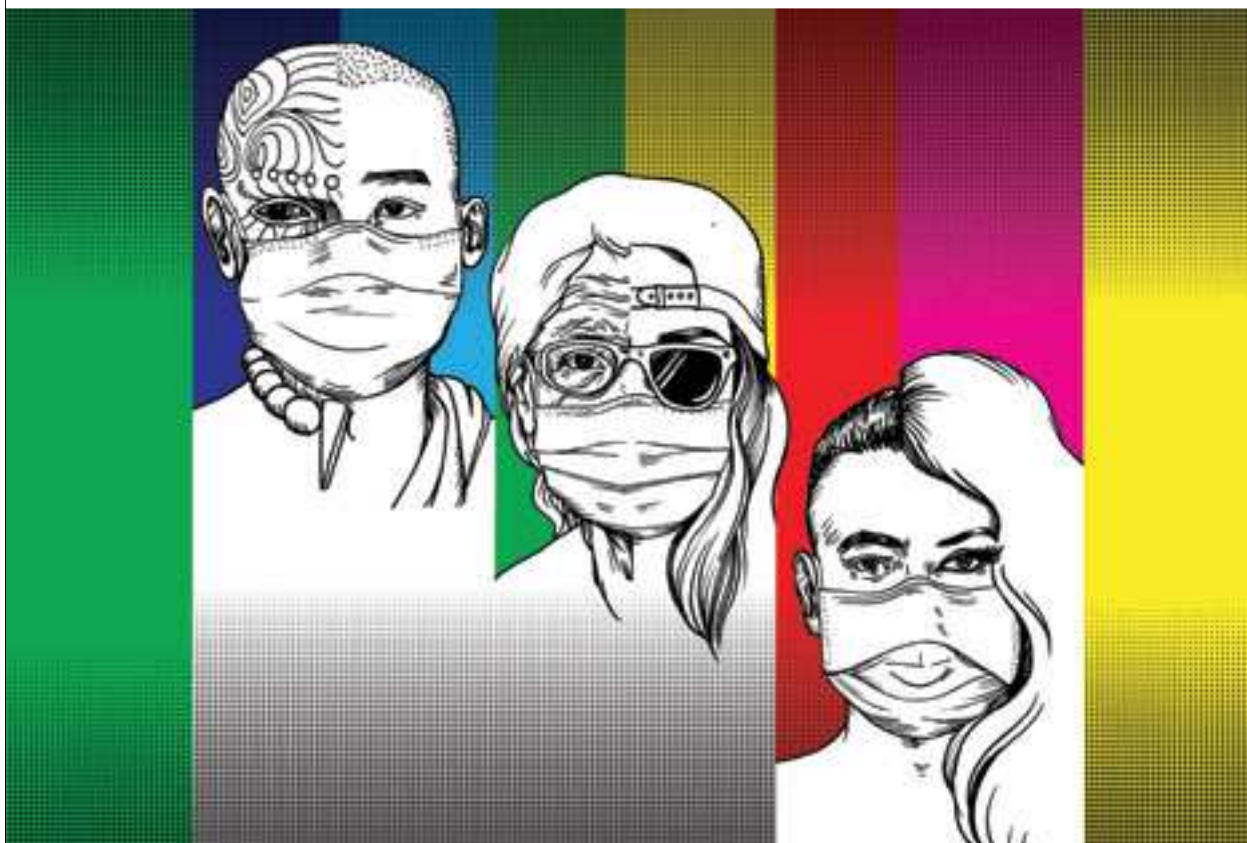


Belgrade Centre for Human Rights

HUMAN RIGHTS IN SERBIA

2020



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 2020
LAW, PRACTICE AND INTERNATIONAL
HUMAN RIGHTS STANDARDS

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The views herein expressed are solely those of the authors and contributors and do not necessarily reflect the official position of the Ministry of Foreign Affairs of the Federal Republic of Germany, the Embassy of the Federal Republic of Germany in Belgrade or the United Nations.

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Abbreviations

- 2009–2019 Reports – BCHR 2009–2019 Annual Reports on Human Rights in the Republic of Serbia
- 2020 *Semi-Annual Report* – BCHR January-July 2020 Report 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
- 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
- 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
- REM – Electronic Media Regulatory Authority

- Equality Commis- – Commissioner for the Protection of Equality
sioner
- ESC – Revised European Social Charter
- EU – European Union
- FAIPA – 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
- 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
- JAS – Journalists' Association of Serbia
- JJA – Juvenile Justice 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
- NHIF – National Health Insurance Fund
- 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

Abbreviations

- SaM – Serbia and Montenegro
- Serbia 2020 Report – Commission Staff Working Document Serbia 2020 Report
Accompanying the document Communication from the
Commission to the European Parliament, the Council, the
European Economic and Social Committee and the Commit-
tee of the Regions 2020 Communication on EU Enlargement
Policy
- SFRJ/SFRY – Socialist Federal Republic of Yugoslavia
- SIA – Security Intelligence Agency
- Sl. glasnik – Official Gazette (of the Socialist Republic of Serbia and, sub-
sequently, the Republic of Serbia)
- Sl. list – Official Herald (of the SFRY, FRY and, subsequently, Serbia
and Montenegro)
- 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
- 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 Commis- – European Commission for Democracy through Law of the
sion Council of Europe
- YIHR – Youth Initiative for Human Rights
- YUCOM – Committee of Human Rights Lawyers

Foreword

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.

The 2020 Report reviews legislation that was in force in 2020 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 2020, 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 (Commissioner), the Commissioner for the Protection of Equality (Equality Commissioner) 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 analyses 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 legal 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.

Multiple sources were perused during the preparation of this Report. They include the dailies, including *Danas*, *Politika* and *Večernje novosti*, weeklies *Vreme*, *Nedeljnik* and *NiN*, as well as reports published by the *Beta*, *FoNet* and *Tanjug* news agencies. The authors also used information published by *TV N1*, *TV Nova S*, *RTS*, *B 92*, *Informer*, as well as the *BBC*, *Voice of America*, *Radio Free Europe* and *Deutsche Welle* in Serbian, and consulted press releases and news published by *IJAS*, *JAS*, *VOICE*, the Press Council and the Culture and Information Ministry. They also used information published on the *Cenzolovka*, *Krik*, *Raskrikavanje*, *Istinomer*, *Nova.rs*, *Kurir.rs*, *Insajderonline.rs*, *SAFE JOURNALIST*, *Regionalna platforma*, *FAKE NEWS tragač*, *Autonomija*, *Južne vesti*, *Žig info*, *Infovranske.rs*, *Kolubarske.rs*, *GMinfo.rs* and *021.rs* websites.

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 Milena Ančić, Kosana Beker, Tamara Branković, Jelena Ilić, Vladica Ilić, Sofija Mandić, Aleksandar Marković, Luka Mihajlović, Nina Miholjčić, Vesna Petrović, Dušan Pokuševski, Ivan Protić, Sanja Radivojević, Vlado Radulović, Vuk Raičević, Goran Sandić, Anja Stefanović, Lazar Stefanović, Bojan Stojanović, Miloš Tasovac, Zorana Teodorović, Milana Todorović, Duška Tomanović, Ana Trifunović, Vlada Šahović and Marko Štambuk.

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.

Editors
Vesna Petrović
Dušan Pokuševski

Socio-Political Conditions for the Realisation of Human Rights

The years-long deterioration of socio-political conditions for the realisation of human rights continued in 2020. Economic difficulties pushing many citizens to the brink of poverty, widespread crime and corruption, populist rhetoric lying at the heart of and driving political activity due to the political elites' inability to address core national issues, all this has turned Serbia, a country apparently stuck in transition forever, into a community of widespread prejudice and stereotypes and great social distance towards specific groups of the population. In Serbia's totally politicised society, scoring of cheap political points has led to a deluge of hate speech in public discourse.

The Belgrade Centre for Human Rights has for years now been alerting not only to the serious problems in realising and protecting human rights, but also to the threat to the fundamental principles the Republic of Serbia is based on – rule of law, social justice, civil democracy and commitment to European principles and values. It thus came as no surprise when Serbia was scored the least since 2006 on the Economist Intelligence Unit's 2020 Democracy Index, which ranked it among "flawed democracies".

Although EU accession has purportedly remained a Government priority for eight years now, Serbia's results prove the contrary. It did not open talks on any new chapters in the reporting period and the European Commission's 2020 progress report was more critical than in the past, especially in sections on the rule of law, the status of the judiciary, media freedoms and the situation of particularly vulnerable groups. The fact that the Government has not appointed the head of Serbia's negotiation talks team for a year and a half now clearly demonstrates that EU accession is not on its priority list.

The COVID-19 pandemic brought on numerous challenges to all the countries, which took various measures to address them. The threat coronavirus posed to the life and health of Serbia's population apparently overwhelmed the Serbian authorities, which often failed to respond adequately to the challenges. The steps it took were inconsistent and frequently not based on the Constitution or the law, causing general confusion among the citizens, who did not know what they should do to protect themselves and others from the disease, as well as their dissatisfaction with and mistrust of the decision makers, manifested in various ways, from non-compliance with the epidemiological measures to open, even violent protests that culminated in a number of Serbian citizens in early July. The many cases of police brutality against citizens not offering any resistance shifted the focus from the

violent protesters to the violent police officers. Police ill-treatment during the July protests led the BCHR to file 32 criminal reports and as many requests to the Protector of Citizens to check the lawfulness of the police ministry's operations.

There are numerous illustrations of the mishandled management of the emergency by the Government and the Crisis Headquarters tasked with implementing anti-COVID-19 measures. Introduction of the state of emergency in contravention of the Constitution and of measures disproportionately infringing on human rights, accompanied by "cataclysmic" announcements, primarily by the Serbian President and other leading state officials, were reminiscent of panicked moves characteristic of autocratic regimes rather than of parliamentary democracies committed to European principles and values and respect for human rights and freedoms.

Disproportionate restrictions of the freedom of movement, which can be qualified as deprivation of liberty under international standards in case of the elderly, attempts to centralise the provision of information under a Conclusion prohibiting the publication of information from any other sources except official ones, limitations of the right to a fair trial, potential double jeopardy for non-compliance with the measures restricting the freedom of movement, were just some of the measures trampling on the principles of rule of law and human rights. Measures, which should have yielded clear results in containing the pandemic and provided the population with clear guidance on how to behave in the situation, were more tailored to the political than the epidemiological situation in the country. After two months of curfew and harsh human rights restrictions, the Government abolished all the protective measures practically overnight so that it could hold the elections in June. This extremely irresponsible move resulted in the surge of COVID-19 infections and deaths in the summer months.

News broke that the epidemiological situation was concerning just one day after the elections, which were held on 21 June. The new National Assembly was constituted on 3 October and the Government on 28 October. Election day was fraught with irregularities; however, the legitimacy of the new Assembly and, by the same token, the Government, was definitely undermined by electoral law changes several months before the elections, election boycott by some opposition parties, party campaigning by public officials, which was especially intensive during the state of emergency, and, last but not least, the great airtime advantage the ruling parties boasted on TV stations with nationwide coverage. The new Government and parliament are a simulacrum of democracy in Serbia, the only country in Europe apart from Belarus without substantial opposition presence in the parliament. The first few months of the work of the new parliament were marked by the MPs' statements that often had the attributes of hate speech, targeting not only their political opponents, but also some media outlets, well-known cultural figures, and CSOs and individuals critical of the government. However, most concern was caused by the statement the President made even before the new Government was formed, that it would rule only until April 2022 and that early parliamentary elections would be scheduled for the same day as the presidential elections.

Threats to judicial independence and prosecutorial autonomy became even more evident in 2020 as leading officials continued suggesting in the media how judges and prosecutors should handle specific cases. The executive exerted additional pressures on the judiciary during the state of emergency, above all by regulating its work through Government decisions and orders of the Minister of Internal Affairs, notwithstanding the explicit constitutional prohibition of derogation from the right to a fair trial during a state of emergency, by issuing judges and prosecutors oral guidance on a daily basis.

The process of amending the constitutional provisions on the judiciary, launched in 2017, was not completed in 2020. The draft amendments were withdrawn from parliament before the elections and the Government endorsed the identical text again, after more than two years, in December and forwarded it to the National Assembly. The Revised Chapter 23 Action Plan envisaged the adoption of the amendments in the last quarter of 2021. The strategic priorities set out in the 2020–2025 Judicial Development Strategy adopted in July rely almost totally on the 2013–2018 National Judicial Reform Strategy. However, the strategic documents hardly reflect the actual situation of the judiciary, which is under major pressure from the legislative and especially the executive branches of government.

The state substantially interfered in the public's right to be informed and in the media's right to report on issues related to the COVID-19 pandemic. In addition to the above-mentioned attempt to centralise the provision of information, BIRN's claims following insight in the COVID-19 Information System that the authorities and the Crisis HQ members underreported the number of COVID-19 deaths and infections caused much public concern.

Freedom of the media was still one of the most threatened rights in Serbia and the situation on the media stage continued worsening in 2020. The number of attacks and pressures against journalists increased, while the government intensified its rhetoric against impartial media and heavily funded its media cronies, the same ones most complaints of Press Code of Conduct violations were levelled against. The European Commission noted lack of progress in the freedom of expression and the need to improve the situation both in its semi-annual non-paper and its regular 2020 Serbia Report, while Reporters without Frontiers qualified the situation in Serbia as "worrying" and concluded that "Serbia has become a country where it is often dangerous to be a journalist and where fake news is gaining in visibility and popularity at an alarming rate."

The authorities' inability to manage the COVID-19 pandemic become starkly obvious in the last few months of 2020, when the number of new infections soared to as many as 7,000 a day due to the government's reluctance to introduce stricter epidemiological measures.

Frontline health professionals were, without doubt, at the greatest risk of contracting coronavirus. The health system often teetered on the brink of collapse, while doctors and other medical professionals lacked the basic personal protection

equipment, such as face masks and coveralls to protect them from the virus. Consequently, Serbia reigned supreme on the list of Western Balkan countries whose health care workers succumbed to COVID-19. The Government brushed away their representatives' appeals and warnings about the health system gaps as politically motivated and prompted by the opposition parties that had boycotted the elections.

The status of specific groups of the population was further exacerbated by the challenges brought on by the pandemic and the state's lack of readiness to respond to them.

The prohibition of movement during the state of emergency curfew impinged on the routines of children with autism and deprived persons with disabilities of the help they needed because the state did not issue curfew passes to their service providers. The prohibition of movement especially affected the people living in residential care institutions due to the ban on visits, which was imposed as soon as the state of emergency was declared, an apparently reasonable move to prevent the infection of the beneficiaries. However, none of the residential care institutions in Serbia heeded the recommendations of international bodies to provide their beneficiaries with alternative forms of communication with their loved ones, such as video calls. For most people, maintaining and intensifying contacts with family have been one of the main ways of coping with emotional problems caused by isolation, anxiety and apprehension. Apart from psychosocial support, contacts with the outside world are important for the residents of the homes because their visitors can identify potential abuses of their rights.

Education of children during the 2019/2020 school-year was fraught with many difficulties for the pupils and teachers alike after the COVID-19 pandemic broke out. One of the main problems was triggered by generally poor skills in using online learning platforms. Children from vulnerable groups, including, notably Roma children living in informal settlements without access to electricity, let alone TV and the Internet, and children with disabilities, also had problems following online classes. Some schools failed in their obligation to organise classes for children with learning difficulties, while pupils with individual education plans in a number of schools encountered quite a few problems: some teachers did not send the children assignments or adequate materials, the children did not have the devices or Internet they needed to follow class online or professional study support.

Women were hit harder by anti-pandemic measures than men: greater burden of unpaid work; difficult and/or impossible access to health care services, including reproductive health services (since the health system has focused entirely on COVID-19); work from home, leading some women to work even at nights to balance their family and professional lives (women are overrepresented in many of the industries hardest-hit by COVID-19, including education, social protection and public administration services). Violence against women also increased.

The plight of the homeless deepened with the outbreak of the COVID-19 pandemic and the introduction of the state of emergency. Many of them had already

lacked access to water, proper nutrition and were suffering from chronic diseases and weak immunity, and constant exposure to diseases. The inconsistent practices of institutions taking in and assisting the homeless became particularly visible during the crisis. While some shelters continued operating as usual, in compliance with recommendations and protection measures, the Belgrade Shelter did not admit any new residents for six months. On the other hand, the Shelter in Niš shut down at one point and only reopened in December in a new temporary facility.

Serbia and EU Accession

When accession talks with the European Union (EU) began in 2014, hardly anyone could have imagined that as many as 17 of the 35 chapters would remain unopened six years later. Even the opening of the two most important chapters (Chapters 23 and 24) in 2016 did not fulfil expectations that the EU accession process would act as a catalyst for the consolidation of democracy and meaningful reforms in rule of law and human rights that lie at the heart of all well-ordered states. On the contrary, Freedom House ranked Serbia among countries with a hybrid regime,¹ rather than among democracies based on the rule of law. However, despite the lack of headway in EU accession, Serbia signed an agreement on IPA 2019 project funding worth €138.5 million at the beginning of the year.² Serbia has thus remained far enough from the EU in terms of alignment with the *acquis*, and, at the same time, close enough to still have access to its funds.

In early February 2020, the European Commission presented the new accession methodology, under which the talks will be organised within six clusters covering all 35 chapters. The methodology aims to speed up the talks and show whether or not the candidate countries are prepared for rapid changes, particularly in terms of alignment with the EU *acquis*.³ It provides for faster completion of the talks because it puts in place conditions for more dynamic alignment with the EU *acquis*. However, Serbia and Montenegro, which have already launched the accession talks, are not under the obligation to adopt the new methodology, but are able to opt in if they wish. Serbian President Aleksandar Vučić said that Serbia would accept the new methodology;⁴ it did not do so officially by the end of the reporting period.

1 Freedom House, *Freedom in the World 2020: A Leaderless Struggle for Democracy*, March 2020, available at: <https://freedomhouse.org/report/freedom-world/2020/leaderless-struggle-democracy>.

2 Ministry of European Integration, “J. Joksimović: Serbia receives about €200 million from IPA 2019,” 7 February. Available at: <https://www.mei.gov.rs/eng/news/1159/189/335/details/j-joksimovic-serbia-receives-about-eur-200-million-from-ipa-2019/>.

3 *Politika*, “What’s New in the EU’s Proposed Methodology,” 23 February. Available in Serbian at: <http://www.politika.rs/sr/clanak/448113/Pogledi/Sta-je-novo-u-predlozenoj-metodologiji-prosirenja-EU>.

4 *NI*, “Vučić: Serbia accepts new accession methodology,” 10 July. Available at: <https://rs.n1info.com/english/news/a618314-vucic-serbia-accepts-new-eu-accession-methodology/>.

Consultations on the Revised Chapter 23 and Chapter 24 Action Plans continued in 2020. The Ministry of Justice organised consultations on the revised Chapter 23 Action Plan with the Chapter 23 Working Group of the National Convention on the EU (NCEU) in the latter half of February 2020 and asked it forward its comments. However, the Report on Public Consultations with the NCEU it forwarded to the Working Group in June 2020 clearly showed that the majority of the NCEU Working Group's comments (over 150 of them) were disregarded.⁵

The Working Group qualified as concerning the fact that a large part of the allegedly accepted comments were not substantially accepted in the proposed form or were incorporated in a form distorting their purpose and essence. Although this Action Plan is of strategic importance for Serbia's EU accession, the Ministry failed to explain why it dismissed the NCEU's comments. Furthermore, the Action Plan was adopted by the caretaker Government. As of 10 July, the Chapter 23 Action Plan has been implemented and reported on by a new mechanism – the Coordination Body.⁶ However, no information about the activities of this Body until the end of the year were available in the public domain. The 2019 and 2020 Reports on the Implementation of the Chapter 23 Action Plan have not been published yet. A report on the fulfilment of the plan of alignment with the EU *acquis* (National Programme for the Adoption of EU *Acquis*) has not been published since the end of 2019 either.

No-one was appointed head of Serbia's EU Accession Negotiating Team by the end of the reporting period although Tanja Mišćević resigned from office back in September 2019. The fact that Serbia lacked an official who would coordinate the accession process, manage the development of negotiating positions for all chapters and all the stages unequivocally demonstrates that EU accession is not a Government priority. Uncertainties about when the new head of the Negotiating Team will be appointed and who the candidates for the office are indicates that the trend will continue: the temporary closure⁷ of the opened chapters will slow down even more, the adoption of negotiating positions will continue to be long and uncoordinated and, possibly, result in the passage of yet another year without the opening of talks on a new chapter. The European Commission recognised this in its Serbia 2020 Report, in which it called for the urgent appointment of the new head of the Negotiating Team. It also expressed concern over the substantial turnover of staff in the Team.

5 The Ministry dismissed 45.4% of the comments, partly accepted 4.9% and allegedly upheld 44.2% of them. See the press release available at: <http://en.yucom.org.rs/press-release-of-the-nceu-working-group-for-chapter-23-on-the-occasion-of-concluding-public-consultations-related-to-the-revision-of-the-action-plan-for-chapter-23/>.

6 Decision on the Establishment of the Coordination Body for the Implementation of the Chapter 23 Action Plan: Judiciary and fundamental rights, *Sl. glasnik RS*, 98/20.

7 Each negotiating chapter is merely temporarily closed pending the day of accession because it is possible that the EU *acquis* will undergo new and substantial changes which a candidate state is under the obligation to adopt before it accedes to the EU.

In April 2020, the EC pledged over €3.3 billion of EU financial support to combat the COVID-19 pandemic, including €750 million of Macro-Financial Assistance, and a €1.7 billion package of assistance from the European Investment Bank. Notwithstanding, Serbian public officials continued sharply criticising the EU during the state of emergency.

The Zagreb Declaration,⁸ issued after the EU-Western Balkans Summit in Zagreb in May 2020, expressed the EU's solidarity with its Western Balkans partners and its commitment to actively support their efforts to combat the coronavirus outbreak and reaffirmed support to the WB countries' accession efforts.

In June 2020, the European Commission issued its fifth Non-paper on rule of law in Serbia on the state of play regarding chapters 23 and 24 for Serbia.⁹ Progress in these two chapters is crucial for Serbia's headway in the accession talks. The EC assessed that Serbia made progress in a number of areas but faced serious delays in others and that it needed to accelerate reforms in the key areas of judicial independence, the fight against corruption, media freedom, the domestic handling of war crimes and the fight against organised crime. It said that the amendment of the constitutional provisions to strengthen the independence of the judiciary needed to be continued in a transparent and inclusive manner and as soon as possible. The EC noted the delay in improving the anti-corruption framework, and the adoption of amendments to the Act on the Financing of Political Activities to comply with ODIHR recommendations and to the FAIPIA. The general conclusion that can be drawn is that there are delays in many areas that have to be reformed and on which the pace of negotiating talks depends.

The EC published its Serbia 2020 Report¹⁰ in October. The Report analysed the situation in each of the 35 chapters, but focused on Chapters 23 and 24 and the political criteria, democracy and rule of law. It notes that substantial progress had not been made in any negotiating chapter. As per political criteria, it recognised that while contestants in the June elections were able to campaign and fundamental freedoms were respected, voter choice was limited by the governing party's overwhelming advantage and the promotion of government policies by most major media outlets, especially TV stations with national coverage. It also said that the newly constituted Serbian parliament was marked by the overwhelming majority of the ruling coalition and the absence of a viable opposition, a situation which was not conducive to political pluralism in the country. The EC said that no progress had been made overall in the reform of the public administration, as the excessive number of acting senior manager positions was not sizeably reduced and it expressed serious concern about the lack of transparency. The EC did not note progress in the

8 Available at: <https://www.consilium.europa.eu/media/43776/zagreb-declaration-en-06052020.pdf>.

9 Available at: https://www.mei.gov.rs/upload/documents/eu_dokumenta/Non_paper_Ch_23_24_June_2020.pdf.

10 Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf.

judiciary in 2020, except the efforts to clear the backlog. It said that limited progress had been made in the fight against corruption but that Serbia needed to intensify its efforts in fighting organised crime. It said that media freedoms, threats and intimidation of journalists were still a source of serious concern. The EC did, however, note that Serbia had made some progress on the economic criteria.

European Parliament Rapporteur on Serbia Vladimir Bilčík underlined in his Draft Report on Serbia that progress on the rule of law and fundamental rights chapters, as well as on the normalisation of relations with Kosovo, continued to be essential and would determine the pace of accession negotiations. He called for the continuation of the Intra-Party Dialogue under the EP's auspices and the implementation of urgent measures to guarantee the freedom of expression and media independence. He also expressed concern over Serbia's increasing dependence on Chinese defence equipment and technologies and over Serbia's close political and military cooperation with Russia, reiterating the importance of alignment with the EU common foreign and security policy, which must progressively become an integral part of Serbia's foreign policy.¹¹

On 30 November, *RTS* reported that it had insight in the EU Council's conclusions on Western Balkan enlargement. *RTS* reported that the Council welcomed the achieved progress, but expressed regret that headway in the area of rule of law was not as fast and efficient as could have been expected from a country that has entered into accession talks. The Council welcomed Serbia's involvement in regional cooperation initiatives and called on the authorities to demonstrate political will and achieve results in the field of the rule of law.¹²

11 Available at: https://insajder.net/attachment/322/Izve%C5%A1taj%20Evropskog%20parlamenta%20o%20Srbiji.pdf?g_download=1.

12 *RTS*, "EU Council's draft conclusions: Serbia made progress, but must do better on rule of law," 30 November. Available in Serbian at: <https://www.rts.rs/page/stories/ci/story/1/politika/4169396/nacrt-zakljucaka-saveta-ministara-eu-.html>.

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 The Council did not hold any meetings in 2020. The newly-formed Ministry for Human and Minority Rights and Social Dialogue took over all the competences of the erstwhile Human and Minority Rights Office, including the coordination of the Council's work and reporting on the implementation of the main international human rights treaties.

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 Eco-

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.

nomic, Social and Cultural Rights, given that Serbia has not ratified the Optional 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.

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 2020 due to the coronavirus pandemic. The Committee against Torture's review of Serbia's third periodic report was put off for 2021.

At its session on 12 June 2020, the Serbian Government adopted Serbia's VI-IX Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.³

In late September, the Government organised the first meeting of the Working Group for the Development of the Universal Periodic Review (UPR) Mid-Term Report. The Platform of Organisations for Cooperation with UN Human Rights Mechanisms on 18 November submitted to the OHCHR its report on Serbia's fulfilment of recommendations to improve human rights issued in 2018 by the UN Human Rights Council after its review of Serbia's third periodic report. The Report analysed the degree of fulfilment of 56 of the 175 recommendations Serbia had accepted. The Platform concluded that only three recommendations have been partly implemented and that the remaining 53 recommendations have not been implemented at all.⁴

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.⁵ In June 2020, the Government submitted Serbia's replies⁶ to the Committee's list of issues in relation to its Third periodic report.⁷

According to the database of communications submitted to UN Special Procedures,⁸ three communications were sent to Serbia in 2020.

3 Available at: https://ljudskaprava.gov.rs/sites/default/files/dokument_file/izvestaj_zacerd_msp_30062020_engleski.doc.

4 Available at: <https://platforma.org.rs/wp-content/uploads/2020/11/Platform-UPR-Mid-term-2020-Serbia-3rd-cycle.pdf>.

5 Available at: <https://ljudskaprava.gov.rs/sh/node/19967>.

6 Available at: <https://cutt.ly/wjLzkw>.

7 Available at: <https://spcommreports.ohchr.org/TmSearch/Results>.

8 Available at: <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

The first communication regards the unsolved murder of the Bitiqi brothers, which the Special Rapporteur on extrajudicial, summary or arbitrary executions sent Serbia on 6 March 2020.⁹ She emphasised that Article 7 of the ICTY Statute included command responsibility as a mode of criminal responsibility, wherefore the Government was on notice that the principle applied to it. She also said that the fact command responsibility was not specifically included in the Criminal Code of Serbia at the time was not a valid argument.

The second communication regarded reports of excessive use of force during the July protests, which were jointly sent to Serbia by three Special Rapporteurs and the Working Group on Arbitrary Detention.¹⁰ They expressed grave alarm at the reported use of excessive force by security forces to disperse protesters, including the use of force through the use of tear gas, batons, dogs and horses against non-violent and injured individuals showing no sign of resistance. They asked Serbia to provide any additional information and comments on the allegations. In its Response of 25 September 2020, the Serbian Government described the protests in detail, emphasising their violent character. It went on to say that cases of excessive use of force had been thoroughly investigated by the public prosecutors and independent bodies and that an investigation against three police officers was under way. Interestingly, the Serbian Government referred to incidents that occurred in Novi Sad, Bačka Palanka and Zrenjanin, although the largest protests were held in Belgrade, where the police resorted to excessive force the most. The Government said that 60 criminal reports and 247 motions for initiating misdemeanour proceedings concerning 302 misdemeanours had been filed with regard to the incidents. The Government said that, according to information available to the MIA, 165 persons had been processed in fast-track proceedings since there was reason to believe that they had committed criminal acts and misdemeanours.

The third communication regarded the request the Serbian Administration for the Prevention of Money Laundering sent to all commercial banks in Serbia to provide information and documentation related to all local and foreign currency accounts and transactions for 57 organisations, media and individuals. Three Special Rapporteurs requested of Serbia to provide it with additional information to ascertain whether any abuses of the mechanism established for preventing money laundering and financing of terrorism had occurred.¹¹ In its Response of 24 December 2020, Serbia said, *inter alia*, that an examination within a strategic analysis rather than an investigation was at issue.¹² Serbia said that the organisations covered by

9 Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25111>.

10 Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25456>.

11 Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25652>.

12 Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35826>.

the “analysis” were not selected because of their criticism of the government; rather, the sample was selected to analyse basic risk elements, namely, transparency (visibility, active status, whether there are accurate instructions for making donations, transparency in terms of disclosing an updated and accurate list of donors, possible cross-border risk) and transparency of beneficial ownership. It went on to say that the organisations covered by the sample were the ones that had the largest revenues and those where foreign donations accounted for more than half the revenues. Serbia also underlined that the examination was fully implemented in accordance with the valid law and in no way prejudiced the freedom of association.

Serbia did not fulfil its obligations arising from the Committee against Torture decision in the case of *Ayaz v. Serbia*.¹³ To recall, the Committee required of Serbia to provide the complainant with redress, including adequate compensation of non-pecuniary damage and to explore ways and means of monitoring the conditions of the complainant’s 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 not only failed to fulfil these obligations. It also failed to notify the Committee of the steps it had undertaken in response to the decision within 90 days of the date of transmittal of the decision.

1.2. State of Emergency and Serbia’s Obligations to International Organisations

The Serbian authorities proclaimed the state of emergency on 15 March 2020. The state of emergency was accompanied by the imposition of measures derogating from rights enshrined both in the Serbian Constitution and the ratified international treaties. This meant that Serbia, as a State Party to the International Covenant on Civil and Political Rights (ICCPR), was under the obligation to act in accordance with Article 4 of the ICCPR and to immediately inform the other States Parties to the ICCPR, through the intermediary of the UN Secretary-General, of the provisions from which it has derogated and of the reasons by which it was actuated. Under this Article, States Parties may take measures derogating from their obligations under the ICCPR to the extent strictly required by the exigencies of the situation.

The UN Treaty Collection website,¹⁴ on which notifications re international treaties are posted, does not include Serbia’s notification of derogation from specific obligations under the ICCPR to the Secretary-General. Since such a notice has not been posted on the websites of the relevant Serbian authorities either, the BCHR

13 Available at: <https://bit.ly/2OpXYgl>.

14 United Nations Treaty Collection, available at: https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en.

filed a request for access to information of public importance to the Serbian Government and Ministry of Foreign Affairs. The MFA responded to the request, but only after the Commissioner for Access to Information of Public Importance intervened.

According to the document the MFA forwarded to the BCHR, Serbia notified the UN Secretary-General in Nota verbale No. 6509 of 6 April 2020 of the introduction of the state of emergency and derogation from specific ICCPR rights to the extent strictly required by the exigencies of the epidemiological situation and medical necessity.¹⁵ The document Serbia sent to the UN Secretary-General does not fulfil either the formal or the substantive requirements prescribed by Article 4 of the ICCPR.¹⁶

Serbia had similar obligations to report derogations under Article 15 of the ECHR. On April 7 2020, Serbia forwarded a Nota verbale to the CoE Secretary-General notifying the CoE that it introduced a state of emergency on 15 March 2020 and derogated from specific ECHR rights.¹⁷ The notification was identical to the one sent to the UN Secretary-General and did not specify which rights Serbia derogated from or why.

Serbia sent the Council of Europe a Nota verbale on withdrawal of derogation from the ECHR on 9 October 2020, more than five months after the state of emergency was lifted.¹⁸

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)¹⁹ 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.²⁰

15 The MFA forwarded the Nota verbale under Ref. No. 7723 on 14 May 2020 to the BCHR, after the Commissioner intervened on its behalf in response to its complaint. The Nota verbale is on file with the BCHR.

16 More in the *2020 Semi-Annual Report*, II.1.

17 Available at: <https://rm.coe.int/09000016809e1d98>.

18 Available at: <https://rm.coe.int/09000016809fee1a>.

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

20 More on the Advisory Committee's findings in *2019 Report*, Chapter IV.4.3.

The Assembly of Serbia and Montenegro ratified the European Charter for Regional and Minority Languages.²¹

Serbia ratified the Revised European Social Charter (ESC) in 2009.²² The nationals of Serbia are not entitled to file collective complaints to the European Committee of Social Rights under the ESC because Serbia has not agreed to the submission of such complaints.

Serbia is also party to the CoE Convention on Action against Trafficking in Human Beings²³ 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 2004.²⁴ 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 2019, the ECtHR reviewed 2,595 applications against Serbia; it declared 2,445 of them inadmissible and it delivered 24 judgments concerning 150 applicants, finding violations of at least one ECHR right in 22 of them.²⁵

According to the statistical data published on ECtHR's website, 1,836 applications against Serbia were registered in 2020 which were allocated to a judicial formation; 466 of them were communicated to the Government. The Court dismissed 1,413 of them as inadmissible and delivered judgments in eight cases.²⁶

The Council of Europe's Committee of Ministers is charged with the execution of ECtHR's judgments. In practice, supervision of the Respondent States' exe-

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

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

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

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

25 ECtHR, Press Country Profile Serbia, available at: https://www.echr.coe.int/Documents/CP_Serbia_ENG.pdf.

26 ECtHR, Analysis of statistics 2020. Available at: https://www.echr.coe.int/Documents/Stats_analysis_2020_ENG.pdf.

cution 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 523; 490 of the cases were closed by final resolution.²⁷

ECtHR statistics show that 16 judgments were transmitted for supervision of their execution in 2020, that supervision was ongoing with respect to 33 cases and that 40 were closed by final resolution. The statistics also show that Serbia was to pay €221,305 of just satisfaction awarded by the ECtHR in 2020.²⁸

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.

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-

27 Council of Europe Department for The Execution of Judgments of The European Court of Human Rights, Country Profile Serbia, available at: <https://rm.coe.int/1680709761>.

28 *Ibid.*

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,²⁹ 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

29 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 (Arts. 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.³⁰ 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-

30 ‘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 Census³¹ 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.³²

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.³³

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

31 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>.

32 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.

33 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).³⁴ 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)).³⁵

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.³⁶

3.3. *State of Emergency in Serbia in 2020 – Derogation from Human Rights Guaranteed by the Constitution*

The Serbian authorities proclaimed a state of emergency on 15 March 2020 to prevent the spread of the SARS-CoV-2 virus and its effects. The Decision on the Proclamation of the State of Emergency³⁷ was adopted by the Serbian President, Na-

34 Article 202(1) of the Constitution.

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

36 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>.

37 *Sl. glasnik RS*, 29/20.

tional Assembly Speaker and Prime Minister. All measures derogating from the human and minority rights and freedoms enshrined in the Serbian Constitution were imposed by the executive authorities.³⁸ The Decision on the Proclamation of the State of Emergency was preceded by a Decision declaring COVID-19 caused by the SARS-CoV-2 virus a communicable disease, which enabled the Health Minister to issue, on 12 March 2020, the Order Prohibiting Assemblies in Indoor Public Spaces pursuant to Article 52 of the Act on the Protection of the Population from Communicable Diseases.

Article 200 (1 and 4) of the Constitution of the Republic of Serbia (hereinafter: Serbian Constitution) lays down that the National Assembly shall proclaim a state of emergency when the survival of the state or its citizens is threatened by a public emergency and allows the National Assembly to prescribe measures derogating from human and minority rights guaranteed by the Constitution during the state of emergency. Paragraph 2 of Article 200 of the Constitution limits the duration of the state of emergency to 90 days; upon the expiry of that period, the National Assembly may extend the validity of the decision proclaiming the state of emergency another 90 days. Under paragraph 3 of Article 200 of the Constitution, the National Assembly shall convene during the state of emergency without any special call for assembly and it may not be dissolved.

The authorities resorted to the constitutional exception regarding the state of emergency and imposition of measures derogating from human rights provided by Article 200(5) of the Constitution, which reads as follows: “When the National Assembly is not in a position to convene, the decision proclaiming the state of emergency shall be adopted by the President of the Republic together with the President of the National Assembly and the Prime Minister, under the same terms as by the National Assembly.” Article 200(6) of the Constitution also provides for a “reserve procedure” for the adoption of measures derogating from constitutionally guaranteed human and minority rights – “When the National Assembly is not in a position to convene, the measures which provide for derogation from human and minority rights may be prescribed by the Government, in a decree, with the President of the Republic as a co-signatory.”

The Constitution assigns the National Assembly the central role in running the country during a state of emergency. Article 200(8) on oversight of the executive authorities’ decisions adopted during a state of emergency reads as follows: “When the decision on the state of emergency has not been passed by the National Assembly, the National Assembly shall verify it within 48 hours from its passing, that is, as

38 Decisions imposing such measures were mainly adopted by the Government and co-signed by the President; some measures derogating from human rights were, however, imposed by ministerial decisions, in contravention of the Constitution (e.g. the Order Restricting and Prohibiting the Movement of Individuals in the Territory of the Republic of Serbia, *Sl. glasnik RS*, 34/20, 39/20, 40/20, 46/20 and 50/20).

soon as it is in a position to convene. If the National Assembly does not verify this decision, it shall cease to be effective upon the end of the first session of the National Assembly held after the proclamation of the state of emergency.” Under paragraph 9 of Article 200, in the event “measures providing for derogation from human and minority rights have not been prescribed by the National Assembly, the Government shall be obliged to submit the decree on measures providing for derogation from human and minority rights to be verified by the National Assembly within 48 hours from its passing, that is, as soon as the National Assembly is in a position to convene. In other respects, the measures providing for derogation shall cease to be effective 24 hours prior to the beginning of the first session of the National Assembly held after the proclamation of the state of emergency.”

The relevant authorities are entitled to impose measures derogating from human and minority rights enshrined in the Constitution throughout the state of emergency. The measures adopted during the 2020 state of emergency impinged the most on the right to liberty and security of person, the freedom of movement, the freedom of assembly, the right to a fair trial, specific rights of defendants, the right to property and the freedom of entrepreneurship. However, the Constitution permits derogations from human and minority rights guaranteed by the Constitution only to the extent deemed necessary (Article 202(1), prohibits derogations from human rights resulting in discrimination (Article 202(2)), and enumerates the rights and freedoms that may not be derogated from under any circumstances (Article 202(4)). Furthermore, Article 202(3) of the Constitution lays down that measures providing for derogation shall cease to be effective when the state of emergency is lifted.

However, contrary to one's expectations after reading the Constitution, the executive authorities – the Government and the President – rather than the legislature branch had the main say in proclaiming the state of emergency and imposing measures derogating from constitutionally guaranteed rights and obligations. The National Assembly convened for the first time during the state of emergency on 28 April 2020 and confirmed the Decision on the Proclamation of the State of Emergency and all other regulations adopted during the state of emergency the following day.³⁹ A week later, on 6 May 2020, the National Assembly abolished the state of emergency in Serbia and all the measures derogating from constitutionally guaranteed human and minority rights during the state of emergency ceased to be effective.⁴⁰

On 6 May 2020, the National Assembly adopted an Act on the Validity of Decrees Adopted by the Government and Co-Signed by the President during the

39 See: <https://europeanwesternbalkans.com/2020/04/30/the-national-assembly-of-serbia-confirmed-the-introduction-of-the-state-of-emergency/>.

40 See: <http://rs.n1info.com/English/NEWS/a596769/Serbian-parliament-lifts-state-of-emergency.html>.

State of Emergency and Ratified by the National Assembly.⁴¹ Article 2 of the Act lists the decrees that are no longer valid, including the Decree on State of Emergency Measures that had restricted the greatest number of human rights. Article 3 lists the decrees to remain into force until the relevant laws are adopted. One of them is the Decree on Deadlines in Administrative Procedures during the State of Emergency, while the rest concern the economy.

3.4. *Ordinary and Extraordinary Legal Remedies and Constitutional Appeals*⁴²

Article 22 of the Constitution of Serbia sets out that everyone shall have the right to judicial protection in case any of their human or minority rights guaranteed by the Constitution have been violated or denied and the right to the elimination of the consequences of such a violation. It also provides everyone with the right to seek protection of their human rights and freedoms before international human rights protection bodies. 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).⁴³ 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

41 *Sl. glasnik RS*, 65/20, available in Serbian at: <https://www.paragraf.rs/propisi/zakon-o-vazenju-uredaba-koje-je-vlada-donela-za-vreme-vanrednog-stanja-potvrda-skupstine.html>.

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

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

of equality of the citizens, to align case law, and in case of the need to reinterpret the law (special review). A five-member judicial panel of the Supreme Court of Cassation rules on the admissibility of special reviews (Art. 405). This provision should minimise the already huge problem of discrepant case law, amounting to a violation of the right to a fair trial.

Under the provisions of procedural laws, an ECtHR judgment may be grounds for retrial. Article 426(1(11)) of the CPA provides for a retrial of a case in which a final decision has been rendered upon the motion of a party in the event it acquires the opportunity to invoke an ECtHR judgment establishing a human rights violation and which may result in the adoption of a decision more favourable for that party. Grounds for ordering a retrial also exist in the event the Constitutional Court found in its ruling on a constitutional appeal a violation or denial of a constitutionally guaranteed human or minority right or freedom in civil proceedings, which may result in the adoption of a more favourable decision for the applicant (Art. 426(1(12))).

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

The Criminal Procedure Code (CPC)⁴⁴ 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.

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

Provisions governing the right of appeal can be found in the General Administrative Procedure Act (GAPA),⁴⁵ the Non-Contentious Procedure Act (NCPA)⁴⁶ and the Act on the Enforcement and Security of Claims⁴⁷ 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).⁴⁸

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

46 *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.

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

48 More on constitutional appeals in the *2018 Report*, I.3.3.2 and in Chapter I.3.4.

II. INDIVIDUAL RIGHTS

1. Prohibition of Torture and Inhuman or Degrading Treatment or Punishment (Prohibition of Ill-Treatment)

1.1. Legal Framework

The Republic of Serbia is party to all major international treaties prohibiting torture and inhuman or degrading treatment or 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.

The Criminal Code (CC)⁴ has inadequately defined the offence incriminating torture as a separate criminal offence. It includes two practically overlapping articles incriminating torture: extortion of a confession (Art. 136 (2)) and ill-treatment and

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 *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.

torture (Art. 137(3) of the CC in conjunction with paragraph 2 of that Article). The most recent amendments to the Criminal Code equated the penalties for these two offences.⁵

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)⁶ 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.⁷

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 penalty (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,⁸ the UN Human Rights Committee,⁹ the European Commission (EC)¹⁰ the European Committee for the Prevention of Torture¹¹ and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (UN Special Rapporteur).¹²

The prohibition of ill-treatment is explicitly laid down also in Article 33(1(7)) of the Police Act¹³ Article 9 of the Criminal Procedure Code (CPC)¹⁴ and Article 6(2) of the Penal Sanctions Enforcement Act (PSEA).¹⁵ *Refoulement* is expressly pro-

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

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

7 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.

8 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.

9 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.

10 *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.

11 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.

12 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>.

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

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

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

hibited 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 territory of the (country of origin or another country) where he is at risk of torture or inhuman or degrading treatment or punishment. The principle of *non-refoulement* is also absolute and non-derogable 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 in the way it is generally recognised in international law. Article 39 of the Constitution prohibits expulsion of aliens to countries where they are at risk of persecution because of their race, sex, religion, ethnic origin, nationality, membership of a social group, political opinion or *of grave violations of rights guaranteed by this Constitution*. Since Article 25 of the Serbian Constitution explicitly prohibits torture and inhuman or degrading treatment or punishment and Article 18 of the Constitution guarantees human and minority rights guaranteed by generally recognised rules of international law and ratified international treaties, 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,

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.

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 the Administrative Disputes Act (ADA).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 Torture²⁴ 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 impartial-

20 Article 39, Aliens Act.

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>

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

The introduction of summary proceedings for all crimes warranting up to eight years’ imprisonment by the CPC is also problematic.²⁹ In such proceedings, there is no obligation to conduct an investigation and the prosecutors are entitled to order the implementation of individual investigative actions.³⁰ This issue was alerted to both by CAT back in 2015³¹ and by CPT in 2018.³²

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.³³ 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 cen-

27 More in the 2017 Report, II.2.2.2.

28 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.

29 Article 495, CPC.

30 More in the 2016 Report, II.2.3.

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

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

33 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.

tre for the appointment of *ex officio* lawyers is, however, encouraging.³⁴ This call centre is expected to narrow the scope for abuse, i.e. for cherry-picking lawyers not necessarily acting in the best interests of 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.³⁵ Similar criticisms of the work of *ex officio* lawyers in Serbia were voiced by the UN Special Rapporteur on torture in his 2019 report.³⁶

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.”³⁷ 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.³⁸

1.4.1. Skype Trials during the State of Emergency – Risks of Violations of Safeguards against Torture

At the recommendation of the Justice Ministry and, subsequently, under the Government Decree on the Participation of Defendants in the Main Hearings in Criminal Proceedings during the State of Emergency proclaimed on 15 March 2020,³⁹ courts were allowed to arrange the presence of defendants at main hearings via Skype. The BCHR alerted that such trials undermined safeguards against torture. Namely, there was a risk that defendants abused by the police might be discouraged from reporting the abuse to the judge during the Skype trials because they were physically under the control of their abusers or their co-workers/superiors. Furthermore, judges hearing defendants via Skype had less opportunity to

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

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

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

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

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

39 *Sl. glasnik RS*, 49/20.

notice any corporal injuries of the defendants reluctant to complain about their treatment in detention.⁴⁰

The Protector of Citizens also alerted to lesser protection of persons deprived of liberty from ill-treatment. He issued an opinion to the Justice Ministry on 31 March 2020, recommending that measures be taken to provide the defendants and their counsel also with the opportunity to communicate via Skype,⁴¹ although it is well-known that the defendants' right to have in-person contact with their counsel is one of the main guarantees preventing ill-treatment of persons deprived of liberty and facilitating prompt reporting of such treatment.

1.5. State of Emergency – Violations of the Prohibition of Ill-Treatment by the Police

1.5.1. Police Ill-Treatment during the State of Emergency

Police exceeded their powers and physically ill-treated people who violated the prohibition of movement (curfew) several times during the state of emergency. Video recordings of uniformed police slapping, hitting or kicking citizens who were outside during the curfew were posted on social networks.⁴² The BCHR filed criminal reports regarding four such incidents. Two of its reports were dismissed while the fate of the other two remained unknown.

One such incident, which occurred in Belgrade in mid-April and drew a lot of public attention, was filmed. The video footage showed a police officer working in the Vračar police station slapping a man in custody in the back seat of the police car.⁴³ In early July, the Protector of Citizens qualified such treatment by the police as illegal and degrading.⁴⁴ However, the Belgrade First Basic Public Prosecution Service dismissed the criminal report against the officer the same month, finding that the officer had not committed a crime. It upheld the officer's claim that he was "defending himself" from the victim, who was spitting at him and telling him he would infect him with coronavirus. It also took into account the victim's statement, given two months after the event, who said he felt "neither tortured nor ill-treated". The prosecutors,

40 See BCHR's press release of 8 April. Available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/saopstenja/page/3/>.

41 Available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=193:the-protector-of-citizens-issued-an-opinion-to-the-ministry-of-justice&catid=49&Itemid=16.

42 Three incidents that were recorded occurred in Belgrade, while the fourth took place in Leskovac.

43 The video recording is available at: https://www.youtube.com/watch?v=iqavVCcqSjE&ab_channel=Direktno.rs.

44 The Protector's press release of 15 July is available in Serbian at: www.ombudsman.rs/index.php/2012-02-07-14-03-33/6697-p-lici-s-i-sluzb-ni-n-z-ni-i-p-niz-v-uc-p-s-up-priv-d-nj.

however, did not take into consideration the victim's statement to the MIA Internal Control Sector the day after the incident, when he said that the police officer had slapped him a number of times, or the video recording during which the officer could be heard asking the citizen "What's your name" while he was slapping him.⁴⁵

Police ill-treated asylum seekers in Serbia as well during the state of emergency; the BCHR filed a criminal report with the Belgrade First Basic Public Prosecution Service and a complaint with the Protector of Citizens against members of an unidentified police unit (apparently a Gendarmerie unit), who abused several asylum seekers in the Krnjača Asylum Centre in early April 2020. Photographs of the injuries and video recordings of part of the police action were submitted, but no decisions were taken either on the criminal report or the complaint by the end of 2020.

1.5.2. Claims of Collective Expulsions of Migrants during the State of Emergency

In early April 2020, a group of migrants and asylum seekers from Algeria, Morocco and Iran contacted the BCHR, claiming that unidentified Serbian public officials had driven them from the Tutin Asylum Centre and pushed them back to North Macedonia. They said that the officials told them they were being moved to the Reception Centre in Preševo, but stopped the official vehicle after a long ride in a remote area, ordered them to get out and not to return to Serbia. They ascertained via their GPS application on their cell phone that they were in North Macedonia, on a hill above Miratovac, near the Lojane village. They claimed that they did not have any food or water and that one member of the group was nauseous and fainted (as the footage they forwarded to the BCHR showed).⁴⁶ This case was also reported by the group of organisations rallied in the Border Violence Monitoring Network (BVMN).

BVMN's report coincides with the information BCHR had, but also says that there were minors in the group of expelled aliens, that physical violence and truncheons were used against them, that the uniformed officers threatened to shoot them and ordered them to take off their jackets or coats and searched them. The photographs published by BVMN show uniformed men – the Serbian police. BVMN said that 16 people were placed into a van by the Serbian Special Forces, that the conditions inside the van were extremely cramped and that they were forced to stand, or sit on top of one another, as the photographs testify. The group claimed they were not allowed to leave the vehicle and were driven for around nine hours. They were finally allowed to leave the van in a remote hilly area, where they were ordered them to cross into North Macedonia and said that the Serbian officers pointed guns at them and told them to leave.⁴⁷

45 See the BCHR's press release of 25 September. Available in Serbian at: www.bgcentar.org.rs/prvo-osnovno-javno-tuzilastvo-u-beogradu-odbacilo-krivicnu-prijavu-protiv-policijskog-službenika-koji-je-udarao-gradanina-na-sedistu-službenog-automobila-za-vreme-vanrednog-stanja/.

46 *Right to Asylum in the Republic of Serbia – Periodic Report for January-June 2020*, pp. 21–25.

47 According to BVMN, the group of people alleged that they tried to re-enter Serbia on four different occasions over the following eight days, but were pushed back by the Serbian

BCHR forwarded the information it received to the Protector of Citizens, suggesting that he perform a check of the MIA's and CRM's operations and ascertain whether the prohibition of *refoulement* had been violated. In his findings published in early October 2020, the Protector of Citizens said that the CRM had informed him that the individuals at issue "had not complied with the Asylum Centre House Rules ... (consumed psychoactive substances, committed burglaries and robberies, physically assaulted the Centre staff, security guards and residents)" and that, because of their conduct, they were transferred to the Preševo Reception Centre on 3 April 2020 by the Novi Pazar police. The CRM said that the police officers left the people at the gate of the Reception Centre, which was guarded by the Army of Serbia to prevent and protect from the spread of COVID-19, before their admission to the Reception Centre, "which is not the usual procedure". Reportedly, "while the Reception Centre staff were preparing the readying the documents for registration and implementation of the requisite epidemiological-sanitary measures," all 16 transported people left the area in front of the Reception Centre of their own accord and went off in an unknown direction. The MIA said that the police officers had handed the transported people over to the relevant officials of the Preševo Reception Centre and left and that the CRM did not contact them subsequently to find them.

The many serious inconsistencies in the CRM and MIA statements cast doubts about their accuracy (e.g. that transfer from one CRM facility to another was the only measure taken against asylum seekers who "consumed psychoactive substances, committed burglaries and robberies, physically assaulted the Centre staff, security guards and residents"; that the group of 16 asylum seekers left at the gate of the Reception Centre succeeded in going off in an unknown direction; that the CRM did not alert the MIA thereof and ask the police to find the fugitives, etc.). Notwithstanding, the Protector of Citizens did not take any further measures to ascertain whether the group of 16 asylum seekers had been pushed back from Serbia, e.g. by contacting them by phone (like BCHR could), checking the Reception Centre's video surveillance footage, requesting of the telecommunications companies to obtain data on the base stations of the cell phones of the transported asylum seekers and the officers transporting them, etc. The Protector of Citizens reproached the police the most for not waiting for the Reception Centre to admit the transported asylum seekers and the CRM for not notifying the MIA that the asylum seekers had gone off in an unknown director, whereby these authorities had "failed to prevent the free movement of individuals who may have been infect-

police, who discovered them near the border and returned them by vans to the border with North Macedonia where they used physical violence and on one occasion threatened to kill them. They were hiding in an abandoned building near Lojane, without food, water or toilets. The North Macedonian police entered the building on 12 April and put eight members of the group in a police van, drove them to the border with Greece and ordered them to leave North Macedonia. The group arrived in Thessaloniki on 14 April, where, according to the latest information, they were living in abandoned buildings, in fear of the police and being pushed back to Turkey. See more at: www.borderviolence.eu/violence-reports/april-3-2020-2300-border-of-srb-mnk-close-to-lojane/.

ed by COVID-19 and increased the risk of the contagion spreading in the territory of the Republic of Serbia.”⁴⁸

1.6. *Impact of COVID-19 on the Situation in Closed Institutions*

In March 2020, the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published its principles on treatment of persons deprived of liberty in the context of the coronavirus disease (COVID-19) pandemic. It, *inter alia*, said that concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty since close personal contact encouraged the spread of the virus, emphasising that such an approach was imperative, in particular, in situations of overcrowding, and that authorities should make greater use of commutation of sentences, early release and probation; reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever appropriate, residents of social care homes; and refrain, to the maximum extent possible, from detaining migrants. The CPT also said that fundamental safeguards against the ill-treatment of persons in the custody of law enforcement officials (access to a lawyer, access to a doctor, notification of custody) had to be fully respected in all circumstances and at all times, and that monitoring by bodies taking every precaution to observe the ‘do no harm’ principle remained an essential safeguard against ill-treatment.⁴⁹ Similar recommendations were issued to states also by the Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), which underlined that, since quarantine facilities were a *de facto* form of deprivation of liberty, all those so held should be able to benefit from the fundamental safeguards against ill-treatment.⁵⁰

Although social networks and media published video recordings testifying to police ill-treatment of citizens who violated the prohibition of movement, the National Preventive Mechanism did not visit any police stations in Serbia during the state of emergency. As it said in its Thematic Report on the application of CPT principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, the NPM “maintained written communication with the relevant authorities and visited several establishments holding people deprived of liberty.”⁵¹ The NPM specified that it visited the Belgrade

48 The Protector’s press release of 13 October is available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=236:kirs-and-moi-did-not-prevent-free-movement-of-migrants-during-the-transfer-from-the-asylum-center-to-the-reception-center&catid=14:statements&Itemid=17. His findings and recommendations are available in Serbian at: www.ombudsman.rs/index.php/2012-02-07-14-03-33/6811-irs-i-up-rs-nisu-spr-cili-sl-b-dn-r-nj-igr-n-prili-pr-sh-iz-dn-g-u-drugi-c-n-r-z-zil.

49 See more at: rm.coe.int/16809cfa4b.

50 See more at: undocs.org/CAT/OP/10.

51 Protector of Citizens, NPM Thematic report: Application of CPT principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19)

District Prison (on 23 March), the Belgrade and Padinska Skela penitentiaries and the MIA Detention Centre (on 24 April), and the Sremska Mitrovica penitentiary (on 30 April). All these visits were pre-notified and the NPM conducted unsupervised interviews with randomly selected persons deprived of liberty during them.⁵² The NPM was apparently satisfied with the work of these establishments during the state of emergency, given that it issued them only one recommendation, to put in place conditions enabling all persons deprived of liberty to maintain contacts with their families and other people by phone or alternative means of communication, including communication over the Internet by using available programmes for the transmission of images and sound, to a greater extent than they would in ordinary circumstances.⁵³ The NPM team that made the visits did not include any doctors, although it commented the protection of the convicts' health from COVID-19 in its Thematic Report.

The Protector of Citizens noted in his Special Report on the activities of his office during the state of emergency that measures for protecting the health of persons deprived of liberty and the staff were complied with, that they were regularly supplied with protective gear and that enhanced medical supervision measures were applied with respect to individuals at particular risk of infection.⁵⁴ The Report further states that the Penal Sanctions Enforcement Administration (PSEA) has undertaken all the requisite steps to organise the work of the staff, ensure the safe operations of all establishments and implement the measures to protect the staff and persons deprived of liberty from contracting coronavirus. Some of the inmates, however, were infected with COVID-19. The situation was particularly grave in the penitentiary in Požarevac, where as many as 84 persons deprived of liberty had coronavirus in early May, as confirmed by the PSEA.⁵⁵ The penitentiary designated rooms for the accommodation of people who had violated the self-isolation measures; the dormitories for them were furnished with three tier bunk beds.⁵⁶

Migrants and asylum seekers not renting housing were shut in the asylum and reception centres as soon as the state of emergency was introduced. The ones who gathered near the border crossing with Croatia and at other venues outside the asylum and reception centres were taken to those centres, which they were not allowed to leave the following two months (until 14 May, i.e. eight days after the state

pandemic, May 2020, p. 3. Available at: <https://www.ombudsman.rs/attachments/article/6627/Report.pdf>.

