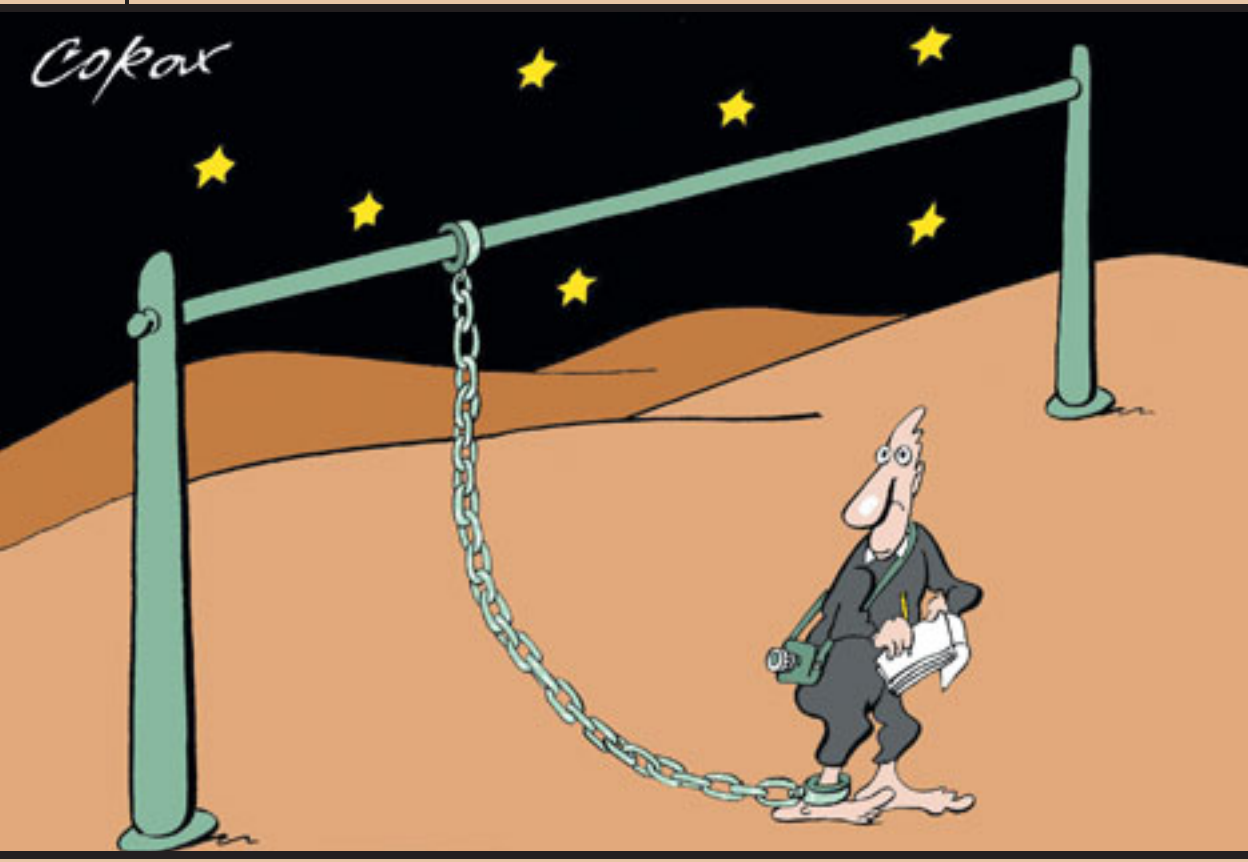
Belgrade Centre for Human Rights

HUMAN RIGHTS IN SERBIA

2019



The Belgrade Centre for Human Rights was established by a group of human rights experts and activists in February 1995 as a non-profit, non-governmental organisation. The main purpose of the Centre is to study human rights, to disseminate knowledge about them and to educate individuals engaged in this area. It hopes, thereby, to promote the development of democracy and rule of law in Serbia.

Since 1998 Belgrade Centre for Human Right has been publishing Annual Human Rights Report. 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), the European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocols and standards established by the jurisprudence of the UN Human Rights Committee and the European Court of Human Rights (ECtHR).

Where relevant, the Report also reviews Serbia's legislation with respect to standards established by specific 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.

For its achievements in the area of human rights, the Centre was awarded the Bruno Kreisky Prize for 2000. The Belgrade Centre is member of the Association of Human Rights Institutes (AHRI).

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HUMAN RIGHTS IN SERBIA 2019
LAW, PRACTICE AND INTERNATIONAL
HUMAN RIGHTS STANDARDS

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Contents

Abbreviations

2009–2018 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

ATPA – Asylum and Temporary Protection Act

BiH – Bosnia and Herzegovina

BIRN – Balkan Investigative Reporting Network

CaT – UN Committee against Torture

CC – Criminal Code

CC Decision – Constitutional Court Decision

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

CfP – Call for Proposals

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
Equality Commissioner – Commissioner for the Protection of Equality
ESC – Revised European Social Charter
EU – European Union
FAIPIA – Free Access to Information of Public Importance Act
FNRJ – Federal People's Republic of Yugoslavia
FRY – Federal Republic of Yugoslavia
GAPA – General Administrative Procedure 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
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
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 Co-operation in Europe

PDPA – Personal Data Protection Act

PSEA – Penal Sanctions Enforcement Act

RS – Republic of Serbia

RTS – Radio Television of Serbia

RTV – Radio Television of Vojvodina

SaM – Serbia and Montenegro

Serbia 2019 Report – Commission Staff Working Document Serbia 2019 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 2019 Communication on EU Enlargement Policy {COM(2019) 260 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

UNHCR – United Nations High Commissioner for Refugees

UPR – Universal Periodic Review

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

WCPS – War Crimes Prosecution Service

YIHR – Youth Initiative for Human Rights

YUCOM – Committee of Human Rights Lawyers

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), the European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocols and standards established by the jurisprudence of the UN Human Rights Committee and the European Court of Human Rights (ECtHR).

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This Report does not address the situation in the field of economic, social and cultural rights. The BCHR is preparing a separate report that will deal with the rights enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Revised European Social Charter (ESC) since we are of the view that particular attention needs to be devoted to these rights, which are under major threat in this time of transition and the strengthening of the economy based on the ideas of liberal capitalism that have been largely impeding the exercise of, notably, economic and social rights.

The 2019 Report reviews legislation that was in force in 2019 but also comments laws that were adopted during the reporting period, irrespective of whether they entered into force, as well as draft laws that were publicly available during the reporting period. 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.

The laws, which are still in force but were adopted before 2019, 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.

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 perusing 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. 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 analyses of the practices of administrative authorities and courts.

We would 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 were extremely useful for our analysis of the human rights situation in Serbia. Detailed analysis of individual laws by NGOs focusing on the areas they govern were of invaluable help in the preparation of this Report, especially the sections on the normative framework and laws affecting the enjoyment of human rights.

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.

The BCHR team monitored the information, news and reports published by daily and weekly press in order to analyse the practice of state authorities. A number of sources were perused during the preparation of this Report, including articles published in the dailies *Danas*, *Politika*, *Večernje novosti*, *Blic*, and the weeklies *Vreme*, *NIN, Novi magazine* and *Nedeljnik*. The BCHR also perused reports by news agencies *Beta, FoNet* and *Tanjug,* as well as by *TV N1* and *Radio Free Europe*. The BCHR team also relied in their analyses on information and press releases published by press associations IJAS, JAS and NDNV and the Coalition of Media Associations, the reporters' Regional Platform, as well as press releases of the Press Council. Furthermore, they perused reports by BBC and Voice of America in Serbian. Reports by investigative reporting networks *BIRN*, *Krik* and *Cenzolovka*, and a number of portals, including *Insajder*, *Peščanik, Istinomer, Raskrikavanje*, *Južne vesti*, *VOICE, Javniservis.net, Prokupačkevesti.rs, Kolubarske.rs and Takovskenovine.rs.*

We hereby express our gratitude 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, Vladica Ilić, Bogdan Krasić, Sofija Mandić, Luka Mihajlović, Meris Mušanović, Vesna Petrović, Vida

Petrović Škero, Dušan Pokuševski, Ivan Protić, Goran Sandić, Anja Stefanović, Lazar Stefanović, Bojan Stojanović, Miloš Stojković, Zorana Teodorović, Milana Todorović, Duška Tomanović, Ana Trifunović, Višnja Šijačić, Senka Škero and Ivana Žanić.

Finally, we would like to express our gratitude to the Ministry of Foreign Affairs of the Federal Republic of Germany and the Embassy of the Federal Republic of Germany in Belgrade for financially supporting the production and translation of this Report and thus helping us make it available to the public. 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.

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

Socio-Political Conditions for the Realisation of Human Rights

The social and political circumstances in Serbia in 2019 were not in the least conducive to the realisation of human rights for many reasons. Populist rhetoric and persistent warnings that the security of the state was jeopardised created a climate of fear among the citizens and increased the experts' reluctance to criticise the public authorities' decisions in their respective fields, but they also led to large-scale civic resistance. Political influence on nearly all walks of life predominated, institutions continued crumbling, as did tolerance, while the situation of particularly vulnerable categories of the population was exacerbated by lack of solidarity.

Despite such unfavourable circumstances, the civic protests staged across Serbia throughout the year provided a ray of hope that the leading politicians would hear the voice of the citizens. That ray was, however, dimmed by the unsuccessful attempt of a dialogue between the government and the opposition on election conditions in the run-up to the 2020 parliamentary elections. Lack of democratic dialogue resulted in now already insurmountable divisions in society, deepened by the public officials' fierce rhetoric and inappropriate communication both with their political opponents and all those expressing critical views of their policies and actions.

1. Some of the Reasons for the Negative Assessment of the Social and Political Circumstances in Terms of Respect for and Protection of Human Rights

The year behind us was visibly characterised by an increasing impact of politics on the everyday lives of Serbia's citizens, relegating to the background respect for and protection of human rights. Namely, respect for human rights essentially requires the existence of a human rights culture, entailing readiness for dialogue, respect for everyone's dignity, tolerance towards those holding different opinions, argumented confrontation of views on important issues regarding the functioning of the state and state institutions, which must be a bulwark against human rights violations and extend protection to those denied their rights and those whose rights are under threat or breached. A democratic society is a society in which the citizens' voice is heard, in which their needs are taken into account and their requirements met.

None of this characterised political and social life in Serbia in 2019. On the contrary, the year behind us was marked by increasingly frequent attacks by

representatives of the legislative and executive authorities on individuals, civil society activists, judges and prosecutors, independent media and investigative reporters and journalists covering and reporting on the work of the state authorities, on trade unions alerting to work-related problems, university professors and students, simply, on anyone who did not share their opinions and who was prepared to publicly criticise them. The trend of launching government-organised NGOs (GONGOs) that first appeared several years ago continued. These associations, openly supporting the government, have been creating the false impression of pluralism. Especially dangerous were the attacks on and criticisms of judicial professionals, which gained in intensity over the previous year and gravely undermined the principles of the rule of law and the independence of the judiciary.

The unenviable situation in the judiciary was exacerbated by the 2019 halt in the constitutional reform launched nearly three years ago. To recall, the Government submitted the draft constitutional amendments to the National Assembly back in November 2018. The lack of will to implement the constitutional reform and preclude the executive and legislative authorities' political influence on the judiciary was reflected also in the way the Ministry of Justice officials treated members of professional judicial and prosecutorial associations, university professors and constitutional law experts, as well as civil society activists, during the dialogue on the constitutional amendments two years ago.

Open pressures and attacks on the judiciary intensified in 2019. Government officials and MPs joined in the pro-regime tabloids' campaigns against representatives of the judiciary, demonstrating unacceptable disrespect not only of individual judges and prosecutors, but of the entire judiciary as well. Let alone a thorough misunderstanding of the concept of separation of powers. Increasingly frequent attacks on judges and prosecutors especially gained in intensity after several scandals implicating senior public officials and their close associates or relatives in crime made the limelight. Ascertaining guilt is in the jurisdiction of judges and prosecutors, wherefore the senior government officials' and MPs' practice of publicly commenting pending cases amounts to an extremely dangerous form of pressure on the judiciary.

Given that the draft constitutional amendments will have to be decided at a referendum because they change the provisions on the system of governance, the Ministry of State Administration and Local Self-Governments drafted a new law on referendums and popular initiatives, which does not set the minimum turnout for a referendum to be valid. Under the preliminary draft, the majority of votes of registered voters who turned out to vote will suffice. This solution undermines an important constitutional principle, under which sovereignty is vested in the citizens, who exercise it, inter alia, at referendums.

No improvements in the work of the National Assembly were registered, at least not in terms of the MPs' attitude towards the culture of political dialogue. Although the practice of adopting laws under an urgent procedure and submitting huge numbers of meaningless amendments has been abandoned, the parliament

failed to conduct genuine debates on the proposed laws. The impression remained that most of the people's deputies were not interested in improving the legislative framework ensuring the protection of human rights and democratic procedures upholding them. The parliament's oversight role did not improve in 2019, especially with respect to civilian oversight of the security sector.

The years-long practice of using the parliamentary sessions, which are aired by the public service broadcaster, to attack political opponents and opposition leaders was "enriched" in 2019 by the MPs' insults and attacks against university professors, journalists, judges, prosecutors, NGO activists and all others daring to publicly voice their critical views or advocate democratic values. Deputies elected by Serbia's citizens to represent them in a dignified and decent fashion resorted to hate speech and threats, putting at major risk not only their targets, but also all individuals who have different opinions on important social issues warranting open and tolerant debate.

The obstruction of the work of the National Assembly by the ruling coalition's MPs and their distortion of democratic procedures led some opposition deputies to start boycotting the parliament in February 2019. They stopped attending the sessions and held regular press conferences in the Assembly entrance hall. Dissatisfaction with the parliament's work was voiced also by the citizens, who rallied at protests staged by the organisation One out of Five Million throughout the year, demanding changes in governance and impartial and prompt coverage of their demands by the public service broadcaster, which for months failed to cover the civic protests in the streets of many Serbian towns or facilitate debates at which different opinions could be heard.

Ruling and opposition parties met four times in the summer of 2019 at the initiative of the Foundation for an Open Society-Serbia and the Belgrade College of Political Sciences to discuss the minimum election conditions. Several parties walked out of the talks at the very beginning, qualifying them as unsatisfactory and as focusing on merely cosmetic changes that would not ensure even minimal standards for holding free and democratic elections. A number of opposition parties soon decided to boycott the parliamentary elections, slated for April 2020, referring to the *Agreement with the People* signed by hundreds of thousands of citizens, in which they expressed their commitment to fight together for free media and free and fair elections and their resolve not to run in any elections unless their demands were met.

The European Parliament's involvement in the dialogue on election conditions in the autumn of 2019 was welcomed both by the ruling parties and some opposition parties. The MEP-brokered dialogue was moved to the National Assembly. European Parliament representatives – Eduard Kukan, Vladimir Bilčik, Knut Fleckenstein and Tanja Fajon – visited Serbia twice to take part in meetings attended by representatives of only some opposition parties (the New Party, the Liberal Democratic Party, the Movement of Free Citizens, the Party of Modern Serbia and the Par-

ty of Justice and Reconciliation). The meetings were not attended by the representatives of the opposition – the Alliance for Serbia, the Democratic Party of Serbia, the Enough is Enough Movement and the Serbian Radical Party, although the MEPs met with the Alliance for Serbia leaders separately.

Although the MEPs were concerned by the opposition MPs' continued boycott of the parliament and expressed hope that the situation would normalise and that they would return to the parliament before the elections, these attempts to change their minds also failed, threatening to gravely undermine the legitimacy of the 2020 elections and cause a serious political crisis. The largest opposition alliance, the Alliance for Serbia, explained that the demands, listed in the recommendations the One out of Five Million expert team drew up after analysing the media situation and the election conditions, had not been fulfilled and that, on the contrary, the situation in the media had further deteriorated and that attacks on political opponents had intensified. The document, drawn up by university professions and media law and communication experts, includes over 40 recommendations on the roles that should be played by the media, the Electronic Media Regulatory Authority (EMRA), monitoring bodies, the Republican Election Commission, the public service broadcasters, as well as on election rules, the work of the prosecutors and the election campaign.

The opposition said that its resolve to boycott rested on the belief that the government's (rash) amendment of legal provisions failed to bring any substantial changes in the conduct of political actors and institutions playing the key role in the election process, secure minimum conditions for fair elections, put in place safeguards against public officials' abuse of office for party campaigning or mechanisms to control the financing of election campaigns, and, in particular, that it failed to improve the media conditions for the promotion of political programmes and debates, ensuring equitable representation in media reports. As the year drew to an end, reports brimming with insults and fake news on activities of civic activists and opposition leaders were increasingly frequently published both by tabloids and electronic media with nationwide coverage; any criticism, no matter how mild and argumented, was interpreted as an attack on the state, Government representatives and the Serbian President.

Such conduct further tainted the reputation not only of the political parties and their leaders, but of eminent public figures as well. It also undermined the capacity of pro-European and democratic forces. Negative campaigns were waged all year not only in print and electronic media, but on social media as well, where texts that can be qualified as hate speech and threats against both media professionals and other individuals appeared more and more often. On the other hand, the opposition parties failed to rally round a programme or ideology; their political orientations remained divergent and their only common goal was to effect conditions for fair and free elections and oust the regime. The confusion sown among their potential voters was further deepened by the proliferation of new parties and movements bare-

ly standing a chance of winning enough votes, a phenomenon characterising every pre-election period.

On a positive note, despite the difficult situation and absence of dialogue prerequisite for overcoming the divisions and potential conflicts, Serbia's citizens increasingly openly demonstrated their disgruntlement, rallying round fresh local civic initiatives to improve living conditions. Most of these protests were ad hoc in character; the citizens joined forces for various reasons: to protect the environment, their own rights and the rights of their fellow citizens and put an end to the government's imperiousness, to name just a few. Some fought for better and more dignified working and living conditions, others to protect academic freedoms and integrity. Some raised their voices against violence against women, others rose to defend media freedoms. The One out of Five Million protests were the only ones that persisted throughout the year, with Belgraders rallying every Saturday. Residents of other Serbian towns often took to the streets as well.

To recall, the first protest was organised in 2018 by the Alliance for Serbia after one of its leaders, Borko Stefanović, was assaulted in Kruševac. In time, the rallies, organised via social media, grew into civic protests attended by tens of thousands of people. Many saw Aleksandar Vučić's "Future of Serbia" campaign, launched in February 2019, as his response to the civic protests. During this campaign, the Serbian President, flanked by the ministers and senior SNS officials, toured municipalities in 29 Central Serbian districts and Kosovo, promising new investments, apartments, factories, jobs, schools, kindergartens, hospitals and health centres and opening new roads and bridges.

As opposed to the spontaneous civic rallies, the Serbian President's campaign was extremely well organised: stages were erected and modern sound systems were installed, local utility services were engaged. Claims that money from the budget was being wasted on the campaign did not elicit any official reactions. The bussing of the citizens to extend their "spontaneous" support was criticised because the events took place during working hours and some of the audience, mostly local self-government and public company staff, were under the obligation to attend the rallies and express their support for the Government and the President.

These events gave rise to sharper criticisms of party-based employment, which has for years now been slowing down the professionalisation of the state administration, because ruling parties have been abusing their influence and employing their party cadres in state institutions. Employment of politically "correct" staff in the state administration has led to public perceptions of the state authorities as implementers of party politics rather than professional institutions extending public services and operating in general interest. Such a practice has not only brought into question the professionalisation and efficiency of the state administration, but has also contributed to the large-scale emigration of professionals, especially younger ones, resulting in the loss of the country's human potential.

External oversight of the executive was still hindered by the continued weakening of the independent regulatory authorities. The impression remained that the authorities did not wish to strengthen them, that they misconstrued their oversight role, and that they did not want to identify, in tandem with civil society, individuals with a proven human rights record to head these institutions. The new Commissioner for Information of Public Importance and Personal Data Protection was appointed in July 2019, seven months after his predecessor's term in office expired, although this institution plays a crucial role in ensuring the transparency of the state authorities. The work of independent regulatory authorities was also undermined by the delay in the election of new staff (deputies of the Protector of Citizens) and members of the Anti-Corruption Agency and EMRA councils; their appointment at the end of the year came as a result of the pressures brought on by the opposition's threats to boycott the elections.

Transparency of state institutions and public companies plays a key role in the fight against corruption. National and international experts and monitors assessed that Serbia did not make any progress in the fight against corruption, the goal of which is to strengthen the rule of law, implementation of the law and democratic procedures, accountability in public property management, and respect for human rights. Widespread public perceptions that corruption has infiltrated the political sphere, the legal system and public administration directly impinged on public trust in state institutions; the man in the street believes that corruption has pervaded all walks of life and that it is not a Government priority. The latter view is corroborated by the non-fulfilment of over half of the measures set out in the 2013–2018 Anti-Corruption Strategy and the Government's failure to adopt a new strategy by the end of 2019.

The citizens' reluctance to report corruption, the typical forms of which include bribery, abuse of office and trading in influence, was strengthened by their impression that the fight against corruption was not a Government priority. Given that corruption usually takes place in secrecy and in the absence of witnesses, it is crucial that individuals who become aware of these illegal and harmful acts report them and do not suffer any repercussions. They should be protected as whistleblowers, in accordance with the Serbian Whistleblower Protection Act. In 2019, the procedure for acquiring the status of whistleblower came into the limelight when an employee of the weapons plant Krušik said that he was in possession of leaked information confirming that the plant had lost money in an arms sale deal in which the father of the Serbian Minister of Internal Affairs was implicated. He was arrested and held in detention. Public pressures and protests led to his release. However, the proceedings against him were still pending and he was not reinstated at work by the end of the year.

Attacks and pressures against reporters, especially investigative reporters, intensified in 2019, which came as no surprise given the years-long alarming situation in the media and state of media freedoms, Impartial coverage in public interest was increasingly stifled by the strong, monolithic government, maintaining full control

over most outlets and using them for its political promotion. Only a handful of media continued doing their job professionally, promptly and impartially, despite accusations that they were foreign mercenaries working against the state voiced against them almost on a daily basis. Furthermore, many moves by the powers that be, involving privatisation of the media, purchase of cable TV operators and media concentration, and their persistent attacks on these outlets indicated their resolve to prevent their reports from reaching most of Serbia's population.

The authorities' views of media associations and journalists were reflected in the events surrounding the development of the new Media Strategy, which was to have been drafted together, by the government and media representatives, through dialogue and public debate. The working group charged with preparing the Strategy submitted the draft document to the Serbian Government in December 2018. It was not adopted in April 2019 as announced. A conflict broke out between the Government and the media and press associations, whose representatives sat in the working group, when it transpired that sections addressing key issues, including the status of EMRA and public media services, were missing from the text the Prime Minister's Office sent to the European Commission in May 2019. The Prime Minister said that the wrong version had been sent by mistake. The working group reconvened and sent a new text to the Government in late October 2019, but its adoption remained pending at the end of the year. Public assurances were made that it would be adopted once the relevant bodies commented it.

2. Serbia's EU Accession Efforts and Regional and International Cooperation

When EU accession talks opened in January 2014, Serbia's citizens had great expectations that the integration process would facilitate fast consolidation of democracy. Their expectations increased in July 2016, when talks opened on the two chapters most relevant to rule of law – Chapter 23 (Judiciary and fundamental rights) and Chapter 24 (Justice, freedom and security). However, expectations that the accession process would spur reform both in these and other areas were not fulfilled due to the major delays in the implementation of action plans, including the Chapter 23 and 24 Action Plans. Experts and CSOs criticised the Revised Chapter 23 Action Plan, published in January 2019, during a public debate, claiming that no substantial interventions were made in it and that it merely moved the deadlines by which the measures specified in it had to be fulfilled.

Notably, they qualified as unrealistic the deadlines for completing the amendment of constitutional provisions on the judiciary. After the CSOs' intervention, the text of the Revised Action Plan was supplemented by a detailed description of activities to be implemented in accordance with the Constitution. These activities include the organisation of a public debate in the relevant parliamentary committee and of

a referendum on the amendments. The deadline was moved to the second quarter of 2020, which appeared quite unrealistic given that regular parliamentary elections are to be held in April 2020 and that the constitutional amendment procedure will be launched after them. Furthermore, the Revised Action Plan does not specify that the Venice Commission will comment the final version of the amendments or the constitutional law on their implementation.

Opening of talks on other chapters also proceeded at a snail's pace. In 2019, Serbia opened talks on only two new chapters, Chapter 9 (Financial services) in June and on Chapter 4 (Free movement of capital) in December, i.e. it has to date opened only 18 of 35 chapters (and provisionally closed talks on two of them). The halt in the reforms and deterioration of the situation in some areas were noted also by the representatives of EU institutions. The European Commission's Serbia 2019 Report was quite negative; it stated that no significant headway had been made in a number of areas and that no progress had been made in the reform of the judiciary, the fight against corruption, confrontation with the legacies of the past and prosecution of war crime perpetrators, as well in the field of media freedoms. The length of the accession process and uncertainty of its outcome further impinged on public support to Serbia's integration in the EU.

The resignation of the head of the Serbian negotiation team, Tanja Miščević, in September 2019 and the Government's failure to appoint her replacement or even publish the names of the candidates for the vacancy by the end of the year went largely unnoticed. All this indicates that EU accession is not on the Government list of priorities, although state officials have been describing it as the state's strategic goal. This position should be filled by an individual who boasts sufficient professional and technical knowledge and experience in the accession process and soon, especially in view of France's proposed reform of the negotiation process.

Chapter 35 is also of crucial relevance to Serbia's progress towards the EU. This Chapter is specific as it includes a mechanism for monitoring the implementation of agreements concluded within the Belgrade-Priština dialogue. The EU expects of Belgrade to normalise its relations with Priština and comply with and implement the Brussels agreements. The talks formally froze in late 2018 and the EU leaders' attempt to revive them in the spring of 2019 fell through. Pressures on Belgrade and Priština abated during the elections in the EU and the US Administration involved itself more actively in the negotiations. The opposition parties won the Kosovo elections in October 2019, but a new government was not formed by the end of the year. With Serbian parliamentary elections slated for the spring of 2020, the direction of the relations between Belgrade and Priština remains questionable.

In addition to rule of law and the normalisation of relations between Belgrade and Priština, EU officials have been insisting on better cooperation among the countries in the region. The sixth summit within the Berlin Process, initiated to that end, was held in Poznan in July 2019. The participants discussed regional cooperation, mobility, Roma inclusion, the present challenges and economic growth in the region.

Another initiative aimed at boosting regional cooperation was launched in 2019 – the Serbian, North Macedonian and Albanian Presidents in October signed a Declaration on the forming of a so-called "small Schengen area" to facilitate free movement of capital, goods, services and people of their three countries. The Declaration provides for the elimination of border controls, recognition of diplomas facilitating the employment of the nationals of these three countries in any of them, cooperation in the fight against organised crime and assistance in case of natural disasters.

A number of open issues, however, continued to plague Serbia's relations with other Western Balkan countries in 2019. They included outstanding border issues, confrontation with the consequences of the wars in the 1990s, succession after the disintegration of the former Yugoslavia, the finding and identification of missing persons, the status and protection of minorities, et al. The relations witnessed their ups and downs and were at times characterised by serious tensions. The relations between Serbia and Croatia as a rule deteriorate on the anniversary of the Storm offensive, which Croatia considers a legitimate military campaign that finally ended the war, while Serbia considers it the day when hundreds of thousands of Serbs were forced to flee their homes. Serbia's relations with Bosnia and Herzegovina were no less traumatic; the commemoration of the Srebrenica genocide yet again provoked disparate reactions in the two countries. Serbia's relations with Montenegro also declined after the latter adopted its Freedom of Religion Act, which was interpreted by some people in Serbia, as well as in Montenegro, as an introduction to the confiscation of some of the Serbian Orthodox Church's property.

Serbia's foreign policy orientation remained vague in 2019. Although EU accession has been identified as Serbia's main foreign policy goal, the authorities' policy on Russia remained unclear, especially given the divergent statements made by the key political actors. Public opinion was also divided on the direction Serbia's foreign policy should take. Polls showed that most citizens were in favour of Serbia joining the EU, but that they perceived Russia as Serbia's greatest friend, which avidly pursued its interests in the international arena.

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.[1] 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 Monitoring the Implementation of Recommendations of United Nations Human Rights Mechanisms.[2]

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

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. Reports by UN Treaty Bodies (Committees) and Special Procedures

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 8 March 2019, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) published its Concluding observations on Serbia's fourth periodic report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women.[3] Serbia submitted its Fourth periodic report in October 2017; CEDAW also received a large number of alternative reports from civil society organisations.

The CEDAW issued a number of recommendations to Serbia, demonstrating that, despite the headway made in advancing women's rights, the position of women in Serbia is still less favourable than that of men and that this particularly holds true for women from disadvantaged groups facing multiple forms of discrimination. The Committee noted that the situation deteriorated in several areas compared with 2013, when Serbia submitted its previous report.

A set of CEDAW recommendations concerns the improvement of the legislative framework. The Committee called on the National Assembly of the Republic of Serbia to take the requisite measures within its purview to fulfil the recommendations regarding, in particular, the adoption of a Gender Equality Act and amendments to the Anti-Discrimination Act, the Free Legal Aid Act, the Domestic Violence Act, the Family Act and the Criminal Code. The Committee expressed its concern at reports of high levels of discriminatory gender stereotypes hindering the advancement of women's rights, in particular, increased instances of anti-gender discourse in the public domain and a public backlash in the perception of gender-equality; misogynistic statements that are expressed in the media and also by high-ranking politicians, religious leaders and academics with impunity; and, promotion of a highly conservative idea of a traditional family, with women primarily considered as mothers.

The Committee also expressed its concern at the high prevalence of physical violence against older women; an increase in all forms of gender-based violence against women with disabilities in institutions; inadequate risk assessment to prevent

3 UN Doc. CEDAW/C/SRB/Q/4.

gender-based violence against women and girls, including femicide; lack of effective prosecution of cases of gender-based violence against women: and lack of a robust data collection and monitoring system for cases of gender-based violence against women and girls.

CEDAW recommended to Serbia to accelerate the equal representation of women, including Roma women and women with disabilities, in all areas of public and political life, particularly in decision-making positions, at national and local levels, and in armed forces and the foreign service. It was also concerned at reports of the position of women experiencing multiple and intersecting forms of discrimination**,** especially Roma women, women with disabilities, and older and rural women in nearly all aspects of life.

The Committee requested of Serbia to submit its fifth report on the implementation of the recommendations in March 2023.

At the request of the Committee on the Elimination of Racial Discrimination voiced in its Concluding observations,[4] the Republic of Serbia in December 2018 submitted its report on the implementation of the recommendations in paragraphs 16 and 17 on the enforcement of Article 54a of the Criminal Code and statistical data on racist hate crimes and cases pending before the courts and prosecution services respectively.[5] In its report, Serbia said it planned to organise joint trainings for judges, public prosecutors and police officers to build their capacity for effective prosecution of hate crimes and ensure that the penalties imposed on their perpetrators are proportionate to the severity of the crime. It further said that, under the Republic Public Prosecutor's Instructions of December 2015, special records of hate crimes have been kept in the meaning of Article 54a of the Criminal Code and that they contained data on the perpetrators, aggrieved parties, offences, undertaken measures and decisions adopted by public prosecutors and courts, as well as the perpetrators' motives for committing the crimes. Serbia also said that Guidelines on the Criminal Prosecution of Hate Crimes have been developed for public prosecutors.

In the letter it sent Serbia in May,[6] the Committee welcomed the information about hate crime investigations and prosecution, but expressed regret about the lack of information on redress provided to victims of hate crimes, the lack of comprehensive information on the number of cases currently pending before the Republic Public Prosecutor's Office and before the courts, and the lack of comprehensive information on the nature of the hate crimes. The Committee asked Serbia to submit in its next periodic report updated detailed information and statistics on hate crimes, disaggregated by ethnicity, the number and nature of racist hate crimes reported, prosecutions and convictions, the number of pending cases, and information on redress provided to victims.

4 UN Doc. CERD/C/SRB/CO/2–5/Add.1, available at: https://bit.ly/2CYCgpT.

5 UN Doc. CERD/C/SRB/CO/2–5/Add.1, available at: https://bit.ly/2qj7aqw.

6 Available at: https://bit.ly/37jRBPU.

In May 2019, the Republic of Serbia submitted to the Committee on Economic, Social and Cultural Rights its Third periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights.[7] In November 2019, the Committee sent Serbia a list of issues[8] about its report and scheduled the review of the report at its 69th session, to be held in the spring of 2021.

On 2 August 2019, the Committee against Torture adopted a decision finding Serbia in violation of the Convention against Torture for extraditing Kurdish political activist Cevdet Ayaz to Turkey on 25 December 2017.[9] The Committee found Serbia in breach of Articles 3 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment.[10] CAT urged Serbia to provide redress for the complainant and to promptly explore ways and means of monitoring the conditions under which Mr. Ayaz was in detention in Turkey. It also called on Serbia to take steps to prevent similar violations of Article 22 in the future and to ensure that, in cases where it requested interim measures, the complainants were not removed from its jurisdiction until it made a decision on a prospective application.

Serbia was visited in November 2017 also by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Nils Melzer. He published his report on the visit in February 2019.[11]

The Republic of Serbia submitted its Third periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights and its Third periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in April and May 2019 respectively.

1.2. Council for Monitoring the Implementation of Recommendations of UN Human Rights Mechanisms

The Government Council for Monitoring the Implementation of Recommendations of UN Human Rights Mechanisms[12] held two sessions in 2019. The Council members were briefed about Serbia's fulfilment of its obligations to UN human rights treaty bodies, including its submission of the Third periodic reports on the implementation of the Convention against Torture and the ICESCR, as well as Serbia's follow-up report on the implementation of Recommendations 16 and 17 of the

7 Available at: https://ljudskaprava.gov.rs/sh/node/19967.

8 UN Doc. CEDAW/C/SRB/Q/4, available at: https://goo.gl/9GcX2z.

9 Available at: https://bit.ly/2OpxYgJ.

10 More on this judgment in Chapter II.1.6.

11 More on the Special Rapporteur's report in Chapter II.1.5.

12 More information about the Council's activities is available at: http://vladinsavetun.ljudskaprava.gov.rs/.

Committee on the Elimination of Racial Discrimination. They were also familiarised with activities undertaken to amend Serbia's basic document on the state of human rights in the country.

The CSOs' involvement in the work of the Council was visibly greater in 2019. At the initiative of the Platform of Organisations for Cooperation with UN Human Rights Mechanisms, the Council held its first thematic session, which focused on the report by UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Nils Melzer. After the UN Committee against Torture issued its decision in the Cevdet Ayaz case, the Council organised a meeting with Platform and BCHR representatives to discuss the implementation of the Committee's recommendations to Serbia. At the ninth Council session, the Platform representatives alerted to the need to establish a mechanism for implementing the recommendations issued to Serbia by UN human rights committees after their reviews of individual communications. The Council is expected to discuss this initiative.

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

2.1. Council of Europe Conventions Binding on Serbia

The Framework Convention for the Protection of National Minorities (FCNM)[13] was ratified back in 1998 by the then FRY. The Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, which monitors the implementation of the FCNM, visited Serbia in 2019. This was the Advisory Committee's fourth visit to Serbia. The Committee met with representatives of the Government, civil society and national minorities to discuss the implementation of the FCNM with the relevant stakeholders. After the visit, the Committee published its fourth opinion on the implementation of the FCNM in Serbia, containing specific findings and recommendations for follow-up.[14]

The Assembly of Serbia and Montenegro ratified the European Charter for Regional and Minority Languages.[15]

Serbia ratified the Revised European Social Charter (ESC) in 2009.[16] 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.

13 *Sl. list SRJ* (*Međunarodni ugovori)*, 6/98.

14 More on the Advisory Committee's findings in Chapter IV.4.3.

15 *Sl. list SCG* (*Međunarodni ugovori)*, 18/05.

16 *Sl. glasnik RS* (*Međunarodni ugovori)*, 19/09.

Serbia is also party to the CoE Convention on Action against Trafficking in Human Beings[17] and the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. The National Assembly ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Council of Europe Framework Convention on the Value of Cultural Heritage for Society and European Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

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.[18] Serbian nationals may file applications with the European Court of Human Rights (ECtHR).

2.2. European Court of Human Rights and Serbia

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. In 2018, the ECtHR reviewed 1,269 applications against Serbia; it declared 1,224 of them inadmissible and it delivered judgments in 13 cases concerning 45 applications, finding violations of at least one ECHR right in 12 of them.

According to the statistical data published on ECtHR's website, 1,038 applications against Serbia were registered in the first half of 2019 (1 January-1 July 2019). Thirty-five applications were communicated to the Government. The Court dealt with 1,106 applications; it dismissed 1,100 of them as inadmissible and delivered judgments in six cases.

A total of 1,953 applications against Serbia were pending before the ECtHR in mid-2019. A similar number of applications was pending before the ECtHR in mid-2018, indicating that the number of complaints against Serbia filed with this Court has been falling for several years now.

The Council of Europe's Committee of Ministers is charged with the execution of ECtHR's judgments. In practice, supervision of the Respondent States' execution of the judgments is performed by the ECtHR's Department for the Execution of Judgments. The total number of cases transmitted for supervision since the entry into force of the Convention stood at 507; 450 of the cases were closed by final resolution.

ECtHR statistics[19] show that 32 judgments were transmitted for supervision of their execution in 2019, that supervision was ongoing with respect to 57 cases and

17 *Sl. glasnik RS* (*Međunarodni ugovori)*, 19/09.

18 *Sl. list SCG* (*Međunarodni ugovori)*, 9/03, 5/05 and 7/05 – corr. and *Sl. glasnik RS (Međunarodni ugovori)*, 12/10 and 10/15.

19 Available at: https://rm.coe.int/1680709761.

that 35 were closed by final resolution. The statistics also show that Serbia was to pay €547,510 of just satisfaction awarded by the ECtHR in 2019.

The ECHR provides for friendly settlements. Article 39 of the Convention lays down that, at any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto. These proceedings are confidential. If a friendly settlement is effected, the Court strikes the case out of its list. The decision is then transmitted to the Committee of Ministers, which supervises the execution of the terms of the friendly settlement as set out in the decision.

In 2019, the Committee of Ministers issued 13 decisions (resolutions) regarding the execution of friendly settlements. It found that Serbia executed friendly settlements with 125 applicants and paid them a total of €259,410. Most of these cases regarded the (non-)execution of court judgments and had been filed by applicants complaining of violations of their rights under Article 6 of the ECHR.

2.3. 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 April 2019, GRECO published its Interim Report on Serbia's compliance with the recommendations it made in the fourth evaluation round (Corruption prevention in respect of members of parliament, judges and prosecutors),[20] which it adopted at its 82nd plenary session in March 2019. In its Report, GRECO concluded that the overall level of Serbia's compliance with its recommendations on prevention of corruption in respect of members of parliament, judges and prosecutors was no longer "globally unsatisfactory". GRECO also concluded that Serbia had not implemented satisfactorily or dealt with in a satisfactory manner any of the thirteen recommendations it had made in its Fourth Round Evaluation Report. It noted headway in the fulfilment of three recommendations, regarding the adoption of the Lobbying Act, appraisals of judges and prosecutors and reform of the judicial and prosecutorial appointment and promotion procedures.

GRECO concluded that 10 of the recommendations made in the 2015 Report had been partly fulfilled and that three of them had not been fulfilled. It said that an important step forward had been taken with the adoption of the new Lobbying Act which, if implemented as foreseen, would present a stride forward in increasing the transparency of contacts of MPs with lobbyists. It, however, noted that more determined action was required: the adoption of a code of conduct for MPs should be a priority, as well as further measures to improve the transparency of the legislative

20 Available at: https://rm.coe.int/grecorc4–2019–5-fourth-evaluation-round-corruption-prevention-in-respe/168093bc55.

process, to allow for adequate timeframes and debates on draft legislation and to avoid the use of urgent legislative procedures, unless in exceptional circumstances.

As regards judges and prosecutors, GRECO noted that constitutional reforms were underway, which would have a bearing on several of its recommendations. It expressed concern about the rather acrimonious environment in which the consultation process had taken place, and criticisms voiced against various NGOs, including the JAS and the prosecutors' association. "Given the importance of the reforms and notwithstanding the positive Venice Commission opinion, GRECO can only encourage the Serbian authorities to spare no efforts to make sure that these constitutional amendments have the broadest base of support possible," it said. GRECO also said it expected more work to be done on the system of appraisal of judges' performance and that further measures should also be taken to effectively communicate the respective codes of ethics to judges and prosecutors, to provide written guidance and confidential counselling.

Finally, with respect to the Draft Anti-Corruption Act, GRECO said its adoption was imperative to change the rules on conflicts of interest and related matters applying to MPs, judges and prosecutors and to strengthen the role of the Anti-Corruption Agency. GRECO could not conclude whether sufficient progress has been made by the draft law, as it had not been provided with the text at the time it adopted its Interim Report.

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. Consequent-

ly, 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.

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.

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), 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.

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 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,[21] 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

21 Available at: http://www.mpravde.gov.rs/tekst/5847/radna-grupa-za-izradu-analize-izmene-ustavnog-okvira.php.

Constitution, under which "[C]ourt decisions shall be binding on everyone and may not be subject to extrajudicial control".

The draft amendments to the Constitution the Government submitted to the National Assembly in December 2018 lay down that the relationship between the three branches of power shall be based on mutual checks and balances, rather than mutual control, as the valid Constitution now envisages. The Government also proposed amendment of the constitutional articles on courts and public prosecution services (Articles 142–165) and, consequently, of Articles 99, 105 and 172 of the Constitution (on the competences of the National Assembly, decision-making in the National Assembly and election and appointment of Constitutional Court judges, respectively). The amendments are to be discussed by the new parliament, to be constituted after the elections to be held in the spring of 2020.

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.[22] The provision prohibiting slavery, status akin to slavery and forced labour in 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 free-

22 '*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.

dom 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 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.

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[23] confirmed that over 20 ethnic groups live in Serbia.

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.[24]

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.[25]

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

23 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.

24 In its *Opinion on the Constitution of Serbia*, the Venice Commission commented Article 20 of the Constitution related to restrictions of human and minority rights (paras. 28–30 of the Opinion). Apart from criticising this provision for not requiring the existence of a legitimate aim for the restrictions to be allowed, the Commission also opined that the excessively complicated drafting of these Articles risked leading to many issues of interpretation. See European 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.

25 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).

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).[26] 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)).[27]

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 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.[28]

3.3. Ordinary and Extraordinary Legal Remedies and Constitutional Appeals[29]

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

26 Article 202(1) of the Constitution.

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

28 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.

29 More on ordinary and extraordinary legal remedies in the *2018 Report*, I.3.3.

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. 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)).

Citizens are guaranteed the right to appeal any decision of a first-instance civil court according to the Civil Procedure Act (hereinafter: CPA).[30] 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). 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 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

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

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)[31] envisages the right of appeal (Art. 432 of the CPC). 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).

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 in the General Administrative Procedure Act (GAPA),[32] the Non-Contentious Procedure Act (NCPA)[33] and the Act on the Enforcement and Security of Claims[34] also envisages legal remedies.

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).[35]

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

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

33 *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.

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

35 More on constitutional appeals in the *2018 Report*, I.3.3.2 and in Chapter III.6.4.

II.
INDIVIDUAL RIGHTS

1. Prohibition of Torture

1.1. Legal Framework

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

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.[3] 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 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.[4]

The Criminal Code (CC)[5] has inadequately defined the offence incriminating torture as a separate criminal offence. It includes two practically overlapping articles

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 *Sl. glasnik RS*, 98/06.

4 More about the freedom of movement of aliens in II.11.

5 *Sl. glasnik RS*, 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19.

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(3) in conjunction with paragraph 2 of that Article). The latest amendments to the Criminal Code equated the penalties for these two offences.[6]

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)[7] 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.[8]

The problems regarding inadequate penalties and the risk of criminal prosecution becoming time-barred or the impossibility of enforcing the penalties for ill-treatment were not addressed in the reporting period. The penaltiy (10 years' imprisonment for extortion of a confession and for torture and ill-treatment) are not proportionate to the gravity of the act of torture. There have been instances in practice where prosecution of ill-treatment became time-barred.

In addition to the BCHR, these deficiencies have for years been alerted to by the UN Committee against Torture,[9] the UN Human Rights Committee,[10] the European Commission (EC)[11] the European Committee for the Prevention of Torture[12] and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (UN Special Rapporteur).[13]

The prohibition of ill-treatment is explicitly laid down also in Article 33(1(7)) of the Police Act[14] and Article 6(2) of the Penal Sanctions Enforcement Act (PSEA).[15]

6 *Sl. glasnik RS*, 35/19.

7 *Sl. list SFRJ (Međunarodni ugovori)*, 9/91.

8 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.

9 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.

10 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.

11 "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.

12 Report to the Government of Serbia on the visit to Serbia carried out by the CPT from 31 May to 7 June 2017, CPT/Inf (2018) 21, paras. 24 and 28.

13 Report of the UN Special Rapporteur on torture, A/HRC/40/59/Add.1, paras. 10–12, available at: https://undocs.org/A/HRC/40/59/Add.1.

14 *Sl. glasnik RS*, 6/16, 24/18 and 87/18.

15 *Sl. glasnik RS*, 55/14 and 35/19.

Refoulement is expressly prohibited under Article 6(3) of the Asylum and Temporary Protection Act (ATPA)[16] and Article 83(3) of the Aliens Act.[17]

1.2. 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 teritoty of the (country of origin or a third country) where he is at risk of torture or 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 seriously and thoroughly review any risk of ill-treatment the aliens may face upon their voluntary or forced return to a country in all proceedings that may result in their removal.[18]

The Serbian Constitution does not enshrine the *non-refoulement* principle; it merely prohibits the expulsion of aliens in Article 39. Although it does not explicitly lay down that appeals of decisions on forced removal have automatic suspensive effect (which may give rise to problems in practice given that legal solutions regarding this fundamental safeguard against *refoulement* vary), it may be concluded that this principle is nevertheless inherent in the Serbian Constitution.

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.

Under the prior Aliens Act,[19] appeals of decisions ordering aliens to leave Serbia did not have suspensive effect. Under Articles 38 and 80 of the new Aliens Act, appeals of return and denial of entry decisions shall not stay enforcement of such decisions except on grounds specified in Article 83 of that law, prohibiting the forcible return of aliens to a territory where they are at risk of ill-treatment. This legal solution is unclear. If the authority reaching one of these decisions is aware of the existence of the grounds under Article 83 of the Aliens Act, it will have violated the *non-refoulement* principle if it renders a return or denial of entry return decision. If these provisions of the Aliens Act are interpreted as providing for appeals stating the grounds regarding the *non-refoulement* principle with suspensive effect, these decisions would still be enforceable from the moment the aliens are notified of them until the moment they lodge their appeals. On the other hand, appeals of rulings revoking the aliens' short-term residence permits do not have suspensive effect.[20] Neither do motions to stay enforcement of administrative enactments provided by

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

17 *Sl. glasnik RS*, 24/18 and 31/19.

18 More on the states' obligation in: *J. K. and Others v. Sweden*, ECtHR, App. no. 59166/12, para. 83 and *F. G. v. Sweden*, ECtHR, App. no. 43611/11, para. 115.

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

20 Article 39, Aliens Act.

the Administrative Disputes Act.[21] The Administrative Court is under the obligation to review such motions within five days and it may order the suspension of enforcement;[22] the impugned administrative enactment is enforceable pending the Administrative Court's decision.

In his 2019 report, the UN Special Rapporteur on torture said that, at the time of the visit, police officers at Belgrade Airport "Nikola Tesla" had not taken any active measure to identify any potential risk or threat aliens denied entry could face upon return and that the considerations underlying and informing the decision of the Border Police to refuse entry and initiate forcible return were not documented with sufficient precision. The aliens held in the transit zone whom the Special Rapporteur interviewed reported that they had not had the opportunity to contact their embassy or a lawyer and that they had not had access to a translator. Two of them clearly expressed their fear of persecution in case of return and claimed to have expressed their intention to seek asylum once they had been brought to the transit area, but they had then been informed that this was no longer possible.[23]

1.3. National Case-Law on Torture and Ill-Treatment

The impunity of public officials accused of torture or inhuman or degrading treatment, was noted, inter alia, in the latest reports of the Committee against Torture[24] and the Human Rights Committee.[25] The latest reports by the CPT (2018) and the UN Special Rapporteur on torture (2019) also mention numerous credible reports of torture and ill-treatment and the absence of any or adequate efforts to thoroughly investigate them.[26]

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' managerial 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".[27] On the other hand, injured parties are precluded from pursuing criminal prosecution in case the prosecutors abandon prosecution at an early stage, given that

21 *Sl. glasnik RS*, 111/09.

22 Article 23, Administrative Disputes Act.

23 A/HRC/40/59/Add.1, st. 49–51. Available at: https://undocs.org/A/HRC/40/59/Add.1.

24 CAT/C/SRB/CO/2*, para. 10; and CAT/C/SRB/CO/1, para. 10.

25 CCPR/C/SRB/CO/3, paras. 26–27; and CCPR/CO/81/SEMO paras. 13–14.

26 CPT/Inf (2018) 21, pp. 3–5 and paras. 9–32, A/HRC/40/59/Add. 1, paras. 20–28. Available at: https://undocs.org/A/HRC/40/59/Add.1

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

the Criminal Procedure Code (CPC) [28] allows them to do so only after the confirmation of the motion to indict.[29]

The introduction of summary proceedings for all crimes warranting up to eight years' imprisonment by the CPC is also problematic.[30] In such proceedings, there is no obligation to conduct an investigation and the prosecutors are entitled to order the implementation of individual investigative actions.[31] This issue was alerted to both by CAT back in 2015[32] and by CPT in 2018.[33]

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.[34] 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.

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. The fact that the Serbian Bar Association established a nationwide call centre for the appointment of *ex officio* lawyers is, however, encouraging.[35] This call centre is expected to narrow the scope for abuse, i.e. for cherry-picking lawyers not necessarily

28 *Sl. glasnik RS*, 72/11, 101/11, 121/12, 32/13, 45/13, 55/14 and 35/19.

29 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.

30 Article 495, CPC.

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

32 CAT/C/SRB/CO/2, para. 10.

33 CPT/Inf (2018) 21, paras. 24, 26 and 28.

34 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 12th General Report on the CPT's Activities, CPT/Inf (2002) 15, para. 40.

35 See: https://mpravde.gov.rs/en/vest/23990/presentacion-of-the-serbian-bar-association-call-centre-for-appointing-ex-officio-counsel.php.

acting in the best interests of 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.[36] Similar criticisms of the work of *ex officio* lawyers in Serbia were voiced by the UN Special Rapporteur on torture in his 2019 report.[37]

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."[38] The UN Special Rapporteur on torture also noted the insufficient expertise on the part of medical personnel in the investigation, interpretation and documentation of the signs of torture and ill-treatment.[39]

1.5. Report by the UN Special Rapporteur on torture

The UN Special Rapporteur on torture published his report on his 2017 visit to Serbia and Kosovo in the spring of 2019. In addition to his criticisms provoked by the numerous consistent allegations of police torture and ill-treatment by people deprived of liberty, the Special Rapporteur also assessed the Serbian prison system, police custody, social care institutions and protection of refugees and migrants.

The UN Special Rapporteur noted that significant and meaningful steps have been taken to renovate and increase the capacity of the existing detention infrastructure and to build new detention facilities over the past few years but that overcrowding and poor material conditions remained the gravest problem in some penitentiaries. He noted that the occupancy rate of the "reception centre" of the Sremska Mitrovica correctional facility was much higher than the actual capacity and stressed the need for the urgent renovation of a pavilion of that facility. He also noted an insufficient number of health professionals in the prisons and said that there did not seem to be special programmes for detainees affected with long-term illnesses, including cancer and HIV.

36 CPT/Inf (2018) 21, paras. 10, 35 and 36.

37 A/HRC/40/59/Add.1, para. 14. Available at: https://undocs.org/A/HRC/40/59/Add.1.

38 CPT/Inf (2018) 21, paras. 10, 12, 37, 57–62.

39 A/HRC/40/59/Add.1, para. 23. Available at: https://undocs.org/A/HRC/40/59/Add.1.

The UN Special Rapporteur said that the holding cells in the New Belgrade police station were in very poor condition, without adequate access to natural light and ventilation, and with deplorable sanitary and hygienic conditions. He voiced his considered opinion that the detention of human beings in these holding cells amounted to cruel, inhuman or degrading treatment or punishment and had to be discontinued immediately.

The UN Special Rapporteur also visited two institutions caring for persons with psychosocial disabilities – the centre for children and youths with development disabilities in Veternik and the social care home Otthon in Stara Moravica. He concluded that both institutions suffered from serious understaffing, precluding the continued, individual attention that would be required for the development of the residents' personal capacities and that caregivers limited their interactions to feeding, changing and showering the residents. He noted with grave concern that the residents of these homes were not separated according to their age, sex and disability and that babies with disabilities and children with very limited mobility spent most of the time lying in cribs or metal beds with little or no human contact. He also noted with concern the forced prescription of contraceptives to all female residents. The Rapporteur also observed a lack of oversight and enforceable regulations on the use of physical restraints in the centres, which might be used unnecessarily or disproportionately. He was also concerned that the decision of the responsible authorities to institutionalise persons with psychosocial disabilities appeared to be taken based exclusively on a medical report by the treating psychiatrist, and generally without any individual encounter with the person concerned. According to the Rapporteur, as most residents are fully stripped of their legal capacity, their subsequent institutionalisation with the agreement of their legal guardian is automatically considered to be "voluntary" and there seems to be no effective legal remedy against such a decision. He said that the need for their further institutionalisation was not adequately reviewed and that many of them – including children – remained institutionalised simply because of a lack of community-based support and services for families wanting to keep their children born with disabilities with them.

The UN Special Rapporteur qualified the material conditions in the room in the transit zone of "Nikola Tesla" airport as inadequate for the purposes of detention, specifying the main shortcomings: absence of beds and heating, deplorable hygienic and sanitary conditions and constant artificial lighting. Individuals held in this room were forced to spend the night sitting in armchairs albeit they had all received meals provided by the airport police, he said.

The UN Special Rapporteur noted that the reception centres for migrants he had visited provided basic humanitarian and medical support. He identified temporary situations of slight overcrowding, that in some units several families were accommodated together in shared spaces, and that in others young adolescents were placed with single men. The Special Rapporteur received allegations concerning limitations of migrants' freedom of movement, particularly in Preševo. The Rapporteur

was also informed of the informal ad hoc waiting list of migrants wanting to cross into Hungary and that some of them have been on the list for over two years; he also reported complaints by migrants that they had to pay bribes to be included in the list. The Rapporteur also noted that single men who had almost no prospect of crossing the border through regular channels reported that they were in regular contact with smugglers and that some single men and adolescents chose to live in forests and other unofficial sites close to the international borders, from where they repeatedly attempted to cross into the EU. Many of them reported to the Special Rapporteur that they had suffered ill-treatment at the hands of the border police of Bulgaria, Croatia and Hungary when attempting to cross the border from Serbia into those states, that they had been beaten with fists and truncheons, kicked or even injured by dogs. The forensic expert accompanying the mission was also able to confirm traumatic injuries consistent with the allegations received. The Special Rapporteur did not receive any serious allegations about ill-treatment or other abusive behaviour on the part of Commissariat staff.[40]

1.6. CAT Decision on the extradition of Cevdet Ayaz to Turkey

In August 2019, the UN Committee against Torture (CAT) adopted a decision finding Serbia in breach of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment because it extradited Kurdish political activist Cevdet Ayaz to Turkey on 25 December 2017.

In its decision, the CAT found that the Serbian asylum and extradition authorities had violated Article 3 of the Convention because they had failed to examine the risk of Mr. Ayaz's ill-treatment if he was extradited to Turkey. The CAT found a number of flaws in the RS extradition authorities' actions during their examination of whether the extradition requirements were fulfilled, which resulted in the violation of the *non-refoulement* principle.

CAT emphasised that the extradition authorities – the Higher Court in Šabac, the Novi Sad Appellate Court and the Justice Minister – had been unable to ascertain all the relevant facts required for a proper decision because Mr. Ayaz's case file was inadequately translated. Namely, the judgment convicting Mr. Ayaz to a 15-year prison sentence was inadequately translated into Serbian, wherefore the above-mentioned authorities were unable to ascertain whether it was based on Mr. Ayaz's confession extorted by torture. Both Mr. Ayaz's counsel and the Novi Sad Appellate Public Prosecution Service had alerted to the inadequacy of the translation of the case files forwarded by Turkey.

CAT urged Serbia to provide redress for the complainant within 90 days of the day of transmittal of its decision. Such redress should include adequate compensation of non-pecuniary damage resulting from the physical and mental harm

40 A/HRC/40/59/Add.1. Available at: https://undocs.org/A/HRC/40/59/Add.1.

caused. It also called on the RS to explore ways and means of monitoring the conditions under which Mr. Ayaz was in detention in Turkey in order to ensure that he was not subjected to treatment contrary to Article 3 of the Convention. CAT also urged Serbia to take steps to prevent similar violations of Article 22 in the future and to ensure that, in cases where it requested interim measures, the complainants were not removed from its jurisdiction until it made a decision on a prospective application.[41]

1.7. ECtHR Judgments

ECtHR judgment in the case of Gjini v. Serbia of 15 January 2019. – The application was filed by a Croatian national of Albanian descent, who complained that the prison authorities had done nothing to stop his ill-treatment by his cellmates in the Sremska Mitrovica penitentiary in 2008. He alleged that his cellmates forced him to mop the cell floor and that they would not let him raise his head while he was mopping and would kick him sporadically. They also threatened to stage his suicide if he told anyone what was happening in the cell. They kept him in the toilet at night, where they forced him to keep his feet in cold water the whole night. The skin on his feet tore off and open wounds appeared.

The situation worsened after the applicant's cellmates found out about his origin. Upon learning that he lived on the Croatian coast, they said that they wanted to test him to see how well a person from the coast could "dive" by putting his head in a bucketful of water. They once forced him to fight another inmate, and afterwards beat him up for daring to hit a Serb. They forced him to sing nationalist songs and ultimately raped him after pouring something that made him drowsy and dizzy in his glass of water. The next morning, when he came to, he felt pain in his anus and saw blood in his faeces. His cellmates shaved his eyebrows that day, which was a sign that he had become someone's "girl". The applicant claimed that the prison guards were fully aware of what he was going through, that they laughed at him during his walks in the prison yard and that one of them was a school friend of one of his abusive cellmates. The ill-treatment ended when the applicant was transferred to another cell at the request of his lawyer.

In late 2009, the applicant filed a civil claim, requesting compensation for his detention, and in respect of the non-pecuniary damage he had sustained in terms of fear, physical pain and mental anxiety owing to the ill-treatment to which he had been subjected during his time in the Sremska Mitrovica penitentiary. Despite the Republic Attorney General's Office's attempts to challenge his claim, the court interviewed several witnesses, one of whom had been detained in the Sremska Mitrovica prison at the same time as the applicant. This witness said he remembered the appli-

41 CAT/C/67/D/857/2017. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/67/D/857/2017&Lang=en.

cant had been singing nationalist songs at night, that he had talked to the applicant on a number of occasions in prison and that he noticed one day that the applicant's eyebrows had been shaved off and haematomas behind his ears and on his forearms. The witness claimed that the applicant had a strange look in his eyes and seemed very scared, that he avoided the company of other prisoners and complained to him about the ill-treatment to which he had been subjected by his cellmates, including the rape. The witness confirmed that shaved eyebrows in prison meant that the person had been raped and said he had noticed the damaged skin on the applicant's feet.

The witness said that the prison guards must have heard that somebody was singing songs and they must also have noticed other signs of the applicant's maltreatment and that they knew what shaved eyebrows meant. Another former inmate from the Sremska Mitrovica prison later confirmed he saw the applicant with his eyebrows shaved off and a strange haircut and that he had heard him scream or sing at night, but he could not remember what songs he was singing. Two expert witnesses – an expert on traumatology and a neuropsychiatrist – submitted their reports, in which they found that, due to his suffering in prison, the applicant had suffered certain physical pain and that his ability to engage in physical activities was diminished by 10%. After the Belgrade Appellate Court remitted the case to the first-instance court for reconsideration, the latter upheld the applicant's claim and awarded him 200,000 RSD in in respect of non-pecuniary damage for the 10% loss of his ability to engage in physical activities associated with the events in detention. However, the claim for the applicant's physical suffering was rejected because, in the court's view, his suffering had not constituted grievous but rather slight bodily harm, for which no compensation could be awarded, according to the law. Also, the court refused to award the applicant compensation for non-pecuniary damage for his fear. The Belgrade Appellate Court later awarded the applicant an additional 50,000 RSD for the fear arising from the events during his detention. The Constitutional Court dismissed the applicant's constitutional appeal, notably his claim of a violation of his right to the inviolability of physical and mental integrity.

The respondent State claimed that the applicant's version of events was not substantiated by proof as he had failed to submit medical evidence corroborating his allegations. It also claimed that the applicant had not complained about the alleged ill-treatment to the prison staff, wherefore the latter could not have been expected to protect him.

The ECtHR based its conclusion that the applicant had been ill-treated in the Sremska Mitrovica prison also on the national court's finding that the applicant's ability to engage in physical activities was diminished by 10%, which "admits of no other conclusion than that he was the victim in the early days of his imprisonment of an event or a sequence of events that seriously impaired his health." Recalling the State's obligation to effectively investigate all signs of ill-treatment and noting that the CPT had repeatedly pointed out in its reports that inter-prisoner violence was a serious problem in the Sremska Mitrovica prison both before and after the events

in the present case, the ECtHR held that the prison staff must have noticed that the applicant's eyebrows had been shaved off and that his skin had been damaged and that they must or ought to have heard him screaming and singing nationalist songs at night. The ECtHR found that the prison authorities had failed to secure a safe environment for the applicant and detect, prevent or monitor the violence he had been subjected to. It also noted that the relevant authorities had not conducted an investigation into the ill-treatment although the applicant and his counsel had complained about it to various authorities (the Ministry of Justice, the Serbian President and ombudspersons) and, ultimately, filed a claim seeking non-pecuniary damages. The ECtHR awarded the applicant €25,000 in respect of non-pecuniary damages.[42]

ECtHR judgment in the case of Almaši v. Serbia of 8 October 2019. – The applicant claimed that he was slapped several times by a police officer on 18 April 2011, during his detention in the Subotica Regional Border Police Centre, before his legal-aid lawyer arrived, and that the fear of further ill-treatment led him to admit to a crime during the interrogation that ensued. He was brought before an investigating judge the following day, on 19 April, where, in the presence of a lawyer of his own choosing, he claimed that he had been ill-treated the previous evening by a police officer he described, adding that he could not complain to his legal-aid lawyer about it because the police officer who had slapped him was present. The investigating judge asked the applicant whether he needed medical assistance. The applicant replied that although he felt some pain he did not need medical help.

The applicant was released at 15:35 that day, after the investigating judge questioned him. At around 9 am the following day, on 20 April, he was examined by a private doctor, to whom he complained about being hit in the face. The doctor found that the tissue around the applicant's temple and left eye was slightly swollen and sensitive to the touch, with no change in colour. During the applicant's criminal trial, the police officers denied that they had ill-treated the applicant and his legal-aid lawyer said that she had not noticed any injuries on the applicant's face during the evening in question and that he had not complained of being ill-treated by the police. The investigating judge also said that she had not noticed any injuries on the applicant's face that could be related to the alleged ill-treatment.

Although there were no visible traces of alleged ill-treatment on the applicant's face, the ECtHR considered that the applicant's complaint of police abuse was such as to require an effective official investigation, it being noted that even where there is insufficient evidence to show that an applicant had in fact been ill-treated the procedural obligation to investigate may still arise, particularly when, such as in the present case, there is a potential for abuse in a detention context. The ECtHR noted that no separate abuse-related investigation aimed at the identification and punishment of those responsible had ever been instituted by the relevant authorities and that the criminal case against the applicant, wherein he raised his abuse complaints in order to have some of the impugned evidence excluded, had certainly not

42 *Gjini v. Serbia*, ECtHR, App. no. 1128/16.

been capable of the latter. Moreover, the criminal courts in these proceedings had declined to hear two witnesses proposed by the applicant (the doctor and his partner) deeming their testimonies unnecessary. The Court, however, could not accept this reasoning because they could have provided meaningful testimony about the existence of the injuries in question and whether they could have been caused in the manner alleged by the applicant. In the light of the foregoing, the Court concluded that Serbian authorities had failed to carry out an effective official investigation into the applicant's allegations of ill-treatment and that there has been a violation of Article 3 of the Convention under its procedural limb.[43]

ECtHR judgment in the case of Jevtović v. Serbia of 3 December 2019. – In its judgment in the case of *Jevtović v. Serbia* (App. no. 29896/14), the European Court of Human Rights found Serbia had violated the applicant's rights under Article 3 of the ECHR, which prohibits in absolute terms torture and inhuman or degrading treatment or punishment. The Court found that the applicant had been ill-treated by the Belgrade District Prison guards in 2007 and 2009 and by the guards of the Požarevac penitentiary in 2011. The Court also found Serbia in breach of the procedural limb of Article 3 of the ECHR because the relevant judicial authorities, notably the Požarevac Basic Public Prosecution Service and Basic Court failed to conduct an effective and meaningful investigation capable of leading to the identification and punishment of those responsible.[44]

1.8. Major Developments Regarding the Prohibition of Torture and Ill-Treatment

Abuse of a boy in a Belgrade kindergarten. – Serbia's Agent before the ECtHR reached a friendly settlement with the counsel of a minor, who filed an application with the ECtHR claiming that he was ill-treated in a Belgrade kindergarten in 2012, when he was seven years old. His kindergarten teacher punished him by ordering him to take off all his clothes in front of the other children. He started crying and promising he would never do anything wrong again. The kindergarten teacher then suggested to another child (the second applicant) to order the first applicant to strip naked, which the first applicant again refused in tears. The kindergarten teacher continued insisting that the first applicant take off all his clothes in front of everyone, which he finally did. He sat naked on the floor in front of the other kindergarten children for 15 minutes. The kindergarten teacher was dismissed from her job and a criminal report was filed against her, but to the best of the applicants' knowledge, she was never convicted.

The kindergarten paid the applicant's parents 250,000 RSD in respect of non-pecuniary damage although it had first promised to pay them 800,000 RSD. In the proceedings before the ECtHR, Serbia's Agent offered that the state pay the

43 *Almaši v. Serbia*, ECtHR, App. no. 21388/15.

44 *Jevtović v. Serbia*, ECtHR, App. no. 29896/14.

applicant €7,500 minus the amount already paid to the boy, which the boy's parents accepted. However, the state paid around €1,000 less then agreed, because it subtracted from the €7,500 other costs that it had covered earlier (lawyers' fees, court fees, et al).[45]

Introduction of life imprisonment in Serbia. – After a session of the National Security Council, which discussed the Serbian courts' penal policies in mid-January 2019, the Serbian President said that the prescribed minimum and maximum sentences for specific crimes would be increased "drastically and draconically" and announced the introduction of life imprisonment,[46] a legislative initiative earlier supported by around 160,000 citizens. Although the amendments to criminal law were to be submitted to parliament for adoption within a month, the Preliminary Draft of the Amendments to the CC were not published on the Justice Ministry's website until April.[47] The names of the members of the working group that drafted the Amendments to the CC were never published.

Under the Amendments to the CC, life imprisonment may be imposed for all crimes that earlier warranted up to 30 and 40 years' imprisonment and the gravest crimes against sexual freedoms (rape, sexual intercourse with a helpless person, a child or by abuse of position). Life imprisonment without parole is envisaged for the gravest forms of crimes against sexual freedoms (which had not even warranted the harshest penalties – between 30 and 40 years' imprisonment – until 2019) and for the murder of children and pregnant women. Offenders convicted to life imprisonment for other crimes will become eligible for parole after they serve 27 years in prison.

The legislator's justification of the reasons for the adoption of the proposed amendments to the CC is unsatisfactory. The legislator explained that the introduction of life imprisonment was criminally and politically justified because life imprisonment is an exceptional penalty replacing the death penalty (abolished in Serbia in 2002) and that time-limited prison sentences have not proven adequate for specific offenders. The legislator also said that penalties of 30–40 years' imprisonment, which are to be abolished under the amendments, could prove more inhuman than life imprisonment, because the convicts released at the end of their lives are, as a rule, very old, destitute and have broken off their ties with their families and friends. The ban on parole for crimes warranting life imprisonment is justified only by a civic initiative organised by the "Tijana Jurić" Foundation in 2017.[48] No public debate

45 *Đorđević v. Serbia*, ECtHR, App. no. 12608/18. More is available in Serbian at: www.politika.rs/sr/clanak/441661/Hronika/Vaspitacica-naredila-decaku-da-se-za-kaznu-skine-go-slucaj-stigao-do-suda-u-Strazburu.

46 See, e.g. the following reports available in Serbian: www.rts.rs/page/stories/sr/story/9/politika/3385250/vucic-najavio-drakonske-kazne-za-zlocince.html and www.youtube.com/watch?v=dHUhf0JNRj0.

47 See: https://www.mpravde.gov.rs/en/vest/23954/draft-criminal-code-amendments-published.php.

48 More is available in Serbian at: tijana.rs/podrzite-inicijativu-za-uvodenje-kazne-dozivotnog-zatvora-spisak-svih-gradova/.

on the PDA CC was held. The Ministry of Justice claimed that the introduction of life imprisonment had been publicly debated since 2015, when the Ministry first initiated its introduction and that a number of round tables on the issue have since been organised.[49]

This issue drew a lot of attention among both legal professionals and the general public, given the sharp disagreements between the Justice Ministry representatives, on the one hand, and civil society organisations and some legal experts on the other, about the justification for introducing life imprisonment and its effect on human rights, primarily the prohibition of torture.[50] In early May, a number of experts (members of international human rights bodies, law school professors, judges, prosecutors and lawyers, and nearly all associations focusing on human rights protection and promotion) submitted an appeal to the Serbian Government and National Assembly, calling for the deletion of the provision in the PDA CC prohibiting the parole of life prisoners.[51] In her letter to the Serbian Justice Minister, the Council of Europe Human Rights Commissioner said that for a life sentence to be compatible with Article 3 of the ECHR, it must be reducible, or in other words there has to be a prospect of the prisoners' release and the possibility of a review of the sentence. Such a review should allow the domestic authorities to consider whether any changes in the life prisoner are so significant and such progress towards rehabilitation has been made in the course of the sentence that continued detention can no longer be justified on legitimate penological grounds. The Commissioner called on the Serbian authorities to reconsider their decision to put the draft law forward and to organise a broader public debate on the issue.[52]

Nevertheless, life imprisonment was introduced in the Serbian Criminal Code when, on 21 May, the parliament adopted the amendments; their entry into force was postponed until 1 December 2019. The very next day, on 2 December 2019, the non-governmental organisations and individuals filed an initiative with the Constitutional Court asking it to review the constitutionality of the amendments prohibiting parole for crimes warranting life imprisonment.[53]

In its Serbia 2019 Report, the European Commission said that the Serbian Government submitted draft amendments to the Criminal Code to parliament in early May 2019, under urgent procedure, introducing life imprisonment without the

49 More is available in Serbian at: www.mpravde.gov.rs/vest/23961/mogucnost-uslovnog-otpusta-postoji-sem-za-pet-najsvirepijih-krivicnih-dela-.php.

50 More is available in Serbian at: www.youtube.com/watch?v=FwSCa05iB1w, www.bgcentar.org.rs/dozivotni-zatvor-bez-uslovnog-otpusta-vodi-u-krsenje-ljudskih-prava/.

51 See more at: www.bgcentar.org.rs/struka-protiv-kazne-dozivotnog-zatvora-bez-prava-na-uslovni-otpust/www.bgcentar.org.rs/vladica-ilic-za-n1-uvodenje-dozivotnog-zatvora-bez-prava-na-uslovni-otpust-predstavlja-krsenje-ljudskih-prava/.

52 See more at: www.coe.int/en/web/commissioner/-/the-commissioner-calls-on-serbia-to-ensure-that-its-draft-legislation-concerning-life-imprisonment-is-compliant-with-the-case-law-of-the-european-cour.

53 See more at: http://www.bgcentar.org.rs/u-drustvu-u-kojem-postoji-vladavina-prava-nijedan-gradanin-nesme-biti-lisen-ljudskog-dostojanstva/.

possibility of conditional release for a number of crimes and that the parliament adopted the amendments on 21 May 2019. It noted that there were relevant provisions of the European Convention of Human Rights and the case law of the European Court of Human Rights and that the amended law would have to be assessed on this basis.[54]

Police ill-treatment in the RTS building. – Several police officers employed excessive force against a participant in the RTS building during a civic protest in Belgrade in March 2019. Footage of the incident, showing the officers hitting a man who was not offering any resistance, was posted on the Internet.[55] Several days after the incident, the Protector of Citizens was asked on TV whether he would look into the case. He, however, said that the case should be solved by the prosecution and the court and that the law precluded him from reacting while another proceeding was under way. [56] He added that he could not examine whether the police had exceeded their powers and used excessive force before the MIA Internal Control Sector.[57] The impression that the Protector of Citizens was avoiding any involvement in this case was corroborated by his failure to undertake any steps under the end of the reporting period.

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 lib-

54 See: Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

55 See: www.youtube.com/watch?v=dCVCJO9rQK0&feature=youtu.be&t=11, www.youtube.com/watch?v=ZBf7F6buD0M.

56 There are no legal grounds for this assertion either in the Protector of Citizens Act or any other Serbian law. The issue was also commented by the UN Committee against Torture, in its Concluding observations on the Second periodic report of Serbia. See: CAT/C/SRB/CO/2, para 21. Available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhskPzZ7qqLIMiSsYYpjvQncppZ1Nq6xPjYePRKLFQ1ZNsnmJYaSrGl46Ce2sCAjC%2B1rN3YxuxGlerpjPEnzqCgPcH4QoyqHape1tU7cDyxfXf.

57 See more at: https://youtu.be/M8vopUN6X3Y?t=958.

erty 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.[58]

Articles 27–31 of the Constitution of the Republic of Serbia[59] 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 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 dep-

58 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.

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

rivation 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)[60] envisages terms of imprisonment (that may be enforced in a penitentiary or in the convict's home),[61] 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 psychiatric treatment and institutionalisation, and of mandatory treatment of alcohol and substance abuse).[62] The Juvenile Justice Act (JJA)[63] 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).[64] The Criminal Procedure Code (CPC)[65] sets out a number of measures restricting the freedom of movement, primarily of suspects;[66] 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).[67] 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*.[68]

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

60 *Sl. glasnik RS*, 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19.

61 Article 45, CC.

62 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*.

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

64 See Articles 21–23 and 28–32, JJA.

65 *Sl. glasnik RS*, 72/11, 101/11, 121/12, 32/13, 45/13, 55/14 and 35/19.

66 See, e.g. Articles 288–290, CPC.

67 See Articles 208–223 and 294, CPC.

68 Article 292, CPC.

investigation proceedings. For instance, the Police Act[69] authorises the police to bring individuals in,[70] hold them in custody and temporarily restrict their freedom of movement;[71] the Misdemeanour Act[72] allows the police to bring individuals in and hold them in custody;[73] the Road Traffic Safety Act[74] 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.[75] 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 institutions.[76] The Domestic Violence Act[77] authorises police officers to bring in domestic violence suspects to the relevant police units and hold them in custody for up to eight hours.[78]

The Aliens Act[79] 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.[80] Similarly, the Asylum and Temporary Protection Act (APTA)[81] 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,[82] judges have in practice been extending pre-trial detention without questioning them about the reasons for extending

69 *Sl. glasnik RS*, 6/16, 24/18 and 87/18.

70 Communal militia are entitled to take individuals, whose identity they cannot establish, to the police for identification. They are also entitled to bring before the relevant misdemeanour court an individual they catch committing a misdemeanour within their remit, after they check or establish his identity, and file a motion for the initiation of misdemeanour proceedings against him. See Article 22 of the Communal Militia Act, *Sl. glasnik RS*, 49/19.

71 Articles 82–90, Police Act.

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

73 Articles 190–193, Misdemeanour Act.

74 *Sl. glasnik RS*, 41/09, 53/10, 101/11, 32/13 – CC Decision, 55/14, 96/15 – other law, 9/16 – CC Decision, 24/18, 41/18, 41/18 – other law, 87/18 and 23/19.

75 Articles 283 and 284, Road Traffic Safety Act.

76 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.

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

78 Article 14, Domestic Violence Act.

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

80 Articles 87–88 of the Aliens Act.

81 *Sl. glasnik RS,* 24/18 and 31/19.

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

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[83] 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[84] (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 order.[85] 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[86]) 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.[87]

83 Article 214(1), CPC.

84 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.

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

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

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

2.2. Major Developments with Respect to the Right to Liberty and Security

2.2.1. Arrests of individuals carrying mock gallows at civic protests

On the order of the public prosecutor, the Belgrade police in early February 2019 arrested two men, one of whom was a minor, for carrying mock gallows at a civic protest in Belgrade. They were suspected of racial and other forms of discrimination, taken into custody and then put in pre-trial detention.[88] Although the minor could not be sentenced to juvenile prison for the crime he was suspected of – which is why his pre-trial detention was disproportionate and unjustified both *ipso facto* and *ipso jure*,[89] he remained detained in the Belgrade District Prison for five days.[90]

A Šabac policeman was also placed in pre-trial detention for posting on his Facebook profile a picture of the Serbian President hanging.[91] On the prosecutor's orders, the Kragujevac police in February hauled in a 66-year-old man for carrying a mock gallows and a dummy in it with a sign "I, a pensioner".[92] The media quoted his family as saying that he felt sick after the police hauled him into custody and spent the night in hospital.[93] He was told he would be charged with racial and other forms of discrimination.[94]

2.2.2. Arrest of whistleblower who alerted to abuses in the Krušik plant

In mid-September 2019, the media reported that armed special police entered the grounds of the Valjevo arms plant Krušik and arrested its employee Aleksandar Obradović, seized his work computer, as well as his personal computer and external memory discs from his home. Obradović was arrested several days after the portal

88 "Protesters' Fake Gallows Outrages Serbian Govt Supporters," *BIRN*, 4 February. Available at: https://balkaninsight.com/2019/02/04/serbia-arrests-anti-vucic-protesters-for-carrying-gallows-02–04–2019/.

89 "Lawyers on minor's detention because of gallows: illogical and unwarranted measure," *N1*, 8 February. Available in Serbian at: rs.n1info.com/Vesti/a458881/Pravnici-o-pritvoru-maloletnika-zbog-vesala.html.

90 "Police release minor who carried gallows at protest," *N1*, 8 February. Available at: http://rs.n1info.com/English/NEWS/a458903/Police-release-minor-who-carried-gallows-at-protest.html.

91 "Up to 30 days' detention for threatening with hanging," *RTS*, 5 February. Available in Serbian at: www.rts.rs/page/stories/sr/story/135/hronika/3411122/pritvor-do-30-dana-zbog-pretnje-vesanjem.html.

92 "The man with gallows at Kragujevac protests released from custody," *N1,* 10 February. Available at: http://rs.n1info.com/English/NEWS/a459229/The-man-with-gallows-at-Kragujevac-protests-released-from-custody.html.

93 *Ibid.*

94 "Kragujevac: man hauled in for carrying gallows released from custody," *Mondo*, 10 February. Available in Serbian at: mondo.rs/Info/Srbija/a1165274/Kragujevac-muskarac-priveden-zbog-vesala-pusten-iz-pritvora.html.

Arms Watch published its research of Serbia's exports of arms to war-torn Yemen[95] and one day before *BIRN* published its report confirming that the company represented by police minister Nebojša Stefanović's father bought weapons at privileged rates.[96] Obradović's arrest and subsequent detention went unnoticed until the Belgrade weekly *NiN* published the news in October 2019.[97] Obradović was being investigated for revealing trade secrets under Article 240 of the Criminal Code.[98]

The preliminary proceedings judge initially placed Obradović under house arrest. The Belgrade Higher Court, however, upheld the public prosecutor's appeal and ordered his remand in custody because it held that as many as three requirements for pre-trial detention were fulfilled: that there was a risk of Obradović absconding, that circumstances indicated he would impede the proceedings by tampering with the witnesses and that he would reoffend in the near future. When the news of Obradović's detention broke, scores of people began rallying in front of the Belgrade District Prison for days, calling for his release and warning that his arrest was politically motivated and that its sole purpose was to intimidate whistleblowers.[99]

In mid-October 2019, the Belgrade Appellate Court quashed the Belgrade Higher Court's decision ordering Obradović's pre-trial detention and remanded the case for reconsideration.[100] The Higher Court soon replaced the pre-trial detention order with a house arrest order,[101] which was not lifted until 18 December 2019. The media reported that the Court explained that the public prosecutor had not specified whether he was requesting the extension or revocation of the imposed measure and that it found that the reasons for ordering house arrest did not exist anymore.[102] Several days before the Court revoked the measure, the civic initiative "Freedom for

95 "Leaked arms dealers' passports reveal who supplies terrorists in Yemen: Serbia files (Part 3)", *Arms Watch.* Available at: armswatch.com/leaked-arms-dealers-passports-reveal-who-supplies-terrorists-in-yemen-serbia-files-part-3/.

96 "Arms trade: Privileged rates for police minister's father," *Javno*, 19 September. Available in Serbian at: javno.rs/istrazivanja/trgovina-oruzjem-povlascena-cena-za-oca-ministra-policije.

97 "Authorities persecuting whistleblower to cover up culprit," *NiN*, 10 October. Available in Serbian at: www.pressreader.com/serbia/nin/20191010/281522227841317.

98 "Storm over Serbia Whistleblower Arrest in State Arms Scam," *BIRN,* 15 October. Available at: https://balkaninsight.com/2019/10/14/storm-over-serbia-whistleblower-arrest-in-state-arms-scam/.

99 "Protest in front of Central Prison against arrest of Krušik worker," *N1*, 13 October. Available in Serbian at: rs.n1info.com/Vesti/a534282/Protest-ispred-Centralnog-zatvora-zbog-hapsenja-radnika-iz-Krusika.html.

100 "Appellate Court quashes decision on detention of Krušik worker, case back in Higher Court," *N1*, 14 October. Available in Serbian at: rs.n1info.com/Vesti/a534531/Apelacioni-sud-ukinuo-odluku-o-pritvoru-radnika-iz-Krusika-slucaj-u-Visem-sudu.html.

101 "Serbia's whistleblower released from jail, put back under house arrest," *N1*, 14 October. Available at: http://rs.n1info.com/English/NEWS/a534541/Serbia-s-court-annuls-decison-on-detention-of-man-who-links-Interior-Minister-father-to-arms-deals.html.

102 "Krušik whistleblower released from house arrest," *N1*, 18 December. Available at: http://rs.n1info.com/English/NEWS/a553553/Krusik-whistleblower-released-from-house-arrest.html.

Aleksandar" and the Association for the Protection of Constitutionality and Legality submitted to the chief state prosecutor a petition signed by 25,000 people seeking Obradović's release from house arrest.[103]

The criminal proceedings against Aleksandar Obradović were still under way at the end of the reporting period.

Although Aleksandar Obradović has widely been perceived as a whistleblower, topmost Serbian politicians, including the President[104] and the Prime Minister,[105] claimed that he did not qualify because he had not complied with the whistleblowing procedures laid down in the Whistleblower Protection Act.[106] Under Article 19 of that law, a whistleblower may make a disclosure to the public, without prior notification to the employer or an authorised authority, in case of an immediate threat to life, public health, safety, the environment, risk of the occurrence of substantial harm or destruction of evidence. According to ECtHR case-law, public disclosure of confidential information may engage Article 10 of the ECHR provided the following requirements are met: the whistleblower had no other (more discreet) means of remedying the wrongdoing available to him or the existing means are inefficient; the whistleblower checked whether the information in his possession was reliable and accurate (credible); there was a public interest in publishing the information notwithstanding any legal obligation to maintain its confidentiality; any damage arising from the disclosure outweighed the interest of the public in having the information revealed; and the whistleblower acted in good faith. [107]

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

In 2019, the BCHR 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).

103 *Ibid*.

104 "Vučić: Lešnjak is a whistleblower, Obradović isn't," *RTS*, 15 November. Available in Serbian at: www.rts.rs/page/stories/sr/story/9/politika/3738486/vucic-lesnjak-jeste-uzbunjivac-obradovic-nije.html.

105 "Brnabić: Obradović is not the whistleblower, he did not abide by law," *N1*, 15 December. Available at http://rs.n1info.com/English/NEWS/a552613/Brnabic-Obradovic-is-not-the-whistleblower-he-did-not-abide-by-law.html.

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

107 "State intimidating whistleblowers instead of protecting them," press release, BCHR, 22 October. More is available in Serbian at: www.bgcentar.org.rs/umesto-da-stiti-uzbunjivace-drzava-ih-zastrasuje/.

Comparative Overview of the Number of Defendants Ordered Pre-Trial Detention and Alternatives to Pre-Trial Detention Ensuring Their Presence and Unhindered Conduct of Criminal Proceedings[108]

Measures	2015	2016	2017	2018	1 Jan – 30 June 2019
Pre-Trial Detention	4,549	5,634	6,754	6,107	3,108
Bail	29	31	33	23	26
House Arrest	295 (152 of which under electronic surveillance)	428 (215 of which under electronic surveillance)	760 (544 of which under electronic surveillance)	677 (466 of which under electronic surveillance)	312 (198 of which under electronic surveillance)
Prohibition of Leaving One's Place of Residence	426	612	512	452	237
Restraining Order	276	372	1,029	1,797	897

Number of Defendants in Pre-Trial Detention at the End of the Year[109]

2015	2016	2017	2018
1,539	1,736	1,577	1,693

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)
Until 30 June 2015	450	172	20	1,939,500
2016	940	243	61	15,485,000
2017	815	235	38	10,747,500

108 The data reflect the case-law of over 90% Basic and Higher Courts that responded to BCHR's requests 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.

109 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)
2018	787	257	69	14,418,000
2019	767	208	51	8,939,948
Total	3,759	1,115	239	51,529,948 (circa €430,000)

The above Table shows that 3,759 damage claims for unlawful deprivation of liberty were filed with the Justice Ministry Damages Commission in the 2015–2019 period, that the Commission reviewed 1,115 of them and concluded settlements with 239 of the claimants.

The number of days of unlawful deprivation of liberty cannot be precisely ascertained, since the Commission has not kept such records either with respect to the claims it reviewed or the ones where it reached settlement with the claimants.

