 See more in Serbian at: <http://mcvojvodine.org/wp-content/uploads/2018/06/PRILOZI-ZA-IZ-RADU-STRATEGIJE-RAZVOJA-SISTEMA-JAVNOG-INFORMISANJA-DO-2023-GODINE.pdf>.

89 *Sl. glasnik RS*, 41/18.

decisions and funding awarded to tabloids and media known to be violating media ethics are among the serious challenges that need to be addressed by the authorities in this context,” he said.<sup>90</sup>

This was one of the central issues and definitely one of the greatest challenges faced by the authors of the new Media Strategy, as it entails “forcing” all public entities publishing Calls for Proposals to comply with the law, given the many irregularities in allocating media project co-financing registered in 2018.

IJAS data indicate that national, provincial and local authorities published 142 Calls for Proposals and disbursed 1.37 billion RSD (around €11.6 million) for co-financing media projects from 1 January to 15 October 2018. The texts of 11 of the 142 Calls were not in compliance with the law; the implementation of as many as 40% formally valid Calls was controversial: the applications were reviewed by incompetent committees, comprising representatives of non-representative and obscure media associations, self-styled media experts and even municipal staff.<sup>91</sup>

Evidence that mostly media toeing the government line were funded from the budgets was ample. For instance, the Belgrade City allocated a third of the budget to *RTV Studio B*, and several tabloids; *Alo*, *Informer*, *Srpski telegraf* and *Kurir* together were granted over 33 million of the 89.8 million RSD. Another third was allocated to related and bogus companies, unknown or recently established agencies and PR companies close to the authorities in one way or another. *Studio B* was granted 16.1 million RSD for three projects. This station was bought in mid-2018 by Saša Blagojević, the owner of the tabloid *Alo*, which was granted six million RSD within the latest Call for Proposals.<sup>92</sup> These decisions prompted the Journalists’ Association of Serbia (JAS)<sup>93</sup> and the daily *Politika*<sup>94</sup> not to take the funds they were granted.

Irregularities occurred in many other municipalities as well, such as, e.g. Gornji Milanovac, Kladovo and Nova Varoš, where municipal staff sat on the committees reviewing the applications.<sup>95</sup> The Arandelovac municipality granted the

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90 See more at: [/www.coe.int/en/web/commissioner/-/serbia-concerted-efforts-needed-to-address-the-legacy-of-the-past-protect-media-freedoms-and-ensure-inclusive-education](http://www.coe.int/en/web/commissioner/-/serbia-concerted-efforts-needed-to-address-the-legacy-of-the-past-protect-media-freedoms-and-ensure-inclusive-education).

91 See the IJAS report in Serbian at: <https://goo.gl/MVc1j3>.

92 The portal *Pištaljka* was quoted as saying Blagojević was a school-friend of the current Finance Minister and former Belgrade Mayor Siniša Mali, more is available in Serbian at: [/www.cenzolovka.rs/drzava-i-mediji/podrska-rezimu-jedini-kriterijum-za-javni-interes/](http://www.cenzolovka.rs/drzava-i-mediji/podrska-rezimu-jedini-kriterijum-za-javni-interes/).

93 See the *Cenzolovka* and IJAS reports, available in Serbian at: <https://www.cenzolovka.rs/drzava-i-mediji/uns-se-odreka-sredstava-dobijenih-na-medijskom-konkursu-beograda/> and: <http://www.nuns.rs/info/news/39418/medijski-konkurs-beograda-ponovo-milioni-fantomskim-firmama.html>.

94 See the IJAS press release, available in Serbian at: <http://www.nuns.rs/info/news/39444/politika-nece-prihvatiti-dodeljeni-novac.html>.

95 See the *Cenzolovka* report, available in Serbian at: <https://www.cenzolovka.rs/drzava-i-mediji/koalicija-hitno-ponistiti-resenje-o-izboru-komisije-za-medijske-projekte-u-gornjem-milanovcu/>.

most funding to the local RTV, whose account had been frozen since 2016,<sup>96</sup> while the Bor municipality allocated 90% of the funding for shows in which the municipal leaders would talk about their activities.<sup>97</sup> Seventy percent of the funding in Niš went to outlets known to be supporting the ruling Serbian Progressive Party.<sup>98</sup> At the same time, the Niš and Pirot authorities changed the contracts on the funds granted to the private portal *Južne vesti* to include the obligation to report on the activities of the municipal leaders.<sup>99</sup> The Malo Crniće municipality had earmarked one million RSD for eight projects of public interest in the field of information; 370,000 RSD were allocated to a civic association and *RTV Braničevo*, which is not registered in the Media Register. Both the association and the station are owned/represented by the same individual. The Malo Crniće committee did not specify in its decision which projects were supported, only the names of the applicants.<sup>100</sup>

The Ministry of Culture and Information granted five million RSD to a company that has no staff and an annual income of 1,000 RSD<sup>101</sup> and two million RSD to *TV Happy*, for a new show, qualified by application review committee member Dragan Guzijan as a good project and good programme.<sup>102</sup>

The extent to which tabloids breached the professional code of ethics is best illustrated by the cases of pro-government tabloids *Informer* and *Srpski telegraf*, which violated it over 3,000 times in 2017. Nevertheless, the state allocated 13 million RSD to them in the first half of 2018.<sup>103</sup>

Although significant money is annually allocated for media content co-financing, there is insufficient information on how it is disbursed. BIRN's research shows that institutions publishing Calls for Proposals scored only 37% on the transparency index, while the transparency of monitoring the implementation of projects granted funding stood at a negligible 3%.<sup>104</sup>

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96 See the IJAS press release, available in Serbian at: <http://www.nuns.rs/info/news/39140/mediju-u-blokadi-ubedljivo-najvise-novca-na-konkursu-u-arandjelovcu.html>.

97 See the ANEM press release, available in Serbian at: <https://goo.gl/zXhBPD>.

98 More is available in Serbian at: <https://www.dijalog.net/nuns-iz-republickog-budzeta-dodeljen-rekordan-iznos-firmama-koje-se-ne-bave-novinarstvom/>.

99 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/opstina-trazi-da-se-izvestava-o-radu-rukovodstva/>.

100 See the IJAS press release, available in Serbian at: <http://www.nuns.rs/info/news/39087/portal-opstina-dala-220000-dinara-rtv-branicevo-koje-nema-u-registru-medija.html>.

101 More is available in Serbian at: <http://www.uns.org.rs/desk/akcija/71480/medijski-konkursi-u-2018-godini-mnogo-nepravilnosti-sporan-i-konkurs-mki.html>.

102 *TV Happy* broadcasts several reality shows, frequently condemned in public. Ministry of Culture and Information State Secretary Aleksandar Gajović declined from commenting its programme at a session of the parliamentary Culture and Information Committee.

103 More is available in Serbian at: <http://www.uns.org.rs/desk/akcija/71480/medijski-konkursi-u-2018-godini-mnogo-nepravilnosti-sporan-i-konkurs-mki.html>.

104 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/gradjani-slabo-obavesteni-o-trosenju-novca/>.

The abolition of VAT on funds allocated by the national, provincial and local governments, which the media associations had insisted on for years, was the only positive government decision regarding media content co-financing in 2018.<sup>105</sup>

## 2.5. *Electronic Media Regulatory Authority (EMRA)*

The EMRA Council election procedure indicates that political authorities have crucial influence on this institution, which ought to be independent. The EMRA Council, the most important body of this authority, had difficulties adopting decisions requiring the support of two-thirds of the Council because it still lacked three members.<sup>106</sup> EMRA continued operating under the Articles of Association adopted at the time the prior Broadcasting Act was in force because the National Assembly did not approve its new Articles of Association. The National Assembly directly undermined the financial independence of this authority, as it approved its 2018 financial plan with a six-month delay, in July 2018. EMRA's status in the legal system remained unclear and could be qualified as "levitating" between an administrative authority and independent regulator.

The EMRA Council introduced a new mode of communication with the public in 2018. Its vehement and quarrelsome responses to every criticism of its work were unbecoming, to say the least, of an independent authority with integrity.<sup>107</sup>

EMRA failed to fulfil its main duty – to control the media during election campaigns – during the Belgrade elections in the spring of 2018, under the excuse that its software was being upgraded. EMRA Council member Olivera Zekić did, however, send a letter to RTS during election blackout, claiming it had turned the volume down when a representative of the ruling coalition was talking and favoured an opposition leader, although the volume was in compliance with EBU standards.<sup>108</sup> In response to the claim that *TV Pink* had broken the law by broadcasting live the session of the SNS Main Board session, Zekić said that the experts, who had voiced it, were attempting to prohibit reports on the activities of Serbia's President.<sup>109</sup>

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105 See the *Cenzolovka* report, available in Serbian at: <https://www.cenzolovka.rs/drzava-i-mediji/medijski-projekti-oslobodjeni-od-pdv/>.

106 Four of the nine members elected by the National Assembly are nominated by "political bodies", two by the relevant parliamentary Committee, and three by the Vojvodina Assembly, National Minority Councils and media organisations (one each). The Assembly's delay in electing the new Council members enabled the government representatives to take the decisions that suited them.

107 See, e.g. the EMRA press releases, available in Serbian at: <https://bit.ly/2QHxL8u>, <https://bit.ly/2qNv4ac> and <https://bit.ly/2FoE8wp>.

108 See the *RTS* report, available in Serbian at: <http://www.rts.rs/page/stories/ci/story/124/drustvo/3074661/odgovor-generalnog-direktora-rts-a-dragana-bujosevica-oliveri-zekic.html>.

109 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/pink-prekrsio-zakon-emitujuci-sednicu-glavnog-odbora-sns/>.

Rather than exercising its powers, EMRA was almost regularly defending negative developments in the media. In reaction to a several-day campaign against journalist Tamara Skrozza, a member of the organisation CRTA, after she said that the Belgrade city election candidates had not been equally treated and described their campaign as a “campaign of senior officials” and whom *TV Pink* called President Vučić’s arch-enemy, EMRA issued a press release saying there was no reason for it react to the complaints submitted to it because they were filed by private citizens, rather than the journalist herself, and that public interest was not in jeopardy.<sup>110</sup> In response to the request to investigate the chat Hague war crime indictee Ratko Mladić had over the speakerphone with the guests in a live show on TV Happy, EMRA said that Mladić was entitled to speak live on TV stations with a national frequency because he was not convicted by a final decision and that the appeals proceedings were under way.<sup>111</sup> EMRA Council member Olivera Zekić specified that “phone calls are not regulated by law, and those with ethical concerns should go to church.”<sup>112</sup>

In response to criticisms by some opposition leaders that it was not doing its job, the EMRA Council accused them of wanting to shut down the media “to fulfil their sick political ambitions”.<sup>113</sup> Culture and Information Minister did not fare any better when he said reality shows should be broadcast exclusively on to pay TV channels, not on stations with a national frequency. EMRA said he should do his job, rather than act as a censor. Olivera Zekić said no country banned reality shows and that Serbia would not ban them either.<sup>114</sup> *TV Pink*, whose programme the Minister was referring to, called him a “superficial ignoramus and inquisitor”. The Prime Minister and other ministers did not defend him. President Vučić said that “Pink will work for a long time”.<sup>115</sup>

## 2.6. Media Privatisation Effects

The privatisation of media outlets, launched in 2015 after the set of media laws was adopted, was not completed by 2018. The mostly negative effects of the completed privatisations reverberated in 2018 as well. According to Justice Ministry data, 50 of the 73 state-owned media were put up for sale and 34 were pri-

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110 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a389023/NUNS-REM-bez-osecaja-i-odgovornosti-za-javni-interes.html>.

111 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a436502/Zekic-REM-za-Insajder-Zasto-je-uključenje-Mladica-sporno.html>.

112 See more at: <http://safejournalists.net/serbia-hitler-caricature-artist-media-freedom/>.

113 See the *Danas* report, available in Serbian at: <https://www.danas.rs/dijalog/redakcijski-komentar/kome-sluzi-rem/>.

114 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/olivera-zekic-vukosavljevic-moze-da-kuka-ali-je-na-pogresnoj-adresi/>.

115 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a426526/Djilas-i-Vucic-o-TV-Pink.html>.

vatised. The sale contracts of six outlets were voided and two other outlets went bankrupt soon after they were privatised; half of the media that were not privatised have also gone bankrupt.<sup>116</sup>

The state's apparent unwillingness to relinquish ownership of all media is corroborated by as several examples. The first is news agency *Tanjug*, which was dissolved under a Government decision back in October 2015, but continued operating under the excuse that the Business Registers Agency could not abolish it because it had not submitted its final account, a requirement for a company to change its status. *Tanjug's* losses in 2016 stood at 56 million RSD,<sup>117</sup> and it pledged 205 works of art to defer the collection of its debt. JAS data showed that it had received 114 million RSD from state institutions despite its losses until September 2018. *Tanjug* ignored the request of the Commissioner for Information of Public Importance to disclose data on its debts, although it faces a fine ranging from 50% of its monthly revenue to 10% of its annual revenue if it defaults on this legal obligation.<sup>118</sup>

Another example is *RTV Kragujevac*, one of the main outlets in Central Serbia. It was privatised but the contract was voided and the City regained ownership of it.<sup>119</sup> This station was granted 141 million RSD from the Kragujevac budget. The City administration, now headed by Mayor Radomir Nikolić, the son of the former Serbian President and SNS co-founder Tomislav Nikolić, has been granting co-funding to media in the absence of Calls for Proposals for years now.<sup>120</sup>

The Belgrade city authorities, for their part, had a soft spot for *RTV Studio B*, which was privatised in 2015 and has always been loyal to the city authorities. Its debt stood at 200 million RSD and its losses at 172 million RSD by June 2018, but the City continued funnelling it money. In June 2018, media reported that *RTV Studio B* had been sold to *Global Media Technology Ltd*, owned by Saša Blagojević, owner of the tabloid *Alo* and believed to be close with SNS.<sup>121</sup> The Belgrade authorities decided to decimate the rent of premises used by electronic outlets performing activities of interest to the City (they pay 80 RSD per square metre, as opposed to others, who pay between 590 and 815 RSD per square meter).<sup>122</sup>

Telekom Serbia, in which the state owns the majority stock, bought cable operator *Kopernikus Technology* in November in a procedure that was anything but

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116 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/ministarstvo-privrede-svaki-peti-medij-raskinuo-ugovor-o-privatizaciji/>.

117 See the *2016 Report*, II.8.2.

118 See the *Danas* report, available in Serbian at: <http://www.danas.rs/drustvo/vladavina-prava/tanjug-ignorise-nalog-poverenika-da-obelodani-svoje-dugove/>.

119 More in the *2017 Report*, III.5.5.

120 See the *Danas* report of 22 October 2018, p. 5.

121 More is available in Serbian at: <https://www.beograduzivo.rs/info/prodata-beogradska-tel-evizija-studio-b/>.

122 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a404867/Popust-medijimaciji-je-program-od-interesa-za-grad-Beograd.html>.



transparent. It claimed it had gotten a great deal, because it bought the largest cable operator in Serbia with around 200,000 users for around €200 million.<sup>123</sup> This purchase provoked a number of criticisms, primarily because the law prohibits state ownership of media. Experts said Telekom had overpaid Kopernikus (RATEL data show Kopernikus has 50,000 users), giving rise to suspicions that a corruptive contract was at issue and that the state was drawing out state money through the company owned by the brother of the top SNS official in Niš Zvezdan Milovanović and expanding its control over the media to cable operators.<sup>124</sup>

In early December, Kopernikus bought two TV stations with nationwide coverage: *Prva* and *O2*, six of their cable channels and three websites, for €180 million, i.e. €15 million less than Kopernikus was paid.<sup>125</sup> This sale raised concerns about the growing influence of the ruling SNS and demonstrated the government's lack of will to respect the media freedoms. This view, expressed by Freedom House, was confirmed by President Vučić, who said on TV Pink that these stations were bought to “prevent the media monopoly of Dragan Đilas and Dragan Šolak”.<sup>126</sup> In sum, the authorities practically controlled all four private TV stations with national coverage, as well as the public service broadcasters in Belgrade and Novi Sad at the end of 2018. In a nutshell, all TV stations in Serbia with national coverage were under government control at the end of 2018.

## 2.7. Attacks and Threats against Journalists

The work of the Standing Group for the Safety of Journalists, envisaged under the Chapter 23 Action Plan, was blocked for the most of 2018 after the press and media associations suspended their membership in the Group due to the attacks on reporters during President Vučić's inauguration in 2017. They ended the boycott in late October 2018, but no information indicating that the Working Group had made any headway in its work was publicly available at the end of the reporting period.

According to the data collected by the Independent Journalists' Association of Serbia, a total of 102 incidents against journalists were registered in 2018 (an increase over 2017, when 84 incidents were registered). Journalists were victims of physical assault in seven cases, of pressures in 72 cases and 23 verbal threats.

The house of *Žig info* portal journalist Milan Jovanović was set on fire in December 2018. Jovanović wrote about abuse by Grocka Mayor, an SNS member. *Žig*

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123 More in Serbian at: <https://www.istinomer.rs/clanak/2500/Kako-je-Telekom-kupio-Kopernikus:-Izmuzi-dok-ima>.

124 More in Serbian at: <https://www.raskrikavanje.rs/page.php?id=297>.

125 See the *Balkan Insight* report, available at: <http://www.balkaninsight.com/en/article/serbian-ruling-party-linked-company-buys-two-tv-stations-12-04-2018>.

126 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/vucic-brani-trgovinu-s-medijima-i-napada-danas/>.

*info* editor Željko Matorčević was beaten up in October 2018.<sup>127</sup> The Committee to Protect Journalists (CPJ) called on the Serbian authorities to conduct a swift and thorough investigation into the arson attack and consider Jovanović's reporting as a likely motive.<sup>128</sup> Head of the OSCE Mission to Serbia Andrea Orizio qualified the arson as alarming, adding that it could indicate the direction that Serbia has chosen. He said journalists in Serbia always paid a high price and recalled that murders of journalists from the 1990s had not been solved. "Politicians and all others must not intimidate journalists and must always condemn violence," the OSCE Ambassador was quoted as saying.<sup>129</sup> At a news conference on 23 December 2018, Minister of Internal Affairs Stefanović said that the police had arrested three individuals suspected of the arson, one of whom is believed to have masterminded the crime.<sup>130</sup>

Ruling politicians increasingly frequently resorted to verbal abuse of journalists and accusing them of treason and working for foreign powers. Every criticism of the state authorities they voiced was construed as work in favour of the opposition. For example, head of the Security Intelligence Agency Belgrade Office Marko Parezanović said that some people in the media, NGOs and the opposition posed a major threat to national security.<sup>131</sup> In response to criticisms of the state's failure to protect the journalists, Culture and Information Ministry State Secretary Aleksandar Gajović said his Ministry was not in charge of attacks on journalists, that they were not the only ones under attack and that they should protect themselves.<sup>132</sup>

Apart from often front-paging fake news,<sup>133</sup> some pro-government media were simultaneously violating professional codes, moral norms and rules of decent and proper public communication. The weekly *Ilustrovana politika* front-paged its six-page article entitled "Dogs are Unleashed", together with a large photograph of a snarling dog and photographs of the front pages of several independent outlets in

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127 See more at: <https://www.slobodnaevropa.org/a/29654458.html> and <https://www.nedeljnik.rs/nedeljnik/portalnews/milan-vlajcic-zapaljena-kuca-novinara-iz-vcina-je-slika-ljudskih-prava-u-srbiji/>.

128 See more at: <https://cpj.org/2018/12/serbian-investigative-journalist-targeted-with-ars.php>.

129 See more at: <http://rs.n1info.com/English/NEWS/a445742/Low-level-of-media-freedom-in-Serbia-report-says.html>.

130 More in the *B92* report, available at: [https://www.b92.net/eng/news/crimes.php?yyyy=2018&mm=12&dd=24&nav\\_id=105826](https://www.b92.net/eng/news/crimes.php?yyyy=2018&mm=12&dd=24&nav_id=105826).

131 See the *N1* report, available in Serbian at: <http://rs.n1info.com/Vesti/a426348/Dragan-Popovic-i-Vesna-Malisc-o-BIA-i-spoljnom-faktoru.html>.

132 As per campaigns against individual journalists and threats hurled at them, Gajović said that "emphasis is intentionally put on attacks on journalists who are not pro-government" and that he would like to hear the "version of the other side, that is, who, what, if anyone is behind those attacks." More in the *RFE* report, available in Serbian at: <https://www.slobodnaevropa.org/a/29027929.html>.

133 Belgrade Political Science College Professor Rade Veljanovski quoted data from a survey showing that the tabloid *Informer* had published 362 fake news on 302 front pages. More is available in Serbian at: <http://fakenews.rs/2018/01/26/pronasli-smo-362-lazne-vesti-na-naslovnicama-in-formera-za-godinu-dana/>.

the background. Journalist Đorđe Martić<sup>134</sup> professionally and morally disqualified critical media, accusing them of treason and working for foreign powers.<sup>135</sup> President Vučić's media adviser resigned from the *Politika* Supervisory Board, for two reasons, because she did not want to support such an editorial policy she could not influence and to avoid "giving you (media organisations) an argument for attacks on the President".<sup>136</sup> In response to journalists' questions about the front-page and article in this state-owned magazine, State Secretary Gajović said that the Ministry was not in the habit of commenting anyone's articles.<sup>137</sup>

However, the Culture and Information Ministry "kicked the habit" when the daily *Danas* published Predrag Koraksić's caricature of Hitler and Goebbels rocking two babies – SNS MPs who had accused the opposition and critical media of fascism. It described it as inappropriate and out of taste, especially at a time when the Serbian President and Government were greatly "contributing to the media reforms under way".<sup>138</sup> SNS members were the only ones who found a resemblance between Vučić and Hitler's caricature and declared it an attack on the Serbian people. It thus came as no surprise when the caricatures by two internationally acclaimed Serbian caricaturists, Predrag Koraksić and Dušan Petričić, were removed from the exhibition in the Lazarevac library 24 hours later.<sup>139</sup>

The authorities applied other, "creative" tools against critical media as well. The tax inspectors started focusing on the Niš-based private portal *Južne vesti* at the beginning of the year. They seized all the portal's contracts with the OSCE, EU, CoE and UN and showed them to the parents of the staff and the portal's business partners as proof that they were foreign spies.<sup>140</sup> The tax inspectors failed to find the portal in violation of any tax laws during the intensive six-month check, but initiat-

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134 To recall, Đorđe Martić wrote a scathing article against Slavko Ćuruvija, during the NATO air strikes in 1999, in which he branded him as a foreign mercenary. Ćuruvija was assassinated several days later. The Government Commission, charged with establishing the facts about the murders of journalists in the 1990s, earlier reacted to another article by Martić, in which he tried to blame Ćuruvija's death on late Zoran Đinđić and other opposition leaders in the Milošević era. Earlier in 2018, Martić wrote a defamatory article about RTS Director Dragan Bujošević, calling him an associate of NATO and the USA. Bujošević said he would sue him. More in the *Insajder* report, available in Serbian at: <https://insajder.net/sr/sajt/tema/10705/>.

135 See the *Insajder* report, available in Serbian at: <https://insajder.net/sr/sajt/stav/12438/>.

136 See the *NI* report, available at: <http://rs.n1info.com/English/NEWS/a432552/Vucic-s-media-aid-resignes-over-public-outcry-following-weekly-s-cover-page.html>.

137 See the *RFE* report, available in Serbian at: <https://www.slobodnaevropa.org/a/srbija-medi-ji-linc/29575412.html>.

138 See the *Politika* report, available in Serbian at: <http://www.politika.rs/sr/clanak/415350/Vucic-Neka-ljudi-vide-jesam-li-ja-Hitler-ili-neko-drugi>.

139 See more at: <https://www.balcanicaucaso.org/eng/Areas/Serbia/Serbia-Hitler-caricature-artist-and-media-freedom-191270>, and the *Danas* report, available in Serbian at: <https://www.danas.rs/politika/martinovic-ja-znam-a-i-svi-vi-koga-predstavlja-hiter-na-karikaturi/>.

140 See the Media Association's press release, available in Serbian at: <http://asmedi.org/blog/2018/08/23/tortura-nad-juznim-vestima/>.

ed the forced collection of an alleged €8,500 debt because the Chief Editor was not employed by *Južne vesti* full time (they referred to a Government Decree enumerating the obligations of Chief Editors of state outlets, which does not apply to private media, such as *Južne vesti*).<sup>141</sup>

The authorities did not, however, act that promptly when media attempted to enforce the collection of their claims. The Novi Sad station *Kanal 9*'s signal was turned off in May due to a 2.5 million RSD debt. This station, critical of the authorities, was unable to collect claims worth 20 million RSD confirmed in court judgments. The owner went on a hunger strike until the authorities said they would turn the signal back on if she agreed to pay the debt in instalments.<sup>142</sup>

Some opposition leaders refused to respond to provocative questions by the owner of the pro-Government tabloid *Informer* and the journalists of the pro-Government *TV Pink* because of their unprofessional conduct and increasingly frequent violations of the Press Code of Conduct.<sup>143</sup>

No headway was made in identifying the assassins of all the journalists in the 1990s or in bringing their killers to justice. The Ćuruvija trial was dragging on, and the hearings scheduled far and between were often adjourned. Chairman of the Commission charged with investigating the murders Veran Matić said that some of the judicial panel's decisions demonstrated its intention to acquit the indictees. The Judges' Association of Serbia accused him of wrongful influence on the court and violation of the presumption of innocence.<sup>144</sup>

The proceedings regarding the 1994 murder of journalist Dada Vujasinović and the attempted murder of journalist Dejan Anastasijević 11 years ago were still in the preliminary investigation stage. No headway was made in identifying the killers of Jagodina journalist Milan Pantić either.<sup>145</sup>

### 2.7.1. *Lawsuits against and Trials of Journalists*

The Belgrade Appellate Court's judgment ordering sociologist Vesna Pešić and *Peščanik* editors Svetlana Lukić and Svetlana Vuković to pay 150,000 RSD in damages to Interior Minister Nebojša Stefanović for damaging his honour and reputation was the trial against media and journalists that provoked the most attention in 2018. In May 2016, *Peščanik* published an article by Pešić about the Savamala illegal

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141 See more at: <http://www.balkaninsight.com/en/article/journalists-accuse-serbian-tax-administration-of-pressures-04-16-2018> and at: <http://www.balkaninsight.com/en/article/serbian-tax-administration-trying-to-close-us-local-media-08-10-2018>.

142 More in the *N1* report, available at: <http://rs.n1info.com/English/NEWS/a390236/Novoi-Sad-s-TV-Channel-9-back-on-air.html>.

143 More in the *N1* report, available at: <http://rs.n1info.com/English/NEWS/a429134/Serbian-opposition-leader-Pink-Informer-factories-of-lies.html>.

144 See the *RTS* report, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/drustvo/3341966/visi-sud-u-beogradu-optuzuje-matica-za-pritisak-na-sudije.html>.

145 More in the *2016 Report*, II.8.9.

demolition case.<sup>146</sup> The Court said that parts of the report aimed at undermining the dignity, honour and reputation of the plaintiff, rather than at contributing to public debate and addressing the problem.<sup>147</sup>

The Supreme Court of Cassation overturned the Appellate Court's judgment acquitting the weekly *NiN*, which Minister Stefanović also sued because of its report on the Savamala case. It found that the Appellate Court had not protected Stefanović's rights and had protected "only the right of media to freedom of expression" and that it should have balanced the rights of Stefanović as a public figure and the right to freedom of expression.<sup>148</sup>

Most plaintiffs initiating lawsuits against media and journalists complained of libel and sought non-pecuniary damages or claimed that they had spread lies about them. The Belgrade Higher Court found in favour of opposition leader Đilas and ordered the tabloid *Informer* to pay him 100,000 RSD in damages for damaging his honour and reputation.<sup>149</sup> The Belgrade Appellate Court upheld the first-instance verdict ordering *Informer* to pay the same amount also to BIRN editor Slobodan Georgijev for the same offence.<sup>150</sup> The Higher Court ordered *Informer* and its editor to pay 150,000 RSD in damages to KRIK editor Stevan Dojčinović.<sup>151</sup>

In early January 2018, RTV *Vojvodina* acted in compliance with the 2017 Novi Sad Appellate Court judgment ordering it to reinstate former Programme Director Slobodan Arežina, whom it illegally sacked in May 2016.<sup>152</sup> Although it issued a ruling reinstating Arežina, it did not relieve of duty Sonja Kokotović Zečević, whom it had appointed in his stead in 2017. RTV *Vojvodina* still had two Programme Directors, one legal and one illegal, until the end of the year.<sup>153</sup> In early December, the Novi Sad Appellate Court upheld the judgment of the Basic Court on Arežina's reinstatement and ordered he start working within five days.<sup>154</sup> Arežina resigned in late December from the office of Director.<sup>155</sup>

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146 More in the 2016 Report, I.5.2.9.

147 See more in the *Peščanik* report, available at: <https://pecsanik.net/how-to-contribute-to-the-public-debate/>.

148 See the *Insajder* report, available in Serbian at: <https://insajder.net/sr/sajt/vazno/12505/>.

149 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/sud-doneo-presududa-informer-treba-da-plati-djilas-100-000/>.

150 See the *Balkan Insight* report, available at: <http://www.balkaninsight.com/en/article/birn-editor-wins-lawsuit-against-pro-govt-tabloid-04-13-2018>.

151 See the *Krik* report, available at: <https://www.krik.rs/en/tabloid-informer-fined-untruths-kriks-chief-editor/>.

152 More in the 2017 Report, III.5.6.

153 See the *N1* report, available in Serbian at: <http://rs.n1info.com/Vesti/a443501/Arezina-zatrrazio-primopredaju-duznosti-na-RTV-direktorka-na-sluzbenom-putu.html>.

154 See: <http://rs.n1info.com/Vesti/a443501/Arezina-zatrrazio-primopredaju-duznosti-na-RTV-direktorka-na-sluzbenom-putu.html>.

155 See the *Radio 021* report, available in Serbian at: <https://www.021.rs/story/Novi-Sad/Vesti/204334/Arezina-podne-ostavku-na-mesto-direktora-programa-RTV-a.html>.

## 2.8. *Unethical Conduct by Media and Journalists*

The number of grave violations of the Press Code of Conduct and ethical norms continued increasing in 2018. Tabloids, as a rule those supporting and respecting the government, first and foremost did not respect the truth. They published threats, speculations, unconfirmed allegations, slander and confidential data in police and health records. They disrespected privacy, the presumption of innocence and other civil rights. Their preference for anonymous sources was corroborated by a survey showing that over one-third of media reports on the EU, US and Russia in Serbia did not quote the sources of the stories and lacked impartiality.<sup>156</sup>

The Press Council registered thousands of texts in violation of the Code of Conduct, mostly by tabloids and the most popular portals in Serbia, said the Council Secretary General Gordana Novaković. Estimates are that between 20 and 25 such breaches occur on a daily basis.<sup>157</sup>

Protests against biased reporting by the RTS were staged in February 2018. During a live broadcast of French President Macron's speech on the occasion of the centenary of the First World War Armistice, RTS inserted, three times, a freeze frame depicting President Vučić among the public. Although this kind of intervention is quite unusual in live streaming, RTS said that "editor in charge made an error of judgment".<sup>158</sup>

## 3. Independent Regulatory Authorities – Independent or Not?<sup>159</sup>

Assessments of the work of various independent regulatory authorities in 2018 were based on their contribution to the advancement and active protection of human rights, and public perceptions of their ability to facilitate the full exercise of those rights. The impression remained that the government was disinclined to strengthen the independent authorities and, in cooperation with civil society, appoint prominent human rights defenders to head these institutions and that it mis-

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156 See the CRTA report, available in Serbian at: <http://crt.rs/trecina-medijskih-objava-u-srbiji-o-eu-sad-i-rusiji-bez-navedenog-izvora/>.

157 See the NDNV press release, available in Serbian at: <http://www.ndnv.org/2018/06/22/savet-za-stampu-novinarski-kodeks-najcesce-krse-tabolidi-i-portali/>.

158 See more at: <https://www.balcanicaucaso.org/eng/Areas/Serbia/Serbia-Hitler-caricature-artist-and-media-freedom-191270>.

159 This section analyses only the status of the authorities, the work of which is directly related to the respect for human rights in the Republic of Serbia. It will provide an overview of only some of the many activities of the independent regulatory authorities, while detailed descriptions of their work and the recommendations they issue to the public authorities are provided in the annual reports they submit to the National Assembly every March and publish on their websites.

interpreted their oversight roles. The appointment of the new Protector of Citizens in 2017 is an example corroborating such an impression – the government ignored the opinion of over 90 CSOs, which had nominated a candidate with long-standing experience in the Office of the Protector of Citizens.<sup>160</sup>

An analysis of the authorities' reactions to the activities of independent institutions protecting human rights leads to the impression that the representatives of the ruling majority still do not understand that these authorities are not the representatives of the opposition, but mechanisms overseeing their work. This misunderstanding of the independent regulatory authorities' role has often resulted in problems they have faced in their endeavours to ensure the full exercise and protection of civil rights.

### *3.1. Commissioner for Information of Public Importance and Personal Data Protection*

The Commissioner for Information of Public Importance and Personal Data Protection (Commissioner) is an independent regulatory authority exercising his remit in accordance with the Free Access to Information of Public Importance Act (FAIPIA)<sup>161</sup> and the Personal Data Protection Act (PDPA).<sup>162</sup> Rodoljub Šabić was first elected Commissioner in 2004 and re-elected to a seven-year term in office in 2011. His term in office expired in 2018.

Under the FAIPIA, the Commissioner is, inter alia, charged with monitoring the state authorities' fulfilment of the obligations set out in that law and reporting to the public and the National Assembly thereof, initiating the adoption or amendment of regulations to ensure the implementation and improvement of the right of access to information of public importance, proposing measures to state authorities with a view to improving their work, and reviewing complaints against the state authorities' decisions violating the rights governed by this law. Under the PDPA, the Commissioner shall oversee the implementation of personal data protection, rule on complaints, keep the Central Register of personal data filing systems, monitor and permit the transfer of personal data outside the Republic of Serbia, alert to abuse during personal data collection, render opinions on the establishment of new data filing systems and introduction of new data processing IT, monitor the enforcement of data protection measures and propose improvements of such measures, render opinions on whether proposed data processing methods constitute specific risks to civil rights and freedoms, et al.

Like in the past, the Commissioner's activities were often misconstrued in the reporting period, as corroborated by the number of complaints filed against him and

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160 More on the appointment of the Protector of Citizens in the *2017 Report*, III.4.1.

161 *Sl. glasnik RS*, 120/04, 54/07, 104/09 and 36/10.

162 *Sl. glasnik RS*, 97/08, 104/09 – other law, 68/12 – CC Decision and 107/12.

the media attacks and attempts to discredit his work. This institution preserved its attribute of independence in 2018 despite numerous challenges. The Commissioner diligently performed his duties prescribed by law in the interest of the citizens' rights, as evidenced by their trust in this institution. However, the number of cases filed with the Commissioner was still very high. The Office statistics showed that, by the end of October 2018, it had reviewed 70,639 cases and that 3,539 cases were pending. The Commissioner's activities met with the misunderstanding of the state authorities and the ruling majority, which groundlessly accused him of "politicking".<sup>163</sup>

In his latest Annual Report,<sup>164</sup> the Commissioner qualified 2017 as the most difficult year since the institution was established thirteen years earlier. In 2018, he was subject to even greater pressures. The failure of the National Assembly to review his Annual Report for the preceding year in plenum for the fourth consecutive year and of the Assembly Culture and Information Committee to review it for the second year running demonstrates not only that the legislature has been violating its legal obligations, but that it still has not grasped the purpose of the institution as well.

The Commissioner's Office was discriminated against at the very beginning of the year, when the Ministry of Finance did not approve its draft staffing plan but approved those of all other independent regulatory authorities.<sup>165</sup> The Ministry had approved the 2018 draft staffing plan of the Protector of Citizens for all the envisaged staff although, despite numerous warnings, the funds allocated in the budget did not suffice to cover the salaries of the staff already working in the Protector's Office.<sup>166</sup>

The National Assembly Administrative Committee in May 2018 approved the proposed plan on the maximum number of staff in the Commissioner's Office although the funds earmarked in the budget for that purpose were insufficient to cover the salaries of the existing staff.<sup>167</sup>

Insults and groundless accusations aiming to discredit the Commissioner were voiced both by the representatives of the ruling coalition, mostly its deputies in the National Assembly,<sup>168</sup> and the pro-regime media. The tabloid *Informer*, for

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163 See the interview the Commissioner gave to the daily *Blic* on 2 May 2018, available in Serbian at: <https://www.blic.rs/vesti/politika/intervju-rodoljub-sabic-zadovoljan-sam-poslom-koji-sam-uradio-kao-poverenik/zf0lvh3>.

164 The Commissioner's 2017 Annual Report is available at: <https://www.poverenik.rs/en/o-nama/annual-reports/>.

165 See more in Serbian at: <https://goo.gl/abHvx9>.

166 The Commissioner wrote to the then Finance Minister Dušan Vujović, asking for an explanation why his Office was being discriminated against and denied even funding for the staff it employed, which brought into question the survival of the institution and was contrary to the proclaimed commitment to building the Office capacity.

167 Under the staffing plan, the Commissioner's Office is to have 94 members of staff, whereas the approved funding did not suffice to pay the wages of its 77 members of staff. More in the B92 report, available in Serbian at: <https://goo.gl/2zZWFN>.

168 See the Commissioner's reply to MP Martinović's question in Serbian at: <https://goo.gl/QMb1ox> and *Cenzolovka's* report in Serbian at: <https://www.cenzolovka.rs/drzava-i-mediji/martinovic-lagao-da-je-sabic-nenamenski-trosio-novac/>.



instance, ran an article quoting allegations by the NGO Monitoring, Human Rights and Anti-Corruption Council–Transparency<sup>169</sup> that the Commissioner had embezzled 15 million RSD from the state budget and disregarded its request for access to information on the issue.<sup>170</sup> The claims were broadcast on the public service broadcaster, RTS, which did not ask the Commissioner to comment the accusations, although the Commissioner had replied to the Council's request within the statutory 15-day deadline.<sup>171</sup> This NGO is headed by a Mario Spasić, who is the chief coordinator of a government anti-corruption body in the health sector, on which Health Minister Zlatibor Lončar also sits.<sup>172</sup> Offensive reports against the Commissioner voicing grave accusations against him were frequently published by the pro-regime media in 2018.<sup>173</sup>

The Commissioner encountered difficulties in performing his duties regarding both free access to information of public importance and personal data protection. To illustrate, it was with considerable delay, in June 2018, that he received his third security certificate allowing him to access and use information classified as “top secret” since the Classified Information Act<sup>174</sup> entered into force, wherefore he had not fulfilled one of the formal requirements requisite for performing one of his roles.

No explanation was publicly given of why it took the Security Intelligence Agency so long to perform the security check, one of the most rigorous ones laid down in the Classified Information Act, after the validity of the Commissioner's prior certificate expired. While experts criticised the Agency's behaviour as unjustified, some pro-regime tabloids waged a defamatory campaign against the Commissioner, claiming he had not been issued the security certificate for reasons laid down in the law.<sup>175</sup>

A multimedia exhibition marking the 14<sup>th</sup> anniversary since the institution of the Commissioner was founded and the 10<sup>th</sup> anniversary since the first Personal Data Protection Act was adopted opened in the National Library of Serbia in May 2018.<sup>176</sup> The work of the Commissioner and his team was praised by the Head of the OSCE Mission to Serbia Ambassador Andrea Orizio and Head of the Delegation of the European Union to Serbia Ambassador Sem Fabrizi on this occasion.

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169 More about this organisation in the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/vladin-sluzbenik-preko-svoje-nvo-napada-poverenika/>.

170 See the *Informer* report, available in Serbian at: <http://informer.rs/vesti/politika/387915/sumnji-vo-savet-monitoring-tvrdi-poverenik-informacije-sabic-proneverio-cak-15-000-000-budzeta>.

171 See the Commissioner's press release, available in Serbian at: <https://goo.gl/afa8SL>.

172 See the *Istinomer* report, available in Serbian at: <https://vesti.istinomer.rs/vesti/2018/07/05/sabic-jos-jedan-jeftin-pokusaj-dezinformisanja-javnosti/>.

173 See the *Informer* report, available in Serbian at: <http://informer.rs/vesti/politika/393789/sabic-brani-siptare-pale-sve-maske-poverenik-otkrio-koga-radi>.

174 *Sl. glasnik RS*, 104/09.

175 See the Commissioner's press release, available in Serbian at: <https://goo.gl/qUrPpj>.

176 See the *RTS* report, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/drustvo/3152725/izlozba-povodom-14-godina-od-osnivanja-insititucije-poverenika-za-informacije.html>.