52 *Ibid*, p. 4.

53 *Ibid*, pp. 9–10.

54 The Special Report is available at: <https://www.ombudsman.org.rs/attachments/article/192/Report%20on%20Protector%20of%20Citizens'%20activities%20during%20COVID-19%20pandemic.pdf>.

55 *N1*, "84 Convicts in Zabela Infected with Coronavirus," 4 May. Available in Serbian at: <http://rs.n1info.com/Vesti/a596021/Korona-u-Zabeli.html>.

56 *Espresso.rs*, "Take a look at the accommodation of everyone who violates isolation measures: in Požarevac (VIDEO)," 19 March. Available at:.

of emergency was lifted) except in exceptional situations (e.g. if they were in need of urgent medical aid, et al).⁵⁷ The negative effects of the collective deprivation of liberty of migrants and asylum seekers were amplified by the overcrowding and sub-standard hygienic and material conditions in some asylum centres, to which many asylum seekers alerted the BCHR.⁵⁸

According to NPM's report on its visits to the reception centres in Obrenovac and Adaševci on 28 April and 4 May 2020, over 2,000 aliens were living in these two centres on the days the NPM visited them. The NPM warned that longer accommodation in such living conditions could cumulatively reach the threshold of inhuman and degrading treatment.⁵⁹

All three buildings of the Obrenovac Reception Centre, which has the capacity to accommodate 400 people, were overcrowded. The dormitories were packed with bunk beds; the NPM found some residents sleeping on the floor in the halls due to lack of free beds. Hygiene in the facilities was unsatisfactory despite the staff's efforts. The situation was even worse in the 52 tents housing 583 people on the athletic field within the Centre complex's grounds. All the tents visited by the NPM team were overcrowded. Most of the tents were not made of material suitable for the weather since the temperatures were extremely low. Migrants living in the tents also had problems accessing drinking water and maintaining hygiene, since there was an insufficient number of showers considering the number of residents.⁶⁰

Migrants and asylum seekers in the Adaševci Reception Centre were accommodated in the building of the former Motel Adaševci and five prefab buildings. In one prefab building, the NPM team found around 150 migrants sharing 142 bunk beds positioned in three rows. It said that the beds were decrepit, with worn-out mattresses, some of which were damaged to the point of no longer being usable, so that the residents had to share beds. The facilities were muggy and stuffy, permeated

57 See the Government Decision on the Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum and Reception Centres in the Republic of Serbia (*Sl. glasnik RS*, 32/20); the Decree Amending the Decree on State of Emergency Measures (*Sl. glasnik RS*, 53/20) and the Order Restricting Movement on Roads Leading to Asylum and Reception Centre Facilities and Grounds (*Sl. glasnik RS*, 66/20).

58 According to UNHCR data, 5,530 aliens were living in Serbian asylum and reception centres in late February; their number rose to 8,562 after the adoption of the Decision on the Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum and Reception Centres in the Republic of Serbia on 16 March and the accommodation of all migrants who had lived outside in these centres, which have the capacity to accommodate around 6,000 people. More in BCHR's *Report on the Right to Asylum in the Republic of Serbia, Periodic Report for January-March 2020*, pp. 36–39.

59 The NPM's report is available in Serbian at: www.ombudsman.rs/index.php/izvestaji/posebni-izvestaji/6719-izv-sh-p-s-prihv-ni-c-n-ri-u-br-n-vcu-i-d-sh-vci-s-dg-v-r-s-ri-z-izb-glic-i-igr-ci-p-s-up-nju-p-pr-p-ru-np.

60 The migrants themselves made facilities for maintaining their personal hygiene. They were dissatisfied with the hygiene in the mobile toilets and the hygiene packages they were provided with. Some residents of this Reception Centre contracted skin diseases. The NPM was told that around 50 migrants were diagnosed with scabies or other skin diseases.

by an unpleasant odor due to overcrowding, lack of windows and the fact that the buildings were not suited for the climate. The residents were deprived of even minimal privacy. However, the facilities were well-heated at night and on colder days, because each facility had its own heating aggregate. The residents of this Reception Centre told the NPM team that there were lice in the tattered mattresses and dirty blankets.

A total of 380 migrants and asylum seekers were housed in the 50 or so rooms of the erstwhile Motel Adaševci. Some dormitories had between six and 10 beds; nine of the rooms had 12 beds, while one large room turned into a dormitory was shared by around 40 migrants and asylum seekers. The entire Centre was disinfected three times a week and the migrants were tasked with keeping it clean. As per the conditions for maintaining personal hygiene, the NPM found that many of the faucets and toilets were severely rundown. Between 650 and 700 residents had to share only 12 faucets and 14 decrepit squatting toilets. The Centre residents claimed that had hot water only four hours a day and that they could not get their turn to shower because of the large number of people.

Despite the numerous shortcomings it identified, the NPM praised the efforts of the Commissariat for Refugees and Migration (CRM) staff to prevent the outbreak of COVID-19 among the refugee and migrant population. CRM reported that none of the residents of asylum and reception centres had contracted coronavirus by the end of May.

The NPM team did not visit any psychiatric or social care institutions during the state of emergency. Therefore, no independent body monitored the situation in these institutions during the period when further interferences with the fundamental freedoms of their residents and greater resort to fixation and overmedication could have been expected in light of the imposed restrictive measures and staff shortages. The Protector of Citizens did not publish by the end of the year the results of his monitoring of 20 social care institutions and residential homes for adults and the elderly founded by the Republic of Serbia and the AP of Vojvodina, where coronavirus infections had been confirmed by 22 April 2020.⁶¹

The NPM did not monitor the private residential institutions for adults and the elderly either. The Protector of Citizens said that he did not have “the competence or powers” to monitor the work of private residential institutions,⁶² which is in contravention to the Optional Protocol to the Convention against Torture (OPCAT).⁶³ According to a report of the Ministry of Labour, Employment and Veteran

61 See the Protector’s press release of 22 April at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=201:protector-of-citizens-launched-control-investigations-of-social-welfare-institutions-and-residential-care-homes-as-well-as-the-ministry-of-labor-employment-veteran-and-social-policy&catid=49&Itemid=16.

62 *Ibid.*

63 Under Article 4 of OPCAT, each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or

and Social Issues, its inspectors had intensified their oversight activities during the epidemic and filed five criminal reports against social service providers.⁶⁴

Coronavirus entered the Gerontology Centre in Niš in April 2020: 135 of the residents contracted and 51 died of COVID-19. Around 40 members of the Centre staff spent a month and a half in quarantine (in the Centre, together with the residents).⁶⁵ Officials claimed that the virus had entered the Centre due to non-compliance with the regulations, unprofessionalism and a number of other irregularities (the residents were allowed visits and to leave the Centre; there were indications that the symptoms of some of the residents were initially concealed).⁶⁶ The Centre Director was soon arrested⁶⁷ and placed into custody on suspicion of committing a grave crime against public health. The indictment against him was filed in October 2020.⁶⁸ Contrary to the view of the Committee against Torture,⁶⁹ the Protector of Citizens discontinued the review of this institution's operations, under the explanation that "there are no elements for further action since all the relevant documents are in the prosecution service."⁷⁰

Throughout November 2020, BCHR was contacted by people serving their prison sentences and members of their families, who claimed that the number of inmates infected by coronavirus was steadily increasing. Given the overcrowding of

at its instigation or with its consent or acquiescence (italics ours). Given that private providers of residential care to adults and the elderly must be licenced by the ministry charged with social protection and are subject to its oversight under the Social Protection Act (*Sl. glasnik RS*, 24/11), the NPM is definitely entitled to visit such institutions during the fulfilment of its mandate under the OPCAT.

64 Available in Serbian at: www.minrzs.gov.rs/sites/default/files/2020-05/Brosura%20Finalna%20verzija.pdf.

65 *Danas*, "Gerontology Centre in Niš still not admitting new residents," 16 June. Available in Serbian at: www.danas.rs/drustvo/gerontoloski-centar-u-nisu-jos-ne-prima-nove-korisnike/.

66 *Bizlife*, "Disaster in Gerontology Centre in Niš, 14 persons infected," 14 April. Available at: <https://www.bizlife.rs/disaster-in-gerontology-centre-in-nis-140-infected-persons-detected/>.

67 *Serbian Monitor*, "424 newly infected in Serbia, Director of Gerontology Centre in Niš arrested," 14 April. Available at: <https://www.serbianmonitor.com/en/424-newly-infected-in-serbia-director-of-the-gerontology-centre-in-nis-arrested/>; *NI*, 13 April, available in Serbian at: rs.n1info.com/Vesti/a588620/Uhapsen-direktor-Gerontoloskog-centra-u-Nisu.html.

68 *NI*, "Charges filed against Director of Gerontology Centre in Niš," 2 October. Available in Serbian at: rs.n1info.com/Vesti/a656302/Optuznica-protiv-bivseg-direktora-Gerontoloskog-centra-Nis.html.

69 In its Concluding observations on the second periodic report of Serbia (CAT/C/SRB/CO/2), the Committee against Torture said that the State party should ensure the effective and independent operation of the Protector of Citizens and refrain from encroaching upon its mandate to act on complaints in individual cases, irrespective of whether or not criminal proceedings have been initiated, para. 21. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPpRiCAqhKb7yhskPzZ7qqLIMiSsYYpjvQncppZ1Nq6xPjYePRKLFQ1ZNsn-mJYsSrGl46Ce2sCAjC%2B1rN3YxuxGlerpjPEnzqCgPcH4QoyqHape1tU7cDyxfXf>.

70 *Insajder*, "Protector of Citizens: Ministry of Labour has not been forwarding information about inspectors' oversight of social care institutions for months now," 9 December. Available in Serbian at: insajder.net/sr/sajt/vazno/21637/Za%C5%A1titnik-gra%C4%91ana-Ministarstvo-za-rad-meseci-ma-ne-dostavlja-informacije-o-inspekcijskom-nadzoru-socijalnih-ustanova.htm.

some penitentiaries, alerted to by domestic and international monitoring bodies for years,⁷¹ the epidemic that peaked in the autumn of 2020, as well as public officials' statements that the health system was overstrained, the BCHR on 26 November 2020 submitted its initiative to the Serbian Government and the National Assembly to urgently draft and adopt a law on pardons within the fight against COVID-19.⁷²

A similar initiative was filed in November 2020 by the association for post-penal reception and resocialisation of inmates "New Beginning".⁷³ Such a law was not adopted by the end of the year; nor was any information that it was being drafted publicly available.⁷⁴

After the initiatives to pass a pardon law were submitted, the Penal Sanctions Enforcement Administration said that only 53 inmates were infected by the virus (i.e. 0.4% of the 10,660 people deprived of liberty) and that all of them were being treated in the Special Prison Hospital in Belgrade.⁷⁵ In early December, the Justice Ministry said that it was "considering all possibilities and initiatives on pardon and analysing the numerical data".⁷⁶

The number of infected inmates grew to 170 in the ten days that passed since BCHR filed its initiative. In its response to BCHR's request for access to information of public importance, the Penal Sanctions Enforcement Administration said that 81 of 1,570 tested inmates were infected by COVID-19, that most of them (72) were admitted to the Special Prison Hospital in Belgrade and that one inmate diagnosed with coronavirus had died. The Administration said that another 142 (around 1.34% of the prison population) of the 842 inmates tested were diagnosed with COVID-19 in the first week of December, that most of them (64) were admitted to the Special

71 At the very end of 2020, the NPM published its finding that Pavilion IV of the Sremska Mitrovica penitentiary was overcrowded and did not fulfil the standards for the accommodation of convicts. The NPM recommended that they be immediately moved to another pavilion or another penitentiary in Serbia fulfilling the standards and that inmates are not referred to it until the conditions in it meet the valid standards. More is available in Serbian at: <https://www.ombudsman.rs/attachments/article/6927/42421%20preporuka%20IV%20paviljon.pdf>.

72 See also Chapter II.2.4. More is available in Serbian at: <http://www.bgcentar.org.rs/inicijativa-za-donosenje-zakona-o-amnestiji-u-hitnom-postupku/>.

73 *Nova.rs*, "Calls to pardon prisoners because of pandemic," 16 November. Available in Serbian at: nova.rs/vesti/hronika/zbog-pandemije-traze-amnestiju-zatvorenika/.

74 An initiative to pass a law on pardons was submitted to the Ministry of Justice by the Belgrade Bar Chamber in late March 2020. See more in Serbian at: akb.org.rs/vesti/predlog-za-amnestiju-odredjenih-osudjenih-lica-kako-bi-se-rasteretili-kapaciteti-u-kp-zavodima/?script=lat. The Ministry said that the adoption of such a law pardoning convicts sentenced to lower sentences, could be considered once the state of emergency was lifted. See the following report in Serbian: <https://www.021.rs/story/Info/Srbija/240233/O-amnestiji-zatvorenika-nakon-okoncanja-van-rednog-stanja-obuhvatila-bi-one-sa-laksim-kaznoma.html>. This did not happen.

75 *Politika*, "BCHR calling for pardons because of corona, 53 convicts in Central Prison infected," 26 November. Available in Serbian at: www.politika.rs/sr/clanak/467579/Beogradski-centar-trazi-amnestiju-zbog-korone-zarazena-53-.

76 *Politika*, "Justice Ministry deliberating pardon proposal," 10 December. Available in Serbian at: www.politika.rs/sr/clanak/468573/Ministarstvo-pravde-razmatra-predlog-amnestije.

Prison Hospital in Belgrade, that 34 of them were in the Sremska Mitrovica and 31 of them in the Padinska Skela penitentiaries and that none of them died that week. By 7 December, small numbers of inmates were diagnosed with COVID-19 in the penitentiaries in Požarevac – Zabela, Pančevo, Valjevo and Čuprija, and in the district prisons in Belgrade, Negotin and Kraljevo.⁷⁷ The Penal Sanctions Enforcement Administration said that the arrival of new inmates and enforcement of penitentiary measures were the greatest challenges faced by the penitentiaries and that 900 fewer inmates were incarcerated in these institutions than before the epidemic broke out.

Presence of coronavirus was registered in many social care institutions, especially for the elderly, in the autumn and winter of 2020. The Ministry of Labour, Employment and Veteran and Social Issues said on 15 November that a total of 404 residents of social care institutions and homes for adults and the elderly had tested positive for coronavirus; their number grew to 1,423 on 1 December, 1,945 on 15 December and 1,732 on 31 December 2020.⁷⁸ The Ministry did not specify how many of these people diagnosed with coronavirus had died.

The NPM was unable to conduct three pre-notified visits to social care institutions (the Belgrade Gerontology Centre institutions in Voždovac and on Bežanjska kosa and the Home for Adults with Disabilities in Zemun) in November to inspect the status of particularly vulnerable categories of people in social care institutions during the COVID-19 pandemic. The Belgrade Gerontology Centre notified the NPM that it could not visit its institutions because of the Order Prohibiting Visits and Restricting Movement in Homes for the Elderly;⁷⁹ the NPM team was notified at the main door of the Home for Adults with Disabilities by the Acting Director that the line ministry prohibited access to the institution's facilities and the visit and that "the institution's guards are present to prevent entry into the institution";⁸⁰ Although the NPM team notified the Ministry of the obligation of such institutions to facilitate access and visits to such institutions under Serbian law and international standards, the then Minister of Labour, Employment and Veteran and Social Issues said that the visits could not go ahead for epidemiological reasons and that "all human rights institutions can implement their activities through video conferencing".⁸¹

77 See more in Serbian at: www.bgcentar.org.rs/odgovor-uprave-za-izvršenje-krivičnih-sankcija-o-prisustvu-korona-virusa-u-ustanovama-u-okviru-uprave/.

78 See more in Serbian at: www.minrzs.gov.rs/sr/aktuelnosti/vesti. As the Ministry staff explained, the above figures do not reflect the number of newly-infected residents tested in the past 24 hours, but the total number of residents "considered positive on that day" (i.e. both the residents who tested positive on that day and those who were still infected by coronavirus).

79 *Sl. glasnik RS*, 28/20, 66/20 and 87/20.

80 See the Protector's press release of 10 October. Available at: <https://www.ombudsman.org.rs/index.php?limitstart=40>.

81 *Insajder*, "Protector of Citizens: Ministry of Labour has not been forwarding information about inspectors' oversight of social care institutions for months now," 9 December. Available in Serbian at: insajder.net/sr/sajt/vazno/21637/Za%C5%A1titnik-gra%C4%91ana-Ministarstvo-za-rad-mesecima-ne-dostavlja-informacije-o-inspekcijskom-nadzoru-socijalnih-ustanova.htm. See also *Insajder*, "Đorđević: Protector of Citizens team not allowed to visit the Zemun

1.7. Numerous Cases of Police Ill-Treatment during the July Protests

The day after the parliamentary elections, which were held on 21 June 2020,⁸² BIRN published its report showing that Serbia had underreported the number of COVID-19 deaths and infections in the 19 March-1 June 2020 period.⁸³ The number of COVID-19 infections did not officially exceed 100 before the elections. After election day, the officially reported numbers of COVID-19 deaths and infections steadily increased, giving rise to public doubts about the accuracy of the official data and the work of the relevant authorities. Public dissatisfaction escalated in the evening on 7 July, after Serbian President Aleksandar Vučić announced new anti-pandemic measures, including the reintroduction of the prohibition of movement from Friday, 10 July, to Monday, 13 July 2020.

Soon after the President announced the new measures, people started gathering in front of the National Assembly, their number rapidly grew to several hundred. In addition to expressing their dissatisfaction verbally, some of them started throwing rocks and various objects at the police deployed in front of the parliament. The rise in the number of violent protesters, who increasingly clashed with the police, prompted the latter to use tear gas and other means of coercion against them. The protesters threw the tear gas back at the police, destroyed public property and some even set fire to police cars.

However, several inadequate police reactions later that evening shifted the focus from violent protesters to violent officers and their ill-treatment of individuals, who were not offering resistance or assaulting them, or destroying property. The protesters filmed the police kicking and truncheoning on the head several people sitting peacefully on a bench in the nearby park and another protester they had thrown to the ground in front of the parliament building.⁸⁴

More and more people joined in the protests, both in Belgrade and in other cities across Serbia. Clashes between the police and some protesters continued. Organised groups provoking the police and “helping” them haul the protesters were also identified.⁸⁵ The police, reinforced by mounted police, used large quantities of tear gas to suppress the protesters, who were wearing face masks. Police even fired

Home because of the coronavirus epidemic,” 12 October. Available in Serbian at: insajder.net/sr/sajt/vazno/20757/.

82 See more at Chapter III.1.

83 BIRN, “Serbia underreported COVID-19 deaths and infections, data shows,” 22 June. Available at: <https://balkaninsight.com/2020/06/22/serbia-under-reported-covid-19-deaths-and-infections-data-shows/>.

84 Videos of the incidents are available at: www.youtube.com/watch?v=QaJ3R5k0Bus and www.krik.rs/rebic-policija-sinoc-bila-uzdrzana-reagovala-kada-su-ugrozeni-zivoti-policaajaca/.

85 See, e.g.: www.youtube.com/watch?v=JSHpuMnLdRk, www.youtube.com/watch?v=iEVI88_ByBg, and *Nova* and *Danas* reports available in Serbian at: nova.rs/vesti/hronika/ko-su-batina-si-koji-su-s-policijom-prebijali-gradane/ and www.danas.rs/drustvo/ko-su-desnicari-koji-su-se-tukli-s-policijom/.

tear gas at the bodies of the protesters.⁸⁶ Some of the shells found on the street indicated that the tear gas was around 30 years old.⁸⁷

Several cases of police brutality filmed during the second day of the protest, the night of 8/9 July, were the “hallmark” of the July protests. On the Belgrade Terazije square, several police officers chased down a protester, threw him on the ground, and truncheoned and kicked him. Another cordon of officers soon arrived and they each truncheoned and kicked the man, who was already lying curled up on the street and not offering any resistance. When they left, he remained lying on the ground, without moving, and a number of police cars coming down the street had to stop lest they run over him. Three officers got out of the car, came up to him, moved him to the sidewalk and went back to the cars that went on their way. The beaten up man continued lying on the sidewalk.⁸⁸

That same evening, a uniformed police officer in Novi Sad left the police cordon and pulled an 18-year-old man driving down the street off his bicycle. Another officer ran up to the young man lying on the ground and kicked him in the head.⁸⁹ Novi Sad residents staged further protests against this case of police brutality, demanding the dismissal of the implicated officers.⁹⁰

Although initial police response to the provocations and violent actions of a small number of protesters was restrained, as time went by, they increasingly resorted to excessive, even brutal use of force⁹¹ against many protesters who were not violent in the least and whose only “mistake” was that they were “in the wrong place at the wrong time”.⁹² Dozens of people, including women,⁹³ children,⁹⁴ journalists⁹⁵

86 See, e.g.: www.youtube.com/watch?v=RPkPcF4E7jI and youtu.be/eMQcWN1lwVI.

87 *Radio Free Europe*, “Tear gas from the 1990s fired during Belgrade protests,” 13 July. Available in Serbian at: <https://www.slobodnaevropa.org/a/suzavac-iz-devedesetih-na-protestima-u-beogradu/30724102.html>. See also *NI*, “Movement of Free Citizens: police firing tear gas manufactured 30 years ago,” 11 July. Available in Serbian at: rs.n1info.com/Vesti/a618786/PSG-Policija-ispaljuje-suzavac-star-i-po-30-godina.html.

88 The video recording of the incident is available at: www.youtube.com/watch?v=EeM3GTY-65Mo. The testimony of the victim of police ill-treatment is available at: www.youtube.com/watch?v=0VUoIcSvNKQ.

89 The video recording of the incident is available at: www.youtube.com/watch?v=UfIsnKjFEZ8.

90 *NI*, “Protest in Novi Sad over police brutality and beating of a boy,” 20 July. Available in Serbian at: rs.n1info.com/Vesti/a621724/Protest-u-Novom-Sadu-zbog-policijske-represije-i-prebijanja-decaka.html.

91 See, e.g.: youtu.be/OkOuZT-XR8Q, youtu.be/V5dOuFrz-uU and youtu.be/0ILpeCJXUSU.

92 *CINS*, “Testimonies of Police Brutality: After One Hits, Another One Comes to Do the Same,” 10 July. Available at: <https://www.cins.rs/en/testimonies-of-police-brutality-after-one-hits-another-one-comes-to-do-the-same/>.

93 See: www.youtube.com/watch?v=1v8rWi8hoPk and www.youtube.com/watch?v=mBR4td-Douck.

94 *NI*, “Proceedings initiated because of torture: activists demanding release of other detainees,” 16 July. Available in Serbian at: rs.n1info.com/Vesti/a620452/Postupci-zbog-torture-aktivisti-traze-oslobadjanje-ostalih-pritvorenih.html.

95 *NI*, “IJAS registered 21 assaults on news crews reporting on July protests,” 11 July. Available in Serbian at: <https://rs.n1info.com/video/info/a618804-nuns-zabelezio-21-napad-na-novinarske-ekipe-tokom-protesta/>.

and persons with disabilities, were victims of police brutality, and scores of people were hauled in by the police, held in custody, brought before misdemeanour judges and punished.⁹⁶

In its report on the July protests in Belgrade, the NPM quoted a number of people deprived of liberty, held in custody and punished by misdemeanour courts, whom it interviewed during its visits to the police stations and penitentiaries during the protests. A number of them alleged that they had not been allowed to notify their family members of their arrest until they were admitted to prison.

The medical examinations of persons deprived of liberty in the police stations were as a rule conducted in the presence of police officers, although the arrestees claimed that the doctors had not insisted on their presence because they feared for their safety. In their reports on the examinations of the arrestees in the police stations, the doctors wrote down that the identified injuries had been inflicted by “unidentified individuals” although the arrestees told them they had been injured by the police. Some police records stated that the arrestees had no visible bodily injuries, while some officers admitted to the NPM team that some of the people hauled in had visible injuries, which were not registered.

Some institutions did not register the arrestees’ detailed testimonies of how they sustained the injuries and did not photograph the injuries. As many as 17 of the 28 people the NPM team interviewed complained of police brutality during arrest. A number of them said they had been arrested by people in plainclothes who did not identify themselves as police. A number of people had visible injuries that could have been sustained in the manner they alleged.⁹⁷ The MIA reply to the NPM report was not published by the end of 2020.

BCHR filed 32 criminal reports complaining of police brutality during the July protests (30 were filed with the Belgrade First Basic Public Prosecution Service and two with the Novi Sad Basic Public Prosecution Service) and initiated as many reviews of the lawfulness of the MIA’s operations with the Protector of Citizens. The NGO A11 – Initiative for Economic and Social Rights filed another seven criminal reports complaining of police brutality at the Belgrade protests.

Video recordings of protests on social networks and in the media indicate that over 100 people were victims of police brutality. While citizens charged with misdemeanours during the protests were expressly convicted,⁹⁸ nearly all proceed-

96 See Chapter II.2.

97 See more in Serbian at: <http://www.bgcentar.org.rs/najvazniji-delovi-izvestaja-nacionalnog-mehanizma-za-prevenciju-torture-o-policijskoj-brutalnosti-tokom-julskim-protesta/>.

98 The protesters found guilty of carrying flares and violating public law and order – usually for offending officers on duty – were fined or sentenced to 30 days’ imprisonment. One protester, who insulted two police officers, was sentenced to 60 days in jail. In many cases, the misdemeanour courts automatically gave credence to the police officers, dismissing the defendants’ denials of any wrongdoing and considering their statements “unsubstantiated and designed in advance to avoid liability.” Some defendants suggested the court obtain video recordings attesting to the veracity of their statements, but the misdemeanour court found that unnecessary since there were “clear and credible” statements of police officers about their wrongdoing,

ings against police officers were still at “square one”. CSOs rallied in the Platform of Organisations for Cooperation with UN Human Rights Mechanisms sent an urgent appeal to the UN Special Rapporteur on Torture during the protests. In its response of 25 September, the Serbian Government said that three officers were suspected of violent conduct and that investigations launched against them by the Basic Public Prosecution Services in Novi Sad, Bačka Palanka and Zrenjanin were under way. No information was available on whether any other officers were prosecuted for violence against citizens during the July protests. The Government said that the Belgrade First Basic Public Prosecution Service on 17 July 2020 submitted a request with the MIA Internal Control Sector to gather the requisite information connected to the criminal reports filed by BCHR and A-11 and that the staff of that Sector would urgently review the facts of the cases and inform the prosecutors of their findings.⁹⁹

According to information obtained from lawyers representing victims of police brutality during the protests, work on the cases is “on hold” since the MIA cannot identify its officers, who were wearing their uniforms, helmets and gas masks on their faces, but had no identification tags when they applied excessive force against people. In its response to BCHR’s request for information of public importance of August 2020, the Belgrade First Public Prosecution Service indicated that it had not taken any measures to preserve the footage of surveillance cameras covering the city that included recordings numerous cases of police abuse.

None of the reviews of individual cases of police brutality against protesters initiated with the Protector of Citizens were completed by the end of the year. After the second night of the protest, when the greatest number of police ill-treatment cases were registered, the Protector of Citizens issued a press releasing in which he concluded that he ascertained by immediate insight in the situation in the field that the police had not used excessive force against the protesters, except in individual cases which he would investigate during his review of the MIA’s operations.¹⁰⁰

1.8. Initiative to Amend the Police Act

In late July 2020, the BCHR filed an initiative with the MIA to as soon as possible draft amendments to the Police Act, that would provide for the mandatory suspension of officers against whom disciplinary proceedings have been initiated on suspicion that they intentionally applied excessive physical or psychological force against people and/or who were criminally prosecuted on suspicion of tor-

“who had no reason to charge the defendant without good cause” and for reasons of procedural economy. See more in the CINS report of 27 July, “Protests: Courts Side with Police, Send People to Prison even for Expletives,” available at: <https://www.cins.rs/en/protests-courts-side-with-police-send-people-to-prison-even-for-expletives/>.

99 See: spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35590.

100 See: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=297:police-did-not-use-excessive-force-individual-cases-will-be-investigated&catid=44:opinions-and-views&Itemid=4.

ture or ill-treatment or extortion of statements pending a final decision in such proceedings, and their mandatory dismissal in the event they are found guilty of these crimes. Under the Police Act as it stands now, suspension and dismissal of officers found guilty of these crimes are one of the options, which has been applied extremely rarely to date. The amendments would bring the Police Act into conformity with the requirements under the case law of the ECtHR and the CPT.¹⁰¹ In October 2020, the MIA notified the BCHR that its initiative would be reviewed “the next time the Police Act is amended” and that the drafting of the amendments would ensue after the MIA units completed their analysis of the valid provisions of that law. The preliminary draft of the amendments was not made public by the end of 2020.

1.9. Violence against Unaccompanied Children in the Bogovađa Asylum Centre

In mid-May 2020, the Group for Children and Youth Indigo alerted the BCHR to an incident that occurred in the Bogovađa Asylum Centre in the night of 10/11 May 2020, when the staff of the company Dekapolit, contracted to guard the Asylum Centre, verbally and physically abused unaccompanied migrant children living in the Centre. One of the boys filmed the incident on his cell phone and forwarded the recording to Indigo. The footage showed one of the guards punching a child and hitting him on the head and all over his body with an object resembling a truncheon, yelling “How much does one have to beat you?!” Another recording showed the same guard threatening and yelling at the children and picking up a chair to hurl at the children sitting on a bed, while his colleague was standing next to him and watching the incident, and not even trying to prevent it from escalating. The footage also showed the guards’ threats, intimidation and physical abuse. BCHR filed a criminal report against two guards with the Ub Basic Public Prosecution Office. The Protector of Citizens was also informed of the incident. After the relevant authorities were notified of the incident, the boy, who had filmed the ill-treatment, reported that one of the guards on the recordings tried to intimidate him because he reported the abuse; the guard searched the content of the boy’s phone in the presence of two other people, in the attempt to find the footage of abuse and then threatened to take his phone and throw it away if he ever did that again.

During his review of the operations of the CRM, the Bogovađa Asylum Centre and the Inter-Municipal Social Work Centre covering the Ljig, Lajkovac and Mionica municipalities, the Protector of Citizens ascertained that they had failed to take the requisite measures when they learned of the physical violence against unaccompanied migrant children in the Bogovađa Asylum Centre, who were under the guardianship of the Inter-Municipal Social Work Centre, and to notify the police and the relevant prosecution service thereof. The Protector of Citizens, however, did

¹⁰¹ See more at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/bchr-files-initiative-with-ministry-of-internal-affairs-to-draft-amendments-to-police-act/>.

not recognise the guards, although employed by a private company, as individuals acting in official (public) capacity in the meaning of Article 1 of the Convention against Torture; consequently he did not qualify the ill-treatment as an act attributable to the state, i.e. the administrative authority subject to his review.¹⁰²

Therefore, rather than recommending that all the implicated guards be suspended from their jobs in the Asylum Centre (a requirement applicable to all public officials according to the case law of the ECtHR and the CPT), he recommended “preclusion of direct contacts” between them and the abused children pending the completion of the procedure. Furthermore, rather than performing a comprehensive review of the legality and regularity of operations of the administrative authorities at issue (the Bogovađa Asylum Centre, the Inter-Municipal Social Work Centre covering the Ljig, Lajkovac and Mionica municipalities, and the MIA), the Protector of Citizens recommended that such a review be implemented by in-house supervisory mechanisms – which brings into question the purpose of his independent oversight. Finally, there was no justification for the Protector’s failure to recommend to the administrative authorities to urgently take measures to address the excessive number of unaccompanied migrant children under the care of just one temporary guardian since he himself said in his enactment that one Inter-Municipal Social Work Centre case officer was acting as a temporary guardian of around 333 unaccompanied migrant children. Nor did the Protector of Citizens recommend any measures with regards to the fact that the Bogovađa Asylum Centre guards were “allowed to carry plastic truncheons,” which they “occasionally use to punish disobedient migrants.”¹⁰³ In mid-June 2020, CRM issued a press release stating that the guard who had abused the unaccompanied migrant children was dismissed.¹⁰⁴

1.10. Novi Sad Police’s Failure to Promptly Identify and Deprive of Liberty a Perpetrator of a Severe Beating

A man was brutally beaten up in the heart of Novi Sad at 1 am on 24 August 2020. The perpetrator first rendered him unconscious by repeatedly punching him in the head and then broke both his forearms. The video recording of the incident was posted almost three weeks later on social networks. The police finally issued a press release saying they would issue an arrest warrant against the suspect. Informa-

102 In its General Comment No. 2 on the implementation of article 2 of the Convention against Torture by State parties, the Committee against Torture held that States bore international responsibility for the acts and omissions of their officials *and others, including agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law* (italics ours). See: CAT/C/GC/2, paras. 15 and 17.

103 See the Protector’s findings and recommendations available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=281:the-protector-of-citizens-asks-serbian-moi-to-ascertain-all-the-circumstances-of-the-physical-illtreatment-of-minor-migrants&catid=44:opinions-and-views&Itemid=4.

104 NI, “Commissariat: Guard who hit underage migrant sacked,” 19 June. Available in Serbian at: rs.n1info.com/Vesti/a611751/Komesarijat-o-napadu-na-migrante-u-Bogovadji.html.

tion indicating that the police were dragging their heels on this case was, however, soon published. It transpired that the Clinical Centre of Vojvodina had promptly notified the police of the incident and that it took the police 10 days to obtain video footage of the event, which had been filmed by a surveillance camera of a company. The Police Director said that the police had to obtain the consent of the owner of the surveillance camera.¹⁰⁵ It even turned out that the suspect showed up on 8 September 2020 at the Novi Sad First Basic Prosecution Service of his own accord to discuss the deferral of his criminal prosecution in a 2018 case.

The Prosecution Service said that the Novi Sad police had not identified the suspect by that time, wherefore it was unaware that the same individual was at issue.¹⁰⁶ The MIA issued a press release on 12 September 2020, in which they identified the man suspected of the assault and stated they were looking for him.¹⁰⁷ Whereas the Novi Sad police claimed their officers notified the Basic Public Prosecution Service in that city of the incident of 24 August as soon as they learned of it, the latter claimed they first heard about it on 2 September 2020.¹⁰⁸ The Protector of Citizens also identified numerous shortcomings in the work of the Novi Sad police, and called for disciplinary proceedings against the relevant officers for grave dereliction of duty.¹⁰⁹ The suspect had fled to Montenegro, where he was found and deprived of liberty in mid-October 2020.

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 Eu-

105 *Insajder*, “Rebić: Police learned about the beating of the young man from Novi Sad the same day, but he had allegedly refused to cooperate with the police” 13 September. Available in Serbian at: insajder.net/sr/sajt/vazno/20369/.

106 *Danas*, “Kontić was a suspect at the time he went to the prosecution service,” 18 September. Available in Serbian at: <https://www.danas.rs/drustvo/kontic-bio-osumnjicen-kada-je-otisao-u-tuzilastvo/>.

107 The MIA press releases are available in Serbian at: mup.gov.rs/wps/portal/sr/aktuelno/saopstenja/1c759a2f-f2b8-471e-aa23-a1d9e7594a4b and mup.gov.rs/wps/portal/sr/aktuelno/saopstenja/f261de83-d358-4020-b21a-c30d2fb38481.

108 See, e.g. the *Istinomer* report, available in Serbian at: www.istinomer.rs/analize/istinomer-saznaje-nadzor-postupanja-osnovnog-tuzilastva-u-novom-sadu/ and the MIA press release, available in Serbian at: mup.gov.rs/wps/portal/sr/aktuelno/saopstenja/856bf75f-217e-4cae-bc8c-3c1943eff4c.

109 See the Protector’s press release of 19 December. Available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=311:police-reacted-inefficiently-and-recklessly-the-protector-of-citizens-demands-disciplinary-proceedings-against-accountable-officers&catid=44:opinions-and-views&Itemid=4.

European Convention on Human Rights (ECHR) enumerate all the situations in which deprivation of liberty is justified, as well as the requirements that must be fulfilled for the lawful restriction of this right (Art. 9 of the ICCPR and Art. 5 of the ECHR).

In its interpretation of Article 5 of the ECHR, the European Court of Human Rights found that, in addition to refraining from actively violating the right to liberty and security of person, states also have the duty to take the requisite measures to secure everyone within their jurisdiction protection from unlawful deprivation of liberty. The competent state authorities are thus under the obligation to take measures to ensure the effective protection of vulnerable persons, including reasonable measures to prevent deprivation of liberty which the authorities knew or ought to have known about. The state is responsible under the Convention for the deprivation of liberty of people by private individuals perpetrated with the acquiescence or connivance of its authorities or for not ending such situations.¹¹⁰

Articles 27–31 of the Constitution of the Republic of Serbia¹¹¹ 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.

110 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.

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

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

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

The Criminal Code (CC)¹¹² envisages terms of imprisonment (that may be enforced in a penitentiary or in the convict's home),¹¹³ 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).¹¹⁴ The Juvenile Justice Act (JJA)¹¹⁵ 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).¹¹⁶ The Criminal Procedure Code (CPC)¹¹⁷ sets out a number of measures restricting the freedom of movement, primarily of suspects;¹¹⁸ some of these measures amount to deprivation of liberty (e.g. pre-trial detention, house arrest – with or without electronic surveil-

112 *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.

113 Article 45, CC.

114 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*.

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

116 See Articles 21–23 and 28–32, JJA.

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

118 See, e.g. Articles 288–290, CPC.

lance, maximum 48-hour police custody of suspects).¹¹⁹ 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*.¹²⁰

The police have other important powers interfering in the right to liberty and security in addition to the ones vested in them with respect to preliminary investigation proceedings. For instance, the Police Act¹²¹ authorises the police to bring individuals in,¹²² hold them in custody and temporarily restrict their freedom of movement;¹²³ the Misdemeanour Act¹²⁴ allows the police to bring individuals in and hold them in custody;¹²⁵ the Road Traffic Safety Act¹²⁶ 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.¹²⁷ 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.¹²⁸ The Domestic Violence Act¹²⁹ authorises police officers to bring in domestic violence suspects to the relevant police units and hold them in custody for up to eight hours.¹³⁰

The Aliens Act¹³¹ 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.¹³² Similarly, the Asylum and Temporary Protection Act (APTA)¹³³ allows the deprivation of asylum seekers in the Aliens Shelter for up to three months; their detention may be extended another three months.

119 See Articles 208–223 and 294, CPC.

120 Article 292, CPC.

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

122 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.

123 Articles 82–90, Police Act.

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

125 Articles 190–193, Misdemeanour Act.

126 *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.

127 Articles 283 and 284, Road Traffic Safety Act.

128 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.

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

130 Article 14, Domestic Violence Act.

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

132 Articles 87–88 of the Aliens Act.

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

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,¹³⁴ judges have in practice been extending pre-trial detention without questioning them about the reasons for extending their pre-trial detention, although they are available to the court. The reason for such an unconstitutional practice may lie in the distinction between the concepts of *ordering and extending* pre-trial detention in the text of the CPC¹³⁵ 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 detention¹³⁶ (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.¹³⁷ 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 Act¹³⁸) 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

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

135 Article 214(1), CPC.

136 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.

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

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

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.¹³⁹

2.2. *Major Developments in 2020 with Respect to the Right to Liberty and Security*

2.2.1. *Restrictions of the Right to Liberty and Security during the State of Emergency*

The measures introduced during the state of emergency substantially restricted the right to liberty and security and the freedom of movement of the elderly (over 65 in urban and over 70 in rural areas) and asylum seekers and migrants in Serbia.

Soon after the state of emergency was imposed, the Ministry of Internal Affairs adopted the Order Restricting and Prohibiting Movement of Individuals in the Territory of the Republic of Serbia,¹⁴⁰ under which citizens over 65(70) were prohibited from leaving their homes at all times in the 18–22 March period. The Order was amended on several occasions after 21 March. Over the next 30 days, this category of the population was allowed to leave their homes only in the early morning hours (from 3 to 8 am and subsequently from 4 to 7 am) on specific days – the time they used to buy groceries. It was only on 21 April they were allowed to leave their homes for 30 minutes three times a week within a radius of 300 m from their homes; as of 25 April, they could spend an hour outdoors every day. In the meantime, the rest of the population was under full lockdown during specific periods of the day (in the afternoons, nights and on weekends).

In early April 2020, the Serbian Government revoked the Order, but included its provisions in the Decree on State of Emergency Measures,¹⁴¹ thus eliminating the formal deficiency related to the unconstitutionality of the measure.¹⁴² However, the degree in which the right to liberty and security of person and freedom of movement were restricted stayed the same.

The duration of the measures, the extent of the restrictions of movement and social contacts imposed on the elderly during the state of emergency are comparable

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

140 *Sl. glasnik RS*, 34/20, 39/20, 40/20, 46/20 and 50/20.

141 *Sl. glasnik RS*, 31/20, 36/20, 38/20, 39/20, 43/20, 47/20, 49/20, 53/20, 56/20, 57/20, 58/20 and 60/20.

142 Experts harshly criticised the MIA's enactment of measures derogating from human rights and freedoms during the state of emergency, since such measures could only be adopted by the Government (and co-signed by the President. Government is not entitled to delegate such power to the MIA.

with the degree of restrictions of liberty during house arrest or home imprisonment, which are considered deprivation of liberty measures. The conclusion that the collective deprivation of liberty of the elderly was at issue is corroborated by the fact that the MIA was charged with monitoring compliance with the measures and that violations of the measures were punishable under criminal and misdemeanour law (up to three years' imprisonment and fines up to 150,000 RSD).¹⁴³

The lockdown regime caused much public dissatisfaction and claims of discrimination given that, for a specific period of time, betting establishments, beauty salons and catering facilities were allowed to work while the elderly were prohibited from leaving their homes. The state failed to provide an adequate explanation for this manifestly disproportionate treatment or why milder measures vis-à-vis the elderly would have been ineffective in containing the epidemic.

A similar regime applied to refugees and migrants, who were confined 24/7 in the asylum and reception centres from 16 March to 14 May 2020. They were allowed to leave them only in circumstances in which individuals under house arrest or home imprisonment are allowed to leave their abodes. The deprivation of liberty of this group of people was ordered by the Government Decision on the Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum and Reception Centres in the Republic of Serbia,¹⁴⁴ adopted in accordance with Article 6 of the Act on the Protection of the Population from Communicable Diseases. In early April 2020, this decision was revoked, but the identical restriction of the right to liberty and security of asylum seekers and migrants was included in the amended Decree on State of Emergency Measures.¹⁴⁵

The authorities planned on keeping asylum seekers and migrants locked up in the Asylum and Reception Centres after the state of emergency was lifted as well. The Health Ministry on 6 May 2020 issued the Order Restricting Movement on Roads Leading to Asylum and Reception Centre Facilities and Grounds,¹⁴⁶ but revoked it eight days later¹⁴⁷ after several CSOs filed an initiative seeking a review of its constitutionality with the Constitutional Court.¹⁴⁸

The measures prompted the submission of a large number of initiatives with the Constitutional Court to review the constitutionality and legality of the Order and several Decrees on State of Emergency Measures by CSOs, including the BCHR. The Constitutional Court discontinued reviewing the constitutionality of the Order Restricting and Prohibiting Movement during the state of emergency and the Decree

143 More on restrictions of the freedom of movement in Chapter II.10.

144 *Sl. glasnik RS*, 32/20.

145 *Sl. glasnik RS*, 53/20, 56/20, 57/20, 58/20 and 60/20.

146 *Sl. glasnik RS*, 66/20.

147 *Sl. glasnik RS*, 74/20.

148 The BCHR initiative is available in Serbian at: www.bgcentar.org.rs/inicijativa-ustavnom-sudu-za-ocenu-ustavnosti-i-zakonitosti-naredbe-o-ogranicenju-kretanja-na-prilazima-otvorenom-prostoru-i-objektima-prihvatnih-centara-za-migrante-i-centara-za-azil/.

on State of Emergency Measures, finding that they were not in contravention of the Constitution. In its view, in its Order (co-signed by the President), the Government had laid down measures derogating from human rights by the very fact that it authorised the MIA to adopt general enactments restricting and prohibiting movement in public areas and the MIA's decisions on the duration of the prohibition of movement, all the areas and people it applied to, exceptions from the prohibition, etc. were merely an act by which it "concretised", "activated" and "operationally implemented" measures derogating from human rights that had been introduced earlier.

The Constitutional Court also held that the measures drastically restricting the movement of people over 65 (and 70 in smaller communities) and refugees and migrants in asylum and reception centres during the state of emergency did not amount to deprivation of liberty because the purpose of the measures (protection from an infectious disease) and their substance (equated with the purpose) did not indicate as much. In response to the claims of the initiators of the review, that the measures discriminated against citizens over 65(70), the Constitutional Court said that that "the anti-discrimination regime that applies to derogation measures is the one laid down in Article 202(2) not in Article 21 of the Constitution". Age is listed among grounds on which discrimination is prohibited in Article 21 but not in Article 202(2) of the Constitution.¹⁴⁹

In October, the BCHR filed complaints with the European Court of Human Rights and the UN Human Rights Committee claiming violations of its clients' rights to liberty and security and freedom of movement. It also filed a discrimination claim on behalf of one client with the relevant Serbian court.

However, residents of old people's home appear to have been under a stricter regime than inmates in maximum security penitentiaries since March 2020. On 14 March, the Health Minister issued an Order Prohibiting Visits and Restricting Movement in Facilities Accommodating the Elderly,¹⁵⁰ which remained in effect even when the state of emergency was lifted; minor amendments to the Order were made on 7 May and 19 June. Residents of old people's homes were not allowed to leave them or receive visits of their closest family members even at a time when public assemblies and numerous cultural and sports events were allowed and when the parliamentary elections were held. It was only in late August that the authorities allowed 15-minute visits to old people's homes, provided that the residents and their visitors maintained a physical distance and wore protective equipment. The residents could not live the homes for nine months, and were allowed only to get some fresh air in the yards of the homes or on their balconies.¹⁵¹

149 More in BCHR's press release of 21 October. Available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/bchr-qualifies-as-disputable-the-constitutional-courts-decision-to-discontinue-reviewing-the-constitutionality-of-the-order-restricting-and-prohibiting-movement-during-the-state-of-emergency/>.

150 *Sl. glasnik RS*, 28/20, 66/20 and 87/20.

151 021, "Seven months behind locked doors of old people's homes," 9 October. Available in Serbian at: <https://www.021.rs/story/Novi-Sad/Vesti/255404/Sedmi-mesec-zakljucanih-vrata-u-do>

Soon after the state of emergency was introduced, media reported that, on the recommendation of the Ministry of Justice, Chief State Prosecutor Zagorka Dolovac issued general binding instructions ordering all public prosecutors to request pre-trial detention for all defendants who had committed a crime prosecuted *ex officio* by violating self-isolation measures.¹⁵²

During the state of emergency, a large number of people reported that they had been arrested and detained for violating the self-isolation measure they had not been properly notified of. They claimed that the flyers on COVID-19 protection measures they received when they entered the country did not specify that they should remain in their homes or that leaving their homes for a specific period of time was punishable by law. The people given flyers rather than rulings on self-isolation were arrested if they were found outside their homes and held in detention for several weeks on suspicion that they had violated the Criminal Code provision incriminating non-compliance with health regulations during an epidemic.¹⁵³

The arrest of journalist Ana Lalić in early April on suspicion of causing panic, just a few hours after the publication of her article about the situation in the Clinical Centre of Vojvodina in Novi Sad and lack of equipment, caused a public outcry. The reporter spent the night in custody and was brought before the judge the next day, who ordered her release with the consent of the prosecutor. Ana Lalić did not receive an apology from the authorities, although, later that month, the Crisis HQ doctors confirmed that the allegations about the lack of protective equipment in hospitals and clinics were true.¹⁵⁴

2.2.2. One year since the Arrest of Aleksandar Obradović – Investigation Still Pending

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 *Arms Watch* published its research of Serbia's exports of arms to war-torn Yemen¹⁵⁵

movima-za-stare-korisnici-tvrde-da-ne-mogu-da-posete-lekare-cekaju-obecani-izlet.html; See also: *NI*, "Overly long isolation in old people's homes," 26 September. Available in Serbian at: <http://rs.n1info.com/Vesti/a654143/Preduga-izolacija-u-domovima-za-stare-otvoreno-pismo-Vucicu-kljuc-se-zagubio.html>.

152 *Danas*, "Prosecutors under the Obligation to Request Pre-Trial Detention for Violation of Self-Isolation," 21 March. Available in Serbian at: www.danas.rs/drustvo/tuzilastvo-obavezno-da-trazi-pritvor-za-krsenje-samoizolacije/.

153 Such a fate befell musician Jovana Popović from Kikinda and basketball player Nikola Todorović from Leskovac. Jovana Popović's account is available in Serbian at: rs.n1info.com/Vesti/a592544/Jovana-Popovic-Iz-jednog-zatvora-sam-usla-u-drugi-i-dalje-cekam-odgovor-suda.html.

154 See more at: <https://cpj.org/2020/04/serbian-reporter-ana-lalic-on-her-arrest-and-deten/>.

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

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.¹⁵⁶ Obradović's arrest and subsequent detention went unnoticed until the Belgrade weekly *NiN* published the news in October 2019.¹⁵⁷ Obradović was being investigated for revealing trade secrets under Article 240 of the Criminal Code.¹⁵⁸

Although the preliminary proceedings judge initially ordered Obradović's house arrest rather than pre-trial detention, the court upheld the public prosecutor's appeal and ordered his remand in custody in the Belgrade District Prison.

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.¹⁵⁹ The Higher Court soon replaced the pre-trial detention order with a house arrest order,¹⁶⁰ which was not lifted until 18 December 2019.

The Cyber Crime Prosecution Service has not filed an indictment against Obradović although over a year has passed since his arrest. Prosecutor Branko Stamenković said that the investigation was in its final stage and that the public would be duly and fully informed. Obradović's lawyer Vladimir Gajić told *Nova* that the defence had not yet had the opportunity to familiarise itself with the evidence based on which the prosecutors were conducting criminal proceedings.¹⁶¹

2.2.3. Restrictions of the Right to Liberty and Security during the July Protests

According to information published by media and on social networks, many people were taken into custody by uniformed police or individuals in plain clothes, whose identity remains unknown, during the public protests that erupted in Belgrade, Niš and Novi Sad in July 2020.

In response to the Human Rights House's request for access to information of public importance, the Penal Sanctions Enforcement Administration within the

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

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

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

159 *NI*, "Appellate Court quashes decision on detention of Krušik worker, case back in Higher Court," 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.

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

161 *Nova.rs*, "One year today since Obradović's arrest, prosecutor says 'investigation in final stage,'" 19 September. Available in Serbian at: <http://rs.n1info.com/Vesti/a641321/Tacno-godinu-od-hapsenja-Obradovica-tuzilac-kaze-istraga-u-zavrsnoj-fazi.html>.

Ministry of Justice said that only 59 individuals had been admitted to penitentiaries in the 7–15 July period. It specified that 24 of them had been found guilty of misdemeanours, 16 had been detained for violating the Public Law and Order Act and that 19 had been detained in accordance with the Criminal Code and the Criminal Procedure Code.¹⁶²

According to information collected by the National Preventive Mechanism (NPM) team in the field,¹⁶³ many citizens hauled in by the police spent up to 48 hours in the holding cells in police stations and were released, without misdemeanour or criminal proceedings instituted against them. The BCHR is representing 18 victims of police ill-treatment during the protests. Three of its five clients had been questioned by the Misdemeanour Court and charges were dropped against them, while the proceedings against one of them were still pending.

In its report, the NPM concluded, among other things, that most of the individuals brought before the Misdemeanour Courts complained that they had not been allowed to call their lawyers and were questioned by the police in their absence and that the judges were “in a hurry” to end the proceedings. The media reported on one such case, Igor Šljapić, a Belgrade College of Electrical Engineering senior, who was hauled in on 11 July on suspicion that he had disrupted public law and order with his arrogant and insolent behaviour towards the police.¹⁶⁴ The Belgrade Misdemeanour Court sentenced him the next morning to 30 days’ imprisonment, in the absence of his lawyer. The testimony of a police officer he allegedly insulted was the only evidence against him. Witnesses of Šljapić’s arrest said that he had not insulted anyone and was standing peacefully near the parliament with a banner “Stop Violence”.¹⁶⁵ Eminent scientist Dr Vladimir Mentus was also arrested for allegedly insulting a police officer in the night of 11/12 July and expressly sentenced to 30 days’ imprisonment, in the absence of his lawyer.¹⁶⁶ The fact that a number of individuals sustained light or grave physical injuries during arrest gave rise to concerns as it indicated that the arresting officers violated the prohibition of ill-treatment.¹⁶⁷

162 In response to a request by Human Rights House for access to information of public importance, the Penal Sanctions Enforcement Administration within the Ministry of Justice sent a letter Ref. No. 7–00–44/2020–03 on 27 July 2020 notifying it of the number of people admitted to penitentiaries and prisons in the 7–15 July period.

163 NPM’s main findings in its report on police brutality during the July protests, available in Serbian at: <http://www.bgcentar.org.rs/najvazniji-delovi-izvestaja-nacionalnog-mehanizma-za-prevenciju-torture-o-policijskoj-brutalnosti-tokom-julskim-protesta/>.

164 *Nova.rs*, “In court without a lawyer: student from protest moved to prison,” 12 July. Available in Serbian at: <https://nova.rs/vesti/hronika/na-sudu-bez-advokata-student-s-protesta-prebacen-u-zatvor/>.

165 *NI*, “Arrested and convicted, carried “Stop Violence” banner,” 12 July. Available in Serbian at: <http://rs.n1info.com/Vesti/a619113/Za-krov-nad-glavom-Uhapsen-i-osudjen-a-nosio-transparent-Stop-nasilju.html>.

166 *Danas*, “Groundless arrests and convictions on the rise,” 14 July. Available in Serbian at: <https://www.danas.rs/drustvo/sve-brojnija-neosnovana-hapsenja-i-osude/>.

167 See more in Chapter II.1.

2.2.4. Pardon Act Initiative

In late November, the BCHR filed an initiative with all the MPs and the Serbian Government calling on them to urgently adopt a pardon law in the context of the fight against COVID-19 epidemic.¹⁶⁸

The Serbian Government and parliament have for years now been alerted to the fact that Serbian prisons were overcrowded, both by international bodies, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the UN Special Rapporteur on Torture, as well as by the Serbian Protector of Citizens and the NPM. It would be unrealistic to expect the effective implementation of preventive measures in Serbia's overcrowded prisons. Furthermore, it is well known that the risks of the uncontrolled transmission of contagious diseases are greater in collective accommodation facilities.

Given medical predictions that the COVID-19 epidemic will last a long time and the officially confirmed strain on the health system, BCHR held that the state had to take steps to facilitate the effective provision of health care to people in its territory, especially those under its control, such as people deprived of liberty.

On 20 March 2020, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommended that concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty, especially in situations of overcrowding. It also recommended that authorities should make greater use of alternatives to pre-trial detention, commutation of sentences, early release and probation; reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever appropriate, residents of social care homes; and refrain, to the maximum extent possible, from detaining migrants.¹⁶⁹ Similar recommendations were made on 25 March by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁷⁰

Given the overcrowding and breakdown of Serbia's prison population, the BCHR called on the Serbian MPs and Government to give thought to releasing from prison inmates sentenced to:

- over three years' imprisonment, who have less than three months to serve on the day the Pardon Act comes into force;
- over three years' imprisonment, who will have less than three months to serve during the first 90 days of the Pardon Act, as of the day of eligibility;
- between 18 months' and three years' imprisonment, who have less than two months to serve on the day the Pardon Act comes into force;

168 More is available in Serbian at: <http://www.bgcentar.org.rs/inicijativa-za-donosenje-zakona-o-amnestiji-u-hitnom-postupku/>.

169 Available at: <https://rm.coe.int/16809cfa4b>.

170 Available at: <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>.

- between 18 months' and three years' imprisonment, who will have less than two months to serve during the first 90 days of the Pardon Act, as of the day of eligibility;
- less than 18 months' imprisonment, who have less than one month to serve on the day the Pardon Act comes into force;
- less than 18 months' imprisonment, who will have less than one month to serve during the first 90 days of the Pardon Act, as of the day of eligibility.

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

In 2020, 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).

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 Proceedings¹⁷¹

Measures	2016	2017	2018	2019	From 1, January – 30, June 2020
Pre-Trial Detention	5,634	6,754	6,107	5,840	2,544
Bail	31	33	23	45	9
House Arrest	428 (215 of which under electronic surveillance)	760 (544 of which under electronic surveillance)	677 (466 of which under electronic surveillance)	392 (311 of which under electronic surveillance)	93
Prohibition of Leaving One's Place of Residence	612	512	452	396	146
Restraining Order	372	1,029	1,797	1,744	753

¹⁷¹ 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.

*Number of Defendants in Pre-Trial Detention at the End of the Year*¹⁷²

2015	2016	2017	2018	2019
1,539	1,736	1,577	1,693	1,833

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
2018	787	257	69	14,418,000
2019	767	208	51	8,939,948
2020	739	133	43	7,791,500
Total	4,498	1,248	282	59,321,448 (around €507,000)

The above Table shows that 4,498 damage claims for unlawful deprivation of liberty were filed with the Justice Ministry Damages Commission in the 2015–2020 period, that the Commission reviewed 1,248 of them and concluded settlements with 282 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 59,321,448 (around € 507,000) in damages in the 2015–2020 period.

Ninety-one judgments upholding damage claims over unlawful deprivation of liberty became final in 2020. The plaintiffs had been deprived of liberty for a total of 16,057 days and were altogether awarded 72,232,935,00 RSD (around €617,000) in damages, almost twice as much as in 2019.

¹⁷² The data were obtained from the Penal Sanctions Enforcement Administration in response to BCHR's request for access to information of public importance.