The available data do, however, show that the Damages Commission paid a total of 51,529,948 RSD (around €430,000) in damages in the 2015–2019 period.

Fifty-seven judgments upholding damage claims over unlawful deprivation of liberty became final in 2019. The plaintiffs had been deprived of liberty for a total of 8,375 days and were altogether awarded 45,001,252 RSD (around €382,000).

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

Statistical Data on Imposed Terms of Imprisonment [110]

Duration	2014	2015	2016	2017	2018	Total
1–3 Months	2,529	1,194	1,293	950	912	6,878
3–6 Months	3,772	2,116	2,269	2,000	1,835	11,992
6–12 Months	3,184	2,422	2,423	2,199	1,860	12,089
1–2 Years	1,631	1,438	1,520	1,448	1,256	7,293
2–3 Years	947	875	930	770	753	4,275
3–5 Years	677	550	705	628	616	3,178

110 See the Statistical Office of the Republic of Serbia website: www.stat.gov.rs.

Duration	2014	2015	2016	2017	2018	Total
5–10 Years	191	171	192	156	125	834
10–15 Years	59	34	49	38	29	209
15–20 Years	23	3	24	18	12	78
30–40 Years	11	13	9	11	7	51
40 Years	2	4	5	2	3	16
Total	13,026	8,820	9,419	8,220	7,408	46,893

Statistical Data on the Number of Convicts Admitted to Penitentiaries to Serve Their Terms of Imprisonment[111]

Duration	2015	2016	2017	2018	Total
> 3 Months	1,365	1,246	1,007	952	4,570
3–6 Months	1,377	1,123	1,216	1,071	4,787
6–12 Months	1,353	1,190	1,151	1,072	4,766
1–2 Years	934	1,037	1,048	944	3,967
2–3 Years	675	678	716	678	2,747
3–5 Years	633	763	736	722	2,854
5–10 Years	331	340	290	264	1,225
10–15 Years	49	54	70	62	235
15–20 Years	18	21	19	18	76
30–40 Years	24	15	18	12	69
Total	6,759	6,467	6,271	5,795	25,292

111 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[112]

Year	2015	2016	2017	2018
Convicted prisoners	7,670	7,958	8,081	7,927
Remanded prisoners	1,539	1,736	1,577	1,693
Security measures	425	489	549	657
Juvenile prison	17	19	20	27
Correctional measures	194	200	192	177
Inmates serving misdemeanour prison sentences	219	267	349	371
Total	10,064	10,669	10,768	10,852

Number of Conditional Sentences (with or without protective supervision)[113]

2014	2015	2016	2017	2018
18,307	19,290	17,514	17,948	16,880

Number of Conditional Sentences under Protective Supervision[114]

2015	2016	2017	2018	1 January – 30 June 2019
57	42	31	39	26

Community Service Sentences[115]

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

112 *Ibid*.

113 See the SORS website: www.stat.gov.rs.

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

115 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[116]

2015	2016	2017	2018	1 Jan – 1 June 2019
1,567	2,411	2,311	2,142	1,021

Number of Parole Decisions[117]

2015	2016	2017	2018
1,583	1,539	1,560	1,445

Number of Early Release Decisions[118]

2015	2016	2017	2018
10	45	21	37

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 46.893 prison sentences in the 2014–2018 period. Of this number, 30,959 (circa 66%) of the convicts were sentenced to terms of imprisonment not exceeding one year, 7,293 (around 16%) to sentences not exceeding two years' imprisonment and 4,275 (around 9%) to prison sentences not exceeding three years. On the other hand, the courts imposed 9,058 home incarceration sentences and community service in 1,753 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[119] and that community service may be imposed for offences warranting up to three years' imprisonment[120], 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.

116 *Ibid*.

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

118 *Ibid*.

119 Article 45(5), CC.

120 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 may be further narrowed if the October 2018 Draft Constitutional Amendments are adopted in the present form. One of their provisions lays down that the public character of court hearings may be restricted not only in accordance with the Constitution but in accordance with the law as well.

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.[121] Reasonings of rulings excluding the public must be of a quality justifying derogation from the general rule on the public character of hearings[122] 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.[123]

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 tri-

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

122 Article 6 of the ECHR.

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

al schedules Although the Court Rules of Procedure[124] obligate courts to publish the time, place and subject matter of the trial every day in a visible place outside the room where the trial is to be held or to make them public on the notice board, electronically, or in another appropriate manner, most courts do not promptly publish the trial schedules, the numbers of the cases or the names of the judges hearing them.

The public character of court hearings means that parties to the proceedings and interested individuals may peruse the case files, in accordance with the CPC and Civil Procedure Act (CPA) provisions and the Court Rules of Procedure. The judgments must be available either on the courts' websites or in the collections of judgments in the court secretariats. However, the provisions on the public availability of judgments are contradictory and provide the courts with a lot of discretion about which decisions the choose to publish. For instance, the Act on the Publication of Acts and Other Regulations and Enactments[125] sets out that the decisions of courts, prosecution services and the Constitutional Court must be published in the Official Gazette, but specifies that they shall be published in accordance with separate laws. On the other hand, these separate laws tend to perpetuate the cycle of referencing to other regulations and provide the courts with ample opportunity not to publish their final decisions. To illustrate, instance, the Court Rules of Procedure[126] lay down that information about final judgments must be published whenever this obligation is prescribed by law or special regulations, as well as in high-profile cases. The criteria for determining which cases are high profile are not specified.

Not all courts have, however, been updating their websites promptly. For instance, the most recent Case-Law Bulletin published by the Belgrade Higher Court on its website is the one containing its 2014 case-law.[127] Public access to the judgments of the Supreme Court of Cassation has been rendered difficult because it does not publish all its judgments on its website. The most recent Case-Law Bulletin published on the Constitutional Court website – in April 2019 – contains its 2017 decisions.[128] The Constitutional Court's Rules of Procedure[129] lay down that the Court shall ensure the public character of its work inter alia by publishing on its website the agenda of its sessions, public hearing schedules, constitutional law decisions and jurisprudence, and important information regarding the Court's work.[130] However, the last time the Court announced a public hearing on its website was back in 2016.[131]

124 Article 57, Court Rules of Procedure.

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

126 Article 58, Court Rules of Procedure.

127 Available in Serbian at: https://www.bg.vi.sud.rs/tekst/251/bilten-sudske-prakse-viseg-suda-u-beogradu.php.

128 Available in Serbian at: http://www.ustavni.sud.rs/Storage/Global/Documents/Sudska_Praksa/%D0%91%D0%B8%D0%BB%D1%82%D0%B5%D0%BD_2017.pdf.

129 Available at: http://www.ustavni.sud.rs/page/view/en-GB/238–101921/rules-of-procedure.

130 Article 29, Constitutional Court Rules of Procedure.

131 Available in Serbian at: http://www.ustavni.sud.rs/page/view/sr-Latn-CS/88–102256/javna-rasprava-u-predmetu-iuz-1682014.

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.

3.3.1. Legal Aid Act

Serbia at long last adopted its Legal Aid Act[132] in early November 2018. This law aims to comprehensively regulate the legal aid system, which had been governed only by individual provisions in several laws. The Legal Aid Act entered into force on 1 October 2019.

The Act defines three categories of individuals entitled to legal aid. The first category comprises those receiving welfare or child benefits. The second category comprises individuals whose income is so low that they would qualify for welfare or child benefits if they were to engage and pay a lawyer. The third category of beneficiaries is not determined on the basis of their financial standing – they are entitled to exercise the right to legal aid as members of "vulnerable groups". The Act recognises 13 vulnerable groups, including children, persons with disabilities, human trafficking victims, asylum seekers, refugees, et al.

Legal aid applicants need to contact local self-government officers accredited by the Ministry of Justice and trained in enforcing the Legal Aid Act. The legal aid approval procedure is extremely complex, especially in the light of its purpose. Local government staff have the discretion the discretion to rule on the applications, and, consequently, reject many of them.

Upon ascertaining that the applicants qualify for legal aid, the officers refer them either to the local self-government units or a lawyer, depending on the circumstances of the case. The assignment of legal aid providers is governed by a by-law;[133] its provisions on the order and expediency of referring the beneficiaries to specific legal aid providers are vague and susceptible to various interpretations. Furthermore, the Legal Aid Act contains a provision allowing legal aid providers to decide whether or not to take the cases referred to them, but not providing the same entitlement to the beneficiaries; moreover, the beneficiaries are even denied the right to appeal rulings granting them legal aid, e.g. the choice of the provider.[134]

The procedure in which legal aid applications are reviewed is not only highly discretionary but extremely centralised as well: the Ministry of Justice both appoints and dismisses the officers ruling on them and reviews appeals of their decisions.[135]

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

133 Rulebook on Referral of Applicants to Legal Aid Service Providers, *Sl. glasnik RS*, 65/19.

134 Article 33, Legal Aid Act.

135 Articles 29,30 and 34, Legal Aid Act.

On 18 September 2019, the Ministry of Justice invited natural and legal persons to register in the Register of Legal Aid Providers.[136] 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. 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. All legal aid service providers account for their work to the Ministry of Justice, while lawyers account for their work to Bar Associations. Legal aid extended by local self-governments is funded from their local budgets, while legal aid extended by lawyers is funded at the rates set in the Fee Schedule adopted by the Serbian Government; associations raise the funds for legal aid through donations and projects.

It remains unclear why individuals and organisations not intending to seek compensation from the state for extending legal aid have to register in the Register of Legal Aid Providers and why they are prohibited from extending legal aid without registration on pain of a fine. The law thus essentially introduces a general ban on the extension of any form of legal aid by lawyers not included in the list of legal aid providers.

On 20 September 2019, the Ministry of Justice adopted a number of rulebooks required by the Legal Aid Act The Rulebook on Training in the Implementation of the Legal Aid Act[137] sets out that the two-day training will comprise theoretical and practical training and that the Rulebook will enter into force on 1 October 2019. Interestingly, the Justice Minister and her Assistant said (on 2 October and 28 September respectively) that over 300 lawyers working in local self-governments had already been trained in applying the Legal Aid Act, i.e. before the Rulebook entered into force and before the training requirements were prescibed.[138]

The 2019 Budget Act[139] did not set aside any funds for the implementation of the Legal Aid Act, wherefore its actual enforcement in the last quarter of 2019 was impossible. In mid-October 2019, the Serbian Government enacted a Decree on the Legal Aid Fee Schedule,[140] which envisages much lower fees than the lawyers had expected.[141]

136 Available in Serbian at: https://www.mpravde.gov.rs/vest/26213/poziv-za-upis-u-registar-pruzalaca-besplatne-pravne-pomoci-i-besplatne-pravne-podrske.php.

137 Available in Serbian at: https://www.mpravde.gov.rs/files/Pravilnik%20o%20obuci.pdf.

138 More in the *Politika* and *Večernje novosti* articles, 28. September. Available in Serbian at: http://www.politika.rs/sr/clanak/439003/Pocela-primena-zakona-o-besplatnoj-pravnoj-pomoci, 2 October, and http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:821194-Besplatna-pravna-pomoc-od-utorka-dostupna-gradjanima.

139 *Sl. glasnik RS*, 95/18 and 72/19.

140 *Sl. glasnik RS,* 74/19, available in Serbian at: http://demo.paragraf.rs/WebParagrafDemo/?did=514812.

141 See the *RTV* report of 21 October, available in Serbian at: http://www.rtv.rs/sr_lat/drustvo/advokati-kompletno-besplatno-brane-za-najvise-130.000-dinara_1059059.html.

3.4. Case-Law Harmonisation

The working text of the Judicial Development Strategy for the 2019–2024 period[142] sets out that accessibility of case-law, which is a prerequisite for case law predictability and uniform application of law, has only been partially achieved.

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 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.[143] A database facilitating the courts' insight in decisions delivered by other courts[144] and their perusal of the available and user-friendly website with European Court of Human Rights case-law would contribute to case-law harmonisation.

In January 2018, the Presidents of the four Serbian Appellate Courts signed an Agreement on Joint Appellate Court Sessions in the 2018–2020 period,[145] with a view to identifying the causes of divergent case-law and proposing a plan of activities to harmonise it. Under the Agreement, the Appellate Courts will hold joint sessions of all their departments every quarter and meetings with the representatives of the Higher and Basic Courts in their jurisdictions twice a year. The session conclusions will be forwarded to the Supreme Court of Cassation and the ones it endorses will be published on the Appellate Courts' websites. No such conclusions were posted on the Belgrade Appellate Court's website in 2019.

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[146] ascribed the failure to implement the activities to

142 Available at: https://www.mpravde.gov.rs.

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

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

145 Available in Serbian at: https://www.vk.sud.rs.

146 The 4/2016 Report on the Implementation of the Chapter 23 Action Plan, available at: https://www.mpravde.gov.rs..

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 2019 as well.

In its latest Opinion No. 921/2018 on the Draft Amendments to the Constitutional Provisions on the Judiciary of 25 June 2018,[147] 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 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.[148] The Draft Constitutional Amendments and the 2013–2018 National Judicial Reform Strategy[149] 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.

This provision was changed in the latest version of the Draft Constitutional Amendments of October 2018, and paragraph 1 of Amendment VI now reads that judges shall rule "taking into account case law". Although the provision alleviates the prior formulations, it defines case law as a formal source of law. Howow this norm, if adopted, will be implemented, remains unclear.

The state appears to have heeded the Venice Commission's comments and abandoned the idea of establishing a separate body that would be charged with harmonising case-law. The authors of the working draft of the 2019–2024 Judicial Development Strategy specify that implementation of plans for harmonising case-law needs to continue, that the case-law database needs to be updated continuously, and that thought should be given to expanding the Supreme Court of Cassation's powers to enable the filing of ordinary legal remedies in cases regarding the gravest cases.

As the parliament still has not begun discussing the draft constitutional amendments[150] submitted for adoption by the Government on 30 November 2018,

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

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

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

150 Available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/akta_procedura/2018/010–3691_18_Predlog.pdf.

it remains unclear how the Constitution will regulate the citizens' right to uniform case-law.

3.5. *Judicial Efficiency and 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.[151]

Serbian courts are still staggering under huge backlogs although the adjudication of such cases and trials within a reasonable time have been among the top priorities of the Serbian judiciary for years. The Supreme Court of Cassation (SCC) to adopt the Amended Backlog Reduction Programme for the 2016–2020 period[152] in August 2016.[153]

Supreme Court of Cassation data[154] indicate that the surge of new cases as of 2015 continued in the first half of 2019, especially in the Belgrade Basic and Higher Courts and that the number of judges and judicial assistants in the Belgrade Higher Court needs to be increased, because those ruling on appeals in civil proceedings have the greatest caseloads and delegation of cases to other Higher Courts is not a durable solution. The number of cases filed with the Supreme Court of Cassation has increased by 6,200.[155]

Cases alleging violations of the right to a trial within a reasonable time accounted for most of the new cases: their number increased by 16,093 in the first half of 2019, compared with the same period in 2018.[156] The number of civil suits for compensation of non-pecuniary damages for violations of the right to a trial within a reasonable time increased from 5,819 to 10,561 and the number of civil suits for compensation of pecuniary damages for such violations increased by 3,649. A total of 20,868 cases regarding protection of the right to a fair trial were still pending on 30 June 2019.

These data indicate that the measures undertaken to improve the right to a trial within a reasonable time are neither adequate nor sufficient. The working draft

151 Article 32(1).

152 Available at: http://www.vk.sud.rs.

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

154 Supreme Court of Cassation Report, available in Serbian at: https://www.vk.sud.rs/sites/default/files/attachments/Knjiga%2006%20-%202019%20KONACNA%20SRP_0.pdf.

155 Report on the Work of Courts in the Republic of Serbia in the January-June 2019 Period, available in Serbian at: https://www.vk.sud.rs/sites/default/files/attachments/Knjiga%2006%20-%202019%20KONACNA%20SRP_0.pdf.

156 *Ibid.*

of the 2019–2024 Judicial Development Strategy states that further steps need to be taken to reduce the number of pending cases, especially the backlog, improve the court network and address disparities in judicial caseloads.[157]

According to the Report on the Work of the Courts in the first six months of the year, a total of 732,991 cases initiated two or more years earlier were still pending in courts across Serbia. The number of such cases excluding enforcement cases stood at 144,878. In the first half of 2019, the courts cleared with 148,271 backlog cases (93,537 excluding enforcement cases). There were still 1,377 cases in Higher Courts and 254,564 cases in Basic Courts in Serbia that have been pending for over 10 years now. On average, each Higher Court civil judge had 239.64 "old" civil cases in his docket on 30 June 2019.

All these data indicate that the courts have been understaffed all this time, which has significantly impinged on the resolution of the problems of violations of the right to a trial within a reasonable time and backlog reduction. In the first half of the year, Serbia's courts were to have been staffed by 3,109 judges under a High Judicial Council decision, but only 2,735 judgeships were filled; 2,538 judges effectively ruled in all courts across Serbia. Although the number of active judges was higher than in 2018, 284 judicial vacancies still had not been filled, undermining the efficiency of the entire court system. Another problem is the average age of the judges (which has risen to 54); most judges – 1,192 of them – are between 50 and 60 years old. The problems are sure to deteriorate if a systemic solution is not found to ensure professional and experiential continuity and if the vacancies are not promptly filled.

Another problem impinging on the efficiency of the courts is the drop in the number of judicial assistants over 2018 and the ongoing ban on employment. Courts have been engaging recent law graduates as volunteers but, lacking prospect of the courts' hiring them, they leave as soon as they find other jobs.

Mediation is one of the measures that can help relieve the judiciary of its backlog. 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.

In June 2017, the SCC President and Justice Minister enacted the Guidelines for Enhancing the Use of Mediation in the Republic of Serbia.[158] The Guidelines qualified as unsatisfactory the results of the enforcement of the Act on Mediation in Dispute Resolution,[159] which came into effect on 1 January 2015, and said that

157 Judicial Development Strategy for the 2019–2024 period, p. 25. Available at: https://www.mpravde.gov.rs/files/New%20Working%20Text%20of%20the%20JDS%20_ENG_%20public%20discussion%20comments%20incorporated.pdf.

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

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

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.

This form of alternative dispute resolution has not yet genuinely been embraced, despite attempts to popularise it. 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 processs.

In December 2018, the Ministry of Justice formed a working group to draft amendments to the Act on Mediation in Dispute Resolution.[160] The results of its work were not made public by the end of 2019. Trainings of mediators continued but mediation was still rarely resorted to in the reporting period.

On the occasion of European Day of Justice, which is marked on 25 October every year, the Ministry of Justice invited the courts to organise a week of settlements and mediation to promote alternative dispute resolution.[161] The Niš Basic and Higher Courts and Bar Association signed a protocol on cooperation in mediation. The president of the Niš Higher Court said that 288 cases had been through mediation since it was introduced 18 months earlier.[162]

The Act on the Protection of the Right to a Trial within a Reasonable Time came into force on 1 January 2016.[163] 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.

As noted above, cases regarding the protection of the right to a trial within a reasonable time accounted for most of the new cases. However, although damages are paid pursuant to court decisions rendered in accordance with this Act and the decisions of the Constitutional Court, these damages are frequently so low that the ECtHR has found that the persons granted such low sums still have the status of victim because of a violation of their right to a trial within a reasonable time. Name-

160 Available in Serbian at: https://jugpress.com/interesovanje-gradjana-za-medijaciju-kao-nacina-resavanja-sporova-pred-sudovima-u-porastu/.

161 See more in Serbian at: https://mpravde.gov.rs/vest/25983/evropski-dan-pravde.php.

162 See: https://niskevesti.rs/u-niskim-sudovima-medijacijom-reseno-skoro-300-predmeta/.

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

ly, dissatisfied applicants have been complaining to the ECtHR, which has found that the "applicants' victim status [...] depends on whether the redress afforded was adequate and sufficient, having regard to just satisfaction as provided for under Article 41 of the Convention."[164] Recent ECtHR judgments indicate that the problem has not been addressed yet.[165] The ECtHR delivered 30 judgments against Serbia regarding violations of the right to a fair trial, some of them because the applicants have not lost the status of victim although they have been awarded redress.[166]

It is also worth noting that the Act on the Protection of the Right to a Fair Trial was adopted to relieve the Constitutional Court of the large number of constitutional appeals claiming violations of the right to a fair trial, but that the Constitutional Court's annual performance data do not indicate that it has fulfilled this purpose. On the contrary, the number of constitutional appeals alleging breach of this right has grown. This can probably be ascribed to the applicants' general dissatisfaction with the decisions of courts vested with the jurisdiction to rule on violations of the right to a fair trial under this Act, as well as to the fact that they cannot complain to the ECtHR unless they exhausted this legal remedy.

3.6. Enforcement and Security of Claims

On 26 July 2019, the National Assembly adopted amendments to the Act on the Enforcement and Security of Claims.[167] These amendments are expected to address the problems of destitute debtors, given that they prohibit the sale of the homes of debtors owing less than €5,000[168] and improve the efficiency and effectiveness of enforcement of court judgments. The amendments will enter into effect on 1 January 2020. Doubts have been voiced whether enough time has been set aside for familiarisation with their all the changes. For instance, the amendments envisage the introduction of e-auctions as of 1 March 2020 and exclusive sale of real estate at e-auctions as of 1 September 2020. Considering the generally low degree of computer literacy and access to IT in Serbia, the question arises whether everyone will have equal access to e-auctions, whether problems in e-auctions will result in their annulment and new e-auctions and, consequently, protracted enforcement.

Furthermore, the Act now lays down fines for obstruction of enforcement. The provision can easily be enforced to counter actions like the ones organised by the association of the citizens "Roof over Our Heads",[169] which has organised

164 *Hrustić and Others v. Serbia*, ECtHR, App. no. 8647/16, 9 January 2018, para. 23.

165 *Knežević and Others v. Serbia*, ECtHR, App. no. 54787/16, 9 January 2018.

166 See more at: https://hudoc.echr.coe.int.

167 *Sl. glasnik RS,* 54/19.

168 Apart from criticising the lack of a public debate on the draft amendments, the organisation "Roof over Our Heads" has also opined that the debtors' real estate constituting their homes should not be subject to enforcement. More is available in Serbian at: http://zakrovnadglavom.org/2019/07/29/izmene-zio-neprihvatljive/.

169 More about activities of this organization see on: http://zakrovnadglavom.org/.

protests and prevented 150 evictions to date. The provision prohibiting debtors from disposing of their property from the moment the rulings ordering enforcement are issued may also led to abuse; so can the provision placing debtors at a disadvantage because it prohibits them from seeking expert appraisals of their real estate and providing for such appraisals only by assessors on the request of the enforcement agents.

Problems in the implementation and various interpretations of the new provisions are to be expected given the large number of amendments.[170] The National Assembly has for years now been defaulting on its obligation to publish consolidated texts of laws. The year ahead will show whether the goal of the amendments will have been achieved or whether the legislator should have opted for writing a brand new law.

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, 26,675 cases in all courts (72 in all regular courts and 26,597 in all Misdemeanour Courts) became time barred in the first half of 2019. The data indicate a significant drop in the number of time-barred cases, especially in misdemeanour proceedings.

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. On a positive note, statistical data indicate that this negative phenomenon is on a downward trend.

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.

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

170 One hundred seventy amendments were made altogether.

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,[171] 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.[172] 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.[173]

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.[174] The Code of Conduct of the People's Deputies was adopted in July 2017.[175] However, although such behaviour is prohibited by the parliamentary and government

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

172 Article 140 Public Information and Media Act.

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

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

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

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.

Senior state officials have been violating the presumption of innocence almost on a daily basis. They have been accusing opposition leaders of various crimes and publicly voicing uncorroborated allegations against them although neither investigations nor criminal proceedings have been initiated against the targets of their attacks.[176]

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[177] 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.

The Ministry of Justice undertook steps in 2019 to improve e-justice. A Protocol and Agreement on Electronic Data Exchange was signed with the National Bank of Serbia (NBS), under which, as of 13 May 2019, the judiciary can directly access the NBS Register of Personal Accounts via the Judicial Information System (JIS), rather than having to send written requests to the NBS.[178] The judiciary now also has access to the new database of deferred prosecution agreements[179] and to data on the citizens' temporary and permanent places of residence and residence histories.[180] These improvements should result in speedier court proceedings.

Notwithstanding the headway in digitising the judiciary, simple statistical and analytical monitoring of the courts' performance is not possible yet, because the courts still lack standardised and compatible automatic case management systems.

176 See, e.g. the *Večernje novosti* report of accusations voiced by senior SNS official Vesić against opposition leader Đilas, available in Serbian at: http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:806047-Vesic-Podsecamo-Djilas-je-novac-otimao-u-dzakovima.

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

178 See more in Serbian at: https://www.mpravde.gov.rs/tekst/24654/registar-racuna-fizickih-lica-.php.

179 See more in Serbian at: https://www.mpravde.gov.rs/tekst/24652/baza-primenjenih-oportuniteta.php.

180 See more in Serbian at: https://www.mpravde.gov.rs/tekst/17837/znacajno-ubrzana-razmena-podataka-sa-mup-om.php.

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.

The Strategy on the Development of Information Society in the Republic of Serbia until 2020[181] defines the use of ICT in the judiciary as one of the priorities and states that, by 2020, members of the public will be able to communicate with the courts electronically on all matters, except those requiring their physical presence.

The working text of the 2019–2024 Judicial Development Strategy also includes a chapter on e-justice. It defines the following goals: improvement of e-services within the judiciary to ensure better access to justice, performance, efficient case management, statistical monitoring and performance reporting. This calls for major infrastructural and software investments and HR capacity building. Furthermore, the entire judiciary needs to apply a uniform electronic data entry and exchange system, which also entails the training of all ICT users.[182]

4. Right to Privacy and Confidentiality of Correspondence

4.1. Right to Privacy – 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 listed in the ECHR, the European Court of Human Rights (ECtHR) acknowledged a similar interpretation of the concept of privacy in its judgments.[183] According to ECtHR case-law, privacy encompasses, inter alia, the physical and the moral integrity of a person, sexual orientation,[184] relationships with other people, including both business and professional relationships.[185] The ECtHR accepts a wider interpretation of the concept of privacy and considers that the content of this right cannot be predetermined in an exhaustive manner.[186]

Serbia is also a signatory of the CoE Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data,[187] The States Parties to

181 *Sl. glasnik RS,* 51/10.

182 More in the 2019–2024 Judicial Development Strategy, available at: https://www.mpravde.gov.rs.

183 See *Pfeifer v. Austria*, ECtHR, App. no. 10802/84, 25 February 2007 and *Lindon and Others v. France*, ECtHR, App. nos. 21279/02 and 36448/02 (2007).

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

185 See *Niemitz v. Germany*, ECtHR, App. no. 13710/88 (1992).

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

187 *Sl. list SRJ (Međunarodni ugovori)*, 1/92 and *Sl. list SCG*, 11/05.

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,[188] 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,[189] 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 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 crim-

188 *Sl. glasnik RS (Međunarodni ugovori)*, 98/08.

189 CC Decision No. Už–3238/2011, p. 9.

inal 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.[190]

Provisions of laws[191] 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.[192] 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,[193] which, *inter alia*, 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.[194]

Neither of the two cases regarding violations of the confidentiality of correspondence and other means of communication that caused quite a public stir in 2019 were resolved by the end of the year.

At a press conference on 17 June 2019, Belgrade Deputy Mayor Goran Vesić accused the TV station *N1* of unprofessionalism and said he had seen the e-mails an editor had sent the journalists and that he would publish them. Later that day, he posted on his Facebook profile part of an e-mail sent to staff by *N1* Executive

190 CC Decision IUz 1245/10.

191 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).

192 See the *2014 Report*, II.6.4.

193 Available at: https://goo.gl/bTtRHc.

194 See: *2017 Report,* II.5.2.

Producer Jugoslav Ćosić.[195] *N1* filed a criminal report against Vesić, accusing him of committing a crime under Article 142 of the Criminal Code (Violation of Confidentiality of Correspondence) and persons unknown accusing them of committing a crime under Article 302 of the CC (Unauthorised Access to Protected Computers, Computer Networks and Electronic Data Processing).[196] It remained unknown how Vesić had gotten hold of in-house correspondence between *N1* staff and which, if any, actions on the criminal report were taken by the Cyber Crime Department of the Belgrade Higher Public Prosecution Service.

The latter half of July was marked by recriminations between the former and present senior government officials about wiretapping their political opponents. Minister of Internal Affairs Nebojša Stefanović said that President Aleksandar Vučić had been bugged since 1995, and then again in the 2000–2003 period, and that Goran Vesić and Vladimir Đukanović had been put under secret surveillance in the 2007–2012 period to monitor their communication with Vučić.[197] Foreign Minister Ivica Dačić confirmed that Aleksandar Vučić and Tomislav Nikolić were bugged at the time he was Minister of Internal Affairs, that he was against it, and that he ordered an investigation and the dismissal of the responsible police staff.[198] Boris Tadić, who was the Serbian President in the 2004–2012 period, said that no-one had been bugged for political reasons while he was in office and that he would sue Vučić because Vojislav Šešelj had said that Vučić had bugged him and then brought the transcripts of the conversations to Šešelj in The Hague, during his trial before the International Criminal Tribunal for the Former Yugoslavia.[199]

Although accusations of bugging are mostly voiced to score political points and discredit political opponents, this issue has to be reviewed beyond daily politicking and in the light of potential breaches of constitutionally guaranteed rights, and the lack of accountability and impunity for violations of the right to privacy. Minister Dačić's statement – that political opponents had been bugged at the time he was Minister of Internal Affairs and that he had ordered dismissals in the police because of it – indicates that one or more police officers illegally intercepted communications of Serbia's citizens. The first question that arises is whose dismissal the Minister had sought, whether those individuals were held accountable for violating the Constitution and the law and why the public never heard anything about it.

195 "Vesić said he had insight in N1's internal e-mails", *N1*, 17 June. Available in Serbian at: http://rs.n1info.com/Vesti/a492661/Vesic-rekao-da-ima-uvid-u-interne-mejlove-N1.html.

196 "N1 lawyers file criminal report against Goran Vesić", *Danas*, 27 June. Available in Serbian at: https://www.danas.rs/politika/advokati-n1-podneli-krivicnu-prijavu-protiv-gorana-vesica/.

197 "Stefanović: Vučić bugged for 15 years", *RTS*, 30 July. Available in Serbian at: http://www.rts.rs/page/stories/ci/story/1/politika/3606974/stefanovic-vucic-prisluskivan-15-godina.html.

198 "Dačić on bugging Vučić: I was vehemently against it," *Blic*, 31 July. Available in Serbian at: https://www.blic.rs/vesti/politika/dacic-o-prisluskivanju-vucica-zestoko-sam-bio-protiv-toga/9j37w9j.

199 "Tadić: I can't wait to be charged with bugging," *N1,* 30 July. Available in Serbian at: http://rs.n1info.com/Vesti/a503842/Tadic-Jedva-cekam-da-me-neko-tuzi-zbog-politickog-prisluskivanja.html.

The second question that arises is who controls the services allowed to interfere in someone's right to confidentiality of correspondence under the Constitution and the law, but only with the court's approval and if national security is jeopardised or to conduct criminal proceedings.

For years now, the work of the parliamentary Security Service Oversight Committee has demonstrated that it is an ineffective, protocolary body, which is not fulfilling its duties properly. The Committee held six sessions in 2019; it twice held two sessions on the same day. At these sessions, the Committee reviewed the reports of the Security Information Agency, the Military Security Agency, the Military Intelligence Agency and the Defence Ministry Inspectorate General. It adopted all of them without voicing any criticisms of these agencies' work. In its report on its oversight of security services in 2018, the Committee said that all of them had acted in accordance with the law and within their purviews and that they promptly forwarded all information, assessments and analyses of security risks and threats. The Committee also noted that it had not identified any shortcomings in their enforcement of special measures and procedures for secret data collection during its oversight visits and checks.

The Committee session reports show that it often discussed issues not falling within its remit or under oversight of security services. For instance, the Committee said in one report that it had "(...) dismissed the resolution on war crimes allegedly committed by Serbia in Kosovo and Metohija, which was adopted by Priština institutions, (...) and holds that it is high time to react to Priština's provocations (...)."[200] In its reports, the Committee has also emphasised its unreserved support to President Vučić and criticised the authorities in Priština. The style in which these reports are written does not befit a parliamentary committee tasked with a specific and delicate mandate – civilian oversight of security services.[201] In 2019, the Committee awarded plaques for exceptional contribution to and strengthening of the security sector and civilian oversight of the security services to Prime Minister Ana Brnabić,[202] Minister of Internal Affairs Nebojša Stefanović, MIA State Secretary Dijana Hrkalović and Police Director Vladimir Rebić.[203]

The Committee, however, failed to note the problems regarding the accuracy of the data on the work of security services. A survey conducted by the Institute for European Affairs showed major discrepancies between the data submitted by

200 Report on the 28th session of the Security Services Oversight Committee, available in Serbian at: http://www.parlament.gov.rs/28.

201 More in the Security Services Oversight Committee reports on its 30th and 31st sessions, available in Serbian at: http://www.parlament.gov.rs/30.

202 "Ana Brnabić awarded plaque by Security Service Oversight Committee," *Danas*, 14 April. Available in Serbian at: https://www.danas.rs/politika/ani-brnabic-plaketa-odbora-za-kontrolu-sluzbi-bezbednosti-narodne-skupstine/.

203 "Assembly Committee awards plaques to Stefanović, Hrkalović and Rebić," *N1*, 8 April. Available in Serbian at: http://rs.n1info.com/Vesti/a474581/Skupstinski-odbor-dodelio-nagrade-Stefanovicu-Hrkalovic-i-Rebicu.html.

the Belgrade Higher Court and the Security Information Agency in response to the question on the number of motions and orders for special measures derogating from the inviolability of correspondence and other means of communication in 2017 and 2018. In its response, which it submitted after the Commissioner for Access to Information and Persona Data Protection (Commissioner) issued a ruling ordering it to, the Security Information Agency said that it had filed with the Belgrade Higher Court motions for special measures against 323 natural persons and no legal persons in 2017 and motions for measures against 262 natural persons and one legal person in 2018. On the other hand the Belgrade Higher Court said that it had received 192 motions against natural and four motions against legal persons in 2017 and 166 motions against natural and no motions against legal persons in 2018.[204] The discrepancies in the data of the two institutions give rise to the following dilemma: whether they can be ascribed to the institutions' failure to update their records or whether they submitted inaccurate data. It is also worth noting that the Security Information Agency as a rule does not respond to requests for access to information of public importance until the applicants appeal its failure with the Commissioner and the latter issues a ruling ordering it disclose the information.

4.3. Data Retention and Access to Retained Data

The Draft Electronic Communications Act, endorsed by the Government back in October 2017, was not submitted to parliament for adoption by the end of 2019.

Assistant Minister of Trade, Tourism and Telecommunications Irina Reljin said in March 2019 that the Draft was withdrawn and would be amended and then sent to the relevant ministries and the Government.[205] State Secretary Tatjana Matić also said in August 2019 that the new Preliminary Draft of the Electronic Communications Act would soon be submitted to the Government for endorsement. The new preliminary draft was not publicly presented by end November 2019. The version posted on the Ministry website is the one that was withdrawn and which specifies that its authors took into account the suggestions made during the public debate held in late 2016.[206] 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 spec-

204 Institute for European Affairs survey. Available in Serbian at: http://iea.rs/blog/2019/07/10/bia-i-visi-sud-u-beogradu-najpre-odbijaju-a-zatim-daju-kontradiktorne-podatke-o-prisluskivanju-gradjana-srbije/.

205 "New version of electronic communications law soon", *Večernje novosti*, 11 March. Available in Serbian at: http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:782195-Uskoro-nova-verzija-zakona-o-elektronskim-komunikacijama.

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

trum 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 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.[207] 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 2019, the National Assembly adopted the Act Amending the Electronic Commerce Act.[208] This law governs electronic commerce, provision of services, commercial messages, the conclusion of contracts in electronic form, responsibilities of service providers, oversight and penalties for non-compliance. Article 16 of the Act is interesting in terms of privacy, as it enumerates the situations in which service providers transmitting electronic messages by service users are not held accountable for the content of these messages and their sending. Under paragraph 3 of that Article, service providers must retain the data on the service users, especially their IP

207 See more in the *2017 Report*, II.5.3.

208 *Sl. glasnik RS,* 41/09, 95/13 and 52/19.

addresses, during the provision of such services and at least 30 days thereafter. The law thus effectively lays down the data retention obligation but it fails to specify who may access such databases and how. Given the experiences with access to the databases of mobile operators, this provision provides room for abuse of the data of the service users and violation of the rights of the citizens.

The BCHR alerted to problems regarding the interception of electronic communication and access to retained data on communication in its prior reports. The situation, however, deteriorated in 2018, because the public has been deprived of information on direct access by the police and security services to retained data on the communications of Serbia's citizens. As the SHARE Foundation said in its analysis, telephone and internet operators have been reporting to the Commissioner fewer and fewer mandatory data in their records of access to the retained data.[209]

Under Article 41 of the Constitution, derogations from the right to confidentiality of letters and other means of communication are allowed only on the order of the court and if such derogations are necessary to conduct criminal proceedings or protect national security. The police, security services and prosecutors may access retained data in the bases of mobile and internet operators directly, through the monitoring centre, or indirectly, by sending their written requests to the operators. They need court orders in both cases. The operators and the state authorities are under the obligation to keep records of access to the retained data and forward them to the Commissioner. Although the operators, particularly Telekom Serbia, had been submitting incomplete records before 2018, the SHARE Foundation found a decrease in transparency in the service providers' reports in the past two years. In their reports to the Commissioner, none of the providers included records of direct access to the bases of retained data. Telenor was the only operator that registered direct access until 2018, but it only mentioned the number of written requests in its 2018 report. All the operators said in their reports that they only met the requests for access to data not older than 12 months, but these claims can no longer be verified – the operators used to register the data retention periods and the time the authorities sought access to them.

Telenor said that it had received 390 requests for access to retained data in 2018 and that it granted 330 of them, i.e. that 9,345 base station and 181 IP address searches were conducted. Telenor, however, stopped forwarding to the Commissioner data on the state authorities' direct access to the retained data (they accessed retained data directly 381,758 times in 2017). As opposed to VIP and Telecom, Telenor continued registering the legal grounds of the requests it received; its records show that 242 requests were submitted under Article 286 of the Criminal Procedure Code, which governs the powers of the police.

209 SHARE Foundation survey. Available in Serbian at: https://www.sharefoundation.info/sr/pristup-bez-transparentnosti-praksa-zadrzavanja-podataka-u-2018/.

In 2018, VIP received and upheld 222 requests for access. VIP does not register the legal grounds for accessing the data, but it does register who submitted the requests. Nearly 85% of the 222 requests were submitted by the MIA Crime Police Department, while the rest were submitted by various Basic and Higher Courts and Basic Public Prosecution Services.

Telecom Serbia, the leading cell phone operator in Serbia, said it had received 615 requests and granted access to 501 applicants. It did not disclose any other details about the requests.

The total number of requests forwarded to Internet service providers increased by around 20%: they received a total of 204 requests for access to retained data in 2018 and granted 149 of them.

The Ministry of Internal Affairs said it had sent a total of 115,713 requests in 2018 and that 115,698 of its requests were granted. The major discrepancy between the number of requests reported by the MIA and the numbers reported by the operators cast doubt about the accuracy of the operators' records and lawfulness of the manner in which the MIA accesses the retained data.

The Military Security Agency submitted 30% more requests in 2018 than in 2017, specifically 4,654 of them. All of them were granted. The Agency applied for access to VIP, Telenor and Telecom via the operators' access applications, which confirms that these mobile operators have applications for the submission of requests but that they do not keep or submit records of them. Furthermore, the operators said in their reports that they had received a total of 1,227 requests from the Military Security Agency, which, as mentioned above, said in its report that it had 4,654 requests. The legal grounds for accessing the retained data also remained unknown.

According to the report of the Security Information Agency, which keeps records of requests sent to courts and higher public prosecution services, in 2018, 26 of the 29 requests submitted to the Belgrade Higher Court and 1,071 of the 1,086 requests submitted to the Higher Public Prosecution Services in 2018 were upheld.

4.4. Families and Family Life

According to the ECtHR, family life is interpreted in terms of the actual existence of close personal ties.[210] It comprises a series of relationships, such as marriage, children, parent-child relationships,[211] and unmarried couples living with their children.[212] Even the possibility of establishing a family life may be sufficient to invoke protection under Article 8.[213] Other relationships that have been found to be protected by Article 8 include relationships between siblings, uncles/aunts and nieces/

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

211 See *Marckx v. Belgium*, ECmHR, App. no. 6833/74 (1979).

212 See *Johnston v. Ireland*, ECmHR, App. no. 9697/82 (1986).

213 See *Keegan v. Ireland,* ECmHR, App. no. 16969/90 (1994).

nephews,[214] adoptive parents and adopted children, and grandparents and grandchildren.[215] Moreover, a family relationship may also exist in situations where there is no blood kinship, in which cases other criteria are to be taken into account, such as the existence of a genuine family life, strong personal relations and the duration of the relationship.[216]

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.[217] 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[218] 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

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

215 See *Bronda v. Italy,* ECtHR, App. no. 22430/93 (1998).

216 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.

217 CC Decision Už–3238/2011.

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

personal relationships with other relatives they are particularly close to (Art. 61 (5)). The Family Act is also the first law in Serbia 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).

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.[219]

The law on ascertaining of facts about the babies who have gone missing from Serbia's maternity wards was not adopted by the end of the reporting period despite steps made in that direction. In July 2019, the Ministry of Justice notified the CoE Committee of Ministers that two amendments to the Draft Act have been prepared. They allow the courts to order DNA tests and lay down that final judgments delivered in proceedings under this law and establishing facts regarding the children's death shall be binding on authorities conducting criminal and other proceedings.[220] The parliamentary Committee on the Judiciary, State Administration and Local Self-Governments endorsed the Draft Act and forwarded it to the National Assembly for consideration in October.[221] The Draft Act was criticised by the representatives of the associations of the parents of the missing babies and opposition MPs at the public hearing organised in the Assembly in late November.[222] Their main objections concerned the law's focus on compensation of parents, rather than on ascertaining the facts in each individual case, the fact that it does not provide for special investigations or the establishment of an independent body that will monitor the implementation of this law.

At its 1362nd meeting on 5 December 2019, the CoE Council of Ministers said that recent developments at the domestic level, notably approval of the draft law by the parliamentary committee, marked an important step forward in the legislative process aimed at finding a global solution to the problem raised by the missing babies case.[223] It went on to say that additional practical measures necessary for the efficient functioning of the new mechanism were already at an advanced stage of planning so that the new mechanism could rapidly become operational. However, the Committee of Ministers noted that the law had not been adopted yet and said that, if it was not adopted by the end of the year, there was a substantial risk of a further substantial delay in the legislative process in view of the forthcoming elections in the spring of 2020.

219 More on the measures undertaken until 2019 in the *2018 Report*, II.4.4.

220 "Ministry of Justice amends draft law on missing babies: DNA tests and binding judgments," *Insajder*, 26 July. Available in Serbian at: https://bit.ly/2ELfRxi.

221 The report on the Committee's 68th session is available at: https://bit.ly/2MkjvlX.

222 "All associations dissatisfied bill: We want to know what happened to our children!" *Espreso*, 2 December. Available in Serbian at: https://bit.ly/2ELIUko.

223 See more at: https://bit.ly/2rnvjww.

The Committee of Ministers highlighted the obligation of the Serbian authorities to ensure the adoption of the law as a matter of priority with all amendments that could still be included during the present parliamentary session and firmly urged the Serbian authorities to ensure the adoption of the law by the end of February 2020 at the latest.

5. Personal Data Protection

5.1. Legal 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 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.

The Personal Data Protection Act,[224] which the National Assembly adopted in November 2018, entered into force on 21 August 2019. This law replaced the prior Personal Data Protection Act and the legislator specified the following two key reasons 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*. Therefore, the purpose of the law is to regulate the general regime of personal data processing in line with EU law. Experts supported the intention to regulate personal data protection in accordance with European standards but at the same time alerted that the legislator needed to take into account the specificities of the Serbian legal system and the context in which it is to be enforced.

However, this requirement remained unfulfilled, mostly because the Act, for the most part, copy-pastes the provisions of the General Data Protection Regulation (GDPR),[225] 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

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

225 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.

prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, (EU Directive).[226]

The new PDPA suffers from a number of nomotechnical flaws, wherefore 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 that 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.

In principle, the new legal framework established by the new PDPA reflects the highest standards in the field of personal data protection. 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.

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.

Furthermore, the Act does not specify which individual authorities these provisions apply to, which, coupled with the incomprehensibleness 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.[227]

Under Article 42 of the Constitution of Serbia "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." Article

226 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.

227 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.

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.[228]

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.[229]

In July 2019, the organisation Partners for Democratic Change filed an initiative with the Constitutional Court, asking it to review the constitutionality of Article 40 of the PDPA.[230] Back in 2012, when it was reviewing the constitutionality of specific provisions of the prior PDPA, the Constitutional Court noted that, under Article 42 of the Constitution, the collection, retention, processing and use of personal data may be governed only by law.[231] Given that Article 40 of the PDPA allows public authorities and private companies handling personal data to restrict the citizens' rights without explicit legal authority and at their own discretion, the Constitutional Court is expected to take the same view and declare this provision unconstitutional.

The PDPA provisions on the protection of rights guaranteed under this law also bring into question legal certainty and the *ne bis in idem* principle. Namely, 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.

228 Under Article 23 of the GDPR, restrictions of the right to personal data protection may be imposed only by legislative measures.

229 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/.

230 The organisation's press release is available in Serbian at: https://bit.ly/2r8whfQ.

231 Constitutional Court Decision IUz-41/2010.

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.[232]

5.2. Application of the PDPA and Open Issues

The nine-month period between the PDPA's adoption and entry into force was obviously insufficient for the relevant state authorities and economic entities to prepare for the fulfilment of all their obligations prescribed by this law. Experts had warned the legislator at the time the PDPA was adopted that the nine-month period and the 31 December 2020 deadline for bringing the provisions of other laws into conformity with the PDPA were unrealistic, especially since the prior PDPA was adopted in 2008 and many laws had not been aligned with it for a decade.

Their concerns were shared by the Commissioner, who sent a letter[233] to the National Assembly Speaker requesting that the enforcement of the PDPA be postponed and specifying that his Office also needed to build its human and professional capacities. The fact that only 200 of 15,000 or so public administration authorities had appointed their personal data protection officers in September 2019, a month after the law entered into effect, testifies to the validity of the concerns.[234] Even the Justice Ministry, which had drafted the PDPA, failed to appoint its personal data protection officer.

Under Article 3(4) of the PDPA, the provisions of this law shall apply also to personal data controllers and processors not headquartered or residing in Serbia that process the personal data of individuals habitually or temporarily residing in Serbia. In view of Article 44 of the PDPA, obligating processors not headquartered or residing in Serbia to appoint their representatives in Serbia to respond to any personal data processing queries, the SHARE Foundation sent a letter to the leading global IT companies calling on them to appoint their representatives by the deadline provided by law.[235] The SHARE Foundation filed misdemeanour reports against Google and Facebook with the Commissioner because they had failed to appoint

232 A more detailed analysis of the law is available in the *2018 Report* II.5.5.2.

233 The Commissioner's press release of 2 August 2019 is available in Serbian at: https://bit.ly/2S6d-DAj.

234 "Already problems in enforcing the new personal data protection law, institutions are lazy and slow," *Portal 021*, 25 September. Available in Serbian at: https://bit.ly/2Zf9gop.

235 "SHARE calls Facebook and Google to appoint their representatives in Serbia," press release, SHARE Foundation, 21 May. Available at: https://www.sharefoundation.info/en/share-calls-facebook-and-google-to-appoint-their-representatives-in-serbia/.

their representatives for personal data protection issues in Serbia. In its press release, the Foundation said that "[A]ppointing representatives of these companies is not a formality – it is essential to exercising the rights of Serbian citizens prescribed by Law. In the current circumstances, companies like Google and Facebook view Serbia, like many other developing countries, as a territory for unregulated exploitation of citizens' private data, even though Serbia harmonized its rules with the EU Single Digital Market by adopting the new Law on Personal Data Protection. Namely, these companies recognise Serbia as a relevant market, offer their services to citizens of the Republic of Serbia and monitor their activities. In the course of doing business, these companies process a large amount of data of Serbian citizens and make huge profits. On the other hand, the new law guarantees numerous rights to citizens in relation to such data processing, but at the moment it seems that exercising these rights would face many difficulties."[236]

A statement by the Minister of Internal Affairs on the introduction of smart video surveillance covering all public spaces in Belgrade elicited a lot of attention in 2019.[237] Contradictory statements by senior officials and the MIA's denial of access to information about the "Safe City" project simultaneously raised justified concerns about the threat to the right to privacy. The officials first said that 1,000 and then that 2,000 cameras would be installed.[238] Furthermore, the public was denied access to information about the deal the state has struck with Huawei on the purchase of the video equipment. In its reply to SHARE Foundation's request for information of public importance, the MIA said that all the documents regarding this public procurement were classified as "confidential".[239]

However, the state's inept approach to Data Protection Impact Assessment (DPIA) on the use of smart video surveillance has given rise to the greatest concerns. Under Article 54 of the PDPA, where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. Furthermore, under paragraph 7 of this Article, the assessment shall contain at least a comprehensive description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, and measures envisaged to address the risks, including safeguards, as well as technical, organisational and personnel measures to ensure the protection of personal data and to demonstrate

236 "Share files complaints against Facebook and Google," press release, SHARE Foundation, 5 December. Available at: https://www.sharefoundation.info/en/share-files-complaints-against-facebook-and-google/.

237 "Stefanović: 1000 cameras with face and licence plate recognition software," *N1*, 30 January. Available in Serbian at: https://bit.ly/2rWLam9.

238 "Around 2000 safety cameras in Belgrade by end 2020," *Politika*, 30 July. Available in Serbian at: https://bit.ly/2sPXTak.

239 The MIA's response is available in Serbian at: https://bit.ly/35NSXkU.

compliance with this Act taking into account the rights and legitimate interests of data subjects and other persons concerned. On 23 September 2019, the Ministry of Internal Affairs forwarded to the Commissioner the DPIA on the use of smart video surveillance.[240] After analysing the document, the Commissioner and civil society organisations concluded that the methodology and structure of the DPIA did not comply with the requirements of the PDPA because the DPIA did not include a comprehensive description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of the data subjects or a description of the measures to be taken to mitigate them.

In his opinion,[241] the Commissioner said that the DPIA failed to specify which concrete video surveillance system(s) it concerned, the legal grounds for and the purpose of the processing or the envisaged processing operations. The Commissioner also concluded that the DPIA did not clearly specify the risks to the rights and freedoms of the data subjects or indication of whether the controller adequately assessed the risks and envisaged measures for mitigating them.

The SHARE Foundation, Partners for Democratic Change and the Belgrade Centre for Security Policy jointly performed an Analysis of the DPIA of the MIA video surveillance system,[242] in which they concluded that the DPIA did not meet either the formal or material requirements set out in the PDPA and that the MIA should suspend the introduction of the smart video surveillance system for the time being. Apart from their conclusion that the DPIA did not fulfil the minimum legal requirements, especially the part on smart video surveillance, the organisations also highlighted that the legal grounds for using the system were disputable. They also qualified the positive effects on crime reduction as described in the DPIA as overestimated, due to the selective use of relevant research and comparative practices. The authors of the Analysis also emphasised that it has not been ascertained that the use of smart video surveillance was necessary for public safety or that the use of such an invasive technology was proportionate, considering the risks to the citizens' rights and freedoms.

On 22 November 2019, Serbia signed the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108) adopted by the Council of Europe on 18 May 2019.[243] Some of the innovations contained in the Protocol include stronger requirements regarding the proportionality and data minimisation principles, and lawfulness of the processing; extension of the types of sensitive data, which will now include genetic and biometric data, et al; the obligation to declare data breaches; greater transparency of data processing; and, new rights for the persons in an algorithmic decision making

240 The PDIA is available in Serbian at: https://bit.ly/35JthFP.

241 The Commissioner's opinion is available in Serbian at: https://bit.ly/2SiDAwV.

242 The analysis is available in Serbian at: https://bit.ly/34C22f2.

243 "Serbia 36th signatory of Convention 108+", CoE, 22 November, press release. Available at: https://bit.ly/38Y3AUc.

context, which are particularly relevant in connection with the development of artificial intelligence.[244]

6. Freedom of Thought, Conscience and Religion

6.1. Legal Framework

The right to freedom of thought, conscience and religion is enshrined in Article 9 of the ECHR, Article 18 of the ICCPR and Article 43 of the Constitution of Serbia. The freedom of thought, conscience and religion includes the freedom of choice of one' religion or belief, the freedom to maintain a belief and change it; the freedom not to declare one's religious and other beliefs;[245] the freedom to manifest one's religion in worship, teaching, practice and observance, either alone or in community with others, and the right to privately or publicly declare one's religious beliefs.[246] The freedom of religion also includes the right of parents and legal guardians to ensure their children religious and moral education in conformity with their own beliefs (Article 43, paragraphs 1, 2, 3 and 5 of the Constitution). The freedom to manifest one's religion or beliefs may be restricted by law only if that is necessary in a democratic society to protect the lives and health of people, morals of a democratic society, civil rights and freedoms guaranteed by the Constitution and public order, or to prevent the incitement or encouragement of religious, ethnic or racial hatred. *Argumentum a contrario*, the freedom to hold a belief and the freedom to change it is not subject to restrictions (by law) (Art. 43(4) of the Constitution).[247] The Constitution guarantees the right to conscientious objection. No-one is under the obligation to perform military or any other service involving the use of weapons if this is in contravention of his religion or beliefs. Any person pleading conscientious objection may be called upon to serve his military duty without the obligation to carry weapons, in accordance with the law (Art. 45 of the Constitution).

244 The text of Convention 108+ is available at: https://bit.ly/2s8uh7P.

245 Under Article 2(1) of the Act on Churches and Religious Communities, no-one may be subjected to coercion that may impair his freedom of religion or be forced to declare his religion and religious beliefs or absence thereof.

246 The ECHR guarantees everyone the freedom to manifest his religion or belief and freedom, in worship, teaching, practice and observance, either alone or in community with others and in public or private.

247 The European Court of Human Rights has repeatedly held 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.

The Serbian Constitution lays down that the state shall be secular and that the churches and religious communities shall be separated from the state and prohibits the imposition of a state or mandatory religion (Art. 11). Article 44 of the Constitution guarantees the equality and autonomy of all religious communities. The autonomy of religious communities entails their freedom to themselves independently organise their internal structure and religious affairs, to perform religious rites in public, and to establish and operate religious schools, social institutions and charities in accordance with the law (Art. 44(2)). 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.[248]

The Constitution prohibits discrimination on grounds of religion (Art. 21(3)). Under Article 2(2) of the Act on Churches and Religious Communities,[249] no-one may be harassed, discriminated against or privileged because of his religious beliefs, membership or non-membership of a religious community, participation or non-participation in religious services and rituals, or for exercising or not exercising guaranteed religious rights and freedoms. The Anti-Discrimination Act also prohibits religious discrimination. Under this law, 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 (1)). Actions by priests or other clerics that are in accordance with the doctrine, beliefs or goals of the churches and religious communities registered in the Register of Religious Communities shall not be deemed discrimination (Art. 18(2)).[250] On the other hand, the Act on Churches and Religious Communities prohibits exercise of the freedom of religion in a way jeopardising the

248 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*.

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

250 This is an exception to the general prohibition of discrimination. This provision was introduced to "protect" clerics when their actions appear discriminatory but are actually motivated by a religious community's doctrine, beliefs or goals – for instance, when a Serbian Orthodox priest refuses to perform a funeral service for a deceased who has not been "baptised". The Act creates

right to life, the right to health, child rights, the right to personal and family integrity and the right to property, or inciting or encouraging religious, national or racial intolerance (Art. 3(2)). Given the described legal framework prohibiting religious discrimination, it is difficult to justify the provisions in the Army of Serbia Act[251] and the Decree on Religious Services in the Army of Serbia,[252] under which only the clerics of the traditional churches and religious communities may perform religious services in the Army of Serbia. This amounts to direct discrimination against other religious communities.

The freedom of religion is protected by criminal law. The Criminal Code incriminates specific behaviours violating the freedom of religion.[253] The Criminal Code also lays down that courts shall consider the commission of an offence out of hate based, inter alia, on religion as an aggravating circumstance unless it is prescribed as an element of the criminal offence (Art. 54a). The Anti-Discrimination Act provides for a number of penalties for discriminatory conduct.[254] Protection from religious discrimination may be sought in civil proceedings. Protection of the freedom of religion in cases of discrimination may also be exercised by filing a complaint with the Equality Commissioner, pursuant to the Anti-Discrimination Act.

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.[255] 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.[256] On the other hand, religious instruction as 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.[257]

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the presumption that there is always an objective and reasonable explanation for the clerics' differential treatment that is in accordance with their religious doctrine.

251 *Sl. glasnik RS*, 116/07, 88/09, 101/10 – other law, 10/15, 88/15 – CC Decision and 36/18.

252 *Sl. glasnik RS*, 22/11.

253 The offences include: violation of equality (Art. 128), violation of the freedom to manifest one's religion and perform religious services (Art. 131), ill-treatment and torture (Art. 137), undermining an individual's reputation because of his racial, religious, ethnic or other affiliation (Art. 174), incitement of ethnic, racial or religious hate or intolerance (Art. 317) and violent behaviour at sports events or public gatherings (Art. 344a).

254 Articles 50–54, 57 and 60 are relevant in terms of protection of the freedom of thought, conscience and religion. See more at: http://ravnopravnost.gov.rs/en/discrimination/legal-protection-misdemeanor-matters/.

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

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

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

6.2. Registration of Religious Communities

6.2.1. Legal Framework

The Act on Churches and Religious Communities 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).[258] 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[259] and the republican Act on Legal Status of Religious Communities.[260] The third group includes new religious organisations. The fourth group, which the Act does not define but establishes implicitly, comprises all the unregistered religious communities.[261] In order to acquire legal personality, the new churches and religious communities must be registered in accordance with the Act on Churches and Religious Communities (Art. 9(1)). Non-registered religious communities do not enjoy the numerous rights and benefits the state extends to registered ones.[262]

Thirty-three religious communities are registered in the Register of Churches Religious Communities. 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

258 The Serbian Orthodox Church, the Roman Catholic Church, the Slovak Lutheran Church, Reformed Church, Evangelical Christian Church and the Islamic and Jewish communities. There are two Islamic Communities in Serbia – the Islamic Community of Serbia headquartered in Belgrade and the Islamic Community in Serbia, which is headquartered in Novi Pazar. Both are registered and have the status of a legal person.

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

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

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

262 Right to property, state subsidies, restitution of confiscated property, subsidised social contributions of religious officials, tax exemptions. The ECtHR has said in one of its judgment that mere tolerance of the activities of a non-recognised religious organisation cannot be regarded as a substitute for recognition, since recognition alone is capable of conferring rights on those concerned. *Metropolitan Church of Bessarabia and Others v. Moldova*, ECtHR, App. no. 45701/99, (2002), para. 129.

quote this as the reason why most of them have not officially been registered.[263] All initiatives claiming discrimination filed with the Constitutional Court since the adoption of the Act have been dismissed on the merits or declared inadmissible.[264]

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 states are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population or to public safety.[265] 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).

Although the number of registered religious communities increased since 2018 (from 29 to 33), the European Commission reiterated in its Serbia 2019 that lack of transparency and consistency in the process for registering religious communities continued to be one of the main obstacles preventing some religious groups from exercising their rights and that the law on churches and religious communities was yet to be aligned with international standards.[266]

6.2.2. Registration of Religious Communities[267]

From 1 January 2018 to 30 October 2019, the Justice Ministry issued 14 rulings on the applications for registration in the Register of Churches and Religious Communities; it dismissed eight and upheld six applications. Six new religious communities were registered in Serbia in this period: the Buddhist Religious Community Nichiren Daishonin,[268] the LOGOS Christian Community in Serbia,[269] the Thera-

263 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 teachings and their goals.

264 See the Constitutional Court 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.

265 See the ECtHR's judgments in the case of *Metropolitan Church of Bessarabia and Others v. Moldova*, App. no. 45701/99, (2002), para. 113; *Metodiev and Others v. Bulgaria*, App. no. 58088/08, (2017), paras. 40 and 45.

266 *Serbia 2019 Report*, p. 24. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

267 This analysis covers a two-year period, given that the *2018 Report* did not focus on the communities registered in 2018.

268 Ruling No. 080–00–00255/2017–26 of 10 October 2018.

269 Ruling No. 080–00–00100/2018–26 of 4 December 2018.

vada Buddhist Community in Serbia,[270] the Golgotha Church in Serbia,[271] the Biblical Centre – Good News[272] and the First Roma Christian Church in Leskovac.[273]

The Ministry dismissed the application by the Orthodox – Old Catholic Church in Serbia explaining that the application suffered from shortcomings, inter alia, regarding the name of the religious community.[274] The Ministry had earlier asked the applicant to delete the word Orthodox from the name of the religious community and, when it did not do so, it dismissed its application. The ECtHR has held that states are entitled to impose specific requirements regarding the names of religious organisations, including that they clearly differ from the names of the already registered organisations. It accepted the stand that identical names or names that are substantially the same can create confusion and misperception in the public, and give rise to risks of grave interferences in the rights and interests of others.[275] Therefore, the fact that a newly-founded legal entity is required to have a name that will not confuse the public and will enable it to differ from other similar organisations may in principle be considered a justified restriction of a religious community's right to freely choose its name.[276] Two religious communities with the word "Orthodox" in their names are already registered in the Register of Religious Communities – the Serbian Orthodox Church (SOC) and the Dacia Felix Diocese of the Romanian Orthodox Church (operating only in the Autonomous Province of Vojvodina). Given the ECtHR criteria regarding the refusal to register a religious community because of its name, the Serbian Justice Ministry's dismissal of this request does not seem to be in conformity with ECtHR's interpretation. The name "Orthodox-Old Catholic Church in Serbia" is sufficiently unique to distinguish it from other registered religious communities that have the word "Orthodox" in their names.

Given that Article 19 of the Act on Churches and Religious Communities prohibits the registration of religious organisations that have in their names words expressing the identity of a church, religious community or religious organisation that is already registered or has already applied for registration, the Justice Ministry will in all likelihood continue dismissing applications by religious organisations including in their names the names of already registered religious organisations. This provision is problematic because it generally prohibits the registration of new organisations that have in their names part of the names of already registered religious communities, without providing the relevant authority with the discretion to decide whether the dismissal of the application would be proportionate to the interference

270 Ruling No. 080–00–00304/2018–26 of 6 May 2019.

271 Ruling No. 080–00–00120/2019–26 of 3 May 2019.

272 Ruling No. 080–00–00170/2019–26 of 14 June 2019.

273 Ruling No. 080–00–00192/2019–26 of 30 October 2019.

274 Ruling No. 080–00–00318/2017–26 of 12 October 2018.

275 *Orthodox Ohrid Archdiocese v. the Former Yugoslav republic of Macedonia*, ECtHR, App. no. 3532/07, (2017), para. 111.

276 *Genov v. Bulgaria*, ECtHR, App. no. 40524/08, (2017), para. 43.

in the rights of the applicant organisation, pursuant to the requirements the ECtHR imposes upon states.[277]

In late 2018, the Justice Ministry dismissed the application by the Christian Community Golgotha, again because of its name, and required of the applicant to delete the words "Christian Community" from its name.[278] The organisation did so and was registered on 3 May 2019 under the name Golgotha Church in Serbia. Although this religious community was ultimately registered, the registration process, more precisely the interpretation of Article 19 of the Act on Churches and Religious Communities by the relevant authority, had forced the community to change its name, delete the words "Christian Community" and use the word "Church". The word "Church" does not reflect the identity of the religious community in the same way as the words "Christian Community" do. If the religious organisation's initial name had not resulted in public confusion, the state unjustifiably restricted its right to freely choose its name. Furthermore, the Justice Ministry on 4 December 2018 approved the registration of the Christian Community LOGOS in Serbia (seven days before it dismissed Golgotha's first application) and, on 30 October 2019, it approved the registration of the First Roma Christian Church in Leskovac. We hope that the Golgotha case is an exception to the interpretation of Article 19 of the Act on Churches and Religious Communities, not allowing the registration of a religious organisation whose name contains the name or part of the name denoting the identity of an already registered religious community only in the event the name of the new religious community confuses the public about the identity of two or more religious communities.

In May 2019, the Justice Ministry dismissed the application for the registration of the religious community Servants of Miroslav's Gospel.[279] The application was dismissed because this religious community did not fulfil specific formal registration requirements; more precisely, it had failed to submit the documents stipulated by the Act on Churches and Religious Communities. The decision, however, warrants a brief analysis for other reasons. The Ministry explained that the Servants of Miroslav's Gospel was not a religious community in its own right, separate from the Orthodox tradition. It went on to say that the goals of this community, specified in the ruling, indicated that it was perhaps an association rather than a religious community, that it was unclear which religion its founders were practicing and that it had not described its basic tenets of creed and religious practices.

Article 6(2) of the Act on Churches and Religious Communities guarantees religious communities autonomy in determining their religious identity. As already

277 The Justice Ministry also referred to this Article of the Act on Churches and Religious Communities in its ruling (No. 080–00–00142/2018–26 of 4 December 2018) in which it dismissed the registration application filed by the SOC Raška-Prizren Diocese in exile. That decision, however, is not as disputable since the organisation's application suffered from other formal shortcomings, which were not eliminated by the given deadline.

278 Ruling No. 080–00–00184/2018–26 of 11 December 2019.

279 Ruling No. 080–00–00009/2019–26 of 10 May 2019.

noted, the ECtHR recognises the state's right to seek of the applicant to present information on the basic tenets of creed and practices of the religion. It should not, however, be forgotten that requiring such information fulfils a narrow purpose – the establish whether the organisation poses a danger to democratic society and the fundamental interests recognised in Article 9(2) of the ECHR.[280] The Justice Ministry said that it was unclear which religion the organisation's founders were practicing and that it had not described its basic tenets of creed and religious practices. It is not the task of the state to categorise the religious teachings of an organisation under a known or traditional religion. If it were, the registration of new religious communities with new teachings would be virtually impossible. Whether the applicant in this case provided sufficient proof of the coherence, seriousness and importance of the religious teachings and goals, which is prerequisite for an organisation to register as a religious community, is an altogether different matter.

Furthermore, both the Constitution and the Act on Churches and Religious Communities lay down that religious communities shall be separate and independent from the state. This undoubtedly entails the state's neutrality vis-à-vis religious communities. The ECtHR has held that the duty of neutrality prevents the State, including the national courts, from deciding the question of the religious belonging of an individual or group, which is the sole responsibility of the supreme spiritual authorities of the religious community in question.[281] Bearing in mind the Ministry's view that the Servants of Miroslav's Gospel is not a religious community separate from the Orthodox tradition and aware of the state's view on applications for the registration of religious communities that have the word "Orthodox" in their names, it may be concluded that, in this case, the state decided that the Servants of Miroslav's Gospel is part of the Serbian Orthodox Church – a decision not within its remit. Such an interpretation of the Act on Churches and Religious Communities is undoubtedly in contravention of ECtHR case-law.

6.3. Financing of Religious Communities

Under the Act on Churches and Religious Communities, churches and religious communities shall finance their activities with income from their property, endowments, legacies and funds, inheritance, donations and contributions, other non-profit transactions and activities, in accordance with law (Art. 26(1)). Churches and religious communities shall manage their property and financial assets independently, in accordance with their autonomous regulations (Art. 26(2)). Churches and religious communities may perform business and other activities (Art. 26(3)). The Act allows the state to extend financial aid to churches and religious communities.[282]

280 *Case of Church of Scientology of Moscow v. Russia*, ECtHR, App. no. 18147/02, (2007), para. 93.

281 *Mirolubovs and Others v. Latvia*, ECtHR, App. no. 798/05, (2009), paras. 89–90.

282 Article 28(2).

The state's subsidies of the pension, social and health insurance contributions of the priests and clerics are a substantial form of material assistance to religious communities.[283] Under Article 2(1) of the Decree on the Payment of Pension, Disability and Insurance Contributions for Priests and Clerics,[284] 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.[285] 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). The state has been paying the minimum contributions for priests and clerics even after they become eligible for full age retirement. Most of the retired priests and clerics are members of the Serbian Orthodox Church (1,746), the Islamic Community/ies (275) and the Roman Catholic Church (65). As per small religious communities, the state has been paying the minimum contributions for around 80 clerics.[286]

Under the Act on Churches and Religious Communities, churches and religious communities may also be exempted from paying taxes (Art. 30). Under the Value Added Tax Act,[287] 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),[288] only traditional churches and religious communities are exempted from paying VAT.[289] In addition to tax exemptions, the state (at the central and local levels) may provide funds in the budget for the construction, maintenance and restoration of religious facilities (Art. 32(6) of the Act on Churches).

Article 34 of the Act on Churches and Religious Communities entitles churches and religious communities to establish institutions for the education of future priests and clerics, promotion of spiritual and theological culture and other similar goals. Verified and accredited religious educational institutions (incorporated in the

283 Article 29 (2 and 3).

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

285 *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.

286 "State amending regulations: priests' contributions to be paid until they turn 65," *Večernje novosti*, 6 April. Available in Serbian at: http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:787441-DRZAVA-MENjA-PROPISE-Popovima-uplate-do-65-godine.

287 *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.

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

289 Article 55, Value Added Tax Act.

education system) are entitled to funding from the state budget, in proportion to the number of believers (Art. 36(2)). The state may extend financial support to religious educational institutions not incorporated in the education system with a view to promoting religious freedoms and education (Art. 36(3)).

The state may extend financial aid to churches in the field of culture as well. Religious facilities and institutions of exceptional historic, national and cultural importance shall enjoy particular protection, care and financial support of state and local authorities (Art. 41(2)). Verified expert and scientific institutions for the protection of sacral heritage may be extended financial support from the state or local budgets (Art. 42(2)). With a view to advancing religious freedom and culture, the relevant state and local authorities may subsidise cultural and scientific institutions and programmes of religious communities; the latter are entitled to apply for funding for cultural and scientific programmes with the relevant state authorities and commissions on an equal footing with other legal and natural persons (Art. 44).

Under the Serbian 2019 Budget Act,[290] slightly over one billion RSD were allocated for the work of the Administration for Cooperation with Churches and Religious Communities. The table below presents the funding earmarked for churches and religious communities in the state budget (but not the Vojvodina and local self-governments' budgets).

In addition to the funding allocated via the Administration for Cooperation with Churches and Religious Communities, another 279 million RSD were earmarked in the 2019 state budget via the Office for Kosovo and Metohija for support to the Serbian Orthodox Church in the protection of cultural heritage and cultural activities.

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%).

290 *Sl. glasnik RS,* 95/18 and 72/19.

FUNDING OF CHURCHES AND RELIGIOUS COMMUNITIES FROM THE SERBIAN BUDGET					
ADMINISTRATION FOR COOPERATION WITH CHURCHES AND RELIGIOUS COMMUNITIES – STATE COOPERATION WITH CHURCHES AND RELIGIOUS COMMUNITIES		Expenditure	Budget Line	Amount	Total
	1.	Support to the work of priests, monks and clerics	Subsidies to NGOs	62,000,000 RSD	**1,035,233,000 RSD**
	2.	Support to priests and monks in Kosovo and Metohija	Subsidies to NGOs	63,500,000 RSD	
	3.	Support to secondary theological education	Subsidies to NGOs	119,110,000 RSD	
	4.	Support to tertiary theological education	Subsidies to NGOs	30,400,000 RSD	
	5.	Protection of religious, cultural and national identity	Subsidies to NGOs	187,200,000 RSD	
	6.	Support for the construction and restoration of religious facilities	Subsidies to NGOs	211,000,000 RSD	
	7.	Advancement of religious culture, religious freedoms and tolerance	Subsidies to NGOs	60,000,000 RSD	
	8.	Pension, disability and health insurance for priests and clerics	Subsidies to mandatory social insurance organisations	260,000,000 RSD	
	9.	Administration and management	Other	42,023,000 RSD	

The registered Jewish Communities in Serbia have an additional source of budget funding under the Act on the Redress of Intestate Jewish Holocaust Victims.[291] This law governs the restitution of property confiscated from intestate Jewish Holocaust victims. The property is restituted to the registered Jewish communities in Serbia. Furthermore, under Article 9(1) of this Act, the Federation of Jewish Communities shall 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

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

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.[292] The conflict between the two factions of the Belgrade Jewish Communities continued in 2019;[293] it escalated when the faction led by Robert Sabadoš took over the offices of the Belgrade Jewish Community and then the Belgrade synagogue. The synagogue is still "under occupation" although the court issued a temporary measure ordering Sabadoš's faction to vacate it.[294]

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.[295] 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.[296]

Restitution Agency Director Strahinja Sekulić said that the restitution of property to churches and religious communities was about to be finalised and that around 98% of the property has been restituted. The value of the property restituted to Jewish Communities is estimated at around €19 million (property worth €7.6 million has been restituted under the Act on the Restitution of Property to Churches and Religious Communities). The total value of property to be restituted to the Jewish Communities, together with the total amount of financial aid the Republic of Serbia will pay the Federation of Jewish Communities, exceeds €65 million.[297]

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292 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-RESTITUCIJE-Rasplamsao-se-sukob-u-jevrejskoj-zajednici.

293 "Belgrade Jewish Community Divided, Ministry of Justice mum", *Voice of America*, 22 August. Available in Serbian at: https://www.glasamerike.net/a/jevrejska-opština-beograd-podeljena-ministarstvo-pravde-se-ne-oglašava/5053021.html.

294 "Synagogue still under 'occupation'," *Danas*, 15 November. Available in Serbian at: https://www.danas.rs/drustvo/sinagoga-i-dalje-pod-okupacijom/.

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

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

297 "End of restitution on the horizon", *Politika*, 17 November. Available in Serbian at: http://www.politika.rs/scc/clanak/442129/Restituciji-se-nazire-kraj.

On 21 March 2019, the Government granted financial aid to the Belgrade-Karlovac Archdiocese to continue the construction and decoration of the St. Sava Memorial Church in Belgrade.[298] In May 2019, the Government adopted a decision to donate 30 million RSD to the Serbian Orthodox Church for the construction of SOC churches and facilities abroad. The organisation Atheists of Serbia criticised the decision, perceiving it as a continuation of the policy of establishing a state religion.[299] The Tutin Municipal Council rendered a decision on the allocation of €1.7 million from the municipal budget to the SOC within a public call for religious community project proposals.[300]

The dispute between the residents of the Belgrade suburb Stepa Stepanović and the Serbian Orthodox Church has been ongoing for several years now. The residents claim that the land the Serbian Government gave the Church under the Restitution Act at the time Aleksandar Vučić was Prime Minister cannot be subject to restitution; on 25 September 2019, a group of residents again blocked the continued construction of a church on that plot of land, claiming that it is designated for the construction of an out-patient health clinic. The SOC filed a lawsuit against nine individuals, seeking restraining orders prohibiting them from accessing the plot of land.[301]

6.4. The State, Society and the Serbian Orthodox Church

Statistical Office of Serbia data estimates that Serbia's population stands at 6,963,764.[302] 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.[303]

From the legal point of view, the state's relationship with the Serbian Orthodox Church is identical to its relationship with other religious communities. How-

298 "Is the state buying the Serbian Orthodox Church's loyalty", *Radio Free Europe*, 28 March. Available in Serbian at: https://www.slobodnaevropa.org/a/srbija-spc-kupovina-lojalnost/29845816.html.

299 "Atheists of Serbia state has no right to give money away to the Serbian Orthodox Church", *Novi magazine*, 20 May. Available in Serbian at: http://www.novimagazin.rs/vesti/ateisti-srbije-drzava-nema-pravo-da-poklanja-novac-srpskoj-pravoslavnoj-crkvi.

300 "Tutin: Funds Islamic Community of Serbia and Serbian Orthodox Church," *Indeks online*, 1 November. Available in Serbian at: https://indeksonline.rs/2019/11/tutin-sredstva-za-islamsku-zajednicu-srbije-i-srpsku-pravoslavnu-crkvu/.

301 "Vučić returned to the SOC land that had never belonged to it," *Danas*, 8 November. Available in Serbian at: https://www.danas.rs/drustvo/bozanic-vucic-vratio-spc-zemljiste-koje-nikada-nije-pripadalo-crkvi/.

302 See the Statistical Office of Serbia press release of 17 November. Available at: https://www.stat.gov.rs/sr-Cyrl.

303 *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.

ever, 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.[304]

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. On the other hand, the Serbian Orthodox Church is extremely partial to senior government officials; for instance, it decorated Finance Minister Siniša Mali and Serbian President Aleksandar Vučić.[305] 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.[306] On the 20th anniversary of NATO air strikes, Patriarch Irinej said that "what we're seeing in the streets today is not good" and it "bolsters our enemies".[307] In this reference to the One out of Five Million protests, the leader of the Serbian Orthodox Church qualified a part of society as "unsuitable" and clearly showed which side he was on in the political struggle in Serbia.[308]

304 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.

305 "Serbian President awarded top Church order", *N1*, 8 October. Available at: http://rs.n1info.com/English/NEWS/a532888/Serbian-President-awarded-top-Church-order.html and the *Cenzolovka* and *Novi Magazin* reports, available in Serbian at: https://www.cenzolovka.rs/etika/vecina-medija-precutala-vest-o-javnoj-osudi-doktorata-malog-od-spc-i-orden/ and http://www.novimagazin.rs/vesti/vucicu-orden-spc-za-borbu-za-ouvanje-kosova-u-sastavu-srbije.

306 The church has frequently voiced its views on issues falling under the jurisdiction of the state. The Serbian Orthodox Church is particularly active in voicing its views on the status of Kosovo and Metohija. See, e.g. the following reports, available in Serbian at: http://www.pravda.rs/2019/10/5/vladika-irinej-bulovic-kosovo-nam-ne-mogu-zauvek-oteti/; https://www.telegraf.rs/vesti/politika/3061721-srpska-pravoslavna-crkva-ne-menja-stav-o-kosovu-i-tacka-nikakvu-podelu-necemo-podrzat.

307 More on the protests in Chapter II.8.2.

308 "Patriarch Irinej sides with government," *Radio Free Europe*, 25 March. Available in Serbian at: https://www.slobodnaevropa.org/a/29841089.html.

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.[309] Given that the majority of Serbia's population consider themselves Serbian Orthodox just because they are ethnic Serbs,[310] the question arises how this relationship between the state and the SOC affects Serbia's nationals who do not perceive themselves as Serbian Orthodox.

The Serbian Orthodox Church also interfered in the work of the Faculty of Orthodox Theology, although it is part of the Belgrade University and obligated to comply with the Higher Education Act and the Belgrade University Statute and their provisions on the autonomy of tertiary educational institutions in Serbia.[311]

In late July 2019, the SOC Holy Synod adopted a decision dismissing two Faculty teachers – West America Bishop Maksim and Assistant Professor Marko Vilotić. The two professors were signatories of a 2017 statement that the theory of evolution did not necessarily contradict Christian faith. The media also speculated that Bishop Maksim, a theologian of international acclaim, was dismissed because he criticised the authorities' Kosovo policy.[312]

The Synod explained that it had not published its decision because it was extensive and theological in character wherefore it would be incomprehensible to the public.[313] SOC spokesman Bishop Irinej commented that "no-one can become a college professor and be promoted without the Synod's blessing and approval [...]." Rather than implementing the Synod decision, the then Faculty Dean, Bishop Ignatije, granted the two teachers a two-year leave of absence and notified the Synod in September 2019 that the implementation of its decision would be in violation of the law and the University Statute given that the Faculty of Theology was part of Belgrade University, that the relevant regulations guaranteed the autonomy of the Faculty, which entails its

309 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.

310 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.

311 Under the Higher Education Act, higher education activities shall be based, inter alia, on the principle of autonomy (Art. 4(1(2))); the autonomy of universities and other tertiary education institutions shall entail their rights to regulate their internal organisation and appoint their teachers and associates (Art. 6(1(3 and 5)); and these rights shall be exercised while observing the human rights and civil liberties and public transparency (Art. 6(2)). The Belgrade University Statute regulates the University's autonomy in a similar fashion (Art. 10).

312 "Synod dismisses Theology Faculty Dean," *Politika*, 25 October. Available in Serbian at: http://www.politika.rs/scc/clanak/440595/Sinod-smenio-dekana-Bogoslovskog-fakulteta.

313 Under Article 4 of the Higher Education Act, higher education activities shall be based, inter alia, on the principle of public transparency.

right to appoint teachers and associates, and that the Synod was not part of either the Belgrade University or the Faculty of Orthodox Theology.[314]

In October 2019, the Synod dismissed Bishop Ignatije's explanation, denied its blessing to the Dean and instructed the Faculty Scientific and Teaching Council to initiate his dismissal. The Dean resigned before the Council dismissed him. The Belgrade University Rector sent a letter to the Faculty bringing into question the Synod's actions, as well as the legitimacy of the decisions of the Faculty Council, which was to launch the procedure for the election of the new Dean.[315]

On 8 November 2019, the Belgrade University Statutory Issues Committee unanimously "adopted an Opinion emphasising that the attempts of the Serbian Orthodox Church Synod, which is not a Belgrade University body, to influence the status of the staff of the Faculty of Orthodox Theology is in contravention of the Higher Education Act and the University Statute."[316]

On 6 November 2019, 86 international Orthodox theologians, scholars from 40 academic institutions and 13 countries expressed their concern about impingements on the freedom of speech and academic thought, independence of universities, and ecclesiastical morality and their profound frustration with the Synod's decision to deny the two teachers its blessing to teach at the Faculty adding that Orthodox spirit is not compatible with authoritarian decisions, issued without any previous hearing of both the two professors, their colleagues and their students.[317]

The Serbian Orthodox Church continued with its humanitarian activities in 2019. The media reported on the social institution for persons with intellectual disabilities run by 10 nuns of the St. Petka Monastery in Izvor near Paraćin.[318] Philanthropy *(Čovekoljublje)* is the main SOC charity. Philanthropy is also engaged in extending humanitarian aid (e.g. to the Golobok villagers[319]), implementing health and welfare programmes (e.g. in the Negotin Home for Children and Youths with Disabilities "Stanko Paunović"[320]), agriculture and education. A charity by the name

314 "Theology Faculty Dean sacked," *Mondo*, 25 October. Available in Serbian at: https://mondo.rs/Info/Drustvo/a1242458/Smenjen-dekan-Pravoslavnog-bogoslovskog-fakulteta.html.

315 "Why are the SOC Synod and Belgrade University in dispute?" *Radio Free Europe*, 17 November. Available in Serbian at: https://www.slobodnaevropa.org/a/spor-spc-univerzitet-u-beogradu/30273164.html.

316 The Committee's opinion is available in Serbian at: http://www.bg.ac.rs/sr/vest.php?id=1350.

317 See more at: https://orthodoxie.com/en/international-orthodox-academic-theologians-appeal-to-holy-synod-of-the-serbian-orthodox-church-to-protect-academic-thought/.

318 "Ten nuns caring for 88 women with special needs, many want to help them," *Blic*, 5 November. Available in Serbian at: https://www.blic.rs/vesti/drustvo/deset-monahinja-brine-o-88-zena-sa-posebnim-potrebama-mnogi-zele-da-im-pomognu-ali/qdtjj7z.

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

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

of *Versko dobrotvorno starateljstvo*, which also operates under SOC's auspices, extends family counselling and specialist medical services and organises foreign language courses.[321] *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.[322]

Although a number of charities operate under the auspices of the SOC, some analysts believe that the SOC does not care about the citizens' social problems. It has never publicly addressed the social problems of the citizens.[323]

6.5. 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.[324] The right to conscientious objection is recognised in CoE Parliamentary Assembly and Committee of Ministers recommendations and resolutions.[325] 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.[326] 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.[327] Army and Defence Ministry officials have described mandatory military service as the future of the Serbian Army.[328]

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321 More about the work of this organisation is available in Serbian at: http://starateljstvo.rs/raspored-aktivnosti-vds-a-za-2018–2019-godinu/.

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

323 See the *2018 Report*, II.7.5.

324 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.

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

326 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 and http://rs.n1info.com/a413546/Vesti/Uvodjenje-vojnog-roka.html.

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

328 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/.

Many outlets in 2019 reported that the state was planning on reinstating mandatory military service in 2020[329] but the Defence Ministry denied the reports.[330] In 2019, the Serbian Government adopted a decree on national defence training of citizens and categories of citizens to undergo such training, which will be conducted by the Defence Ministry.[331] All men over the age of 30, whether or not they served their military service, and women in the army records will have to undergo such training.

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[332] of an applicant, a Jehovah's Witness, 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.[333]

7. Freedom of Expression

7.1. Legal Framework

Freedom of expression is enshrined in Article 19 of the ICCPR and Article 10 of the ECHR. Both of these international treaties allow restrictions of this freedom, provided that they are in accordance with law and necessary in a democratic society. The Constitution of Serbia guarantees right to freedom of expression of opinion. It prescribes that freedom of expression may be restricted by law. Restriction could be imposed only if necessary to protect the rights and reputation of others, uphold the authority and impartiality of the courts and protect public health, morals of a democratic society and the national security of the Republic of Serbia (Art. 46 (2)). It is unclear what is exactly implied by "morals of a democratic society", a coinage introduced by the Constitution as grounds for restricting specific rights.

329 "Serbia introducing mandatory military service as of 2020," *Dnevnik*, 16 July. Available in Serbian at: https://www.dnevnik.rs/drustvo/mediji-srbija-uvodi-obavezan-vojni-rok-od-2020-godine-16-07-2019.

330 "Mandatory military service will not be introduced in 2020," *Politika*, 16 July. Available in Serbian at: http://www.politika.rs/sr/clanak/433784/Nema-uvodenja-obaveznog-vojnog-roka-2020-godine.

331 Decree on National Defence Trainings and Categories of Citizens to be Trained by the Defence Ministry, *Sl. glasnik RS,* 76/19.

332 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.

333 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.

The Constitution guarantees the freedom of the press – publication of newspapers is possible without prior authorisation and subject to registration, while television and radio stations shall be established in accordance with law (Art. 50). Censorship of the press and other media is prohibited by the same article. Only competent court may prevent the dissemination of information. This preventive measure could be imposed only if that is "necessary in a democratic society to prevent incitement to the violent change of the constitutional order or the violation of the territorial integrity of the Republic of Serbia, to prevent propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" (Art. 50 (3)). The right to correction is guaranteed by the Constitution (Art. 50 (4)), which leaves its detailed regulation to the law. Criminal Code incriminate insult but warrant only fines (Art. 170).