Their view was, unfortunately, apparently not shared by the Serbian authorities, which took a number of steps in the attempt to render the Commissioner's work meaningless. Šabić's second term in office expired on 22 December 2018 and he could not run for it again.

The process of electing the new Commissioner was not initiated by the end of 2018. CSOs filed an initiative with the Assembly Culture and Information Committee on the implementation of a competitive election process, which the stakeholders could participate in and monitor. In their open letter, they suggested the requirements the candidates needed to fulfil and how to verify their submissions, including, notably, integrity prerequisite for overseeing and supervising the work of other state authorities; non-affiliation with any political parties; proof that they had not violated any laws; proof of their familiarity with democratic standards; and, relevant expertise and experience in personal data protection and access to information of public importance.<sup>177</sup> However, at its session on 26 November 2018, the Committee refused to review the initiative calling for the urgent initiation of a transparent process for the election of the new Commissioner, which was signed by 70 CSOs, media, businessmen, experts and academia. The proposal to include the initiative in the agenda was supported by five Committee members, while the remaining eight did not vote on it.

There were fears that the ruling coalition would politicise this independent regulatory authority, as it has some other independent institutions, by electing its yes-man to head the Office of Commissioner.

### 3.1.1. Violations of the Right to Personal Data Protection

The new Personal Data Protection Act was adopted in November 2018.<sup>178</sup> The following text will outline the effects of implementation of its predecessor<sup>179</sup> which was in force practically the entire year. The prior PDPA governed the collection and processing of personal data, the rights of the data subjects and the protection of their rights, restrictions of personal data protection, the procedure before the Personal Data Protection Commissioner, safety of personal data and records, transfer of personal data to other countries and oversight of the enforcement of that law.

Not much was done in the field of personal data protection since the adoption of the prior PDPA ten years ago. The Commissioner is in charge of overseeing and protecting the right to personal data protection. The authorities' attitude towards personal data protection is reflected by their failure to adopt the Action Plan for the Implementation of the Personal Data Protection Strategy, which was adopted

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177 See the CSOs' open letter, available in Serbian at: <http://crta.rs/wp-content/uploads/2018/11/Otvoreno-pismo-Odboru-za-kulturu-i-informisanje-Narodne-skups%CC%8Ctine-Republike-Srbije.pdf>.

178 More on the drafting of the new Act and its provisions in Chapter II.5.

179 *Sl. glasnik RS*, 97/08, 104/09, 68/12 – CC Decision and 107/12.

back in 2010 at the Commissioner's initiative. In his 2017 Annual Report,<sup>180</sup> the Commissioner described the situation in this field as alarming. He said that the inadequate legal framework was the main obstacle to ensuring adequate personal data protection. He also noted the need to draft a new strategy and action plan govern this field systemically.

Violations of the right to personal data protection were frequent. The existing protection mechanisms are inefficient and the state's response inadequate.

With a view to improving the situation in practice, the Commissioner issued guidance to data controllers on how to use the data without violating the data subjects' right to personal data protection, in order to strengthen cooperation with other state institutions. In January 2018, he met with the Chairman of the Management Board and Director of the national Pension and Disability Insurance Fund (PDIF) to discuss the Fund's intention to start issuing retirees 'pensioner cards' which they can produce to prove their status.<sup>181</sup> The Commissioner qualified the initiative as useful because the 'pensioner card' would include minimum personal data sufficient to prove that their holders had the status of retiree.<sup>182</sup> The introduction of such cards would obviate the need for local self-governments to issue their own forms of personalised documents, resulting in unlawful personal data processing in practice, putting personal data at unnecessary risk of abuse, obtaining data from unreliable sources, causing the feeling of discrimination because they are issued only by individual local communities et al, which was the case with the so-called Belgrade 'Senior Citizens' Cards'.<sup>183</sup>

As regards the 'Senior Citizens' Card' case, the Belgrade City authorities<sup>184</sup> sent a letter to the Commissioner, notifying him that they would act in accordance with his Warning about the irregularities in processing personal data within this activity.<sup>185</sup>

In May 2018, the Ministry of Health launched a mobile application "My Doctor", allowing citizens to schedule an appointment with their GPs, dentists and gynaecologists. The Commissioner called on the citizens to beware of the various risks of using the application. One of the problems regarded ownership of the application. The company managing it appeared under two names at two different addresses in Niš: Sorsix International and Sorsix Internacional; only the former was registered

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180 Available at: <https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2017/EN2017Godisnjilzvestaj.pdf>.

181 More is available in Serbian at: <https://goo.gl/5qSGnS>.

182 The 'pensioner cards' are to include the retirees' first and last names, the name of the PDIF branch office and card number.

183 More in the *2017 Report*, II.6.3.

184 More is available in the Commissioner's press release, available in Serbian at: <https://goo.gl/Gpg-PVE>.

185 The Commissioner recalled that the Belgrade City authorities had claimed that their actions were in compliance with the law and insulted him when he initiated oversight in response to their illegal processing of personal data in the 'Senior Citizens' Card' case. More in the *2017 Report*, III.4.2.

with the Serbian Business Registers Agency. Furthermore, the “privacy policy” section of the application said the contract was being concluded between the user and a company by the name of “Izabrani Doktor App d.o.o.,” which was not registered with the Serbian Business Registers Agency.<sup>186</sup> Although the Health Ministry promoted the application solely as a tool for scheduling appointments, the “privacy policy” allowed the company charged with data processing and its agents to use the citizens’ data (first and last names, personal health insurance numbers, IP addresses, server domains, types of device via which they accessed the application, e-mails, text messages, calendars, locations, network data, insurance data, et al), for direct marketing and profiling.<sup>187</sup> The application’s terms and conditions and privacy policy were removed as soon as the Commissioner launched the oversight procedure, wherefore the terms under which the data are used remain unclear.<sup>188</sup> The Commissioner issued a ruling prohibiting Niš-based Sorsix International from processing personal data obtained via the application and forwarded the documentation to the Higher Public Prosecution Service, requesting it investigate whether the company had violated Article 146 of the Criminal Code, which prohibits unauthorised collection of personal data.<sup>189</sup>

The Commissioner in 2018 launched an inspection of the Ministry of Labour, Employment and Veteran and Social Issues and a Belgrade entrepreneur registered under the name “Softverski inženjering PC COM” and subsequently against the Kraljevo and Zrenjanin Social Work Centres, the Niš Social Work Centre Sveti Sava and the Pančevo Solidarnost Social Work Centre, and their directors and the entrepreneur who produced a manual for the use of the software for the SWCs. The listed SWCs had made available particularly sensitive personal data of their beneficiaries (data on abuse victims, the beneficiaries’ ethnic origin, sex, state of health and welfare allowances) to the entrepreneur without the data subjects’ consent. The entrepreneur used the data during the development of the manual and published them in the manual on his website, thus making them available to an unlimited number of unauthorised individuals (Internet users).<sup>190</sup>

The Commissioner also launched an inspection after the ID photo of a young man from Belgrade was posted on social media with the caption “this is the opposition’s fool” and suspicions that his data originated directly from the database of the Serbian Ministry of Internal Affairs. The case was reported to the Ministry, which said it was being investigated by the Ministry Department Overseeing the Lawfulness of the Operations of the Belgrade City Police, which would submit its report to

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186 See the Commissioner’s press release, available in Serbian at: <https://www.poverenik.rs/sr-yu/saopstenja/>.

187 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a394173/Vesti/Poverenik-zabranio-niskoj-firmi-obradu-podataka-s-aplikacije-Izabrani-lekar.html>.

188 See the Commissioner’s press release, available in Serbian at: <https://www.poverenik.rs/sr-yu/saopstenja/>.

189 *Ibid.*

190 See the Commissioner’s press release, available in Serbian at: <https://goo.gl/v2EZwt>.

the relevant prosecution service once it established the facts. The young man, whose confidential data were “leaked” to the public, said that this was not the first time he was the target of cyber attacks, which he ascribed to the fact that he had been alerting on the social media to the deficiencies in the work of the local and central authorities.<sup>191</sup>

The Army Trade Union of Serbia asked the Commissioner to render his opinion on the order the Minister of Defence issued to Army and MoD staff to sign statements of consent to the temporary seizure of their private cell phones, i.e. the processing of data in their private telephones. The Commissioner issued a ruling<sup>192</sup> prohibiting the MoD, as a personal data controller, of processing personal data in temporarily seized telephones pursuant to the statements of consent, i.e. without a court order. The Ministry complied with the ruling and issued a circular to all MoD and Army units ordering them to stop collecting statements of consent and destroy the ones they had already collected.<sup>193</sup>

### 3.2. Commissioner for the Protection of Equality

The Commissioner for the Protection of Equality was established pursuant to the Anti-Discrimination Act<sup>194</sup> to oversee the enforcement of anti-discrimination law, prevent all forms of discrimination and improve the realisation and protection of equality, receive and review complaints alleging violations of the Act and provide information to the complainants. The Commissioner, who is elected to a five-year term in office, is also authorised to file lawsuits and misdemeanour and criminal reports, with the complainants’ consent. The Commissioner may also issue recommendations and opinions on specific cases of discrimination, impose measures prescribed by law and alert the public to grave cases of discrimination, as well as monitor the enforcement of the law and other regulations within his remit. The Commissioner is also authorised to initiate the adoption or amendments of regulations and issue opinions on preliminary drafts of laws and other regulations related to the prohibition of discrimination, as well as recommend measures ensuring equality to the state authorities and others.

The National Assembly elected Brankica Janković Commissioner for the Protection of Equality in May 2015.

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191 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a433081/Vesti/Na-Tviteru-fotografija-mladica-iz-baze-MUP-a.html>.

192 Ruling No. 072-04-1742/2018-07 of 17 May 2018, available in Serbian at: <https://www.poverenik.rs/sr-yu/saopstenja/2856-повереник-забрањено-министарству-одбране-да-без-одлуке-суда-обрађује-податке-из-приватних-инфо-телекомуникационих-средстава>.

193 See the Commissioner’s press release, available in Serbian at: <https://www.poverenik.rs/sr-yu/saopstenja/2870-министарство-одбране-поступило-по-решењу-повереника-којим-се-забрањује-обрада-података-у-приватним-информационо-телекомуникационим-средствима-без-судског-налога1>.

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

The Commissioner for the Protection of Equality held that Serbia's citizens were increasingly aware of and recognised discrimination, as corroborated by the fact that the number of complaints she received in 2018 was 20% higher than in 2017.<sup>195</sup> Most of the applicants complained of discrimination on grounds of disability, usually of the physical barriers preventing persons with disabilities from using specific public services or accessing public buildings. Complaints of discrimination on grounds of age, sex, health, nation affiliation and ethnic origin came next; traditionally, most alleged discrimination against Roma.

Most of the complaints regarded work and recruitment, procedures before public authorities, provision of public services and access to public areas and facilities and private relationships.

As per fields in which discrimination occurred, discrimination in recruitment and at work still topped the list – nearly one out of three complaints regarded this field. Next came procedures before public authorities – 20% of all the complaints, and provision of public services and access to public areas and facilities.

In 2018, the Commissioner for the Protection of Equality publicly reacted to a number of grave violations of the right to equal treatment and discrimination and on several occasions recommended measures ensuring equality to public authorities. In September, for instance, she recommended measures to health institutions after the complaints she had reviewed led her to conclude that some health institutions' decisions on which parent would accompany the child during treatment were based on stereotypes and prejudices on the fathers' and mothers' roles in their children's lives.<sup>196</sup> After reviewing a complaint against General Hospital Dr Laza Lazarević in Šabac alleging discrimination against Roma, she found the Hospital in breach of the Anti-Discrimination Act. The complainant claimed he had applied for jobs at the Hospital on a number of occasions, that he had submitted the requisite documentation and fulfilled the requirements, but that he was never hired because he was a Roma. The Commissioner issued a press release that the Šabac Hospital had not acted on her recommendation within the statutory deadline.<sup>197</sup>

The Commissioner for the Protection of Equality in June recommended measures to ensure equality on grounds of disability in the field of service provision to the City of Kragujevac and the Vuk Karadžić Library in that city, because the elevator was "blocked" and did not stop on the 1<sup>st</sup> floor, wherefore persons with disabilities did not have access to the library on that floor.<sup>198</sup>

The Commissioner for the Protection of Equality issued recommendations to the Ministry of Finance on the same grounds that same month. Namely, the company

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195 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a427965/Vesti/Brankica-Jankovic-na-TV-N1-o-diskriminaciji.html>.

196 See more at: <http://ravnopravnost.gov.rs/en/recommendation-on-measures-for-achieving-equality-2/>.

197 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a366858/Bg-Izbori/Poverenica-Bolnica-diskriminisa-kandidata-jer-je-Rom.html>.

198 See more at: <http://ravnopravnost.gov.rs/en/no-021-01-8-2018-02-date-5-april-2018/>.

for vocational rehabilitation and employment of persons with disabilities Goša Solko Ltd. in late 2017 asked the Commissioner to review the enforcement of Article 21 of the Personal Income Tax Act, given that it resulted in unequal treatment of persons employed in companies like Goša Solko, depending on whether or not they were persons with disabilities, of persons working in different companies for vocational rehabilitation and employment of persons with disabilities, and of persons with disabilities employed in such companies and those not employed in such companies.<sup>199</sup>

In September 2018, the Commissioner for the Protection of Equality recommended measures to ensure equality to city and municipal administrations after she identified during her reviews of complaints that some of these administrations did not grant parental allowance to fathers of children whose mothers were foreign nationals, although the fathers fulfilled all the requirements under the Act on Financial Support for Families with Children. The Commissioner concluded that such treatment unjustifiably placed families, in which the mothers were foreign nationals, at a disadvantage vis-à-vis families in which the mothers were Serbian nationals and the fathers were either Serbian or foreign nationals, which was in contravention of the Anti-Discrimination Act.<sup>200</sup>

The Commissioner also issued recommendations to Internet portals registered in the Media Register kept by the Business Registers Agency. She had noticed that some of them published content and comments of users that might incite hate or violence against individuals or groups of individuals because of their personal characteristics, or cause fear or a hostile, humiliating and offensive environment.<sup>201</sup>

In her opinion on a complaint filed by LGBT organisations, the Commissioner for the Protection of Equality found that Minister without Portfolio charged with innovations and technological development Nenad Popović had violated the Anti-Discrimination Act and discriminated against the LGBT population. The Minister had tweeted the following comment to a news report titled “Roko has two Moms, Ana has two Dads: First Gay Picture Book Flooding the Region; to be published in Serbia”: “They’re importing gay picture-books at a time when our state is doing its utmost to support childbirth. Put an end to it immediately! We have to stop those trying to persuade us it’s OK that ROKO HAS TWO MOMS AND ANA HAS TWO DADS!” The Minister did not act on the Commissioner’s recommendation to apologise to the LGBT population. Quite the contrary, he said he had not violated the law or insulted anyone and that he firmly stood by his beliefs, and that the Commissioner had symptomatically issued her recommendations after “four months of sleep”, on the eve of the Belgrade Pride Parade scheduled for 16 September, at which the legalisation of same sex marriages was one of the main demands.<sup>202</sup> The Commission-

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199 See more at: <http://ravnopravnost.gov.rs/en/no-011-00-68-2017-03-of-08-june-2018/>.

200 See more at: <http://ravnopravnost.gov.rs/en/recommendation-on-measures-for-achieving-equality/>.

201 See more at: <http://ravnopravnost.gov.rs/en/recommendation-on-measures-for-the-achievement-of-equality/>.

202 See the *N1* report, available in Serbian at: <http://rs.n1info.com/a414791/Vesti/Popovic-Necu-se-izviniti-LGBT-zajednici-ne-krsim-zakone.html>.

er reminded the Minister that the law was clear and applied equally to all Serbia's citizens, including the Minister.<sup>203</sup> The Gay Lesbian Info Centre (GLIC) referred to the Commissioner's recommendation and called on Serbian Prime Minister Ana Brnabić to put pressure on the Minister to apologise to the LGBT population for his discriminatory tweet within the statutory deadline.

Red Star Football Club Director Zvezdan Terzić was another official who did not act on the Commissioner's recommendation within the statutory deadline in 2018. After reviewing a complaint filed by the Belgrade-based Regional Info Centre, the Commissioner found that Terzić had a say on who would be hired, alluding to his statement that he "would not hire a homosexual player" to play for the Red Star team, whereby he directly violated the Anti-Discrimination Act.<sup>204</sup>

Professor Branislav Ristivojević was convicted by the Novi Sad Higher Court for hate speech against the LGBT community in July 2018, several months before he was appointed Dean of the Novi Sad Law School. The Higher Court convicted Ristivojević after the Commissioner for the Protection of Equality sued him in November 2017, in response to a complaint the civic association *Da se zna!* filed against him<sup>205</sup> for publishing a homophobic text<sup>206</sup> on the website of the *New Serbian Political Thought*, in which he accused the Pride Parade and the so-called homosexual lobby for the increase in domestic violence. The Professor, an influential public figure, was found to have committed multiple discrimination against particularly vulnerable groups, both women and the LGBT community. Ristivojević appealed the Higher Court judgment and described the proceedings as a campaign against the freedom of thought in Serbia, specifying that "the Commissioner for the Protection of Equality wants to silence the last sources of free thought in Serbia (the academia) by attempting to monopolise the market of ideas in Serbia."<sup>207</sup>

Pursuant to her remit under the law, the Commissioner for the Protection of Equality in 2018 issued a number of opinions on draft laws and amendments and filed initiatives for the review of the constitutionality and legality of individual laws, as well as initiatives to improve the public administration's standards of conduct, et al.

Domestic violence, violence against women, as well as media disclosures of information about the victims and their private lives and violations of their dignity remained outstanding problems the Commissioner continued alerting to in 2018. She emphasised that although domestic and partner violence were major social and

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203 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a415088/Vesti/Poverenica-Zakon-je-isti-za-sve-pa-i-za-ministra-Popovica.html>.

204 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a406564/Vesti/Mera-Poverenice-protiv-Terzica-zbog-sporne-izjave.html>.

205 See the *Peščanik* report, available in Serbian at: <https://pecanik.net/novi-dekan-i-govor-mrznje/>.

206 The text is available in Serbian at: <http://www.nspm.rs/kuda-ide-srbija/nasilje-u-porodici-i-nasilje-nad-porodicom.html?alphabet=l>.

207 See the *Pečat* report, available in Serbian at: <http://www.pecat.co.rs/2018/03/branislav-ristivojevic-kad-radikalne-feministkinje-marsiraju/>.



political issues, they should not lead to abuse of information about the victims and their private lives. She said that media that disclosed such information were also violating the Press Code of Conduct and appealed to them to comply with professional and ethical standards in their reports on domestic and partner violence, which included respect for the privacy and dignity of the victims, their children and families, whether or not they were public figures or private individuals.<sup>208</sup>

The Commissioner alerted to discrimination against women in 2018. At the conference “Women in Media”, she said it was difficult to answer the question whether the prevailing image of women in the media was the consequence or the cause of discrimination, that objectification of women predominated, that the image of women was simplified, that focus was put on their motherhood role and that those women who did not fulfil it were condemned. Alluding to statements on the status of women by public figures and officials quoted by the media, the Commissioner held that many of those things had been unintentional, but that this could not justify inappropriate, sexist and misogynous actions and words. The way media portrait women cannot be changed overnight, but the process would be faster if inappropriate reporting were adequately condemned with a view to precluding discrimination, she said.

In October 2018, Raiffeisen Bank notified the Commissioner for the Protection of Equality it would process loans for civic associations, after the Commissioner ruled on a complaint by the Journalists’ Association of Serbia (JAS) and issued a binding opinion in May, finding the Bank had discriminated against civic associations. To recall, the Commissioner had found Raiffeisen Bank had discriminated against this civic association and ordered it to take all the requisite measures to enable civic associations to avail themselves of its services on an equal footing with other natural and legal persons.<sup>209</sup>

The Commissioner for the Protection of Equality established an Annual Award for Cities/Municipalities of Equal Opportunities with a view to promoting and strengthening equality in all walks of life and creating better and fairer living conditions in the local communities for all the citizens.<sup>210</sup>

The Commissioner has been organising conferences every International Day for Tolerance with a view to promoting the ideas of equality and tolerance. On 16 November 2018, she awarded the fourth Annual Media Prize for best media reports on the fight against discrimination and promotion of equality and tolerance.<sup>211</sup>

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208 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a380231/Vesti/Poverenica-Nedopustivo-izvestavanje-o-nasilju-nad-Bekvalac.html>.

209 See the *Cenzolovka* report, available in Serbian at: <https://www.cenzolovka.rs/trziste/rajfajzen-banka-priznala-da-je-diskriminisala-udruzenja-gradjana/>.

210 See more at: <http://ravnopravnost.gov.rs/en/awards-to-municipality-city-of-equal-opportunities/>.

211 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a436438/Vesti/Poverenica-Diskriminacija-rec-koja-se-odmacila-u-Srbiji.html>.

### 3.3. *Anti-Corruption Agency*

The Anti-Corruption Agency is an autonomous and independent state authority established under the Anti-Corruption Agency Act (ACA)<sup>212</sup> to monitor the implementation of the National Anti-Corruption Strategy<sup>213</sup> and its Action Plan,<sup>214</sup> issue recommendations and opinions on the enforcement of ACA and institute procedures and impose measures against those who violate this law.

In the 2005–2014 period, Serbia changed some of its anti-corruption regulations as recommended by the Group of States against Corruption (GRECO), a Council of Europe mechanism. However, Serbia did not fulfil GRECO's recommendations issued after its fourth evaluation round,<sup>215</sup> including, inter alia, those regarding the Anti-Corruption Agency, to this day let alone by 31 December 2016, the deadline set by GRECO. One of GRECO's recommendations is to further strengthen the role of the Anti-Corruption Agency in the prevention of corruption and in the prevention and resolution of conflicts of interest with respect to publish officials by taking appropriate measures to ensure an adequate degree of independence and by providing adequate financial and personnel resources and by extending the Agency's competences and rights.<sup>216</sup>

The ACA's work has never been sufficiently visible in the public. Nor has it been very effective in the fight against corruption. The general impression is that its recommendations and opinions are not complied with. One of the reasons for the situation lies in the delay in the adoption of a new anti-corruption law to replace the valid Act and facilitate the Agency's fulfilment of its role.

Another, just as important reason, is that the appointment of the Agency Director and bodies is largely politicised. Under the Anti-Corruption Agency Act, the Agency bodies comprise the Director and a nine-member Committee. The Director is appointed by the Committee, the members of which are elected by the National Assembly. The procedure for appointing the new ACA Director was launched in November 2017 and ended in mid-January, with the appointment of Dragan Sikimić, the Deputy Director of the National Employment Service at the time. The new Committee Chairwoman Danica Marinković and her Deputy Miloš Stanković were unanimously voted in at the same session. Sikimić's appointment raised quite a few

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212 *Sl. glasnik RS*, 97/08, 53/10, 66/11 – CC Decision, 67/13 – CC Decision, 112/13 and 8/15 – CC Decision.

213 *Sl. glasnik RS*, 57/13. The 2013–2018 National Anti-Corruption Strategy is available at: <http://mpravde.gov.rs/tekst/38/protiv-korupcije.php>.

214 The Action Plan is available in Serbian at: [http://www.acas.rs/wp-content/uploads/2010/06/Akcioni\\_plan\\_za\\_sprovođenje\\_Strategije.pdf](http://www.acas.rs/wp-content/uploads/2010/06/Akcioni_plan_za_sprovođenje_Strategije.pdf).

215 See: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca35d>.

216 E.g., the right to immediate access to data from other public bodies, the right to act upon anonymous complaints and on its own initiative, and the right to file criminal charges, request misdemeanour proceedings and launch initiatives for disciplinary proceedings.

eyebrows; the media published a number of reports tying him to the ruling Serbian Progressive Party (SNS), although Article 16(12) of the Anti-Corruption Agency Act explicitly lays down that the Agency Director may not be a member of any political party. The media also said Sikimić was a member of the Republican Election Commission (REC) Zemun Municipality Working Body at the previous presidential elections<sup>217</sup> and had been nominated to sit on it by the SNS.<sup>218</sup> Sikimić was also listed as an SNS election campaign donor, and reports that he had donated 40,000 RSD, and that had run on SNS' ticket and was elected SNS councillor in the Zemun Municipal Assembly were confirmed.<sup>219</sup>

The Agency responded by stating that the new Director fulfilled all the eligibility criteria and gave its interpretation of the provision prohibiting party membership, saying that the fulfilment of this requirement could only be assessed on the basis of the situation at the time of application. The Agency said that any prior membership of a political party was not a legally relevant fact impacting on the appointment of an individual to the office of Agency Director and that the Agency would have exceeded its statutory powers had it reviewed that issue.<sup>220</sup>

Transparency Serbia said that Sikimić's appointment brought into question the Agency's impartiality in the process of overseeing the funding of the campaigns for the presidential elections called several months later. That is why it suggested that the new law lay down that individuals, who ran in elections on any party ticket or were members of election committees or bodies nominated by political parties in the previous four years, shall be ineligible for the office of Agency Director or Committee member. This is a logical request given that the Agency directly rules on the interests of political entities and public officials, many of which are political. A large share of the Agency's work would be blocked if the Agency Director were found in conflict of interest when deciding on issues regarding a political party or its officials because of his prior engagement on the proposal of that political party.<sup>221</sup> The Bureau for Social Research (BIRODI) and numerous experts and civil sector representatives called on Sikimić to resign and thus contribute to the fight against corruption in Serbia.<sup>222</sup>

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217 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a357501/Vesti/Vesti/Novi-direktor-Agencije-bio-u-RIK-u-na-predlog-SNS-a.html>.

218 As corroborated by the REC Decision adopted at its 22<sup>nd</sup> session on 15 March 2017, at which it established 161 Working Bodies to assist with the organisation of the presidential elections called for 2 April 2017.

219 See the *KRIK* report, available in Serbian at: <https://www.krik.rs/sumnja-na-veze-novog-direktora-agencije-i-sns-a/>.

220 See the *Insajder* report, available in Serbian at: <https://goo.gl/kkrc6D>. Experts alerted to the deficiency of the valid Act: it prohibits only membership of a political party, not other forms of links with political entities.

221 See more at: <http://www.transparentnost.org.rs/index.php/en/ts-and-media/press-issues/9715-the-work-of-anti-corruption-agency-could-be-blocked>.

222 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a358775/Vesti/Vesti/BIRODI-Sikimic-da-podnese-ostavku.html>.

The Agency did not react when the daily *Danas* reported it had insight in documents clearly proving Sikimić had been an SNS member since 2010 and that he allegedly left the ruling party on 17 January 2018, the very day he was appointed ACA Director. The fact that the Agency did not explicitly refute these allegations gave rise to suspicions that the appointment of the Director of this important anti-corruption mechanism was illegal.<sup>223</sup>

The impression that the ACA was not independent was strengthened during the election of its Committee. The parliamentary Judiciary Committee submitted two candidacies to the National Assembly plenary session on 8 June 2018, one fielded by Protector of Citizens Zoran Pašalić, who nominated former Supreme Court judge Janko Lazarević, and one fielded by Commissioner Rodoljub Šabić, who nominated Vida Petrović Škero, also a former Supreme Court judge. The Committee thus ignored Article 9(1(6)) of the Anti-Corruption Agency Act, under which the Protector of Citizens and Commissioner are to jointly nominate the candidate for the Agency Committee.<sup>224</sup> The law was clearly broken given that the Protector of Citizens withdrew his consent to the joint candidate his predecessor and Šabić had nominated and put forward the name of his own candidate. The Commissioner sent a letter to Speaker Maja Gojković, alerting her to the irregularity. The Protector of Citizens saw nothing controversial in the submission of two candidacies and offered quite an unusual interpretation of the clear legal provision: he specified that the Act inferred that they consult on the nominees, which they did and agreed that they disagreed, and were thus under no obligation to nominate the same candidate.<sup>225</sup>

The status and political backgrounds of some former and current ACA officials have been surrounded by public controversies for years now. The parliamentary Administrative Committee permitted ACA Committee member Dragan Mitrović, a full professor of the Belgrade University Law School, to sit on the temporary Council of the Belgrade Business Vocational Studies Academy,<sup>226</sup> wherefore Mitrović held three offices,<sup>227</sup> which is in contravention of the Anti-Corruption Agency Act that

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223 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/sikimic-bio-clan-sns-u-vreme-izbora-na-celo-agencije/>.

224 That very Committee had for years ignored the nomination of former Supreme Court President Vida Petrović-Škero, who was jointly nominated by the previous Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection back in 2015. More in the *2017 Report*, III.4.4.2.

225 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/sukob-ombudsmana-pasalica-i-poverenika-sabica/>.

226 The Belgrade Business Vocational Studies Academy was established in August 2018 at the initiative of Education Minister Mladen Šarčević, after the wrongdoings of the Belgrade Business School were revealed. The Blace Business Vocational Studies School and the Belgrade Business School were merged and became the Academy.

227 According to Mitrović's asset declaration, he earns 76,948 RSD a month at ACA. He earns his highest income at the Law School, where he is a full professor and is paid 106,698 RSD a month

permits Council members to exceptionally hold two offices. Mitrović also chairs the Management Board of the Institute for Philosophy and Social Theory, where he allegedly receives no remuneration.<sup>228</sup>

In August 2018, the ACA Committee published the vacancy of ACA Deputy Director. Director Dragan Sikimić chose Dejan Damnjanović among the three short-listed candidates.<sup>229</sup>

### 3.3.1. Preliminary Draft of the Anti-Corruption Act

The need to improve the Anti-Corruption Agency Act was noted in the national strategic documents several years ago but nothing was done by any of the deadlines they set. Delays in amending this law led to a halt in the implementation of the Anti-Corruption Strategy and the achievement of the anti-corruption goals in the Chapter 23 Action Plan.

A working group tasked with drafting the anti-corruption law, which is to replace the valid Anti-Corruption Agency Act, was formed three years ago. The first Preliminary Draft was published in October 2016, but the legislative process was not initiated. The Preliminary Draft published by the Ministry of Justice in 2018 was qualified by the relevant expert associations as much worse and as a step backward compared to the text presented in 2016.<sup>230</sup>

Transparency Serbia described the Preliminary Draft as a slight improvement over the valid Act,<sup>231</sup> but noted it did not address many of the identified problems, such as, e.g.: separation of public and political offices, accumulation of functions, declaration of assets and valuable gifts, expansion of the Agency's competences, Agency Director and Committee appointment/election requirements, et al.<sup>232</sup> Justice Minister Nela Kuburović took the opposite view, claiming that the Preliminary Draft strengthened the Agency's powers and expanded its competences vis-à-vis the ones it has under the valid law.

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from the state budget. He also earns two more incomes, paid from the Law School's own funds: 139,263 and 60,000 RSD a month. The grounds for the latter two incomes remain unclear.

228 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/politika/clan-je-agencije-za-borbu-protiv-korupcije-vec-prima-skoro-400000-mesecno-a-sad-je/de151g9>.

229 See the *RTS* report, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/drustvo/3221935/izabran-zamenika-direktora-agencije-za-borbu-protiv-korupcije.html>.

230 See more at: <http://www.transparentnost.org.rs/index.php/en/110-english/naslovna/10161-the-draft-of-the-law-on-prevention-of-corruption-does-not-solve-the-essential-problems>.

231 More in the *Politika* report, available in Serbian at: <http://www.politika.rs/sr/clanak/407407/Os-trije-protiv-korupcije-uskoro-novi-zakon>.

232 One suggestion, which was rejected by the authors of the latest Preliminary Draft, was that the new law lay down that individuals, who ran in elections on any party ticket or were members of election committees or bodies nominated by political parties, shall be ineligible for the office of Agency Director or Committee member. See the *NI* report, available in Serbian at: <http://rs.n1info.com/a416435/Vesti/Sprecavanje-korupcije-novi-zakon-stari-problemi.html>.

### 3.3.2. ACA Activities in 2018

The Anti-Corruption Agency initiated several proceedings and issued measures against those who had violated the Anti-Corruption Agency Act in the reporting period. In August 2018, it initiated proceedings against Belgrade Mayor Zoran Radojičić, to check whether he had promptly submitted the “extraordinary report on his property and income”. i.e. whether he had promptly declared his illegally built cabin on Mt. Zlatibor. The Agency launched the proceedings when *KRIK* revealed he had built his cabin in the posh resort in the latter half of 2017. Radojičić was under the obligation to declare it by end January 2018, when he was the Director of the Belgrade Children’s Clinic Tiršova. Radojičić declared the cabin only in early July 2018, when he became Belgrade Mayor and again submitted his asset declaration.<sup>233</sup> *KRIK* also revealed that the Agency retroactively amended the information in Radojičić’s asset declaration during the election campaign, without offering any public explanation for its move.<sup>234</sup>

In February 2018, the Agency issued a measure against the brother of Igor Mirović, the Vojvodina Prime Minister and a senior SNS official – the measure involved the publication of its decision that he had violated the law. Apart from working as a member of the Vojvodina Waters Supervisory Board and as a Council of the Novi Sad College of Technical Sciences, Mirović had failed to transfer his management rights in the company he co-owns Delfin wash.<sup>235</sup>

The Agency is legally authorised to issue opinions and recommendations on the enforcement of the Anti-Corruption Agency Act to preclude the adoption of potentially corruptive provisions. The Agency had frequently exercised this important power in the previous years and issued its opinions on draft laws containing potentially corruptive provisions (so-called regulatory corruption profiling).<sup>236</sup> However, this activity petered out when the new Director took over in 2018.<sup>237</sup>

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233 See the *KRIK* report, available in Serbian at: <https://www.krik.rs/agencija-pokrenula-postupak-protiv-radojicica/>.

234 See the *KRIK* report, available in Serbian at: <https://www.krik.rs/predizborna-ciscenje-imovinskog-kartona-prvog-na-listi-sns/>.

235 Vojvodina Prime Minister and senior SNS official. The proceedings were launched back in 2017 and Igor Mirović was punished only by a warning, although the Agency found him in conflict of interest in August 2016, when he appointed his brother to sit on the Supervisory Board of the Waters of Vojvodina public company. The Agency explained in its statement of justification that it could have issued a recommendation to dismiss Mirović, but that it accepted as a mitigating circumstance the fact that Predrag Mirović had been relieved of duty before the proceedings were initiated. The Agency specified that Mirović’s brother had been relieved of duty only after an article on the case was published on the *Peščanik* website. More is available in Serbian at: <https://www.cins.rs/srpski/news/article/olaksavajuca-okolnost-samo-upozorenje-za-sukob-interesa-igora-mirovica>.

236 More is available in Serbian at: <http://www.acas.rs/praksa-agencije/analize-propisa-na-rizike-od-korupcije/>.

237 The Agency did not publish any opinions since February 2018.

### 3.4. Protector of Citizens of the Republic of Serbia

Under the Constitution and the Protector of Citizens Act,<sup>238</sup> the Protector of Citizens shall be an autonomous and independent state authority charged with protecting and improving civil rights and freedoms, minority rights and overseeing the work of state administration authorities, the authority charged with the legal protection of the property rights and interests of the Republic of Serbia and other authorities and organisations, and companies and institutions vested with public powers.<sup>239</sup>

Zoran Pašalić has been performing the duties of Protector of Citizens since 2017, when he was elected to a five-year term in office.<sup>240</sup> The Protector has four Deputies, specialising in the protection of the rights of the child, persons with disabilities, persons deprived of liberty, persons belonging to national minorities and gender equality. The Deputies are nominated by the Protector of Citizens and elected by the National Assembly. Apart from the central office in Belgrade, the Protector of Citizens operates three offices, in Bujanovac, Preševo and Medveđa. The Protector of Citizens shall account for his work to and be elected and relieved of duty by the National Assembly.

The Protector of Citizens submits his annual reports to the National Assembly. The National Assembly's failure to review and adopt the last five reports of the Protector of Citizens, or other independent authorities for that matter, demonstrates the parliament's lack of interest in the operations of the independent authorities.<sup>241</sup>

The unlawful election of a member of the Anti-Corruption Agency Committee in the reporting period indicates that the cooperation between the Commissioner for Access to Information of Public Importance and Personal Data Protection and the Protector of Citizens deteriorated since Zoran Pašalić's appointment. Namely, under Article 9 of the Anti-Corruption Agency Act,<sup>242</sup> one Agency Committee member shall be nominated jointly by the Protector of Citizens and the Commissioner. In mid-2018, the former nominated his candidate to the National Assembly, claiming that he and Commissioner Rodoljub Šabić had consulted but failed to agree on a joint candidate. Šabić said they had never discussed a joint candidate and that the Protector had violated the law.<sup>243</sup>

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

239 The Protector of Citizens is not entitled to monitor the work of the National Assembly, the Serbian President, Government, the Constitutional Court and other courts and public prosecution services.

240 More in the *2017 Report*. IV.3.4.1.

241 More in Chapter III.4.

242 *Sl. glasnik RS*, 97/08, 53/10, 66/11, 67/13, 112/13 and 8/15.

243 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/sukob-ombudsmana-pasalica-i-poverenika-sabica/>.

The Republic of Serbia also has a Vojvodina Provincial Ombudsman. Zoran Pavlović assumed the office of Provincial Ombudsman in November 2016.<sup>244</sup> The Protector of Citizens shall cooperate with the provincial and local self-government ombudspersons with a view to exchanging information on identified problems in the work and actions of the administrative authorities, with the aim of fostering the exercise of fundamental human rights and freedoms.<sup>245</sup>

The Chapter 23 Action Plan envisages the amendment of the Protector of Citizens Act.<sup>246</sup> The relevant Ministry of State Administration and Local Self-Governments established a Special Working Group to draft these amendments.<sup>247</sup> The Ministry had earlier prepared special reports on this issue in cooperation with SIG-MA<sup>248</sup> and TAIEX<sup>249</sup> experts. The online consultations on the amendments, during which the stakeholders and the Protector of Citizens commented the Baseline Study, lasted from 6 December 2017 to 28 February 2018.<sup>250</sup> However, neither the Ministry's report on the consultations nor the Preliminary Draft of the amendments were made available to the public by the end of the reporting period.

In his 2017 Annual Report,<sup>251</sup> the Protector of Citizens emphasised the need for the more thorough regulation of the status and competences of this institution, through the amendment of the Constitution and the Protector of Citizens Act. His suggestion that his powers be expanded to overseeing the work of courts<sup>252</sup> gave rise to concerns given the ongoing sensitive debate on the status of the judiciary under the Serbian Constitution.<sup>253</sup>

Experts criticised Pašalić's suggestion that the jurisdiction of the Protector of Citizens be extended to the judiciary. They said that solutions for the courts' inefficiency could not be sought in other branches of government or factors outside the judiciary.<sup>254</sup> In his response to the experts' comments, the Protector of Citizens issued a press release saying that they had made a number of arbitrary and untrue statements and were obviously unaware of the fact that Ombudsmen of countries such as Finland and Sweden exercised full control over their courts, while the Om-

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244 The Provincial Ombudsman and his Deputies are nominated by the Protector of Citizens and elected to six-year terms in office by the Vojvodina Provincial Assembly.

245 Protector of Citizens Act, Article 34.

246 More in the *2017 Report*, III.4.4.1.

247 The Working Group was formed on 3 November 2016.

248 See more at: <http://www.sigmaweb.org/>.

249 Technical Assistance and Information Exchange instrument within the EC Directorate-General for Neighbourhood and Enlargement Negotiations.

250 The Baseline Study is available in Serbian at: <https://goo.gl/9DvnJd>.

251 The Report is available in Serbian at: <https://goo.gl/AnigLc>.

252 See the *Večernje novosti* report, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:752948-Zoran-Pasalic-Neko-mora-da-kontrolise-i-sudstvo>.

253 See Chapter III.1.

254 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/ombudsmano-va-ideja-opasna-po-nezavisnost-sudstva/>.



budsmen of many EU Member States and ex-Yugoslav states controlled the court administration.<sup>255</sup>

Pašalić's view on politically sensitive cases the Protector of Citizens is to decide on is very different from that of his predecessor. A good illustration is the pending Savamala case,<sup>256</sup> which has for over two years now provoked negative reactions not only in Serbia, but abroad as well (the European Parliament mentioned it in its November 2018 Resolution). The Serbian authorities have not yet shed light on this incident; nor did the Ministry of Internal Affairs act on the recommendations issued by the former Protector of Citizens, Saša Janković, by the end of 2018 (the MIA is under the legal obligation to submit a report on why the police were not doing their job the night the buildings in Hercegovačka Street were demolished).<sup>257</sup>

The new Protector of Citizens did not even mention the Savamala case in his 2017 Annual Report. In his written replies to *Insajder's* questions, he said that the case file had been archived by his predecessor, who had notified the parliament, Government and public about the incident in his 2016 Report, but that he had not sought the dismissal of senior officials and that this had probably been the assessment of those reviewing the case. In response to the question why he had not applied the mechanisms available to him to pressure the Ministry of Internal Affairs to act on the recommendations of the Protector of Citizens although the 60-day deadline had expired a long time ago and why no measures had been taken to penalise the MIA for not acting on the recommendations, the Protector of Citizens replied that the law was vague on this issue and that these questions should be addressed to his predecessor. He referred to Article 26(2) of the Protector of Citizens Act, under which complaints may be filed with the Protector of Citizens within one year from the day a civil right was violated, but that this deadline had expired and that he no longer had jurisdiction over it.