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 Imprisonment¹⁷³

Duration	2014	2015	2016	2017	2018	2019	Total
1–3 Months	2,529	1,194	1,293	950	912	723	7,601
3–6 Months	3,772	2,116	2,269	2,000	1,835	1,498	13,490
6–12 Months	3,184	2,422	2,423	2,199	1,860	1,664	13,753
1–2 Years	1,631	1,438	1,520	1,448	1,256	1,239	8,532
2–3 Years	947	875	930	770	753	798	5,073
3–5 Years	677	550	705	628	616	589	3,767
5–10 Years	191	171	192	156	125	150	984
10–15 Years	59	34	49	38	29	36	245
15–20 Years	23	3	24	18	12	13	91
30–40 Years	11	13	9	11	7	4	55
40 Years	2	4	5	2	3	4	19
Total	13,026	8,820	9,419	8,220	7,408	6,718	53,611

Statistical Data on the Number of Convicts Admitted to Penitentiaries to Serve Their Terms of Imprisonment¹⁷⁴

Duration	2015	2016	2017	2018	2019	Total
> 3 Months	1,365	1,246	1,007	952	884	5,454
3–6 Months	1,377	1,123	1,216	1,071	903	5,690
6–12 Months	1,353	1,190	1,151	1,072	1,107	5,873
1–2 Years	934	1,037	1,048	944	1,017	4,984
2–3 Years	675	678	716	678	652	3,399
3–5 Years	633	763	736	722	718	3,572
5–10 Years	331	340	290	264	263	1,488

¹⁷³ See the Statistical Office of the Republic of Serbia website: www.stat.gov.rs.

¹⁷⁴ The data were obtained from the Penal Sanctions Enforcement Administration in response to request for access to information of public importance.

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Duration	2015	2016	2017	2018	2019	Total
10–15 Years	49	54	70	62	66	301
15–20 Years	18	21	19	18	17	93
30–40 Years	24	15	18	12	4	73
Total	6,759	6,467	6,271	5,795	5,631	30,923

*Number of Inmates in Serbian Penitentiaries
at the End of the Year¹⁷⁵*

Year	2015	2016	2017	2018	2019
Convicted prisoners	7,670	7,958	8,081	7,927	7,799
Remanded prisoners	1,539	1,736	1,577	1,693	1,833
Security measures	425	489	549	657	679
Juvenile prison	17	19	20	27	25
Correctional measures	194	200	192	177	257
Inmates serving misdemeanour prison sentences	219	267	349	371	418
Total	10,064	10,669	10,768	10,852	11,011

*Number of Conditional Sentences
(with or without protective supervision)¹⁷⁶*

2014	2015	2016	2017	2018	2019
18,307	19,290	17,541	17,948	16,880	16,093

Number of Conditional Sentences under Protective Supervision¹⁷⁷

2015	2016	2017	2018	2019	1 January – 30 June 2020
57	42	31	39	152	92

¹⁷⁵ *Ibid.*

¹⁷⁶ See the SORS website: www.stat.gov.rs.

¹⁷⁷ Data obtained from Basic and Higher Courts and the Penal Sanctions Enforcement Administration in response to requests for access to information of public importance.

*Community Service Sentences*¹⁷⁸

Year	2015	2016	2017	2018	2019	2020
Number of imposed sentences	353	329	391	309	274	156
Number of served sentences	285	127	280	238	137	111

*Number of Home Incarceration Sentences*¹⁷⁹

2015	2016	2017	2018	2019	1 Jan – 1 June 2020
1,567	2,411	2,311	2,142	2,200	853

*Number of Parole Decisions*¹⁸⁰

2015	2016	2017	2018	2019
1,583	1,539	1,560	1,445	1,289

*Number of Early Release Decisions*¹⁸¹

2015	2016	2017	2018	2019
10	45	21	37	27

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 53,611 prison sentences in the 2014–2019 period. Of this number, 34,844 (circa 65%) of the convicts were sentenced to terms of imprisonment not exceeding one year, 8,532 (around 16%) to sentences not exceeding two years' imprisonment and 5,073 (around 9%) to prison sentences not exceeding three years. Therefore, 81% (43,376) of the prison sentences imposed in the observed period did not exceed three years. On the other hand, the courts imposed 11,484 home incarceration sentences and community service in 1,812 cases.

In the light of the above statistics and the fact that home incarceration may be imposed for offences warranting up to one year imprisonment¹⁸² and that community service may be imposed for offences warranting up to three years' imprisonment

178 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.

179 *Ibid.*

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

181 *Ibid.*

182 Article 45(5), CC.

onment¹⁸³, 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.

3. Right to a Fair Trial

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.

3.1. 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.¹⁸⁴ Reasonings of rulings excluding the public must be of a quality justifying derogation from the general rule on the

¹⁸³ Article 52, CC.

¹⁸⁴ More in the 2016 Report, I.4.7.

public character of hearings¹⁸⁵ 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.¹⁸⁶

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. To illustrate, instance, the Court Rules of Procedure¹⁸⁷ 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.

The Constitutional Court's Rules of Procedure¹⁸⁸ lay down in the Article 29 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.¹⁸⁹

3.1.1. Skype Trials during the State of Emergency – Restriction of the Right to a Fair Trial

On 17 March 2020, the Ministry of Justice issued Recommendations on the Work of Courts and Public Prosecution Services during the State of Emergency. The following day, the High Judicial Council adopted a Conclusion specifying that only trials that could not be postponed would be held during the state of emergency. Such trials included trials for the crimes of non-compliance with health regulations during epidemics (Art. 248 of the CC) and transmission of communicable diseases (Art. 249 of the CC).

Although punishment of individuals violating health regulations during epidemics is reasonable, they cannot be denied their right to a fair trial even during a state of emergency. It was thus clear that the principle of directness, and especially the public character of trials, could not be limited by a letter¹⁹⁰ the Justice Ministry sent courts on 26 March 2020, recommending they hold Skype trials of individuals who breached self-isolation measures in order to protect all parties to the pro-

185 Article 6 of the ECHR.

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

187 Article 58, Court Rules of Procedure.

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

189 More in Chapter III.4.

190 *Danas*, "Ministry of Justice: Video link trials of people who violated self-isolation measures," 26 March. Available in Serbian at: <https://www.danas.rs/drustvo/ministarstvo-pravde-sudjenja-preko-video-linka-za-lica-koja-su-prekrasila-mere-samoizolacije/>.

ceedings and to instruct their IT staff to put in place all the technical requirements for such trials. The recommendation required of the courts to have computers with cameras and microphones and installed Skype; the defendants were not in the courtrooms, but in the pre-trial detention units.¹⁹¹

The Serbian, Vojvodina and Belgrade Bar Associations issued press releases alerting that such proceedings violated human rights.¹⁹² The Protector of Citizens held otherwise; he noted that the Justice Ministry needed to provide the defendants and their counsels with the possibility of conferring in private in case of Skype trials as well.¹⁹³

Although Skype trials restrict the right to a fair trial, which is impermissible under the Serbian Constitution, it was only on 1 April 2020 that the Government adopted (and the President co-signed) the Decree on the Participation of Defendants in the Main Hearings in Criminal Proceedings during the State of Emergency providing for such trials and derogating from specific human and minority rights¹⁹⁴ although a number of such trials had already been conducted. The adoption of the Decree demonstrates that the Justice Ministry's letter could not have constituted grounds for introducing Skype trials. The courts were obviously not entitled to hold Skype trials until this Decree was adopted; the number of such trials was not negligible.

Most of the people found guilty of non-compliance with health regulations during epidemics had violated the curfew or the self-isolation imposed on them on return to Serbia. Police Director Vladimir Rebić said in late March 2020 that 1,253 people had been processed for violating the curfew and another 678 for violating self-isolation measures.¹⁹⁵

Arrest of a number of people for violating self-isolation, although the measure had not been imposed upon them, was a matter of concern. Namely, a number of individuals arrested for venturing outside their homes claimed they had never been told they should self-isolate. The Government said that the authorities did not need to issue formal rulings on self-isolation and that oral notification sufficed only three days after the state of emergency was introduced.

191 The NGO Lawyers' Committee for Human Rights – YUCOM requested of 15 courts to let it observe the trials in order to monitor compliance with the right to a fair trial standards and public character of trials. Its findings are available in its report Human Rights and COVID-19, Analysis of the Changes in Legal Framework during the COVID-19 Epidemic and Impact on Enjoying Human Rights in the Republic of Serbia. Available at: https://en.yucom.org.rs/wp-content/uploads/2020/11/Yucom_Covid_layout_ENG_all1.pdf.

192 NI, "Serbian Bar Association against Skype Trials," 30 March. Available in Serbian at: <http://rs.n1info.com/Vesti/a583657/Advokatska-komora-Srbije-protiv-sudjenja-putem-Skajpa.html>.

193 RTS, "Protector of Citizens reminds of the right to a fair trial," 1 April. Available in Serbian at: <https://www.rts.rs/page/stories/sr/story/9/politika/3909023/korona-virus-zastitnik-gradjana-sudjenje-.html>.

194 *Sl. glasnik RS*, 49/20.

195 NI, "Rebić: 1,253 curfew violation cases," 29 March. Available in Serbian at: <https://rs.n1info.com/vesti/a583157-osobe-procesuirane-zbog-kršenja-policijskog-casa>.

In BCHR's view, although oral notification of measures is not prohibited, public officials are under the obligation to prepare official reports specifying the identity of people orally notified of the measures, the time and place and manner of notification (by phone, e-mail, or in person) and the duration of and reason for the measures. The individuals at issue should be instructed whom they can appeal the measure with and by when. Evidence so documented is important in any proceedings for breach of the measure, as the arrest of Jovana Popović from Kikinda confirms. She returned to Serbia before the strict measures were introduced and claimed no-one had her she would have to self-isolate when she was entering the country.¹⁹⁶

Given the above decrees, conclusions, recommendations and court practices during the state of emergency, the question remains whether the principle of directness and public character of trials were violated. The public character of trials and the directness principle obviously had not been complied with also with respect to the availability of information on the trial schedules, the judges assigned the cases and the number of cases the courts heard; this may be understandable but it is not justifiable, since the public character of trials is one of the main safeguards of democracy and an important principle of the right to a fair trial.¹⁹⁷

Furthermore, the Criminal Procedure Code does not provide for Skype trials at first instance; courts hearing appeals may hold Skype hearings of defendants when they conclude that it would be difficult to secure their presence for security or other reasons (Art. 449(2)).¹⁹⁸

It also remains unclear whether Skype trials for only the above-mentioned two crimes were justifiable, although the HJC mentioned many other crimes for which trials could not be adjourned, given that the protection of court staff and defendants was the reason for the adoption of such a decision.

The state of emergency Skype trials, during which the courts did not publicly pronounce the reasons for their judgments, gave rise to public perceptions of haywire case law, since the courts handed down different penalties for the same crimes. The courts imposed various penalties for non-compliance with health regulations during epidemics.

The first judgment after such a trial was delivered already on 27 March 2020, by the Dimitrovgrad Basic Court, which convicted the defendant to the maximum sentence – three years' imprisonment.¹⁹⁹ Information about the number of delivered

196 NI, "Associations: a number of people arrested for violating isolation measures although they have not been imposed against them," 1 April. Available at: <https://rs.n1info.com/vesti/a584474-udruzenja-vise-uhapsenih-zbog-kršenja-mera-izolacije-iako-im-ona-nije-izrecena/>.

197 *Autonomija – Civic Vojvodina Portal*, "VELJKO MILIĆ: Skype trials – necessary or exaggerated measure," 29 March. Available in Serbian at: <https://www.autonomija.info/veljko-milic-ska-jp-sudjenja-neophodna-ili-prenaglasena-mera.html>.

198 CEPRIS, "Ilić: Virus of ignorance never sleeps," 3 April. Available in Serbian at: <https://www.cepris.org/licni-stavovi/ilic-virus-neznanja-nikad-ne-spava/>.

199 NI, "First convictions for violating self-isolation," 27 March. Available in Serbian at: <http://rs.n1info.com/Vesti/a582637/Prve-presude-zbog-kršenja-samoizolacije.html>.

judgments and the imposed penalties published by numerous media indicates that the case law was extremely disparate. Namely, some defendants were handed down the harshest penalty – three years’ imprisonment – for not complying with the order restricting and prohibiting movement, while others were only referred to home imprisonment.

3.2. *Judicial Efficiency and 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.²⁰⁰

Serbian courts were still staggering under huge caseloads although tackling the backlog and closure of cases within a reasonable time have been a priority for years now. The Belgrade Basic Courts and the Belgrade Higher Court, the largest higher court in the country, had the largest caseload increase. The Belgrade High Court comprises 11 departments; the civil and criminal departments try cases in both the first and second instances. This Court also includes a special Organised Crime Department formed under the Act on the Organisation and Jurisdiction of State Authorities in Combatting Organised Crime, Terrorism and Corruption²⁰¹ and a War Crimes Department formed in accordance with the Act on the Organisation and Jurisdiction of State Authorities in War Crime Proceedings; the latter two departments have jurisdiction over all of Serbia.

The Belgrade Higher Court’s jurisdiction has further been expanded by the Act on the Seats and Jurisdictions of Courts and Public Prosecution Services, the Civil Procedure Act, the Act on the Organisation of Courts, the Whistleblower Act, the Act on the Protection of the Right to a Trial within a Reasonable Time, as well as the Act Amending the Notaries Public Act, which has led to a surge in new cases filed with the Belgrade Higher Court.²⁰² The problem of this Court’s efficiency has affected the efficiency of the judicial system on the whole.²⁰³

Statistical reports show that the Administrative Court also had a huge caseload, which has been continuously increasing due to the constant expansion of its jurisdiction. The authorities should analyse the status, jurisdiction, organisation and capacities of the administrative judiciary and the manner in which administrative

200 Article 32(1).

201 *Sl. glasnik RS*, 94/16 and 87/18.

202 The Belgrade Higher Court had 210,722 pending cases in 2018, an increase of 125.80% over 2016 and of 76.04% over 2017. The number of incoming cases in 2018 increased by 182.40% over 2016 and by 96.75% over 2017.

203 *Sl. glasnik RS*, 101/20.

disputes are regulated to improve the efficiency of the people's realisation of their rights before administrative authorities.

Another problem impinging on the efficiency of the courts is the drop in the number of judicial assistants 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.

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

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. Namely, 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."²⁰⁴

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.²⁰⁵

3.2.1. Adverse Impact of the State of Emergency on Judicial Efficiency

As noted above, the Justice Ministry issued its recommendations on 17 March, two days after the state of emergency was introduced. These recommendations impinged on judicial efficiency since the Ministry recommended that judges and court staff work from home wherever feasible. The Ministry recommended in

²⁰⁴ *Hrustić and Others v. Serbia*, ECtHR, App. no. 8647/16, 9 January 2018, para. 23.

²⁰⁵ See more in Chapter I.3.4.

paragraph 1 that the judges of the Supreme Court of Cassation, the Commercial Appeals Court and the Appellate Courts work on cases at home, unless they had to hold judicial panel sessions or meet on other urgent matters. The Ministry also recommended that the judges of higher, basic, commercial and misdemeanour courts continue coming to work, unless they could work from home, a decision that was to be taken by the court presidents.

The Justice Ministry issued recommendations on the homebased work of judges and court staff wherever feasible. It recommended that the courts rule on criminal cases in which pre-trial detention has been ordered or was requested, cases against juvenile offenders, cases in which minors were victims, domestic violence cases, cases in which the statutes of limitations were about to expire, etc. As per civil cases, the Ministry recommended the adjournment of the hearings, with the exception of cases that were urgent under the law, proceedings concerning legal and international legal aid in cases involving the legalisation of documents, bankruptcy and reorganisation cases, decisions on motions to ban the distribution of the press and dissemination of information by the media, paternity and maternity disputes, and cases of discrimination and harassment at work. The Ministry issued similar recommendations with respect to misdemeanour proceedings.

The HJC issued a Conclusion elaborating paragraphs 6 and 7 of the Justice Ministry's Recommendations, specifying which trials were to be conducted and which were to be adjourned during the state of emergency. In line with the Justice Ministry's recommendations and the HJC's Conclusion, the courts postponed most of the scheduled hearings for an indefinite period of time. They did not schedule new hearings except in the precisely enumerated urgent cases and they did not hold trials if the standards for protecting the health of all parties to the proceedings could not be fulfilled.

3.3. *Right to Legal Aid*

The Constitution guarantees everyone the right to legal assistance (Art. 67) and equal legal protection without discrimination (Art. 21). Serbia at long last adopted its Legal Aid Act²⁰⁶ in early November 2018. The Legal Aid Act entered into force on 1 October 2019.²⁰⁷

The legal aid system, although functional, suffers from some shortcomings, including, notably, the small number of lawyers employed in municipal administrations. In its Report on the Implementation of the Legal Aid Act,²⁰⁸ the Justice Ministry said that additional training needed to be organised for lawyers in local self-government units, although it had organised two cycles of training for 300 lawyers. The

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

207 The analysis of the law is available in the 2019 Report, II.3.1.

208 Available in Serbian at: <https://cutt.ly/3jEo3iU>.

overview presented in the Report shows that over 20 cities and municipalities had not registered any legal aid providers and that three municipalities (Irig, Kosjerić and Majdanpek) still had not designated staff to perform initial assessments of the applicants' eligibility for legal aid.

Based on the initially collected data presented in the Ministry's Report,²⁰⁹ 1,902 of the 2,079 legal aid applications submitted from 1 October 2019 to 31 March 2020 were approved. Municipal administrations dealt with most of these cases, while 416 applicants were referred to lawyers. In that period, 7,460 beneficiaries were extended legal advice, while 635 beneficiaries were extended assistance in filling forms.²¹⁰ Some associations that registered as legal aid providers forwarded their data to the Ministry as well.²¹¹

4. Right to Privacy

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.²¹² According to ECtHR case-law, privacy encompasses, inter alia, the physical and the moral integrity of a person, sexual orientation,²¹³ relationships with other people, including both business and professional relationships.²¹⁴ The ECtHR accepts a wider interpretation of the concept of privacy and considers that the content of this right cannot be pre-determined in an exhaustive manner.²¹⁵

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

209 The data were incomplete because some local self-government units had not submitted their reports.

210 Available in Serbian at: <https://cutt.ly/3jEo3iU>.

211 YUCOM, for instance, said that it had extended legal advice and provided general legal information to members of the public in 192 cases in 2020. It also referred 10 people to apply for legal aid with the local self-government units.

212 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).

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

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

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

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,²¹⁶ 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

4.2.1. Legal Framework

Article 41 of the Constitution guarantees the right to confidentiality of letters and other means of communication and allows for derogations from this right only on the order of the court and if such derogations are necessary to conduct criminal proceedings or protect the security of the state in the manner prescribed by the law. State interference in the confidentiality of correspondence and other means of communication may be only temporary. The Constitution, unfortunately, does not specify that measures infringing on the confidentiality of communication must be necessary in a democratic society. The Constitutional Court has, however, introduced this standard in the Serbian legal system by referring to Article 8 of the ECHR and ECtHR’s case law in its Decision.²¹⁷

²¹⁶ CC Decision UŽ – 3238/2011, p. 9.

²¹⁷ CC Decision IUŽ – 1245/10.

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,²¹⁸ 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.²¹⁹

Article 142 of the Criminal Code²²⁰ incriminates violation of the confidentiality of letters and other mail: "Whoever without authorisation opens another's letter, telegram or other closed correspondence or consignment or otherwise violates their privacy or whoever without authorisation withholds, conceals, destroys or delivers to another person someone else's letter, telegram or other mail or who violates the privacy of electronic mail, shall be punished by a fine or imprisonment up to two years." The same penalty shall be imposed against anyone who communicates to another the content of another's closed mail, telegram or consignment acquired by violating the privacy thereof, or makes use of such contents. The aggravated form of the crime is committed by officials discharging their duties and carries between six months and three years of imprisonment.

Article 143 of the Criminal Code sets out that anyone who without authorisation intercepts or records by special equipment conversations, statements or announcements not intended for them shall be punished by a fine or imprisonment from three months to three years. The same penalty shall be imposed against anyone who communicates the content of the intercepted or recorded conversations, statements or announcements to another.

Articles 166–170 of the Criminal Procedure Code²²¹ provide for covert interception of communication as a special evidentiary action. On a reasoned motion of the public prosecutor, the court may order interception and recording of communications conducted by telephone or other technical means or surveillance of the electronic or other addresses of a suspect and the seizure of letters and other consignments. Covert interception of communication may last three months and may be extended another three months if necessary to collect additional evidence. Court orders on covert interception of communication are enforced by the police, the Security Intelligence Agency and the Military Intelligence Agency.

Article 286 of the Criminal Procedure Code, which sets out police powers where there are grounds for suspicion that a criminal offence prosecuted *ex offi-*

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

219 See the 2017 Report, II.5.2.

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

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

cio has been committed, provides for derogation from the confidentiality of correspondence. On the motion of the public prosecutor, the preliminary proceedings judge may order the police to obtain records of telephone communication and the used base stations and locate the place from where communication is conducted.

The Security Intelligence Agency Act²²² provides for measures derogating from the confidentiality of correspondence and other means of communication that may be taken against individuals, groups or organisations where there are grounds for suspicion that they are undertaking or preparing to undertake actions against the security of the Republic of Serbia and the circumstances of the case indicate that such actions cannot be detected, prevented or proven in another manner or that it would entail disproportionate difficulties or substantial risks. Article 14(2) lays down that the possibility of achieving the same aim in a democratic society by a lesser restriction of civil rights, shall be particularly taken into consideration when deliberating the imposition and duration of such measures. Only the court is entitled to order this special measure, on the motion of the Agency Director. The ordered measure shall be in effect three months and it may be extended three more times.

The Electronic Communications Act defines the confidentiality of electronic communications, their lawful interception and the operators' obligation to retain them.²²³ The Act and its by-laws governing the issue suffer from numerous shortcomings that have given rise to grave problems regarding respect for the constitutionally guaranteed right to confidentiality of correspondence, which the BCHR has been alerting to for years.²²⁴ The Draft Electronic Communications Act endorsed by the Government back in October 2017 was withdrawn in early 2019. The new Preliminary Draft does not thoroughly regulate legal interception of electronic communications, or retention of and access to communication data.²²⁵

4.2.2. Confidentiality of Correspondence in 2020

Violation of the confidentiality of correspondence between *NI*'s editor and reporters by Belgrade Deputy Mayor Goran Vesić caused quite a public stir in 2019.²²⁶ No information was publicly available on which steps, if any, the Cyber Crime Department of the Belgrade Higher Public Prosecution Service has taken in response to the criminal report filed by this TV station.

Interceptions of electronic communications of media and reporters critical of the authorities occurred in 2020 as well. The issue of confidentiality of correspondence drew a lot of attention when the then Defence Minister Aleksandar Vulin in February commented an op-ed written by his predecessor Dragan Šutanovac that was

222 *Sl. glasnik RS*, 42/02, 111/09, 65/14 – CC Decision, 66/14 and 36/18.

223 *Sl. glasnik RS*, 44/10, 60/13 – CC Decision, 62/14 and 95/18 – other law.

224 More in the *2017 Report*, II.5.3.

225 More in the *2019 Report*, II 4.3.

226 More in the *2019 Report*, II 4.2.

never published in the weekly *Nedeljnik*.²²⁷ Šutanovac had e-mailed the text to *Nedeljnik* Chief Editor Veljko Lalić, but the editors decided against running it. The question arose how Vulin found out about the content of the article and whether the constitutional right to confidentiality of correspondence had been violated in this case.

The Ministry of Defence (MoD) issued a press release the same day, explaining that the MoD PR department had made a grave mistake, because Vulin's comment regarded Šutanovac's interview to the daily *Kurir*, not a text in *Nedeljnik*.²²⁸ This explanation is unacceptable because the interview Šutanovac gave to *Kurir* dealt with altogether different issues than the op-ed that was to have appeared in *Nedeljnik* and Vulin's initial reaction evidently concerned Šutanovac's allegations in the latter. At its session on 21 February 2020, the parliamentary Security Services Oversight Committee unanimously upheld the MoD General Inspector's Report on the *ad hoc* check of the Military Security Agency, which stated that the Agency had not implemented any particular procedures or measures with respect to former Defence Minister Dragan Šutanovac or *Nedeljnik* Chief Editor Veljko Lalić that would have enabled collection of information from their mutual communication.²²⁹ Đorđe Komlenski, a lawyer and MP of Vulin's Socialists' Movement, filed a criminal report against his party leader.²³⁰ Special Cyber Crime Prosecutor Branko Stamenković said that his office had undertaken steps to verify the allegations in the report that Vulin had illegally accessed the e-mail communication between *Nedeljnik* Chief Editor Lalić and former Defence Minister Šutanovac and would publish the results of their investigation. *Nedeljnik* called for the establishment of an independent commission to investigate whether journalists in Serbia were followed and bugged.²³¹ No new information about this case was published by the end of the year. In all likelihood, that the public will never find out who had intercepted the electronic correspondence of the *Nedeljnik* editor. Participants in the panel discussion organised by the Journalists' Association of Serbia on the *Nedeljnik* case emphasised that "wiretapping" of journalists was unsurprising, but rather quite commonplace.²³²

227 *Kurir*, "MINISTER VULIN: Šutanovac has to attack Serbia every time I meet Minister Shoygu," 16 February. Available in Serbian at: <https://www.kurir.rs/vesti/politika/3412501/vulin-sutanovac-napada-srbiju-kad-god-dolazi-ruski-ministar-odbrane-sergej-sojgu>

228 MoD, "Apology to *Kurir* and *Nedeljnik*," 16 February. Available at: <http://www.mod.gov.rs/eng/15053/izvinjenje-kuriru-i-nedeljniku-15053>.

229 The report on the Security Services Oversight Committee session is available in Serbian at: <http://www.parlament.gov.rs/36>.

230 *Espresso.rs*, "DELIBERATE: Socialists' Movement Filed Criminal Report against Vulin, Forwards Copy to NEDELJNIK!" 27 February. Available in Serbian at: <https://www.espresso.rs/vesti/politika/517521/smisljeno-pokret-socijalista-podneo-krivicnu-prijavu-protiv-vulina-pa-uputio-kopiju-nedeljniku>.

231 *Nedeljnik*, "Nedeljnik Requesting Independent Commission on Bugging of Reporters," 27 February. Available in Serbian at: <https://www.nedeljnik.rs/nedeljnik-trazi-nezavisnu-komisiju-za-prisluskivanje-novinara/>.

232 *N1*, "Nedeljnik was not the only one followed, reporters reveal when and how they were wiretapped," 11 March. Available in Serbian at: <http://rs.n1info.com/Vesti/a577044/Novinari-otkrivaju-kad-su-prisluskivani.html>.

In early December, the Toronto University Citizen Lab Institute published a report revealing which countries, and in some cases which specialised state agencies, used the software of the Israeli company Circles, which exploits weaknesses in the global mobile phone system to snoop on calls, texts, and the location of phones around the globe.²³³ When a device is tracked – or messages intercepted – there are not necessarily any traces on the target's device for researchers or investigators to find. Meanwhile, cellular carriers have many technical difficulties identifying and blocking abuses of their infrastructure. Circles, whose products work without hacking the phone itself, says they sell only to nation-states. The Report says that at least 25 countries have used the services of this company, including Serbia. It also says that the Serbian Security Intelligence Agency used the software. To recall, Citizen Lab said in 2015 that the Serbian Security Intelligence Agency had used Gamma International's FinFisher spyware.²³⁴

As noted above, the Constitution allows for derogations from the confidentiality of correspondence and other means of communication only on the order of the court. The Criminal Procedure Code, the Security Intelligence Agency Act, the Act on the Military Security Agency and the Military Intelligence Agency and the Electronic Communications Act specify when and under which conditions this right may be derogated from. Since national law already entitles the state authorities to intercept and monitor communications where there is a constitutional or legal interest, the question of the lawfulness of using software, such as the one developed by Circles, must be raised.

This issue gains in significance in the context of the many abuses of the existing mechanisms for intercepting communications, access to retained communication data, and the absence of any meaningful oversight of intelligence agencies, which BCHR has been alerting to for years.²³⁵

4.2.3. *State of Emergency and Right to Privacy*

The state of emergency brought numerous challenges to the human rights of citizens. As opposed to people in other European countries, Serbia's public did not devote much attention to the right to privacy during the pandemic. This is probably why the following statement Serbian President Aleksandar Vučić made on 19 March practically went unnoticed. Vučić said that "the state is monitoring telephone numbers, primarily Italian ones" in order to keep track of the movement of people who had come from Italy and added "don't think you'll fool us by leaving your phone somewhere, because we've found another way to monitor who is violating the rules prescribed by

233 The report is available at: <https://citizenlab.ca/2020/12/running-in-circles-uncovering-the-clients-of-cyberespionage-firm-circles/>.

234 More about this case is available in Serbian at: <https://resursi.sharefoundation.info/sr/resource/bia-koristi-finfisher-opremu-za-spijuniranje/>.

235 More in the 2019 Report, II.4.3. and the 2018 Report, II.4.3.

the state and how.”²³⁶ The state imposed mandatory self-isolation on everyone who had come to Serbia from other countries and the police called them up every day to check whether they complied with the measure (and visited them on occasion). Vučić said that these steps were being taken to protect the health of the population.

Several days earlier, Vučić blamed the appearance of the virus in the country on the hundreds of thousands of Serbian nationals who had returned from other countries, especially Italy, which had the most COVID-19 cases at the time.²³⁷

Although Vučić said that the state was not intercepting telephone conversations, but just monitoring the telephone numbers, especially Italian ones, to prevent people from moving and to protect human health, he did not specify which law such measures were based on. Perusal of the legal framework on interception and monitoring of communication and movement of citizens indicates that there is a great likelihood that these measures were illegal.

Namely, Article 41(2) of the Constitution provides for derogations from the right to confidentiality of letters and other means of communication only for a specified period of time and based on a court decision if necessary to conduct criminal proceedings or protect the safety of the Republic of Serbia, in a manner stipulated by the law. Furthermore, the Criminal Procedure Code (CPC) lays down that special evidentiary actions, including covert interception of communication and secret surveillance and audio and video recording, may be ordered against persons reasonably suspected of committing any of the crimes enumerated in Article 162 of the CPC. Given that non-compliance with health regulations during epidemics (Art. 248 of the Criminal Code) and transmission of communicable diseases (Art. 249 of the Criminal Code) are not listed in Article 162 of the CPC, it remains unclear which legal grounds the state had relied on when it monitored the locations of the cell phone signals. Rights guaranteeing the confidentiality of correspondence and personal data protection were not formally restricted during the state of emergency. The Ministry of Justice did not respond to Radio Free Europe’s request to disclose how many motions for monitoring individuals via their cell phones had been submitted.²³⁸

4.3. *Families and Family Life*

According to the ECtHR, family life is interpreted in terms of the actual existence of close personal ties.²³⁹ It comprises a series of relationships, such as marriage,

236 *Mondo*, “Vučić: Don’t leave your phones, you won’t fool us! WE KNOW you’re moving about,” <https://mondo.rs/Info/Drustvo/a1298105/Aleksandar-Vucic-policija-telefonski-brojevi-policijski-sat-upozorenje-krecu-se.html>.

237 More in Chapter II.11.

238 *Radio Free Europe*, “How the secret services monitored the movement of Serbia’s citizens,” 28 April. Available in Serbian at: <https://www.slobodnaevropa.org/a/nadziranje-gradjana-srbije-odbor-za-kontrolu-sluzbi/30579785.html>.

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

children, parent-child relationships,²⁴⁰ and unmarried couples living with their children.²⁴¹ Even the possibility of establishing a family life may be sufficient to invoke protection under Article 8.²⁴² Other relationships that have been found to be protected by Article 8 include relationships between siblings, uncles/aunts and nieces/nephews,²⁴³ adoptive parents and adopted children, and grandparents and grandchildren.²⁴⁴ 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.²⁴⁵

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.²⁴⁶ 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.

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

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

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

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

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

245 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.

246 CC Decision UŽ – 3238/2011.

The provisions of the Family Act²⁴⁷ are in accordance with international standards in terms of the right to privacy. The Act prescribes that everyone has the right to the respect of family life (Art. 2(1)). It also guarantees the children's right to maintain personal relationships with the parents they are not living with, unless there are reasons for partly or fully depriving those parents of parental rights or in case of domestic violence (Art. 61). The children are also afforded the right to maintain personal relationships with other relatives they are particularly close to (Art. 61 (5)). The Family Act is also the first law in Serbia that takes into account the parents' interests in their children's education, as it entitles them to provide their children with education in keeping with their ethical and religious convictions (Art. 71).

4.3.1. Missing Babies Act

On 29 February 2020, the Serbian Assembly adopted the Act on Establishment of Facts about the Status of Newborns Suspected to Have Been Abducted from Maternity Wards in Serbia (Missing Babies Act).²⁴⁸ Serbia thus at least formally executed the part of the European Court of Human Rights judgment in the *Jovanović v. Serbia* case²⁴⁹ requiring of it to establish a mechanism that would be capable of providing credible answers regarding the fate of each child and awarding adequate compensation as appropriate. The law entered into force on 11 March.

The purpose of the Act is to establish facts to find out the truth about the fate of these children based on evidence collected from state and other authorities, parents and other individuals and presented in court.

The Act also aims to facilitate Serbia's implementation of its obligation under the ECtHR's judgment in the case of *Jovanović v. Serbia*.

The procedure is initiated by the submission of a motion with the court to establish the facts about the status of a newborn suspected to have been abducted from a maternity ward in Serbia.

Such a motion may be filed by the parents of the missing newborn. If they are not alive, it may be filed by the missing children's siblings or grandparents, whether or not they had earlier raised the issue with state authorities or maternity wards in order to establish the fate of the newborns.

Such a motion may also be filed by individuals doubting their parentage, whether or not they already raised the issue of their family status with the state authorities.

The Protector of Citizens is also entitled to file a motion with the court on behalf of the above individuals.

The proceedings may be reopened in case new facts or evidence emerge.

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

248 *Sl. glasnik RS*, 18/20.

249 *Jovanović v. Serbia*, ECtHR, App. no. 21794/08 (2013).

Under the Act, the Government shall establish a Commission for the Collection of Facts about the Status of Newborn Children Suspected to Have Been Abducted from Maternity Wards in Serbia. The Government adopted the decision on the establishment of the Commission on 10 July 2020.²⁵⁰ The Commission has 15 members: six were appointed by the Government from among the ranks of representatives of the ministries in charge of justice, internal affairs, health, family welfare, state administration and the Security Intelligence Agency, while nine members were appointed from amongst the ranks of registered associations of parents of the missing babies. The Commission is under the duty to submit annual operational reports to the Government and the relevant National Assembly committee.

The Act provides for award of just satisfaction for non-pecuniary damages caused by violations of the right to family life. The court shall set the amount at its own discretion, taking into account all the circumstances of the case, primarily the intensity of mental anguish and fear suffered and other criteria set in the law of contract and torts. The amount of awarded just satisfaction may not exceed €10,000.

A total of 684 motions to establish the fates of the missing babies were filed by the end of December 2020.²⁵¹

4.3.2. *Boljević v. Serbia*

In June 2020, the ECtHR delivered its judgment in the case of *Boljević v. Serbia*,²⁵² in which it found a violation of Article 8 of the ECHR.

The case regarded the domestic courts' refusal to reopen paternity proceedings in a case from the 1970s on procedural grounds. The applicant complained that the decision deprived him of the opportunity to establish the identity of his biological father by means of a modern DNA test.

The Court found that the courts' refusal to reopen the proceedings was in accordance with the law and absence of arbitrariness in the reasoning of the first- and second-instance courts.

The Court said that the refusal to reopen the proceedings pursued the legitimate aims of ensuring legal certainty and protecting of the rights of others. It noted that that time-limits in paternity-related proceedings, in particular, had a legitimate aim and were intended to protect the interests of purported fathers from stale claims, thus preventing possible injustices if courts were required to make findings of fact that went back many years.

250 *Sl. glasnik RS*, 98/20.

251 *Novosti*, "THEY WANT ANSWERS ABOUT MISSING BABIES: Belgrade parents who suspect their newborns had been stolen will meet with Higher Court judges," 3 December. Available in Serbian at: <https://www.novosti.rs/vesti/drustvo/941551/traze-odgovore-nestanim-bebama-beogradski-roditelji-koji-sumnjaju-novordjencad-ukradena-sastace-sudijama-viseg-suda>.

252 *Boljević v. Serbia*, ECtHR, App. no. 47443/14, available at: <http://hudoc.echr.coe.int/?i=001-203052>.

However, the ECtHR held that preservation of legal certainty could not suffice in itself as a ground for depriving the applicant of the right to ascertain his parentage, bearing in mind the circumstances of the case and the overriding interest at stake for the applicant – to uncover the truth about an important aspect of his personal identity.

The Court was of the view that domestic law did not therefore allow for the relevant elements of the applicant's specific situation to be taken into account or for a balancing of the relevant interests to be carried out and that the domestic courts in the present case had been unable to deal with the substantive issue due to the expiry of the statute of limitations.

The ECtHR considered that, in the circumstances of this case, the finding of a violation of Article 8 of the Convention constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

4.4. *Petrović v. Serbia*

On 14 April 2020, the European Court of Human Rights delivered its judgment in the case of *Dragan Petrović v. Serbia*, in which it, inter alia, found a violation of Article 8(2), since the interference with the exercise of the right to private life was not in accordance with the law.²⁵³

The applicant complained that the search of his home had been in breach of his right to the respect for his home and private life, and that the taking of his DNA sample from his saliva was also in violation of the right to respect for his private life guaranteed by Article 8 of the ECHR. The applicant also complained under Article 6(3(a)) of the Convention.

The situation the applicant complained about occurred on 29 July 2008, when the Subotica District Court investigating judge ordered the search of the apartment the applicant was living in. The judge specified he had issued the order at the request of the Subotica police, who claimed that the search would “probably” result in the seizure of evidence relevant to a murder investigation. The investigating judge accepted the explanation and specified that the search should focus on “objects taken” following the murder, notably a “black leather jacket”, as well as on “shoes and other objects” which could be connected to the crime in question. The order noted that in carrying out the search the officers were to comply with the relevant provision of the Criminal Procedure Code. On the same day, but by means of a separate decision, the investigating judge ordered that a sample of the applicant's saliva be taken for the purposes of a DNA analysis. The judge authorised the police to take this sample, or alternatively a sample of the applicant's blood, by force should the applicant resist, with the assistance of medical professionals. The reasoning of this order stated that a

²⁵³ *Dragan Petrović v. Serbia*, ECtHR, App. no. 75229/10, available at: <http://hudoc.echr.coe.int/eng?i=001-202345>.

DNA test was required in order to compare the DNA data found at the scene of the crime with the applicant's own DNA profile.

The ECtHR found that this interference was not "in accordance with the law" within the meaning of Article 8(2) of the Convention, since the domestic legal provisions in question should, *inter alia*, have been "foreseeable as to [their] effects" for the applicant.

The ECtHR took into account that the order authorising police officers to take a sample of the applicant's saliva did not refer to any particular legal provisions and that Article 131, paragraphs 2 and 3, of the Criminal Procedure Code that was in force at the relevant time, provided, *inter alia*, that a blood sample could be taken from, or "other medical procedures" could be undertaken in respect of, any given person if this was deemed medically necessary in order to establish facts "of importance" to the criminal investigation. The ECtHR thus concluded that the CPC did not have a provision on taking of DNA samples. It also noted that, when taking the applicant's DNA sample, according to the information contained in the case file, the authorities of the respondent State had failed to prepare an official record of the procedure, thus failing to comply with the requirements of Article 239 of the CPC.

Comparing the relevant provisions of the 2001 CPC and the 2011 CPC, the ECtHR noted that Article 131 paras. 2 and 3, of the 2001 CPC, which was in force at the time the violation occurred, "provided, *inter alia*, that a blood sample could be taken from, or "other medical procedures" could be undertaken in respect of, any given person if this was deemed medically necessary in order to establish facts "of importance" to the criminal investigation, thus allowing such procedures in respect of a potentially very large group of persons. Conversely, Article 140 paras. 1, 3 and 4 of the new Code of Criminal Procedure indicates that buccal swab samples may be taken only from a suspect or, in order to "eliminate a suspicion of being connected to a criminal offence", from the victim or another person found at the scene of the crime. In those circumstances, the Court considers that it would be reasonable to assume that by adopting the clearly more detailed provisions regarding the taking of DNA samples in its recent Code of Criminal Procedure, the respondent State has itself implicitly acknowledged the need for tighter regulation compared with the earlier legislation in this sphere."

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 (PDPA),²⁵⁴ which the National Assembly adopted in November 2018, entered into force on 21 August 2019.²⁵⁵

The PDPA is a complex law comprising numerous overly long, cumbersome and referencing provisions, giving rise to numerous dilemmas in its enforcement. The ensuing text therefore clarifies some of the fundamental concepts.

First of all, the PDPA defines personal data as any information relating to a natural person identified or identifiable, either directly or indirectly, in particular by reference to their identity, such as name or identification number, location data, an online identifier, or one or more factors specific to their physical, physiological, genetic, mental, economic, cultural or social identity. Consequently, personal data include any information based on which an individual may be identified. That means that, in addition to people's personal identification numbers, their personal data also include e.g. video footage based on which their identity can be established, the IP addresses of their computers or the IMEI numbers of their cell phones. Although the definition of personal data is broad, the very context in which the information appears also needs to be taken into account when determining whether it constitutes personal data.

The PDPA defines data processing as any operation or set of operations performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction. Any activity related to personal data shall be considered processing, even when it is a passive action, e.g. storage of data without the possibility insight in their content.

The PDPA lists six legal bases for processing personal data.

The data subjects' consent to the collection and processing of their personal data is the most visible, albeit not the most frequent or most important one. For the collection and processing of data subjects' personal data to be lawful, their consent must fulfil specific criteria. First of all, consent must be given freely, i.e. not given under any pressure. Individuals consenting to the collection and processing of their personal data must be informed exactly what they are consenting to and their consent should be unbundled from other terms and conditions. Consent must be documented and withdrawing consent should be as easy as giving it.

²⁵⁴ *Sl. glasnik RS*, 87/18.

²⁵⁵ More on the new Personal Data Protection Act in the *2018 Report*, II.5.1. and the *2019 Report*, II.5.1.

Conclusion and/or performance of a contract involves the collection of the contracting parties' personal data. The personal data controller may not necessarily be one of the contracting parties; it may be the processor of the personal data of the data subject or a third party with a view to executing the contract. In such cases, account must be taken of the proportionality and necessity of processing personal data.

Personal data processing is lawful also when it is necessary for the data controllers' fulfilment of their legal obligations. This applies to situations where a law stipulates that data controllers must process personal data.

Protection of vital interests is another legal basis for collecting and processing data. It regards situations in which the lives or health of the data subjects or third parties are in danger and processing their personal data is one of the actions that must be performed to protect them.

Personal data processing is lawful also if it is necessary for the controllers to perform a task in the public interest or exercise their powers provided by law. This basis mostly applies to government authorities and organisations vested with public powers.

Processing is also lawful if it is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

The PDPA also lists specific personal data, the processing of which is prohibited in principle. They include data on the data subjects' racial or ethnic origin, political opinion, religious and philosophical beliefs, trade union membership, as well the processing of genetic data and of biometric data (for the purpose of uniquely identifying a natural person), data concerning health, and data concerning sex life or sexual orientation. However, Article 17 provides for exceptions to the ban, when processing these data is permitted under specific conditions and in specific cases.

Article 5 of the PDPA lays down the principles of personal data processing. These principles are extremely important since they provide "guidance" on how the provisions of the law are to be applied, but they may also be grounds for taking to task controllers and processors not complying with them. The PDPA sets out six principles. The first is the principle of lawfulness, fairness and transparency, under which personal data may be processed only in accordance with the law; the controllers shall bear in mind the interests of the individuals whose data they are processing and are under the obligation to enable them to exercise their right to know what data concerning them are collected, used, consulted or otherwise processed at any time. Under the purpose limitation principle, personal data must be collected for specified, explicit, and legitimate purposes, and not be processed further in a manner incompatible with those purposes. Under the data minimisation principle, personal data that are collected must be limited to what is necessary in relation to the purposes for which they are processed. The fourth principle concerns the accuracy of data,

which also entails their regular updating, as well as the erasure or rectification of inaccurate data. The principle of storage limitation requires the determination of the period of data retention depending on the purpose, whilst taking into account the legitimate reason for the period. The principle gives rise to the obligation to erase or anonymise personal data upon the expiry of the period. And finally, the principle of security sets out that personal data must be processed in a way ensuring their adequate protection, including from unauthorised or illegal processing, as well as from their accidental loss, destruction or damage.

The definition of the main personal data processing actors – the controllers and processors – facilitates understanding of the right to personal data protection. Controllers are natural or legal persons or government authorities, which independently or in tandem with others define the purpose and means of processing. They decide whether they will start collecting and processing personal data whilst bearing in mind all the requirements envisaged in the principles. Processors are natural or legal persons or government authorities processing personal data on behalf of the controllers. That means that processors shall not define the purpose or scope of collection or processing, nor the data retention periods. Processors act on the controllers' instructions, wherefore responsibility lies with the controllers. This, however, does not mean that processors have no responsibilities. Processors are under the obligation to act on the instructions of controllers, take all adequate technical, organisational and staffing measures to fulfil the obligations of controllers vis-à-vis requirements regarding the exercise of the data subjects' rights, make available to the controllers all the information needed to demonstrate their compliance with their obligations, and notify the controllers of any data security violations they are aware of.

Chapter III of the PDPA governs the rights of data subjects, the exercise of which must be facilitated by the controllers. Under the right to information, anyone whose personal data are processed must be notified which of their data are processed on which grounds and for which purpose, as well as how long they will be stored. Data subjects may also require of controllers insight in their data being processed and request a copy of them. They may also require the rectification, supplementing or erasure of their personal data held by the controller. Data subjects are entitled to have their personal data erased by the controllers if the data are incorrect, if processing is unlawful and they object to their deletion, if the data are unnecessary to the controllers but the data subjects required them to establish, exercise or defend a legal claim, if a complaint about the processing was filed and an assessment of whether the legitimate grounds for processing them override the data subject's interests is under way. Pursuant to Article 36 of the PDPA, at the data subjects' request, the controllers shall provide them with their personal data in a structured, commonly used and machine readable format. Data subjects are entitled to transmit their personal data to other controllers without hindrance. Data subjects are entitled to object to the controllers' processing of their personal data at any time on grounds relating to

their particular situation. Data subjects shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning them or similarly significantly affects them. Automated processing denotes processing without any human involvement.

The PDPA provides for restrictions of these rights provided they do not interfere with the fundamental rights and freedoms and are a necessary and proportionate measure in a democratic society for the protection of national security, defence, criminal prosecution, enforcement of civil law claims, etc.

Finally, the PDPA lays down various protection mechanisms. Data subjects may file a complaint with the Commissioner against processors or controllers claiming personal data violations. The provisions of the law on inspectorial oversight apply accordingly to the review of such complaints. The Commissioner's decisions are subject to judicial review, which means that parties dissatisfied with the Commissioner's decisions may initiate an administrative dispute within 30 days from the day of receipt of the decision.

Data subjects are entitled to judicial protection if they believe their rights under the PDPA have been violated by the controllers or processors who processed their personal data. They shall file their lawsuits with the higher court that has jurisdiction over the territory in which the controllers, processors or their representatives are habitually or temporarily residing or headquartered or the territory in which they are habitually or temporarily residing, unless the controllers or processors are government authorities. The law governing civil procedure applies.

Other laws and regulations were to have been aligned with the PDPA by the end of 2020. The BCHR warned that the deadline, set in the PDPA, was unrealistic, since not all laws and by-laws had been aligned with its predecessor for nine years.²⁵⁶ The analysis of security sector regulations from the perspective of personal data protection²⁵⁷ published in December 2020 by the OSCE Mission to Serbia, confirms as much. The authors of the analysis concluded that a large number of laws and by-laws, over 10 laws in the security sector alone, needed to be amended in order to comply with the protection regime laid down by the PDPA.²⁵⁸

5.2. Application of the PDPA and Open Issues

Both experts and the Commissioner for Information of Public Importance and Personal Data Protection have for years been warning that personal data protection remained at an extremely low level despite the new Personal Data Protection Act

256 See the 2018 Report, II 5.2.

257 Available in Serbian at: <https://www.osce.org/files/f/documents/8/1/473013.pdf>.

258 Danas, "Data protection stuck between new law and old regulations," 15 December. Available in Serbian at: <https://www.danas.rs/drustvo/zastita-podataka-zapela-izmedju-novog-zakona-i-starih-propisa/>.

(PDPA),²⁵⁹ which entered into force in August 2019, and its predecessor, the 2008 Personal Data Protection Act,²⁶⁰ which had been amended several times. Many cases actually or potentially leading to personal data violations were registered in 2020.

Serbia signed the Council of Europe Protocol amending the Convention for the protection of individuals with regard to the processing of personal data (Convention 108+) in November 2019 and ratified it on 26 May 2020.²⁶¹ The Protocol aims to reinforce international cooperation and the role and independence of authorities charged with personal data protection.²⁶²

5.2.1. State of Emergency and Personal Data Protection

The pandemic and state of emergency brought numerous challenges to personal data protection. The Commissioner warned state authorities,²⁶³ the media²⁶⁴ and the public at large²⁶⁵ that both data controllers and processors were under the duty to act in accordance with the PDPA in emergencies as well.

The greatest threat to the personal data on health was definitely the deficiency of the COVID-19 information system, centralised software for collecting, analysing and storing data of all individuals monitored to control and suppress the pandemic in Serbia. This programme stores the data of all individuals who have been tested, treated, placed into isolation or died of coronavirus, including of individuals who may have contracted the disease because they were in contact with COVID-19 patients.

During its search of key words on Google, the SHARE Foundation accidentally came upon the username and password to access the COVID-19 Information System, which were accessible through a simple search. Anyone was able access the data on the population's health in the 9–17 April period. The SHARE Foundation immediately alerted the Commissioner, the National ICT Cyber Security Centre and the Ministry of Trade, Tourism and Telecommunications and the deficiency was soon eliminated.

After this review, the Commissioner issued a reprimand to the controller of the Information System, the Public Health Institute Dr Milan Jovanović Batut. He noted that the Institute had failed to conclude contracts with the processors before

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

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

261 *Sl. glasnik RS (Međunarodni ugovori)*, 4/20.

262 The main novelties in Convention 108+ include stronger requirements regarding the principles of proportionality and lawfulness and transparency of processing; extension of the types of sensitive data, which will now include genetic and biometric data, et al; the obligation to declare data breaches; and, new rights for the persons in an algorithmic decision making context, which are particularly relevant in connection with the development of artificial intelligence.

263 The Commissioner's press release of 19 March 2020 is available in Serbian at: <http://skr.rs/A5J>.

264 The Commissioner's press release of 9 March 2020 is available in Serbian at: <http://skr.rs/A5B>.

265 The Commissioner's press release of 1 April 2020 is available in Serbian at: <https://bit.ly/2WAKIA2>.

the processing of data began, notably the National Health Insurance Fund; that the incident occurred because the Institute had failed to take adequate measures to protect the System; and that the Institute had failed to perform an assessment of the impact of the envisaged processing on personal data protection before launching the System.²⁶⁶

5.2.2. Application of the Personal Data Protection Act

Not unexpectedly, political parties, especially those in power, amply resorted to abuse of the population's personal data in the run-up to the 2020 elections. Representatives of the Commissioner's Office said that many citizens complained to it that they were harassed by political parties after the state of emergency was lifted and the election campaigns resumed and that the activists were in possession of their private data.²⁶⁷ The Commissioner's Office said that the reports it had received before the introduction of the state of emergency mostly concerned door to door campaigning, while the ones it received after it concerned phone calls by party activists. The Commissioner issued a press release appealing to political parties to comply with the Personal Data Protection Act, especially its provisions on the legal and transparent processing of personal data.²⁶⁸

Under the PDPA, its provisions 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 in 2019 sent a letter to the leading global IT companies calling on them to appoint their representatives by the deadline provided by law.²⁶⁹ The SHARE Foundation filed misdemeanour reports against Google and Facebook with the Commissioner because they had failed to appoint 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." Google designated its representative in Serbia in writing in May 2020 after the Commissioner thoroughly familiarised it with the Serbian personal data protection legal regime.²⁷⁰

266 The Commissioner's reprimand SHARE Foundation obtained access to by filing a request for access to information of public importance is available in Serbian at: <https://drive.google.com/file/d/14j8mTQ-AppGnDC5ed81q8owPH7b7-qiu/view>.

267 *N1*, "Interview with Zlatko Petrović of the Commissioner's Office: Increasingly frequent abuse of personal data," 4 June. Available in Serbian at: <http://rs.n1info.com/Vesti/a606445/Petrovic-Veoma-ucestala-zloupotreba-podataka-o-licnosti-u-poslednje-vreme.html>.

268 The Commissioner's press release of 28 February 2020 is available in Serbian at: <https://bit.ly/3f-M7r9E>.

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

270 The Commissioner's press release is available in Serbian at: <https://cutt.ly/QjmWbgQ>.

Other major tech companies, however, failed to take the step of their own accord. Facebook did not even respond to the Commissioner's letter. This prompted the SHARE Foundation to file a misdemeanour report against as many as 16 foreign companies, including, Twitter, Netflix, Viber, Yahoo and others on 1 October.²⁷¹ Booking and Netflix notified the Commissioner they had appointed their representatives in Serbia in late October.²⁷² The other companies followed suit in November and December.²⁷³

The installation of smart video surveillance cameras in Belgrade continued in 2020.²⁷⁴ In its *2019 Report*, BCHR alerted to the potential risks to privacy and violations of the right to personal data protection smart video surveillance posed, as well as to the state's unacceptable attitude towards this issue, especially the MIA's Data Protection Impact Assessment.²⁷⁵

After the Commissioner criticised the first document,²⁷⁶ the MIA in March prepared a new Data Protection Impact Assessment within the Safe City Project in Belgrade.²⁷⁷ The document sets out that the Safe City project envisages the installation of 8,100 video surveillance devices, which are to collect biometric facial recognition data; data on the individuals' health and provision of health services to them, e.g. if they are injured in a car accident, fire, et al; licence plate numbers and other vehicle recognition data, and data on the time and place the data were collected.

The DPIA specifies the purpose of processing data in the general and special regimes.

Under the special regime, the purpose of processing includes the prevention, identification and investigation of crimes; prosecution of criminal offenders and securing the enforcement of penal sanctions; and protection from threats to public safety and national security. Smart video surveillance will be used to identify individuals reasonably suspected of having committed or intending to commit a crime or misdemeanour; victims of crimes and misdemeanours; persons otherwise associated with the crimes or misdemeanours, e.g. witnesses.

Under the general regime, the purpose of processing includes protection of the lives and health of the individuals the data concern and other individuals. Smart video

271 The SHARE Foundation's press release and link to its misdemeanour report are available in Serbian at: <https://www.sharefoundation.info/sr/share-prijave-protiv-16-globalnih-tehno-kompanija/>.

272 The Commissioner's press release is available in Serbian at: <https://cutt.ly/GjWiFEO>.

273 See, e.g. the Commissioner's press release, available in Serbian at: <https://cutt.ly/JjWot8F>.

274 *Novosti*, "Cameras hunting down arrogant drivers: Video surveillance in Belgrade EVERY STEP OF THE WAY, infractions are recorded, penalties arrive at home addresses (PHOTO)," 5 February. Available in Serbian at: <https://www.novosti.rs/vesti/beograd.74.html:845621-Kamere-love-bahate-vozace-Video-nadzor-u-Beogradu-na-SVAKOM-KORAKU-prekrsaji-se-snimaju-a-kazne-stizu-na-kucnu-adresu-FOTO>.

275 More in the *2019 Report*, II.5.2.

276 The Commissioner's opinion of 12 November 2019 is available in Serbian at: <https://cutt.ly/cjm-Vmpd>.

277 Available in Serbian at: <https://cutt.ly/tjmDsCc>.

surveillance will be used to identify people whose lives or health are in danger; monitor traffic; provide information to the public of relevance to life in the city; secure material that will be used for police upskilling and improvement of surveillance.

The purpose of processing is so broadly defined that smart surveillance can in practice be used for unlimited collection and processing of personal data. The DPIA, however, does not specify to whom the collected data may be transmitted. Data collected under the special regime are to be retained five years, while data collected under the general regime are to be retained until the purpose for which they were collected is achieved.

The Commissioner issued an opinion on 29 May, in which he said that there were no legal grounds for the intended processing of biometric data to identify individuals by use of video cameras and devices enabling video and audio recording in public areas. He also said that the DPIA did not provide for an assessment of the necessity and proportionality of the processing operations vis-à-vis the purpose of processing, which was in contravention of Article 54 of the PDPA. In his view, since the legal framework for the intended processing was not in place, launch of processing would be illegal since the Minister of Internal Affairs had not adopted a by-law governing the manner of recording in public places and of announcing the intention to record.²⁷⁸

The Rulebook on Recording in Public Places and Announcement of the Intention to Record was adopted in late August.²⁷⁹ Under the Rulebook, the public shall be informed of recording performed in public places by display of permanent or temporary signage at the venues, publication of the information on the MIA's website and via the media and other public information means. In case urgent action is needed to prevent threats to human life or health, property damage, or the commission of crimes and misdemeanours, police officers shall perform recording if they assess they can perform it safely, i.e. without endangering their safety or the safety of other people, whilst respecting their human rights and freedoms. In such cases, police officers shall orally announce their intention to record, which will be documented by an audio-video recording or an official report.

In light of the PDPA and the principle of transparency of data processing, it is highly disputable whether the Rulebook provides for the adequate notification of citizens of the processing of their data and their rights. Signage is an important step towards transparency, but comparison of the updated MIA list and the civic map shows that there are still major discrepancies in the camera locations and numbers of cameras.²⁸⁰

278 The Commissioner's opinion is available in Serbian at: https://www.sharefoundation.info/Documents/Mi%5c%a1ljenje_Poverenika_2_0.pdf.