The National Assembly on 2 August 2014 adopted a set of media laws – the Public Information and Media Act,[334] the Electronic Media Act[335] and the Public Media Services Act[336]. The state thus fulfilled most of the obligations it assumed under the Strategy for the Development of the Public Information System in the Republic of Serbia until 2016 (hereinafter: Media Strategy) adopted back in 2011.[337]

The Public Information and Media Act prescribes that public media services, institutions providing information in national minority languages and to citizens in Kosovo will remain in public ownership. The law also introduces project-based funding of media producing programmes of public interest. The national, provincial and local governments shall ensure the realisation of public interest by encouraging media content diversity, freedom of expression of ideas and opinions, free development of independent and professional media, which shall contribute to fulfilling the citizens' needs for information and content covering all walks of life, without discrimination (Art. 15). Under this Act, all other outlets are to be privatised and may count only on public funding granted for co-financing their projects.

The main deficiency of the system established under the law lies in who has the last say on which outlets will be granted funding – the competent ministry and the provincial and local self-governments, that is, political authorities. The main question that arose in the past three years regarded the way in which decisions on project co-funding were adopted, bringing the entire system into question especially since many local self-governments had to cut the amount of funding for the media, thus rendering senseless the project co-funding concept.

The Electronic Media Act introduced numerous new institutes drawing Serbia closer to rules applied in the EU internal market. The chief sections of the new Act regarding the development of freedom of expression are the ones on the organisation of the independent regulator (the Electronic Media Regulatory Authority

334 *Sl. glasnik RS*, 83/14.

335 *Ibid.*

336 *Ibid.*

337 More about media legislation in *2014 Report*, II.9.2.

(EMRA)), the licencing system and restrictions of the powers of the operators (infrastructure owners).[338]

7.2. Permitted Restrictions of the Freedom of Expression

The Criminal Code explicitly prohibits incitement to national, racial and religious hate, dissension or intolerance (Art. 317). Hate speech, which is unfortunately still frequent in both public discourse and the media, is also incriminated. Article 387(4) of the Criminal Code prohibits promotion of ideas and theories advocating or inciting hate, discrimination or violence on grounds of race, skin colour, religious or ethnic affiliation or other personal characteristics. The Criminal Code was amended in 2013 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.

The Public Information and Media Act (PIMA)[339] also prohibits hate speech. It is forbidden to publish ideas, information and opinions that incite to discrimination, hatred or violence against persons or groups of persons on the grounds of their race, religion, nationality, ethnic group, gender or sexual preference, notwithstanding whether this criminal offence has been committed by such publication (Art. 75). Liability is excluded if such information is a part of a scientific or journalistic work and (1) was published without intent to incite to discrimination, hatred or violence, as a part of an objective journalistic report or (2) intends to critically review such occurrences (Art. 76).

Hate speech is also prohibited by the Electronic Media Act.[340] Under this law, media service providers shall be held accountable for the programme content they broadcast notwithstanding who produced it (independent production, programme exchange, programme announcements, text and other messages of the audience, et al). The regulator shall ensure that media service providers' programme content does not include information overtly or covertly inciting discrimination, hate or violence on grounds of race, skin colour, ancestry, citizenship, ethnic origin, language, religious or political beliefs, sex, gender identity, sexual orientation, economic status, birth, genetic characteristics, health, disability, marital or family status, criminal record, age, looks, membership of a political, trade union or other organisations and other actual and presumed personal characteristics (Art. 51).

With the adoption of the Act Ratifying the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems,[341] use of computer systems to

338 More in the *2014 Report*, II.9.5.

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

340 Sl. glasnik RS, 83/14 and 6/16 – other law.

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

promote ideas or theories advocating, promoting or inciting hatred, discrimination or violence against individuals or groups on grounds of race, skin colour, descent or national or ethnic origin and religion is now prohibited in Serbia.

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

7.3. Criminal Law and the Freedom of Expression

The Serbian Criminal Code[342] incriminates insults and lays down that fines shall be levied against individuals who committed this offence via the print and electronic media or by similar means or at public events (Art. 170(1)). The legislator retained imprisonment as the penalty for dissemination of information about someone's personal and family circumstances (Art. 172). These crimes are privately prosecuted. Exclusion of liability for acts against honour and reputation is provided for in Serbian laws, *inter alia*, in the case of serious criticism, scientific or literary work and works of art, in journalism, etc., if it can be determined from the manner of expression that it had not been done with the intent of contempt.

Contrary to this, the European Court of Human Rights articulated a clear view that freedom of expression also includes the right to disclose information and opinions that are insulting and shocking, if it is the matter of public interest, and that freedom of the press includes the right to exaggerate and be provocative to a certain extent.[343] National law also excludes liability if the accused *proved the authenticity of his claims* or if there had been sufficient grounds for him/her to believe in their authenticity. However, the burden of proof set in such a manner deviates from the guaranteed presumption of innocence and is not in accordance with international standards.[344]

Graver forms of libel/slander are defined in Serbian legislation as offences committed via the media and where "the stated or spread falsehood is of such importance that it could have incurred graver consequences to the injured party" (Art. 170(2) CC). The provision, which incriminates the spreading and not only the voicing of falsehoods can affect the journalists.[345]

342 *Sl. glasnik RS*, 85/05, 88/05– corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19.

343 See *Prager and Oberschlick v. Austria*, ECmHR, App. no. 15974/90 (1995); *Selisto v. Finland*, ECHR, App. no. 56767/00 (2004).

344 See *Lingens v. Austria*, ECmHR, App. no. 9815/82 (1986). The responsible person is, however, obligated to submit facts corroborating the claim if the accusations are levelled against a specific individual. See the case *Cumpana and Mazare v. Romania*, ECHR, App. no. 33348/96 (2004).

345 The ECtHR found that a journalist must not be held responsible for quoting or conveying the text. See *Thoma v. Luxemburg,* ECtHR, App. no. 38432/97 (2001).

These provisions are not fully aligned with international standards, given that both UN human rights mechanisms and the European Court of Human Rights have held that the term of imprisonment and criminal liaibility in general are unnecessary for the protection of the reputation of others, and that, in addition to the right to a correction and other out-of-court proceeedings, it suffices to envisage civil liability, i.e. compensation of damages to a proportionate amount.[346]

Furthermore, the Criminal Code does not distinguish between the victims, which is in contravention of ECtHR's case-law. This Court has held that politicians and other people in public office need to withstand much more criticism than the others,[347] particularly with regard to issues affecting their financial integrity.[348] The ECtHR affirmed the view in its judgment in the case *Lepojić v. Serbia*.[349] This flaw was partly rectified after the Supreme Court Criminal Division adopted a legal interpretation introducing into the local legislation some elements of the ECtHR case law.[350]

Article 49 of the Constitution prohibits incitement to national, racial or religious hatred. The Constitution merely mentions propaganda for war as grounds for restricting the freedom of expression. The Criminal Code envisages imprisonment for damaging another's reputation on grounds of race, religion, ethnic or other affiliation, for damaging the reputation of a foreign state or international organisation and for damaging Serbia's reputation (Arts. 173–175).

7.4. Development of the New Media Strategy – Long and Winding Road

The adoption of a new Media Strategy has been pending for years. Its predecessor expired back in late 2016.[351] The Working Group charged with drafting it was formed in July 2017, but its members representing press associations left it in the autumn of that year. Work on the text resumed months later, in June 2018. The Government Coordination Group for Media Relations and the Team for Dialogue comprising representatives of media associations were formed. Press and media associations rallied in the Team for Dialogue sent their list of 13 demands to the Coor-

346 See the conclusions of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN Commission on Human Rights UN Doc E/CN.4/2000/63, para. 205; and ECtHR judgments in the cases of *Dalban v. Romania*, ECHR, App. no. 28144/95 (1999) and *Tolstoy Miloslavsky v. the United Kingdom*, ECHR, App. no. 18139/91 (1995).

347 See *Lingens v. Austria*, ECmHR, App. no. 9815/82 (1986) and *Lindon v. France*, ECHR, App. nos. 21279/02 and 36448/02 (2007). For a different interpretation, see *Prager and Obershlick v. Austria*, ECmHR, App. no. 15974/90 (1995).

348 *Ivanova v. Bulgaria*, ECHR, App. no. 36207/03 (2008).

349 ECtHR, App. no. 13909/05 (2007).

350 See *Report 2010*, I.4.9.4. See also the Supreme Court of Serbia Criminal Division statement of 18 December 2008.

351 An overview of the problems press associations faced during the previous reporting period is available in the *2018 Report*, III.2.2.

dination Group in mid-August, asking that the two bodies meet as soon as possible. In December 2018, the Prime Minister said that the Working Group would submit the draft Media Strategy to the Government by the end of the year and that the public debate on it would commence in January 2019.

Already in early January 2019, the Media Coalition[352] suspended its cooperation with the Coordination Group since none of its 13 specific demands had been fulfilled by the deadlines. The situation in the media deteriorated on a daily basis. Culture and Information Ministry State Secretary Aleksandar Gajović said he did not feel personally responsible for the government's failure to fulfil the 13 demands.[353] The Ministry went ahead and organised a brief public debate, which comprised several round tables and ended on 1 March 2019. In May, the Prime Minister described the development of the Media Strategy as a "fully inclusive and transparent" process and said that the draft had been forwarded to the European Commission for review.[354]

Just before the European Commission published its Serbia 2019 Report, the Government adopted the Media Strategy and forwarded it to Brussels. It transpired that the text sent to Brussels was not the one developed by the Working Group but a version from which the key suggestions had been omitted. The section on the Electronic Media Regulatory Authority (EMRA), which provoked vehement reactions of the press associations, the Press Council, a self-regulatory body formed by journalists, the demand regarding the tri-partite composition of boards of governors of the public service broadcasters, and the section on the appointment of chief editors of outlets founded by national minority councils were omitted from the version sent to Brussels.[355]

The Government's move was qualified by the media associations as an "unsuccessful attempt to deceive" the European Commission just as it was readying to publish its Serbia 2019 Report. The Prime Minister's office said that it had reviewed 300 objections and taken on board over 80 of them.[356] The Prime Minister said that the changed text of the Media Strategy had been sent behind her back, that a mistake had been made because some substantial matters were omitted from the version that

352 This coalition of press and media associations comprises the Independent Journalists' Association of Serbia (IJAS), the Independent Association of Vojvodina Journalists (NDNV), the Association of Independent Electronic Media (ANEM), Local Press and the Association of Online Media (AOM).

353 "Gajović: Strategy not undermined by Media Coalition's decision," *RFE*, 4 January. Available in Serbian at: https://www.slobodnaevropa.org/a/29691724.html.

354 "Draft Media Strategy forwarded to European Commission, report on debate soon," *Cenzolovka*, 18 May. Available in Serbian at: https://www.cenzolovka.rs/drzava-i-mediji/nacrt-medijske-strategije-dostavljen-evropskoj-komisiji-uskoro-i-izvestaj-o-raspravi/.

355 "Government trying to deceive EU with Media Strategy," *Danas*, 31 May. Available in Serbian at: https://www.danas.rs/drustvo/vlada-medijskom-strategijom-pokusala-obmanu-eu/. See also "Draft Media Strategy drafts; associations unpleasantly surprised," *N1*, 31 May. Available in Serbian at: http://rs.n1info.com/Vesti/a487948/Dva-nacrta-Medijske-strategije-udruzenja-neprijatno-iznenadjena.html.

356 "Prime Minister's office responds to JAS: Over 80 of 300 objections taken on board," *Danas*, 31 May. Available in Serbian at: https://www.danas.rs/drustvo/odgovor-iz-kabineta-premijerke-napismo-uns-a-od-300-primedbi-usvojeno-80/.

was sent, that she was planning on talking with the media and press associations and that she was trying to maintain an open channel of communication with the media.[357] Her statement did not come across as sincere, because it is hard to believe that sections on such major issues had been omitted by accident from the version sent to the European Commission.

Since these developments brought into question work on the Media Strategy, the Prime Minister decided to extend the mandate of the Working Group so that it could reincorporate the parts of the text. In response to her request to submit their objections to the changed text, seven media and press associations said that the sections had already been incorporated in the version communicated in late 2018, and in the recommendations of the EU and international organisations.[358] All that remained to be done was to take on board their objections and suggestions. The Working Group continued working in September and submitted the draft Strategy to the Government in late October.[359] However, the Strategy was not adopted by the end of the year, despite the Prime Minister's assurances.[360]

In the light of the developments surrounding the Media Strategy, the parliamentary elections due in the spring of 2020, the course of the government-opposition talks on minimum conditions for free and fair elections, as well the extremely important role media play in election campaigns, it may be concluded that it is in the government's interest to maintain full control over the media, especially in election year, and that neither it nor the influential pro-regime media want anything to change in practice. The Media Strategy, however important will remain a dead letter in the absence of genuine will to radically improve the media stage, free media from pressures and ensure that public service broadcasters work in public interest.

8. Freedom of Peaceful Assembly

8.1. Legal Framework

The freedom of peaceful assembly 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).

357 "Brnabić and associations: align draft Media Strategy within 30 days," *N1*, 17 September. Available in Serbian at: http://rs.n1info.com/Vesti/a526291/Brnabic-i-udruzenja-Nacrt-Medijske-strategije-da-se-uskladi-u-roku-od-30-dana.html.

358 "Press and media associations respond to Ana Brnabić," press release, *IJAS*, 1 August. Available in Serbian at: http://www.nuns.rs/info/statements/44031/novinarska-i-medijska-udruzenja-u-odgovoru-ani-brnabic.html.

359 "Draft Media Strategy submitted to Serbian Government," *JAS*, 24 October. Available in Serbian at: http://www.uns.org.rs/sr/desk/UNS-news/87579/vladi-srbije-predat-nacrt-medijske-strategije.html.

360 "Brnabić and associations: align draft Media Strategy within 30 days," *N1*, 17 September. Available in Serbian at: http://rs.n1info.com/Vesti/a526291/Brnabic-i-udruzenja-Nacrt-Medijske-strategije-da-se-uskladi-u-roku-od-30-dana.html.

The ECHR allows restrictions of the freedom of assembly provided the following two conditions are met: that they are *prescribed by law* and *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. In order to reduce the risks of abuse of the restriction of freedom of assembly to a minimum, the ECHR also stipulates that such restrictions must be *proportionate* – that the manner and intensity of the restriction are genuinely necessary to achieve protection of one of the prescribed goals.[361]

The ECHR and the ICCPR provide everyone with the right to freedom of assembly and "recognise" the right to free peaceful assembly. The ECHR allows restrictions of activities of aliens,[362] but only with respect to political activities, wherefore this provision could justify the ban on political assemblies organised by aliens.

Article 54 of the Serbian Constitution generally enshrines the right to freedom of peaceful assembly and distinguishes between indoor and outdoor assemblies. It lays down that everyone is free to hold indoor assemblies without the obligation to report or seek approval for them and that outdoor assemblies shall be governed in greater detail by law. The Constitution does not explicitly guarantee the freedom of assembly to aliens and stateless persons.

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.

Exercise of the freedom of assembly is governed in detail by the Public Assembly Act,[363] which was adopted in January 2016. 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). Under Article 3 of the Public Assembly Act, a public assembly shall denote an assembly of more than 20 people who have rallied with a view to expressing, realising and promoting state, political, social, national beliefs and goals and other freedoms and rights in a democratic society, as well as an assembly for the purpose of achieving religious, cultural, humanitarian, sports, entertainment and other interests.[364]

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361 *Guide on Article 11 of the European Convention on Human Rights – Freedom of Assembly and Association*, CoE/ECtHR, 2019, p. 10. Available at: https://www.echr.coe.int/Documents/Guide_Art_11_ENG.pdf.

362 Pursuant to Article 16 of the ECHR, 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.

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

364 Sports and entertainment assemblies, however, are devoid of a political dimension or value in a democratic society and should not be regulated and protected by the Public Assembly Act.

The freedom of peaceful assembly is not an absolute right. That means that there are specific legitimate reasons for prohibiting the holding of assemblies at specific venues and at specific times. The first restriction can be found in the very name of this freedom – an assembly must be *peaceful*. States are under the obligation to protect peaceful assemblies, but not events and demonstrations the participants of which engage in violent actions. It needs to be noted that the attribute 'violent' regards the way the participants express their ideas, not their ideas. If they are expressing ideas inciting hate or war, restrictions of their assemblies fall within the scope of freedom of expression restrictions.

Serbia has assumed obligations under international instruments stipulating that all restrictions of the freedom of peaceful assembly must satisfy specific criteria. The public authorities' interferences in the freedom of assembly must be checked against the criteria enshrined in the ECHR and the Constitution.

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 8 prohibits public assemblies aimed at inciting or encouraging armed conflicts, violence, violations of human and minority rights and freedoms of others, racial, national and religious or other inequalities, hate or intolerance, as well as assemblies in contravention of this law.

The Public Assembly Act, however, provides the police with broad discretion, because it lays down numerous reasons why they may prohibit assemblies. It, however, does not lay down that restrictions of the freedom of assembly must be proportionate to the goal and necessary in a democratic society, a legal standard the Constitutional Court also noted in its 2015 decision declaring the prior law on public assembly unconstitutional[365] and prescribed by Article 11 of the ECHR.

As OSCE/ODIHR and the Venice Commission noted, any restrictions imposed on the freedom of assembly must pass the proportionality test. The principle of proportionality does not directly balance the right against the reason for interfering with it. Instead, it balances the nature and extent of the interference against the reason for interfering. The Public Assembly Act does not lay down that assemblies shall be disbanded only if other reasonable and less restrictive measures prove ineffective. The state authorities should envisage a wide range of interventions rather than merely the choice of non-interference in the freedom of assembly and its prohibition.[366] The Act lays down *in abstracto* prohibitions of public assembly venues and times, as well as extremely complicated and demanding notification obligations and high fines for organisers.

365 IUz 204/13 of 9 April 2019.

366 *Guidelines on Freedom of Peaceful Assembly*, OSCE/ODIHR and Venice Commission, Warsaw/Strasbourg 2010, para. 39. Available at: https://www.osce.org/odihr/73405?download=true.

Under the Public Assembly Act, outdoor assemblies must be notified to the relevant MIA units. The Act imposes excessive obligations on the organisers, because their notices must include numerous data and accompanying documents they do not necessarily possess. The submission of incomplete notices may result in the prohibition of the assemblies. Organisers are provided with 12 hours to supplement their incomplete notices, otherwise their assemblies shall be deemed unnotified and impermissible under the Act. Such organisers may be fined between 100,000 and 150,000 RSD. This provision may result in unwarranted violations of the freedom of movement, especially since the Act enumerates what notices must include, while some data to be included in the notices are not specified (e.g. information required for the safe and unimpeded holding of an assembly).

Under the Public Assembly Act, the organisers need not notify indoor public assemblies but they may notify the Ministry of Internal Affairs of them if the police need to take special security measures to secure the events (Art. 13(4)). This is a welcome solution as it provides the organisers with the opportunity to ask the police to safeguard their events, which is also a positive obligation the state has with respect to the realisation of the freedom of assembly.

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).

Appeals of such rulings may be filed with the Ministry of Internal Affairs within 24 hours from the time of service. 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 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. Organisers may file constitutional appeals against final decisions prohibiting their assemblies or in the event they have no effective legal remedies at their disposal.

The Public Assembly Act lays down draconic fines to be imposed organisers and leaders of public assemblies defaulting on their statutory obligations. 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 assem-

blies 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.

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.[367]

The Act does not govern the issue of dissenting and simultaneous assemblies at all. Under international standards and ECtHR case-law, there should be no reason for prohibiting counter-demonstrations if they are peaceful, fulfil the prescribed requirements and do not incite hatred of the other group. A careful balance needs to be struck between the demonstrations and counter-demonstrations in order to ensure that everyone enjoys the freedom of peaceful assembly, but it should be borne in mind that "[I]n a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate."[368]

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.

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

367 *Ibid*., para. 197.

368 *Plattform "Ärzte für das Leben" v. Austria*, ECtHR, App. no. 10126/82 (1988), para. 32.

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)).

8.2. Exercise of the Right to Freedom of Assembly

The number of events and protests at which the citizens expressed their dissatisfaction with the decisions of state and local authorities in 2019 was probably the highest in the past few years.[369] The text below describes the most important of the innumerable rallies held in the reporting period.

Support rallies were held in the reporting period as well. The following two warrant mention. One was organised to welcome Russian President Putin in January 2019, when citizens across Serbia were bussed to Belgrade to participate in the event held under the slogan "One out of 300 Million".[370] Central Belgrade streets were turned into parking lots for the hundreds of buses that came from all over Serbia.[371] A similar event was staged during French President Macron's official visit to Belgrade, when thousands rallied in front of the Monument of Gratitude to France in the Belgrade Kalemegdan Park to hear the Serbian and French Presidents' speeches.

However, most of the rallies were organised by the citizens to express their dissatisfaction. Throughout the reporting period, the association One out of Five Million regularly held its Saturday protests, launched in December 2018, in Belgrade, as well as in many other Serbian cities.[372] One out of Five Million protests were held in the first half of 2019 in as many as 50 other towns and cities as well.[373]

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369 BCHR filed requests for access to information of public importance to all 27 police administrations asking them about the number of notified rallies in 2019, how many of them they had prohibited and why. The only police administration to respond was the one based in Kraljevo, which said that 939 rallies had been notified and that it had not banned any of them. The BCHR complained to the Commissioner about the other police administrations' failure to reply to its requests.

370 Although the organisers claimed the citizens rallied merely to welcome Putin and Vučić, the real character of the event is reflected in its slogan "One out of 300 Million" – a direct response to opposition protests held every week under the slogan "One out of Five Million".

371 "70,000 people to welcome Putin in Belgrade," *RTV*, 10 January. Available at: http://www.rtv.rs/sr_lat/politika/mediji-putina-ce-cekati-70.000-ljudi-ispred-hrama_981961.html.

372 Protests have been held in numerous Serbian towns and cities, including Novi Sad, Vranje, Zaječar, Požega, Lazarevec, Subotica, Sokobanja, Niš, Aranđelovac, Bor, Čačak, Kikinda, Kruševac, Leskovac, Loznica, Mladenovac and Pančevo. Regular weekly protests were held for several months at the beginning of the year in 30 cities. More is available in Serbian at: https://www.danas.rs/politika/protesti-1-od-5-miliona-u-vise-gradova-srbije/.

373 "'One out of Five Million' protests held in over 25 cities and municipalities," *Danas*, 29 March. Available in Serbian at: https://www.danas.rs/politika/protesti-1-od-5-miliona-i-ovog-petka-u-gradovima-sirom-srbije/.

The protests, under the slogan "Stop to Bloody Shirts", began in 2018 after a physical assault on an opposition politician and one of the leaders of the Alliance for Serbia (SzS) Borko Stefanović. The first event was staged by opposition parties, but the protests that ensued every Saturday acquired the character of spontaneous civic protests organised by citizens on social networks.

In addition to some opposition parties, the One out of Five Million protests were publicly supported by Belgrade College of Philosophy professors and assistants already in January 2019.[374] They were soon joined by their colleagues at the Belgrade College of Political Sciences who said that the "citizens of Serbia have raised their voice against violence, injustice, the throttling of freedoms, destruction of institutions, demeaning of democratic practices and media persecution."[375] Groups of professors and associates of the Union University Law School, Belgrade University Law School, the Belgrade University Philosophy and Social Theory Institute and the Novi Sad University College of Philosophy also extended their support to the protesters.

Education Minister Mladen Šarčević made a deeply offensive statement about the 610 professors who publicly pledged their support, saying that they were no-names, that most of them were retired or young researchers "who started working yesterday" and that they accounted for a fraction of Serbia's academic community.[376]

Other college professors, public figures, artists and eminent intellectuals also lent their support to the protests and addressed the rallied citizens at the Saturday protests. Experts, public figures, journalists, professors and civic activists discussed various topical issues at well-attended debates titled "It's not Philosophical to Keep Silent" held every Thursday evening in the main hall of the Belgrade College of Philosophy throughout 2019.

As noted above, the association One out of Five Million staged protests in Belgrade every Saturday. Tens of thousands of protesters rallied in front of the College of Philosophy and went in processions, stopping in front of state institutions and the public service broadcaster (RTS), calling on it to stop ignoring the protests in its news since all Serbia's citizens, who were paying licence fees, were entitled to hear about them. With a few exceptions, the protests were generally peaceful and incident-free; law and order were maintained by the organisers' monitors rather than the police.

374 "105 out of 5 Million," *Peščanik*, 21 January. Available at: https://pescanik.net/105-out-of-5-million/.

375 "Second Belgrade University School supports protests," *N1*, 21 January. Available at: http://rs.n1info.com/English/NEWS/a453685/Second-Belgrade-University-school-supports-protests.html.

376 "Opposition: Serbia's Minister disgracefully offends academics," *N1*, 30 January. Available at: http://rs.n1info.com/English/NEWS/a456113/Serbia-s-Minister-follows-Milosevic-s-footsteps.html.

The first incident occurred in February, when a protester carried a mock-up gallows during the procession. Senior state officials qualified his gesture as a call for hanging. The police hauled in two young men, one of whom was a minor, and kept them in custody for five days. They were charged with racial and other forms of discrimination.[377]

The protests escalated in March 2019, when the protesters, headed by Dveri leader Boško Obradović stormed RTS, demanding they appear live on it.[378] The police arrested several protesters, one of whom ended up in the Emergency Centre. A video recording posted on the Internet showed police officers hitting the young man, although he was not resisting arrest.[379] Citizens rallied the following day in front of the Serbian Presidency building, demanding the release of the arrested men.[380] The police fired tear gas and used excessive force against them. Belgrade Philology High School pupils protested against the arrest of their peer, accused of participating in the protests and the incident in the RTS.

The largest One out of Five Million protest was held in front of the National Assembly in Belgrade on 13 April, under the slogan "All for One – One out of Five Million". As soon as the opposition parties said they would invite citizens across Serbia to join the rally, the ruling officials accused them of orchestrating a riot and "a new Maidan".[381] Serbian President Aleksandar Vučić invited the citizens to attend his rallies in Novi Sad (12 April) and Belgrade (19 April).

The two latter events were staged within the "Future of Serbia" campaign launched back in February 2019, during which the Serbian President, flanked by ministers and senior SNS officials, toured a hundred municipalities in 29 Central Serbia districts and Kosovo, and promised the opening of new plants and jobs, kindergartens, schools and outpatient health centres, the building of new apartments and culture institutions, roads, bridges and investments.[382] The Novi Sad event was attended by numerous citizens carrying messages supporting Aleksandar Vučić; a large number of buses with Belgrade licence plates and licence plates of other central Serbian towns were parked across the city.[383] The atmosphere was the same at the Belgrade rally on 19 April, which Vučić announced as one of the largest in the past

377 More on the pre-trial detention of the minor in Chapter II.2.2.1.

378 "Serbian Protesters Storm National Broadcaster Building," *BIRN*, 16 March. Available at: https://balkaninsight.com/2019/03/16/serbian-protesters-storm-national-broadcaster-building/.

379 More in Chapter II.2.2.3.

380 "Violence Erupts at Anti-Gov't Protest Outside Serbian Presidency," *BIRN*, 17 March. Available at: https://balkaninsight.com/2019/03/17/violence-erupts-at-anti-govt-protest-outside-serbian-presidency/.

381 "April – Month of rallies and counter-rallies," *N1*, 1 April. Available in Serbian at: http://rs.n1info.com/Vesti/a472833/April-mesec-mitinga-i-kontramitinga.html.

382 "Vučić announces his campaign on Instagram," *N1*, 5 February. Available at: http://rs.n1info.com/English/NEWS/a458045/Vucic-announces-campaign-on-Instagram.html.

383 "Serbian president at rally in Novi Sad," *N1*, 1 April. Available at: http://rs.n1info.com/English/NEWS/a475594/Serbian-president-at-rally-in-Novi-Sad.html.

40–50 years.[384] The SNS organised a large number of buses that brought citizens from other parts of Serbia to this rally.[385]

Another incident broke out in August, when the Presidency security guards applied force to prevent a protest organiser from taking the demands into the building and he ended up in the emergency centre. The protest organisers said they had had an agreement with the police to leave their demands in front of the Presidency building.[386]

Organisers of One out of Five Million protests in other towns were the victims of physical assaults on a number of occasions as well. Milan Blagojević in Žitorađa was beaten up and held in policy custody for 48 hours.[387] Strahinja Ćirić, the organiser of the protest in Negotin, was beaten up in March.[388] Srđan Marković, one of the organisers of the Belgrade protests, was assaulted in late November and his colleagues said they would not notify the future One out of Five Million protests to the police until those responsible were identified.[389]

No major incidents occurred during these peaceful civic protests, which were organised every week, not only in Belgrade, but in many other Serbian cities as well, and which were not safeguarded by the police. All praise goes to the monitors who maintained law and order at them.

No major incidents broke out during other spontaneous or organised civic events in 2019 either, despite attempts by rightist organisations to disrupt them. A group of 50 rightists and members of the association *Zavetnici* showed up in front of the Belgrade Centre for Cultural Decontamination at the opening of Mirëdita – Good Day Festival aiming to present the Kosovo cultural and social scenes to the Belgrade audience,[390] which was organised by the Youth Initiative for Human Rights (YIHR) in May 2019.[391] Police in anti-riot gear were forced to intervene against a

384 "Vučić expects largest rally in past 40 or 50 years in Belgrade on 19 April," *Danas*, 10 April. Available in Serbian at: https://www.danas.rs/politika/vucic-srbija-ekonomski-najuspesnija-zemlja-u-regionu/.

385 "Occupation in 25 Pictures," *Vreme*, 25 April. Available in Serbian at: https://www.vreme.com/cms/view.php?id=1685064.

386 "Protester shows bruises he received during 1 in 5 million protest," *N1*, 11 August. Available at: http://rs.n1info.com/English/NEWS/a506912/Protester-shows-bruises-he-received-during-1-in-5-million-protest.html.

387 "Violence at #1od5miliona Protests in Belgrade, Monitor Civicus, 21 March. Available at: https://monitor.civicus.org/updates/2019/03/21/violence-1od5miliona-protests-belgrade/.

388 *Ibid*.

389 "Marković: we won't notify our rallies unless those responsible for the assault are identified," *Danas*, 1 December. Available in Serbian at: https://www.danas.rs/politika/markovic-ako-se-ne-otkriju-odgovorni-za-napad-necemo-prijavljivati-skupove/.

390 Several political parties and rightist organisations called for the prohibition of the Festival before it opened.

391 "Mirëdita – Good Day Festival opens, accompanied by rightists' protest," *N1*, 29 May. Available in Serbian at: http://rs.n1info.com/Vesti/a487676/Uoci-pocetka-festivala-Mirdita-dobar-dan-manji-incident-desnicara.html.

group of hooligans, members of soccer fan groups, who rallied on the second day of the Festival. None of the participants were physically in danger and the Director of the Festival said that they had not even seen the hooligans and that they had heard about the incident from the police, who had put them under control.[392] The Festival participants were totally isolated behind the police cordon preventing anyone from entering the Centre.

A group of rightists rallied in front of the "Roma" bakery in Borča owned by ethnic Albanians, demanding that the authorities shut it down after a photograph of their cousin displaying an Albanian national symbol was reposted on social media.[393]

The police failed to react both to insults a group of youths hurled at the participants in the Zone of New Optimism panel discussion in Šabac and when a group of twenty or so people wearing T-shirts with nationalist symbols interrupted the play "Srebrenica – When we, the killed, rise," organised by the Helsinki Committee for Human Rights in Serbia, although they were standing in front of the hall.

Tensions ran high in November, when student members of One out of Five Million stood in front of the RTS building, waiting for President Vučić, who was scheduled to give a live interview on the national broadcaster, to ask him questions they believed his interviewer would not ask and which, in their opinion, were crucial for shedding light on some scandals and events. Vučić's fans showed up at the same time and organised a counter-protest.[394] An incident broke out between the two groups despite the visible presence of plain-clothes and uniformed policemen. The ruling parties' practice of staging counter-demonstrations has extremely negative consequences, especially when such events are staged to intimidate the citizens or deter them from participating in future protests.

The sixth Pride Parade was held in Belgrade in September 2019 under the slogan "I am not giving up". Its organisers said that it was still a protest.[395] The Parade was incident-free but the conduct of the relevant authorities was criticised. Two counter-demonstrations were organised at the same time – one was notified to the police and passed without incident while the other one, which was not notified, was, according to the Pride Parade organisers, treated by the police as a security threat.[396]

392 "Festival Director: Everyone left the Centre safely, we were expecting the hooligans," *N1*, 30 May. Available in Serbian at: http://rs.n1info.com/Vesti/a488020/Direktor-festivala-Svi-su-bezbedno-napustili-prostor-ocekivali-smo-huligane.html.

393 "Serbian Nationalists Target Albanian Baker over Cousin's Gesture," *BIRN*, 29 April. Available at: https://balkaninsight.com/2019/04/29/serbian-nationalists-target-albanian-baker-over-cousins-gesture/.

394 "Opponents, Supporters of Serbian President Vučić Rally before State TV Appearance," *RFE*, 6 November. Available at: https://www.rferl.org/a/serbian-president-vucic-slips-past-angry-protesters-at-state-tv-studios-using-side-door/30255398.html.

395 "Todorović: We introduced an entertainment component, but Pride is still a protest," *N1*, 15 September. Available in Serbian at: http://rs.n1info.com/Vesti/a525883/Todorovic-Uneli-smo-komponentu-zabave-ali-Prajd-je-i-dalje-protest.html.

396 Information BCHR obtained from YIHR.

Rather than dispersing-halting the latter rally, the police merely moved the participants from the planned Pride Parade route and arrested, arresting between five and ten of those who refused to comply with their orders.[397]

Although the Public Assembly Act does not regulate counter-demonstrations, hardly any problems occur when such events are peaceful. Challenges arise when the police do not disperse-halt unnotified counter-demonstrations they treat as security threats. Furthermore, police conduct during counter-protests is not standardised and depends on their individual assessments of the situation.

In September 2019, student members of the One out of Five Million association kept the Belgrade University Rectorate under a blockade for 12 days, demanding the completion of the five-year-long review of the authenticity of the PhD thesis of Finance Minister Siniša Mali, who was accused of plagiarism. The students reached an agreement with Belgrade University Rector Ivanka Popović on the resolution of this case, gave her back the keys of the Rectorate and said that they would block it again if a decision was not reached by the deadline they had agreed on.[398]

The Group for Media Freedom in October organised a protest dubbed "Journalists against Phantoms" in front of the Serbian Government building, to express their support for *TV N1*'s reporters and alert to the poor status of journalists in Serbia. IJAS Chairman Željko Bodrožić said that the protesters supported everyone trying to do their job professionally.[399]

Numerous spontaneous civic protests were held in 2019 as well. The "Protect the Stara Planina Rivers" movement was active throughout the year and organised a number of protests in villages where the building of small hydro-power plants (SHPPs) had been planned, approved or initiated. The residents of villages near the Kolubara mine also protested, demanding they be relocated because they were inhaling coal dust every day.[400] The residents of Bor, which has been suffering for decades from high concentrations of sulphur dioxide, organised several protests in 2019, demanding of the city authorities and the management of the Chinese company Zijin Mining, the new owner of the Bor copper mine complex, to urgently take steps to reduce the air pollution.[401] Greens organised a protest in Novi Sad as well,

397 "Pride Parade begins in Belgrade, five counter-protesters detained," *N1*, 15 September. Available at: http://rs.n1info.com/English/NEWS/a526003/Pride-Parade-begins-in-Belgrade-five-counter-protesters-detained.html.

398 "Rectorate blockade lifted, students return keys to Rector," *Blic*, 25 September. Available in Serbian at: https://www.blic.rs/vesti/drustvo/prekinuta-blokada-rektorata-studenti-vratili-kljuceve-zgrade-rektorki/yvxjpvz.

399 "Serbia's journalists protest in support of N1," *N1*, 26 October. Available at: http://rs.n1info.com/English/NEWS/a535278/Serbia-s-journalists-protest-in-support-of-N1.html.

400 "Protest against open pit coal mine in front of Environment Ministry," *N1*, 24 September. Available at: http://rs.n1info.com/English/NEWS/a528706/Protest-against-open-pit-coal-mine-in-front-of-Environment-Ministry.htm l.

401 "Fresh protest held in Serbia's Bor over excessive air pollution," *Balkan Green Energy News*, 15 October. Available at: https://balkangreenenergynews.com/fresh-protest-held-in-serbias-bor-over-excessive-air-pollution/.

under the slogan "For Life, Forests, Water and the City".[402] Zrenjanin's residents have been alerting to problems with tap water, which has been unfit for consumption for 15 years now. Activists staged several protests in 2019, demanding of the local self-government to explain why the newly-built water purification facility in Zrenjanin was not working any longer.[403]

Environmentalists staged a number of rallies in Belgrade, calling for the preservation of the environment, protesting against the cutting of trees and the destruction of green areas and parks. The following paragraphs describe some of them.

Many Belgraders were flabbergasted by the city authorities' decision to build a cable car across the river, from the Belgrade Fortress at Kalemegdan Park and their felling of 150 trees at the two sites. In March 2019, the participants in the protest, organised by "One out of Five Million," held a minute of silence for the felled trees and planted a new one at Kalemegdan. Several similar actions followed. The campaign against the construction of the cable car was supported also by Europa Nostra, an organisation lobbying for the protection of cultural heritage.[404]

Protests were also organised by citizens –keepers of a small park in the Belgrade suburb of Banovo brdo;[405] residents of another Belgrade suburb, Braće Jerković, protested against the cutting of trees in a public green area;[406] an informal civic association organised a protest against the felling of trees and construction of a cement sports terrain in the Belgrade Košutnjak Park.[407]

Cab drivers kept the busiest Belgrade streets jammed for days in October, protesting against Car:go, which, in their opinion was operating illegally. The Ministry of Internal Affairs failed to react to the daily jams, saying that the protests were properly notified.[408] Protests like these give rise to the issue of the proportionality of their aim – prohibition of the work of a private company, and their negative ef-

402 "Environmentalist protest in Novi Sad: protection of nature, not profit," *N1*, 16 November. Available in Serbian at: http://rs.n1info.com/Vesti/a544363/Protest-ekoloskih-aktivista-u-Novom-Sadu-Zastita-prirode-a-ne-profit.html.

403 "Protest over water in Zrenjanin, residents say they'll no longer keep quiet," *N1*, 4 May. Available in Serbian at: http://rs.n1info.com/Vesti/a481258/Protest-u-Zrenjaninu-zbog-vode-gradjani-kazu-dosta-im-je-cutanja.html.

404 "Stop Harmful Cable Car Project on the Belgrade Fortress," Europa Nostra, press release, 9 June. Available at: https://www.europanostra.org/stop-harmful-cable-car-project-on-the-belgrade-fortress/.

405 "Belgrade: let's preserve our small park, protest on Banovo brdo continues with yoga class," *Blic*, 25 August. Available in Serbian at: https://www.blic.rs/vesti/beograd/sacuvajmo-nas-parkic-protest-na-banovom-brdu-nastavljen-casom-joge/5lw0exy.

406 "More trees cut, no construction notice," *Danas*, 17 September. Available in Serbian at: https://www.danas.rs/beograd/nova-seca-stabala-bez-gradjevinske-table/.

407 "Halt destruction of Košutnjak, no to concreting of the forest", *Danas*, 5 July. Available in Serbian at: https://www.danas.rs/beograd/stop-unistavanju-kosutnjaka-ne-pristajemo-na-betoniranje-sume/.

408 "Belgrade paralyzed by taxi drivers protesting," Serbian Monitor, 4 October. Available at: https://www.serbianmonitor.com/en/belgrade-paralyzed-by-taxi-drivers-protesting/.

fects on the everyday lives of citizens. Especially in the light of the misdemeanour proceedings launched against numerous car owners who took part in spontaneous traffic blockades in protest against rising fuel prices in 2018, which did not last as long and did not impinge on Belgrade traffic as much.

Misdemeanour proceedings were also launched against the activists of the "Don't Let Belgrade D(r)own" Initiative. One of them, Radomir Lazović, was summoned to serve a prison sentence because he had failed to pay a fine levied against him by the misdemeanour court for violating the Public Assembly Act – Lazović held a speech at a "Masks Have Fallen" protest on 11 May 2016 and called on its participants to join in a procession.[409] Another activist of this organisation, Dobrica Veselinović, was also summoned to serve his prison sentence although he had paid his fine.[410]

Finally, protests were staged in Belgrade, Valjevo and other Serbian cities in support of whistleblower Aleksandar Obradović, who had spent several months in pre-trial detention because he alerted to corruption and conflict of interests regarding the sale of weapons manufactured in the Krušik plant in which he is employed.[411]

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

409 "Serbia Activist Radomir Lazovic from Ne davimo Beograd to serve jail time for organising protests," Civic Space Watch, 18 July. Available at: https://civicspacewatch.eu/serbia-activist-radomir-lazovic-from-ne-davimo-beograd-to-serve-jail-time-for-organising-protests/.

410 Don't Let Belgrade D(r)own, "Dobrica Veselinović summoned to serve prison sentence,"5 September. Available in Serbian at: https://nedavimobeograd.rs/dobrica-veselinovic-pozvan-na-odsluzenje-kazne-zatvora/.

411 More in Chapters II.2.2.2. and III.3.6.

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 constitutional order, violation of guaranteed human and minority rights or incitement to racial, ethnic or religious hate.[412]

The Act on Associations,[413] 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.[414]

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.). Secret and paramilitary associations are prohibited.

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.[415] 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.[416]

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

412 Article 55, Serbian Constitution.

413 *Sl. glasnik RS*, 51/09 and 99/11 – other law.

414 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/.

415 *Sl. glasnik RS*, 99/11 and 83/14.

416 More on the complaints procedure in the *2016 Report*, II.10.2.

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.

The Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia[417] further bans the activities of organisations reaffirming neo-Nazi and Fascist ideas in their Articles of Association and programmes. Article 2(2) of the Act lays down the procedure for the deletion of such associations from the register. Under Article 7 of the Act, misdemeanour fines shall be levied against individuals participating in such events, displaying symbols or insignia or propagating ideas and activities of neo-Nazi or Fascist organisations and associations.

The Act, 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".

9.2. Narrower Scope for CSO Engagement

Although the legislative framework, which has been in effect for a decade now, is mostly in accordance with European standards, it may be concluded that insufficient support has been extended to the development of civic participation and the promotion of a democratic political culture.

This conclusion is corroborated by the fact that Serbia's civic space rating was downgraded from Narrowed to Obstructed from March to October 2019 on the Watch List of CIVICUS Monitor, which monitors freedoms of association, assembly and expression across the world. In March 2019, Serbia's civic space was rated as Narrowed, alongside Afghanistan, Saudi Arabia Sudan and Venezuela[418] (64.39%); it was downgraded to Obstructed (60.39%), a group including only three other European countries, Hungary, Ukraine and Moldova. Serbia was the only Western Balkan country with such a poor rating. According to this international organisation, Serbia's civic space has drastically been narrowed and individuals and organisations criticising the authorities are threatened.[419]

NGOs in Serbia reacted to the situation by establishing the Three Freedoms Platform to Protect the Civic Space in the Republic of Serbia (Platform). Represent-

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

418 CIVICUS. See more at: https://www.civicus.org/index.php/media-resources/news/3799-five-countries-added-to-watchlist-of-countries-where-civic-freedoms-are-under-serious-threat.

419 Available at: https://www.civicus.org/index.php/media-resources/news/4113-serbia-s-civic-space-do wngraded.

atives of 20 CSOs signed the Platform during International Civil Society Week, organised by Civic Initiatives in cooperation with the CIVICUS global network and the Macedonian-based Balkan Civil Society Development Network (BCSDN).[420]

Civil society in Serbia has been grappling with various challenges. One of the key ones is how to restore public trust in their activities, undermined by years-long smear campaigns by the pro-regime newspapers, especially tabloids, which have frequently been spreading lies about their work, describing them as working against the state and national interests and the interests of Serbia's citizens, and accusing them of being on the payroll of foreign anti-Serbian interest groups. Their reputation is further undermined by the reluctance of electronic media with nationwide coverage, including the public service broadcaster, to report on CSO activities.

The brunt of pro-regime media attacks has focused less on humanitarian organisations and associations engaged in the protection of social and economic rights than on human rights and anti-corruption CSOs and guild associations, which have often criticised the government's moves and alerted to their failures and bad practices impinging on human rights protection, judicial independence, rule of law and democratic procedures.

The trend of founding and funding non-government organisations to further the government's interests was also on the rise.[421] The proliferation of GONGOs, notably guild and humanitarian GONGOs, over the past few years is concerning. The situation was even worse in the media field.[422]

For instance, the Association of Judges and Prosecutors – which was established in 2018 and boasts a fraction of the members of the Judges' Association of Serbia (JAS) and the Association of Public Prosecutors and Deputy Public Prosecutors, which have been active for nearly two decades now – praised the draft amendments to the constitutional provisions on the judiciary as soon as it was founded. Those amendments, which were proposed by the Justice Ministry, had been vehemently criticised by all genuine NGOs, judicial and prosecutorial associations, and constitutional law professors throughout the two-year-long public debate on constitutional reform. In 2019, this Association of Judges and Prosecutors often criticised the work of the State Prosecutorial Council (SPC) and the Association of Public Prosecutors and Deputy Public Prosecutors, joining the pre-regime tabloids and portals that had

420 The Platform is a joint block of CSOs rallied to protect freedoms and create conditions for unimpeded civic participation in public affairs through civil society development. It was signed, inter alia, by Civic Initiatives, Youth Initiative for Human Rights (YIHR), Centre for Research, Transparency and Accountability (CRTA), Transparency Serbia, Belgrade Centre for Security Policy, Belgrade Centre for Human Rights, YUCOM – Lawyers' Committee for Human Rights, the Centre for Cultural Decontamination, the Trag Foundation, et al. More is available at: https://www.gradjanske.org/en/platform-three-freedoms-to-protect-the-civic-space-in-the-republic-of-serbia-signed-at-icsw-2019/.

421 Such organisations are called government-organised non-governmental organisations – GONGOs.

422 More in Chapter III.1.1.

for days published articles on some members of these two bodies, describing them as traitors and mobsters.[423]

The increase in GONGOs has been accompanied by an increase in the establishment and activities of rightist organisations and frequent attacks on human right defenders and individuals publicly criticising the government. The organisation National Avant-guard, for instance, posted a video criticising Belgrade Centre for Security Policy Director Sonja Stojanović, who qualified Defence Minister Aleksandar Vulin's announcement that he would go on a hunger strike as yet another reality show. Her words gave the pro-regime media and associations another cue to continue with their attacks on her NGO, which has been describing Serbia as a captured state riddled with corruption and facilitating abuse of public resources for private purposes, while control mechanisms are neutralised, either by legal or illegal channels.[424]

However, CSOs have not yet found an answer to this challenge. They failed to reach out to the public at large and regularly promote the results of their activities, although many of their projects are aimed at improving the situation of citizens in various walks of life.

The results of a survey conducted in late 2019 give rise to concern. They show that only one-third (34%) of the respondents consider human rights NGOs useful; 35% think that they are meaningless and that no-one ever benefitted from them, while as many as 11% believe that they are illegal, traitorous and mercenary organisations that pose a threat to the state. Furthermore, 52% respondents said that they would not turn to such an organisation if their human rights were in jeopardy (while 23% said they would).[425]

9.3. Campaigns and Attacks against CSOs

The atmosphere in which CSOs are declared traitors and foreign mercenaries and campaigns promoting violence are considered a legitimate method of opposing their activities prevailed in 2019 as well. Human rights NGOs bore the brunt of the attacks. Anti-NGO campaigns in 2019 took several forms, from physical attacks and threats against them to calls for the adoption of a law prohibiting the work of NGOs receiving foreign funding and declaring them foreign agents, et al.

423 More on attacks on judicial bodies in Chapter III.2.5. See also: "Majić: More serious scandals than this one with Ilić had not awoken the chief prosecutor," *N1*, 13 September. Available in Serbian at: http://rs.n1info.com/Vesti/a525393/Majic-Ozbiljnije-afere-od-ove-sa-Ilicem-nisu-probudile-republicku-tuziteljku.html.

424 "Three Freedoms under the Magnifying Glass, March-June 2019", Civic Initiatives. Available at: https://www.gradjanske.org/wp-content/uploads/2019/08/Three-freedoms-under-the-magnifying-glass.pdf.

425 Survey: Public Perceptions of Human Rights in Serbia, BCHR, 9 December. Available in Serbian at: http://www.bgcentar.org.rs/predstavljeno-istrazivanje-ljudska-prava-u-ocima-gradana-i-gradanki-srbije/.

The NGO Civic Initiatives, CIVICUS Monitor's partner in Serbia, has been monitoring the freedoms of association, assembly and expression in Serbia since August 2019. In late 2019, it stated that these three freedoms had been violated over 130 times in 2019. Civic Initiatives publishes information about attacks on activists and journalists in reports called "Three Freedoms under the Magnifying Glass."[426]

An increasing number of Internet pages and portals have been publishing texts discrediting NGOs. The movement "#Balternativa" launched an online petition for the "legal regulation of NGOs acting as foreign agents."[427] The petition calls for the prohibition of NGOs posing a risk to Serbia's national security and a ban on political influence exerted through NGOs "acting as foreign agents".[428] A similar initiative was launched by Ratko Dmitrović, a journalist and former chief editor of the daily *Večernje novosti*. Dmitrović called for the adoption of a law that would declare all NGOs the activities of which were (partly) funded from foreign sources "foreign intelligence agencies" and all their staff "foreign agents".[429]

Pro-regime media continued their smear campaigns against NGOs qualifying them as "foreign mercenaries". The pro-government tabloids continued their fervent attacks on the civil sector, including, notably, activists of the "Don't Let Belgrade D(r)own". In his article published on the *Novi standard* portal, political scientist Slobodan Antonić wrote that "a lot of money has been spent on brainwashing youths but not to much avail,"[430] and went on to campaign against Civic Initiatives via Twitter.

CSOs and their activists, especially those lobbying for reconciliation and confrontation with the past, were frequently physically attacked by extreme rightists as well. So were other activists, e.g. organisers of the One out of Five Million protests holding diametrically opposite views than their assailants Ultranationalists tried to disrupt the Mirëdita – Good Day Festival promoting Kosovo culture in May 2019; police in anti-riot gear were forced to intervene against a group of hooligans trying to storm the Centre at which the Festival was held.

Organisers of local One out of Five Million protests were victims of physical assaults on a number of occasions. Milan Blagojević, a protest organiser in Žitorađa,

426 A detailed and chronological overview of attacks on civic associations is available at: https://www.gradjanske.org/en/news/.

427 The petition is available in Serbian at: https://www.change.org/p/peticija-za-donošenje-zakona-o-zabrani-rada-nevladinim-organizacijama-koje-predstavljaju-rizik-po-nacionalnu-bezbednost-republike-srbije-i-zabrani-političkog-uticaja-preko-nvo-koje-se-ponašaju-kao-strani-agenti.

428 *Ibid*.

429 "Three Freedoms under the Magnifying Glass", Civic Initiatives, 16–31 October. Available at: https://www.gradjanske.org/wp-content/uploads/2019/11/Three-freedoms-under-the-magnifying-glass-16–31.-october.pdf.

430 "How the brains of our youths are washed with foreign money," *Novi standard*, 16 June. Available in Serbian at: https://www.standard.rs/2019/06/16/slobodan-antonic-kako-se-stranim-novcem-preumljava-nasa-omladina/.

was beaten up and ordered into 48-hour police custody.[431] Strahinja Ćirić, organiser of the protests in Negotin, was beaten up in March 2019.[432] In late November, one of the Belgrade protest co-organisers Srđan Marković was assaulted and the One out of Five Million organisers said they would not notify their protests to the police until those responsible for the assault were identified.[433]

Physical assaults on student activists gave rise to major concerns. Three students were assaulted on the Novi Sad University campus in June 2019. Two of them, activists of the "Roof over Our Heads" initiative, were beaten up after participating in a local protest against the cutting of trees,[434] while the third victim is a One out of Five Million activist.[435]

Hooligans attacked the Pride Info Centre offices in the heart of Belgrade on a number of occasions in 2019. Such attacks occurred in February[436] and in September 2019;[437] Red Star soccer fans attacked the offices in October although the police had been alerted to the risk.[438] The increasingly frequent attacks are not countered by effective and efficient procedures for preventing them and punishing the perpetrators. A state aspiring to rule of law must clearly and efficiently stand up to the climate of hate, violence and human rights violations.

Pro-regime media and GONGOs extensively criticised the initiative filed with the Constitutional Court of Serbia to review the constitutionality of the amendments to the Criminal Code. The initiative was qualified as "ridiculous" by the Council for Monitoring, Human Rights and Anti-Corruption – Transparency, the name of which mimics that of a credible NGO, Transparency Serbia.[439] Child Rights Centre

431 "Protest organiser, who claims he was beaten up in municipality, detained in custody," *N1*, 18 March. Available in Serbian at: http://rs.n1info.com/Vesti/a469129/Organizator-protesta-u-Zitoradji-Tukli-su-me-u-kancelariji-predsednika-opstine.html.

432 "Violence at #1od5miliona Protests in Belgrade", Monitor Civicus, 21 March. Available at: https://monitor.civicus.org/updates/2019/03/21/violence-1od5miliona-protests-belgrade/.

433 "Marković: we won't notify our rallies unless those responsible for the assault are identified," *Danas*, 1 December. Available in Serbian at: https://www.danas.rs/politika/markovic-ako-se-ne-otkriju-odgovorni-za-napad-necemo-prijavljivati-skupove/.

434 "Acivists assaulted in Novi Sad," Roof over Our Heads, 6 July. Available in Serbian at: http://zakrovnadglavom.org/2019/06/08/napadnuti-aktivisti-za-krov-nad-glavom-u-novom-sadu/.

435 "Three student activists assaulted in Novi Sad in three days," *N1*, 10 June. Available in Serbian at: http://rs.n1info.com/Vesti/a490854/Napadi-na-aktiviste-u-Novom-Sadu.html.

436 "Fresh attack on Pride Info Centre," *N1*, 18 February. Available in Serbian at: http://rs.n1info.com/Vesti/a461511/Novi-napad-na-Prajd-info-centar.html.

437 "Attack on Pride Info Centre in Heart of Belgrade – Frenzied youths tried to storm the office, four people arrested," *Blic*, 9 February. Available in Serbian at: https://www.blic.rs/vesti/beograd/napad-na-prajd-info-centar-u-centru-beograda-mladici-pomahnitalo-pokusavali-da-upadnu/vxdcz1v.

438 "Miletić: Red Star fans attacked Pride Info Centre offices," *N1*, 2 October. Available in Serbian at: http://rs.n1info.com/Vesti/a530934/Miletic-Navijaci-Crvene-zvezde-napali-prostorije-Prajd-info-centra.html.

439 "Transparency: initiative filed with Constitutional Court to allow conditional release for child killers is ridiculous," *Informer*, 1 December. Available in Serbian at: https://informer.rs/vesti/

staff started receiving death threats after Igor Jurić, the founder of the Tijana Jurić Foundation, who had collected 160,000 signatures for the introduction of life imprisonment, said in an interview on *RTS* that this NGO was working against the interests of children. The threats intensified after Pavle Bihali of the Leviathan movement posted a video recording in which he listed the individuals and organisations that signed the constitutionality initiative, threatened them and incited violence against them. CSOs were forced to file criminal reports.

Human rights NGOs were also attacked by other organisations. The Belgrade Bar Association warned Director of YUCOM, an organisation extending legal aid, that, as a lawyer, she was not entitled to run an NGO, and accused lawyers working in the civil sector of unfair competition. Fourteen CSOs filed a complaint against the Belgrade Bar Association, which said that lawyers working in CSOs, who had applied to provide legal aid, would be subject to review before the relevant Bar bodies. The CSOs said that the Association started deleting from its directory lawyers who were statutory representatives of NGOs, whereby it was restricting their right to work in public interest.[440]

Leading politicians and senior state officials continued criticising NGOs in 2019. Serbian President Aleksandar Vučić qualified CRTA and CeSID, the two NGOs actively taking part in the government-opposition talks on election conditions, as a "lie" because they had never mentioned which of their recommendations regarding the rule of law and fair elections in Serbia the government had fulfilled.[441] The topmost state officials' practice of discrediting and labelling NGOs is unacceptable.

9.4. Limited CSO Participation in the Legislative and EU Accession Processes

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.[442]

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. In 2019, the executive continued with its policy of essentially excluding experts and professionals from public debates

drustvo/475565/transparentnost-neozbiljna-inicijativa-ustavnom-sudu-ubicama-dece-dozvoli-uslovni-otpust.

440 "Three Freedoms under the Magnifying Glass", Civic Initiatives, 1–15 December. Available at: https://www.gradjanske.org/wp-content/uploads/2019/12/Three-freedoms-under-the-magnifying-glass-1–15-December-.pdf.

441 "Vučić: So-called CRTA and CeSID are a lie," *Danas,* 1 September. Available in Serbian at: https://www.danas.rs/politika/vucic-takozvana-crta-i-cesid-su-laz/.

442 See the Civic Initiatives analysis, available in Serbian at: https://www.gradjanske.org/wp-content/uploads/2018/12/Analiza-suzavanje-prostora.pdf.

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.

After its session in May 2019, at which it reviewed the penalties for the gravest crimes, the Working Group charged with drafting the amendments to the Criminal Code issued a statement saying that its members unanimously agreed that courts should be allowed to sentence defendants to life imprisonment without parole. Some of the CSOs that participated in the Working Group distanced themselves from this position.[443] When the amendments to the Criminal Code entered into force on 1 December 2019, the BCHR prepared and organised the submission of a joint initiative of experts which asked the Constitutional Court to review the constitutionality of the impugned provisions of the Criminal Code and the Act on Special Measures for Preventing the Commission of Sex Crimes against Minors, prohibiting parole of defendants convicted for offences warranting life imprisonment, and the compliance of these provisions with ratified international treaties.[444]

A good illustration of continued simulations of dialogue and failure to include authentic CSOs in public debates and sessions is the meeting with NGOs on amendments to the Act on Financial Support for Families with Children, to which the organisers initially failed to invite the association "Moms are the Law", which had spearheaded discussions about the amendments and voiced the most criticisms about them. The association was subsequently invited, after it said on the social networks that it had not been invited to the meeting. Ever since this law was adopted, "Moms are the Law" have been lobbying for the amendment of provisions impinging on mothers who had worked less than 18 months before they got pregnant, mothers-entrepreneurs, mothers of children with disabilities and mothers earning more than three national average wages.

9.5. 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

443 "Three Freedoms under the Magnifying Glass", Civic Initiatives, March-July 2019. Available at: https://www.gradjanske.org/tri-slobode-pod-lupom/.

444 "No-one may be deprived of human dignity in a rule of law society," press release, BCHR, 2 December. Available in Serbian at: http://www.bgcentar.org.rs/u-drustvu-u-kojem-postoji-vladavina-prava-nijedan-gradanin-nesme-biti-lisen-ljudskog-dostojanstva/.

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

Under Article 21 of the Universal Declaration of Human Rights, everyone has the right to take part in the government of his country, directly or through freely chosen representatives. This Article also sets out that the will of the people shall be the basis of the authority of government and that it will be expressed in periodic and genuine elections.

Article 25 of the International Covenant on Civil and Political Rights also guarantees every citizen the right to take part in the conduct of public affairs, directly or through freely chosen representatives and to have access, on general terms of equality, to public service in his country. The right to vote and to be elected shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

The right to free elections is enshrined in Article 3 of Protocol No. 1 to the European Convention on Human Rights[445] as well. Under this Article, the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. The ECtHR has held that the right to be elected may be restricted i.e. subjected to qualification requirements as long as they are not discriminatory.[446]

Other important election-related international documents include the Inter-Parliamentary Union's Declaration on Criteria for Free and Fair Elections,[447] as

445 Protocol No. 1 to the ECHR, 1952. Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

446 *Gitonas v. Greece*, ECtHR, App. nos. 18747/91, 19376/92, 19379/92, 28208/95, 27755/95 (1997); *Fryske Nasjonale Partij v. the Netherlands, ECtHR,* App. no. 11100/84 (1985) and *Tanase v. Moldova,* ECtHR, App. no. 7/08 (2010).

447 IPU, Declaration on Criteria for Free and Fair Elections, Paris, 1994. Available at: https://www.ipu.org/our-impact/strong-parliaments/setting-standards/declaration-criteria-free-and-fair-elec-

well as the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.[448] Among "those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings", the Copenhagen Document lists free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives. The Document also declares that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government and that the participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes.

Under Article 2 of the Serbian Constitution, sovereignty shall be vested with the citizens, who shall exercise it through referendums, people's initiatives and freely elected representatives. Article 52 of the Constitution entitles all citizens over 18 with legal capacity to vote and be elected. It lays down that suffrage shall be universal and equal for all, that elections shall be free and direct and that voting shall be by secret ballot in person. The Constitution also guarantees citizens the right "to take part in the management of public affairs and to assume public service and functions under equal conditions." (Art. 53).

The election process is governed in greater detail by the Act on the Election of Assembly Deputies (AEAD),[449] the Local Elections Act (LEA),[450] the Act on the Election of the President of the Republic,[451] the Act on Political Parties,[452] the Act on Financing of Political Parties,[453] the Single Voter Register Act,[454] the Anti-Corruption Agency Act,[455] the Electronic Media Act,[456] and the Decision on the Election of AP Vojvodina Assembly Deputies (DEVD).[457]

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tions.

448 Yugoslavia also took part in this Conference. The Document is available at: https://www.osce.org/odihr/elections/14304?download=true.

449 *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.

450 *Sl. glasnik RS*, 129/07, 34/10 and 54/11.

451 *Sl. glasnik RS*, 111/07 and 104/09 – other law.

452 *Sl. glasnik RS*, 36/2009 and 61/2015 – CC Decision.

453 *Sl. glasnik RS,* 43/11 and 123/14.

454 Sl. glasnik RS, 104/09 and 99/11.

455 Sl. glasnik RS, 97/08, 53/10, 66/11 – CC Decision, 67/13 – CC Decision, 112/13 – authentic interpretation and 8/15 – CC Decision.

456 *Sl. glasnik RS,* 83/14 and 6/16 – other law.

457 *Sl. list AP Vojvodine*, 12/04, 20/08, 5/09, 18/09 and 23/10.

10.2. Demands for Improving Election Conditions

Some provisions of these election laws have been criticised for years because they limit the citizens' right to vote and be elected. Experts agree that these laws need to undergo serious reform in order to eliminate their deficiencies.

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.

Complaints that the voter register includes the names of deceased voters or those who have changed their place of residence have frequently been voiced over the past few years. Furthermore, the obligation to establish a nationwide electoral roll laid down in the Single Voter Register Act[458] is still pending, although Minister of State Administration and Local Self-Governments Branko Ružić said in early October that the voter register "has never been as updated as it is now", that it has been connected to the death and marriage registers and that any changes in the latter are reflected in the voter register.[459]

Criticisms of the legislative framework are justified and argumented, but what is much more concerning is the way elections have been organised and conducted in the last few years. Two cycles of early parliamentary elections were held in Serbia (in 2014 and 2016) since the last regular parliamentary elections in 2012. Observers of these elections said that they were neither free nor fair, alerting to the irregularities and abuses during the campaigns, errors and problems in the work of the election administration, unequal representation of the candidates in the media, especially on the public service broadcaster RTS and TV stations with nationwide coverage, and lack of monitoring by the Electronic Media Regulatory Authority (EMRA) and the

458 *Sl. glasnik RS,* 104/09 and 99/11.

459 "Ružić: Voter register has never been as updated as it is now," *Danas*, 9 October. Available in Serbian at: https://www.danas.rs/politika/ruzic-jedinstveni-biracki-spisak-nikada-azurniji/.

Anti-Corruption Agency; they also said that pressures had been exerted on the voters and that the ruling parties' senior officials had abused their public offices for political campaigning, et al.[460]

Improvement of election conditions has been one of the major demands voiced by citizens protesting every Saturday since December 2018,[461] especially since the regular parliamentary elections are to be held in the spring of 2020. The same demands were made by some opposition parties. In December 2018, they adopted a document in which they outlined their joint conditions for free and fair elections.[462] In February 2019, some opposition parties rallied round the Alliance for Serbia (SzS) and some other opposition parties and individuals offered an Agreement with the People, in which they expressed their commitment to fight together for free media and free and fair elections and their resolve not to run in any elections unless their demands were fulfilled. They said that any attempt to form a government on the basis of the results of unfair and unfree elections would be considered illegitimate and that they would resort to all forms of resistance and civic disobedience in their struggle against a government formed after such elections.[463]

In March 2019, the Centre for Research, Transparency and Accountability (CRTA) recommended a number of measures[464] that could be implemented by the 2020 elections. CRTA's focus was on the need to change the electoral practice, rather than the legislative changes. CRTA said that abuse of public resources, public officials' political campaigning and pressures on public sector staff, along with unequal media coverage of the candidates were the main areas where legislative interventions were needed. [465]

The Anti-Corruption Act[466] adopted in May 2019 was criticised by CSOs and some opposition parties because it does not facilitate the elimination of abuse of public resources and political campaigning by public officials.[467] CRTA warned that

460 See more in the *2016 Report*, II.11.

461 The protests led by the association One out of Five Million have been organised via social media and have the character of civic protests. Tens of thousands of people have been taking part in them every Saturday. See more in Chapter II.8.2.

462 "Joint opposition conditions for free and fair elections," Alliance for Serbia, 2018. Available in Serbian at: https://savez-za-srbiju.rs/sadrzaj/uploads/2018/12/Zahtevi-opozicije-za-sprovodjenje-slobodnih-i-po%C5%A1tenih-izbora.pdf.

463 The Agreement with the People is available in Serbian at: https://savez-za-srbiju.rs/predlog-sporazuma-sa-narodom/#.XgDgP_BKhhE.

464 CRTA's recommendations are available at: https://crta.rs/wp-content/uploads/2019/03/CRTA-2020-Recommendations-Web.pdf.

465 "Election irregularities mainly caused by the abuse of public resources and unequal media representation in the campaign," CRTA, 23 March. Available at: https://crta.rs/en/election-irregularities-mainly-caused-by-the-abuse-of-public-resources-and-unequal-media-representation-in-the-campaign/.

466 *Sl. glasnik RS,* 35/19.

467 "Anti-Corruption Law adopted," *Danas*, 21 May. Available in Serbian at: https://www.danas.rs/politika/usvojene-zakon-o-sprecavanju-korupcije/.

yet another opportunity had been missed to improve the Serbian election legislative framework, that there was no precise definition of the concept of public resources, that the new law did not address the problem of the abuse of events staged by the public administration and institutions for the promotion of the ruling parties' election candidates or the problem of excessive spending of budgetary and other public funds during election campaigns. It said that deadlines laid down for the Anti-Corruption Agency's reviews of complaints were too long for curbing election campaign corruption and that the new regulations on the appointment of the Agency's senior officials jeopardised the Agency's independence from political pressure.[468]

10.3. Dialogue on Improving the Election Process – Concrete Changes or Instant Democracy?

The opposition's boycott of the parliament, which began back in February 2019, was a warning that the political situation in Serbia was at the crisis stage. Another indicator was an announcement by some opposition parties at the end of the summer that they would boycott the next elections regardless of the talks launched at the FPN.

At the initiative of the Fund for an Open Society-Serbia (FOSS), the government and opposition entered into negotiations on election conditions at the Belgrade Faculty of Political Sciences (FPN) in July 2019, [469] much to the public's surprise. The meetings at FPN were held under Chatham House Rules, provoking concerns and dilemmas among some opposition parties. In their joint press release, the FPN and FOSS said that the dialogue was organised with a view to improving the election process ahead of the 2020 local and parliamentary elections, to promptly initiating the changes that could be made before the elections and, in the longer term, achieve democratic standards for holding fair and free elections that would increase public trust and stabilise democracy.[470] They said that the following four topics would be discussed at the following events: campaign funding, access to and oversight of media, the voter register and election administration, and ensuring that all citizens could exercise suffrage.[471] Although not very successful, the event nevertheless marked the opening of a kind of dialogue between the government and the opposition.

468 "The Anti-Corruption Law does not solve problems in the election process," CRTA, 2019. Available at: https://crta.rs/en/the-anti-corruption-law-does-not-solve-problems-in-the-election-process/.

469 "Government and opposition meet behind closed doors at FPN," *RTS,* 30 July. Available in Serbian at: http://www.rts.rs/page/stories/sr/story/9/politika/3607145/zatvoreni-sastanak-vlasti-i-opozicije-na-fpn– u.html.

470 "Dialogue on 2020 elections, Fund for an Open Society – Serbia and FPN," FPN, press release, 31 July. Available in Serbian at: http://www.fpn.bg.ac.rs/27543?jezik=lat.

471 *Ibid.*

Representatives of CRTA and the Centre for Free Elections and Democracy (CeSID) provided the platform for the debate by outlining the results of their analyses of the election system and the changes that needed to be made. Representatives of the ruling party and the largest opposition bloc, the Alliance for Serbia (SzS), vehemently denied that they were negotiating. SzS said that the meeting was attended by a broad spectrum of relevant stakeholders and that it voiced its views on the election conditions and the needed changes in accordance with the documents the coalition had already endorsed. Representatives of the ruling party said that they had not engaged in any talks with the opposition, but attended CRTA's and CeSID's presentations.[472]

The Party of Freedom and Justice left the talks after the first round table in July and said it would not partake in them until they were public. The New Party, People's Party and the Dveri Movement walked out after the second round table in August.[473] SNS senior official Goran Vesić's violations of the Chatham House Rules, agreed on at the very beginning, and populist and banal statements by other SNS representatives, such as those voiced by MP Vladimir Đukanović, rendered the talks meaningless.[474] The Don't Let Belgrade D(r)own movement did not take part in the talks.

The public was surprised to learn that the leader of the Movement of Free Citizens, Sergej Trifunović, had written a letter[475] to the Chairman of the European Parliament Committee on Foreign Affairs David McAllister asking the EP to facilitate talks on election conditions. In mid-September, McAllister suggested that the Serbian National Assembly host EP-facilitated talks on election conditions. The National Assembly Speaker agreed almost immediately and three rounds of Inter-Party Dialogue (IPD) were held in October, November and December 2019.[476]

Media were denied access to the EP-brokered talks in the National Assembly as well. Despite EP mediation, the talks were boycotted by SzS, Don't Let Belgrade D(r)own, the Democratic Party, the Democratic Party of Serbia, Enough is Enough

472 "Government and opposition representatives participate in round table on election conditions," *N1,* 30 July. Available in Serbian at: http://rs.n1info.com/Vesti/a503702/Zatvoreni-sastanak-vlasti-i-opozicije-na-FPN.html.

473 "Alliance for Serbia will not participate in round tables anymore," RFE, 19 August. Available in Serbian at: https://www.slobodnaevropa.org/a/30117894.html.

474 "Is the dialogue between the government and opposition in Serbia dead?" *RFE*, 21 August. Available in Serbian at: https://www.slobodnaevropa.org/a/da-li-je-dijalog-vlasti-i-opozicije-mrtav-/30121800.html.

475 Available at: https://pokretslobodnih.rs/novosti/saopstenja/sergej-trifunovic-pisao-dejvidu-mekalisteru-i-pozvao-eu-da-bude-medijator-u-preg.

476 "European Parliament moving dialogue to Serbian parliament," *RFE*, 18 September. Available in Serbian at: https://www.slobodnaevropa.org/a/srbija-stranke-dijalog-ep/30171397.html. See also "Third round of EP-brokered Inter-Party Dialogue: Đukanović talks of headway, Živković of cosmetic changes," *N1*, 13 December. Available in Serbian at: http://rs.n1info.com/Vesti/a552022/Treca-runda-medjustranackog-dijaloga-uz-posredovanje-EP.html.

and the Serbian Radical Party.[477] After calling on the MEPs to do more to ensure the participation of all opposition parties (and, thus, the credibility of the talks, BCHR's comment), Social-Democratic Party of Serbia leader Boris Tadić walked out of the talks and said he would not take part in them anymore.[478] SzS members, however, met with the MEPs outside the official talks, thus partly accepting EU mediation.

European officials appeared to be trying to support the preservation of stabilocracy, regardless of the scandals, the situation in the media, violations of the principles of democratic governance, et al. The very fact that Serbia ended up needing the mediation of foreign actors to find a solution to the election issue demonstrates the extent to which its rule of law has crumbled. In the opinion of FPN Assistant Professor Dušan Spasojević, the EU's intervention indicates that "Serbia is not even a minimal democracy anymore, that we found ourselves with a problem we cannot fix through regular channels and by regular means and that we need help from the outside."[479]

Although the talks were brokered by a neutral actor – MEPs, they failed to bring on board all the relevant opposition parties and lend the negotiations greater credibility. Notwithstanding, the fact that the ruling Serbian Progressive Party – whose governance methods are problematic, to say the least, in the light of the standards in developed democracies, including media freedoms – agreed to the IPD demonstrates that all parties have realised that changes are necessary.

On the other hand, the Serbian public interpreted the MEPs' interest in the situation in Serbia as a positive step by the Brussels administration. In the light of Russia's and China's continuous activities in the Western Balkans and other open EU issues, including Brexit, the refugee crisis, economic problems, as well as the EP 2019 elections, the EU's decision to broker the talks may also be perceived as its need to demonstrate its authority and ability to resolve open issues in its future (at least in theory) Member State.

After the three rounds of talks, the MEPs said that a set of measures which should yield specific results[480] have been agreed on, and that all the commitments needed to be turned into concrete deliverables. They said that they were willing to return to Serbia to assess the pace of implementation of the conclusions and the 17 commitments agreed during the three rounds of dialogue and that the EU was willing to monitor the implementation process in 2020 as well as send an observer mission on election day. They said they hoped that the opposition parties that planned

477 The Serbian Radical Party is defined as an opposition party solely because it is not part of the ruling coalition. Its actual opposition capacity is, however, questionable.

478 "Gojković: Government-opposition dialogue to continue in November," *RFE*, 10 October. Available in Serbian at: https://www.slobodnaevropa.org/a/30209162.html.

479 "European Parliament moving dialogue to Serbian parliament," *RFE*, 8 September. Available in Serbian at: https://www.slobodnaevropa.org/a/srbija-stranke-dijalog-ep/30171397.html.

480 Implementation Table, Third Inter-Party Dialogue in the National Assembly of the Republic of Serbia, 12–13 December 2019. Available at: http://www.parlament.gov.rs/Joint_Press_Statement_after_the_3nd_European_Parliament_Facilitated_Inter-Party_Dialogue.38288.537.html.

on boycotting the elections would change their minds.[481] The second phase of the dialogue is planned to take place after the 2020 parliamentary elections, which will focus on the longer-term objective of improving Inter-Party Dialogue inside the National Assembly. This will include the reform of the Rules of Procedure and further review of the overall electoral framework in line with the European Commission and ODIHR reports.[482]

The opposition parties reacted differently to the agreement, qualifying the outcome of the talks as insufficient for meaningful changes. Representatives of the Alliance for Serbia, Don't Let Belgrade D(r)own and One out of Five Million were still planning on boycotting the elections, some parties said they would decide whether to boycott them once they were called, while government representatives claimed that they made more concessions than the opposition had demanded.[483] Prime Minister Ana Brnabić said she had asked Serbian President Aleksandar Vučić to put the elections off and that he agreed to schedule them for 3 May 2020; Vučić earlier said that the elections would be held in March.[484] This statement is odd, to say the least, given that, under the law, the elections may be held only in the 19 April – 3 May 2020 period, that Easter falls on 19 April, wherefore they can be held either the last weekend of April or the first weekend of May.

On the other hand, opposition parties, political analysts and media experts regretted that the IPD did not discuss the media, which play the main role in shaping public opinion. They said that it was not enough to ensure balanced media coverage of all candidates a few weeks before the elections because the citizens needed accurate and reliable information to form their political views and the process of forming public opinion took much longer. Furthermore, they said that the replacement of two members and appointment of three new EMRA members would not suffice to ensure the impartiality of this regulatory authority and that all the members needed to be replaced because the incumbent members have not been doing their job. They also noted that the talks lasted seven months and that, under the law, the legal procedure for replacing the EMRA members took several months and could not be completed in weeks.[485]

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481 "Fajon: Conditions for fair elections not in place now, but measures to change that have been adopted," *N1*, 13 December. Available in Serbian at: http://rs.n1info.com/Vesti/a552174/Fajon-Nema-uslova-za-fer-izbore-sada-ali-usvojene-mere-da-se-to-promeni.html.

482 "Conclusions after the third Inter-Party Dialogue on Election Conditions," DEU, 13 December. Available at: https://europa.rs/conclusions-after-the-third-inter-party-dialogue-on-election-conditions/?lang=en.

483 "Election conditions: Vučić says he is lenient, SzS not budging on boycott," *N1*, 15 December. Available in Serbian at: http://rs.n1info.com/Vesti/a552601/Izborni-uslovi-Vucic-kaze-da-je-popustljiv-SzS-ostaje-pri-bojkotu.html.

484 "Brnabić: Vučić upheld my request to postpone the elections as much as possible," *RTS*, 14 December. Available at: http://www.rts.rs/page/stories/sr/story/9/politika/3774252/brnabic-vucic-prihvatio-moju-molbu-izbori-se-pomeraju-maksimalno-moguce.html.

485 "*N1* guests: EMRA Rulebook reverses all the benefits from the Dialogue, zero result," press release, IJAS, 20 December. Available in Serbian at: http://nuns.rs/info/news/45920/gosce-n1-pravilnik-rem-a-ponistava-dobiti-dijaloga-rezultat-je---nista.html.

The opposition Alliance for Serbia demanded that elections be called at least nine months after the fulfilment of all the requirements regarding election conditions is proven in practice.

In late November, the Serbian Government submitted to the parliament draft amendments to the Anti-Corruption Agency Act, the Act on Financing of Political Activities and the Anti-Corruption Act, with a view to improving the election conditions. The National Assembly adopted the amendments in early December. CRTA said that the amendments would not put an end to the public officials' political campaigning.[486] The National Assembly did not vote in the amendment prohibiting public officials from presenting the results of the public authorities during election campaigns; such a prohibition would have resulted in a clear distinction between their public and political offices.[487] CRTA welcomed the parliament's adoption of the other amendment submitted on its initiative and obligating the Anti-Corruption Agency to rule on complaints of abuse of public resources and of public officials' political campaigning within five days.[488]

CRTA's analysis of the fulfilment of OSCE/ODIHR and its own recommendations published in mid-December 2019[489] gives a good idea of the headway made. Twelve of CRTA's 31 recommendations[490] for improving the election process before the 2020 elections were dismissed and six were fully implemented. CRTA reviewed the fulfilment of one-third of the recommendations made by the OSCE/ODIHR Mission after the previous three election cycles that were complementary with its own recommendations and found that none of them have been fully implemented.[491]

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486 "Insufficient legal improvements to prevent public officials' campaign," press release, CRTA, 14 December. Available at: https://crta.rs/en/insufficient-legal-improvements-to-prevent-a-public-officials-campaign/.

487 The amendment would have prohibited public officials from presenting, during election campaigns, the results of specific activities, such as infrastructural projects, which were partly or fully funded from public resources. The results of the state authorities' work should be presented by their staff. See CRTA, "Government defending public officials' campaigning," press release, 12 November. Available at: https://crta.rs/en/government-defending-public-officials-campaigning/.

488 "Insufficient legal improvements to prevent public officials' campaign," press release, CRTA, 14 December. Available at: https://crta.rs/en/insufficient-legal-improvements-to-prevent-a-public-officials-campaign/.

489 "Overview of measures undertaken by the Serbian Government in response to OSCE/ODIHR and CRTA recommendations". CRTA. Available in Serbian at: https://crta.rs/wp-content/uploads/2019/12/Pregled-mera-preduzetih-od-strane-Vlade-Republike-Srbije-u-odnosu-na-preporuke-OEBS_ODIHR-i-Crte.pdf.

490 CRTA's recommendations are available at: https://crta.rs/wp-content/uploads/2019/03/CRTA-2020-Recommendations-Web.pdf.

491 "Insufficient legal improvements to prevent public officials' campaign," press release, CRTA, 14 December. Available at: https://crta.rs/en/insufficient-legal-improvements-to-prevent-a-public-officials-campaign/.

10.4. Local Elections – "Litmus Test" of the Election System

Local elections were held in the municipality of Medveđa in September 2019. Its residents had the opportunity to vote for the ticket of the ruling Serbian Progressive Party Aleksandar Vučić – Because We Love Medveđa (SNS), which ran in coalition with the Socialist Party of Serbia and United Serbia, for the Party of United Pensioners, the Serbian Radical Party, the Party for Democratic Action, the joint ticket of the Democratic Party and Alternative for the Future, and the ticket of the newly-formed party Serbian Right.[492] The Alliance for Serbia, which had walked out of the talks on election conditions at the FPN[493] three weeks before the elections, boycotted the Medveđa elections, saying they lacked legitimacy.[494]

The local elections in Medveđa can be taken as a litmus test of the government's willingness to create a climate in which fair and democratic elections can be held and as an indicator of the election conditions in Serbia. The election campaign was characterised by irregularities identified time and again at local and parliamentary elections, including political campaigning by public officials, notably by the Serbian President, threats against opposition parties, violations of the right to personal data protection, distribution of different kinds of aid to the voters before the elections, the presence of a large number of vehicles with licence plates of other towns or without any licence plates on election day, et al.

This small and undeveloped municipality was visited by five ministers, the Serbian President and directors of national public companies before the elections.[495] During his speech at the SNS rally in Medveđa, President Aleksandar Vučić promised that measures would be adopted to improve living standards, that the income of the residents of impoverished municipalities would be increased by between 5% and 10% to halt the depopulation of that part of Serbia and that the government would bring investors. He also called on the people to vote their conscience.[496] The rally was also addressed by Medveđa Mayor Nebojša Arsić, who headed the SNS ticket and who boasted about the number of senior state officials who had visited the municipality. After the elections, he publicly claimed that his ticket had been supported by the topmost state authorities.[497]

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492 "Scuffles on eve of elections in Medveđa, opposition parties say thugs and force are incompatible with elections," *N1*, 5 September. Available in Serbian at: http://rs.n1info.com/Vesti/a523403/Koskanja-pred-izbore-u-Medvedji-opozicija-kaze-batinasi-i-prisila-nisu-izbori.html.

493 "Alliance for Serbia will not participate in round tables anymore," *RFE*, 19 August. Available in Serbian at: https://www.slobodnaevropa.org/a/30117894.html.

494 "Elections in Medveđa: SNS declares victory, Miša Vacić's party wins seat in local parliament, jeeps without licence plates resurface," *Insajder*, 9 September.

495 See more in Serbian at: https://insajder.net/sr/sajt/vazno/15514/, http://rs.n1info.com/Vesti/a523070/Vuciceva-stadionska-groznica-za-razvoj-fudbala-ili-samo-predizborna-obecanja.html and https://www.youtube.com/watch?v=zzXvvE1x4Ls.

496 *Ibid.*

497 "Final results in Medveđa: SNS coalition can form local government by itself," *Južne vesti*, 9 September. Available in Serbian at: https://www.juznevesti.com/Politika/Konacni-rezultati-u-Medvedji-Koalicija-oko-SNS-moze-sama-da-formira-vlast.sr.html.

The newly-formed party Serbian Right, which ran in the Medveđa elections, is led by Miša Vacić, who had earlier been found guilty of discriminating against the LGBT population, illegal possession of weapons and obstructing public officials from performing their duties.[498] This extreme rightist has always intensified his activities at times of tension, for instance, after ICTY indictee Radovan Karadžić was arrested and when Pride Parades were held. He is also infamous for putting up posters with the name of another ICTY indictee, Ratko Mladić, voicing threats against opposition MP Marinika Tepić and threatening on social media that he would personally mobilise other people's children for war.[499]

A number of incidents in which the members of Vacić's party were involved occurred during the elections in Medveđa.[500] Their wrongdoings were also shown on video clips Vacić and the Serbian Right posted on social networks. Namely, Vacić posted on his Twitter profile a recording of him going through the local Red Cross Office's lists of soup kitchen and food package beneficiaries and commenting how many votes they could bring (the number of such people is relatively high in this impoverished municipality).[501] Vacić's perusal of the personal data of the most vulnerable citizens was not only morally reprehensible, but in breach of the law as well. Former Commissioner Šabić said that Vacić had broken Article 146 of the Criminal Code (unauthorised collection of personal data),[502] a crime warranting a fine or up to one year of imprisonment. The incumbent Commissioner initiated an ad hoc check of the Medveđa Red Cross Office and filed a misdemeanour motion against it.[503] The prosecution service did not react.[504] The Red Cross Office at first denied it had done anything wrong, but subsequently apologised on social networks.[505]

498 "Elections in Medveđa: SNS declares victory, Miša Vacić's party wins seat in local parliament, jeeps without licence plates resurface," *Insajder*, 9 September. Available in Serbian at: https://insajder.net/sr/sajt/vazno/15514/.

499 News that Vacić served as an advisor in the Kosovo and Metohija Office attracted a lot of attention. Vacić's contract was not extended after Marko Đurić, the Head of the Kosovo Office, said that he did not actually work there.

500 "Scuffles on eve of elections in Medveđa, opposition parties say thugs and force are not elections," *N1*, 5 September. Available in Serbian at: http://rs.n1info.com/Vesti/a523403/Koskanja-pred-izbore-u-Medvedji-opozicija-kaze-batinasi-i-prisila-nisu-izbori.html.

501 "Commissioner launches check of Red Cross: Miša Vacić had access to citizens' personal data during election campaign in Medveđa," *Insajder*, 9 September. Available in Serbian at: https://insajder.net/sr/sajt/vazno/15518/.

502 "Šabić: Vacić committed a crime," *Danas*, 9 September. Available in Serbian at: https://www.danas.rs/drustvo/sabic-vacic-je-pocinio-krivicno-delo/.

503 "Misdemeanour proceedings initiated against Medveđa Red Cross Office because of Vacić's video clip," *RTS,* 14 October. Available in Serbian at: http://www.rts.rs/page/stories/sr/story/125/drustvo/3697362/prekrsajni-postupak-protiv-crvenog-krsta-medvedja-zbog-vaciceve-objave.html.

504 Rodoljub Šabić recalled that the prosecutors had turned a blind eye to many criminal reports he had filed when he was Commissioner because of violations of the right to personal data protection.