Former Protector of Citizens Saša Janković said that his successor could still propose the dismissal of a senior official under Article 20(1) of the Protector of Citizens Act if the latter's recurring behaviour revealed his intention not to cooperate with the Protector of Citizens. Therefore, Pašalić was entitled to seek the dismissal of the Minister of Internal Affairs if the Minister did not act on his repeated request to implement the recommendations.<sup>258</sup>

No action was taken on several other complaints filed with the Protector of Citizens. The Protector of Citizens did not take a single action during the reporting period to check the lawfulness of the MIA's actions in the case of Turkish national Ce-

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255 More is available in Serbian at: <https://goo.gl/jXNmYK>

256 The Savamala case occurred on election night in April 2016, when people with balaclavas illegally demolished buildings in the Belgrade Hercegovačka Street. More in the *2016 Report*, I.5.2.10.

257 More in the 2016 Annual Report of the Protector of Citizens, available at: [https://www.ombudsman.org.rs/attachments/article/134/Introduction\\_2016%20Annual%20Report.pdf](https://www.ombudsman.org.rs/attachments/article/134/Introduction_2016%20Annual%20Report.pdf).

258 See the *Insajder* report, available in Serbian at: <https://insajder.net/sr/sajt/tema/10986/>.

vdet Ayaz, who filed a complaint with the Protector of Citizens<sup>259</sup> in December 2017. To recall, after his extradition custody was terminated, Ayaz was held in the MIA Aliens Shelter in the absence of a detention order until he was extradited to Turkey despite the interim measure indicated by the UN Committee against Torture.<sup>260</sup>

BCHR filed a complaint about the work of the MIA with the Protector of Citizens in early September 2017. The complaint was filed on behalf of an Afghani minor, whom the MIA ordered to leave Serbia, although he was unaccompanied and had neither a passport nor money. The MIA ruling did not specify which country the minor could legally enter and how; nor did the police first consider the best interests of the child or review the risk of his ill-treatment if the order was enforced. The case was still pending before the Protector of Citizens at the end of the reporting period.<sup>261</sup>

The Protector of Citizens reacted to several tragic deaths of construction workers in 2018. The death of two workers on the Belgrade Waterfront construction site attracted a lot of media attention, especially since the Labour Inspectorate did not issue any statements on the case either on the day of the tragedy or in the days that followed. The Protector of Citizens reiterated that his Office was not authorised to investigate cases or initiate court proceedings, but that it could request to be notified of the results of the investigation into the cause of the tragedy. He specified he had requested urgent meetings with those responsible for overseeing occupational health and safety<sup>262</sup> and appealed to the competent authorities to ensure full occupational health and safety in accordance with the law.

Under Article 17 of the Protector of Citizens Act, the Protector is entitled to control respect for civil rights, establish violations resulting from enactments, actions or non-actions of administrative authorities if they amount to violations of national laws, other regulations and general enactments, and to control the regularity and lawfulness of the work of administrative authorities.

The Protector of Citizens, for instance, found that the deficiencies in the work of the national Pension and Disability Insurance Fund (PDIF) had been to the detriment of retirees because it had failed to promptly update its records, conduct procedures to establish data requisite for issuing adequate final rulings on the amounts of pensions and review retirement applications. He found that, due to these shortcomings, the PDIF violated the principles of legality, legal certainty and good governance because it had set different amounts of the pensions in the temporary and final pension rulings, and the retirees ended up having to repay the surplus.<sup>263</sup> The Protector also found that, in the Vojvodina Clinical Centre, the measure of physical

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259 The case has been registered under number 13-32-3911/17 by the Protector of Citizens Office.

260 More in the *2017 Report*, I.1.2.

261 The case has been registered under number 13-2-2806/17 by the Protector of Citizens Office.

262 See the *Insajder* report, available in Serbian at: <https://insajder.net/sr/sajt/vazno/12181/>.

263 More is available in Serbian at: <https://goo.gl/azDP7k>.

restraint and isolation had been applied to patients with mental disorders not only by health professionals, but by security guards as well, although the latter were not trained therefor, and that this institution had not kept records of such measures.<sup>264</sup>

In July 2018, the Protector of Citizens found that the deficiencies in the work of the Kruševac Cultural Centre had been to the detriment of a Belgrade-based civic association, because it refused to allow it to organise a panel discussion on the status of LGBT persons in its hall without a valid justification or explain why it had changed its mind although it had first agreed to let the association use the public premises. He found that the Cultural Centre had thus violated the civic association's rights to freedom of assembly and public services.<sup>265</sup> The Cultural Centre fulfilled the recommendations of the Protector of Citizens within the statutory deadline.<sup>266</sup>

The Belgrade City Health Secretariat in 2018 notified the Protector of Citizens of the steps the City municipalities had taken to fulfil the recommendations in his Special Report on the Reproductive Health of Roma Women.<sup>267</sup> The Special Report<sup>268</sup> was prepared by drawing on information the Protector of Citizens had collected from Roma women and the authorities of five Serbian cities in August and September 2016.

Under Article 18 of the Protector of Citizens Act, the Protector of Citizens is entitled to propose laws within his remit to the Government and National Assembly, as well as initiatives to amend laws, other regulations or general enactments he deems are relevant to the realisation and protection of civil rights. Furthermore, this Article authorises the Protector of Citizens to give his opinions to the Government and National Assembly on draft laws and other regulations governing issues of relevance to the protection of civil rights.

In 2018, the Protector of Citizens reviewed the Preliminary Draft Act on Civil Service Salaries and issued his opinion<sup>269</sup> at the request of the Ministry of State Administration and Local Self-Governments. The Protector of Citizens held that Article 24 of the Preliminary Draft on the corrective coefficient for civil servants charged with oversight duties<sup>270</sup> was incomplete and not in compliance with the law and recommended the elaboration of the impugned provision. He also held that the

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264 More is available in Serbian at: <https://goo.gl/tpTPMy>.

265 See more in Serbian at: <https://goo.gl/isi88g>.

266 The Cultural Centre's reply is available in Serbian at: <https://goo.gl/Jnf3WT>.

267 More is available in Serbian at: <https://goo.gl/AXwz5H>.

268 The Report is available in Serbian at: <https://goo.gl/B2P1nd>.

269 See more in Serbian at: <https://goo.gl/erynUK>.

270 Under this Article, the value of the coefficient of civil servants working in the expert-administrative departments of the Constitutional Court and State Audit Institution may be increased by 30% depending on their responsibilities and complexity of their oversight duties, while the criteria for setting the corrective coefficient and its percentage shall be defined in an enactment adopted by the majority of all judges of the Constitutional Court i.e. the enactment of the State Audit Institution President.

Preliminary Draft should not govern budgetary restrictions.<sup>271</sup> The Protector of Citizens also issued his opinion on the Draft HIV and AIDS Prevention and Control Strategy and Action Plan,<sup>272</sup> the Draft Strike Act,<sup>273</sup> and the draft amendments to the Public Administration Reform Strategy and its Action Plan.<sup>274</sup>

The Protector of Citizens in April 2018 filed an initiative to amend the Act on the Enforcement and Security of Claims<sup>275</sup> to prevent enforcement against movable property in the possession of enforcement debtors to which third parties hold a right precluding enforcement. In May 2018, the Protector of Citizens filed an initiative to amend the regulations on the right to domiciliary care and assistance allowances,<sup>276</sup> with a view to ensuring uniform terms and conditions for the realisation of this right before one authority. The Protector of Citizens also filed an initiative to amend the Pension and Disability Insurance Act.<sup>277</sup> The Protector of Citizens also requested of the Ministry of Justice to take the measures within its purview and propose amendments to the Misdemeanour Act and the Rulebook on the Misdemeanour Order Template to improve the efficiency of the exercise of the right to an effective legal remedy enshrined in the Constitution and the law.<sup>278</sup>

The Protector of Citizens in October 2018 published a special report “Accessibility for All”<sup>279</sup> in which he compiled the data on physical barriers precluding access of people with disabilities, which he had obtained from local communities, civil society organisations and persons with disabilities.<sup>280</sup> Earlier, in May 2018, he published his Special Report on the “Representation of Women in Decision-Making Positions, and the Position and Activities of Local Gender Equality Mechanisms in Local Self-Government Units in Serbia.”<sup>281</sup>

The Protector of Citizens did not appear much in the public or the media in 2018. He mostly issued press releases, as well as several appeals to state authorities and institutions to improve their work methods and treatment of citizens.

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271 Under Article 4 of the Preliminary Draft, the funds for wages, compensation and other income of civil servants shall be secured depending on the budgetary restrictions for the current and following two fiscal years.

272 See more in Serbian at: <https://goo.gl/54Zg77>.

273 See more in Serbian at: <https://goo.gl/cdfDBr>.

274 See more in Serbian at: <https://goo.gl/LgeZCH>.

275 See more in Serbian at: <https://goo.gl/rKvMwM>.

276 See more in Serbian at: <https://goo.gl/DHuU5T>.

277 See more in Serbian at: <https://goo.gl/EZcRGh>.

278 See more in Serbian at: <https://goo.gl/xDRbVe>.

279 Available at: <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5908-special-report-of-the-protector-of-citizens-accessibility-for-all>.

280 See the RTS report, available in Serbian at: <https://goo.gl/AxcYhA>.

281 Available at: <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5902-special-report-of-the-protector-of-citizens-representation-of-women-in-decision-making-positions-and-the-position-and-activities-of-local-gender-equality-mechanisms-in-local-self-government-units-in-serbia>.

### *3.4.1. National Mechanism for the Prevention of Torture (NPM)*

Serbia assumed the obligation to form the National Mechanism for the Prevention of Torture when it ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment<sup>282</sup> in December 2005. The NPM was established in 2011, under the Act Amending the Act on the Ratification of the Optional Protocol.<sup>283</sup> In Serbia, the Protector of Citizens performs the duties of the NPM in cooperation with the provincial ombudsmen and human rights organisations.<sup>284</sup>

The Protector of Citizens is entitled to visit and regularly examine the treatment of persons deprived of their liberty in places of detention,<sup>285</sup> have private interviews with them, as well as with the staff of the institutions in which they are held, without witnesses, and to access information of relevance to the achievement of his preventive role, regardless of the degree of confidentiality of such information. He is also entitled to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment. He is entitled to submit proposals and observations concerning existing or draft legislation. The competent authorities are under the obligation to review the NPM's recommendations and eliminate the identified obstacles that have or may result in torture.<sup>286</sup>

The NPM paid 31 visits to places of detention in 2018, notably, to prisons, police stations and health institutions in Novi Pazar, Sombor, Kruševac, Šabac and Užice, the Border Police Station at Belgrade Airport “Nikola Tesla”, and the Sremčica home for children with disabilities. The NPM also visited the Asylum and Reception Centres, in order to gain insight in the living conditions and monitor the relevant authorities' treatment of migrants and asylum seekers living in them.

The Protector of Citizens published on his website five reports on visits to penitentiaries, 11 reports on visits to asylum institutions, one report on the visit to the Užice police station, two reports on visits to social welfare residential institutions and one report on the visit to the Psychiatric Ward of the General Hospital in Kruševac.<sup>287</sup> The Protector of Citizens did not file any legal initiatives or submit any opinions in his NPM capacity in 2018.

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282 *Sl. list SCG (International Treaties)*, 16/05 and 2/06.

283 *Sl. glasnik RS (International Treaties)*, 7/11.

284 Article 2a of the Act Amending the Act on the Ratification of the Optional Protocol.

285 The places of detention visited by the Serbian NPM include district prisons, penitentiaries, the Special Prison Hospital in Belgrade, the Juvenile Correctional Home in Kruševac, social welfare institutions, psychiatric institutions, police stations across the country, Asylum Centres, etc.

286 The remit of the Protector of Citizens regarding the protection of the rights of persons deprived of liberty, laid down in the Protector of Citizens Act, coincides with the NPM's mandate under the Optional Protocol.

287 These reports are available at: <https://npm.ils.rs/index.php?limitstart=0>.

## 4. National Assembly – Collapse of Democratic Procedures

The coalition rallied round the Serbian Progressive Party (SNS), which won most of the 250 seats together with its coalition partners at the early parliamentary elections in April 2016, boasted a majority in the National Assembly in 2018. The SNS alone had 131 seats. There were 16 caucuses in the parliament in 2018.

Like in the past, the work of the National Assembly was subject to numerous criticisms in 2018, mostly because the legislature did not conduct open, democratic parliamentary debates or seriously discuss the draft laws on the agenda. The deputies of the ruling majority instead spent hours and hours discussing issues unrelated to the legislative activities of the topmost representative body in the country and hurling ignominious insults at their political opponents.

The parliament was also criticised for not holding a session on a topic which was intensively discussed in 2018 – the amendments to provisions on the judiciary in the Constitution, the highest law of the land.<sup>288</sup> Namely, it was only on 30 November 2018 that the Serbian Government forwarded the draft constitutional amendments to the Assembly.

The deputies also disregarded their duty under the Chapter 24 Action Plan to review the existence of any potentially corruptive provisions in the laws they were adopting and to discuss how the valid laws affected the fight against corruption. After several years of intensive activities in this field, the Anti-Corruption Agency in late February suddenly ceased elaborating these risks on its own initiative. Moreover, the Agency failed to produce – or at least publish – any comments concerning the draft law regulating its own powers, which was published by the Ministry of Justice in July 2018.<sup>289</sup>

### 4.1. *Legislative Activities*

National Assembly website statistics show that the parliament adopted 210 laws in 2018. However, an analysis conducted by the Centre for Research, Transparency and Accountability (CRTA), a CSO which has regularly been monitoring the work of the National Assembly, showed that only 29% of the 106 laws adopted in the first half of 2018 were brand new laws, that another 29% laws ratified international agreements, while most (42%) laws amended the valid laws. Parliamentary debates were constrained by the submission of large numbers of identical amendments to important laws that were later withdrawn. The practice of adopting laws under an

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288 More in Chapter III.1.

289 See more at: <http://preugovor.org/Alarm-Reports/1460/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml>.

urgent procedure was commonplace – 47% of the laws adopted in the same period were enacted under such a procedure.<sup>290</sup> As many as 89 of all laws enacted in 2018 were adopted under an urgent procedure.<sup>291</sup>

Although the number of laws adopted under an urgent procedure decreased, the fact that laws ratifying international treaties were adopted under the regular procedure, while many (60%) of the laws systemic in character or amending laws impacting on the legal system were enacted under an urgent procedure, gave rise to concerns. Such a practice does not only practically abolish parliamentary dialogue between elected representatives of the people, but also impinges on the quality of the adopted laws, and, of course, undermines the parliament's reputation and legitimacy.

Most of the adopted laws were submitted for adoption by the Government. In the June 2016 – August 2018 period, the current convocation of the Assembly enacted 242 laws, 233 (96%) of which were submitted by the Government. As a rule, draft laws submitted by opposition parties or civic groups were not even included in the agenda, which undermines the democratic capacity of the highest legislative and representative body in the country.

The parliament also continued with the practice of including in the agenda draft laws that had not undergone a public debate, although Article 77 of the State Administration Act<sup>292</sup> lays down that state administration authorities shall ensure public engagement in the preparation of laws and by-laws, notify the public of the development of preliminary draft laws, and consult with all the relevant stakeholders, including other state authorities, associations, experts and other interested parties, in a manner ensuring transparency and effective public participation in the process. Such an obligation is also laid down in the Assembly Legislative Policy Resolution.<sup>293</sup>

The legislative activities of the Assembly Committees were also criticised. Most of the Committees were chaired by deputies of the ruling parties, which had not been the case earlier, when opposition deputies headed between 40 and 50 percent of the parliamentary committees. The number of Committees chaired by opposition deputies fell drastically since 2014 and only two of the twenty (10%) Assembly Committees were headed by representatives of opposition parties in May 2018. Their number dwindled to one after Ivan Kostić of Dveri was dismissed and an SNS deputy took over chairmanship of the Committee for the Diaspora and Serbs in the Region. Such a practice has constrained parliamentary democ-

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290 The share of laws adopted under an urgent procedure stood at 80% in the 2012–2013 period.

291 The statistics are available in Serbian at: <http://otvoreniiparlament.rs/statistika/zakoni-po-hitnom-postupku>.

292 *Sl. glasnik RS*, 79/05, 101/07, 95/10, 99/14, 47/18 and 30/18– other law.

293 *Sl. glasnik RS*, 4/13.

racy and reduced opportunities for dialogue between the ruling coalition and the opposition MPs.

#### 4.2. Oversight Role

The National Assembly's oversight of the executive continued weakening in 2018 and was apparent in all areas, especially in the security sector. The Government proposed the adoption of the National Security Strategy<sup>294</sup> and the Defence Strategy,<sup>295</sup> excluding the judiciary and independent authorities from the group of institutions charged with democratic and civilian oversight of the security sector and not foreseeing the obligation to report to the National Assembly on the implementation of these Strategies and their Action Plans. No external experts were involved the development of these strategic documents, drafted by an inter-departmental working group for over 18 months; nor were any consultations on them held with civil society or the Assembly.<sup>296</sup>

Although the Defence and Internal Affairs Committee met frequently, its sessions were very short and did not focus on the crucial issues. Furthermore, the Committee did not pay due attention to the proposed amendments to the draft laws. For instance, one session, at which the Committee reviewed drafts of six key laws governing the defence system, including two international treaties and the Annual Plan of the deployment of Serbian Army and other defence troops in multinational operations, lasted 26 minutes. The session, at which the Committee reviewed and upheld the Draft Act amending the Security Intelligence Agency Act, lasted 10 minutes; the Committee did not endorse any of the 40 amendments to it. The Committee also failed to regularly review the reports of the Ministry of Internal Affairs Internal Control Sector, the Defence Inspectorate, or the performance reports of the Ministry of Defence and the Ministry of Internal Affairs.

The members of the parliamentary Defence and Internal Affairs Committee and the Security Service Oversight Committee paid several visits to the Security Intelligence Agency, the Military Security Agency and the Military Intelligence Agency in Belgrade and their regional centres in northern and central Serbia, but issued only general conclusions praising their work after them.<sup>297</sup> The coalition *PrEUgovor* (PrEUunp), which regularly analyses Serbia's fulfilment of its Chapter 23 and 24 obligations, issued a number of recommendations on how the National Assembly could improve its work and strengthen its oversight role and legislative activities.<sup>298</sup>

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294 Available in Serbian at: [http://www.mod.gov.rs/multimedia/file/staticki\\_sadrzaj/javna%20rasprava/strategije/Nacrt%20Strategije%20nacionalne%20bezbednosti.pdf](http://www.mod.gov.rs/multimedia/file/staticki_sadrzaj/javna%20rasprava/strategije/Nacrt%20Strategije%20nacionalne%20bezbednosti.pdf).

295 Available in Serbian at: [http://www.mod.gov.rs/multimedia/file/staticki\\_sadrzaj/javna%20rasprava/strategije/Nacrt%20Strategije%20odbrane.pdf](http://www.mod.gov.rs/multimedia/file/staticki_sadrzaj/javna%20rasprava/strategije/Nacrt%20Strategije%20odbrane.pdf).

296 See: <http://preugovor.org/Alarm-Reports/1460/Coalition-prEUgovor-Report-on-Progress-of-Serbia>.

297 *Ibid.*, p. 20.

298 *Ibid.*, pp. 23–24.



### 4.3. *Disregard of the Independent Regulatory Authorities*

The Assembly had not reviewed the annual reports of the independent regulatory authorities (the Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection and the Commissioner for the Protection of Equality) at its plenary sessions since 2014, although the Assembly Rules of Procedure lay down that the relevant Assembly Committees are under the obligation to discuss them within 30 days from the day of submission and forward their reports and draft conclusions to the Assembly for adoption. The National Assembly also failed to review the Anti-Corruption Agency's 2017 Report on the Implementation of the Anti-Corruption Strategy and its Action Plan.

Not only has the parliament defaulted on its legal obligations. Its attitude also demonstrates the ruling majority's lack of understanding of the roles of these bodies, its disrespect of their work and conveys the message to the public that they are irrelevant.

The independent regulatory authorities should be the parliament's key partners. The information they forward should inform the deputies on respect for human rights and good governance principles in the country. The information they provide also alerts to any risks of corruption and facilitates financial oversight. The parliament's conspicuous lack of interest in the findings of these authorities for five years running clearly illustrates the absence of effective parliamentary oversight of the implementation of their recommendations addressing the key irregularities in the work of the executive authorities, especially with regard to combatting corruption. As *PrEUGovor* said in its analysis, this is especially worrying having in mind that one quarter of the complaints submitted to the Commissioner for Information of Public Importance regard the failure of the Ministry of Internal Affairs to provide access to information. The absence of discussion and non-adoption of annual reports prepared by institutions, whose top officials have been elected by the Assembly, is a worrisome trend and illustrates reluctance to take expert opinions and recommendations into account.<sup>299</sup>

### 4.4. *Election Role*

The parliament failed to promptly fulfil its role concerning the election of officials to specific authorities. It elected the Chair and members of the State Audit Institution in April 2018, seven months after their predecessors' terms in office expired. In June 2018, the National Assembly elected two members of the Anti-Corruption Agency Council, one nominated by press associations and the other nominated by the Protector of Citizens. The election of the latter Council member was

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299 See: <http://preugovor.org/Alarm-Reports/1460/Coalition-prEUGovor-Report-on-Progress-of-Serbia>, p. 23.

illegal, as he should have been nominated jointly by the Protector of Citizens and the Commissioner for Information of Public Importance. Since the two had not agreed on a joint candidate, the Assembly violated the Anti-Corruption Agency Act when it voted in the Protector's candidate. It remained unclear why the Assembly had not reviewed the Serbian Bar Association's nominee for the Anti-Corruption Agency Council. The Assembly also failed to elect the new Commissioner for Information of Public Importance and Personal Data Protection after Šabić's term in office expired in late December.

The manner in which the members of the regulatory authorities were elected was also extremely problematic; almost as a rule, candidates nominated by the parliamentary majority were elected to these bodies, with the parliamentary committees refusing to endorse the nominees of the opposition parties, independent bodies or civil society or applying various mechanisms to thwart their election.

#### 4.5. *Filibustering*

Debates in parliament were obstructed throughout the year, by the deputies of the ruling coalition, who submitted huge numbers of amendments which, as a rule, did not substantively contribute to improving the text of the laws they were adopting. For example over 600 amendments to just one law were submitted at an April session; nearly 400 of them were filed by the deputies of the ruling coalition.<sup>300</sup> The same happened in June, when the parliament was discussing a set of financial laws. The ruling majority continued submitting and then withdrawing or not voting for its own amendments, thereby rendering the debate meaningless and abusing parliamentary procedure.<sup>301</sup>

The identical scenario as in December 2017 was played out in December 2018, when the 2019 Budget Act was on the agenda. The Government forwarded the Draft Budget Act with a 23-day delay and it was included in the agenda the very next day, giving the deputies no time to prepare themselves for the debate. Even if they had familiarised themselves with the text, it would have been in vain, since they had 62 items on the agenda to review; the time they had for discussion was spent on the 550 amendments submitted to the two draft laws preceding the Draft Budget Act on the agenda.

In their joint press release, CRTA and Open Parliament said that the developments in parliament corroborated the authorities' intention to essentially abolish the debate on the Serbian budget.<sup>302</sup> They recalled that the European Parliament called

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300 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a376514/Vladajuca-vecina-opet-podnela-veliki-broj-amandmana.html>.

301 See the *Novi magazin* report, available in Serbian at: <http://www.novimagazin.rs/vesti/pocetak-sednice-parlamentna-obelezila-polemika-o-podnosenju-velikog-broja-amandmana>.

302 See more in Serbian at: <http://www.otvoreniparlament.rs/aktuelno/56>.

on the Serbian parliament in its Resolution of 29 November 2018 “to review the practice of filibustering and whether it stifles democratic debate.”<sup>303</sup>

The deputies of a number of opposition parties walked out of the session dissatisfied with the time they had to discuss the Draft Budget Act (and the 2,317 submitted amendments) and requested of the Speaker to call a meeting of all chief whips to agree on a way to normalise the work of the parliament.<sup>304</sup> Deputies of four opposition groups held news conferences in the Assembly building during the night, at which they spoke about the budget and the other draft laws, because, as they explained, they were prevented from doing so at the plenary session.

## 5. Confrontation with the Past – Transitional Justice

Transitional justice is a new discipline within the broader framework of human rights. It deals with the challenges faced by societies with a legacy of massive human rights violations, both societies in transition from an autocratic to democratic system and post-conflict societies. Such societies have to achieve specific goals: confront the past, establish rule of law and reinforce the possibilities to preserve peace, reconciliation and prevent the recurrence of massive human rights violations.<sup>305</sup>

### 5.1. *Judgments of the International Criminal Tribunal for the Former Yugoslavia (ICTY)*

The International Criminal Tribunal for the Former Yugoslavia (ICTY) ceased to exist in December 2017, pursuant to its Completion Strategy.<sup>306</sup> Its functions were assumed by the International Residual Mechanism for Criminal Tribunals (IRMCT). The IRMCT will complete the appeals proceedings in the cases of *Karadžić* and *Mladić* and the retrial in the case of *Stanišić* and *Simatović*.<sup>307</sup> In April 2018, the IRMCT delivered its final judgment against Serbian Radical Party (SRS)

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303 See more at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0478+0+DOC+XML+V0//EN&language=EN>.

304 More in the *NI* report, available at: <http://rs.n1info.com/English/NEWS/a442144/Opposition-in-Serbia-demands-meeting-to-discuss-parliament-work-saying-ruling-majority-obeys-it.html> and in the *Novi magazin* report, available in Serbian at: <http://www.novimagazin.rs/vesti/opozicija-trazi-kolegijum-skupstine-kako-bi-se-normalizovao-rad>.

305 Mark Freeman, *What is transitional justice?* FHP, available at: [http://www.un.org/en/peacebuilding/pdf/doc\\_wgll/justice\\_times\\_transition/26\\_02\\_2008\\_background\\_note.pdf](http://www.un.org/en/peacebuilding/pdf/doc_wgll/justice_times_transition/26_02_2008_background_note.pdf).

306 Available at: <http://www.icty.org/en/about/tribunal/completion-strategy>.

307 The International Residual Mechanism for Criminal Tribunals assumed responsibility for a number of functions of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, more is available at: <http://www.irmct.org/en/about/functions>.

leader Vojislav Šešelj, reversing in part the ICTY Trial Chamber judgment acquitting Šešelj and sentencing him to ten years' imprisonment for instigating deportation, persecution (forcible displacement), and other inhumane acts (forcible transfer) as crimes against humanity, as well as for committing persecution, based on a violation of the right to security, as a crime against humanity. In particular, the Appeals Chamber found that the Trial Chamber had erred in not holding Šešelj responsible for a speech he gave in Hrtkovci, Vojvodina (Serbia) calling for the expulsion of the non-Serbian population.<sup>308</sup> The Appeals Chamber declared that Šešelj had served his sentence in view of the credit given for his detention in the custody of the ICTY pending trial from 14 February 2003 to 6 November 2014.

The IRMCT said in the judgment that widespread and systematic attacks against the non-Serb population occurred in the territory of Bosnia and Herzegovina (BiH) and Croatia in the November 1991-October 1992 period, given that evidence clearly showed that "Serbian forces, including paramilitary groups and volunteers, committed numerous violations of the laws or customs of war against non-Serbian civilians" in that period, including murder, torture and cruel treatment of non-Serbian civilians and plunder of private property at various locations across the municipalities of Vukovar, Zvornik, Greater Sarajevo, Mostar and Nevesinje.<sup>309</sup> These groups included volunteers of the Serbian Radical Party known as "Šešelj's men", whom Vojislav Šešelj and his party recruited and deployed to the front. Pursuant to the findings of the Trial Chamber, which the Appeals Chamber upheld, these units had committed numerous crimes in BiH and Croatia.<sup>310</sup> The Appeals Chamber, however, agreed with the Trial Chamber, which was not persuaded that the volunteers on the ground had acted "in coordination" with Šešelj and that a joint criminal enterprise was at issue.

During the investigation, several insiders close to Šešelj and/or members of his political party during the wars in Croatia and BiH testified of his and SRS' links with the units that had committed the crimes together with other participants in the joint criminal enterprise. Most of them, however, partly or completely recanted their initial written statements or contradicted them when they testified, following the same pattern and specifying the same reasons for doing so after Šešelj disclosed information about protected witnesses in his books, which led the ICTY to conduct three contempt proceedings against him and convict him to four years and nine months' imprisonment.

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308 IRMCT judgment in the *Šešelj* case No. 16-99-A of 11 April 2018. Šešelj had been indicted for a much higher number of crimes than he was convicted for.

309 The Appeals Chamber thus reversed the prior view of the ICTY Trial Chamber that such attacks had not occurred.

310 Murder of four Muslim detainees at the Ekonomija farm in Zvornik in May 1992, murder of at least 40 Muslims on the Uborač dump at Mostar in June 1992, murder of one Muslim in the village of Lješevo at Sarajevo in June 1992, torture and cruel treatment of 90 Muslims at the Mostar stadium Vrapčići in June 1992, and large groups of Croats at Velepromet and Ovčara near Vukovar in November 1991 (see paragraphs 207, 210, 213 and 216 of the Trial Chamber judgment).

## 5.2. Reactions to the Judgment against Šešelj

The delivery of the judgment against the SRS leader did not elicit the expected reactions of the public and the ruling coalition. On the contrary, as soon as the judgment was delivered, Šešelj, who is now an MP, threatened in the National Assembly that he would beat up anyone who called him a war criminal.<sup>311</sup> He also said he would gladly again commit the crimes he was convicted of and that he would start with Tomislav Žigmanov, the leader of the Democratic Alliance of Croats in Vojvodina, and Nenad Čanak, the leader of the League of Social Democrats of Vojvodina.<sup>312</sup> Šešelj then insulted DS MP Aleksandra Jerkov, who reacted to his open threats against Tomislav Žigmanov and Nenad Čanak; Speaker Maja Gojković (who was a senior member of Šešelj's party before siding with Vučić and his SNS) did not react to his insults.<sup>313</sup>

The latest of Šešelj's many open threats against Croats living in Vojvodina was made in May, when he bought a house in Hrtkovci, just a month after the final judgment against him was delivered.<sup>314</sup>

Given the gravity of the crimes Šešelj was convicted for and his threats that he would commit them again, it may be concluded that the Serbian authorities did nothing to prevent his aggressive attacks against his political opponents and Serbian nationals of Croatian origin.

Individual lawyers and NGOs called on the Serbian Assembly to strip Šešelj of his mandate, pursuant to Article 88(3) of the Act on the Election of Assembly Deputies (AEAD),<sup>315</sup> providing for the termination of the mandate of deputies sentenced to an unconditional sentence of at least six months' imprisonment.<sup>316</sup> However, the Chairman of the Committee for Administrative-Budgetary and Mandate and Immunity Issues Aleksandar Martinović said that none of the legal grounds for divesting Šešelj of his seat in parliament existed.<sup>317</sup> On the other hand, no penalty is envisaged in the event the Chairman of this Committee refuses to include the issue of Šešelj's

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311 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/politika/bahati-seselj-preti-i-u-skupstini-da-vidim-da-li-ce-mi-neko- reci-da-sam-ratni/y22j6ks>.

312 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/politika/skandalozne-seselje-pretnje-jos-intenzivnije-cu-da-ponovim-svoje-ratne-zlocine/40qjf0l>.

313 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/politika/seselj-opet-provocira-prvo-je-u-skupstini-nazivao-ustaskom-kvom-a-sada-za-nju-ima/1rgvqy8>.

314 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/politika/seselj-kupio-kucu-u-hrtkovcima-lider-radikala-se-vraca-medu-ljude-koje-je-proganjao/regw4sy>.

315 *Sl. glasnik RS*, 35/00, 57/03 – CC Decision, 72/03 – other law, 75/03 – corr. of other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – CC Decision, 36/11 and 104/09 – other law.

316 See the *Balkan Insight* report, available at: <http://www.balkaninsight.com/en/article/verdict-might-cost-seselj-seat-in-serbian-parliament-04-12-2018>.

317 See the *Kurir* report, available in Serbian at: <https://www.kurir.rs/vesti/politika/3150375/martinovic-kaze-da-se-seselj-ne-moze-oduzeti-mandat-nema-zakonskih-uslova-ali-to-ne-znaci-da-se-slazem-sa-njegovim-izjavama>.

mandate in the agenda. Erstwhile ICTY Prosecutor Geoffrey Nice commented that Serbia did not apply its own law, which reflected the power it had because it was allowed to make headway despite its disrespect of the law.<sup>318</sup>

Three senior SRS officials were also involved in the ICTY proceedings against their party leader. Namely, in December 2014, the ICTY issued an order in lieu of indictment (the confidential warrant of arrest was issued in Serbia in January 2015) charging Petar Jojić, Jovo Ostojić and Vjerica Radeta with contempt of the Tribunal for having threatened, intimidated, offered bribes to or otherwise interfered with two witnesses to dissuade them from cooperating with the ICTY prosecutors or appearing as witnesses for the defence in the Šešelj trial.<sup>319</sup> Serbia refused to extradite two of the indictees (Ostojić died in mid-2017) to the ICTY and, subsequently, the IRMCT. In June 2018, the IRMCT decided to refer Radeta's and Jojić's trial to Serbia and issued a warrant of arrest and order for surrender in relation to the accused directed to the Serbian authorities and all United Nations Member States. The *Amicus Curiae* appealed this decision; the proceedings were still pending at the end of the reporting period.<sup>320</sup>

### 5.3. War Crime Trials in Serbia in 2018

The Serbian National Assembly in 2003 enacted the Act on the Organisation and Jurisdiction of State Authorities in War Crime Proceedings,<sup>321</sup> which governs the establishment, organisation, jurisdiction and powers of state authorities and their units regarding the identification of perpetrators of war crimes, and their criminal prosecution and trials. The War Crimes Prosecution Service (WCPS), a public prosecution service with special jurisdiction and covering the entire territory of the country, is charged with the criminal prosecution of perpetrators of war crimes both in first instance and appeals proceedings. The War Crimes Department of the Belgrade Higher Court is charged with trying war crime defendants in the first instance while appeals of its decisions are reviewed by the War Crimes Department of the Belgrade Appeals Court.

The WCPS in 2018 filed four indictments against four individuals. Three indictments were the result of regional cooperation with the BiH Prosecution Service and only one was the result of an investigation conducted by the WCPS.<sup>322</sup>

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318 More is available in Serbian at: <http://www.yucom.org.rs/dzefri-najs-seselju-bi-se-morao-oduze-ti-poslanicki-mandat/>.

319 See the ICTY press release of 1 December 2015 at: <http://www.icty.org/en/press/petar-jojic-jovo-ostojic-and-vjerica-radeta-charged-contempt-court>.

320 See the Ministry of Justice press release at: <https://www.mpravde.gov.rs/en/vest/21679/the-hague-court-pleased-with-serbias-cooperation-.php>.

321 *Sl. glasnik RS*, 67/09, 135/04, 61/05, 101/07, 104/09, 101/11 – other law and 6/15.

322 Bosnian Serb Army member Željko Budimir was indicted on 1 February 2018 for war crimes against the civilian population in Ključ (BiH). Nebojša Stojanović, a member of a Serbian volun-

In late October 2018, the Belgrade Appeals Court confirmed the WCPS indictment against five members of the Bosnian Serb Army Višegrad Brigade for the crime committed in the town of Štrpci, when 20 non-Serbian civilians were abducted from a train and killed.<sup>323</sup>

The WCPS continued demonstrating its reluctance to indict former high-ranking army and police officers in 2018, although the National War Crimes Prosecution Strategy for the 2016–2020 Period<sup>324</sup> specifies prosecution of medium- and high-ranking armed forces members as one of the priorities.

The Belgrade Higher Court War Crimes Department handed down three convictions in 2018.<sup>325</sup> It discontinued the trial in one case, after the accused, Dragan Maksimović, charged with killing five Bosnian civilians, three of whom were children, in Caparde (Kelesija, BiH), signed a plea bargain with the WCPS. The Belgrade Higher Court confirmed the agreement and sentenced Maksimović to six years and two months' imprisonment.<sup>326</sup> In November 2018, the Belgrade Higher Court convicted Milanko Dević to seven years' imprisonment for killing a Bosnian in the village of Šljivari at Ključ (BiH).<sup>327</sup> On 26 November 2018, the Higher Court convicted Ranka Tomić to five years' imprisonment for torture and inhuman treatment of prisoner of war Karmena Kamenčić in Radić (Bosanska Krupa, BiH) in mid-July 1992.<sup>328</sup>

The criminal proceedings against Dušan Vuković, accused of war crimes in Doboј, were discontinued on 15 May 2018 after Vuković died.<sup>329</sup>

The Belgrade Appeals Court War Crimes Department delivered only one judgment in 2018. It upheld the acquittal of the members of the "Sima's Chetniks" unit, who had been accused of demolishing a mosque and killing 27 Roma civilians

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teer unit, was accused of killing a prisoner of war in Kožuhe at Doboј (BiH). Nikola Vida-Lujić, a member of the Red Berets, was indicted on 12 September 2018 for raping a Muslim woman in Brčko. The indictment against Branko Branković was publicly unavailable at the time this Report was prepared.

323 The WCPS filed the indictment for the first time back in March 2015, but the Belgrade Higher Court refused to confirm it six times because the WCPS had not formulated it in accordance with the formal requirements laid down in the Criminal Procedure Code and three times because it required of the WCPS to supplement the investigation. See more at: <http://www.hlc-rdc.org/?p=35768&lang=de>.

324 *Sl. glasnik RS*, 19/16, available at: [http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document\\_\\_en/2016-05/p\\_nac\\_stragetija\\_eng.PDF](http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2016-05/p_nac_stragetija_eng.PDF).

325 Cases Ključ-Šljivari, Bosanska Krupa.

326 The Belgrade Higher Court's judgment of 6 June 2018 is available in Serbian at: <https://goo.gl/AU8oK2>.

327 See the Humanitarian Law Center's press release of 14 November 2018, available at: <http://www.hlc-rdc.org/?p=35818&lang=de>.

328 See the Humanitarian Law Center's press release of 27 November 2018, available at: <http://www.hlc-rdc.org/?p=35855&lang=de>.

329 Report on the main hearing, held on 8 May 2017, available in Serbian at: [http://www.hlc-rdc.org/wp-content/uploads/2018/05/15.\\_Doboј\\_-\\_Izvestaj\\_sa\\_sudjenja\\_08.05.2018..pdf](http://www.hlc-rdc.org/wp-content/uploads/2018/05/15._Doboј_-_Izvestaj_sa_sudjenja_08.05.2018..pdf).

in the village of Skočić (Zvornik, BiH) in July 1992. It reversed the first-instance judgment with respect to three indictees and found them guilty of inhuman treatment, violation of physical integrity, sexual humiliation and rape of three protected witnesses; Zoran Alić was sentenced to six years' imprisonment and Zoran Đurđević and Tomislav Gavrić to ten years' imprisonment each.<sup>330</sup>

In this judgment, the Appeals Court made a turnabout in its interpretation of the institute of co-perpetration. In its earlier judgments, the Court had qualified all members of a group, which had committed crimes in a specific area during a specific period of time, as co-perpetrators because they had consented to the acts of each of the members of the group, thereby accepting them as their own.<sup>331</sup> In its judgment in the *Skočić case*, the Court took a different view: that it is necessary to prove each of the acts of perpetration by each member of the group. By raising the standard of proof of the existence of co-perpetration, the Court has imposed a disproportionate burden on the WCPS, because it will be next to impossible to prove co-perpetration in proceedings against large numbers of defendants accused of committing crimes as a group in a specific time period.<sup>332</sup>

#### 5.4. *Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia*

The Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia for the 2018–2023 Period (Prosecutorial Strategy)<sup>333</sup> was adopted in April 2018 pursuant to the Chapter 23 Action Plan and the National War Crimes Prosecution Strategy (NWCS), although these two documents envisaged its adoption in the first half of 2016.<sup>334</sup>

The Prosecutorial Strategy suffers from a number of methodological flaws, leaving room for reinterpretation of obligations and expected results. Notably, it does not lay down clear criteria the WCPS is to be guided by when prioritising the cases it will prosecute, although the NWCS<sup>335</sup> specifies that these criteria shall be more thoroughly defined in the Prosecutorial Strategy. The Prosecutorial Strategy

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330 Belgrade Appellate Court judgment Kž1 Po2 5/15 of 28 March 2018, available in Serbian at: [http://www.hlc-rdc.org/wp-content/uploads/2018/08/Drugostepena\\_presuda\\_u\\_ponovljenom\\_postupku\\_28.03.2018.pdf](http://www.hlc-rdc.org/wp-content/uploads/2018/08/Drugostepena_presuda_u_ponovljenom_postupku_28.03.2018.pdf).