279 *Sl. glasnik RS*, 27/20 and 101/20.

280 SHARE Foundation, "The MIA must mark all cameras in Belgrade," 11 September. Available in Serbian at: <https://www.sharefoundation.info/sr/mup-mora-da-obezi-sve-kamere-u-beogradu/>.

In response to the state's non-transparency with regard to the introduction of smart video surveillance and the need to keep the public abreast of the entire process and its effects, an informal group of Internet activists last year launched the "Thousands of Cameras" campaign and an Internet portal by the same name.²⁸¹ The portal calls on members of the public to help map the cameras by photographing them and posting them on Twitter with the #hiljadekamera hashtag and their precise locations, and to help raise awareness of problems caused by massive surveillance.

The Commissioner called for a public debate and the adoption of a law governing all forms of video surveillance, including biometric surveillance, before the collection and processing of personal data via the video surveillance in Belgrade began.²⁸²

Although Serbia's citizens say they highly value their privacy and personal data protection as a segment of their right to privacy, a poll conducted by Partners Serbia shows that many of them are unclear of what it entails and that they are willing to waive it in exchange for some benefits.²⁸³ Most citizens still associate the right to privacy with concepts such as "intimate life", "family", "loneliness", "my room", "peace", unaware what it means today. Over half of the respondents fully or partly agreed with the statement that "privacy is a thing of the past since everyone already knows everything about us". Over a third of the respondents said they "might" be willing to disclose their personal information if they would get a discount in return, and they mostly "measured" the disclosure of their data by the percentage of the discount or the type of data they would have to disclose. Over 80% of the respondents said that the right to privacy must not impede criminal investigations or "capturing" criminals. On the other hand, the Commissioner's caseload indicates that those citizens, who are informed of their right to personal data protection, do complain to him and seek protection of their privacy-related rights.

Most complaints claiming violations of the right to privacy filed with the Commissioner concerned breaches of this right at work, by health institutions and law enforcement bodies, installation of video surveillance, et al.

6. Freedom of Thought, Conscience and Religion

6.1. Legal Framework

No changes were made to the legislation governing the freedom of thought, conscience and religion in 2020. The right to freedom of thought, conscience and religion is enshrined in Article 9 of the ECHR, Article 18 of the ICCPR and Article

281 See: <https://hiljade.kamera.rs/>.

282 *NI*, "Do not introduce surveillance cameras without a public debate and in contravention of the law," 2 January 2021. Available in Serbian at: <https://rs.n1info.com/vesti/poverenik-ne-uvoditi-kamere-za-nadzor-bez-javne-rasprave-i-mimo-zakona/>.

283 The poll results are available in Serbian at: <https://www.partners-serbia.org/post?id=286>.

43 of the Constitution of Serbia. The freedom of thought, conscience and religion includes the freedom of choice of one's religion or belief, the freedom to maintain a belief and change it; the freedom not to declare one's religious and other beliefs;²⁸⁴ 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.²⁸⁵ 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 (Art. 43 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. On the other hand, the freedom to hold a belief and the freedom to change is not subject to restrictions (Art. 43(4) of the Constitution).²⁸⁶ 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).

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 in-

284 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.

285 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.

286 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.

tolerance. It is unclear why a religious community may be prohibited only if it jeopardises the enumerated rights. Given that the establishment of religious communities and activities within them amounts to manifestation of religion, 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, as well as the general prohibition of discrimination, which has the status of a fundamental principle of constitutional protection of human rights under the Constitution (Art. 21(3)).²⁸⁷

The Constitution prohibits discrimination on grounds of religion (Art. 21(3)). Under Article 2(2) of the Act on Churches and Religious Communities,²⁸⁸ 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)).²⁸⁹

On the other hand, the Act on Churches and Religious Communities prohibits exercise of the freedom of religion in a way jeopardising the 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 Act²⁹⁰ and the Decree on Religious Services in the Army of Serbia,²⁹¹ under which only the clerics of the

287 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*.

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

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

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

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

traditional churches and religious communities may perform religious services in the Army of Serbia. This amounts to direct discrimination against other religious communities.

Furthermore, the Act on State and Other Holidays in the Republic of Serbia²⁹² discriminates against workers who are not members of the Christian, Islamic or Jewish communities, as well as workers who are not members of religious organisations. Article 4 of this law, which entitles workers who are Serbian Orthodox, Catholic or members of other Christian religious communities, and members of the Islamic and Jewish Communities to take a day off for their religious holidays (e.g. their Patron Saint's Day, Yom Kippur, etc.), unjustifiably distinguishes between workers on grounds of their religion and discriminates against all workers not belonging to the enumerated religious communities.

The freedom of religion is protected by criminal law. The Criminal Code incriminates specific behaviours violating the freedom of religion.²⁹³ 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.²⁹⁴ 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.²⁹⁵ 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.²⁹⁶ 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.²⁹⁷

292 *Sl. glasnik RS*, 43/01, 101/07 and 92/11.

293 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).

294 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/>.

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

296 See the CC Decision of 4 November 2003 (cases IU 177/01, IU 213/02 and IU 214/02).

297 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 Directorate 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).²⁹⁸ 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 Communities²⁹⁹ and the republican Act on Legal Status of Religious Communities.³⁰⁰ 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.³⁰¹ 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.³⁰²

Thirty-five 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 quote this as the reason why most of them have not officially been registered.³⁰³ The

298 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.

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

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

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

302 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.

303 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 Reg-

Constitutional Court has rejected or declared inadmissible all initiatives claiming discrimination since the adoption of the Act on Churches and Religious Communities, which governs the registration of religious communities.³⁰⁴

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.³⁰⁵ 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 2019 (to 33), the European Commission reiterated in its Serbia 2020 Report 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.³⁰⁶

6.2.2. Registration of Religious Communities in 2020

Two new religious organisations were registered in Serbia in 2020 – the Vaishnava Religious Community –ISKCON and the Czech Protestant Reformist Church – Veliko Središte. In the reporting period, the Ministry of Justice did not reject any applications during the reporting period. It dismissed two applications because the applicants had not submitted all the documentation required by the Act on Churches and Religious Communities and the General Administrative Procedure Act. One of the rulings dismissing the application is worthy of analysis because of the interpretation of Article 19 of the Act on Churches and Religious Communities, prohibiting the registration of a religious organisation the name of which includes the name or part of the name reflecting the identity of a church, religious commu-

ister. 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.

304 See the Constitutional Court Decision No. IUz – 455/2011 of 16 January 2013. More in the 2014 Report III.8.2. and the 2013 Report II.8.2.

305 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.

306 *Serbia 2020 Report*, p. 32. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf.

nity or religious organisation that has already been entered in the Register or has applied for registration.

On 24 March 2020, the Ministry of Justice dismissed the application filed by the “Albanian Islamic Community in Serbia”,³⁰⁷ not only because it failed to submit all the relevant documentation, but because of its name as well. The Ministry held that could not register this community because its name included part of the name of another religious community already entered in the Register, that of the Islamic Community.

Although the autonomy of churches and religious communities, guaranteed by the Serbian Constitution and the Act on Churches and Religious Communities, entails the religious communities’ right to freely choose their own name, this right is subject to specific restrictions. The European Court of Human Rights 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 ones. It agreed that identical names or names that were substantially the same could create confusion and misperception in the public, giving rise to the risk of grave interference in the rights and interests of others.³⁰⁸ Therefore, the fact that a newly-established legal entity is required to have a name that will not mislead the public and that enables its differentiation from other similar organisations may in principle be considered a justified restriction of a religious community’s right to freely choose its name.³⁰⁹

However, the name of the applicant organisation, “Albanian Islamic Community in Serbia”, differs sufficiently from the name of the already registered “Islamic Community”. The applicant organisation gave no indication during the registration procedure that it wanted to reflect the identity of the already registered “Islamic Community”. The Ministry’s interpretation of the provision on names was excessively formalistic in this case; had the applicant organisation fulfilled all the registration requirements, the Ministry’s dismissal of the application only on account of the applicant organisation’s name would have amounted to disproportionate interference in that religious community’s right to freely choose its name and acquire the status of a legal person, because the name sufficiently differs from that of the already registered religious community, does not reflect the identity of the already registered religious community and does not confuse the public about their identity. This is not the first time the Ministry of Justice interpreted Article 19 in this manner and it should conform its practice to ECtHR standards.³¹⁰

307 Ruling No. 080–00–00330/2019–26 of 24 March 2020, obtained in response to BCHR’s request for access to information of public importance.

308 See *Orthodox Ohrid Archdiocese v. the former Yugoslav Republic of Macedonia*, ECtHR, App. no. 3532/07, (2017), para. 111.

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

310 See the 2019 Report, II.6.2.2.

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.³¹¹

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.³¹² Under Article 2(1) of the Decree on the Payment of Pension, Disability and Insurance Contributions for Priests and Clerics,³¹³ 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.³¹⁴ 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, which poses an unjustifiable strain on the state budget. The Directorate for Cooperation with Churches and Religious Communities said in 2019 that this regulation would be changed, but the Ministry of Justice, within which the Directorate operates, dismissed the initiative.³¹⁵ Most of the retired priests and clerics are members of the Serbian Orthodox Church (SOC) (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.³¹⁶

Under the Act on Churches and Religious Communities, churches and religious communities may also be exempted from paying taxes (Art. 30). Article 25(2(16)) of the Value Added Tax Act³¹⁷ exempts registered churches and religious communities from paying VAT on their services religious in character and the trade

311 Article 28(2).

312 Article 29 (2 and 3).

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

314 *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.

315 *Politika*, “Contributions for priests to be paid from the budget after they turn 65 as well,” 15 April. Available in Serbian at: <http://www.politika.rs/sr/clanak/427499/Svestenicima-doprinosi-iz-budzeta-i-posle-65-godine>.

316 *Večernje novosti*, “State amending regulations: priests’ contributions to be paid until they turn 65,” 6 April 2019, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:787441-DRZAVA-MENJA-PROPISE-Popovima-uplate-do-65-godine>.

317 *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, 30/18, and 72/19.

of goods and services directly associated with them. The provision essentially exempts citizens paying services religious in character and buying goods associated with them from paying tax. Furthermore, religious communities are entitled to VAT reimbursement for the delivered goods or services directly connected with their religious activities. However, this right is reserved for traditional churches and religious communities, which amounts to unjustifiable distinction between traditional religious communities and religious communities registered under the Act on Churches and Religious Communities.

Traditional and other confessional and registered churches and religious communities are exempted from paying tax on property (which is designated and exclusively used for religious activities).³¹⁸ Given that the restitution of property to churches and religious communities has practically been finalised and that the process of compensating them for the rest of the property is expected to be completed soon, there is no longer a valid reason for providing these entities with a privileged status under tax law and for exempting them from paying property tax. The state should give thought to introducing tax on the property of churches and religious communities.

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 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)).

Churches and religious communities enjoy another privilege as well – to manage their property and funds in accordance with their own regulations.³¹⁹ This practically means that, except where they are engaged in economic or other activities, they are not obligated to keep books, recognise and evaluate assets and obligations, revenue and expenditure, or prepare, submit and publish financial reports.

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

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

319 Article 26(2), Act on Churches and Religious Communities.

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).

The Serbian 2020 Budget Act allocated slightly more for the work of the Directorate for Cooperation with Churches and Religious Organisations than the 2019 Act – nearly 1,1 billion RSD.³²⁰ 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).

FUNDING OF CHURCHES AND RELIGIOUS COMMUNITIES FROM THE SERBIAN BUDGET					
DIRECTORATE 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	1,097,569,000 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	187,500,000 RSD	
	6.	Support for the construction and restoration of religious facilities	Subsidies to NGOs	261,000,000 RSD	
	7.	Advancement of religious culture, religious freedoms and tolerance	Subsidies to NGOs	70,000,000 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	44, 059, 000 RSD	
		TOTAL		1,097,569,000 RSD	

320 Sl. glasnik RS, 84/19.

In addition to the funding allocated via the Directorate for Cooperation with Churches and Religious Communities, another 311 million RSD were earmarked in the 2020 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 2020 budget had to be revised in order to respond to the COVID-19 pandemic – the Government first adopted a Decree on 27 April 2020³²¹ and then the National Assembly adopted amendments to the 2020 Budget Act.³²² Under the amendments, total budget expenditure increased by 24.8%, while funds set aside for religious communities decreased by around 6.5% compared to the 2019 level. Funds allocated from the budget reserves and at the local level for religious communities are not insignificant either. Like in 2019, the Serbian Government set aside even more additional funding for the construction of the St. Sava Temple in Belgrade – as many as one billion RSD. Although the Temple is undisputably a facility of major social importance, the state should have obviously spent the money on addressing burning social needs, above all on the public health system amidst the pandemic, especially since the 2020 Budget Act already set aside a sizable sum for the construction and maintenance of religious facilities.³²³

Local self-governments continued funding religious communities in 2020. The Vranje City Council in February published its call for funding projects of religious communities, envisaging the allocation of five million RSD for such purposes;³²⁴ the Kragujevac city authorities published a call envisaging the allocation of seven million RSD for such purposes the same month.³²⁵ In June, the Nova Varoš authorities said that two million RSD would be set aside for the reconstruction of religious facilities in that municipality.³²⁶ The Vojvodina Government said in June that 32 projects were approved nearly 10 million RSD in co-funding within calls for the adaptation and reconstruction of religious facilities,³²⁷ while Stara Pazova

321 *Sl. glasnik RS*, 60/20.

322 *Sl. glasnik RS*, 135/20.

323 *NI*, “Serbian Government gives SOC billion RSD for the Temple amidst the epidemic,” 6 July. Available in Serbian at: <http://rs.n1info.com/Vesti/a617064/Usred-epidemije-Vlada-Srbije-dala-SPC-milijardu-dinara-za-radove-na-Hramu.html>.

324 *Jugmedia*, “Call for reconstruction of churches and monasteries published,” 11 February. Available in Serbian at: <https://jugmedia.rs/konkurs-za-obnovu-crkava-i-verskih-manastira/>.

325 *Pressek*, “Call for church and religious community projects in Kragujevac published,” 25 February. Available in Serbian at: <https://www.pressek.rs/kragujevac/konkurs-za-projekte-crkava-i-verskih-zajednica-u-kragujevcu/>.

326 *RINA*, “Nova Varoš Municipality setting aside two million RSD for reconstruction of places of worship; most money for the church in the centre and the mosque,” 7 June. Available in Serbian at: <http://www.rina.rs/item/3893-n-a/>.

327 *RTV*, “9,943,000 RSD for projects of churches and religious communities,” 18 June. Available in Serbian at: http://www.rtv.rs/sr_lat/vojvodina/novi-sad/za-projekte-crkava-i-verskih-zajednica-9.943.000-dinara_1136530.html.

authorities set aside over 28 million RSD for churches and religious communities in this municipality.³²⁸

The ECtHR has held that states have a very wide such a margin of appreciation with regard to the financing of churches or religions and that such questions are closely related to the history and traditions of each country.³²⁹ This means that the state's funding of religious organisations is in principle not problematic from the human rights perspective. Where the state charges "church tax", such an obligation is imposed on members of the religious community the tax revenue is designated for (or on individuals who decide to designate part of their taxes for religious communities, depending on the modality). Under Article 9 of the ECHR, there will be an interference with the negative aspect of that provision when the State brings about a situation in which individuals are obliged – directly or indirectly – to contribute to a religious organisation of which they are not a member.³³⁰ (there are exceptions, e.g. when tax revenue is used for funding only secular activities benefitting all citizens).³³¹ The ECtHR has held that the obligation to pay taxes is a general one which has no specific conscientious implications in itself. Its neutrality in this sense is also illustrated by the fact that no tax payer can influence or determine the purpose for which his or her contributions are applied, once they are collected.³³² It has thus held that there were no interferences in the right to freedom of religion where the state decided to assist religious communities and their religious activities from general tax revenue.³³³ Whether or not the state will fund religious communities and their religious activities from general tax revenue is a fiscal policy decision, but it is restricted by the principle of neutrality, which requires that such revenue be distributed at least approximately proportionately to the size of the religious communities and the size of their flock.

The registered Jewish Communities in Serbia have an additional source of budget funding under the Act on the Redress of Intestate Jewish Holocaust Victims.³³⁴ 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 of 1 January 2017 (Art. 9(2)). Property and income in the form of financial support

328 RTV, "Stara Pazova sets aside over 28 million RSD for churches and religious communities," 14 July. Available in Serbian at: http://www.rtv.rs/sr_lat/vojvodina/srem/stara-pazova-izdvojila-jevise-od-28-miliona-dinara-za-crkve-i-verske-zajednice_1144654.html.

329 *Alujer Fernandez and Caballero Garcia v. Spain*, ECtHR, App. no. 53072/99 (2001).

330 *Klein and Others v. Germany*, ECtHR, App. no. 10138/11 (2017), para. 81.

331 *Bruno v. Sweden*, ECtHR, App. no. 32196/96 (2001). "Church taxes" exist in Germany, Austria, Sweden and other countries.

332 *C. v. The United Kingdom*, ECmHR, App. no. 10358/83.

333 *Darby v. Sweden*, ECmHR, App. no. 11581/85 (1988).

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

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.

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.³³⁵ 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.³³⁶

Restitution Agency Director Strahinja Sekulić said that the restitution of property to churches and religious communities was about to be finalised and that around 60,373 hectares of land and 92,560 square metres of buildings had been returned to them by the end of 2019.³³⁷ The value of the property restituted to Jewish Communities is estimated at around €22 million.³³⁸ 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.³³⁹

6.4. Freedom of Religion, Religious Communities and COVID-19

The COVID-19 pandemic gave states the reason to restrict many human rights, with or without good cause. Freedom of thought, conscience and religion was no exception. The restrictions of this right mostly concerned the freedom of religion, more specifically, the right to freely manifest one's religion in community with others (by participating in religious rites and worship with others). Various government measures raised questions about whether this right could be derogated from (during a state of emergency), what the religious organisations' autonomy to perform religious rites entailed, and whether the freedom of religion created the

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

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

337 *Danas*, "Sekulić: Advance compensation for seized property to be paid in latter half of 2020," 5 February. Available in Serbian at: <https://www.danas.rs/ekonomija/sekulic-isplata-akontacije-obestecenja-za-oduzetu-imovinu-u-drugoj-polovini-2020-godine/>.

338 *Ibid.*

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

right of individuals not to comply with state anti-COVID-19 measures conflicting with their religious beliefs.

When a large number of citizens in Novi Sad shared communion from a common spoon on 22 March 2020³⁴⁰, during the state of emergency and in defiance of measures prohibiting the freedom of movement and restricting the freedom of assembly, the Serbian Orthodox Church said that this was a traditional rite and that measures introduced to contain coronavirus could not apply to religious rites, that this was an autonomous church matter, that none of the people were forced to take communion and that the Church could not deny communion.³⁴¹ The academic community also said that the Constitution prohibited restrictions of the freedom of religion.³⁴² On the other hand, the World Health Organization (WHO) called on religious leaders to explain to their believers the importance of compliance with the measures and adjust their worship practices to the circumstances, including the need to maintain physical distancing measures; avoid mass gatherings and conduct rituals and activities remotely/virtually; prevent touching or kissing of devotional and other objects; avoid the distribution of Holy Communion that involves placing the wafer on the tongue or drinking from a common cup, etc.³⁴³

Article 43(3) of the Serbian Constitution guarantees everyone the right “to manifest their religion or religious beliefs in worship, observance, practice and teaching, individually or in community with others, and to manifest religious beliefs in private or public.” The Constitution also lays down, in paragraph 4 of Article 43, that “[F]reedom of manifesting one’s religion or beliefs may be restricted by law only if that is necessary in a democratic society to protect lives and health of people, morals of democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent inciting of religious, national, and racial hatred.” Under Article 9(2) of the ECHR, “[F]reedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” Article 3(2) of the Act on Churches and Religious Communities lays down that freedom of religion may not be used in such a way to threaten, inter alia, the right to life and

340 *Telegraf*, “Unbelievable! Believers in Novi Sad shared communion from a common spoon during coronavirus,” 22 March. Available in Serbian at: <https://www.telegraf.rs/vesti/srbija/3168730-neverovatno-vernici-se-u-novom-sadu-u-vreme-korona-virusa-pricestili-istom-kasicom>.

341 *SOC website*, “Communique of the Holy Synod of Bishops,” 23 March. Available at: http://www.spc.rs/eng/communique_holy_synod_bishops_1.

342 *N1*, “Professor: Police illegally broke into churches, harassed believers and priests,” 2 April. Available in Serbian at: <http://rs.n1info.com/Vesti/a584666/Profesor-Policija-nezakonito-upadala-u-crkve-sikanira-vernike-i-svestenike.html>.

343 *Radio 021*, “WHO recommends to religious communities to adjust their worship practices or cancel all gatherings,” 9 April. Available in Serbian at: <https://www.021.rs/story/Info/Region-i-svet/239735/SZO-porucila-verskim-zajednicama-da-prilagode-prakse-bogosluzenja-ili-da-otkazu-sva-okupljanja.html>.

the right to health. Indeed, the Constitution does not provide for derogation from the right to freedom of thought, conscience and religion during a state of emergency (Art. 202(4)), but this provision needs to be interpreted in conjunction with other constitutional provisions guaranteeing this right and providing for its limitations. Given that the Constitution permits restrictions of the freedom to manifest one's religion or beliefs, the provision on derogation during a state of emergency should be construed as a prohibition of derogation from other aspects of the freedom of thought, conscience and religion – the right to adopt, change or renounce a religion or belief, not have a religion or belief, freely declare one's religion or belief, which entails freedom from coercion to declare one's religion or belief.

Therefore, the question that remains is whether the restrictions of the freedom of thought, conscience and religion have been proportionate, i.e. necessary. Measures, such as those limiting the number of people who may gather in a church or another temple and introducing a curfew, doubtlessly interfere in the freedom to manifest one's religion, but that does not mean that such restrictions are impermissible. The believers' right to manifest their religion in churches were limited in Serbia by general regulations restricting the freedom of assembly. During the state of emergency, the Serbian Government issued a recommendation to churches and religious communities to conduct their religious rites in religious facilities and outdoors in the absence of the believers, and to conduct funeral services in the presence of small numbers of people and in compliance with all preventive measures;³⁴⁴ The Government decision was adopted on 27 March 2020 (almost ten days after the prohibition of movement was imposed), when indoor and outdoor public assemblies were already banned.³⁴⁵

Therefore, the prohibition and restrictions of the freedom of assembly did not apply just to believers but to anyone who wanted to gather for any reason. On the other hand, scientists knew already in March 2020 that physical distancing measures were the best and practically irreplaceable method for fighting coronavirus and that the transmission of the virus could not be contained by measures milder than restrictions or prohibition of the freedom of assembly, depending on the epidemiological situation. This is why the freedom of manifesting one's religion in community with others had to be restricted in Serbia and the introduced restrictions were proportionate. However, the religious communities' appeals to their flock to comply with these rules were apparently ineffective. The rules were frequently violated despite the religious communities' many official calls on their believers to comply with the regulations restricting the freedom of assembly, on physical distancing and wearing of masks. The memorial service for SOC Patriarch Irinej was probably the most illustrative example– despite SOC's appeals to believers not to kiss the Patriarch's body, many people paid their last respects by kissing the glass cover on (which was occasionally disinfected) on top of his casket, did not maintain physical distance,

344 Serbian Government Decision, 05 No. 53–2868, *Sl. glasnik RS*, 43/20.

345 Decree on State of Emergency Measures, *Sl. glasnik RS*, 31/20, 36/20, 38/20, 39/20 and 43/20.

while some did not even wear masks.³⁴⁶ Assemblies of over five people were prohibited at the time, under paragraph 1 of the Order on the Prohibition of Indoor and Outdoor Public Assemblies.³⁴⁷

Another important question that arose with respect to the interaction between the freedom of religion and COVID-19 was whether individuals were entitled to refuse to comply with specific measures mandated to contain the virus, such as mask-wearing, because of their religious beliefs, or whether the very existence of such obligations amounted to a violation of the freedom of religion (conscientious objection). Specifically, the following issue arose: whether the interest of an individual not to comply with a general obligation for reasons of conscience overrides the public interest protected by such an obligation. The case of Archimandrite Nikodim Bogosavljević illustrates this well – he issued himself a pass exempting him from the obligation to wear a mask. He claimed that wearing a face mask was in violation of the right to human dignity (Art. 23 of the Constitution) and the right to freedom of religion (Art. 43 of the Constitution) and that the autonomy of churches and religious communities entailed the right of each church to establish its own rules, independently of the state.³⁴⁸

First of all, such a pass has no legal force. Anarchy would ensue if anyone could issue themselves passes allowing them not to comply with rules binding on everyone. The authority that issued a general legal norm has envisaged exceptions and may amend it or revoke it. In addition, the Constitutional Court is entitled to eliminate the norm from the legal order in the event it finds that it is illegal or unconstitutional. Individuals, who maintain that their religion prohibits them from wearing a mask or that wearing a mask amounts to a violation of their freedom of religion, do not automatically acquire the right not to comply with a general obligation; they have to realise the right in a procedure, by filing a request for permission not to wear a mask because of their religious beliefs.

Second, the Constitution does guarantee the separation of the state and the church and it does provide for the autonomy of religious communities (Art. 44). However, the autonomy of religious communities does not mean that the Constitution entitles the religious communities and believers to arbitrariness and unlimited freedom. In the meaning of the Constitution, the autonomy of religious communities means that they are free to regulate their internal organisation and religious affairs autonomously, but not that they are entitled to disobey generally binding regulations or enact their regulations derogating from them.

346 Noizz, “Worshippers kissing Patriarch Irinej’s casket and not wearing masks, despite warnings and security measures,” 21 November. Available in Serbian at: <https://noizz.rs/noizz-news/vernici-se-oprastaju-od-patrijarha-irineja-ne-postujuci-mere-protiv-korone/906h71g>.

347 *Sl. glasnik RS*, 100/20, 111/20 and 133/20.

348 *Nova.rs*, “Archimandrite Nikodim issued himself a pass exempting him from wearing a mask,” 26 November. Available in Serbian at: <https://nova.rs/nova-rs-emisije/arhimandrit-nikodim-sam-sebi-izdao-potvrdu-da-ne-nosi-masku/>.

Finally, the question arises whether there are any situations in which people are allowed to act in contravention of specific rules of conduct that apply to everyone because such conduct is in contravention of their beliefs. The Serbian Constitution lays down no-one shall be obliged to perform military or any other service involving the use of weapons if that is contrary to their religion or beliefs, but it makes no mention of conscientious objection in the civilian sphere. The Act on Churches and Religious Communities sets out that religious freedom may not be used to violate the right to life and the right to health (Art. 3(2)). In principle, an extremely limited number of practical situations where the individuals' interest not to act for reasons of conscience would override public interest may be conceivable in practice, but in this case, where public interest has required equal treatment of everyone in order to protect life and health (general obligation to wear a mask), it appears that the obligation to wear a mask does not amount to a violation of the right to freedom of religion.

6.5. Autonomy in Tertiary Education – the Serbian Orthodox Church, Faculty of Orthodox Theology and the University of Belgrade

BCHR's *2019 Report* discussed the “dismissal” of two teachers of the Faculty of Orthodox Theology in Belgrade, pursuant to a decision of the SOC Synod.³⁴⁹ Similar developments occurred in 2020.

Full Professor Rodoljub Kubat of the Faculty of Orthodox Theology was sacked on 14 October 2020. The ruling on the termination of his employment set out that he was prohibited from working as a full professor and that he could not be secured another job, and only referred to a Synod decision withdrawing consent to his appointment.³⁵⁰ Although the ruling on the termination of his employment said that the Synod decision was an integral part of the ruling, Professor Kubat said he had never received a copy of the decision, that he had never read it and that it was merely read out to him when he was handed the ruling. He said that the Synod decision stated that he was “undermining the reputation of the SOC and the Faculty” but not how he had done that.³⁵¹ Professor Kubat opined that he was “dismissed” because he publicly spoke about the illegal operations of the Faculty.

The Constitution guarantees the autonomy of religious communities (Art. 44(2)). The Higher Education Act lays down that high education shall be, *inter alia*, based on autonomy, respect for human rights and civil freedoms, including the pro-

349 More in the *2019 Report*, II.6.4.

350 Professor Kubat's tweet, 14 October. Available in Serbian at: <https://twitter.com/KubatRodoljub/status/1316322189419917313>.

351 *NI*, “Kubat sacked from Faculty of Theology, says Bač Bishop Irinej behind it,” 14 October. Available in Serbian at: <http://rs.n1info.com/Vesti/a660548/Profesoru-Bogoslovskog-fakulteta-Rodoljubu-Kubatu-uruceno-resenje-o-otkazu.html>.

hibition of all forms of discrimination, and the equality of all tertiary education institutions irrespective of who founded i.e. owns them (Art. 4).³⁵² Article 6 of the Act sets out that the autonomy of universities and other tertiary institutions shall, among other things, entail the right to appoint professors and associates. The Faculty of Orthodox Theology is part of the University of Belgrade. Several questions arose with respect to Professor Kubat's dismissal: Is the Serbian Orthodox Church entitled to influence and/or decide on the appointment of the Faculty Orthodox Theology teachers in accordance with the principle of autonomy of religious communities? May a professor of the Faculty of Orthodox Theology be dismissed for undermining the Faculty's reputation by his statements? And, is the decision on the termination of Professor Kubat's employment legal?

The ECtHR has dealt with the issues regarding the relationship of the freedom of movement in terms of the autonomy of religious communities and the ECHR rights of their members, employees or representatives (primarily, the freedom of association, freedom of expression and the right to respect for their private and family life). The ECtHR has ample case law on the right of religious communities to dismiss their employees or representatives who they brought into question the communities' teachings (e.g. in their public appearances) or acted in contravention of them (e.g. got a divorce or lived with a same-sex partner) whilst exercising their ECHR rights. The Court emphasised that it was a common feature of many religions that they determined doctrinal standards of behaviour by which their followers must abide in their private lives.³⁵³ In that sense, when they accepted the job, religious-education teachers (such as Rodoljub Kubat) also accepted the obligation to show a degree of loyalty to the religious community they represent (in this case the Serbian Orthodox Church) in their private lives as well.³⁵⁴ The degree of loyalty depends above all on the proximity between the individual's activity and the Church's proclamatory mission.³⁵⁵ Such proximity is close in case of religious-education teachers, such as Mr. Kubat, and it would be reasonable to expect of them not to be in conflict with the Church and its teachings because only then can the teacher and his teaching remain convincing and credible. This obligation of loyalty extends to teaching in educational institutions not under the control of religious communities (e.g. state schools).³⁵⁶ The obligation also extends to views religious-education teachers voice in public. Although individuals who accept the job of religious-education teacher do not waive their right to freedom of expression, that right is limited to an extent. That does not mean that religious organisations have an unlimited right to impose their views on their representatives.

However, religious communities' accusations that their adherents, employees or representatives are endangering their autonomy by their behaviour must be cor-

352 *Sl. glasnik RS*, 88/17, 27/18 – other law, 73/18, 67/19, 6/20 – other law and 6/20 – other law.

353 *Jehovah's Witnesses of Moscow against Russia*, ECtHR, App. No. 302/02, (2010), para. 118.

354 *Ibid.*, paras. 137–138.

355 *Schuth v. Germany*, ECtHR, App. No. 1620/03, (2010), para. 69.

356 *Fernandez Martinez v. Spain* [GC], ECtHR, App. No. 56030–07, (2014), paras. 137–138.

roborated. The religious community in question must also show, in the light of the circumstances of the individual case, that the risk alleged is probable and substantial and that the impugned interference with the right of its adherents, employees or representatives does not go beyond what is necessary to eliminate that risk and does not serve any other purpose unrelated to the exercise of the religious community's autonomy. Neither should it affect the substance of the right at issue.³⁵⁷

The case of Rodoljub Kubat has a specific dimension because the Faculty of Orthodox Theology is part of the University of Belgrade, wherefore its Statute should be in compliance with the Statute of the University of Belgrade. The Higher Education Act and the Statute of the University of Belgrade guarantee autonomy of universities and other tertiary education institutions, which implies the right of universities and their faculties to autonomously appoint and dismiss their teachers. On the other hand, the Statute of the Faculty of Orthodox Theology sets out that the appointment and continued employment of teachers must be approved by the Serbian Orthodox Church, i.e. its Synod. This provision of the Faculty Statute is in contravention of the principle of autonomy and the Statute of the University of Belgrade (Art. 11(7)). However, account needs to be taken of the ECtHR's above views on autonomy of religious communities and the fact that the University of Belgrade Senate approved the Faculty Statute.

Whatever one may think of the SOC's role in the appointment of Faculty of Orthodox Theology teachers and the lawfulness of the provision in its Statute requiring the Synod's approval of the teachers, the fact remains that the ruling terminating Mr. Kubat's employment lacked an explanation. The Faculty thus deprived him of the opportunity to comment on the accusations that he had undermined the reputation of the Faculty by voicing his views. Furthermore, the ruling stated that Mr. Kubat could not be secured another job. The question thus logically arises whether the restriction of Mr. Kubat's freedom of expression by terminating his employment was well-founded, i.e. whether it was necessary and proportionate, and whether this Faculty decision had been inspired by other goals and not only the protection of the autonomy of the Serbian Orthodox Church.

7. Freedom of Expression and the Right to Know

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 the right to freedom of expression of opinion,

³⁵⁷ *Ibid.*, paras. 123 and 132.

as well as the freedom to seek, receive and impart information and ideas through speech, writing, art, or in some other manner (Art. 46(1)).³⁵⁸ 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)).

The Constitution guarantees the freedom of the press – publication of newspapers is possible without prior authorisation and subject to registration. Television and radio stations shall be established in accordance with the law (Art. 50(2)). TV and radio stations are in principle required to have licences.³⁵⁹

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.

The Constitution guarantees the right to know, which entails everyone’s right to be informed accurately, fully and promptly about issues of public importance and obligates media to respect this right. Furthermore, everyone shall have the right to access information kept by state authorities and organisations vested with public powers, in accordance with the law (Art. 51). In the view of the UN Human Rights Committee, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) enshrining the freedom of opinion and expression, embraces a right of access to information held by public bodies.³⁶⁰ Exercise of the freedom of public information is governed by the Public Information and Media Act (PIMA),³⁶¹ while the right of access to information of public importance is governed by the Free Access to Information of Public Importance Act (FAPIA),³⁶² which also defines information of public importance.

358 The ECtHR has established in its case law that Article 10 on the freedom of expression applies also to publication of photographs (*Axel Springer AG v. Germany* [GC], ECtHR, App. no. 39954/08, 2012); photomontages (*Société de conception de presse et d’édition et Ponson v. France*, ECtHR, App. no. 26935/05, 2009); forms of conduct (*Ibrahimov Mammadov v. Azerbaijan*, ECtHR, App. nos. 63571/16 74143/16 2883/17 2890/17 39527/17 and 39541/17, 2020, paras. 166–167); rules governing clothing (*Stevens v. United Kingdom*, ECmHR, App. no. 11674/85, 1986); and display of vestimentary symbols e.g. a cross (*Vajnai v. Hungary*, ECtHR, App. no. 33629/06, 2008, para. 47).

359 Article 10 of the ECHR does not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

360 General Comment No. 34, para. 18.

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

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

7.2. Permitted Restrictions of the Freedom of Expression

The Serbian Constitution allows restrictions of the freedom of expression if the following three requirements are fulfilled: (1) the restriction is prescribed by law; (2) it aims to uphold the authority and impartiality of the court, to protect public health, morals of a democratic society and national security of the Republic of Serbia.; and (3) the restriction is necessary (Art. 46(2)). The ECHR provides several other grounds for restricting the freedom of expression – in the interests of territorial integrity, for the prevention of disorder or crime, and for preventing the disclosure of information received in confidence (Art. 10(2)). These grounds for restriction are mentioned also in Article 19(3) of the ICCPR.

A norm restricting the freedom of expression cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the person concerned to regulate his or her conduct: he or she needs to be able to foresee, to a degree that is reasonable in the circumstances, the consequences that a given action could entail.³⁶³ In order for a measure to be considered proportionate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned.³⁶⁴ Restriction of the freedom of movement should not amount to a form of censorship or intimidation, which can happen if the penalty is excessive or the practice of the authorities imposing them is unforeseeable, which is likely to deter journalists from expressing their views or from imparting information.³⁶⁵ And, finally, the reasons to justify the restriction must be relevant and sufficient and the measure taken must be proportionate to the pursued legitimate aims, laid down in the Constitution or international treaties.³⁶⁶

The Criminal Code³⁶⁷ 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 con-

363 *Perincek v. Switzerland* [GC], ECtHR, App. no. 27510/08, (2015), para. 131.

364 *Glor v. Switzerland*, ECtHR, App. no. 13444/04, (2009), para. 94. E.g. The Serbian Criminal Code envisages the imposition of a fine for the crime of insult (restricting the freedom of expression of an individual to protect the reputation of another person). On the other hand, an even milder interference with the freedom of expression would entail decriminalisation of insults and reliance on civil proceedings in which the injured parties would pursue their right to compensation of non-pecuniary damages.

365 *Bedat v. Switzerland* [GC], ECtHR, App. no. 56925/08, (2016), para. 79.

366 *Uj v. Hungary*, ECtHR, App. no. 23954/10, (2011), para. 25–26.

367 *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.

sider the commission of an offence out of hate based on race and religion, national or ethnic origin, sex, sexual orientation or gender identity as an aggravating circumstance unless it is prescribed as an element of the criminal offence.³⁶⁸

The Public Information and Media Act 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.³⁶⁹ 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,³⁷⁰ use of computer systems to promote ideas or theories advocating, promoting or inciting hatred, discrimination or violence against individuals or groups on grounds of race, skin colour, descent or national or ethnic origin and religion is now prohibited in Serbia.

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).

Freedom of expression may also be restricted to protect the reputation of others. The Serbian Criminal Code envisages the imposition of a fine for the crime of

368 This means, e.g., that the court cannot take as an aggravating circumstance that a person who committed the crime of inciting national, racial or religious hatred or intolerance, which entails the instigation or incitement of such hate or intolerance, committed it out of e.g. national hate.

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

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

insult. The aggravated form of the crime is committed via the press, radio, television or other media (e.g. the Internet) or at public rallies. No one shall be punished for insulting another person if they did so in within the framework of a serious critique in a scientific, literary or artistic work, while discharging their official duties, journalistic profession, as part of a political activity, in defence of a right or to protect a justified interest, if it clear from the manner of their expression or other circumstances that there was no [underlying] intent to disparage (Art. 170). 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.

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 liability 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 proceedings, it suffices to envisage civil liability, i.e. compensation of damages to a proportionate amount.³⁷¹

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,³⁷² particularly with regard to issues affecting their financial integrity.³⁷³ The ECtHR affirmed the view in its judgment in the case *Lepojić v. Serbia*.³⁷⁴ 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.³⁷⁵

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).

371 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).

372 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 Oberschlick v. Austria*, ECmHR, App. no. 15974/90 (1995).

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

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

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

7.3. *The Right to Know during the Epidemic*

The public's right to accurate, full and prompt information about issues of public interest was exercised "in the light" of the coronavirus epidemic. One of the problems identified with respect to the right to know arose from the numerous decrees adopted by the Government or ministries during the state of emergency, which provided for various measures, prohibitions and restrictions of human rights. Some of them, albeit not all³⁷⁶ were necessary to protect the population and contain the spread of the epidemic. The authorities, however, frequently amended their decisions, wherefore the public was not always clear on which measures applied to which categories of the population, on which days and in which periods of the day.³⁷⁷

The right to information and the state's obligation to inform the public about the character of the virus (its transmission, symptoms and effects) and protective measures were of paramount importance. The state is indisputably under the obligation to protect the lives and health of people in its jurisdiction and its measures may, indeed, have to involve restrictions of other human rights. The question regarding such restrictions, as with all interferences with human rights, is whether they are prescribed by law, necessary and proportionate.

Information facilitates the public's critical assessment of the government's actions and meaningful and informed public debates about the state's activities, which should contribute to improvement of its pursuit of the best interests of the citizens. The public's interest to "control" the government and hold it accountable (if necessary) does not diminish during an epidemic or crisis circumstances in general. The public is in even greater need of an "open" state and government when it faces the threat of a dangerous contagious disease, because individuals and communities are unable to render decisions on public health if they do not have all the information.

Even when the authorities think that the publication of specific information may lead to panic, withholding it cannot be the only option. Sharing information that is properly contextualised may advance both public policy and freedom of expression guarantees.³⁷⁸

Experts of the United Nations, the Inter-American Commission for Human Rights and the OSCE Representative on Freedom of the Media jointly called on all governments to promote and protect access to and free flow of information during pandemic. They specified what the governments of all countries needed to do, emphasising that human health also depended on "access to accurate information about

376 See the 2020 *Semi-Annual Report*, I.1.

377 Information on measures restricting human rights are available in Serbian at: <https://www.pravno-informacioni-sistem.rs>.

378 More in the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Disease pandemics and the freedom of opinion and expression*, A/HRC/44/49, 2020, available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F44%2F49&Language=E&DeviceType=Desktop>.

the nature of the threats and the means to protect oneself, one's family, and one's community."³⁷⁹ They reminded governments of their obligation to provide reliable information in accessible formats to all; that internet access was critical at a time of crisis, and that states should refrain from blocking internet access; that states had to make exceptional efforts to protect the work of journalists; and that governments and internet companies should address disinformation in the first instance by themselves providing reliable information.³⁸⁰

7.3.1. Did the Serbian Government "conceal" information about the epidemic?

The state substantially interfered with the public's right to receive information and the media outlets' right to impart information during the state of emergency. The Government Conclusion of 28 March prohibiting the publication of information from any sources apart from official ones, in order to avoid fake news and public anxiety, is a good illustration of such direct interference.³⁸¹ This Conclusion caused an avalanche of protests both in Serbia and abroad and the Government soon revoked it "at the explicit request of the President", as Prime Minister Brnabić explained.³⁸²

Information about the virus and measures restricting human rights during the state of emergency were released to the Serbian population and reporters once a day, at the Crisis Headquarters' news conferences. This practically meant that information published at the briefings was later retold, rewritten and interpreted in newscasts and other news shows, on the Internet and in the print media.

However, the Crisis Headquarters' briefings suffered from specific deficiencies: they were short, the reporters were not allowed to ask all the questions they wanted and the HQ members responded laconically to them. The situation was exacerbated by the Government's decision of 11 April prohibiting reporters from attending the news conferences and instructing them to send their questions by e-mail.³⁸³ The Government explained that the measure was necessary to protect the health of all the people attending the conferences. Media professionals warned that the Decision could result in preferential treatment of specific outlets if the audience

379 "COVID-19: Governments must promote and protect access to and free flow of information during pandemic – International experts," OHCHR. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25729>.

380 *Ibid.*

381 Government Conclusion 05 No. 53–2928/2020, *Sl. glasnik RS*, 48/20. More on the Conclusion and reactions to it in the 2020 *Semi-Annual Report*, IV.2.

382 Serbian Government, "Government to Withdraw Conclusion on Information in State of Emergency," 2 April. Available at: <https://www.srbija.gov.rs/vest/en/153089/government-to-withdraw-conclusion-on-information-in-state-of-emergency.php>. See more in Chapter III.2.

383 *N1*, "No journalists at daily pandemic briefings, Serbian Government says", 10 April. Available at: <https://rs.n1info.com/english/news/a587867-no-journalists-at-daily-pandemic-briefings-serbian-government-says/>.

did not have the opportunity to hear all the questions and in case someone decided not to respond to questions by specific media, which would thus be precluded from reporting on events they considered important of public interest. Press and civic associations criticised the decision and the authorities again allowed reporters to attend the Crisis HQ briefings some 10 days later, on 21 April 2020.³⁸⁴

In addition to information released at Crisis HQ briefings, the Ministry of Health reported on the number of COVID-19 deaths and infections twice a day, at 8 am and at 6 pm, until 22 March 2020. As of that day, the statistics and official information on the disease were published on the website <https://covid19.rs>. Although the website was updated several times a day and had useful information, its content essentially mirrored the information the Government Crisis HQ released at its daily briefings.³⁸⁵

Information on epidemiological parameters was collected in accordance with Government instructions for the nationwide centralised COVID-19 Information System launched and managed by the Serbian Public Health Institute “Dr Milan Jovanović Batut”, with the technical support of the Government Office for IT and e-Government and the National Health Insurance Fund.³⁸⁶ The data have been entered into the system by hospitals treating COVID-19 patients, public health institutes, laboratories running the tests and other relevant authorities and organisations. They have been entering information on the numbers of people who recovered from COVID-19 or succumbed to it, the number of tested people (how many tested positive and negative) and the number of people ordered self-isolation or referred to quarantine facilities. The Public Health Institute “Dr Milan Jovanović Batut” has been tasked with preparing and forwarding daily reports to the Ministry of Health, which is under the obligation to publish them on the <https://covid19.rs> website.

BIRN Serbia, a member of the regional Balkan Investigative Reporting Network (BIRN), on 22 June 2020 published an article claiming that 632 people had died of COVID-19 in the 19 March-1 June 2020 period, or 388 more than officially reported.³⁸⁷ BIRN arrived at the figure by analysing the data in the COVID-19 Information System and comparing them with those published on <https://covid19.rs> and released at Crisis HQ briefings. Such a discrepancy (of 159%) met with negative public reactions and resulted in loss of trust in the institutions. Government representatives and Crisis HQ members were caught unawares.

384 NI, “Reporters allowed back into pandemic briefings,” 20 April. Available at: <https://rs.n1info.com/english/news/a591208-reporters-allowed-back-into-coronavirus-briefings/>.

385 Lawyers’ Committee for Human Rights (YUCOM), *Human Rights and COVID-19*, Belgrade 2020, p. 53.

386 Government Conclusion 05 No. 53–2926/2020, *Sl. glasnik RS*, 50/20 and 57/20.

387 BIRN, “Serbia underreported COVID-19 deaths and infections data shows,” 22 June. Available at: <https://balkaninsight.com/2020/06/22/serbia-under-reported-covid-19-deaths-and-infections-data-shows>.

Crisis HQ member Dr Srđa Janković said the same day that “fatal outcome of COVID-19 means that the clinical manifestations or complications caused by the coronavirus infection substantially or decisively contributed to the fatal outcome” and that, in addition to testing positive, “the course of the illness needs to correspond to COVID-19 for the fatal outcome to be attributed to it”. The very next day, he said that the data needed to be revised.³⁸⁸ Similar statements were made by Darija Kisić Tepavčević, another member of the Crisis HQ,³⁸⁹ and her other colleagues. Branislav Todorović, for instance, said that he did not have the statistics on COVID-19 infections and deaths, that the Batut Institute was in charge of them,³⁹⁰ while Dr Predrag Kon said several days later that BIRN’s article smacked of a conspiracy theory,³⁹¹ that BIRN was causing public anxiety with its research and publication of “raw” data if the official data published on <https://covid19.rs> were accurate.³⁹² However, Dr Kon said on 28 June 2020 that the data needed to be checked and revised.³⁹³ That same evening, Prime Minister Ana Brnabić said that BIRN’s article was nonsense.³⁹⁴ The Batut Institute did not comment the BIRN research until 2 July, when it dismissed it.³⁹⁵

Speculations about underreported COVID-19 deaths and infections did not end there. An official investigation was not launched after BIRN’s report came out. In late September, Dr Predrag Kon said that the numbers of COVID-19 deaths in Belgrade in the March-May period were three times higher than reported and that he arrived at the information by researching the data of the Belgrade Public Health

388 *Nova.rs*, “Srđa Janković: All discrepancies should be checked,” 23 June. Available in Serbian at: <https://nova.rs/vesti/drustvo/srda-jankovic-proveriti-sva-neslaganja-podataka/>.

389 *Insajder*, “Kisić Tepavčević: Not every patient who had COVID-19 died of it,” 23 June. Available in Serbian at: <https://insajder.net/sr/sajt/vazno/19096/Kisić-Tepavčević-Nije-svaki-pacijent-s-kovidom-umro-od-posledica-infekcije.htm>.

390 *Insajder*, “Srđa Janković on discrepancies between data on coronavirus deaths and infections: Not everyone who tested positive died of COVID-19,” 22 June. Available in Serbian at: <https://insajder.net/sr/sajt/vazno/19074/Srđa-Janković-o-razlici-o-broju-zaraženih-i-preminulih-od-koronavirusa-Nije-svako-sa-pozitivnim-nalazom-umro-od-Covida-19.htm>.

391 *Insajder*, “Kon: We received official data just before the press conferences,” 25 June. Available in Serbian at: <https://insajder.net/sr/sajt/vazno/19128/Kon-Dobijali-smo-zvanične-podatke-neposredno-pred-konferencije-za-medije.htm>.

392 *Insajder*, “Kon: Databases are not the same as medical documents,” 26 June. Available in Serbian at: <https://insajder.net/sr/sajt/vazno/19161/Kon-Baze-podataka-nisu-isto-što-i-medicinska-dokumentacija.htm>.

393 *Insajder*, “Crisis HQ members: investigate claims that COVID-19 deaths and infections were underreported,” 28 June. Available in Serbian at: <https://insajder.net/sr/sajt/vazno/19192/Članovi-Kriznog-štaba-Ispitati-navode-o-tome-da-je-veći-broj-inficiranih-i-umrlih-od-zvanično-saopštenih.htm>.

394 *Srbija Danas*, “Brnabić on BIRN’s claims: nonsense, they’ll attack us whatever we say,” 28 June. Available in Serbian at: <https://www.srbijadanas.com/vesti/drustvo/sto-oni-pisu-su-nebuloze-sta-god-mi-rekli-oni-ce-nas-napadati-brnabic-o-navodima-birn-2020-06-28>.

395 *Nova.rs*, “Why did it take Batut 10 days to ‘refute’ BIRN,” 2 July. Available in Serbian at: <https://nova.rs/vesti/drustvo/zasto-je-batutu-bilo-potrebno-10-dana-da-demantuje-birn/>.

Institute; he “blamed” the Information System for the discrepancies.³⁹⁶ Health Minister Zlatibor Lončar reacted to Kon’s statement by saying he did not see anything disputable and that all reported infections and deaths were published.³⁹⁷ President Aleksandar Vučić also denied that Serbia had underreported the figures.³⁹⁸

In late May, BCHR requested of the Serbian Government to provide it with access to the minutes of the COVID-19 Crisis Headquarters sessions, the decision on the establishment of the Crisis Headquarters and information on all members of this body and their functions. It sent two follow-up requests in June 2020.³⁹⁹ On 22 June 2020, the BCHR filed an initiative with the Protector of Citizens to launch a review of the work of the Ministry of Health, specifically, the management of the COVID-19 Information System, emphasising, in particular, that any concealment of data on the health of Serbia’s population could result in irreparable and incalculable harm.⁴⁰⁰

The Serbian Government failed to respond to BCHR’s request by the end of the year. The Protector of Citizens said three months later on RTS that the review of the work of the Ministry of Health was under way.⁴⁰¹ However, in response to its request for access to information of public importance, BCHR learned out that the review had not been formally initiated; rather on 16 October, a day before Zoran Pašalić appeared on RTS, the Health Minister was asked to forward the Protector of Citizens the facts he ascertained during his own review of the COVID-19 Information System. By asking an administrative authority to itself perform the review and notify him of its results, the Protector of Citizens rendered meaningless his independent oversight role.

The saga ended with a statement that an IT error ended and the public was assured that no irregularities in registering and publishing COVID-19 deaths and infections would occur in the future.

396 *Danas*, “Kon on City Institute data: number of deaths until June was three times higher than officially reported,” 29 September. Available in Serbian at: <https://www.danas.rs/drustvo/kon-o-podacima-gradskog-zavoda-do-juna-tri-puta-vise-umrljih-od-zvanicnog-broja/>.

397 *Danas*, “In reaction to Kon’s statement, Lončar accuses reporter she is unhappy with Serbia’s excellent results in fighting corona,” 30 September. Available in Serbian at: <https://www.danas.rs/drustvo/loncar-reagujuci-na-izjavu-dr-kona-optuzio-novinarku-da-joj-smetaju-odlicni-rezultati-srbije-u-borbi-protiv-korone/>.

398 *Nova.rs*, “Who’s lying – Kon, Vučić or Lončar: authorities again messing with people’s minds,” 1 October. Available in Serbian at: <https://nova.rs/vesti/politika/ko-laze-kon-vucic-ili-loncar-vlast-opet-sluduje-gradane/>.

399 See: <http://www.bgcentar.org.rs/vlada-srbije-i-zastitnik-gradana-da-prekinu-zavet-cutanja-o-broju-obolelih-i-preminulih-od-covid-19/>.

400 BCHR’s initiative is available in Serbian at: <http://www.bgcentar.org.rs/povereniku-za-informacije-od-javnog-znacaja-i-zastitniku-gradana-upuceni-zahtevi-za-postupanjem-povodom-sumnji-u-vezi-sa-zvanicnim-podacima-o-covid-19/>.

401 *RTS*, “Protector of Citizens appeals – provide victims of violence with urgent and free forensic examinations,” 17 October. Available in Serbian at: <https://www.rts.rs/page/stories/sr/story/125/drustvo/4116168/pasalic-nasilje-porodica-dokazi.html>.

Information on the procurement of medical equipment and supplies was also unavailable to the public. The number of ventilators in Serbia was treated as a state secret in 2020.⁴⁰² The National Health Insurance Fund (NHIF) refused to forward data on the procurement of ventilators and other supplies, such as face masks and gloves. The Ministry of Health refused to reveal how many corona tests Serbia had, claiming it was a business secret.⁴⁰³ Under the law, classified information denotes any information of interest to the state, the unauthorised disclosure of which would cause damage, if the necessity of protecting state interest prevails over the interest for free access to information of public importance.⁴⁰⁴ During a health crisis, the public indisputably has an interest and the need to know how the crisis is managed, i.e. whether the state is responding to it adequately. Declaration of all these data as classified *de iure* or *de facto* without a valid explanation precluded public access to such information, giving rise to suspicions of corruption.⁴⁰⁵ The government's tendency to invoke confidentiality continued until the end of the year; the state declared the contract with Pfizer strictly confidential.⁴⁰⁶

7.3.2. Disinformation and Fake News

Disinformation and fake news about COVID-19 did not bypass Serbia either. Its public was continuously exposed to unverified information, fake news and manipulative content in the media, on social networks, as well as in the statements of the leading state officials and health professionals. Fake news are always a problem, especially where they concern human health. The proportions of fake news during the pandemic led to the coining of a new term 'infodemic'.

Messages relayed by the topmost politicians and health professionals were confusing, to say the least, and often included disinformation. One member of the Crisis HQ qualified coronavirus as "the most ridiculous virus in the history of mankind" at a news conference before the state of emergency was declared. The conference was attended also by the Serbian President, who later denied that anyone had said that.⁴⁰⁷ On a number of occasions, the public received messages that could only sow panic and fear: a text message warning that the Italian and Spanish scenari-

402 RTS, "Brnabić: Number of ventilators is a state secret," 12 March. Available in Serbian at: <https://rs.n1info.com/vesti/a577236-brnabic-broj-respiratora-je-drzavna-tajna/>.

403 CINS, "Data on procurement of ventilators and number of tests are secret," 7 July. Available in Serbian at: <https://www.cins.rs/podaci-o-nabavci-respiratora-i-broju-testova-tajna/>.

404 Article 8, Classified Information Act, *Sl. glasnik RS*, 104/09.

405 See, e.g. Transparency Serbia, "Cost of COVID hospitals and irresponsible questions," 21 December. Available in Serbian at: <https://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/11830-cena-kovid-bolnica-i-neodgovorena-pitanja>.

406 Raskrikavanje, "State declares contract on purchase of Pfizer vaccines strictly confidential," 23 December. Available in Serbian at: <https://www.raskrikavanje.rs/page.php?id=Ugovor-o-kupovini-Fajzer-vakcina-drzava-proglasila-strogo-poverljivim-765>.

407 See *Telegraf's* report of 11 March 2020, available at: <https://www.telegraf.rs/english/3164262-new-coronavirus-measures-in-serbia-schools-to-work-indoor-meetings-banned-easter-major-concern>.

os loomed over Serbia and signed by the Crisis HQ was sent to users of the MTS network,⁴⁰⁸ while the Serbian President said that all Serbian cemeteries would not suffice to bury all those who died of COVID-19.⁴⁰⁹

Fake news and disinformation were especially disseminated on social networks. *Fake News tragač* (Fake News Searcher) analysed the content on Facebook at the start of the epidemic. It was dominated by “advice” (33%), “foreign news” (22%) and conspiracy theories (13%).⁴¹⁰ Fake news on the harmfulness of face masks, chemtrails, Bill Gates and the 5G technology activating the virus were particularly widespread. Social networks tried to limit the reach of disinformation, mostly by blurring (but not deleting) texts qualified as disinformation or fake news by independent portals processing and verifying news. In Serbia, *Istinomer* in July started checking the accuracy of information published on Facebook in partnership with that social network.⁴¹¹ Reports published by tabloids and other newspapers and magazines were regularly analysed by research portals *Istinomer*, *Raskrikavanje* and *Fake News tragač*.⁴¹²

Due to the lack of prompt and reliable information released by the topmost state officials, citizens were practically left with looking for information themselves on obscure portals and taking serious decisions about their health based on unverified posts on social media and ridiculous advice of public figures, including some doctors. Such management of the epidemic led as many as 34.3% of Serbia’s citizens to disbelieve or seriously doubt that coronavirus really exists, as a survey conducted by the Belgrade Centre for Security Policy showed.⁴¹³

7.4. New Media Strategy

On 30 January 2020, the Serbian Government adopted the 2020–2025 Media Development Strategy⁴¹⁴, four years after the prior strategy expired.⁴¹⁵ The Strategy defines five objectives and measures for their achievement.