505 "Medveđa elections: 6 political tickets vying, SzS boycotting," *Južne vesti*, 7 September. Available in Serbian at: https://www.juznevesti.com/Politika/Izbori-u-Medvedji-na-listicu-6-politickih-opcija-SzS-bojkotuje.sr.html.

Another problematic video clip made by the Serbian Right shows one of its members recording the printing of ballots in front of the election commission. No explanation for the man's presence there was provided. The comment of the election commission chairman, Ivan Kostić, raised quite a few eyebrows. He said that he was primarily tasked with ensuring the regularity of the elections (...) that he had not seen the recording, was not interested in it and was not planning on seeing it.[506]

Recordings of a large number of cars without licence plates cruising Medveđa on election day and at the behest of the ruling party also testify to systemic violations of fair election conditions and abusive methods of pressure and lawlessness unheard of in developed democracies. This was confirmed also by SNS senior official Dragan Šormaz who called the column of SUVs driving through Medveđa in the plain view of the police "a party machine crushing the opposition".[507] Such a practice has become commonplace on election day in small towns; it culminated during the local elections in Lučani in 2018, which were characterised by continuous pressures on the voters, presence of numerous individuals and cars from other parts of Serbia, who were communicating with the election committee members and ID-ing the voters in front of the polling stations, et al.[508]

The Serbian Progressive Party scored a convincing victory at the Medveđa elections (winning nearly 65% of the votes). All the other parties that ran also made the threshold.[509] Given all the irregularities during the elections, SNS' victory did not come as a surprise. However, the fact that none of the institutions reacted to these irregularities, with the exception of the Commissioner who filed a misdemeanour report against the local Red Cross Office, is concerning.

10.5. 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

506 "SNS declares victory at Medveđa elections," *N1*, 8 September. Available in Serbian at: http://rs.n1info.com/Vesti/a524221/SNS-proglasila-pobedu-na-izborima-u-Medvedji.html.

507 "Jeeps without licence plates cruising Medveđa," *Južne vesti*, 8 September. Available in Serbian at: https://www.juznevesti.com/Politika/Dzipovi-bez-tablica-obilaze-Medvedju-izlaznost-do-18-sati-56.sr.html.

508 See the *2018 Report*,II.10.2.

509 "Final results in Medveđa: SNS coalition can form local government by itself," *Južne vesti*, 9 September. Available in Serbian at: https://www.juznevesti.com/Politika/Konacni-rezultati-u-Medvedji-Koalicija-oko-SNS-moze-sama-da-formira-vlast.sr.html.

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).

Direct public engagement in local governance is governed by the Act on Local Self-Governments,[510] which provides for civil initiatives, citizens' assemblies and referendums as forms of civil engagement at the local level (in Arts. 67–71).

The Preliminary Draft of the Referendum and Civil Initiative Act[511] was developed back in 2009. The Venice Commission issued its opinion on it in 2010.[512] A public debate on the Preliminary Draft was at long last organised in November 2019. It, was, however, held only in Belgrade, Novi Sad and Niš, and lasted only a month. True to form, the legislator again failed to take on board the opinions of all the relevant experts.[513]

The most problematic provision in the Preliminary Draft is the one under which a decision will be endorsed at a referendum if more than half of the voters who participated in the referendum vote for it (under the valid Act, decisions must be endorsed by a majority of all registered voters). Experts warned of the risk that decisions would be endorsed by a small number of citizens, who would thus take over the sovereignty vested in all the citizens.[514]

Another question that arises is the timing of adoption of this law, which has been on the back-burner for a decade, in the light of a potential referendum on constitutional amendments and the resolution of the Kosovo issue, which the citizens must endorse.[515] Such fears are all the greater given the state of democracy in Serbia, primarily the political parties' usurpation of institutions, undermining of the separation of powers and the situation in the media, precluding both free election and free referendum campaigns. Other disputable issues concern the funding of referendum campaigns, including the authentication of signatures, flawed electoral rolls[516] and a small number of provisions governing the civil initiative.

510 *Sl. glasnik RS*, 129/07 and 83/14 – other law.

511 Available in Serbian at: https://www.paragraf.rs/dnevne-vesti/301019/301019-vest12.html.

512 Venice Commission Opinion 551/2009, 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.

513 "Petrović Škero on Referendum Act," *N1*, 24 November. Available in Serbian at: http://rs.n1info.com/Vesti/a546530/Petrovic-Skero-i-zakonu-o-referendumu.html; "Ivošević and Dimitrijevic on Preliminary Draft of Referendum Act," *N1*, 21 November. Available in Serbian at: http://rs.n1info.com/Vesti/a545911/Ivosevic-i-Dimitrijevic-o-nacrtu-zakona-o-referendumu.html.

514 *Ibid.*

515 "Mandić: Referendum law is being changed to declare victory in an unfair game," CEPRIS, 2 December. Available in Serbian at: https://www.cepris.org/mandic-zakon-o-referendumu-se-menja-da-bi-se-u-nefer-utakmici-proglasila-pobeda/.

516 "Ivošević and Dimitrijevic on Preliminary Draft of Referendum Act," *N1*, 21 November. Available in Serbian at: http://rs.n1info.com/Vesti/a545911/Ivosevic-i-Dimitrijevic-o-nacrtu-zakona-o-referendumu.html.

The Act now in force lays down an extremely restrictive deadline for collecting signatures supporting a popular initiative (30,000 signatures have to be collected within seven days) and the formal requirements the citizens have to fulfil. Furthermore, it does not offer strong guarantees that the National Assembly will discuss such an initiative.[517] The Preliminary Draft commendably extends the deadline for collecting the signatures to 90 days. The question of funding the costs of submission remains open since notarial authentication of signatures will cost 9 million RSD.

11. Freedom of Movement

11.1. International and Constitutional Framework

The freedom of movement and choice of residence is one of the fundamental personal rights guaranteed to everyone. This freedom is enshrined also in Article 12 of the International Covenant on Civil and Political Rights, under which everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence and be free to leave any country, including his own. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others.

The ECHR[518] also guarantees individuals the right to liberty of movement and freedom to choose their residence provided that they are lawfully in a state; the lawful residence requirements are set by national law and authorities.[519] No restrictions on the aliens' freedom of movement and right to choose their residence shall be placed other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The prohibition of expulsion enshrined in Protocol No. 4 to the ECHR is related to the right to liberty of movement and freedom to choose one's residence. Under Article 3 of this Protocol, no one shall be expelled, by means either of an

517 CRTA's data show that 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. See more in CRTA's "Civil initiative waiting in a drawer: Analysis of collective civic participation in the decision-making process," Belgrade, 2018, p. 8. Available in Serbian at: http://crta.rs/wp-content/uploads/2018/03/Finalno_03-narodna-inicijativa-NOVO.pdf. This publication also includes a detailed analysis of the normative framework and problems in practice.

518 Protocols Nos. 4 and 7 to the ECHR.

519 *Paramanathan v. Germany*, ECmHR, App. no. 12068/86 (1986).

individual or of a collective measure, from the territory of the State of which he is a national and no one shall be deprived of the right to enter the territory of the state of which he is a national. Freedom of movement is more restrictive under the ECHR than the ICCPR given that the prohibition of expulsion applies only to nationals, but not to aliens, notably refugees and stateless persons whom states grant residence because of they are refugees or stateless.[520]

Collective expulsion of aliens is also prohibited. Collective expulsion is defined by ECHR bodies as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.[521] Although it may seem that a collective right has thus been established, an individual right is essentially at issue, because it protects individuals from group expulsion.[522]

Protocol No. 7 to the ECHR guarantees protection to aliens at risk of expulsion. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law. The rights such aliens have are specified in Article 1(1) of this Protocol, while paragraph 2 of that Article lays down that an alien may be expelled before the exercise of his rights when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

The freedom of movement and choice of residence in Serbia is enshrined in Article 39 of the RS Constitution. It entails the freedom to choose, change and leave one's place of residence, the right to leave the territory of Serbia and the right to return to it. Under the Constitution, freedom of movement and choice of residence may be restricted by law but such law may in no event undermine the substance of the guaranteed right.[523] Furthermore, the legislator is bound by the constitutionally set limits within which human rights may generally be restricted. The Constitution specifies the reasons that may constitute grounds for restricting the freedom of movement and choice of residence: in order to conduct criminal proceedings, protect public law and order, prevent the spread of communicable diseases and defend the Republic of Serbia.

The freedom of movement and choice of residence is a right aliens enjoy under a special regime. The Constitution lays down that the entry, movement and residence of aliens shall be prescribed by law. As opposed to Serbian nationals, whose expulsion is prohibited under the Constitution,[524] aliens may be expelled from Ser-

520 M. Paunović et al, *International Human Rights* (*Međunarodna ljudska prava),* Belgrade University Law School, 5th edition, 2018, p. 161.

521 *Excerpts from Landmark European Court of Human Rights Case-Law (Izvodi iz najznačajnijih odluka Evropskog suda za ljudska prava),* PC Službeni glasnik, 2006, p. 387.

522 V. Dimitrijević et al, *International Human Rights Law (Međunarodno pravo ljudskih prava),* BCHR and Dosije, 2007, p. 179.

523 Article 18(2), RS Constitution.

524 Article 39(2), RS Constitution.

bia under conditions specified in the Constitution, notably under a decision taken in a procedure prescribed by law which is appealable The Constitution prohibits the expulsion of aliens to a country where they are at risk of persecution because of their personal features (race, sex, religion, ethnic affiliation, nationality, membership of a social group) or their beliefs (political opinion) or where they are at risk of grave violations of their rights guaranteed by the Serbian Constitution.[525]

11.2. Freedom of Movement and Its Restrictions under Serbian Administrative Law

11.2.1. Aliens Act

The Aliens Act[526] governs the entry, movement, residence and return of aliens and the powers and duties of RS administrative authorities related to the entry, movement and residence of aliens in Serbia and their return from Serbia.[527]

Aliens are entitled to enter and reside in the Republic of Serbia provided they fulfil the conditions laid down in the Aliens Act, possess a valid travel document with a visa or residence permit unless otherwise provided by law or an international treaty.[528] Under Article 17 of the Aliens Act, aliens may freely leave the Republic of Serbia; this right may be restricted only exceptionally, in the event: they do not possess a travel or another document required for crossing the state border; they do not have a visa required to enter another country; or there are reasonable grounds to believe that, by leaving Serbia, they would avoid prosecution for a crime or misdemeanour, service of a prison sentence, enforcement of a court order, deprivation of liberty or enforcement of a due pecuniary claim pursuant to an order of the relevant state authority or court.

The relevant authorities (border police) are entitled to deny aliens entry in the RS. As opposed to the prior Aliens Act,[529] under which denial of entry was entered only in the aliens' travel documents, the new Aliens Act commendably stipulates that the border police must issue decisions denying entry that are to be issued in the prescribed template[530] and specify the grounds for denial of entry. The denial of entry decisions are issued in both Serbian and English and may be appealed with the MIA.

The new Aliens Act also lays down the return procedure principles, the procedure for issuing rulings ordering the return of aliens not fulfilling or no longer

525 Article 39(3), RS Constitution.

526 *Sl. glasnik RS,* 24/18 and 31/19.

527 Article 1, Aliens Act.

528 Article 6, Aliens Act.

529 Aliens Act, *Sl. glasnik RS,* 97/08.

530 Police issue decisions denying entry pursuant to the Rulebook on Denial and Approval of Entry Templates and the Entry of Denial of Entry Data in the Aliens' Travel Documents, *Sl. glasnik RS,* 50/18.

fulfilling the requirements for lawful residence in the RS, as well as the deadlines for their voluntary return to their country of origin or country of habitual residence.[531]

Article 81 of the Aliens Act lays down the forced removal procedure and conditions. The enforcement of the forced removal of aliens is monitored by the Protector of Citizens in accordance with his powers and the Act Ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 83 of the Aliens Act prohibits *refoulement* of aliens to a territory where they are at risk of capital punishment, torture, inhuman or degrading treatment or punishment or grave violations of their rights guaranteed by the Serbian Constitution.

Article 87 of the Aliens Act is also relevant to the restriction of the aliens' freedom of movement. Under that Article, aliens shall be detained in the Aliens Shelter pursuant to a ruling of the relevant authority to prepare their return or pending their forced removal. Such rulings, however, are not appealable; the aliens may contest them before the Administrative Court, but their claims do not have suspensive effect, i.e. do not stay the enforcement of the rulings.

As per the issuance of travel documents to aliens, aliens who have developed family, cultural or social ties with the RS, i.e. those who can be considered to have achieved a degree of integration in Serbian society, may be granted temporary residence on humanitarian grounds.[532] Such a possibility is reserved for aliens, who had been unable to apply for temporary residence in the previous period due to specific circumstances, including lack of a travel document. Aliens without valid travel documents are granted or extended temporary residence in a *ruling*.[533]

On the other hand, Article 97 of the Aliens Act regulates the issuance of laissez passers to aliens. Laissez-passers shall be issued to aliens without travel documents (to go abroad) in the event their Serbian citizenship has been terminated; they have lost their foreign travel documents or have otherwise been left without them and the states they are nationals of do not have a diplomatic or consular mission in Serbia and their interests are not represented by another state; or in the event they are to be forcibly removed from Serbia.

Laissez passers may be issued to aliens in all three cases prescribed by the Aliens Act, but only to those abroad leaving Serbia.

It may thus be concluded that aliens without travel documents who are granted temporary residence may only be issued laissez passers to leave Serbia, but that they are not entitled to return to it.

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531 Articles 75–77, Aliens Act.

532 Article 61(1) Aliens Act. Other categories of aliens who may be approved this type of residence are listed in Art. 61 (2–5).

533 Article 44(6) Aliens Act.

11.2.2. Asylum and Temporary Protection Act (ATPA)

The Asylum and Temporary Protection Act[534] governs the status, rights and obligations of asylum seekers and aliens granted asylum or temporary protection, the principles, conditions and procedures for granting asylum and temporary protection and their termination, as well as other issues of relevance to asylum and temporary protection.[535]

Asylum seekers are entitled to residence and freedom of movement in the Republic of Serbia (Art. 48). Upon their admission to an asylum centre or another facility designated for the accommodation of asylum seekers, the asylum seekers are entitled to reside in the Republic of Serbia and move freely in it, unless there are grounds for restricting their movement under the law.[536] The same right is reserved for successful asylum seekers. Aliens granted asylum are entitled to move freely across the Republic of Serbia and outside it, in accordance with the provisions of this law.[537]

Articles 77–80 of the ATPA deal with restrictions of the free movement of asylum seekers, grounds for and duration of the restrictions and the measures the authorities may take in case the asylum seekers fail to comply with the restrictions. Asylum seekers may be prohibited from leaving their asylum centres, specific addresses or areas. Such a restriction may last a maximum of three months and may exceptionally be extended another three months. Asylum seekers not complying with the restrictions may be detained in the Aliens Shelter.

Successful asylum seekers are entitled to documents, including refugee travel documents (Art. 87(6)). Refugee travel documents with five-year validity are to be issued by the Asylum Office on the application of the successful asylum seekers.[538] However, the MIA failed to adopt a by-law on the template of a refugee travel document by the end of the year, thus restricting the freedom of movement of the successful asylum seekers. Neither the Serbian Constitution nor the ECHR envisage the non-existence of a regulation as grounds for restricting the freedom of movement.

The BCHR filed a constitutional appeal with the Constitutional Court on behalf of its client, Syrian national X.Y. in which it challenged the restriction of his movement because he lacks a travel document due to the non-existence of the by-law. The Constitutional Court dismissed the appeal, explaining that:

"Pursuant to Article 170 of the RS Constitution introducing the constitutional appeal as a separate and extraordinary legal remedy that may be filed for the protection of constitutionally guaranteed rights and freedoms, constitutional appeals may be lodged only against individual enactments or actions deciding on the rights and

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

535 Article 1 ATPA.

536 Article 49 ATPA.

537 Article 62 ATPA.

538 Article 91(1).

obligations of the applicants, given that the applicants' constitutionally guaranteed rights and freedoms can be violated only by such enactments or actions."

Therefore, the Constitutional Court held that it could not rule on violations of rights arising from the non-existence of a legal enactment and that the non-adoption of a general legal enactment was not an individual action in the meaning of Article 170, wherefore it cannot be contested by a constitutional appeal.

In October 2016, X.Y. filed an application with the ECtHR complaining of a violation of Article 2 of Protocol No. 4 to the ECHR. The ECtHR asked Serbia to submit its observations on the admissibility and merits of the complaint. The case was still pending at the time this Report was finalised.

11.2.3. Travel Documents Act

The Travel Documents Act (TDA)[539] governs the travel documents required by Serbian nationals for travel abroad, the kinds of travel documents and the issuance procedure.[540] Article 35 of this law is relevant to restrictions of the freedom of movement as it specifies when the relevant authorities shall refuse to issue travel documents to applicants: if an investigation has been launched or charges have been raised against them at the order of the relevant court or public prosecution service; if they have been convicted to an unconditional sentence of imprisonment exceeding three months or have not served it yet; if they are prohibited from travelling in accordance with recognised international enactments; if their movement is prohibited to prevent the spread of communicable diseases or epidemics; if they lack consent to travel abroad for national defence reasons or there are other impediments under the law governing military conscription; in case of a state of emergency or state of war; and, if they already possess valid travel documents seized by the relevant authorities pending the completion of proceedings against them. The relevant authorities may not refuse to issue laissez passers on the request of Serbian nationals abroad who do not have travel documents and want to return to Serbia.

11.2.4. Act on the Protection of the Population from Communicable Diseases

The Act on the Protection of the Population from Communicable Diseases[541] governs the protection of the population from communicable diseases and specific health issues; enumerates the communicable diseases endangering the health of the population of the Republic of Serbia the prevention and suppression of which is of general interest to the Republic of Serbia; regulates epidemiological supervision and measures and their implementation and funding; monitoring of the enforcement of this law and other issues of relevance to the protection of the population from communicable diseases.[542]

539 *Sl. glasnik RS,* 90/07, 116/08, 104/09, 76/10 and 62/14.

540 Article 1 TDA.

541 *Sl. glasnik RS*, 15/16.

542 Article 1, Act on the Protection of the Population from Communicable Diseases.

Quarantine, a measure laid down in Article 31 of this Act, amounts to a restriction of the freedom of movement. Quarantine is defined as a measure restricting the freedom of movement and involving mandatory health examinations of well individuals who may have been exposed to communicable diseases during the incubation period. Another measure to protect the population from communicable diseases involves the restriction of its movement in areas in which an emergency has been declared.[543] Prohibition of movement or restriction of movement in an area affected by a communicable disease or epidemic may be ordered also to prevent the spread of communicable diseases from other countries to Serbia and vice versa. (Art. 53(1(1)).

11.3. Freedom of Movement and Its Restrictions under Serbian Criminal Law

11.3.1. Police Act

Under Article 1 of the Police Act,[544] this law shall govern the affairs, organisation and powers of the Ministry of Internal Affairs and the police. The internal affairs in the Ministry's remit denote state administration affairs prescribed by law, the performance of which ensures and improves the safety of the citizens and property, fosters rule of law and ensures the exercise of human and minority rights and freedoms enshrined in the Constitution and the law, and other related affairs within the Ministry's purview and jurisdiction.[545]

Under Article 88 of the Police Act, police officers may *temporarily* restrict an individual's freedom of movement to a specific area or facility in order to: 1) prevent the commission of crimes or misdemeanours; 2) find and arrest perpetrators of crimes or misdemeanours; 3) find and arrest individuals wanted by the authorities; 4) find traces and objects that may serve as evidence in criminal or misdemeanour proceedings. The temporary restriction of the freedom of movement may not exceed the time necessary to achieve the goal for which it was imposed. Restrictions of the freedom of movement exceeding eight hours must be approved by the relevant court.

11.3.2. Criminal Procedure Code (CPC)

Ban on leaving one's place of residence is a measure prescribed in Article 188(1(4)) of the Criminal Procedure Code[546] to secure the presence of a defendant and unhindered conduct of criminal proceedings. The reason for ordering this measure is very similar to the one laid down in the CPC for ordering pre-trial detention – risk of absconding. Under Article 199 of the CPC, the court may prohibit the

543 Article 52 (1(2)), Act on the Protection of the Population from Communicable Diseases.

544 *Sl. glasnik RS,* 6/16, 24/18 and 87/18.

545 Article 2, Police Act.

546 *Sl. glasnik RS,* 72/11, 101/11, 121/12, 32/13, 45/13, 55/14 and 35/19.

defendant from leaving his temporary place of residence or the Republic of Serbia if circumstances indicate he might abscond, go into hiding, leave for an unknown destination or a foreign country. This measure may be combined with other forms of restrictions of the defendants' liberty: they may be prohibited from visiting specific locations, ordered to periodically report to a specific state authority and their travel documents or driving licences may be seized.

Seizure of a travel document is an adhesive measure providing an additional guarantee that the defendant will not go abroad and be beyond the reach of the police and the court. The orders imposing this measure and other restrictions in addition to the ban on leaving one's place of temporary residence are issued by the relevant courts on the motion of the public prosecutors. The courts shall notify the Ministry of Internal Affairs of the imposed measures and caution the defendants that their non-compliance with the measures will result in the ordering of harsher measures.

Distinction needs to be made between deprivation of liberty as a form of restriction of the right to liberty and security and restriction of the freedom of movement. The views of the ECtHR are relevant given that this issue arises in interpretations of Article 5(1) of the ECHR (right to liberty and security) and Article 2 of Protocol No. 4 to the ECHR (freedom of movement). The difference between deprivation of and restriction upon liberty is nonetheless merely one of degree or intensity, and not one of nature or substance.[547] In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5, the starting point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question.[548]

The Constitutional Court of Serbia reviewed the constitutionality of the conditions for ordering the ban on leaving one's place of temporary residence in a case in which it dismissed the constitutional appeal as ill-founded.[549] The Constitutional Court held that the following issues needed to be examined in particular when reviewing whether a violation of the right to freedom of movement has occurred: whether the restriction exists, whether it is explicitly prescribed by law, its purpose, and whether the restriction is proportionate to the aim pursued in a democratic society. The Constitutional Court held that this measure restricted the freedom of movement guaranteed by the Constitution but that freedom of movement was not absolute. It concluded that decisions prohibiting individuals from leaving their places of residence had to be in compliance with the general constitutional rule defining the substance, quality and scope of legal powers in human rights matters and the constitutionally permissible limits of human rights restrictions.

547 *Guzzardi v. Italy*, ECHR, App. no. 7367/76 (1980).

548 *Ibid*.

549 Constitutional Court Decision Už – 1167/2011 of 29 May 2014.

12. Right to Citizenship

12.1. Legal Framework

Article 15 of the Universal Declaration of Human Rights provides that everyone has the right to a nationality and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. The International Covenant on Civil and Political Rights does not recognise this right per se but it does guarantee every child the right to acquire a nationality (Art. 24(3)). The right to acquire a nationality is guaranteed to every child also under Article 7 of the Convention on the Rights of the Child,[550] which also prohibits statelessness of children. Article 18 of the Convention on the Rights of Persons with Disabilities[551] provides the right to recognition of a nationality of persons with disabilities and guarantees children with disabilities the right to a nationality.[552]

The procedure and requirements for acquiring citizenship are governed by domestic law but international standards require that no distinction be made between new-born children. Under Article 7 of the Convention relating to the Status of Stateless Persons,[553] states shall accord to stateless persons the same treatment as is accorded to aliens generally. The Convention on the Reduction of Statelessness[554] lays down in Article 1 that a state shall, under specific circumstances, grant its nationality to a person born in its territory who would otherwise be stateless. Apart from calling on Serbia to ratify international treaties it has not ratified yet,[555] UN Committees have also urged it, in their Concluding observations, to ensure immediate birth registration, access to identity documentation and citizenship for all children, regardless of whether their parents lack personal documentation or are stateless.[556]

The ECHR does not provide the right to citizenship per se but it indirectly protects it, through the protection of other rights.[557]

550 *Sl. list SFRJ* (*Međunarodni ugovori*), 15/90 and *Sl. list SRJ* (*Međunarodni ugovori*), 4/96 and 2/97.

551 *Sl. glasnik RS* (*Međunarodni ugovori*), 42/09.

552 Art. 18(2), Convention on the Rights of Persons with Disabilities.

553 *Sl. list FNRJ*, 9/59.

554 *Sl. glasnik RS* (*Međunarodni ugovori*), 8/11.

555 Serbia has not yet ratified the European Convention on Nationality (ETS No. 166 of 6 November 1997); the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession (ETS No. 200 of 19 May 2006); or the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families (UN Resolution 45/158 of 18 December 1990).

556 See: CRC/C/SRB/CO/2–3 of 7 March 2017, para. 31; CEDAW Concluding observations on the fourth periodic report of Serbia, CEDAW/C/SRB/CO/4, of 14 March 2019, para. 32 (a) and (b).

557 ECtHR case-law on indirect protection of the right to citizenship is evolving. See, e.g. the Court's judgment in the case of *Genovese v. Malta*, App. No. 53124, of 11 October 2011 (violation of Article 14 in conjunction with Article 8 of the ECHR).

The Serbian Constitution *does not guarantee* the right to Serbian citizenship. Under Article 38 of the Constitution, acquisition and termination of Serbian citizenship shall be governed by law, Serbian citizens may not be expelled or deprived of their citizenship or their right to change it and children born in the territory of Serbia are entitled to Serbian citizenship in the event they do not fulfil the requirements to acquire the citizenship of another state.

The Serbian Citizenship Act (CA)[558] lays down the prerequisites, requirements and procedures for acquiring and terminating Serbian citizenship and prescribes the keeping of citizenship records and the proof of citizenship procedure (Arts. 46–49b).

The entry of citizenship in citizenship records is governed in greater detail by the Rulebook on the entry of citizenship in the birth register, templates for keeping records of citizenship acquisition and termination rulings and the citizenship certificate template.[559] Another Rulebook[560] lays down the template of the applicants' written statement wherein they recognise Serbia as their own state, which they need to submit together with their citizenship application forms[561]

The citizenship acquisition and termination procedure is a specific administrative procedure. The Citizenship Act's procedural provisions are a *lex specialis* vis-à-vis the General Administrative Procedure Act (GAPA),[562] which means that the GAPA applies to procedural issues not explicitly governed by the Citizenship Act.[563]

12.2. Acquisition of Serbian Citizenship

Under Article 6(1) of the Citizenship Act, Serbian citizenship shall be acquired by: descent; birth in the territory of the Republic of Serbia; naturalisation; and, pursuant to an international treaty. Serbian citizenship by birth or descent is acquired by registration of citizenship in the birth register (Art. 6(2)) while citizenship by naturalisation is acquired pursuant to a final ruling issued by the Ministry of Internal Affairs after its implementation of the procedure laid down in the Act.

Serbian citizenship by descent is acquired by a child: whose both parents are citizens of Serbia at the time of his birth; born in Serbia, whose one parent is a citizen of Serbia at the time of his birth; born abroad, whose one parent is a citizen of Serbia at the time of his birth and the other parent is either a foreign citizen, of unknown citizenship or stateless.

558 *Sl. glasnik RS*, 135/04, 90/07 and 24/18.

559 *Sl. glasnik RS*, 22/05, 84/05, 121/07, 69/10, 55/17 and 82/18.

560 *Sl. glasnik RS*, 13/05 and 121/07.

561 *Ibid*. Art. 1.

562 *Sl. glasnik RS*, 18/2016 and 95/2018 – authentic interpretation.

563 Stevan Lilić, *Administrative Law – Administrative Procedural Law*, 8th edition, Belgrade University Law School, Belgrade, 2014, pp. 124–125.

A child born or found in the territory of the Republic of Serbia shall acquire Serbian citizenship by birth if both his parents are unknown or of unknown citizenship or stateless or if the child is stateless. The citizenship of such a child may be terminated at the request of his parents if it is ascertained that both his parents are foreign nationals before he turns 18; children over 14 have to consent to termination of their Serbian citizenship.[564]

Aliens granted permanent residence under the law on movement and residence of aliens are eligible for Serbian citizenship provided they are: over 18 years old; have not been deprived of legal capacity; have been released from foreign citizenship or submit proof they will be released if they are granted Serbian citizenship by naturalisation; have continuously resided at a registered address in Serbia for at least three years; and submit a written statement recognising the Republic of Serbia as their state (Art. 14). Individuals released from Serbian citizenship who have acquired foreign citizenship and individuals whose Serbian citizenship was terminated by release or renunciation at their parents' request may again acquire Serbian citizenship if they fulfil the requirements specified in Article 34 of the Citizenship Act.

Under Article 23(1) of the Act "[A] member of the Serbian nation not residing in the territory of the Republic of Serbia is entitled to citizenship of the Republic of Serbia without release from foreign citizenship provided he is 18 years old, has not been deprived of legal capacity and submits a written statement considering the Republic of Serbia his own state." Although paragraph 2 of this Article grants the same right to members of other nations or ethnic communities in the territory of the Republic of Serbia, paragraph 1 could be perceived as favouring members of the Serbian nation.

The Citizenship Act provides for naturalisation, pursuant to a Serbian Government decision and on the proposal of the relevant ministry.[565] Namely, Serbian citizenship may be granted also to aliens whose acquisition of Serbian citizenship is in Serbia's interest. In the January-August 2019, 13 aliens acquired Serbian citizenship under Article 19(1) of the Citizenship Act.[566]

The decision to grant Serbian citizenship to fugitive former Thai Prime Minister Yingluck Shinawatra raised quite a few eyebrows.[567] The Serbian Government rendered its decision to grant her Serbian citizenship at its session on 27 June 2019.[568] The ruling is based on Article 19, of the Citizenship Act, under which Serbian citizenship may be granted to aliens, whose admission to Serbian citizenship

564 Article 13, Citizenship Act.

565 Article 19(3), Citizenship Act.

566 The list of all 171 aliens granted Serbian citizenship under Government decisions from 2010 to August is available in the *Nedeljnik* article of 15 August, available in Serbian at: https://www.nedeljnik.rs/kompletan-spisak-171-osobe-koje-su-odlukom-vlade-dobile-srpsko-drzavljanstvo-od-2010-godine-politicari-sportisti-biznismeni/.

567 *Ibid*.

568 *Sl. glasnik RS*, 47/19.

would be in Serbia's interest. The legitimacy, not the legality of this decision is at stake. Namely, Shinawatra has been convicted of corruption in her country of origin and there are no records that she had ever been in Serbia before she was granted Serbian citizenship. Most importantly, her contribution to Serbia's society rendering her worthy of Serbian citizenship remains unclear.[569]

12.3. Acquisition of Serbian Citizenship by Refugees

The naturalisation of refugees, as the highest degree of their integration in the receiving country, is laid down in Article 34 of the Convention Relating to the Status of Refugees.[570] Under this Article, "[T]he Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."[571]

However, the relevant amendments to the Citizenship Act defining the requirements for the naturalisation of this particularly vulnerable category of the population were not adopted even after the Asylum and Temporary Protection Act[572] entered into force, wherefore aliens granted asylum are precluded from acquiring Serbian citizenship through naturalisation, which has greatly impinged also on their motivation to integrate.[573]

Aliens granted asylum in Serbia do not have the possibility of acquiring Serbian citizenship through naturalisation because all legal forms of protection (refuge, subsidiary and temporary protection) are considered temporary forms of protection. This solution has resulted in the statelessness of the children of the refugees (granted refuge in Serbia) given that, as a rule, these refugees cannot regulate their children's citizenship by applying to the authorities of their countries of origin.

12.4. Termination of Serbian Citizenship

Under Article 28 of the Citizenship Act, Serbian citizenship may be terminated by release, renunciation or pursuant to an international treaty.[574] Individuals may be released from Serbian citizenship provided they are over 18 years of age, have no outstanding military service, tax or legal property obligations arising from marital or

569 Bojan Stojanović, "Thai Connection," *Vreme*, 15 August, available in Serbian at: https://www.vreme.com/cms/view.php?id=1709703.

570 *Sl. list FNRJ* (*Međunarodni ugovori*), 7/60.

571 Article 34, Convention Relating to the Status of Refugees.

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

573 BCHR, *Right to Asylum in the Republic of Serbia 2018*, p. 92, available at: http://azil.rs/en/wp-content/uploads/2019/02/Right-to-Asylum-2018.pdf.

574 Article 27, Citizenship Act.

parental relationships with persons living in Serbia, are not prosecuted for criminal offences prosecuted ex officio, have served any prison sentences they have been convicted to, and have foreign citizenship or evidence that they will be granted foreign citizenship.

Serbian citizenship may be terminated by renunciation by adult Serbian citizens born and living abroad and holding foreign citizenship before they turn 25.

Article 36 of the Citizenship Act lays down that citizenship of the Republic of Serbia may be terminated pursuant to a ratified international treaty.

Citizenship of the Republic of Serbia is terminated on the day of service of the decision on release from Serbian citizenship and, in case of termination of citizenship by renunciation, on the day the renunciation statement is made.[575]

575 Article 37, Citizenship Act.

III.
HUMAN RIGHTS IN PRACTICE – SELECT TOPICS

1. Dire Media Straits and Jeopardised Media Freedoms

1.1. Divergent Assessments of the Serbian Media Situation

The situation on Serbia's media stage, qualified as concerning for years, deteriorated drastically in 2019. The reporting period was characterised by regular attacks on outlets and reporters criticising the government, especially those engaged in investigative journalism who unearthed several scandals involving individuals in power. The government stepped up its rhetoric against unbiased media and journalists, the state stepped up its indirect takeover of media ownership and economic pressures on media, whilst increasing its co-funding of projects submitted by media, the reports of which can be described as uncritical and frequently as untrue.

On the other hand, the Serbian authorities have persistently disagreed with such assessments of the situation on the media stage. During her appearance in the TV show "Insajder Debate", the Serbian President's Media Adviser Suzana Vasiljević said that Serbia had a large number of independent media and that her boss had never been aggressive towards reporters; she described journalists as zealots and said that the reporters of *N1*, a TV station lauded for its impartiality by all independent and guild associations, were unprofessional.[1]

Such an assessment is shared neither by international institutions and international NGOs focusing on press freedoms and media, nor by Serbian media experts and liberals.

In its Serbia 2019 Report, the European Commission expressed concern by the lack of headway in improving the status of media professionals and media freedoms. It, inter alia, said that serious efforts were needed to identify and prosecute those suspected of violating Internet freedoms, as well as those using social media to intimidate and threaten journalists, that the independence of EMRA needed to be strengthened and that the new Media Strategy needed to be adopted. It also recom-

1 "Vasiljević: Vučić has never been aggressive towards journalists," *Danas*, 27 May. Available in Serbian at: https://www.danas.rs/drustvo/vasiljevic-vucic-nikada-nije-bio-agresivan-prema-novinarima/.

mended that co-funding of media content serving public interest should be brought into line with existing legislation and criteria, and implemented in a fair and transparent way that is not detrimental to market equality, especially at the local level.[2]

In her comment of the EC Report, Prime Minister Ana Brnabić said that some of its parts, including on the media, were partly biased, that the EC had noted that work on the Media Strategy had continued throughout 2018[3] and that the first-instance judgment in the Ćuruvija case had been delivered, but that this had not sufficed for it to conclude that progress has been made.[4] At the beginning of the year, Brnabić said that the press freedoms in Serbia were better than before 2012, i.e. before the Serbian Progressive Party came to power[5] and that she was proud of the freedom of the media in Serbia.[6]

Serbia slipped 14 places and ranked 90th out of 180 countries on the Reporters without Borders (RSF) 2019 World Press Freedom Index. This organisation concluded, among other things, that Serbia has become a place where practicing journalism was neither safe nor supported by the state and, that the number of attacks on media was on the rise, including death threats.[7] Serbia has continuously been dropping on this Index; it fell as 31 places since 2016.[8]

Head of the RSF EU and Balkans desk Pauline Ades-Mevel said that the RSF delegation discussed the media situation with Serbian President Aleksandar Vučić during its January visit and alerted him to increasing violence and attacks against journalists, especially the assaults on reporters Milan Jovanović and Tatjana Vojtehovski, as well as many other journalists. She went on to say that they had received assurances both from him and the Serbian Government that steps would be taken to improve the conditions in which media were operating, but that the results were not visible yet.[9] After meeting the RSF's delegation, Vučić said that the media situation

2 *Serbia 2019 Report*, pp. 25–27. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

3 More on the development of the new Media Strategy and the problems faced by media associations in the previous reporting period in the *2018 Report*, II.2.2.

4 "Serbia's PM says EC 2019 report on her country partly biased," *N1*, 29 May. Available at: http://rs.n1info.com/English/NEWS/a487680/Belgrade-sees-EC-2019-report-on-Serbia-as-partly-biased.html.

5 "Brnabić: state of media freedoms in Serbia better than before 2012," *Danas*, 27 February. Available in Serbian at: https://www.danas.rs/politika/brnabic-stanje-slobode-medija-u-srbiji-bolje-nego-pre-2012/.

6 "Brnabić: media freedoms exist in Serbia and I'm proud of that," *Cenzolovka*, 5 January. Available in Serbian at https://www.cenzolovka.rs/drzava-i-mediji/ana-brnabic-u-srbiji-postoji-sloboda-medija-ponosim-se-time-srbija-je-sve-sem-diktature/.

7 2019 World Press Freedom Index. Reporters without Borders. Available at: https://rsf.org/en/serbia.

8 "Serbia drops 14 places on RSF Global Press Freedom Index," *Cenzolovka,* 18 April. Available in Serbian at: https://www.cenzolovka.rs/pritisci-i-napadi/srbija-pala-za-14-mesta-u-izvestaju-rbg-o-stanju-medijskih-sloboda-u-svetu/.

9 "Serbian President without results in press freedoms," *Danas*, 19 April. Available in Serbian at: https://www.danas.rs/drustvo/predsednik-srbije-bez-rezultata-u-slobodi-medija/.

was far from ideal but that the state was willing to cooperate with European institutions, media organisations and NGOs on improving it.[10]

The Serbian President maintained this moderately critical tone at the international "Media Freedom in Crisis," panel at Davos, where he said that he was not proud of the media situation in Serbia and vowed the state would do its utmost to improve it and that he hoped he would be able to be proud of the freedom of the press and speech in Serbia in a year or two.[11]

Vučić's participation in the panel provoked sharp reactions among some Serbian press associations. On the eve of the panel, IJAS and NDNV qualified his participation in it as cynical and utterly hypocritical. "There is no doubt that no other than President Vučić is to the most to blame for the increasing crisis in the safety of reporters and media freedoms in Serbia. Consequently, he has no moral right to share advice and recommendations on media freedoms at an international event," the two associations said in their press release.[12]

In its 2019 report, *Freedom House* moved Serbia from the group of free to the group of partly free countries. This organisation warned that governments of vulnerable democracies used economic and legal tools to silence independent journalism and support pro-regime media, and cited Serbian President Aleksandar Vučić and Hungarian Prime Minister Viktor Orban in example. Freedom House described the Serbian authorities' methods and pressures on independent media as much more sophisticated than those employed in traditionally undemocratic countries. It said that the weakness of the opposition helped keep the government in power, but concluded that the outlets under its control, which dominated the media scene in Serbia, were still the most responsible for the support it still enjoyed.[13]

For his part, Aleksandar Vučić said that the Freedom House 2019 report brought "nothing new" and merely comprised two texts from the previous report. He dismissed criticisms of the state of media freedoms in Serbia, saying that those "who want to write whatever they want" were talking of pressures on the media.[14]

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10 "Vučić with Reporters without Borders: Media situation far from ideal," *Danas*, 21 January. Available in Serbian at: https://www.danas.rs/drustvo/vucic-pozvao-reportere-bez-granica-da-pomognu-medije-u-srbiji/.

11 "Serbian President Accused of Hypocrisy for Media Freedom Speech," *Balkan Insight*, 22 January. Available at: https://balkaninsight.com/2019/01/22/serbian-president-accused-of-hypocrisy-for-media-freedom-speech-01–22–2019/.

12 "IJAS and NDNV: Vučić has no moral right to discuss media freedoms in Davos," *IJAS*, 22 January. Available in Serbian at: http://nuns.rs/info/statements/40689/nuns-i-ndnv-vucic-nema-moralno-pravo-da-u-davosu-govori-o-medijskim-slobodama.html.

13 "Freedom House warns of new tools for snuffling media freedoms," *Euractiv*, 5 June. Available in Serbian at: https://euractiv.rs/11-mediji/193-vesti/13864-fridom-haus-upozorava-na-nove-alatke-za-guenje-medijskih-sloboda. See also the Freedom House 2019 report, available at: https://freedomhouse.org/report/freedom-media/freedom-media-2019?fbclid=IwAR3KqWus1NiLUT-6MaDPNDPAxeU5w87AREpMxDxh4oKdqjYb9SdHzLbcBSg0.

14 "Vučić: Freedom House has nothing new on Serbia, two texts from last year's report," *Cenzolovka*, 6 June. Available in Serbian at: https://www.cenzolovka.rs/pritisci-i-napadi/vucic-fridom-haus-nema-nista-novo-dva-teksta-od-proslogodisnjeg-izvestaja/.

Culture and Information Ministry State Secretary Aleksandar Gajović spoke in a similar vein. He said that the EC, Reporters without Borders and Freedom House reports were riddled with deficiencies and presumptions.[15] In November, when thousands of citizens in many Serbian towns were protesting against RTS' biased reporting on the scandals covered by independent media, he said that there was no media darkness in Serbia and that pluralism and voicing of critical views were well regulated in Serbia.[16]

Freedom of expression in Serbia was also commented on by *CIVICUS*, an international association rallying CSOs and activists and monitoring three freedoms – of assembly, association and expression – across the world. In 2019, *CIVICUS* downgraded Serbia's civic space rating from Narrowed to Obstructed following a thorough assessment of the state of civic freedoms in the country as protected by international law. Serbia now ranks among the most vulnerable countries, together with Hungary and Ukraine.[17]

The state of media freedoms in Serbia was similarly qualified by other international organisations as well. The Committee to Protect Journalists (*CPJ*) said that investigative reporters, independent media and those critical of the Serbian government, especially those investigating issues related to government officials, were having an increasingly hard time doing their job.[18] In November 2019, the Council of Europe included among the threats to press freedoms the arrest of Aleksandar Obradović, a whistle-blower from the Valjevo arms plant Krušik, because he leaked information implicating the father of police minister Branko Stefanović.[19]

The media situation and attacks and pressures on journalists in Serbia, especially those engaged in investigative journalism, were also criticised by the Serbian public and professional press associations and NGOs focusing on freedom of expression.[20] The Protector of Citizens also qualified the pressures on reporters in Serbia as unbearable. He described these pressures as verbal, physical, as well as economic. He said that the professional work of the reporters and the status of the profession

15 "Gajović: EC and Freedom House reports riddled with shortcomings," *N1*, 11 June. Available in Serbian at: http://rs.n1info.com/Vesti/a491094/Gajovic-Izvestaji-EK-i-Fridom-hausa-obiluju-nedostacima.html.

16 "Gajović on opposition in media," *N1*, 13 November. Available in Serbian at: http://rs.n1info.com/Vesti/a543395/Gajovic-o-opoziciji-u-medijima.html.

17 More on the freedoms of assembly and association in Chapter II.8 and II.9. The CIVICUS report is available at: https://www.civicus.org/index.php/media-resources/news/4113-serbia-s-civic-space-downgraded.

18 "Serbian authorities fear independent media," *VoA*, 3 May. Available in Serbian at: https://www.glasamerike.net/a/cpj-vlast-u-srbiji-se-boji-nezavisnih-medija/4901376.html.

19 More on the case of whistleblower Aleksandar Obradović in Chapters II.2.2.2 and III.3.6. More on the Council of Europe's qualification of his arrest as a threat to freedom of the press in: https://betabriefing.com/news/politics/8991-arrest-of-krusik-whistleblower-noted-as-threat-to-freedom-of-the-press-by-council-of-europe.

20 More about threats against journalists in III.1.4.

had been undermined both by their material status and the physical and all other forms of attacks against them, hate speech and discriminatory terminology.[21]

1.2. Project Co-Funding – State Reclaiming Grip on Media

In the 2011 Media Strategy and the 2014 media laws, the state committed to relinquishing its ownership of the media (with the exception of the public service broadcasters, minority media publishing councils and the institution publishing media informing citizens in Kosovo and Metohija).

One of the main goals of the authors of the Public Information and Media Act (PIMA) was to establish an adequate legal model for the public authorities' participation in the funding of media that would, on the one hand, preclude the direct subsidising of the media by the public authorities, and, on the other, ensure the achievement of public interest in the area of public information. This is also a consequence of the character of the public authorities' obligation with respect to media freedoms, because they must both refrain from all actions stifling such freedoms and create an environment enabling their development.

The state's financial involvement thus has to be based on the principles of transparency, impartiality and non-discrimination. As opposed to direct subsidies to the media, project co-funding does not aim at ensuring the economic functioning of the media, but, rather, the realisation of public interest in the field of public information, as specified in the PIMA.

However, rather than relinquishing its ownership of the media, the state has been increasing its presence in them in various ways: through the purchase of outlets by individuals in or close to power; allocation of public co-funding for content of public interest; and allocation of regional TV and radio frequencies to outlets the owners or editors of which are close to the government.

Telekom Serbia, in which the state holds a majority stake, continued buying cable TV operators and expanding its network in 2019. The Telekom Group comprises Telekom Serbia, MTS Antena and another 16 cable TV operators in Serbia. Telekom Serbia's share in the Internet services market stands at between 50 and 60 percent and its share in the media content distribution market at between 40 and 50 percent.[22] The announcement of the future partnership between Telekom Serbia and Euronews in August 2019 was qualified as a violation of Serbian law. The state owns a majority stake in Telekom and Euronews derives a third of its annual income from the EU budget. Under Serbian information law, state-owned companies may

21 "Protector of Citizens: Pressures on reporters in Serbia have become unbearable," *Danas*, 22 March. Available in Serbian at: https://www.danas.rs/drustvo/zastitnik-gradjana-pritisak-na-novinare-u-srbiji-postao-nepodnosljiv/.

22 "Telekom taking over also Polaris Media in Niš", *Danas*, 19 November. Available in Serbian at: https://www.danas.rs/ekonomija/telekom-srbija-preuzima-i-polaris-media-iz-nisa/.

not own or co-own media outlets. This practice is also in contravention of the European Commission's assessments and recommendations in its Serbia 2016 and 2018 Reports.[23]

Furthermore, the state controls all four private TV stations with nationwide coverage, as well as both public service broadcasters – *Radio Television of Serbia* (RTS) and *Radio Television of Vojvodina* (RTV Vojvodina). Although it officially ceased to exist back in 2015, the state news agency *Tanjug* continued working thanks to the state's indirect financial aid, extended via the contracts it has won with public companies without competition. *Tanjug* continued accumulating debts, which rose to 93.2 million RSD in the 2016–2018 period.[24] *Tanjug* enjoys a major advantage over the other two private agencies, *Beta* and *FoNet,* in accessing information of the state authorities. The resolution of *Tanjug*'s status has been put off until the adoption of the new Media Strategy, which is still pending. At the same time, its staff are denied their legally guaranteed rights because, according to Tanjug's documentation, it has only one employee – its Director.

Media project co-funding, the other mechanism by which the government has been exercising control over the media, was also effective. According to data of the Journalists' Association of Serbia (JAS), 27.5 million RSD (€233,000) were allocated in the first half of 2019 to outlets holding record in violations of the law and professional standards and in publishing fake news. They include *Alo*, *Srpski telegraf*, *Kurir*, *Informer* and the *Srbija danas* portal; Press Council's monitoring shows that they had violated the Press Code of Conduct over 3,000 times in the last five months of 2018[25] and 2,286 times in the July-September 2019 period.

As a survey conducted by the Balkan Investigative Reporting Network showed, over two billion RSD of public funds are allocated to media through Calls for Proposals every year; most of the money goes to tabloids and pro-regime media, inter alia, due to abuse of the legal lacunae by government-organised NGOs (GONGOs).[26]

Examples of allocations of public funding to pro-regime media are many. Over 80% of the 78.5 million RSD allocated within a Call for Proposals in Niš (the second largest CfP after Belgrade) went to outlets whose owners are close to the SNS and/or toe the government line. In the first nine months of 2019, a total of 5.1

23 "The state of Serbian and Euronews are breaking the law," press release, Civic Initiatives, 16 August. Available at: https://www.gradjanske.org/en/the-state-of-serbia-and-euronews-are-breaking-the-law/.

24 "Tanjug ended last year with 32 million RSD debt," *Cenzolovka*, 23 July. Available in Serbian at: https://www.cenzolovka.rs/drzava-i-mediji/tanjug-proslu-godinu-zavrsio-sa-minusom-od-32-miliona-dinara/.

25 "Increasingly open funding of pro-regime propaganda," *Danas,* 20–21 July. Available in Serbian at: https://www.danas.rs/drustvo/sve-otvorenije-finansiranje-prorezimske-propagande/.

26 "Abuse of state funds for media via GONGOs," *Danas*, 13 September. Available in Serbian at: https://www.danas.rs/drustvo/vladavina-prava/zloupotrebe-drzavnog-novca-za-medije-preko-gongo-organizacija/.

million RSD were granted (by a ministry and the local self-governments in Kruševac and the vicinity) to ADD Production, a company owned by Irena Gašić, the wife of state security chief and senior SNS official Bratislav Gašić.[27]

Funds allocated for media project co-funding are also used to purchase other outlets. Radoica Milosavljević, an SNS sponsor and co-owner of a PET manufacturing company, who already owns ten outlets, bought the local RTV from Bačka Palanka for 1.3 million RSD; he was granted four million RSD via the call for media project co-funding proposals in 2019.[28] This businessman was one of the 27 donors who bought office space in New Belgrade and then gifted it to the SNS, as the Centre for Investigative Reporting of Serbia (CINS) reported in February 2019.[29] Zorica Jelača from Belgrade, who bought *Radio Valjevo* for 400,000 RSD, was granted 6.2 million RSD by the local self-government via the media CfPs.[30]

The state's sale of one of the leading dailies in Serbia, *Večernje novosti*, for 300 million RSD was fraught with unknowns. This paper was bought by a private company based in the village of Vučak near Smederevo, which was founded in the summer of 2018. Lawyer Igor Isailović, who has strong ties with Finance Minister Siniša Mali and Prime Minister Ana Brnabić, legally represented the company during the transaction.[31]

These more than generous allocations were made at the time when 1,518 outlets in Serbia had 11,163 employees, 60% of them freelancers not by their own choice[32] and when only 27% of the young journalists were employed full time. [33] At the time when, according to a survey, 52.6% of the media quoted lack of money as the greatest obstacle to introducing innovations.[34]

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27 "At least 5.1 million dinars will be allocated by end year for media projects to the company owned by Gašić's wife," *Cenzolovka*, 5 October. Available in Serbian at: https://www.cenzolovka.rs/drzava-i-mediji/firmi-gasiceve-supruge-za-medijske-projekte-najmanje-51-milion-dinara-ove-godine/.

28 "RTV Bačka Palanka bought for 1.3 million, gets 4 million from municipality," *Danas*, 26 June. Available in Serbian at: https://www.danas.rs/drustvo/rtv-backa-palanka-kupljena-za-13-miliona-od-opstine-dobila-cetiri-miliona/.

29 "Radoica Milosavljević among 27 donors of office space to SNS," CINS, 14 February. Available in Serbian at: https://www.cins.rs/radoica-milosavljevic-medju-27-donatora-prostorija-sns-u/.

30 "Jelača buys Radio Valjevo for 400,000, gets 6.2 million from city," *Kolubarske*, 30 April. Available in Serbian at: https://www.kolubarske.rs/sr/vesti/valjevo/8503/.

31 "Company that bought *Večernje novosti* was registered by an associate of Ana Brnabić and Siniša Mali," *Danas*, 30 August. Available in Serbian at: https://www.danas.rs/ekonomija/raskrikavanje-advokat-blizak-vrhu-vlasti-registrovao-firmu-koja-kupuje-vecernje-novosti/.

32 "11,000 working in media, most journalists free lancing," *Danas*, 1 August. Available in Serbian at: https://www.danas.rs/drustvo/uns-u-medijima-11-000-zaposlenih-novinari-pretezno-honorarci/.

33 "SINOS: only 27% young journalists in Serbia employed for an indefinite period of time," *Danas,* 30 April. Available in Serbian at: https://www.danas.rs/drustvo/sinos-samo-27-odsto-mladih-novinara-u-srbiji-zaposleno-na-neodredjeno/.

34 "Half the media in Serbia lack money for innovations," *Danas*, 15 November. Available in Serbian at: https://www.danas.rs/drustvo/polovina-medija-u-srbiji-nema-para-za-inovacije/.

It thus comes as no surprise that nearly 67% of the polled citizens said they did not trust the *RTS* at all or very little, while almost as many (64%) opined that it was under strong political influence. At the same time, as many as 81% of the respondents said they distrusted information broadcast on private TV stations. A recent survey by Konrad Adenauer Stiftung showed that print media enjoyed the trust of 20%, online media the trust of 23% and radio stations the trust of 27% of the respondents.[35]

1.3. Electronic Media Regulatory Authority (EMRA) – Major Problem on Serbia's Media Stage

The legal status of the EMRA is not ideally regulated by the law. Although it, on the one hand, proclaims that the EMRA shall be independent, it, on the other hand, curtails its independence. Furthermore, the EMRA's Financial Plans have to be voted in by the National Assembly, but the law fails to specify what happens if the National Assembly votes against it or if the vote on it is delayed.

If one also takes into account the ample opportunities political bodies have to influence EMRA Council appointments and that EMRA professional staff are treated as civil servants, one can clearly conclude that EMRA actually does not have much independence and that it is "levitating" between a state administration authority and an independent regulatory authority, which definitely affects the quality of regulation.

Therefore, the legislative framework is inadequate but the work of the EMRA, above all its Council, is a much greater problem. It is mainly criticised for succumbing to obvious political pressure and not exercising all its powers conferred by law. Furthermore, the rump EMRA Council has failed to fulfil one of its obligations, to monitor election campaigns, for several years now. It, for instance, refused to publish the list of misdemeanours committed by pro-regime TV stations *Pink* and *Studio B* during the 2018 Belgrade election campaign and qualified as false a report that was prepared by its department and published by some media, accusing the opposition and the daily *Danas* of undue pressure.[36]

During the widespread civic protests in February 2019, the Serbian Progressive Party recorded a video spot ridiculing not only the opposition leaders but the citizens participating in the protests as well. In response to a question whether she found the spot disputable and whether EMRA would react to its broadcasting on TV stations with nationwide coverage, EMRA Council member Olivera Zekić said that there was no need for them to react because it was aired during the news and thus

35 "Serbia doesn't believe RTS," *Danas*, 9 –10 November. Available in Serbian at: https://www.danas.rs/drustvo/vladavina-prava/srbija-ne-veruje-rts-u/.

36 "EMRA accusing Danas of pressuring it," *Danas*, 13–14 April. Available in Serbian at: https://www.danas.rs/drustvo/rem-optuzuje-danas-za-pritisak/.

constituted part of the stations' editorial policies and that EMRA did not react to editorial policies.[37]

EMRA has frequently initiated proceedings against TV stations with nationwide coverage for violating advertising law, mostly for airing overly long advertisements. This agility can probably be ascribed to its wish to leave the impression that it is doing its job.[38] EMRA initiated 81 such proceedings from April 2014 to November 2018, but over a third of them (32 cases) were dismissed because the statute of limitations expired. The misdemeanour court said that EMRA was late in filing its reports, while EMRA complained that the deadline was too short. Whatever the reason may be, the fact is that around 65% of cases concerning violations of the advertising law are dismissed as out of time.[39]

EMRA was much less efficient in initiating proceedings over grave violations of the law, the professional code of conduct and broadcasting regulations. It reacted only twice to the plethora of insults, quarrels, fights, promotions of quackery, explicit sexual intercourse, et al, mostly on reality shows aired by *Happy* and *Pink*. In April 2019, it initiated two proceedings against *TV Pink* for broadcasting scenes of violence and adult content at impermissible times and the inappropriate performance of the national anthem.[40] After huge public pressure, EMRA also initiated proceedings against *TV Happy* for insulting professor Danijel Sinani on ethnic grounds.[41]

The vacancies in the EMRA Council were advertised in December, as agreed by the government and the opposition in the third round of dialogue on election conditions brokered by European Parliament MEPs.[42] Since the Council members are elected by the parliament, which is under the strong control of the ruling coalition, there are reasonable grounds to believe that it made this move to leave the impression that it has acquiesced to the opposition's demands, not that it is actually trying to improve the situation on the Serbian media scene.

On the other hand, Serbian police minister Nebojša Stefanović, who heads the Government working group for improving the election conditions, claimed that people have been reluctant to apply for the positions because they were afraid of the

37 "SNS spot on "tycoon" protests above the law," *Danas*, 2 February. Available in Serbian at: https://www.danas.rs/drustvo/spot-sns-o-tajkunskim-protestima-iznad-zakona/.

38 The number of violations of this law is extremely high. According to JAS data, it was violated 882 times in March 2019 by four private TV stations with nationwide coverage – *Pink, Happy, Prva* and *O2*.

39 "EMRA won only four cases against TV stations in four years," *Cenzolovka*, 31 January. Available in Serbian at: https://www.cenzolovka.rs/drzava-i-mediji/rem-za-cetiri-i-po-godine-dobio-samo-cetiri-spora-protiv-nacionalnih-televizija/.

40 "EMRA initiates proceedings against Pink over violence," *Danas*, 15–16 June. Available in Serbian at: https://www.danas.rs/drustvo/rem-pokrenuo-postupke-protiv-pinka-zbog-nasilja-i-erotskog-sadrzaja/.

41 "EMRA initiates proceedings against *TV Happy* for insulting professor Sinani," *Insajder*, 3 October. Available in Serbian at: https://insajder.net/sr/sajt/vazno/15709/.

42 More in Chapter II.10.3.

opposition. He said that the new Council members could be elected by the end of the year,[43] although, under the law, the procedure is to last several months.

Nonetheless, the procedure was implemented in record time and the National Assembly elected three new EMRA members on 27 December 2019. It remained unclear how the authorities planned on fulfilling the other commitment on the replacement of two other EMRA members, which they made within the dialogue with the opposition brokered by the European Parliament in the autumn: whether the two EMRA members would resign or whether they would be relieved of duty by the National Assembly. The Chairman of the parliamentary Culture and Information Committee said that there was not enough time to complete the resignation procedure and the election of the two new members by the end of the year.[44]

1.3.1. EMRA's Role in the Election Process

The process of amending by-laws governing media coverage of election campaigns is fraught with risks. In December, EMRA published two documents regulating the conduct of electronic media during election campaigns: the Draft Rulebook on the Public Media Services' Fulfilment of Their Obligations during Election Campaigns and the Draft Recommendation to Commercial Media Service Providers on Ensuring the Representation of Political Parties, Coalitions and Candidates. Under Article 57(1(5)) of the Electronic Media Act, in relation to their programme content and in accordance with their programme concepts, media service providers shall respect the ban on political advertising outside election campaigns and, during such campaigns, enable registered political parties, coalitions and candidates representation without discrimination. Article 60 of the Act provides for the adoption of by-laws regulating these obligations in greater detail.

All media service providers, public and commercial alike, were treated equally until the Rulebook on the Media Service Providers' Obligations during Election Campaigns was repealed. EMRA draft rulebook will have binding effect only on public media service providers, whereas its recommendation concerning commercial media services will not have binding effect. Such an approach is not in accordance with the Electronic Media Act. The obligations regarding the prohibition of political advertising outside of election campaigns and equal media representation during such campaigns apply to all media service providers, both public and commercial ones, both those issued terrestrial and those issued cable licences. Therefore, the new Rulebook should apply to all media service providers, especially since a provider's failure to comply with a recommendation does not constitute grounds for the imposition of measures against it.

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43 "Stefanović: EMRA vacancies announced, people not applying in fear of opposition," *Danas*, 14 December. Available in Serbian at: https://www.danas.rs/politika/stefanovic-konkurs-za-nove-clanove-rem-raspisan-ljudi-se-plase-da-konkurisu-zbog-opozicije/.

44 "Committee Chairman: Election of five EMRA members by the New Year unrealistic," *N1*, 18 December. Available in Serbian at: http://rs.n1info.com/Vesti/a553517/Predsednik-Odbora-za-kulturu-o-izboru-clanova-REM-a.html.

The Draft Rulebook is quite general and does not bring any qualitative improvements. Some of its segments are potentially in conflict with the law the provisions of which it should be regulating in greater detail. First of all, its authors have opted for a narrow interpretation of political advertising, as a public statement broadcast in the form of an advertising message in exchange for financial or other compensation, by which the candidates are recommending themselves and advertising their activities, ideas or views with a view to winning the elections. Reducing political advertising to advertising messages does not target the problem of abuse of public office for political campaigning or editorially unjustified media coverage of political activities. The problems with media coverage of political activities have mostly regarded the promotion of ruling politicians abusing their public offices for party campaigning and coverage of political events under the guise of editorial content.

The Draft Rulebook includes provisions that are directly in contravention of the law. It lays down that, in their coverage of the election activities of parties, coalitions and candidates, public media services shall ensure their representation without discrimination, whilst respecting the principle of proportional equality, and ensure that their programmes reflect the importance of the political parties or candidates. The Electronic Media Act does not make any mention of proportional equality or reflection of the parties' or candidates' importance. It provides for representation without discrimination, which entails the prohibition of different treatment in the same situation. If the parties/coalitions or candidates have fulfilled the criteria for running in the elections, all of them should in principle be equally represented because they are all in the same situation. Therefore, this provision, which is to "regulate in greater detail" the principle of non-discrimination, will actually achieve the opposite effect.

1.4. Threats and Attacks against Journalists

The number of reported incidents targeting journalists continued growing in 2019. According to BCHR's data, 110 such incidents occurred until early December; 11 involved physical assaults and two involved attacks on property. This marks an increase over 2018, when 102 incidents targeting journalists were registered. The number of such incidents has been steadily rising since 2013.

The targets of such attacks hardly vary – media criticising the government and their reporters, notably TV stations *N1* and *Nova S*, the *Beta* news agency, the daily *Danas*, weeklies *Vreme* and *NiN*, and press associations IJAS and NDNV. The number of threats and attacks against investigative reporting networks – Centre for Investigative Reporting (CINS), KRIK – Crime and Corruption Reporting Network and Balkan Investigative Reporting Network (BIRN), and their journalists – increased in the year behind us as well.

Verbal attacks and grave threats, including death and arson threats, were voiced against *Beta* (*Danas*, 12 February, *Beta*, 22 and 29 March, 11 April), NDNV members (*Danas,* 9–10 February, 25 March, 1 April; *TV N1*, 12 April, NDNV, 30 March, *Insajder*, 18 April) and IJAS (IJAS 3 March).

In 2019, physical assaults on journalists were registered in Valjevo (*TV N1*, 31 January), Zrenjanin (*Danas*, 18 February), Prokuplje (*Prokupačkevesti.rs*, 4 March), Niš (IJAS, 10 April), Belgrade (*Regionalna platforma*, 28 May), Inđija (*Danas*, 24 June), Novi Pazar (IJAS, 25 June), Belgrade (*TV N1*, 28 August and 4 September), Belgrade (*Blic*, 13 December) and Obrenovac (JAS, 5 December). The offices of the Media Reform Centre in Niš were stoned, the car of an Aleksinac reporter was set on fire, the home of a KRIK reporter was broken into, while the Serbian police in Sandžak took into custody a Montenegrin journalist and interrogated him for hours without explaining why.

Dissatisfied with *RTS*' coverage of the civic protests, the protesters stormed into its building in March and blocked it twice in December 2019, demanding the dismissal of its Director General Dragan Bujošević. The latter blockade was condemned by press associations IJAS, JAS and the Serbian press trade union SINOS, which noted that reporters should comply with professional standards. The blockade was commented also by EP MEPs, who were attending the dialogue on election conditions in Belgrade that day. MEP Tanja Fajon said that citizens were entitled to peaceful demonstrations, which are the foundations of democracy; she also said journalists were entitled to work freely and professionally, free from pressure, and that they were under the obligation not to spread false news, whereas the politicians were under the obligation not to sow hate and dissent.[45] The Protector of Citizens also reacted extremely sharply, qualifying the peaceful protest as the climax of violence against journalists.[46]

RTS staff, who are members of the *Nezavisnost* press TU, called on both the government and the opposition not to use them as cannon fodder in their conflicts and on the *RTS* senior management to bring the editorial policy into line with "common sense".[47]

The number of verbal attacks on journalists increased in 2019 but the repertoire of insults and accusations remained the same. Reporters were accused of treason, ignorance and lying, of being on the payroll of foreign agencies and the muscle for the opposition. These accusations were mostly voiced by senior ruling coalition

45 "Fajon on RTS blockade: protests are foundation of democracy," *Cenzolovka*, 14 December. Available in Serbian at: https://www.cenzolovka.rs/pritisci-i-napadi/fajon-o-blokadi-rts-a-protesti-su-temelj-demokratije/.

46 "RTS blockade is climax of violence," *RTS*, 14 December. Available in Serbian at: http://www.rts.rs/page/stories/sr/story/125/drustvo/3773813/pasalic-blokada-rts-a-vrhunac-nasilja-.html.

47 "RTS *Nezavisnost* TU: We're not cannon fodder for the government-opposition showdown," *Beta*, 19 December. Available in Serbian at: https://beta.rs/vesti/drustvo-vesti-srbija/120818-sindikat-nezavisnost-rts-nismo-topovsko-meso-za-obracun-vlasti-i-opozicije.

officials and their crony analysts and reporters. After Serbian President Vučić felt sick and ended up in hospital after *N1* journalist Miodrag Sovilj asked him about the Krušik scandal, *Informer* Chief Editor Dragan J. Vučićević said that the *N1* reporter had been tasked with provoking Vučić "and causing havoc afterwards".[48] Vučić's Media Adviser Suzana Vasiljević qualified Sovilj's conduct as inappropriate and said she hoped he did not talk that way with his parents.[49] Vučić himself denied the spins the following day, saying that journalists had nothing to do with his state of health; he did, however, accuse *TV N1* of working for the opposition.[50]

Attacks on *TV N1* and its reporters intensified after the protesters stormed into RTS in March 2019, an event only this station was covering live. *N1* Programme Director Jugoslav Ćosić said that *N1* received hundreds of threats every day.[51] They range from accusations that it is a "treacherous CIA TV station" to calls to move to Luxembourg, where the company is headquartered, threats against journalists and their families, and threats to blow up the building, as well as accusations that it is monopolising the Serbian market.

The weekly NiN was the target of another major government campaign against independent media in 2019. The weekly's front-page in late November, featuring an old photo of President Vučić and his Bosnian Serb counterpart Milorad Dodik on tour of an arms fair, with a snipe rifle pointing in their direction, was sharply condemned by the authorities even before *NiN* hit the stands. SNS chief whip Aleksandar Martinović qualified it as "incitement to assassinate the President."[52] The front-page was changed at the suggestion of the senior management of NiN's publisher, Ringier Axel Springer. The front pages of this weekly remained blank until the end of the year.[53]

That same day, posters featuring a doctored photo of Zvezdan Jovanović, who assassinated Serbian Prime Minister Zoran Đinđić in 2003, receiving the *NiN* prize, were posted across Novi Sad. The publication of a caricature by the famous Serbian caricaturist Predrag Koraksić Corax in *Danas* the following day provoked similar reactions of the authorities, which accused the opposition of wanting to assassinate Vučić. Protests in his support and against these media were staged in Kruševac, Niš, Leskovac and Vranje.

48 "Abuse of Vučić's health to attack *N1*," *Danas*, 18 November. Available in Serbian at: https://www.danas.rs/drustvo/zloupotrebili-vucicevo-zdravlje-za-napade-na-n1/.

49 "Fogging the Krušik scandal," *Danas,* 19 November. Available in Serbian at: https://www.danas.rs/drustvo/zamagljivanje-afere-krusik/.

50 "Vučić: journalists not to blame for me feeling sick," *RFE*, 19 November. Available in Serbian at: https://www.slobodnaevropa.org/a/30280389.html.

51 "Ćosić: state campaigning against us," *Danas*, 20 March. Available in Serbian at: https://www.danas.rs/drustvo/jugoslav-cosic-drzava-vodi-kampanju-protiv-nas/.

52 "NiN front-page awakens devious minds," *Danas*, 29 November.

53 The new front-page was blank except for the title referring to the Krušik scandal. The scandal broke out after NiN reported that Branko Stefanović, the father of the Minister of Internal Affairs, was involved in the illegal sale of weapons made in the Krušik arms plant. More in Chapters II.1.3 and III.3.6.

GIM, one of the main companies implicated in the Krušik scandal, which was represented by the police minister's father Branko Stefanović, publicly threatened to sue *Danas*, *NiN, TV N1,* and *Nedeljnik,* if they went on reporting about it and its operations because they were "revealing trade secrets" and "jeopardising Serbia's security".[54]

Stevan Dojčinović, Chief Editor of *KRIK*, which has also been reporting on the Krušik scandal, was stopped at the airport in Abu Dhabi, where he was to have participated in a panel on the fight against cross-border corruption, money laundering, and organized crime. He was not allowed into the country under the explanation that he was implicated in an international case and was on a "black list", which had not been drawn up by Abu Dhabi. He was not told who had authored the list. Dojčinović said it may have been drawn up by Russia, because he had been subjected to similar treatment in that country.[55]

Grave threats were voiced also against BIRN Editor Slobodan Georgijev (*Danas*, 19 April), whose appearance on *TV Prva* was cancelled (*Danas*, 21 March), as well as against KRIK (IJAS, 22 July), and reporters working for *TV Šabac, TV Pančevo, Srpski telegraf, Žurnal* and journalists in Pančevo, Ruma and Sombor.

Many women journalists were also the target of threats and insults, many of them sexist.[56] *TV Prva* reporter Tanja Vojtehovski authored a show on the sexual harassment of Marija Lukić by the Brus Mayor. Local power-wielders first tried to prevent its broadcast, and when they failed, they turned off the electricity of the local cable TV provider so that the entire city was left without a TV signal and Internet during the show.[57] Vojtehovski was left without her show on *TV Prva* and sacked. The same fate befell journalist Suzana Trninić,[58] a reporter who had worked in *Pančevac*[59] and a reporter who had worked for *RTV Vojvodina.*

Complaints by ruling coalition officials, including Serbian President Aleksandar Vučić, that they are underrepresented in the media are refuted by data published by CRTA, which monitored all five TV stations with national frequencies from

54 "Lalić: amateurish intimidation of the media," *Danas*, 4 December. Available in Serbian at: https://www.danas.rs/drustvo/lalic-amatersko-zastrasivanje-medija/.

55 "Dojčinović and Janjić: the state must find out who's blacklisting journalists," *N1*, 19 December. Available in Serbian at: http://rs.n1info.com/Vesti/a553745/Dojcinovic-i-Janjic-Drzava-mora-da-sazna-ko-stavlja-novinare-na-crne-liste.html.

56 E.g. *Insajder* Editor Brankica Stanković, journalists of *Danas* and *Večernje novosti*, *TV N1*'s Kosovo correspondent, reporters in Valjevo, Zrenjanin, Prokuplje, Dimitrovgrad and *TV Prva*'s reporter.

57 "Vojtehovski: show was obviously sabotaged," *Danas*, 1 March. Available in Serbian at: https://www.danas.rs/drustvo/vojtehovski-svima-je-jasno-da-je-bila-sabotaza-emisije/.

58 "Suzana Trninić sacked from Prva TV," *Danas*, 4 September. Available in Serbian at: https://www.danas.rs/drustvo/suzana-trninic-dobila-otkaz-na-prvoj-televiziji/.

59 "Former Pančevac journalist: I was sacked because I didn't agree to see a shrink," *Cenzolovka*, 22 October. Available in Serbian at: https://www.cenzolovka.rs/pritisci-i-napadi/bivsi-novinar-pancevca-dobio-sam-otkaz-jer-nisam-pristao-da-idem-na-psihijatrijski-pregled/.

14 October to 5 December 2019. The data show that nearly 75% of their reports were devoted to the representatives of the ruling parties and that these reports were, for the most part, positive. Over one-third of airtime was devoted to Aleksandar Vučić and all the reports were positive. Reports on the main opposition group, the Alliance for Serbia, were rare and, in the vast majority of cases, negative.[60]

The importance the ruling SNS attaches to the media is corroborated by its launch of a foundation called "For the Serbian People and State" at Vučić's suggestion. "Media training" is one of the goals of this institution. Its Articles of Association also list among its goals the promotion of politicians and social figures advocating "a modern and progressive Serbia".[61]

Years-long endeavours to shed light on the assassinations of journalists yielded partial results. The killers of reporter and editor Slavko Ćuruvija, assassinated during NATO air strikes on Serbia in April 1999, were convicted by the first-instance court on 5 April 2019. Former state security agents Marković and Milan Radonjić were sentenced to 30 years' imprisonment and their colleagues Ratko Romić and Miroslav Kurak to 20 years in jail (the latter is at large).[62] The proceedings in the case of journalist Dada Vujasinović, who was killed back in 1994, was still in the preliminary investigation state. So was the case regarding the attack on the apartment of late journalist Dejan Anastasijević. No headway was made in the investigation of the murder of Jagodina reporter Milan Pantić.

1.5. Trials and Lawsuits against Journalists and Media

Trials and lawsuits against reporters and media were numerous in 2019. Most of them regarded complaints of damaged honour and reputation, with the plaintiffs seeking damages, and publications of lies. Most of the verdicts delivered in 2019 in honour and reputation cases regarded reports published by tabloids two or more years earlier.

For instance, the court ordered *TV Pink* to pay damages to opposition leaders Dragan Đilas and Saša Radulović. The tabloid *Informer* also paid damages to opposition leaders, including Dragan Đilas, who was the most frequent target of fake news and insults by nearly all the tabloids in 2019, Boško Obradović, Vuk Jeremić, journalist Dinko Gruhonjić and KRIK Editor Stevan Dojčinović. *Informer* was also found guilty of damaging the honour and reputation and ordered to pay damages to

60 "CRTA: Over one-third of airtime on national TV stations devoted to Vučić," *IJAS*, 26 December. Available in Serbian at: http://www.nuns.rs/info/news/46002/crta-o-vucicu-vise-od-trecine-ukupnog-vremena-na-nacionalnim-televizijama.html.

61 "Vučić's initiative SNS foundation for 'media training'," *Istinomer*, 6 November. Available in Serbian at: https://www.istinomer.rs/analize/sns-osnovala-fondaciju-za-srpski-narod-i-drzavu/.

62 "Prosecute other crimes against journalists now that verdict in Ćuruvija case has been delivered," press release, *IJAS*, 5 April. Available in Serbian at: http://www.nuns.rs/info/statements/42107/nuns-posle-presude-za-ubistvo-curuvije-procesuirati-i-druge-zlocine-prema-novinarima.html.

the Chamber of Public Enforcement Agents; it was also prohibited from publishing several articles about enforcement agents. *Ilustrovana politika* was ordered by the court to pay damages to Veran Matić, *RTV Pančevo* was ordered to pay damages to a woman because of a smear campaign it had waged against her. The municipality of Aleksandrovac was ordered to pay damages to *Rasina pres* owner.[63] The court dismissed all the lawsuits Minister Nenad Popović had filed against KRIK.

Notwithstanding these judgments, it cannot be concluded that fake news and insults are effectively prosecuted. Press associations repeatedly criticised the courts' reactions. A group of Serbian journalists filed an application with the ECtHR complaining against a smear campaign waged by pro-regime media against them, describing them as foreign mercenaries seeking to violently create chaos in the country and murder the then prime minister, and now president, Aleksandar Vučić.[64]

On the other hand, when the journalists are the victims, the trials are rarer, last long and are obstructed in various ways. The trial of Grocka Mayor Dragoljub Simonović, charged with ordering the burning down of *Žig info* editor and journalist Milan Jovanović's house in December 2018, commenced only on 20 September 2019. In the meantime, Simonović sued Jovanović 14 times, claiming 4.2 million RSD in damages for the damage the latter had done to his reputation. At the last hearing in December, Simonović hurled insults at Jovanović and threatened deputy public prosecutor Predrag Milovanović that he would lose his job.[65]

1.6. Unprofessional Conduct by Media and Journalists

The number of grave violations of the professional code of conduct and ethical norms continued growing in 2019. Such violations were mostly committed by pro-regime tabloids, which have been publishing lies, amply resorting to speculations and libel, with blatant disregard of privacy, the presumption of innocence, human rights, prohibition of discrimination, the obligation to protect the identity of minors, as well as to the publication of unverified information and data from health and police records.

Hate speech was rampant in 2019, as a rule in pro-regime media. A survey conducted in the 15 September-15 October 2019 period showed that eight dailies and 20 leading Internet portals published 644 texts containing elements of aggressive communication, hate speech and sensationalism in just one day (i.e. each of

63 "JAS: Zdravić's honour and reputation tainted," Danas, 26. August. Available in Serbian at: https://www.danas.rs/drustvo/uns-zdravicu-povredjeni-ugled-i-cast/.

64 "Tabloid witch hunts prompts journalists to turn to European Court of Human Rights," *Cenzolovka*, 15 May. Available at: https://www.cenzolovka.rs/english/tabloid-witch-hunt-prompts-journalists-to-turn-to-european-court-of-human-rights/.

65 "Simonović insulted Jovanović in court," *Politika*, 13 December. Available in Serbian at: http://www.politika.rs/sr/clanak/443940/Dragoljub-Simonovic-pretio-tuziocu.

these outlets published 23 such reports a day). According to the results of the survey "Communication Aggression in Serbia in 2019" conducted by the Centre for Media Professionalisation and Media Literacy (CEPROM), the monitored media published nearly 20,000 reports with such content in one month; the word "traitor" was used in 1,368 reports, the word "Ustasha" in 508 reports and the derogatory word for Albanians "Shiptar" in 491 reports.[66]

Violations of the professional code of conduct and ethical norms were frequent in reports on violence against women. In its survey conducted in the first half of the year, the network Women Journalists against Violence perused 5,549 media reports on violence against women and found that 70% of them included elements of unethical and irresponsible behaviour, that half of them revealed the identity of the victims or their families and that 45 percent of them described the violent incidents in detail.[67]

The Serbian Press Code of Conduct was violated in 2,286 articles in the third quarter of the year[68] and in 3,615 articles in the last five months of 2018. The absolute monthly record of violations since the Press Council was established ten years ago – 791 – was achieved in July 2019.

Tabloids routinely published fake news and lies. As many as 419 false, groundless or unverifiable stories were front-paged by the pro-government tabloids – *Kurir, Informer, Srpski telegraf* and *Alo* – in the first half of 2019, most of them by *Informer*.[69]

Herewith just a few of the many fake news published in the year behind us. *Informer* and *Blic* reported that Angela Merkel and Aleksandar Vučić met in New York, although the meeting had been put off. *Informer* went a step further and also reported on what Vučić had said to the German Chancellor.[70] *Srpski telegraf,* for its part, specified the topics and the names of people who chaired a meeting of defence ministers in Zagreb that had not happened yet. In October, the tabloids made up a story about actor Branislav Trifunović, who led the anti-government civic protests for a while, ripping up the Serbian flag during a theatre performance.[71]

66 The CEPROM survey is available in Serbian at: https://www.ceprom.rs/2019/10/01/komunikativna-agresija-kako-jezik-agresivnosti-i-senzacionalisticki-narativi-uticu-na-pojedince-i-drustvo/.

67 More about the survey is available in Serbian at: https://www.cenzolovka.rs/etika/nasilje-nad-zenama-u-medijima-pravdanje-nasilnika-uz-ismevanje-nasilja-i-zrtve/.

68 "Press Code of Conduct violated in 2,286 articles in three months," press release, Press Council, 19 November. Available in Serbian at: http://www.savetzastampu.rs/cirilica/pres/95/2019/11/19/2208/kodeks-novinara-srbije-za-tri-meseca-prekrsen-u-2_286-tekstova.html.

69 "Over 400 lies published on front-pages of four tabloids in half a year," *Raskrikavanje*, 16 August. Available in Serbian at: https://www.raskrikavanje.rs/page.php?id=488.

70 "What Vučić said at a meeting that didn't take place," *Raskrikavanje*, 25 September. Available in Serbian at: https://www.raskrikavanje.rs/page.php?id=506.

71 "Trifunović: I can't wait to see them present *Informer*'s pages as evidence in court," *Danas*, 12–13 October. Available in Serbian at: https://www.danas.rs/drustvo/trifunovic-jedva-cekam-da-kao-dokazni-materijal-na-sudu-rasire-informer/.

The public service broadcaster also failed to report news promptly and aired doctored stories in 2019. *RTS* was a week late in reporting on the Krušik scandal and arrest of whistle-blower Aleksandar Obradović[72] and it doctored a report on Finance Minister Siniša Mali's plagiarised PhD thesis.[73]

Mention also needs to be made of daily *Politika*'s censorship of an interview with Stanford University Professor Branislav Jakovljević. It version it published did not include Jakovljević's criticisms of the Serbian regime.[74]

2. Status of the Judiciary – Years and Years of Uncertainty

2.1. Constitutional Status of the Judiciary and Appointment of Public Prosecutors and Judges

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.

For the exercise of these principles, the main prerequisite is that the courts render decisions independently, impartially and efficiently in order to enable access to justice. The full exercise of this right, however, requires a thorough reform of the Serbian judiciary, which was, yet again, not implemented by the end of 2019. Judicial independence and elimination of political influence on its work are also the key tasks the Serbian state authorities face in the EU accession process.

The National Judicial Reform Strategy (NJRS) and its Action Plan envisage to exclude the National Assembly from the process of the 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.

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

72 "Shameless *RTS* silence: hid world news on whistleblower's arrest," *Cenzolovka*, 21 October. Available in Serbian at: https://www.cenzolovka.rs/etika/sramno-cutanje-javnog-servisa-rts-sakrio-svetsku-pricu-o-hapsenju-uzbunjivaca/.

73 "*RTS* and *Tanjug* doctor news on Siniša Mali's PhD," *Cenzolovka*, 14 May. Available in Serbian at: https://www.cenzolovka.rs/etika/rts-i-tanjug-izmenili-vest-o-doktoratu-sinise-malog-cins-od-bio-isti-predlog-iz-kabineta-ministra/.

74 "*Politika* censors Stanford University professor Branislav Jakovljević," *Cenzolovka*, 17 December. Available in Serbian at: https://www.cenzolovka.rs/etika/politika-cenzurisala-profesora-univerziteta-stanford-branislava-jakovljevica/.

to three-year probation periods and shall thereupon be appointed to permanent judicial 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.[75]

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.[76]

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.[77] 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.[78]

The appointment of prosecutors is governed by the Public Prosecution Services Act.[79] 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.

The Constitution lays down that public prosecutors shall be nominated by the Government and elected to six-year terms in office by the National Assembly; they may be re-elected once. 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.[80]

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75 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.

76 Article 153 of the Constitution.

77 Constitution, Articles 156–165.

78 Constitution, Article 164.

79 *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.

80 Constitution, Article 159.

2.2. Judicial Appointments in 2019

A number of judges, public prosecutors and deputy public prosecutors were appointed in 2019. The candidates were nominated by the High Judicial Council (HJC) and State Prosecutorial Council (SPC). Both judges and prosecutors, however, claimed that the courts and prosecution services were constantly understaffed. Another issue of relevance to judicial independence was the long periods courts were managed by acting court presidents.

The HJC advertised judicial vacancies[81] in December 2018 but the appointment of new judges was not completed by the end of the year. Judicial vacancies were advertised on a number of occasions in 2019 as well. In March 2019, the HJC advertised court president vacancies in 20 Higher Courts, 48 Basic Courts, 12 Economic Courts and 35 Misdemeanour Courts.[82] Fifty-eight judicial vacancies, including seven in the Supreme Court of Cassation,[83] were advertised in mid-September, while three vacancies in the Novi Sad Appellate Court were advertised in mid-October 2019.[84]

Judicial appointments are not conducted promptly as demonstrated by the lapses between the advertisement of the vacancies and the election of first-time judges and court presidents by the National Assembly or judicial promotions by the HJC. The procedures take very long. For instance, the judges who applied for the 15 Higher Court judicial vacancies advertised on 21 June and 5 July 2019[85] were appointed on 8 October 2019.[86] The election of new court presidents, launched by the advertisement of the vacancies on 15 March 2019,[87] also took long. The HJC published the preliminary list of candidates on 27 September 2019[88] and the new court presidents were elected by the National Assembly on 23 October 2019.[89]

These data indicate that the HJC needs to respond more efficiently and monitor the need for the appointment of judges in order to reduce their deficit in courts at all levels and ensure the greater efficiency of the courts. Experts have for years been warning that the courts are understaffed and that this has undermined their efficiency. This particularly holds true in the case of court presidents, many of whom are occupying the positions on an acting basis, which may impinge on their work

81 *Sl. glasnik RS,* 103/18.

82 *Sl. glasnik RS,* 18/19.

83 *Sl. glasnik RS,* 65/19.

84 *Sl. glasnik RS,* 75/19.

85 *Sl. glasnik RS,* 45/19.

86 The decision on their appointment is available in Serbian at: https://vss.sud.rs/sites/default/files/attachments/za%20sajt%20izbor%20sudije%20visi%20bg%20ns%20ni%2008.10_.pdf.

87 *Sl. glasnik RS,* 18/19.

88 The preliminary list is available in Serbian at: https://vss.sud.rs/sites/default/files/attachments/Visi%20N.%20Sad%20i%20Nis-48–19_1.pdf.

89 The decision on the election of court presidents is available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala_akta/2019/RS42–19-lat.pdf.

given that they have not been appointed in full capacity. Allowing acting court presidents to run the majority of courts gives rise to risks of politicisation of the judiciary and undue influence on its work by other branches of government.

The SPC is only charged with nominating future prosecutors but not with appointing them. It forwards its lists of nominees to the Government, which then forwards them for adoption to the National Assembly. The SPC forwards the lists of nominated deputy public prosecutors directly to the National Assembly. On 10 December 2019, Serbia had a total of 68 public proseutors (22 less than envisaged in the rulebook on staffing) and 718 deputy public prosecutors.

In accordance with its powers, the SPC forwarded a list of 19 nominees to the Serbian Government on 28 November and 4 December 2018. It advertised another two vacancies in 2019. Unfortunately, the National Assembly did not vote in the new prosecutors until the end of the reporting period, wherefore quite a few of them had the status of acting prosecutors. An end should be put to such delays, because they cause uncertainty, much like among the ranks of judges.