331 See, e.g. the cases *Scorpions-Trnovo* and *Bijeljina*.

332 See more at: <http://www.hlc-rdc.org/?p=35407&lang=de>.

333 Available at: [http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document\\_\\_en/2018-05/strategija\\_trz\\_eng.pdf](http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2018-05/strategija_trz_eng.pdf).

334 See Activity 1.4.1.3. in the Chapter 23 Action Plan at: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023%20Third%20draft%20-%20final1.pdf>; see also pp. 20–21 of the War Crimes Prosecution Strategy, Increasing Efficiency of War Crimes Proceedings before the Republic of Serbia Bodies at: [http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document\\_\\_en/2016-05/p\\_nac\\_stragetija\\_eng.PDF](http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2016-05/p_nac_stragetija_eng.PDF).

335 NWCS, p. 21.



merely refers to the criteria defined in the NWCS although, as a *lex specialis* vis-à-vis the NWCS, it should include concrete criteria the WCPS should be guided by when prioritising its activities.<sup>336</sup> The absence of clear criteria for prioritising cases may result in the WCPS' continuation of its practice of prosecuting only less challenging war crimes cases (cases with fewer victims, cases regarding isolated or minor incidents, cases implicating lower ranking perpetrators).<sup>337</sup>

Furthermore, the Prosecutorial Strategy does not list the activities the WCPS will undertake or the deadlines by which it will implement them. The Prosecutorial Strategy also fails to set the deadlines by which it will draft its five-year investigation plan and perform an inventory of the cases of prosecution services of general jurisdiction, etc.<sup>338</sup> The Prosecutorial Strategy also lacks the key indicators of success: quantitative (e.g. number of convictions, number of indictments against high-ranking perpetrators, number of indictments in cases with large numbers of victims) and qualitative (e.g. improved regional cooperation, reduction in the number of missing persons due to the WCPS' greater pro-activeness) headway in war crimes prosecution. The effectiveness of the Prosecutorial Strategy and the efficiency of the WCPS cannot be monitored in the absence of such indicators.

The Prosecutorial Strategy does not envisage any strategic activities aimed at improving cooperation with the EULEX Mission or establishing cooperation with the Hague-based Kosovo Specialist Prosecutor's Office. The Strategy provides an overview of cooperation with the EULEX Mission to date, but does not list a single activity that should result in improving it.<sup>339</sup>

Although the NWCS provides for the adoption of the Prosecutorial Strategy in a "transparent and consultative process with all relevant stakeholders,"<sup>340</sup> its draft was presented to a very small circle of representatives of state authorities charged with prosecuting war crimes and experts and in the absence of the media;<sup>341</sup> the stakeholders were provided with an unacceptably short deadline for commenting the draft in writing.<sup>342</sup>

The comments received from the stakeholders were obviously not adequately reviewed or taken on board, as corroborated by the fact that one graph is the only

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336 Activity 1.4.1.3 of the Chapter 23 Action Plan envisages that the cases will be divided into three categories, by priority, p. 120.

337 See the Humanitarian Law Center press release of 22 May 2017, available at: <http://www.hlc-rdc.org/?p=33810&lang=de>.

338 Prosecutorial Strategy, p. 18.

339 *Ibid.*, pp. 32, 42–44.

340 NWCS, p. 21.

341 See the *Balkan Insight* report, available at: <http://www.balkaninsight.com/en/article/serbia-s-war-crimes-strategy-seriously-flawed-ngos-say-03-16-2018>.

342 The WCPS communicated the draft to the stakeholders on Friday afternoon, 9 March 2018, and scheduled the presentation for Monday, 12 March 2018. The stakeholders had until Wednesday, 14 March 2018, to send in their written comments.

difference between the text of the presented draft and the text of the adopted Prosecutorial Strategy.<sup>343</sup>

In its June 2018 report on the implementation of the NWCS, the NGO Humanitarian Law Center (HLC) said that it could not report any progress in war crimes prosecutions in the two years since the adoption of this strategy. It said that the implementation of the NWCS had been severely delayed, and that 11 of the 12 indictments issued since the adoption of the National Strategy were not the result of WCPS' investigations but transferred from BiH. HLC went on to say that war crimes trials continued to be unnecessarily protracted, that the procedural rights of victims have not been strengthened and that the number of missing persons was decreasing at a slower pace than foreseen in the NWCS. It also noted that the relevant international governmental and non-governmental organisations had negative opinions about Serbia's progress in the prosecution of war crimes.<sup>344</sup>

### 5.5. *Truth Commission (RECOM) – Transitional Justice Mechanism*

The Coalition for RECOM is a network of over 2000 civil society organisations and individuals from all post-Yugoslav countries, which was formed in 2008 and advocates the establishment of a Regional Commission for the establishment of facts about war crimes and other grave violations of human rights committed in the former Yugoslavia from 1 January 1991 to 31 December 2001 (RECOM).

RECOM is an official, intergovernmental commission to be jointly established by the successors of the former SFRY. As an extra-judicial body, RECOM is tasked with establishing the facts about all the war crimes and other grave war-related human rights violations; listing all war-related victims and determining the circumstances of their death; collecting data on places of detention, on persons who were unlawfully detained, subjected to torture and inhuman treatment, and drawing up their comprehensive inventory; collecting data on the fate of the missing, as well as organising public hearings of the victims' testimonies and the testimonies of other persons concerning war-related atrocities.<sup>345</sup>

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343 Humanitarian Law Center's comparative overview of the draft and final texts of the Prosecutorial Strategy is available in Serbian at: [http://www.hlc-rcd.org/wp-content/uploads/2018/06/Tuzilacka\\_strategija\\_-\\_konacna\\_i\\_radna\\_verzija.pdf](http://www.hlc-rcd.org/wp-content/uploads/2018/06/Tuzilacka_strategija_-_konacna_i_radna_verzija.pdf). See also the *Balkan Insight* report, available at: <http://www.balkaninsight.com/en/article/serbia-s-war-crimes-strategy-seriously-flawed-ngos-say-03-16-2018> and the Prosecutorial Strategy at: [http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document\\_\\_en/2018-05/strategija\\_trz\\_eng.pdf](http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2018-05/strategija_trz_eng.pdf).

344 Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes, available at: [http://www.hlc-rcd.org/wp-content/uploads/2018/07/Izvestaj\\_Strategija\\_2\\_ENG-ff.pdf](http://www.hlc-rcd.org/wp-content/uploads/2018/07/Izvestaj_Strategija_2_ENG-ff.pdf).

345 See: <http://recom.link/about-recom/what-is-recom/>.

The European Commission noted the importance of establishing RECOM in its 2018 Enlargement Strategy.<sup>346</sup> One of the six initiatives of strategic relevance to the EU set out in the EC's Action Plan in Support of the Transformation of the Western Balkans, which is part of this Strategy, relates to "Supporting reconciliation and good neighbourly relations" and envisages the following measure: "Support initiatives to foster reconciliation and transitional justice, such as the Regional Commission set up to establish facts about war crimes and other violations of human rights on the territory of the former Yugoslavia (RECOM)".<sup>347</sup> In June 2018, the Coalition for RECOM called on the Chair of the European Parliament Committee on Foreign Affairs to supplement the Draft European Parliament resolution on the 2018 Commission Report on Serbia to reflect the Commission's support to the establishment of RECOM. In its Resolution of 29 November 2018, the European Parliament reiterated "its support for the initiative to establish the Regional Commission for the establishment of facts about war crimes and other gross human rights violations on the territory of the former Yugoslavia."<sup>348</sup>

The Coalition for RECOM published a summary of its RECOM Roadmap<sup>349</sup> and Proposal of the Action Plan for establishing RECOM,<sup>350</sup> which is to start working in 2022.

A firm pledge by the Presidents of Serbia, Montenegro, Kosovo, and Macedonia that the Prime Ministers of the aforementioned countries would sign the Declaration on the Establishment of RECOM at the London Summit on 10 July 2018 did not produce the expected results. By 7 July 2018, the Coalition had not received the decisions of the governments of all the aforementioned countries, which led the summit organiser, the British Foreign and Commonwealth Office, to exclude the planned item – the Declaration on RECOM – from the Summit agenda.<sup>351</sup>

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346 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, available at: [https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf).

347 Annex to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, available at: [https://ec.europa.eu/commission/sites/beta-political/files/annex-communication-credible-enlargement-perspective-western-balkans\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/annex-communication-credible-enlargement-perspective-western-balkans_en.pdf).

348 See: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0478+0+DOC+PDF+V0//EN>.

349 See: <http://recom.link/wp-content/uploads/2018/06/RECOM-Roadmap-ff-1.pdf>.

350 See: <http://recom.link/wp-content/uploads/2018/06/Annex-Action-Plan-ff.pdf>.

351 The signing of the Declaration on RECOM is conceived as a demonstration of the willingness of the leaders of the post-Yugoslav countries to deal with the recent past by establishing the facts about the war crimes and victims, as well as a call to the remaining post-Yugoslav countries – Croatia, Bosnia and Herzegovina, and Slovenia – to jointly bear the burden of the past and contribute to the development of a culture of compassion and respect for all victims of the wars

## 5.6. Institutional Reform, Vetting and Public Perceptions of War Criminals

Institutional reform is prerequisite to prevent the recurrence of future large-scale human rights violations. Vetting members of the public service, particularly in the security and justice sectors, is critical to facilitating this transformation, by removing from office or refraining from recruiting those public employees personally liable for gross violations of human rights. The goal of this mechanism is to put in place conditions ensuring that crimes do not recur and that public trust in those institutions is restored. Vetting is an extremely important step for ensuring rule of law and reconciliation. It goes without saying that security sector reform is of particular importance.<sup>352</sup>

There are no indications that any mechanisms preventing those liable for or implicated in war crimes from holding senior offices in the army, police and civilian institutions were applied in Serbia in 2018. The Chapter 23 Action Plan envisages the analysis of the situation in the War Crimes Investigation Service (WCIS) and the Witness Protection Unit (both of which operate as part of the Ministry of Internal Affairs) with a view to ascertaining whether the process of hiring staff should be changed, given the potential impact of the candidates' prior participation in armed conflicts in the former Yugoslavia.<sup>353</sup>

The official report on the implementation of the Chapter 23 Action Plan states that the analysis of the WCIS' work showed that this body supported the view that police officers, who had taken part in the armed conflicts, should not be engaged in investigating war crimes.<sup>354</sup> The Report said that the current appointment procedure precluded the possibility of deployment to the WCIS of candidates who had in any way been "in contact with persons, units and/or locations related to the war crimes committed in the territory of the former Yugoslavia". The rulebooks on the recruitment of new police officers, however, do not lay down any measures for investigating the candidates' potential involvement in the conflicts, wherefore it is unclear how they preclude the engagement of such officers.<sup>355</sup>

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in the 1990s. More in the RECOM press release, available at: <http://recom.link/london-summit-without-the-declaration-on-recom/>.

352 Guidance Note of the Secretary General of the UN, United Nations Approach to Transitional Justice, March 2010, available at: [https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf).

353 Chapter 23 Action Plan, measures 1.4.1.7 and 1.4.4.2, available at: <https://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023.pdf>.

354 2/2018 Report on the Implementation of the Action Plan for Chapter 23, p. 325, available at: <https://www.mpravde.gov.rs/files/Report%20no.%202-2018%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>.

355 Recruitment of new police officers for the WCIS is conducted in accordance with the Rulebook on Internal Selection of MIA Staff (*Sl. glasnik RS*, 73/16) and the Rulebook on MIA Staff Competences (*Sl. glasnik RS*, 52/16), 2/2018 Report on the Implementation of the Action Plan for Chapter 23, p. 322.

No information was available on the implementation of the reform of the Witness Protection Unit (WPU) staff recruitment process; the finding of the Council monitoring the implementation of the Chapter 23 Action Plan of April 2017 – that this activity could not be considered as successfully implemented – remained unchanged.<sup>356</sup>

The above findings lead to the conclusion that no checks of what the candidates for positions in the WCIS and the WPU had been doing during the armed conflicts had been conducted, wherefore they were not subject to vetting, which would result in their non-engagement on account of their involvement in war crimes. Neither experts nor the public at large are aware that any public official has been dismissed after subsequent checks confirmed they had been involved in human rights violations in the 1990s. Moreover, Serbian Army Chief Ljubiša Diković was bestowed the Karađorđe Star – 1<sup>st</sup> class when he retired in September 2018; the Serbian President described him as an honorable and committed officer “despite false accusations and attempts to stamp the seal of shame on his forehead”.<sup>357</sup> The HLC published two dossiers<sup>358</sup> containing evidence that around 1,400 Albanian civilians were killed and thousands were expelled from the area of responsibility of the 37<sup>th</sup> Motorised Brigade of the Yugoslav Army under Diković’s command during the Kosovo conflict.

These and other events in 2018 demonstrate that there is no political will or readiness in Serbia to face the legacy of large-scale crimes, which would also entail a reform of the institutions.

### *5.6.1. Public Promotions of War Criminals*

During the 63<sup>rd</sup> International Book Fair in Belgrade in October 2018, the Serbian Ministry of Defence publishing company promoted four books in its “Warrior” edition: four volumes of the wartime diaries of Nebojša Pavković titled “Third Army – 78 Days in the Embrace of the Merciful Angel”, “Memories of the Participants in the 1999 Battle at Košare”, “Memories of the Participants in the 1999 Paštrik Battle” and “Priština Corps 1998–1999 – Testimonies of War Commanders”. To recall, Pavković was the Chief of Staff of the Yugoslav Army during the Kosovo conflict, who was convicted by the ICTY to 22 years’ imprisonment for crimes against Albanian civilians. The organisers of the promotion described his wartime diaries as “contribution to the preservation of knowledge of applied war skills that helped defend the

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356 1/2017 Report on the Implementation of the Action Plan for Chapter 23, April 2017, p. 152, available at: <https://www.mpravde.gov.rs/files/Report%20no%20%201-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>.

357 See the HLC report at: <http://www.hlc-rdc.org/?p=35653&lang=de> and the RTS report of 14 September 2018, available in Serbian at: <http://www.rts.rs/page/stories/ci/story/1/politika/3258943/general-major-milan-mojasilovic-novi-nacelnik-generalstaba.html>.

358 See the Ljubiša Diković Dossier, available at: <http://www.hlc-rdc.org/wp-content/uploads/2012/11/Ljubisa-Dikovic-File-and-Annex.pdf> and the Rudnica Dossier, available at: [http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije\\_Rudnica\\_eng.pdf](http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije_Rudnica_eng.pdf).

country”,<sup>359</sup> fully ignoring the fact that Pavković’s “war skills” had led to the murder of thousands of civilians and expulsion of hundreds of thousands of Albanians from Kosovo, and the burning down of their homes.

Former commander of the 549<sup>th</sup> Motorised Brigade of the Yugoslav Army Božidar Delić also took part in the presentation of the “Memories of the Participants in the 1999 Paštrik Battle”.<sup>360</sup> Delić is a member of the Serbian Radical Party and was its MP in the National Assembly at one point. The HLC in 2013 publicly presented evidence of the participation of the unit under his command during the Kosovo conflict,<sup>361</sup> and filed a criminal report accusing him of crimes in the village of Trnje in March 1999.<sup>362</sup>

Retired General Dragan Živanović, who was the commander of the Yugoslav Army 125<sup>th</sup> Motorised Brigade during the Kosovo conflict, spoke at the presentation of “Memories of the Participants in the 1999 Battle at Košare”. The HLC in 2013 publicly presented evidence of this Brigade’s involvement in crimes committed in Kosovo in 1998 and 1999,<sup>363</sup> and filed a criminal report accusing Živanović of killing 78 Kosovo Albanians in the village of Kraljane (Đakovica) in April 1999.<sup>364</sup> Duško Šljivančanin, erstwhile commander of the 53<sup>rd</sup> Yugoslav Army Border Battalion during the Kosovo conflict, also spoke at the presentation of this book. The HLC in 2013 filed a criminal report with the WCPS accusing Šljivančanin of crimes in the village of Goden in March 1999, which had resulted in the death of 21 Albanian civilians.<sup>365</sup>

The fourth book in the Warrior edition, “Priština Corps 1998–1999 – Testimonies of War Commanders” was presented publicly by Vladimir Lazarević, who was the commander of the Yugoslav Army Priština Corps during the Kosovo conflict and convicted by the ICTY to fourteen years’ imprisonment for crimes against Albanian civilians. Lazarević expressed special “gratitude to Serbian President and Supreme Commander of the Army of Serbia Aleksandar Vučić, Defence Minister Aleksandar Vulin and the Ministry of Defence for helping the Warrior edition, the edition of truth and non-oblivion, see the light of day.”<sup>366</sup>

The latest in the series of indicators that the public appearances of war criminals are acceptable was the incident that occurred during a live show on *Happy TV*, a station with a nationwide frequency, in November 2016. War crime indictee Ratko

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359 See the MoD’s press release, available at: <http://www.mod.gov.rs/eng/13197/promocija-ratnog-dnevnika-general-a-pavkovica-na-sajmu-knjiga-13197>.

360 See the *Tanjug* report, available in Serbian at: <http://tanjug.rs/mobile/full-view.aspx?izb=438588>.

361 See: <http://www.hlc-rdc.org/?p=22710&lang=de>.

362 See: <http://www.hlc-rdc.org/?p=12923&lang=de>.

363 See: <http://www.hlc-rdc.org/?p=24661&lang=de>.

364 See: <http://www.hlc-rdc.org/?p=24590&lang=de>.

365 See: <http://www.hlc-rdc.org/?p=23483&lang=de>.

366 See the MoD press release, available at: <http://www.mod.gov.rs/eng/tekst/13228/promocija-knjige-pristinski-korpus-1998-1999-svedocenja-ratnih-komandanata-na-sajmu-knjiga-13228>.

Mladić, who is in custody in Scheveningen, spoke live when his son Darko Mladić, a guest in the show who was launching a book about the former general, called him up. Mladić hailed the other guests in the studio, Russian State Duma deputy Pavel Dorokhin and his Communist Party of Russia, and SRS leader Šešelj.

In response to a public outcry describing the incident as scandalous and unacceptable and calling on the Electronic Media Regulatory Authority to react, the EMRA issued a press release stating that Mladić was entitled to speak live on TV stations with a national frequency because he was not convicted by a final decision (given that Mladić appealed the Trial Chamber judgment). True as it may be that Mladić has not been convicted by a final decision, EMRA should have taken into account the fact that his involvement in the Srebrenica genocide has been established in numerous ICTY judgments, in which he was qualified as a participant in a joint criminal enterprise.

### 5.6.2. Denial of the Srebrenica Genocide by Serbian Prime Minister Ana Brnabić

In an interview to *Deutsche Welle* on 14 November 2018, Serbian Prime Minister Ana Brnabić claimed that the crimes committed in Srebrenica in 1995 were “horrible, horrible crimes,” but that they did not constitute genocide.<sup>367</sup> In addition to denying the Srebrenica genocide, confirmed in several cases before the ICTY,<sup>368</sup> the Prime Minister also said that the ICTY owed Šešelj three years of his life, alluding to the fact that he had spent 13 years in detention and was sentenced to ten years’ imprisonment. Coupled with the failure of the National Assembly Speaker, Maja Gojković, to apply Article 88 of the Act on the Election of Assembly Deputies and terminate Šešelj’s MP mandate on the day the judgment in his case came final, the Prime Minister’s views further strengthen the belief that promotions of individuals accused of or convicted for grave crimes against civilians as heroes or ICTY victims are fully acceptable in Serbia’s public and political life.

At his meeting with the Prime Minister, IRMCT President Theodor Meron clearly expressed the view that “It does not help the Government of Serbia to challenge judgements of a major international criminal tribunal.” He also suggested that legal interpretations of international crimes better be left to international criminal tribunals.<sup>369</sup>

In late November 2018, the Vojvodina Press Association gave the “Golden Pen” award to their colleague, Ljiljana Bulatović Medić, Mladić’s chronicler, who is also infamous for her open denial of the Srebrenica genocide. The prize was awarded

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367 See the *Deutsche Welle* report, available in Serbian at: <https://goo.gl/PncpEj>.

368 See, e.g. the ICTY judgments in the cases of Radislav Krstić and Zdravko Tolimir.

369 Meron expressed disagreement and disappointment with Brnabić’s recent interview, in which she denied that the crimes committed in Srebrenica constituted genocide. See more at: <http://www.irmct.org/en/news/president-meron-meets-serbian-prime-minister-brnabi%C4%87-challenges-her-statements-denying-genocide>.

by the Provincial Secretary of Culture and Information in the Government building, who saw nothing controversial in it. The Independent Association of Vojvodina Journalists (NDNV) branded Ljiljana Bulatović Medić as “one of the top five war and post-war mongers” and described the award as horrifying.<sup>370</sup>

## 5.7. *Attitude towards Victims – Reparations*

Reparations programmes seek to redress systemic violations of human rights. Reparations, commonly divided into material and symbolic, individual and collective, judicial and administrative, encompass all kinds of measures and mechanisms aimed at alleviating the consequences of violence, acknowledging the victims’ suffering, respecting their dignity and assisting their reintegration into society.<sup>371</sup> Serbia’s obligation to provide reparations to all victims of human rights violations emanates from the international treaties it has ratified but the realisation of the victims’ right to reparations in Serbia still falls very short of European standards.<sup>372</sup>

### 5.7.1. *Administrative Reparations*

The administrative reparation mechanism<sup>373</sup> is provided in the 1996 Act on the Rights of Civilian Invalids of War.<sup>374</sup> Pursuant to this Act, individuals with the status of civilian invalids of war are entitled to financial support, healthcare and specific forms of social protection, as well as lower public transportation fares. The Act contains a large number of discriminatory provisions precluding many victims from exercising their rights; they include victims suffering from psychological or psychosomatic disorders, victims of wartime sexual abuse, victims whose disability rating does not exceed 50%, families whose members were victims of enforced disappearance, etc.<sup>375</sup> No data were available on the number of victims who were granted the status of civilian invalids of war in 2018. None of the victims represented by HLC were granted such status in 2018.

The Ministry of Labour, Employment and Veteran and Social Issues formed a working group in 2018 to draft a new law on the protection of army veterans; disabled war and peacetime army veterans; civilian invalids of war; families of fallen and deceased disabled war veterans, army staff who were killed or died in peace-

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370 See: <http://rs.n1info.com/English/NEWS/a439449/General-Mladic-s-fan-awarded-for-books-denying-genocide.html>.

371 Administrative Reparations in Serbia – an analysis of the existing legal framework, HLC, June 2013, available at: [http://www.hlc-rdc.org/wp-content/uploads/2014/03/Administrative\\_reparations\\_in\\_Serbia\\_an\\_analysis\\_of\\_the\\_existing\\_legal\\_framework.pdf](http://www.hlc-rdc.org/wp-content/uploads/2014/03/Administrative_reparations_in_Serbia_an_analysis_of_the_existing_legal_framework.pdf).

372 See: <http://www.hlc-rdc.org/?p=31034&dlang=de>.

373 Administrative Reparations in Serbia, HLC, p. 3.

374 *Sl. glasnik RS*, 52/96, available at: [http://www.hlc-rdc.org/wp-content/uploads/2014/03/The\\_Law\\_on\\_Civilian\\_Invalids\\_of\\_War.pdf](http://www.hlc-rdc.org/wp-content/uploads/2014/03/The_Law_on_Civilian_Invalids_of_War.pdf).

375 Administrative Reparations in Serbia, HLC, pp. 4–9.



time, deceased civilian invalids of war and civilian victims of war. The authors of the Preliminary Draft further tightened the requirements for acquiring the status of civilian victim of war: they must have sustained the lethal injury or wound in Serbia or its diplomatic or consular mission abroad and they must have been nationals and residents of Serbia at the time. As opposed to the valid Act, the Preliminary Draft recognises kidnapped and missing persons as civilian victims of war but does not specify whether their families have to first declare them deceased in a non-contentious procedure before applying for the status.

The Preliminary Draft retains the requirements for exercising the right to monthly benefits laid down in the valid Act, classifying it as a right in the field of social protection rather than in the field of human rights protection. Victims must fulfil the following “material requirements” to acquire the status of a civilian invalid of war or civilian victim of war: they must lack subsistence; be incapacitated for work; not exercise the right to financial aid during vocational rehabilitation; and, may not have any regular monthly pecuniary income.

Under the Preliminary Draft, army veterans, disabled war and peacetime army veterans and members of their families are entitled to IDs proving their status; however, the draft law does not envisage the issuance of such IDs to civilian invalids of war/families of civilian victims of war, wherefore the state does not effectively recognise their status of victim. Families of fallen war veterans are entitled to the compensation of costs of the exhumation, transportation and burial of their remains and of the gravestone costs. Such rights are not bestowed upon the families of civilian invalids of war and civilian war victims. Given the costs of exhumation and the fact that several thousand civilians are still registered as missing in the former Yugoslavia, the question of who will pay for their exhumations is not immaterial.

Exercise of the rights under the Preliminary Draft is further exacerbated by the provisions requiring of applicants for the status of civilian invalid of war or member of the family of a civilian victim of war to submit the originals of all proofs together with their applications to the administrative authorities. Under the Preliminary Draft, the applications of applicants not in possession of original proofs or unable to procure original proofs in another manner shall be dismissed. Furthermore, all the proofs must date back to the time the injury/wound occurred, within a year of the incident at the latest. The fulfilment of these requirements by civilian invalids of war and members of the families of civilian victims of war will be next to impossible, because it can hardly be expected of anyone living in a war-torn area to have collected and kept all the requisite medical documentation from that period.

### *5.7.2. Judicial Reparations*

The judicial mechanism for exercising the right to reparations in Serbia is applied in (pecuniary and non-pecuniary) damage compensation proceedings. The legal framework for claiming damages from the Republic of Serbia is laid down in the provisions of the Serbian Constitution, ratified international human rights con-

ventions and the Act on Torts and Contracts.<sup>376</sup> The decades-long problems in damage proceedings have mostly arisen due to the strict interpretation of the statute of limitations provisions, excessive duration of the proceedings and awards of very low amounts of damages.

On 7 June 2018, the Belgrade Higher Court delivered a judgment ordering the state to pay 3.05 million RSD (around €27,500) for non-pecuniary damages to the Bogujevci sisters, Saranda, Jehona and Lirie, who were gravely wounded by the Scorpions unit in Podujevo on 28 March 1999. The trial lasted over 10 years and the awarded amount is anything but just satisfaction given that the Bogujevci sisters were children at the time of the crime (13, 10 and 8 years old) and that many of their family members had been killed, the grave injuries they sustained, the years of treatment they had to undergo, and the fact that they are still suffering the consequences of those injuries. Award of such pittance to the victims by the Serbian courts has rendered senseless the goal of compensation of non-pecuniary damages and is an affront to the plight suffered by the Bogujevci sisters ever since they were children.<sup>377</sup>

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376 *Sl. list SFRJ*, 29/78, 39/85, 45/89 – CC of Yugoslavia Decision and 57/89, *Sl. list SRJ*, 31/93 and *Sl. list SCG*, 1/03 – Constitutional Charter.

377 The Belgrade Higher Court War Crimes Department sentenced five members of the Scorpions unit to multiple years of imprisonment for this crime. The Scorpions unit was part of the Special Anti-Terrorist Unit of the Ministry of Internal Affairs of Serbia. See more at: <http://www.hlc-rdc.org/?s=Bogujevci&lang=de>.

## IV. PROTECTION AND REALISATION OF RIGHTS OF SPECIFIC CATEGORIES OF THE POPULATION

### 1. Status of Roma

Roma are the second largest national minority in the Republic of Serbia, outnumbered only by ethnic Hungarians. Roma are one of the most vulnerable categories of the population in Serbia. Their status has for years now been qualified as desultory. According to the last Census, conducted by the Statistical Office of the Republic of Serbia in 2011, 147,604 (2%) of Serbia's nationals declared themselves as Roma.<sup>1</sup> Other sources, however, cite different figures. For instance, the European Commission's Roma Integration 2014 Assessment: Questions and Answers,<sup>2</sup> prepared by the Support Team of the CoE Secretary General's Special Representative for Roma Issues in 2013, puts the average estimated number of Roma in Serbia at as many as 600,000.

#### *1.1. Social Inclusion of Roma*

The Coordination Body Monitoring the Implementation of the 2016–2025 Roma Social Inclusion Strategy (Coordination Body) held only two sessions since it was formed in March 2017. At its second session, in April 2018, the Coordination Body discussed the preparation of Operational Conclusions of the Roma Social Inclusion Seminar and activities for improving the living conditions in the Crvena zvezda settlement in Niš.<sup>3</sup>

The Coordination Body upheld the initiative to abolish quotas for enrolling Roma in tertiary education, under the explanation that all Roma who passed the entrance exam had to be enrolled. Construction Minister Zorana Mihajlović, who

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1 See the Statistical Office of the Republic of Serbia publication: <http://media.popis2011.stat.rs/2012/Nacionalna%20pripadnost-Ethnicity.pdf>.

2 Roma Integration – 2014 Commission Assessment: Questions and Answers, European Commission, 4 April 2014, available at: [http://europa.eu/rapid/press-release\\_MEMO-14-249\\_en.htm](http://europa.eu/rapid/press-release_MEMO-14-249_en.htm).

3 More is available in Serbian at: <http://socijalnoukljucivanje.gov.rs/>.

chairs the Body, said that the initiative would reduce discrimination and prejudices and facilitate the inclusion of the Roma community in society.<sup>4</sup> The initiative was adopted although the number of Roma students is negligible and despite the fact that 2016–2025 Roma Social Inclusion Strategy (Strategy)<sup>5</sup> lays down that the quotas of Roma students enrolled in tertiary education have to be increased. Only one percent of Roma students graduated from college in 2017.<sup>6</sup> The Strategy also emphasises the need to strengthen the existing measures by specifying the criteria, conducting campaigns to reach out to potential beneficiaries, provide support and secure funding in the state budget.

The Report on the Implementation of the Strategy Action Plan for 2017 was presented in late June 2018. The Report focuses on the four areas designated as priorities: education, health, employment and housing. At the presentation of the Report, Roma Integration 2020 Action Team Leader Orhan Usein said that the Report lacked data on planned budgets and funds allocated for the implementation of the Action Plan, wherefore its authors were unable to precisely evaluate the progress made the previous year. The Report noted headway in the enrolment of Roma children in pre-school and primary school and an increase in the number of Roma children who completed primary school. It, however, emphasised that many measures had not been implemented or that information on their implementation was lacking.<sup>7</sup>

In September 2018, the Serbian Government adopted the Fourth Periodic Report on the Implementation of the Framework Convention for the Protection of National Minorities and submitted it to the Council of Europe Secretary-General.<sup>8</sup> The Government replied to the CoE Committee of Ministers recommendations, including on the status of the Roma national minority, and quoted data on human and financial resources until 2017, the right of Roma to housing, forced evictions of Roma, the health situation and healthcare of Roma, engagement of health mediators, issues regarding Roma segregation in education and the status of Roma in the field of education.

In cooperation with the Coordination Body, the UN Development Programme, the UN High Commissioner for Refugees (UNHCR) and UN Volunteers (UNV) implemented the project “Local Initiatives for Improved Social Inclusion of Young Roma” supporting the development of skills and employment of 30 young Roma, including internally displaced persons, in local self-governments and government and non-government institutions to formulate, implement and monitor Roma

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4 More is available in Serbian at: <http://www.mgsi.gov.rs/cir/aktuelnosti/mihajlovitsheva-obrazovanje-je-kljuch-boljeg-polozhaja-roma-i-romkinja-u-srbiji>.

5 *Sl. glasnik RS*, 26/16.

6 See more at: [http://www.rs.ndp.org/content/serbia/en/home/presscenter/articles/2018/te\\_akpolo\\_aj-roma-na-zapadnom-balkanu.html](http://www.rs.ndp.org/content/serbia/en/home/presscenter/articles/2018/te_akpolo_aj-roma-na-zapadnom-balkanu.html).

7 Available in Serbian at: <http://romaworld.rs/izvestaj-o-sprovodjenju-ap-o-sprovodjenju-strategije-za-socijalno-ukljucivanje-roma-i-romkinja-2016-2025/>.

8 Available at: <http://www.ljudskaprava.gov.rs/sr/node/22332>.

inclusion policies at the local level.<sup>9</sup> The project was implemented from February to end October 2018. Young Roma were provided with knowledge, skills and useful experience empowering them to influence social and political processes in their local communities. They underwent training in, inter alia, human rights, discrimination, prevention of statelessness, rights of vulnerable groups and social inclusion mechanisms at the local level. As of May 2018, 30 qualified young Roma started working as UN volunteers in local institutions in 24 Serbian cities and municipalities.<sup>10</sup>

The state textbook publisher in 2018 published four textbooks in Roma – Picture-book, Primer and Readers with Elements of Roma National Culture for third and fourth grades. These are the first Roma language textbooks introduced in the Serbian education system.<sup>11</sup>

The European Union has allocated four million EUR to support a three-year project which aims to strengthen local communities with a view to promoting the inclusion of Roma, who are the most discriminated against and marginalised minority across Europe. At a news conference at which the project titled “EU support for Roma inclusion – Strengthening local communities for Roma inclusion” was launched in March 2018, the EU representative said that the EU has to date invested €11.4 million<sup>12</sup> in support of Serbia’s Roma integration efforts and planned on supporting them with another 20 million EUR, corroborating the EU’s great huge interest in improving the status of Roma.<sup>13</sup>

Efforts to formulate Roma integration policies and their implementation, budgeting and monitoring continued in 2018 through the technical and expert assistance to governments within the Roma Integration 2020 project.<sup>14</sup> However, the precarious situation of Roma requires further long-term commitment and serious investment of all participating economies that will not only lead to better integration and quality of life among Roma, but will also facilitate the EU accession efforts of Western Balkan countries as well.<sup>15</sup>

The Ministry of Construction, Transportation and Infrastructure, the Council of Europe and 11 local self-governments signed a Protocol on Cooperation at the ROMACTED conference in May 2018. The following local self-governments

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9 See more at: <http://www.unhcr.rs/media/docs/2018/10/YoungRomaENG.PDF>.

10 See more at: <http://www.unhcr.rs/en/dokumenti/saopstenja-za-medije/unhcr-i-undp-unapredenje-socijalne-inkluzije-roma.html>.

11 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/drustvo/cetiri-udzbenika-na-romskom-u-upotrebi-od-septembra/re6jd4d>.

12 More in the *2017 Report*, IV.1.

13 See more at: <https://europa.rs/new-eu-project-for-roma-inclusion/?lang=en>.

14 The implementation of the project began in 2016 and involves the provision of technical and expert support to Western Balkan Governments and Turkey to increase the level of Roma integration in society. It is implemented by the Regional Cooperation Council, with the financial support of the European Union and the Open Society Foundation.

15 See more at: [http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/roma\\_integracion\\_2020\\_newsletter\\_ii.pdf](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/roma_integracion_2020_newsletter_ii.pdf).

are participating in the project: Zaječar, Kragujevac, Niš, Odžaci, Kostolac, Prokuplje, Smederevo, Subotica, Vranje, Vrnjačka Banja and Zvezdara.<sup>16</sup> ROMACTED is a joint Council of Europe/European Commission programme aimed at promoting good governance and Roma empowerment at the local level.<sup>17</sup>

## 1.2. Roma-Related Recommendations of International Bodies

The large number of recommendations issued to Serbia by international bodies and organisations on the status of the Roma national minority also corroborate the precarious situation of Roma and the need for the state to take further measures to improve their status and respect for their human rights.

In January 2018, the Committee on the Elimination of Racial Discrimination published its Concluding observations on Serbia's second and fifth periodic reports on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>18</sup> The Committee expressed deep concern that the percentage of Roma children enrolled in all levels of education was drastically lower than that of the general population of children and at the practice of segregation in schools where most children were Roma, or where Roma were placed in Roma-only classes. The Committee has held that segregation is one of the most gravest forms of discrimination and a serious violation of human rights and it called on Serbia to put an end to de facto public school segregation of Roma children and ensure access to quality education for Roma children, including through anti-racism and human rights training for school staff, awareness-raising efforts targeting parents and increased employment of Roma teachers. The Committee also recommended that Serbia take measures to avoid so-called "white flight" from schools where Roma are enrolled, including by developing effective mechanisms with a view to preventing further de facto segregation in schools. It recommended that Serbia enshrine the desegregation of schooling in its national policies to ensure its sustainability and provide adequate funding for its implementation, in line with target 4.1 of the Sustainable Development Goals on ensuring that, by 2030, all girls and boys complete free, equitable and quality primary and secondary education.

The Committee said it was very concerned by reports that one-third of registered homeless persons in Serbia were Roma and that 60,000 Roma, Ashkali and Egyptians lived in substandard living conditions in hundreds of informal settlements, often lacking access to basic services, including drinking water and sanitation. The Committee said it was also concerned by reports that forced evictions from settlements continued to take place without consultation, due process of law

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16 See the *Blic* report, available in Serbian at: <https://www.blic.rs/vesti/drustvo/mihajlovic-omoguciti-romima-da-se-sami-bore-za-svoja-prava/n9fn4zx>.

17 See more at: <https://pjp-eu.coe.int/en/web/roma-local-governance/about-the-project>.

18 Available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSRB%2fCO%2f2-5&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSRB%2fCO%2f2-5&Lang=en).

or the possibility of alternative accommodation. The Committee urged Serbia to eliminate de facto residential segregation and to vigorously pursue efforts to develop social housing programmes for Roma. It recommended that Serbia ensure that, where resettlement from informal settlements is necessary as a last resort, residents are consulted in advance and are provided with sufficient notice and adequate and appropriate alternative housing and that it allocate and disburse sufficient funds to provide durable housing solutions for Roma, Ashkali and Egyptians, so as to contribute to their enjoyment of their right to an adequate standard of living.

In June 2018, the UN Human Rights Council adopted the report on Serbia<sup>19</sup> of the Working Group on the Universal Periodic Review. Serbia was issued the following recommendations: to implement its Anti-Discrimination Strategy and continue combatting all forms of discrimination; to strengthen anti-discrimination mechanisms and continue efforts to promote the human rights of persons belonging to minorities, especially the Roma minority; to continue intensifying efforts to promote tolerance towards persons belonging to ethnic, national, racial, religious and other minorities, including Roma; to continue to ensure non-discriminatory and adequate maternal health care for Roma mothers and young children; to further promote the effective participation of national minorities, especially the Roma minority, in electoral processes and their representation in public administration; to consider adopting a law on racial discrimination and continue efforts to combat racial discrimination and hate speech against foreigners and minorities, particularly the Roma; to take further measures to overcome the prevailing discrimination against Roma in the enjoyment of economic, social and cultural rights; and, to ensure the full implementation of the new Roma Inclusion Strategy.

The European Commission also addressed the status of Roma in Serbia. In its Serbia 2018 Report,<sup>20</sup> it noted that further sustained efforts were needed to improve the situation of persons belonging to the most discriminated groups, including Roma, that Serbia needed to address the shortcomings and to efficiently implement and monitor the Roma Inclusion Strategy and Action Plan. The EC said that the Statistical Office data on the position of women and men in Serbia showed wide gender gaps in the areas of labour, time use, political participation, property and access to resources and that women with disabilities, older, rural and Roma women continued to be among the most discriminated against in society. Although it noted that most Roma in Serbia had civil documentation (birth certificates and ID cards), which used to be a serious problem, it said that the procedure for registering the birth of children whose parents lacked personal documents needed to be monitored.

The EC noted that Serbia had made headway in the field of education and an increase in Roma students benefiting from affirmative action and at all levels

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19 Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/113/90/PDF/G1811390.pdf?OpenElement>.

20 See the Serbia 2018 Report, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

of education. It, however, said that more efforts should be invested in reducing the drop-out rate and segregation. It concluded that, although 84% of the Roma children were enrolled in primary schools, they still faced barriers and lacked adequate support in education. It said that the drop-out rate remained high, especially for Roma girls, and that only 14 % of Roma youth completed secondary education. It noted that only 17% of marginalised Roma pre-schoolers had attended kindergartens in 2017.