408 CINS, “They scared even children with message on Italian and Spanish scenarios,” 2 April. Available in Serbian at: <https://www.cins.rs/porukom-o-italijanskom-i-spanskom-scenariju-plasili-i-decu/>.

409 Alo, “Neither the New Cemetery, nor Lešće, nor the Bežanija Cemetery will suffice,” 25 March. Available in Serbian at: <https://www.alo.rs/vesti/politika/korona-virus-aleksandar-vucic-zabrana-izlaska-vanredno-stanje-u-srbiji-penzioneri-policijski-cas/298734/vest>.

410 Danas, “Special: Corona fake news rooms in the pandemic era,” 29 December, p. 7.

411 *Istinomer*, “Istinomer among Facebook’s new partners in the fight against disinformation,” 20 July. Available in Serbian at: <https://www.istinomer.rs/arhiva/saopstenja/istinomer-medju-novim-fejsbukovim-partnerima-u-borbi-protiv-dezinformacija/>.

412 See, e.g. posts on the *Raskrikavanje* portal: <https://www.raskrikavanje.rs/tags.php?tag=Koronavirus>.

413 “Serbia in the Jaws of the COVID-19 Pandemic,” Belgrade Centre for Security Policy public opinion survey, p. 6, available at: <https://bezbednost.org/wp-content/uploads/2020/12/covid-eng-02.pdf> <https://bezbednost.org/en/publication/serbia-in-the-jaws-of-the-covid-19-pandemic/>.

414 *Sl. glasnik RS*, 11/20.

415 More on the development and adoption of the Strategy in the 2018 Report, III.3.2. and the 2019 Report, II.7.4.

The Strategy recognises the difficult status and working conditions of journalists and envisages measures to improve their safety and economic status. First of all, it envisages the initiation of a socio-economic dialogue that will lead to the signing of a branch collective agreement, in accordance with labour law, and financial incentives for media publishers who enter into it. Mechanisms for new jobs and employment of young journalists are also to be developed. The Ministry of Justice will be charged with setting up a database on crimes or misdemeanours committed against journalists and media professionals, and the organisation of trainings in the protection of the safety of journalists, to be attended by judges, prosecutors, police, lawyers, as well as journalists and media professionals.

The Strategy envisages transparency of media data, which will require amendment of the law to precisely define which media-related data are to be entered in the relevant registers, specifically data regarding media outlets, their ownership structure and publishers, all payments from public revenues they are granted and other data of relevance to identifying potential influence on the media. Records are also to be kept of companies allocating funds to media, donations, gifts and sponsorships. The Strategy envisages the privatisation of the remaining publicly owned outlets to ensure a level playing field and prevent undue influence on editorial policy. This primarily regards the state's withdrawal from ownership in *Politika*, and the deletion of the news agency *Tanjug* from the Business Register and identification of a new model of its operation.

The Strategy also lists a set of measures aimed at ensuring the independence of the REM, primarily amendment of the Electronic Media Act to exclude the possibility of the parliamentary Culture and Information Committee nominating REM Council members and of the National Assembly endorsing the REM Statute and by-laws governing this field. The Strategy also provides for the clear definition of requirements candidates for seats on the REM Council must fulfil, such as education level, work experience in the field of relevance to REM's operations, competences, professional integrity, professional distinction, etc.⁴¹⁶

The Strategy also addresses influence on the work of public media services. Establishment of a long-term and stable funding arrangement, primarily a broadcasting fee, is listed as one of the main ways for ensuring their independence; public service broadcasters may also earn revenues from commercial content. It points out the necessity of putting in place legal guarantees of editorial autonomy, especially of newsrooms and their full independence (including clear guarantees of independence and the separation of editorial and managerial roles).

The Strategy also outlines a number of measures aimed at ensuring full realisation of the right of free access to information of public importance and the right to reuse of data. For instance, it envisages the identification of clear mechanisms for

416 More about REM's work, appointment of the REM Council members and chairperson in Chapter III.2.

enforcing the Commissioner's final decisions and undertaking of measures to ascertain the liability of officials who did not fulfil their obligations under the law.

As per co-funding of media projects, the Strategy, *inter alia*, envisages that print and online media applying for public co-funding must accept the authority of the Press Council and that those complying with the Press Code of Conduct will be given advantage in allocation of public funds.

In early December, the Government adopted the Action Plan for the Implementation of the Media Strategy in the 2020–2022 Period.⁴¹⁷ It elaborates how and by when measures envisaged by the Strategy are to be implemented. Representatives of press and media associations said that the Strategy and Action Plan covered all the key issues and that all their suggestions were taken on board. They, however, warned that their implementation depended on political will and that it remained to be seen whether all the planned activities would be conducted.⁴¹⁸

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).⁴¹⁹

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.⁴²⁰

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 re-

417 The Action Plan is available in Serbian at: <https://www.kultura.gov.rs/tekst/sr/5745/akcionni-plan-za-sprovodjenje-strategije-razvoja-sistema-javnog-informisanja-u-republici-srbiji-za-period-2020-2025-godina.php>.

418 Danas, “Implementation of the Media Strategy will depend on government will,” 7 December. Available in Serbian at: <https://www.danas.rs/drustvo/sprovodjenje-medijske-strategije-zavisice-od-volje-vlasti/>.

419 In late July 2020, the Human Rights Committee published its revised General Comment No. 37 on Article 21 of the ICCPR. Available at: <https://digitallibrary.un.org/record/3884725?ln=en>.

420 *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.

strictions of activities of aliens,⁴²¹ 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,⁴²² 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.⁴²³

The provisions of the Act on the Protection of the Population from Communicable Diseases, were of relevance to the freedom of assembly in 2020 due to the coronavirus epidemic. Article 52 of this law entitles the Health Minister to prohibit assemblies in public areas at the proposal of the Republican Commission for the Protection of the Population from Communicable Diseases and the national Public Health Institute Dr Milan Jovanović Batut.⁴²⁴

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.

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.

421 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.

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

423 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.

424 *Sl. glasnik RS*, 15/16, 68/20–4 and 136/20.

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 unconstitutional⁴²⁵ 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.⁴²⁶ 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.

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).

425 IUz – 204/13 of 9 April 2019.

426 *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, 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 on 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 assemblies at the venues and times other than those specified in their notices; fail to notify the public of the prohibition of their assemblies; fail to engage stewards or ensure law and order during the assemblies or during the arrival or departure of the participants; fail to manage or monitor their assemblies; fail to facilitate the unimpeded movement of ambulances, police and firemen; fail to act on the orders of the competent authority (police unit); fail to disperse their assemblies in case of an immediate threat to the safety of people and property and notify the police thereof (Art. 21). In addition to assembly organisers, the Act recognises other categories of persons liable for the security of the assemblies, notably, the assembly leaders, who may be designated as such by the organisers, and the stewards, whose roles are not specified in detail in the Act.

Such cumulative punishment of various actors of an assembly involving sky-high fines amounts to the state's disproportionate interference in the freedom of assembly.

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.⁴²⁷

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."⁴²⁸

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 record an assembly, unless they are engaged in covert surveillance 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)). The Rulebook governing public video surveillance⁴²⁹ was, however, adopted only in August 2020.

In its Serbia 2020 Report, the European Commission reiterated that legislation on freedom of assembly was generally in line with European standards, but had yet to be aligned with ODIHR's Guidelines on Freedom of Peaceful Assembly and that implementing legislation regarding the law on freedom of assembly had yet to be adopted.⁴³⁰

427 *Ibid.*, para. 197.

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

429 *Sl. glasnik RS*, 111/20–11.

430 *Serbia 2020 Report*, p. 36.

8.1.1. COVID-19 and Restrictions of the Freedom of Peaceful Assembly

Like many other countries, Serbia introduced measures restricting the freedom of peaceful assembly after the coronavirus epidemic broke out. The national legislation sets out the conditions under which the freedom of assembly may be restricted. Since the protection of public health is indisputably a legitimate aim for restricting this freedom, the Health Minister exercised the powers vested in him under the Act on the Protection of the Population from Communicable Diseases and issued a number of orders prohibiting or restricting assemblies in public spaces.

The Health Minister's orders failed to refer to public health protection as the reason for restricting the freedom of peaceful assembly under the Public Assembly Act.

The measures adopted during the state of emergency lacked consistency, resulting in the incompatibility of the Health Minister's orders prohibiting freedom of assembly and the Decree on State of Emergency Measures,⁴³¹ which was adopted by the Government and co-signed by the President.⁴³²

Although cultural and art events fall under the definition of public assemblies, the Government envisaged a special regime for them in its Decree on Measures to Prevent and Contain COVID-19⁴³³ – a maximum of 500 people were allowed to attend outdoor and indoor cultural and art events in the latter half of the year.⁴³⁴

The below table shows the number of people who were allowed to gather under the amended orders restricting assemblies in public spaces across Serbia.

Amendments to the Order Prohibiting Assemblies in Public Spaces in the Republic of Serbia			
Date	Outdoor Assemblies	Indoor Assemblies	Official Gazette No.
12 March 2020	/	100	25/20–62
15 March 2020	/	50	30/20–14
21 March 2020	/	5	39/20–17
7 May 2020	50	50	66/20–17
21 May 2020	100	100	76/20–17
29 May 2020	1000	100	78/20–71
10 June 2020	/	500	83/20

431 *Sl. glasnik RS*, 31/20–3.

432 More in 2020 *Semi-Annual Report*, VI.2.2.2.

433 *Sl. glasnik RS*, 66/20–4, 93/20–12, 94/20–3, 100/20–3, 109/20–3, 111/20–3, 120/20–3, 122/20–4, 126/20–3, 138/20–3, and 141/20–3.

434 *Sl. glasnik RS*, 109/20–3, 111/20–3, 120/20–3, 122/20–4, 126/20–3, 138/20–3, and 141/20–3.

Amendments to the Order Prohibiting Assemblies in Public Spaces in the Republic of Serbia			
12 June 2020	/	500	84/20
16 July 2020	10	10	100/20
28 Aug 2020	30	30	111/20
6 Nov 2020	5	5	133/20

8.2. Exercise of the Right to Freedom of Assembly in 2020

After 60 Saturday processions, the association “One out of Five Million” said in late January 2020 that it would no longer organise the protests.⁴³⁵ The civic protests in Belgrade continued under the slogan “Boycott the 2020 Elections”.⁴³⁶ Rallies in support of the Serbian Orthodox Church (SOC) in Montenegro⁴³⁷ and protests against air pollution and the construction of small hydro power plants were held as well.⁴³⁸

Hardly any rallies were staged in March and April, given the prohibitions of movement and restrictions of assemblies.⁴³⁹ However, protests against the measures and actions of the executive authorities ensued once the state of emergency was lifted.⁴⁴⁰ Supporters of the Serbian Progressive Party (SNS) and the *Dveri* Movement rallied in front of the parliament in May, the former in support of SNS MPs and the latter in support of their MPs who were on a hunger strike.⁴⁴¹ What all these rallies

435 NI, “One out of Five Million giving up on boycott and organising protests,” 29 January. Available in Serbian at: <http://rs.n1info.com/Vesti/a564582/Udruzenje-1-od-5-miliona-odustaje-od-bojkota-i-od-organizacije-protesta.html>. More on the protests in the *2019 Report*, II.8.

436 Danas, “Belgrade: “Boycott the 2020 Elections” instead of One out of Five Million protests,” 8 February. Available in Serbian at: <https://www.danas.rs/politika/nastavljeni-protesti-u-beogradu/>.

437 NI, “New protest in support of SOC in Montenegro held in Belgrade,” 7 February. Available in Serbian at: <http://rs.n1info.com/Vesti/a567494/Protest-u-Beogradu-zbog-crnogorskog-zakona-koji-je-sporan-SPC.html>.

438 NI, “Protest against SHPP in Sumrakovac Village: Investor is not welcome,” 11 January. Available in Serbian at: <http://rs.n1info.com/Vesti/a559681/Protest-protiv-MHE-u-selu-Sumrakovac-Investitor-nije-dobrodosao.html>.

439 The ones that were held included the “Dorćol Neighbours” protest on 28 April, the Alliance for Serbia protest against the curfew on 30 April and the “flare festivals” staged by government sympathisers on roofs of buildings.

440 Such as the 7 May protest by “Civic Resistance” and the protest initiated by MP Srđan Nogo on 8 May.

441 NI, “Vučić quotes approximate number of SNS and opposition followers, what do recordings show,” 17 May. Available in Serbian at: <http://rs.n1info.com/Vesti/a600510/Odakle-potreba-za-prebrojavanjem-gradjana-u-glavu-i-koliko-su-ti-podaci-tacni.html>.

had in common was that their participants did not comply with any of the protective measures, i.e. did not wear masks or maintain a physical distance.⁴⁴²

The “eternal derby” between Belgrade’s two leading soccer clubs, Red Star and Partizan, was played on 10 June 2020. The number of spectators was officially estimated at 15,803.⁴⁴³ Interestingly, no-one apparently contemplated the idea of having the teams play the match in an empty stadium, like in many other countries, to minimise the risk of the epidemic spreading. The fans did not comply with protective measures or maintain a physical distance.

The imposition of the state of emergency and restrictions of the freedom of assembly on 15 March forced parties and coalitions that had submitted their election tickets to cancel their election rallies. Some of the parties held their events once the measures were lifted. Although the SNS decided to cancel its rallies on 10 June, two large public events were staged by its local chapters the next day.⁴⁴⁴ Two election rallies were held in Novi Pazar as well.⁴⁴⁵ The people who gathered to celebrate victory in their party HQs on election night did not comply with any of the protective measures.⁴⁴⁶

Residents of Novi Pazar, which was hit especially hard by coronavirus, protested over 100 days, demanding to hear the truth about how many people had died of COVID-19 and the dismissal of the responsible health and Crisis HQ officials.⁴⁴⁷ One of the organisers of the daily protests said the police questioned him on the order of the public prosecutor in mid-November after a complaint that he was disrupting public law and order had been filed against him, although the protests were peaceful.⁴⁴⁸

The residents of Zrenjanin staged protests for over two and a half months, demanding the closure of the rendering plant releasing pungent odours. They also sub-

442 More on the exercise of the freedom of peaceful assembly in the first half of the year in 2020 *Semi-Annual Report*, VI.2.2.

443 AFP, “Belgrade Derby Played in Front of 16,000 Fans,” 11 June. Available at: <https://www.news-break.com/news/0PJ911Mv/belgrade-derby-played-in-front-of-16000-fans>.

444 *Južne vesti*, “Two rallies already staged in the south of the country despite SNS decision not to hold any,” 12 June. Available in Serbian at: <https://www.juznevesti.com/Politika/I-posle-odluke-SNS-a-da-nema-predizbornih-mitinga-na-jugu-vec-odrzali-dva.sr.html>.

445 *SNews*, “Two election rallies held, Novi Pazar police were equal to the task,” 17 June. Available in Serbian at: <https://www.snews.rs/odrzana-dva-predizborna-skupa-policija-u-novom-pazaru-na-visini-zadatka-foto/>.

446 *RFE*, “SNS’ celebration without protective measures,” 23 June. Available in Serbian at: <https://www.slobodnaevropa.org/a/slavlje-naprednjaka-bez-mera-zastite/30686758.html>.

447 *Nova.rs*, “100 days of protests in Pazar: we’ll persevere until we oust you,” 26 October. Available in Serbian at: <https://nova.rs/vesti/drustvo/100-dana-protesta-u-pazaru-nastavlja-mo-dok-vas-ne-smenimo/>.

448 *Radio Sto Plus*, “Paučinac gives statement to police,” 14 November. Available in Serbian at: <http://radiostoplus.com/item/30307>.

mitted a petition signed by over 12,000 people.⁴⁴⁹ Concerned about the impact of dirty technologies on the environment, the residents of the Brezjak village at Loznica protested against the opening of Rio Tinto's lithium mine.⁴⁵⁰

Pro-right organisations continued conducting their activities in 2020. In October 2020, at least two groups of rightists invited their followers via social networks to join them in their demand to prohibit Miredita – Good Day Festival, aiming to present the Kosovo cultural and social scenes to the Belgrade audience.⁴⁵¹ Police cordons blocked off the intersection at the venue, the Belgrade Centre for Cultural Decontamination (CZKD), preventing the groups from approaching the entrance; the participants entered the venue under police escort.⁴⁵² It remained unclear whether these groups had notified the police of their rallies and whether the police considered prohibiting their rallies or dispersing them.

The seventh Pride Parade in Belgrade was not held in its traditional form because of COVID-19 concerns. Instead, it was held under the slogan "Solidarity also within Four Walls". Pride week was held online and the actual parade was moved to 2021.⁴⁵³

Participants in the anti-migrant protest held in Šid⁴⁵⁴ demanded that the organisation *No Name Kitchen*, which has been preparing food for migrants, immediately leave the country.⁴⁵⁵

In late November, hundreds of people gathered to pay their last respects to SOC Patriarch Irinej while he was lying in state in St. Michael's Cathedral and the following day, at his funeral in the St. Sava temple.⁴⁵⁶ This was not the only event the

449 *TV Kikinda*, "Petition "Let Zrenjanin Breathe", signed by over 12,000 citizens, submitted," 17 September. Available in Serbian at: <https://www.ktv.rs/2020/09/17/predata-peticija-da-zrenjanin-dise-sa-preko-12-000-potpisa-gradjana/>.

450 *Danas*, "Protest against Rio Tinto," 27 October. Available in Serbian at: <https://www.danas.rs/drustvo/protest-protiv-rio-tinta/>. See also: <https://serbia-energy.eu/residents-protest-against-jadarite-lithium-mine-near-loznica-serbia/>.

451 *KoSSev*, "Miredita Good Night posted on the door of the Cultural Centre on the eve of the Festival," 22 October. Available in Serbian at: <https://kossev.info/uoci-festivala-na-vratima-kulturnog-centra-oblepljen-natpis-mirdita-laku-noc/>.

452 *NI*, "Tensions at Miredita opening, police prevented rights from coming closer," 22 October. Available in Serbian at: <http://rs.n1info.com/Vesti/a663646/Kordoni-okolo-CZKD-ucesnici-festivala-Mirdita-stigli-pod-pratnjom-policije.html>.

453 *RTS*, "Pride Week and Parade will not be held in their traditional form," 19 August. Available in Serbian at: <https://www.rts.rs/page/stories/sr/story/125/drustvo/4053589/nedelja-ponosa-prajd-beograd-srbija-2020.html>.

454 *Politika*, "Anti-migrant protests in Šid cause rift between SNS and LSV," 8 November. p. 13.

455 *Portal 021*, "Šid: Anti-migrant protest demanding that organisation feeding migrants leave Serbia," 8 November. Available in Serbian at: <https://www.021.rs/story/Info/Vojvodina/257978/Sid-Protest-protiv-migranata-zatrazeno-da-se-iz-Srbije-iseli-organizacija-koja-ih-hrani.html>.

456 "Serbian patriarch buried with few virus measures in place," 22 November. Available at: <https://apnews.com/article/montenegro-serbia-coronavirus-pandemic-3322aa83e329971406b-6443405329cb9>.

participants of which did not heed protective measures, but the size of it rendered the non-compliance even more visible.

8.2.1. July Protests

Students spontaneously rallied in early July 2020 in protest against the President's announcement that all dorms would close to prevent the spread of the epidemic. The students in various Belgrade dorms made their way to the parliament. The Education Minister said the same evening that "everything would be cleared up in the morning" and that "students have no reason to worry".⁴⁵⁷ The dorms remained open.

The protests by which July 2020 will be remembered began in Belgrade on 7 July and spread to other cities (Novi Sad, Kragujevac, Vranje, Zrenjanin, Čačak and Niš). Thousands of people rallied in Belgrade when the President said that weekend lockdowns would be reintroduced.⁴⁵⁸ The protests, which were not politically homogenous, soon grew into large-scale public expression of dissatisfaction with the political and social situation in the country.⁴⁵⁹

Although the protests were initially peaceful, a small group of protesters broke into the parliament building; the police intervened and drove them out of the building. The police response was perceived as moderate. However, as time went by, the police increasingly resorted to brutality and teargas. In the opinion of observers and reporters covering the protests, the use of teargas was definitely disproportionate to the aim pursued. The police fired the teargas indiscriminately, including at non-violent protesters, including children and the elderly and bystanders. Use of force was not proportionate to the legitimate aims of preventing public disorder and protecting the rights of others. The ECtHR has held in its case-law that there had to be particular justification for the use of teargas.⁴⁶⁰

The police essentially qualified all the protesters as dangerous and reacted indiscriminately. It goes without saying that the police do not have to tolerate physical assaults. They are, however, expected to be able to manage their forces during public assemblies. An assembly that was intended to be and was initially peaceful does not forfeit the protection of Article 11 because individuals causing incidents have joined it. It is the duty of the police to stop such individuals. An individual does not cease

457 NI, "Šarčević: We'll clear everything up in the morning, students have no reason to worry," 3 July. Available in Serbian at: <http://rs.n1info.com/Vesti/a615992/Sarcevic-Ujutro-cemo-sve-razjasniti-studenti-nemaju-razloga-za-brigu.html>.

458 Danas, "Vučić: Prohibition of assemblies as of tomorrow, curfew as of Friday in Serbia," 7 July. Available in Serbian at: <https://www.danas.rs/drustvo/vucic-od-sutra-zabrana-okupljanja-od-petka-policijski-cas-u-srbiji/>.

459 Opposition to the curfew and to recognition of Kosovo's independence were the two most frequent messages at the protests.

460 See the ECtHR's judgment in the case of *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, App. no. 20347/07 (2016).

to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.⁴⁶¹ The Serbian police incorrectly attributed the behaviour of the violent individuals to all the protesters, which is in contravention of international standards on the freedom of peaceful assembly, according to which an assembly tarnished with isolated acts of violence is not automatically considered non-peaceful.⁴⁶²

The police were not restrained with their use of force over the following days either. The authorities failed to ensure that the citizens could exercise their right to peaceful assembly, without fear of repression or police brutality. There is a lot of video footage documenting arbitrary use of excessive force and arrests of non-violent protesters.⁴⁶³ The police minister said that the police had used drones and cameras to record the protests throughout.⁴⁶⁴ Amnesty International warned the police were using facial recognition cameras to identify the protesters.⁴⁶⁵

Dozens of protesters and innocent bystanders, as well as police officers were injured during the protests. Media crews, including TV N1's crew which covered the protests throughout, also suffered violence at the hands of the police and protesters.⁴⁶⁶ The Journalists' Association of Serbia (JAS) said that 28 reporters and other media professionals had been assaulted or prevented from doing their work during the first five days of the protests.⁴⁶⁷ CSOs monitored the protests,⁴⁶⁸ alerted the human rights mechanisms to them,⁴⁶⁹ extended assistance to victims of

461 See the ECtHR's judgments in the cases of *Ezelin v. France*, App. no. 11800/85 (1991), para. 53 and *Frumkin v. Russia*, App. no. 74568/12 (2016), para. 99.

462 *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.

463 More in Chapter II.1.

464 *Insajder*, "Stefanović: Police used drones and cameras to record the protests, anyone who committed a crime will be arrested," 10 July. Available in Serbian at: <https://insajder.net/sr/sajt/vazno/19459/Stefanovic-Policija-je-proteste-snimala-dronom-i-kamera-svi-koji-su-pocinili-neko-krivichno-delo-bice-uhapšeni.htm>.

465 *Amnesty International*, "Serbia: Violent police crackdown against COVID-19 lockdown protesters must stop", 9 July. Available at: <https://www.amnesty.org/en/latest/news/2020/07/serbia-violent-police-crackdown-against-covid-19-lockdown-protesters-must-stop/>.

466 More about the protest on 7 July in: *N1*, "Protesters break into parliament, several-hour clash with police – tear gas, rocks and arrests". Available in Serbian at: <http://rs.n1info.com/Vesti/a617458/Protest-ispred-Skupstine-zbog-najavljenih-mera.html>.

467 See the JAS press release of 15 July. Available in Serbian at: <http://www.uns.org.rs/desk/UNS-news/101500/uns-za-pet-dana-napadnuto-i-ometano-u-radu-28-novinara-i-medijjskih-radnika.html>.

468 E.g. BCHR and YIHR monitored the protests.

469 The organisations within the Platform for Cooperation with UN Human Rights Mechanisms notified the UN Special Rapporteur on Torture of police brutality during the protests in Serbia, see more at: <https://ian.org.rs/urgent-appeal-to-the-un-special-rapporteur-on-torture/>.

police brutality⁴⁷⁰ and to protesters charged with organising the protests under misdemeanour law.⁴⁷¹

The protest continued the next day.⁴⁷² The assembly was spontaneous; there were no organisers, leaders or stewards. Several thousand people rallied, including older people and parents with children. Many police units, including the Gendarmerie, anti-riot police, mounted police, K9 units and members of the Special Anti-Terrorist Unit (SAJ), as well as many plain-clothes policemen, were present at the venue. Most police officers were not carrying visible identification.⁴⁷³ A large number of protesters were arrested and hauled in; quite a few of them were victims of police brutality. Police officers were also injured.⁴⁷⁴

The arrests and the courts' swift and harsh judgments based solely on the police officers' statements and in the absence of any other evidence corroborated the impression that the authorities and the courts' response had been rash and excessive.⁴⁷⁵ The risk of faring like the injured and penalised protesters may have a chilling effect and discourage anyone wishing to express their disagreement or support in a peaceful assembly.⁴⁷⁶

8.3. Four Years of Enforcement of the Public Assembly Act

The BCHR researched the enforcement of the Public Assembly Act from the day it entered into force until August 2020, specifically the actions of the MIA, the misdemeanour courts and the local self-government assemblies. It obtained information by requesting access to information of public importance and analysed statistical data on notified and prohibited public assemblies, copies of judgments of misdemeanour courts, and copies of decisions of local self-government assemblies.

470 The BCHR extended legal counselling and assistance to citizens ill-treated by police and other public officials during the July protests.

471 Lawyers' Committee for Human Rights – YUCOM called on citizens to contact its legal team if they were held liable under misdemeanour law for organising spontaneous assemblies.

472 BCHR's team monitored the protests with a view to reporting on violations of the freedom of peaceful assembly, ill-treatment and violations of the right to liberty and security of person. Due to capacity constraints, the monitoring was conducted in accordance with just some but not all OSCE/ODIHR guidelines set out in the 2011 *Handbook on Monitoring Freedom of Peaceful Assembly*.

473 The NPM recommended to the MIA to ensure that all police officers carry visible identification. Recommendation No. 8, Report on Police Treatment of Persons Deprived of Liberty during the Public Assemblies in Belgrade, p. 15. Available in Serbian at: http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2020/11/izvestaj-protesti_compressed.pdf.

474 More in Chapter II.1.

475 CINS, "Protests: Courts Side with Police, Send People to Prison even for Expletives," 27 July. Available at: <https://www.cins.rs/en/protests-courts-side-with-police-send-people-to-prison-even-for-expletives/>.

476 See the ECtHR judgment in the case of *Balçık and Others v. Turkey*, App. no. 25/02 (2008), para. 41.

8.3.1. Analysis of MIA Statistics

The Ministry of Internal Affairs is charged with facilitating the holding of assemblies and protecting their participants. Notifications of outdoor assemblies are submitted to the MIA, which is entitled to prohibit or disperse them. The analysis covered 26 regional police administrations. Statistics show a decrease in the number of notified assemblies⁴⁷⁷ and an increase in the number of spontaneous assemblies.⁴⁷⁸ In the four years since the Public Assembly Act entered into force, the MIA issued 32 rulings prohibiting assemblies pursuant to Art. 15(1) of the Public Assembly Act.⁴⁷⁹ In most cases (24), it prohibited assemblies under sub-paragraph 1 of Article 8(1) – potential threat to the safety of people or property, public health, morals, the rights of others or the security of the Republic of Serbia; in five cases, it prohibited the assemblies under sub-paragraph 3 of Article 8(1) – risk of violence, destruction of property or other large-scale disruptions of public order; and it prohibited one assembly because it was in contravention of the law (sub-paragraph 4). It remained unknown whether the MIA prohibited assemblies because they aimed at inciting or encouraging armed conflicts, violence, violations of human and minority rights and freedoms of others, or racial, ethnic, religious or other inequalities, hate or intolerance (Art. 8(1(2))).

8.3.2. Analysis of Misdemeanour Court Judgments

Since the Public Assembly Act provides for misdemeanour penalties, the BCHR filed requests for access to information of public importance to all 44 Misdemeanour Courts in Serbia, asking them to specify the number of proceedings they conducted under Articles 20–22 of the Public Assembly Act and their outcomes from the day the Act entered into force until end August 2020. Twenty courts reported that they had conducted 184 proceedings, while 24 courts said they had not conducted any misdemeanour proceedings concerning assemblies. BCHR analysed 131 court decisions⁴⁸⁰ (some proceedings were still pending and some courts dismissed its requests). Forty-six proceedings were discontinued as out of time (upon the expiry of the two-year statute of limitations). Out of 85 judgments, 69 were condemnatory and 16 were exculpatory.

Only two of the 184 cases concerned Article 20 of the Public Assembly Act – failure to comply with the order of the organiser of the assembly and leave the venue. Forty cases concerned Article 21; of them, 25 regarded the organisers' failure to engage stewards or maintain order. As many as 140 proceedings had been initiated

477 Notifications of public assemblies by year: 42,491 (2016), 39,178 (2017), 38,425 (2018), 32,761 (Jan-Sep 2019), 6,786 (Jan-Aug 2020).

478 At least 616 assemblies held in the analysed period were considered spontaneous and 269 were considered unnotified.

479 Twenty-three of the rulings concerned assemblies in Belgrade.

480 Forty-two cases concerned sports events.

under Article 22: 103 of them concerned the organisers' failure to notify the police of their assemblies.

Most of the proceedings were conducted by the Misdemeanour Courts in Belgrade (81), Kragujevac (29), Senta (18) and Niš (15). Most of the organisers had not known they were under the obligation to notify the police of their assemblies or engage stewards, or they had notified the police with a delay. The highest fines were imposed when the Public Assembly Act entered into force. The courts often took into account extenuating circumstances and reduced the penalties.

8.3.3. Analysis of Local Self-Government Assembly Decisions

Article 24 of the Public Assembly Act obligates city and municipal assemblies to adopt decisions specifying venues at which assemblies may not be held. The vast majority of local self-governments (LSGs) failed to adopt such decisions within 60 days from the day the Act entered into force, as they were obliged to. BCHR filed a complaint with the Commissioner for Access to Information of Public Importance against one of the 146 LSGs, which did not reply to its request for information of public importance.⁴⁸¹ BCHR ascertained that 66 LSGs had not adopted the decisions yet; six of them said they were in the process of drafting or adopting them. A total of 79 LSGs have adopted the decisions – 13 of the decisions were clearly in contravention of the Constitution and the law and the BCHR alerted these LSGs⁴⁸² to their shortcomings and suggested they amend them. Most of these decisions dated back to the 1990s, or still included provisions on the payment of a deposit.

The vast majority of LSG decisions suffer from the same shortcomings as the Public Assembly Act – they identify venues at which assemblies are prohibited *in abstracto* and refer to the general categories mentioned in the Public Assembly Act. For instance, they prohibit assemblies in front of health institutions or schools in general. Several LSGs improperly prohibited assemblies in front of specific institutions, usually the town hall, the bus/railway station, the green market, the cemetery entrance, a hotel or a gas station. Such *in abstracto* provisions, in combination with specific categories of venues not even mentioned in the Public Assembly Act, preclude the full enjoyment of the freedom of peaceful assembly in Serbia. The Kosjerić Municipality is a good practice example of an LSG willing to take on board CSO suggestions – the BCHR alerted it to the shortcomings of its 2009 decision at the beginning of the year and the municipal authorities notified it already on 10 March that they had amended their decision.

481 The Municipality of Požega. We are grateful to the Youth Initiative for Human Rights for forwarding us 44 LSG decisions.

482 Bački Petrovac, Bela Crkva, Dimitrovgrad, Jagodina, Loznica, Pančevo, Šabac, Vršac, Nova Crnja, Prokuplje, Srbobran, Ub and Velika Plana.

9. Freedom of Association

9.1. Legal Framework

The International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) guarantee everyone the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. Both of these international documents allow the States Parties to impose lawful restrictions on the exercise of these rights by members of the armed forces and the police, while the ECHR also allows them to impose such restrictions on members of the administration of the State.

The Constitution of Serbia guarantees the freedom to join and form political, trade union and all other forms of associations (Art. 55). The Constitution lays down that associations shall be formed by entry in a register, in accordance with the law, and that they shall not require prior consent. The Constitution also prohibits political party membership of Constitutional Court judges, public prosecutors, the Protector of Citizens and army and police staff, but not their membership of guild and professional associations.

Freedom of association may be restricted in the event such restrictions are prescribed by law, necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others (Art. 11(2), ECHR). Art. 22(2) of the ICCPR lays down that freedom of association may be restricted in the interest of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The Constitution specifies that the Constitutional Court may ban only associations the activities of which are aimed at the violent change of the constitutional order, violation of guaranteed human and minority rights or incitement to racial, ethnic or religious hate.⁴⁸³

The Act on Associations,⁴⁸⁴ 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.⁴⁸⁵ In its Serbia 2020 Report, the European Commission noted that the freedom of association “is guaranteed by the Constitution and is generally respected” and that legislation was “generally in line with European standards”.⁴⁸⁶

483 Article 55, Serbian Constitution.

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

485 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/>.

486 *Serbia 2020 Report*, p. 36.

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.⁴⁸⁷ 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.⁴⁸⁸

Associations may engage in economic activities. An association may use its assets only to pursue its goals. The Act on Associations lays down that funds will be earmarked in the budget of the Republic of Serbia to encourage the implementation of programmes of public interest or cover the funds an association lacks to implement them. The Act on Associations entitles legal and natural persons making contributions and donations to associations to tax exemption.

The Act on Associations further allows the prohibition of associations in the event their goals and activities are aimed at undermining the territorial integrity of the Republic of Serbia, incitement of inequality, hate or intolerance on grounds of race, ethnicity, religious or other affiliation or orientation, as well as of gender, sex, physical, psychological or other features or abilities. The Act prohibits the public use of visual symbols and insignia of prohibited associations (Art. 50(5)). The Act's penal provisions, however, do not lay down any penalties for non-compliance with this prohibition.

The Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia⁴⁸⁹ 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".

A new Ministry for Human and Minority Rights and Social Dialogue was established in October 2020. It will play an important role in the context of the free-

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

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

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

dom of association as it has taken over the duties that were performed by two Government Offices – the Office for Cooperation with Civil Society and the Office for Human and Minority Rights.⁴⁹⁰

9.2. *Enjoyment of the Freedom of Association in 2020*

9.2.1. *Freedom of Association during the State of Emergency*

The introduction of the state of emergency in response to the COVID-19 pandemic led not only to changes in the work of state authorities tasked with cooperating with civil society, but impeded the work of CSOs as well. The Business Registers Agency, which inter alia maintains the Register of Associations, suspended face-to-face dealings with clients in accordance with a Government conclusion, wherefore CSOs that wanted to register and thus obtain the status of a legal person had to send their documents by post.⁴⁹¹ The Office for Cooperation with Civil Society decided to suspend the allocation of grants co-funding projects of organisations that received funding within the EU's 2019 call, despite warnings that this would jeopardise the financial sustainability of these CSOs and the livelihoods of people depending on revenues from these sources.⁴⁹²

The Bor City Emergency HQ on 6 April adopted an order introducing the obligation of civic associations “to place all their human resources” at its disposal. The HQ withdrew the order after the CSOs warned it that it could be qualified as a step towards introducing “forced labour”, which is prohibited by the Constitution.⁴⁹³

The authorities failed to promptly provide for exemptions from the restrictions of movement either of vulnerable categories of the population or associations advocating their interests and extending them the requisite (social, psychological, et al) support, leaving many disadvantaged vulnerable groups and individuals without critical CSO assistance. Civic Initiatives opened the issue of curfew passes for CSOs extending aid to these people, since the Government had provided for the issuance of such passes only to businesses. The plan developed and presented to the Office for Cooperation with Civil Society by Civic Initiatives did not elicit a response.⁴⁹⁴ The authorities continued ignoring NGOs, not only as partners, but also as actors

490 Act on Ministries, *Sl. glasnik RS*, 128/20–3.

491 Government Conclusion, 05 No. 53–2561/2020, *Sl. glasnik RS*, 35/20 and 37/20.

492 Three freedoms under the magnifying glass: 16–26 March 2020, Civic Initiatives, available at: <https://www.gradjanske.org/en/three-freedoms-under-the-magnifying-glass-16-26-march-2020/>.

493 BCHR, “Bor Emergency Headquarters Unconstitutionally and Illegally Restricting Human Rights,” 8 April. Available in Serbian at: <http://www.bgcentar.org.rs/gradski-stab-za-van-redne-situacije-u-boru-protivustavno-i-protivzakonito-ogranicava-ljudska-prava/>. See more in the 2020 *Semi-Annual Report*.

494 Information BCHR obtained from Civic Initiatives.

that could help during the pandemic. CSOs, notably those with specialised knowledge and experience and focusing on human rights, trade unions and humanitarian organisations were not consulted during the adoption of (new) measures. Ultimately they were unable to extend help to the most vulnerable citizens.

9.2.2. 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. However, the climate in which CSOs operated further deteriorated in 2020, especially due to the continuing smear campaigns and lack of social and institutional dialogue, as corroborated by discriminatory narratives, the rise in the number of GONGOs⁴⁹⁵ and intensified activities of extremist organisations, formal and informal alike.

To recall, 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 Venezuela⁴⁹⁶ (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.⁴⁹⁷

Serbia was the only Balkan country the civic space of which was rated as Obstructed in 2020. This means that the authorities are strongly pressuring civic space in the country.

The gravest institutional pressures on CSOs came from the Ministry of Finance Anti-Money Laundering Administration (AMLA). It drew up a list of organisations and individuals and required of the banks to grant it access to all their transactions since January 2019 to investigate their potential involvement in money laundering and financing of terrorism. The list included 37 CSOs and 20 individuals, including BIRN, KRIK, CRTA, YUCOM, the Helsinki Committee for Human Rights in Serbia, Civic Initiatives and BCHR.⁴⁹⁸ Over 200 organisations and individuals signed a statement requiring of the AMLA to publish the grounds for suspicion

⁴⁹⁵ Government-organised non-governmental organisations.

⁴⁹⁶ 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>.

⁴⁹⁷ Available at: <https://www.civicus.org/index.php/media-resources/news/4113-serbia-s-civic-space-do-wngraded>.

⁴⁹⁸ *European Western Balkans*, "Government of Serbia demands access to bank records of journalists and CSOs," 28 July. Available at: <https://europeanwesternbalkans.com/2020/07/28/government-of-serbia-demands-access-to-bank-records-of-journalists-and-csos/>.

prompting its extraordinary collection of such data. They warned that, in the absence of such grounds, the AMLA's activity amounted to abuse of legal mechanisms and a drastic attack on the freedom of association.⁴⁹⁹ The probe elicited reactions from the European Commission,⁵⁰⁰ the Chair of the European Parliament Delegation to the EU-Serbia Stabilisation and Association Parliamentary Committee⁵⁰¹ and UN Special Rapporteurs, who said that the unjustified use of the law on the prevention of money laundering and the financing of terrorism risked "intimidating civil society actors and human rights defenders, restricting their work and muffling any criticism of the Government."⁵⁰²

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.

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 2020 as well. Human rights NGOs bore the brunt of the attacks. Anti-NGO campaigns in 2020 took several forms, from physical attacks and

499 BCHR, "Civil society and media will not give up the fight for a democratic and free Serbia," 28 July. Available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/civil-society-and-media-will-not-give-up-the-fight-for-a-democratic-and-free-serbia/>.

500 NI, "EC expects details about Serbia's Fin Ministry probe into money laundering," 28 July. Available at: <http://rs.n1info.com/English/NEWS/a624598/EC-expects-details-about-Serbia-s-Fin-Min-probe-into-money-laundering.html>.

501 NI, "Fajon: Any unjustified investigation should be treated as pressure," 28 July. Available at: <http://rs.n1info.com/English/NEWS/a624146/Fajon-Any-unjustified-investigation-should-be-treated-as-pressure.html>.

502 OHCHR, Serbia's anti-terrorism laws being misused to target and curb work of NGOs, UN human rights experts warn, 11 November. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26492&LangID=E>.

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.

The smear campaigns against CSOs persisted during the COVID-19 pandemic. The *Vidovdan* and *Prismotra* portals ran a number of texts rife with cliché qualifications of CSOs as foreign enemies and mercenaries working against the state, while the sponsored Facebook page COVID-19 Serbia discredited activists, journalists and human rights champions.⁵⁰³

Prismotra published a text describing the Belgrade Centre for Security Policy (BCSP) as a “NATO lobbyist” that aimed to “destabilise Serbia and cause unrest on Belgrade streets”.⁵⁰⁴ The campaign was given a “boost” by local TV stations that picked up the text (*Rubin TV*, *RTV Pančevo*, *Dunav TV*), while a GONGO National Avantgarde singled out BCSP researcher Saša Đorđević by posting a video clip “Is Saša Đorđević’s statement jeopardising the safety of the President’s son?”.⁵⁰⁵ The intensified uncritical pick-ups of such texts by local media are in contravention with press standards and give rise to concern.

The Centre for Environmental Protection and Sustainable Development (CEKOR) was targeted by *Prismotra* in a number of texts, accusing this NGO of working for foreign intelligence agencies and economically killing Serbia.⁵⁰⁶ In one of its many texts, the portal accused the CEKOR Director of working for a sect.⁵⁰⁷

During the July protests, Belgrade Deputy Mayor Goran Vesić accused the Youth Initiative for Human Rights (YIHR) and BCHR on his Facebook profile of making excuses for bandits and hooligans and campaigning against the police.⁵⁰⁸ His attack came in response to YIHR’s press release condemning police violence against the protesters and BCHR’s reactions and calls to victims of police violence to contact it.

An informal group “United against COVID”, rallying health professionals, who signed an initiative for the dismissal of the national Crisis HQ under the same name, has been attacked and pressured since it was established. Members of the association said that a number of doctors had to leave their jobs because of pressures and intimidation. The representatives of the association were received in September by Health Minister Zlatibor Lončar, but their appeals that the powers that be see reason went unheeded. Nor did any state officials, institutions or members of the Crisis

503 See, 2020 *Semi-Annual Report*, VI.3.2.

504 *Prismotra*, “Who are members of the NATO lobby organisation BCSP?” 14 June. Available in Serbian at: <https://prismotra.net/2020/06/14/ko-su-clanovi-nato-lobisticke-organizacije-bcbp/>.

505 The video clip is available at: <https://www.youtube.com/watch?v=kBmoY33DIfs>.

506 *Prismotra*, “What is CEKOR? Economic killers in Serbia,” 16 August. Available in Serbian at: <https://prismotra.net/2020/08/16/sta-je-organizacija-cekor-ekonske-ubice-u-srbiji/>.

507 *Prismotra*, “This woman is luring people into sects? What does CEKOR have to do with sects?” 25 September. Available in Serbian at: <https://prismotra.net/2020/09/25/532/>.

508 The post is available in Serbian at: <https://www.facebook.com/Goran.Vesic.zvanicna.stranica/posts/3593872073974006>.

HQ react to the reasonable measures the doctors rallied round the initiative insisted on to contain the pandemic and protect public health.

Ultrationalists tried to disrupt the Mirëdita – Good Day Festival promoting Kosovo culture in 2020. 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.

Hooligans attacked the Pride Info Centre offices in the heart of Belgrade on a number of occasions. In late February 2020, a group of masked hooligans broke down the entrance door and destroyed the inventory. This was the 11th attack on Pride Info Centre. Its representatives said that no-one has been convicted for the first ten attacks.⁵⁰⁹ The investigations are clearly insufficient and ineffective for the prevention of such attacks and punishment of their perpetrators. The Protector of Citizens said in August that he ascertained during his review of MIA's operations that it had identified the perpetrator of the February assault.⁵¹⁰

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.⁵¹¹

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.⁵¹²

In 2020, the executive continued with its policy of essentially excluding experts and professionals from public debates on major legislative amendments. Exclusion of the public was particularly visible in the authorities' deliberations of health and economic measures in response to the COVID-19 pandemic. Even where the public was formally engaged, its suggestions, proposals and objections were mostly not taken into account, which did not stop the Government from alleging in its reports that the draft legislation was informed by public consultation. The practice of adopting laws under an urgent procedure was replaced by simulations of public debates on draft laws.

In its Serbia 2020 Report, the European Commission noted that the government adopted guidelines on the inclusion of CSOs in working groups for drafting

509 *Voice of America*, "11th attack on Pride Info Centre, no-one convicted for first 10 attacks," 2 March. Available in Serbian at: <https://www.glasamerike.net/a/napadnut-prajd-info-centar---11-put-za-prvih-10-napada-osudenih-nema/5311434.html>.

510 *Danas*, "Attackers on Pride Info Centre in early 2020 identified," 21 August. Available in Serbian at: <https://www.danas.rs/drustvo/identifikovani-napadaci-na-prajdinfo-centar-pocetkom-2020/>.

511 See the Civic Initiatives analysis, available in Serbian at: <https://www.gradjanske.org/wp-content/uploads/2018/12/Analiza-suzavanje-prostora.pdf>.

512 More in the 2019 Report, II.9.4.

regulations and public policies in January and that the Government Office for Cooperation with Civil Society created a “database of ‘CSO focal points’ in public institutions and local self-governments. The use of the urgent procedure for adopting laws was reduced, potentially allowing for more time for consultations in the law-making process. However, a number of CSOs have reported that the time given for public consultations was still too short, or that their comments on draft laws were not given sufficient consideration and follow-up.”

“For the first time, all public administration bodies were obliged in 2019 to submit an annual plan as regards public calls for financing CSOs to the office for co-operation with civil society, which then published an e-calendar of public calls. The implementation in practice of such annual plans needs to be monitored. The criteria for public financial support for CSOs need to be better defined and implemented to ensure overall transparency, especially at local level,” the EC said.⁵¹³

The authorities continued simulating dialogue with CSOs in 2020. Consultations on the revised Chapter 23 Action Plan were a particularly illustrative example. The Ministry of Justice organised consultations with the Chapter 23 Working Group of the National Convention on the EU (NCEU) in the latter half of February 2020. The Report on the consultations forwarded to the Working Group in early June showed that, technically, 44.2% of CSOs’ specific comments had been taken on board, that 4.8% of them had been partly accepted and that 45.4% of them were dismissed, whereas the general comments, which are critical for the direction of the rule of law reform, were not even reviewed. The NCEU stated that the comments the authorities said they had upheld were watered down or rendered senseless by the changes they underwent.⁵¹⁴

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 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

513 *Serbia 2020 Report*, p. 13.

514 The NCEU Working Group’s press release of 5 June 2020 is available at: <http://en.yucom.org.rs/press-release-of-the-nceu-working-group-for-chapter-23-on-the-occasion-of-concluding-public-consultations-related-to-the-revision-of-the-action-plan-for-chapter-23/>.

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. Freedom of Movement

10.1. 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 ECHR⁵¹⁵ 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.⁵¹⁶ 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 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.⁵¹⁷

515 Protocols Nos. 4 and 7 to the ECHR.

516 *Paramanathan v. Germany*, ECmHR, App. no. 12068/86 (1986).

517 M. Paunović et al, *International Human Rights (Međunarodna ljudska prava)*, 5th edition, Belgrade University Law School, 2018, p. 161.

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.⁵¹⁸ 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.⁵¹⁹

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.⁵²⁰ 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,⁵²¹ aliens may be expelled from Serbia 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.⁵²²

518 *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.

519 V. Dimitrijević et al, *International Human Rights Law (Međunarodno pravo ljudskih prava)*, BCHR and Dosije, 2007, p. 179.

520 Article 18(2), RS Constitution.

521 Article 39(2), RS Constitution.

522 Article 39(3), RS Constitution.

10.2. Freedom of Movement and Its Restrictions under Serbian Law

10.2.1. Aliens Act

The Aliens Act⁵²³ 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.⁵²⁴

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.⁵²⁵ 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 not fulfilling the requirements under the Aliens Act.⁵²⁶ Denial of entry decisions may be appealed with the MIA.⁵²⁷

The Aliens Act also lays down the return procedure principles, the procedure for issuing rulings ordering the return of aliens not fulfilling or no longer 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.⁵²⁸

The Aliens Act lays down the forced removal procedure and conditions.⁵²⁹ 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.⁵³⁰

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.

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

524 Article 1, Aliens Act.

525 Article 6, Aliens Act.

526 Article 15, Aliens Act.

527 *Ibid.*

528 Articles 75–77, Aliens Act.

529 Article 81, Aliens Act.

530 Article 82, Aliens Act.

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.

10.2.2. Asylum and Temporary Protection Act (ATPA)

The Asylum and Temporary Protection Act (ATPA)⁵³¹ 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.⁵³²

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.⁵³³ 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.⁵³⁴

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.⁵³⁵ 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.⁵³⁶

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

532 Article 1, ATPA.

533 Article 49, ATPA.

534 Article 62, ATPA.

535 Article 91(1).

536 The BCHR filed a constitutional appeal with the Serbian Constitutional Court on behalf of its client X.Y., a national of Syria, because of the state's failure to issue him a travel document i.e. to

10.2.3. Travel Documents Act

The Travel Documents Act (TDA)⁵³⁷ governs the travel documents required by Serbian nationals for travel abroad, the kinds of travel documents and the issuance procedure.⁵³⁸ 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.

10.2.4. Act on the Protection of the Population from Communicable Diseases

The Act on the Protection of the Population from Communicable Diseases⁵³⁹ 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

adopt a by-law on the issuance of travel documents to aliens led to restrictions of his movement. In its decision dismissing the appeal, the Constitutional Court stated the following: “Under Article 170 of the Constitution, which provides for the constitutional appeal as an 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 violating the rights and obligations of the applicants, given that a constitutionally guaranteed right or freedom can only be violated by an individual enactment or action.” Consequently, the Constitutional Court held that it could not rule on violations of rights arising from the non-existence of legal enactments and that the non-adoption of a general legal enactment was not an individual action under Article 170 of the Constitution and thus could not constitute grounds for a constitutional appeal. In October 2016, X.Y. filed an application with the ECtHR claiming a violation of Article 2 of Protocol No. 4 to the ECHR. The Court admitted the application and requested of the Government to submit its observations on the admissibility and merits of the complaint. The case was still pending before the ECtHR at the end of the reporting period.

537 *Sl. glasnik RS*, 90/07, 116/08, 104/09, 76/10 and 62/14.

538 Article 1, TDA.

539 *Sl. glasnik RS*, 15/16.

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.⁵⁴⁰

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.⁵⁴¹ 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))).

On 20 November 2020, the National Assembly adopted the Act Amending the Act on the Protection of the Population from Communicable Diseases,⁵⁴² which introduced new provisions restricting the freedom of movement. The amendments define home isolation as a measure ordering home treatment and restricting the freedom of movement of infected individuals not displaying any symptoms or signs of a communicable disease.⁵⁴³ The amendments also introduce home quarantine, a measure restricting the freedom of movement and providing for the monitoring of the health of healthy individuals who have been in contact with individuals infected with a communicable disease.⁵⁴⁴ The Act also lays down the preventive measure restricting the freedom of movement of individuals in collective accommodation with a view to preventing them from bringing the infection into the facilities. This measure may be ordered with respect to all types of and all collective accommodation facilities, or just those accommodating individuals at greater risk of contracting more severe forms of a disease or succumbing to it.⁵⁴⁵

10.2.5. Police Act

Under Article 1 of the Police Act,⁵⁴⁶ 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 prop-

540 Article 1, Act on the Protection of the Population from Communicable Diseases.

541 Article 52 (1(2)), Act on the Protection of the Population from Communicable Diseases.

542 *Sl. glasnik RS*, 136/20.

543 Article 29a, Act Amending the Act on the Protection of the Population from Communicable Diseases.

544 *Ibid.*, Article 31a.

545 *Ibid.*, Article 31b.

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

erty, 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.⁵⁴⁷

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.

10.2.6. 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 Code⁵⁴⁸ 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 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 depri-

⁵⁴⁷ Article 2, Police Act.

⁵⁴⁸ *Sl. glasnik RS*, 72/11, 101/11, 121/12, 32/13, 45/13, 55/14 and 35/19.

vation of and restriction upon liberty is nonetheless merely one of degree or intensity, and not one of nature or substance.⁵⁴⁹ 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.⁵⁵⁰

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.⁵⁵¹ 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.

10.3. Disproportionate Restrictions of the Freedom of Movement in 2020

With a view to preventing the spread of SARS-CoV-2 and its consequences, the Serbian Government on 15 March 2020 adopted the Decision on the Proclamation of the State of Emergency⁵⁵² and right after that the Decree on State of Emergency Measures.⁵⁵³ Under the Decree, with the consent of the Health Ministry, the Ministry of Internal Affairs was entitled to temporarily restrict or prohibit the movement of people in public spaces; order individuals or groups of people with suspected or confirmed COVID-19 infections to stay at home and report to the relevant health institutions (Art. 2); order the closure of all access to outdoor spaces or facilities and preclude people from leaving such spaces or facilities without special passes; and, order specific individuals or groups to remain in specific areas or facilities – migrant reception centres, et al.

549 *Guzzardi v. Italy*, ECHR, App. no. 7367/76 (1980).

550 *Ibid.*

551 Constitutional Court Decision UŽ – 1167/2011 of 29 May 2014.

552 *Sl. glasnik RS*, 29/20.

553 *Sl. glasnik RS*, 31/20–3, 36/20–3, 38/20–3, 39/20–3, 43/20–3, 47/20–3, 49/20–3, 53/20–3, 56/20–3, 57/20–11, 58/20–3 and 60/20–5.

Pursuant to Article 2 of the Decree, the Minister of Internal Affairs on 18 March 2020 issued the Order Restricting and Prohibiting Movement of Individuals in the Territory of the Republic of Serbia,⁵⁵⁴ with the consent of the Ministry of Health and with a view to suppressing and preventing the spread of COVID-19 and protecting the population from this disease.

One of the most drastic and, indeed, humiliating measures that hit hard people over 65 was the one allowing them to leave their homes and shop for their groceries only between 4 and 7 am once a week. There was no logical explanation or justification for this measure, which, as the authorities explained, was introduced to protect the health of this category of the population.

The Interior Ministry's Order was not valid grounds for derogating from human and minority rights enshrined in the Constitution, especially since some of the restrictions of the freedom of movement prescribed by the Order (notably, the 24-hour curfew imposed on people over 65 or 70) amounted to deprivation of liberty under international human rights standards. The BCHR thus filed an initiative with the Constitutional Court on 31 March, requesting a review of the constitutionality of Articles 2 and 3 of the Decree and the Order.⁵⁵⁵

Frequent changes in the scope and periods of the restrictions and bans on freedom of movement and the illogicality of the order in which the measures were introduced and lifted created confusion among the people, who often had problems conforming their conduct and actions to the valid measures, as numerous cases of citizens penalised for violating the lockdown testify.⁵⁵⁶ The question remains whether such stringent measures restricting and prohibiting the freedom of movement were necessary to achieve the goal – halt the transmission of COVID-19, i.e. whether the same result could have been achieved by measures interfering less in the citizens' rights, as well as whether the state had acted in violation of the Constitution and international law in this case.

BCHR's analysis of the lockdown measures in European countries shows that the restrictions of the freedom of movement of Serbia's citizens imposed by the Serbian authorities to prevent the spread of COVID-19 were amongst the most drastic in Europe. For instance, only 18% of the European countries introduced a curfew. The elderly were hit the hardest by the lockdown measures. The round-the-clock curfew of people over 65 (lifted only for four hours in the early morning once a week) remained in place for 34 days. Only 15% of the European countries had introduced measures additionally restricting the movement of the elderly.

554 *Sl. glasnik RS*, 34/20.

555 More at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/category/news-from-the-center/page/2/>.

556 *Danas*, "Agrosmart: Police arrested farmer in Silbas returning from his field," 5 April. Available in Serbian at: <https://www.danas.rs/drustvo/agrosmart-policija-uhapsila-poljoprivrednika-u-silbasu-dok-se-vracao-s-njive/>.

10.3.1. Right to Freedom of Movement of Migrants and Asylum Seekers

In the context of protecting the fundamental rights of migrants, the European Commission issued Guidance⁵⁵⁷ under which all protective measures to prevent the spread of coronavirus should be applied as necessary for third-country nationals, including applicants for international protection, resettled persons or third-country nationals illegally staying in the EU provided that these measures are reasonable, proportionate and non-discriminatory.

On 16 March 2020, the Serbian Government adopted the Decision on the Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum and Reception Centres in the Republic of Serbia.⁵⁵⁸

The temporary restriction of the movement of asylum seekers and irregular migrants to the asylum and reception centres meant that asylum seekers and migrants were locked in the centres 24/7. The Decision specified that the measure was introduced to protect against the transmission of contagious diseases in the territory of the RS and to “prevent the uncontrolled movement of potential carriers of the virus and their arbitrary departure from asylum and reception centres”. The Decision also provided for enhanced supervision and security of all facilities accommodating migrants.⁵⁵⁹ Asylum seekers and migrants were allowed to leave the centres for exceptional and justified reasons and for specific periods of time.⁵⁶⁰

A group of CSOs filed an initiative with the Constitutional Court to review the constitutionality of the restrictions of movement of refugees, asylum seekers and irregular migrants to asylum and reception centres in Serbia, qualifying them as ill-founded and disproportionate restrictions of the right to liberty and security of person, i.e. deprivation of liberty.⁵⁶¹

10.3.2. Constitutional Court Decision IUo – 45/2020

On 28 October 2020, the Constitutional Court rendered its decision on BCHR’s initiative and other initiatives on the same, as well as some other legal issues.⁵⁶² It set forth unconvincing arguments that the Order and several provisions of the Decree were not in contravention of the Constitution. Having reviewed the constitutionality of the impugned provisions, the Constitutional Court upheld the following arguments put forward by the Government: that “all measures adopt-

557 COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement, available at: <https://cutt.ly/fhQle0V>.

558 *Sl. glasnik RS*, 32/20.