The number of deputy public prosecutors was also lower than prescribed by the rulebook on staffing: 718 instead of 804. The SPC forwarded its list of 19 first-time deputy public prosecutor nominees to the National Assembly on 25 November 2019.

In May and June 2019, the SPC appointed 16 Higher Deputy Public Prosecutors. In July 2019, the National Assembly elected 35 first-time deputy public prosecutors nominated by the SPC. At its November session, it elected two Deputy Public Prosecutors of the Kragujevac Appellate Public Prosecution Service and 12 Deputy Public Prosecutors of the Belgrade, Smederevo, Niš, Novi Sad and Kraljevo Higher Public Prosecution Services. The election of 19 Deputy Public Prosecutors in the Basic Public Prosecution Services, nominated by the SPC, was still pending at the end of the reporting period.

2.3. Forgotten Reform of Constitutional Provisions on the Judiciary

In its 2007 Opinion on Serbia's Constitution,[90] the Venice Commission alerted to problematic constitutional provisions allowing political influence on the judiciary. Its recommendations were fully integrated in the Chapter 23 Action Plan activities, as Serbia decided to amend its Constitution and ensure the judiciary's independence from political influence within the EU accession process.

The Chapter 23 Action Plan envisaged the adoption of the proposal to amend the Constitution by the National Assembly in the third quarter of 2016, the devel-

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

opment of the draft amendments and a public debate on them by the end of 2016, the submission of the draft amendments to the Venice Commission for comment in early 2017, and the adoption of the amendments by the end of 2017.[91]

However, the initiative to amend the constitutional provisions on the judiciary was only initiated in the spring of 2017. The two-year "public debate" did not yield any results. The entire process was poorly organised from the very start. Representatives of the judiciary, constitutional law professors and civil society made a number of objections about the draft amendments developed by the Ministry of Justice. The preliminary draft was changed four times. Numerous events devoted to the constitutional reform of the judiciary were organised, although experts warned from the very start that neither the procedure laid down in the Constitution nor the procedure set out in the Chapter 23 Action Plan were followed and that the Justice Ministry was not entitled to propose the constitutional amendments.[92]

Namely, under the Chapter 23 Action Plan, the draft constitutional amendments are to be submitted to the National Assembly in accordance with Article 203 of the Constitution, under which amendments to the Constitution may be proposed only by the Serbian President, the Serbian Government, at least one-third of the MPs or 150,000 or more voters. Therefore, the Ministry of Justice was not authorised to propose the draft constitutional amendments.

Under the Chapter 23 Action Plan, the Government and the National Assembly were to have implemented the ensuing activities: the Government was charged with establishing a working group to draft the working version; organising a public debate; and forwarding the draft to the Venice Commission for comment. Thereafter, the amendments were to be adopted by the National Assembly.

Articles 142–150 of the National Assembly Rules of Procedure[93] govern the constitutional amendment procedure. Under these Articles, the National Assembly shall review the proposed constitutional amendments at its next sitting, no earlier than 30 days from the day they are submitted. After it endorses them, the relevant parliamentary committee shall draft the enactment amending the Constitution and its explanatory memorandum and the constitutional law on the implementation of the constitutional amendments, which shall be adopted by a majority vote of the committee members.

The procedures clearly were not complied with. The two years of consultations and "public debate" organised by the Ministry of Justice were obviously wasted. So was 2019, as far as the constitutional reform of the judiciary is concerned.

Actually, the Government went back to the beginning of the process, after submitting, on 30 November 2018, the proposal to amend the Constitution to the

91 Chapter 23 Action Plan, p. 31.

92 More on the constitutional reform of the judiciary in the *2017 Report*, III.1.1 and the *2018 Report*, III.1.2.

93 National Assembly, Rules of Procedure. Available at: http://www.parlament.gov.rs/upload/documents/06.06.2014.%20ENG%20Rules%20of%20Procedure%20edit%202014.pdf.

National Assembly, in which it referred to Article 203 of the Constitution and Article 142 of the Assembly Rules of Procedure.[94] It proposed that Article 4 of the Constitution on the separation of powers be amended and suggested that the relationship between the three branches be based on mutual checks and balances, rather than mutual control, as it is now. It also proposed amendment of the provisions on courts and public prosecution services in Articles 142–165 of the Constitution and, consequently, of Articles 99, 105 and 172 of the Constitution (on the competences of the National Assembly, decision-making in the National Assembly and election and appointment of Constitutional Court judges, respectively).

The proposed amendments were explained, the Government representatives in the National Assembly and trustees were named. The National Assembly, however, failed to launch the procedure for amending the Constitution nearly a year since the proposal to amend the Constitution had been submitted to it.

The Committee for Constitutional Issues and Legislation upheld the proposal at its session on 14 June 2019. The parliament failed to implement any other activities related to the constitutional reform of the judiciary until the end of the year. It did not schedule a sitting devoted only to the amendment of the Constitution, as provided for by its Rules of Procedure.

The Justice Minister in August 2019 said that the draft constitutional amendments would be decided on by the new parliament, after the 2020 general election.[95] The Revised Chapter 23 Action Plan also envisages the amendment of the Constitution in the second quarter of 2020.[96]

Given that the draft constitutional amendments will have to be decided on at a referendum because they change the provisions on the system of governance, the State Administration and Local Self-Government Ministry in October 2019 drafted a new law on referendums and popular initiatives,[97] which does not set the minimum turnout for a referendum to be valid. Under the preliminary draft, the majority of votes of registered voters who turned out to vote will suffice.[98] Some experts fiercely criticised the draft, interpreting it as an attack on the citizens' sovereignty and fundamental constitutional aspiration to the necessity of referendums on specific, extremely important issues.[99]

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94 The draft constitutional amendments are available at: https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2018)053-e.

95 "Kuburović: Constitution to be amended after the elections," *Novi magazin*, 18 August. Available in Serbian at: http://www.novimagazin.rs/vesti/kuburovic-izmene-ustava-nakon-izbora.

96 The First Preliminary Draft of the Chapter 23 Action Plan is available in Serbian at: https://www.mpravde.gov.rs/sr/tekst/26438/prvi-nacrt-revidiranog-ap-pg23-izmenjen-na-osnovu-komentara-organizacija-civilnog-drustva.php.

97 The preliminary draft is available in Serbian at: https://www.paragraf.rs/dnevne-vesti/301019/301019-vest12.html

98 More about the proposed changes in Chapter II.10.5.

99 "Referendum law: citizens' sovereignty at stake," *N1*, 24 November. Available in Serbian at: http://rs.n1info.com/Vesti/a546530/Petrovic-Skero-i-zakonu-o-referendumu.html.

2.4. New Judicial Reform Strategy

Given that the 2013–2018 Judicial Reform Strategy expired in 2018, the Ministry of Justice on 22 January 2019 issued a ruling[100] establishing a working group tasked with drafting the 2019–2024 strategy.

The working group held three meetings, and, after receiving comments on the first draft of the strategy, it concluded that sufficient headway has been made in reforming the judiciary and that the activities set out in the new strategy focused more on the further development of the judiciary than on structural reform. It therefore changed the title of the text to Judicial Development Strategy.[101]

At its meeting on 24 April 2019, the working group adopted the working version of the 2019–2024 Judicial Development Strategy and invited the public to comment it. On 24 June 2019, the Ministry of Justice presented the new working version of the Strategy.[102] The Strategy states that the completion of the process of amending the Constitution, requiring amendment of laws and by-laws and their alignment with European standards, would be the greatest challenge in the forthcoming period. The Strategy goals include strengthening the independence and autonomy of the judiciary and advancement of its impartiality, accountability, expertise and efficiency.

These goals will be difficult to achieve given the described constitutional reform process, i.e. the fact that the draft constitutional amendments – which the Government submitted to the National Assembly for adoption back in November 2018, after nearly three years of consultations and spending a lot of time, energy and money on it – have not been included in the agenda yet.

2.5. Miscomprehension of the Separation of Powers – Attacks and Pressures on Judges and Prosecutors

Although guaranteed by the Constitution, judicial independence and prosecutorial autonomr are not respected in practice. This conclusion features in numerous reports by international and national organisations, independent associations and bodies of international organisation, including the European Commission's reports on Serbia. In its 2007 Opinion on the Serbian Constitution, the Venice Commission said that some of its provisions were a "recipe for the politicisation of the judiciary".[103] The Venice Commission also noted that some provisions of the Consti-

100 The Ministry of Justice ruling is available in Serbian at: https://www.mpravde.gov.rs/files/Re%C5%A1enje%20RG%20za%20izradu%20NSRP%202019–2024.PDF.

101 The report on the results of the consultations on the working version of the 2019–2024 Strategy is available in Serbian at: https://www.mpravde.gov.rs/files/pdf.

102 Ministry of Justice, Draft 2019–2024 Judicial Development Strategy. Available at: https://www.mpravde.gov.rs/files/New%20Working%20Text%20of%20the%20JDS%20_ENG_%20public%20discussion%20comments%20incorporated.pdf.

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

tution, especially those on the appointment of judges and prosecutors and the High Judicial Council and State Prosecutorial Council left the impression of excessive influence of the legislative and executive branches on the judiciary.

This conclusion was again corroborated in practice in 2019. Senior government officials and MPs joined in the pro-regime tabloids' attacks on the judiciary, demonstrating their uttermost disrespect not only of individual judges and prosecutors but the entire judiciary as well. Herewith a few of the many examples of such conduct.

This is how police minister Nebojša Stefanović reacted to the release of some of the 150 or so individuals arrested during a police campaign in January 2019:[104] "What should I tell police officers, what kind of a message are we sending our society? And then you say, they've been set free. Yes, unforunately. If it were up to me, I'd never let them out. Those who let criminals caught with illegal guns walk freely in New Belgrade are irresponsible."[105] His words, suggesting that the courts must order the pre-trial detention of everyone the police hauled in and want to keep in custody in the absence of any proof of their guilt, can be qualified as nothing less than undue pressure on the judiciary. They met with fierce reactions of guild associations, which warned that neither the Ministry of Internal Affairs nor the Minister were authorised to assess the work of judges and prosecutors.[106]

Only a day after these arrests, the National Security Council held a session, after which President Aleksandar Vučić said that the life imprisonment and stricter prison sentences would be introduced. To recall, the national penal policy is not within the purview of either the Serbian President or the National Security Council.[107]

The Serbian President also made a number of comments about the Krušik case. He discussed who could have the status of whistleblower and specified who definitely was not guilty.[108] He said that: "Stefanović's father had nothing to do with

104 As BCHR has been warning for several years now, two questions arise with respect to the large-scale arrest campaigns conducted by the police. The simultaneous arrest of a large number of persons across Serbia, who are suspected of very different crimes (wherefore it is quite unlikely that they are 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 most of these people, but had not deprived them of liberty until a specific moment, which may be interpreted as an attempt to publicly promote the work of the police. Furthermore, in addition to undermining the likelihood of successfully completing the criminal proceedings, such timing also puts at risk the public order, i.e. the protection of the citizens' rights by the timely prevention of crime. More in the *2017* and *2018 Reports*.

105 "Lawyers respond to Stefanović's criticisms," *N1*, 3 February. Available in Serbian at: http://rs.n1info.com/Vesti/a457435/Pravnici-odgovaraju-na-kritike-Stefanovica.html.

106 "Who releases criminals – the courts or the police," *Politika*, 18 January 2020. Available in Serbian at: http://www.politika.rs/sr/clanak/422074/Hronika/Ko-oslobada-kriminalce-sudovi-ili-policija.

107 "Vučić: We're introducing life sentences and draconic measures for the heaviest crimes," *Insajder*, 12 January. Available in Serbian at: https://insajder.net/sr/sajt/vazno/13115/.

108 "Vučić: corruption scandal implicating Nebojša Stefanović's father is fabricated," *Danas*, 20 October. Available in Serbian at: https://www.danas.rs/politika/vucic-izmisljena-afera-o-umesa-

it,", that "Obradović cannot be a whistleblower under the law". Needless to say, the drawing of such conclusions is within the purview of the judicial authorities, not the representatives of the executive authorities.[109]

The Serbian MPs' comments of the judiciary and its representatives were just as inappropriate. At a May session, the MPs criticised two judges for acquitting the defendants in a case, saying they had "probably done that in exchange for money", that "Albanians bought the judgment" and that "the judgment is prejudicial to Serbs, the Serbian population and humanity in general". The Judges' Association of Serbia qualified their statements as an invitation to lynch these judges and said they further shattered public trust in the judiciary and intimidated the judges. The National Assembly Speaker publicly made insinuations about the judges' membership of judicial associations, thus discouraging citizens from exercising their constitutional right to freedom of association with a view to pursuing their legitimate goals and from freely expressing their opinions about judicial measures.[110]

The chair of a parliamentary session on 22 October 2019 failed to react to a statement by one MP, that "High Judicial Council members will tremble with fear when they come to the Assembly" [111] during the debate on the election of court presidents and first-time judges. Such statements clearly show that some MPs do not understand the role and status of the judiciary. Other offensive and inappropriate comments were made at this session, about judges whose nominations were not even on the agenda. One of them was described as wearing the Democratic Party colours and "pressuring the legislative authorities by his criticisms of life imprisonment and the law".

The insults and attacks did not elicit a response even from the members of the HJC, entrusted with ensuring the independence of courts and judges by the Constitution, who were attending the session. Some MPs obviously believe that judges do not have the same constitutional rights to freedom of association and freedom of speech as other citizens, even in discussions on future laws.[112] Guild associations, such the Association of Public Prosecutors and Deputy Public Prosecutors, the Judges' Association of Serbia,[113] CEPRIS[114] and other CSOs also condemned the insults and attacks in parliament.

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nosti-oca-nebojse-stefanovica-o-korupciji/.

109 More on the Krušik scandal in Chapters II.2.2.2 and III.3.3.6.

110 JAS press release following attacks on judges, 19 May. Available at: https://www.sudije.rs/index.php/en/aktuelnosti/saopstenja-za-javnost/497-jas-statement-following-assaults-on-judges.html.

111 "MPs do not consider the judiciary an equal branch of government," press release, CEPRIS, 28 October. Available in Serbian at: https://www.cepris.org/tag/narodna-skupstina/.

112 A recording of the session is available at: https://www.youtube.com/watch?v=hdYovgfx5P8.

113 JAS press release on the discussion in parliament, 25 October. Available in Serbian at: https://www.sudije.rs/index.php/aktuelnosti/saopstenja-za-javnost/516-s-psh-nj-drush-v-sudi-srbi-dis-usi-i-p-dinih-n-r-dnih-p-sl-ni.html.

114 "MPs do not consider the judiciary an equal branch of government," press release, CEPRIS, 28 October. Available in Serbian at: https://www.cepris.org/2019/10/28/cepris-za-narodne-poslanike-sudstvo-nije-ravnopravna-grana-vlasti/.

All these examples clearly demonstrate that the other two branches of government do not respect the equality and independence of the judiciary and exert undue influence on it, both indirectly and, quite often, directly.

2.6. *Freedom of Association and Freedom of Expression of Judges and Prosecutors*

In 2019, CIVICUS, an international organisation monitoring civic space, downgraded Serbia's civic space rating from Narrowed to Obstructed due to the cumulative impact of threats, smears and the threat of physical attacks against civil society. CIVICUS also alerted to the appearance of government-organised NGOs funded by state institutions and launching organised campaigns against independent associations and activists.[115]

Nearly an identical conclusion was drawn in 2018 by European Judges for Democratic and Freedoms (*MEDEL)* This association warned that it noted in Serbia "the trend of formation of professional organization of judges and prosecutors, which operation is primarily directed to the confirmation or justification of previously presented opinions and visions of governmental authorities" and that these GONGOs focusing on the judiciary aimed at "discrediting and creating of nonsense and confusion in public regarding the work and attitudes of authentic associations, having in mind that these organizations have similar names or abbreviations as authentic associations of judges and prosecutors."[116]

The campaign against judge Miodrag Majić was the climax of the attacks on the judges' and prosecutors' freedoms of association and expression in 2019. These attacks, both by the MPs of the ruling coalition and most regime print and electronic media, were provoked by his public opposition, shared by the association he belongs to, to the amendments to the Criminal Code introducing life imprisonment without parole. The attacks on Majić were so intensive that even the High Judicial Council issued a press release condemning them, which it is not wont to do often.[117]

Another illustrative example is the criminal report filed against Goran Ilić, the deputy chief state prosecutor and member of the SPC.[118] A GONGO accused him of a number of crimes he reportedly committed by writing a text[119] in which he

115 More in Chapter II.9.2.

116 See MEDEL's statement on GONGOs in Serbia, 22 November. Available at: https://medelnet.eu/index.php/news/60-featured-news/482-statement-of-medel-on-government-oriented-ngo-s.

117 "HJC condemns MPs' attacks on judges," *Insajder*, 6 June. Available in Serbian at: https://insajder.net/sr/sajt/vazno/14665/.

118 "Goran Ilić targeted after Miodrag Majić, next in line...," *Danas*, 3 October. Available in Serbian at: https://www.danas.rs/drustvo/vladavina-prava/posle-miodraga-majica-na-meti-hajke-je-goran-ilic-neka-se-pripreme/.

119 "Why prosecutors should be independent," *Danas*, 25 July. Available in Serbian at: https://www.danas.rs/dijalog/licni-stavovi/zasto-bi-tuzilastvo-trebalo-da-bude-nezavisno/.

called for the independence of the prosecutors, criticised their work, especially the practice of keeping specific cases "in their drawers".

3. Right to be Informed and the Fight against Corruption – Are Whistleblowers Protected?

3.1. Corruption

The fight against corruption aims to ensure the rule of law, compliance with law and democratic procedures, effective public policy implementation, accountable management of public property, transparent work of public companies and the realisation and enjoyment of human rights. Corruption affects all walks of public life and is the main barrier to the efficient and effective enforcement of human rights standards. In Serbia, there is a widespread public perception that corruption has infiltrated the political sphere, the legal system and public administration, all of which has directly impinged on public trust in state institutions.

A survey conducted by the Centre for Free Elections and Democracy (CeSID) within USAID's Government Accountability Initiative project in 2019 showed that 55% of Serbia's citizens believed that corruption was widespread and that 59% of the respondents between 18 and 39 years of age thought that the country was heading in the wrong direction. Public trust in institutions fighting corruption also dwindled. Asked which institutions were the most corrupt, 18% of the respondents named the health sector, 11% the inspectorates, 9% the police and 8% the courts. They opined that nepotism in employment and party-based employment were the most frequent corruptive acts.

According to the citizens of Serbia, corruption remains one of the three biggest problems they are facing, alongside low wages and unemployment. The majority of respondents (84%) believe that corruption greatly impacts Serbian society as a whole, and citizens still believe the healthcare sector to be the most corrupt. Still people are not fully aware of the consequences corruption has on their quality of life, as only 47% of respondents believe that corruption affects their personal lives. However 30% more respondents now recognize that appropriate oversight of government services is a key fact to positively affect efforts to combat corruption.[120]

In addition to destroying the moral fibre of society, corruption impinges on economic development. It affects the poor layers of society to a greater degree, as it undermines their exercise of their economic and social rights, especially in Serbia, where it is present in health, education and the judiciary.

120 Citizens' Perceptions of Efforts to Combat Corruption, CeSID, 2019. Available in Serbian at: http://www.cesid.rs/istrazivanja/percepcija-gradana-o-borbi-protiv-korupcije-u-srbiji/.

In its Serbia 2019 Report, the European Commission said that public procurement, infrastructure projects, healthcare, education, construction and spatial planning, and public companies remained particularly vulnerable to corruption and concluded that no tangible improvements had taken place in relation to verifications and procedural transparency in these fields. It also noted the lack of results in the fight against corruption and a drop in the number of convictions in corruption cases and recalled that the Anti-Corruption Agency had established that over half of the measures specified in the 2013–2018 Anti-Corruption Strategy had not been fulfilled.

A similar assessment was made by the US State Department in its Serbia 2018 Human Rights Report, in which it noted that corruption, in some cases involving senior officials, and non-reporting and non-prosecution of corruption remained a concern in Serbia. It also noted that, while the legal framework for fighting corruption was broadly in place, anti-corruption entities, including new specialised anti-corruption and economic crimes prosecutorial units, along with four corresponding judicial departments and eight police units, typically lacked adequate personnel and were not integrated with other judicial entities, which inhibited information and evidence sharing with the prosecution service.[121]

All these assessments, indicating that widespread corruption has permeated all levels of society in Serbia and that the fight against corruption is not a Government priority, are corroborated by data demonstrating lack of results in the implementation of the 2013–2018 Anti-Corruption Strategy and by the Government's failure to adopt a new strategy by the end of 2019. Many measures laid down in the Chapter 23 Action Plan remained unfulfilled; the deadlines for their implementation have expired, while the new Action Plan, which has not been adopted yet, puts their implementation off to the end of 2020.

The National Assembly adopted several laws directly or indirectly facilitating the fight against corruption, but whether they will actually fulfil that purpose in practice remains questionable. Although it had been developed for years, the new Anti-Corruption Act,[122] which will replace the Anti-Corruption Agency Act, does not improve the legal framework. Furthermore, most of the objections and suggestions made during the public debate on the draft text were not taken on board by the relevant ministry.

Electronic auctions, introduced by the amendments to the Act on Enforcement and Security of Claims, are expected to limit the risks of collusion among bidders and conflict of interest.

Enforcement of the 2018 Lobbying Act,[123] which came into force in August 2019, was delayed. No lobbyists were registered by the end of the reporting period.

121 Serbia 2018 Human Rights Report, US State Department. Available at: https://www.state.gov/wp-content/uploads/2019/03/SERBIA-2018-HUMAN-RIGHTS-REPORT.pdf.

122 *Sl. glasnik RS*, 35/19.

123 *Sl. glasnik RS*, 87/18 and 86/19 – other law.

The Agency keeping the register of lobbyists failed to promptly conduct the training provided for by the Lobbying Act. The vague and imprecise provisions alerted to by anti-corruption NGOs during the public debate on the draft law are sure to cause problems in its implementation.

Amendments to the Criminal Code have not facilitated the fight against corruption either. The Public Procurement Act was not improved. Nor were the rules on public sector and political advertising. Co-funding of media content also remained problematic in the context of corruption and transparency of media ownership.[124] The transparency of funding of political parties, especially their election campaigns, was not increased.[125]

As per regulations impinging on the fight against corruption, attention needs to be drawn to those allowing the authorities to conclude bilateral intergovernmental loan agreements and simultaneously engage the contractors, which has brought into question market competition and protection from unfair competition. The practice of adopting *leges speciales* can also gravely undermine the public procurement system. Namely, there is a risk that the enactment of such laws by the obedient parliamentary majority will result in the utter disregard of the concept of public interest and result in the expropriation of private property to pursue private interests that are proclaimed public interests by such laws. Such a practice clearly endangers the right to peaceful enjoyment of possessions because it allows for the unlimited proliferation of cases in which property can be expropriated and undermines the unity of Serbia's legal order. One such law, adopted in 2015 to facilitate the implementation of the Belgrade Waterfront project, was met with sharp public criticism.[126]

Another *lex specialis,* this one facilitating the implementation of the "Morava Corridor" project, was adopted in 2019. Experts opined that the adoption of this law was unnecessary because expropriation, planning and public-private partnerships were already governed by Serbian law. What provoked greater concern was the Government decree on public procurement for the construction of the motorway, in which it laid down that prior experience in building roads in South-East Europe would carry up to as many as 70% of the points. Suspicions of wheeling and dealing were confirmed when only one bid was submitted, by a US-Turkish consortium – the two companies with which the Serbian Government signed a Memorandum of Understanding in 2018, before the tender was called.

Warnings of widespread party-based employment were ignored by the relevant authorities. On the contrary, party affiliation remained the applicants' main asset during recruitment. Public company management was not professionalised. A great many public companies were run by acting directors and, again, party affiliation was crucial in appointment to senior management positions.

124 More on media content co-funding in Chapter III.1.2.

125 More on election conditions and financing of political organisations in Chapter II.10.

126 More on the Belgrade Waterfront project in the *2015 Report*, II.12.3.

Finally, the draft law on the origin of property, endorsed by the Government in late December, met with the experts' scepticism that it would help systematically reduce corruption. The draft law does not specify whose assets will be checked and which period it will apply to, i.e. as of which year individuals suspected of illegally acquiring their property will be checked. Furthermore, there are many laws governing specific property origin issues, said Transparency Serbia, which has been focusing on corruption for years.[127]

Transparent work of state authorities and public companies and institutions, easy access to important information that might reveal corruption, as well as the courage of witnesses of corruption to report it and not suffer repercussions, play a crucial role in the fight against corruption. This is why the following text will focus on the Free Access to Information of Public Importance Act (FAIPIA); the Classified Information Act, which provides for the designation of specific information as confidential and, consequently, lack of public access to it; the Whistleblower Protection Act, and other laws positively or negatively affecting the right of Serbia's citizens to be promptly informed of issues of public importance.

Despite their deficiencies, these three laws nevertheless create a framework for the executive's fight against corruption. However, there have been problems in implementing all three of them. The number of public authorities ignoring the Commissioner's rulings ordering them to provide access to information of public importance continued growing. Reviews of information designated as classified under the Classified Information Act were delayed or non-existent. The greatest problems were identified in the enforcement of the Whistleblower Protection Act – as corroborated in 2019 by several scandals, in which senior party and state officials were suspected of corruption or conflict of interest.[128]

3.2. Free Access to Information of Public Importance

The Constitution of the Republic of Serbia regulates the freedom of access to information under a title "Right to Information". Article 51 of the Constitution guarantees persons within the state's jurisdiction the right to receive true, full and prompt information on issues of public importance and envisages the duty of the media to enable the exercise of this right. Paragraph 2 of this Article sets out that everyone is entitled to information in the possession of state authorities and organisations vested with public powers in accordance with the law.

This right directly affects exercise of the freedom of thought and expression enshrined in Article 46 of the Constitution. Under this Article, freedom of expression may be restricted by law if so necessary to protect the rights and reputation of

127 "Announced law on origin of property not instilling optimism," Transparency Serbia, 10 January 2010. Available in Serbian at: http://transparentnost.org.rs/index.php/sr/aktivnosti-2/podlupom/11171-najavljeni-zakon-o-utvrdjivanju-porekla-imovine-ne-uliva-optimizam.

128 See II.1.2.2.

others, preserve the authority and impartiality of courts or protect public health, morals of a democratic society and national security of the Republic of Serbia.

The Free Access to Information of Public Importance of the Republic of Serbia Act (FAIPIA)[129] governs this matter in greater detail. The Act precisely defines information of public importance, governs the right of access to information, the obligations of the public authorities with respect to improving the transparency of their work and the procedures for accessing information held by the public authorities.

To ensure the realisation of the right of free access to information, under Article 1(2) of the FAIPIA, the Access to Information Commissioner (Commissioner) is established as an independent and autonomous state authority. Anyone who is dissatisfied with accessing information in a procedure before a public authority is entitled to file a complaint with the Commissioner, who shall render a binding, final and enforceable decision (Arts. 22–28).[130]

The National Assembly in the meantime adopted the Act Amending the FAIPIA, which introduces specific improvements in the Act. Notably, it maximally cuts down the deadlines for accessing the sought information and provides for access to information in the form in which it was requested; furthermore, the enforcement of the law shall be monitored by the Ministry for State Administration and Local Self-Government, not the Ministry of Culture.

The adopted Act includes a provision on the protection of whistleblowers, but does not provide them with adequate protection, because it lays down that an employee shall first report his/her suspicions to the responsible person in the authority. This practically means that the employee will sometimes have to first report an irregularity to the very person s/he suspects of committing it, which renders meaningless the whole idea of the need to protect whistleblowers.

However, despite the amendments, the practical enforcement of the law indicated that some of its provisions were in need of improvement. The Chapter 23 Action Plan laid down the obligation to amend the FAIPIA by the end of 2016. These amendments were not adopted by the end of 2019, although they were developed back in 2012. The 2012 draft was withdrawn from the parliamentary pipeline in May that year, after the government changed and was never resubmitted for adoption. Development of the amendments continued behind closed doors and the new Preliminary Draft was presented in 2018.

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 as its text largely differed from the prior one. One of those reiterated the most concerned the provisions exempting from the law for-profit corporations (erstwhile state companies) availing themselves of significant state and public resources because these provisions risk to substantially restrict the already difficult realisation of the right

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

130 More on the work of the Commissioner in Chapter III.4.2.

of free access to information. 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.[131]

The Preliminary Draft indicates the authorities' unwillingness to provide access to information of public importance. In view of the negative assessments of Serbia's fight against corruption, voiced both by domestic experts and international anti-corruption bodies, it may be concluded that the authorities are not genuinely committed to combatting corruption, as demonstrated also by their frequent conclusion of contracts with foreign and domestic investors worth millions and denial of public access to the details of those contracts under the explanation that they contain state or trade secrets.

The executive's attitude towards the rights guaranteed by this law is reflected in its unwillingness to ensure the enforcement of the Commissioner's final rulings although Article 28(4) of the FAIPIA lays down that, in the event the Commissioner is unable to enforce his rulings, the Government is under the obligation to assist him in their administrative enforcement, at his request, by taking the measures within its purview, i.e. directly forcing the defaulting authorities to comply with the rulings.

The unsatisfactory situation in this area is compounded not only by the authorities' lack of will to run the state and the economy in a transparent fashion, but also by the legal provisions, many of which are in need of improvement or are imprecise, lending themselves to different interpretations, as well as the state authorities' routine delays in adopting by-laws governing specific legal issues in greater detail. Such delays have been noted with respect to the Classified Information Act.

3.3. Classified Information Act

The 2009 Classified Information Act[132] has been in force since 1 January 2010. The Act comprises numerous provisions (it has over 100 Articles) governing the system of defining and protecting classified information and represents a kind of compromise between the security services and civil society. However, the Act does not regulate a number of crucial issues, such as the manner and procedure for classifying information or documents as confidential; nor does it specify the criteria for establishing the degree of confidentiality in detail. The Government was to have passed the subsidiary legislation regulating these issues within six months from the day the Act came into effect, but it had failed to do so by the end of the reporting period.

The Act introduces a single system defining and protecting classified information of interest to national and public security, defence, internal and external affairs

131 More about the criticisms of the Preliminary Draft in the *2018 Report*, II.6.1.

132 *Sl. glasnik RS*, 104/09.

of the Republic of Serbia, the protection of foreign classified information, access to classified information, termination of its confidentiality, the mandates of the authorities, monitoring of its implementation, and responsibility for the failure to fulfil the obligations laid down in the Act (Art. 1). Information shall be classified if it is of interest to the Republic of Serbia and its disclosure to an unauthorised person would incur damage, if the necessity of protecting the interest of the Republic of Serbia prevails over the interest for free access to information of public importance (Art. 8).

The Ministry of Justice is charged with monitoring the enforcement of the Act, while the National Security Council and Classified Information Protection Office is tasked with its implementation.

The Act introduces the principle under which information designated as confidential to cover up a criminal offence or another unlawful act shall not be considered classified (Art. 3); this principle facilitates the position of so-called whistleblowers and provides protection from corruption and malfeasance in state institutions and public companies.

Information may be designated as classified by authorised persons, notably the National Assembly Speaker, the President of the Republic, the Prime Minister, head of a public authority, an elected, appointed or named official of a public authority authorised to classify confidential information by the law or a regulation passed in accordance with the law, or authorised thereto by the head of the public authority or person employed in the public authority and authorised in writing thereto by the head of the authority (Art. 9). This provision gives excessive powers to heads of public authorities and may easily lead to abuse.

Only the Speaker of the National Assembly, the President of the Republic and the Prime Minister may access classified information without a security clearance certificate (Art. 37). The certificate, i.e. clearance to access classified information, shall be issued by the National Security Council and Classified Information Protection Office. A natural or legal person may access confidential information after passing a security check. Security checks of persons seeking access to information at lower classification levels shall be conducted by the Ministry of the Interior, while the Security Information Agency shall conduct security checks of persons seeking access to information at higher classification levels (Art. 54).

The Act obliges heads of public authorities to review the designation of documents as classified information under the prior regulations within two years from the day the Act takes effect (Article 105). A lot of currently classified information should not be classified at all. Such information includes some normative acts, even those regulating the designation of information as classified.[133]

The Government authorities failed to review the designation of documents as classified information within the two-year deadline. In the 2010–2014 period, it

133 A detailed analysis of the Classified Information Act is available in the *2010 Report*, I.4.9.6.1 and the *2011 Report*, I.4.9.6.1.

adopted decrees governing this matter in greater detail (on the data classification procedure, confidentiality classification criteria, clearance certificates, records of access to classified data, criteria for designation of information as a state secret, strictly confidential, confidential or for internal purpose, et al).[134]

The FAIPIA – under which public authorities shall not provide access to information if it would thereby make available information or document classified as a state, official, business or other secret, i.e. if such information or documents are accessible only to a specific group of persons and their disclosure could seriously legally or otherwise prejudice interests protected by law and outweighing the interest of allowing access to such information[135] – is frequently referred to in decisions denying access to information.

Many documents are still designated as classified, although the two-year deadline by which the authorities were to have reviewed whether their information and documents should still be designated as classified (set in Art. 105 of the Classified Information Act), expired back in 2011. This is yet another way public authorities have been obstructing the consistent implementation of the Free Access to Information of Public Importance Act.

The frequent problems in practice and different interpretations of the law caused by delays in the adoption of the by-laws and the slow harmonisation of the FAIPIA, the Personal Data Protection Act and the Criminal Code with the Classified Information Act, as well as the relevant public administration bodies' reluctance to apply the prescribed tests for balancing conflicting interests were the main reasons that led to the impression that the Government was obstructing the enforcement of the law to prevent disclosure of information indicating corruption or conflicts of interest.

Namely, public authorities as a rule do not provide clear arguments or substantive reasons for their decisions to deny access to information, merely referring to confidentiality without explaining why the disclosure of the requested information would violate a state or national interest.

3.4. Protection of Whistleblowers

Taking and offering bribes, abuse of office and trading in influence are typical forms of corruption. Corruption usually takes place in secrecy and in the absence of witnesses, wherefore it is crucial that individuals who become aware of these illegal and harmful acts report them and do not suffer any repercussions.

This was also the main reason why the Commissioner for Information of Public Importance (Commissioner), experts and civil society insisted for years on

134 The Act replaced the prior vague classification of information as state, official and military secrets with four degrees of a secret: state secret, strictly confidential, confidential and for internal use.

135 Art. 9(1(5)).

the adoption of a law that would protect such individuals from retaliation and encourage the citizens to report corruption. Former Commissioner Rodoljub Šabić formed an expert working group and, in 2013, forwarded to the Ministry of Justice a Model Whistleblower Act, which later served as the basis for the development of a text drafted by the working group set up by the Ministry of Justice. However, its version, which was ultimately adopted, differs from the Model Act proposed by the Commissioner.

The failure to conduct the prescribed alignment of the provisions of other laws with the Whistleblower Protection Act has given rise to problems in its enforcement. Furthermore, provisions of some other laws directly or indirectly affecting the status of whistleblowers collide with the Act and preclude its consistent implementation.

The Whistleblower Protection Act was adopted in November 2014 despite the numerous objections experts voiced about some of its provisions.[136] Article 21 prohibits employers from placing whistleblowers in an unfavourable position, while Article 22 entitles whistleblowers to compensation of damages caused to them by their whistleblowing. The Act envisages court protection of whistleblowers in urgent proceedings. The employer bears the burden of proving that there is no causal relationship between the detriment to the whistleblower and the whistleblowing in the event the latter proves such detriment probable (Art. 29).

However, many of the criticisms of the shortcomings in the draft law causing dilemmas in practice and undermining the protection of whistleblowers, which were voiced during the public debate, were not taken on board.[137] The Act excessively focuses on work-related treatment of whistleblowers, thus neglecting one of the reasons for its adoption – protection of whistleblowers revealing information indicating corruptive acts of relevance to the protection of public interest, whether or not they directly affect anyone.

It is worth noting that, in April 2019, the European Parliament adopted new rules affording a much higher degree of protection to whistleblowers, which had been governed by national laws. Under the Whistleblower Directive, whistleblowers can also approach the public and the media with impunity if no appropriate action has been taken after the initial report to the company or the authorities, or if there is an immediate or obvious threat to the public interest. The European Commission is entitled to take disciplinary action against Member States not applying the Directive and to bring cases before the European Court of Justice.

The Serbian Whistleblower Protection Act has also been criticised because it grants the status of whistleblower to a limited number of people. Article 2(1(4))

136 The NGO Transparency Serbia sharply criticised the text of the law, noting that the legislator missed the chance to regulate important issues that had been covered by the Model Act published on the Commissioner's website in April 2013.

137 Transparency Serbia's comments forwarded to the National Assembly are available in Serbian at: http://transparentnost.org.rs/index.php/sr/.

defines whistleblowers as natural persons reporting information about threats to or violations of public interest they become aware of by virtue of their work, recruitment, use of services rendered by state and other authorities, persons vested with public powers or public companies, business cooperation and ownership of company shares. Another shortcoming of the law is its unnecessary temporal restriction. Article 5 lays down that whistleblowers shall be entitled to protection provided they disclose information within one year from the day they became aware of the committed action and no later than ten years from the day of commission of the action. Needless to say, information about actions that occurred over 10 years ago might also be relevant.

3.5. Confidentiality of Data and Whistleblowing

Article 19 of the Whistleblower Protection Act provides for disclosure to the public, without prior notification of the employer or relevant authority, in case of an immediate threat to life, health, safety of people and the environment, occurrence of damage of immense proportions, or an immediate risk of destruction of evidence. This provision is quite imprecise, because it limits the right to blow the whistle only in case of an *immediate threat* or of *occurrence of damage of immense proportions*, allowing different and arbitrary interpretations in practice. The legislator dismissed the suggestion made during the public debate – that this provision also allow for the disclosure of information that has not been but ought to have been published.

Specific provisions of the Classified Information Act referred to in the Whistleblower Protection Act may undermine the status of whistleblowers as well. The former sets out in Article 3 that information shall not be considered classified in the event it was designated as such to cover up a crime, transgression of powers, abuse of official duty, or other illegal enactments or actions by public authorities. Although this exception may appear useful, potential whistle-blowers cannot be sure they will be protected until it is ascertained that such abuse of classification had occurred.

Analysis of Article 20 of the Whistleblower Protection Act in the light of the Classified Information Act leads to the conclusion that there is a risk that whistle-blowers will not be afforded protection if the information they disclose contains classified information – information designated as classified under the Classified Information Act. In such cases, whistleblowers must follow a special procedure: they must first report to the employer, and in case the employer fails to act, respond, or take measures within its purview within 15 days, they must report to the relevant authority. Paragraph 6 of this Article is especially problematic as it does not allow whistle-blowers to make a disclosure containing classified information to the .public except as may be otherwise prescribed by the law.

This provision is particularly problematic in the light of the following considerations. First, there is an unjustifiably long delay in the enforcement of the Classified Information Act. Second, the two-year deadline by which the public authorities

were to have reviewed whether information should be still designated as classified expired a long time ago and many documents are still designated as classified. Third, it is quite possible and, indeed, quite likely that a lot of information is designated as classified in contravention of the law. Whistleblowers are not protected in such situations although they believe that the information they have become aware of is crucial for disclosure of a corruptive act and that it needs to be revealed to the public to protect public interest.

3.6. Whistleblowers between the Law and Public Interest

Public support to whistleblowers, as well as to judges and prosecutors playing the key role in protecting whistleblowers, especially those reporting corruptive acts by individuals or groups in power or with major leverage over the legislative, executive or judicial branches, has proven extremely important in the enforcement of the Whistleblower Protection Act. Serbian whistleblowers sometimes rightly first report to the public, rather than the institutions, because they doubt the latter will protect them. Therefore, it is necessary to strengthen public trust in the judicial protection of whistleblowers and, simultaneously, the judiciary's independence from the executive, a problem Serbian judiciary has been struggling with.

This conclusion is corroborated by the case of whistleblower Aleksandar Obradović, employed in the Valjevo-based arms plant Krušik. He was arrested by the Security Intelligence Agency in September and detained (first in prison and then under house arrest) under suspicion that he had disclosed a trade secret, specifically information about the involvement of the police minister's father in arms trade at cut prices, which impinged on the plant's business. Obradović denied that he had committed a crime from the very start, claiming he had alerted to the systematic draining of money from the plant and that a serious case of corruption and conflict of interest was at issue.

Suspicions of corruption are fuelled whenever the Serbian authorities deny public access to information about the contracts they have concluded or declare entire contracts or parts of them a trade secret. And they do that a lot. Trade secrets are governed by the Trade Secret Protection Act,[138] which, similarly to the Classified Information Act, does not consider a trade secret information designated as such in order to cover up a crime, transgression of powers, abuse of official duty or other illegal enactments or actions of natural or legal persons.

The importance of public pressure and support to whistleblowers was demonstrated during Obradović's detention, which was lifted in early December. His release was one of the demands voiced at civic protests in various Serbian towns until his release. The proceedings against him were still under way, but the details of the investigation against him were not made public until the end of the reporting period.

138 *Sl. glasnik RS*, 72/11.

The Krušik scandal opened another issue – who can be protected as a whistleblower? Experts do not harbour any dilemmas and believe that Obradović must have the status of whistleblower, although he did not comply with the procedure: he could not report the corruption to anyone in Krušik because it was committed by its senior management, he could not report it to the police or prosecutors because he was implicating the police minister, therefore, he had no choice but to report it to the public.[139]

Retired Supreme Court judge Zoran Ivošević referred to Article 19 of the Whistleblower Protection Act, which provides for disclosure to the public, without prior notification of the employer or relevant authority, in case of an immediate threat to life, health, safety of people, the environment, occurrence of damage of immense proportions, or an immediate risk of destruction of evidence. In his opinion, occurrence of damage of immense proportions sufficed for Obradović to alert the public immediately. He, therefore, blew the whistle in accordance with the law and is entitled to judicial protection from the employer's retaliation and the authority that ordered his pre-trial detention.[140]

Different interpretations of the law were voiced as well. One of them is that, due to the requirements in Article 20 of the Whistleblower Protection Act, Obradović most probably will not be entitled to seek protection as whistleblowing in public interest does not constitute grounds for exemption from (criminal or misdemeanour) liability. However, this does not mean he should be accused of publicly disclosing information that should not have been confidential, especially since it remains unclear whether the information had been classified as a trade secret and whether such classification is warranted. This is why the prosecutors will have the final say.

The state officials' reactions were very different. Prime Minister Ana Brnabić said that Obradović could "not be a whistleblower because the Whistleblower Protection Act lays down the procedure that needs to be implemented to declare someone a whistleblower." She said he had collected information about the military industry for months and years and had given it to foreign journalists and wondered what word would be used for such an act in any other country.[141]

The statement made by Serbian President Aleksandar Vučić is even more dangerous. He called Obradović a miserable man who had committed grave crimes, but failed to elaborate which. He also said that the opposition parties were pressuring

139 "Whistleblowers in Serbia are a special kind of people – those helping them tell VICE," *Cenzolovka*, 1 December. Available in Serbian at: https://www.cenzolovka.rs/mediologija/uzbunjivaci-u-srbiji-su-ljudi-posebnog-kova-kazu-za-vice-oni-koji-im-pomazu/.

140 "Aleksandar Obradović is not a 'fake whistleblower'," *Danas*, 11 December. Available in Serbian at: https://www.danas.rs/dijalog/licni-stavovi/aleksandar-obradovic-nije-lazni-uzbunjivac/.

141 "Brnabić: Obradović cannot be a whistleblower," *RTS*, 14 December. Available in Serbian at: http://www.rts.rs/page/stories/sr/story/9/politika/3774845/brnabic-obradovic-ne-moze-biti-uzbunjivac.html.

the chief public prosecutor Zagorka Dolovac. He utterly disregarded his obligation, as head of state, to refrain from commenting judicial proceedings or the obligation he shares with all other citizens, to respect the presumption of innocence.[142]

To recall, speaking at an international conference in Belgrade in June 2018, Vučić said that Serbia was in dire need of whistleblowers and that they protected rather than undermined the system.[143] At an American Chamber of Commerce conference in November 2019, the Serbian Justice Minister said that zero tolerance for corruption was a priority of the Serbian Government and that proceedings against 750 individuals suspected of corruption and with links with the government had been initiated in the past 12 months.[144]

If what she said is true, the Krušik scandal shows that not all individuals in power are equal, that some enjoy the unreserved support of the topmost state officials. In the Krušik case, the support of Minister of Interior and senior SNS official Nebojša Stefanović, since the issue of his involvement in issuing arms export licences and the involvement of GIM, the company his father represented, in the sale of weapons manufactured in Krušik apparently did not suffice to investigate the accuracy of information Obradović disclosed. On the contrary, the leading state officials stood up in Stefanović's defence.

4. Independent Regulatory Authorities – Independent or Not?[145]

Assessments of the work of various independent regulatory authorities in 2019 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 misinterpreted their oversight roles.

142 "Vučić accusing whistleblower of crime, but there are neither any charges nor evidence against him," *N1*, 29 November. Available in Serbian at http://rs.n1info.com/Vesti/a548198/Vucic-optuzuje-uzbunjivaca-iz-Krusika-za-krivicna-dela.html.

143 "Vučić: Serbia in dire need of whistleblowers," *N1*, 5 June 2018. Available in Serbian at: http://rs.n1info.com/Vesti/a393844/Vucic-Uzbunjivaci-preko-potrebni-Srbiji.html.

144 "Kuburović: Zero tolerance of corruption is Government's priority," *N1*, 28 November. Available in Serbian at: http://rs.n1info.com/Vesti/a547758/Kuburovic-Prioritet-Vlade-nulta-tolerancija-prema-korupciji.html.

145 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.

4.1. Protector of Citizens of the Republic of Serbia

Under the Constitution (Art. 138) and the Protector of Citizens Act,[146] 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. The Constitution ranks the Protector of Citizens among the highest government authorities, together with the National Assembly, the President, the Government, the Army, the state administration, courts and public prosecution services. The Protector of Citizens is not entitled to control the work of the National Assembly, the President, the Government, the Constitutional Court, the courts or the public prosecution services. The Protector of Citizens is elected and dismissed by the National Assembly, in accordance with the Constitution and the law. The Protector of Citizens accounts for his work to the National Assembly. The Constitution authorises the Protector of Citizens to propose laws (Art. 107(2)).

Zoran Pašalić has been performing the duties of Protector of Citizens since 2017, when he was elected to a five-year term in office.[147] 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.

The terms in office of all Deputy Protectors of Citizens expired back in early December 2018, but the new Office of the Protector of Citizens, the only one entitled to nominate the Deputies to the National Assembly under Article 6(4) of the Protector of Citizens Act, operated without any Deputies for an entire year. In response to criticisms that his failure to nominate them undermined the efficiency of his Office, the Protector of Citizens repeatedly said that their election was "not a priority" and that they would be elected once the Protector of Citizens Act was amended and a platform registering all pressures and attacks on journalists was developed.[148]

At long last, in December 2019, the Protector of Citizens nominated only three candidates. On 13 December 2019, the National Assembly elected three new Deputy Protectors of Citizens: Jelena Stojanović, Dr Nataša Tanjević and Slobodan Tomić.

The Republic of Serbia also has a Vojvodina Provincial Ombudsman. Zoran Pavlović assumed the office of Provincial Ombudsman in November 2016.[149] The

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

147 More in the *2017 Report*, IV.3.4.1.

148 "Protector of Citizens working without deputies," *Politika*, 4 April. Available in Serbian at: http://www.politika.rs/sr/clanak/428746/Zastitnik-gradana-radi-i-bez-zamenika.

149 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.

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.[150]

The Protector of Citizens received an A-Status Accreditation Certificate granted to national institutions for the protection and promotion of human rights in 2010, which was confirmed in 2015. The status will be reviewed by the ICC Sub-Committee on Accreditation again in 2020.[151]

4.1.1. Jurisdiction of the Protector of Citizens

The Protector of Citizens submits his annual reports to the National Assembly, which is under the obligation to review them at its plenary sessions. The Assembly, however, ceased reviewing his annual reports at plenary sessions in 2015, in contravention of Article 58 of the National Assembly Act and Articles 238 and 239 of its Rules of Procedure. It resumed its obligation in July 2019, when it reviewed his 2018 Annual Report, which can be ascribed to the European Commission's remark in the Serbia 2019 Report that, for the fourth consecutive year, the parliament failed to discuss in the plenary the annual reports of the Ombudsman and of other independent bodies and that, therefore, no conclusions for the government's review were made.

In addition to his annual reports, the Protector of Citizens has also been publishing special reports. He published two such reports in 2019: on the implementation of the Roma Inclusion Strategy with recommendations and on problems in implementing the Veterinary Act and the Animal Welfare Act.

The Protector of Citizens Act entitles the Protector to propose laws within his remit, initiate the amendment of laws and other regulations and general enactments with the Government and National Assembly if he believes their shortcomings have resulted in human rights violations, as well as new laws, regulations and general enactments which he deems relevant to the exercise and protection of human rights. The Government and relevant Assembly committee are under the duty to review his initiatives. The Protector of Citizens is also entitled to give the Government and National Assembly his opinions on draft laws and regulations governing issues of relevance to human rights protection and to request of the Constitutional Court to review the constitutionality and legality of laws, other regulations and general enactments (Arts. 18 and 19).

According to the information on his website, the Protector of Citizens submitted 15 initiatives in 2019. Only one of them was upheld, six were dismissed, while the decisions on the remaining eight were still pending.

150 Protector of Citizens Act, Article 34.

151 More on the fulfilment of the requirements for acquiring A-Status A under the Paris Principles in YUCOM's study "Five Years: Analysis of the Work of the Protector of Citizens of the Republic of Serbia in the 2015–2019 Period". Available in Serbian at: http://www.yucom.org.rs/wp-content/uploads/2019/11/Analiza-rada-Ombudsmana-2015–2019–1.pdf.

Another important quasi-judicial power the Protector of Citizens has is to review complaints or applications of individuals or groups alleging violations of their human rights. The Protector of Citizens started receiving the complainants in person two years ago. According to the statistics published on his website, he had contact with 7,582 citizens in 2019. In addition, the Protector of Citizens received 3,293 complaints in 2019; he completed the review of 2,286 of them, while his decisions on 1,007 cases were still pending.

The visible drop in the number of complaints filed with the Protector of Citizens may be ascribed not only to his lesser presence in the public, but also to the fact that complainants have unrealistic expectations and are unaware that the Protector of Citizens is entitled to warn of the deficiencies in the work of administrative authorities (in response to complaints) and issue them recommendations on how to improve it, but that he is not entitled to change or directly influence their final decisions. Essentially, the public is insufficiently familiar with the Protector's powers, as proven by the large number of complaints he has been dismissing because they are incomplete, do not fall within his remit, or were filed out of time or anonymously.

The Protector of Citizens issued 384 recommendations in 2019; 119 of them were implemented and 24 were not; the deadlines for the fulfilment of 241 of his recommendations had not expired yet at the end of 2019.

Financial autonomy is an important factor. Under the law, the Protector of Citizens shall draft his budget for the following year and submit it for approval to the Government and the parliamentary Committee for Administrative and Budgetary Issues. Funding has also affected the staffing of his Office; his staff have been moving on to other, better paid jobs.

The Protector of Citizens had a falling out with his staff in 2019. He himself confirmed media reports that he had illegally recorded his meetings with his staff. His staff had been unaware that their conversations had been taped and they had not consented to that. They only found out that the meetings were recorded when they were played an audio recording of what they said at a meeting. In response to a request by the daily *Danas* to forward it the recording, the Protector of Citizens said that it had been erased after two days.[152] *Danas* also reported that some staff had been promoted in contravention of the regulations, while others had been degraded and demoted.

Another issue that arose in practice was the adequate funding of the work of the National Preventive Mechanism (NPM), specifically, the establishment of a separate unit within the Office of the Protector of Citizens that would have its own budget. Under the new Rulebook on Staffing and Internal Organisation of his Office,[153] the NPM, which used to operate at the level of the Secretariat, will now function as a separate department and have more staff.

152 "Pašalić illegally recording conversations with staff," *Danas*, 9 May. Available in Serbian at: https://www.danas.rs/drustvo/pasalic-neovlasceno-snima-razgovore-sa-zaposlenima/.

153 Rulebook on Staffing and Internal Organisation of the Protector of Citizens Professional Service (363–241/2019 of 1 March 2019). Available in Serbian at: https://www.ombudsman.rs/attach-

4.1.2. Should the Powers of the Protector of Citizens be Extended?

The Chapter 23 Action Plan envisages the amendment of the Protector of Citizens Act.[154] The relevant Ministry of State Administration and Local Self-Governments established a Special Working Group to draft these amendments back in late 2016.

A year later, at the end of 2017, the Ministry published a Baseline Study[155] for the development of the law amending the Protector of Citizens Act and initiated online consultations. The Baseline Study envisages that the law be amended minimally in order to improve the relationship between the Protector of Citizens and the Government and National Assembly. However, it does not specify the deadlines or mechanisms that are to ensure that the latter two fulfil their obligations related to cooperation with the Protector of Citizens.

The issue of strengthening the independence or efficiency or the operations of the National Preventive Mechanism are not addressed either. No suggestions on how to regulate the relationship between the Protector of Citizens and international human rights mechanisms are provided. The Baseline Study addresses the relationship between the Protector of Citizens and local ombudspersons, who go by different names, and suggests that the latter not use the names and symbols of this institution.

Guarantees of the independence of the Protector of Citizens would be strengthened if he were granted greater powers regarding the proposal and execution of his budget. This possibility was unfortunately omitted from the Baseline Study although it was envisaged in the 2014 draft law.[156] The authors of the Baseline Study also failed to specify the penalties for non-compliance with the obligations prescribed by the Protector of Citizens Act.[157]

The Government's promise to adopt amendments to the Protector of Citizens Act by the 4th quarter of 2016, set out in the Chapter 23 Action Plan, has not been fulfilled. According to some sources, the public debate on the draft amendments was to have been organised in the summer of 2019 and they were to have been adopted by the end of the year.

It may, therefore, be concluded that the improvement of the efficiency and effectiveness of the operations of the Protector of Citizens through legal amendments is still pending despite the need to strengthen his powers in many areas, especially

ments/article/142/pravilnik%201.pdf.

154 More in the *2017 Report*, III.4.4.1.

155 The Baseline Study is available in Serbian at: https://www.paragraf.rs/nacrti_i_predlozi/111217-osnove-nacrta-zakona-o-zastiti-gradjana.pdf.

156 Serbian Government, Draft Amendments to the Protector of Citizens Act, 2014. Available in Serbian at: http://www.transparentnost.org.rs/images/stories/zakoni/pz_zastitnik_gradjana00599_cyr.doc.

157 In the experience of the Access to Information and Personal Data Protection Commissioner, fines are not an effective tool for forcing public authorities to comply with the law as they boil down to transfers of the money from one budget to another.

with respect to the fulfilment of his recommendations and execution of his decisions regarding the work of the public administration. The drop in the number of complaints filed with the Protector of Citizens reinforces the impression that the public's trust in the ability of the Protector of Citizen to protect their rights is dwindling.

It is therefore crucial to strengthen the efficiency of the Protector of Citizens with respect to the powers already vested in him and put off the extension of his powers to new areas, since this institution lacks the capacity even to exercise the powers it now has under the Protector of Citizens Act and their extension at this moment would be dangerous.[158] Notwithstanding, initiatives to extend the jurisdiction of the Protector of Citizens to the judiciary and the protection of media freedoms, especially reporters and their professional and work-related status, have been voiced increasingly frequently since mid-2017.

Protector of Citizens Zoran Pašalić frequently said that his Office should also control the work of the court administration and the courts' promptness, but he has not formalised this initiative yet.[159] 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.[160] 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 Ombudsmen of many EU Member States and ex-Yugoslav states controlled the court administration.[161]

Another analysis published in 2019 drew attention to an important argument against extending the purview of the Protector of Citizens to the judiciary: whether there was a need to introduce another mechanism for protecting the right to a fair trial within a reasonable time alongside the existing Act on the Protection of the Right to a Fair Trial within a Reasonable Time (which has proven to be relatively efficient in practice). The authors of the analysis recommend improvement of the legal framework protecting this right, rather than extending the powers of the Protector of Citizens and duplicating procedures addressing this matter.[162]

158 See more in YUCOM's study "Five Years: Analysis of the Work of the Protector of Citizens of the Republic of Serbia in the 2015–2019 Period", pp. 17–18. Available in Serbian at: http://www.yucom.org.rs/wp-content/uploads/2019/11/Analiza-rada-Ombudsmana-2015–2019–1.pdf.

159 "Protector of Citizens: Court inefficiency and delays require extending my powers also to control of the court administration," 10 December 2018. Available in Serbian at: https://www.dijalog.net/zastitnik-gradana-neefikasnost-i-neazurnost-sudova-namece-prosirenje-nadleznosti-i-na-kontrolu-sudske-uprave/

160 See the *Danas* report, available in Serbian at: https://www.danas.rs/drustvo/ombudsmanova-ideja-opasna-po-nezavisnost-sudstva/.

161 More is available in Serbian at: ttps://goo.gl/jXNmYK.

162 "Pro et Contra Analysis of the Jurisdiction of the Protector of the Citizens related to Judicial Competences," YUCOM, 2019, p. 6. Available in Serbian at: http://www.yucom.org.rs/wp-content/uploads/2019/12/Pro-i-Contra-analiza-nadleznosti-Zastitnika-gradjana.pdf.

Another initiative regarding the extension of the powers of the Protector of Citizens involves the establishment of a single media platform registering all attacks against journalists, from physical assaults and attacks on their property to pressures and oral and other threats against them. Pašalić frequently publicly talked about this idea and pursued it in 2019.

In April 2019, the Protector of Citizens met with representatives of press and media associations and reporters working in print and electronic media to discuss the launch of the online platform. He said that Serbian prosecutors, courts, police, press associations and NGOs in Serbia interpreted and registered attacks against journalists differently and that the goal of his initiative was to establish a media platform that would be modelled after the one already launched by the Council of Europe and on which all attacks against media professionals would be registered, in tandem with the representatives of media and press associations.[163]

Despite the opposition of some press associations and media professionals, the Protector of Citizens in July forwarded a Draft Agreement on Cooperation in the Establishment of the Platform to media and press associations, asking them to comment the text envisaging the launch of the first online platform in Serbia that would register all individual cases of pressures on and risks to the safety of journalists and media professionals. The Draft Agreement envisages the establishment of a working group comprising experts from amongst the ranks of reporters, media professionals, representatives of the Protector of Citizens and *relevant experts* that will be tasked with developing the methodology for collecting, verifying, classifying and presenting data on threats to the reporters' safety.[164]

The press associations' reactions were restrained. They agreed that the model of the Council of Europe platform was a good one, but noted that the Council of Europe was the umbrella body ensuring the operation of the platform, while the pressures and attacks were registered by 12 media organisations and that the Council of Europe's role was to exert pressure on states to investigate and solve the registered incidents. Hence, they opined, the Protector of Citizens should confine himself to exerting additional pressure on the state to solve cases of attacks and pressures on journalists.

Furthermore, the journalists were unclear who the Protector of Citizens was inviting to participate in the development of the platform, who would be included in the working group, since he said the platform would be launched by his Office, as the representative of the state, and its partners, without specifying them. The IJAS

163 "Protector of Citizens proposing platform registering all attacks against journalists," *N1*, 15 December. Available in Serbian at: http://rs.n1info.com/Vesti/a552493/Zastitnik-gradjana-platforma-za-belezenje-napada-na-novinare.html.

164 Pravni portal, Draft Agreement on Cooperation in the Establishment of the Platform TO Protect and Improve the Safety of Journalists. Available in Serbian at: https://www.pravniportal.com/predlog-sporazuma-o-saradnji-u-oblasti-uspostavljanja-platforme-radi-zastite-i-unapredenja-bezbednosti-novinara/

recalled that it has been registering cases of pressures on and attacks against journalists in Serbia since 2008 and that its database has been developed in accordance with an internationally recognised methodology and that the incidents were classified in accordance with domestic law and that they would approach the Protector's proposal with caution.[165]

The journalists' concerns about the platform are well illustrated by an opinion voiced by IJAS representative Tamara Filipović – "Our state is a stickler for form, but the purpose behind the form isn't always clear. This is why we're concerned about the forming of yet another working group that will be tasked with doing something, while the journalists' situation will not be improved in the field."[166]

This wariness among journalists, especially those working for independent media outlets, originates from their apprehension that the initiative may lead to the establishment of yet another GONGO, a practice the regime has been resorting to for several years now.[167]

The Protector's insistence and resolve to include the protection of journalists in his purview is illustrated by his statement that "although the Preliminary Draft of the Protector of Citizens Act has been finalised, we will call for the extension of the Protector's mandate to the protection of journalists."[168] The portal also quoted excerpts from a press release the Protector of Citizens published on his website, in which he said that the blockade of the RTS, which affected everyone in the building, was a climax of violence, to the degree that restricted entry into and exit from the building.[169] This was the first time the Protector of Citizens mentioned a specific case of pressures on journalists, although innumerable attacks on journalists occurred since he assumed office; he never used to comment them and all of his statements were general in character.

The ideas to extend the jurisdiction of the Protector of Citizens are not new. The one that he be in charge of the execution of ECtHR judgments was abandoned because his Office lacks capacity to exercise even the powers he is vested with under the Protector of Citizens Act.

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165 "Can the Protector of Citizens protect journalists?" *RFE*, 24 July. Available in Serbian at: https://www.slobodnaevropa.org/a/moze-li-zastitinik-gradjana-da-zastiti-novinare/30073553.html.

166 *Ibid.*

167 More on the creation of GONGOs in Chapter II.9.2.

168 "Pašalić: Extend the purview of the Protector of Citizens to protection of journalists," *Dijalog*, 13 December. Available in Serbian at: https://www.dijalog.net/pasalic-prosiriti-nadleznost-zastitnika-gradana-i-u-domenu-zastite-novinare/.

169 The RTS blockade was organised by a coalition of opposition parties rallied round the Alliance for Serbia and calling for professional and accurate reporting by the public service broadcaster. No incidents occurred during the blockade. The Protector's press release on increasingly frequent attacks on journalists is available in Serbian at: https://www.ombudsman.rs/index.php/2011–12–25–10–17–15/2011–12–26–10–05–05/6400-s-psh-nj-z-sh-i-ni-gr-d-n-p-v-d-sv-uc-s-li-ih-n-p-d-n-n-vin-r.

4.1.3. 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[170] in December 2005. The NPM was established in 2011, under the Act Amending the Act on the Ratification of the Optional Protocol.[171] In Serbia, the Protector of Citizens performs the duties of the NPM in cooperation with the provincial Ombudsma and human rights organisations.[172]

The Protector of Citizens is entitled to visit and regularly examine the treatment of persons deprived of liberty in places of detention,[173] 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.[174]

An analysis of the NPM's activities in 2019 leads to the conclusion that the number of visits this body makes has been falling every year. The information published on the Protector of Citizens website indicates that the NPM visited police stations only nine times (most of these visits were commendably not notified in advance) although international bodies (such as the CPT and the UN Special Rapporteur on torture) have repeatedly criticised Serbia with respect to ill-treatment of people held in police custody.[175]

The information on the website also shows that the NPM also made fewer visits to other institutions in 2019 (only two visits to military facilities, five visits to

170 *Sl. list SCG (Međunarodni ugovori),* 16/05 and 2/06.

171 *Sl. glasnik RS (Međunarodni ugovori),* 7/11.

172 Article 2a of the Act Amending the Act on the Ratification of the Optional Protocol.

173 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.

174 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.

175 The NPM made nearly 50 visits in 2014, eight in 2017 and only five in 2018. Visits to police stations accounted for circa 61% of all NPM visits in 2014 and just slightly over 11% in 2018. More in YUCOM's study "Five Years: Analysis of the Work of the Protector of Citizens of the Republic of Serbia in the 2015–2019 Period," p. 97, available in Serbian at: http://www.yucom.org.rs/wp-content/uploads/2019/11/Analiza-rada-Ombudsmana-2015-2019-1.pdf.

district prisons and penitentiaries and 11 visits to psychiatric institutions or homes). The Protector of Citizens also monitored the forced removal of aliens from Serbia in five cases.

The reports published after the visits lead to the conclusion that the NPM focused on the accommodation conditions in facilities where people deprived of liberty are held and procedural irregularities and administrative issues, rather than on indications of ill-treatment.[176]

It is worth noting that the Protector of Citizens was not very active and did not comment public allegations of treatment in violation of the prohibition of ill-treatment by the police, state authorities and even the leading government officials. Nor did he actively engage in some earlier cases, where the administration authorities failed to act, to ensure the fulfilment of the recommendations made after the visits.[177]

The Protector of Citizens also failed to react to excessive force the police applied against an individual during a civic protest in Belgrade in March 2019, although a recording showing the police beating him up although he was not offering resistance was posted on the Internet. When the journalists asked him whether he would react to the incident, he said that he had not seen the recording but that the police officers' actions nevertheless did not amount to "torture", that the case should be solved by the prosecution and the court and that he could not react while another proceeding was under way. He added that it was up to the MIA Internal Control Sector to ascertain whether the officers had exceeded their powers in this case.

The Protector of Citizens similarly reacted to the arrest of whistleblower Aleksandar Obradović, who alerted to the engagement of police minister Nebojša Stefanović's father in a company that sold at cut price the weapons manufactured by the Valjevo-based plant Krušik.[178] The Protector of Citizens said that he could not control the work of the courts and prosecutors, that he was entitled to examine whether any irregularities had occurred during the arrest and that he would launch such a review in response to a complaint filed by Obradović but not on his own motion.[179]

176 *Ibid*.

177 For instance, he failed to react to a complaint filed back in 2017 regarding the case of Cevdet Ayaz, in which the UN Committee against Torture found Serbia in violation of the Convention against Torture because it extradited this ethnic Kurd to Turkey, despite the interim measures it had requested. The Protector of Citizens also failed to rule on a complaint filed in September 2017 regarding a police order to deport an unaccompanied Afghani minor, who was not in possession of any personal documents, passport or any money to support himself.

178 See more in Chapters II.2.2.2 and III.3.6.

179 "Pašalić: We'll seek an answer to the question whether procedure was followed during Obradović's arrest," JAS, 15 October. Available in Serbian at: http://www.uns.org.rs/sr/desk/vesti-iz-medija/86925/pasalic-trazicemo-odgovor-da-li-je-postovana-procedura-pri-hapsenju-obradovica-video.html.

4.2. 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)[180] and the Personal Data Protection Act (PDPA).[181]

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.

The right of access to information of public importance is frequently claimed but is often exercised only after the Commissioner's interventions. The number of cases in which the state authorities refused to provide access to such information even after the Commissioner's rulings increased in the reporting period. State authorities usually dismissed the requests for access to information of public importance by quoting confidentiality and abuse and violations of the right to privacy, although the requests in most cases regarded access to state contracts, public procurement decisions, the state authorities' expenses, investments or criminal proceedings against public officials.

After not complying with its legal obligation to consider the independent regulatory authorities' annual reports for four years in a row, the National Assembly at long last held a session in July 2019, at which it reviewed their reports, including the Commissioner's 2018 Annual Report on the Implementation of the Free Access to Information of Public Importance Act and the Personal Data Protection Act (2018 Report).[182] The change in the Assembly's practice and fulfilment of its obligation

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

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

182 The Commissioner's 2018 Report is available at: https://www.poverenik.rs/en/commissioners-report.html.

to review the annual reports at its plenary sessions was commended by domestic and international actors, including the European Commission, who had criticised its failure to do so in the past four years.

The 2018 Report was the last report submitted by Rodoljub Šabić, who was the first to hold the office of Commissioner since this institution was established and whose term in office expired on 22 December 2018. Given that his successor had not been appointed by the time the 2018 Report was submitted to parliament, it was signed by his Deputy Stanojla Mandić. The 2018 Report states that the Commissioner faced the greatest number of challenges in the 14 years of existence, arising both from the relevant state authorities' attitude towards it and its caseload. In the reporting period, the Commissioner dealt with 6,432 complaints, 3086 of which had been filed before 2018. The Commissioner solved 3,874 cases in 2018, or 12.9% more than in 2017. Most of the complaints, 1,864 of them (or 200 more than in 2017), had been filed against Ministries and other state authorities and organisations. The Report said that the right of free access to information of public importance in Serbia was frequently claimed, but that it was still difficult to exercise it without the Commissioner's interventions, as the large number of complaints demonstrated.

The Report also said that, by their refusal to cooperate, the competent authorities and those subjected to oversight undermined the Commissioner's work and even precluded him from taking the measures provided by law or rendered the measures ineffective. The reactions to and criticisms of the Commissioner by some authorities and senior officials impinged on the Commissioner's reputation, the efficiency of his work and deflected attention from problems regarding violations of the right of access to information, although the Commissioner imposed the measures in accordance with his powers vested by law. The Commissioner said he had asked the Government to ensure the enforcement of his rulings instructing the relevant authorities to provide access to information requested in 65 cases, but that he had not received confirmation with respect to any of them. Therefore, the public remained deprived of information about some extremely sensitive issues of public interest, including the details of the report on internal oversight of the MIA regarding the illegal Savamala demolition,[183] the Belgrade Higher Public Prosecution Service's proceedings against Finance Minister Siniša Mali, information about the engagement of specific MPs and officials to lecture at the Medical College of Vocational Studies in Ćuprija, etc.

After it reviewed the 2018 Report, the National Assembly adopted conclusions[184] expressing support to the preparation of amendments to the FAIPIA, ensuring the enforcement of the Commissioner's final, enforceable and binding rulings, and respect for the fundamental principles of free access to information of public

183 More on the Savamala case in the *2017 Report*, III.4.2.

184 More in the Conclusions on the review of the Commissioner's 2018 Annual Report of 15 July. Available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2019/RS33–19.pdf.

importance and personal data protection. The conclusions, however, do not reflect the actual situation described in the Commissioner's 2018 Report.[185] The 2018 Report shows that many state authorities have not been fulfilling their legal obligations, publishing their information booklets, implementing staff trainings or submitting their implementation reports to the Commissioner for years, but that they have not suffered any consequences although the non-fulfilment of each of these obligations is defined as a misdemeanour.

4.2.1. Appointment of the New Commissioner

Rodoljub Šabić's second seven-year term in office expired on 22 December 2018. His successor, who was to have been appointed by that date, was appointed only in July 2019. As the day Šabić was to step down was drawing near, a group of CSOs and representatives of the business, expert and academic communities called for the prompt and transparent appointment of the new Commission in accordance with the law.[186] The organisation *CRTA* launched a campaign "I want a Commissioner, not a yes man!"[187] alerting to the authorities' failure to initiate the appointment procedure and the need that they comply with the criteria of transparency, openness and integrity and inform the citizens about the potential candidates.

In its Serbia 2019 Report[188] published in late May, the European Commission said that the mandate of the previous Commissioner had ended in December 2018 and that a new Commissioner needed to be appointed in a transparent manner, taking into account relevant professional experience. It also highlighted the need to provide the institution with adequate resources and sufficient staff to perform its tasks.[189]

In March 2019, Chairman of the Assembly Culture and Information Committee Mirko Krlić told the news portal *Insajder* that he would launch the appointment procedure as soon as he received instructions from the leading politicians, adding that the non-appointment of a new Commissioner had not left "a public void" because the previous one was "a political figure". [190] This was not the first time Krlić said that he would launch the procedure for the appointment of the new Commission.[191] In addition to Krlić and CSOs, head of the SNS caucus Aleksandar Marti-

185 Transparency Serbia's criticism of the National Assembly's conclusions is available in Serbian at: http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/10594-komentar-predloga-zakljucaka-povodom-razmatranja-izvestaja-poverenika-za-2018.

186 More in the *2018 Report*, III.3.1.

187 See more in Serbian at: https://srbijadoinformacija.rs/pismo/.

188 European Commission, Serbia 2019 Report, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

189 *Ibid.,* p. 24.

190 "Krlić: We'll launch the appointment of the new Commissioner as soon as I get instructions from SNS and partners," *Insajder*, 22 March. Available in Serbian at: https://insajder.net/sr/sajt/vazno/13857/.

191 "Assembly launching appointment of new Commissioner, opposition fears party official will be appointed in Šabić's place too," *Insajder*, 4 November 2018, available in Serbian at: https://in-

nović also spoke about the appointment of the new Commissioner. He said that his party had "several serious candidates" for the office and that their nominee "will in any case be a total opposite to former Commissioner Rodoljub Šabić."[192]

FAIPIA specifies the criteria to be fulfilled by eligible candidates for the office of Commissioner.[193] However, the criteria are set too broadly both in the FAIPIA and the PDPA. For instance, the criterion regarding a renowned reputation and expertise in the protection and advancement of human rights does not specify which specific rights are at issue. CSOs asked the relevant parliamentary Committee to interpret, to the greatest degree possible, the appointment criteria in the context of the rights protected by the Commissioner. They also called for greater transparency of the process and that the candidates and their resumes be publicly presented by the public service broadcaster. Furthermore, they requested that the future Commissioner fulfil the following two criteria: possess personal integrity and independence from political parties, and possess extensive expertise in the rights he is to protect.[194]

Despite constant appeals to urgently launch the procedure for the appointment of the new Commissioner, it was not before 14 June 2019 that the parliamentary Culture and Information Committee invited caucuses to nominate the candidates within seven days and explain why they were nominating them.[195] Not only was the deadline extremely short; several CSOs sent a joint request to the Committee to revoke the criterion rendering ineligible candidates "holding office or employed in other state authorities or political parties" that is not provided by law.[196] Furthermore, the invitation to nominate candidates was sent only to parliamentary caucuses but not to other actors.

The caucuses nominated three candidates: SNS nominated Acting President of the Belgrade Misdemeanour Court Milan Marinović; the Movement of Socialists,

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sajder.net/sr/sajt/tema/12468/ and "SNS takes the appointment of Commissioner seriously, we don't want to be rash," *Insajder*, 11 February. Available in Serbian at: https://insajder.net/sr/sajt/vazno/13433/.

192 "Martinović: Candidate for Commissioner will be total opposite to Šabić," *Danas*, 28 January. Available in Serbian at: https://www.danas.rs/politika/martinovic-kandidat-za-poverenika-bice-susta-suprotnost-sabicu/.

193 Under Article 30 of the FAIPIA, eligible candidates must have a law degree, at least ten years of experience, fulfil state employment requirements and have a renowned reputation and expertise in protecting and advancing human rights.

194 More on the criteria for the appointment of the new Commissioner CRTA proposed to the parliamentary Culture and Information Criteria in: https://crta.rs/wp-content/uploads/2018/12/Kriterijumi-za-izbor-kandidata-za-Poverenika-za-informacije-od-javnog-zna%C4%8Daja-i-za%C5%A1titu-podataka-o-li%C4%8Dnosti.pdf.

195 "Caucuses invited to nominate candidates for the office of Commissioner," *N1*, 14 June. Available in Serbian at: http://rs.n1info.com/Vesti/a491951/Poslanicke-grupe-dobile-poziv-da-predloze-kandidate-za-poverenika.html.

196 "Assembly should revoke disputable eligibility criterion," the Transparency Serbia press release, available in Serbian at: http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/naslovna/10584-skupstina-da-povuce-sporni-uslov-za-izbor-novog-poverenika.

People's Farmers' Party and United Farmers' Party nominated Bojan Milosavljević, a lawyer from Veliko Gradište; and three caucuses – the Democratic Party (DS), Party of Modern Serbia (SMS) and Social Democratic Party (SDS) – nominated Nevena Ružić, Assistant Secretary General of the Commissioner's Office, whose nomination was upheld by over 70 CSOs[197] who thought she was the best candidate given her experience, expertise, personal integrity, professionalism and membership of international bodies dealing with access to information.[198] The Committee session turned into a polemic about whether the new Commissioner should conduct a policy of continuity or discontinuity of his predecessor.

The Culture and Information Committee's interviews with the nominees at the public session lasted only a few minutes, indicating that the candidate had already been agreed on by the parliamentary majority and that their qualities, such as their experience, integrity and professionalism were not crucial. This session was also used to reopen the discussion on whether the new Commissioner should conduct a policy of continuity or discontinuity of his predecessor. The Committee decided by a majority vote (10) [199] to uphold Milan Marinović's candidacy.[200] The candidacy was forwarded to the Assembly, simultaneously with the proposal to adopt a decision[201] relieving Rodoljub Šabić of duty.

The extraordinary parliamentary session was marked by fresh accusations against the former Commissioner voiced by SNS MPs.[202] The debate at the Assembly plenary session was used to again discredit and insult Šabić. For instance, SNS deputy Aleksandar Marković said that "we have for years" had a Commissioner who, "instead of doing his job, was solely and exclusively engaged in daily politicking and attacking Aleksandar Vučić, the Serbian Progressive Party, SNS deputies and the Serbian Government."[203]

197 "Nevena Ružić for Commissioner," CRTA, 18 June. Available at: https://crta.rs/en/civil-society-suggests-that-nevena-ruzic-be-the-head-of-the-institution-of-the-commissioner/.

198 The participants in the International Conference of Information Commissioners (ICIC) held in Johannesburg (South African Republic) in March 2019 adopted a Resolution on the Creation of the ICIC as a Permanent Network and the Adoption of the ICIC Charter. They adopted the ICIC Charter and decided to entrust the tasks set out in it to the Governance Working Group; Nevena Ružić is a member of the Working Group on behalf of the Serbian Commissioner. See more in Serbian at: https://www.poverenik.rs/sr-yu/.

199 One deputy voted for Nevena Ružić and none voted for Bojan Milosavljević.

200 "Milan Marinović candidate for new Commissioner," *Danas*, 1 July. Available in Serbian at: https://www.danas.rs/politika/milan-marinovic-kandidat-za-novog-poverenika/.

201 The decision is available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2019/RS37–19.pdf.

202 National Assembly press release on the 15th session of 22 July 2019. Available at: http://www.parlament.gov.rs/15th_Extraordinary_Session_of_the_National_Assembly_of_the_Republic_of_Serbia,_11th_Legislature_.37056.537.html.

203 "SNS discussed Šabić more than own candidate for Commissioner," *N1*, 24 July. Available in Serbian at: http://rs.n1info.com/Vesti/a502386/Poslanici-o-izboru-novog-poverenika.html.

Milan Marinović was appointed Commissioner, essentially in the absence of a prior public debate or a thorough review of his credentials.[204] Public apprehensions about how the institution will operate in the future can primarily be ascribed to his lack of experience in the implementation of two such very important and challenging laws,[205] as well as to the statements by the members of the caucus that nominated him, that he would be "the total opposite" to Šabić, although the latter's work had regularly been applauded both at home and abroad. Soon after he took office, Marinović appeared on *TV Prva* and said he would not tolerate pressures by anyone "because he did not agree to be Commissioner to enforce anyone's political will, but to work in the interests of the citizens and the state". He also said that his independence was not brought into question by the fact that he was appointed Commissioner on the proposal of the ruling coalition and that he was appointed because he was impartial, expert, independent and autonomous in his work.[206] It was too early to assess whether he actually possesses these qualities, because he held the office of Commissioner for only a few months at the time this Report was finalised.

4.2.2. "Free" Access to Information of Public Importance

Difficulties in the implementation of the FAIPIA emerged as soon as it entered into force, because not all state authorities were willing to provide the members of the public with access to the information requested. The awareness that all authorities in possession of information of public importance most comply with their legal obligations grew slowly and with difficulty, but, in the last couple of years, they have increasingly been refusing to allow access to the information requested and ignoring the Commissioner's rulings instructing them to comply with the law. The trend continued in 2019, as the following of many examples illustrate.

In his ruling of 9 May 2019,[207] the Commissioner instructed the Belgrade Mayor to notify the Anti-Corruption Council whether he was in possession of a contract between the City of Belgrade and the Republic of Serbia on the costs of clearing the construction land at the Belgrade Waterfront site (under Article 2 of the

204 National Assembly decision on the appointment of Milan Marinović to the office of Commissioner, available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2019/RS38–19.pdf.

205 Marinović said in his official said that he has protected human rights as misdemeanour judge and Misdemeanour Court judge since 1998, that he ruled on cases regarding the FAIPIA and PDPA as a judge of the Belgrade Misdemeanour Court, that he was a member of the working group that drafted the Whistleblower Protection Act and acted on requests for access to information of public importance. See more in Serbian at: https://www.istinomer.rs/akter/milan-marinovic/.

206 "New Commissioner: I won't tolerate pressures or enforce anyone's political will," *N1*, 29 July 2019. Available in Serbian at: http://rs.n1info.com/Vesti/a503392/Novi-poverenik-Necu-trpeti-pritiske-niti-sprovoditi-bilo-ciju-politicku-volju.html.

207 Commissioner's Ruling No. 071-01–2880/2019–03 of 9 May 2019. Available in Serbian at: https://www.poverenik.rs/images/stories/dokumentacija-nova/resenja/2019/071-01–2880–2019–03.pdf.

Act Establishing Public Interest and Special Expropriation and Building Licencing Procedures to Implement the Belgrade Waterfront Project[208] and, if he was, to forward a copy of the contract to the Commissioner.[209] The City of Belgrade neither replied to the Commissioner's request nor to the Council's allegations in its complaint to the Commissioner.[210]

A new approach to impeding exercise of the right of access to information of public importance was applied by the Niš Public Transportation Directorate in 2018 and 2019 – the Directorate refused to receive the Commissioner's rulings sent by registered mail. It first refused to receive the Commissioner's ruling of 16 October 2018, ordering it to respond to the complaint by *Južne vesti* reporters about the "silence of the administration". It subsequently refused to receive the Commissioner's ruling of 18 March 2019[211] instructing it to provide access to the information requested.[212] The Commissioner immediately alerted the Administrative Inspectorate[213] asking it to take measures within its purview, given that impeding and precluding exercise of the right of access to information of public importance is a misdemeanour offence. The Commissioner said in his press release that the requested information regarded public spending and use of capital goods.[214]

The Commissioner also instructed Telekom Serbia to as soon as possible respond to a request made by a KRIK reporter and provide her with access to a contract this state company had concluded with two offshore companies registered in Cyprus[215] on the purchase of cable operator *Kopernikus technology*, if it was in possession of such a contract. The contract, reportedly worth €195 million, had not been published even ten months after it was signed.[216]

208 More on the Belgrade Waterfront project and the irregularities surrounding the contract with the investor and conditions for its implementation in the *2016 Report*, II.12.4.

209 The City of Belgrade received the Commissioner's ruling on 14 May 2019 and the deadline for complying with it expired on 17 May 2019. The Anti-Corruption Council had complained to the Commissioner because of the "silence" of the City of Belgrade – Mayor regarding its request for access to the information of 5 March 2019.

210 The Commissioner's press release is available in Serbian at: https://www.poverenik.rs/sr-yu/.

211 The Commissioner's Ruling is available in Serbian at: https://www.poverenik.rs/images/stories/dokumentacija-nova/resenja/2019/3514resenje.pdf.

212 The registered mail was returned to the Commissioner. The post office notified the Commissioner that two unsuccessful attempts to deliver it were made on 21 and 22 March 2019 and that notice of registered mail was left in the Directorate's offices, but that the Directorate had failed to pick it up for 15 days, whereupon it was returned to sender.

213 Commissioner's letter to the Ministry of State Administration and Local Self-Governments of 11 April 2019. Available in Serbian at: https://www.poverenik.rs/images/stories/dokumentacija-nova/resenja/2019/3514MDULS.pdf.

214 The Commissioner's press release is available in Serbian at: https://www.poverenik.rs/sr-yu/.

215 According to KRIK's information, the company Kopernikus Corporation (Cyprus) Ltd is owned by Srđan Milovanović, the new owner of *TV Prva* and *02* and the brother of the Serbian Progressive Party commissioner. The Polish investment fund Abris owns the other company, KPNK CY Holdings Limited.

216 More is available in Serbian at: https://www.raskrikavanje.rs/page.php?id=491.

The news that the father of Minister of Internal Affair Nebojša Stefanović was implicated in the export of weapons manufactured in the Valjevo arms plant Krušik drew a lot of attention in the autumn of 2019.[217] Security Intelligence Agency officers arrested a plant employee Aleksandar Obradović[218] on suspicion of leaking the texts that were published by BIRN[219] and Arms Watch.[220] The Commissioner said that he was unfamiliar with the details of the case, apart from those published by the media, that Obradović probably had cause to believe that the information he had was true, which is prerequisite for gaining the status of whistle-blower, but that he did not go through the so-called whistle-blowing channels, because the law explicitly lays down which internal or external whistle-blowing channels have to be used. He said that although Obradović may not formally qualify as a whistle-blower, the information at issue could be considered information of public importance and that the prosecutors should check it. Asked whether Obradović should be under house arrest although he should have the status of whistle-blower and enjoy protection – the Commissioner said that "it's good that his case is now public and that the public is interested in his fate" and that "it's good the court reacted, albeit with a delay late, and let him out of pre-trial detention".[221] He did not answer the question.

4.3. Anti-Corruption Agency

4.3.1. Legal Framework

Serbia has ratified the UN Convention against Corruption (UNCAC),[222] the UN Convention against Transnational Organized Crime and its Protocols (UNTOC)[223] and the Council of Europe anti-corruption regulations – the Criminal Law Convention on Corruption and its Additional Protocol[224] and the Civil Law Convention on Corruption.[225]

The UN Convention against Corruption is the main instrument for the global fight against corruption and its enforcement is one of the major UN Millennium Development Goals. Its signatories have also adopted resolutions on the monitoring of

217 More on the Krušik scandal in: III.3.6.

218 Aleksandar Obradović is an IT expert from Valjevo, working in the Krušik plant. For several years, he collected documents which, in his view, prove that the leading state officials are involved in weapons exports.

219 Available in Serbian at: https://www.glasamerike.net/a/birn-srbija-otkriva-detalje-slu%C4%8Daja-uzbunjiva%C4%8Da-iz-kru%C5%A1ika-/5121988.html.

220 See at: http://armswatch.com/leaked-arms-dealers-passports-reveal-who-supplies-terrorists-in-yemen-serbia-files-part-3/.

221 "Commissioner: Obradović's arrest uncalled for, examine all arms trade allegations," *Insajder,* 20 October. More is available in Serbian at: https://insajder.net/sr/sajt/vazno/15885/.

222 *Sl. list SCG (Međunarodni ugovori)*, 12/05.

223 *Sl. list SRJ (Međunarodni ugovori)*, 6/01.

224 *Sl. list SRJ (Međunarodni ugovori)*, 2/02 and *Sl. list SCG (Međunarodni ugovori)*, 18/05.