The EC noted that the employment rates of Roma were low and that the situation has been deteriorating since 2011 and that Roma were still underrepresented in public administration. It said that the Roma's right to housing was jeopardised, and that an assessment for the legalisation of the existing informal settlements should be carried out. It said that greater efforts needed to be made to improve the living conditions in informal settlements, as many Roma households had no access to drinking water or connection to the sewage system. The EC said that child marriage and early and forced marriages remained a concern and that there was a lack of support services for girls subject to child marriage. It also noted that domestic violence in Roma families often went unreported.

### *1.3. Discrimination against Roma*

Roma have frequently been discriminated against, despite the measures the state has taken to prevent the discrimination of this national minority. Roma are still the most discriminated against group in Serbia, as corroborated by the fact that over half of the complaints filed with the Commissioner for the Protection of Equality claiming discrimination on grounds of national affiliation regarded Roma.<sup>21</sup>

The Commissioner for the Protection of Equality issued an opinion after reviewing a complaint against a secondary school in P regarding discrimination on grounds of national affiliation in June 2017. She found that, by its treatment of a Roma pupil, the school had violated Articles 7 and 12 in conjunction with Article 24 of the Anti-Discrimination Act and recommended it organise training to build its staff's capacity for recognising and preventing discrimination, promoting tolerance and knowledge and understanding of discrimination and that it make sure they no longer violate anti-discrimination law.<sup>22</sup>

In December 2017, the Commissioner issued an opinion regarding a complaint against the General Hospital Dr Laza K. Lazarević in Šabac. The complainant alleged he had had been discriminated against on grounds of his national affiliation because he had repeatedly applied for jobs in the hospital, for which he fulfilled all the requirements, but that he was never hired because he was Roma. The Com-

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21 See more at: <http://ravnopravnost.gov.rs/en/announcement-on-the-occasion-of-the-international-roma-day/>.

22 See more at: <http://ravnopravnost.gov.rs/en/no-07-00-00028-2018-02/>.



missioner found the Hospital in violation of Article 7 in conjunction with Articles 16 and 24 of the Anti-Discrimination Act.<sup>23</sup> The Commissioner recommended the Hospital take measures to eliminate the effects of its discriminatory conduct and not to violate anti-discrimination law in the future. The Commissioner notified the public of this case of discrimination because the Hospital had not acted on her recommendations.<sup>24</sup>

On World Roma Day, the Protector of Citizens also spoke about the problems Roma in Serbia faced, despite the state's efforts to improve their situation, especially in education, health and civil documentation. He said that over 55% of the complaints alleging violations of the rights of national minorities had been filed by Roma and that Roma women were victims of multiple discrimination.<sup>25</sup>

The Protector of Citizens issued recommendations to the Ministry of Health and local self-governments with a view to improving the prevention and protection of the sexual and reproductive health of Roma women and legally regulating the status of health mediators.<sup>26</sup>

The plight of Roma is illustrated also by the fact that 90% Roma households in Serbia have no permanently employed members and that around 27,000 of Roma are unemployed despite the affirmative employment measures. The number of unemployed Roma is probably much higher because many have not registered with the National Employment Service, while others do not register as Roma, head of Roma World Production Turkijan Redzepi said in August 2018.<sup>27</sup>

## 2. LGBTI Rights

### 2.1. Normative Framework

The ECHR and ICCPR do not explicitly mention sexual orientation as grounds on which discrimination is prohibited but they leave the possibility open as they specify that discrimination is prohibited on any ground or status in addition to the listed ones, thus allowing for such an interpretation of Article 1 of Protocol No. 12 to the ECHR and Article 26 of the ICCPR.

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23 See more at: <http://ravnopravnost.gov.rs/en/%D0%A1omplaint-by-z-d-from-b-against-o-hospital-s-on-account-of-discrimination-on-the-grounds-of-national-affiliation/>.

24 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a366858/Bg-Izbori/Poverenica-Bolnica-diskriminisala-kandidata-jer-je-Rom.html>.

25 More is available in Serbian at: <https://www.pravamanjina.rs/index.php/692-саопштење-заштитника-грађана-поводом-светског-дана-рома>.

26 *Ibid.*

27 See more at: <http://rs.n1info.com/English/NEWS/a416121/Most-Roma-unemployed-in-Serbia.html>.

The Constitution of the Republic of Serbia does not explicitly list sexual orientation or gender identity among the personal features that constitute prohibited discrimination grounds.<sup>28</sup> The Anti-Discrimination Act prohibits discrimination on grounds of sexual orientation (in Art. 2), but makes no explicit mention of gender identity.<sup>29</sup> Article 21 of the Anti-Discrimination Act lays down that sexual orientation is a private matter, that no-one may be requested to publicly declare their sexual orientation, that everyone is entitled to express their sexual orientation and prohibits discriminatory treatment based on such expression. Most other laws mention either sexual orientation or gender identity, or cover them by “other grounds” of discrimination.<sup>30</sup>

Neither the rights of transgender persons, including the right to change the sex designation in their personal documents and access documents, nor the rights of same-sex partners are regulated at all by Serbian law.

The LGBTI community has for several years now called on the state authorities to adopt the Anti-Homophobia Declaration. The Declaration was not adopted by the end of 2018 although, after their September 2016 joint session, attended also by representatives of LGBTI organisations, the National Assembly Human and Minority Rights and Gender Equality and EU Accession Committees called on the parliament to enact an Anti-Homophobia Declaration<sup>31</sup> and on the Government to adopt a national strategy recognising violence against LGBTI persons and peer violence in schools provoked by the victims’ perceived sexual orientation, and to prepare a law regulating all the legal consequences of sex change.

## *2.2. Discrimination against LGBTI Persons*

Equality of sexual minorities still was not fully achieved in practice in the reporting period despite the satisfactory normative framework prohibiting discriminatory treatment of persons of a different sexual orientation. In its Serbia 2018 Report, the European Commission said that LGBTI persons were among the most discriminated against groups of the population in Serbia and that they often faced hate speech, threats and violence. The EC called on Serbia to promptly and properly investigate, prosecute and sanction such abuses.<sup>32</sup>

The Commissioner for the Protection of Equality issued three opinions in 2018 regarding complaints in the field of information and found violations of the

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28 Although the Constitution does not explicitly mention discrimination on grounds of sexual orientation, it prohibits discrimination on any grounds and on grounds of personal characteristics, which include sexual orientation, as the Constitutional Court confirmed in its decision in the case UŽ-1918/2009 of 22 December 2011.

29 More in the *2009 Report*, I.4.1.2.

30 E.g., the Labour Act prohibits discrimination on grounds of sexual orientation and the Act on Youths prohibits discrimination on grounds of gender identity.

31 See the *N1 Report*, available in Serbian at: <http://rs.n1info.com/a192039/Vesti/Vesti/Predlog-da-Skupstina-usvoji-Deklaraciju-protiv-homofobije.html>.

32 Serbia 2018 Report, p. 28.

prohibition of discrimination on grounds of sexual orientation. She found that the statements J.F. made on TV P about LGBT persons were in violation of Article 12 of the Anti-Discrimination Act.<sup>33</sup> During the morning talk show, J.F. equated same-sex orientation with zoophilia and said it was unrealistic and unnatural; he said persons of same-sex orientation did not want to develop their human potential and develop as human beings. The Commissioner found he had inferred that same-sex orientation was a disease and had thus humiliated LGBT persons and discriminated against them on grounds of their sexual orientation.

In another case, in which she reviewed a complaint the Belgrade organisation R.I.C. filed against the Red Star Soccer Club Director, the Commissioner issued an Opinion<sup>34</sup> in which she found Zvezdan Terzić had discriminated against gay people in an interview to an Internet portal. He had said that gay soccer players were not welcome on the Red Star team and that they would feel uncomfortable in it, specifying that “we have been brought up in the patriarchal, traditional and Orthodox spirit and such a player would feel uncomfortable in the Red Star locker-room.”<sup>35</sup>

The promotion of the picture-book “My Rainbow Family”<sup>36</sup> attracted a lot of attention in early May, especially when its translation into Serbian and sale on the local market were announced for the summer. Media criticisms of the idea were “outshined” by Nenad Popović, the Serbian Minister without Portfolio charged with innovation and technological development, who appealed to the public to resist such phenomena on his Twitter account.<sup>37</sup> The Gay Lesbian Info Centre (GLIC) filed a complaint against Popović with the Commissioner for the Protection of Equality, claiming he had threatened and discriminated against the LGBTI population.<sup>38</sup>

Popović’s statements were condemned both by civil society organisations and Serbian Prime Minister Ana Brnabić, who offered to step down.<sup>39</sup> However, neither did she resign nor was Popović dismissed.

The Commissioner for the Protection of Equality issued an Opinion<sup>40</sup> on the complaint against Popović by the Regional Info Centre and GAYTEN-LGBT, in which she found he had violated Article 12 of the Anti-Discrimination Act. She

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33 Opinion No. 07-00-444/2017-02 of 25 January 2018.

34 Opinion No. 07-00-9/2018-02, of 5 April 2018.

35 See the *Mondo* report, available in Serbian at: <http://mondo.rs/a1068941/Kolumne/Nesa-Petrovic/Zvezdan-Terzic-Nesa-Petrovic-intervju-MONDO.html>.

36 The picture-book was published by the Zagreb association Rainbow Families in 2017.

37 Popović said the following on his Twitter account (NenadPopović@npopovicSNP, Twitter): “They’re importing gay picture-books at a time when our state is doing its utmost to support childbirth. Put an end to it immediately! We have to stop those trying to persuade us it’s OK that ROKO HAS TWO MOMS AND ANA HAS TWO DADS!”

38 See the *Radio Free Europe* report, available in Serbian at: <https://www.slobodnaevropa.org/a/29206220.html>.

39 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a385434/Vesti/Ana-Brnabic-nudila-ostavku.html>.

40 Opinion No. 07-00-368/2018-02 of 2 August 2018.

said that his statement could be qualified as harassment and degrading treatment with the purpose or effect of violating a person's or group's dignity based on their personal characteristic(s), specifically minority sexual orientation in this case. The Commissioner ordered Popović to publicly apologise to the LGBT persons within 15 days and to refrain from making statements and disseminating ideas and views degrading LGBT persons and supporting prejudices against marginalised social groups in the future.<sup>41</sup> Not only did Popović fail to publicly apologise to LGBT persons; he said he stood firmly by his beliefs and would not apologise for his tweet. He criticised the Commissioner for taking four months to issue her Opinion, on the eve of Belgrade Pride Parade.<sup>42</sup> Since Popović did not publicly apologise to the LGBT population within the statutory 30-day deadline, the Commissioner for the Protection of Equality issued a press release stating that he had discriminated against LGBT persons.<sup>43</sup>

In May 2018, the Press Council issued a decision on a case regarding hate speech on the Internet.<sup>44</sup> The complaint was filed with the Press Council because of a comment to a text on daily *Blic's* Facebook profile. The author of the comment insulted LGBT persons and incited hate and violence against them. The Press Council found a violation of the Serbian Press Code of Conduct (Part IV, para 5 on responsibilities of journalists), under which journalists are under the duty to respect and protect the rights and dignity of children, crime victims, persons with disabilities and other vulnerable groups. It said that journalists had to be aware of the risk of media inciting discrimination and do their utmost to avoid discrimination on grounds of race, sex, age, sexual orientation, language, religion, political and other opinions, ethnic or social background, et al. Many 2018 media reports on LGBTI persons were tendentious and negative. They, for instance, sharply criticised and published lies about a Belgrade fashion designer, charged with assaulting two young men.<sup>45</sup> The murder of a young man in Zemun, of which a gay man was suspected, provoked heated reactions, sensationalist media reports and comments on Internet portals. The Commissioner for the Protection of Equality issued a public warning,<sup>46</sup> in which she said that the use of offensive language and qualifications exacerbated intolerance and hostility towards LGBT persons and appealed to the media not to publish discriminatory statements and to comply with ethical standards and the Serbian Press Code of Conduct.

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41 Popović did not publicly apologise to LGBT persons by the end of the reporting period.

42 See the *N1* report, available at: <http://rs.n1info.com/English/NEWS/a414837/Minister-will-not-apologise-to-LGBT-community-for-comment.html>.

43 See more at: <http://ravnopravnost.gov.rs/en/public-notice-nenad-popovic-discriminated-members-of-lgbt-population/>.

44 The complaint was filed with the Press Council by BCHR, within the "Anonymous Hate" project. The Council's decision is available in Serbian at: <http://www.savetzastampu.rs/latinica/zalbeni-postupci/4844>.

45 See the *Optimist* report, available in Serbian at: <https://www.optimist.rs/optimist-43-avgust-2018/>.

46 See more at: <http://ravnopravnost.gov.rs/en/public-warning-2/>.

### 2.3. Trials

The Serbian courts delivered several judgments concerning discrimination against LGBTI persons.

The Niš Appellate Court delivered a judgment<sup>47</sup> upholding the judgment of the Prokuplje Higher Court,<sup>48</sup> finding chairman of the Serbian Radical Party (SRS) Kuršumlija Municipal Committee and SRS councillor in the Kuršumlija Municipal Assembly Zvezdan Ristić guilty of discrimination. At the Municipal Assembly session on 1 December 2016, Ristić made discriminatory statements against journalist Stefan Radović on account of his sexual orientation. Criticising the work of the Director of the Kuršumlija Outpatient Health Clinic, Ristić said she was “abusing her office to provide an ambulance and a special driver to drive journalist Stefan Radović, who is unfortunately a sick person, because that’s a sickness in my opinion, to Belgrade whenever he wants to.” When the others asked who he was talking about, he said Radović was “the best known homosexual”. The Court found Ristić had violated the prohibition of discrimination because he commented Radović in a negative context, emphasising his sexual orientation as the feature he was best known for, and said he thought homosexuality was a disease, wherefore he publicly expressed a negative opinion about a group of people of that sexual orientation. The Niš Appellate Court thus upheld the views of the Prokuplje Higher Court and ordered Ristić to cover Radović’s court fees amounting to 36,000 RSD and publish the judgment in the Kuršumlija Municipality Official Journal at his own expense.<sup>49</sup>

The case of Dr Bojan Marko Lens attracted the attention of the public both in Serbia and in other countries in July 2018.<sup>50</sup> The Belgrade Higher Court delivered a judgment on 12 July 2017 (which became final on 14 March 2018), in which it found Lens had been discriminated against by Swiss International Airlines Ltd on grounds of his ethnic affiliation (Serb) and sexual orientation (gay). As ordered by the Court, the company published its judgment in the daily *Politika*.

The acquittal of Novi Sad Law School Professor Dr Branislav Ristivojević on appeal prompted a lot of debate. Ristivojević was found guilty of discrimination against women and LGBT persons in a first-instance judgment in 2018 after he voiced various negative comments about them and human rights organisations in his text “Domestic Violence and Violence against Families” posted on the website of New Serbian Political Thought.<sup>51</sup> This strategic litigation case was initiated by the

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47 Niš Appellate Court judgment 28 Gž. No. 1/18 of 27 March 2018.

48 Prokuplje Higher Court judgment P. No. 52/17 of 14 November 2017.

49 The judgment was not published in the Kuršumlija Municipality Official Journal by 1 November 2018.

50 See: <https://www.them.us/story/an-airline-employee-harassed-this-gay-man-for-years-yet-got-promoted>.

51 The text is available in Serbian at: <http://www.nspm.rs/kuda-ide-srbija/nasilje-u-porodici-i-nasilje-nad-porodicom.html>.

Commissioner for the Protection of Equality, who explained that multiple discrimination was at issue, that the victims were vulnerable categories – women and LGBT persons and that the perpetrator was an important public figure (university professor). Ristivojević was in the meantime appointed Novi Law School Dean, although he was found guilty of discrimination in the first instance.<sup>52</sup>

The Novi Sad Appellate Court acquitted Ristivojević in October 2018. It said that Ristivojević's statement did not amount to discrimination and that he had expressed value judgments, as he was entitled to in accordance with his freedom of speech.<sup>53</sup>

#### 2.4. *Discrimination in the Serbian Education System*

Discrimination in education is prohibited under a number of national laws, including the Anti-Discrimination Act (Article 19), the Education System Act (Article 9),<sup>54</sup> the Higher Education Act (Article 4),<sup>55</sup> the Textbook Act (Article 13),<sup>56</sup> etc. The 2016 Rulebook on Detailed Criteria for Recognising Forms of Discrimination in Education Institutions by Staff, Children, Pupils or Third Parties<sup>57</sup> specifies sexual orientation among the grounds on which discrimination is prohibited and enumerates in Article 10 the forms of expression that constitute hate speech.

A World Bank research<sup>58</sup> on access to primary education in Serbia disclosed concerning data: “feminine boys,” widely perceived as being gay, were at least three times more likely to be refused enrolment in primary schools (15%) compared to boys not perceived to be feminine (5%).<sup>59</sup> The chances of a non-feminine boy being accepted into a school without hesitation were more than twice as high (72 percent) as the chances for feminine boys (35 percent).<sup>60</sup> The study revealed that the boys’

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52 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a427692/Branislav-Ristivojevic-ostaje-dekan-Pravnog-fakulteta-uprkos-presudi-za-diskriminaciju.html>.

53 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a436394/Dekan-Pravnog-fakulteta-u-Novom-Sadu-pravosazno-oslobodjen.html>.

54 *Sl. glasnik RS*, 55/13, 101/17 and 27/18 – other law.

55 *Sl. glasnik RS*, 88/17, 27/17, 27/18 – other law and 73/18.

56 *Sl. glasnik RS*, 27/18.

57 *Sl. glasnik RS*, 22/16.

58 World Bank Group, in cooperation with: IPSOS; ERA, the Williams Institute, “Discrimination against Sexual Minorities in Education and Housing: Evidence from Two Field Experiments in Serbia,” April 2018, available at: <http://documents.worldbank.org/curated/en/161011522071811826/pdf/124587-WP-P156209-DISCRIMINATION-AGAINST-SEXUAL-MINORITIES-IN-EDUCATION-AND-HOUSING-EVIDENCE-FROM-TWO-FIELD-EXPERIMENTS-IN-SERBIA-PUBLIC-ENGLISH.pdf>. This report documents, for the first time, experimental evidence of discrimination against LGBTI people in access to education and housing in Serbia.

59 *Ibid.*, p. 6.

60 *Ibid.*, p. 13.

perceived femininity was more problematic than low academic performance or behavioural problems.<sup>61</sup>

In April 2018, the Commissioner for the Protection of Equality issued an Opinion after reviewing complaints association L filed against the Ministry of Education, Science and Technological Development, the National High Education Council, the Education Improvement Institute, the national textbook publisher and the Education Quality Evaluation Institute because of content discriminating against LGBT persons on account of their sexual orientation in two secondary school textbooks on health, the psychology textbook for high schools and specific vocational secondary schools, as well textbooks in neuropsychiatry and child neuropsychiatry. The Commissioner for the Protection of Equality found a violation of Article 6 of the Anti-Discrimination Act by the Education Ministry, because it had failed to take measures to eliminate discriminatory content from the textbooks.<sup>62</sup>

## 2.5. *Violence and Hate Crimes*

The Criminal Code was amended in 2012 and now includes Article 54a, under which courts shall consider as an aggravating circumstance the commission of a crime out of hate of another on grounds of his race, religion, national or ethnic affiliation, sexual orientation or gender identity. However, most hate crimes against LGBTI persons are not reported to the competent institutions, due to distrust in the institutions, fears of outing or lack of information.<sup>63</sup>

The first judgment<sup>64</sup> for a hate crime, incriminated in Article 54a of the Criminal Code, was delivered by a Serbian court in 2018. The Belgrade First Basic Court considered hate crime an aggravating circumstance in a domestic violence case, which ended with the conviction of the defendant under Article 194(1) of the Criminal Code for abusing his wife and his gay son. The defendant was found to have committed the crime motivated by his hatred of his son because of his sexual orientation. The defendant also assaulted his wife because she had known their son was gay, a fact she hid from him. The Court took into consideration that the mother was a victim of discriminatory violence by association with another person having the relevant characteristic – her son.<sup>65</sup> The father was convicted to a suspended one-year sentence, three years on probation, and issued a one-year restraining order.

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61 *Ibid.*, p. 14.

62 Opinion No. 07-00-564/2017-02 of 5 April 2018.

63 More in: I. Stjelja, K. Todorović, D. Todorović, J. Todorović: *HATE CRIMES Actions of State Authorities in Cases of Attacks against LGBT Persons in Serbia*, Labris, Belgrade 2014, available at: <http://labris.org.rs/en/wp-content/uploads/2014/04/Hate-Crimes-Publication-English.pdf>.

64 Belgrade First Basic Court judgment No. 7 K. 1435/18 of 17 October 2018 (became final on 2 November 2018).

65 See the ECtHR judgment in the case of *Škorjanec v. Croatia*, App. No. 25536/14.

This judgment is important for a number of reasons. First, this is the first time this legal institute has been applied in Serbia since it came into force in 2013.<sup>66</sup> Second, the court convicted the perpetrator of a crime against a member of a vulnerable group. Third, this judgment is the first step in the creation of case-law that can significantly impact the prosecution of other or similar crimes committed out of hate.

The state is under the obligation to fulfil a number of obligations it assumed under Chapter 23, notably in combatting hate crimes (Art. 54a of the Criminal Code). By actively monitoring the situation and representing the victims, civil society organisations can further encourage courts and prosecutors to improve the situation in this area. The media should intensify their campaigns to protect the victims of such attacks.<sup>67</sup> Guidelines for the Criminal Prosecution of Hate Crimes in the Republic of Serbia<sup>68</sup> were published in mid-2018 with a view to facilitating the identification and registration of hate crimes. The Guidelines were prepared as a tool to help public prosecutors recognise and understand the problem of crimes committed out of hate.

The Judicial Academy and the OSCE Mission to Serbia have been cooperating on the organisation of a series of trainings on hate crimes, at which the Guidelines will be presented, and on participation in the ODIHR conference in Warsaw. One-day training for judges and prosecutors on the status of LGBTI persons before the Serbian courts was held in cooperation with UCLA. Several of the sessions were devoted to hate crimes.<sup>69</sup>

Two assaults on LGBTI persons were registered in 2018. One incident occurred in Subotica in late April 2018, when a group of young men verbally abused a young man they perceived to be gay.<sup>70</sup> The other incident occurred in the heart of Belgrade in mid-April, when an LGBTI activist was first physically assaulted and then verbally abused by his assailant because of his perceived sexual orientation.<sup>71</sup>

## *2.6. Events Organised by the LGBTI Population*

No incidents occurred during the viewing of films and discussions within the FALAFEL– Festival of Israeli LGBTI movies, held in Belgrade on 16–17 May 2018.

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66 Act Amending the Criminal Act, which introduced the legal institute of hate crime in Serbia's legal order in Article 54a (this Act was adopted in December 2012).

67 See more in Serbian at: <http://www.yucom.org.rs/wp-content/uploads/2018/02/Procesuiranje-zlocina-iz-mrznje-SRP.pdf>.

68 The Guidelines, prepared by Tamara Mirović, Jasmina Kiurski, Milan Antonijević and Jelena Jokanović, provide an overview of international and Serbian law governing the field and provide practical examples of the application of Article 54a of the Criminal Code.

69 2/2018 Report on the Implementation of the Action Plan for Chapter 23, p. 1142, available at: <https://www.mpravde.gov.rs/files/Report%20no.%20202-2018%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>.

70 See more in Serbian at: [https://dasezna.lgbt/case/DSZ\\_061/upu%C4%87ivanje\\_pretnje\\_biciklisti\\_zbog\\_pretpostavljne\\_istopolne\\_seksualne\\_orijentacije.html](https://dasezna.lgbt/case/DSZ_061/upu%C4%87ivanje_pretnje_biciklisti_zbog_pretpostavljne_istopolne_seksualne_orijentacije.html).

71 See more in Serbian at: [https://dasezna.lgbt/case/DSZ\\_057/fizi%C4%8Dki\\_napad\\_na\\_lgbtqiqa\\_aktivistu.html](https://dasezna.lgbt/case/DSZ_057/fizi%C4%8Dki_napad_na_lgbtqiqa_aktivistu.html).



The Festival was co-organised by the organisation Haver Serbia, the Cultural-Educational Centre, the Israeli Embassy in Belgrade, in cooperation with the Merlinka Festival and the organisation XY Spectrum.

Numerous events focusing on the rights and problems of the LGBTI population were organised during Pride Month in June 2018. The central event – the Pride Parade – was held in Belgrade on 23 June.<sup>72</sup> Its organisers called for the adoption of a law on same-sex partnerships, greater visibility of transgender persons and better prevention and treatment of persons living with HIV/AIDS. Only one incident occurred during the event; the police led away a woman who was insulting the participants in the park.<sup>73</sup>

Pride Week was staged in September 2018. The events – movie showings, discussions et al – began on 10 September and the Pride Parade under the slogan “Say Yes” took place on 16 September.<sup>74</sup> The participants called on the state to assume responsibility for the protection of the human rights of LGBT+ persons; penalise violence against them and apply Article 54a of the Criminal Code (incriminating hate crime); adopt laws on gender equality and registration of same-sex partnerships; encourage impartial and non-sensationalist reporting on the problems of LGBT+ persons; reform the education system and eliminate discriminatory content from the textbooks; adopt laws penalising peer violence and harassment on grounds of sexual orientation and gender identity. No incidents occurred during the Parade, which was attended by senior state officials, notably Prime Minister Ana Brnabić, public figures, diplomats, LGBTI activists and ordinary citizens.

The Pride Info Centre that opened in Belgrade in August 2018 hosted lectures, panel discussions and movie showings and theatre plays aiming to familiarise the general public with the problems faced by the LGBTI population.<sup>75</sup> Like in 2017, Pride Info Centre attracted a lot of attention and regularly staged numerous events regarding the problems of the LGBTI population.

## *2.7. Status of Trans<sup>76</sup> Persons*

The Serbian legal system does not recognise trans persons. The health system recognises only transgender, which it categorises as a mental disorder.<sup>77</sup> The An-

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72 The Pride Parade was organised by Egal, the Gay Lesbian Info Centre and Loud and Queer.

73 See more at: <http://rs.n1info.com/English/NEWS/a398592/Minor-incident-at-Belgrade-Pride-parade.html>.

74 The Pride Parade was organised by: Civil Rights Defenders, GAYTEN-LGBT, Heartefact, *Da se zna*, Belgrade Pride, Come Out and the Youth Initiative for Human Rights.

75 See more in Serbian at: <http://parada.rs/prajd-info-centar/>.

76 Trans is an umbrella term for people whose gender identity/ies differ/s from sex/gender assigned at birth.

77 See: J. Vidić, “Trans Persons in Serbia – Analysis of the Status and Proposal of a Legal Solution, Model Gender Identity Act, Gayten-LGBT”, GAYTEN, Belgrade, 2015, p. 10, available in Serbi-

ti-Discrimination Strategy highlights the following major problems: lack of legal regulations protecting the right of transgender persons to the legal recognition of their sex change and clearly facilitating the prompt changes of their personal documents and the current inconsistent practices on this issue, which have resulted in depriving such persons of numerous rights, e.g. the right to work.

The civil sector prepared two texts, a Model Act on the Recognition of the Legal Consequences of Sex Change and Determination of Transsexualism<sup>78</sup> in 2012 and the Model Gender Identity Act<sup>79</sup> in 2016.

The Anti-Discrimination Strategy Action Plan envisages two more measures addressing this issue: the drafting of a law on gender identity to improve the status of transgender persons until mid-2016<sup>80</sup> and the preparation of a draft sex change law, which would subsequently serve as the basis for amending other relevant laws. A sex change law was not, however, adopted by the end of 2018 either.

## 2.8. People Living with HIV/AIDS

The new 2018–2025 HIV/AIDS Strategy and its Action Plan covering the 2018–2021 period were adopted during the reporting period.<sup>81</sup> The Strategy's goal is to prevent HIV infections and other sexually transmittable infections and facilitate the treatment of and support to all persons living with HIV/AIDS. The main components of the Strategy include: prevention, treatment and support to persons living with HIV/AIDS, protection of their human rights and protection from stigmatisation and discrimination, quality standards and strategic action information. The Strategy recognises the importance of respecting and promoting the human rights of people living with HIV/AIDS, the key populations at risk of HIV and other vulnerable groups of the population. It puts emphasis on the right to privacy, normal schooling, health care, work, housing and non-discrimination of persons living with HIV/AIDS in all walks of life, as well as the responsibility of all public servants, especially health, education and welfare staff, for eliminating prejudices and dispelling fear of them.<sup>82</sup>

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an at: <http://www.transserbia.org/images/2015/dokumenti/Trans%20osobe%20u%20Srbi%20ji%20-%20analiza%20poloaja%20i%20predlog%20pravnog%20reenja.pdf>.

78 Prepared by CUPS, Gayten LGBT and AIRE Centre, S. Gajin (ed.), *Model Act on the Recognition of the Legal Consequences of Sex Change and Determination of Transsexualism*, CUPS, Belgrade, 2012, available in Serbian at: <http://cups.rs/wp-content/uploads/2010/03/Model-zakona-o-priznavanju-pravnih-posledica-promene-pola-i-utvr%20C4%91ivanja-transeksualizma.pdf>.

79 Prepared by Gayten LGBT, available in Serbian at: <http://www.transserbia.org/images/2015/dokumenti/Trans%20osobe%20u%20Srbiji%20-%20analiza%20poloaja%20i%20predlog%20pravnog%20reenja.pdf>.

80 Anti-Discrimination Strategy Action Plan, point 3.1.6(4).

81 *Sl. glasnik RS*, 61/18. This is the third HIV/AIDS Strategy adopted by the Serbian Government. The first, covering the 2005–2010 period, was adopted in February 2005, and the second, covering the 2011–2015 period, was adopted in May 2011.

82 See pages 5–6 of the Strategy, available in Serbian at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2018/61/2/reg>.

The legal framework governing care for people living with HIV/AIDS also includes the Healthcare Programme to Protect the Population from Communicable Diseases,<sup>83</sup> the priority goals of which include prevention and control of sexually transmitted infections. The Serbian Government adopted a decision in January 2018 on the establishment of the new government Commission for Combatting HIV/AIDS and Tuberculosis,<sup>84</sup> which also acts as the Council monitoring the implementation of projects funded from the GFATM donation.<sup>85</sup>

## 2.9. *Intersex*<sup>86</sup> *Persons*

There are no specific regulations in Serbian law on intersex persons. Intersex variations are still considered medical disorders.<sup>87</sup> No data are available on the number of “normalising” operations performed on intersex children in Serbia. The NGO Gayten LGBT formed a group to extend support to intersex persons in Serbia.<sup>88</sup>

In October 2017, the Parliamentary Assembly of the Council of Europe (PACE) adopted a Resolution promoting the human rights of and eliminating discrimination against intersex people.<sup>89</sup> The Resolution devotes attention to children’s right to physical and mental integrity and bodily autonomy; the need for psychological support of the family, society, CSOs to intersex people: the legal status and recognition of gender identity; prohibition of discrimination against intersex people in anti-discrimination law and raising awareness among lawyers, police, prosecutors, judges and all other relevant professionals; the need for collection of more data and implementation of further research into the situation and rights of intersex people, including into the long-term impact of sex-“normalising” surgery, sterilisation and other treatments. In this Resolution, the PACE invited the national parliaments to work actively, with the participation of intersex people and their representative organisations, to raise public awareness about the situation of intersex people in their country and to give effect to its recommendations. Serbia has to act on the recom-

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83 *Sl. glasnik RS*, 22/16.

84 *Sl. glasnik RS*, 5/18 and 8/18 – corrigendum.

85 The Commission comprises representatives of the relevant Ministries, health institutions, the Human and Minority Rights Office, the parliamentary Health and Family Committee, associations, representatives of persons living with HIV, et al, while representatives of international organisations have the status of observers.

86 “Intersex people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies. Intersex is an umbrella term used to describe a wide range of natural bodily variations.” Intersex Fact Sheet, Free&Equal”, United Nations for LGBTI Equality, available at: [https://unfe.org/system/unfe-65-Intersex\\_Factsheet\\_ENGLISH.pdf](https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf).

87 *Ibid.*, p. 144.

88 See: <http://www.transserbia.org/interseks/595-podraska-i-poziv-interseks-osobama>.

89 PACE Resolution 2191 (2017) of October 2017, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24232&lang=en>.

mendations in this Resolution given that it is a member of the Council of Europe and that PACE's recommendations apply to it as well.

### 3. Human Rights of Persons with Disabilities

According to 2011 Census in Serbia, 7.96% (571,780) of Serbia's citizens suffer from some kind of disability. As many as 60.3% of them were over 65 and 1.2% under 15 years of age in 2011. The Census showed that most suffered from physical and sensory disabilities (59.5% and 41.9% respectively) and that 16.2% of all persons with disabilities suffered from three or more of the listed disabilities.

#### 3.1. *Legal Framework*

By ratifying the UN Convention on the Rights of Persons with Disabilities (CRPD)<sup>90</sup> and its Optional Protocol in 2009, the Republic of Serbia assumed the international obligation "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity". Under Article 15 of the Revised European Social Charter (ESC), which Serbia ratified in 2009,<sup>91</sup> persons with disabilities are entitled to independence, social integration and participation in the life of the community. Another document relevant to Serbia as an EU candidate country is the European Disability Strategy (2010–2020), adopted with a view to achieving the full economic and social inclusion of persons with disabilities.

The Constitution of the Republic of Serbia prohibits all forms of discrimination, especially discrimination on grounds of physical or mental disability. The universal standards laid down in the CRPD and ILO Convention No. 159 concerning vocational rehabilitation and employment of persons with disabilities<sup>92</sup> were only partially integrated in Serbian law by the adoption of the Act on the Prevention of Discrimination against Persons with Disabilities<sup>93</sup> and the Act on the Vocational Rehabilitation and Employment of Persons with Disabilities.<sup>94</sup>

The Act on the Prevention of Discrimination against Persons with Disabilities 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

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90 *Sl. glasnik RS (International Treaties)*, 42/09.

91 *Ibid.*

92 *Sl. list SFRJ (International Treaties)*, 3/87.

93 *Sl. glasnik RS*, 33/06 and 13/16.

94 *Sl. glasnik RS*, 36/09 and 32/13.

and local self-government authorities to undertake special measures to encourage the equality of persons with disabilities (Arts. 32–38). Unfortunately, neither this Act nor the Anti-Discrimination Act include a provision defining denial of reasonable accommodation as a form of discrimination on grounds of disability, which has elicited the concern of international bodies as well.<sup>95</sup> Denial of reasonable accommodation is also not recognised as a form of discrimination in laws governing education and employment, including of persons with disabilities.<sup>96</sup>

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 request of 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).

### 3.2. Realisation of the Rights of Persons with Disabilities

In 2018, children with physical and/or mental disabilities and their parents continued facing numerous obstacles in exercising their rights. Protection of children with disabilities and their parents from poverty remained inadequate. The recently adopted Act on Financial Support for Families with Children<sup>97</sup> has apparently failed to improve the situation of these families, pushing them into deeper poverty. The very reasons for the adoption of this law<sup>98</sup> are reversed by Article 12(7), which reads: “Parents of children receiving domiciliary care and assistance allowances are not entitled to compensation of wages for leave taken to extend special care to their children.”

The Act thus forces parents to choose between taking *leave from work to extend special care to their children* and their right to *domiciliary care and assistance allowances*. Apart from interlinking these separate and independent two rights and rendering them mutually exclusive, this provision also amounts to multiple discrimination, both on grounds of age, the nature of social exclusion and the right to work.<sup>99</sup>

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95 More in the Concluding observations on the initial report of Serbia, CRPD/C/SRB/CO/1, Committee on the Rights of Persons with Disabilities, 2016, para 9, available at: [https://digitallibrary.un.org/record/831042/files/CRPD\\_C\\_SRB\\_CO\\_1-EN.pdf](https://digitallibrary.un.org/record/831042/files/CRPD_C_SRB_CO_1-EN.pdf).

96 *Ibid.*, paras. 50 and 53.

97 *Sl. glasnik RS*, 113/17 and 50/18.

98 “Improvement of the conditions for satisfying the basic needs of children” (Art. 1(1)); “balancing work and parenthood” (Art. 1(2)); “improvement of the material status of families with children, families with children with physical or mental disabilities and foster families” (Art. 1(4)).

99 The Network of Organisations for Children of Serbia (MODS), National Organisation for Rare Diseases (NORBS), Alliance of Patient Associations of Serbia (SUPS) and the association *Hrabriša* (Li'l Brave One) filed an initiative with the Constitutional Court to review the constitutionality

Serbia lacks a strategy on improving the status of persons with disabilities, although such a document, covering the 2015–2020 period, was drafted and publicly debated in October 2016.<sup>100</sup> The absence of such a public policy document since the expiry of the prior strategy covering the 2007–2015 period for three years now has greatly impeded headway in the realisation of rights of all persons with disabilities.<sup>101</sup>

In 2018, the Ministry of Labour, Employment and Veteran and Social Issues organised a debate on the draft amendments to the Social Protection Act. Civil society organisations criticised the non-involvement of persons with disabilities and their organisations in the working group that had drafted the amendments, as well as the non-transparency of the process and lack of public information about the important stages of the process.<sup>102</sup> Some experts were also concerned about the draft amendments, which, in their view, were in contravention of the accepted international standards and, inter alia, provided for the further expansion of the accommodation capacity of social protection institutions for persons with disabilities.<sup>103</sup>

The Study on the Implementation of Anti-Discrimination Law in Serbia, presented in March 2018, concluded that the case-law on enforcement of anti-discrimination law was inconsistent and that judges often lacked the experience and understanding of some of the basic concepts, such as reasonable accommodation, ensuring accessibility and shift/share of the burden of proof.<sup>104</sup> The author of the Study illustrated the improper application of the Anti-Discrimination Act and the right of access by referring to a 2014 decision of the Supreme Court of Cassation, which held that the absence of adequate modes of public transportation for persons with disabilities (in Novi Sad) did not amount to discrimination, because eliminating barriers and ensuring the free movement of persons with disabilities were *lengthy processes depending on the community's financial potentials*.<sup>105</sup> Furthermore,

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and legality of Article 12(7) of the Act on Financial Support for Families with Children. See the press release, available in Serbian at: <http://zadecu.org/potpisana-inicijativa-za-ocenu-ustavnosti-i-zakonitosti-spornog-clana-zakona-o-finansijskoj-podrsi-porodici-sa-decom/>.

- 100 More about the public debate on the 2015–2020 Draft Strategy for Improving the Status of Persons with Disabilities, available in Serbian at: <http://www.minrzs.gov.rs/lat/aktuelno/javna-rasp-rava-unapredjenje-polozaja-osoba-sa-invaliditetom.html>.
- 101 More in the Mental Disability Rights Initiative – Serbia (MDRI-S) press release, available in Serbian at: <https://www.mdri-s.org/vesti/polozaj-dece-i-mladih-sa-invaliditetom-u-sistemu-socijalne-zastite-izazovi-i-prilike/>.
- 102 More in the MDRI-S press release, available in Serbian at: <https://www.mdri-s.org/wp-content/uploads/2018/08/SAOP%C5%A0TENJE-povodom-izmena-Zakona-o-soc.-za%C5%A1titi-Final.pdf>.
- 103 *Ibid.* More in Trag Foundation's press release, available in Serbian at: <https://www.tragfondacija.org/pages/posts/organizacije-gradanskog-drustva-zahtevaju-povlacenje-nacrta-zakona-o-izmenama-i-dopunama-zakona-o-socijalnoj-zastiti-2098.php>.
- 104 M. Reljanović, *Study on the Implementation of Anti-Discrimination Law in Serbia*, YUCOM, 2017, p. 5, available at: <http://en.yucom.org.rs/wp-content/uploads/2018/03/Study-on-Implementation-of-Anti-Discrimination-Law-Mario-Reljanovic.pdf>.
- 105 Supreme Court of Cassation Judgment Rev2 361/2014 of 23 October 2014, quoted by Reljanović (2017, p. 26).

the groups most discriminated against in Serbia, including persons with intellectual and mental disabilities, did not appear to be benefitting from anti-discrimination law in practice, given that their cases were extremely rarely taken to court.<sup>106</sup>

The Commissioner for the Protection of Equality received as many as 243 complaints of discrimination on grounds of disability from 1 January to 11 October 2018. Such complaints accounted for 30.6% of all complaints (794) the Commissioner's office received in that period<sup>107</sup> (an increase of 113% over 2017, when a total of 114 complaints on disability grounds were filed with the Commissioner,<sup>108</sup> and of 196.3% compared with 2016, when the Commissioner received 82 complaints on disability grounds<sup>109</sup>). Most of the 2018 complaints alleged discrimination "during the provision of public services or use of public facilities," in procedures before public authorities, and in the fields of recruitment, labour, education and vocational training, social protection, public information and media, health care, etc.<sup>110</sup>

The exponential increase in the number of complaints of discrimination indicates that the citizens are better informed about their rights and ways of realising them, as well as that public trust in the Commissioner for the Protection of Equality has been growing. At the same time, the number of complaints regarding the rights of persons with disabilities and the elderly<sup>111</sup> filed with the Protector of Citizens constantly fell, by 34% from 2015 to 2017.<sup>112</sup> Finally, experts have opined that the most vulnerable citizens, especially those who are institutionalised and those suffering from intellectual disabilities, seek the protection of their rights the least.<sup>113</sup> This is why the Commissioner for the Protection of Equality and Protector of Citizens should proactively protect the rights of persons with disabilities, especially of persons with intellectual disabilities and institutionalised persons.