559 Article 1, Decision.

560 Article 2, Decision.

561 More in Serbian at: <http://www.bgcentar.org.rs/inicijativa-ustavnom-sudu-za-ocenu-ustavnosti-i-zakonitosti-naredbe-o-ogranicenju-kretanja-na-prilazima-otvorenom-prostoru-i-objektima-prihvatnih-centara-za-migrante-i-centara-za-azil/>.

562 Constitutional Court Decision IUo – 45/2020.

ed by the Minister of Internal Affairs had de facto been adopted with the prior consent of the Government, because all the proposed [...] measures had been discussed at Government sessions and adopted only after it had consented to them”; that the Order “was essentially an implementing act which in and of itself is not an aspect of autonomous and autochthonous decision-making” i.e. that it “does not amount to a decision in substantive terms”; and, that the Government was entitled to “task the relevant Minister with concretising specific decisions it had essentially adopted”. In other words, the Constitutional Court held that, in its Order (co-signed by the President), the Government had laid down measures derogating from human rights by the very fact that it authorised the MIA to adopt general enactments restricting and prohibiting movement in public areas and that the MIA’s decisions on the duration of the prohibition of movement, all the areas and people it applied to, exceptions from the prohibition, etc. were merely an act by which it “concretised”, “activated” and “operationally implemented” measures derogating from human rights that had been laid down earlier. The Constitutional Court also held that the measures drastically restricting the movement of people over 65 (and 70 in smaller communities) and refugees and migrants in asylum and reception centres during the state of emergency did not amount to deprivation of liberty because the purpose of the measures (protection from an infectious disease) and their substance (equated with the purpose) did not indicate as much. The duration of the measures, the extent of the restrictions of movement and social contacts imposed on the elderly during the state of emergency are comparable with the degree of restrictions of liberty during house arrest or home imprisonment, which are considered deprivation of liberty measures. A similar regime applied to refugees and migrants, who were confined in the asylum and reception centres from 16 March to 14 May 2020. They were allowed to leave them only in circumstances in which individuals under house arrest or home imprisonment are allowed to leave their abodes.

The validity of the Constitutional Court’s arguments was also questioned by a judge of that court, Tamas Korhec, in his separate opinion. He said that the main issue was whether the Government had laid down in Articles 2 and 3 of the Decree specific derogation measures or merely authorised state administration bodies to prescribe the measures themselves, including their duration, and the individuals and parts of Serbia they applied to. Judge Korhec opined that the interpretation of the language used in the Decree led to the conclusion that the impugned provisions were formulated extremely generally, to the extent that they left the determination of the substance of the restrictions and the imposition of obligations, as well as decisions on the prohibition and restrictions of movement, to general administrative enactments. Korhec went on to question whether the substantive legal restriction in Article 16(2) of the State Administration Act (under which ministries and state organisations are not entitled to enact regulations establishing their own competences

and those of others or the rights and obligations of natural and legal persons that are not already established by laws) had been complied with.⁵⁶³ Administrative regulations may regulate in greater detail obligations prescribed by the law with a view to their fulfilment and implementation. Korhec questioned the fulfilment of all these standards given that the prohibition and restrictions of movement were not imposed by the Decree, but by the Ministry, which is authorised to impose them or not impose them depending on the need to protect the population from the transmission of communicable diseases.

Judge Korhec also alerted to the substantive incompatibility of the Order and the Decree. He held that the Ministry's Order had gone beyond the framework set by the Decree and that the prohibition and restrictions of movement could apply to public areas but not to non-public areas.

11. Right to Citizenship

11.1. 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,⁵⁶⁴ which also prohibits statelessness of children. Article 18 of the Convention on the Rights of Persons with Disabilities⁵⁶⁵ provides the right to recognition of a nationality of persons with disabilities and guarantees children with disabilities the right to a nationality.⁵⁶⁶

The European Convention on Human Rights does not provide for a right to citizenship, but Article 3 of its Protocol No. 4 as amended by Protocol No. 11⁵⁶⁷ prohibits the expulsion of anyone, by means either of an individual or of a collective measure, from the territory of the State of which he is a national and the deprivation of anyone of the right to enter the territory of the state of which he is a national.

⁵⁶³ *Sl. glasnik RS*, 79/05, 101/07, 95/10, 99/14, 47/18 and 30/18 – other law.

⁵⁶⁴ *Sl. list SFRJ (Međunarodni ugovori)*, 15/90 and *Sl. list SRJ (Međunarodni ugovori)*, 4/96 and 2/97.

⁵⁶⁵ *Sl. glasnik RS (Međunarodni ugovori)*, 42/09.

⁵⁶⁶ Article 18(2), Convention on the Rights of Persons with Disabilities.

⁵⁶⁷ *Sl. list SCG (Međunarodni ugovori)*, 9/03, 5/05 and 7/05 – corr. and *Sl. glasnik RS (Međunarodni ugovori)*, 12/10 and 10/15.

Under the Convention on the Elimination of All Forms of Discrimination against Women, States Parties shall grant women equal rights with men to acquire, change or retain their nationality.⁵⁶⁸ They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. States Parties shall grant women equal rights with men with respect to the nationality of their children. (Art. 9).

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,⁵⁶⁹ states shall accord to stateless persons the same treatment as is accorded to aliens generally. The Convention on the Reduction of Statelessness⁵⁷⁰ 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,⁵⁷¹ 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.⁵⁷²

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)⁵⁷³ 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

568 *Sl. list SFRJ* 11/81.

569 *Sl. list FNRJ*, 9/59.

570 *Sl. glasnik RS (Međunarodni ugovori)*, 8/11.

571 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).

572 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).

573 *Sl. glasnik RS*, 135/04, 90/07 and 24/18.

records of citizenship acquisition and termination rulings and the citizenship certificate template.⁵⁷⁴ Another Rulebook⁵⁷⁵ 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.⁵⁷⁶

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),⁵⁷⁷ which means that the GAPA applies to procedural issues not explicitly governed by the Citizenship Act.⁵⁷⁸

11.2. 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.

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.⁵⁷⁹

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

574 *Sl. glasnik RS*, 22/05, 84/05, 121/07, 69/10, 55/17 and 82/18.

575 *Sl. glasnik RS*, 13/05 and 121/07.

576 *Ibid.* Art. 1.

577 *Sl. glasnik RS*, 18/16 and 95/18 – authentic interpretation.

578 Stevan Lilić, *Administrative Law – Administrative Procedural Law (Upravno pravo – upravno procesno pravo)*, 8th edition, Belgrade University Law School, Belgrade, 2014, pp. 124–125.

579 Article 13, Citizenship Act.

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.⁵⁸⁰ Namely, Serbian citizenship may be granted also to aliens whose acquisition of Serbian citizenship is in Serbia's interest.

By December 2020, 38 aliens were granted Serbian citizenship under Article 19(1) of the Citizenship Act.⁵⁸¹ Most of them were nationals of Iraq and the Russian Federation, several were nationals of the USA, Palestine, Georgia, Turkey, Romania, the United Kingdom, etc.⁵⁸²

11.3. 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.⁵⁸³ 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."⁵⁸⁴

Latest EUROSTAT data show that around EU Member States granted citizenship to 672,000 people, including refugees, in 2016.⁵⁸⁵ On the other hand, the

580 Article 19(3), Citizenship Act.

581 Thirty-eight rulings granting citizenship were accessed by search of: www.paragraf.rs.

582 Citizenship by naturalisation was granted in 2020 to Đorđe Mihajlović, a Greek national and keeper of the Serbian Military Cemetery in Thessaloniki (Ruling 05 No. 204–3793/2020 of 12 May 2020).

583 *Sl. list FNRJ (Međunarodni ugovori)*, 7/60.

584 Article 34, Convention Relating to the Status of Refugees.

585 EUROSTAT, "Migration and migrant population statistics," 2018, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migration_and_migrant_population_statistics

Republic of Serbia has not granted citizenship to any aliens granted asylum (refugee or subsidiary protection)⁵⁸⁶ although 12 years have passed since it adopted its first Asylum Act⁵⁸⁷ and two years have passed since the Asylum and Temporary Protection Act⁵⁸⁸ entered into force. In order to facilitate the acquisition of citizenship by these aliens granted asylum, the Citizenship and Aliens Acts need to be amended to enable them to apply for permanent residence; residence based on granted asylum needs to be defined as a special form of temporary residence, entitling asylees to apply for permanent residence upon the expiry of the statutory deadline.⁵⁸⁹ This would facilitate their full naturalisation and entitle them to apply for Serbian citizenship. Residence of aliens granted refugee or subsidiary protection would thus be “replaced” by one of the forms of temporary residence specified in Article 40 of the Aliens Act.

Lack of provisions governing the acquisition of citizenship has fully deprived refugees of the possibility of naturalisation, which has greatly impinged on their motivation to integrate.⁵⁹⁰

11.4. 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.⁵⁹¹ 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 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.

tics#Acquisitions_of_citizenship:_EU-27_Member_States_granted_citizenship_to_672_thousand_persons_in_2018.

586 Articles 24 and 25, ATPA, *Sl. glasnik RS*, 24/18.

587 *Sl. glasnik RS*, 109/07, ceased to have effect in 2018.

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

589 Article 67(2) of the Aliens Act reads: “A permanent residence permit shall be granted to an alien who fulfils the conditions referred to in Article 70 of this law, and who has resided in the Republic of Serbia without interruption for more than five years on account of a temporary residence permit until the day of application for a permanent residence permit.”

590 *Right to Asylum in the Republic of Serbia 2019*, BCHR, Belgrade, 2019, 7.2.1. and 7.7, available at: <http://azil.rs/en/wp-content/uploads/2019/02/Right-to-Asylum-2018.pdf>.

591 Article 27, Citizenship Act.

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.⁵⁹²

11.5. *Rights of Serbian Nationals – (Un)Obstructed Return to Their Country*

Article 38(2) of the Constitution prohibits the expulsion of Serbian nationals while Article 39, on the freedom of movement, guarantees everyone the right to leave and return to Serbia. A large number of Serbian nationals were abroad when the COVID-19 pandemic was declared and numerous states closed their borders. Some of them were temporarily or habitually residing and working or studying abroad. Serbian tourists were also prevented from returning to Serbia as flights were cancelled and airports were shut down. Since Serbia is under the duty to protect the rights and interests of its nationals abroad and extend them diplomatic and consular protection, it was under the obligation to do its utmost to help all its nationals who wanted to return to Serbia after the state of emergency was proclaimed.⁵⁹³

In March 2020 and upon the introduction of the state of emergency,⁵⁹⁴ Serbian officials called on Serbian nationals abroad not to return to Serbia lest they spread the virus and sharply criticised those who had gone on vacations abroad.⁵⁹⁵ Such statements are disputable for a number of reasons and can be qualified as grave violations of equality and discrimination. Serbian nationals are entitled to return to Serbia irrespective of the situation in the country, emergency circumstances, or, in this case, the pandemic.

After the introduction of the state of emergency and the closure of all national borders⁵⁹⁶ and of international passenger transport via Nikola Tesla airport, many Serbian nationals stranded abroad or at airports appealed via social networks for help to return to Serbia. The Serbian Ministry of Foreign Affairs started organising their return from various cities in late March.⁵⁹⁷

592 Article 37, Citizenship Act.

593 Article 13(1) of the Constitution. The fundamental provisions of the Constitution define the state's active relationship with its nationals habitually or temporarily residing in other states. More in: Marijana Pajvančić, *Comments on the Constitution of the Republic of Serbia*, Konrad Adenauer Foundation, Belgrade, 2009, p. 23.

594 Decision on the Proclamation of the State of Emergency 02 No. 2–1186/2020, *Sl. glasnik RS*, 29/20.

595 More in *2020 Semi-Annual Report*, VII.2.2.

596 Serbian Government Decision on the Closure of All Border Crossings, *Sl. glasnik RS*, 25/20, 27/20, 35/20, 47/20 and 37/20.

597 MFA, "Dačić: State flying in Serbian nationals stranded across the world almost every day," 10 April. Available in Serbian at: <http://www.mfa.gov.rs/sr/index.php/pres-servis/saopstenja/22424-q-q-?lang=lat>.

The Decision proclaiming the COVID-19 pandemic and its subsequent amendments⁵⁹⁸ are disputable given the difficulties in applying them and the fact that the provisions were amended several times. The accommodation of returning Serbian nationals in separate inadequate facilities, where they had to wait a long time to be tested and where they had to stay if they tested positive, was also disputable. Serbian nationals who entered the country but did not have a registered place of residence in Serbia were referred to a special tent camp put up by the Ministry of Defence under a Government conclusion of 17 March.⁵⁹⁹ These measures restricted the movement of Serbian nationals.

The Serbian parliament's decision of 6 May 2020 to lift the state of emergency⁶⁰⁰ provided for the revocation of a number of rash restrictive decisions and for the adoption of new measures.⁶⁰¹ Fourteen-day quarantine of people entering the country initially remained in force,⁶⁰² but was later relaxed and aligned with international agreements and measures. In mid-May, new arrivals had to produce negative tests to enter Serbia. Foreign Minister Ivica Dačić told the parliament on 6 May that self-isolation and isolation measures did not apply to residents in border areas farming their land or working in the neighbouring countries.⁶⁰³

Problems persisted, albeit sporadically. One concerned the return of Serbian nationals still stranded in faraway countries, usually on other continents, who had been unable to return due to disruptions in international passenger traffic and despite numerous appeals on social networks and the media. These individual cases can be ascribed to the inactivity of Serbian diplomatic missions and the global problems in air traffic not only in the first half of the year, but in the second half of the year as well.

Despite the stringent and disproportionate measures accompanied by numerous irregularities in the first half of the year, the Government failed to introduce specific measures related to entry into the country as of September, when the number of COVID-19 cases started surging. As of 18 September, everyone returning to Serbia had to fill an online application form and specify when and where they entered the

598 *Sl. glasnik RS*, 23/20, 24/20, 27/20, 28/20, 30/20, 32/20, 35/20, 37/20, 38/20, 39/20, 43/20, 45/20, 48/20, 49/20, 59/20, 60/20, 66/20, 67/20, 72/20, 73/20, 75/20, 76/20 and 84/20.

599 Serbian Government Conclusion 05 No. 53–2551/2020 of 17 March 2020, *Sl. glasnik RS*, 33/20.

600 Decision Lifting the State of Emergency, *Sl. glasnik RS*, 65/20.

601 Decree on Post State of Emergency anti-COVID-19 Measures, which came into effect the same day they were adopted, on 7 May 2020, *Sl. glasnik RS*, 66/20.

602 *N1 Info*, “Kon explains which measures will remain in force after the state of emergency is lifted,” 4 May. Available in Serbian at: <http://rs.n1info.com/Vesti/a595889/Kon-objasnjava-ko-je-sve-mere-ostaju-na-snazi-posle-ukidanja-vanrednog-stanja.html>.

603 *Radio Free Europe*, “Which measures will remain in effect after the state of emergency is lifted in Serbia?” 7 May. Available in Serbian at: <https://www.slobodnaevropa.org/a/vanredno-stanja-ukidanje-srbija-korona-virus/30597668.html>.

country.⁶⁰⁴ This “mild” preventive measure, which remained in force until end November, was sharply criticised by the public, especially since Serbia was among the countries with the highest numbers of COVID-19 cases per capita at the time and many Serbian nationals living and working abroad traditionally come home for the Christmas holidays. Only in late November did the Crisis Headquarters members mention the introduction of stricter measures, such as the obligation to produce a negative PCR or a positive IgG antigen test on entry.⁶⁰⁵ They also mentioned identical measures would apply to foreign nationals entering Serbia.⁶⁰⁶

604 *BBC in Serbian*, “Coronavirus and tourism: what awaits everyone returning to Serbia as of 18 September,” 18 September. Available in Serbian at: <https://www.bbc.com/serbian/lat/srbija-54198253>.

605 *Mondo*, “New measures on Crisis HQ’s table for our nationals returning from abroad! Two options for the holidays, special measure to be introduced for New Year?!” 28 November. Available in Serbian at: <https://mondo.rs/Info/Drustvo/a1403777/nove-mere-krizni-stab-korona-epidemioloske-mere-uvodjenje-novih-mera-radno-vreme-kafica-i-restorana.html>.

606 *Ibid.*

III. HUMAN RIGHTS IN PRACTICE – SELECT TOPICS

1. Work of the National Assembly and the June Parliamentary and Local Elections

1.1. Election Process in 2020

On 4 March, the Serbian President called the parliamentary elections for 26 April 2020 and the National Assembly Speaker scheduled the local elections for the same day. Provincial elections were also called for 26 April.¹ The outbreak of the COVID-19 epidemic and the proclamation of the state of emergency led to an interruption of the 2020 election process, wherefore all election activities and the work of the election administration² were officially suspended for nearly two months. In practice, campaigning continued throughout this period. The election campaign, which resumed after the state of emergency was lifted, was not as intense or extensive as usual, due to the measures imposed to prevent the spread of the epidemic, including the ban on public assemblies, and the fact that some opposition parties boycotted the elections.

The elections were held on 21 June. The following day, news broke that the epidemiological situation was serious. The new MPs were sworn in on 3 August and the new Serbian Government was elected on 28 October. Elections fraught with irregularities, election boycott, the composition of the new Government and parliament were merely a simulacrum of democracy in Serbia, the only European country except Belarus without substantial opposition presence in the parliament.³

1 *Danas*, “BBC in Serbian: 2020 Elections: Elections Called in Serbia – Who is Entitled to Vote and for Who,” 4 Marc. Available in Serbian at: <https://www.danas.rs/bbc-news-serbian/izbori-2020-raspisani-izbori-u-srbiji-ko-moze-da-glasi-i-za-koga/>. The Decision on Elections did not apply to cities and municipalities in which early elections were held in the 2017–2019 period, notably Zaječar, Bor, Belgrade, Kosjerić, Lučani, Negotin, Arandelovac, Majdanpek, Mionica, Preševo, Medveđa, Kula, Doljevac, Kladovo and Smederevska Palanka.

2 Republican Election Commission, Ruling Suspending All Parliamentary Election Activities, 16 March. Available in Serbian at: <https://www.rik.parlament.gov.rs/vesti/sr/2615/republicka-izborna-komisija-donela-resenje-o-prekidu-svih-izbornih-radnji-u-sprovođenju-izbora-za-narodne-poslanike-.php>.

3 *NI*, “Vukadinović: Only parliament in Europe without opposition, except the Belarus one,” 3 August. Available in Serbian at: <http://rs.n1info.com/Vesti/a626053/Vukadinovic-Jedini-parlament-u-Evropi-izuzev-beloruskog-koji-nema-opoziciju.html>.

1.1.1. Amendments of Election Law in the Serbian Assembly

After the unsuccessful talks about the changes of election law between the representatives of the ruling parties and some opposition parties in 2019 and specific amendments adopted in late 2019,⁴ the authorities in early 2020 decided to make major changes to the legislative framework governing the election process. On 7 February 2020, the Serbian National Assembly adopted amendments to the Act on the Election of Assembly Deputies (AEAD)⁵ and the Local Elections Act,⁶ lowering the threshold from five to three percent.⁷ The Assembly also upheld a proposal of Democratic Party MP Gordana Čomić, who took part in this session while the other MPs of most opposition parties continued boycotting the parliament, supported in an amendment filed by Serbian Progressive Party (SNS) MP Marija Obradović, increasing the quota of the less represented gender on the election tickets to 40 percent.⁸ Under the amendment, women have to account for at least two of every five candidates on the election tickets.⁹

The parliament also adopted amendments proposed by minority parties. When proclaiming minority tickets, the Republican Election Commission (REC) is entitled, but not under the obligation, to request the opinion of the relevant National Minority Councils (NMCs) whether the parties that submitted the tickets can be considered representatives of the minority communities. Minorities may now enter the parliament even if they won less than 3% of the votes and the quotients of all tickets of national minority parties and coalitions are increased by 35% during the allocation of seats.¹⁰

The adoption of such important amendments to election law during election year, without a public debate and in the absence of the opposition boycotting the parliament, is problematic since these amendments substantially changed the conditions for participation in the work of the legislature and the forming of a ruling majority. The ruling coalition qualified the lowering of the threshold as a step towards ensuring the more comprehensive representation of citizens in parliament. On the other hand, the opposition and some experts qualified the move as the ruling majority's ploy to create a semblance of an opposition comprising parties not standing a chance of passing the 5% threshold and to dampen the effects of the announced election boycott.¹¹ Experts also warned that the entry of a large number of small

4 More in the 2019 Report, IX.10.2.

5 *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, 104/09 – other law and 12/20.

6 *Sl. glasnik RS*, 129/07, 34/10 – CC decision, 54/11 and 12/20.

7 Article 81, AEAD.

8 From 30%.

9 Article 40a.

10 Article 81(2–4), AEAD.

11 The Opposition Alliance for Serbia, one of the largest opposition groups, adopted its Boycott Declaration on 1 February by which it launched its election boycott campaign.

parties in the national and local parliaments would result in greater divisions in the parliaments, but not necessarily in the greater representation of various segments of society, and that the lower threshold might impinge on the stability of the parliaments and, in the longer term, of the executive government, facilitating broad coalitions and providing the small parties with blackmail potential.¹²

The second set of amendments to election law was adopted after the state of emergency was lifted. The National Assembly adopted amendments to the AEAD¹³ and the Local Election Act¹⁴ provisions on the verification of signatures of voters backing election tickets.¹⁵ Under the amendments, the signatures must be verified by notaries public of the city or municipal administrations, or by the Basic Courts, court units, or city or municipal administrations in cities and municipalities that have no notaries public.¹⁶ Under the original provisions, the voters' signatures had to be verified by the relevant courts or notaries public under the Notaries Public Act.¹⁷ The REC accordingly adopted the amended Instructions on National Assembly Elections.¹⁸

The Centre for Research of Transparency and Accountability (CRTA) reported that these amendments were important in the light of legal certainty and equality of all contestants. The signatures of citizens supporting the nine tickets submitted to the REC before the amendments were adopted were verified under the provisions in effect until 11 May, wherefore the submitters of those tickets had not been treated the same as the ones that collected signatures after the amendments were adopted. The latter could have their signatures verified by a much larger number of authorities and in a much larger geographic area.¹⁹

1.1.2. Election Campaign

The election campaign began before the elections were called. Indeed, it was difficult to single out a period when it was not conducted given the public officials' abuse of their offices for party campaigning, abuse of public resources to promote

12 *BBC in Serbian*, "2020 Elections: lower threshold and local elections – more politically colourful or fragmented assemblies," 10 February. Available in Serbian at: <https://www.bbc.com/serbian/lat/srbija-51442371?xtor=AL-73-%5Bpartner%5D-%5Bdanas.rs%5D-%5Blink%5D-%5Bserbian%5D-%5Bbizdev%5D-%5Bisapi%5D>.

13 *Sl. glasnik RS*, 68/20.

14 *Ibid.*

15 The amendments entered into force as soon as they were published in the Official Gazette for "particularly justifiable reasons".

16 CRTA, "2020 Elections – Long-Term Observation Report for the Period March 4th –March 16th and May 12th–May 24th", available at: <https://crt.rs/en/elections-2020-long-term-observation-report-for-the-period-march-4th-march-16th-and-may-12th-may-24th>.

17 *Ibid.*, pp. 11–12.

18 Available in Serbian at: <https://www.rik.parlament.gov.rs/tekst/1553/izborna-dokumenta.php>.

19 CRTA, "2020 Elections – Long-Term Observation Report for the Period March 4th –March 16th and May 12th–May 24th", available at: <https://crt.rs/en/elections-2020-long-term-observation-report-for-the-period-march-4th-march-16th-and-may-12th-may-24th>.

the ruling parties and the huge airtime they were given by TV stations with nationwide coverage. After the introduction of the state of emergency and the ban on public assemblies, the campaign “moved” almost entirely to TV stations, Internet portals and direct communication with the citizens.

Organisations monitoring the election process and individuals alerted over social media to the reappearance of campaigning practices present during the prior election cycles as well: suspicions of abuse of the citizens’ private data, telephone calls ruling party activists made to voters, especially the users of the *Telekom* mobile network, in the run-up to the elections, asking them whether they were satisfied with the COVID-19 response and the work of the Government and the President, and, on election day, when they called them up reminding them to vote.

The law prohibits political parties from accessing the citizens’ personal data unless the latter had consented by e.g. leaving their personal details with the activists at the booths of the parties they support. The campaigners must notify the citizens what they will use their personal data for. Under the new Personal Data Protection Act (PDPA), all political parties must tell individuals how they came into possession of their personal data. Abuse of databases that may be accessed only by public officials is a crime warranting up to three years’ imprisonment.²⁰

Like in the past, the citizens complained to the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: Commissioner) that the parties were in possession of their personal data.²¹ Door to door campaigning, which exists in other countries, needs to be governed by law. Furthermore, Serbia lacks regulations on political marketing.

Video clips of the SNS activists’ door to door campaigning across Serbia with lists of residents in their hands and no explanation of how they had obtained them, could be seen on social networks almost on a daily basis. In smaller towns, the voters recognised public company staff and local officials among the activists.²² CRTA registered such campaigning in 11 out of 25 Serbian districts, notably in the Belgrade and Raška Districts.²³

20 The Commissioner filed over 40 criminal reports, but the courts handed down only one suspended sentence.

21 *N1*, “Petrović: Parties may not be in possession of citizens’ personal data without their consent,” 7 March. Available in Serbian at: <http://rs.n1info.com/Izbori-2020/a575766/Petrovic-Bez-saglasnosti-stranke-ne-smeju-da-imaju-podatke-o-gradjanima.html>.

22 *N1*, “SNS activists start knocking on doors and asking who you’ll vote for,” 2 March. Available in Serbian at: <http://rs.n1info.com/Vesti/a574260/Aktivisti-SNS-a-krenuli-da-kucaju-na-vrata-i-pitaju-za-koga-cete-da-glasate.html>; *Južne vesti*, “SNS Launches Door to Door Campaign, Tensions Rise as Citizens Insist Their Names be Erased from the Lists,” 25 February. Available in Serbian at: <https://www.juznevesti.com/Politika/SNS-pred-vratima-Vladajuca-stranka-pocela-kampanju-od-vrata-do-vrata-pocela-i-napetosti-sa-onima-koji-ne-zele-da-budu-na-spisku.sr.html>.

23 In addition to party activists, the voters’ homes were visited by public officials; meetings with them were organised in one of the neighbourhood homes. See CRTA, “Elections 2020: Cam-

In its monitoring report,²⁴ CRTA drew attention to the political players' pro-active communication with voters, noting that the ruling parties lobbied the voters by emphasising their successes and making promises, while opposition activists made promises and campaigned for the boycott of the election. CRTA registered the public officials' abuse of their offices for party campaigning at all levels, abuse of public resources, pressures on voters that were particularly intensive in public companies, humanitarian drives and the parties' provision of other forms of assistance to the citizens, which could be qualified as voter bribery.²⁵ The Serbian Progressive Party was the most active – its activities accounted for as many as 92% of the registered drives.²⁶ Transparency Serbia registered intensive abuse of public offices for party campaigning in that period as well, noting that it was much more visible than party activities.²⁷ CRTA registered 250 events in which public officials abused their offices to promote their parties during the second part of the campaign, after the state of emergency was lifted.²⁸

1.1.2.1. Media Coverage of the Election Campaign

Domestic and international stakeholders continued alerting to the troubling media situation in Serbia in 2020. Representatives of the academia filed several initiatives regarding media reporting at the beginning of the year. Over 140 of them called on the public service broadcaster, Radio Television of Serbia (RTS) to change its editorial policy and, inter alia, broadcast in its prime time slot a show impartially covering all the ongoing and relevant scandals.²⁹ When their request was dismissed, they demanded the dismissal of the RTS senior management; this demand went unheeded as well. Finally, in early March 2020, they forwarded a request to the Electronic Media Regulator (REM) to dismiss the members of the RTS Management Board and temporarily prohibit TV stations *Pink*, *Hepi* and *Studio B* from broad-

paigned before the Campaign, Full Report," available at: <https://crt.rs/en/elections-2020-campaign-before-the-campaign-full-report>.

24 CRTA, "2020 Election: Campaign before the Campaign, Full Report," available at: <https://crt.rs/wp-content/uploads/2020/03/Elections-2020-Campaign-before-the-Campaign-Full-report.pdf>.

25 *Ibid.* CRTA registered 170 cases in which the citizens were distributed humanitarian aid, provided with free medical examinations, assistance in households, et al. p. 19.

26 *Ibid.* The greatest problem was that these drives were almost always portrayed as donations by individuals, public officials and party members, wherefore they were not formally in contravention of the law.

27 Transparency Serbia, "Initial Results of Monitoring Public Officials' Activities during the Election Campaign (4–15 March) and during the 'Suspended Election Campaign' (16 March–10 May)". Available in Serbian at: https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Ts_prvi_rezultati_monitoringa_funkcionerske_kampanje_2020.pdf.

28 NI, "Election campaigning by officials typical for Serbia," 27 May. Available at: <http://rs.n1info.com/English/NEWS/a603956/Election-campaigning-by-officials-in-Serbia.html>.

29 Beta, "RTS handed demand to change its editorial policy," 22 January. Available at: <https://betabriefing.com/archive/news/9594-rtshanded-demand-to-change-its-editorial-policy>.

casting news and political shows.³⁰ They said that these stations' reporting was uncivilised, that the stations violated media laws, covered up the scandals of the ruling clique, and served as the Serbian President's propaganda tool. They said that RTS' operations were in violation of Article 50 of the Serbian Constitution prohibiting censorship, as well as of Article 51 of the Constitution guaranteeing everyone the right to be accurately, fully and promptly informed of issues of public importance. They also emphasised that REM was under the obligation to oversee the work of the public service broadcaster.³¹

After the state of emergency was lifted and the election campaign resumed, the European Commission issued its Non-paper on the state of play regarding chapters 23 and 24 for Serbia (justice and human rights)³² on 11 June 2020, in which it said that political and economic influence over the media continued to be a source of concern, that an unbalanced representation by public service broadcasters of the plurality of political views was observed during the reporting period and that media ownership was not transparent. It recommended that REM's independence be strengthened to enable it to efficiently safeguard media pluralism. However, REM's independence was brought into question in December 2020, with the election of the new/old members of the Council of this regulatory authority and undemocratic procedure in which Olivera Zekić was elected its Chair.³³

TV stations with nationwide coverage devoted three-quarters of their airtime to the parties in power before the elections were officially called and at the start of the election campaign. Coverage of their activities was positive or neutral. The stations' coverage of actors calling for the boycott of the elections was negative, while their coverage of opposition parties that said they would run in the elections was neutral.³⁴

Government representatives reigned supreme on TV after the state of emergency was lifted as well; 60.4% of the airtime was devoted to them, 27.6% to parties running in the elections and 11.9% to parties boycotting the elections.³⁵ The former maintained their advantage throughout the campaign, both in the news on elections and in the news on other activities, while the representatives of the opposition featured only in reports on elections.³⁶

30 NI, "Serbian intellectuals call on REM to dismiss RTS Board, ban news on three TV stations," 7 March. Available at: <http://rs.n1info.com/English/NEWS/a577344/Serbian-intellectuals-call-REM-to-dismiss-RTS-board-ban-news-on-three-TV-stations.html>.

31 *Ibid.*

32 European Commission, Non-paper on the state of play regarding chapters 23 and 24 for Serbia, June 2020. Available at: https://www.mei.gov.rs/upload/documents/eu_dokumenta/Non_paper_Ch_23_24_June_2020.pdf.

33 More in Chapter III.2.

34 CRTA, "2020 Election: Campaign before the Campaign, Full Report," available at: <https://crt.rs/wp-content/uploads/2020/03/Elections-2020-Campaign-before-the-Campaign-Full-report.pdf>.

35 *Ibid.*

36 *Ibid.*

The SNS held two online conferences on *TV Pink* in May 2020; each lasted over 30 minutes. According to REM's election campaign monitoring report, the events were labelled as pre-election commercial content, although the duration of commercial content may not exceed 12 minutes an hour under the Advertising Act.³⁷

1.1.2.2. REM Reports and Activities

REM adopted the Rulebook on the Implementation of Public Media Service Obligations during Election Campaigns in early February 2020. The Rulebook, however, does not regulate the work of commercial stations, although the REM should adopt rulebooks governing the work of all broadcasters under the law.³⁸ Although the Ministry of Culture and Information has held that the Electronic Media Act does not distinguish between public media services and other broadcasters, the Recommendation regarding commercial media REM adopted in early March is not binding in character, as opposed to the Rulebook. The new Rulebook does not extend to seven of the ten most popular TV stations in Serbia (*Hepi, Pink, Prva, B92, N1, Pink 2* and *Pink 3*).³⁹ Furthermore, as per the broadcasters' obligation to provide the parties, coalitions and candidates running in the elections with representation without discrimination, the REM gave editors free rein to decide which of them were important and how much airtime to devote to them by specifying in the Rulebook that they should take into account "the importance of political parties and candidates or events they are participating in".⁴⁰

REM's report on the 11–15 May media coverage of the election campaign raised quite a few eyebrows. REM said that SNS' ticket "Aleksandar Vučić – For Our Children" had six hours, three minutes and ten seconds airtime, while the Alliance for Serbia (Szs), which decided to boycott the elections, had nine hours, 40 minutes and 29 seconds of airtime.⁴¹ Media and election observers criticised REM's methodology.⁴² REM member Olivera Zekić explained that REM applied the same methodology and would produce a report after the elections, which would include also an

37 CINS, "Broadcast of Vučić's Event on Pink Was Commercial Content, CRTA Requires of REM to Launch Procedure against it," 28 May. Available in Serbian at: <https://www.cins.rs/prenos-vucicevog-skupa-na-pinku-komercijalni-sadrzaj-crt-trazi-da-rem-pokrene-postupak/>.

38 CRTA, "Media in Serbia: Defending the Status Quo," March 2020. Available in Serbian at: https://crt.rs/wp-content/uploads/2020/03/Mediji-u-Srbiji_U-odbrani-postojeceg-stanja.pdf.

39 CRTA, "2020 Election: Campaign before the Campaign, Full Report," available at: <https://crt.rs/wp-content/uploads/2020/03/Elections-2020-Campaign-before-the-Campaign-Full-report.pdf>.

40 Beta, "IJAS: Election campaign in media continues under illegal REM rulebook," 15 May. Available in Serbian at: <https://beta.rs/su-pro-media/supromedia-srpski/127225-nuns-predizborna-kampanja-u-medijima-nastavlja-se-po-nezakonitom-pravilniku-rem-a>.

41 N1, "Serbian media watchdog says opposition got more airtime than authorities," 25 May. Available in Serbian at: <http://rs.n1info.com/English/NEWS/a603113/Serbian-media-watchdog-says-opposition-got-more-air-time-than-authorities.html>.

42 CRTA, "REM Election Monitoring 2020 Biased and Opaque," available at: <https://crt.rs/en/rem-election-monitoring-2020-biased-and-opaque/>.

analysis of the tonality of the coverage “which is much more difficult than numerical measurement”.⁴³

The Bureau for Social Research (BIRODI), however, said that REM’s methodology was not in compliance with the international standards of the ODIHR, the Venice Commission or the European Commission’s Human Rights Directorate, or practices followed by election observer missions.⁴⁴ BIRODI in particular referred to lack of the analysis of the tonality (positive, negative and neutral) of the coverage; the fact that REM did not distinguish between the political stakeholders’ roles – whether they were the subjects or objects of the reports; that REM did not monitor all stations broadcasting election programmes; and that the criteria under which it selected the ones to monitor remained unclear; it further noted that REM had added up the seconds of airtime, regardless of whether the reports were broadcast on stations with nationwide coverage, public service broadcasters, cable or radio stations.⁴⁵

Although public officials’ abuse of their offices for party campaigning was commonplace in Serbia and more effective in news than in election campaign shows,⁴⁶ REM monitored only the election campaign blocks, not the stations’ entire programmes. It registered the contestants only in their capacity of representatives of election tickets, disregarding their appearances in newscasts. Under the Anti-Corruption Agency Act, only the President may engage in such campaigning. Under Article 50(4) of the Anti-Corruption Act,⁴⁷ directly elected public officials are under the obligation to always specify whether they are relaying the views of the authorities they are working in or their political parties.

Nevertheless, “measuring the President’s media coverage is justifiable from the phenomenological point of view, because his dominantly positive presence in that office influences the forming of voters’ opinions”.⁴⁸ Although the President did not run for any of the seats in these elections and did not head his party’s election ticket, he dominated in most SNS election spots.⁴⁹

43 NI, “Gavrilović on “one and non-existent” in the media, Zekić on paramilitary REMs,” 2 June. Available in Serbian at: <http://rs.n1info.com/Izbori-2020/a606015/Gavrilovic-o-jednom-i-nepostojećima-u-medijima-Zekic-o-paravojnim-REM-ovima.html>.

44 Beta, “BIRODI: REM’s election monitoring of media not in line with international standards,” 25 May. Available at: <https://betabriefing.com/news/politics/10943-birodi-rems-election-monitoring-of-media-not-in-line-with-international-standards>.

45 More is available on BIRODI’s website: <https://www.birodi.rs/category/saopstenja/>.

46 *Ibid.*

47 *Sl. glasnik RS*, 35/19 and 88/19.

48 Danas, “BIRODI: REM’s methodology is faulty,” 26 May. Available in Serbian at: <https://www.danas.rs/drustvo/birodi-metodologija-rem-a-nije-dobra/>.

49 Most complaints filed with REM concerned TV reports giving advantage to public officials running in the elections, especially at the local level. REM’s decisions on the complaints were not publicly available at the end of the reporting period. More in CRTA, “2020 Election: Campaign before the Campaign, Full Report,” available at: <https://crt.rs/wp-content/uploads/2020/03/Elections-2020-Campaign-before-the-Campaign-Full-report.pdf>.

The Slavko Ćuruvija Foundation filed a complaint with REM against *TV Kopernikus*, which broadcast a show hosted by SNS MP Vladimir Đukanović. REM ordered the station to suspend the show until the end of the election campaign. Under Article 9 of the Rulebook on the Protection of Human Rights in the Field of Media Service Provision,⁵⁰ officials may not appear in newscasts and current affairs shows either as hosts, announcers or reporters. REM discontinued the procedure against *TV Kopernikus* in June, after the station admitted its mistake. The show was taken off the air for good in the meantime.⁵¹ REM in June initiated a review of *TV Šabac*, for violating the Electronic Media Act; this station broadcast the spots of the Russian Party in late February and early March, before the elections were called.⁵²

1.1.2.3. Social Media Campaigning

CRTA in 2020 monitored the campaigning of political parties and their representatives also on the following social media: Facebook, Twitter and Instagram. It monitored and analysed over 300 official profiles and around 7,500 posts in the 4–16 March and 12–24 May periods. Opposition parties and individuals were much more active on the social networks, which may be interpreted as their attempt to make up for lack of other space to communicate with the voters. The number of posts of opposition parties and figures heavily outnumbered those posted on social networks by the ruling parties and their officials (72% v. 28% in March and 78% v. 22% in May).⁵³

In March 2020, Twitter removed over 8,500 accounts that sent over 43 million tweets promoting SNS and its leader Aleksandar Vučić and attacking their political opponents. Daniel Bush of Stanford University described the contours of this operation and the tactics the ruling party used to achieve its aims.⁵⁴

1.1.3. Unofficial Campaigning during the State of Emergency

On 16 March 2020, the Republican Election Commission (REC) adopted a Ruling Suspending All Parliamentary Election Activities⁵⁵ pursuant to Article 5 of

50 *Sl. glasnik RS*, 55/15.

51 *Cenzolovka*, “Procedure against *TV Kopernikus* over SNS Official Đukanović’s show discontinued,” 11 June. Available in Serbian at: <https://www.cenzolovka.rs/etika/obustavljen-postupak-protiv-kopernikusa-zbog-emisije-funkcionera-sns-a-djukanovica/>.

52 *Radio 021*, “REM initiates procedure against *TV Šabac*,” 12 June. Available in Serbian at: <https://www.021.rs/story/Izbori-2020/245792/REM-pokrenuo-postupak-protiv-TV-Sabac.html>.

53 CRTA, “Elections 2020: Long-Term Observation Report for the May 25th – June 14th Period,” available at: <https://crt.rs/wp-content/uploads/2020/06/Elections-2020-Long-term-observation-report-for-the-period-May-25th-June-14th.pdf>.

54 Daniel Bush, “*Fighting Like a Lion for Serbia*”: *An Analysis of Government-Linked Influence Operations in Serbia*, Stanford Internet Observatory, April 2020, available at: https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/serbia_march_twitter.pdf.

55 DPA, “Serbia delays elections because of coronavirus outbreak,” 16 March. Available at: <https://www.dpa-international.com/topic/serbia-delays-elections-coronavirus-outbreak-urn%3Anewsml%3Adpa.com%3A20090101%3A200316-99-354365>. The REC Ruling is available in Serbian at:

the Decree on State of Emergency Measures,⁵⁶ ordering the discontinuation of all election activities at all three levels: national, provincial and local. Paragraph 3 of the Ruling specified that the new election activity deadlines would be set after the end of the state of emergency.

After the COVID-19 epidemic was declared and the state of emergency introduced, all parties were forced to cancel their rallies; the anti-Government protests held every Saturday were called off as well. Representatives and sympathisers of both the ruling and the opposition parties violated the prohibition of movement in plain sight on several occasions. The public officials' activities and presence in the media, especially the activities and statements of the topmost officials – the Serbian President and Prime Minister – regarding epidemic-related questions left the impression that the campaign had actually never been suspended.

At the very onset of the state of emergency, Government representatives participated together with medical experts in news conference on the epidemic. Subsequently the Crisis Headquarters members held their press conferences every day at 3 pm and the Government representatives addressed the nation in the evenings.

The SNS election ticket was headed by the Serbian President, who was not running for any seats. Both before and especially after the state of emergency was proclaimed, he frequently appeared on TV stations with nationwide coverage in his capacity of President, promoting activities associated with the fight against the pandemic, which quite a few people interpreted as his election campaign. For instance, he held a news conference in the Belgrade Arena after touring the packing of aid packages to be distributed to Belgrade pensioners; the impression of campaigning could not be shaken off, as there was clearly no rational reason why the head of state should oversee the city authorities' activities.

The Serbian President frequently publicly spoke about a number of issues not within his remit; the one that drew the greatest attention was his announcement that all adult citizens of Serbia would be given €100 from the state budget, although the President has no powers to decide on distribution of money from the budget. With TV cameras in their wake, the President and Ministers went to various Serbian towns distributing medical equipment and ventilators to fight COVID-19.⁵⁷

Transparency Serbia said that the public officials' campaigns during the state of emergency were even more intensive and visible and that most regarded the fight against coronavirus and distribution of donations.⁵⁸ Representatives of opposition

<https://www.rik.parlament.gov.rs/vest/sr/2615/republicka-izborna-komisija-donela-resenje-o-prekidu-svih-izbornih-radnji-u-sprovodjenju-izbora-za-narodne-poslanike-.php>.

56 *Sl. glasnik RS*, 31/20, 36/20, 38/20, 39/20, 43/20, 47/20 and 49/20.

57 *BIRN*, "Serbian Mayor's Assistant Sacked for Criticising President," 7 April. Available at: <https://balkaninsight.com/2020/04/07/serbian-mayors-assistant-sacked-for-criticising-president/>. Vučić also handed out medical equipment in Niš and toured the construction of the highway at Čortanovci.

58 Transparency Serbia, "Monitoring of Public Officials' Activities during the Election Campaign (4–15 March) and during the 'Suspended Election Campaign' (16 March – 10 May) – Initial Results,"

parties promoted the volunteering activities of their officials and sympathisers during the epidemic on social networks.

The Don't Let Belgrade D(r)own Initiative and Civic Front on 26 April called on citizens to come out to their windows and balconies and take part in a campaign under the slogan "Raise Your Voice Every Day: Noise against Dictatorship" every evening at 8:05 pm, by making noise to express their dissatisfaction with the degradation of the institutions and state capture by the SNS.⁵⁹ In response, SNS MP Vladimir Đukanović said he would play music on his balcony and make noise in support of the regime; footage of unidentified men climbing on tops of buildings across Serbia amidst the curfew, lighting flares and playing music, and voicing insults against opposition leader Dragan Đilas, soon appeared on social networks.⁶⁰ In response to citizens' complaints, the police came to the scene on several occasions and ID-ed the individuals on the roofs, who apparently had curfew passes.

The epidemic did not bring any changes to the outlets' editorial policies. Members of the ruling majority dominated the contents of programmes of television stations with national frequencies and occupied 91 percent of time dedicated to political entities in the extended prime-time. Of the nine percent of media time devoted to the opposition, five percent went to parties boycotting the elections, and four percent to those running in the elections. Reporting on the regime was mostly positive or neutral, on the opposition boycotting the elections mostly negative, while reports on the opposition that announced its participation in the elections were neutral.⁶¹ Government representatives addressed the nation on nine special occasions, which were broadcast by all TV stations with nationwide coverage.⁶²

BIRODI's research showed that the opposition was altogether given 20 seconds and President Vučić 13,919 seconds of airtime in the 16–31 March period in the news on *RTS*, *TV Pink*, *TV Hupi* and *B92 TV*. Together with the airtime devoted to the Prime Minister, Ministers and representatives of the Vojvodina provin-

available in Serbian at: https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_prvi_rezultati_monitoringa_funkcionerske_kampanje_2020.pdf. In the 16 March – 10 May period, the greatest number of promotional activities was implemented by Defence Minister Aleksandar Vulin (52), Labour Minister Zoran Đorđević (28) and President Aleksandar Vučić (11). Among the local officials, the list was topped by Belgrade Deputy Mayor Goran Vesić (26), Zemun Mayor Dejan Matić (11), Šabac Mayor Nebojša Zelenović (10) and Novi Pazar Mayor Nihat Biševac (10).

59 *US News/Reuters*, "Serbs Bang Pots to Protest Government and Strict Coronavirus Measures," 29 April. Available at: <https://www.usnews.com/news/world/articles/2020-04-29/serbs-bang-pots-to-protest-government-and-strict-coronavirus-measures>.

60 *BIRN*, "Serbian police allow pro gov't protesters to breach curfew," 5 May. Available at: <https://balkaninsight.com/2020/05/05/serbian-police-allow-pro-govt-protesters-to-breach-curfew/>.

61 *CRTA*, "In the state of emergency, the regime is absolutely dominant on televisions with national coverage," 16 May. Available at: <https://crt.rs/en/in-the-state-of-emergency-the-regime-is-absolutely-dominant-on-televisions-with-national-coverage>.

62 *Ibid.* The Serbian President took part in seven and the Prime Minister in three of these special addresses.

cial government, the ruling parties featured around 20,000 seconds in these stations' newscasts.⁶³

When the state of emergency was lifted, the REC issued a Ruling on the Continuation of Parliamentary Election Activities.⁶⁴ The elections were scheduled for 21 June 2020. Rallies were organised in front of the National Assembly despite the ban on assemblies. Representatives of the ruling coalition and some opposition parties clashed⁶⁵ despite the police cordon between them. An SNS sympathiser slapped a woman protesting in the other camp.⁶⁶ Neither group complied with the protection measures, including the recommended physical distance; SNS organised buses to transport its supporters to the rally.

After the ban on assemblies was lifted, the assessments of the risks in the context of the election campaign were left to the political parties. Many public figures and experts criticised the total relaxation of the rigorous anti-epidemic measures. They also voiced concerns about the threats to health during the collection of signatures and rallies, as well as during voting in closed and often cramped polling stations. Wearing of protective gear was no longer obligatory, merely recommended.

1.1.4. Election Day – Campaigning for Turnout

Elections at all three levels were held on 21 June 2020. The REC published the final number of voters in Serbia in its Decision: as of 18 June 2020, the number of voters in Serbia stood at 6,583,665.⁶⁷ They were able to cast their ballots at 8,433 polling stations. Twenty-one tickets ran for the 250 seats in the Serbian parliament.⁶⁸ The name of SNS' ticket "Aleksandar Vučić – For Our Children" drew attention, *inter alia*, in the light of the Code on the Protection of Children from Political Abuse⁶⁹ adopted back in 1993. Under this Code, "political organisations shall not acquiesce

63 *Direktno*, "Opposition given 20 seconds, Vučić 13,919 seconds in news in one fortnight!" 28 April. Available in Serbian at: <https://direktno.rs/vesti/drustvo-i-ekonomija/270410/u-15-dana-opoziciji-na-tv-20-sekundi-vucic-u-dnevnicima-13919.html>.

64 The REC Ruling is available in Serbian at: <https://www.rik.parlament.gov.rs/tekst/1553/izborna-dokumenta.php>.

65 *BIRN*, "Serbian right-winger clashes with minister outside parliament," 8 May. Available at: <https://balkaninsight.com/2020/05/08/serbian-right-winger-clashes-with-minister-outside-parliament/>; *BIRN*, "Serbian MPs vow to continue rival hunger strikes," 11 May. Available at: <https://balkaninsight.com/2020/05/11/serbian-mps-vow-to-continue-rival-hunger-strikes/>; *NI*, "Incidents at the Parliament Door: *Dveri* Protest, Assaults on Ministers and MPs," 8 May. Available in Serbian at: <http://rs.n1info.com/Vesti/a597243/Protest-Dveri-ispred-ula-za-u-Skupstinu.html>.

66 *Danas*, "Police and gendarmes fail to react to SNS slap," 13 May. Available in Serbian at: <https://www.danas.rs/drustvo/policija-i-zandarmerija-nisu-reagovali-na-udarac-od-naprednjaka/>.

67 Available in Serbian at: <https://www.rik.parlament.gov.rs/tekst/8230/broj-biraca.php>.

68 Available in Serbian at: <https://www.rik.parlament.gov.rs/tekst/1937/izborne-liste.php>.

69 Prvoslav S. Plavšić, *Children and the Media: Rulebook against Abuse of Children for Media Purposes, Code on Protection of Children from Political Abuse*, Friends of Children of Serbia, 2019, p. 66. Available in Serbian at: <http://zadecu.org/wp-content/uploads/2019/09/Deca-i-mediji.pdf>.

to abuse of children and youths for political purposes even through media and reports supporting their policies and actions. They shall promote media legislation and self-regulation precluding the abuse of children for any purpose in their programs and activities.”

With the exception of the Socialist Party of Serbia (SPS) – United Serbia coalition, the other contestants won little support. Albanian, Bosniak and Hungarian minority parties also fielded their candidates, as did the Russian Party.

The question of which turnout could be considered a good one dominated public discourse given that some opposition parties opted for boycotting the elections. The Alliance for Serbia, the Don't Let Belgrade D(r)own Initiative, the Movement of Free Citizens (PSG), Enough is Enough et al. decided against running in early 2020. PSG and the *Dveri* movement, however, decided to run after the state of emergency was lifted.⁷⁰ The Mayors of Šabac and Paraćin, Nebojša Zelenović and Saša Paunović, were advocating the third option – boycott of the parliamentary elections but not of the local elections; they argued that elections in these cities could be held in a democratic atmosphere and that they should not give them up to SNS without a fight.

On 5 July 2020, the REC published the final results of the elections⁷¹ held on 21 June and of the repeat elections held on 1 July 2020.⁷² CRTA and the Centre for Free Elections and Democracy (CeSID) decided against monitoring the repeat elections because of the hike in coronavirus cases. According to the REC's data, 3,221,909 (or around 49%) of the voters went to the polls. With the exception of the minority parties, to which the 3% threshold does not apply, only the following parties won enough votes and seats in the parliament: SNS (60.65%-188 seats), SPS-United Serbia coalition (10.38% – 32 seats) and Aleksandar Šapić's Victory for Serbia (3.83%-11 seats). The following minority parties won seats in the National Assembly: Alliance of Vojvodina Hungarians (2.23%-9 seats), Straight Ahead (1% – 4 seats), the Albanian Democratic Alternative – United Valley (0.82%-3 seats) and the Party of Democratic Action of Sandžak (0.77% – 3 seats). The 49% turnout, estimated by CRTA on election night and ultimately confirmed by REC, was much lower than at the 2016 parliamentary elections, when 56.7% of the voters cast their ballots.⁷³

CRTA assessed that the turnout was increased by between four and five percent through undue pressures, incidents and irregularities, which occurred at

70 *Blic*, “Payle Grbović, member of PSG Presidency: Young people should decide what kind of a country they want to live in,” 10 May. Available in Serbian at: <https://www.blic.rs/vesti/politika/pavle-grbovic-clan-predsednistva-psg-mladi-treba-da-odluce-u-kakvoj-zemlji-zele-da-ykepqj3>.

71 REC press release of 5 July 2020. Available in Serbian at: <https://www.rik.parlament.gov.rs/vest/9434/saopstenje-za-javnost-.php>.

72 The repeat parliamentary elections were held at 234 polling stations. The REC Ruling of 26 June 2020 ordering them is available in Serbian at: <https://www.rik.parlament.gov.rs/tekst/9231/ponavljanje-glasanja-1-jula-2020-godine.php>.

73 CRTA, “Voter Turnout in Parliamentary Elections Lower Than in 2016,” 21 June. Available at: <https://crt.rs/en/voter-turnout-in-parliamentary-elections-lower-than-in-2016/>.

between 8 and 10 percent of the polling stations. The number of irregularities at these elections doubled compared with those registered during the 2016 and 2017 elections.⁷⁴ A number of irregularities registered during election-day at polling stations and in front of them, upped the turnout; they included the so-called Bulgarian train⁷⁵ in Zrenjanin and Požarevac, prompting CRTA to file criminal complaints.⁷⁶ Secrecy of voting was violated and pressures were brought to bear both on the voters and on the election observers.

CRTA observers inside the polling stations, in front of the polls and at households of voters who registered to vote outside of polling stations identified the following breaches: breaches of secrecy of voting, registration of voters in parallel voter registers, pressures on voters, vote buying, letting people vote before identifying them first or using the UV lamp, as well as so-called carousel voting.⁷⁷ On election-day, many citizens were phoned by SNS activists, who asked them whether they had voted and, if not, whether they would. The REC dismissed 108 complaints by citizens, 34 complaints filed by the CRTA observers and 85 complaints by the Movement for the Restauration of the Kingdom of Serbia.⁷⁸

Several cases of grave violations of the law and absurd situations drew public attention in the aftermath of the elections. Footage of an unidentified woman at polling station 49 in Ub standing behind the voting screen and showing voters, who had obviously come in a group, who to vote for, was posted on the social media. At one point, she even took the ballots after the voters circled the number they were told to, folded them and threw them into the ballot box. All this was happening in front of the election committee members, who ignored the scene, going about their usual duties of tracking down the names of the voters in the voters' registers before handing them the ballots. The footage prompted CRTA to file a criminal complaint against the unidentified woman for violating the confidentiality of voting and voting-related bribery.⁷⁹ The Association for the Protection of Constitutionality and Legality said that it had information that the voters were residents of a Roma settlement, who each received 1,000 RSD and a package of assistance. It called on the

⁷⁴ *Ibid.*

⁷⁵ See more: https://en.wikipedia.org/wiki/Bulgarian_train.

⁷⁶ CRTA, "Nedeljkov and Pavlović: Minimal standards fulfilled, democracy endangered," 22 June, available at: <https://crt.rs/en/minimal-standards-fulfilled-democracy-endangered>; *Danas*, "CeSID: Lots of Irregularities at Polls During the Last Two Hours," 21 June. Available in Serbian at: <https://www.danas.rs/politika/izbori-2020/cesid-u-poslednja-dva-sata-mnogo-nepravilnosti-na-birackim-mestima/>.

⁷⁷ CRTA, "Nedeljkov and Pavlović: Minimal standards fulfilled, democracy endangered," 22 June. Available at: <https://crt.rs/en/minimal-standards-fulfilled-democracy-endangered>.

⁷⁸ *NI*, "REC rejects all complaints about Serbia's Elections," 24 June. Available at: <http://rs.n1info.com/English/NEWS/a613250/RIK-rejects-all-complaints-about-Serbia-s-elections-ENEMO-Race-imperilled.html>.

⁷⁹ *NI*, "CRTA files criminal complaint over voting 'assistance' in Ub," 26 June. Available in Serbian at: <http://rs.n1info.com/Izbori-2020/a613631/CRTA-podnela-krivicnu-prijavu-zbog-zajednickog-glasanja-u-Ubu.html>.

prosecutors to investigate these claims and gross violations of election rules seen on the footage.⁸⁰ Complaints were also filed because of the same handwriting on the minutes of various election committees in Niš and Požarevac.⁸¹

Čajetina, Ražanj, Surdulica, Beočin, Topola and Svilajnac were the only municipalities in which the Serbian Progressive Party did not win the local elections.⁸² In Belgrade, the SNS lost in the municipality of New Belgrade, to Aleksandar Šapić. The Šabac City Election Commission annulled the elections at all 100 polling stations due to irregularities.⁸³ The Šabac Mayor said that his movement had filed 27 criminal complaints against the chairs of the 26 election committees, all of them members of the SNS, because voters had cast their ballots outside the polling stations, and 42 complaints over irregularities at polling stations, including voting by people who did not show their IDs to the election committees, keeping of parallel voters' registers, group voting, et al.⁸⁴ The SNS City Committee appealed the decision with the Novi Sad Administrative Court, which upheld the appeal partially and ruled that elections be repeated at 27 polling stations.⁸⁵

However, due to the emergency situation declared in this city because of the rise in COVID-19 infections, the City Election Commission decided that the repeat elections would be held seven days after the emergency situation was abolished.⁸⁶ They were held on 5 September and repeated on 3 October at three polling stations where the votes had been annulled. The final results brought the SNS ticket 37 seats in the local parliament while the ticket of the former Mayor Nebojša Zelenović won 22 seats.⁸⁷ SNS won the majority of votes also in Paraćin, where the elections were repeated at three polling stations.

80 NI, "APCL: People on footage voted for 1,000 dinars and a package," 25 June. Available in Serbian at: <http://rs.n1info.com/Izbori-2020/a613538/UZUZ-Ljudi-sa-snimka-glasali-za-hiljadu-dinara-i-paket.html>.