225 *Sl. glasnik RS (Međunarodni ugovori)*, 102/07.

UNCAC implementation, collection of information, harmonisation of national legislation with UNCAC, establishment of intergovernmental working groups on asset recovery and technical assistance, and promotion of best anti-corruption practices. Under Article 6 of the UNCAC, States Parties are under the obligation to ensure the existence of one or more bodies, as appropriate, that prevent corruption, to enable them to carry out their functions effectively and free from any undue influence, grant them the necessary independence, provide with the necessary material resources and specialised staff.

Serbia fulfilled the obligation to establish an anti-corruption body when it adopted the Anti-Corruption Agency Act (ACA)[226] under which the Anti-Corruption Agency was formed. The Anti-Corruption Agency is defined as an autonomous and independent state authority established under the Act to monitor the implementation of the National Anti-Corruption Strategy[227] and its Action Plan,[228] issue recommendations and opinions on the enforcement of ACA and institute procedures and impose measures against those who violate this law.

However, although the Agency has been working for a decade now, it has rarely responded adequate to the major challenges faced, eliciting criticisms in the public, especially from CSOs dealing with corruption.[229] Its independence has also frequently been brought into question, especially since Dragan Sikimić, erstwhile Deputy Director of the National Employment Service, was appointed Agency Director in January 2018. Sikimić's appointment raised quite a few eyebrows; the media published a number of reports tying him to the ruling Serbian Progressive Party 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.[230]

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. The situation can partly be ascribed to the delays in the adoption of a new law on the Anti-Corruption Agency.

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.

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226 *Sl. glasnik RS*, 97/08, 53/10, 66/11 – CC Decision, 67/13 – CC Decision, 112/13 and 8/15 – CC Decision.

227 *Sl. glasnik RS*, 57/13. The 2013–2018 National Anti-Corruption Strategy is available at: http://mpravde.gov.rs/tekst/38/protiv-korupcije.php.

228 The Action Plan is available in Serbian at: http://www.acas.rs/wp-content/uploads/2010/06/Akcioni_plan_za_sprovodjenje_Strategije.pdf.

229 See more at: http://transparentnost.org.rs/.

230 More on the appointment of the Agency Director and Committee members in the *2018 Report*, III.3.3.

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, the second in 2018[231] and the third in 2019. In February 2019, the Ministry of Justice initiated a public debate on the Preliminary Draft.[232]

Transparency Serbia forwarded its own draft anti-corruption law[233] and recommended the amendment of 65 of the 114 provisions of the Preliminary Draft. Although it noted slight improvements over the prior versions and the valid Act, this CSO said that many of the provisions facilitated politicisation. However, the provision under which the Agency Director and Council members are to be elected by the National Assembly from among all the candidates who have passed the test is extremely concerning as it allows for the appointment of candidates close to the ruling party, to an even greater extent than now.

The Preliminary Draft does not include a provision that existed in the prior versions – that senior managers of dependent companies shall be considered public officials, which is why plans to subject to control directors of other, still unprivatised state companies fell through. Furthermore, many of the problems identified and discussed earlier – such as the separation of public and political offices, cumulation of offices, declaration of assets and valuable gifts, the public officials' associated persons, and the expansion of the Agency's powers – have not been eliminated, although practice has shown that some of these abuses have gone unpunished.[234]

The new Anti-Corruption Act[235] was adopted under an urgent procedure in May 2019 and will enter into force in September 2020, i.e. 16 months after its "urgent adoption". To recall, GRECO has recommended to Serbia that "adequate timeframes are in place for submitting amendments and that the urgent procedure is applied as an exception and not as a rule".[236]

In November 2019, the Serbian Government endorsed the amendments to the Anti-Corruption Agency Act and the Anti-Corruption Act, with a view to strengthening the accountability of political entities participating in elections. With a view to strengthening the fight against corruption, it also submitted for adoption amend-

231 More in the *2018 Report*, III.3.3.1.

232 Conclusion of the Committee on the Legal System and State Authorities on the implementation of the public debate on the Preliminary Draft of the Anti-Corruption Act, available in Serbian at: https://www.mpravde.gov.rs/files/ZAKLJU%C4%8CAK%20zakon.pdf.

233 Available in Serbian at: http://www.transparentnost.org.rs/images/stories/inicijativeianalize/poredjenje%20predlog%20zakona%20i%20nacrt%20iz%20februara%202019%20sa%20TS%20komentarima.pdf.

234 Transparency Serbia, Letter to MPs, 13 May 2019. Available at: http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/ACAS_Law_proposals.pdf; see also "Anti-corruption law, kind of," *Peščanik,* 17 May, available in Serbian at: https://pescanik.net/zakon-za-sprecavanje-korupcije-ali-pomalo/.

235 *Sl. glasnik RS*, 35/19.

236 See: https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680792e56.

ments to two other laws, specifically the Act on the Financing of Political Activities and the Act on Public Companies**.** It said that these laws needed to be brought into compliance with the OSCE/ODIHR Mission's recommendations issued back in 2016 and 2017.[237] On 8 December 2019, Transparency Serbia submitted its amendments to the bills, specifying they did not fulfil the said recommendations and would not address the abuse of public offices for political campaigning purposes.[238]

GRECO adopted its Interim Compliance Report[239] regarding the fourth evaluation round in March and published it in April 2019. The Report assesses Serbia's implementation of the 13 recommendations since the adoption of the Compliance Report, and provides an overall assessment of its level of compliance with these recommendations. GRECO found that three recommendations have not been implemented at all and that the other 10 have been implemented only partly. GRECO welcomed the adoption of the Lobbying Act.[240] GRECO put off the deadline for the fulfilment of the recommendations for the third time – this time until 31 December 2019.[241]

In its Serbia 2019 Report, the European Commission said that, overall, corruption was prevalent in many areas and remained an issue of concern. It noted that limited progress had been made but that there was no measureable impact of corruption-prevention reforms. It said that law enforcement and judicial authorities still needed to establish a credible track record of operationally independent prosecutions and of finalised high-level corruption cases. It concluded that there was a need for strong political will to effectively address corruption issues, as well as a robust criminal justice response to high-level corruption. [242]

4.3.2. Anti-Corruption Agency's Activities

The National Assembly in 2019 reviewed the Anti-Corruption Agency's 2018 Annual Report.[243] The parliamentary Committee on Finance, State Budget and Oversight of Public Spending adopted the Agency Report. The Anti-Corruption Agency said in its 2018 Report that it had filed 16 criminal reports against public officials suspected of not declaring their assets or providing false data to conceal information about their assets.[244] The Agency said it had filed 13 reports to the rel-

237 More on the talks on election conditions in the latter half of 2019 in Chapter II.10.3.

238 Transparency Serbia, Letter to MPs and Draft Amendments, 8 December 2019. Available in Serbian at: http://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_dopis_za_poslanike_i_predlog_amandmana_-_%C4%8Detiri_antikorupcijska_i_izborna_zakona.pdf.

239 See more at: https://rm.coe.int/grecorc4–2019–5-fourth-evaluation-round-corruption-prevention-in-respe/168093bc55.

240 *Sl. glasnik RS,* 87/18, in force as of 14 August 2019.

241 See para. 101, https://rm.coe.int/grecorc4–2019–5-fourth-evaluation-round-corruption-prevention-in-respe/168093bc55.

242 See more at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

243 Anti-Corruption Agency 2018 Report, available at: http://www.acas.rs/reports/annual-reports/.

244 Article 72, ACA.

evant prosecution services and other state authorities about its suspicions that the public officials, whose property and income had been subject to checks, had committed other crimes (giving and taking bribes, tax evasion, money laundering, et al.). The Agency's 2018 Annual Plan Assets and Income Check Plan[245] envisaged the checking of the assets and income declarations of 317 public officials in 2018.[246] The Agency also performed ad hoc checks of the assets and income declarations of seven other public officials suspected of declaring incorrect or incomplete data. Altogether, the Agency completed the checks of the assets and income declarations of 275 public officials in 2018.

In response to the comment that GRECO had negatively assessed Serbia's track record back in 2017, the Agency Director said GRECO said in March that Serbia was no longer qualified by GRECO as "globally unsatisfactory", wherefore it was now among the civilised countries to which the standard regime applied.[247] This conclusion does not coincide with many CSO reports alerting to high levels of corruption.[248]

The Assembly also debated the Report on the Implementation of the National 2013–2018 Anti-Corruption Strategy[249] submitted by the Agency. The Report was presented by the Agency Director, who said that over 93% of the state authorities had fulfilled the Agency's conflict of interest recommendations and that as many as 96% had complied with the Agency's rulings ordering the termination of the other office *ex lege*. Despite very negative assessments of corruption in Serbia, the deputies of the ruling coalition praised the Agency's work, emphasising that corruption has been receding since the ruling coalition came into power, whereas it had raged during the previous government, and calling on the relevant authorities to investigate the origin of the assets of the opposition politicians.[250]

The Anti-Corruption Agency in 2019 drafted its 2019–2023 Strategic Plan[251] which provides measures for strengthening integrity in the public sector, greater civic

245 The Plan is available in Serbian at: http://www.acas.rs/wp-content/uploads/2017/12/Godisnji-plan-provere-za-2018.pdf.

246 A minister, minister without portfolio, state secretaries, assistant ministers, acting assistant minister, people's deputies, Higher Court Presidents and Acting Presidents, Higher Public Prosecution Service prosecutors and acting prosecutors.

247 "Anti-Corruption Agency report adopted," *RTS*, 13 June. Available in Serbian at: http://www.rts.rs/page/stories/sr/story/9/politika/3555995/usvojen-izvestaj-agencije-za-borbu-protiv-korupcije.html. See also the press release on the Agency website, available in Serbian at: http://www.acas.rs/narodna-skupstina-usvojila-izvestaj-o-radu-agencije-za-borbu-protiv-korupcije/.

248 PrEUgovor Coalition, Report on Progress of Serbia in Chapters 23 and 24 – September 2019. Available at: http://preugovor.org/Alarm-Reports/1553/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml. See also Transparency Serbia's publications, available in Serbian at: http://transparentnost.org.rs/index.php/sr/inicijative-i-analize-ts#a2019.

249 Available in Serbian at: http://www.acas.rs/wp-content/uploads/2019/04/ACAS-strategija-web.pdf.

250 "SNS requests check of opposition politicians' property, SRS against Siniša Mali," *N1*, 12 July. Available in Serbian at: http://rs.n1info.com/Vesti/a499217/Poslanici-o-izvestaju-Agencije-za-borbu-protiv-korupcije.html.

251 Available in Serbian at: http://www.acas.rs/wp-content/uploads/2019/05/STRATESKI-PLAN-SRB-01_print.pdf.

participation in the prevention of corruption, better implementation of anti-corruption regulations, fostering international cooperation and application of international anti-corruption standards and enhanced Agency powers. Judging by the decisions the Agency has been adopting in cases regarding senior state officials, many other things have to be improved for this institution to really become the main bulwark against corruption and influence peddling.

One such case is no doubt the Krušik scandal, which broke out when investigative reporters[252] discovered that Branko Stefanović, the father of the Minister of Internal Affairs Nebojša Stefanović, was involved in the sale of weapons manufactured in the state arms plant Krušik[253] and the potential conflict of interest of the Minister, a senior SNS official. One would have expected the Agency to react immediately. Only after *TV N1* continued insisting on an answer from Agency Director Dragan Sikimić on which steps, if any, the Agency was taking in response to the allegations did the Agency reply that it was conducting a "preliminary examination of the fulfilment of all the requirements".[254] Finally, in early December, the Agency stated that Branko Stefanović was neither an owner of the company GIM nor its legal representative and that he was neither employed in or engaged by it in any capacity, wherefore the Agency concluded that "purchase of Krušik's weapons by GIM does not constitute a conflict of interest of Minister Nebojša Stefanović, that it cannot impinge on his impartial and independent discharge of public office, wherefore there is no relationship of dependence the official must avoid when discharging public office." The Agency also said it had not analysed how the prices of the weapons were formed.[255]

The Agency decision provoked an avalanche of criticism, especially its statement that it had not investigated at what prices GIM had bought and sold the weapons and because the Ministry headed by Stefanović is one of the ministries that has to approve arms exports. Furthermore, documents and photographs have been published clearly proving that Branko Stefanović has had a business arrangement with GIM, which has increased its income by several thousand percent over the past few years.[256]

In response to a report on the Serbian President's activities within the campaign "Future of Serbia" submitted to it, the Anti-Corruption Agency found that

252 "Serbian Minister's Father Mediated Weapon Sales to Saudis," *BIRN*, 22 November. Available at: https://balkaninsight.com/2018/11/22/serbian-minister-s-father-mediated-weapon-sales-to-saudis-11–22–2018/

253 More in Chapter III.3.6.

254 "Agency: we're checking requirements for initiating proceedings against Stefanović", *N1*, 8 November. Available in Serbian at: http://rs.n1info.com/Vesti/a542251/Agencija-Proveravamo-uslove-za-pokretanje-postupka-protiv-Stefanovica.html.

255 "Anti-Corruption Agency: Branko Stefanović neither owns nor works for GIM," *Danas*, 9 December. Available in Serbian at: https://www.danas.rs/politika/agencija-za-borbu-protiv-korupcije-branko-stefanovic-nije-ni-vlasnik-niti-je-zaposlen-u-gim-u/.

256 "Anti-Corruption Agency's suicide," *Danas*, 10 December. Available in Serbian at: https://www.danas.rs/drustvo/samoubistvo-agencije-za-borbu-protiv-korupcije/.

Vučić had not violated the Anti-Corruption Agency Act, because the exercise of his presidential powers under the Constitution, rather than activities relating to use of public resources for the promotion of political parties, was at issue in this specific case.[257] Transparency Serbia qualified the Agency's press release as "unusual" because it said already in the title that the "President has not violated the law on the Agency" and called on the Agency to investigate other facts as well, in addition to the ones specified in the press release. For instance, it should investigate whether Vučić had used the events in which he participated in the capacity of President for party purposes as well. The CSO also noted that the Agency was not in the habit of reacting so quickly on its website to allegations and suspicions of senior public officials violating the rules within the Agency's remit as it has in the case of the Serbian President.[258]

The Anti-Corruption Agency has, indeed, on several occasions initiated proceedings and imposed measures against officials who violated the Anti-Corruption Agency Act, but it has also been dismissing reports of manifest and corroborated corruption and conflicts of interest.

For instance, *Pištaljka (Whistle)*, an organisation protecting and extending legal aid to whistle-blowers, claimed that the Agency had concealed conflict of interest and potential corruption by the Director of the Niš Transfusion Institute Vesna Knežević and ignored all the evidence proving the corruptive ties between the Director and the American pharmaceutical company Bio-Rad which *Pištaljka* found and published. It took the Agency nearly a year to issue a decision, in which it found that the Director had not been in a conflict of interest when she went to a conference in Oman at Bio-Rad's expense, although the Institute was illegally buying its products at rigged tenders. *Pištaljka* claims that the Agency opted for "believing" the Director, who dimissed all the accusations in her letter to the Agency, and totally ignored all the material evidence of conflict of interest and potential corruption, which has been public for a year now and which had prompted the Ministry of Health to declare the equipment procurement contracts illegal.[259]

The Anti-Corruption Agency discontinued proceedings against the Director of the weapons plant "Namenska" in Lučani, Radoš Milovanović, who was reported to it by the organisation CRTA. The Agency found that he had not abused his office when he called on the plant workers to vote for the Serbian Progressive Party at the local elections. The Agency accepted his explanation that he did so at a meeting

257 "President has not violated the Anti-Corruption Agency Act," press release, Anti-Corruption Agency, available in Serbian at: http://www.acas.rs/predsednik-republike-nije-prekrsio-zakon-o-agenciji/.

258 "TS: Unusual press release of the Anti-Corruption Agency," *Danas*, 21 February. Available in Serbian at: https://www.danas.rs/politika/ts-neobicno-saopstenje-agencije-za-borbu-protiv-korupcije/.

259 "Anti-Corruption Agency hiding corruption," press release, *Pištaljka*, 6 November. Available in Serbian at: https://pistaljka.rs/home/read/835.

of the plant blood donors, not at an event organised by the plant he manages.[260] In CRTA's opinion, the Director had violated Article 29(2) of the Anti-Corruption Agency Act, prohibiting public officials from using public resources and events and meetings they are attending in their official capacity to promote political parties and entities.

In 2018, the Republican Public Prosecutor upheld the Agency's initiative and initiated an administrative dispute before the Administrative Court challenging a ruling issued by the Commissioner for Information of Public Importance and Personal Data Protection of December 2018.[261] The Agency held that it had dismissed the Commissioner's ruling because he had "obviously misapplied" the Free Access to Information of Public Importance Act.[262] The Commissioner had instructed the Agency to provide the reporter of the Centre for Investigative Journalism of Serbia (CINS), Milica Šarić, with insight in blank bills of exchange and lien and mortgage agreements political entities used as collateral for loans for 2012, 2014, 2016, 2017 and 2018 election campaigns at all levels.[263] The Administrative Court held a hearing on 7 May 2019 and said it would deliver its judgment.

The Agency posted only one opinion on its website, in January 2019, in which it found that all members of the University Council were public officials in the meaning of Article 2 of the Anti-Corruption Agency Act, irrespective of whether they were representatives of the institution, the students or the founders, because the Council was an authority of a tertiary educational institution.[264] It instructed the University Council to notify it by the specified deadline when each Council member took office and alerted it that all of them were under the obligation to submit their asset declarations to the Agency within the set deadline if they were remunerated for their work in the Council. Belgrade University Rector Ivanka Popović said that she

260 "Anti-Corruption Agency: no grounds for proceedings against Namenska's Director for calling on workers to vote for SNS," press release, Transparency Serbia, 10 July 2019. Available in Serbian at: http://transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/10624-agencija-za-borbu-protiv-korupcije-nema-osnova-za-postupak-protiv-direktora-namenske-zbog-poziva-radnicima-da-glasaju-za-sns.

261 The Republican Public Prosecutor's notice is available in Serbian at: https://www.cins.rs/uploads/useruploads/Documents/Dopis%20RJT-a%20kojim%20obave%C5%A1tava%20Poverenika%20o%20pokretanju%20tu%C5%BEbe.pdf; see also CINS, "Another administrative dispute against Commissioner because of CINS' request," 20 February, available in Serbian at: https://www.cins.rs/jos-jedna-tuzba-protiv-poverenika-zbog-cins-ovog-zahteva/.

262 The Agency said that the Commissioner's misapplication of the law was reflected in his request to the Agency to prove the existence of actual and real damage to lawfully protected interests which would be incurred by the future event and that he had neglected the provision on potential damage not just actual damage. Furthermore, the Agency held that the publication of data on bank loan collateral would incur multiple damages, especially in the context of "trust in Serbia's bank system" and the right to free enjoyment of possessions.

263 The Agency initially dismissed CINS' request for access to these documents and then requested the initiation of an administrative dispute against the Commissioner, who had upheld CINS' complaint and instructed the Agency to provide CINS with access to the documents.

264 The Agency's opinions are available in Serbian at: http://www.acas.rs/praksa-agencije/miljenja/#.

would forward the list of Council members to the Agency, but that none of them were remunerated for their work in the Council and hence not under the obligation to submit their asset declarations.[265]

4.4. Commissioner for the Protection of Equality

The Commissioner for the Protection of Equality (hereinafter: Equality Commissioner) was established pursuant to the Anti-Discrimination Act[266] 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 Equality 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 Equality 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 Equality 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 legislator decided to amend the Anti-Discrimination Act, adopted ten years ago, to address some of its weaknesses identified during its implementation. When it proposed the amendments to the law on February 2019, the Government said that they aimed to strengthen the fight against and prevention of discrimination in accordance with the EU *acquis* and law and that the text had been drafted by the Ministry of Labour, Employment and Veteran and Social Issues, the Ministry of Justice, the Equality Commissioner, university professors, judges and anti-discrimination experts.[267] However, the Anti-Discrimination Coalition and partner organisations called for the withdrawal of the draft amendments in March 2019 because the representatives of vulnerable and discriminated groups, as well as the public at large, had not had an opportunity to comment them. They alerted to the numerous shortcomings of the draft, inconsistency of some articles, poorly formulated and meaningless provisions, legal and systemic shortcomings, et al.[268]

265 "Professors and deans becoming public officials," *Politika*, 29 April. Available in Serbian at: http://www.politika.rs/sr/clanak/428488/Drustvo/Profesori-i-dekani-postaju-funkcioneri.

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

267 The Draft Act Amending the Anti-Discrimination Act is available in Serbian at: https://www.paragraflex.co.rs/dnevne-vesti/210219/210219-vest16.html.

268 See more at: https://www.praxis.org.rs/index.php/en/praxis-in-action/discrimination/item/1408-request-for-the-withdrawal-of-the-proposed-amending-act-on-the-anti-discrimination-law.

4.4.1. Equality Commissioner's Activities

The National Assembly elected Brankica Janković Equality Commissioner in May 2015.

At the first session of its regular autumn sitting, the National Assembly reviewed (and adopted) the ninth Annual Report of the Equality Commissioner, an obligation it defaulted on for four years in a row. In her 2018 Report, the Equality Commissioner said that most complaints filed with her office, over a quarter of them, concerned discrimination on grounds of disability and age, and discrimination against children, notably lack of personal escorts and pedagogical assistants, which indicated inadequate support in the education system.[269] Citizens over 50 were victims of age discrimination in the field of work and employment.[270] Next came complaints of discrimination on grounds of gender, birth and health, while less than six percent of the complaints alleged discrimination on grounds of national affiliation[271] (most victims were Roma), marital and family status and sexual orientation. LGBTI persons and women were the targets of most hate speech complainants alerted the Equality Commissioner to in 2018.[272] At the session held on 1 October 2019, Equality Commissioner Brankica Janković was mostly praised by the people's deputies for her report, the comprehensive overview of the situation and the relevant data that may be important for public policy development and improvement and of use to the MPs in their work.[273]

However, Serbian Radical Party deputy Vjerica Radeta sharply criticised the Equality Commissioner, noting that some NGOs had qualified her as unsuitable in 2015, when she was appointed and that she has in the meantime "evolved" and "started acting as if she headed one of them". As per the Equality Commissioner's statements that women were among the main victims of hate speech, Radeta commented that she should "forget those modern shticks, feminist idiocies, protection from I don't know what" and that she was "not paid for that".[274]

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269 The Equality Commissioner said that the increase in the number of these complaints could be ascribed to the implementation of the Act on Financial Support for Families with Children, which had led her Office to submit a number of initiatives to amend that law and requests for the review of its constitutionality and legality.

270 Most of the complainants claimed that they had been assigned to jobs beneath their qualifications and that their employment contracts had been cancelled or not concluded because of their age.

271 The Equality Commissioner noted that the number of complaints alleging discrimination on grounds of national affiliation and ethnic origin was lower in 2018 than the previous years, which was an indicator of the improvement of the status of national minorities, but that their rights were still violated.

272 The Equality Commissioner's 2018 Annual Report is available at: http://ravnopravnost.gov.rs/en/reports/.

273 More in the Conclusion on the review of the 2018 Annual Report of by the Equality Commissioner, available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala_akta/2019/RS40–19-lat.pdf.

274 "You're not paid for feminist idiocies," *B92*, 1 October. Available in Serbian at: https://www.b92.net/info/vesti/index.php?yyyy=2019&mm=10&dd=01&nav_category=12&nav_id=1598252.

The Equality Commissioner herself was a victim of sexist statements voiced by SRS leader and MP Vojislav Šešelj. The Equality Commissioner stood in defence of *Danas* reporter Snežana Čongradin and issued a warning to Šešelj, who had hurled a barrage of insults at her during a parliamentary session because of her article "Why I haven't written a report from Srebrenica" and said she "should have been run over a tank while she was there".[275] After the Equality Commissioner issued her warning, Šešelj tweeted a sexist comment indirectly calling for her rape. Academics, MPs, CSOs and the Journalists' Association of Serbia (JAS) condemned Šešelj's brutal verbal assault on the Equality Commissioner and hate speech and the relevant institutions' failure to respond to them.[276] The Equality Commissioner also reacted to other Šešelj's discriminatory outbursts and verbal attacks on opposition female MPs.[277]

The Equality Commissioner repeatedly reacted to hate speech targeting women in 2019, including in the case of Marija Lukić from Brus, who was sexually harassed by the Mayor of that town, a member of the ruling SNS, for two years. The Mayor was extended the support of Brus residents and numerous social media users, who hurled countless misogynistic and sexist insults at Lukić during the court proceedings. The Equality Commissioner said in her warning that all those insults violated Lukić's dignity and created a humiliating setting in her community, as well as the impression that she was to blame for everything that had happened to her. The Equality Commissioner added that, to make things worse, such messages discouraged women who had suffered any kind of sexual harassment, abuse or violence, to report it without expecting to be criticised because they had courage to confront their abusers.[278] In April 2019, the Equality Commissioner reacted to a statement by the Director of the Novi Bečej Tourist Organisation Saša Dujin, who said live on TV that "Hungarian is best learned in bed with a Hungarian woman". She said that this statement discrediting women was even worse because it reduced Hungarian women to sexual objects.[279]

Domestic violence, which often ends in the death of the victims, usually women, is still a burning issue in Serbia, given the extremely high number of killed women. The need for a rapid response and prompt implementation of systemic

275 See the Equality Commissioner's warning of 17 July 2019 at: http://ravnopravnost.gov.rs/en/warning-for-offensive-comments-sent-to-journalists/.

276 See the *N1* report and JAS press release, available in Serbian at: http://rs.n1info.com/Vesti/a501122/Drzava-cuti-na-uvrede-Seselja-Teodorovic-kaze-gradjani-nece.html and http://www.uns.org.rs/saopstenja/83394/uns-skupstina-srbije-da-osudi-seseljev-jezik-mrznje.html.

277 See the Equality Commissioner's warnings re the Twitter attack on MP Marinika Tepić on 6 May 2019 and the insults voiced against MP Aleksandra Jerkov on 10 April 2019, available at: http://ravnopravnost.gov.rs/en/warning-for-the-public-6/ and http://ravnopravnost.gov.rs/en/warning-for-the-public-regarding-the-insulting-of-mp-aleksandra-jerkov/.

278 See the Equality Commissioner's warning re comments insulting Marija Lukić on social networks of 4 March 2019, available at: http://ravnopravnost.gov.rs/en/warning-for-the-public-6/.

279 See the Equality Commissioner's press release of 5 April 2019 at: http://ravnopravnost.gov.rs/en/statement/.

measures was confirmed by the triple murder in Novi Sad in May 2019, which the Equality Commissioner also alerted to.[280] The horrific murder of a woman in Novi Sad, Mirjana Janković and her parents, by her husband is proof that institutional protection from violence is not efficient enough. The Equality Commissioner also recalled the sensationalist reports on domestic violence cases by some media, which further undermined the suppression of domestic violence and provided the abusers with room to publicly molest and humiliate their victims.[281]

The Equality Commissioner in 2019 repeatedly alerted to the situation of particularly vulnerable categories of citizens, such as persons with hearing and speech impairments and persons with disabilities.[282] She expressed her support to persons with disabilities by participating in the "Equally until the Finish Line" event held for the eighth time running within the 32nd Belgrade Marathon.[283]

On the eve of the Pride Parade, which was held in Belgrade on 15 September 2019, the Equality Commissioner said that evident improvements in the position of the LGBT population have been made over the past few years, but that they were still facing great social distance and misunderstanding and were frequently discriminated against and insulted by the media. She also noted that many of them did not report the violence in fear of stigmatisation.[284] The Equality Commissioner attended the finals[285] of the *Belgrade PlayOut Open 2019,*[286] the first tennis tournament of LGBTI persons in South-East Europe.

4.4.2. Opinions, Recommendations, Initiatives and Proceedings

According to the data the Equality Commissioner published on her website, she issued 28 opinions and recommendations in response to complaints; 11 recommendations were addressed to public authorities.

In response to a complaint that the Vojvodina Clinical Centre highlighted the HIV status of patients on the gastroenterology and endocrinology wards in contra-

280 See the Equality Commissioner's press release on domestic violence of 26 May 2019 at: http://ravnopravnost.gov.rs/en/announcement-regarding-domestic-violence/.

281 Just two weeks before she was killed, Mirjana Janković from Novi Sad reported her husband to the police accusing him of domestic violence, but she was not extended any support or protection.

282 On 25 February 2019, the Equality Commissioner met with the representatives of the Association of the Deaf and Hard of Hearing of Serbia, who told her about their everyday problems. See more at: http://ravnopravnost.gov.rs/en/commissioner-with-representatives-from-the-association-of-deaf-and-hard-of-hearing/.

283 See the Equality Commissioner's press release of 14 April 2019 at: http://ravnopravnost.gov.rs/en/equally-until-the-fihish-line-at-the-belgrade-marathon/.

284 See the Equality Commissioner's press release of 14 April 2019 at: http://ravnopravnost.gov.rs/en/it-is-essential-to-continue-improving-lgbt-rights/.

285 See the Equality Commissioner's press release of 3 June 2019 at: http://ravnopravnost.gov.rs/en/commissioner-supported-the-first-tennis-tournament-for-lgbt-persons/.

286 Over 90 tennis players from 14 countries took part in the tournament, held with the support of the global Gay and Lesbian Tennis Alliance (GLTA).

vention with regulations – by writing the word HIV in a large font and with a red marker, the Equality Commissioner issued the Centre a recommendation, recalling its obligation to respect the human rights of persons living with HIV and other vulnerable groups, as specified, inter alia, in the 2018 national HIV/AIDS Prevention and Control Strategy.[287] In response to a complaint by an NGO, the Equality Commissioner also issued a recommendation to the Ministry of Labour, Employment and Veteran and Social Issues requiring of it to withdraw its circular and take measures to strengthen social protection services and develop new services prerequisite for enabling children to live with their families.[288]

In November 2019, the Equality Commissioner recommended to the Ministry of Education, Science and Technological Development to collaborate with persons with disabilities or their representatives, as well as other experts in the field of communication and information accessibility, in order to provide pupils with disabilities access to textbooks tailored to their needs and abilities and produce precise technical specifications for the procurement of such textbooks. The Equality Commissioner issued the recommendation in response to a complaint by a mother of a primary school visually-impaired pupil, who had not been promptly provided textbooks tailored to children with visual impairments for the second year running.[289]

As far as complaints of multiple discrimination are concerned, the Equality Commissioner in 2019 issued opinions on two complaints of multiple discrimination: one concerned discrimination on grounds of gender and marital and family status in the field of education[290] and the other discrimination on grounds of gender and marital and family status in the area of employment.[291]

The Equality Commissioner initiated amendments of laws in 2019. In September, she filed an initiative with the Belgrade City Assembly asking it to name streets after well-known Serbian women[292] given the major role they have played in society's progress.[293] The most important initiative the Equality Commissioner filed in 2019 (on the proposal of CSOs) regarded amendment of the provision of the

287 Application no. 07–00–191/2019–02. See the Equality Commissioner's Recommendation of 5 April 2019 at: http://ravnopravnost.gov.rs/en/commissioner-sent-a-recommendation-to-cc-of-vojvodina-to-provide-equal-treatment-of-patients-with-hiv/.

288 See the Equality Commissioner's Recommendation of 19, August 2019 at: http://ravnopravnost.gov.rs/en/no-021-00–522–2019–02/.

289 See the Equality Commissioner's Recommendation of 4 November 2019 at: http://ravnopravnost.gov.rs/en/no-021-01–646–2019–02/.

290 See the Equality Commissioner's Opinion of 29 January 2019 at: http://ravnopravnost.gov.rs/en/no-07–00–349–2018–02/.

291 See the Equality Commissioner's Opinion of 8 May 2019 at: http://ravnopravnost.gov.rs/en/opinion-on-complaint-about-discrimination-in-the-workplace-and-employment/.

292 Only 4.48% of all Belgrade streets are named after women, as opposed to 50.19% streets named after men.

293 See the Equality Commissioner's press release of 15 September 2019 at: http://ravnopravnost.gov.rs/en/our-society-was-shaped-by-women-and-men/.

Act on Financial Support for Families with Children that is in contravention of the Serbian Constitution and anti-discrimination law.[294] She also issued her opinions on the Preliminary Draft Act Amending the Anti-Discrimination Act, the purview of her Office[295] and the Draft Rulebook on Recognition of Abuse and Harassment of and Discrimination and Violence against Children in Sports.[296]

The Association of Students with Disabilities complained to the Equality Commissioner about the Rulebook on the Right to Enrolment of Persons with Disabilities[297] adopted by the Belgrade University Senate at its 17 April 2019 session. The Association noted that the "medical model of disabilities dominates" in the Rulebook and that this enactment "neglects the social aspect and impact of various barriers on the social status of persons with disabilities, which is contrary to the very point of social inclusion and the desired effects of enrolling students pursuant to affirmative measures, as is also indicated by the provisions on the composition of the Commission charged with establishing the right to enrolment of persons with disabilities. Furthermore, the deadlines set in the Rulebook preclude all students with disabilities from exercising their rights provided by law." The Equality Commissioner analysed the Rulebook and recommended it be amended.[298]

The Equality Commissioner also filed a criminal report against unidentified individual(s) for spreading racial and other discrimination, in response to a complaint about flyers titled "Who teaches our students when the best are kicked out?"

294 Under Article 12(7) of the Act on Financial Support for Families with Children, 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. More is available in Serbian at: http://ravnopravnost.gov.rs/rs/inicijativu-za-izmenu-clana-12-stav-7-zakona-o-finansijskoj-podrsci-porodici-sa-decom/.

295 See the Equality Commissioner's opinion on the Ministry's letter No. 011-00–13/2018–02 of 29 May 2018, available in Serbian at: http://ravnopravnost.gov.rs/rs/misljenje-na-nacrt-zakona-o-izmenama-i-dopunama-zakona-o-zabrani-diskriminacije/ and her opinion on the Ministry's letter No. 011-00–00031/2019–02 of 14 October 2019, available in Serbian at: http://ravnopravnost.gov.rs/rs/36547/.

296 The Ministry of Youth and Sports asked the Equality Commissioner to give her opinion on the Draft Rulebook on Recognition of Abuse and Harassment of and Discrimination and Violence against Children in Sports in its letter No. 011-00–12/2018–03 of 21 January 2019. The Equality Commissioner's opinion is available in Serbian at: http://ravnopravnost.gov.rs/rs/misljenje-na-predlog-pravilnika-o-nacinima-prepoznavanja-oblika-zlostavl%d1%98anja-zloupotrebe-diskriminacije-i-nasil%d1%98a-nad-decom-u-sportu/.

297 The Rulebook is available in Serbian at: https://www.bg.ac.rs/files/sr/univerzitet/univ-propisi/Pravilnik_upis_lica_invaliditet.pdf.

298 In her initiative of 30 May 2019, the Equality Commissioner suggested that the generally accepted expression "persons with disabilities" be used, that the name and subject matter of the Rulebook be brought in compliance with the regulations, that the definition of the concept of disability be re-examined in the context of the generally accepted social approach focusing on the way society is organised rather than on individuals' differences and impairments, and to bring the scope of persons who may enrol in university and the procedure for enrolment in the future in compliance with the valid regulations. See more in Serbian at: http://ravnopravnost.gov.rs/rs/inicijativa-za-izmenu-pravilnika-o-utvrdivanju-prava-na-upis-lica-sa-invaliditetom/#_ftnref1.

with photographs and initials of four professors of the History Department of the Belgrade University College of Philosophy. The Equality Commissioner noted in her press release that the unsigned flyers qualified the professors as "anti-Serbian" and "fags, lobbyists and mercenaries" and called on the students to boycott their classes to prove they are "worthy of the Kosovo oath" and defend "patriotic and national feelings".[299] The Equality Commissioner explained that the unidentified perpetrator(s) had created and made publicly available a pamphlet rife with hate speech and advocating and inciting hate, discrimination and violence against a group of people, because of their actual or assumed personal characteristic.[300]

The Equality Commissioner also reacted to discrimination against women in the labour market and initiated strategic litigation before the Belgrade Higher Court for discrimination on grounds of gender and family status. Apart from seeking the elimination of the consequences of the discriminatory conduct, the Equality Commissioner also requested of the court to urgently issue a provisional measure prohibiting discrimination and preventing the effects of such conduct against an employee because of her pregnancy and maternity leave.[301]

On the International Right to Know Day in 2019, the Equality Commissioner received an acknowledgement[302] in the category of republican authorities awarded by the Commissioner for Information of Public Importance and Personal Data Protection in cooperation with the OSCE Mission.[303]

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299 See the Equality Commissioner's press release of 15 April 2019. Available at: http://ravnopravnost.gov.rs/en/commissioner-filed-criminal-charges-because-of-spreading-of-racial-and-other-discrimination/.

300 The Equality Commissioner also stressed that hate speech was particularly dangerous when it targeted individuals, such as students, who are vulnerable because of their age and lack of life experience, and that the publication of content inciting violence, boycott or intolerance and disseminating hate speech caused immeasurable danger to society.

301 Immediately after the footage was broadcast on *RTS*, the Equality Commissioner, with the consent of the aggrieved party, Snežana Pešović, initiated an analysis and started collecting evidence with a view to filing a lawsuit. She underlined that media were important partners in the fight against discrimination because they facilitated it by publishing and broadcasting the individual cases of citizens. See the Equality Commissioner's press release of 6 August 2019, available at: http://ravnopravnost.gov.rs/en/strategic-litigation-because-of-discrimination-against-pregnant-employee/.

302 Equality Commissioner Brankica Janković received the acknowledgment from Commissioner Milan Marinović, who awarded it to her on behalf of a Commission comprising the chairs of the press associations JAS and IJAS, a representative of the academic community and a representative of the Access to Information NGO Coalition. The following entities also received acknowledgments for their contribution to fostering access to information: the Obrenovac Basic Public Prosecution Service in the category of judicial authorities, the Novi Sad City Environmental Department in the category of local authorities, and the Ministry of State Administration and Local Self-Governments, in the category of best information booklet.

303 See the Equality Commissioner's press release of 27 September 2019 at: http://ravnopravnost.gov.rs/en/acknowledgment-to-commissioner-for-the-protection-of-equality/.

5. 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 2019. The SNS alone had 104 seats, but it and its coalition partners together held 131 of the 250 seats in parliament. The parliamentary parties operated in 15 caucuses in 2019. As per the gender breakdown, 156 (62.4%) of the people's deputies were men and 94 (37.6%) were women. Only one MP was under 30 years old; most (142) were between 40 and 60 years old.

The National Assembly held several extraordinary sessions in the spring of 2019: the May session was called to greet the Russian Duma Speaker during his visit to Belgrade, while the June sessions were devoted to Kosovo and review of the independent regulatory authorities' annual reports.

Twenty Assembly Committees operated in 2019. The EU Accession Committee was the only one not chaired by a member of the ruling majority. In addition to her office of Assembly Speaker, Maja Gojković also chaired the Committee on the Rights of the Child and the Environmental Protection Committee. Committee chairmanship by members of the ruling majority undermine the impartiality of the Committees' work and definitely cannot be qualified as a positive democratic practice.[304]

The Assembly Committees organised three public hearings in 2019. The first national report on the implementation of the Sustainable Development Goals was presented at the public hearing organised by the Foreign Affairs Committee. The Education, Science and Technological Development Committee organised a public hearing on the Draft Science and Research Act, while the Committee on Human and Minority Rights and Gender Equality organised a public hearing on prevention of violence against women.[305]

In March 2019, the parliament included in the agenda two items suggested by opposition MPs for the first time since it was constituted in 2016. The Draft National Assembly Resolution on Vojvodina and the Draft Vojvodina Funding Act were proposed by the League of Social Democrats of Vojvodina (LSV).[306] The debate was

304 In the past, 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 one of the twenty Assembly Committees was headed by an opposition MP in May 2019.

305 See more in Serbian at: https://otvoreniparlament.rs/statistika/javna-slusanja.

306 The deadline for the adoption of the Vojvodina Funding Act had expired back in 2018. Democratic Party deputy Aleksandra Jerkov submitted such a draft law for adoption back in 2016. The opposition, which was already boycotting the parliament, commented the Speaker's move as "faking debate and dialogue in parliament". See more in Serbian at: https://www.slobodnaevropa.org/a/zakon-i-rezolucija-o-vojvodini-pred-poslanicima-/29832142.html.

dominated by the LSV and the Serbian Radical Party, but the Resolution and Act were opposed by the SNS and ultimately not adopted.

Despite slight improvements in 2019 (the ruling coalition's deputies stopped their filibustering by submitting absurd amendments to minimise the time for debate, a practice they had resorted to throughout 2018, fewer laws were adopted under an "urgent procedure" and the Assembly finally reviewed the annual reports submitted by independent regulatory authorities after reneging on this obligation for four years in a row), the Assembly was again heavily criticised in 2019, mostly because the legislature failed to 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 ignominous insults at their political opponents.

The European Commission published its Serbia 2019 Report in June 2019, in which it clearly noted that the ruling coalition's parliamentary practices led to a deterioration of legislative debate and scrutiny, and undermined the parliament's oversight of the executive. It also identified the urgent need to create space for genuine cross-party debate and conditions for meaningful participation by the opposition in the parliament (several opposition parties started boycotting the parliament).[307]

Opportunities for dialogue in parliament were still limited and deteriorated further in the reporting period. The parliamentary majority used the sessions to attack the opposition, university professors, experts, media, professional organisations, civil society, individuals publicly criticising the proposed laws or questioning the public officials' statements or moves, as well as the trade unions alerting to problems at the local and national levels.

Herewith a few illustrations. At one parliament session (broadcast live on RTS), SNS MP Marko Atlagić insulted Professor Raša Karapandža, who claimed that Finance Minister Siniša Mali plagiarised his PhD thesis calling him "a scientific abomination known as the tweeting professor bad-mouthing Serbia on a daily basis".[308] Atlagić called Belgrade College of Philosophy professor Jovo Bakić a "shithead" and his colleague Dubravka Stojanović a "history forger" who should be punished in accordance with Prince Miloš's Code (by death).[309]

Insults were hurled also at Belgrade Appellate Court judge Miša Majić, who has often publicly voiced his views differing from the official ones. SNS chief whip Aleksandar Martinović called him an arrogant and hypocritical know-it-all, accus-

307 *Serbia 2019 Report*, p. 4.

308 "SNS deputy Atlagić insults professor Karapandža in Serbian parliament," *N1*, 8 October. Available in Serbian at: http://rs.n1info.com/Vesti/a532734/Poslanik-SNS-Atlagic-vredjao-profesora-Karapandzu-u-Skupstin-Srbije.html.

309 "Atlagić (SNS) insults Jovo Bakić and Dubravka Stojanović from dais," *Danas*, 9 September. Available in Serbian at: https://www.danas.rs/politika/atlagic-sns-vredjao-za-govornicom-jovu-bakica-i-dubravku-stojanovic/.

ing him of complicity in a "broader conspiracy against Aleksandar Vučić," while Marijan Rističević, a deputy of SNS' coalition partner People's Farmers Party, said that Majić had been involved in "freeing the Gnjilane group, KLA terrorists" and did not consider Serbs victims.[310] The deputies' statements were condemned also by the High Judicial Council.[311]

Opposition leaders felt the brunt of the attacks by ruling coalition MPs. Parliamentary watchdog Open Parliament (*Otvoreni parlament*) said that the deputies mentioned Dragan Đilas 159 times and his "purchase of a caucus and political party" during the May debate on corruption.[312] NGOs and media were not spared either; they were accused of working against the state and Serbs and leading the hue and cry against the Serbian President and Government, as well as against the MPs.[313]

The answer to calls for penalising this practice – that the law does not recognise situations in which MPs are endangering others – is particularly concerning. Namely, under Article 38 of the National Assembly Act,[314] national deputies shall enjoy immunity and may not be held criminally or otherwise liable for stating their views orally or in writing in their capacity of deputy or for the way they voted. Article 107 of the parliamentary Rules of Procedure, on the other hand, lays down that deputies speaking at sessions are under the obligation to respect the parliament's dignity and that they are not allowed to directly address other deputies, use offensive language or present facts and judgments concerning other people's private lives. Article 108 entitles the Speaker to issue a reprimand to the offending deputies, deny them the floor or expel them from the sessions and the Committee on Administrative, Budgetary, Mandate and Immunity Issues to fine them. As a rule, the Speaker and the Committee have, as a rule, refrained from applying these measures against one of their own.

5.1. Legislative Activities

The National Assembly website statistics show that the parliament adopted 181 laws in 2019; 118 were laws and 63 were laws ratifying international treaties. The National Assembly also adopted one authentic interpretation,[315] 46 decisions

310 "HJC condemns deputies' insults against judge Majić," *KRIK*, 4 June. Available in Serbian at: https://www.krik.rs/vss-osudio-poslanike-koji-su-vredjali-sudiju-majica/.

311 HJC, press release on statements by some people's deputies at session," 4 June. Available in Serbian at: https://vss.sud.rs/sr-lat/saop%C5%A1tenja/saop%C5%A1tenje-visokog-savet-sudstva-povodom-istupa-pojedinih-narodnih-poslanika-na-sednici.

312 "Parliament under the Magnifying Glass" Newsletter, April-June 2019, available in Serbian at: https://otvoreniparlament.rs/istrazivanje/38.

313 "Pressures and attacks: media and NGOs again targeted in Serbian Assembly," *Cenzolovka*, 19 July. Available in Serbian at: https://www.cenzolovka.rs/pritisci-i-napadi/novo-targetiranje-medija-i-nevladinih-organizacija-u-skupstini-srbije/.

314 *Sl. glasnik RS*, 9/10.

315 Authentic interpretation of Article 2 of the Act Ratifying the Amendment Agreement in relation to the finance contracts 23.761, 24.745, 25.002, 25.198, 25.497, 25.610, 25.872, 81.657

and eight conclusions. Although the parliament cut back on its practice of adopting laws under an urgent procedure, Open Parliament data show that as many as 31 laws were adopted under such a procedure in 2019.[316] nfortunately, very important laws with potentially corruptive provisions were still adopted under an urgent procedure.

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[317] 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.[318]

At its May session, the National Assembly discussed and subsequently adopted the Act Amending the Criminal Code[319] that introduced life imprisonment. No public debate had been organised before the amendments were submitted to parliament for adoption, despite their importance, the opposition of most experts to the new penalty and the accusations voiced in parliament against the critics of life imprisonment. The Act entered into force on 1 December 2019.[320]

The parliament's practice of adopting *legi specialis* is also problematic because these laws render ineffective the provisions of valid laws. In June 2019, the National Assembly adopted yet another *lex specialis* dealing with the Morava Corridor project and undermining the unity of the Serbian legal order, especially the public procurement system. The Act[321] governs issues already regulated by valid Serbian laws on expropriation, public procurement, public-private partnership, planning, taxes and customs duties but only with respect to the Morava Corridor project. The procurement criteria and procedure were set out in a Government decree adopted a month later. The criteria for the selection of the private partners are discriminatory as they lay down that 70% of the points will be granted to applicants with experience in building roads in South-East Europe.[322]

As already noted, filibustering involving the submission of meaningless amendments to preclude parliamentary debate ended when some opposition parties

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and 82.640 between the Republic of Serbia and the European Investment Bank, *Sl. glasnik RS* (*Međunarodni ugovori*), 11/17 and *Sl. glasnik RS*, 67/19.

316 See more in Serbian at: https://otvoreniparlament.rs/statistika/zakoni-po-hitnom-postupku.

317 *Sl. glasnik RS*, 79/05, 101/07, 95/10, 99/14, 47/18 and 30/18– other law.

318 *Sl. glasnik RS*, 4/13.

319 Act Amending the Criminal Code, *Sl. glasnik RS*, 35/19.

320 See more in Chapter II.1.8.

321 Act on Public Interest and Special Procedures for Implementing the Project of Construction of the Infrastructural Corridor of E-761 Motorway section: Pojate – Preljina, *Sl. glasnik RS*, 49/19.

322 Coalition *prEUgovor*, Report on Progress of Serbia in Chapters 23 and 24 – September 2019, p. 23. Available at: http://preugovor.org/Alarm-Reports/1553/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml.

started boycotting the parliament. But the ruling coalition's deputies continued with the practice of discussing extremely important systemic laws governing various issues during consolidated debates at one and the same sessions, which impinged on the quality of the debates and left less time for discussions and improvement of the drafts through amendments. For instance, at one 2019 session, the MPs discussed at the same session the new Anti-Corruption Act, the amendments to the Criminal Code and several related enactments and voted in the new judges and court presidents.

The practice of submitting meaningless amendments was replaced by the submission of numerous motions to supplement the agenda. For instance, observers reported that the time set aside for debate on the first day of a spring session was wasted on discussing motions to supplement the agenda that were filed by the ruling coalition and the SRS. Only two of the 77 motions were ultimately upheld. Rather than discussing the laws they were to adopt, the MPs of the ruling coalition, notably Marijan Rističević and Marko Atlagić, again spent most of the time attacking the opposition. They submitted draft decisions on the establishment of inquiry committees to examine the cases of Alliance for Serbia leaders Dragan Đilas, Vuk Jeremić, Sanda Rašković Ivić and Marinika Tepić and leaders of other opposition parties, Boris Tadić, Zoran Živković and Sergej Trifunović, as well as to accuse and insult public figures their draft decisions did not even regard, such as actors Dragan Bjelogrlić and Nikola Kojo.[323]

5.2. Oversight Role

The National Assembly's oversight of the executive continued weakening in 2019 and was apparent in all areas, especially in the security sector. The Government proposed the adoption of the National Security Strategy[324] and the Defence Strategy,[325] 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 in 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.[326]

323 See the Parliament under the Magnifying Glass Newsletter of March 2019. Available in Serbian at: https://otvoreniparlament.rs/istrazivanje/36.

324 Available in Serbian at: http://www.mod.gov.rs/multimedia/file/staticki_sadrzaj/javna%20rasprava/strategije/Nacrt%20Strategije%20nacionalne%20bezbednosti.pdf.

325 Available in Serbian at: http://www.mod.gov.rs/multimedia/file/staticki_sadrzaj/javna%20rasprava/strategije/Nacrt%20Strategije%20odbrane.pdf.

326 See: http://preugovor.org/Alarm-Reports/1460/Coalition-prEUgovor-Report-on-Progress-of-Serbia.

The Serbian Government endorsed the Draft National Security and Defence Strategies in August 2019, over a year after the inadequate public debate on the preliminary drafts of these two topmost strategic documents ended. The fact that only a few of the experts' many criticisms of the preliminary drafts were taken on board testifies to the absence of a meaningful debate on priority strategic documents defining Serbia's security and foreign political orientation.[327]

Parliamentary oversight involves also the establishment of ad hoc bodies, commissions and inquiry committees conducting parliamentary investigations. These ad hoc bodies are tasked with ascertaining the facts and collecting information on issues regarding the work of the executive (the President, Prime Minister and Ministers). No such body was set up by the National Assembly in 2019 as this practice is not commonplace in Serbia.[328]

The parliamentary oversight role can be fulfilled also through parliamentary questions. The deputies, however, failed to use the opportunity they have every last Thursday of the month to alert the Government to any issues and ask them questions about important issues and developments, spending most of the time criticising and insulting opposition parties and their leaders, which the Ministers wholeheartedly supported in their replies.[329]

The National Assembly is not entitled to oversee the independent regulatory authorities but it is under the obligation to review their annual reports at plenary sessions, an obligation it reneged on for four years in a row. The parliament reviewed the 2018 Annual Reports submitted by the Commissioner for Information of Public Importance and Personal Data Protection, the Protector of Citizens and the Anti-Corruption Agency in July 2019 and the 2018 Annual Report of the Equality Commissioner in October 2019. However the course and quality of the debates, in the absence of opposition MPs boycotting parliament, did not contribute to effective oversight of the executive.

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.

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327 Coalition *prEUgovor*, Report on Progress of Serbia in Chapters 23 and 24 – September 2019, p. 24. Available at: http://preugovor.org/Alarm-Reports/1553/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml.

328 Only eight inquiry committees have been established since 2000. More on this and other oversight mechanisms in T., Tepavac, *National Assembly of the Republic of Serbia Temple or Façade of Democracy*, January 2019, available at: https://crta.rs/wp-content/uploads/2019/01/National-Assembly-of-the-Republic-of-Serbia-temple-or-facade-of-democracy.pdf.

329 An overview of the MP questions asked at the sessions is available at: http://www.parlament.gov.rs/activities/national-assembly/parliamentary-questions.1252.html. See also the Parliament under the Magnifying Glass Newsletter of March 2019. Available in Serbian at: https://otvorenaparlament.rs/uploads/istrazivanja/Otvoreni%20parlament%20-%20Bilten%205%20-%20Mart%202019.pdf.

5.3. Election Role

The parliament failed to promptly fulfil its role concerning the election of officials to specific authorities.

After a delay of over six months, the National Assembly elected the new Commissioner for Information of Public Importance and Personal Data Protection – Milan Marinović, the former president of the Belgrade Misdemeanour Court. Marinović was nominated by the ruling coalition. The Assembly debate on his candidacy was characterised by SNS MPs' accusations against former Commissioner Rodoljub Šabić.[330] This deflection of attention from Marinović's competences and those of the other candidates has become a commonplace practice in the work of the current convocation.

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.

In 2019, the National Assembly also elected the Competition Protection Commission Chair and members, new members of the Securities Commission and of the National Bank of Serbia Council of Governors.

6. Constitutional Court

6.1. Composition and Election of Judges

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

Under the Constitution, at least one judge appointed from each of the three lists of candidates must be from the territory of the autonomous provinces (Art.

330 "Assembly elects Milan Marinović Commissioner for Information of Public Importance," *Danas*, 26 July. Available in Serbian at: https://www.danas.rs/politika/skupstina-izabrala-milan-marinovic-novi-poverenik-za-informacije-od-javnog-znacaja/.

172 (4)). Nine new Constitutional Court judges were elected in late 2016. Like the previous elections of Constitutional Court judges, these, too, were conducted in the absence of clearly defined rules and criteria. Nor was the Venice Commission's recommendation that the procedure for electing and appointing Constitutional Court judges had to secure guarantees of independence heeded.[331] Snežana Marković, who was the Deputy Republic Prosecutor from 2003 to 2016, when she became a Constitutional Court judge, was elected Constitutional Court President in late 2019.

The Constitution and the Constitutional Court Act (hereinafter: CCA)[332] failed to lay down clear and efficient rules on the appointment of the Constitutional Court judges or proper guarantees of the Court's independence. These deficiencies were not rectified by the Act Amending the Constitutional Court Act either.

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.

6.2. Jurisdiction

The Constitution of the Republic of Serbia[333] defines the competences of the Constitutional Court. Article 167(1) of the Constitution specifies the Court's jurisdiction, including its competence to rule on compliance of general enactments with higher general legal enactments. Specifically, the Constitutional Court shall rule on compliance of laws and other general enactments with the Constitution, generally accepted rules of international law and ratified international treaties; compliance of ratified international treaties with the Constitution; compliance of other general

331 More in the *2016 Report*, I.5.1.1.

332 *Sl. glasnik RS*, 109/07, 99/11, 18/13 – CC Decision, 103/15 and 40/15 – other law.

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

enactments with the law; compliance of the statutes and general enactments of autonomous provinces and local self-government units with the Constitution and the law; and, compliance of the general enactments of organisations vested with public authority, political parties, trade unions, civic associations and collective agreements with the Constitution and the law.

The Constitutional Court shall rule on conflicts of jurisdiction between courts and other state authorities; between the republican authorities and provincial or local self-government authorities; between provincial and local self-government authorities; and, between various provincial authorities and local self-government authorities. It shall also rule on electoral disputes for which court jurisdiction has not been specified by law and on the prohibition of political parties, trade unions and civic associations.[334]

Under Article 167(4) of the Constitution, the Constitutional Court shall perform other duties stipulated by the Constitution. These duties are specified in various provisions of the highest law of the land. Apart from its jurisdiction to ban a religious community (Art. 44(3)), the Court shall rule on: appeals of decisions confirming the terms in office of people's deputies at the first National Assembly session held after election (Art. 101(5)); the Serbian President's violation of the Constitution constituting grounds for his dismissal by the National Assembly (Art. 118(3)); judges' appeals of decisions terminating their office (Art. 155 in conjunction with Art. 1(1) of the Constitutional Court Act[335]); public prosecutors' and deputy public prosecutors' appeals of decisions terminating their office (Art. 161(4)); provincial authorities' appeals contesting individual enactments or actions of state or local self-government authorities precluding the former from exercising their jurisdiction (Art. 187); and on municipal authorities' appeals of individual enactments or actions of state or local self-government authorities precluding the former from exercising their jurisdiction (Art. 193).

The discrepancy between paragraph 4 of Article 167 of the Constitution, under which the Constitutional Court shall perform other duties stipulated by the Constitution, and paragraph 2(6) of that Article, which lays down that the Constitutional Court shall perform other duties stipulated by the Constitution and the law (a similar provision can be found in Article 2 of the Constitutional Court Act) gives rise to dilemmas whether new competences of the Constitutional Court may be prescribed by law.

6.3. Transparency of the Constitutional Court

The Constitutional Court Rules of Procedure[336] lay down that the Court's transparency shall be ensured, inter alia, by publication on its website of its session

334 Article 167(2 and 3).

335 *Sl. glasnik RS,* 109/07, 99/11, 18/13 – CC decision, 40/15 – other law and 103/15.

336 Constitutional Court Rules of Procedure. Available at: http://www.ustavni.sud.rs/page/view/en-GB/238–101921/rules-of-procedure.

agenda, public hearings schedules, decisions, case-law and important information about the Court's work.[337] Given that the Serbian Constitution does not guarantee the transparency of the work of the Constitutional Court, the latter adopted a Conclusion in 2011 in which it set out that its regular sessions would be open to the public only in exceptional circumstances, when the impugned general enactments or constitutional law issues it was discussing concerned a matter of general social relevance. The public character of the Constitutional Court sessions thus became an exception rather than the rule, especially since this Court failed to define the criteria for determining which cases were of general social relevance. Consequently, reporters can sign up only to cover the Court's public hearings, but not its regular sessions.

The Constitutional Court did not organise any press conferences or issue press releases to the media over the past five years. It published its last notice of a public hearing back in 2016.[338] The Constitutional Court's website does not include topical and transparent information – some of its sections have not been updated since 2013. The "Session Decisions Archives" are of no informational value to the public. The last Case-Law Bulletin, published in April 2019, covers the Constitutional Court's 2017 case-law.[339]

6.4. Constitutional Appeals

Under Article 170 of the Constitution, the Constitutional Court shall rule on constitutional appeals, which may be lodged only against individual general enactments or actions of state authorities or organisations vested with public powers violating or denying human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or are not envisaged. Given that this provision is extremely general in character, numerous issues regarding constitutional appeals are regulated by the Constitutional Court Act, the Constitutional Court Rules of Procedure[340] and the Constitutional Court's views on constitutional appeals.[341]

One issue that arose before the Constitutional Court was whether constitutional appeals may be lodged in case of violations of rights guaranteed by generally accepted rules of international law or ratified international treaties that are not guaranteed by the Constitution given that Article 170 of the Constitution lays down that constitutional appeals may be filed against individual enactments violating or denying human or minority rights and freedoms guaranteed by the Constitution.

337 Article 29, Constitutional Court Rules of Procedure.

338 The Constitutional Court's press release on the public hearing is available in Serbian at: http://www.ustavni.sud.rs/page/view/sr-Latn-CS/88–102256/javna-rasprava-u-predmetu-iuz-1682014.

339 The Bulletin is available in Serbian at: http://www.ustavni.sud.rs/Storage/Global/Documents/Sudska_Praksa/%D0%91%D0%B8%D0%BB%D1%82%D0%B5%D0%BD_2017.pdf.

340 *Sl. glasnik RS,* 103/13.

341 The Court's views are available in Serbian at: http://www.ustavni.sud.rs/page/view/163–100890/stavovi-suda.

The Constitutional Court has held that they could since, under Article 16 of the Constitution, generally accepted rules of international law and ratified international treaties are an integral part of Serbia's legal order and shall apply directly, while Article 18(2) of the Constitution provides for the direct implementation of human and minority rights guaranteed by generally accepted rules of international law and ratified international treaties.

The Constitution does not specify who is entitled to file a constitutional appeal. This issue is governed by the Constitutional Court Act. Article 83(1) of this law grants the right to lodge a constitutional appeal to anyone who believes his human or minority rights and freedoms guaranteed by the Constitution have been violated by an individual enactment or action of a state authority or organisation vested with public powers. Other natural persons or state or other authorities charged with the monitoring and realisation of human and minority rights and freedoms are entitled to file constitutional appeals on behalf of such persons with their written consent (Art. 83(2)).

It is also worth noting that the Act on the Protection of the Right to a Fair Trial was adopted to relieve the Constitutional Court of the large number of constitutional appeals claiming violations of the right to a fair trial but that the Constitutional Court's annual performance data do not indicate that it has fulfilled this purpose. On the contrary, the number of constitutional appeals alleging breach of this right has grown. This can probably be ascribed to the applicants' general dissatisfaction with the decisions of courts vested with the jurisdiction to rule on violations of the right to a fair trial under this Act, as well as to the fact that they cannot complain to the ECtHR unless they exhausted this legal remedy.

6.5. Work of the Constitutional Court – Statistical Overview[342]

6.5.1. Constitutional Appeals

Constitutional appeals accounted for the vast majority of cases the Constitutional Court has been dealing with.[343] As of 22 October 2019, the Constitutional Court opened 10,722 constitutional appeal cases since the beginning of the year.

342 The statistical data presented in this section are based on information obtained from the Constitutional Court in response to BCHR's request for access to information of public importance. The Constitutional Court publishes its annual reports including the statistical data several months after the end of the calendar year they concern. The statistical data presented herein cover the period from 1 January 2019 to 22 October 2019 (when the Constitutional Court received BCHR's request).

343 The Constitutional Court said in its 2018 annual report that it opened 15,545 new cases in the reporting period; 15,150 (97.46%) of them were constitutional appeal cases. The share of constitutional appeal cases in the Court's caseload has been increasing. See the Judicial Research Centre (CEPRIS) report: *Odnos Ustavnog suda i sudske vlasti – stanje i perspective,* 2019, p. 7. Available in Serbian at: https://www.cepris.org/wp-content/uploads/2019/10/CEPRIS-Odnos-Ustavnog-suda-i-sudske-vlasti2.pdf.

Continuation of this trend until the end of the reporting period will be indication of a decrease in the number of constitutional appeal cases.[344]

Information provided by the Constitutional Court indicates that it resolved 8,782 constitutional appeal cases from 1 January to 22 October 2019. If it continues dealing with such cases at this rate until the end of the year, it will have been as efficient as it was in 2018.

Information provided by the Constitutional Court in response to a request for access to information of public importance – that it found breaches or denial of human and minority rights guaranteed by the Constitution in only 565 (6.4%) cases – is concerning in light of the numerous reports by human rights NGOs alleging an increase in such violations.[345]

The Constitutional Court has often been criticised for its excessively long proceedings. On 22 October 2019, the Constitutional Court had yet to rule on 270 constitutional appeals filed before 1 January 2017,[346] which is not a negligible number given the time they were lodged. The total number of constitutional appeal cases pending before the Constitutional Court fell in 2019 over 2018, from 22,225 to around 17,000.

6.5.2. Constitutional Court's Reviews of Constitutionality and Legality and Its Other Competences

A total of 148 constitutionality and legality review initiatives were filed with the Constitutional Court by 22 October 2019. The Constitutional Court does not keep records of how many of the initiatives were filed by subjects authorised to lodge them, wherefore that number remained unknown. However, the Constitutional Court did not initiate reviews in response to any of the 148 initiatives – it dismissed 146 as ill-founded and dismissed three of them on the merits.[347] The Constitutional Court did not itself initiate any reviews of constitutionality or legality in 2019.[348]

344 The number of constitutional appeal cases grew by 25% in 2018 over 2017.

345 This marks a negligible increase over 2018, when the Constitutional Court upheld 5.9% appeals. Although BCHR lacks data on the number of the Court's negative decisions, the statistical data for the past few years indicate that the Constitutional Court dismissed the vast majority of appeals it ruled on as ill-founded (and without ruling on their merits).

346 Such proceedings last at least three years. See the section on the Constitutional Court and the ECtHR and the ECtHR's judgment in the case of *Milovanović v. Serbia*, in which it found a violation of Article 6 of the ECHR because the proceedings before the Constitutional Court were unreasonably long (three years and five months).

347 The Constitutional Court may rule on some initiatives filed in 2019 by the end of the year; its decisions to dismiss initiatives on the merits or as ill-founded do not concern exclusively the initiatives filed the same year.

348 Interestingly, the Constitutional Court had itself initiated the review of the constitutionality of Art. 89(2) of the Constitutional Court Act and decided to "retain" the power to quash court decisions in the event it finds that they violated a constitutionally guaranteed right and that it must repeal them to eliminate the effects of the violation.

No proceedings were conducted in 2019 on constitutionality or legality review cases initiated by courts of general or special jurisdiction in terms of Article 63 of the Constitutional Court Act. In 2018, the Constitutional Court had 229 new "normative oversight" cases. It remained unknown whether the Constitutional Court opened fewer or more such cases in 2019 given the lack of data on the number of proceedings launched on the motion of subjects authorised to initiate reviews.

According to information obtained in response to BCHR's request for information of public importance, the Constitutional Court found that the impugned general enactments were unconstitutional or in contravention of the law in five cases (in 26 cases in 2018).[349] From 1 January to 22 October 2019, the Constitutional Court ruled on 27 conflict of jurisdiction cases and on three appeals by judges, public prosecutors and deputy public prosecutors contesting decisions terminating their office.

6.6. Important Constitutional Court Cases

"*Local Front*". – In February 2018, the Kraljevo Misdemeanour Court found activist and co-founder of the Kraljevo organisation Local Front Branislav Seničić guilty of indecent, arrogant and ruthless behaviour under Article 8(1) of the Public Law and Order Act.[350] The Misdemeanour Court found the defendant guilty of disturbing public tranquillity and disrupting public law and order because he sprayed an election poster depicting Aleksandar Vučić's election poster at a public venue and in the presence of other people on 20 March 2017.[351] The Kraljevo Misdemeanour Court's decision was upheld in April 2018 by the Kragujevac Department of the Misdemeanour Appellate Court.[352] The Court explained that spraying election posters with black paint at a public venue could not be considered lawful behaviour in terms of expression of political opinion. Branislav Seničić filed a constitutional appeal with the Constitutional Court, which the latter dismissed.[353] In his appeal, Seničić only complained of a violation of his right to a fair trial (Art. 32(1) of the Constitution) and his right to equal protection of his rights and a legal remedy (Art. 36 of the Constitution). The Court may have ruled otherwise had the applicant alleged a violation of his right to freedom of opinion and expression (Art. 46(1) of the Constitution).[354]

The Constitutional Court explained that the applicant had been ordered to pay a fine of 10,000 RSD, wherefore it did "not find that a general issue of impor-

349 The Constitutional Court's 2018 report is available in Serbian at: http://www.ustavni.sud.rs/page/view/137–101100/pregled-rada.

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

351 Judgment No. 2775/17 of 13 February 2018.

352 Judgment No. I-133 PRŽ 6958/18 of 11 April 2018.

353 Ruling Už – 7850/18.

354 The Constitutional Court is bound to review the violations claimed by the applicants. See its views 1 and 9 on constitutional appeals, available in Serbian at: http://www.ustavni.sud.rs/page/view/163–100890/stavovi-suda.

tance to the realisation of guaranteed rights was at issue in this specific case [...], or that the applicant had suffered significant harm regardless of any ethical importance he attaches to this legal matter" and that the errors made by the relevant authorities in this case did not amount to violations of guaranteed rights and freedoms.

Initiative to Review the Constitutionality of Article 51 of the Criminal Procedure Code and Its Conformity with Ratified International Treaties. – In 2019, the Constitutional Court adopted a decision dismissing five initiatives that it review the constitutionality of Article 51 of the Criminal Procedure Code, under which, in the event the prosecutor decides to abandon criminal prosecution before the indictment is confirmed, the aggrieved party is only entitled to file a complaint with a higher prosecutor but not to assume criminal prosecution himself.[355] The submitters of the initiatives have claimed that this provision is in violation of Article 20(2) of the Constitution because it lowers the attained level of human rights, and that it violates the aggrieved party's right to have a court rule on his rights under Article 32(1) of the Constitution and his right to an effective legal remedy against any decision on his rights, obligations or lawful interests (Art. 36(2) of the Constitution). The Constitutional Court unfortunately decided against reviewing the constitutionality of this Article although this extremely serious legal issue infringes on the rights of all citizens of Serbia. The Constitutional Court could have alerted the legislator to the need to amend Article 51 of the CPC, as one judge said in his separate opinion.[356]

Nonetheless, the Constitutional Court avoided dealing with this issue, explaining that it found "that the reasons in the initiatives essentially boil down to the question why aggrieved parties are unable to assume criminal prosecution from the prosecutors before the confirmation of the indictment and whether the rights of the aggrieved parties are thus diminished" and that the "issue of expediency and rationality of legal solutions may not be the subject of constitutional-law oversight laid down in Article 167 of the Constitution [...]."

The Constitutional Court decided not to review the constitutionality of the impugned provision because, under the Constitution, it is entitled "only" to abolish unconstitutional provisions. In its view, even if it did declare this provision unconstitutional, an aggrieved party still would not be entitled to assume criminal prosecution if the prosecutor decided to dismiss the criminal report, discontinue the inves-

355 Ruling IUz-62/2018 of 18 April 2019.

356 In his nine-page separate opinion, judge Milan Škulić confirmed that "by launching the proceedings and possibly deciding on the merits, the Constitutional Court could have drawn the legislator's attention to the essential inadequacy of the valid legal regulation of this issue, i.e. its inadmissibility or, at the very least, its disputability in terms of constitutional law, which could then, of course, serve as an "impetus" for some future novelties in the Criminal Procedure Code. In my view, even these relatively "limited" powers of the Constitutional Court, which fully correspond to its constitutional law status and reach and effects of its decisions, are nevertheless not irrelevant; on the contrary, the Constitutional Court could make an important and extremely useful contribution, exert its useful influence on a very important area of the legal system, which is simultaneously extremely significant from the constitutional law perspective."

tigation or abandon criminal prosecution before the indictment is confirmed. The submitters of the initiative said that the legal solutions in Article 51 of the CPC were "inexpedient" and "irrational" but their allegations essentially concerned constitutional law – the impugned provision lowers the level of the attained rights, a complaint to a higher prosecutor is not an effective legal remedy and aggrieved parties are denied their constitutionally guaranteed rights to have a court decide on their rights and obligations.

On the other hand, the Constitutional Court explained its decision to dismiss the initiatives on three pages, on which it listed constitutional law arguments that led it to find the initiatives inadmissible. Under Article 53(2) of the Constitutional Court Act, the Court shall dismiss initiatives as inadmissible in the event the reasons stated by the submitters do not substantiate their claim that there are grounds to initiate a constitutionality or legality review. However, the Constitutional Court did not assess whether the submitters of the initiative stated reasons corroborating their claims that there were grounds to initiate the review. On the contrary, the Constitutional Court actually reviewed the constitutionality of the impugned provisions, justifying its argumentation by specifying that the submitters had asked it to state its view on the expediency and rationality of Article 51 of the CPC. In his separate opinion, judge Milan Škulić opined that "initiation of a review of the constitutionality of a provision and its compliance with ratified international treaties definitely does not mean that such a review must result in a decision that the impugned provision is unconstitutional or not in conformity with a ratified international treaty; nor may the Constitutional Court itself "create" a new legal solution even if it finds that the one in the Criminal Procedure Code is not in compliance with the Constitution. However, the Constitutional Court should always launch a constitutionality review if there is a reasonable degree of likelihood that the legal provision is unconstitutional or not in compliance with a ratified international treaty. In my view, the degree of such likelihood is quite high with regard to the provisions of Article 51 of the Criminal Procedure Code."

Pension and Disability Insurance Act. – In April 2019, the Constitutional Court found that part of Article 28a of the Pension and Disability Insurance Act[357] was incompatible with Article 21 of the Serbian Constitution (prohibition of discrimination).[358] Article 28a laid down an additional requirement surviving spouses had to fulfil to exercise the right to family pensions in case their deceased spouses, the pension beneficiaries, were over 65 years of age – they had to have had children together or been married for at least two years. The Court found that the provision amounted to discrimination on grounds of age, given the unjustified distinction between surviving spouses who had married the deceased pension beneficiaries before the latter turned 65 and surviving spouses who had married them after they turned 65.

357 *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, 30/10 – other law, 101/10, 93/12, 62/13, 108/13, 75/14, 142/14, 73/18 and 46/19 – CC Decision.

358 Decision IUz-130/2017 of 25 April 2019.

The Constitutional Court said that there was no objective or reasonable justification for the differential treatment. It found that the provision did not pursue a legitimate aim and that there was no reasonable relationship between the objective to be achieved and the means used to achieve that objective. The Constitutional Court's decision is in accordance with human rights protection standards although it may be concluded that it lacks a clearly defined procedure for reviewing the conformity of general enactments with the constitutional prohibition of discrimination.

As per one of the National Assembly's main arguments for introducing an additional requirement for the surviving spouses' entitlement to family pensions where the pension beneficiaries were over 65 years old when they entered into marriage – to prevent abuse of this right by their surviving spouses, the Constitutional Court said that the legislator "thereby went beyond the *sedes materiae* of the Pension and Disability Act and thus beyond the scope of the legitimate objective. Namely, duration of marriage as proof of the actual realisation of the spouses' community of life and, consequently, the rights emanating from marriage, fall within the scope of the Family Act, which governs marital dispute procedures; therefore, in case it is ascertained that the marriage does not exist or is null and void, the legal grounds for exercising the right to a family pension would cease to exist as well."[359] However, the Constitutional Court also said in its decision that it "did not find the alternatively set requirement in Article 28a – common children or duration of marriage – disputable from the perspective of constitutional law; rather, what is disputable is that this requirement applies only to marriages concluded after the pension beneficiaries reach a specific age."

On the one hand, the Constitutional Court claimed that it was not up to laws on pensions and other forms of social insurance to regulate the issue of the duration of a marriage as proof of the actual realisation of the spouses' community of life and that such regulation would be going beyond the scope of the legitimate objective.[360]

It may also be concluded that the Constitutional Court erred when it found that the additional requirement in Article 28a did not pursue a legitimate aim given that the legislator introduced it in order to prevent abuse of the right to a family pension, which is a legitimate objective of legislative activities.[361] On the other hand, the Constitutional Court's argument that the impugned provision is unconstitutional also because it does not pass the proportionality test – that there is no reason to impose an additional requirement to exercise the right to a family pension on surviving spouses of pension beneficiaries they married after the latter turned 65 – is credible

359 Under Article 212 of the Family Act, the public prosecutor and members of the deceased pension beneficiary's family may seek the annulment of the beneficiary's marriage on grounds laid down in that law, inter alia, if the marriage was not concluded to realise the community of life of the spouses or if the beneficiary was incompetent at the time he entered into marriage.

360 The Constitutional Court may have violated the separation of powers principle by suggesting to the legislator which law should regulate a specific issue.

361 Article 70(1) of the Serbian Constitution lays down that pension insurance shall be regulated by law.

and justified in the light of the fact that the Family Act provides for annulment of marriage, which results in the disappearance of legal grounds for exercising the right to a family pension. The inconsistencies of the Court's ruling do not contribute to its definition of a clear test for reviewing the conformity of provisions with the constitutional prohibition of discrimination.

Constitutionality of the Competition Protection Act. – On 25 April 2019, the Constitutional Court dismissed the motion to review the constitutionality of Article 45(4) of the Competition Protection Act,[362] which had been filed by the Commissioner for Information of Public Importance and Personal Data Protection.[363] Under Article 45 of the Competition Protection Act, during its reviews of violations of competition rules, the Competition Protection Commission may order the protection (non-disclosure) of the sources of information or specific information in the event it finds that the interests of the submitters of the non-disclosure motions are justified and significantly override public interest for disclosure (para 1); in their motions, the submitters are under the obligation to make plausible the risk of substantial harm from disclosure (para. 2); the protected information shall not have the status of information of public importance in terms of the law governing free access to information of public importance (para. 4). The Commissioner contended that protected information in terms of the Competition Protection Act was information of public importance in the meaning of Articles 2 and 4 of the Free Access to Information of Public Importance Act (FAIPIA)[364] and that Article 45(4) of the Competition Protection Act, which lays down that such protected information is not information of public importance, was in contravention of Articles 51 (right to be informed) and 194 (unity of the legal system) of the Constitution.

The Constitutional Court issued a conclusion dismissing the motion as manifestly ill-founded, and referred primarily to Article 9(1(2)) of the FAIPIA, under which public authorities shall not allow access to information of public importance if such access would jeopardise, obstruct or impede court or any other legal proceedings. The Constitutional Court's view is unpersuasive for a number of reasons. First, protection of the interests of the submitter of the non-disclosure motion, not the unimpeded conduct of proceedings before the Competition Protection Commission, is specified in the Competition Protection Act as grounds for Commission's decision to protect specific information or its source.

Second, under Article 8(1) of the FAIPIA, the rights in this law may be exceptionally subjected to limitations prescribed by this law if that is necessary in a democratic society in order to prevent a serious violation of an overriding interest based on the Constitution or law. In its decision, the Constitutional Court referred to Article 84(2) of the Constitution, strictly prohibiting acts in contravention of the law and limiting free competition by creating or abusing a monopolistic or dominant

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

363 Conclusion IUz-185/2018 of 25 April 2019.

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

position. Protection of free competition definitely can be an overriding interest in terms of Article 8(1) of the FAIPIA but the question arises whether allowing access to specific information the public has a justified interest to know can be considered an act creating or abusing a monopolistic or dominant position.

Finally, nothing is stopping the legislator from laying down in the Competition Protection Act the circumstances in which the Commission shall not make specific information available to the public. On the other hand, the provision stating that specific information shall not have the status of information of public importance in terms of the law governing free access to information of public importance is unconstitutional. Furthermore, the impugned provision deprives members of the public of the right to complain to the Commissioner under the FAIPIA in case they are denied access to specific information protected by the Competition Protection Commission.

Act on the Temporary Regulation of Pension Payments. – On 25 April 2019, the Constitutional Court adopted its last decision on the Act on the Temporary Regulation of Pension Payments,[365] discontinuing the review of its constitutionality because the impugned Act ceased to have effect in the meantime.[366]

This law had slashed the pensions of a huge number of retirees in Serbia in the 2014–2018 period. Estimates are that they had lost over €600 million while this law was in force.[367] The text below outlines the fate of a number of initiatives challenging its constitutionality filed with the Constitutional Court in the period from 2014 to 2017.

On 23 September 2015, the Court issued a ruling dismissing the initiatives. Although it did not review them on the merits, the arguments it put forward in its ruling, especially its reference to the legitimate aim of the interference with the right to a pension (consolidation of the state budget) corresponds to a decision on the merits. Four Constitutional Court judges dissented and explained their opinion on 55 pages. Without going into the potential outcomes of the Constitutional Court's deliberation of the merits, the judges said that "by its decision to dismiss the initiative and its actions regarding this matter, the Court deprived itself of the opportunity to review the merits of an exceptionally important constitutional law dispute in the field of human rights protection,"[368] and failed to extend "effective protection to constitutionally guaranteed rights emanating from work; rather, it extended almost blanket support to the executive authorities, which have literally received the judiciary's "go-ahead" to make unlimited constitutional interventions in fundamental human rights."[369]

365 *Sl. glasnik RS*, 116/14 and 99/16.

366 Ruling No. IUz-93/2018.

367 See the *Istinomer* report, available in Serbian at: https://www.istinomer.rs/analize/koliko-su-penzioneri-platili-konsolidaciju/.

368 Separate opinion of judge B. Nenadić.

369 Separate opinion of judge D. Stojanović.

One of the initiatives challenging the constitutionality of this Act before it ceased to have effect was filed by two former Constitutional Court judges. As noted above, this initiative, too, was dismissed, although Article 168(5) of the Constitution lays down that the Constitutional Court may rule on the compliance of laws and other general enactments with the Constitution and the compliance of general enactments with the law even after they are no longer in effect, provided the review proceedings were initiated no later than six months from the day they ceased to have effect. This requirement was met at the time the judges filed their initiative. Furthermore, under the Constitutional Court Act, in the event a general enactment under review has ceased to have effect but the consequences of its unconstitutionality or illegality have not been eliminated, the Constitutional Court is entitled to adopt a decision finding that it was not in compliance with the Constitution, generally accepted rules of international law, ratified international treaties or the law and such a Constitutional Court decision shall have the same legal effect as its decision declaring a valid general enactment unconstitutional or not in conformity with the law. In view of these provisions of the Constitution and the Constitutional Court Act, it may be concluded that, by its decision to dismiss the initiative, the Constitutional Court inferred that the effects of any unconstitutionality of the impugned law have been eliminated.

Constitutionality of the Penalty of Life Imprisonment without Parole. – The amendments to the Criminal Code introducing the penalty of life imprisonment without parole for specific crimes entered into force on 1 December 2019. The BCHR drafted and organised the submission of a joint initiative to the Constitutional Court to review the constitutionality of the impugned provisions and their conformity with ratified international treaties. In the submitters' view, the prohibition of parole of defendants convicted of crimes warranting life imprisonment render this penalty irreducible on penological grounds given that there is no other effective legal mechanism in Serbia's legal system for reviewing the penalty on penological grounds. They contend that the penalty of life imprisonment is thus incompatible with human dignity and inhuman and degrading.[370]

It remains to be seen whether the Constitutional Court will review the case on its merits or dismiss the initiative as it did the ones disputing the constitutionality and legality of the Act on the Temporary Regulation of Pension Payments and the Criminal Procedure Code. Such a review is the last chance for a confrontation of constitutional law arguments on this extremely important issue in the field of protection (and/or violation) of human rights in the Serbian institutions, especially in the light of the fact that no public debate had been organised on the impugned amendments to the Criminal Code before their adoption.

370 See more in Serbian at: http://www.bgcentar.org.rs/u-drustvu-u-kojem-postoji-vladavina-prava-nijedan-gradanin-nesme-biti-lisen-ljudskog-dostojanstva/.

6.7. Constitutional Court and the European Court of Human Rights

In its judgment in the case of *Milovanović v. Serbia*, the ECtHR found Serbia in breach of Article 6(1) of the ECHR because the proceedings before the Constitutional Court lasted three years and five months, i.e. were unreasonably long in the circumstances of the case.[371] The case regarded custody of children, which, in ECtHR's view, calls for exceptional diligence.[372]

The ECtHR observed that neither the complexity of the case nor the applicant's conduct[373] explained the length of the proceedings and that the applicant's case was not terminated earlier owing to the excessive caseload of the Constitutional Court. It recalled that it has repeatedly held that Article 6(1) "imposes on Contracting States a duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time. Although this obligation cannot be construed in the same way for a constitutional court with its role as guardian of the Constitution as for an ordinary court, this role also makes it particularly necessary for a Constitutional Court sometimes to take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms". The ECtHR emphasised that the Constitutional Court's chronic overload could not justify the excessively long proceedings. Furthermore, the ECtHR noted the Government's observation that the Constitutional Court was not in a position to adopt and implement any priority policy in dealing with constitutional appeals and did not consider doing so, including in child custody-related cases.[374] Having taken all of these considerations into account, the ECtHR found a violation of Article 6(1) of the ECHR.[375]

7. 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: con-

371 *Milovanović v. Serbia,* ECtHR, App. no. 56065/10, (2019).

372 *Ibid.,* para. 88.

373 The applicant had been awarded custody of her children by the relevant court but the enforcement of its judgment had been pending for four years at the time she filed her constitutional appeal.

374 *Milovanović*, para. 89.

375 *Milovanović*, para. 90. Interestingly, it took the ECtHR nine years to rule on a case alleging, inter alia, violation of the right to a trial within a reasonable time.

front the past, establish rule of law and reinforce the possibilities to preserve peace, reconciliation and prevent the recurrence of massive human rights violations.[376]

7.1. Activities of the International Residual Mechanism for Criminal Tribunals

Since the establishment of the International Criminal Court for the Former Yugoslavia (ICTY), the ICTY Prosecutor filed indictments against 161 people for grave breaches of the 1949 Geneva Conventions, violations of laws or customs of war, crimes against humanity and genocide. A total of 90 indictees were found guilty and 19 were found innocent; cases of 13 indictees were transferred to national courts; indictments against 20 indictees were withdrawn; 17 of the indictees died before the completion of first-instance proceedings against them. Pursuant to its Completion Strategy,[377] the ICTY ceased to exist in December 2017. Its functions were assumed by the International Residual Mechanism for Criminal Tribunals (IRMCT), which is to complete appeals proceedings in the Mladić case and the retrial in the case of Stanišić and Simatović.[378]

In March 2019, the IRMCT delivered its appeal judgment in the case of former Bosnian Serb President Radovan Karadžić,[379] whom it convicted to 40 years' imprisonment for the genocide in Srebrenica, the persecution of Croats and Moslems, the siege of Sarajevo, violations of laws or customs of war and crimes against humanity. The judges acquitted Karadžić of one count of genocide, finding that the prosecution had not proven beyond a reasonable doubt his genocidal intent in relation to crimes committed in seven municipalities across Bosnia and Herzegovina (Foča, Vlasenica, Bratunac, Zvornik, Sanski Most, Prijedor and Ključ). The IRMCT found that Karadžić had participated in several Joint Criminal Enterprises (Overarching Sarajevo, Srebrenica and Hostages). Neither the Serbian President nor the Prime Minister commented the IRMCT judgment, while some senior officials of the ruling parties qualified the IRMCT as an anti-Serbian court and condemned Karadžić's conviction.[380]

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376 M. Freeman, *What is transitional justice?* FHP, available at: http://www.un.org/en/pea cebuilding/pdf/doc_wgll/justice_times_transition/26_02_2008_background_note.pdf.

377 The ICTY Completion Strategy is available at https://www.icty.org/en/about/tribunal/completion-strategy.

378 The International Residual Mechanism for Criminal Tribunals assumed responsibility for a number of functions of the ICTR and the ICTY. More is available at: https://www.irmct.org/en/about/functions.

379 See at: https://www.irmct.org/en/cases/mict-13–55.

380 An overview of the reactions is available in Serbian at: https://talas.rs/2019/03/21/nije-srpski-cutati-reakcije-na-presudu-karadzicu/.