In October 2018, the Commissioner for the Protection of Equality issued a very important decision on a complaint, finding that the editor of the media portal *Telegraf.rs* had discriminated against persons with psychosocial problems. The Commissioner concluded that the "impugned article gave rise to fears and intolerance of persons with mental disabilities among the general population and the feelings

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106 M. Reljanović, *Study on the Implementation of Anti-Discrimination Law in Serbia*, p. 8.

107 Data obtained from the Commissioner for the Protection of Equality in her reply Ref. No. 011-00-44/2018-03 of 11 October 2018 to BCHR's request for access to information of public importance.

108 2017 Annual Report of the Commissioner for the Protection of Equality, March 2018, p. 44, available at: <http://ravnopravnost.gov.rs/en/reports/>.

109 *Ibid.*, p. 78.

110 Most complaints filed in 2017 also regarded discrimination in these fields, while, in 2016, most of the complaints regarded discrimination in education and vocational training.

111 Data on persons with disabilities and the elderly presented in the reports of the Protector of Citizens are presented together.

112 The Annual Reports of the Protector of Citizens are available at: <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>.

113 M. Reljanović, *Study on the Implementation of Anti-Discrimination Law in Serbia*, YUCOM, 2017, p. 8.

of humiliation, shame and isolation among persons with mental and psychosocial disabilities, who are branded as dangerous and violent.” Unfortunately, articles like this one are not infrequent; popular media in Serbia have been greatly contributing to the stigmatisation and exclusion of persons with mental disabilities.<sup>114</sup>

### 3.2.1. *Independent Living and Community Inclusion*

Persons with disabilities living in Serbia continued experiencing problems in exercising their right to live in the community. Although Serbia has committed to deinstitutionalisation in principle, the number of institutionalised persons with disabilities has been increasing every year. New institutions have been built<sup>115</sup> and the announced changes of the legal framework will provide for the institutionalisation of even more children and adults. Every expansion of the capacities of residential institutions essentially runs counter to the deinstitutionalisation process because the money spent on the former could be spent on developing community-based services.<sup>116</sup>

Institutionalised women with disabilities remained a particularly vulnerable group discriminated against on multiple grounds in 2018. Violations of the right to personal integrity and family life were commonplace<sup>117</sup> and the normative framework still lacked measures preventing the separation of mothers with disabilities from their children and contraception treatments without informed consent, despite the recommendations of the UN Committee on the Rights of Persons with Disabilities.<sup>118</sup> Serbia’s obligation to take all the necessary measures to guarantee the right to free, prior and informed consent to any kind of treatment, particularly contraception, that may affect a person with a disability, regardless of her/his legal capacity, remained unfulfilled. In the reporting period, Serbia failed to take the measures to improve access of institutionalised women with disabilities to sexual and reproductive health, as the Committee recommended back in 2016.

The authorities also failed to improve the protection of institutionalised women with disabilities from sexual abuse and violence, which often went unreported.<sup>119</sup>

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114 See more in Serbian at: <https://www.mdri-s.org/saopstenja/medijski-portal-telegraf-rs-duzan-je-da-se-javno-izvini-gradjanima-sa-psihosocijalnim-teskocama-i-ubuduce-ne-objavljuje-sadrzaje-koje-sire-predrasude-o-ovoj-drustvenoj-grupi/>.

115 The Šabac Institution for Children and Youth was officially opened in 2014, although Serbia had committed itself to deinstitutionalisation over a decade earlier.

116 Common European Guidelines on Transition from Institutional to Community-based Care, European Expert Group, 2012, Brussels, p. 79, available at: <https://deinstitutionalisationdotcom.files.wordpress.com/2017/07/guidelines-final-english.pdf>.

117 B. Janjić, D. Ćirić Milovanović, *Here the Walls Have Ears, Too*, MDRI-S, 2017, available at: <https://www.mdri-s.org/publication-english/>.

118 Concluding observations on the initial report of Serbia, CRPD/C/SRB/CO/1, Committee on the Rights of Persons with Disabilities, 2016, paras. 34, 36 and 38.

119 B. Janjić, D. Ćirić Milovanović, *Here the Walls Have Ears, Too*, MDRI-S, 2017, available at: <https://www.mdri-s.org/wp-content/uploads/2018/02/Publikacija-ingleski.pdf>.



Lack of community-based services and support prerequisite for the independent living of some persons with disabilities remained a chronic problem that has not been adequately addressed, as the European Commission recognised in its Serbia 2018 Report, where it concluded that no progress had been made towards deinstitutionalisation, including of persons with mental disabilities and the elderly.<sup>120</sup>

The deinstitutionalisation strategy has not been drafted, wherefore progress in this area is questionable and the development of community-based services is uncertain.<sup>121</sup> The assisted living service for persons with intellectual disabilities provided by the Serbian Association for Promoting Inclusion (APIS) was regrettably abolished in June 2018. Twenty-three persons with intellectual disabilities, who had lived in the Sremčica Institution for Youth and Children<sup>122</sup> moved to five apartments in Belgrade, where they lived for 14 years. APIS quoted financial unsustainability as the reason for discontinuing the service, inter alia, due to the lack of support of the relevant ministry and lack of understanding of the importance of community-based services.<sup>123</sup> The uncertain sustainability of community-based services discourages their development and may result in perceptions that institutionalisation is the simpler solution. Furthermore, re-institutionalisation is an extremely stressful experience.

In June 2018, the media reported that a 23-year-old ward of the Sremčica Institution died of food suffocation.<sup>124</sup> A defectologist working in the Institution soon criticised the way it organised its work, claiming that the young man should have been monitored during his meals. The portal *Pištaljka* (Whistle) reported that the defectologist had been fired and would seek justice under the Whistle-Blowers Protection Act.<sup>125</sup> Reports of neglect, abuse, torture and ill-treatment of institutionalised persons, especially children, had been published in the past as well.<sup>126</sup>

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120 Serbia 2018 Report, p. 18.

121 The Committee on the Rights of Persons with Disabilities emphasised the importance of the adoption of such a document in Serbia in paragraph 40 of its Concluding observations on the initial report of Serbia of 2016.

122 In 2016, the Sremčica Institution had 298 beneficiaries of all ages, only 48 (16%) of whom were children. See the 2016 Report on the Operations of the Institutions for Children and Youths, p. 29, available in Serbian at: <http://www.zavodsz.gov.rs/PDF/izvestaj2017/Izvestaj%20o%20radu%20ustanova%20za%20smestaj%20dece%20i%20mladih%20za%202016.%20godinu.pdf>.

123 APIS press release of June 2018, available in Serbian at: <http://www.sapi.rs>.

124 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a402663/Vesti/Sticenici-Doma-za-decu-i-mlade-uznemireni-zbog-incidenata.html>.

125 See the *Pištaljka* press release, available in Serbian at: <https://pistaljka.rs/home/read/744>.

126 More in: "It's My Dream to Leave This Place: Children with Disabilities in Serbian Institutions", *Human Rights Watch*, 2016, available at: <https://www.hrw.org/report/2016/06/08/it-my-dream-leave-place/children-disabilities-serbian-institutions>; *The Hidden and Forgotten: Segregation and neglect of children and adults with disabilities in Serbia*, MDRI, 2013, available at: <http://www.mdri-s.org/wp-content/uploads/2013/10/the-hidden-and-forgotten-2013-12-17.pdf>; *Torment not Treatment: Serbia's Segregation and Abuse of Children and Adults with Disabilities*, MDRI, 2006, available at: <http://www.mdri-s.org/wp-content/uploads/2015/02/Torment-not-Treatment.pdf>.

The 2011 Social Protection Act lays down that “all individuals and families in need of social assistance and support to address their social and existential difficulties and create conditions for satisfying their basic needs” shall be entitled to social protection. In July 2018, the Ministry of Labour, Employment and Veteran and Social Issues published the draft amendments to the Social Protection Act<sup>127</sup> and scheduled a public debate for 10 July-5 August. One of the amendments regards the provision that now limits the number of beneficiaries in institutions for adults to 100 and the number of beneficiaries in institutions for children to 50. Under the draft amendments, no individual facility may accommodate more than 100 adults or 25 children,<sup>128</sup> but this rule may be deviated from with the consent of the relevant minister. Given that most social protection institutions comprise more than one facility, the Mental Disability Rights Initiative –Serbia (MDRI-S) warned that the new provision would facilitate the construction of new and adaptation of the non-accommodation facilities for the institutionalisation of a greater number of people.<sup>129</sup>

NGOs criticised the amendments to this law drafted in 2018 for various reasons, especially the financial aid conditions, expansion of the capacities of residential institutions, centralisation of the social protection system, as well as the manner in which the amendments were drafted and the public consultation and debate were held.<sup>130</sup>

### 3.2.2. Children with Disabilities

Children with disabilities remained the largest group of institutionalised minors. They were accommodated in five large institutions,<sup>131</sup> three of which also provided care to adults,<sup>132</sup> although research shows that the non-separation of children and adults additionally increases the risk of violence against children.<sup>133</sup> Article

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127 *Sl. glasnik RS*, 24/11.

128 Preliminary Draft Amendments to the Social Protection Act, Ministry of Labour, Employment and Veteran and Social Issues, available in Serbian at: <https://www.minrzs.gov.rs/javni-poziv-za-ucescu-u-javnoj-raspraf66ffdf7554e7.html>.

129 See MDRI-S’ press release of August 2018, available in Serbian at: <https://www.mdri-s.org/wp-content/uploads/2018/08/SAOP%C5%A0TENJE-povodom-izmena-Zakona-o-soc.-za%C5%A1titi-Final.pdf>.

130 See the initiative for the withdrawal of the Preliminary Draft Amendments to the Social Protection Act, Trag Foundation, August 2018, available in Serbian at: <https://www.tragfondacija.org/pages/posts/organizacije-gradanskog-drustva-zahtevaju-povlacenje-nacrta-zakona-o-izmenama-i-dopunama-zakona-o-socijalnoj-zastiti-2098.php> and MDRI-S’ press release, available in Serbian at: <https://www.mdri-s.org/saopstenja/nacrt-zakona-o-izmenama-i-dopunama-zakona-o-socijalnoj-zastiti-podstice-segregaciju-dece-i-odraslih-sa-invaliditetom/>.

131 Institutions with 50+ capacity: Institution for Children and Youths “Sremčica” (100 children and youths; 200 adults;), Institution for Children and Youths “Veternik” (100 children and youths; 400 adults), Institution for Children and Youths “Kolevka” (180 children and youths), Institution for Children and Youths “Dr Nikola Šumenković” in Stamnica (250 youths; 200 adults), Centre for the Protection of Infants, Children and Youths “Zvečanska” (466 children and youths).

132 “Dr Nikola Šumenković” Stamnica, “Veternik” and “Sremčica”.

133 Institutionalised children are at much greater risk of violence than those living in families.

52(2(3)) of the Social Protection Act prohibits the institutionalisation of children under three years of age for periods exceeding two months; this rule may be deviated from with the consent of the relevant minister. However, experts are of the view that even short-term institutionalisation in early childhood can have negative effects on the child's intellectual, emotional and social development.<sup>134</sup> This is why institutionalisation of children under three years of age should be absolutely prohibited and reviews of placement in foster care should be performed at reasonable intervals.

Serbia still lacks adequate mechanisms to prevent the abandonment and institutionalisation of children with disabilities.<sup>135</sup> Greater support needs to be extended to biological families to prevent the children's separation from their families. Although several by-laws have been enacted and the Republican Social Protection Institute developed guidelines on the introduction and development of community-based services,<sup>136</sup> children with disabilities and their families were still deprived of the requisite support in 2018. Day Care was the most widespread community-based service, provided in around one-third of the local self-governments in Serbia;<sup>137</sup> however, the quality of the service is questionable; it also remains unknown whether it adequately responds to the individual needs of the children and their families or the families have to adjust to the rules under which the service is provided.<sup>138</sup> The Family Outreach Worker is one of the services provided since 2013. It was developed based on some of the main community service principles. It is flexible and tailored to the needs and challenges of each parent and child, delivered in the homes of the beneficiaries and in the local community, and user-centred, empowering and supporting parents to claim their rights from local authorities and service providers, et al.<sup>139</sup>

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134 Common European Guidelines on Transition from Institutional to Community-based Care, European Expert Group, Brussels 2012, available at: <https://deinstitutionalisationdotcom.files.wordpress.com/2017/07/guidelines-final-english.pdf>.

135 In paragraph 44(c) of its Concluding observations on the combined second and third periodic report of Serbia of 2017 (<http://www.refworld.org/docid/58e76fc14.html>), the Committee on the Rights of the Child urged Serbia to establish legislative and other measures to enable children with disabilities who are in need of constant care and assistance to remain with their biological families through services for children and parents and/or through financial support and assistance to parents who are unable to work and generate income because they provide constant care and assistance to a child with a disability.

136 *Guide for Local Self-Governments: Guidelines on the Introduction and Development of Community Services*, Republican Social Protection Institute, 2013.

137 *Mapping Social Care Services within the Mandate of Local Governments in the Republic of Serbia*, Social Policy Centre, 2016, available at: <http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2017/05/Mapping-Social-Care-Service-within-the-Mandate-of-Local-Governments-in-the-Republic-of-Serbia.pdf>.

138 Community-based services are to provide their beneficiaries and their families with the possibility of choice and control over their lives. As opposed to the "one size fits all" approach, these, so-called individualised services focus on the needs of each individual beneficiary.

139 *Strengthening vulnerable families, Windows of opportunity*, UNICEF, 2018, p. 26, available at: [https://www.unicef.org/serbia/sites/unicef.org.serbia/files/2018-10/Strengthening\\_Vulnerable\\_Families.pdf](https://www.unicef.org/serbia/sites/unicef.org.serbia/files/2018-10/Strengthening_Vulnerable_Families.pdf).

### 3.2.3. Inclusive Education

The discriminatory practice of excluding children with disabilities from the formal mainstream education system was applied in Serbia until 2009 when inclusive education was introduced by the new Education System Act<sup>140</sup> that launched a long-term reform of the education system. This Act guarantees persons with disabilities the right to education in the mainstream education system, which recognises their needs, and provides for additional, both individual and group, support (Art. 61). The 2017 amendments to the Primary Education Act reintroduced the possibility of opening special classes for children with mental or physical disabilities in primary schools, which has been perceived as a form of segregation. Although improved, the education legal framework still provides for the existence of two parallel education systems –mainstream and special education, which is not in compliance with international norms.

An Individual Education Plan (IEP) is an instrument introduced to tailor the education process to children with disabilities. The IEPs shall be drawn up by the expert inclusive education teams or the teams extending additional support to children (comprising the child's kindergarten and school teachers and the school pedagogue) and adopted by the pedagogical teams (comprising chairs of the expert council and team and a representative of the school's professional associates i.e. pedagogue or psychologist).<sup>141</sup> The Committee on the Rights of the Child in 2017 expressed concern that efforts to achieve inclusive education were hindered by regional disparities in available funding and resources for schools, insufficient training for teachers and education assistants and continuing resistance from school staff and parents.<sup>142</sup> It thus urged Serbia to strengthen efforts to improve access to quality education in rural areas and in small towns, including access to preschool, secondary and higher education, guarantee all children with disabilities the right to inclusive education in mainstream schools independent of parental consent,<sup>143</sup> and train and assign specialised teachers and professionals in integrated classes providing individual sup-

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140 *Sl. glasnik RS*, 72/09, 52/11, 55/13, 35/15 – authentic interpretation, 68/15 and 62/16 – authentic interpretation.

141 More in the *2016 Report*, III.4.5.

142 Concluding observations on the combined second and third periodic report of Serbia, CRC/C/SRB/CO/2–3 Committee on the Rights of the Child, 2017, 2017, para. 54, available at: <http://www.refworld.org/docid/58e76fc14.html> and the *Situation Analysis: Position of children with disabilities in Serbia*, NOOIS, 2017, pp. 37, available at: [https://www.unicef.org/serbia/sites/unicef.org/serbia/files/2018-04/Situation\\_analysis\\_Position\\_of\\_children\\_with\\_disabilities\\_2018\\_0.PDF](https://www.unicef.org/serbia/sites/unicef.org/serbia/files/2018-04/Situation_analysis_Position_of_children_with_disabilities_2018_0.PDF).

143 A lot of parents believe their children with disabilities are better off at special than in mainstream schools; experts are of the view that the parents subscribe to that view due to the lack of adequate support to children with disabilities in mainstream education. More in the *Situation Analysis: Position of children with disabilities in Serbia*, NOOIS, 2017, p. 36, available at: [https://www.unicef.org/serbia/sites/unicef.org/serbia/files/2018-04/Situation\\_analysis\\_Position\\_of\\_children\\_with\\_disabilities\\_2018\\_0.PDF](https://www.unicef.org/serbia/sites/unicef.org/serbia/files/2018-04/Situation_analysis_Position_of_children_with_disabilities_2018_0.PDF).

port.<sup>144</sup> The prevailing negative social attitudes towards children with disabilities call for the implementation of adequately funded public campaigns defined in the strategic anti-discrimination and inclusive education documents.<sup>145</sup> The state needs to resolutely engage itself in such a campaign given that the ones implemented by CSOs are limited in scope.

The enforcement of the education laws and inclusive practices leave a lot to be desired, and there is still the tendency to exclude children with disabilities, especially institutionalised children. Hence the view that children with disabilities are discriminated against on grounds of disability, whereas institutionalised children are additionally discriminated against because they do not live with their families.<sup>146</sup> The Committee on the Rights of Persons with Disabilities also drew attention to this problem in its Concluding observations, urging Serbia to identify concrete targets in the Action Plan for Inclusive Education (2016–2020), to meet inclusive education standards and requirements and devote special attention to children with multiple disabilities and pupils and students with disabilities living in institutions, as well as to the development of individual education plans and accommodation of all types of disabilities.

Mere enrolment of children with disabilities in mainstream classes, however, does not suffice. They need to be provided with quality education and genuinely included in the education process. One of the examples mentioned by organisations promoting inclusive education was registered during a visit to a mainstream school, where a child with a disability and his personal assistant were sitting facing the back wall and studying Math, while the rest of the class was facing the blackboard and studying Serbian. Inter-sectoral commissions have frequently been criticised for not providing equal access to the services of pedagogical assistants and personal escorts. The need to review the criteria for assigning personal escorts has been identified as well.<sup>147</sup>

Institutionalised children have had major trouble claiming this right. Despite the recommendations of the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, the medical model of assessing whether a child should be enrolled in school prevails, wherefore the professional teams in the institutions often decide not to enrol the children, because of their diagnosis

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144 Concluding observations on the combined second and third periodic report of Serbia, CRC/C/SRB/CO/2–3, Committee on the Rights of the Child, 2017, para. 55, available at: <http://www.refworld.org/docid/58e76fc14.html>.

145 *Ibid.*, para. 23.

146 B. Janjić, K. Beker, *Educational Exclusion and Segregation of Institutionalised Children with Disabilities*, MDRI-S, 2016, available at: <http://www.mdri-s.org/wp-content/uploads/2016/04/Publikacija-ENG.pdf>.

147 More on inter-sectoral commissions and listed services in *Situation Analysis: Position of children with disabilities in Serbia*, NOOIS, 2017, pp. 40–41, available at: [https://www.unicef.org/serbia/sites/unicef.org.serbia/files/2018-04/Situation\\_analysis\\_Position\\_of\\_children\\_with\\_disabilities\\_2018\\_0.PDF](https://www.unicef.org/serbia/sites/unicef.org.serbia/files/2018-04/Situation_analysis_Position_of_children_with_disabilities_2018_0.PDF).

and type of disability,<sup>148</sup> which is in contravention of anti-discrimination law and the Education System Act. Not only are institutionalised children enrolled in special schools; they are further segregated in them because they are assigned to classes only for institutionalised children.

The Situation Analysis notes that special schools are incapable of providing the children with quality education and equipping them with the skills and knowledge they will need to live independently, and that only 27% of special school staff consider themselves adequately trained to work with children with disabilities. Lack of any and quality education frequently condemns children and youths with disabilities to lifelong exclusion from the labour market and impinges on their prospects of living independently.

### 3.3. *Equal Recognition before the Law and Legal Capacity of Persons with Disabilities*

Legal capacity is the main prerequisite for exercising other rights. Deprivation of legal capacity<sup>149</sup> greatly impacts the everyday life and the rights and freedoms of persons with disabilities. Decisions depriving people of legal capacity are taken by courts in a non-contentious procedure, whilst decisions appointing their guardians are taken by Social Work Centres in an administrative procedure. The legal capacity proceedings are based on court medical expert evaluations and may be conducted in the absence of a judge. In their rulings on partial deprivation of legal capacity, the courts determine the type of actions the persons at issue can take apart from the ones they are authorised to take under the law. On the other hand, full deprivation of legal capacity means that the persons in question cannot take any decisions or exercise their rights. Under the Family Act,<sup>150</sup> persons fully deprived of legal capacity have the legal capacity of a 14-year-old child.

The 2014 amendments to the Non-Contentious Procedure Act introducing the obligation of courts to review the existence of grounds for the deprivation of legal capacity have not resulted in many changes for legally incapacitated persons.<sup>151</sup>

The Serbian Government said it would amend the Family Act to further align the national legal framework, specifying it would abolish the full deprivation of legal capacity and retain the possibility of partially depriving people of legal capacity.<sup>152</sup>

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148 *Ibid.*

149 Deprivation of legal capacity is governed by the Family Act and the Non-Contentious Procedure Act.

150 *Sl. glasnik RS*, 18/05, 72/11 – other law and 6/15, Article 146.

151 More in K. Beker, T. Milošević, *Legal Capacity: Court practice and legislation in Serbia 2016*, MDRI-S, 2016, available at: <http://www.mdri-s.org/wp-content/uploads/2013/10/2016-Country-report-Legal-Capacity-1.pdf>.

152 Report of the Republic of Serbia on the Fulfilment of Recommendations in Paragraphs 34 and 54 in the Concluding observations on the initial report of Serbia of the Committee on the Rights

In 2016, the Committee on the Rights of Persons with Disabilities urged Serbia to replace substituted decision-making with supported decision-making regimes that respected the person's autonomy, will and preferences, and established transparent safeguards.<sup>153</sup> Failure to include a legislative provision on supported decision-making gives rise to risks that the announced amendments will not result in the substantial improvement of the status of persons with disabilities, i.e. in the change of the prevailing paradigm that persons with disabilities are merely an object of the law, passive actors whose rights and lives are decided by others.<sup>154</sup>

Although the practice of fully depriving persons of legal capacity on grounds of disability persists, the courts have over the past few years increasingly ordered partial deprivation of legal capacity.<sup>155</sup> This headway was recognised also by the European Commission.<sup>156</sup>

Depriving a person of legal capacity practically results in his "civic death" and denies him his fundamental human rights, undermining his autonomy. Furthermore, depriving a person with disabilities of his legal capacity brings him into danger of being institutionalised and subjected to treatment against his will; he cannot marry and have a family. Persons deprived of legal capacity are explicitly deprived of their voting rights. Article 18 of the Serbian Constitution, and consequently the election laws,<sup>157</sup> entitle every citizen of age and with legal capacity to vote and be elected.<sup>158</sup> Not only are persons deprived of legal capacity unable to find employment; in specific situations, they cannot work as volunteers either.<sup>159</sup>

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of Persons with Disabilities, Government of the Republic of Serbia, May 2017, available at: <http://www.ljudskaprava.gov.rs/sh/node/19868>.

153 Concluding observations on the initial report of Serbia, CRPD/C/SRB/CO/1, Committee on the Rights of Persons with Disabilities, 2016, para. 22.

154 More in General Comment No. 1 on Article 12 of the Convention on the Rights of Persons with Disabilities, 2014, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>.

155 More in K. Beker, T. Milošević, *Legal Capacity: Court practice and legislation in Serbia 2016*, MDRI-S, 2016, available at: <http://www.mdri-s.org/wp-content/uploads/2013/10/2016-Country-report-Legal-Capacity-1.pdf>.

156 Serbia 2018 Report, European Commission, April 2018, p. 28, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

157 The Council of Europe Commissioner for Human Rights intervened before the European Court of Human Rights in July 2018 in the case of *Maria del Mar Caamano v. Spain*, which regarded the denial of the applicant's right to vote. She said: "In a modern democracy no one needs to justify why they vote for a particular party or candidate. Contrary to received beliefs, stripping a person of their right to vote protects neither the person nor the society. On the contrary, it perpetuates exclusion and stigma, and deprives the society from a legislature which represents its full diversity." Available at: <https://www.coe.int/en/web/commissioner/-/commissioner-mijatovic-intervenes-before-the-strasbourg-court-on-the-right-to-vote-of-persons-with-disabilitie>.

158 The Act on the Election of the President of the Republic and the Act on the Election of Assembly Deputies.

159 Article 12(2(3)), Volunteer Act, *Sl. glasnik RS*, 36/10.

No amendments have been made to the Act on the Protection of Persons with Mental Disabilities<sup>160</sup> despite recommendations by international bodies.<sup>161</sup> This law provides for deprivation of liberty on grounds of mental disability and the forced institutionalisation of children and adults with disabilities in health and residential institutions. These issues are evidently poorly regulated and the human rights protection standards and safeguards are much weaker than those in place with respect to deprivation of liberty in criminal proceedings.

### 3.4. Accessibility

The concept of accessibility means that persons with disabilities are provided with access, on an equal basis with others, to the physical environment, to transportation, to information and communications, and to other facilities and services open or provided to the public.<sup>162</sup> Together with equal recognition before the law, accessibility for persons with disabilities is one of the main prerequisites for involvement in community life.

The Act on the Prevention of Discrimination against Persons with Disabilities prohibits discrimination on grounds of disability in access to services and public areas and buildings. Article 27 of the Act also prohibits discrimination against persons with disabilities in all forms of public transportation. Access to information and communications is inadequately addressed both in law and practice. There is apparently a lack of general understanding of this aspect of accessibility, the denial of which affects persons with intellectual disabilities and sensory impairments the most.

Although the legal framework prohibits discrimination in access to public services and facilities, persons with disabilities continued facing barriers precluding their unimpeded use of public transportation and access to public buildings and spaces on an everyday basis.

The Protector of Citizens published his Accessibility for All report in October 2018, in which he analysed the enforcement of the relevant laws at the local level. The findings of the survey of the facilities of the LSGs, SWCs, outpatient health clinics and national Pension and Disability Insurance Fund branch offices indicate that the vast majority of these facilities are inaccessible to persons with disabilities; only several of the 26 surveyed SWCs had wheelchair access ramps, albeit inadequate ones, and none had eliminated the information and communication barriers.<sup>163</sup> The Protector of Citizens noted that some of the outpatient health centre staff overcame

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160 *Sl. glasnik RS* 45/13.

161 The CRPD in 2016 urged Serbia to repeal this law because it contains provisions grossly violating the rights of persons with mental disabilities.

162 Article 9 of the Convention on the Rights of Persons with Disabilities.

163 More in the Protector of Citizens' report "Accessibility for All," 2018, pp. 29–33, available at: <https://www.ombudsman.rs/attachments/article/5908/Ombudsman's%20Report%20on%20Accessibility.pdf>.



the accessibility barriers by examining patients with disabilities in the ground floor offices or even in the parking lots<sup>164</sup> and correctly concluded that such actions were inappropriate because they violated human dignity.<sup>165</sup> Furthermore, such practices create the illusion that the problem of accessibility has been resolved because the services have been rendered, wherefore the LSGs do not consider the inaccessibility of these facilities and services an urgent problem or a priority.

In its Serbia 2018 Report, the European Commission observed that some improvements had been made, including in the participation of persons with disabilities in voting.<sup>166</sup> However, the right to vote was still limited for many persons with disabilities due to both the physical inaccessibility of the polling stations and the legal framework allowing full deprivation of legal capacity, given that Article 52(1) of the Serbian Constitution lays down that the right to vote is vested only in citizens of age with legal capacity. Furthermore, blind and visually impaired persons in Serbia still cannot exercise their constitutional right to vote in secrecy since there are no ballots in Braille.<sup>167</sup>

The 2006 amendments to the Planning and Construction Act<sup>168</sup> lay down the obligation of builders to observe the standards of accessibility of persons with disabilities. This obligation is governed in greater detail in the Technical Accessibility Standards Rulebook<sup>169</sup>. Companies and other legal persons that fail to ensure persons with disabilities access to their facilities pursuant to the accessibility standards under Article 206 of the Act are subject to a fine in the amount of 300,000 RSD. The amount is considered insufficient to compel these entities to fulfil their accessibility obligation. Furthermore, surveys have shown that this penalty has never been imposed.<sup>170</sup>

Most buildings housing the public administration and public institutions,<sup>171</sup> new and old alike, are inaccessible to persons with disabilities. Furthermore, facili-

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164 *Ibid.*

165 One such case was examined by a court: the Niš Appellate Court found that the plaintiff had been discriminated against because he had been taken out of his wheelchair and carried to the second floor to attend court hearings.

166 Serbia 2018 Report, p. 6, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

167 The Commissioner issued a recommendation in response to a complaint filed by a person with a disability. See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/vladavina-prava/drzava-da-obezbredi-tajno-glasanje-za-slepe/>.

168 *Sl. glasnik RS*, 72/09, 81/09 – corr., 64/10 – CC Decision, 21/11, 121/12, 42/13 – CC Decision, 50/13 – CC Decision, 98/13 – CC Decision, 132/14 and 145/14.

169 *Sl. glasnik RS*, 22/15.

170 More in the Protector of Citizens report “Accessibility for All,” 2018, pp. 47–48, available at: <https://www.ombudsman.rs/attachments/article/5908/Ombudsman's%20Report%20on%20Accessibility.pdf>.

171 Under Article 13, paragraphs 1 and 3, of the Act on the Prevention of Discrimination against Persons with Disabilities, they include facilities in which educational, health, welfare, cultural, sports and tourist institutions and services are housed and facilities used for environmental protection and protection from natural disasters, et al.

ties protected under the Cultural Property Act remain inaccessible even after reconstruction under the excuse that they are protected.<sup>172</sup>

Public transportation across Serbia is still for the most part inaccessible to wheelchair users. So are quite a few of the schools. The accessibility of health institutions, which are charged with extending medical care to all people with health problems, is unsatisfactory as well.<sup>173</sup>

### 3.5. Work and Employment

The Act on the Vocational Rehabilitation and Employment of Persons with Disabilities<sup>174</sup> is the first law to comprehensively govern the employment of persons with disabilities and it gives precedence to the employment of persons with disabilities in the open labour market over alternative models of employment. The Rulebook on the Procedure, Costs and Criteria for Evaluating the Abilities and Opportunities for the Employment and Retention of Employment of Persons with Disabilities<sup>175</sup> lays down that the relevant authority shall assess how a person's illness or disability affects his ability to work, find a job and retain it, wherefore it has the discretion to find a person totally incapable of being involved in any employment measures either under general or special conditions on the basis of a very vague and elusive standard despite Article 60 of the Serbian Constitution, which guarantees everyone the right to free choice of occupation. Furthermore, assessment of working capacity continues to be based on a medical model of "incapacity", as the Committee on the Rights of Persons with Disabilities also noted.<sup>176</sup>

The Act on the Vocational Rehabilitation and Employment of Persons with Disabilities has failed to improve the situation of persons with disabilities. It does not take into account the specific situation of many persons with intellectual and psychosocial disabilities and, by laying down the same rules for all persons with disabilities, creates room for indirect discrimination against those whose situation differs significantly due to the nature of their disability.<sup>177</sup> Article 7(3) of the Act, for instance, imposes upon persons with disabilities the obligation to actively search

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172 More in the Protector of Citizens report "Accessibility for All," 2018, p. 39, available at: <https://www.ombudsman.rs/attachments/article/5908/Ombudsman's%20Report%20on%20Accessibility.pdf>.

173 *Ibid.*

174 *Sl. glasnik RS*, 36/09 and 32/13.

175 *Sl. glasnik RS*, 36/10. Employment of Persons with Intellectual and Psychosocial Disabilities, MDRI-S, September 2018, available in Serbian at: <https://www.mdri-s.org/saopstenja/zaposljavanje-osoba-sa-intelektualnim-i-psihosocijalnim-teskocama/>.

176 Employment of Persons with Intellectual and Psychosocial Disabilities, MDRI-S, September 2018, available in Serbian at: <https://www.mdri-s.org/saopstenja/zaposljavanje-osoba-sa-intelektualnim-i-psihosocijalnim-teskocama/>.

177 Apart from the obvious distinction between physical and mental disabilities, the legal framework needs to capture the existence of a great diversity in each of these groups.

for jobs, without giving any consideration to the nature or manifestation of their disability, the extent of their social exclusion, or the frequent lack of the necessary skills due to unsatisfactory education of persons with intellectual disabilities. Most persons with disabilities thus face an insurmountable obstacle. Paragraph 5 of the same Article imposes upon persons with disabilities the obligation *to cooperate with professional staff in the course of vocational rehabilitation, recruitment and work and comply with the work and technological discipline*. The legislator again did not take into consideration the nature of specific types of disabilities and the possibility that some persons with disabilities cannot fulfil this obligation by themselves and failed to recognise the need to support them in the fulfilment of the listed obligations.

Chapter VII of the Act lays down active measures for the employment of persons with disabilities, including reimbursement of the employers' expenses of adapting the workplace and subsidising the first 12 monthly salaries they pay to persons with disabilities without work experience who they hired for an indefinite period of time. The Act also obliges employers to hire a specific number of persons with disabilities; the number depends on the total number of their workers (Art. 24). If they fail to hire persons with disabilities, they are to pay 50% of the average wage in Serbia into the budget fund for vocational rehabilitation and encouragement of employment of persons with disabilities (Art. 26). Not only is the amount extremely low; its character was changed by the 2013 amendments to the Act, which transformed the erstwhile "penalties" (clearly punitive in character) into a contribution, which employers pay and thus *fulfil their obligation to employ persons with disabilities* (Art. 26(2)).

These obligations are regulated more thoroughly in the Rulebook on the Monitoring of the Fulfilment of the Obligation to Hire Persons with Disabilities and Methods for Proving the Fulfilment of the Obligation,<sup>178</sup> which exempts the Republic of Serbia as an employer from the obligation, specifying in Article 8 that the state shall fulfil the obligation exclusively by allocating the requisite financial resources in the budget. Given that the state, as the biggest employer, is totally exempted from this affirmative measure for employing persons with disabilities, the state has missed the opportunity to promote the employment of persons with disabilities and set a positive example to other employers.

Article 43 of the Act on Vocational Rehabilitation and Employment of Persons with Disabilities<sup>179</sup> envisages the establishment of sheltered workshops called Job Centres. The law defines a Job Centre as a special form of employment in a segregated environment; instead of wages, persons working in the Job Centres receive *financial aid* equalling 20% of the minimum wage to cover their transportation costs (Art. 21). Such engagement is in contravention of the CRPD, and prompted the Committee on the Rights of Persons with Disabilities to express its concern because

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178 *Sl. glasnik RS*, 33/10, 48/10 – corr. and 113/13.

179 *Sl. glasnik RS*, 36/09 and 32/13.

of the existence of such employment and to urge Serbia to support the transition of all persons with disabilities who are currently in sheltered workshops into formal, open labour market employment.<sup>180</sup>

Unofficial National Employment Service (NES) records indicate that over 13,000 persons with disabilities are registered as unemployed.<sup>181</sup> It needs to be noted that these people are considered unemployed under the definition in Article 2 of the Employment and Unemployment Insurance Act.<sup>182</sup> The NES figures do not include persons with disabilities temporarily prevented from working under the law, i.e. around 7,000 of them. Persons deprived of legal capacity and those under extended parental custody are not in NES records either (the number of such persons aged 18–65 is estimated at around 15,000).<sup>183</sup>

### 3.6. Health Care and Social Protection

Under Article 20 of the Health Care Act,<sup>184</sup> persons with disabilities are entitled to health care even if they do not fulfil the labour and employment-related requirements to have medical insurance. The right to health care also includes medical rehabilitation in case of illness or injury, and the right to walking and mobility aids, and sight, hearing, and speech aids (hereinafter: medical-technical aids).

Large numbers of patients have been detained in some psychiatric hospitals, some of them for several decades. These people are for the most part totally isolated from the community, wherefore these institutions can be said to have the character of asylums. One of the reasons for the long-term institutionalisation of these people lies in the lack of mental health community-based services.

The first Belgrade Mental Health Centre opened in in March 2018. People can seek and receive professional assistance in the Centre free of charge; they do not need to produce either their IDs or their health cards, referrals from their GPs or schedule an appointment. Although operating as part of the Psychiatric Clinic Dr Laza Lazarević, the Centre is located in the heart of the city, a commercial high-rise called Beograđanka. The choice of location helps the citizens feel more comfortable about seeking help, popularises mental health care and alleviates stigmatisation. Similar Centres have been opened in Niš, Vršac and Kikinda.

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180 Concluding observations on the initial report of Serbia, CRPD/C/SRB/CO/1, 2016, para. 55.

181 “Employment of Persons with Intellectual and Psychosocial Disabilities”, MDRI-S, September 2018, available in Serbian at: <https://www.mdri-s.org/saopstenja/zaposljavanje-osoba-sa-intelektualnim-i-psihosocijalnim-teskocama/>.

182 *Sl. glasnik RS*, 36/09, 88/10, 38/15, 113/17 and 113/17 – other law.

183 K. Beker, T. Milošević, *Legal Capacity: Court practice and legislation in Serbia 2016*, MDRI-S, 2016, p. 17, available at: <http://www.mdri-s.org/wp-content/uploads/2013/10/2016-Country-report-Legal-Capacity-1.pdf> <https://www.mdri-s.org/publication-english/>.

184 *Sl. glasnik RS*, 107/05, 72/09 – other law, 88/10, 99/10, 57/11, 119/12, 45/13 – other law, 93/14, 96/15 and 106/15.

The quality of health care extended to institutionalised persons is particularly concerning. There have been instances in which persons with psychosocial disabilities in need of intensive mental health treatment were unable to obtain such treatment in residential institutions and the psychiatric clinics did not want to admit them because they were suffering both from psychosocial and cognitive disabilities. Such beneficiaries were left without adequate health care, which intensified the deterioration of their health.

The Republican Health Insurance Fund covers between 60 and 100 percent of the costs of the medical-technical aids.<sup>185</sup>

## 4. Status of National Minorities

According to the 2011 Census, ethnic Hungarians account for the largest national minority in Serbia (3.53%). They are followed by Roma (2.05%), and the Bosniak (2.02%), Croatian (0.81%), and Slovak (0.73%) national minorities. Serbia is also populated by the Montenegrin, Vlach, Romanian, Yugoslav, Macedonian, Moslem, Bulgarian, Bunyevtsi, Ruthenian, Gorani, Albanian, Ukrainian, German, Slovenian and Russian national minorities and other minorities categorised as others. Slightly over two percent (2.23%) of the citizens covered by the Census did not declare their ethnicity, 0.43% declared their regional affiliation, while the ethnicity of 1.14% of the population remained unknown.<sup>186</sup>

### 4.1. *Constitutional and Legislative Framework on the Protection of Minority Rights*

Serbia acceded to the Framework Convention for the Protection of National Minorities in 2001 and the European Charter for Regional or Minority Languages in 2006. It also concluded bilateral agreements on the mutual protection of national minority rights with Croatia, Hungary, Former Yugoslav Republic of Macedonia and Romania.

The protection of national minorities is guaranteed by Article 14 of the Serbian Constitution, under which the state shall provide special protection to national minorities to facilitate their full equality and preservation of their identity. The rights of national minorities are governed in greater detail in Articles 75–81 of the Constitution, which guarantee additional individual and collective rights to national minorities. The Constitution prohibits any discrimination of national minorities and provides for affirmative measures, which shall not be considered discriminatory if

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185 More in the *2016 Report*, III.4.8.