81 *Južne vesti*, "Criminal report filed with Niš Prosecutors over same handwriting on Election Committees' minutes," 2 July; *Danas*, "Administrative Court to establish final results in Požarevac," 7 July. Available in Serbian at: <https://www.juznevesti.com/Politika/Krivicna-prijava-DJB-u-Nisu-zbog-zapisnika-sa-istim-rukopisom-iz-GIK-a-kazu-da-nema-nepravilnosti.sr.html> and <https://www.danas.rs/politika/konacne-rezultate-izbora-u-pozarevcu-utvrdice-upravni-sud/>.

82 NI, "Local elections: municipalities in which SNS did not win," 22 June. Available in Serbian at: <http://rs.n1info.com/Izbori-2020/a612544/Lokalni-izbori-Opstine-u-kojima-nije-pobedio-SNS.html>.

83 NI, "Zelenović on elections: SNS entitled to complain, we have to hold on to Šabac," 25 June. Available in Serbian at: <http://rs.n1info.com/Izbori-2020/a613384/Zelenovic-o-izborima-SNS-ima-pravo-zalbe-moramo-da-sacuvamo-Sabac.html>.

84 *Ibid.*

85 NI, "Court partly upholds SNS complaint, repeat elections at 27 stations in Šabac," 29 June. Available in Serbian at: <http://rs.n1info.com/Izbori-2020/a614588/Sud-delimicno-usvojio-zalbu-SNS-izbori-u-Sapcu-ponavljaju-se-na-27-mesta.html>.

86 NI, "Partial repeat of elections in Šabac after emergency situation," 11 July. Available in Serbian at: <http://rs.n1info.com/Izbori-2020/a618740/Delimicno-ponavljanje-izbora-u-Sapcu.html>.

87 NI, "Local election commission confirms final results of voting in Šabac," 17 October. Available at: <https://rs.n1info.com/english/news/a661861-local-election-commission-confirms-final-results-of-voting-in-sabac/>.

Questions were again raised of the now established practice of holding elections at various levels on the same day given that senior state officials, who have no powers at the local level, usually head the tickets and wage the campaigns. Simultaneous local and parliamentary elections benefit large and/or ruling parties, since they allow them to pool their campaigning resources and airtime, as opposed to their local adversaries. Rather than focusing on the local parties' programmes addressing specific local community issues and interests, the voters are confused by campaigns waged by senior state officials discussing national policy issues.

The turnout was lower in Belgrade than in the rest of Serbia – it stood at around 38%.⁸⁸

Just one day after the elections, the media turned their attention back to the COVID-19 epidemic and claims that it has again acquired critical proportions. The number of COVID-19 cases suddenly rose but public events, such as soccer games, concerts, et al, were not cancelled. The following questions arise in the light of the explosion of the epidemic in late June, although the ruling party was repeatedly declaring “victory” over it from 6 May, when it decided to lift the state of emergency, to election-day and abolished most of the measures: Where conditions for holding elections fulfilled? How much did voting in cramped polling stations contribute to the surge of the virus? Were citizens intentionally deceived about the actual threats to their health at the time?

1.2. Eighty-Day Long Constitution of the Parliament and a Short-Term Government

The 250 seats in the National Assembly went to the following parties and coalitions that won enough votes in the parliamentary elections: SNS – 188; the SPS-United Serbia (JS)Coalition – 32; Aleksandra Šapić's SPAS – 11, Alliance of Vojvodina Hungarians – 9; Straight Ahead – 4; Albanian Democratic Alternative – United Valley – 3; and Sandžak Party of Democratic Action (SDA) – 3. Nearly two months passed from the constitution of the parliament and the election of the Assembly Speaker and his six Deputy, an unusually long period in the opinion of experts.⁸⁹

Although it was clear that the SNS would have no trouble mustering a majority ever since the final elections were declared on 5 July 2020, since its ticket “Aleksandar Vučić – For Our Children” won two-thirds of the seats, the process of constituting the parliament started when the statutory deadline expired, on 3 August. However, the constituent session that began that day by the formal confirmation of the deputies' mandates and their swearing-in, was adjourned without explanation

88 REC, Parliamentary Election Results by Municipalities, available in Serbian at: <https://www.rik.parlament.gov.rs/tekst/9386/ukupni-rezultati-izbora-za-narodne-poslanike-narodne-skupstine-2020-godine.php>.

89 BBC in Serbian, “Simple Guide: Who will form the Government in Serbia, how and when,” 19 October. Available in Serbian at: <https://www.bbc.com/srbian/lat/srbija-54559238>.

for three months. It resumed just before the 90-day deadline for the election of the Government was about to expire. During this three-month period, the parliament was precluded from working because its committees, without which the parliament cannot perform any of its legislative, oversight or election duties, had not been formed. Furthermore, the Assembly Speaker and his deputies had not been elected. The constituent session continued on 22 October – 80 days after it opened – and ended on 24 October 2020.

No public explanation was provided for such a long delay in the constitution of the parliament. The parliament's dormancy, for which there was no rational justification, precluded not only its legislative activities but its oversight of the executive as well, at a time when numerous developments in the country called for intensive institutional scrutiny of the responsibility of a number of actors and various issues – from excessive use of force by the police during the July protests and COVID-19 management to EU accession.

The Serbian President named Ana Brnabić the Prime Minister Designate on 5 October, 106 days after the elections. Asked what took him so long, President Aleksandar Vučić said that he had been very busy, and listed the senior foreign officials he met during that period.⁹⁰ After the SNS Presidency's meeting on 20 October, Vučić said that the new Government would be a coalition of SNS, SPS-JS and Šapić's SPAS. He said the five main goals of the future Government, which he qualified as reformist, had been identified. However, most concern was caused by his statement that the new Government, which had not even been formed yet, would rule only until April 2022 and that early parliamentary elections would be scheduled for the same day as the presidential elections.⁹¹

The Government, formed on 28 October,⁹² includes 21 ministries, ten of which are headed by women. The gender balance is no guarantee that the Government will work well or contribute to the improvement of the status of women in society if it satisfies just the form but not the substance, especially given the choice of ministers⁹³ and the nature of the Serbian political order, in which the institutions and democratic processes have been yanked out of the legal framework. Notwith-

90 *BBC in Serbian*, "Vučić says Ana Brnabić Prime Minister Designate, more women in Serbian Government, 5 October. Available in Serbian at: <https://www.bbc.com/serbian/lat/srbija-54423449>.

91 *Beta*, "Vučić: New government's term in office limited, parliamentary elections to be held by 3 April 2022 at the latest," 20 October. Available in Serbian at: <https://beta.rs/vesti/politika-vesti-srbija/135419-vucic-nova-vlada-ogranicenog-trajanja-parlamentarni-izbori-najkasnije-3-aprila-2022-godine>. The 2022 parliamentary elections will be the third early elections in the eight years SNS has been in power, and the ninth early parliamentary elections since the multi-party system was introduced. SNS came to power in 2012 and early parliamentary elections were held in 2014 and 2016.

92 See: <https://www.srbija.gov.rs/sastav/en/10/members-of-government.php>.

93 The choice of ministers indicates that many high-ranking SNS officials were given seats in the cabinet at the last moment even if temporarily, despite their total lack of expertise or experience in the affairs they are running.

standing, Vučić was sure to score a few points in the West with this move.⁹⁴ The new Government can be qualified as a government of continuity with its predecessor since many of the new ministers served in the prior Government and there is no doubt that the Prime Minister will continue deferring to the President regardless of their powers under the law.

Some of the reasons why a Government enjoying almost 100% support in parliament will rule only until the spring of 2022 could be that parties/coalitions in power benefit from the simultaneous holding of local/presidential and parliamentary elections, especially when their popularity is based on that of their leaders, SNS being the prime example as well as the party officials' potential to blackmail the temporary ministers.

1.2.1. Activities of the New National Assembly

After a months-long delay, the parliament in November at long last elected the last member of the REM Council and the Equality Commissioner. The National Assembly, however, failed to elect the members of the Anti-Corruption Agency Council by the end of the year, although the deadline for their election expired back in August, before the new Anti-Corruption Act (requiring the restructuring of the former Anti-Corruption Agency) entered into force.

The parliament also showed what it thought of independent institutions and their reports during the first month of work. It initiated and completed overnight the election of the Equality Commissioner in a non-transparent procedure and without consulting experts.⁹⁵

In early December, the Assembly reviewed the annual reports of the Anti-Corruption Agency, the Fiscal Council and the Republican Commission for the Protection of Rights in Public Procurement Procedures.⁹⁶ Yet again, the MPs did not engage in meaningful debates about the reports or, consequently, extend the support the parliament should be giving the efforts of the independent institutions. The conclusions on the reports amount to mere fulfilment of the procedure, rather than an effective instrument by which the parliament imposes upon the Government the obligation to fulfil the independent institutions' recommendations in various areas and oversees the process. The MPs displayed an identical attitude when they reviewed the annual reports filed by the Protector of Citizens, the Commissioner, the Equality Commissioner and the State Audit Institution in late December.⁹⁷

94 *Deutsche Welle*, "New Serbian Government: politics more important than expertise," 28 October. Available in Serbian at: <https://www.dw.com/sr/nova-vlada-srbije-politika-va%C5%BEnija-od-struke/a-55417987>.

95 More in section IV.5.2.

96 *NI*, "Milićević criticises Fiscal Council, Petrović reiterating – budget is not transparent," 1 December. Available in Serbian at: <https://rs.n1info.com/vesti/a678466-poslanici-o-izvestajima-nezavisnih-tela/>.

97 *021.rs*, "MPs don't even want to listen: Martinović shouted out to Protector of Citizens that he was 'reading a report as if he were at a Communist Party congress,'" 27 December. Available

The Serbian Assembly finally adopted the Code of Conduct of MPs in an urgent procedure, six years after the last draft was developed.⁹⁸ The text that the MPs voted on does not include key provisions that would facilitate the actual application of the Code and change the conduct of the MPs; these provisions existed in the prior version of the Code that was in compliance with international standards. After experts called for a halt in the urgent adoption of the Code and a public debate about it before it was voted in, a compromise was reached – an MP of the ruling coalition submitted eight amendments. The amendments, for the most part, did not change the essence of the impugned provisions, except that they again allowed members of the public, and not just the MPs, to report violations of the Code. Other controversial provisions, such as charging the Administrative Committee with ensuring the application of the Code and lighter penalties, remained in the adopted Code.⁹⁹

In December, the parliamentary European Integration Committee reviewed the European Commission's Serbia 2020 Report and adopted draft conclusions on it, which were submitted to the parliament for adoption for the first time.¹⁰⁰ The importance of the new practice was emphasised by the Assembly Speaker in his introductory address to the Committee; he said that the President, Prime Minister and relevant ministers supported the initiative. After the Head of the EU Delegation presented the main findings of the EC Report, the Committee drafted the conclusions welcoming the positive assessments in the Report, as well as Serbian Government's accession efforts and confirming that the National Assembly would continue its active involvement in ensuring the continuation of inter-party dialogue on elections. The conclusions made no mention of the numerous problems in the rule of law and the work of the parliament noted in the EC Report. The National Assembly adopted the conclusions on 29 December 2020.¹⁰¹

The MPs of the ruling majority spent most of the time set aside for debates ranting and railing against the non-parliamentary opposition. Their public discourse often had the attributes of hate speech, directed not only at political actors, but also at some media outlets, well-known cultural figures, and CSOs critical of the government. The MPs used expressions such as "traitor", "foreign mercenary", "thief" and "tycoon" during the parliamentary debates, calling on their targets to leave the country and assessing their patriotism. Not once did the chairs of the sessions stop or condemn such speech.

in Serbian at: <https://www.021.rs/story/Info/Srbija/261978/Poslanike-mrzi-i-da-slusaju-Martinov-ic-dobacivao-zastitniku-gradjana-da-cita-referat-kao-da-je-na-kongresu-komunista.html>.

98 *Sl. glasnik RS*, 156/20.

99 *Radio Free Europe*, "Code of verbal order in the Serbian Assembly," 24 December. Available in Serbian at: <https://www.slobodnaevropa.org/a/31017259.html>.

100 The report on the European Integration Committee's session is available at: http://www.parlament.gov.rs/Fourth_Sitting_of_the_European_Integration_Committee.39879.537.html.

101 *NI*, "SNS MPs again talk about the opposition and Vučić," 29 December. Available in Serbian at: <https://rs.n1info.com/vesti/poslanici-sns-opet-o-opoziciji-i-vucicu/>.

2. Media Freedoms in Serbia

2.1. Assessments of the Media Situation

The media situation in Serbia deteriorated further in 2020, a trend present since 2012. The number of attacks and pressures on reporters continued increasing, as the authorities stepped up their rhetoric against impartial outlets. The authorities continued funding pro-government media although most complaints of violations of the Press Code of Conduct, the law and ethical principles were filed against them.

In its Non-paper on the state of play regarding chapters 23 and 24 (justice and human rights), which was published on 11 June 2020, the European Commission said that the media situation needed to improve. It noted that threats and violence against journalists remained a concern and that the overall environment for the exercise of freedom of expression without hindrance needed to be further strengthened. The EC went on to say that “[A]n unbalanced representation by public service broadcasters of the plurality of political views was observed” in the first half of the year. The Non-paper also said that the independence of the Electronic Media Regulator (REM) needed to be strengthened to enable it to efficiently safeguard media pluralism. The EC said that political and economic influence over the media continued to be a source of concern.¹⁰²

In their letter to Enlargement Commissioner Olivér Várhelyi, a group of European Parliament MEPs, including Tanja Fajon, who chairs the EP Delegation to EU-Serbia Stabilisation and Association Parliamentary Committee, said that the Serbian Government wanted full control of the press. Fajon said that “the EU was particularly concerned by the hate speech and fake news in Serbia, especially when coming from the ruling party and the key media.”¹⁰³

In its Serbia 2020 Report, the European Commission said that no progress was made yet on the ground to improve the overall environment for freedom of expression, that cases of threats, intimidation and violence against journalists were still a source of serious concern and that transparency of media ownership and of allocation of public funds, especially at local level, was yet to be established. It also said that editorial environment, which favoured ‘tabloidism’ was not conducive to improving journalistic standards.¹⁰⁴

102 Danas, “New European Commission Report: Violence against Journalists Continues,” 15 June. Available in Serbian at: <https://www.danas.rs/drustvo/novi-izvestaj-evropske-komisije-nastavlja-se-nasilje-nad-novinarima/>.

103 JAS, “ENEX Conference on Media Freedoms: EU Not Seeing Expected Headway in Serbia,” 7 March. Available in Serbian at: <http://www.uns.org.rs/sr/desk/vesti-iz-medija/94953/konferencija-enex-o-slobodi-medija-eu-ne-vidi-ocekivani-pomak-u-srbiji.html>.

104 *Serbia 2020 Report*, pp. 5 and 36, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf.

The Varieties of Democracy (V-Dem) Institute of the University of Gothenburg ranked Serbia among the countries that became an “electoral autocracy” over the past decade. Serbia was the most poorly rated Western Balkan country, ranking 139th on a list of 179 countries. Serbia dropped from 0.53 in 2009 to 0.25 in 2019 on the Institute’s Liberal Democracy Index.¹⁰⁵

Similar assessments were made by numerous international organisations monitoring the media situation and freedom of expression in the world. Serbia slid three places and now ranks 93rd on the 2020 World Press Freedom Index of the Reporters without Borders. This organisation qualified the situation in Serbia as “worrying” and concluded that “Serbia has become a country where it is often dangerous to be a journalist and where fake news is gaining in visibility and popularity at an alarming rate.”¹⁰⁶

Serbia dropped 31 places on the World Press Freedom Index since 2016. The authorities’ attitude towards these findings is, however, surprising: the Ministry of Culture and Information State Secretary Aleksandar Gajović qualified some of the arguments in the report as “cynical”. The Ministry should thoroughly review the reports of relevant international organisations, the findings of which are monitored and used by many international institutions, and make serious efforts to improve the situation in the media. Instead, the State Secretary said that this report and the Freedom House 2020 Report were politicised and that “Reporters without Borders are unfair or jealous of this Government’s results,” and that it was “unfair to mention media freedoms now, during this huge fight (against COVID-19), because Serbia is in a state of emergency, not in an ordinary state.”¹⁰⁷

Sweden-based Civil Rights Defenders (CRD) came to a similar conclusion about the media situation in Serbia. In its Internet Freedoms in the Western Balkan Region Report, it said that technical attacks against online media outlets in Serbia were rather frequent and that violations included: distributed denial of service (DDoS) attacks, unauthorised access, unauthorised alterations of content, malware injection, etc., and that the targets were often media organisations critical of the Government’s actions.¹⁰⁸

105 *Beta*, “V-Dem Institute: Democratic Traits Drastically Decline in Serbia,” 29 September. Available at: <https://betabriefing.com/archive/news/12299-v-dem-institute-democratic-traits-drastically-decline-in-serbia>.

106 *Danas*, “Serbia Drops to 93rd Place on Reporters without Borders Index,” 21 April. Available in Serbian at: <https://www.danas.rs/drustvo/srbija-pala-na-93-mesto-na-rang-listi-reportera-bez-granica/>. The Reporters without Borders report is available at: <https://rsf.org/en/serbia>.

107 *Danas*, “Increasing Pressures on Journalists in Serbia,” 22 April. Available in Serbian at: <https://www.danas.rs/drustvo/u-srbiji-sve-veci-pritisci-na-novinare/>.

108 IJAS, “CRD Research: Western Balkan Governments Undermining the Freedom of Expression,” 12 April. Available in Serbian at: <http://www.nuns.rs/info/news/47765/istrazivanje-crd-vlade-zapadnog-balkana-ugrozavaju-pravo-na-slobodu-izrazavanja.html>. The CRD Report is available at: <https://crd.org/2020/04/09/internet-freedoms-in-the-western-balkan-region-report-released/>.

The Serbian authorities dismissed such allegations, claiming that the media situation was now better than in 2011 and that political motives and pressures were behind the foreign reports. For instance, during a panel debate on media involvement in the election process organised by the Norwegian Embassy in March 2020, Serbian Prime Minister Ana Brnabić said that there were media in Serbia that were critical of the government; she cited the following positive steps: the results achieved by the Commission charged with investigating assassinations of journalists, the establishment of the parliamentary committee¹⁰⁹ tasked with monitoring media conduct during the election campaign, the election of five REM members and the adoption of the Media Strategy.¹¹⁰ However, the courts did not deliver judgments in journalist assassination cases by the end of the year, while trials of cases in which journalists were victims did not prove efficient.¹¹¹ The Parliamentary Committee did not react to numerous reports of electoral rights violations during the June elections.¹¹² Election of REM members was also criticised.¹¹³

On 30 January 2020, the Serbian Government adopted the 2020–2025 Media Strategy¹¹⁴ and the 2020–2022 Action Plan for its implementation on 4 December.¹¹⁵

2.2. State of Emergency and the Role of the Media

The continuous and growing problems between the government and the media loyal to it, on the one hand, and the outlets critical of the authorities, on the other, escalated during the state of emergency proclaimed in response to the COVID-19 epidemic, although one would have expected them to intensively work in concert and provide prompt and accurate information in the service of public interest.

During the state of emergency, the Serbian Government enacted a number of decrees imposing various bans and measures. Some of these decisions directly violated the right to be informed. Pressures on media especially increased when the Government on 28 March 2020 adopted a Conclusion allowing only the Prime Minister, the Crisis Headquarters and persons designated by it to disclose information

109 On 23 December 2019, the MPs elected the members of the Oversight Committee tasked with general monitoring of the conduct of political parties, candidates and media during election campaigns: Branko Rakić, Miodrag Savović, Ivona Pantelić, Jelena Milenković Orlić, Aleksandar Stamatović, Svetislav Gončić, Branislav Klanšček, Dragan Varagić and Nikola Žutić.

110 *Danas*, “Brnabić: Situation in Media Better Today than in 2011,” 9 March. Available in Serbian at: <https://www.danas.rs/drustvo/brnabic-situacija-u-medijima-bolja-nego-2011/>.

111 More in III.2.5 and III.2.6.

112 More on elections in III.1.

113 More in III.2.4.

114 More on the Strategy in Chapter II.7.4.

115 *FoNet*, “Government adopts Action Plan,” 4 December. Available in Serbian at: <https://fonet.rs/politika/35886805/vlada-usvojila-akcioni-plan.html>.

about the virus; the decision was adopted in order to avoid the dissemination of fake news and public anxiety.¹¹⁶

This Conclusion caused an avalanche of protests both in Serbia and abroad and the Government soon revoked it “at the explicit request of the President”, as Prime Minister Brnabić explained.¹¹⁷ Journalists had a lot of trouble obtaining important information about the situation in the medical institutions and the number of COVID-19 cases and deaths in many Serbian cities and towns (Bečej, Valjevo, Niš, Kragujevac, Sombor, Novi Sad, Zaječar, Pančevo, Leskovac, Subotica, Vranje, et al.).

The Government probably adopted the impugned Conclusion because journalists, mostly those working in local media, were trying to obtain information from representatives of local self-governments and directors of health institutions across Serbia that were turned into COVID-19 hospitals, in order to accurately report on the number of hospitalised, infected and closed cases, rather than rely exclusively on the information provided by the members of the Crisis Headquarters.¹¹⁸

Namely, the Crisis Headquarters started holding daily press conferences in the latter half of March, at which it presented the aggregate data on the number of infected and tested people and the death toll. However, the journalists’ questions on the situation in the country and the relevant institutions usually went unanswered. The discomfort critically-minded journalists caused the Crisis Headquarters members was evident; all press questions about inadequate conduct of public officials or non-compliance with the imposed measures were qualified as political and ignored.

The Crisis Headquarters news conferences, which were carried live by all Serbian media, testified to the lack of professionalism of some journalists and absence of even minimal solidarity between reporters. Journalists of pro-government media publicly attacked their colleagues working for media not supporting the authorities, who were asking questions in order to provide accurate information to the public, accusing them of lying, treason, being foreign mercenaries, even of hoping that coronavirus would beat Serbia’s citizens. The organisers of the news conferences did not react to such outbursts at all.¹¹⁹

116 Government Conclusion 05 No. 53–2928/2020, *Sl. glasnik RS*, 48/20; *Vreme*, “State Championship in Ignominy,” 9 April. Available in Serbian at: <https://www.vreme.com/cms/view.php?id=1771911>; See more in *CINS*, “Government Attempts to Restrict Reporting on Coronavirus,” 1 April. Available at: <https://www.cins.rs/en/government-attempts-to-restrict-reporting-on-coronavirus/>.

117 Serbian Government, “Government to Withdraw Conclusion on Information in State of Emergency,” 2 April. Available at: <https://www.srbija.gov.rs/vest/en/153089/government-to-withdraw-conclusion-on-information-in-state-of-emergency.php>.

118 Questions about the actual numbers of coronavirus cases and deaths were asked as soon as the 21 June elections were over, after suspicions arose that there were other records showing much higher numbers than the ones on the official COVID-19 website.

119 *Danas*, “Regime Media Don’t Care about Situation in Serbia, They Attacked Independent Media,” 23 April. Available in Serbian at: <https://www.danas.rs/drustvo/stanje-u-srbiji-nebitno-rezimskim-medijima-napadali-nezavisne/>.

Interestingly, pro-Government analyst Nebojša Krstić called on the state to temporarily shut down Twitter, Facebook and YouTube as soon as the state of emergency was proclaimed. He explained that such a campaign, which he dubbed “pest control”, was necessary to counter organised groups “spewing venom, fake news and misinformation 24/7”.¹²⁰

On 10 April 2020, as the number of COVID-19 cases increased on a daily basis, the authorities said that journalists could no longer attend the Crisis Headquarters’ press conferences in person, that they should send their questions by e-mail and that the conferences would be covered by the public service broadcaster *RTS* and the state news agency *Tanjug* (which has continued operating although it was abolished under the media laws back in 2014).¹²¹

The authorities said that the measure was introduced to protect the health of the reporters and due to fears that some of them were infected, although a poll conducted by the Journalists’ Association of Serbia (JAS) showed that no journalists or media professionals in Belgrade had caught the virus. News agency *FoNet*¹²² decided against continuing with the absurd practice of asking its questions by e-mail; the daily *Danas*,¹²³ news agency *Beta*, the weekly *Vreme*¹²⁴ and the *Insajder* portal¹²⁵ followed suit. The authorities changed their minds on 21 April and allowed journalists of all media to attend the press conferences, again under public pressure, not because they realised that both the government and the media had to work exclusively in public interest, especially during the state of emergency.¹²⁶

The climax of the authorities’ irregularities during the state of emergency was the arrest of reporter Ana Lalić on 2 April 2020, after the Vojvodina Clinical Centre (VCC) accused her of causing public anxiety and damaging its reputation because

120 NI, “Serbian Pro-Government Expert Calls for Ban on Social Media,” 17 March. Available at: <http://rs.n1info.com/English/NEWS/a578881/Serbian-pro-government-expert-calls-for-ban-on-social-media.html>.

121 *Vreme*, “Epidemic of Targeting Journalists,” 22 April. Available in Serbian at: <https://www.vreme.com/cms/view.php?id=1776617>.

122 NI, “FoNet Will No Longer Ask the Crisis Headquarters Online Questions,” 16 April. Available in Serbian at: <http://rs.n1info.com/Vesti/a589309/FoNet-nece-vise-da-postavlja-Stabu-onlajn-pitanja-nisu-dobili-sve-odgovore.html>.

123 *Danas*, “No Questions at Regular News Conferences,” 18 April. Available in Serbian at: <https://www.danas.rs/drustvo/beta-bez-pitanja-za-redovne-konferencije-za-novinare/>.

124 *Vreme*, “Weekly Vreme will no long e-mail questions to the Crisis Headquarters,” 18 April. Available in Serbian at: <http://rs.n1info.com/Vesti/a590392/Nedeljnik-Vreme-nece-vise-slati-pitanja-mejlo-m-Kriznom-stabu.html>.

125 *Insajder*, “Why Insajder isn’t e-mailing its questions to the Crisis Headquarters: answers without questions and questions without answers,” 17 April. Available in Serbian at: <https://insajder.net/sr/sajt/stav/17956/>.

126 IJAS, “Government: Journalists may take turns attending Crisis Headquarters news conferences, every other day,” 21 April. Available in Serbian at: <http://nuns.rs/info/news/47909/vlada-od-utorka-prisustvo-novinara-konferencijama-o-epidemiji-naizmenicno-svaki-drugi-dan.html>.

she published a text *Nova.rs* portal alleging that VCC had problems with “chronic lack of basic equipment and totally chaotic working conditions during the pandemic”. The reporter said that she had tried to get a comment from the relevant VCC authorities and the Vojvodina Health Secretary, but that none of them answered her questions.¹²⁷ Lalić’s apartment was searched and the police seized her laptop and cell phone, insisting that she disclose her source of information. She was ordered into 48-hour custody.

Lalić was released in response to major pressures by the international and Serbian public and accusations of censorship.¹²⁸ President Vučić said that her arrest had been a mistake,¹²⁹ while Prime Minister Ana Brnabić described professional journalists, including Lalić, as enemies of the state and all citizens, accusing them of spreading misinformation and disseminating panic; she described media reporting in public interest as “the tycoons’ media”.¹³⁰

Several days later, the *Reuters* TV crew was allowed to visit the VCC only to find that the situation was almost idyllic. The VCC conducted an in-house investigation to find out who had leaked information to the portal. *Nova.rs* learned that the investigation had been ordered by Vojvodina Health Secretary Zoran Gojković, who denied the allegation, albeit unpersuasively.¹³¹ Oddly, the VCC did not avail itself of Article 50(4) of the Constitution allowing it to require the correction of untrue, incomplete or inaccurately imparted information resulting in a violation of its rights or interests.

Fortunately, the prosecutors dismissed the criminal report against Lalić. Some members of the Crisis Headquarters publicly admitted that there was not enough protective gear at the start,¹³² while pro-government tabloids and individuals on social networks voiced numerous grave accusations against Lalić.

127 *Danas*, “Police Come after Nova.rs Reporter because of Article on Vojvodina Clinical Centre,” 1 April. Available in Serbian at: <https://www.danas.rs/drustvo/kc-vojvodine-obavestio-polici-ju-i-tuzilastvo-o-izvestavanju-portala-nova-rs/>.

128 *Global Voices*, “Serbian Government Revokes Controversial COVID-19 Related Decree Used as Pretext to Arrest Journalists,” 7 April. Available at: <https://globalvoices.org/2020/04/07/serbian-government-revokes-controversial-covid-19-related-decree-used-as-pretext-to-arrests-journalists/>. See also the *Radio Free Europe* report, available in Serbian at: <https://www.slobodnaevropa.org/a/vlada-srbija-hapsenje-novinarka-ana-lalic-brnabic-nova/30525262.html>.

129 *NI*, “Vučić: Information Decree Was a Mistake. So Was Reporter’s Custody,” 8 April. Available in Serbian at: <http://rs.n1info.com/Vesti/a586725/Vucic-Uredba-o-informisanju-bila-greska-kao-i-drzanje-novinarke-u-pritvoru.html>.

130 *IJAS*, “Dangerous Statements by Prime Minister Brnabić,” 8 April. Available in Serbian at: <http://www.nuns.rs/info/statements/47671/nuns-opasne-izjave-premijerke-brnabic.html>.

131 *Nova.rs*, “Investigation Launched in VCC: Gojković Looking for Ana Lalić’s Sources,” 14 May. Available in Serbian at: <https://nova.rs/drustvo/pokrenuta-istraga-u-kcv-gojkovic-trazi-izvore-ane-lalic/>.

132 *Danas*, “Lalić: Authorities Admit Mistake as Public Pressures Prevailed,” 28 April. Available in Serbian at: <https://www.danas.rs/drustvo/lalic-pobeda-pritiska-javnosti-i-priznanje-greske-vlasti/>.

Freedom of expression was under threat during the state of emergency whenever the authorities invoked Article 343 of the Serbian Criminal Code incriminating dissemination of panic and disorder. Under this Article, imprisonment ranging between three months and three years and a fine await anyone who disseminates panic or seriously disrupts public law and order or frustrates or significantly impedes the enforcement of decisions of the state authorities or organisations vested with public powers by disclosing or disseminating untrue information or allegations; if the offence is committed through media or by similar means or at a public event, the offender shall be punished by imprisonment ranging between six months and five years.

The chief state prosecutor, Zagorka Dolovac, issued General Binding Instructions¹³³ ordering urgent prosecution of people suspected of violating Article 248 (non-compliance with health regulations during epidemics) and Article 343 of the Criminal Code during the state of emergency. In many cases, it was difficult to ascertain whether publication of specific information actually did cause panic.¹³⁴

2.3. State Capture of the Media

The state relinquished its ownership of media under the prior Strategy and the 2014 laws (with the exception of public media services, minority language media and media providing information to citizens in Kosovo and Metohija). The state formally withdrew from media ownership, but in the meantime opened other effective channels to control the media and support those toeing its line.

Media project co-funding has been one of the major stumbling blocks over the past few years. Co-funding of media content of public interest has become the best tool for financing “government-friendly” outlets and even for funnelling large amounts of financial aid to the ruling coalition’s cronies to buy up the remaining non-privatised media, mostly local outlets.

Co-funding has often been the only ticket to survival in the oversaturated media market. Business Register Agency data show that 2,508 outlets were registered in Serbia in November 2020; they included 937 print media, 751 Internet portals, 33s radio and 224 TV stations.¹³⁵ Many of them lacked regular sources of funding and were barely making ends meet. One of the ways to keep their heads above water was to obtain co-funding from the local or state budget.

A Journalists’ Association of Serbia (JAS) survey showed that 1.7 billion RSD, or 77 million RSD more than in 2019, were earmarked for co-funding media

133 The General Binding Instructions are available in Serbian at: <https://www.paragraf.rs/koronavirus/strucni-komentari/uputstvo-republickog-javnog-tuzilastva.html>.

134 More in Chapter II.2.

135 *NI*, “2,508 media outlets officially exist in Serbia, 751 Internet portals registered,” 19 November. Available in Serbian at: <https://rs.n1info.com/vesti/a674009-uns-u-srbiji-zvanicno-postoji-2508-medija-registrovan-751-internet-portal/>.

projects during the first nine months of 2020.¹³⁶ However, like in the previous years, publishers of tabloids *Alo*, *Kurir*, *Srpski telegraf* and *Informer* were granted nearly 26 million RSD for media project co-funding in the first five months of the year, although the Press Council's monitoring results show that they violated the Press Code of Conduct 3,903 times in the latter half of 2019 alone.¹³⁷ All these papers also topped the list of outlets that published the greatest number of fake news.¹³⁸ The commissions distributing the funds yet again turned a blind eye to the provision in the rulebook on co-funding laying down that they must take into account whether the applicants violated the law and the Press Code of Conduct in the last 12 months.

Especially concerning were reports on allocation of funding to recently privatised media the owners of which are close to the ruling party, as BCHR noted in all its annual reports since 2015. The practice unfortunately continued in 2020; at the very end of the year, the Čačak city authorities granted 20 million RSD to outlets owned by SNS supporters those toeing the party line. Most of the funding, 3.6 million RSD, was granted to *Telemark TV*, which is owned by Radojica Milosavljević.¹³⁹ He bought a number of local outlets over the past few years and co-owns the newly-established company *Tačno*, which was granted the right to use Tanjug's logo, slogan and part of its archive over the next decade.¹⁴⁰

A vivid illustration of indirect abolition of media pluralism in Serbia was the move by the *Telekom Srbija* cable operator, in which the state has a majority stake, to remove *TV N1* from its offer in January 2020, before the election campaign. The decision depriving one million people of the chance to watch this station was taken after the talks between United Media AG, which holds the distribution rights, and *Telekom Srbija* failed.¹⁴¹ United Media AG said in its press release that cable operator SBB has been prevented from installing fibre-optic cables and expanding its network for a long time, that this move discriminated against Serbian citizens, who did

136 JAS, "1.7 billion dinars for media projects, 77 million more than last year," 16 September. Available in Serbian at: <http://uns.org.rs/sr/desk/UNS-news/103821/za-medijske-projekte-17-milijardi-dinara-77-miliona-vise-nego-lane.html>.

137 JAS, "Violate the Code several thousand times and you'll get millions," 5 May. Available in Serbian at: <http://uns.org.rs/sr/desk/UNS-news/99126/prekrsi-kodeks-par-hiljada-puta-i-dobij-milione.html>.

138 See Fake news tragač, available in Serbian at: <https://fakenews.rs/>.

139 *Raskrikavanje*, "Čačak allocates 2020 funds to media seven days before the end of the year," 30 December. Available in Serbian at: <https://www.raskrikavanje.rs/page.php?id=Cacak-podelio-novac-medijima-za-2020--sedam-dana-pred-kraj-godine-768>.

140 *Raskrikavanje*, "Radoica Milosavljević's and Željko Joksimović's company gets rights to Tanjug," 25 December. Available in Serbian at: <https://www.raskrikavanje.rs/page.php?id=Firma-Radoice-Milosavljevica-i-Zeljka-Joksimovica-dobila-prava-na-Tanjug-766>.

141 *N1*, "Some million people cannot watch *N1* after state-owned operators remove the channel from their offer," 24 January. Available at: <http://rs.n1info.com/English/NEWS/a563590/Some-million-people-cannot-watch-N1-after-state-owned-operators-remove-the-channel-from-their-offer.html>.

not have the possibility of freely choosing their cable operators, and that the talks were simulated and aimed at torpedoing a deal.¹⁴²

The incident that occurred in Surdulica in December could also be interpreted as pressure against independent media. *TV N1*'s sound was muted in that town during its broadcast of a documentary on lockdown, whereas no other channels experienced any difficulties. The cable TV operator said that a technical malfunction was at issue. "Naša kablovska" subscribers were later told that they could be left without channels broadcast by SBB in 2021.¹⁴³

2.4. *Electronic Media Regulatory Authority (REM) – Major Problem on Serbia's Media Stage*

Five members of the REM Council were elected after the talks between MEPs and the Serbian authorities in late 2019. However, the ruling political structures continued influencing the work of this body.

REM issued a recommendation in March relieving commercial radio and TV stations of the obligation to comply with binding rules on election campaign reporting and itself of the obligation to supervise the operations of private broadcasters during the election campaign period.¹⁴⁴ Pro-government private media drastically violated their legal obligation on equitable presentation of candidates during the election campaign.¹⁴⁵

In May 2020, REM first upheld and then dismissed the request to launch a procedure against TV Pink owner, who advertised blood ozonation in the treatment of COVID-19 during a live show, which was qualified as quackery by medical experts. One REM Council member explained that "ozonation is not in the treatment protocol in Serbia but is not prohibited either."¹⁴⁶

REM was the most diligent in initiating misdemeanour proceedings against violators of the Advertising Act. This activity definitely accounted for most of its

142 *N1*, "United Group: Failed negotiations with Telekom increase media darkness," 20 January. Available at: <http://rs.n1info.com/English/NEWS/a562100/UNITED-GROUP-Failed-negotiations-with-Telekom-increase-media-darkness.html>.

143 *Južne vesti*, "First sound disappeared during the broadcast of 'Locked Down,' documentary, *N1* may disappear from Surdulica cable next year," 25 December. Available in Serbian at: <https://www.juznevesti.com/Drushtvo/Najpre-ton-tokom-dokumentarca-Zakljucani-od-naredne-godine-mozda-nestane-i-N1-na-surdulickoj-kablovskoj.sr.html>.

144 More on REM's work in section III.I.

145 *Cenzolovka*, "REM has not created conditions for fair media election campaign reporting," 4 March. Available in Serbian at: <https://www.cenzolovka.rs/drzava-i-mediji/rem-nije-stvorio-uslove-za-fer-izvestavanje-medija-tokom-predizborne-kampanje/>.

146 JAS, "REM Council: Pink will not be punished for 'ozonation,'" 21 May. Available in Serbian at: <http://www.uns.org.rs/sr/desk/UNS-news/99012/savet-rem-a-nema-kazne-za-pink-zbog-ozoniranja.html>.

work. However, the penalties are clearly inadequate given that the maximum fines equal the price of one minute of advertising. REM filed motions for initiating misdemeanour proceedings against *Hepi*, *Pink*, *Prva* and *B92* TV stations because they violated the Advertising Act over 2,000 times during the first quarter of 2020 alone. *TV Pink* and *TV Hepi* each committed over 800 violations.¹⁴⁷ REM also prohibited *TV Hepi* from broadcasting its show *Good Land* for two weeks, because it compared insemination of cows with infertility treatments of women.¹⁴⁸ It also banned the broadcast of *TV Prva*'s morning show for one day for indirectly revealing the identity of a minor.¹⁴⁹ Altogether, REM issued only two reprimands, six warnings and three temporary bans on show broadcasts in the first ten months of the year.¹⁵⁰

REM failed to adopt the Rulebook on Broadcasting of Forced-Environment Shows, that would have limited broadcasts of reality shows to nighttime. Some REM Council members were of the opinion that it would amount to a form of censorship.¹⁵¹ This decision is particularly concerning given that REM has issued its own instructions to broadcasters, under which shows that may harm children (containing violence and pornography) may be broadcast only from 10 pm to 6 am. REM also found no violations of the rulebook or the law by singer Aca Lukas who hurled insults against *TV NI* reporter Žaklina Tatalović on *TV Pink*; it explained that insults did not refer to her personal features, although they were sexist and he commented on her physical appearance.¹⁵²

Two REM Council members (Olivera Zekić and Aleksandra Janković) were re-elected in late December. Olivera Zekić, infamous for her unreserved defence of the authorities, was elected Chair of the Council. Experts qualified her election as a step forward in strengthening the government's control of this formally independent body. Her elections was questioned during the session by Slobodan Cvijić, an REM Council member elected in February 2020, who resigned claiming the Council had violated the democratic decision-making procedure.¹⁵³

147 *Danas*, "Nearly 1,700 violations by *Pink* and *Hepi* in three months," 23 October. Available in Serbian at: <https://www.danas.rs/drustvo/vladavina-prava/na-pinku-i-hepiju-skoro-1-700-prekrsaja-za-tri-meseca/>.

148 *Danas*, "REM issues 15-day ban on broadcast of *Hepi*'s agri show for insulting women," 16 September. Available in Serbian at: <https://www.danas.rs/drustvo/uns-rem-na-15-dana-zabrano-prikazivanje-poljoprivredne-emisije-hepi-zbog-vredjanja-zena/>.

149 *Nova.rs*, "REM issues 24-hour ban on broadcast of *Prva TV*'s morning show," 22 September. Available in Serbian at: <https://nova.rs/zabava/rem-zabrano-jutarnji-program-na-prva-tv/>.

150 *Danas*, "Penalties for TV stations low, breaking the law pays off," 7 October. Available in Serbian at: <https://www.danas.rs/drustvo/kazne-za-televizije-male-vise-se-isplati-krsiti-zakon/>.

151 *Danas*, "Proposal to broadcast reality shows only at night rejected," 2 November. Available in Serbian at: <https://www.danas.rs/drustvo/odbijen-predlog-da-se-rijaliti-emituje-samo-nocu/>.

152 *Cenzolovka*, "Cvejić and Popović: Brutality trivialised by REM's conclusion that insults against reporter Tatalović are not against the law," 19 November. Available in Serbian at: <https://www.cenzolovka.rs/etika/cvejic-i-popovic-sluzba-rem-a-zakljuckom-da-nije-povredjen-zakon-vredjanjem-novinarke-tatalovic-bagatelizuje-brutalnost/>.

153 *Danas*, "Olivera Zekić elected elsewhere?" 23 December. Available in Serbian at: <https://www.danas.rs/drustvo/olivera-zekic-izabrana-na-nekom-drugom-mestu/>.

2.5. Journalists and Media Targeted

The increase in the number of incidents against reporters and media in the 2020, corroborated by the data of the Independent Journalists' Association of Serbia (IJAS), was particularly concerning. Safety of journalists was threatened 186 times during the reporting period; 32 of these assaults were physical.¹⁵⁴ The number of such attacks increased over 2019, when a total of 119 attacks and pressures on journalists were registered. Notwithstanding proof of the rise in the number of physical assaults on journalists, chief state prosecutor Zagorka Dolovac said in November that prosecutors' records showed a "substantial decline in the number of physical assaults and threats against journalists".¹⁵⁵ Just a month later, she issued General Binding Instructions ordering prosecutors to act urgently (within 48 hours) in all criminal cases involving journalists.¹⁵⁶

Assaults on reporters intensified in July, during the public protests in Belgrade, Novi Sad and Niš. JAS data showed that 28 reporters covering the protests were physically or verbally assaulted in the 7–11 July period; 14 of them sustained physical injuries, six of them so grave they had to seek urgent medical assistance.¹⁵⁷ Although clearly bearing clear press IDs, the injured journalists, cameramen and photo reporters were attacked by the police and the protesters, who were throwing rocks and other solid objects at them; they also sustained blows in the head and on their bodies with solid objects from close vicinity. Most attacks against journalists during the July protests were still in the investigation stage. Some cases have not even been processed yet, as indicated in the report the police forwarded to the Council of Europe Platform for the Protection of Journalism and Safety of Journalists.¹⁵⁸ According to available data, only one assailant on journalists has been prosecuted so far; he pleaded guilty and was sentenced to one-year home imprisonment.¹⁵⁹

154 IJAS' 1 April-26 December Operational Report, p. 8. Available in Serbian at: <http://nuns.rs/about-nuns/docs/parlament-reports.html>.

155 *Safejournalist.net*, "Zagorka Dolovac: Number of physical assaults on journalists on the decline," 16 November. Available in Serbian at: <https://safejournalists.net/zagorka-dolovac-opada-broj-fizickih-napada-na-novinare/>.

156 *NI*, "Serbian public prosecutor issues order for cases involving journalists," 25 December. Available at: <https://rs.n1info.com/english/news/a687715-serbian-public-prosecutor-issues-order-for-cases-involving-journalists/>.

157 JAS, "28 journalists and media workers attacked and obstructed in their work in five days," 15 July. Available at: <https://www.uns.org.rs/en/UNS-info/UNS-info/101504/journalists-association-of-serbia-28-journalists-and-media-workers-attacked-and-obstructed-in-their-work-in-five-days.html>.

158 *Danas*, "IJAS: Most assaults against reporters during protests still in investigation stage," 28 October. Available in Serbian at: <https://www.danas.rs/drustvo/nuns-vecina-napada-na-novinare-na-protestima-i-dalje-u-istraznoj-fazi/>.

159 *Danas*, "JAS: Attacker on Nova.rs reporter sentenced to one-year home imprisonment," 21 July. Available in Serbian at: <https://www.danas.rs/drustvo/uns-godinu-dana-kucnog-zatvora-napad-acu-na-novinara-portala-nova-rs/>.

The repertoire of insults and accusations was the same as in 2019. Journalists and media were accused of treason, working for foreign powers or opposition parties, of lying and ignorance, and even of hoping coronavirus would prevail. Most of the accusations were voiced by senior officials of the ruling coalition and analysts and reporters close to them. For instance, Serbian President Aleksandar Vučić said on 8 November that it would be easier for “enemy media” bought by opposition leader Dragan Đilas and others (*N1*, *Nova S*, *News MaxAdria*, *Danas*, three radio stations and weeklies) to kill him than waste hundreds of millions of EUR fighting him.¹⁶⁰

Female journalists were also victims of insults and threats. For instance, President Vučić started attacking, insulting and humiliating reporter Olivera Jovičević during a live show on *RTS* in July, accusing her of lying.¹⁶¹ Folk singer Aca Lukas voiced sexist insults against *N1* reporter Žaklina Tatalović during an hours-long show on *TV Pink*.

N1’s reporter Jelena Zorić was threatened in late 2020 and early 2021. One of the lawyers of Predrag Koluvija (the main defendant in the Jovanjica case concerning a large illegal marijuana plantation) on 28 December relayed his client’s messages, inter alia, that she was “destroying him with her reporting” but that he was praying for her just as he was praying for the prosecutor and the police officer who arrested him, adding that “no-one who has wronged Peđa has fared well”.¹⁶² Several days later, she found another threatening message left at her front door.¹⁶³

Reporters were attacked on social media as well. In April 2020, Twitter shut down over 8,000 accounts promoting SNS and its leader.¹⁶⁴ Fake Facebook page COVID-19 Serbia spearheaded attacks against reporters; the initiative Don’t Let Belgrade D(r)own said it served as the “SNS platform for disseminating amply sponsored announcements attacking, maligning and inciting violence against unsuitable public figures and media”.¹⁶⁵

160 *N1*, “N1’s interlocutors: Vučić’s statement – continued targeting of professional journalists,” 8 November. Available in Serbian at: <https://rs.n1info.com/vesti/a669729-aleksandar-vucic-izjava-u-batajnici-napad-na-novinare/>.

161 *Cenzolovka*, “Vučić on *RTS*: Interview should be included in anthology of greatest humiliations of not only public service broadcasters, but media in general as well,” 3 July. Available in Serbian at: <https://www.cenzolovka.rs/etika/vucic-na-rt-s-u-intervju-za-antologiju-najvecih-ponizenjanee-samo-javnog-servisa-vec-i-medija-uopste/>.

162 *N1*, “Lawyer threatens *N1* TV Reporter,” 30 December. Available at: <https://rs.n1info.com/english/news/lawyer-threatens-n1-tv-reporter/>.

163 *Danas*, “New threats against Jelena Zorić,” 14 January 2021. Available at: <https://www.danas.rs/drustvo/jeleni-zoric-ponovo-upucene-pretnje/>.

164 *N1*, “Twitter Shuts down Accounts Promoting Serbia’s Vučić,” 2 April. Available at: <http://rs.n1info.com/English/NEWS/a584862/Twitter-shuts-down-accounts-promoting-Serbia-s-Vucic.html>.

165 *N1*, “NDMBGD: Fake Facebook COVID-19 Serbia Page Platform for Attacking Opponents,” 14 April. Available in Serbian at: <http://rs.n1info.com/Vesti/a589071/NDMBGD-Fejsbuk-stranica-COVID-19-Serbia-platforma-za-napad-na-neistomisljenike.html>.

The Facebook group *Zavisni novinari* (Dependent Journalists), which has registered as a media/news company but does not provide any contact or other details on its Facebook profile, has been pursuing a similar mission. The group is clearly rolling in money since it has been publishing sponsored posts. Its insults and threats against individual journalists and public figures definitely warrant an investigation by the prosecutors.¹⁶⁶

Defence Minister Aleksandar Vulin's reaction to an op-ed his predecessor Dragan Šutanovac e-mailed to the weekly *Nedeljnik*, but which was never published,¹⁶⁷ gave rise to suspicions that media professionals were followed. None of the state authorities confirmed or denied the allegations, with the exception of the Military Security Agency, which said that it had not implemented any particular procedures or measures with respect to the former Defence Minister.¹⁶⁸

Yet another group charged with the safety and protection of journalists¹⁶⁹ was set up in December 2020. This is the fourth body dealing with the safety of journalists in Serbia, which will operate under the auspices of the Ministry of Culture and Information and the Prime Minister's Office.¹⁷⁰

2.6. Trials for Attacks on Journalists – Difficult Access to Justice

IJAS reported that 283 cases against reporters, editors and owners of media outlets had been filed with the Belgrade Higher Court in the first eight months of the year. That Court dealt with 296 cases; another 1,105 cases against journalists and media filed in 2020 and earlier were still pending before the Higher Court.¹⁷¹

The trend of taking the press and journalists to court, mostly for libel, continued in 2020. Like in 2019, the courts ruled on cases against tabloids frequently front-paging fake news and falsehoods, and harming the honour and reputation of

166 IJAS believes that the Facebook profile was created by an individual who has for a long time now been jeopardising the safety of reporters and public figures. IJAS alerted the relevant authorities to his wrongdoings, but apparently to no avail. More in *Danas*, "Fresh Targeting of Reporters Criticising Government," 17 June. Available in Serbian at: <https://www.danas.rs/drustvo/novo-targetiranje-novinara-koji-kritikuju-vlast/>.

167 *Danas*, "Šutanovac: Vulin proved existence of para-services reading e-mails," 18 February. Available in Serbian at: <https://www.danas.rs/drustvo/sutanovac-vulin-dokazao-postojanje-parasluzbi/>.

168 More in Chapter II.4.

169 *Blic*, "Working Group for Safety and Protection of Journalists formed," 15 December. Available in Serbian at: <https://www.blic.rs/vesti/politika/formirana-radna-grupa-za-bezbednost-i-zastitu-novinara/z1wqee2>.

170 *Danas*, "Obradović: one commission per each journalist," 28 December. Available in Serbian at: <https://www.danas.rs/drustvo/obradovic-za-svakog-novinara-jedna-komisija/>.

171 *Danas*, "283 lawsuits filed against reporters and media during the first eight months of the year," 19 October. Available in Serbian at: <https://www.danas.rs/drustvo/za-prvih-osam-mesece-ove-godine-283-tuzbe-protiv-novinara-i-medija/>.

public figures, opposition politicians and critical journalists. On the other hand, trials of cases in which reporters were victims were rare, took long and were 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, was still pending.¹⁷² Simonović failed to appear at the hearing scheduled for 15 December because he had his tooth pulled out. The judge said that he could not ascertain whether his absence was justified, that he needed to check the doctor's report and rescheduled the hearing for the next day. The defendant's lawyer said that neither he nor his client would attend it.¹⁷³

The court, for instance, prohibited the tabloids *Kurir* and *Informer* from publishing insults against TV N1 Programme Director Jugoslav Ćosić and information violating the dignity of opposition leader Dragan Đilas.¹⁷⁴ These decisions, however, do not suffice to conclude that the publication of falsehoods and insults and violations of professional standards are effectively prosecuted.

On the other hand, trials of attackers on journalists are rare, take long and are obstructed in various ways, while criminal reports against pro-government journalists are dismissed. For instance, the prosecutors dismissed the criminal report against TV Hепi Chief Editor Milomir Marić for insulting University Professor Danijel Sinić on ethnic grounds; they were of the view that there were no grounds to suspect Marić of inciting ethnic, religious or racial hatred, which is prosecuted *ex officio*.¹⁷⁵

A verdict brought by a Vranje court in March 2020 illustrates the length of trials of attackers on journalists. It took the court eight years to convict four men (one of them a police inspector) indicted for beating up B92 reporter Tanja Janković's family back in September 2012; the motion to indict was submitted in 2014. The penalties it handed down were much too lenient (ranging from a four-month prison sentence suspended for two years to one-year home imprisonment).¹⁷⁶

The Belgrade Appellate Court in July overturned the first-instance judgment convicting four Serbian State Security officers of involvement in the assassination of opposition journalist and editor Slavko Ćuruvija in 1999 due to major procedural

172 *Javniservis.net*, "Safety of journalists obstructed," 7 December. Available in Serbian at: <https://javniservis.net/dnevnik/opstrukcije-bezbednosti-novinara/>.

173 *Danas*, "JAS: Trial for setting reporter Milan Jovanović's house on fire adjourned, Simonović did not appear," 15 December. Available in Serbian at: <https://www.danas.rs/drustvo/uns-sud-jenje-za-paljenje-kuce-novinara-milana-jovanovica-odloženo-optuženi-simonovic-nije-dosao/>.

174 See N1 reports of 28 May and 9 June. Available in Serbian at: <http://rs.n1info.com/Vesti/a604120/Sud-zabranio-Kuriru-objave-i-uvrede-o-Jugoslavuu-Cosicu-do-okoncanja-postupka.html> and <http://rs.n1info.com/Vesti/a608213/SSP-Visi-sud-zabranio-Informeru-da-objavljuje-neistine-o-Djilasu.html>.

175 *Danas*, "Marić's insults are not a crime," 27 February. Available in Serbian at: <https://www.danas.rs/drustvo/mariceve-uvrede-nisu-krivicno-delo/>.

176 RTV, "Court sentences inspector to one year of home imprisonment for attacking Vranje journalists' family," 5 March. Available in Serbian at: https://www.rtv.rs/sr_lat/drustvo/presuda-za-napad-na-porodicu-novinara-u-vranju-inspektoruu-godinu-dana-kucnog-zatvora_1099683.html.

violations and remitted the case for retrial to the Belgrade Higher Court. The Appellate Court said that the first-instance court had added facts to the charges that were not in the original indictment, finding the defendants guilty of violations which were not contained in the indictment and re which no evidence was presented during the proceedings.¹⁷⁷ The retrial was rescheduled several times, the last time for February 2021.¹⁷⁸ The first-instance court had sentenced the four intelligence officers, one of whom is at large, to a total of 100 years in jail.¹⁷⁹

Investigation into the death of journalist Milan Pantić was still ongoing.¹⁸⁰ The investigation into the the death of reporter Dada Vujasinović was still open, but there was no new information about her death 26 years ago.¹⁸¹

2.7. Unprofessional Media Conduct

The number of grave violations of the professional code of conduct, ethical standards and the law continued growing. The media have most frequently been violating the presumption of innocence. They have been increasingly publishing reports presenting opinions and presumptions as indisputable facts, often citing anonymous sources. Furthermore, the media have often violated the right to privacy, personality rights, the prohibition of discrimination and the obligation to protect the identity of minors.

The Press Council said that it had received twice as many complaints in the first six months of the year as in the same period in 2019, but that their number was still negligible vis-à-vis the number of violations of the Press Code of Conduct.¹⁸² For instance, the Code was violated 2,829 times in the April-June 2020 period by six media portals.¹⁸³ During the first half of the year, the Press Council received 131

177 The Belgrade Appellate Court Ruling No. Kž1-Po1 25/19 of 15 July 2020 is available in Serbian at: <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2014/01/Re%C5%A1enje-Apelacion-og-suda-po-%C5%BEalbama-na-prvostepenu-presudu-za-ubistvo-Slavka-%C4%86uruvije.pdf>.

178 B92, “Ćuruvija assassination trial put off for February,” 21 December. Available in Serbian at: https://www.b92.net/info/vesti/index.php?yyyy=2020&mm=12&dd=18&nav_category=12&nav_id=1782890.

179 N1, “Former secret agents convicted to a total of 100 years in jail for assassinating Slavko Ćuruvija,” 5 April. Available in Serbian at: <https://rs.n1info.com/vesti/a473781-presuda-za-ubistvo-slavka-curuvije/>.

180 Danas, “Veran Matić: Jagodina prosecutors reached their limit,” 9 June. Available in Serbian at: <https://www.danas.rs/drustvo/veran-matic-tuzilastvo-u-jagodini-doslo-do-limita/>.

181 Radio Free Europe, “JAS: Investigation into Dada Vujasinović’s cause of death still open,” 8 April. Available in Serbian at: <https://www.slobodnaevropa.org/a/30541459.html>.

182 N1, “Violations of media code on the rise, most committed on crime and entertainment pages,” 30 September. Available in Serbian at: <https://rs.n1info.com/vesti/a655454-savet-za-stampu-na-jcesca-krsenja-medijskog-kodeksa-u-crnoj-hronici-i-zabavi/>.

183 Beta, “Press Code of Conduct violated in 1,564 texts on six portals in three months,” 30 September. Available in Serbian at: <https://beta.rs/vesti/drustvo-vesti-srbija/134308-kodeks-novinaraza-tri-meseca-prekrsen-u-1-564-teksta-na-sest-internet-portala>.

complaints; it reviewed 94 of them and found no violation of the Code in 12 cases. The Press Council issued 37 public reprimands to media that had not eliminated the impugned articles or failed to issue a public apology.

Gross violations of the Code included the broadcast of a video recording of an abortion and dismemberment of the foetus' body on *TV Hепи*¹⁸⁴, publication of news of Patriarch Irinej's and Metropolitan Amfilohije's deaths while they were still alive¹⁸⁵ and tabloid *Kurir*'s lie that former US President Barrack Obama gave it an exclusive interview.¹⁸⁶

Gross violations of the Code were also committed by outlets that published 15 reports on alleged violence perpetrated by migrants in the latter half of November¹⁸⁷ and by a magazine for children, *Politikin zabavnik*, which published an article singing praises to infamous WWII Nazi Otto Skorzeny and making no mention of his crimes.¹⁸⁸ This children's weekly also published a laudatory article about the Serbian WWII Quisling Prime Minister Milan Nedić in early 2019.