7.2. Non-Extradition of SRS Members to the IRMCT

Back in January 2015, the ICTY issued a warrant for the arrest of three members of the Serbian Radical Party – Petar Jojić, Jovo Ostojić and Vjerica Radeta, for allegedly having threatened, intimidated, offered bribes to, or otherwise interfered with two witnesses to persuade them not to cooperate with the prosecution in the trial against SRS leader Vojislav Šešelj or to testify on his behalf.[381] Serbia refused to extradite two of the indictees (Jovo Ostojić died in mid-2017) to the ICTY.[382] In June 2018, the IRMCT decided to refer the case of Radeta and Jojić to a Serbian court.[383] The *Amicus Curiae* appealed the order,[384] wherefore the ICRMT revoked it in May 2019 and requested of Serbia to hand the indictees over to it "without delay".[385] The ICRMT explained that that the *Amicus Curiae* Prosecutor provided statements from witnesses, which, in her submission, demonstrated that the witnesses were "categorically unwilling" to be witnesses in proceedings in Serbia due to fears for the safety of themselves and their family members, including fear of being killed or seriously physically harmed.[386]

7.3. War Crime Trials before Serbian Courts

The Serbian National Assembly in 2003 enacted the Act on the Organisation and Jurisdiction of State Authorities in War Crime Proceedings,[387] 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 Bel-

381 See the case of *Jojić et al.* (IT-03–67-R77.5) at https://www.icty.org/case/contempt_seselj4/27.

382 Ruling Pom Ik2 Po2 48/2016, Kv Po2 16/2016 of the Belgrade Higher Court War Crimes Department of 18 May 2016, upholding the preliminary judge's ruling finding that the conditions for the arrest and handover of the indictees have not been fulfilled, available in Serbian at http://www.hlc-rdc.org/wp-content/uploads/2016/05/2st_presuda_Jojic,_Radeta_i_Ostojic.pdf.

383 *Public redacted version of the 12 June 2018 order referring a case to the Republic of Serbia*, MICT-17–111—R90, D205-D191, p. 5, 12 June 2018. The ICRMT then also issued an order for Radeta's and Jojić's arrest and extradition to Serbia in case they are found in the territory of an EU Member State.

384 Notice of appeal against the order referring a case to the Republic of Serbia, MICT-17–111—R90; D220-D-214, 26 June 2018; Ministry of Justice, "The Hague court pleased with Serbia's cooperation," press release, 19 November 2018, available at: https://www.mpravde.gov.rs/en/vest/21679/the-hague-court-pleased-with-serbias-cooperation-.php.

385 Jojić & Radeta –Decision Re-Examining the Referral of a Case to the Republic of Serbia (MICT-17–111-0052/3), 13 May 2019, available at https://jrad.irmct.org/view.htm?r=245231&s=.

386 *Ibid.,* p. 2.

387 *Sl. glasnik RS*, 67/09, 135/04, 61/05, 101/07, 104/09, 101/11 – other law and 6/15.

grade 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 Appellate Court.

The War Crimes Prosecution Service filed three indictments against three individuals until November 2019 at the time this report was finalised. Two indictments were the result of regional cooperation with the Bosnia and Herzegovina prosecutors[388] and the third was the result of an investigation conducted by the WCPS in 2010.[389]

The WCPS continued demonstrating its reluctance to indict former high-ranking army and police officers in 2019, although the National War Crimes Prosecution Strategy for the 2016–2020 Period[390] specifies prosecution of medium– and high-ranking armed forces members as one of the priorities and the Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia[391] lays down the prosecution of the most responsible war crime perpetrators irrespective of their rank as one of its principles.

In 2019, the Belgrade Higher Court War Crimes Department delivered eight judgments and dismissed the indictment in one case. On 19 March 2019, it upheld the plea bargain the defendant Ramadan Maljoku struck with the WCPS. Maljoku had been charged with violence, intimidation, infliction of bodily injuries and illegal imprisonment of two Serbian civilians in the Kosovo village of Gornje Nerodimlje. The Court sentenced him to 18 months' imprisonment.[392]

On 16 April 2019, the Belgrade Higher Court acquitted Pavle Gavrilović of ordering an attack "leaving no survivors" on the Kosovo village of Trnje. In the same judgment, it found the defendant Rajko Kozlina guilty of inflicting bodily harm to two and killing 15 Albanian civilians and convicted him to 15 years' imprisonment.[393]

On 24 April 2019, the Belgrade Higher Court found defendant Milan Dragišić guilty of murder and of wounding and attempted murder of a Bosniak civilian in Bosanski Petrovac in September 1992.[394]

388 Bosnian Serb Army troop Dalibor Maksimović was indicted on 10 May 2019 for killing four Bosniak civilians in Karakaj (BiH). Dalibor Krstović was indicted for raping a Bosniak woman in Kalinovik (BiH).

389 The indictment was filed against Predrag Vuković, who had been investigated since 13 March 2010 for the crime in the Kosovo village of Ćuška together with 15 other suspects. He was not indicted when they were because he was out of reach of the Serbian authorities until 2019. The *Ćuška* trial is ongoing.

390 *Sl. glasnik RS*, 19/16, available at: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2016-05/p_nac_stragetija_eng.PDF.

391 Available at: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2018–05/strategija_trz_eng.pdf.

392 Belgrade Higher Court Judgment SPK.Po2 1/19 of 19 March 2019.

393 "On the verdict of the Higher Court in Belgrade in the Trnje war crime trial," press release, HLC, 17 April. Available at**:** http://www.hlc-rdc.org/?p=36548&lang=de, http://www.hlc-rdc.org/?p=36548.

394 "Report on the delivery of the judgment," HLC. Available in Serbian at: http://www.hlc-rdc.org/wp-content/uploads/2019/05/29.Bosanski_Petrovac_-_Gaj_-_Objavljivanje_presude_24.04.2019..pdf.

The Belgrade Higher Court on 20 June 2019 ended the retrial of the Lovas case and convicted the eight defendants to between four and eight years' imprisonment for war crimes. Three defendants were handed down the same, while five defendants received lighter sentences than at the trial. Milan Devčić was sentenced to eight years' imprisonment, Saša Stojanović to seven years' imprisonment, Zoran Kosijer, Željko Krnjajić and Jovan Dimitrijević to six years' imprisonment, Darko Perić and Radovan Vlajković to five years' imprisonment and Radisav Josipović to four years' imprisonment.[395]

On 19 September 2019, the Belgrade Higher Court delivered a judgment convicting defendant Nikola Vid Lujić to eight years' imprisonment for raping a Bosniak woman in Brčko in June 1992.[396]

On 23 September 2019, the Belgrade Higher Court convicted defendant Dalibor Maksimović to 15 years' imprisonment for killing four people and raping one Bosniak woman in the Bratunac area in May 1992.[397]

On 24 September 2019, the Belgrade Higher Court found Željko Budimir guilty of inflicting bodily harm and robbery in November 1992 in the Ključ settlement Mali Rejzovići.

In its judgment of 15 November 2019, the Belgrade Higher Court found Joja Plavanjac guilty of killing 11 Bosniak civilians in Bosanski Petrovac and sentenced him to 15 years' imprisonment; it sentenced his accomplice Zdravko Narančić to seven years' imprisonment.

On 5 February 2019, the Belgrade Higher Court dismissed the indictment against Branko Branković, who had been charged with war crimes against the civilian population given his inability to stand trial.[398]

The Belgrade Appellate Court War Crimes Department delivered five war crime judgments in 2019. On 13 February 2019, acting on appeal in the third-instance, it delivered a judgment reducing the sentences of the members of "Sima's Chetniks" Tomislav Gavrić, Zoran Đurđević and Zoran Alić who were found guilty of inhuman treatment, rape and sexual abuse of three Roma women in the Bosnian village of Skočić in the latter half of 1992. Tomislav Gavrić and Zoran Đurđević were sentenced to eight years' imprisonment and Zoran Alić to five years' imprisonment. The Court failed to consider as an aggravating circumstance the fact that Đurđević has already sentenced by a final judgment to 13 years' imprisonment for raping and sexually humiliating two Bosniak women in Bijeljina in mid-1992.[399]

395 "On the verdict of the Higher Court in Belgrade in the Lovas Case," press release, HLC, 21 June. Available at: http://www.hlc-rdc.org/?p=36716&lang=de, http://www.hlc-rdc.org/?p=36716.

396 "On the verdict for the rape of a Bosniak woman in Brčko," press release, HLC, 20 September. Available at: http://www.hlc-rdc.org/?p=36910&lang=de.

397 "Rape victim referred to civil proceeding for damages," press release, HLC, 25 September 2019. Available at http://www.hlc-rdc.org/?p=36916&lang=de.

398 Belgrade Higher Court Ruling KPo2 No. 6/18 of 5 February 2019.

399 Belgrade Appellate Court judgment Kž3Kpo2 1/18 of 13 February 2019. Available in Serbian at: http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/kz3-po2–1–18.html.

On 8 April 2019, the Belgrade Appellate Court delivered a sentence reducing Milanko Dević's sentence of imprisonment for killing a Bosniak civilian in the village of Šljivari near Ključ in the summer of 1992 from eight to six years.[400]

On 27 May 2019, the Belgrade Appellate Court delivered a judgment reducing Ranka Tomić's sentence for war crimes against POWs from five to three years. Tomić was found guilty of torturing and ill-treating a female prisoner of war together with other members of the "Petrovac Women's Front": they had forced her to take all her clothes off in front of the residents of the village Radić, cut off her hair and cut a cross into her forehead with a knife, beat her with a stick and forced her to dig her own grave, then made her to lie down in it, after which a minor killed her by firing several bullets at her from an automatic rifle.[401]

On 29 May 2019, the Belgrade Appellate Court modified the Belgrade Higher Court sentence acquitting Dragan Bajić and Marko Pauković and sentenced them to 12 years' imprisonment for killing five Bosniak civilians, including a 12-year-old girl, in Kamičak at Ključ in October 1992.[402] On 29 October 2019, this Court dismissed all the appeals in this case as ill-founded and upheld the second-instance judgement.

7.4. Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia

In its July 2018 Report on the Implementation of the National Strategy for the Prosecution of War Crimes, the Humanitarian Law Center (HLC) said that no headway was made in the prosecution of war crimes since its adoption. It went on to say that at least 18 of the 21 indictments filed since its adoption were transferred from Bosnia and Herzegovina rather than the result of the WCPS' own investigation.[403] HLC said that war crime trials were still overly long, that the victims' procedural rights have not been strengthened, that identification of missing persons was slower than expected, and that cooperation with the IRMCT was marked by its decision to have SRS officials Vjerica Radeta and Petar Jojić tried for contempt of court in The Hague rather than in Serbia after the witnesses in that trial said that they would fear for their safety if the trial was held in Serbia.

400 Belgrade Appellate Court judgment Kž1Po2 2/19 of 8 April 2019. Available in Serbian at: http://www.bg.ap.sud.rs/cr/archive/rz-donete-odluke/2019/6.

401 Belgrade Appellate Court judgment Kž1Po2 3/19 of 27 May 2019. Available in Serbian at: http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/kz1-po2–3–19.html.

402 Report on the Belgrade Appellate Court judgment Kž1 Po2 3/19 of 27 May 2019. Available in Serbian at: ww.bg.ap.sud.rs/cr/articles/sluzba-za-odnose-sa-javnoscu/aktuelni-predmeti/ratni-zlocini/rz-donete-odluke/.

403 Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes, HLC, July 2019, pp. 5–6. Available at: http://www.hlc-rdc.org/wp-content/uploads/2019/07/Fourth-Report-on-the-Implementation-of-the-National-Strategy-for-the-Prosecution-of-War-Crimes.pdf.

During the Judges' Days in Vrnjačka Banja in October 2019, the Supreme Court of Cassation presented its Guidelines on improving jurisprudence on compensation of victims in criminal proceedings. [404] The Guidelines offer judges and public prosecutors practical suggestions on the actions they need to take to decide on damage claims most efficiently and cost-effectively. Human rights NGOs welcomed the Guidelines as a step forward in improving the rights of crime victims because they provide both the prosecution services and the courts in Serbia with explicit guidance on the specific steps they need to take to ensure that the victims exercise their right to damages immediately, during the criminal proceedings.

7.5. Truth Commission (RECOM) – Transitional Justice Mechanism

Formed in 2008, the Coalition for RECOM is a network of civil society organisations from post-Yugoslav countries that advocates the establishment of an official 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 would be tasked with enumerating all civilian and military victims, establishing the circumstances in which they lost their lives or went missing, and drawing up a register of camps and other places of detention. In the view of RECOM Initiative Coordinator Nataša Kandić, the establishment of the inter-state RECOM first lost support in Croatia when Kolinda Grabar Kitarović was elected President in 2015 and subsequently of the Bosniak and Croatian members of the BiH Presidency in May 2019. The latter told a European Commission envoy that BiH's priorities were stability and security rather than reconciliation. This has blocked the RECOM process, because support from Serbia, Kosovo, Macedonia and North Macedonia does not suffice for the establishment of the inter-state commission.[405]

7.6. 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 person-

404 Guidelines for judges and prosecutors on improving jurisprudence on compensation of victims in criminal proceedings, Supreme Court of Cassation, August 2019. Available in Serbian at: https://www.podrskazrtvama.rs/lat/media/domaci/Smernice.pdf.

405 *Young People and War Legacy: the new generations are not susceptible to the ongoing propaganda,* VOICE, 25 October. Available in Serbian at: http://voice.org.rs/mladi-i-ratno-nasledede-dolaze-generacije-koje-nisu-prijemcive-na-dosadasnju-propagandu/.

ally 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 the reform of the security sector, including the army, is of particular importance.[406]

7.6.1. Public Promotions of War Criminals

The 2019 developments demonstrate that there is neither political will nor readiness in Serbia to confront the legacy of the mass crimes that occurred in the 1990s. Promotions of the Defence Ministry's Warrior edition, launched during the 2018 Book Fair, continued.[407] The four volumes of Nebojša Pavković's wartime diaries "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" were again presented in April 2019, this time in the Central Military Club in Belgrade.[408] Pavković addressed the audience in an exclusive video recording from his prison cell in Finland where he is serving his prison sentence,[409] where, as the Ministry of Defence said "he was detained pursuant to the ICTY ruling because he successfully defended his country from the NATO aggression".[410] The Ministry, however, failed to mention that Pavković, a retired Army of Yugoslavia General, former FRY Deputy Prime Minister Nikola Šainović, head of the police HQ in Kosovo Sreten Luić and retired general Vladimir Lazarević were found guilty by the ICTY on all counts: deportation, forcible transfer, murder and persecution of the Albanian population in Kosovo.[411]

The Ministry of Defence continued promoting its Warrior edition[412] at the 2019 Belgrade Book Fair, where it, inter alia, presented Pavković's new book "The Smell of Gunpowder and Death in Kosovo and Metohija in 1998". The Ministry has spent around four million RSD from the state budget on the publication of the War-

406 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.

407 "Edition Warrior promoted at the Central Military Club," Defence Ministry, 10 April. Available at: http://www.mod.gov.rs/eng/13814/edicija-ratnik-promovisana-u-domu-vojske-13814.

408 *Ibid.*

409 *Ibid.*

410 *Ibid.*

411 See: *Šainović and Others* (IT-05–87). Available at: https://www.icty.org/en/case/milutinovic/4.

412 As the Defence Ministry said on its website, "[T]he reason for launching the edition "Warrior" is the effort to preserve the experience of our war commanders during NATO aggression in 1999, their war skills, the decision-making process, the disposition of units..., everything by which they made us proud at that time, defending the country – as a contribution to the culture of memory. See "Edition Warrior promoted at the Central Military Club," 10 April. Available at: http://www.mod.gov.rs/eng/13814/edicija-ratnik-promovisana-u-domu-vojske-13814.

rior edition.[413] The Ministry also organised a panel discussion "Experiences from the Actions during the NATO aggression – BOOKS TO REMEMBER", in which Vladimir Lazarević and Vinko Pandurević, both convicted by the ICTY, and Ljubiša Diković and Božidar Delić, both VJ commanders during the Kosovo conflict, took part. Evidence of the latter two's roles and the involvement of their brigades in the Kosovo crimes are well documented in HLC's two dossiers "Ljubiša Diković"[414] and "Rudnica"[415] – around 3,500 Albanian civilians were killed during the Kosovo conflict in the areas of responsibility of their two brigades. The WCPS never investigated HLC's reports of Diković's and Delić's involvement in these crimes. Media quoted the Ministry of Defence as saying that "others have been writing Serbia's history and deciding what is true and what is not for much too long and this is a way to tell the truth about the wars Serbia neither wanted nor caused".[416]

Promotions of war criminals at the Book Fair staged by the Ministry of Defence lead to the relativisation of crime and denial of facts established by the ICTY. Such actions strengthen mistrust of Serbia's institutions and stoke doubts about its authorities' willingness to genuinely participate in the process of reconciliation in the region.

7.6.2. Victory Day

Victory Day, commemorating the surrender of Nazi Germany in WWII, is celebrated on 9 May. Instead of promoting anti-Fascism, this year's celebration in Serbia turned into a promotion of convicted war criminals. Vladimir Lazarević, convicted by ICTY to 14 years' imprisonment for crimes against humanity during the Kosovo war, [417] led the parade of the Immortal Regiment in Niš. [418]

7.6.3. Srebrenica Genocide Anniversary

Several days before the 24th anniversary of the Srebrenica genocide, Vladimir Đukanović, an MP of the ruling Serbian Progressive Party, twitted his thanks to Bosnian Serb wartime army commander Ratko Mladić for the "brilliant operation" in Srebrenica. Defence Minister Aleksandar Vulin said that "the Serbian people sur-

413 The Defence Ministry's reply the HLC's request for access to information of public importance No. 32–128 of 3 October 2019.

414 *Ljubiša Diković Dossier,* 2012, HLC. Available at: http://www.hlc-rdc.org/wp-content/uploads/2012/11/Ljubisa-Dikovic-File-and-Annex.pdf.

415 *Rudnica Dossier,* HLC, 2015. Available at: http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije_Rudnica_eng.pdf.

416 "MoD to HLC: Serbia kept quiet and let others write its history for a long time," *RTV*, 25 October. Available in Serbian at: http://www.rtv.rs/sr_lat/drustvo/ministarstvo-odbrane-fondu-za-humanitarno-pravo-srbija-dugo-cutala-i-pustala-druge-da-pisu-njenu-istoriju_1060685.html.

417 *Šainović and Others* (IT-05–87), available at: https://www.icty.org/en/case/milutinovic/4.

418 "Convicted war criminal in march on Victory Day in southern Serbia," *N1*, 9 May. Available at http://rs.n1info.com/English/NEWS/a482452/Convicted-war-criminal-in-march-on-Victory-Day-in-southern-Serbia.html.

vived genocide rather than committed it, and way bigger nations cannot say that for themselves".[419] Serbian Prime Minister Ana Brnabić said that she did not feel good about any of the Srebrenica crime anniversaries "but Serbia is not to blame for it, it is not responsible for it, it did not assist it or take part in it",[420] adding that she was the only one guided by the Serbian parliament declaration condemning the Srebrenica crime. She reiterated her predecessors' claims that no-one has been held accountable for the crimes committed against Serbs in the Drina river valley and that "no-one regrets them".[421]

In his address to the UN Security Council in July 2019, IRMCT Chief Prosecutor Serge Brammertz said that the situation in Serbia has "worsened dramatically" and that statements by Serbian politicians denying the Srebrenica genocide and glorifying war criminals were intolerable and destabilised the region and prevented reconciliation.[422] Brammertz also said that thousands of cases still needed to be processed by national courts and that regional cooperation needed to intensify.[423]

7.7. 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.[424] 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.[425]

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419 "Hague Prosecutor criticises Serbian politicians for genocide denial," *Balkan Insight*, 17 July 2019. Available at https://balkaninsight.com/2019/07/17/hague-prosecutor-criticises-serbian-politicians-for-genocide-denial/.

420 "Serbia does not dispute that crime was committed in Srebrenica," *RTS*, 12 July. Available in Serbian at: http://www.rts.rs/page/stories/sr/story/9/politika/3589413/srbija-ne-spori-da-je-u-srebrenici-pocinjen-zlocin.html.

421 *Ibid.*

422 "Serge Brammertz urges UN to stop genocide denial," *N1*, 17 July. Available at http://rs.n1info.com/English/NEWS/a500570/Serge-Brammertz-urges-UN-to-stop-genocide-denial.html.

423 *Ibid.*

424 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.

425 *Victims' Right to Reparation in Serbia and European Court of Human Rights Standards*, *2014–2015 Report*, HLC. Available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_eng_FF.pdf.

7.7.1. Administrative Reparations

The administrative procedure for the recognition of the status of civilian victims of war, one of the three mechanisms[426] for exercising the right to reparations in the Republic of Serbia, is laid down in the Act on the Rights of Civilian Invalids of War, adopted back in 1996.[427] This administrative reparation mechanism falls in the domain of social protection given the way the 1996 Act regulates the rights and requirements for acquiring the status of civilian invalid of war or a member of the family of a civilian victim or civilian invalid of war.[428]

The practical implementation of the 1996 Act demonstrates that the mechanism does not respond to the actual needs of the victims, because it contains numerous discriminatory provisions depriving many victims of the possibility of exercising their rights. The 1996 Act does not provide any protection to victims suffering from psychological or psychosomatic disorders caused by the harm they suffered; wartime victims of sexual violence; victims of injuries inflicted by forces the Republic of Serbia does not consider hostile; family members of persons who disappeared; victims whose injuries or unnatural death occurred outside Serbia or victims whose injuries or unnatural death did not occur during a formally declared state of war in Serbia (Art. 2).

The HLC has for years been alerting that this Act is in contravention of both the Serbian Constitution and the obligations Serbia assumed when it acceded to the ECHR.[429] The fact that Serbia has not improved the administrative reparation mechanism or aligned it with ratified international treaties[430] – although 23 years have passed since the 1996 Act was adopted and 15 years since the state ratified the ECHR – testifies to the lack of political will and readiness to confront the legacy of the mass crimes in the 1990s. The Ministry of Labour, Employment and Veteran and Social Issues set up a working group in 2018 to draft a law on veteran and disability protection that would cover: veterans, disabled veterans (veterans disabled in wartime and peacetime), war-disabled civilians and civilian victims of war.

426 Civil damage suits against the Republic of Serbia and damage claims in criminal proceedings are the other two mechanisms.

427 Act on the Rights of Civilian Invalids of War, *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.

428 See: *2018 Report,* III.5.7.1.

429 *The Legal and Institutional Framework in Serbia Regarding the Rights and Needs of Civilian Victims of War*, HLC, 2017, p. 12, available at: http://www.hlc-rdc.org/wp-content/uploads/2017/08/The-legal-and-institutional-framework-in-Serbia-regarding-the-rights-and-needs-of-civilian-victims-of-war.pdf.

430 The obligation to provide redress to victims of human rights violations is enshrined in numerous international human rights conventions ratified by Serbia: the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Radical Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. The victims' right to redress is also guaranteed by regional human rights protection mechanisms, the ECHR and the European Convention on the Compensation of Victims of Violent Crimes.

The Ministry conducted a non-transparent consultative process before the work on the preliminary draft commenced; consequently, rather than improving the status of civilian victims of war, the draft's authors kept the discriminatory provisions of the 1996 Act, leaving both war-disabled civilians and civilian victims of war at a disadvantage vis-à-vis military victims of war. On 21 December 2018, the HLC forwarded its detailed comments on the preliminary draft to the Ministry, in which it, inter alia, emphasised that Serbia had to adopt a separate law governing the rights of only war-disabled civilians and civilian victims of war. [431]

During his appearance on *TV Happy* in April 2019, Labour Minister Zoran Đorđević said that Serbian President Vučić "has issued clear guidance to the Serbian Government to develop a new law on the rights of veterans, war-disabled veterans, war-disabled civilians and their family members."[432] The public debate on the Preliminary Draft organised in the 13 May-3 June period included panel discussions in Vranje, Leskovac, Kragujevac, Užice, Sjenica, Kraljevo, Sombor, Zrenjanin, Novi Sad, Zaječar, Belgrade and Niš,[433] and, due to high interest, in Ruma.[434]

Most of the participants in the public debate called for the withdrawal of the preliminary draft and the establishment of a new working group that would be tasked with drafting a new text or amending the existing draft. The preliminary draft was not endorsed by the Government or submitted to parliament for adoption by the time this Report was finalised.

7.7.2. 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-

431 Comments of the Humanitarian Law Center on the Draft Law on the Protection of Veterans and Civilian Invalids of War prepared by the Ministry of Labour, Employment and Veteran and Social Affairs, HLC, 2019. Available at: http://www.hlc-rdc.org/wp-content/uploads/2019/01/Comments_of_the_Humanitarian_Law_Center_on_the_Draft_Law_on_the_Protection_of_Veterans_and_Civilian_Invalids_of_War_prepared_by_the_Ministry_of_Labour,_Employment_and_Veteran_and_Social_Affairs.pdf.

432 "Đorđević: New law on the rights of veterans, war-disabled veterans, war-disabled civilians and their family members to be written by end of 2019," press release, Ministry of Labour, Employment and Veteran and Social Issues, 25 April. Available in Serbian at: https://www.minrzs.gov.rs/srb-lat/aktuelnosti/intervjui/djordjevic%3A-do-kraja-2019.-godine-izrada-novog-zakona-o-pravima-boraca-vojnih-invalida-civilnih-invalida-rata-i-clanova-porodica.

433 Public Invitation to Public Debate on the Preliminary Draft Act on the rights of veterans, war-disabled veterans, war-disabled civilians and their family members, Ministry of Labour, Employment and Veteran and Social Issues. Available in Serbian at: https://www.minrzs.gov.rs/sites/default/files/2019–04/2.%20Javni%20poziv%20za%20javnu%20raspravu.doc.

434 Panel discussion on new law on veterans' rights, *Sremske novine*. Available in Serbian at: https://www.sremskenovine.co.rs/2019/05/tribina-o-novom-zakonu-o-pravima-boraca/.

ventions and the Act on Torts and Contracts.[435] 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.

In its judgment Gž-8845/2018 of 5 September 2019, the Belgrade Appellate Court partly modified the first-instance decision and awarded much higher damages to the plaintiffs. It was guided by the facts emphasised in the appeal by the plaintiffs' lawyer (type of crime, degree of social danger, et al), the circumstances in which the crime occurred and the plaintiffs' age at the time, which led it to find that the damages awarded by the first-instance court were too low.

7.8. European Court of Human Rights Decisions

7.8.1. Dudaš and Others (Vojvodina Camps)

The European Court of Human Rights (ECtHR) dismissed an application filed by 10 individuals, who were imprisoned in late 1991 in camps in Begejci and Sremska Mitrovica after the fall of Vukovar and other settlements along the Danube in Croatia.

The applicants had sued the Republic of Serbia, seeking non-pecuniary damages for their fear, diminished ability to engage in physical activities and violations of their honour and reputation due to the torture they had suffered during imprisonment. All Serbian courts, including the Constitutional Court, had dismissed their claims on the grounds that the three– and five-year statutes of limitations had expired, despite the fact that they had been subjected to torture and inhuman treatment for which longer statutes of limitations are prescribed by law.

The ECtHR dismissed the application because the events at issue had occurred at a time when the ECHR was not applicable in the Republic of Serbia, i.e. it declared it inadmissible *ratione temporis*.

435 *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.

7.8.2. Bexhet Rrmoku

The ECtHR dismissed the application filed by Behxhet Rrmoku as manifestly ill-founded and concluded that the violation of the rights complained of had not occurred.

Bexhet Rrmoku had instituted civil proceedings claiming damages for the torture he had suffered in the prisons in Lipljan and Sremska Mitrovica in late 1999 and 2000. All Serbian courts dismissed his claim for the same reasons as in the *Dudaš* case, the expiry of the three– and five-year statutes of limitations.

As opposed to *Dudaš*, where it declared the application inadmissible *ratione temporis*, the ECtHR did not explain in this decision why it found the application inadmissible.

7.8.3. Sjeverin

The ECtHR dismissed an application filed by 19 applicants, the closest relatives of the people who were killed or disappeared on 22 October 1992, when the members of a military unit Avengers abducted and killed 16 civilians, FRY nationals, in Mioče in Bosnia and Herzegovina. The perpetrators of this crime were convicted of war crimes against the civilian population by a final judgment of the then Belgrade District Court on 15 July 2005.

The aggrieved parties sued the Republic of Serbia (the Ministry of Defence and the Ministry of Internal Affairs), seeking non-pecuniary damages they suffered due to the death of their loved ones. The Serbian court delivered a final judgment dismissing their claim under the explanation that Serbia was not responsible for the crime given that it had occurred in territory where Serbian authorities had no formal jurisdiction and did not exercise power (Bosnia and Herzegovina).

The ECtHR declared this application inadmissible *ratione temporis* as well, explaining that the crime had occurred at the time the ECHR did not apply in Serbia.

8. Right to a Healthy Environment

8.1. Legal Framework

The Republic of Serbia is bound by numerous international treaties protecting various aspects of the right to a healthy environment: the United Nations Framework Convention on Climate Change[436] and Protocol to the Framework Convention on Climate Change (Kyoto Protocol),[437] the Convention on Long-Range Trans-

436 *Sl. list SRJ* (*Međunarodni ugovori*), 2/97.

437 *Sl. glasnik RS* (*Međunarodni ugovori*), 88/07.

boundary Air Pollution,[438] its Protocol on Heavy Metals[439] and Protocol on Persistent Organic Pollutants,[440] the Vienna Convention for the Protection of the Ozone Layer,[441] the Montreal Protocol on Substances that Deplete the Ozone Layer[442] et al.

Serbia is also bound by the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention),[443] which lays down three important rights: of access to information, public participation in decision making and access to justice.[444] Serbia also acceded to the European Landscape Convention,[445] adopted under the auspices of the Council of Europe auspices and protecting the landscape as "an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors".[446]

Given that Article 11 of the European Social Charter (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.[447]

The Serbian Constitution guarantees the right to a healthy environment in the section on fundamental human rights and freedoms.[448] Under Article 74(1) of the Constitution, "[E]veryone shall have the right to a 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.

The Environmental Protection Act[449] is the main environmental law, governing the integral environment protection system facilitating the exercise of the human

438 *Sl. list SFRJ* (*Međunarodni ugovori*), 11/86.

439 *Sl. glasnik RS* (*Međunarodni ugovori)*, 1/12.

440 *Sl. glasnik RS* (*Međunarodni ugovori*), 1/12.

441 *Sl. list SFRJ* (*Međunarodni ugovori*), 1/90.

442 *Sl. list SFRJ* (*Međunarodni ugovori*), 16/90 and *Sl. list SCG* (*Međunarodni ugovori*), 24/04 – other law.

443 *Sl. glasnik RS* (*Međunarodni ugovori*), 38/09.

444 Article 1, Aarhus Convention.

445 *Sl. glasnik RS* (*Međunarodni ugovori*), 4/11.

446 Article 1(1(a)), European Landscape Convention.

447 V. Dimitrijević, D. Popović, T. Papić, V. Petrović, *International Human Rights Law*, Belgrade Centre for Human Rights, Belgrade, p. 336.

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

449 *Sl. glasnik RS,* 135/04, 36/09, 36/09 – other law, 72/09 – other law, 43/11 – CC Decision and 14/16.

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,[450] the Strategic Environmental Impact Assessment Act,[451] and the Act on Integrated Environmental Pollution Prevention and Control.[452] Environmental protection is governed also by a number of other laws and by-laws dealing with specific 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.[453]

The National Assembly held a session in 2019 at which it adopted or amended a number of laws regarding the right to a healthy environment: the Plant Nutrients Act, the Plant Protection Substances Act, the Plant Health Act and the Food Safety Act.[454]

The new Communal Militia Act[455] entitles the communal militia to act in environment-related matters;[456] such powers are also conferred to the Belgrade city authorities under the new Capital City Act.[457]

Serbia in 2019 ratified the Safety and Health in Agriculture Convention[458] and entered into several bilateral agreements regarding the right to a healthy environment, notably, with the European Investment Bank[459] and the Republic of India.[460] The Environmental Protection Ministry signed several MoUs with its counterparts in Bulgaria[461] and Greece.[462]

A number of bills directly or indirectly dealing with the right to a healthy environment were submitted during the year to the National Assembly but were

450 *Sl. glasnik RS*, 135/04 and 88/10.

451 *Ibid*.

452 *Sl. glasnik RS*, 135/04 and 25/15.

453 In 2018, the National Assembly adopted the Critical Infrastructure Act (*Sl. glasnik RS*, 87 /18), the Disaster Risk Reduction and Emergency Management Act, the Act on Acquisition of the Right of Ownership of Land, Facilities and Water of the Bor Mining and Smelting Basin Bor Ltd, the Radiation and Nuclear Safety and Security Act *(Sl. glasnik RS*, 87/18) and the Communal Activities Act (*Sl. glasnik RS*, 88/11, 104/16 and 95/18).

454 *Sl. glasnik RS*, 41/09 and 17/19.

455 *Sl. glasnik RS*, 49/19.

456 Articles 1(1), 5, 10 and 20, Communal Militia Act.

457 *Sl. glasnik RS*, 129/07, 83/14 – other law, 101/16 – other law and 37/19.

458 *Sl. glasnik RS* (*Međunarodni ugovori*), 2/19.

459 Act Ratifying the Partnership for Local Development Finance Contract between the Republic of Serbia and the European Investment Bank, *Sl. glasnik RS* (*Međunarodni ugovori*), 6/19.

460 Act Ratifying the Agreement between the Government of the Republic of Serbia and the Government of the Republic of India on Co-operation in Plant Health and Plant Quarantine, *Sl. glasnik RS* (*Međunarodni ugovori*), 2/19.

461 *Sl. glasnik RS* (*Međunarodni ugovori*), 2/19–152.

462 *Sl. glasnik RS* (*Međunarodni ugovori*), 6/19–193.

not included in the parliamentary agenda.[463] Opposition MPs also submitted draft laws for adoption: the Draft Act Prohibiting the Construction of Small Hydro-Power Plants in the Republic of Serbia, the Draft Act Amending the Environmental Impact Assessment Act and the Draft Act Amending the Nature Protection Act.[464]

The Environmental Centre *Stanište* (Habitat) which researches spending on environmental protection, published the data of its preliminary research showing that 25 municipalities abolished their environmental protection budget funds in 2019 and that, despite the increase in ecotax revenues, the local self-governments cut the amounts they planned on spending on environmental protection (from 6.4 billion RSD in 2015 to 4.5 billion RSD in 2019). The research also shows that around €500 million more were collected from ecotax[465] than spent on environmental protection activities and that the problem of communal waste would have been addressed had that money been spent on the construction of 200 landfills. *Stanište* called on the Environmental Protection Ministry to, inter alia, lay down in the law that ecotax revenues must be spent on environmental protection and that local assemblies must adopt environmental protection programmes and report on their implementation and ensure meaningful public involvement in decisions on the "green" fund programmes.[466]

8.2. State of the Environment

The Water Act[467] governs the legal status of waters, water, water facilities and water estate management, sources and mode of funding of water activities, oversight of the implementation of this law and other relevant water management issues. Most of Serbia's territory lies within the Danube basin; since Danube is an international river, the decisions of the Danube Commission regarding the protection of this river are binding on Serbia. Serbia is also under the obligation to protect from pollution other international rivers passing through its territory (Sava, Drina and Tisa), which are partly or entirely non-navigable.[468]

463 Draft Act Amending the Water Act, Draft Act on Hydrographic Activities and Draft Act Amending the Inland Water Navigation and Ports Acts. However, the drafts of other laws regarding the right to a healthy environment, which were to have been adopted under the Government 2019 Work Plan and which the Environmental Protection Ministry had prepared, were not submitted to the parliament for adoption by the end of the year. The list of bills in the parliament pipeline is available in Serbian at: http://www.parlament.gov.rs/akti/zakoni-u-proceduri/zakoni-u-proceduri.1037.html.

464 *Ibid*.

465 Around €300 million by the state and around €200 million by the local self-governments.

466 See more in Serbian at: https://staniste.org.rs/obavestenja/dijalog-sa-ministrom-trivanom-na-temu-finansiranja-zastite-zivotne-sredine/?script=lat.

467 *Sl. glasnik RS*, 30/10, 93/12, 101/16 and 95/18 – other law.

468 More on the regime of non-navigable international rivers in: R. Etinski, *Inernational Public Law, 4th edition*, JP Službeni glasnik, Novi Sad University Law School, Belgrade 2010, pp. 491–492.

Untreated industrial and communal wastewater, agricultural drainage water, landfill water and pollution caused by river navigation and the work of thermal electric power plants are the main sources of water pollution. Only 21 municipalities have wastewater treatment facilities and even the largest Serbian cities discharge their wastewater into the rivers.[469]

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.[470] They brought into question the SHPP environmental impact assessments, which gave rise to doubts that these projects had received the green light from the Environmental Protection Ministry although the authors of the studies had not conducted the required research.[471]

A Cadastre of SHHPs in Serbia was developed back in 1987 by Energoprojekt and the Jaroslav Černi Institute. The Cadastre, however, suffers from some shortcomings: it does not take into account constraints regarding water, water supply, sewerage and sanitary protection of water, or protection of the natural and cultural-historical heritage (which is partly due to the way it was developed, based on geographic maps rather than field research). Due to these constraints and changes in the hydrology of river flows and the use of space, the national 2010 – 2020 Spatial Plan specifies that the SHPP Cadastre should serve as a documentary basis, and that SHPPs should be built on the basis of technical documentation, which is to be prepared in accordance with the rules for the development of special purpose area spatial plans and the rules stipulated by local self-government units, pursuant to conditions regulating waters and the protection of nature.[472]

The non-aligned regulations and underdeveloped standards have led to a number of proceedings before courts contesting the Environmental Protection Ministry's decisions to approve the construction of SHPPs[473] as well as protests across Serbia.

In September 2019, the movement "Protect the Stara Planina Rivers" and Alliance of Old Planina Local Communities organised a large rally in Belgrade to protest the silence of the relevant institutions and risks to Serbia's water resources.[474]

469 United Nations Development Programme in Serbia, "Observed climate change in Serbia and projections of future climate based on different emission scenarios", October 2018, available in Serbian at: http://www.klimatskepromene.rs/wp-content/uploads/2019/04/Osmotrene-promene-klime-Final_compressed.pdf.

470 See: https://balkangreenenergynews.com/thousands-rally-against-small-hydropower-plants-on-mt-stara-planina/.

471 See the *Insajder* report, available in Serbian at: https://goo.gl/P11ZDZ.

472 "What can you do in Serbia when you build a small hydropower plant," CRTA. Available at: https://crta.rs/wp-content/uploads/2019/07/What-can-you-do-in-Serbia-when-you-build-a-small-hydropower-plant.pdf.

473 More on the construction of the SHPP Pakleštica in the *2018 Report*, II.14.3.

474 "Anti-SHHP protest in Belgrade: relevant authorities still turning a deaf ear to our demands," *N1*, 21 September. Available in Serbian at: http://rs.n1info.com/Vesti/a527794/Protest-protiv-MHE-u-Beogradu.html.

It remained unclear how the Serbian President, who met the members of the Protect the Stara Planina Rivers movement at their request, would fulfil the promise he made to them – that he would resolve the problem – given that he does not have the powers to resolve disputes such as this one.[475]

The construction of SHPPs continued across Serbia although Energy Minister Aleksandar Antić and Environmental Protection Minister Goran Trivan said that it would be prohibited.[476] Groups of citizens and residents of villages through which the rivers on which SHPPS are already being or are planned to be built started keeping round the clock watch at the sites to prevent the investors from starting construction.[477]

The European Commission also noted the issue of SHPPs endangering the environment in its 2019 Serbia Report. It said that any further development of hydropower should be in line with EU environmental legislation including environmental impact assessments with proper public consultations, nature protection and water management legislation.[478]

Protests were occasionally staged in 2019 against the illegal buildings on the Sava River embankment in Belgrade and the traffic along it,[479] because 16 of the 99 radial collector wells supplying Belgrade with water are located in this area.[480] The major supermarkets started charging their customers for the plastic bags; estimates are that the use of plastic bags has fallen more than 60%.[481]

The Air Protection Act[482] governs air quality management and sets out measures and procedures for protecting, improving and overseeing the quality of air as a natural resource of general interest and enjoying particular protection.[483] The Act defines three categories of air quality.[484] The relevant ministry, Vojvodina and local

475 "Vučić does not have the powers to address SHPP problems," *CINS,* 4 October. Available in Serbian at: https://www.cins.rs/vucic-nije-nadlezan-da-resava-probleme-malih-hidroelektrana/.

476 "Antić and Trivan reiterate construction of SHHPs will be banned," *N1*, 2 October. Available in Serbian at: http://rs.n1info.com/Biznis/a530998/Antic-i-Trivan-ponovili-da-ce-biti-zabranjena-izgradnja-mini-hidroelektrana.html.

477 "Fight for Stara Planina rivers, night watch and chain on the bridge," *Novi magazin*, 5 September. Available in Serbian at: http://www.novimagazin.rs/vesti/borba-za-reke-stare-planine-nocna-dezurstva-i-lanac-na-mostu.

478 European Commission, Serbia 2019 Report, p. 87. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

479 "Protest at the Sava embankment almost ends in blows," *N1*, 27 March. Available in Serbian at: http://rs.n1info.com/Vesti/a470285/Protest-na-Savskom-nasipu-na-ivici-incidenta.html.

480 See the *N1* report, available in Serbian at: http://rs.n1info.com/a394607/Vesti/Savski-nasip-i-posledice-gradnje-vikendica-i-sojenica.html.

481 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.

482 *Sl. glasnik RS*, 36/09 and 10/13.

483 Article 1(1), Air Protection Act.

484 Article 21, Air Protection Act.

self-government authorities are under the obligation to alert the public via the media of excessive air pollution.[485]

The Belgrade air was polluted after a fire broke out at the Vinča landfill.[486] The air was of extremely poor quality at the end of the year, not only in Belgrade, but in other Serbian towns as well (Novi Sad, Subotica, Užice, Valjevo and Pančevo). Air pollution in Valjevo was even qualified as "hazardous to health".[487] *Airvisual.com* put Belgrade at the top of the list of the most polluted cities on a number of occasions in 2019.[488]

The Land Protection Act[489] applies to all types of land as a natural resource, regardless of who owns, its purpose or what it is used for.[490] The Act provides, inter alia, for protection of soil from pollution generated by waste management, wastewater release, point and diffuse emissions, chemical pollution, et al.[491] However, this natural resource is not always adequately protected. Belgrade's Vinča landfill was again qualified as one of Europe's largest uncontrolled landfills**,** not fulfilling Serbian or and EU standards on sanitary landfills and polluting the underground waters and the surrounding soil and contaminating the nearby farms and air.[492] The landfill fire was caused by the cracks in the land and the landslide.[493]

8.3. Serbia and Climate Change

The issue of climate change is gaining in significance across the world but this issue is apparently not taken seriously in Serbia. A Climate Change Act, announced time and again, [494] was not adopted by the end of 2019. Only a few of the many

485 Article 23, Air Protection Act.

486 Don't Let Belgrade D(r)own: Vinča landfill burning again, authorities silent on huge air pollution," *Danas*, 26 October. Available in Serbian at: https://www.danas.rs/politika/ne-davimo-beograd-deponija-u-vinci-ponovo-gori-a-vlast-cuti-na-ogromno-zagadjenje-vazduha/.

487 "Belgrade again one of the most polluted cities in the world, air in Valjevo "hazardous" to health," *RTS*, 7 December. Available in Serbian at: http://www.rts.rs/page/stories/ci/story/124/drustvo/3765384/beograd-ponovo-medju-najzagadjenijim-gradovima-sveta-u-valjevu-vazduh-opasan-po-zdravlje.html.

488 See: https://www.airvisual.com/world-air-quality-ranking.

489 *Sl. glasnik RS*, 112/15.

490 Article 2 Land Protection Act.

491 Article 3(1(9)), Land Protection Act.

492 EBRD, Belgrade to get new waste management facilities, 2 October 2019, available at: https://www.ebrd.com/news/2019/belgrade-to-get-new-waste-management-facilities.html; see also BCE, Vinča Energy-from-Waste Facility, Construction of the New Landfill and Remediation of the Existing Landfill (Version 6), p. 4.

493 "Smoke above Vinča landfill: Belgraders complaining of smell. Competent authorities: no open fire, no risk to people," *Blic*, 27 October. Available in Serbian at: https://www.blic.rs/vesti/beograd/dim-iznad-deponije-u-vinci-gradani-se-zale-na-smrad-nadlezni-nema-otvorenog-pozara-ni/gcjrgwj.

494 "Trivan: Climate change law in pipeline by end year," *Blic*, 30 September. Available in Serbian at: https://www.blic.rs/vesti/drustvo/trivan-zakon-o-klimatskim-promenama-do-kraja-godine-ulazi-u-proceduru/shs3kfk.

comments on the Preliminary Draft of the Climate Change Act experts and CSOs sent to the Ministry in 2018 were upheld.[495]

In its Serbia 2019 Report, the European Commission stressed that Serbia should implement the Paris Agreement, including by adopting a comprehensive climate strategy and law, consistent with the EU 2030 framework for climate and energy policies and well integrated into all relevant sectors and develop a National Energy and Climate Plan, in line with Energy Community obligations.[496]

The Environmental Protection Ministry itself admitted that the current level of integration of climate change into sectoral and overall development strategies, level of knowledge, institutional and individual capacities, available technology and financial resources at the national level and involvement of local governments were still insufficient for an effective and rapid response to the climate change problem.[497]

The air pollution in Belgrade, death of fish across Serbia[498], tree cutting, inadequate waste disposal are merely some of the regrettable everyday events in Serbia that are inadequately addressed. Such a practice cannot be qualified as positive or as an illustration of Serbia's commitment to eliminate all threats to the environment.

495 More in the *2018 Report*, II.14.3.

496 *Serbia 2019 Report*, p. 86. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

497 Environmental Protection Ministry, Second National Communication of the Republic of Serbia under the United Nations Framework Convention on Climate Change, August 2017, p. 14. http://www.klimatskepromene.rs/wp-content/uploads/2017/09/SNC_eng.pdf.

498 "Who's to blame for tons and tons of dead fish in the Big Bač Canal," *N1*, 20 November. Available in Serbian at: http://rs.n1info.com/Vesti/a545625/Pomor-ribe-od-Srbobrana-do-Beceja.html.

IV.
PROTECTION AND REALISATION OF THE 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. According to the 2011 Census, conducted by the Statistical Office of the Republic of Serbia, 147,604 (2%) of Serbia's nationals declared themselves as Roma.[1] Roma are one of the most vulnerable categories of the population in Serbia and victims of deeply-rooted social exclusion. Employment, housing, access to education and health services, as well as the fight against discrimination, are the main challenges standing in the way of improving the position of Roma.

1.1. Social Inclusion of Roma

At its third session in January 2019, the Coordination Body Monitoring the Implementation of the 2016–2025 Roma Social Inclusion Strategy[2] discussed the implementation of measures aimed at permanently addressing Roma housing problems and improving infrastructure in Roma settlements and regional standards on responsible budgeting of Roma inclusion policies. The participants agreed that more needed to be done in the fields of Roma education and welfare.[3]

At its fourth session in June 2019, the Coordination Body reviewed the reports on the implementation of activities and discussed the upcoming activities aimed at ensuring full Roma integration. The participants also discussed the new

1 See the Statistical Office of the Republic of Serbia publication: http://media.popis2011.stat.rs/2012/Nacionalna%20pripadnost-Ethnicity.pdf.

2 Available at: https://ljudskaprava.gov.rs/sites/default/files/dokument_file/national_strategy_for_roma_inclusion_2016–2025_0.pdf.

3 See more at: http://socijalnoukljucivanje.gov.rs/en/another-eur-3-million-for-social-inclusion-of-roma/.

Action Plan for the Implementation of the Roma Social Inclusion Strategy, which was being finalised at the time.[4]

The "Local Initiatives Programme for Social Inclusion and Poverty Reduction – Support to the Development of Innovative Social Inclusion Models" is implemented with a view to improving the situation of vulnerable categories, including Roma, especially those living in rural and poor communities, through their social inclusion. The second stage of the Programme, launched in February 2019, aims at improving the existing and establishing new/innovative local community measures and programmes to address the identified social problems.[5]

The Roma Social Inclusion Seminar, organised every other year since 2012, was held on 23 October 2019. The participants identified the priorities in the field of Roma social inclusion for the upcoming period.[6] The Report on the Implementation of the Operational Conclusions for the October 2017–2019 Period[7] was published after the Seminar.

The Protector of Citizens, one of the actors entrusted with monitoring the Roma Social Inclusion Strategy and its Action Plan under that Strategy, started monitoring their implementation at the local level in April 2019 and published a Special Report on the Implementation of the Roma Inclusion Strategy with his recommendations.[8]

According to a study conducted in 2018/2019 by Friedrich Ebert Stiftung, 2% of Serbian youths have negative opinions about Croats, Bosniaks and Roma and would neither be friends with them nor marry them.[9] Twenty-one percent of young people are more tolerant and have nothing against befriending or marrying members of any ethnic group. Training for journalists on affirmative reporting on vulnerable groups was conducted in March 2019.[10]

The implementation of the project "My Body, My Rights" began in Belgrade, Obrenovac, Zaječar and Pirot in June 2019. The project aims to educate and empower Roma women in family planning. It also focuses on Roma rights, increasing Roma access to health institutions and reproductive health services and the preven-

4 See more at: https://www.mgsi.gov.rs/en/aktuelnosti/mihajlovic-inclusion-roma-men-and-women-society-step-towards-better-and-more-successful.

5 See more at: http://socijalnoukljucivanje.gov.rs/en/second-phase-of-the-local-initiatives-programme-for-social-inclusion-and-poverty-reduction-support-to-the-development-of-innovative-social-inclusion-models-lip-2/.

6 More is available in Serbian at: http://socijalnoukljucivanje.gov.rs/rs/odrzan-peti-seminar-o-socijalnom-ukljucivanju-roma-i-romkinja-u-republici-srbiji/.

7 The Report is available at https://inkluzijaroma.stat.gov.rs/en/reports.

8 The Special Report is available in Serbian at: https://www.ombudsman.rs/attachments/article/6359/ZAstitnik%20socialno%20ukljucivanje%20roma%2020191129c.pdf.

9 *Youth Study Serbia 2018/2019*, Friedrich Ebert Stiftung, p. 26, available at: http://library.fes.de/pdf-files/id-moe/15269–20190411.pdf.

10 See more at: https://mailchi.mp/gov/56th-newsletter-on-social-inclusion-and-poverty-reduction-5-30052019.

tion of unwanted, especially teenage pregnancies. The project is implemented by the Sexual and Reproductive Health Association, with the support of the Ministry of Health, the Office of the Minister without Portfolio Charged with Demographics and Population Policy, the Institute for Public Health of Serbia, and health and social institutions and local self-governments.[11]

The UN Committee on the Elimination of Discrimination against Women also alerted to the importance of improving Roma women's exercise of the right to health. In its Concluding observations on the fourth periodic report of Serbia, it expressed concern over the prevalence of adolescent pregnancy among Roma girls and the low participation of Roma women in birth preparation programmes and insufficient coverage of organised screenings for the early detection of breast cancer and cervical cancer. The Committee thus urged Serbia to ensure all women, including Roma women, unhindered access to health care, including sexual and reproductive health care, early prevention programmes for breast and cervical cancer.[12]

The Committee welcomed Serbia's efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, such as the adoption of the Roma Social Inclusion Strategy. It, however, expressed concern at the persistent lack of awareness among women, including Roma women, rural women, women with disabilities, older women and migrant women, of their rights under the Convention and available remedies. The Committee further emphasised the need to conduct a survey on the prevalence and causes of gender-based violence against women and girls, ensuring that it covers Roma women. It recommended Serbia accelerate the equal representation of women, including Roma women, in all areas of political and public life and allocate adequate resources for the implementation of such measures.[13]

The Committee commended the significant progress made by Serbia in the reduction of the risk of statelessness among the Roma population, from 30,000 persons at risk in 2004 to 2,200 in 2018 and welcomed the adoption of new legislation simplifying birth registration and registration of residence. However, the Committee was concerned that some 2,200 persons remained at risk of statelessness, in particular Roma who are internally displaced, registered in Kosovo and residing in Serbia, with approximately 300 to 400 persons lacking birth registration. It also expressed concern at the lack of access to birth registration for children whose parents, or at least whose mothers, lack birth registration or identity documents, mainly among Roma and urged Serbia to facilitate birth registration of children whose parents lack personal documents.[14]

11 See more at: http://socijalnoukljucivanje.gov.rs/en/project-for-the-empowerment-of-reproductive-and-sexual-health-of-young-roma-women-presented/.

12 CEDAW/C/SRB/SO/4. paras. 37 and 38. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/SRB/CO/4&La.

13 *Ibid*., paras. 5, 9, 24, 28.

14 *Ibid.,* paras. 31 and 35.

1.2. Status of the Roma Community and Serbia's EU Accession Efforts

In its Serbia 2019 Report,[15] the European Commission noted that Serbia needed to ensure a consistent implementation of legislation regarding national minorities, including Roma, leading to a tangible improvement in the effective exercise of their rights across the country and that older, rural and Roma women, as well as women with disabilities, continued to be among the most discriminated against in society. Regarding Roma inclusion, the EC noted the need to reinforce coordination between the national and local authorities and budgeting at the local level and that job descriptions for local Roma coordinators, pedagogical assistants and health mediators should be uniform throughout Serbia and institutionalised. Although most Roma in Serbia have civil documentation, the EC said that the procedure for registering the birth of children whose parents lacked personal documents needed to be monitored and that the relevant by-laws needed to be amended. It also alerted to the fact that only 12.7% of Roma children have received all recommended vaccines and that almost 60% of Roma girls were married at an early age.

The implementation of 36 projects within the two million EUR "EU Support to Roma Inclusion – Strengthening local communities towards Roma inclusion" grant programme began in September 2019. The programme, funded by the EU, aims to empower local communities in the inclusion of Roma.[16] The overall objective of the Programme is to support the ongoing process of improving the socio-economic position of the Roma population in local communities in Serbia and implement prioritised local and strategic measures promoting Roma equality and employment and combatting discrimination against Roma.[17]

The EU funded the procurement of cars and laptops for Roma inclusion mobile teams in 30 municipalities to facilitate the performance of their tasks. The mobile teams can now visit Roma communities and provide services which would otherwise be impossible, as some of them live in remote areas. The EU has thus continued supporting 50 local teams that are extending services to Roma that it had established.[18]

In July 2019, Serbia ratified the Declaration of Western Balkans Partners on Roma Integration within the EU Enlargement Process.[19] All the states that have ratified the Declaration committed to continuing and enhancing efforts to ensure the

15 Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

16 See more at: http://www.skgo.org/projects/details/50/podrska-eu-inkluziji-roma-osnazivanje-lokalnih-zajednica-za-inkluziju-roma.

17 Report on the Implementation of the Operational Conclusions for the October 2017–2019 Period, p. 4. Available at: https://inkluzijaroma.stat.gov.rs/en/reports.

18 See more at: https://europa.rs/30-cars-for-mobile-teams-for-roma-inclusion/?lang=en.

19 The Declaration is available at: https://www.rcc.int/docs/464/declaration-of-western-balkans-partners-on-roma-integration-within-the-eu-enlargement-process.

equality and full integration of Roma in society and monitoring efforts undertaken to achieve the full equality of Roma.

In April 2019, Chairwoman of the Coordination Body Monitoring the Implementation of the 2016–2025 Roma Social Inclusion Strategy Zorana Mihajlović signed an Agreement on the Establishment and Work of the Regional Cooperation Council Roma Integration 2020 Action Team with the RCC Secretary-General. The Agreement provides for the continued implementation of a project aimed at resolving all the issues of importance for the Roma community, such as housing and employment. [20]

A Regional Conference on the results of the Decade of Roma Inclusion was held on 21 June 2019. The participants emphasised the importance of continuing work on the inclusion of this vulnerable category, especially the housing issues, in addition to education and employment. The Minister of Labour, Employment and Veteran and Social Issues said that Roma needed to be involved more in activities promoting their integration in society.[21]

1.3. Housing

The housing problems faced by many Roma were noted also by the European Commission. It said that many Roma households had no access to electricity, drinking water or connection to the sewage system and that, as of March 2019, there were 199,584 internally displaced persons (IDPs) in Serbia and that Roma IDPs remained the most marginalised and vulnerable; [22] 10,188 Roma IDPs are now living in Serbia.[23]

The EU continued supporting the improvement of the socio-economic situation of Roma in Serbia and set aside another 3.1 million EUR for the implementation of activities in pursuit of this objective. The programme aims to put in place prerequisites for durable housing solutions, the construction of communal infrastructure for Roma and extend support to the existing mobile teams and the forming of new teams to increase the social inclusion of Roma.[24]

In early 2019, 12 Roma families in Svilajnac received keys to their new apartments built within the project "Durable housing solutions and physical infrastruc-

20 See more at: http://socijalnoukljucivanje.gov.rs/en/agreement-signed-on-the-establishment-and-work-of-the-action-team-of-the-regional-cooperation-council-for-roma-integration-2020/.

21 See more at: http://socijalnoukljucivanje.gov.rs/en/regional-conference-held-on-the-results-of-the-roma-inclusion-decade/.

22 *Serbia 2019 Report*, p. 33. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

23 Report on the Implementation of the Operational Conclusions for the October 2017–2019 Period, p. 63. Available at: https://inkluzijaroma.stat.gov.rs/en/reports.

24 See more in Serbian at: https://strategijaromi.rs/obezbedjeno-novih-3–1-miliona-evra-fondova-eu-za-poboljsanje-polozaja-roma-u-srbiji/.

ture improvements in in Roma settlements". The project was funded by the EU and co-funded by the Ministry of Construction, Transportation and Infrastructure.[25] Keys to another 15 newly-built homes were handed over to Roma families in Ub.[26]

At the Decade of Roma Inclusion Conference, the Chairwoman of the Coordination Body Monitoring the Implementation of the 2016–2025 Roma Social Inclusion Strategy said that over 700 Roma, including 250 children, have resolved their housing issues thanks to EU projects.[27] This programme, worth €9.6 million to date, is implemented in 13 Serbian municipalities.[28]

1.4. Education

Concerns about insufficient coverage of Roma children by education persisted although the number of Roma children attending school increased.

In its Serbia 2019 Report, the European Commission said that only 9% of Roma children attended kindergarten, as opposed to 28% of non-Roma children. As the EC noted, the drop-out rate remained high, especially for Roma girls, and only 67% of Roma youth completed mandatory primary education, compared with 96% of the non-Roma population. It also observed that the percentage of Roma completing tertiary education remained extremely low, namely 1% compared with 16% of the non-Roma population.[29] This is why urgent measures need to be taken to address segregations in schools and reduce the drop-out rate. In the 2017/2018 school-year, 154 Roma students (71 male and 83 female) enrolled in college within the affirmative measures programme.[30]

The Annual Report on the Implementation of the Action Plan for the Implementation of the Strategy for Development of Education in Serbia until 2020 was published in May 2019. The Report identifies Roma girls as a particularly vulnerable group and states that the Ministry of Education, Science and Technological Development has been endeavouring to gender mainstream its measures. Given that coverage of children from vulnerable groups by the mandatory preparatory preschool programme is much lower, the Ministry has been implementing, in tandem with its

25 See more in Serbian at: https://strategijaromi.rs/uruceni-kljucevi-stanova-romskim-porodicama-u-svilajncu/.

26 See more in Serbian at: https://strategijaromi.rs/unapredjeni-uslovi-stanovanja-39-romskih-porodica-u-ubu/.

27 "Roma are the largest and most discriminated against minority," *Politika*, 21 June. Available in Serbian at: http://www.politika.rs/scc/clanak/432290/Romi-najbrojnija-i-najcesce-diskriminisana-manjina.

28 See more at: http://socijalnoukljucivanje.gov.rs/en/regional-conference-held-on-the-results-of-the-roma-inclusion-decade/.

29 *Serbia 2019 Report*, p. 33. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

30 Report on the Implementation of the Operational Conclusions for the October 2017–2019 Period, p. 21. Available at: https://inkluzijaroma.stat.gov.rs/en/reports.

partners, a campaign to increase the number of children enrolling in the preparatory preschool programme and first grade.[31]

The Annual Report notes the positive effects of the amendments to the Education System Act, which have facilitated primary school enrolment; children from vulnerable categories can now enrol in primary school without submitting proof of their parents' place of residence or other documentation. Use of Roma during enrolment is also possible. Furthermore, individual educational plans are drawn up to extend assistance to pupils in need of additional support.[32]

The Committee on the Elimination of Discrimination against Women urged Serbia to strengthen mechanisms for keeping Roma girls in the education system, continuously monitor the implementation of the national Roma Inclusion Strategy and assess its impact on the inclusion of Roma women in education, given that Roma girls are almost fully absent from the education system after the age of 18. The Committee further urged Serbia to enhance its efforts to promote and ensure inclusive preschool and school education in regular classes for Roma children, especially girls, and for girls with disabilities, and accelerate the adoption and implementation of the national framework for monitoring inclusive education and the education quality indicators.[33]

Sixty percent of the 544 scholarships granted Roma pupils in the 2018/2019 school-year went to girls; the number of Roma girls attending school is much lower than that of Roma boys. A total of 1,969 Roma pupils were enrolled in secondary schools in the 2017/2018 school-year through the affirmative measures programme; the number of Roma pupils enrolled in secondary schools through the affirmative measures programme in the 2018/2019 school-year was higher, standing at 2,220 (54% were girls).[34]

The elective subject "Roma Language with Elements of National Culture" was attended by 2,463 pupils of 66 primary schools in 39 local self-governments in the 2018/2019 school-year.[35]

A total of 261 pedagogical assistants were engaged to extend support and assistance to Roma children in kindergartens and primary schools in the 2018/2019 school-year, in order to help them overcome obstacles and keep them in school.[36]

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31 Flyers in Roma and Serbian are printed and handed out, communication with kindergartens is ongoing, local teams have been set up and action plans are being implemented, et al. More is available in Serbian at: http://www.mpn.gov.rs/wp-content/uploads/2019/08/izvestaj.pdf.

32 *Ibid.*

33 CEDAW/C/SRB/SO/4, paras. 33 and 34. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/SRB/CO/4&La.

34 Annual Report on the Implementation of the Action Plan for the Implementation of the Strategy for Development of Education in Serbia until 2020, Ministry of Education, Science and Technological Development, pp. 134 and 136. Available in Serbian at: http://www.mpn.gov.rs/wp-content/uploads/2019/08/izvestaj.pdf.

35 *Ibid.,* p. 138.

36 Report on the Implementation of the Operational Conclusions for the October 2017–2019 Period, p. 21. Available at: https://inkluzijaroma.stat.gov.rs/en/reports.

The Ministry of Education, Science and Technological Development published a call for applications for secondary school scholarships. The call was published within an EU-funded project supporting Roma children in pursuing secondary education.[37] Roma Master's, PhD and post-doctoral students were eligible to apply for the Roma International Scholarship Programme, which aims to promote academic mobility of Roma students and support their academic integration internationally.[38]

1.5. Employment

A total of 25,611 job-seekers registered with the National Employment Service (NES) on 31 August 2019 have declared themselves as Roma; 12,646 of them were women. Most of them (89.6%) were unskilled and 10.4% of them were skilled job-seekers.[39]

The European Commission also alerted to the importance of this issue, stating that the Roma unemployment rate stood at 36% (45% for Roma women) compared with the 16% unemployment rate of the non-Roma population.[40]

A total of 3,549 Roma (37.21% of them women) job-seekers registered with the NES found jobs in the January-August 2019 period; most of them were unskilled or low-skilled workers. In that period, 32,759 Roma were benefitting from active employment measures, 47 were undergoing additional training or education courses and 193 were engaged in public works. The NES conducted employability assessments and developed individual employment plans for 16,956 Roma (7,982 of them women) in the November 2018-April 2019 period. [41]

A total of 1,490 Roma job-seekers underwent trainings in various occupations until July 2019 within the GIZ project "*Youth Employment Promotion*" and 190 of them found jobs.[42]

1.6. Child Marriages

The National Coalition for Ending Child Marriages was formed in February 2019 by the Gender Equality Coordination Body and the UNICEF Serbia Office.

37 More is available in Serbian at: http://socijalnoukljucivanje.gov.rs/rs/konkurs-za-dodelu-stipendija-ucenicima-ama-romske-nacionalnosti-upisanih-u-srednje-skole-za-skolsku-2019–2020-godinu-rok-20–11–2019/.

38 See more at: http://socijalnoukljucivanje.gov.rs/en/applications-open-for-the-roma-international-scholarship-programme-for-the-2019–2020-school-year-deadline-25–7–2019/.

39 Report on the Implementation of the Operational Conclusions for the October 2017–2019 Period, pp. 33–34, available at: https://inkluzijaroma.stat.gov.rs/en/reports.

40 *Serbia 2019 Report*, p. 30. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

41 Report on the Implementation of the Operational Conclusions for the October 2017–2019 Period, pp. 34 and 40, available at: https://inkluzijaroma.stat.gov.rs/en/reports.

42 *Ibid*., p. 36.

The Coalition aims to contribute to ending child marriages in Serbia, particularly among the Roma population, through targeted and coordinated activities or relevant stakeholders, by advocating the elimination of institutional and social obstacles to the implementation of law and promotion of good practice examples.[43] Child marriages are the most frequent among Roma, because of the community's culture and poverty. They lead to the violation of numerous rights, such as the rights to education, health, and a living standard guaranteeing the children's physical, mental, spiritual, moral and social development. Roma girls are the most vulnerable to and at greatest risk of child marriage.

At its session on 1 October 2019, the Coalition participants emphasised the importance of expanding the Coalition, especially by engaging representatives of courts and prosecution services as their participation would facilitate the adoption of an efficient strategic and systemic approach. The participants also upheld the initiative to amend the provisions of the Criminal Code regarding civil unions with minors. This offence falls within the category of crimes against marriage and family, rather than crimes against sexual freedoms, wherefore there are no additional mechanisms for the protection of child victims. The participants emphasised that all systems – the police, the welfare system, educational and health institutions and others – were under the obligation to report preparations for and arrangement and conclusion of child marriages.[44]

In May 2019, the Minister of Labour, Employment and Veteran and Social Issues adopted Guidance on Social Work Centres' Actions in Cases of Child, Early and Forced Marriages"[45] tasking them with taking action to protect children from such negative practices where such risks occur.

The Committee on the Elimination of Discrimination against Women also expressed concern at the presence of child marriages in Serbia. It said in its Concluding observations that this phenomenon was the most widespread among Roma, where around 7% girls marry before they turn 18. The Committee urged Serbia to prevent and eradicate child and forced marriage by strengthening awareness-raising campaigns on the negative effects of such marriages on the health and well-being of women and girls; establishing mechanisms to detect cases of child and forced marriage; ensuring the implementation of the relevant Criminal Code articles and the prosecution and punishment of perpetrators with sanctions commensurate with the gravity of the crime; and, systematically collecting data on the number of com-

43 See more at: http://socijalnoukljucivanje.gov.rs/en/national-coalition-for-ending-child-marriages-formed/.

44 "Civil unions with minors should be qualified as crimes against sexual freedoms," press release, Serbian Protector of Citizens, 3 October. Available in Serbian at: https://www.ombudsman.rs/index.php/2011–12–25–10–17–15/2011–12–26–10–05–05/6290-v-nbr-cnu-z-dnicu-s-l-l-ni-v-lifi-v-i-rivicn-d-l-pr-iv-p-ln-sl-b-d.

45 Guidance No. 551-00–00100/2019–14 of 20 May 2019. Available in Serbian at: https://www.minrzs.gov.rs/sites/default/files/2019–06/Deciji%20Brakovi%20Instrukcija0001.pdf.

plaints, investigations, prosecutions, convictions and penalties imposed with regard to the prohibition of forced marriage and cohabitation with a minor.[46]

The Belgrade Appellate Court's acquittal of a man convicted by the lower court to five years' imprisonment for sexual intercourse with a girl under 14 provoked fierce polemics in the public. The 13-year-old Roma girl had entered into an arranged marriage with a 19-year-old man and soon became pregnant. The Appellate Court acquittal was criticised by some NGOs, which claimed that it had violated the rights of the child, as well as the law and Conventions protecting these rights. Some experts, on the other hand, upheld the Court's decision, because, in their view, it had considered the circumstances of the specific case, whether the lower court's judgment was to the advantage or disadvantage of the girl and the appellant, and, in particular the interests of their child and family. In its judgment, the Court explained that it was acquitting the appellant because he had been unaware that he was committing a crime and that there was an interest not to convict him to prison, especially since the offence carried a minimum penalty of five years' imprisonment. The Court said it had also taken into account that the girl and the appellant had intended to enter into a union from the very start and that they were still in it.[47] It should be borne in mind that early or arranged marriages cannot be prevented by heavy penalties, but, only by serious actions by the state authorities and NGOs in the Roma community and the education and awareness-raising of Roma youths.

1.7. Discrimination

Roma were still the victims of discrimination, lack of tolerance and hate speech despite efforts to eradicate these phenomena and despite laws protecting the rights of national minorities. Most of the complaints submitted to the Equality Commissioner in 2018 (28 of them) reported discrimination against Roma; these complaints accounted for 47.5% of all complaints alleging discrimination on grounds of national affiliation or ethnic origin.[48]

In its Concluding observations, the Committee on the Elimination of Discrimination against Women expressed concern because Roma women continued to experience multiple and intersecting forms of discrimination, still had limited access to health care, education, employment and social assistance and lacked protection from gender-based violence. The Committee called on Serbia to vigorously pursue efforts to eliminate multiple and intersecting forms of discrimination experienced

46 CEDAW/C/SRB/SO/4, paras. 47 and 48. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/SRB/CO/4&La.

47 "Acquitted on charges of intercourse with underage girl – public vexed, experts divided," *N1*, 4 October. Available in Serbian at: http://rs.n1info.com/Vesti/a531580/Vanja-Macanovic-i-Veljko-Milic-o-oslobadjajucoj-presudi-za-obljubu-devojcice.html.

48 *Abridged Version of the 2018 Annual Report*, May 2019, Commissioner for the Protection of Equality. Available at: http://ravnopravnost.gov.rs/en/reports/.

by Roma and other vulnerable categories of women and to economically empower them.[49]

The Equality Commissioner intervened in response to a CSO complaint against the Social Work Centre in P. for reportedly discriminating against Roma IDPs, and refusing to receive their welfare applications. In response, the Centre submitted minutes of interviews with the individuals on whose behalf the complaint had been submitted. The complainant included the interviews in the complaint, claiming that the Centre had victimised the witnesses. As far as the initial complaint is concerned, the Commissioner concluded that she could not ascertain whether the Centre's actions were discriminatory. She said that, by summoning and questioning the three individuals on whose behalf the complaint had been submitted, the Centre had violated Article 9 of the Anti-Discrimination Act – prohibition of calling to account individuals who submitted proof of discrimination or sought protection from discrimination. She recommended that the Centre refrain from such actions in the future, apologise to the witnesses in writing, and train its staff in recognising discrimination, especially discrimination against Roma IDPs.[50]

The Equality Commissioner issued an opinion on a complaint against the primary school B.R. in Bujanovac, the Ministry of Education, Science and Technological Development and the Vranje School Administration for discriminating against Roma pupils, because, in the 2018/2019 school-year, the school formed two segregated first grade classes attended only by Roma pupils. The Commissioner found a violation of Article 6 in conjunction with Article 19 of the Anti-Discrimination Act and recommended to the primary school to draw up a desegregation plan to eliminate the negative practice and conduct training on the prohibition of discrimination for its staff and student body, in order to promote the spirit of tolerance, diversity and non-discrimination. The Commissioner recommended to the Bujanovac municipality to take measures to ensure the satisfaction of the citizens' education-related needs and extend the B.R. assistance in developing plans and taking measures, as well as to extend support to the relevant authorities in preparing Roma children for schooling in Serbian while they are still in kindergarten. She recommended to the Ministry of Education, Science and Technological Development to monitor the implementation of the measure in the primary school and extend it the requisite assistance, and to take all measure to ensure full compliance with the Rulebook on actions by institutions in case of suspected or ascertained discriminatory conduct and insults to the reputation, honour or dignity of person.[51]

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49 CEDAW/C/SRB/SO/4, paras. 43 and 44. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/SRB/CO/4&La, https://ljudskaprava.gov.rs/sh/node/19867.

50 The Commissioner's opinion is available at: http://ravnopravnost.gov.rs/en/1001–18-opinion-with-recommendation-upon-the-complaint-by-a-civil-society-organization-against-center-for-social-work-because-of-discrimination-on-grounds-of-nationality/.

51 The Commissioner's opinion is available at: http://ravnopravnost.gov.rs/en/opinion-on-complaint-about-discrimination-on-the-grounds-of-segregation-of-roma-children-in-education/.

The Commissioner issued an opinion on a complaint against an out-patient health clinic Z. which published a text stigmatising Roma, who are already marginalised and frequently discriminated against. She found a violation of Article 12 of the Anti-Discrimination Act. Given that the clinic removed the text from its website before the Commissioner issued her opinion, she recommended that it refrain from publishing texts with content violating the Anti-Discrimination Act.[52]

On World Roma Day, the Protector of Citizens emphasised that, despite the efforts the state was making in the fields of education, health and issuance of personal documents, Roma remained one of the most vulnerable groups in Serbia who were frequently discriminated against, and that support to Roma employment was still lacking, as corroborated by the complaints he received. He also warned that most Roma lived in extreme poverty, in informal settlements, which carried other risks and impinged on the development of Roma children.[53] In his 2018 Annual Report published in March 2019,[54] the Protector of Citizens said that Roma were marginalised and socially excluded and often victims of discrimination.[55]

In October 2019, the Protector of Citizens, Ministry of State Administration and Local Self-Governments and UNHCR signed a Memorandum of Understanding strengthening cooperation to ensure that all new-borns, including those whose parents lack documents or legal status, obtain immediate birth registration and access to a nationality. Given that a lot has been done to enable immediate registration of Roma new-borns and the resolution of other civil status issues, the new Memorandum will help address the remaining outstanding issues in this area.[56]

2. LGBTI Rights

2.1. Legal 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

52 The Commissioner's opinion is available at: http://ravnopravnost.gov.rs/en/682-18-mp-u-a-i-z-eis-p-against-d-z-z-for-discrimination-based-on-nationality-in-the-field-of-public-information/.

53 "World Roma Day," Protector of Citizens, press release 6 April. Available in Serbian at: https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6081-s-psh-nj-z-sh-i-ni-gr-d-n-p-v-d-d-n-r.

54 2018 Annual Report, Protector of Citizens. Available at: https://www.ombudsman.org.rs/attachments/article/145/Regular%20Annual%20Report%20of%20the%20Protector%20of%20Citizens%20for%202018.pdf.

55 *Ibid*.

56 More is available in Serbian at: https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05–05/6291-inis-rs-v-drz-vn-upr-v-i-l-ln-s-upr-v-z-sh-i-ni-gr-d-n-i-pr-ds-vnish-v-g-nci-un-z-izb-glic-u-b-gr-du-p-pis-li-sp-r-zu-r-zu-v-nju.

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.

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.[57] The Anti-Discrimination Act prohibits discrimination on grounds of sexual orientation (in Art. 2), but makes no explicit mention of gender identity.[58] 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.[59]

Discrimination in education is prohibited under a number of national laws, including the Anti-Discrimination Act (Article 19), the Education System Act (Article 9),[60] the Higher Education Act (Article 4),[61] the Textbook Act (Article 13),[62] etc. The 2016 Rulebook on Detailed Criteria for Recognising Forms of Discrimination in Education Institutions by Staff, Children, Pupils or Third Parties[63] specifies sexual orientation among the grounds on which discrimination is prohibited and enumerates in Article 10 the forms of expression that constitute hate speech. Neither the rights of transgender persons 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 2019 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[64] 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.

57 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.

58 More in the *2009 Report,* I.4.1.2.

59 E.g., the Labour Act prohibits discrimination on grounds of sexual orientation and the Act on Youths prohibits discrimination on grounds of gender identity.

60 *Sl. glasnik RS*, 55/13, 101/17, 27/18 – other law and 10/19.

61 *Sl. glasnik RS*, 88/17, 27/17, 27/18 – other law and 73/18.

62 *Sl. glasnik RS*, 27/18.

63 *Sl. glasnik RS,* 22/16.

64 See the *N1* Report, available in Serbian at: http://rs.n1info.com/a192039/Vesti/Vesti/Predlog-da-Skupstina-usvoji-Deklaraciju-protiv-homofobije.html.

The Act Amending the Civil Registers Act[65] and the new Rulebook on Sex Change Certificates and Their Issuance by Health Institutions entered into force on 1 January 2019.

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. Serbia ranked 30th on the ILGA-Europe Rainbow Map as regards respect for the human rights and full equality of the LGBTI population.[66]

In its Serbia 2019 Report, the European Commission said that Serbia needed to step up measures to protect the rights of persons facing discrimination, including LGBTI) persons; actively pursue investigation and convictions for hate-motivated crimes; and adopt a new anti-discrimination strategy.[67] The Commission noted that LGBTI persons often faced hate speech, threats and violence, as the Equality Commissioner had noted in her annual report, and that these abuses should be promptly and properly investigated and penalised.[68]

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.[69] Guidelines for the Criminal Prosecution of Hate Crimes in the Republic of Serbia[70] 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 Equality Commissioner issued an opinion[71] in response to a CSO complaint against a portal that had published two texts, one entitled "Brunei: Gays Stoned to Death!" and the other entitled "Tuzla: Incident at Queer Fest, They Chant-

65 *Sl. glasnik RS*, 47/18.

66 10th Rainbow Map, ILGA Europe. Available at: https://rainbow-europe.org/#8658/8667/0.

67 *Serbia 2019 Report*, p. 24. Available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

68 *Ibid.,* p. 28.

69 See more in Serbian at: http://www.yucom.org.rs/wp-content/uploads/2018/02/Procesuiranje-zlocina-iz-mrznje-SRP.pdf.

70 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 practical examples of the application of Article 54a of the Criminal Code. The Guidelines are available in Serbian at: http://www.yucom.org.rs/wp-content/uploads/2018/02/Procesuiranje-zlocina-iz-mrznje-SRP.pdf.

71 Opinion No. 07–00–174/2019–02 of 29 May 2019.

ed Allahu Akbar" and prompting numerous discriminatory comments. She found that the portal had violated Article 6 in conjunction with Articles 11 and 12 of the Anti-Discrimination Act because it published comments violating the dignity of and encouraging discrimination, hate and violence against LGBT persons. The Commissioner instructed the portal to take measures to improve the comment moderation system and prevent the publication of content in contravention of anti-discrimination regulations.

The Commissioner found that LGBTI persons faced a great social distance and misunderstandings and continuous disparagement and offensive speech in some media. She said that fear of stigmatisation was the reason why many of them were still reluctant to report cases of violence and discrimination."[72]

The association *Da se zna!* (Let it be known!) reported that a civil registry office refused to issue a document certifying that an LGBTI person was unmarried, under the explanation that the applicant was planning on marrying his partner in Denmark but that Serbian law did not allow same-sex marriages. The victim of discrimination complained to the Ministry of State Administration and Local Self-Governments, but has not received a reply from them.[73]

The Press Council reviewed several complaints regarding LGBTI persons. It mediated a settlement in two cases: one regarded a complaint the association Egal filed against the tabloid *Kurir*[74] and the other a complaint LGBT activist Predrag Azdejković filed against the daily *Večernje novosti*.[75]

Many 2019 media reports on LGBTI persons were tendentious and negative. The news that the prison sentence handed down to actor Goran Jevtić for illicit sex was replaced by house arrest provoked an avalanche of negative and offensive reactions and comments against Jevtić and LGBTI persons. Jevtić was initially convicted to ten months' imprisonment in a penitentiary, but the Sombor Higher Court modified the first-instance judgment and ordered that he serve his sentence under house arrest. This led a number of Serbian media to publish sensationalist reports about this case.[76]

In early 2019, the Belgrade Higher Court delivered a judgment[77] finding that J.F. violated anti-discrimination law during his appearance on a *Pink TV* morning show on 19 October 2017. The Court also ordered J.F. to pay for the publication of the judgment against him in the daily *Danas* within 15 days from day of its trans-

72 Commissioner for the Protection of Equality, press release of 14 September. Available at: http://ravnopravnost.gov.rs/en/it-is-essential-to-continue-improving-lgbt-rights/.

73 More is available in Serbian at: https://dasezna.lgbt/case/DSZ_148/mati%C4%8Dna_slu%C5%BEba_u_vr%C5%A1cu_odbila_da_izda_dokument_gej_mu%C5%A1karcu.html.

74 More is available in Serbian at: http://zalbe.rs/zalba/4483.

75 More is available in Serbian at: http://zalbe.rs/zalba/4444.

76 "Who is irritated by Goran Jevtić?" *Danas*, 9 October. Available in Serbian at: https://www.danas.rs/dijalog/licni-stavovi/kome-smeta-goran-jevtic/.

77 Belgrade Higher Court judgment 14 P No. 16966/18 of 25 January 2019.

mittal on pain of enforcement action. The Court had taken into account that J.F. had made his discriminatory statement on a TV station with nationwide coverage, wherefore the judgment had to be published in a public media outlet, pursuant to Article 43(1(5)) of the Anti-Discrimination Act.

2.3. 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.[78] The courts, have, however, rarely applied this provision when handing down penalties. As the European Commission also noted in its Serbia 2019 Report, "implementation of the hate crime legislation, including on grounds of sexual orientation, remains inadequate." It went on to say that centralised official data on hate crimes was still lacking and that CSOs reported a slight increase in violence and attacks on LGBTI persons, including from within their families.[79]

The first judgment[80] 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. [81]

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. Second, the court convicted the perpetrator of a crime against a member of a vulnerable group.

The Pride Info Centre in Belgrade was attacked several times in 2019. In the evening of 8 February, seven people banged on the door and insulted the Centre

78 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.

79 *Serbia 2019 Report*, p. 28. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

80 Belgrade First Basic Court judgment No. 7 K. 1435/18 of 17 October 2018 (became final on 2 November 2018).

81 See more in the *2018 Report*, IV.2.5.

staff. The police arrested four of them.[82] The second incident occurred on 18 February, during the "Kosovo is Serbia" rally, when several individuals sprayed the Centre's front window and put stickers on it.[83] In early October, a group of fans of the Red Star soccer club carrying lit flares hurled cans and bottles at the Centre's front window. The police had been alerted to the risk in advance.[84]

Dragoslava Barzut, the Director of the association *Da se zna!*, was assaulted during the International Women's Day protest march in Belgrade on 8 March. The incident was reported to the police.[85] This association reported on its portal that 24 hate crimes may have been committed. Assaults were registered in the streets of Belgrade, Novi Sad, Novi Pazar, Tutin and Majdanpek. The victims of these assaults had been subjected to physical and psychological abuse, violence in a public area (street, disco club, bus station), at work, and even at the hands of public officials, specifically the intervention police. The association also registered an incident in Smederevo, where stickers showing a crossed out LGBTI flag were put at public venues, and an attack on a transperson in Belgrade. The police failed to seriously react to the incidents although most of them were reported to them. [86]

In early November, two men first verbally and then physically assaulted another man because of his assumed homosexual orientation. The victim was assaulted in front of a Belgrade pizzeria because of a purple bag he was carrying. He lost three of his teeth and his brow ridge was broken. The police and paramedics soon arrived at the scene.[87] The police soon found the perpetrators and hauled them into custody until they were taken before the Belgrade First Basic Prosecution Service.[88] The defendants struck a plea bargain with the prosecutor, which was upheld by the court. The court sentenced one of the perpetrators to a one-year prison sentence suspended for three years for the infliction of grave bodily injuries (Art. 121 of the CC) and violent behaviour (Art. 344 of the CC) and the other, who verbally abused the victim, to an eight-month prison sentence suspended for two years.[89]

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82 "Four arrested after attack on Pride Info Centre in heart of Belgrade," *Danas*, 8 February. Available in Serbian at: https://www.danas.rs/drustvo/uhapsene-cetiri-osobe-nakon-napada-na-prajd-info-centar-u-centru-beograda/.

83 "Fresh attack on Pride Info Centre," *N1*, 18 February. Available in Serbian at: http://rs.n1info.com/Vesti/a461511/Novi-napad-na-Prajd-info-centar.html.

84 "Miletić: Red Star fans attacked Pride Info Centre offices," *Danas*, 2 October. Available in Serbian at: https://www.danas.rs/drustvo/miletic-navijaci-crvene-zvezde-napali-prostorije-prajd-info-centra/.

85 "They spat at us and shouted that we stink. Details of the assault on LGBT activists in the centre of Belgrade," *Blic*, 9 March. Available in Serbian at: https://www.blic.rs/vesti/drustvo/pljuvali-su-nas-i-vikali-da-smrdimo-detalji-napada-na-lgbt-aktiviste-u-centru/wwvnzpr.

86 Available in Serbian at: https://dasezna.lgbt/cases.html.

87 "Beaten-up man: anyone not fitting in has problems," *N1*, 3 November. Available in Serbian at: http://rs.n1info.com/Vesti/a540567/Pretuceni-covek-za-N1-Problemi-za-svakog-ko-se-ne-uklapa-u-sablon.html.

88 MIA press release of 3 November. Available in Serbian at: http://www.mup.gov.rs/wps/portal/sr/aktuelno/saopstenja/c271aec1-dfb0–458b-843b-8cde369d5459.

89 Belgrade First Basic Public Prosecution Service press release of 4 November 2019. Available in Serbian at: https://prvo.os.jt.rs/saopstenja/saopstenje-2/.

The rapid reactions by the police and prosecution service in this case may be considered a good practice example, but the overly lenient penalties definitely cannot. The criminal sanctions and their duration cannot be considered adequate for these crimes, especially since they were committed at a public venue and in front of a large number of people. The preventive and retributive character of punishment of hate crimes calls for the imposition of stricter penalties to prevent future commission of hate-motivated crimes and deter their potential perpetrators.[90] Finally, the victim and the perpetrators of this hate crime reached an out-of-court settlement, involving the compensation of the victim's pecuniary and non-pecuniary damages, and the victim forgave his assailants.[91] CSOs[92] criticised the overly lenient penalties handed down to the perpetrators. So did the Equality Commissioner,[93] while public officials remained mum.