186 See more at: <https://goo.gl/U2bLhc>.

they are aimed at eliminating extremely unfavourable living conditions which particularly affect them. Under the Constitution, special consideration shall be given to ensuring adequate representation of national minorities during recruitment in state authorities, public services, and provincial and local self-government authorities. The Constitution prohibits forced assimilation and grants the minorities the right to preserve their specificities, which, inter alia, entails their right to use their scripts and languages and display their symbols at public venues. Persons belonging to national minorities are entitled to unobstructed relations and cooperation with their ethnic kin outside Serbia and to establish their own educational and cultural associations. The Constitution also lays down that the state shall encourage the development of the spirit of tolerance among all people living in Serbia.

The Act on the Protection of the Rights and Freedoms of National Minorities (hereinafter: Minority Protection Act)<sup>187</sup> is the main law governing the protection of national minorities, while their association in National Minority Councils is regulated by the National Councils of National Minorities Act (NCNMA).<sup>188</sup> The Official Use of Scripts and Languages Act<sup>189</sup> is also relevant to the rights of national minorities. All three laws were amended in June 2018.<sup>190</sup>

The Minority Protection Act was adopted back in 2002 as a federal law of the former Federal Republic of Yugoslavia (FRY). The 2018 amendments primarily aligned it nomotechnically with the Constitution and systemic laws, given that the prior version of the law was quite outdated as it relied on the FRY state order. The amendments also aligned the law with the obligations laid down in the Action Plan for the Realisation of the Rights of National Minorities of the Republic of Serbia, which was adopted pursuant to the Chapter 23 Action Plan. The amendments also had to be made to ensure the adequate representation of persons belonging to national minorities in the public sector and the realisation of the right to register data on ethnic affiliation in official records and personal data files. The law now defines more precisely the aspects of the use of minority scripts and languages and the minorities' right to select and use their national symbols and emblems. The legislator took on board the recommendations of the European Commission TAIEX Expert Mission.

The Minority Protection Act defines only the purpose, role, character and principles on which National Minority Councils are formed and refers to a separate law, the NCNMA, which governs the NMCs' powers, election, funding and other issues. It also provides for additional minority rights at the provincial level, pursuant to the Constitution. Discrimination is now prohibited not only against persons

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187 *Sl. list SRJ*, 11/02, *Sl. list SCG*, 1/03 – Constitutional Charter and *Sl. glasnik RS*, 72/09 – other law, 97/13 – CC Decision and 47/18.

188 *Sl. glasnik RS*, 72/09, 20/14 – CC Decision, 55/14 and 47/18.

189 *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05 – other law, 30/10, 47/18 i 48/18 – corr.

190 Available in Serbian at: <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2018/1325-18.pdf>; <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2018/2120-18.pdf>; and <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2018/1324-18..pdf>.

belonging to national minorities but minorities on the whole as well. The Act has been aligned with the Constitution to reflect the prohibition of the reduction of the achieved level of acquired rights. It lays down that local self-governments shall introduce the official use of minority scripts and languages within 90 days from the day they establish that the relevant legal requirements have been fulfilled. Minorities accounting for less than 2% of the population, whose languages are officially used in local self-governments, are entitled to submit applications to the state authorities in their languages and receive answers in their languages, via their local self-governments. National Assembly deputies also have the right to oral and written use of their languages in parliament; the Assembly shall put in place conditions for the exercise of this right. The amended Act also provides for translation into minority languages and publication of consolidated texts of the main national laws and laws entirely or partly governing minority rights, and for the publication of provincial and local self-government regulations in minority languages.

The Minority Protection Act now also allows provincial and local self-government authorities, not only the state authorities, to fund national minority institutions, associations and societies. The obligation to protect the cultural and historical heritage of national minorities has been extended and now includes both state museums, archives and institutions and institutions founded by the provinces or local self-governments. The Act defines the use of minority symbols more thoroughly and entrusts the decisions on them to the National Minority Councils. The legislator introduced penal provisions to ensure consistent compliance with and effective implementation of the law. Failure by authorities and institutions to write their names in minority languages in accordance with the law and use of other states' national symbols as minority symbols and celebration of holidays not designated as such by the National Minority Councils constitute misdemeanours or economic offences.

Amendments to the Official Use of Scripts and Languages Act align this law with the Minority Protection Act with respect to the inscription of names and toponyms in minority languages, exercise of the right of MPs belonging to national minorities to use their languages, and translation of legislation into minority languages. The Act allows for the inscription of names and toponyms in minority languages also in local self-governments where those minority languages are not officially used at the moment.

The amendments can facilitate the use of Roma language. Although the second largest minority in Serbia, Roma do not account for 15% of the population in any local self-government, a requirement that needs to be fulfilled for them to officially use their language. Their inability to officially use their language has greatly hindered their exercise of their rights before courts and other authorities as well. Although Vlachs account for at least 15% of the population in some local self-governments, Vlach language is still not officially used because it is not standardised. No conclusion on use of minority languages in civil cases can be drawn due to the lack of an obligation to keep records of minority languages used by parties in court.

The Action Plan for the Realisation of the Rights of National Minorities envisaged the amendment of the NCNMA and its alignment with the Constitution, after the Constitutional Court declared a number of its Articles unconstitutional in 2014.<sup>191</sup> The amended Act governs the legal status and powers of National Minority Councils (NMCs) and introduces a number of new provisions on their financial obligations, such as mandatory audit reports, programme budgets and more transparent spending. The provisions on NMCs founding institutions, companies and other organisations have been amended in accordance with the Constitutional Court decision. The Act now deals more thoroughly with the use of NMC property, obligates the NMCs to align their legal enactments with their Statutes, specifies the powers and duties of NMC Chairmen and Management Boards with a view to ensuring separation of powers, and introduces the principle of incompatibility of office with a view to depoliticising NMCs.<sup>192</sup> In response to criticisms that NMCs are not transparent, the legislator laid down that their work shall be transparent and that they shall publish all their decisions and enactments on their websites.<sup>193</sup>

The Vital Records Act was also amended in 2018 and now provides for the registration of ethnic affiliation in the birth register. Given that the Constitution enshrines the freedom to express one's ethnic affiliation, the entry of such data in the birth records is voluntary and the law does not restrict the right to change them. The Vital Records Act now includes a penal provision, under which a fine shall be imposed against an authority that refuses to write the first and last names of a person belonging to a national minority in his script and language.

#### 4.2. National Minority Council Elections Held in 2018

The NCNMA defines National Minority Councils as organisations vested with specific public powers by law to participate in decisions or independently decide on individual issues in the fields of culture, education, information and official use of scripts and languages with a view to facilitating the realisation of the national minorities' collective rights to self-government in these fields. Each national minority is entitled to establish only one National Minority Council. Twenty-one NMCs operated in Serbia in 2018.<sup>194</sup>

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191 Constitutional Court Decision, *Sl. glasnik RS*, 20/14.

192 The concept of a political party of a national minority is governed in greater detail by the Act on Political Parties (*Sl. glasnik RS*, 36/09 and 61/15 – CC Decision). As of September 2018, a total of 72 minority political parties were registered in the register of political parties kept by the Ministry of State Administration and Local Self-Governments. The register is available in Serbian at: <http://www.mduls.gov.rs/doc/dokumenta/pstranke/izvod-iz-Registra-politickih-stranaka-septembar-2018.docx>.

193 Given that quite a few NMCs do not operate websites, the law allows the NMCs to publish their decisions also on their bulletin boards and in daily newspapers.

194 Notably, the NMCs of the Albanian, Ashkali, Bulgarian, Bunjevtsi, Vlach, Greek, Egyptian, Hungarian, German, Roma, Romanian, Ruthenian, Slovak, Slovenian, Ukrainian, Croatian,



The right to vote for NMCs is vested in persons belonging to national minorities, who are registered in the Special Election Roll. Their number stood at 467,545.<sup>195</sup> The NMC elections were held on 4 November 2018. Persons belonging to 18 national minorities elected the members of their NMCs at direct elections. The candidates ran on 58 tickets<sup>196</sup> for the NMCs of the Albanian, Ashkali, Bosniak, Bulgarian, Bunyevtsi, Vlach, Greek, Egyptian, Hungarian, German, Polish, Roma, Romanian, Ruthenian, Slovak, Slovenian, Ukrainian and Czech minorities. Persons belonging to four national minorities – the Macedonian, Croatian, Montenegrin and Russian national minorities – elected their NMC members via electoral assemblies. The elections were monitored by domestic and foreign observers.<sup>197</sup>

Although the election process mostly passed without incident, a number of Belgrade and Novi Pazar NGOs issued a press release alerting that elections of the Bosniak NMC were held in a “climate of fear and violence”, warning of interferences by the state authorities, massive registration of non-minority nationals in the Special Election Roll and acts of violence that did not elicit any response on the part of the competent authorities.<sup>198</sup>

Many civil society representatives disagreed with the positive assessment of the Ministry of State Administration and Local Self-Governments and qualified the NMC elections as fraught with irregularities and pressures on voters. They held that the elections were not depoliticised. The outgoing representative of the Roma NMC drew attention to the pressures, and, in many cases, threats against the voters by the representatives of the ruling Serbian Progressive Party (SNS), while the representative of the Croatian NMC criticised the non-transparency of the process. Registration of non-minorities and deceased people in the minority election roll was highlighted as a problem as well.<sup>199</sup>

The Migration Research Centre said that the ruling parties applied strong pressures and aggressive rhetoric and that the greatest number of irregularities were registered in the election of the Bosniak, Bulgarian, Romanian, Slovak and Czech

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Czech, Macedonian, Bosniak, Jewish (the Federation of Jewish Communities in Serbia performs the duties of the NMC under Article 134 of the Act, but it is not constituted in the election process) and Montenegrin national minorities. The NMC of the Russian National Minority was formed after the November 2018 elections.

195 94<sup>th</sup> session of the Republican Election Commission, 2 November 2018, available in Serbian at: <http://www.rik.parlament.gov.rs/aktivnosti-sednice.php#a160>.

196 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a432726/Vesti/Izbori-za-nacionalne-savete-u-nedelju-u-Srbiji.html>.

197 The Ministry of Foreign Affairs allowed the representatives of the following international organisations to monitor the NMC elections: OSCE Mission to Serbia, Delegation of the European Union to Serbia, and the British, US, Croatian, Slovak, Turkish, German and Ukrainian Embassies in Belgrade.

198 More is available in Serbian at: <https://izbori2018.minoritynews.rs/obavestenja/nevladine-organizacije-velike-tenzije-u-sandzaku-pred-izbore-za-bosnjacko-nacionalno-vece>.

199 See the *Danas* report of 21 November 2018, available in Serbian at: <https://www.danas.rs/drustvo/izbore-za-nacionalne-savete-obelezile-brojne-nepravilnosti/>.

NMCs. The Forum for Ethnic Relations said that the NMCs have turned into “para-state bodies”.<sup>200</sup> Accusations were voiced about the elections of the Bulgarian NMC, where two pro-SNS Bosilegrad-based tickets formally vied against each other. The third ticket, headed by the Dimitrovgrad Assembly Chairman, withdrew from the elections; its representative refused to specify the reason or answer media questions about whether it had done so under pressure from Belgrade. The minority ethnic Bulgarian party called on the ethnic Bulgarians to boycott the elections.<sup>201</sup> Serbian opposition parties accused the ruling party of forcing public sector staff to register in the minority election rolls although they were Serbs and to vote for tickets under SNS control.<sup>202</sup>

#### 4.3. *Assessments of the Protection of National Minorities in Serbia by International Bodies*

In its 2018 Serbia Report, the European Commission said that, in order to successfully conclude negotiations on Chapter 23 (Judiciary and fundamental rights), Serbia needed to develop a comprehensive approach for the protection of national minorities by implementing its action plan on national minorities consistently across the country and amending the legal framework by means of an inclusive, transparent and efficient process. It also said public broadcasting services in minority languages needed to be strengthened, especially as regards the Radio Television of Serbia (RTS). On a positive note, the EC said that the legal framework for respect for and protection of minorities and cultural rights was in place and generally upheld, in line with the Framework Convention on National Minorities and that interethnic relations continued to be good and stable. It also noted that the Republican National Minority Council had established good cooperation with national minority councils and that the fund for national minorities was functioning.

The EC noted that some regions inhabited predominantly by national minorities remained among the most underdeveloped, that local councils for interethnic relations had not been established in all the 29 municipalities where such an obligation was stipulated by the law and that their role and mandate should be clarified. It drew particular attention to the underrepresentation of national minorities in the public administration. The EC observed that the preparation of textbooks in minority languages and their printing continued following the signing of a memorandum of understanding and relevant annexes with eight national minority councils on the publication of textbooks in minority languages, but that preparations for providing textbooks for

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200 See the *Radio Free Europe* report of 21 November 2018, available in Serbian at: <https://www.slobodnaevropa.org/a/29613340.html>.

201 See the *Beta* report of 1 November 2018, available in Serbian at: <https://beta.rs/politika/100190-voice-obe-liste-na-izborima-za-nacionalni-savet-bugara-naginju-sns>.

202 See the *Danas* report of 2 November 2018, available in Serbian at: <https://www.danas.rs/politika/szs-ugrozeni-izbori-za-nacionalne-savete/>.

secondary schools had not yet started. The EC said that access to religious worship in minority languages should be enabled throughout Serbia. It highlighted that following media privatisation, broadcasting of programmes in minority languages remained vulnerable due to lack of sufficient funding and control of content.<sup>203</sup>

In his annual address to the plenary meeting of the OSCE Permanent Council in November 2018, the OSCE High Commissioner on National Minorities noted that Serbia's update of the legal framework covering the rights and freedoms of national minorities was deemed positive by both the Government and, to a certain extent, by national minority representatives. He said that the minorities' representatives, however, continued to be concerned over undue political interference in the elections of their National Councils and noted that "the media privatization process, completed two years ago, continues to impact negatively on the financial viability of media run by national minorities in their mother tongues."<sup>204</sup>

In January 2018, the Committee on the Elimination of Racial Discrimination adopted its Concluding observations on the combined second to fifth periodic reports of Serbia, presented in late November 2017.<sup>205</sup> The Committee expressed its concern at the paucity of information on complaints regarding racial discrimination submitted to the Ombudsman and on the outcome of their review. It said it was alarmed by reports of a rise in hate speech, including on the Internet, against ethnic and ethno-religious minorities. It requested of Serbia to continue its efforts to prevent, combat and punish trafficking in persons and to focus its efforts on members of ethnic minorities and non-citizens, who were particularly vulnerable to trafficking.

Serbia submitted its fourth periodic report on the implementation of the Framework Convention on National Minorities to the Council of Europe Secretary General on 18 September 2018.<sup>206</sup>

#### *4.4. Realisation of Minority Rights*

The National Minority Council was established as a standing Government body in 2015 to monitor and review the realisation of minority rights and the state of interethnic relations in the Republic of Serbia.<sup>207</sup> The Human and Minority Rights Office extends expert support to the Council. The Office includes a Sector for

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203 Serbia 2018 Report, p. 26.

204 See more at: <https://www.osce.org/permanent-council/401942?download=true>.

205 See more at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSRB%2fCO%2f2-5&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSRB%2fCO%2f2-5&Lang=en).

206 Available at: <http://www.ljudskaprava.gov.rs/sr/node/22332>. The Report covers the 2012–2016 period and includes Serbia's responses to recommendations made by the CoE Committee of Ministers in its Resolution CM/ResCMN(2015)8 of 1 July 2015.

207 *Sl. glasnik RS*, 32/15, 91/16 and 78/17. The Council is chaired by the Prime Minister. Its members also include the Ministers of State Administration and Local Self-Governments, Foreign Affairs, Justice, Education, and Culture and Information, the Director of the Justice Ministry Department for Cooperation with Churches and Religious Communities, the Director of the

National Minorities comprising a unit charged with advancing the rights of national minorities and a group tasked with improving the status of Roma and extending assistance to migrants.<sup>208</sup>

In March 2016, the Serbian Government adopted the Action Plan for the Realisation of the Rights of National Minorities.<sup>209</sup> The Eighth Report on the Implementation of the Action Plan, adopted on October 2018 covers activities that were to have been completed by the end of Q2 2018 and continuous activities,<sup>210</sup> while the Seventh Report, presented on 13 June 2018, covers the activities that were to have been completed by the end of Q1 2018 and continuous activities.<sup>211</sup>

The Eighth Report sets out that most activities were fully implemented and that some activities were partly implemented in the reporting period. It said that the following activities were not implemented as had been planned: activities aiming to ensure the sustainability of media outlets founded indirectly by NMCs and production of media content, in the transitional period, until the new NCNMA entered into force; participation of national minorities in the appointment of the Electronic Media Regulatory Authority (EMRA) and of the Chief Editor of the minority language programme; signing of bilateral agreements with countries the national minorities of which are provided with education in Serbia; initiation of cooperation on the provision of quality textbooks and teaching materials; Serbian and minority language courses for police officers; full implementation of the law governing the keeping of the register of state sector staff; organisation of regional seminars on international standards and best practices regarding the status of national minorities, in cooperation with the EU, CoE and OSCE; and, review of the part of the Constitution on the application of affirmative measures with a view to eliminating any ambiguities and aligning the provisions.<sup>212</sup>

In Q1 2018, the Republican Public Prosecution Service, Judicial Academy and the OSCE Mission to Serbia organised training on hate crimes for public prosecutors. The Ministry of Internal Affairs organised training for police officers on responding to apparent discrimination and working with minority and other vulnerable groups. Supreme Court of Cassation data covering the first five months of 2018 show that the Serbian basic courts heard one case regarding the alleged violation of the freedom of

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Human and Minority Rights Office, the Chairmen of NMCs and the Chairman of the Federation of Jewish Communities in Serbia.

208 More is available in Serbian at: <http://www.ljudskaprava.gov.rs/sh/o-kancelariji/sektor-za-nacionalne-manjine>.

209 The development of the Action Plan was based on the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the EC TAIEX Expert Mission report on national minorities. The Action Plan is available in Serbian at: <http://www.ljudskaprava.gov.rs/sh/node/21793>.

210 Available at: [http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/report\\_2-2018\\_y.pdf](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/report_2-2018_y.pdf).

211 Available at: [http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/report\\_1-2018.pdf](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/report_1-2018.pdf).

212 Available in Serbian at: <https://goo.gl/H7fzzS>.

expression of national or ethnic affiliation under Article 130 of the Criminal Code. In the same period, public prosecution services with general jurisdiction received criminal reports against two individuals accused of harming people's reputation on grounds of race, religion, ethnic or other affiliation and against four individuals accused of inciting national, racial and religious hate and intolerance. All but one report were dismissed. The Cyber Crime Public Prosecution Service received criminal reports against three individuals accused of inciting on the Internet national, racial and religious hate and intolerance motivated by their hate of persons belonging to national minorities; the motion to indict was filed against one of them.<sup>213</sup>

The Commissioner for the Protection of Equality continued monitoring respect for minority rights in 2018. She issued a warning early in 2018 after two ethnic Albanian youths were assaulted in Novi Sad; one of them was beaten up so severely that his life was in danger.<sup>214</sup> In her opinion on the draft amendments to the NCN-MA published in May 2018,<sup>215</sup> the Commissioner alerted to the need to introduce an anti-discriminatory provision in the text of the Act referring to the application of the Anti-Discrimination Act, the need to use gender-sensitive language throughout the law and that stakeholders were provided with insufficient time to comment the draft amendments.

In the first half of 2018, the Commissioner for the Protection of Equality received 34 complaints of discrimination on grounds of ethnic origin or national affiliation. Thirteen complaints alleged discrimination on grounds of membership of the Roma national minority, eight to discrimination on grounds of membership of the Montenegrin national minority, five to discrimination on grounds of membership of the Hungarian national minority, two to discrimination on grounds of membership of the Romanian national minority, one to discrimination on grounds of membership of the Albanian national minority and one to discrimination on grounds of membership of the Ukrainian national community, whereas the remaining four complaints alleged discrimination on grounds of membership of other national minorities.

In her 2017 Annual Report,<sup>216</sup> the Commissioner for the Protection of Equality said that the number of complaints of discrimination on grounds of national affiliation or ethnic origin took fifth place, and that most of the complaints she had received alleged discrimination on grounds of disability, age, sex and health. Most of the complaints regarded work and recruitment, procedures before public authorities, provision of public services and access to public areas and facilities and private relationships. The Commissioner issued 29 recommendations on combatting discrimination and improving equality in 2017. One of the Commissioner's main

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213 Available at: [http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/izvestaj\\_2-2018.pdf](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/izvestaj_2-2018.pdf).

214 Available at: <http://ravnopravnost.gov.rs/en/warning-because-of-the-attack-against-two-albanians-in-novi-sad/>.

215 Available in Serbian at: <https://goo.gl/ua8QVa>.

216 Available at: <http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2018/07/Abridged-Version-of-2017-RAR-of-the-CPE.pdf>.

recommendations was that the state take all the requisite measures to ensure that the composition of the staff of state and local self-government authorities and other public authorities reflects the ethnic breakdown of the population in the territories within their remit.

The realisation of rights of national minorities in the Autonomous Province of Vojvodina is monitored by the Deputy Ombudsman. The Vojvodina Ombudsman also publishes annual reports.<sup>217</sup>

#### 4.5. *Funding of National Minorities*

The Fund for Minority Language Information Programmes and Projects, established 16 years ago, at long last allocated funds in late 2017. A total of 1.8 million RSD were granted for 25 information-related programmes and projects in minority languages. The Fund was allocated 21.8 million RSD in the 2018 Budget.<sup>218</sup> The 2018 Call for Proposals was published in May 2018.<sup>219</sup> Ten of the 168 submitted applications did not fulfil the formal requirements. Funds were granted for the implementation of 77 projects.<sup>220</sup>

The Human and Minority Rights Office had 245 million RSD at its disposal in 2018 for funding the work of National Minority Councils; this money could also be used for funding or co-funding media-related projects and programmes and the work of institutions, foundations, companies and organisations in this area that are founded or co-founded by NMCs.

In 2018, the Vojvodina Secretariat for Culture, Public Information and Religious Communities had around 278 million RSD at its disposal for funding minority-language media owned by NMCs. A Call for Proposals for co-funding minority-language media programmes in the amount of 6.2 million RSD was also called in 2018.

The Vojvodina Secretariat for Education, Regulations, Administration and National Minorities and Communities invited organisations of ethnic communities in Vojvodina to apply for subsidies totalling 30 million RSD to fund their regular activities, projects, events, equipment and investments, with the consent of the Vojvodina-based NMCs.<sup>221</sup> The Secretariat also published a Call for Proposals for co-funding projects preserving and nurturing interethnic tolerance in Vojvodina; 13.3 million RSD were

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217 The 2017 Report is available in Serbian at: [https://www.ombudsmanapv.org/riv/attachments/article/1995/Godisnji\\_izvestaj\\_PZG-ombudsmana\\_2017-online.pdf](https://www.ombudsmanapv.org/riv/attachments/article/1995/Godisnji_izvestaj_PZG-ombudsmana_2017-online.pdf).

218 See the *Danas* report of 2 December 2017, available in Serbian at: <https://www.danas.rs/drustvo/aktiviran-fond-za-nacionalne-manjine/>.

219 Available in Serbian at: <http://www.mduls.gov.rs/latinica/konkurs-za-dodelu-sredstava-za-nsnm.php>.

220 Available in Serbian at: <http://www.mduls.gov.rs/doc/odluka-Budzetski-fond-za-nacionalne-manjine-u-2018-godini-3-9-2018.pdf>.

221 Available in Serbian at: [http://www.puma.vojvodina.gov.rs/etext.php?ID\\_mat=8607](http://www.puma.vojvodina.gov.rs/etext.php?ID_mat=8607).

designated for such projects.<sup>222</sup> The Secretariat also published a Call for Proposals for funding and co-funding NMC activities, projects and programmes regarding primary and secondary education; nearly 1.6 million RSD were allocated for this purpose.<sup>223</sup> Budget funds were also allocated for Vojvodina authorities and organisations officially using minority scripts and languages, primarily for covering the costs of multi-lingual signboards and forms.<sup>224</sup> In 2018, the Vojvodina Secretariat for Culture, Public Information and Religious Communities allocated 6.5 million RSD in a Call for Proposals for funding and co-funding projects and programmes of relevance to the art and culture of national minorities in Vojvodina<sup>225</sup> and four million RSD in a Call for Proposals for the production of media content in minority languages in the field of public information.<sup>226</sup> The Secretariat for Culture also published a Call for Proposals, through which it supported minority organisations in preparing documentation for the Secretariat CfPs. Funding permitting, the Vojvodina authorities planned on designating up to 51 million RSD in the Vojvodina budget to fund the work of the culture institutes of the Vojvodina Hungarians, Slovaks, Romanians, Ruthenians and Croats.

At the central level, the Ministry of Culture and Information published a Call for Proposals for co-funding the production of media content targeting national minorities; a total of 5.8 million RSD was allocated for this purpose.<sup>227</sup> Nearly 15.4 million RSD were allocated for the cultural activities of national minorities within the Call for Proposals for funding contemporary creativity projects in Serbia.<sup>228</sup> The Ministry also allocated 40 million RSD for co-funding projects in the field of public information in minority languages in 2018.<sup>229</sup>

A public Call for Proposals was published in July 2018 within the project “Strengthening the protection of national minorities in Serbia” by the Horizontal Facility for the Western Balkans and Turkey, funded by the EU and Council of Europe. Local self-governments were invited to submit project proposals encouraging the exercise of the rights of national minorities regarding official use of scripts and languages and education in minority languages.<sup>230</sup>

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222 Available in Serbian at: [http://www.puma.vojvodina.gov.rs/etext.php?ID\\_mat=8614](http://www.puma.vojvodina.gov.rs/etext.php?ID_mat=8614).

223 Available in Serbian at: <http://www.puma.vojvodina.gov.rs/text.php?vr=4>.

224 Available in Serbian at: [http://www.puma.vojvodina.gov.rs/dokumenti/Konkursi/2018/sluzbena\\_upotreba\\_jezika/Resenje.pdf](http://www.puma.vojvodina.gov.rs/dokumenti/Konkursi/2018/sluzbena_upotreba_jezika/Resenje.pdf).

225 Available in Serbian at: <http://www.kultura.vojvodina.gov.rs/Konkursi/konkurs.htm>.

226 Available in Serbian at: [http://www.kultura.vojvodina.gov.rs/Konkursi/konkurs\\_inf.htm](http://www.kultura.vojvodina.gov.rs/Konkursi/konkurs_inf.htm).

227 Available in Serbian at: <http://www.kultura.gov.rs/lat/konkursi/konkurs-za-sufinansiranje-projekata-proizvodnje-medijskih-sadrzaja-namenjenih-nacionalnim-manjinama-u-2018--godini>.

228 Available in Serbian at: <http://www.kultura.gov.rs/lat/konkursi/rezultati-konkursa-za-finansiranje-ili-sufinansiranje-projekata-iz-oblasti-savremenog-stvaralastva-u-republici-srbiji-u-2018--godini>.

229 Available in Serbian at: <http://www.kultura.gov.rs/lat/konkursi/rezultati-konkursa-za-sufinansiranje-projekata-iz-oblasti-javnog-informisanja-na-jezicima-nacionalnih-manjina-u-2018--godini>.

230 Available in Serbian at: <http://sociojalkoukljucivanje.gov.rs/rs/jacanje-zastite-nacionalnih-manjina-u-srbiji-konkurs-za-dodelu-grantova-jedinicama-lokalne-samouprave-rok-6-7-2018/>.

## 5. Women's Rights and Gender Equality

### 5.1. General overview

Gender equality denotes equal access by women and men to resources and opportunities, including involvement in the society's economic life and decision-making processes. Empowerment of women and their participation in all walks of public and private life is essential to their realisation of human rights. The women's full involvement in economic and political life is prerequisite for the development of a society.

Enjoyment of equal rights, regardless of gender, sex or another personal feature, is guaranteed by all international instruments ratified by Serbia. Gender equality and the development of equal opportunities policies are among the 17 principles enshrined in the Serbian Constitution. The Gender Equality Coordination Body, operating within the Serbian Government and headed by Deputy Prime Minister Zorana Mihajlović, was established to guide the work of public administrative authorities and other institutions with a view to promoting the status of women and men in Serbia. In addition, the Anti-Discrimination and Gender Equality Promotion Sector was set up within the Ministry of Labour, Employment and Veteran and Social Issues in May 2017. The National Assembly of the Republic of Serbia has a standing Committee on Human and Minority Rights and Gender Equality. Local self-governments have also established their gender equality mechanisms. Gender equality is also within the remit of two independent regulatory authorities, the Protector of Citizens and the Commissioner for the Protection of Equality, and, in Vojvodina, the Provincial Ombudsman.

Serbia has made some progress in aligning its law with international standards and the EU *acquis*. The obligation to introduce gender responsive budgeting<sup>231</sup> was introduced for the first time in late 2016 and is to be fulfilled by authorities at all levels by 2020 at the latest. It entails analysis of the effects of budget allocations on the lives of women and men, taking into consideration gender and other socio-economic characteristics and personal features which may place specific individuals or groups at a disadvantage.<sup>232</sup> The 2016–2020 National Gender Equality Strategy<sup>233</sup> and its 2016–2018 Action Plan were adopted in 2016. Neither an evaluation of the Action Plan, which expired in the reporting period, nor a draft of the one covering the ensuing period were available at the end of the reporting period. In 2017, the Domestic Violence Act<sup>234</sup> entered into force and the National Action Plan for the Implementation of UN Secu-

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231 Gender responsive budgeting entails gender mainstreaming of the budget process, including gender analysis of the budget and restructuring of income and expenditures in order to advance gender equality. The budget system should achieve the efficient allocation of budget resources with a view to fostering gender equality.

232 See the UN Women Serbia Office manual for budget users developed by Sanja Nikolin and Aleksandra Vladisavljević, p. 6, available in Serbian at: <http://rs.one.un.org/content/dam/unctf/serbia/docs/Publications/Prirucnik%20za%20uvodjenje%20ROB.pdf>

233 *Sl. glasnik RS*, 4/16.

234 *Sl. glasnik RS*, 94/16.



riety Council Resolution 1325 on Women, Peace and Security in the Republic of Serbia until 2020<sup>235</sup> was adopted. All these developments led the World Economic Forum to rank Serbia 38<sup>th</sup> on the list of 149 countries in its 2018 Global Gender Gap Report, up from 40<sup>th</sup> place the previous year. Serbia made headway in reducing the gender gap in the labour market and political participation.<sup>236</sup> However, a new law replacing the valid Gender Equality Act<sup>237</sup> was not enacted by the end of 2018, although the legislator has been drafting it for four years now.

Women's and men's labour still was not equally valued in 2018 and, in many communities, it went without saying that the property was registered in the men's name and that they took the important household decisions. The patriarchal gender roles and division of work and chores into male and female were still widespread and socially acceptable. Men's work was traditionally associated with productive labour, while the roles of women, regardless of their employment status, were associated with the non-productive sphere, i.e. household chores and child care.<sup>238</sup>

The Human Rights Committee noted that patriarchal cultural patterns and stereotypical gender roles of women and men remained prevalent in Serbian society,<sup>239</sup> exacerbating, inter alia, women's vulnerability to severe forms of violence.

## 5.2. *Equality and Non-Discrimination*

The principle of the prohibition of discrimination is proclaimed in numerous international instruments ratified by Serbia. The ICCPR imposes the obligation of States to ensure equal access to rights to women and men, which means that they should not only refrain from discriminatory practices (a negative obligation), but that they should also adopt positive measures in all areas so as to achieve the effective and equal empowerment of women (positive obligation).<sup>240</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also lays down the States' obligation not only to prohibit all discrimination against women (Art. 2) but also to take all appropriate measures to guarantee women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men (Art. 3).

The Serbian Constitution guarantees equality before the law and prohibits direct and indirect discrimination on any grounds, including sex and gender (Art.

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235 *Sl. glasnik RS*, 53/17.

236 See more at: [http://www3.weforum.org/docs/WEF\\_GGGR\\_2018.pdf](http://www3.weforum.org/docs/WEF_GGGR_2018.pdf)

237 *Sl. glasnik RS*, 104/09.

238 More in the *2016 Report*, III.5. and the *2017 Report*, IV.4.1

239 Concluding observations on the third periodic report of Serbia, HRC, UN Doc. CCPR/C/SRB/CO/3, 10 April 2017, paragraph 18, available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/SRB/CO/3&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/SRB/CO/3&Lang=En)

240 General Comment No. 28, UN Human Rights Committee, available at: [http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/b\)GeneralCommentNo28Theequalityofrightsbetweenmenandwomen\(article3\)\(2000\).aspx](http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/b)GeneralCommentNo28Theequalityofrightsbetweenmenandwomen(article3)(2000).aspx).

21). Anti-discrimination provisions, including the possibility of affirmative action, are integrated in labour, employment, family, education, health and social protection law, as well as regulations on political and civil rights, et al.

In its Serbia 2018 Report, the European Commission said that Serbia's non-discrimination legislation was broadly in line with the European standards, although further alignment with the *acquis* was still needed.<sup>241</sup> It said that Serbia needed to improve the implementation of anti-discrimination law, ensure its uniform application throughout the country and make additional efforts to improve the status of vulnerable groups. It also said that Serbia needed to adopt a gender equality law.<sup>242</sup>

In July 2018, the Committee on the Elimination of Discrimination against Women forwarded a List of issues and questions in relation to the fourth periodic report of Serbia.<sup>243</sup> The CEDAW Committee asked the state to provide information about the status of adoption of the bill on gender equality, indicate whether gender-based violence was addressed in it and provide information on protection mechanisms.<sup>244</sup>

In its Fourth periodic report to the CEDAW Committee,<sup>245</sup> Serbia said that the Preliminary Draft of the Gender Equality was in compliance with international treaties and the EU *acquis*, which is not entirely true. The newly-established Anti-Discrimination and Gender Equality Sector of the Ministry of Labour, Employment and Veteran and Social Issues changed the text of the preliminary draft of the gender equality law developed by the Gender Equality Coordination Body in 2017 twice, after the public debates in 2017 and 2018. The sector succumbed to pressures of conservative and religious organisations and other stakeholders, and introduced even greater confusion into the text, which is now not in compliance with international standards or ratified international treaties (for instance, the legislator avoids use of the noun and adjective 'gender' in all provisions on violence, to ensure "neutrality").<sup>246</sup>

Furthermore, after the Ministry's intervention, the definition of "violence against women" was replaced by a neutral expression "gender-based violence" although the former was in line with international standards and the definition in the Council of Europe Convention on preventing and combating violence against women and domestic violence.

The CEDAW Committee also asked Serbia to provide additional information on the amendments to the Anti-Discrimination Act, given that the state had notified the Committee that they had been drafted in cooperation with the Commissioner

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241 Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

242 *Ibid.*, p. 4.

243 Available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FSRB%2FQ%2F4&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FSRB%2FQ%2F4&Lang=en)

244 *Ibid.*, para 2.

245 Available at: <https://undocs.org/CEDAW/C/SRB/4>.

246 See the PrEUunup report, available at: <http://preugovor.org/Alarm-Reports/1460/Coalition-prEUGovor-Report-on-Progress-of-Serbia.shtml>.

for the Protection of Equality and the European Commission, and that it was fully in compliance with EU Directives.<sup>247</sup> No public debate on these amendments was held in Serbia.

The UN Human Rights Committee also noted that patriarchal cultural patterns and stereotypical gender roles of women and men remained prevalent in Serbian society and called on Serbia to pursue efforts to raise awareness of women's equality with a view to combating all prejudices and stereotypes against women.<sup>248</sup>

The slogans encouraging childbirth were one of the most extreme illustrations of the widespread gender stereotypes and prejudices in 2018. Namely, at the proposal of the Government Population Policy Council, the Ministry of Culture and Information in December 2017 published a call for slogans to be used in the campaign to boost the birth rate. The winning slogans published in February 2018 (*Love and babies – first thing we need; Don't put off babies; Mom, I don't want to be alone, I want a bro; Enough talk, let them be born*<sup>249</sup>) illustrate how embedded gender stereotypes are and the public authorities' lack of understanding of the status of women in Serbian society. They were qualified as inadequate both by Prime Minister Ana Brnabić,<sup>250</sup> and the Gender Equality Coordination Body Chairwoman Zorana Mihajlović, who said they were offensive to women.<sup>251</sup> The slogans also prompted the CEDAW Committee to request of Serbia to provide information on the impact that the national campaign to increase the birth rate has had on the overall perception of the traditional roles of women and girls in the family and society, in particular with regard to the relegation of women to a reproductive role.<sup>252</sup>

### 5.3. Violence against Women

In paragraph 10 of its General Recommendation 35 on gender-based violence against women, adopted in July 2017, the CEDAW Committee reaffirmed that “gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated.” Under the Convention and international law, States parties are responsible for preventing these acts or omissions by their

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247 Available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FSRB%2FQ%2F4&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FSRB%2FQ%2F4&Lang=en), para. 1.

248 Concluding observations on the third periodic report of Serbia, UN Human Rights Committee, 10 April 2017, available at: <http://www.refworld.org/docid/591e9c4b4.html>.

249 See the *Srpski telegraf* report, available at: <https://www.telegraf.rs/english/2935850-give-the-best-slogan-and-motivate-serbs-to-make-children-make-love-for-your-country>.

250 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a364606/Slogani-za-bebenisu-ni-u-premijerkinom-stilu-traze-se-novi.html>

251 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a364428/Mihajlovic-o-sloganima-za-akciju-podsticanja-radjanja.html>

252 Available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FSRB%2FQ%2F4&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FSRB%2FQ%2F4&Lang=en), para 6.

own organs and to investigate, prosecute and apply appropriate legal or disciplinary sanctions, as well as provide reparation in all cases of gender-based violence against women (para. 22).<sup>253</sup>

Violence against women is frequent in Serbia. Estimates are that one out of two women in the country are subject to some form of violence. Unemployed and economically dependent women are at greater risk of abuse. Thirty women were killed in domestic violence incidents in the first 11 months of the year; over 350 women were killed in such incidents in the past decade.<sup>254</sup> The statistics are devastating, despite the improvement of the legal framework and enforcement of the Domestic Violence Act<sup>255</sup> since 1 June 2017. Only three of the 30 women victims of domestic violence in 2018 had reported their abusers earlier. There are no official statistical data on femicide in Serbia and the information on women killed by their husbands or partners is mostly collected from media reports.<sup>256</sup> Gender Equality Coordination Body Chairwoman Zorana Mihajlović thus vowed she would call for the establishment of a body that would monitor femicide in Serbia to facilitate thorough analysis of individual cases and identify the bottlenecks in protection in order to improve and further develop preventive measures.<sup>257</sup>

In 2013, Serbia ratified the Council of Europe Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence in October 2013,<sup>258</sup> the so-called Istanbul Convention, which is the first and only legally binding document at the European level that regulates violence against women. The Convention provides for the establishment of an independent mechanism, a group of experts on action against violence against women and domestic violence, which will oversee and monitor the implementation of the Convention by the Parties (the GREVIO Committee). When it ratified the Convention, Serbia reserved the right not to apply the provisions on compensation to the victims, issues of territorial jurisdiction in situations when the perpetrators have habitual residence in the territory of Serbia and jurisdiction over sexual violence cases until it aligned its criminal legislation with the relevant provisions of the Convention.

The Criminal Code was amended in November 2016 with a view to aligning national law with the Istanbul Convention. The new provisions, notably, envisage harsher penalties for crimes against sexual freedoms and incriminate new acts, including stalking (Art. 138a). Another 20 or so articles of the Criminal Code, including the definition of the criminal offence of rape, need to be amended for this Code

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253 Available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CE\\_DAW\\_C\\_GC\\_35\\_8267\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CE_DAW_C_GC_35_8267_E.pdf).

254 See the RTS report, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/drustvo/3333736/nasilje-moze-i-mora-da-se-prijavi-statistika-obeshrabrujuca.html>.

255 *Sl. glasnik RS*, 94/16.

256 More is available in Serbian at: <https://www.zeneprotivnasilja.net/femicid-u-srbiji>.

257 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/mihajlovic-formirati-telo-za-pracenje-femicida/>.

258 *Sl. glasnik RS (International Treaties)*, 12/13.

to be fully in line with the Istanbul Convention.<sup>259</sup> Furthermore, an efficient mechanism of legal and psychosocial support for victims of all forms of violence covered by the Convention needs to be established.

The Domestic Violence Act, adopted with a view to fulfilling the standards set by the Istanbul Convention, governs the organisation and activities of state authorities aimed at preventing domestic violence and extending adequate protection and support to victims of domestic violence (Art. 2). The Act defines domestic violence as every “act of physical, sexual, psychological or economic violence against an individual with whom the perpetrator has been in a marital, extramarital or partnership relationship, or is the perpetrator’s consanguineous lineal or lateral kin to the second degree, a relative by affinity to the second degree, adoptive or foster parent or child, or any other individual with whom the perpetrator has lived with.” The authorities and institutions charged with preventing domestic violence and extending support to the victims comprise the police, public prosecution services, courts of general jurisdiction and misdemeanour courts, as well as Social Work Centres.