In June 2019, the association *Da se zna!* published its 2018 annual report on hate crimes against LGBTI persons. It documented 42 offences that can be qualified as hate crimes in 2018; 36 hate crimes involved criminal offences, three involved criminal offences and discriminatory conduct, and six involved exclusively discriminatory conduct (including case of hate speech not perpetrated by the media). The authors of the report noted that the problem with the accuracy of the data arose from the fact that a number of hate crimes were not reported at all or were reported but not qualified as hate crimes by the relevant authorities. The report also said that eight hate crimes were reported to the institutions in 2018, three of them to the police, two to the Cyber Crime Prosecution Service, two to the Equality Commissioner, one to a Social Work Centre and one to a university campus administration. The Report quoted the following reasons why the victims do not report hate crimes: distrust of the institutions (23.5%), they are not outed (14.7%), fear of the perpetrator (14.7%), unfamiliarity with the procedure (14.7%), and other reasons (23.5%).

90 B. Stojanović, "Hate Crime – (In)Complete Story," *Vreme,* 7 November. Available in Serbian at: https://www.vreme.com/cms/view.php?id=1730213.

91 "Vučević makes up with the assailants: I accept the extended hand," *Danas*, 12 November. Available in Serbian at: https://www.danas.rs/drustvo/vucevic-se-pomirio-s-napadacima-prihvatam-pruzenu-ruku/.

92 BCHR press release of 4 November. Available in Serbian at: http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2019/11/Saop%C5%A1tenje-4.11.pdf. The following day, 17 CSOs (*Da se zna*!, Egal, Labris, ERA LGBTI, Rainbow Association, Niš Human Rights Committee, CRPC, the Roma-Serbian Friendship Society *Stablo*, the Institute for European Affairs, LGBT Serbia, the COME OUT Group, Geten, Civic Initiatives, Civil Right Defenders, Belgrade Pride, Women in Black and the BCHR), signed a joint statement condemning hate crimes and the overly lenient penalties handed down to the perpetrators of this crime.

93 Commissioner for the Protection of Equality, press release of 3 November 2019. Available at: http://ravnopravnost.gov.rs/en/impermissable-attack-on-a-person-because-of-its-supposed-lgbt-orientation/.

2.4. Events Organised by the LGBTI Population

The first Pride Parade in Novi Sad was held within the Pride Week organised by the association *Izađi* on 13–17 May. It aimed to alert to the status of the LGBTI population and their exercise of their constitutionally guaranteed rights.[94] No incidents broke out during the Parade, although a dozen or so people rallied at an anti-Pride protest. One young man was taken into custody for trying to provoke an incident and the police dispersed a group of high-schoolers hurling insults at the Parade participants before the event.[95]

Like in 2018, two parades were held in Belgrade. The first parade, "Pride of Serbia" that went under the slogan "The battle is still ongoing – join in!" was held on 29 June.[96] The participants called for the legal regulation of same-sex partnerships, hormone therapy for transpersons, sensitising public sector staff about LGBTI persons and increase of the budget allocation for LGBTI organisations. A group of people carrying a banner saying "Next Year in Prizren" held their own rally at the same time.[97]

Belgrade Pride Week was held on 8–15 September and ended with the Pride Parade. A number of educational, cultural and entertainment events were held in Belgrade. The Pride Info Centre hosted HIV testing organised by the Šabac association Rainbow (*Duga*), including professional counselling on safe sex and communicable diseases.[98] The participants in the Pride Parade, held on 15 September under the slogan "I am not giving up", called for the adoption of laws on registered partnerships and gender identity and improvement of health services extended to transpersons. They also called for the rapid and adequate reaction of the state authorities and the government officials' public condemnation of hate speech and crimes motivated by hate of the LGBTI community, adoption of local action plans for the LGBT+ community and organisation of trainings for youths on sexual orientation and gender identity.

No incidents occurred during the Pride Parade, although a group of people protesting against it staged a rally at the same time. A verbal clash broke out between the protesters and the police and five young men were arrested. Before that, the po-

94 "First Pride in Novi Sad, small group of people protested with icons and crosses," *N1*, 17 May. Available in Serbian at: http://rs.n1info.com/Vesti/a484477/Parada-ponosa-u-Novom-Sadu.html.

95 "Pride and 'anti-Pride' in five pictures: First Pride Parade held in Novi Sad, one person taken into custody," *Blic*, 17 May. Available in Serbian at: https://www.blic.rs/vesti/drustvo/prajd-i-antiprajd-u-pet-slika-odrzana-prva-parada-ponosa-u-novom-sadu-jedna-osoba/0vwml8g.

96 This parade was organised by the Gay-Lesbian Info Centre and Egal.

97 "Belgrade hosts fifth Pride of Serbia, no incident reported," *N1*, 29 June. Available in Serbian at: http://rs.n1info.com/Vesti/a495814/Peta-parada-Ponos-Srbije.html.

98 See: http://parada.rs/en/2019/09/19/under-the-banner-of-im-not-giving-up-belgrade-pride-2019-is-successfully-held/.

lice erected barricades between the Czech Embassy and the Constitutional Court. After the police intervened, the protesters lay down on the street.[99]

A Pride Caravan, organised by the Youth Initiative for Human Rights (YIHR), left Kragujevac on 1 September and toured Kraljevo, Zrenjanin, Novi Sad, Subotica, Šabac, Niš and Vranje.[100] Unfortunately, the Caravan did not pass through Valjevo and Novi Pazar as planned; it decided against passing through Valjevo because the passers-by were hurling cans at the participants. The Novi Pazar leg was called off because of the threats the day before the procession was scheduled.[101] Opponents of the Pride Caravan held their own rally in Novi Pazar; the misinformation disseminated via social networks led them to the wrong conclusion that the city would host a Pride Parade not a Caravan promoting the Pride Parade. The protesters chanted anti-gay slogans and sang soccer fan songs as they paraded down the pedestrian zone.[102] The Pride Caravan aimed at inviting citizens across Serbia to join in the Belgrade Pride Parade and to extend support to the local LGBTI communities and convey them the message that they are not alone.[103]

On 20 September 2019, Belgrade was elected the EuroPride host in 2022 after it won the votes of 71% of the delegates at the European Pride Organisers Association (EPOA) conference in Bilbao, Spain.[104] Expectations are that the event will be attended by a large number of participants from Serbia and abroad. It will undoubtedly pose a major challenge and security risk both to the organisers of the event and the Serbian authorities.

A number of events promoting the visibility and rights of LGBTI persons were held in Serbia in 2019. The International Transgender Day of Visibility (31 March) was marked on 12 April by a rally in a Belgrade club "October Cooperative". The International Day against Homophobia, Transphobia and Biphobia was marked by the presentation of the Rainbow award to the authors and producers of the TV series

99 "Pride Parade 2018: Rainbow colours, icons and the Prime Minister," *BBC in Serbian*, 15 September. Available in Serbian at: https://www.bbc.com/serbian/lat/srbija-49710360.

100 "Pride Caravan through nine cities in Serbia," press release, YIHR. Available at: http://www.yihr.rs/en/pride-caravan-through-nine-cities-in-serbia/.

101 "Pride Caravan tours Serbia – What's it like to grow up as an LGBT person outside Belgrade," *BBC in Serbian,* 13 September. Available in Serbian at: https://www.bbc.com/serbian/lat/srbija-49677913.

102 "Protest against the non-existing Pride Parade in Novi Pazar," GETEN. 6 September 2019. Available in Serbian at: http://www.transserbia.org/index.php?option=com_content&view=article&id=1588:protest-protiv-nepostojece-parade-ponosa-u-novom-pazaru&catid=26:vesti.

103 "Pride Caravan begins with walks in Kragujevac and Kraljevo," press release, YIHR. 1 September. Available in Serbian at: http://www.yihr.rs/bhs/prajd-karavan-poceo-setnjom-u-kragujevcu-i-kraljevu/.

104 "Belgrade wins EuroPride 2022 in landslide vote", European Pride Organisers Association, 21 September. Available at: http://epoa.eu/2019/09/21/belgrade-wins-europride-2022-in-landslide-vote/.

"Everything will be Different in the Morning".[105] Da se zna! on 19 May organised a charity event, the "IDAHOT tournament", in the Belgrade Manjež Park.[106] Parents of LGBTI persons published ads in dailies declaring that they were not disowning their children because of their same-sex orientation, within a campaign dubbed "I am not disowning", organised by the association Da se zna!.[107]

2.5. Sex Change Registration

The Act Amending the Civil Registers Act[108] introduced specific provisions facilitating sex change registration.[109] Article 41 of the Act now lays down that, upon the registration of the sex change, insight in the birth register and documents on the basis of which the entry was made will be allowed only to the individuals who had changed their sex and their closest family members, their parents and children, and the relevant authorities in order to perform duties within their remit.

Sex change data shall be entered pursuant to rulings issued by the relevant (city or municipal) administrative authorities based on the certificates issued by the relevant health institutions in accordance with this law (Art. 45).

The legislator left the relevant authorities 12 months to put in place the procedure for the issuance of electronic sex change certificates. On 21 December 2018, the Ministers of State Administration and Local Government and Health adopted the Rulebook on Sex Change Certificates and Their Issuance by Health Institutions (hereinafter: Rulebook).[110]

Sex change certificates are defined as public documents.[111] Article 3 of the Rulebook lays down that such certificates shall be issued to individuals who underwent either a minimum one-year hormone therapy indicated by and under the supervision of a psychiatrist and endocrinologist or a sex change surgery.[112] In case the sex change took place abroad, the national health institution shall issue the sex change certificate on the basis of the medical documents issued by the foreign health

105 "The 'Rainbow' prize awarded to authors of the TV series 'Everything Will be Different in the Morning,'" *N1*, 17 May. Available in Serbian at: http://rs.n1info.com/Vesti/a484531/Nagrada-Duga-dodeljena-autorima-TV-serije-Jutro-ce-promeniti-sve.html.

106 More at: http://parada.rs/en/2019/07/09/3rd-idahot-tournament-at-manjez/.

107 "Another mother declares she's not disowning her child in a newspaper," *N1*, 23 June. Available in Serbian at: http://rs.n1info.com/Lifestyle/a494081/Oglas-u-novinama-da-se-ne-odrice-dece.html.

108 *Sl. glasnik RS*, 47/18.

109 Registration of sex change in the birth register is prerequisite for exercising a number of other rights. See the explanation of the Draft Act, available in Serbian at: https://www.paragraf.rs/dnevne-vesti/160518/160518-vest15.html.

110 *Sl. glasnik RS*, 103/18.

111 Under Art. 118(2) General Administrative Procedure Act (*Sl. glasnik RS*, 18/16 and 95/18 – authentic interpretation), public documents prove what they ascertain or confirm.

112 Article 2(1(1 and 2)) of the Rulebook.

institution where the sex change took place. The documents must include evidence that the sex change was conducted in the manner specified in the Rulebook. Under the Rulebook, all the relevant health institutions shall forward sex change certificates electronically as of 1 January 2020.[113]

It may be concluded that the Act and Rulebook have facilitated the sex change registration procedure. Their provisions, however, do not fully address the needs of the population they regard. Namely, sex change registration is conditioned by a one-year hormone therapy or sex change surgery, not the feelings of the individuals at issue, which puts at a disadvantage those who sex differs from the one assigned at birth and who cannot afford hormone therapy or surgery.[114]

2.6. Status of Trans persons*[115]

The Serbian legal system does not recognise transpersons. The health system recognises only transgender, which it categorises as a mental disorder.[116] During the 72nd World Health Assembly (WHA) held in Geneva on 20–28 May 2019, the World Health Organization officially adopted the International Classification of Diseases – 11th revision (ICD-11). In the ICD-11, trans-related categories have been removed from the Chapter on Mental and Behavioral Disorders, which means that trans identities are now formally de-psycho-pathologised in the ICD-11.[117]

In its Serbia 2019 Report, the European Commission said that transgender persons were particularly vulnerable to violence, abuse and discrimination.[118]

The civil sector prepared two texts, a Model Act on the Recognition of the Legal Consequences of Sex Change and Determination of Transsexualism[119] in 2012 and the Model Gender Identity Act[120] in 2016.

113 Article 8 of the Rulebook.

114 "Easy to change sex in birth certificate," *Večernje novosti*, 11 January. Available in Serbian at: http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:770833-Lako-menjaju-pol-u-krstenici?fbclid=IwAR1J5OwjsSbv2TuMgWv3oTNRJduYVxr-2JLcpIPkuaQNOsRVsk7i3MxejmE.

115 Trans is an umbrella term for people whose gender identity/ies differ/s from sex/gender assigned at birth.

116 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 Serbian at: http://www.transserbia.org/images/2015/dokumenti/Trans%20osobe%20u%20Srbi ji%20-%20analiza%20poloaja%20i%20predlog%20pravnog%20reenja.pdf.

117 See Transgender Europe: https://tgeu.org/icd-11-depathologizes-trans-and-gender-diverse-identities/ and https://news.un.org/en/story/2019/05/1039531.

118 *Serbia 2019 Report*, p. 28.

119 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: ttp://cups.rs/wp-content/uploads/2010/03/Model-zakona-o-priznavanju-pravnih-posledica-promene-pola-i-utvr%C4%91ivanja-transeksualizma.pdf.

120 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.

2.7. 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.[121] 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.[122]

The legal framework governing care for people living with HIV/AIDS also includes the Healthcare Programme to Protect the Population from Communicable Diseases,[123] 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,[124] which also acts as the Council monitoring the implementation of projects funded from the GFATM donation.[125]

The Equality Commissioner issued a Recommendation[126] to the Vojvodina Clinical Centre in Novi Sad after receiving a number of complaints from the Union of organisations involved in protecting people living with HIV/AIDS. The Commissioner recommended that the Centre take all the measures within its remit to ensure that, when entering the data on the patients' HIV status in the medical documentation columns referring to diagnosis (and other diagnoses), health professionals use the same letter fonts and colours they ordinarily use to write the diagnoses and states of relevance to the medical procedures and to use the Latin names of and codes for the diseases under the International Classification of Diseases, Injuries and Causes

121 *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.

122 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.

123 *Sl. glasnik RS*, 22/16.

124 *Sl. glasnik RS*, 5/18 and 8/18 – corrigendum.

125 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.

126 Recommendation No. 07–00–191/2019–02 of 4 April 2019. Available in Serbian at: http://ravnopravnost.gov.rs/rs/preporuka-mera-klinickom-centru-vojvodine/.

of Death. She also instructed the Centre to notify her of the measures it would undertake to implement her recommendation and ensure equality within 30 days from the day of its transmittal.

Burial of people who had HIV/AIDS is still disputable. Ever since the outbreak of the HIV epidemic in Serbia in 1985, their bodies have merely been buried in the black body bags in which the hospitals sent them to the funeral homes.[127]

Handling of the bodies of the deceased is governed by Article 56 of the Act on the Protection of the Population from Communicable Diseases.[128] The Rulebook on the Handling of the Bodies of the Deceased[129] stipulates that hygienic preparation of the bodies of persons who succumbed to communicable diseases shall not be allowed (Art. 3(2)).[130]

Experts and organisations protecting and promoting the rights of persons living with HIV/AIDS are of the view that there are no risks of the individuals handling the bodies of people with HIV/AIDS contracting HIV/AIDS as long as they comply with the prescribed precautionary measures.[131]

The current practice unnecessarily deprives the people with HIV/AIDS of a dignified burial. This has prompted Potent – the National Centre for Sexual and Reproductive Health – to submit an initiative with the Ministry of Health to amend to impugned regulations.[132]

2.8. Intersex[133] *Persons*

There are no specific regulations in Serbian law on intersex persons. Intersex variations are still considered medical disorders. There are no official reports of the

127 Bratislav Prokić, "Death and Dignity in a Plastic Bag," *Vreme*, 31 October. Available in Serbian at: https://www.vreme.com/cms/view.php?id=1728735.

128 *Sl. glasnik RS*, 15/16.

129 No. 110–00–00313/2016–10, Beograd, 28 November 2016. *Sl. glasnik RS*, 96/16.

130 This provision is meaningless in the light of Article 2 of the Rulebook, under which the bodies may be handled only by individuals inoculated against acute Hepatitis B virus and wearing protective caps, overalls, glasses, nose and mouth masks and shoes, and rubber gloves.

131 "HIV positive to be buried in dignity, not in black body bags," *Politika*, 20 October. Available in Serbian at: http://www.politika.rs/sr/clanak/440176/Drustvo/HIV-pozitivni-da-se-sahrane-dostojanstveno-a-ne-u-crnim-vrecama.

132 "Black body bag – protective or discriminatory measure," *Politika*, 24 October. Available in Serbian at: http://www.politika.rs/sr/clanak/440516/Beograd/Crna-vreca-mera-zastite-ili-diskriminacija.

133 "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.

relevant ministry on the statistical data or treatment of intersex persons.[134] 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.[135]

The degree of stigmatisation and auto-stigmatisation of intersex persons in Serbia is high. This problem is particularly evident in rural areas, where the level of awareness of problems faced by intersex persons is extremely low. It is therefore very difficult to obtain data on the number of intersex persons living in Serbia and, due to the small number of activists focusing on the issue, the intersex community is almost totally invisible.[136]

The Serbian Government Human and Minority Rights Office and the Health Ministry on 15 July organised the first inter-sectoral meeting devoted to advancing the rights of intersex persons in Serbia. The meeting was attended by the representatives of CSOs focusing on the rights of intersex persons and it aimed at initiating a dialogue between them, the relevant Ministry and other state authorities and establishing coordination and cooperation mechanisms with a view to improving the status of intersex persons in the health system.[137]

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.[138]

In its Serbia 2019 Report, the European Commission said that intersex persons were still invisible both socially and legally.[139] Its conclusion was confirmed by the Equality Commissioner, who issued a statement on 12 July 2019 in which she said that intersex persons were practically invisible in Serbia and that the main problems they and their families faced were not addressed either by law or in practice.[140]

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134 J. Simić, S. D. Lazić, P. Šarčević, *Intersex – towards the development of an intersectional platform – Research Report*, Gayten – LGBT, Belgrade, 2019, p. 51. Available in Serbian at: http://www.transserbia.org/images/2019/dokumenta/Interseks.pdf.

135 See: http://www.transserbia.org/interseks/595-podrska-i-poziv-interseks-osobama.

136 *Ibid*.

137 More is available in Serbian at: https://www.transserbia.org/interseks/1567-sektorski-sastanak-saradnjom-do-boljeg-polozaja-interseks-osoba-u-srbiji.

138 PACE Resolution 2191 (2017) of October 2017, available at: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24232&lang=en. More about the Resolution in the *2018 Report*, IV.2.9.

139 European Commission, Serbia 2019 Report, p. 28. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

140 "Improvement of the Status of Intersex Persons," press release, Equality Commissioner, 12 July. Available in Serbian at: http://ravnopravnost.gov.rs/rs/poverenica-o-unapredenju-polozaja-interseks-osoba/.

3. Human Rights of Persons with Disabilities

Serbia still lacks data on how many of its citizens are living with disabilities. Reliable data are prerequisite for designing policies improving the situation of persons with disabilities and developing mechanisms to protect and support them. Notwithstanding, a number of public policy documents, laws and by-laws were being amended in 2019. The question of the adequacy of these documents, i.e. how they can facilitate the creation of a fairer and more inclusive society arises given that the size and other characteristics of the population whose lives they are meant to improve remain unknown. The 2011 Census data, according to which less than 8% of Serbia's population suffers from a physical or mental disability, were used to inform the development of these policies and regulations. It needs to be noted that international organisations estimate that 15–20% of the global population live with some form of disability.[141]

3.1. Legal Framework

By ratifying the UN Convention on the Rights of Persons with Disabilities (CRPD)[142] 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,[143] 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[144] were only partially integrated in Serbian law by the adoption of the Act on the Prevention of Discrimination against Persons with Disabilities[145] and the Act on the Vocational Rehabilitation and Employment of Persons with Disabilities.[146]

141 World Health Organization, World Report on Disability, 2011, p. 44. Available at: https://www.who.int/disabilities/world_report/2011/report/en/.

142 *Sl. glasnik RS (Međunarodni ugovori)*, 42/09.

143 *Ibid*.

144 *Sl. list SFRJ (Međunarodni ugovori)*, 3/87.

145 *Sl. glasnik RS*, 33/06 and 13/16.

146 *Sl. glasnik RS*, 36/09 and 32/13.

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 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.[147] Denial of reasonable accommodation is also not recognised as a form of discrimination in laws governing education and employment, including of persons with disabilities.[148]

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).

Greater support to biological families to prevent separation of children and continued deinstitutionalisation and development of community-based services are listed as major goals of an important strategic document, the Employment and Social Reform Programme (ESRP). The ESRP is an EU mechanism introduced to set and monitor employment and social policy priorities for accession countries, including Serbia.

A public debate on the new National Strategy on Improving the Status of Persons with Disabilities for the 2020–2024 period was held in 2019. This document is all the more important in the light of the fact that the previous Strategy expired back in 2015 i.e. that planned and coordinated improvement of the situation of persons with disabilities and budget funding had been missing for years. The new strategy was developed by public administration staff in tandem with university and CSO experts with ample experience in protecting the rights of persons with disabilities. Unfortunately, the draft strategy was not accompanied by an action plan, although the Planning System Act[149] provides for the adoption of action plans together with the strategies or within the following 90 days at the latest. The lack of an action plan greatly constrained the debate participants in fully contributing to the quality of the document.

147 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.

148 *Ibid.*, paras. 50 and 53.

149 *Sl. glasnik RS,* 30/18.

The process of amending the Social Protection Act,[150] the umbrella law on social protection, which was launched nearly two years ago, was not completed by the end of 2019.[151] A fresh public debate on the amendments was held in the summer of 2019, but the organisers imposed major restrictions on the participants commenting them. The Ministry of Labour, Employment and Veteran and Social Issues specified which draft amendments could be debated, saying that the others were undisputable and thus not subject to debate. The Ministry thus deprived the participants of the opportunity to publicly discuss all the draft amendments.

3.2. Assessment of the Realisation of the Rights of Persons with Disabilities

The Committee on the Elimination of Discrimination against Women (CEDAW) in March 2019 published its Concluding observations on Serbia's fourth periodic report.[152] CEDAW noted some headway, but observed that women with disabilities, Roma women and rural women were among the most discriminated against categories. It said that it was particularly concerned that those women continued to have limited access to health care, education, employment and social assistance and that they lacked protection from gender-based violence. CEDAW also expressed particular concern about violence against institutionalised women with disabilities. It also drew attention to the discriminatory language in relation to women with disabilities in article 179 of the Criminal Code, in which "copulation with a helpless person" is criminalised.

In his report on his 2017 visit to Serbia and Kosovo[153] published in February 2019, the UN Special Rapporteur on torture said that the Otthon centre in Stara Moravica and the Veternik centre "suffered from serious understaffing, thus not allowing for the continued, individual attention that would be required for the development of residents' personal capacities."[154] The Special Rapporteur noted that as most residents were completely stripped of their legal capacity, their subsequent institutionalisation with the agreement of their legal guardian was automatically considered to be "voluntary" and that there seemed to be no effective legal remedy against such a decision. The Special Rapporteur was able to ascertain that many individuals, in particular children, were separated from their parents and family and

150 *Sl. glasnik RS,* 24/11.

151 See more in the *2018 Report*, IV.3.2.

152 Concluding observations on the fourth periodic report of Serbia, CEDAW, 14 March. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/SRB/CO/4&Lang=En

153 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Visit to Serbia and Kosovo*, A/HRC/40/59/Add.1, 25 February 2019. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/019/18/PDF/G1901918.pdf?OpenElement.

154 *Ibid.,* p. 7.

placed in institutions simply because of a lack of community-based support and services for families wanting to keep their children born with disabilities with them.[155] The Rapporteur recommended, inter alia, that Serbia develop community-based services for persons with disabilities and their families, facilitate deinstitutionalisation, prohibit the institutionalisation of persons with disabilities merely on the grounds of their disability without their free and informed consent, etc.[156]

In its Serbia 2019 Report,[157] the European Commission said that persons with disabilities were still one of the most discriminated against groups of society. No progress has been made on the rights of persons with disabilities. Serbia is party to the UN Convention on the Rights of Persons with Disabilities. There is a lack of funding for the development of community-based services, licensed service providers and social services. The adoption of a strategic framework on disability is still pending. Placement and treatment in social institutions of people with psychosocial and intellectual disabilities is still not regulated in accordance with international standards. Serbia is still lacking a comprehensive strategy on deinstitutionalization.

The data on the administrative authorities' response to the recommendations the Protector of Citizens made after reviewing complaints by persons with disabilities or of his own accord corroborate the assessment – they acted on only 33.33% of the recommendations issued in 2018 and dismissed 74.35% of them.[158] The share of dismissed complaints increased significantly since 2014, when it stood at 46.60%,[159] indicating the need to propose measures to improve the protection of rights of persons with disabilities before the Protector of Citizens.

Most of the complaints submitted to the Equality Commissioner regarded discrimination against persons with disabilities. The majority of them concerned lack of access to public services and public facilities and areas. The measures recommended by the Equality Commissioner were implemented in 98.3% of the cases and her recommendations after reviewing the complaints were acted on in 78.2% of the cases. The public authorities fulfilled all her recommendations regarding complaints of discrimination on grounds of disability.

3.3. Independent Living and Community Inclusion

The state must pursue deinstutionalisation if persons with disabilities are to live independently and in the community. Organisations focusing on the protection

155 *Ibid.,* p. 8.

156 *Ibid.,* pp. 17–18.

157 *Serbia 2019 Report*. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

158 *2018 Annual Report*, Protector of Citizens, March 2019, pp. 41 and 42. Available at: https://www.ombudsman.org.rs/attachments/article/145/Regular%20Annual%20Report%20of%20the%20Protector%20of%20Citizens%20for%202018.pdf.

159 *Ibid.,* p. 87.

of the rights of persons with disabilities and improving their situation strongly subscribe to the view that 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.[160]

Human rights organisations, especially those focusing on the rights of persons with disabilities, criticised the recommendations the Protector of Citizens made to the state in his 2018 Annual Report, notably to build new or expand the capacity of the existing residential institutions for the long-term accommodation of children with autism. They stressed that such recommendations violated international human rights standards and recalled that UN Committees and the European Commission have for years been insisting on deinstitutionalisation and recommending to Serbia to continuously implement the process. On the other hand, the Serbian authorities have committed, at least declaratively, to the policy of deinstitutionalisation and the life of persons with disabilities in their communities and with their families. This policy is defined in the Chapter 19 and Chapter 23 Action Plans.

No headway was, however, made in 2019 in the realisation of the right of persons with disabilities to independent community-based living, especially of those living with intellectual and psycho-social disabilities. They still lack access to many services, the provision of which varies from one social work centre to another. A research conducted by the Mental Disability Rights Initiative of Serbia (MDRI-S)[161] shows that the practices of the social work centres are extremely diverse. Furthermore, exercise of social protection rights is often impeded or precluded by the conditions imposed on persons with disabilities and requiring of them to first realise other right or acquire a specific status.

That is the case with the right to personal assistance, an extremely important social service directly facilitating the independence of persons with disabilities and their engagement in the everyday life of the community and their satisfaction of their personal needs. Under Article 99 of the Rulebook on Conditions and Standards for the Provision of Social Protection Services,[162] persons living with mental disabilities cannot avail themselves of this service because such services are available only to persons who are able to independently make decisions and who are working or are actively engaged in the work of civic associations, political parties, sports organisations "and other forms of social engagement" or are attending full-time or part-time education programmes. These conditions amount to violations of the principle of equal rights and obligations enshrined in the Anti-Discrimination Act and the Act on the Prevention of Discrimination against Persons with Disabilities.

160 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.

161 The research was not published by the end of the reporting period.

162 *Sl. glasnik RS*, 42/13, 89/18 and 73/19.

The first condition – the ability to independently make decisions –obviously discriminates against persons in need of support in decision-making, i.e. persons deprived of their legal capacity. Direct discrimination is reflected in the unjustified placing of a group of people in a less favourable position because of their personal characteristics, in this case their disability and/or health, impinging on their ability to independently make decisions.

The second condition – employment or engagement in associations, political parties and sports organisations – is also discriminatory. Article 25 of the Anti-Discrimination Act[163] prohibits discrimination based on membership or non-membership of a political organisations. Even if the legislator was motivated to provide personal assistance services to persons with disabilities engaged in social activities to facilitate their engagement in such activities, this provision has resulted in the inability of many persons with disabilities to engage in social activities precisely because they cannot avail themselves of the personal assistance service. The availability of this service to persons with disabilities would result in an increase in the number of those engaged in the listed social activities and in the decrease of the gap between persons with physical and persons with mental disabilities.

Furthermore, the personal assistance service is available only to persons granted the right to domiciliary care and assistance allowances. However, not all persons with disabilities are in need of domiciliary care and assistance, whereas they may be in need of personal assistance to work or engage in the work of associations. Children with disabilities attending primary or secondary school are entitled to a very important service, that of a personal escort, until they complete their full-time education. Once they leave school, they are left without the practical support enabling them to continue engaging in community life and to become independent.

A group of 30 Serbian and international NGOs issued a press release in March 2019, alerting to the deaths in Serbian residential institutions, above all in the homes in Trbunje, Tutin and Sremčica. They reported that 71% of the adult and 40% of the underage residents of these institutions lived in them until they died. They called on the Republican Public Prosecution Service and the Ministry of Labour, Employment and Veteran and Social Issues to make public the results of their investigations into the deaths, punish those responsible, adopt a strategic document on deinstitutionalisation and amend or repeal regulations allowing the institutionalisation of persons with disabilities against their free will.[164]

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

164 "The recently reported deaths in social care institutions in Serbia are not isolated cases," press release, MDRI-S, 11 March. Available at: https://www.mdri-s.org/press-releases/the-recently-reported-deaths-in-social-care-institutions-in-serbia-are-not-isolated-cases/.

3.4. Children with Disabilities

Article 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.[165] 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.

In December 2019, a public debate was held on the Draft Strategy on the Protection of Children and Prevention of Violence against Children and its Action Plan. The Draft Strategy recognises deinstitutionalisation as prerequisite for the protection of children with disabilities from violence. In addition to violence prevention and protection measures, the Draft Strategy envisages the amendment of the Social Protection Act with a view to encouraging the construction of small group homes, since practice has shown that institutional accommodation, regardless of the size of the groups, is not beneficial for children and impinges on their development.[166]

3.5. 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[167] 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.

165 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.

166 In some countries, small group homes often replicate the institutional culture, and, although safer and cleaner, they do not provide the children with what they need the most – family and love, i.e. stable emotional relationships with adults. See more at: *New DRI report finds appalling conditions in Bulgaria's group homes*, Disability Rights International, 21 November. Available at: https://www.driadvocacy.org/new-dri-report-finds-appalling-conditions-in-bulgarias-group-homes/.

167 *Sl. glasnik RS*, 72/09, 52/11, 55/13, 35/15 – authentic interpretation, 68/15 and 62/16 – authentic interpretation.

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).[168]

The Rulebook on Pedagogical and Andragogical Assistants[169] was adopted in December 2019. Pedagogical assistants were introduced in the education system when the Education System Act was amended in 2009; Roma assistants were renamed into pedagogical assistants and their purview was formally extended to assisting children with disabilities. Article 2 of the Rulebook governs the requirements pedagogical assistants need to fulfil to "extend assistance and additional support to groups of children and pupils" and preschool primary and secondary school staff. The Rulebook specifically mentions their work with Roma children and children with disabilities. This provision is especially important because pedagogical assistants used to extend assistance and support only to Roma children, while children with disabilities were often left without support. Special needs teachers, social science and humanities teachers, psychologists, pedagogues, adult teachers and speech therapists with master degrees and the relevant training may be engaged as pedagogical assistants of children with disabilities.[170] The Rulebook, however, does not address the problem faced by some educational institutions because it does not lay down specific criteria for assigning pedagogical assistants to children.

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.[171]

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 and type of disability, 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.

168 More in the *2016 Report*, III.4.5.

169 *Sl. glasnik RS*, 87/19.

170 *Ibid.,* Art. 8(2(1 and 2)).

171 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.

Apart from these problems, children with disabilities have been facing obstacles in enrolling in kindergartens because the latter are not disability friendly.[172]

3.6. *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[173] 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,[174] persons fully deprived of legal capacity have the legal capacity of a 14-year-old child.

The drafting of amendments to the Family Act, ongoing for several years now, was not completed in the reporting period. The preliminary draft amendments provide for the abolition of full deprivation of legal capacity and extension of parental rights as the most drastic measure.

An important research of case-law on restoration of legal capacity was published in 2019.[175] The 2014 amendments to the Non-Contentious Procedure Act imposed upon the courts the obligation to periodically review whether deprivation of legal capacity is still warranted. YUCOM found that 2351 of the 3578 cases concerning restoration of legal capacity launched before 63 courts were completed in the 2014–2019 period and that only 67 (2.8%) of them ended with the restoration of the applicants' legal capacity. These data indicate that the obligation to periodically review the deprivation of legal capacity has not significantly improved the situation of persons with disabilities and that the concept and assessments of legal capacity and supported decision-making mechanisms need to be reformed.

There are other mechanisms, in addition to abolishing the institute of deprivation of legal capacity, that allow respect of the will of persons with disabilities and

172 *2018 Annual Report*, 2019, Equality Commissioner, p. 54. Available in Serbian at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2019/07/RGI.pdf.

173 Deprivation of legal capacity is governed by the Family Act and the Non-Contentious Procedure Act.

174 *Sl. glasnik RS,* 18/05, 72/11 – other law and 6/15, Article 146.

175 Restoration of Legal Capacity, Case-Law and Recommendations, YUCOM, 2019. Available in Serbian at: http://www.yucom.org.rs/wp-content/uploads/2019/10/Vra%C4%87anje-poslovne-sposobnosti-i-sudska-praksa-za-stampu-1.pdf.

prevent limitations of their legal capacity, but do not entail supported decision-making in the narrower sense. They include permanent powers of attorney, personal directives and representation agreements.[176] The legislator should give thought to introducing such mechanisms in the Family Act as an alternative to the deprivation of legal capacity.

3.7. 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.[177] 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.

The Equality Commissioner's data testify to the widespread problem of lack of physical access to public facilities and areas. As many as 80% of the complaints of discrimination against persons with disabilities filed with her office regarded public service provision and use of public facilities and areas.[178]

Results of a 2018 analysis of the accessibility of polling stations in several Serbian cities and municipalities gave rise to concerns. As many as 59% of the polling stations in the Belgrade municipality of Vračar, 75% in the Savski venac municipality, 42% in the New Belgrade municipality, 62% in Kragujevac, and 88% in Sombor were found to be inaccessible to wheelchair users. Since many of these polling stations are traditionally set up in kindergartens and schools, it may be concluded that many educational institutions are inaccessible to children with disabilities.[179]

An Accessibility Working Group was established in September 2019. It is chaired by MP Ljupka Mihajlovska, the only person with a disability in the National

176 Some of these mechanisms exist in various jurisdictions. More in: *Canadian supported-decision making models as an alternative to the guardianship regime in Serbia*, MDRI-S, 2019. Available in Serbian at: https://www.mdri-s.org/wp-content/uploads/2019/09/Publikacija-SRB.pdf.

177 Article 9 of the Convention on the Rights of Persons with Disabilities.

178 Abridged 2018 Annual Report, Equality Commissioner, March 2019, p. 21. Available in Serbian at: ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2019/05/Srb-Skraceni-izvestaj-1.pdf

179 Centre for Independent Living, Analysis of the Accessibility of Polling Stations in Belgrade, Kragujevac and Sombor, 2018. Available at: http://www.cilsrbija.org/ebib/201807241414140.brosura_analiza_pristupacnosti_bm_2018.pdf.

Assembly. The Working Group is generally to be involved in planning actions to improve architectural and ICT accessibility, but its specific tasks have not been made public yet. The Working Group does not include representatives of any associations of persons with disabilities.

The Ministry of Labour, Employment and Veteran and Social Issues said in December 2019 that the national Pension and Disability Insurance Fund was "the first institution in Serbia that is fully accessible to persons with disabilities".[180] The interactive accessibility map,[181] which has been developed and is available on the Internet, will help people with mobility difficulties plan the routes they will take but its user-friendliness needs to be improved.

The 2006 amendments to the Planning and Construction Act[182] 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[183]. 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.[184]

3.8. Work and Employment

The Act on the Vocational Rehabilitation and Employment of Persons with Disabilities[185] 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[186] lays down that the relevant authority shall assess how a person's illness

180 "Republican Pension and Disability Fund Accessible to persons with disabilities," Ministry of Labour, Employment and Veteran and Social Issues, December 2019. Available in Serbian at: https://www.minrzs.gov.rs/sr/aktuelnosti/vesti/republicki-fond-za-penzijsko-i-invalidsko-osiguranje-u-potpunosti-dostupan-osobama-sa-invaliditetom.

181 The map is available at: pristupacnost.org.

182 *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.

183 *Sl. glasnik RS*, 22/15.

184 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.

185 *Sl. glasnik RS,* 36/09 and 32/13.

186 *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/.

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.

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)).

The Employment Adviser service developed by the association Our Home was piloted in 2019. Employment advisers extend support to their clients by developing support plans for them, empowering them, contacting and negotiating with employers, helping their clients on the job and liaising between them and the employers as long as necessary. The development of this service is expected to greatly facilitate employment of persons with intellectual disabilities and "move" this issue from the realm of social to economic policy, which will benefit not only the clients and employers, but society on the whole as well.

Social entrepreneurship, perceived as an extremely promising form of employment of persons with disabilities, has been gradually developing in Serbia. Some enterprises have excelled in employing persons with mental disabilities and providing them with excellent working conditions and have become renowned for their innovativeness and quality products.[187] As opposed to other forms of engagement, such as Work Centres, staff of social enterprises are working in the open labour market, earning salaries proportionate to their work that may not be lower than the statutory minimum wage. The drafting of a law on social entrepreneurship was under way at the end of the reporting period; social enterprises have been operating under company law and the Act on the Employment and Special Rehabilitation of Persons with Disabilities.

187 One of them is Our Home. More about its work is available in Serbian at: http://nashakuca.blogspot.com/.

3.9. Health Care

Under Article 20 of the Health Care Act,[188] 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 2019–2026 national Mental Health Protection Programme[189] was adopted in December 2019. The Programme recognises the problem of long-term hospitalisation of people with chronic psychoses and intellectual problems, as well as the poor conditions and overcrowding of the institutions and notes that the human rights of the patients are not respected. Its authors also alert to the lack of community-based mental health centres and other outpatient services prerequisite for deinstitutionalisation. They note that outdated psychiatric methods are often used in the treatment of the patients and specify improvement of the quality of health care and respect for the patients' human rights "in accordance with international standards and best practices" as one of the main objectives of the Programme. The Programme is commendably accompanied by an Action Plan, as opposed to its predecessor, where lack of such a plan impinged on its implementation and fulfilment of its goals.

No amendments have been made to the Act on the Protection of Persons with Mental Disabilities[190] despite recommendations by international bodies.[191] 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.

188 *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.

189 2019–2026 Mental Health Protection Programme, *Sl. glasnik RS*, 84/19.

190 *Sl. glasnik RS* 45/13.

191 The CRPD in 2016 urged Serbia to repeal this law because it contains provisions grossly violating the rights of persons with mental disabilities.

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.[192]

4.1. Legal Framework

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 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)[193] is the main law governing the protection of

192 See more at: https://goo.gl/U2bLhc.

193 *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.

national minorities, while their association in National Minority Councils is regulated by the National Councils of National Minorities Act (NCNMA).[194] The Official Use of Scripts and Languages Act[195] is also relevant to the rights of national minorities. All three laws were amended in June 2018.[196]

The 2018 amendments to the Vital Records Act[197] provide 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.

The amended Guidance on the Keeping of Vital Records and Templates entered into force on 1 January 2019.[198] The personal names of children, parents, spouses and deceased persons belonging to national minorities shall be inscribed in their minority languages and scripts below the inscriptions in Serbian and the Cyrillic script and in the same font and size. Local self-government units providing for the official use of minority languages in their statutes shall publish bilingual vital records certificates in Serbian in Cyrillic and in the minority languages and scripts.

The law, however, still limits exercise of the right to a full personal name. Article 343 of the Family Act[199] limits the length of the first and last names to a maximum of three words. This provision limits the rights of persons belonging to ethnic communities that have different naming customs, e.g. give their children middle names and add the surnames of both parents to their given names.

Another outstanding problem is the inscription of surnames in communities such as the Bulgarian or Slovak ones, where there is a traditional distinction between male and female surnames. Serbian law does not provide for gender distinction and all the surnames are male.

4.2. National Minority Councils and Minority Political Parties

The National Councils of National Minorities Act (NCNMA)[200] defines National Minority Councils (NMCs) as organisations vested with specific public powers by law to participate in decisions or independently decide on individual issues in

194 *Sl. glasnik RS*, 72/09, 20/14 – CC Decision, 55/14 and 47/18.

195 *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05 – other law, 30/10, 47/18 and 48/18 – corr.

196 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.

197 *Sl. glasnik RS*, 47/18.

198 *Sl. glasnik RS*, 93/18.

199 *Sl. glasnik RS*, 18/05, 72/11 – other law and 6/15.

200 *Sl. glasnik RS*, 72/09, 20/14 – CC Decision, 55/14 and 47/18.

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-three NMCs operated in Serbia in 2019.

Persons belonging to national minorities elected the members of their NMCs in November 2018. The elections were accompanied by reports of numerous irregularities. Minority parties and NGOs complained about the ruling party's strong pressures and aggressive rhetoric, alleging it was forcing public sector staff to register in the minority election rolls although they were Serbs and to vote for tickets under SNS control. Most of the irregularities were registered in the election of the Bosniak, Bulgarian, Romanian, Slovak and Czech NMCs.[201] After the elections, all the NMCs were constituted by the deadline provided by law.

The Vojvodina Ombudsman drafted an analysis describing the complaints about the irregularities during the NMC elections. These complaints regarded election campaign funding, pressures and blackmail by political parties, "vote buying", registration of Serbs in minority election rolls, et al. Complaints were also filed about media reports and the composition of the election committees, which included local administration staff. The Republican Election Commission, however, did not find any of the complaints well-founded.[202]

Political parties of national minorities are established and operate in accordance with the Act on Political Parties.[203] By end October 2019, 67 active national minority parties were entered in the register of political parties kept by the Ministry of State Administration and Local Self-Governments; 72 minority parties have been registered since the register was established. Two parties were deleted from the register in late 2018 and 2019 – the Subotica-based – *Magyar Remény Mozgalom* (Hungarian Hope Movement) and the Preševo-based *Bashkimi Demokratik i Luginës* (Democratic Union of the Valley) respectively.[204]

4.3. Assessments of the Protection of National Minorities in Serbia by International Bodies

The situation of national minorities is of major relevance to the conclusion of talks on Chapter 23 (judiciary and fundamental rights). In its Serbia 2019 Report, the European Commission said that the legal framework for respect for and protection of minorities and cultural rights was in place and generally upheld, in line with

201 See more in the *2018 Report*, IV.4.4.2.

202 *Analysis of the 2018 NMC Elections and Constitution of the New NMCs,* Vojvodina Ombudsman, 2018. Available in Serbian at: https://www.ombudsmanapv.org/riv/attachments/article/2127/Analiza%20-%20Izbori%20za%20nacionalne%20savete%202018.pdf.

203 *Sl. glasnik RS*, 36/09 and 61/15 – CC decision.

204 Available in Serbian at: http://mduls.gov.rs/wp-content/uploads/Izvod-iz-registra-politickih-stranaka-28102019.pdf.

the Council of Europe Framework Convention on National Minorities. It noted that the June 2018 amendments improved the legislative framework related to national minorities, but that consistent and efficient implementation of legislation and policies needed to be ensured.[205]

Like in 2018, the EC said that public broadcasting services in minority languages needed to be strengthened, especially as regards Radio Television of Serbia, and that, following the media privatisation process, the broadcasting of programmes in minority languages remained fragile and dependent on funding.[206] The only headway the EC registered was the introduction of five minutes of news in Albanian on RTS in 2018.[207] As per the 2018 NMC elections, the EC merely noted that they had been held and that the Fund for National Minorities had been further increased.[208]

The EC also noted that the 2018 amendments to the law on local self-governments strengthened the Councils for Inter-Ethnic Relations but that such Councils have still not been established and made operational in all the municipalities where this is required by law. It also observed that national minorities remained underrepresented in the public administration. The EC welcomed the adoption of the new Textbook Act in April 2018, which simplifies the procedure for import and approval of textbooks in national minority languages, and the provision of new textbooks in Albanian, but it observed that the process of preparing textbooks for secondary schools has not yet started.[209]

In late December 2019, the Council of Europe Advisory Committee published its Fourth Opinion on Serbia's implementation of the Framework Convention for the Protection of National Minorities.[210] Although the Opinion was adopted back on 26 June 2019, it was published on 18 December 2019, because the Serbian Government sent its comments to the Council of Europe only on 4 November 2019.[211]

The Advisory Committee expressed regret that hate speech was neither systematically monitored not expressly prohibited. It noted that occasional reports of police brutality against Roma continued and reiterated that it contributed to feeding distrust of minorities towards the police. The Advisory Committee said that it

205 *Serbia 2019 Report*, p. 24. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

206 *Ibid.*, pp. 27, 29.

207 *Ibid.*, p. 67.

208 *Ibid.,* p. 29.

209 *Ibid.*, p. 29.

210 *Fourth Opinion on Serbia adopted on 26 June 2019,* Advisory Committee on the Framework Convention for the Protection of National Minorities). Available at: https://rm.coe.int/4th-op-serbia-en/16809943b6.

211 Comments of the Government of Serbia on the Fourth Opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities by Serbia–received on 4 November 2019, Advisory Committee on the Framework Convention for the Protection of National Minorities. Available at: https://rm.coe.int/4th-com-serbia-en/16809943d9.

was still hard to assess whether there has been any progress in inter-ethnic relations between different groups in Serbia. The Committee generally regretted the very limited volume of disaggregated data available in Serbia regarding persons belonging to national minorities that would facilitate an analysis of their situation. The Committee said that this structural lacuna prevented the development of policies and strategies that genuinely addressed the needs of the persons concerned. As per the right to manifest one's religion, the Committee reiterated the regret it expressed in its Third Opinion that the recommendations it had previously formulated have still not resulted in any change in Serbian legislation. The Committee also regretted that the principles enshrined in the Serbian Constitution and the law were not always combined with measures for implementation, including their periodical review in consultation with persons belonging to national minorities. [212]

In its recommendations, the Advisory Committee focused on the alarming situation of the Roma minority. It highlighted the following problems: informal Roma settlements, structural discrimination faced by Roma with regard to their citizenship status, as well as housing, healthcare, education and employment, and the segregation of Roma children and school absenteeism and early dropouts among Roma children. The Committee recommended to Serbia to set up and operate, as soon as possible, a sustainable and human rights-based data collection framework on issues pertaining to the access to rights of persons belonging to national minorities, as well as to promote complementary qualitative and quantitative research in order to assess the situation of persons belonging to national minorities and on the basis of such data and research, set up, implement, monitor and periodically review minority policies with the effective participation of persons belonging to national minorities.

The Committee also called on Serbia to implement the Protector of Citizens' recommendations on Councils for Inter-Ethnic Relations, promote multicultural and intercultural perspectives in education and put in place measures to increase the representation of national minorities in the public administration. The Advisory Committee also recommended to Serbia to launch an information campaign well ahead of the next census, targeting specifically persons belonging to national minorities and to ensure their effective participation in the design of the census methodology and in the organisation and operation of such processes. The Advisory Committee also issued a number of recommendations regarding the minorities' right to manifest their religion, the work of minority media, the minorities' right to use their own languages and scripts and on the improvement of the situation of minorities living outside Vojvodina.[213]

212 *Fourth Opinion on Serbia adopted on 26 June 2019,* Advisory Committee on the Framework Convention for the Protection of National Minorities. Available at: https://rm.coe.int/4th-op-serbia-en/16809943b6.

213 *Ibid.*

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.[214] The Human and Minority Rights Office extends expert support to the Council. The Office includes a Sector for 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.[215]

In March 2016, the Serbian Government adopted the Action Plan for the Realisation of the Rights of National Minorities.[216] As opposed to 2018, when the Human and Minority Rights Office published four reports on the implementation of the Action Plan, it published only one such report by the end of the reporting period. The Eleventh Report, covering the first quarter of 2019, was published in August 2019.[217]

In her 2018 Annual Report[218] published in March 2019, the Equality Commissioner said that the number of complaints alleging discrimination on grounds of national affiliation or ethnic origin ranked sixth among all complaints filed with her office. In 2018, 59 (6%) of all complaints concerned discrimination on grounds of national affiliation, mostly in procedures before public authorities, and, notably, in the areas of education, employment and the media.

The Equality Commissioner reacted to several cases in which the rights of persons belonging to national minorities were violated in 2019. In June 2019, she issued an opinion in response to a complaint against the Director of the Novi Bečej Tourist Organisation, who had said that that "Hungarian is best learned in bed with a Hungarian woman".[219] The Equality Commissioner called on him to publicly apol-

214 *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 Human and Minority Rights Office, the Chairmen of NMCs and the Chairman of the Federation of Jewish Communities in Serbia.

215 More is available in Serbian at: http://www.ljudskaprava.gov.rs/sh/o-kancelariji/sektor-za-nacionalne-manjine.

216 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.

217 The Report is available at: https://ljudskaprava.gov.rs/sites/default/files/dokument_file/report_1–2019.pdf.

218 *2018 Annual Report*, Equality Commissioner, March 2019. Available at: http://ravnopravnost.gov.rs/en/reports/

219 "Novi Bečej Tourist Organisation Director says Hungarian is best learned 'in bed with a Hungarian woman'", *Radio 021*, 4 April. Available in Serbian at: https://www.021.rs/story/Info/Vo-

ogise to all women, especially women belonging to the Hungarian national minority.[220] In April 2019, the Equality Commissioner issued a press release sharply condemning the graffiti offensive to ethnic Hungarians that were written on the wall of the Hungarian Embassy in Belgrade.[221]

In reaction to anti-Albanian graffiti scrawled on the walls of a residential building in Zrenjanin, the Equality Commissioner in March 2019 issued a warning calling on the relevant authorities to erase them and prevent such incidents in the future.[222] The insults journalist Milomir Marić voiced against Belgrade College of Philosophy Professor Danijel Sinani because of his actual or presumed national affiliation and ethnic origin prompted the Equality Commissioner in October 2019 to issue a public warning calling on all media to comply with ethical and professional standards.[223] Earlier, in May, she issued a warning because of the insults Serbian Radical Party leader Vojislav Šešelj voiced against an ethnic Albanian baker.[224] In February 2019, the Equality Commissioner qualified as dangerous and concerning the threats against the Sandžak Human Rights Committee urging Moslems to move out of Serbia.[225] The same month, she issued a warning after an incident in Kruševac when the players of the soccer club Napredak were assaulted verbally and physically and called on the relevant authorities to find and punish the perpetrators.[226]

In his 2018 Annual Report,[227] the Protector of Citizens said that he had reviewed 64 cases concerning violations of minority rights and that such cases accounted for less than 2% of his caseload. Many of the complaints were dismissed because they did not fulfil the requirements (were filed prematurely or out of time, did not fall within the Protector's purview, were filed anonymously or suffered from formal deficiencies). Most of the complaints regarded the work of local self-governments, ministries, institutions and other public services. The Protector of Citizens issued 11 recommendations to public administration authorities. In April 2019,

jvodina/211625/Direktor-Turisticke-organizacije-Novi-Becej-izjavio-da-se-madjarski-jezik-najbolje-uci-spavanjem-s-Madjaricom.html.

220 The Equality Commissioner's opinion is available in Serbian at: http://ravnopravnost.gov.rs.

221 The Commissioner's press release of 14 April 2019 is available in Serbian at: http://ravnopravnost.gov.rs.

222 The Equality Commissioner's warning is available in Serbian at: http://ravnopravnost.gov.rs/upozoren%d1%98e-zbog-grafita-protiv-albanaca-u-zren%d1%98aninu-cir/.

223 The Equality Commissioner's warning is available in Serbian at: http://ravnopravnost.gov.rs/upozorenje-za-javnost-zbog-vredanja-rektorke-i-profesora-cir/.

224 The Equality Commissioner's warning is available in Serbian at: http://ravnopravnost.gov.rs/upozoren%d1%98e-za-javnost-cir4/.

225 The Equality Commissioner's warning is available in Serbian at: http://ravnopravnost.gov.rs/upozorenje-za-javnost-povodom-pretnji-i-napada-na-nvo-cir/.

226 The Equality Commissioner's warning is available in Serbian at: http://ravnopravnost.gov.rs/saopstenje-povodom-napada-na-fudbalere-africkog-porekla-u-krusevcu-cir/.

227 *2018 Annual Report,* Protector of Citizens. Available at: https://www.ombudsman.org.rs/attachments/article/145/Regular%20Annual%20Report%20of%20the%20Protector%20of%20Citizens%20for%202018.pdf.

the Protector of Citizens issued a decision to disband his office's National Minority Rights Council.[228]

The realisation of minority rights in the Autonomous Province of Vojvodina is monitored by the First Deputy of the Vojvodina Ombudsman. The Vojvodina Ombudsman's 2018 Annual Report,[229] which was published in March 2019, described complaints of irregularities that occurred during the 2018 NMC elections and noted that the Republican Election Commission did not find any of the 15 complaints submitted to it well-founded. The Vojvodina Ombudsman published a separate report analysing the NMC elections and the constitution of these Councils.[230]

5. Women's Rights and Gender Equality

5.1. Legal Framework

The Republic of Serbia has ratified the main universal instruments guaranteeing human rights and prohibiting discrimination,[231] including discrimination on grounds of sex/gender. Article 15 of the Serbian Constitution sets out that the state shall guarantee the equality of men and women and develop equal opportunity policies. These safeguards, including the state's obligation to develop equal opportunity policies, rank Serbia among the few countries that guarantee the equality of women and men in their Constitutions.[232] The Constitution explicitly lays down that special state measures introduced to achieve full equality of individuals or group of individuals in a substantially unequal position compared with other citizens shall not be deemed discrimination.[233] This provision is extremely important for achieving gender equality and improving the status of women, because women in Serbia are still victims of discrimination in all walks of life, notwithstanding the good legislative framework.

The Anti-Discrimination Act[234] and the Gender Equality Act[235] are particularly relevant in the context of women's rights and gender equality. The Anti-Dis-

228 The Decision is available in Serbian at: https://www.pravamanjina.rs/attachments/article/700/odluka.PDF.

229 The Report is available at: https://www.ombudsmanapv.org/riv/attachments/article/2142/Godisnji_izvestaj_PZG-ombudsmana_2018.pdf.

230 *Analysis of the 2018 NMC Elections and Constitution of the new NMCs*, Vojvodina Ombudsman, 2018. Available in Serbian at: https://www.ombudsmanapv.org/riv/attachments/article/2127/Analiza%20-%20Izbori%20za%20nacionalne%20savete%202018.pdf.

231 The list of ratified international treaties is available in Chapter I.1.

232 *Comment of the Constitution of the Republic of Serbia*, Konrad Adenauer Stiftung, Belgrade, 2009. Available in Serbian at: http://mojustav.rs/wp-content/uploads/2013/03/Komentar-Ustava-RS-dr-Marijana-Pajvancic.pdf.

233 Constitution, Article 21(4).

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

235 *Sl. glasnik RS*, 104/09.

crimination Act is a general law establishing a comprehensive system of protection from discrimination; it governs the general prohibition of discrimination, forms and cases of discrimination, and procedures for protection from discrimination. Articles 5–21 of the Act deal with direct and indirect discrimination, violations of the principle of equal rights and obligations and prohibit calling to account individuals seeking protection from discrimination, establishment of associations to perpetrate discrimination, hate speech, harassment and degrading treatment. Article 13(1(5)) defines multiple discrimination as discrimination against individuals based on two or more of their personal characteristics and qualifies it as a grave form of discrimination.

The Anti-Discrimination Act devotes an entire chapter to specific cases of discrimination,[236] including discrimination on grounds of gender, which entails treatment of individuals contrary to the gender equality principle and/or the principle of respect of the equal rights and freedoms of women and men in political, economic, cultural and other aspects of public, professional, private and family life (Art. 20(1). Art. 20(2) prohibits denial of rights and public or covert allowance of privileges based on sex or sex change, incitement of physical or other kinds of violence, exploitation, expression of hatred, disparagement, blackmail and harassment on grounds of gender, as well as public advocacy, condoning and treatment based on prejudice, customs and other social clichés of behaviour, which rest upon the idea of the inferiority or superiority of one sex over another, i.e. stereotypical roles of the sexes.

The Gender Equality Act is a separate anti-discrimination law governing the creation of equal opportunities for men and women to exercise their rights and fulfil their obligations, special measures for preventing and eliminating sex and gender discrimination and the legal procedure for protection from such discrimination.

A new gender equality law, drafted for five years now, was not adopted by the end of the year. Serbia slipped from 38th to 39th place among the 153 countries ranked in 2019 by the World Economic Forum in its Global Gender Gap Report.[237]

5.2. Institutional Gender Equality Mechanisms

Institutional gender equality mechanisms (GEMs) have been established at all government levels in Serbia. At the national level, the Gender Equality Coordination Body, operating as part of the executive government, is tasked with providing guid-

236 They include: discrimination in proceedings before public authorities, in employment, in the provision of public services and use of public areas and facilities and in the field of education and professional development; age discrimination; religious discrimination; discrimination on grounds of gender, political or union affiliation, health and sexual orientation; and, discrimination against children, national minorities and persons with disabilities.

237 *Global Gender Gap Report 2020*, World Economic Forum, 2019, p. 305. Available at: http://www3.weforum.org/docs/WEF_GGGR_2020.pdf.

ance to public administration authorities and other institutions with a view to improving the status of women and men in Serbia. The National Assembly has a Committee for Human and Minority Rights and Gender Equality. Local GEMs (bodies or individuals) have been established/appointed in 129 cities and municipalities.[238] Furthermore, promotion of gender equality is within the remits of the Protector of Citizens and the Equality Commissioner (Equality Commissioner), as well as the Vojvodina Ombudsman.[239]

Serbia was the first non-EU country to introduce a Gender Equality Index[240] in 2016 to measure equality[241] in six domains: knowledge, work, money, health, time and power, and two satellite domains: violence and intersecting inequalities.[242] The Gender Equality Index in Serbia was developed twice, according to 2014 and 2016 data; its value rose by 3.4 points in two years and stood at 55.8 points in 2016. The value of the Gender Equality Index in Serbia was 10.4 points lower than the EU average.[243]

Given the increase in the share of women MPs and ministers, Serbia's scores in the sub-domains of political and economic power are higher than the EU average. Serbia, however, needs to promote gender equality in various areas,[244] especially the social power sub-domain, where it ranks last.

Although Serbia ranks higher than the EU average in political power, it needs to be borne in mind that the share of women in senior local government offices is very low – essentially, the higher the decision-making position, the lower the share of women. Results of a survey conducted in 143 local self-governments showed that women were mayors of only 7.9% cities and municipalities and chaired only 14.4% of the city/municipal assemblies, and that no Roma women or women with disabilities held any decision-making positions.[245] All this demonstrates that Serbia lacks adequate gender policies and that the GEMs are insufficiently functional.

238 Standing Conference of Towns and Municipalities (SCTM), Gender Equality in Serbia, Aggregate Data. Available in Serbian at: http://rr.skgo.org/.

239 Serbia has committed to the gradual alignment of its legislation with the *acquis communautaire* and has made some progress, mostly reflected in the adoption of regulations relevant to this field.

240 M. Babović, *Gender Equality Index in the Republic of Serbia. Measuring Gender Equality in the Republic of Serbia 2014*, Serbian Government, Social Inclusion and Poverty Reduction Unit (SIPRU),Belgrade, 2016.

241 A 1–100 scale is used, with 1 denoting total inequality and 100 full equality.

242 See more at: *Gender Equality Index,* European Institute for Gender Equality EIGE. Available at: https://eige.europa.eu/gender-equality-index.

243 M. Babović, *Gender Equality Index in the Republic of Serbia. Measuring Gender Equality in the Republic of Serbia 2016*, Serbian Government, SIPRU, Belgrade, 2018, p. 6.

244 *Ibid.,* p. 9.

245 *Special Report on Representation of Women in Decision-Making Positions, and the Position and Activities of Local Gender Equality Mechanisms in Local Self-Government Units in Serbia*, Protector of Citizens, Belgrade, 2018. Available at: https://ombudsman.rs/attachments/article/5902/Zastitnik%20gradjana%20engleski.pdf.

Serbia is one of the rare countries that introduced the legal obligation of gender-responsive budgeting[246] when it adopted its 2015 Budget System Act recognising the promotion of gender equality as one of the budget goals.[247] This law also introduced gender-responsive budgeting as an obligation in the planning and execution of budgets, envisaging its gradual introduction in the 2016–2020 period.[248] Fifty-three national and provincial institutions funded from the budget applied gender-responsive budgeting in 2019; 72 such institutions are to apply gender-responsive budgeting in their 2020 budgets.[249]

The 2016–2020 National Gender Equality Strategy[250] and its 2016–2018 Action Plan were adopted in 2016. The evaluation of the Action Plan was conducted only in mid-2019.[251] It showed that the goals and objectives were relevant and targeted gender inequality areas and problems, but that there were deficiencies arising from the absence of an explicit and comprehensive theory of change, gender segregation in education, and a gender gap in wages and social contributions. The evaluation also showed that the Action Plan had ben implemented with uneven effectiveness, with most effective implementation in the area of system-wide changes induced by the introduction of gender mainstreaming mechanisms and less effective implementation in the areas of changing the culture of gender equality and promoting equal opportunities.[252]

Furthermore, the implementation of the Action Plan was found to be unsatisfactory at the local level; national-local level coordination mechanisms were qualified as inadequate; the factors inhibiting effective implementation were related to inconsistencies in measures, fragmented and small-scale interventions, lack of funds and unclear competences and weak coordination mechanisms. On the other hand, the implementation of the Action Plan resulted in increased participation of women in legislative power, gender sensitive statistics and safety of women from

246 Gender Responsive Budgeting (GRB) is an innovative public policy tool for assessing the impact of policies and budgets from the gender perspective and for ensuring that policies and their budgets do not perpetuate gender inequalities but contribute to a more equal society for women and men.

247 Article 4(1(4)), Budget System Act, *Sl. glasnik RS*, 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13 – corr., 108/13, 142/14, 68/15 – other law, 103/15, 99/16, 113/17, 95/18, 31/2019 and 72/19.

248 Gender Responsive Budgeting, Introduction of Gender Responsive Budgeting in the Republic of Serbia 2019, UN Women. Available at: https://serbia.un.org/sites/default/files/2019–08/UNW_GRB_%202019_ENG%20_layout%20DIGITAL.pdf, https://www.undp.org/content/dam/unct/serbia/docs/Publications/UNW_GRB_%202019_SRB%20_layout%20DIGITAL.pdf.

249 *Ibid*.

250 *Sl. glasnik RS*, 4/16.

251 *Evaluation of the National Action Plan for the Implementation of the Serbia National Strategy for Gender Equality Final Report*, SeCONS, Belgrade, 2019. Available in Serbian at: https://www.secons.net/files/publications/99-publication.pdf.

252 *Ibid.,* pp. 12–13.

gender-based and domestic violence.[253] The second National Action Plan, to have covered the 2019–2020 period, was not adopted by the end of 2019 although public consultations on the draft were held in five Serbian cities in March 2019.[254]

5.3. *Equality and Non-Discrimination*

A public debate on the draft amendments to the Anti-Discrimination Act[255] was held in September 2019, but this law was not adopted by the end of the reporting period. In its Serbia 2019 Report,[256] the European Commission emphasised the need to intensify the pace of reforms on rule of law and further align national law with EU anti-discrimination regulations and standards. It noted that specific groups of women were constantly exposed to multiple discrimination. The EC also expressed concern about the role of the media in perpetuating gender stereotypes and minimising gender-based violence.[257]

In March 2019, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) published its Concluding observations on the fourth periodic report of Serbia[258] in which it reiterated its 2013 recommendations regarding discriminatory gender stereotypes, employment, women's health and temporary special measures.

The CEDAW Committee also expressed concern about reports of high levels of discriminatory gender stereotypes hindering the advancement of women's rights, increased instances of anti-gender discourse in the public domain and the public backlash in terms of the perception of gender equality, and misogynistic statements expressed in the media, including by high-ranking politicians, religious leaders and academics, with impunity, as well as promotion of a highly conservative idea of a traditional family, with women primarily regarded as mothers.[259]

253 *Ibid*.

254 Consultations on the 2019–2020 NAP for the Implementation of the National Gender Equality Strategy, SIPRU, 1 March. Available in Serbian at: http://socijalnoukljucivanje.gov.rs/rs/konsultacije-o-nap-za-sprovodjenje-nacionalne-strategije-za-rodnu-ravnopravnost-2019–2020/.

255 SIPRU, Public Debate on the Preliminary Draft Act Amending the Anti-Discrimination Act, 10 September 2019. Available in Serbian at: http://socijalnoukljucivanje.gov.rs.

256 *Serbia 2019 Report*. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf.

257 *Ibid.*

258 Concluding observations on the fourth periodic report of Serbia, CEDAW, 8 March. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/SRB/CO/4&La.

259 Platform of Organisations for Cooperation with UN Human Rights Mechanisms, "Discriminatory gender stereotypes impeding improvement of women's rights," 13 March 2019. Available in Serbian at: https://platforma.org.rs/diskriminatorni-rodni-stereotipi-ometaju-unapredenje-pravazena/.

The position of women in the labour market and in employment left a lot to be desired. The austerity measures introduced in 2014 disproportionately affected women. Gender inequalities in the labour market are pronounced and employment policies are not gender mainstreamed. The gender gap in employment rates is constant and the labour market is characterised by gender segregation by sector and occupation. There is also a gender gap in wages and women are much less active in the labour market because of their inability to reconcile their professional and family lives due to the lack of adequate services.[260]

A public opinion survey[261] conducted in 2019 by the Equality Commissioner (and using the standard questionnaire, facilitating comparison of the results) shows that the respondents recognise the importance of the problem of discrimination to a greater extent than in 2016. Two-thirds of them said that there was a substantial degree of discrimination in Serbia; in their view, most of the discrimination occurs in the labour market.[262] Many respondents listed Roma, women, the LGBT population, persons with disabilities, the poor and the elderly as the most discriminated against groups.[263]

The Equality Commissioner's survey on the situation of elderly women in Serbia showed that 54% of them specified their poor socio-economic status as their greatest problem and that only a sixth of them said their monthly income sufficed to make ends meet. Elderly women bear higher medical costs and nearly a half of them (47%) financially support their children and grandchildren, which further exacerbates their economic situation.

Furthermore, elderly women in Serbia have lesser access to quality health care; 86% of them said that health professionals treated them with less respect because of their age and routinely referred them to private health care providers for specialist examinations, to bypass the long waiting times for such examinations in the state health institutions. They are thus practically deprived of specialist health services in case they cannot afford them. The survey results also show a major discrepancy between the number of women who needed and who received welfare support; for instance, only 1.1% of the respondents were receiving financial allowances, while as many as 44.5% said they were in need of them. Furthermore, elderly women face challenges in using public services and public transportation, as well as in par-

260 Analysis of the State of Social and Economic Rights in the Republic of Serbia – Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights, Centre for Dignity at Work, Belgrade, 2019. Available in Serbian at: http://www.centaronline.org/userfiles/files/preuzimanje/CDR-izvestaj.pdf.

261 *Public Opinion Survey Report Citizens' Attitudes towards Discrimination in Serbia,* Equality Commissioner, Belgrade, 2019. Available in Serbian at: http://ravnopravnost.gov.rs/izvestaji-i-publikacije/istrazivanja/.

262 *Ibid*.

263 *Ibid*.

ticipating in cultural and other community activities. The respondents also alerted to the problem of violence – 14% said that they were abused.[264]

Women with disabilities are victims of multiple discrimination. Data indicate that the educational levels of all persons with disabilities are extremely low, but even lower among women with disabilities. There are fewer women than men with disabilities among job-seekers as well. Furthermore, women with disabilities face barriers in accessing health services, particularly regarding the protection of their sexual and reproductive health. Health professionals are insufficiently sensitised to extending health care to this category of the population, the services are not fully tailored to their needs and the health institutions lack adequate medical equipment.[265]

Roma women are also victims of multiple discrimination. Their health situation is much worse than that of the non-Roma population, inter alia, due to inadequate living conditions, poverty, early marriage and motherhood, as well as difficulties in accessing health care and health services, including the prejudices of health professionals.[266] Roma women are still at risk of child marriages, which society recognises as a problem but tolerates, ascribing it to the Roma tradition, although the causes of early marriages are primarily gender-based discrimination, poverty, lack of education and inadequate institutional responses to child marriages.[267]

5.4. Violence against Women

Despite some efforts to extend adequate protection to women, violence against women was still widespread in Serbia. The latest OSCE survey of violence against women, which included Serbia,[268] showed that as many as 70% of the women have experienced some form of sexual harassment, stalking, intimate partner violence or non-partner violence (including psychological, physical or sexual violence) since the age of 15.[269]

264 "Survey of the Status of Elderly Women in Serbia", Equality Commissioner, Belgrade, 2019. Available in Serbian at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2019/08/Polozaj-starijih-zena-u-Srbiji-10.4.2019.-digitalna-verzija.pdf.

265 *Reproductive Health of Women with Disabilities in AP of Vojvodina*, Vojvodina Ombudsman, Novi Sad, 2018, pp. 61–63. Available in Serbian at: https://www.ombudsmanapv.org/riv/index.php/istrazivanja/2125-istrazivanje-reproduktivno-zdravlje-zena-sa-invaliditetom.html?lang=sr-YU.

266 *National Report on the Implementation of CEDAW and the Istanbul Convention in Serbia – Discrimination and Violence against Roma Women,* Roma Women's Centre Bibija, Belgrade, 2019, p. 57. Available at: http://www.bibija.org.rs/images/cedaw/National__report_Republic_of_Serbia_compressed.pdf.

267 *Ibid*.

268 The OSCE Survey covered Albania, Bosnia and Herzegovina, North Macedonia, Serbia, Kosovo*, Moldova and Ukraine.

269 *OSCE-led Survey on Violence against Women: Well-being and Safety of Women*, OSCE, Vienna, 2019, p. 6. Available at: https://www.osce.org/secretariat/413237?download=true.

In 2013, Serbia ratified the Council of Europe Convention on *preventing* and combating *violence against women* and domestic violence (Istanbul Convention),[270] which is the first and only binding CoE instrument governing violence against women. The ratification of this Convention imposes upon Serbia the obligation to amend its criminal law and assume responsibility for the establishment and adequate provision of general and specialised services to prevent violence against women and protect women. Despite specific measures taken in 2016, national criminal law has not yet been brought fully into compliance with the Convention (e.g. the provisions on rape).[271]

The Convention provides for the establishment of an independent expert body to monitor the implementation of the Convention at the national level (GREVIO). Serbia submitted its first report to GREVIO in 2018.[272] Women rights NGOs submitted their shadow reports to GREVIO, in which they alerted to the problems and challenges in the implementation of the Convention.[273]

One of them, the Autonomous Women's Center, said that a new national strategy on preventing and combating domestic and intimate partner violence against women has not been adopted yet although the previous one expired in 2015 (the latter was never evaluated).[274] Many women's organisations with years-long experience in helping women victims of violence said that the situation resulting from the inconsistent enforcement of protocols for the prevention of domestic and intimate partner violence against women, adopted for the Ministry of Internal Affairs, Ministry of Labour, Employment and Veteran and Social Issues, Ministry of Justice and Ministry of Health, and the absence of mechanisms for their implementation, was exacerbated by the adoption of the Domestic Violence Act,[275] which created a gap allowing discretionary interpretations of regulations and jurisdictions.[276]

270 *Sl. glasnik RS (Međunarodni ugovori)*, 12/13.

271 Analysis of the Compliance of the Serbian Legislative and Strategic Framework with the Council of Europe Convention on *preventing* and combating *violence against women* and domestic violence, Autonomous Women's Center, Belgrade, 2014.

272 *Report submitted by Serbia pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)*, 2018. Available at: https://rm.coe.int/state-report-serbia/pdfa/168094afec.

273 The seven shadow reports are available at: https://www.coe.int/en/web/istanbul-convention/serbia.

274 *Improved Legislation Failed Protection, Independent report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence*, Autonomous Women's Center, Belgrade, 2018, p. 7. Available at: https://rm.coe.int/improved-legislation-failed-protection-independent-awc-s-report-to-gre/16808e2f8b.

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

276 *NGO report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Serbia*, SOS Vojvodina et al, Kikinda, December 2018, pp. 11–15. Available at: http://sosvojvodina.org/wp-content/uploads/2019/01/VSOSN-Independent-GREVIO-REPORT-2018.-.pdf.

In their shadow report to GREVIO, FemPlatz and the Mental Disability Rights Initiative-Serbia focused on violence against women with mental disabilities in Serbian residential institutions.[277] They said that life in a residential institution was characterised by lack of privacy, inability to make decisions about one's own life, social exclusion, and violation of fundamental human rights and dignity of person, but that it also represented a high risk of violence, abuse, and neglect. They went on to say that, although precise data were not available, most women with intellectual and psychosocial disabilities in institutions were deprived of their legal capacity and put under guardianship, which means that their guardians decide where and whom they will live with, about their medical treatments and interventions, pregnancies, abortions, parenthood, et al. The NGOs said that women with disabilities in residential and psychiatric institutions have been exposed to various forms and manifestations of gender-based violence and were at greater risk of abuse, exploitation, and sexual abuse, including rape.[278]

The few surveys on violence against Roma women show that this is a serious social problem, that around 90% of Roma women have been subjected to some form of physical and/or sexual abuse since the age of 18, and that they are more reluctant to report domestic and intimate partner violence than non-Roma women.[279] Roma women are aware of the existence of shelters, but many of them say that they do not dare take such a step because they believe that they would be condemned by their relatives and neighbours, because they mistrust the institutions and are concerned about the lack of support after leaving the shelter.[280]

On the other hand, Roma women have had trouble availing themselves of shelter services. Over half of the Roma women who participated in a survey[281] quoted the following reasons for not going to a shelter when they needed to: lack of understanding for Roma women in situations of violence; stereotypes and prejudices against Roma women; obstruction of placement by professionals in institutions; they themselves decided not to go to a shelter out of fear, shame, et al, and the fact that they can stay in a shelter only for a short period of time.[282]

277 *Submission on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Serbia*, Joint submission, Women's rights organization FemPlatz and Mental Disability Rights Initiative (MDRI-S), Pančevo and Belgrade, January 2019. Available at: https://rm.coe.int/2019–01–18-grevio-submission-femplatz-mdri-s/168091f1ab.

278 *Ibid*.

279 *National Report on the Implementation of CEDAW and the Istanbul Convention in Serbia – Discrimination and Violence against Roma Women,* Roma Women's Centre Bibija, Belgrade, 2019, p. 58. Available at: http://www.bibija.org.rs/images/cedaw/National__report_Republic_of_Serbia_compressed.pdf.

280 *Ibid*.

281 *Special report to GREVIO Committee*, Association of Roma Novi Bečej, et al., 2018, p. 11. Available at: https://rm.coe.int/arnb-grevio-shot-report/16808e64a7.

282 *Ibid*.

The Domestic Violence Act, which has been in force since mid-2017, aims to regulate the state's actions geared at preventing and protecting from domestic violence in a general and uniform manner. According to October 2019 data, 109,000 domestic violence reports were filed and 30,000 individual victim protection plans were developed in the 27 months since this law came into effect.[283] A total of 27,042 emergency protection orders were issued and 16,000 of them were extended in 2018; 23,097 emergency protection orders were issued and 12,675 of them extended in 2019.[284]

Results of a survey on gender and small arms show that women account for 64.2% of all people killed by their family members. Of all murders committed by family members, 42.2% were committed by the victims' intimate partners; women accounted for the vast majority of these victims – 88.1%. Over half of the domestic violence cases involving firearms (51.9%) were fatal. The likelihood of a fatal outcome was the highest in domestic violence incidents and more than three times higher than in a criminal context.[285]

Serbia still lacks reliable official statistics on femicide. Data on the number of killed women are mostly collected from media reports.[286] Twenty-seven of the 35 women killed in 2018 had never reported their abusers before they were killed. Fifteen of the 28 women killed by mid-November 2019[287] had never reported their abusers.[288] A body that would be charged with monitoring femicide in Serbia was not established by the end of the reporting period, although such a promise was made back in 2018 by Zorana Mihajlović, the Chairwoman of the Gender Equality Coordination Body.[289]

The first inter-disciplinary research of femicide, conducted in Serbia in 2018–2019, included a quantitative analysis of all 2015–2017 case law on femicide in Serbia, a qualitative analysis of 10 case studies, interviews with professionals charged with

283 "Effects of the Implementation of the Domestic Violence Act", *Pravni portal*, 4 October. Available in Serbian at: https://www.pravniportal.com/efekti-primene-zakona-o-sprecavanju-nasilja-u-porodici/.

284 "Statistics on violence against women in Serbia still disastrous," *Danas*, 14 November. Available in Serbian at: https://www.danas.rs/drustvo/statistika-o-nasilju-nad-zenama-u-srbiji-jos-uvek-porazavajuca/.

285 Gender and Small Arms in Serbia, Fast Facts, Belgrade, UNDP SEESAC, 2019, pp. 9–21. Available at: http://www.seesac.org/f/docs/Gender-and-SALW/Gender-And-Small-Arms_SERBIA_ENG_WEB.pdf.

286 More on the website of the Women against Violence Network: https://www.zeneprotivnasilja.net/.

287 The death toll rose to 29 by 21 December 2019, after media reported that one woman was killed in the second half of November.

288 "Statistics on violence against women in Serbia still disastrous," *Danas*, 14 November. Available in Serbian at: https://www.danas.rs/drustvo/statistika-o-nasilju-nad-zenama-u-srbiji-jos-uvek-porazavajuca/.

289 "Mihajlović: body to monitor femicide to be formed," *Danas,* 18 May 2018. Available in Serbian at: https://www.danas.rs/drustvo/mihajlovic-formirati-telo-za-pracenje-femicida.

the prevention of and protection from violence, in-depth interviews with the killers and interviews with women's organisations extending support to women in situations of violence.[290]

The research results show that 74% of the women were killed by their family members or intimate partners – 49.3% of the women were killed by their spouses, civil law or intimate partners. Furthermore, 68% of the murders were committed in the homes, apartments or yards of the victims or the killers, which indicates that the home is still the least safe place for women.[291] The research showed that the courts focused on the perpetrators and that little information was collected about the victims – 89.7% of the case files lacked information about the victims' education, 69.1% on their employment status, 41.2% on whether they were married or had children, while 41.2% lacked information whether they had sought protection from the relevant institutions before they were killed.[292] Nearly one half of the victims (47.1%) had not asked any institutions for assistance or protection in situations of violence. The research showed that most of the murders were brutal and cruel and committed by use of physical force, various objects, knives and firearms. The relationships between the victims and their killers had mostly been bad and the murders had been preceded by arguments and quarrels, with or without physical abuse.[293]

The CEDAW Committee issued Serbia a number of recommendations regarding violence against women, inter alia, to: conduct a survey on the prevalence and causes of gender-based violence against women and girls, ensuring that it covers vulnerable and disadvantaged categories of women; develop a comprehensive strategy and action plan to eliminate all forms of gender-based violence against women; ensure that cases involving all forms of violence against women, including rape, are properly investigated, that perpetrators are prosecuted and punished with sanctions commensurate with the gravity of the crime; strengthen multi-sectoral cooperation for preventing and combating all forms of gender-based violence and providing services to victims; ensure that all women who are victims of gender-based violence have unimpeded access to effective protection from violence; and, enhance its system for collecting and monitoring cases of all forms of gender-based violence, while ensuring the disaggregation of data by type of violence and by relationship between perpetrator and victim.[294]

290 The research was conducted within the project "Eradication and Prevention of Femicide in Serbia", implemented by the Novi Sad-based House of Gender Knowledge and Policies, the Pančevo-based NGO FemPlatz and the Women's Research Centre for Education and Communication in Niš.

291 "Social and Institutional Response to Femicide in Serbia I", FemPlatz, Pančevo, 2019. Available in Serbian at: http://femplatz.org/index.php?t7.

292 *Ibid*.

293 *Ibid*.

294 Concluding observations on the fourth periodic report of Serbia, CEDAW, 8 March 2019, para. 24. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/SRB/CO/4&La

Appendix I

The Most Important Human Rights Treaties Binding on Serbia

- Act Amending the Act on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG* (*Međunarodni ugovori)*, 5/05.
- Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature and committed through computer systems, *Sl. glasnik RS*, 19/09.
- Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data regarding Supervisory Authorities and Transborder Data Flows, *Sl. glasnik RS* (*Međunarodni ugovori)*, 98/08.
- Additional Protocol to the Criminal Law Convention on Corruption, *Sl. glasnik RS*, 102/07.
- Agreement between the Republic of Serbia and the European Community on the Readmission of Persons Residing without Authorisation, *Sl. glasnik RS,* 103/07.
- Agreement between the Republic of Serbia and the European Community on Visa Facilitation, *Sl. glasnik RS,* 103/07.
- Agreement on Amending and Accessing the Central Europe Free Trade Agreement – CEFTA 2006.
- Civil Law Convention on Corruption, *Sl. glasnik RS*, 102/07.
- CoE Convention on Action against Trafficking in Human Beings, *Sl. glasnik RS*, 19/09.
- CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, *Sl. glasnik RS*, 19/09.
- Convention against Discrimination in Education (UNESCO), *Sl. list SFRJ (Addendum)*, 4/64.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SFRJ (Međunarodni ugovori)*, 9/91.
- Convention UN against Transnational Organized Crime and Protocols thereto, *Sl. list SRJ* (*Međunarodni ugovori)*, 6/01.
- Convention Concerning Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *Sl. list SFRJ (Addendum)*, 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 (Aarhus Convention), *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 (Addendum)*, 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 Long-Range Transboundary Air Pollution and Protocols thereto, *Sl. list SFRJ* (*Međunarodni ugovori)*, 11/86 and *Sl. glasnik RS* (*Međunarodni ugovori)*, 1/12.
- Convention on the Nationality of Married Women, *Sl. list FNRJ (Addendum)*, 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 (Addendum)*, 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 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* (*Addendum*), 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 (Addendum)*, 9/59 and 7/60 and *Sl. list SFRJ (Addendum)*, 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 Charter on Regional and Minority Languages, *Sl. list SCG* (*Međunarodni ugovori)*, 18/05.
- 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 Extradition with additional protocols, *Sl. list SRJ (Međunarodni ugovori)*, 10/01.
- European Convention on the International Validity of Criminal Judgments, with appendices, *Sl. list SCG* (*Međunarodni ugovori)*, 18/05.
- 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 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 Framework Convention on the Value of Cultural Heritage for Society, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- European Landscape Convention, *Sl. glasnik RS* (*Međunarodni ugovori)*, 4/11.
- Framework Convention for the Protection of National Minorities, *Sl. list SRJ (Međunarodni ugovori)*, 6/98.
- 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.
- Montreal Protocol on Substances that Deplete the Ozone Layer, *Sl. list SFRJ* (*Međunarodni ugovori)*, 16/90 and *Sl. list SCG* (*Međunarodni ugovori)*, 24/04 – other law.
- 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 Elimination of All Forms of Discrimination against Women, *Sl. list SRJ* (*Međunarodni ugovori)*, 13/02.
- 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 (Addendum)*, 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 on Heavy Metals, *Sl. glasnik RS* (*Međunarodni ugovori)*, 1/12.
- Protocol Relating to the Status of Refugees, *Sl. list SFRJ (Addendum)*, 15/67.
- Protocol on Persistent Organic Pollutants, *Sl. glasnik RS* (*Međunarodni ugovori)*, 1/12.
- 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.
- Revised European Social Charter, *Sl. glasnik RS*, 42/09.

- Safety and Health in Agriculture Convention, *Sl. glasnik RS* (*Međunarodni ugovori)*, 2/19.
- 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 (Addendum)*, 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)*, 12/05.
- UN Convention against Transnational Organized Crime and Protocols thereto, *Sl. list SRJ* (*Međunarodni ugovori)*, 6/01.
- 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.
- UN Framework Convention on Climate Change, *Sl. list SRJ* (*Međunarodni ugovori)*, 2/97.
- Vienna Convention for the Protection of the Ozone Layer, *Sl. list SFRJ* (*Međunarodni ugovori)*, 1/90.

Appendix II

Legislation in Serbia Concerning Human Rights Mentioned in the Report

- 2018–2025 HIV/AIDS Strategy and Action Plan, *Sl. glasnik RS*, 61/18.
- 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 a Single Voter Register*, Sl. glasnik RS,* 104/09 and 99/11.
- Act on Associations, *Sl. glasnik RS*, 51/09 and 99/11 – other law.
- 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 Financial Support for Families with Children, *Sl. glasnik RS,* 113/17 and 50/18.
- Act on Health Documentation and Health Records, *Sl. glasnik RS*, 123/14, 106/15 and 105/17.
- 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 Mediation in Dispute Resolution, *Sl. glasnik RS,* 55/14.
- 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 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 Protection of the Population from Communicable Diseases, *Sl. glasnik RS*, 15/16.
- Act on Public Prosecutor's Offices, *Sl. glasnik RS*, 116/08, 104/09, 101/10 and 171/14.

- 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 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.
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The social and political circumstances in Serbia in 2019 were not in the least conducive to the realisation of human rights for many reasons. Populist rhetoric and persistent warnings that the security of the state was jeopardised created a climate of fear among the citizens and increased the experts' reluctance to criticise the public authorities' decisions in their respective fields, but they also led to large-scale civic resistance. Political influence on nearly all walks of life predominated, institutions continued crumbling, as did tolerance, while the situation of particularly vulnerable categories of the population was exacerbated by lack of solidarity.

The civic protests staged across Serbia throughout the year provided a ray of hope that the leading politicians would hear the voice of the citizens. That ray was, however, dimmed by the unsuccessful attempt of a dialogue between the government and the opposition on election conditions in the run-up to the 2020 parliamentary elections.

The year 2019 was marked by increasingly frequent attacks by representatives of the legislative and executive authorities on individuals, civil society activists, judges and prosecutors, independent media and investigative reporters and journalists covering and reporting on the work of the state authorities, on trade unions alerting to work-related problems, university professors and students, simply, on anyone who did not share their opinions and who was prepared to publicly criticise them. Especially dangerous were the attacks on and criticisms of judicial professionals, which gained in intensity over the previous year and gravely undermined the principles of the rule of law and the independence of the judiciary.

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