From 1 January to 24 November 2018, the police issued 23,118 emergency protective orders, of which 6,928 ordered the abusers to move out of the victim’s residence and 16,190 were restraining orders.<sup>260</sup> The collection and disaggregation of data on violence under the Istanbul Convention was inadequate and the data available in various state records were mutually incomparable. The data on the enforcement of the Domestic Violence Act were not disaggregated by gender or by the relationship between the victim and perpetrator. Furthermore, the number of women penalised for violating the emergency orders was much higher than the number of punished men, which was disconcerting given the number of reported, indicted and convicted women and men. In addition, the new National Strategy and the Action Plan for the Prevention of Domestic and Partner Violence, which was to have been enacted in 2016, were neither prepared nor adopted in the reporting period. Nor was an evaluation of the prior Strategy made publicly available at the end of the reporting period.<sup>261</sup>

In 2018, the Protector of Citizens performed over 20 checks of domestic and partner violence cases pursuant to complaints and at his own initiative. Some of these incidents had resulted in the death of the women victims. The Protector identified irregularities and shortcomings in the state authorities’ work, notably that those authorities charged with social protection, implementation of economic policy measures and reviewing applications for recruitment had not made sure that the Social Work Centres had sufficient staff to address domestic and partner violence

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259 The Analysis of the Compliance of the Criminal Code with the Istanbul Convention is available in Serbian at: <http://www.potpisujem.org/srb/882/analiza-uskladenosti-zakonodavnog-i-strateskog-okvira-sa-standardima-konvencije>.

260 See the *NI* report, available in Serbian at: <http://rs.n1info.com/Vesti/a438513/Izreceno-23.118-hitnih-mera-po-Zakonu-o-sprecavanju-nasilja.html>.

261 See more at: <http://preugovor.org/Alarm-Reports/1460/Coalition-prEUGovor-Report-on-Progress-of-Serbia.shtml>

cases; that the Ministry of Internal Affairs had not implemented enough trainings on the enforcement of the Domestic Violence Act; and, that the Ministry of Labour, Employment and Veteran and Social Issues and the Republican Social Protection Institute failed to implement training of Social Work Centre professionals in the application of the Domestic Violence Act.<sup>262</sup>

One of the obligations Serbia assumed by ratifying the Istanbul Convention was to set up state wide round the clock telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity, in relation to all forms of violence covered by the scope of this Convention (Article 24 of the Convention). Such a nationwide helpline for victims of violence against women and domestic violence, fulfilling standards related to accessibility, anonymity and other criteria under the Convention, was not established by the end of the year. The helplines operated by NGOs focusing on women lacked financial support of the local self-governments. Both Calls for Proposals for the establishment of the helpline published in 2017 by the Ministry of Labour, Employment and Veteran and Social Issues were withdrawn because they were not in compliance with either the Istanbul Convention or Serbian law.<sup>263</sup> The Call for Proposals published in 2018 was unsuccessful.<sup>264</sup> In December 2018, the Women against Violence Network sent a letter to the Ministry when news broke that the national helpline would be operated by the Centre for the Protection of Infants and Children, asking it to explain why this service was entrusted to an institution, which was neither licenced nor had the expertise to extend such services.<sup>265</sup>

The CEDAW Committee asked Serbia to provide information on the enforcement of the Domestic Violence Act, the measures to give it effect and any obstacles encountered in its implementation, in particular in protecting women who belonged to vulnerable groups, especially those with disabilities and Roma women.<sup>266</sup> The Committee also asked Serbia to provide information on the measures taken to put in place a new national strategy for preventing and eliminating violence against women, services available to women who fall victim to such violence, the number of available shelters and rape crisis centres and the human and financial resources allocated to them.<sup>267</sup> The Committee also asked Serbia to provide data, disaggregat-

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262 The Protector of Citizens' opinion and recommendation are available in Serbian at: <https://www.rodnaravnopravnost.rs>.

263 See more at: <http://preugovor.org/Alarm-Reports/1460/Coalition-prEUGovor-Report-on-Progress-of-Serbia.shtml>.

264 The Ministry decision to terminate the Call for Proposals is available in Serbian at: [https://www.minrzs.gov.rs/files/obustavljanje\\_konkursa.pdf](https://www.minrzs.gov.rs/files/obustavljanje_konkursa.pdf).

265 The letter is available in Serbian at: <https://www.zeneprotivnasilja.net/vesti/939-dopis-ministarstvu-za-rad-zaposljavanje-boracka-i-socijalna-pitanja?fbclid=IwAR3cyvrw4o-9SuUGVn-sUreBeubwCcXUA4LSM5Gr1J5QIDyuy0jJG1bMxWGE>.

266 See more at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FSRB%2FQ%2F4&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FSRB%2FQ%2F4&Lang=en), para. 8.

267 *Ibid.*, para. 9.

ed by age, ethnicity, disability and relationship between the victim and perpetrator, on the number of prosecutions and convictions and the types of sentences imposed on perpetrators of gender-based violence against women, in particular women from disadvantaged groups and especially those with disabilities and Roma women.<sup>268</sup>

The seven centres for women victims of sexual violence formed in seven Vojvodina districts<sup>269</sup> within the three-year project “Stop, Protect, Help”, implemented with the support of the UN Trust Fund, registered and extended packages of services to 95 women victims of violence over a two-year period; 60 perpetrators were prosecuted.<sup>270</sup> The project was completed in December 2018 and it remained to be seen whether these centres would receive funding to continue their work and whether similar centres would be established elsewhere in Serbia.

#### *5.4. Women’s Participation in Political and Public Life*

Women’s direct participation in decision-making in all walks of life and at all levels of government is of major importance for the realisation of gender equality. Women’s involvement in the adoption and implementation of policies contributes to the change of political priorities with regard to specific problems, values and experiences of women. The Convention on the Political Rights of Women, which Serbia ratified in 1954, entitles women to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination. By ratifying the CEDAW, Serbia assumed the obligation to take all appropriate measures to involve women in the political and public life of the country and entitle them to participate in the formulation and implementation of government policy and to hold public office and perform all public functions at all levels of government (Art. 7).

Under Article 37(2) of the Gender Equality Act,<sup>271</sup> the gender equality principle shall be complied with in all nominations of candidates for posts and appointments to posts in the public authorities and financial and other institutions. Given that the number of women appointed to public office is still much smaller than the number of men and that the law does not prescribe a protection quota, the preliminary draft of the Gender Equality Act<sup>272</sup> sets out that the underrepresented gender shall account for at least 40% of members nominated or appointed to Serbia’s delegations representing it before international bodies, as well as in managerial and supervisory bodies of political parties, trade unions and guild associations. The adoption of this law was still pending at the end of the reporting period. The Act on the Elec-

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268 *Ibid.*

269 In Novi Sad, Zrenjanin, Sombor, Subotica, Vršac, Sremska Mitrovica and Kikinda

270 See the *Danas* report, available in Serbian at: <https://www.danas.rs/drustvo/formirano-se-dam-centara-za-zastitu-zena-od-nasilja-u-vojvodini/>

271 *Sl. glasnik*, 104/09.

272 The preliminary draft is available in Serbian at: <https://www.paragraf.rs/dnevne-vesti/300817/300817-vest15.html>.

tion of Assembly Deputies<sup>273</sup> includes an affirmative measure aimed at increasing the number of women in parliament: every third candidate on every election ticket must be a woman and the election tickets must include at least 30% of the candidates of the less represented gender (Art. 40a).

Although women are underrepresented in Serbia's political and public life, some headway has been made, mostly at the national level. A woman was elected Assembly Speaker following the 2016 parliamentary and local elections; women account for 34.54% of the deputies. There is no legal obligation to entrust the vacated parliamentary seat of a female deputy to the next female candidate who ran on the same ticket. This has in practice frequently led to male deputies replacing the outgoing female deputies, a problem recognised also in the new Gender Equality Strategy. The Strategy sets out that special measures and quota for women must be prescribed to ensure equitable participation of women in all the executive authorities at all levels, as well as in public companies and financial and other institutions.

All female deputies, regardless of political colour, are members of the Women's Parliamentary Network, an informal group supporting the promotion and advancement of the gender equality policy by submitting amendments to laws and through other activities. The Network's priorities include raising awareness of female solidarity and encouragement of women in Serbia to participate in public and political life to a greater extent.

As far as the women's role in local governments is concerned, it needs to be noted that only 46 local self-governments signed the European Charter for Equality of Women and Men in Local Life. Only one of the 11 members of the Vojvodina government is a woman; women account for 35.8% of the Vojvodina parliament deputies, which is in accordance with the statutory quota. Out of 158 local self-governments, only 7.6% are headed by women mayors; 13.3% of the city or municipal assemblies are headed by women.<sup>274</sup> On the other hand, more women than men hold the job of local assembly secretary. As far as the ratio of women councillors in the local assemblies is concerned, their shares do not satisfy the statutory quotas in as many as 59 (37.5%) of the cities and municipalities.<sup>275</sup> Only 50% of the local self-governments set up standing gender equality mechanisms provided for by Article 39(4) of the Gender Equality Act; most of these mechanisms were established in the form of gender equality commissions or councils and women accounted for 80% of their members.<sup>276</sup>

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273 *Sl. glasnik*, 35/00, 57/03 – CC Decision, 72/03 – other law, 75/03 – corr., other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – CC Decision, 36/11 and 104/09 – other law.

274 See more at: <http://ravnopravnost.gov.rs/en/gender-equality-in-local-self-government-units-current-situation-in-terms-of-implementing-recommendations-containing-measures-issued-to-local-self-government-units-with-the-aim-of-achieving-gender-equ/>.

275 *Ibid.*

276 *Ibid.*, pp. 15–16.



## Appendix I

### *The Most Important Human Rights Treaties Binding on Serbia*

- Act Amending the Act on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG (Međunarodni ugovori)*, 5/05.
- Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature and committed through computer systems, *Sl. glasnik RS*, 19/09.
- Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data regarding Supervisory Authorities and Transborder Data Flows, *Sl. glasnik RS (Međunarodni ugovori)*, 98/08.
- Additional Protocol to the Criminal Law Convention on Corruption, *Sl. glasnik RS*, 102/07.
- Agreement between the Republic of Serbia and the European Community on the Readmission of Persons Residing without Authorisation, *Sl. glasnik RS*, 103/07.
- Agreement between the Republic of Serbia and the European Community on Visa Facilitation, *Sl. glasnik RS*, 103/07.
- Agreement on Amending and Accessing the Central Europe Free Trade Agreement – CEFTA 2006.
- Civil Law Convention on Corruption, *Sl. glasnik RS*, 102/07.
- CoE Convention on Action against Trafficking in Human Beings, *Sl. glasnik RS*, 19/09.
- CoE Convention on Laundering, Search, Seizure and Confiscation of of the Proceeds from Crime and on the Financing of Terrorism, *Sl. glasnik RS*, 19/09.
- Convention against Discrimination in Education (UNESCO), *Sl. list SFRJ (Dodatak)*, 4/64.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SFRJ (Međunarodni ugovori)*, 9/91.
- Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, 6/01.
- Convention Concerning Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *Sl. list SFRJ (Dodatak)*, 13/64.

- Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, *Sl. list SRJ (Međunarodni ugovori)*, 1/92 and *Sl. list SCG*, 11/05.
- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, *Sl. glasnik RS*, 38/09.
- Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SFRJ (Međunarodni ugovori)*, 11/81.
- Convention on Environmental Impact Assessment in a Transboundary Context, *Sl. glasnik RS*, 102/07.
- Convention on the High Seas, *Sl. list SFRJ (Dodatak)*, 1/86.
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, *Sl. list SRJ (Međunarodni ugovori)*, 7/02 and 18/05.
- Convention on the Nationality of Married Women, *Sl. list FNRJ (Dodatak)*, 7/58.
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, *Sl. list SFRJ (Međunarodni ugovori)*, 50/70.
- Convention on Police Cooperation in South East Europe, *Sl. glasnik RS*, 70/07.
- Convention on the Political Rights of Women, *Sl. list FNRJ (Dodatak)*, 7/54.
- Convention on the Preservation of Intangible Cultural Heritage, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- Convention on the Prevention and Punishment of the Crime of the Genocide, *Sl. vesnik Prezidijuma Narodne skupštine FNRJ*, 2/50.
- Convention on the Protection and Promotion of Diversity of Cultural Expression, *Sl. glasnik RS*, 42/09.
- Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, *Sl. glasnik RS (Međunarodni ugovori)*, 12/10.
- Convention Relating to the Status of Refugees, *Sl. list FNRJ (Dodatak)*, 7/60.
- Convention Relating to the Status of Stateless Persons and Final Act of the UN Conference Relating to the Status of Stateless Persons, *Sl. list FNRJ (Dodatak)*, 9/59 and 7/60 and *Sl. list SFRJ (Dodatak)*, 2/64.
- Convention on the Rights of the Child, *Sl. list SFRJ (Međunarodni ugovori)*, 15/90 and *Sl. list SRJ (Međunarodni ugovori)*, 4/96 and 2/97.
- Convention on the Suppression of Trade in Adult Women, *Sl. list FNRJ*, 41/50.
- Convention for the Suppression on the Trafficking in Persons and of the Exploitation of the Prostitution of Others, *Sl. list FNRJ*, 2/51.
- Criminal Law Convention on Corruption, *Sl. list SCG (Međunarodni ugovori)*, 18/05.

- European Charter of Local Self-Government, *Sl. glasnik RS*, 70/07.
- European Convention on the International Validity of Criminal Judgments, with appendices, *Sl. list SCG (Međunarodni ugovori)*, 18/05.
- European Convention on Extradition with additional protocols, *Sl. list SRJ (Međunarodni ugovori)*, 10/01.
- European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, *Sl. glasnik RS (Međunarodni ugovori)*, 13/10.
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Sl. list SCG (Međunarodni ugovori)*, 9/03.
- European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG (Međunarodni ugovori)*, 9/03.
- European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, *Sl. list SRJ (Međunarodni ugovori)*, 1/02.
- European Charter on Regional and Minority Languages, *Sl. list SCG (Međunarodni ugovori)*, 18/05.
- European Framework Convention on the Value of Cultural Heritage for Society, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- Framework Convention for the Protection of National Minorities, *Sl. list SRJ (Međunarodni ugovori)*, 6/98.
- ILO Convention No. 3 Concerning Maternity Protection, *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 11 Concerning Right of Association (Agriculture), *Sl. novine of the Kingdom of Yugoslavia*, 44-XVI/30.
- ILO Convention No. 14 Concerning Weekly Rest (Industry), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 16 Concerning Medical Examination of Young Persons (Sea), *Sl. novine of the Kingdom of Serbs Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 17 Concerning Workmen's Compensation (Accidents), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 18 Concerning Workmen's Compensation (Occupational Diseases), *Sl. novine Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.

- ILO Convention No. 19 Concerning Equality of Treatment (Accident Compensation), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 29 Concerning Forced Labour, *Sl. novine of the Kingdom of Yugoslavia*, 297/32.
- ILO Convention No. 45 Concerning Underground Work (Women), *Sl. vesnik of the Presidium of the Assembly of the Federal People's Republic of Yugoslavia (FNRJ)*, 12/52.
- ILO Convention No. 81 Concerning Labour Inspection, *Sl. list FNRJ (Addendum)*, 5/56.
- ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, *Sl. list FNRJ (Dodatak)*, 8/58.
- ILO Convention No. 89 Concerning Night Work of Women (revised), *Sl. list FNRJ (Dodatak)*, 12/56.
- ILO Convention No. 90 Concerning Night Work of Young Persons in Industry (Revised) *Sl. list FNRJ (Dodatak)*, 12/56.
- ILO Convention No. 91 Concerning Paid Vacations for Seafarers (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 7/67.
- ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, *Sl. list FNRJ (Dodatak)*, 11/58.
- ILO Convention No. 100 Concerning Equal Remuneration, *Sl. list FNRJ (Međunarodni ugovori)*, 11/52.
- ILO Convention No. 103 Concerning Maternity Protection (Revised), *Sl. list FNRJ (Dodatak)*, 9/55.
- ILO Convention No. 105 Concerning Abolition of Forced Labour, *Sl. list SRJ (Međunarodni ugovori)*, 13/02.
- ILO Convention No. 106 Concerning Weekly Rest (Commerce and Offices), *Sl. list FNRJ (Dodatak)*, 12/58.
- ILO Convention No. 109 Concerning Wages, Hours of Work and Manning (Sea), (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 10/65.
- ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation, *Sl. list FNRJ (Dodatak)*, 3/61.
- ILO Convention No. 121 Concerning Employment Injury Benefits, *Sl. list SFRJ (Međunarodni ugovori)*, 27/70.
- ILO Convention No. 122 Concerning Employment Policy, *Sl. list SFRJ*, 34/71.
- ILO Convention No. 129 Concerning Labour Inspection (Agriculture), *Sl. list SFRJ (Međunarodni ugovori)*, 22/75.

- ILO Convention No. 131 Concerning Minimum Wage Fixing, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 132 Concerning Holidays with Pay Convention (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 52/73.
- ILO Convention No. 135 Concerning Workers’ Representatives, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 138 Concerning Minimum Age for employment, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 140 Concerning Paid Educational Leave, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 144 Concerning Tripartite Consultation (International Labour Standards), *Sl. list SCG (Međunarodni ugovori)*, 1/05.
- ILO Convention No. 155 Concerning Occupational Safety and Health, *Sl. list SFRJ (Međunarodni ugovori)*, 7/87.
- ILO Convention No. 156 Concerning Workers with Family Responsibilities, *Sl. list SFRJ (Međunarodni ugovori)*, 7/87.
- ILO Convention No. 161 Concerning Occupational Health Services Convention, *Sl. list SFRJ (Međunarodni ugovori)*, 14/89.
- ILO Convention No. 167 concerning safety and health in construction, *Sl. glasnik RS*, 42/09.
- ILO Convention No. 182 Concerning the Worst Forms of Child Labour, *Sl. list SRJ (Međunarodni ugovori)*, 2/03.
- ILO Convention No. 183 of the Maternity Protection, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- ILO Convention No. 187 concerning the promotional framework for occupational safety and health, *Sl. glasnik RS*, 42/09.
- International Covenant on Civil and Political Rights, *Sl. list SFRJ*, 7/71.
- International Covenant on Economic, Social and Cultural Rights, *Sl. list SFRJ*, 7/71.
- International Criminal Court Statute, *Sl. list SRJ (Međunarodni ugovori)*, 5/01.
- International Convention on the Elimination of All Forms of Racial Discrimination, *Sl. list SFRJ (Međunarodni ugovori)*, 6/67.
- International Convention on the Suppression and Punishment of the Crime of Apartheid, *Sl. list SRFJ*, 14/75.
- Kyoto Protocol to the UN Framework Convention on Climate Change, *Sl. glasnik RS*, 88/07.

- Optional Protocol to the International Covenant on Civil and Political Rights, *Sl. list SRJ (Međunarodni ugovori)*, 4/01.
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SRJ (Međunarodni ugovori)*, 13/02.
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SCG (Međunarodni ugovori)*, 16/05.
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, *Sl. list SRJ (Međunarodni ugovori)*, 7/02.
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, *Sl. list SRJ (Međunarodni ugovori)*, 7/02.
- Optional Protocol to the UN Convention on the Rights of Persons with Disabilities, *Sl. glasnik RS*, 42/09.
- Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, 6/01.
- Protocol Amending the Slavery Convention Signed at Geneva 25 September 1926, *Sl. list FNRJ (Dodatak)*, 6/55.
- Protocol No. 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG (Međunarodni ugovori)*, 5/05 and 7/05.
- Protocol No. 15 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. glasnik (Međunarodni ugovori)*, 10/15.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, 6/01.
- Protocol on Relating to the Status of Refugees, *Sl. list SFRJ (Dodatak)*, 15/67.
- Revised European Social Charter, *Sl. glasnik RS*, 42/09.
- Second Optional Protocol to the International Covenant on Civil and Political Rights, *Sl. list SRJ (Međunarodni ugovori)*, 4/01.
- Slavery Convention, *Sl. novine Kraljevine Jugoslavije*, XI–1929, 234.
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *Sl. list FNRJ (Dodatak)*, 7/58.

- Third Additional Protocol to the European Convention on Extradition, *Sl. glasnik RS (Međunarodni ugovori)*, 1/11.
- UN Convention Against Corruption, *Sl. list SCG (Međunarodni ugovori)*, 18/05.
- UN Convention for the Protection of All Persons from Enforced Disappearance, *Sl. glasnik RS (Međunarodni ugovori)*, 1/11.
- UN Convention on the Reduction of Statelessness, *Sl. glasnik RS (Međunarodni ugovori)*, 8/11.
- UN Convention on the Rights of Persons with Disabilities, *Sl. glasnik RS*, 42/09.

## Appendix II

### *Legislation in Serbia Concerning Human Rights and Mentioned in the Report*

- Act on Associations, *Sl. glasnik RS*, 51/09 and 99/11 – other law.
- Act on the Basis of the Education System, *Sl. glasnik RS*, 72/09, 52/11 and 55/13.
- Act on the Bases of Ownership and Proprietary Relations, *Sl. list SFRJ*, 6/80 and 36/90, *Sl. list SRJ*, 29/96, and *Sl. glasnik RS*, 115/05 – other law.
- Act on the Basis of the Regulation of the Security Agencies of the Republic of Serbia, *Sl. glasnik RS*, 116/07.
- Act on Churches and Religious Communities, *Sl. glasnik RS*, 36/06.
- Act on Defence, *Sl. glasnik RS*, 116/07, 88/09 – other law and 104/09 – other law.
- Act on the Election of Assembly Deputies, *Sl. glasnik RS*, 35/00, 57/03 – CC Decision, 72/03 – other law, 75/03 – corr. of other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – CC Decision, 36/11 and 104/09 – other law.
- Act on the Election of the President of the Republic, *Sl. glasnik RS*, 111/07 and 104/09 – other law.
- Act on the Employment of Aliens, *Sl. glasnik RS*, 128/14, 113/17 and 50/18.
- Act on the Enforcement and Security of Claims, *Sl. glasnik RS*, 106/16.
- Act Establishing Public Interest and Special Expropriation and Building Licencing Procedures to Implement the Belgrade Waterfront Project, *Sl. glasnik RS*, 34/15 and 103/15.
- Act on Financial Support for Families with Children, *Sl. glasnik RS*, 113/17 and 50/18.
- Act on Free Access to Information of Public Importance, *Sl. glasnik RS*, 120/04, 54/07, 104/09 and 36/10.
- Act on Health Documentation and Health Records, *Sl. glasnik RS*, 123/14, 106/15 and 105/17.
- Act on the Implementation of the Constitution, *Sl. glasnik RS*, 98/06.
- Act on Independent Movement with the Assistance of Guide Dogs, *Sl. glasnik RS*, 38/15.
- Act on Judges, *Sl. glasnik RS*, 116/08, 58/09 – CC Decision, 104/09, 101/10, 8/12 – CC Decision, 121/12, 124/12 – CC Decision, 101/13, 111/14 – CC Decision,



- 117/14, 40/15 – CC Decision, 63/15 – CC Decision, 106/15, 63/16 – CC Decision and 47/17.
- Act on the Judicial Academy, *Sl. glasnik RS*, 104/09, 32/14 – CC Decision and 106/15.
  - Act on Mediation in Dispute Resolution, *Sl. glasnik RS*, 55/14.
  - Act on the Military Security Agency and the Military Intelligence Agency, *Sl. glasnik RS*, 88/09, 55/12 – CC Decision and 17/13.
  - Act on Ministries, *Sl. glasnik RS*, 62/17.
  - Act on Misdemeanours, *Sl. glasnik RS*, 65/13, 13/16 and 98/16 – CC Decision.
  - Act on the Organisation of Courts, *Sl. glasnik RS*, 116/08, 104/09, 101/10, 31/11, 78/11, 101/11, 101/13, 106/15, 40/15, 13/16, 108/16, 113/17 and 87/18. .
  - Act on Political Parties, *Sl. glasnik RS*, 36/09 and 61/15 – CC Decision.
  - Act on Prevention of Discrimination against Persons with Disabilities, *Sl. glasnik RS*, 33/06 and 13/16.
  - Act on the Professional Rehabilitation and Employment of Persons with Disabilities, *Sl. glasnik RS*, 36/09 and 32/13.
  - Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia, *Sl. glasnik RS*, 41/09.
  - Act on the Protection of Participants in Criminal Proceedings, *Sl. glasnik RS*, 85/05.
  - Act on the Protection of People with Mental Disorders, *Sl. glasnik RS*, 45/13.
  - Act on Protection the Population from Communicable Diseases, *Sl. glasnik RS*, 15/16.
  - Act on the Protection of the Rights and Freedoms of National Minorities, *Sl. list SRJ*, 11/02, *Sl. list SCG*, 1/03 – Constitutional Charter and *Sl. glasnik RS*, 72/09 – other law, 97/13 – CC Decision and 47/18.
  - Act on the Protection of the Right to a Trial within a Reasonable Time, *Sl. glasnik RS*, 40/15.
  - Act on Public Prosecutor’s Offices, *Sl. glasnik RS*, 116/08, 104/09, 101/10 and 171/14.
  - Act on the Restitution of Property to Churches and Religious Communities, *Sl. glasnik RS*, 46/06.
  - Act on a Single Voter Register, *Sl. glasnik RS*, 104/09 and 99/11.
  - Act on Special Requirements for the Registration of the Right of Ownership of Illegally Built Facilities, *Sl. glasnik RS*, 25/13 and 145/14.
  - Act on the Temporary Regulation of Public Media Service Licence Fee Collection, *Sl. glasnik RS*, 112/15.

- Act on Voluntary Pension Funds and Pension Plans, *Sl. glasnik RS*, 85/05 and 31/11.
- Action Plan for the Implementation of the Personal Data Protection Strategy, *Sl. glasnik RS*, 58/10.
- Action Plan for Implementation Strategy to Reduce Overcrowding in Penitentiaries, *Sl. glasnik RS*, 90/11.
- Administrative Disputes Act, *Sl. glasnik RS*, 111/09.
- Administrative Procedure Act, *Sl. glasnik RS*, 18/16.
- Adult Education Act, *Sl. glasnik RS*, 55/13.
- Air Transportation Act, *Sl. glasnik RS*, 73/10, 57/11, 93/12 and 45/15.
- Aliens Act, *Sl. glasnik RS*, 6/16 and 24/18.
- Aliens Employment Act – *Sl. glasnik RS*, 128/14, 113/217 and 50/18.
- Anti-Discrimination Act, *Sl. glasnik RS*, 22/09.
- Anti-Corruption Agency Act, *Sl. glasnik RS*, 97/08, 53/10, 66/11 – CC Decision, 67/13 – CC Decision and 112/13 – authentic interpretation and 8/15 – CC Decision.
- Advertising Act, *Sl. glasnik RS*, 6/16.
- Asylum and Temporary Protection Act, *Sl. glasnik RS*, 6/16 and 24/18.
- Bankruptcy Act, *Sl. glasnik RS*, 104/09, 99/11 – other law, 71/12 – CC Decision, 83/14 and 113/17.
- Budget Act for 2019, *Sl. glasnik RS*, 95/18.
- Business Registers Agency Registration Procedure Act, *Sl. glasnik RS*, 99/11.
- Central Register of Real Owners Act, *Sl. glasnik RS*, 41/18.
- Civil Procedure Act, *Sl. glasnik RS*, 72/11, 49/13 – CC Decision and 74/13 – CC Decision, 55/14 and 87/18.
- Civil Servants Act, *Sl. glasnik RS*, 79/05, 81/05 – corr., 83/05 – corr., 64/07, 67/07 – corr., 116/08, 104/09 and 99/14.
- Classified Information Act, *Sl. glasnik RS*, 104/09.
- Code of Conduct, *Sl. glasnik RS*, 71/17.
- Constitution of the Republic of Serbia, *Sl. glasnik RS*, 83/06.
- Constitutional Court Act, *Sl. glasnik RS*, 109/07, 99/11, 18/13 – CC Decision, 103/15 and 40/15 – other law.
- Constitutional Act for the Implementation of the Constitution. *Sl. glasnik RS*, 98/06.

- Corporate Profit Tax Act, *Sl. glasnik RS*, 25/01, 80/02, 80/02 – other law, 43/03, 84/04, 18/10, 101/11, 119/12, 47/13, 108/13, 68/14 – other law, 142/14, 91/15 – authentic interpretation and 112/15.
- Criminal Code, *Sl. glasnik RS*, 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13 and 94/16.
- Criminal Procedure Code, *Sl. glasnik RS* 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14.
- Customs Act, *Sl. glasnik RS*, 18/10, 111/12, 29/15, 108/16 and 113/17 – other law.
- Data Protection Act, *Sl. glasnik RS*, 87/18.
- Decision of forming Council for the Monitoring of the Implementation of Recommendations of United Nations Human Rights Mechanisms, *Sl. glasnik RS*, 140/14.
- Decision on Additional Forms of Protection of Young Mothers in the Territory of the City of Belgrade, *Sl. glasnik RS*, 44/17.
- Decision on the Election of AP Vojvodina Assembly Deputies, *Sl. list AP Vojvodine*, 12/04, 20/08, 5/09, 18/09 and 23/10.
- Decision amending High Judicial Council Rules of Procedure, *Sl. glasnik RS*, 91/16.
- Decree on Designation of Information as Classified, *Sl. glasnik RS*, 8/11.
- Decree on the Funding of Public Media Services from the State Budget in 2016, *Sl. glasnik RS*, 3/16.
- Decree on the National Minorities Budget Fund Disbursement Procedure, *Sl. glasnik RS*, 22/16.
- Decree on the Social Inclusion Measures for Welfare Beneficiaries, *Sl. glasnik RS*, 112/14.
- Domestic Violence Act, *Sl. glasnik RS*, 94/16.
- Dual Education Act, *Sl. glasnik RS*, 101/17.
- Education Development Strategy until 2020, *Sl. glasnik RS*, 107/12.
- Education System Act, *Sl. glasnik RS*, 88/17 i 27/18 – other law.
- Electronic Communications Act, *Sl. glasnik RS*, 44/10, 60/ 13 – CC Decision and 62/14.
- Electronic Media Act, *Sl. glasnik RS*, 83/14 and 6/16 – other law.
- Employment and Unemployment Insurance Act, *Sl. glasnik RS*, 36/09, 88/10 and 38/15.
- Enforcement and Security of Claims Act, *Sl. glasnik RS*, 106/15.
- Expropriation Act, *Sl. list SRJ*, 53/95, 16/01 – CC Decision and *Sl. glasnik RS*, 20/09, 55/13 – CC Decision and 106/16 – authentic interpretation.

- Family Act, *Sl. glasnik RS*, 18/05 and 72/11 – other law.
- General Collective Agreement, *Sl. glasnik RS*, 50/08, 104/08 – Annex I and 8/09 – Annex II.
- Gender Equality Act, *Sl. glasnik RS*, 104/09.
- Health Care Act, *Sl. glasnik RS*, 107/05, 72/09, 88/10, 99/10, 57/11, 119/12, 45/13 – other law, 93/14, 96/15, 106/15 and 105/17 – other law.
- Health Insurance Act, *Sl. glasnik RS*, 107/05, 109/05 – corr, 57/11, 110/12 – CC Decision, 119/12, 99/14, 126/14 – CC Decision, 106/15 and 10/16 – other law.
- Higher Education Act, *Sl. glasnik RS*, 88/17, 27/17, 27/18 – other law and 73/18.
- HIV/AIDS 2018–2025 Strategy and Action Plan, *Sl. glasnik RS*, 61/18.
- Housing and Maintenance of Residential Buildings Act, *Sl. glasnik RS*, 104/16.
- Human Cells and Tissues Act, *Sl. glasnik RS*, 57/18.
- Human Organ Transplantation Act, *Sl. glasnik RS*, 57/18.
- Instructions on the Treatment of People Brought in or Detained by the Police, *Sl. glasnik RS*, 101/05, 63/09 – CC Decision and 92/11.
- Investments Act, *Sl. glasnik RS*, 89/15.
- Judicial Trainee Employment Rulebook, *Sl. glasnik RS*, 92/17.
- Juvenile Justice Act, *Sl. glasnik RS*, 85/05.
- Labour Act, *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13, 75/14, 13/17 – CC Decision and 113/17.
- Land Transportation Act, *Sl. glasnik RS*, 46/95, 66/01, 61/05, 91/05, 62/06, 31/11 and 68/15 – other laws.
- Languages and Scripts Act, *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05 and 30/10.
- Local Elections Act, *Sl. glasnik RS*, 129/07, 34/10 and 54/11.
- Mandatory Social Insurance Contributions Act, *Sl. glasnik RS*, 84/04, 61/05, 62/06, 5/09, 52/11, 101/11, 7/12, 8/13, 47/13, 108/13, 6/14, 57/14, 68/14 – other law, 5/15, 112/15, 5/16, 7/17, 113/17 and 7/18.
- Medical Equipment Act, *Sl. glasnik RS*, 105/17.
- Mental Health Protection Strategy, *Sl. glasnik RS*, 8/07.
- Migration Management Act, *Sl. glasnik RS*, 107/12.
- Minority Protection Act, *Sl. glasnik SRJ*, 11/02.
- National Councils of National Minorities Act, *Sl. glasnik RS*, 72/09, 20/14 – CC Decision, 55/14 and 47/18.
- National Employment Strategy for the 2011–2020 Period, *Sl. glasnik RS*, 37/11.

- National Gender Equality Strategy for the 2016–2020 Period and its 2016–2018 Action Plan, *Sl. glasnik RS*, 4/16.
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- Non-Contentious Procedure Act, *Sl. glasnik SRS*, 25/82, 48/88 and *Sl. glasnik RS*, 46/95 – other law, 18/05 – other law, 85/12, 45/13 – other law, 55/14, 6/15 and 106/15 – other law.
- Non-Custodial Sanctions and Measures Enforcement Act, *Sl. glasnik RS*, 55/14.
- Notaries Public Act, *Sl. glasnik RS*, 31/11, 85/12, 19/13, 55/14 – other law, 93/14 – other law, 121/14, 6/15 and 106/15.
- Notary Fee Schedule, *Sl. glasnik RS*, 91/14, 103/14, 138/14 and 12/16.
- Occupational Health and Safety Act, *Sl. glasnik RS*, 101/05 and 91/15.
- Official Use of Scripts and Languages Act, *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05 – other law, 30/10, 47/18 i 48/18 – corr.
- Patient Rights Act, *Sl. glasnik RS*, 45/13.
- Peaceful Settlement of Labour Disputes Act, *Sl. glasnik RS*, 125/04, 104/09 and 50/18.
- Legal Aid Act, *Sl. glasnik RS*, 87/18.
- Penal Sanctions Enforcement Act, *Sl. glasnik RS*, 55/14.
- Pension and Disability Insurance Act, *Sl. glasnik RS*, 34/03, 64/04 – CC Decision, 84/04 – other law, 85/05, 101/05 – other law, 63/06 – CC Decision, 5/09, 107/09, 101/10, 93/12, 62/13, 108/13, 75/14, 142/14 and 73/18.
- Personal Income Tax, *Sl. glasnik RS*, 24/01, 80/02 – other law, 135/04, 62/06, 65/06 – corr., 31/09, 44/09, 18/10, 50/11, 91/11 – CC Decision, 7/12, 93/12, 114/12 – CC Decision, 8/13, 47/13, 48/13, 108/13, 6/14, 57/14, 68/14 – other law, 5/15, 112/15, 5/16, 7/17 and 113/17.
- Police Act, *Sl. glasnik RS*, 6/16 and 24/18.
- Primary Education Act, *Sl. glasnik RS*, 55/13.
- Protector of Citizens Act, *Sl. glasnik RS*, 79/05 and 54/07.
- Provisional Pension Payments Act, *Sl. glasnik RS*, 116/14.
- Psychoactive Substances Act, *Sl. glasnik RS*, 57/18.
- Public Assembly Act, *Sl. glasnik RS*, 6/16.
- Public Information and Media Act, *Sl. glasnik RS*, 83/14, 58/15 and 12/16 – authentic interpretation.
- Public Law and Order Act, *Sl. glasnik RS*, 6/16.
- Public Media Services Act, *Sl. glasnik RS*, 83/14, 103/15 and 108/16.

- Public Prosecution Services Act, *Sl. glasnik RS*, 116/08, 104/09, 101/10, 78/11 – other law, 101/11, 38/12 – CC Decision, 121/12, 101/13, 111/14 – CC Decision, 117/14 and 106/15.
- Railway Act, *Sl. glasnik RS*, 45/16 and 91/15.
- Regulation on Measures for Maintaining Order and Security in Penitentiaries, *Sl. glasnik RS*, 105/06.
- Rent Fixing Instructions, *Sl. glasnik RS*, 27/97, 43/01, 28/02 and 82/09.
- Restitution and Compensation Act, *Sl. glasnik RS*, 72/11, 108/13, 142/14 and 88/15 – CC Decision.
- Rulebook on Additional Educational, Health and Social Support to Children and Pupils, *Sl. glasnik RS*, 63/10.
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- Rulebook on Medical Rehabilitation in Specialised Rehabilitation Institutions, *Sl. glasnik RS*, 75/16.
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- Rulebook on the Register of Churches and Religious Communities, *Sl. glasnik RS*, 64/06.
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- Rulebook on Social Welfare Service Provision Conditions and Standards, *Sl. glasnik RS*, 42/13.
- Rulebook on the Technical Features and Manner of Use of Means of Coercion, *Sl. glasnik RS*, 19/07, 112/08 and 115/14.
- Safety and Health Act, *Sl. glasnik RS*, 101/05.
- Seasonal Workers Act, *Sl. glasnik RS*, 50/18.
- Secondary Education Act, *Sl. glasnik RS*, 55/13 and 101/17.
- Security Information Agency Act, *Sl. glasnik RS*, 42/02, 111/09, 65/14 – CC Decision and 66/14.
- Sign Language Act, *Sl. glasnik RS*, 38/15.
- Social Insurance Contributions Act, *Sl. glasnik RS*, 84/04, 61/05, 62/06, 5/09, 52/11, 101/11, 7/12, 8/13, 47/13, 108/13, 6/14, 5/15, 112/15, 5/16, 7/17 and 113/17.
- Social Protection Act, *Sl. glasnik RS*, 24/11.

- Social Welfare Act, *Sl. glasnik RS*, 24/11.
- State Administration Act, *Sl. glasnik RS*, 79/05, 101/07, 95/10, 99/14, 47/18 and 30/18– other law.
- State Audit Institution Act, *Sl. glasnik RS*, 101/05, 54/07 and 36/10.
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- Strategy for the Prevention of and Protection from Discrimination, *Sl. glasnik RS*, 60/13.
- Strategy to Reduce Overcrowding in Penitentiaries, *Sl. glasnik RS*, 53/10.
- Strikes Act, *Sl. list SRJ*, 29/96 and *Sl. glasnik RS*, 101/05 – other law and 103/12 CC Decision.
- Temporary Service Abroad Act, *Sl. glasnik RS*, 91/15 i 50/18.
- Textbook Act, *Sl. glasnik RS*, 27/18.
- Transplantation of Organs Act, *Sl. glasnik RS*, 72/09.
- Value Added Tax Act, *Sl. glasnik RS*, 84/04, 86/04 – corr., 61/05, 61/07, 93/12, 6/14, 68/14 – other law, 142/14, 5/15, 5/16 and 108/16.
- Vital Records Act, *Sl. glasnik RS*, 20/09.
- Volunteer Act, *Sl. glasnik RS*, 36/10.
- Whistle-blowers Protection Act, *Sl. glasnik RS*, 128/14.





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This Report on Human Rights in Serbia analyses the Constitution and laws of the Republic of Serbia with respect to the civil and political rights guaranteed by international treaties binding on Serbia, in particular the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights and Fundamental Freedoms and its Protocols, the Revised European Social Charter and standards established by the jurisprudence of the UN Human Rights Committee and the European Court of Human Rights.

Where relevant, the Report also reviews Serbia's legislation with respect to standards established by specific International Labour Organisation treaties and other international treaties dealing with specific human rights, such as the UN Convention against Torture, the UN Convention on the Rights of Persons with Disabilities, the UN Convention on the Rights of the Child, the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Elimination of All Forms of Racial Discrimination. The 2018 Report reviews legislation that was in force in 2018 but also comments laws that were adopted during the reporting period, irrespective of whether they entered into force.

*From Introduction*

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