The most drastic violations of the Press Code of Conduct provisions on minors were perpetrated by tabloids reporting on the abduction of a 12-year-old girl, Monika Karimanović from Niš. They even published TV footage and records of the interrogation of Ninoslav Jovanović, the man suspected of and subsequently charged with abducting and raping the girl. Dozens of complaints were filed with the Press Council, including by the girl's parents, regarding the front pages and articles published in *Srpski telegraf*, *Informер*, *Alo* and *Kurir* on 9 January, after Jovanović was questioned by the Niš prosecutors. The Press Council Commission unanimously concluded that all of these tabloids had committed multiple violations of the Press Code of Conduct.¹⁸⁹

The relevant state authorities, however, did not take them to task. Instead, the Ministry of Culture and Information filed misdemeanour reports against the weeklies *Vreme* and *Nedeljnik* for publishing the tabloids' front-pages alongside articles about their flagrant violations of the professional code.¹⁹⁰

184 *Nova.rs*, "Scandal on Hепи: horrible footage of abortion," 3 November. Available in Serbian at: <https://nova.rs/vesti/drustvo/skandal-na-hepiju-uzasavajuc-snimak-u-emisiji-o-abortusu/>.

185 *Istinomer*, "Chronicle of announced death," 20 November. Available at: <https://english.istinomer.rs/analyses/chronicle-of-announced-death/>.

186 *Danas*, "Kurir apologises for untrue report that Barrack Obama gave them an interview," 3 November. Available in Serbian at: <https://www.danas.rs/drustvo/redakcija-kurira-uputila-izvinjenje-zbog-netacne-vesti-da-im-je-barak-obama-dao-intervju/>.

187 *VOICE*, "Ethical reporting on migrants rare in domestic media," 2 November. Available in Serbian at: <http://voice.org.rs/eticko-izvestavanje-o-migrantima-retkost-u-domacim-medijima/>.

188 *Nova.rs*, "Politikin zabavnik singing praises to Nazi again," 6 October. Available in Serbian at: <https://nova.rs/vesti/drustvo/politikin-zabavnik-opet-u-superlativu-pise-o-nacisti/>.

189 *Raskrikavanje*, "Press Council Churning Out "Verdicts" over Monika Karimanović Case," 30 January. Available in Serbian at: <https://www.raskrikavanje.rs/page.php?id=Pljuste-presude-Saveta-za-stampu-zbog-slucaja-Monike-Karimanovic-560>.

190 *Danas*, "Authorities Trying to Equate Tabloids with Serious Media," 1–2 February. Available in Serbian at: <https://www.danas.rs/drustvo/vlast-pokusava-da-izjednaci-tabloide-sa-ozbiljnim-medijima/>.

Press associations warned that domestic media were still bombarding the readers with terrifying front-pages, fake news and health advice from quacks and that the authorities were not reacting to tabloid articles disseminating panic, which is a crime under Serbian law, adding that the prompt provision of reliable information the public could trust was the best way to fight fake news and fear mongering.¹⁹¹

The Ministry of Defence awarded certificates of appreciation to outlets that contributed to the fight against the coronavirus, including tabloids *Alo* and *Informer*, although as a member of the Press Council Complaints Commission Vida Škero said, this body registered a higher number of complaints during the state of emergency, most of which regarded the tabloids awarded the certificates.¹⁹²

Journalists and media showed lack of solidarity not only during the state of emergency but in other situations as well. Verica Bradić, a show host on pro-Government *TV Pink* did nothing to stop folk singer Aca Lukas from insulting and attacking *TV N1* reporter Žaklina Tatalović, as she was bound to under REM's instructions to broadcasters.

Hate speech, fear mongering and fake news also increased in frequency. For instance, 43 fake news published 241 times by Serbian traditional and online media were identified in just one month, from 12 March to 12 April 2020. Most of them, 71%, were created in Serbia; although their inaccuracy was proven, over 95% were still present in the domestic media.¹⁹³ A fake news story is shared 927 times on average in Serbia, using different pages and profiles, an IREX expert told *Voice of America* on 24 May 2020.¹⁹⁴ In addition, tabloids published numerous falsehoods about Serbian nationals who returned to Serbia during the epidemic, including claims that thousands of them were infected with the coronavirus.¹⁹⁵

Members of the public criticised the way in which the public service broadcaster, Radio Television Serbia (RTS), reported on major national events, as well as reports of TV stations with national broadcasting licences, who are under the obligation to promptly and accurately inform the citizens of important events in the country. Pro-government media were sharply and extensively criticised for their coverage of the several-day protests in Belgrade in July, which erupted after the President announced

191 *Danas*, "Authorities not seeing what pro-government media are doing," 23 March. Available in Serbian at: <https://www.danas.rs/drustvo/vlast-ne-vidi-sta-rade-provladini-mediji/>.

192 *Danas*, "Certificates of appreciation to tabloids for sowing confusion," 20 May. Available in Serbian at: <https://www.danas.rs/drustvo/zahvalnice-tabloidima-za-stvaranje-konfuzije/>.

193 *Vreme*, "Two-thirds of fake news on coronavirus created in Serbia," 1 May. Available in Serbian at: <https://www.vreme.com/cms/view.php?id=1779930>.

194 *Euractiv*, "A fake news story is shared 927 times on average in Serbia," 25 May. Available at: https://www.euractiv.com/section/all/short_news/a-fake-news-story-is-shared-927-times-on-average-in-serbia/.

195 See e.g. *Informer*: ONLY IN TODAY'S INFORMER! DANGER! Epidemic about to explode: 100,000 gastarbiters entered Serbia, at least 6,000 of them infected with coronavirus!," 20 March. Available in Serbian at: <http://informer.rs/vesti/srbija/501595/samo-danas-njem-infomeru-opasno-preti-nam-eksplzija-epidemije-srbiju-uslo-100-000-gastarbitera-njih-bar-000-ima-koronavirus>.

the introduction of new, drastic restrictions of the freedom of movement¹⁹⁶ and of police brutality against peaceful protesters. They merely reported on violence perpetrated by some protesters, ignoring the peaceful aspects of the protest and keeping mum on police violence against protesters and reporters. RTS did not broadcast footage of incidents on Belgrade streets, such as of the police beating up people offering no resistance, but it did quote Police Director Vladimir Rebić as saying that the “police acted with maximum restraint during the riots”. Six of the nine minutes on the protests in the news were devoted to statements and press releases of ruling politicians. The RTS did not broadcast footage of a group of police officers coming up to three young men sitting peacefully on a park bench and truncheoning them. Nor did it broadcast footage of a police officer pinning a man he was arresting to the ground with his foot and hitting on the head another protester lying on the ground for no reason.¹⁹⁷

3. Status of the Judiciary – Independence at Risk

3.1. *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 2020. 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.

Under the Serbian Constitution, judges shall be appointed by the National Assembly and the High Judicial Council. The Constitution retained the principle of permanent judicial tenure, but introduced the rule that judges shall first be elected to three-year probation periods and shall thereupon be appointed to permanent 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.¹⁹⁸

¹⁹⁶ More in Chapter II.8.

¹⁹⁷ *Raskrikavanje*, “Your right to know nothing: three minutes about protests, while officials’ statements take up six minutes,” 8 July. Available in Serbian at: <https://www.raskrikavanje.rs/page.php?id=Vase-pravo-da-ne-znate-nista-Tri-minuta-o-protestima-sest-minuta-izjave-vlasti-696>.

¹⁹⁸ 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.

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 by the National Assembly. With the exception of *ex officio* members, the other HJC members are appointed to five-year terms in office.¹⁹⁹

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.²⁰⁰ 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.²⁰¹

The appointment of prosecutors is governed by the Public Prosecution Services Act.²⁰² 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.²⁰³

The HJC and SPC had 10 members each throughout 2020, because the Serbian Bar Association failed to nominate its candidates for the two bodies to the National Assembly.

The term in office of the HJC Chairman and Acting President of the Supreme Court of Cassation, Dragan Milivojević, expired *ex lege* in mid-2018. Milivojević was elected President of that Court by the National Assembly in October 2013. Un-

199 Article 153 of the Constitution.

200 Constitution, Articles 156–165.

201 Constitution, Article 164.

202 *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.

203 Constitution, Article 159.

der the law, his mandate of Acting President could be extended for a maximum of six months.²⁰⁴

The status of the Serbian judiciary in general is best illustrated by the fact that the President of the highest court in the land and the Chairman of the HJC has remained in office for over two years in contravention of the law.

On December 24 2020, the High Judicial Council published an announcement²⁰⁵ for the election of the President of the Supreme Court of Cassation, with a deadline of 15 days for the application of candidates who meet the conditions of the announcement.

3.2. Judicial Appointments in 2020

A number of judges, public prosecutors and deputy public prosecutors were appointed in 2020. 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 on a number of occasions during the reporting period, on 6 and 13 March,²⁰⁶ and on 5 and 10 June 2020.²⁰⁷ It interviewed and tested the applicants and prepared the preliminary lists of candidates for courts at various levels and of various jurisdictions – Basic, Higher, Appellate, Misdemeanour, Misdemeanour Appeals, Commercial, Commercial Appeals Courts and the Administrative Court.

On 26 May 2020, the HJC elected two judges of the Kraljevo Higher Court who applied in 2019.²⁰⁸

The HJC also prepared a preliminary list of candidates for the Presidents of Misdemeanour and Basic Courts, who applied for the vacancies advertised on 13 March. On 23 December, the Serbian Assembly elected 83 court presidents nominated by the High Judicial Council. Eighty-one of them are Presidents of Basic and Misdemeanour Courts, one is the President of a Higher Court and one is the President of a Commercial Court.

In its most recent report on the work of courts,²⁰⁹ the Supreme Court of Cassation said that the HJC decided that the Serbian judiciary should have 3,038 judges,

204 Article 73, Act on Judges.

205 Available at Serbian: <https://cutt.ly/TkszHZe>.

206 *Sl. glasnik RS*, 21/20 and 27/20.

207 *Sl. glasnik RS*, 81/20 and 83/20.

208 The decision on their appointment is available in Serbian at: <https://cutt.ly/nksj8n0>.

209 January-June 2020 Report on the Work of the Courts, available in Serbian at: <https://www.vk.sud.rs/sites/default/files/attachments/Izve%C5%A1taj%20o%20radu%20sudova%20u%20Republici%20Srbiji%20za%20period%20januar-juni%202020.%20godine.pdf>.

that it had 2,742 judges of whom 2,602 were effectively working. The Supreme Court of Cassation concluded that, although the number of judges had increased over 2019, the lack of 296 judges impinged on the efficiency of the entire court system. 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 state of emergency, which was in place from 15 March to 6 May 2020, substantially impeded the nomination and appointment of judges, prosecutors and deputy prosecutors during the year. The HJC suspended all activities related to judicial appointments during this period. The SPC did not meet once during the state of emergency, despite requests by prosecutors sitting on the Council.

These data indicate that the HJC needs to respond more efficiently even in emergencies 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 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.

In November 2020, Serbia had 792 prosecutors altogether – 68 were public prosecutors, like in 2019, and 724 were deputy public prosecutors, or six more than in 2019. The Public Prosecution Services are obviously understaffed since Serbia should have 90 public prosecutors and 804 deputy public prosecutors, according to the rulebook on staffing.

The SPC advertised vacancies in the Belgrade, Novi Sad and Kragujevac Appellate Public Prosecution Services,²¹⁰ pursuant to its decision on ad hoc performance appraisals of applicants for the office of public prosecutor.²¹¹ The SPC sent a letter to the relevant PPS requiring they conduct ad hoc performance appraisals of nine applicants.

Pursuant to its decision²¹² on ad hoc performance appraisals of deputy public prosecutors, elected by the National Assembly for the first time on 15 May 2017, the SPC requested of the relevant PPS to forward their decisions on the ad hoc appraisals of deputy public prosecutors and their appointment on permanent tenure. The

210 *Sl. glasnik RS*, 75/20.

211 A No. 198/20 of 26 June 2020.

212 A No. 58/20 of 24 February 2020.

performance of 17 deputy public prosecutors was appraised and all of them were graded as “excellent”. The SPC appointed them on permanent tenure at its session on 12 May 2020. No prosecutors in Basic PPS were promoted to Higher PPS during the year.

The National Assembly on 13 February 2020 appointed 19 first-time deputy public prosecutors nominated by the SPC.²¹³

3.3. Election of High Judicial Council and State Prosecutorial Council Members

On 23 December 2020, the National Assembly elected five HJC members from amongst the ranks of judges and six members of the SPC from amongst the ranks of public prosecutors and deputy public prosecutors. They were previously voted on by their peers. On the same day, the National Assembly also elected the SPC member from amongst the ranks of law school professors.

3.3.1. Election of State Prosecutorial Council Members

Public and deputy public prosecutors voted on SPC nominees on 12 November 2020. The elections were conducted at 17 polling stations and the voter register included the names of 629 prosecutors. In its press release on the preliminary results, the SPC said it had received no complaints after the voting or any objections to the minutes on the elections. The elections were monitored by the representatives of the OSCE Mission to Serbia, the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia (UTS) and the Association of Judges and Prosecutors of Serbia (UST). The SPC published the election-related documents and decisions and the candidates’ programmes on its website.²¹⁴

However, experts criticised the prosecutorial election, claiming that substantial pressures were exerted on the voting prosecutors. They also objected to the short deadlines, since the elections were called on 1 October 2020, after the SPC awoke from its months-long dormancy. The applications had to be submitted by 16 October. Furthermore, the applicants had less than two weeks to campaign and present their programmes to their peers after the final list of nominees was drawn up. These presentations were impeded by the anti-COVID-19 measures. Furthermore, UTS warned that it was receiving information about attempts to sway the voters on a daily basis.²¹⁵ UTS claimed that a Justice Ministry State Secretary toured PPS and told their heads which nominees the Ministry preferred, recommending that they “relay” the suggestions to their subordinates. UTS said that the same “recommendations”

213 *Sl. glasnik RS*, 13/20.

214 Available in Serbian at: <https://www.dvt.jt.rs/izborna-komisija/>.

215 Available in Serbian at: <https://www.uts.org.rs/press-centar/saopstenja-za-javnost/1706-saopstenje-za-javnost-izbor-dvt>.

were made by the Chief State Prosecutor. The Justice Ministry State Secretary Ilić resigned in late October after his dismissal was requested,²¹⁶ and a criminal report was filed against him. He was soon appointed First Counselor of the Serbian Embassy in the USA.²¹⁷

3.3.2. Election of High Judicial Council Members

Judges voted on their nominees for the HJC on 7 December 2020. The voting took place at 49 polling stations and the voter register included the names of 2,092 judges. The elections were monitored by the representatives of the OSCE Mission to Serbia, the Judges Association of Serbia (JAS), the Judicial Academy Alumni Club, the Association of Judges and Prosecutors of Serbia, the Niš Human Rights Committee and the South Niš Judicial Base.

The HJC published the election documents and decisions on its website.²¹⁸ The information about the candidates and their programmes was not presented adequately on the HJC website. The JAS published information about its members running for office on its website.²¹⁹ Like the UTS, the JAS alerted to potential irregularities that needed to be eliminated to ensure free and democratic elections.²²⁰

3.4. Further Delay of the Reform of Constitutional Provisions on the Judiciary

In its 2007 Opinion on Serbia's Constitution,²²¹ 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 development 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 2017.²²²

216 Nova.rs, "State secretary secretly dismissed for pressuring prosecutors," 30 October. Available in Serbian at: <https://nova.rs/vesti/hronika/pritiskao-tuzioce-drzavni-sekretar-razresen-u-tajnosti/>.

217 See: <http://www.washington.mfa.gov.rs/lat/embassy.php>.

218 Available in Serbian at: <https://cutt.ly/QkskN2g>.

219 Available in Serbian at: <https://www.sudije.rs/Item/Index/5>.

220 Available in Serbian at: <https://www.sudije.rs/Item/Details/904>.

221 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), paras. 15–17.

222 Chapter 23 Action Plan, p. 31. Available at: <https://www.pars.rs/images/dokumenta/Poglavlje-23/Revised-AP23.pdf>.

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.²²³

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 Procedure²²⁴ 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 2020, as far as the constitutional reform of the judiciary is concerned.

To recall, the Government went back to the beginning of the process, after submitting, on 30 November 2018, the proposal to amend the Constitution to the National Assembly, in which it referred to Article 203 of the Constitution and Article 142 of the Assembly Rules of Procedure.²²⁵ It proposed that Article 4 of the

223 More on the constitutional reform of the judiciary in the *2017 Report*, III.1.1 and the *2018 Report*, III.1.2.

224 National Assembly, Rules of Procedure. Available at: <http://www.parlament.gov.rs/upload/documents/06.06.2014.%20ENG%20Rules%20of%20Procedure%20edit%202014.pdf>.

225 The draft constitutional amendments are available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2018\)053-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2018)053-e).

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 Committee for Constitutional Issues and Legislation upheld the proposal at its session on 14 June 2019. Although a year and a half had passed since the submission of the constitutional amendments, the parliament did not schedule a sitting devoted only to the amendment of the Constitution, as provided for by its Rules of Procedure.

In August 2019, the Justice Minister said that the draft constitutional amendments would be decided on by the new parliament, after the 2020 general election.²²⁶

The draft constitutional amendments, along with other draft regulations proposed by the Government, were withdrawn from the parliament before the 21 June parliamentary elections. The Government endorsed the identical text again, after more than two years, at its session on 3 December 2020²²⁷ and forwarded it to the National Assembly.

The Revised Chapter 23 Action Plan envisages the adoption of the constitutional amendments in the fourth quarter of 2021.²²⁸

3.5. *New Judicial Reform Strategy*

The Ministry of Justice on 22 January 2019 issued a ruling establishing a Working Group to be charged with drafting the new national judicial reform strategy.²²⁹

The 2020–2025 Judicial Development Strategy²³⁰ and the Revised Chapter 23 Action Plan were adopted in July 2020. Both documents, crucial for the future of the judiciary, were adopted by the caretaker Government. Under the Constitution, a

226 *Novi magazin*, “Kuburović: Constitution to be amended after the elections,” 18 August. Available in Serbian at: <http://www.novimagazin.rs/vesti/kuburovic-izmene-ustava-nakon-izbora>.

227 *Radio Free Europe*, “Serbian Government proposes amendments to constitutional provisions on the judiciary,” 3 December. Available in Serbian at: <https://www.slobodnaevropa.org/a/30982621.html>.

228 Available at: <https://www.pars.rs/images/dokumenta/Poglavlje-23/Revised-AP23.pdf>.

229 The Working Group 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.

230 *Sl. glasnik RS*, 101/20.

caretaker government is entitled to perform only daily administrative management, prompting experts to wonder whether the adoption of these strategic documents fell under daily duties.

The new Judicial Development Strategy largely relies on the goals and analysis of the implementation of the 2013–2018 National Judicial Reform Strategy. It defines the following strategic priorities: to further strengthen judicial independence and prosecutorial autonomy; to further strengthen the integrity of judicial office holders and members of the HJC and SPC; to further improve the quality of the judicial system by strengthening the expertise and competences of judicial office holders and judicial staff; to further increase the level of judicial efficiency through an analysis and adaptation of the judicial network, and reduction in the total number of pending cases with an emphasis on backlog cases; and to increase public trust in the judiciary by improving the accessibility and transparency of the judicial institutions.

The measures set out in the Strategy will be implemented within the activities envisaged by the Revised Chapter 23 Action Plan, which defines the activity implementers, deadlines and funds.

3.6. Miscomprehension of the Separation of Powers – Attacks and Pressures on Judges and Prosecutors and Violations of Their Freedom of Association and Freedom of Expression

Although guaranteed by the Constitution, judicial independence and prosecutorial autonomy 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".²³¹ The Venice Commission also noted that some provisions of the Constitution, 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.

That impression has persisted ever since. The executive authorities further pressured the judiciary during the state of emergency – the judiciary's work was regulated by Government Decrees and Orders of the Minister of Internal Affairs, despite the explicit constitutional ban on restrictions of the right to a fair trial during a state of emergency.²³² The Government Decrees and the Ministers' Orders intro-

231 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](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)004-e).

232 Article 202, Constitution.

duced new offences and penalties, provided for criminal trials in the absence of the defendants (although they were not out of the court's reach) and suspended deadlines in all court proceedings. The latter effectively precluded the initiation of new proceedings before courts and resulted in the cancellation of nearly all trials during the state of emergency, with the exception of cases declared urgent in a separate enactment.

Furthermore, public officials often commented in the media how judges and prosecutors should act in specific cases, especially those concerning violations of epidemiological regulations. One illustrative example was the first-instance judgment delivered by Belgrade Misdemeanour Court, in which the judge quoted among the sources of law the President's statement and a number of judgments of misdemeanour courts sentencing the defendants to imprisonment, although such a harsh penalty is imposed only exceptionally in misdemeanour proceedings. These defendants were promptly admitted to prison to serve their sentences.²³³

Prosecutors qualified as pressure the Chief State Prosecutor's binding instructions ordering them to request pre-trial detention for all defendants charged with violating epidemiological regulations, although the grounds on which pre-trial detention is ordered are prescribed by law and must be assessed in each individual case.²³⁴

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.

The MPs' treatment of the judiciary and its representatives was no better. They continued criticising and insulting judges. Like in 2019, their main target was Miodrag Majić, a Belgrade Appellate Court judge and member of the Judicial Research Center (CEPRIS) Management Board.

He was mentioned in a negative context and dominated parliament debates as many as 16 times just in the first two months of the year (until the state of emergency was proclaimed). The MPs branded him as the judge "acquitting Šiptar terrorists," "acquitting pedofiles" and "violating all ethical and professional norms". They said Majić was "infamous for his poor performance and inhumaneness" and was "more involved in politics than all political leaders put together". A number of MPs wondered whether he was worthy of judgeship at all and "when the High Judicial Council will initiate the procedure for his dismissal".²³⁵

233 See also, e.g., *NI*, "Misdemeanour Court again convicts Vladimir Mentus and Igor Šljapić to 30 days' imprisonment," 17 July. Available in Serbian at: <http://rs.n1info.com/Vesti/a620884/Prekr-sajni-sud-opet-osudio-Vladimira-Mentusa-i-Igora-Sljapica-na-30-dana-zatvora.html>.

234 *Peščanik*, "Judiciary in the time of corona," 3 October. Available in Serbian at: <https://pescanik.net/pravosudje-u-doba-korone/>

235 More is available in Serbian at: <https://otvoreniparlament.rs/transkript?od=2020-01-01&do=2020-12-21&kljucnaRec=Maji%C4%87&page=1>.

Violations of the judges' and prosecutors' freedoms of association and expression were tightly intertwined with the attacks and pressures on them by the executive and legislative authorities. In addition to criticising the character of individual judges and their decisions, the MPs in 2020 asked whether judges needed the HJC's consent to speak in public, insinuating that their public appearances should be subject to the consent of either the HJC or their court presidents.

The reporting period was also marked by a check of transactions of 37 critically oriented civic associations and individuals allegedly suspected of involvement in money laundering or financing of terrorism by the Ministry of Finance Anti-Money Laundering Administration (AMLA).²³⁶ Although guild associations of judges and prosecutors were not initially included in the list, the Association of Judges and Prosecutors, qualified as a Government-oriented NGO also by international experts,²³⁷ called on the AMLA to check the transactions of judicial and prosecutorial associations without delay, starting with its own, and then those of the Judges Association of Serbia, the Association of Public Prosecutors and Deputy Public Prosecutors, the Judicial Research Center, the Judicial Academy Alumni Club and the Forum of Judges of Serbia.²³⁸

The Judges Association of Serbia, the Association of Public Prosecutors and Deputy Public Prosecutors and the Judicial Research Center in principle supported the state authorities' activities aimed at preventing money laundering and financing of terrorism, but noted that the legal requirements for ad hoc financial checks were not fulfilled and expressed concerns that the latest activity was targeting organisations and individuals critical of the government.²³⁹

It may be concluded that guild associations of judges and prosecutors and their individual members found themselves, as well as their freedom of association and freedom of expression, the target of unabated and, in some segments, intensified pressures during the state of emergency and the reporting period in general. The legislative and executive authorities added new methods to their arsenal in 2020, openly implicating the guild associations in political and even criminal activities.

236 NI, "List of journalists and organisations whose transactions the Anti-Money Laundering Administration wants to check," 28 July. Available in Serbian at: <http://rs.n1info.com/Vesti/a624048/Spisak-novinar-a-i-organizacija-cije-transakcije-trazi-Uprava-za-sprecavanje-pranja-novca.html>.

237 Statement of MEDEL on Government-Oriented NGOs, available at: <https://medelnet.eu/index.php/news/60-featured-news/482-statement-of-medel-on-government-oriented-ngos>; see also: <https://medelnet.eu/index.php/news/europe/545-medel-statement-on-the-recent-developments-in-the-judiciary-of-the-republic-of-serbia>.

238 *Danas*, "UST: Support to checks of transactions," 29 July. Available in Serbian at: <https://www.danas.rs/drustvo/ust-podrska-proveri-tokova-novca/>.

239 "AMLA should present grounds for suspicion," joint press release by CEPRIS, JAS and UTS, available in Serbian at: <https://www.cepris.org/stav-cepris-a/uprava-za-sprecavanje-novca-da-predoci-osnove-sumnje/>.

4. Constitutional Court

4.1. *Composition and Election of Judges and Jurisdiction of the Constitutional Court*

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 (2)).²⁴⁰

At least one of the elected judges from each of the three lists must be from the territory of the autonomous provinces. This means that two-thirds of the Constitutional Court judges are elected by the representatives of the “political” branch of government – the executive and legislative authorities. The National Assembly also elects judges of courts of general or special jurisdiction (first-time judges to three-year terms in office, Article 147(1) of the Constitution), wherefore the election of judges by representatives of “non-judicial” authorities is not an exception in the Serbian Constitution. However, as opposed to judges of courts of general or special jurisdiction, who are appointed to permanent tenure by the High Judicial Council (a judicial body), the Constitutional Court judges are elected to nine-year terms in office and may be re-elected. This solution may affect the independence of Constitutional Court judges, whose work may be “guided” by their ambition to be re-elected.

Thought should thus be given to changing the manner in which Constitutional Court judges are elected or the duration and number of their terms in office. On 3 December 2020, the Serbian Government submitted the Draft Amendments to the Constitution to the National Assembly.²⁴¹ The proposed amendment to Article 172 of the Constitution on the election of Constitutional Court judges only aims to align this article with the proposed change in the name of the highest court of the land – the Supreme Court of Serbia. At the end of the reporting period, the Constitutional Court had 13 judges. No new Constitutional Court judges were appointed in 2020.

The Constitution of the Republic of Serbia 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

²⁴⁰ *Sl. glasnik RS*, 98/06.

²⁴¹ Available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/2020/1984-20.pdf.

of ratified international treaties with the Constitution; compliance of other general 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 (Art. 167 of the Constitution).

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 (CCA)²⁴²); 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. These provisions have sown confusion about the Constitutional Court's competences.

Under Article 170 of the Constitution, constitutional appeals may be filed only against individual enactments or actions of state authorities or organisations vested with public powers that violate or deny human or minority rights and freedoms enshrined in the Constitution, in the event all other legal remedies have been

242 *Sl. glasnik RS*, 109/07, 99/11, 18/13 – CC decision, 40/15 – other law and 103/15.

exhausted or do not exist. Given that this provision of the Constitution is very general, many issues regarding constitutional appeals are regulated by the Constitutional Court Act, the Constitutional Court Rules of Procedure²⁴³ and the Constitutional Court's views on constitutional appeals.²⁴⁴

One of the issues the Constitutional Court addressed was which rights the constitutional appeals may concern. It agreed that constitutional appeals may be filed in case of rights enshrined in generally accepted rules of international law or ratified international treaties that are not guaranteed by the Constitution. Namely, Article 16 of the Constitution lays down that generally recognised rules of international law and ratified international treaties are an integral part of Serbia's legal order and apply directly, while Article 18(2) of the Constitution provides for the direct implementation of human and minority rights guaranteed by generally recognised rules of international law and ratified international treaties.

Article 83(1) of the CCA entitles everyone to file a constitutional appeal if they believe that their human or minority rights and freedoms enshrined in the Constitution have been violated or denied by an individual enactment or an action of a state authority or an organisation vested with public powers. Constitutional appeals may be filed on behalf of such persons and with their written consent by other natural persons or state or other authorities charged with the monitoring and realisation of human and minority rights (Art. 83(2)).

Although the Act on the Protection of the Right to a Trial within a Reasonable Time²⁴⁵ was adopted to relieve the Constitutional Court of the large number constitutional appeals claiming violations of the right to a trial within a reasonable time, the Constitutional Court's annual performance data that this goal has not been achieved. On the contrary, the number of constitutional appeals claiming breach of the right to a trial within a reasonable time is on the rise. This can probably be ascribed to the applicants' general dissatisfaction with the decisions delivered in accordance with the Act and the fact that constitutional appeals are the ultimate remedy they have to exhaust before complaining to the European Court of Human Rights.

4.2. *Transparency of the Constitutional Court*

The Serbian Constitution does not guarantee the transparency of the Constitutional Court. In its 2011 Conclusion, the Constitutional Court set out that its regular sessions would be opened to the public only in exceptional cases, 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's

243 *Sl. glasnik RS*, 103/13.

244 Available in Serbian at: <http://www.ustavni.sud.rs/page/view/163-100890/stavovi-suda>.

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

sessions thus became an exception rather than the rule. The Constitutional Court Rules of Procedure²⁴⁶ lay down that the Court's transparency shall be ensured, *inter alia*, by publication on its website of its session agenda, public hearings schedules, decisions, case law and important information about the Court's work.²⁴⁷

Under the CCA, the Constitutional Court's decisions, other than its decisions on constitutional appeals, shall be published in the Official Gazette of the Republic of Serbia and the official journals in which the statutes of the autonomous provinces, other general enactments or collective agreements were published, *i.e.* in the manner in which the general enactments at issue the Court ruled on were published. The Court's decisions on constitutional appeals and rulings of general relevance to the protection of constitutionality and legality may be published in the Official Gazette of the Republic of Serbia.²⁴⁸ This system providing for the publication of the results of the Constitutional Court's work in official journals is legally sound, but there is a risk that not all of its decisions of general relevance to the protection of constitutionality and legality will be published in an official journal.²⁴⁹

The CCA sets out that the Constitutional Court shall issue rulings (which, as a rule, are not published) dismissing initiatives for its review of constitutionality and legality in the event it finds them inadmissible, because the reasons set forth in them do not corroborate the claim that there are grounds for initiating the review procedure (Art. 53(2) in conjunction with Art. 46(1(5))).

The Constitutional Court issued a ruling dismissing the initiatives to review the constitutionality and legality of the Decision on the Proclamation of the State of Emergency holding that the reasons set forth in them did not corroborate the claim that there were grounds for initiating the review of this Decision. However, rather than addressing the lack of grounds for initiating the review in its decision, the Constitutional Court disputed the reasons set forth in the initiatives and offered other reasons why the Decision was constitutional.²⁵⁰ The Constitutional Court decided to publish the ruling in the Official Gazette of the Republic of Serbia because of its general relevance to the protection of constitutionality and legality.

246 *Sl. glasnik RS*, 103/13.

247 Article 29, Constitutional Court Rules of Procedure.

248 The Constitutional Court issues decisions on the merits of petitions (e.g. initiatives or motions to review constitutionality), while it issues rulings and conclusions initiating or discontinuing proceedings on procedural grounds without ruling on the merits. The Constitutional Court's decisions are issued in the form of rulings or conclusions in some other cases as well, but none of these decisions address the merits of the constitutional law issues in question.

249 This, however, does not mean that Constitutional Court decisions, rulings and conclusions not published in the Official Gazette of the Republic of Serbia cannot be accessed. The Court's case law can be searched on its website: <http://www.ustavni.sud.rs/page/jurisprudence/35/>) and the Court publishes its most important decisions in its Annual Bulletins, available at: <http://www.ustavni.sud.rs/page/view/162-100208/bilteni>.

250 More on the ruling in the 2020 *Semi-Annual Report*, I.2.

The transparency of the Constitutional Court's work during the state of emergency was analysed in BCHR's 2020 Semi-Annual Report. To recall, media reports of the Constitutional Court's lethargy²⁵¹ were denied by the Constitutional Court,²⁵² which said that it had only suspended proceedings involving face-to-face contacts with the parties and that submissions could still be filed by mail.²⁵³

In addition to these two press releases, the Constitutional Court published only one more press release during the state of emergency, the one on deadlines in proceedings before the Constitutional Court.²⁵⁴ The Constitutional Court undoubtedly did work during the state of emergency but the effects of its work became public only in late May, when it published its ruling dismissing a number of initiatives for the review of the constitutionality and legality of the Decision on the Proclamation of the State of Emergency.²⁵⁵ The Constitutional Court appears not to have deliberated the possibility of holding electronic sessions to debate the numerous initiatives questioning the constitutionality of the regulations adopted during the state of emergency²⁵⁶ and to rule on them while violations of rights were happening (during the state of emergency) and halt them. Constitutional Court of some countries switched to electronic sessions soon after the epidemic was declared.²⁵⁷

All other Constitutional Court press releases published in 2020 regarded the participation of its representatives at various conferences and meetings of Constitutional Court judges and representatives of state authorities, international and judicial organisations, et al. In October, the Constitutional Court delivered another important decision on initiatives to review the constitutionality and legality of regulations restricting human rights during the state of emergency, but it failed to issue a press

251 *Danas*, "Where has the Constitutional Court disappeared," 29 April. Available at: <https://www.danas.rs/drustvo/vladavina-prava/gde-je-nestao-ustavni-sud/>.

252 The Constitutional Court's reaction of 1 May is available in Serbian at: <http://www.ustavni.sud.rs/page/view/156-102622/reagovanje>.

253 Guidance on the Work of the Constitutional Court Registry Office during the State of Emergency, 22 March. Available in Serbian at: <http://www.ustavni.sud.rs/page/view/156-102620/uputstvo-o-radu-kancelarije-ustavnog-suda-za-neposredan-prijem-podnesaka-za-vreme-vanrednog-stanja>.

254 Notice of Entry into Force of the Decree on Deadlines in Court Proceedings during the State of Emergency Proclaimed on 15 March 2020, 22 March. Available in Serbian at: <http://www.ustavni.sud.rs/page/view/156-102621/obavestjenje-o-stupanju-na-snagu-uredbe-o-rokovi-ma-u-sudskim-postupcima-za-vreme-vanrednog-stanja-proglasenog-15-marta-2020-godine>.

255 Constitutional Court press release of 25 May. Available in Serbian at: <http://www.ustavni.sud.rs/page/view/156-102626/obavestjenje>.

256 *Danas*, "As many as 32 initiatives filed with the Constitutional Court during the state of emergency," 9 May. Available in Serbian at: <https://www.danas.rs/drustvo/podnete-cak-32-inicijative-ustavnom-sudu-tokom-vanrednog-stanja/>.

257 The Constitutional Court of Bosnia and Herzegovina held its first electronic session already on 26 March 2020, see its press release. Available in BCS at: <http://www.ccbh.ba/novosti/sjednice/?id=7ecca101-4760-4249-a8c2-7332bb095ca7>.

release with the summary of the decision, although the entire decision was published in the Official Gazette of the Republic of Serbia.²⁵⁸

The Constitutional Court continued informing the public of its work by issuing brief press releases after its sessions, containing information on the number of cases ruled on at the sessions and the decisions it had taken in them. These press releases did not include information on the constitutional issues the cases regarded or brief descriptions of the Court's reasoning.

4.3. Statistical Overview of the Constitutional Court's Performance in 2019²⁵⁹

Since the Constitutional Court failed to provide BCHR with the statistical data on its work in 2020, this section presents only the publicly available data on its work in 2019.²⁶⁰

The Constitutional Court opened 14,419 new cases in 2019, or 7.8% less than in 2018, although it received 27,963 cases, or 2,363 cases more than in 2018. The vast majority of the new cases concerned constitutional appeals (14,122 cases or 97.9% of all cases). The number of cases requesting of the Constitutional Court to review the compliance of law with the Constitution and ratified international treaties, of ratified international treaties with the Constitution and the review of the constitutionality and/or legality of regulations and other general enactments stood at 199, or 30 more than in 2018.

Together with cases pending from previous years, the Constitutional Court had a caseload of 36,892 cases in 2019, the highest annual caseload ever. The Constitutional Court closed 15,129 cases in 2019, reducing its backload by a mere 3.5%.

Most of the cases deliberated by the Constitutional Court in 2019 regarded constitutional appeals (36,291); it rendered decisions in 14,780 of them (or 26.8% more than in 2018). It, however, had another 21,511 cases pending, 8,867 of which were filed in the 2011–2018 period. The Court ruled on 10.4% constitutional appeals submitted in 2019. It upheld the constitutional appeals and confirmed violations of constitutionally guaranteed rights in 778 cases; most of these cases concerned violations of the right to a fair trial, right to property and right to a trial within a reasonable time.

258 *Sl. glasnik RS*, 126/20.

259 Like in 2019, the BCHR requested of the Constitutional Court to provide it with statistical data on its operations by filing a request for access to information of public importance (Requests No. 2469 of 21 October and No. 2496/1 of 26 November 2020). However, as opposed to last year, the Constitutional Court refused to forward the requested information, explaining that BCHR had requested too many data and that the statistical data on its 2020 performance would be published in its annual report in 2021 (Constitutional Court's replies No. 17/61 of 3 November and No. 17/61–1 of 7 December 2020).

260 More in the Constitutional Court's 2019 Annual Report, published in 2020 and available in Serbian at: http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/Преглед_2019.pdf.

Like in the past, the Constitutional Court dealt with the greatest number of constitutional appeals by issuing rulings dismissing them (9,872 or 66.8%); 3,965 or 26.8% were dealt with in other procedural ways. In light of Article 46 of the CCA entitling the Constitutional Court to issue a ruling dismissing a constitutional appeal on procedural grounds, and Article 36 of the CCA, which specifies situations in which the Constitutional Court decides on applications initiating proceedings before the Constitutional Court (including constitutional appeals) without ruling on their merits, the latter decisions probable entail dismissed constitutional appeals it found manifestly ill-founded or abusing the right to a constitutional appeal.

Like in the past, the Constitutional Court reviewed a much smaller number of cases concerning compliance of laws and other general enactments with the Constitution and ratified international treaties. It dealt with 536 such cases and rendered decisions in 286 of them. The Court ruled on the merits in only 12 of these cases, finding that the general enactments were not compliant with higher general legal enactments in 10 cases. The fact that a relatively large number of constitutionality and legality cases (around 80), which were filed in the 2013–2018, remained pending is concerning. These cases are of paramount importance for constitutional law and the Court's failure to rule on them extends the effectiveness of general legal enactments that may not be in accordance with the Constitution, law and/or ratified international treaties, which may impinge on the constitutionally guaranteed rights of large numbers of citizens.

4.4. *Important Constitutional Court Decisions in the Latter Half of 2020*

4.4.1. *Constitutional Court Decision No. IUo – 45/2020²⁶¹ – Human Rights Derogations during the State of Emergency*

The Constitutional Court ruled on initiatives to review the constitutionality and legality of the Decision on the Proclamation of the State of Emergency in the first half of 2020 and found that the state of emergency had been proclaimed in accordance with the Constitution.²⁶² The Court delivered another important decision about the state of emergency in September 2020. It received a number of initiatives to review the constitutionality and legality of a number of provisions of general legal enactments (or entire general legal enactments) restricting human rights and freedoms, which were adopted during the state of emergency.

The Constitutional Court delivered one decision on all these initiatives on the constitutionality and legality of: provisions by which the Government entitled ministries to enact regulations derogating from human rights during the state of emer-

²⁶¹ *Sl. glasnik RS*, 126/20.

²⁶² More in the 2020 *Semi-Annual Report*.

gency; regulations providing for the imposition of misdemeanour penalties against people who violated the state of emergency regulations although they had already been convicted for a crime including an element of these misdemeanours; and the prohibition of movement of people over 65(70), and of asylum seekers and migrants.

These restrictions of human rights were laid down in three legal enactments (the Decree on State of Emergency Measures (hereinafter: Decree),²⁶³ the Order Restricting and Prohibiting Movement of Individuals in the Territory of the Republic of Serbia (hereinafter: Order),²⁶⁴ and the Decree on Misdemeanour Violations of the Interior Minister's Order Restricting and Prohibiting Movement of Individuals in the Territory of the Republic of Serbia (hereinafter: Decree on Misdemeanours).²⁶⁵ Although these general enactments had ceased to have effect (the Order and the Decree on Misdemeanours during the state of emergency and the Decree after the state of emergency was lifted), Article 168(5) of the Constitution allows the Constitutional Court to assess the constitutionality of general enactments even when they are no longer in force.

Prohibition of double jeopardy and the ne bis in idem principle. – The BCHR filed an initiative challenging the constitutionality and legality of Article 2 of the Decree on Misdemeanours and Article 4d(2) of the Order and claiming a violation of the constitutional principle of *ne bis in idem*. The impugned provisions of the Decree on Misdemeanours provided for the initiation and completion of misdemeanour proceedings for violations of the prohibition of movement also in the event criminal proceedings for a criminal offence comprising elements of the misdemeanour had been initiated against the perpetrators or were pending against them, notwithstanding the prohibition under Article 8(3) of the Misdemeanour Act (which lays down that misdemeanour proceedings may not be initiated against anyone finally convicted of a criminal offence comprising elements of a misdemeanour and that any such misdemeanour proceedings, if initiated or pending, may not be continued or completed). The Constitutional Court found that the impugned provisions allowing double jeopardy had not been in compliance with the Constitution and ratified international treaties. These provisions had also provided for simultaneous and parallel conduct of misdemeanour and criminal proceedings for the same offence. Although that possibility is not unconstitutional, the Constitutional Court held that simultaneous and parallel conduct of two proceedings for the same offence was inexpedient given the prohibition of double jeopardy.

The *ne bis in idem* principle is enshrined in the Constitution of the Republic of Serbia and ratified international treaties. Article 34(4) of the Constitution lays down that no-one may be prosecuted or sentenced for a criminal offence for which he has already been finally acquitted or convicted and regarding which the charges

263 *Sl. glasnik RS*, 31/20, 36/20, 38/20, 39/20, 43/20, 47/20, 49/20, 53/20, 56/20, 57/20, 58/20 and 60/20.

264 *Sl. glasnik RS*, 34/20, 39/20, 40/20, 46/20 and 50/20.

265 *Sl. glasnik RS*, 39/20 and 126/20.

have been dismissed or criminal proceedings discontinued by a final decision. Court decisions may not be modified to the detriment of the defendant in proceedings initiated by the filing of an extraordinary legal remedy. These prohibitions shall apply to all other proceedings conducted for any other act punishable by law, which means they also apply to misdemeanours and other punishable acts, such as commercial offences. Under Article 202(4) of the Constitution, the rights guaranteed, *inter alia*, in Article 34 of the Constitution may not be derogated from during a state of emergency. Under Article 14(7) of the International Covenant on Civil and Political Rights, no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country. The European Convention on Human Rights includes an identical provision on the *ne bis in idem* principle in Article 4 of Protocol No. 7, which, in paragraph 4, also prohibits derogations from this Article under Article 15 of the Convention.

The provision allowing double jeopardy was initially laid down in the Decree on Misdemeanours. When the Decree on Misdemeanours ceased to have effect on 9 April 2020, the provision was incorporated in the Decree as a brand new Article 4d. What did the same offence constitute in these cases? Under the Decree on Misdemeanours, a misdemeanour fine would be levied against anyone who violated the prohibition of movement during the curfew or the almost 24-hour long prohibition of movement imposed on people over 65(70), which were set in the Order.²⁶⁶ When the Order and the Decree on Misdemeanours ceased to have effect, the Decree laid down these prohibitions of movement. It also prohibited movement in parks and public areas designated for sports and recreation, and presence of over 10 people at funerals, which also carried misdemeanour penalties and allowed double jeopardy.²⁶⁷ Whoever violated the prohibition of movement could also be held liable for committing a criminal offence – non-compliance with health regulations during an epidemic under Article 248 of the Criminal Code. People who ventured outside during the curfew could thus face up to three years' imprisonment (criminal penalty) and a 150,000 RSD fine (misdemeanour penalty).

Under Article 54(1) of the CCA, the Constitutional Court is not constrained by the request of the initiator. Referring to this provision, the Constitutional Court found that identical provisions existed in Article 4(c(6)) and Article 4(d(6)) of the Degree and that parts of them allowing double jeopardy were not in compliance with the Constitution and ratified international treaties at the time they were in force. There was, however, one other provision the Constitutional Court should have reviewed the legality and constitutionality of in the process.

After the state of emergency was lifted, the National Assembly adopted the Act on the Validity of Decrees Adopted by the Government and Co-Signed by the

²⁶⁶ Article 2 of the Decree on Misdemeanours, paragraphs 1 and 2 of the Order.

²⁶⁷ Articles 1a, 1b and 4e of the Decree.

President during the State of Emergency and Ratified by the National Assembly.²⁶⁸ Article 2 of the Act listed the decrees that were no longer valid, including, inter alia, the Decree that allowed double jeopardy (Article 2(1(1))). However, the Act provides for an exception: the Decree shall apply to perpetrators of misdemeanours laid down in the Decree and committed during the state of emergency even after it is lifted (Art. 2(2)). Given that the Decree had laid down the prohibition of the freedom of movement and misdemeanour penalties for violating it and that it derogated from the prohibition of the *ne bis in idem* principle (which the Constitutional Court declared unconstitutional), a criminal and misdemeanour penalty could be imposed against anyone who committed the misdemeanour during the state of emergency, and after 9 April, when the Decree on Misdemeanours and the Order ceased to have effect, until the Constitutional Court's decision was published in the Official Gazette of the Republic of Serbia, i.e. until 23 October 2020. This is why the Constitutional Court should have also reviewed the constitutionality of Article 2(2) of the Act on the Validity of Decrees Adopted by the Government and Co-Signed by the President during the State of Emergency and Ratified by the National Assembly Act.

The Constitutional Court commendably found that provisions allowing double jeopardy were unconstitutional. However, since it took the Court five months to deliver the decision (on 17 September 2020), the impugned provisions became unconstitutional six months after they were adopted (the Constitutional Court decision was published in the Official Gazette on 23 October). Although they ceased to have effect when the state of emergency was lifted, the misdemeanour courts could have applied Article 2(2) of the Act on the Validity of Decrees Adopted by the Government and Co-Signed by the President during the State of Emergency and Ratified by the National Assembly up to 23 October 2020 and punish individuals already found guilty of the offences under criminal law. Although no such cases have been publicly reported, anyone against whom a fine and criminal penalty were imposed for violating the impugned provisions would succeed in having their sentences voided by filing a request for the protection of legality (an extraordinary legal remedy). Had the Constitutional Court been more proactive and ruled on the constitutionality of Article 2(2) as well, it would have minimised even the risk of such manifestly unconstitutional judgments being delivered.

Who is entitled to adopt measures derogating from human rights during a state of emergency? – The BCHR filed another constitutional review initiative with the Constitutional Court during the state of emergency²⁶⁹ in which it challenged the

²⁶⁸ *Sl. glasnik RS*, 65/20.

²⁶⁹ See BCHR's press release on the initiative at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/bchr-initiates-review-of-constitutionality-of-the-decree-on-state-emergency-measures-and-the-order-restricting-and-prohibiting-movement-of-individuals-in-the-territory-of-the-republic-of-serbia/>. The initiative is available in Serbian at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2020/03/Inicijativa-za-pokretanje-postupka-za-ocenu-ustavnosti-policijski-čas.pdf>.

constitutionality of Articles 2 and 3 of the Decree²⁷⁰ and the entire Order²⁷¹ in the light of Article 200(6) of the Constitution. The latter provision lays down that measures derogating from human and minority rights may be prescribed by the Government, in a decree, with the President of the Republic as a co-signatory, in the event the National Assembly is not in a position to convene. BCHR challenged the constitutionality of Articles 2 and 3 of the Decree because the Serbian Government had authorised a state administration authority (the Ministry of Internal Affairs) to define the types, scope and duration of human rights restrictions with the consent of another state administration authority (the Ministry of Health) rather than itself laying down the specific measures derogating from human and minority rights in the Decree. It therefore claimed that the Ministry's Order restricting the right to liberty and security and freedom of movement was also incompatible with the Constitution. The Constitutional Court dismissed the initiative as ill-founded and discontinued its review.

Article 2 of the Decree (adopted by the Government) authorised the MIA to temporarily restrict or prohibit the movement of people in public areas and to order individuals or groups of people having or suspected of having COVID-19 not to leave their homes and report to the relevant health institutions. Article 3 of the Decree entitled the MIA to shut all entrances to public areas or facilities and prevent people from leaving them without special passes, and to order specific individuals or groups of people to remain in specific areas or facilities (migrant reception centres, et al).

Pursuant to these Articles of the Decree, the MIA issued the Order introducing the curfew, prohibiting movement of people over 65(70) and prohibiting movement in parks and other public areas designated for sports and recreation. These measures restricted the freedom of movement of all citizens and, in BCHR's view, deprived of liberty people over 65 (70) and restricted the right to liberty and security of person.²⁷²

During its review of the compatibility of the impugned provisions with the Constitution at the time they were in force, the Constitutional Court held that the Decree laid down measures derogating from human rights (restriction and prohibition of movement, home quarantine) which pursued a legitimate aim (prevention and containment of a communicable diseases) and specified who the measures applied to (primarily people having or at immediate risk of contracting the disease, at-

270 *Sl. glasnik RS*, 31/20, 36/20, 38/20, 39/20, 43/20 and 47/20.

271 *Sl. glasnik RS*, 34/20, 39/20, 40/20 and 46/20.

272 The Constitutional Court held in its decision that people over 65 (70) had not been deprived of liberty, that they had been subjected to a more restrictive restriction of their freedom of movement and that there were no grounds to review the constitutionality of the prohibition of movement measures in light of deprivation of liberty rights (e.g. the right of detained persons to take proceedings by which the lawfulness of their detention shall be decided by a court and their release ordered if the detention is not lawful). More about this part of the Court's decision below.

risk groups of the population) and that the state administration authority (Ministry of Internal Affairs) was tasked with concretising the measures and implementing them in the field. The Constitutional Court considered the solution expedient because the MIA had the most accurate information about the epidemic and its parameters and was able to tailor the intensity of the measures to the need to prevent and contain the epidemic.

The submitter of the initiative did not request of the Constitutional Court to rule on the necessity of the anti-pandemic measures or the expediency of the Government's decision to delegate to the Ministry of Internal Affairs the adoption of regulations to implement and concretise measures derogating from human rights during the state of emergency. As judge Tamaš Korhec set out in his separate opinion, "The main constitutional issue is whether the Government had exercised its constitutional power to lay down measures derogating from constitutionally guaranteed human and minority rights in compliance with the Constitution, i.e. whether it had laid down specific derogation measures or whether it had merely authorised state administration bodies to prescribe the measures themselves in an administrative regulation."

The interpretation of the language used in the Decree leads to the conclusion that the Government had not even specified the measures derogating from human rights, and had merely entitled the Ministry of Internal Affairs to restrict or prohibit movement, order specific individuals not to leave their places of residence, order the closing of all entrances to open areas or facilities and prevent people from leaving them, and order people to stay in specific areas and facilities. The Government also failed to specify who the derogations applied to (restrictions or prohibition of movement could apply to everyone); nor did it specify the areas or times of day the measures applied to or their duration. All these are criteria against which the degree of concretization of a measure is assessed when determining whether it is a derogation measure. The Ministry of Internal Affairs did not concretise the measures derogating from human rights that were prescribed by the Decree. The Government did not prohibit the freedom of movement. The MIA did that in its Order, by which it prohibited people from leaving their homes during curfew, specified whom the prohibition applied to and the degrees of prohibition (people under and over 65 (70)), and restricted freedom of movement in public areas when movement was permitted (prohibition of movement in parks).

Constitutional Court on prohibition of movement of people over 65 (70) and migrants and asylum seekers. – The Constitutional Court also addressed the constitutionality of the prohibition of movement of people over 65 (70) and of migrants and asylum seekers beyond the asylum and reception centres in Serbia. Some initiatives challenged the stricter regime of prohibition of movement of people over 65 (70) than the one imposed on younger people, claiming the former had been discriminated against on account of their age. Some initiatives claimed that the restrictions of the freedom of movement of the elderly amounted to a deprivation of

liberty, which was unconstitutional because it was unnecessary and deprived them of enjoying constitutionally guaranteed rights of people deprived of liberty. Similar arguments about the prohibition of discrimination and unlawful and arbitrary deprivation of liberty were highlighted in claims challenging the constitutionality of measures prohibiting migrants and asylum seekers from leaving asylum and reception centres. The Constitutional Court found that these measures had been in compliance with the Constitution and discontinued the review of these initiatives.

The Constitutional Court first found that these groups of people had not been deprived of liberty, but subjected to a harsher regime of restrictions of the freedom of movement. As of 18 March 2020, people over 65 (70) were prohibited from moving 24/7 for several days, unless they were in need of urgent medical assistance; the prohibition was relaxed subsequently (they were first allowed to leave their homes once a week, in the early morning hours on specific days, when grocery stores opened just for them; subsequently, they were allowed to leave their homes several times a week for 30 minutes when everyone else was under lockdown, provided they did not venture far from their homes; before the state of emergency was lifted, they were allowed to leave their homes every day for 60 minutes when everyone else was under lockdown).

The prohibition of movement of the elderly was laid down in the Order, and, when it ceased to have effect, the Decree. Violations of the prohibition were punishable under criminal law (up to three years' imprisonment) and under misdemeanour law (a fine up to 150,000 RSD). Misdemeanour fines could be levied also against individuals found guilty of the same offence under criminal law.²⁷³ Migrants and asylum seekers were allowed to move within the compounds of the asylum and reception centres they were living in from 16 March to 14 May 2020. The asylum and reception centres were under close watch during the state of emergency, guarded by the Army of Serbia.²⁷⁴ Migrants and asylum seekers were exceptionally allowed to leave the centres with the consent of the Serbian Commissariat for Refugees and Migration in justified cases (to see a doctor or for other justified reasons). Therefore, the restrictions of movement of migrants and asylum seekers were even more rigorous than those imposed on people over 65 (70).

The European Court of Human Rights has identified several criteria for distinguishing between restrictions of the freedom of movement and deprivation of liberty. In its view, the difference between restrictions on movement and mere restric-

273 The misdemeanour and the fine were laid down in the Decree on Misdemeanours and subsequently the Decree, while the criminal offence is prescribed by the Criminal Code.

274 These measures were prescribed by the Decision on the Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum and Reception Centres in the Republic of Serbia (*Sl. glasnik RS*, 32/20) from 16 March to 9 April, and thereafter by the Decree on State of Emergency Measures. After the state of emergency was lifted, the Health Minister issued the Order Restricting Movement on Roads Leading to Asylum and Reception Centre Facilities and Grounds (*Sl. glasnik RS*, 66/20) prohibiting migrants and asylum seekers from leaving the compounds until 14 May 2020.

tions of liberty is one of degree or intensity, and not one of nature or substance.²⁷⁵ The relevant factors include the duration, type and effects of the measures.²⁷⁶ During its review of the issue in case of people over 65 (70), the Constitutional Court also considered the purpose and substance of the measures. It held that their purpose was not to deprive these people of liberty but to protect this vulnerable group from the risk of contracting a dangerous communicable disease. The substance of the measures aimed to create the requisite conditions for effective protection from the dangerous communicable disease in the particular circumstances.

The Constitutional Court thus deviated from ECtHR case law which is part of Serbia's legal order (and which states that the difference between restrictions of movement and deprivation of liberty is not one of nature or substance), concluding that there had been no deprivation of liberty. Consequently, it deemed it unnecessary to review whether these individuals had access to deprivation of liberty rights enshrined in the Constitution;²⁷⁷ nor did it touch on the issue whether the regime the elderly had been subjected to was necessary (to protect them), i.e. whether the restrictions were proportionate (whether the same effect could have been achieved by one or more milder measures). The Constitutional Court applied the same argumentation and concluded that migrants and asylum seekers had not been deprived of liberty either.

What the Constitutional Court would have concluded had it applied the criteria the ECtHR developed in its case law remains unknown. Perhaps it would have concluded that there had been no deprivation of liberty. However, its approach to distinguishing between restrictions of the freedom of movement and deprivation of liberty is problematic for one other reason as well. It would be easy to conclude that any deprivation of liberty imposed to protect a person does not amount to a deprivation of liberty if one uses the criteria applied by the Constitutional Court. The Constitutional Court may thus have diminished constitutional protection against unlawful and arbitrary deprivations of liberty, which may, in particular, impinge on specific vulnerable groups (e.g. people with mental disabilities, the elderly, or the homeless).

The Constitutional Court also dismissed the claims in the initiative that people over 65 (70) had been discriminated against vis-à-vis younger people, because the former had been subjected to a stricter regime of the prohibition of movement without an adequate justification. The Constitutional Court said that the anti-discrimination regime that applied to derogation measures was the one laid down in

275 *Guzzardi v. Italy*, ECtHR, App. no. 7367/76, (1980), para. 92.

276 *De Tommaso v. Italy* [GC], ECtHR, App. no. 43395/09, (2017), paras. 74–90.

277 The right of persons deprived of liberty to be informed promptly in a language they understand about the grounds for arrest or detention, charges brought against them, and their rights to inform any person of their choice about their arrest or detention without delay (Art. 27(2)); to initiate proceedings where the court shall review the lawfulness of arrest or detention and order the release if the arrest or detention was against the law (Art. 27(3); and the right to of all persons deprived of liberty in the absence of a court decision to be brought before the competent court without delay and not later than 48 hours, or their release (Art. 29(2)).

Article 202(2) not in Article 21 of the Constitution. Essentially, the Constitutional Court held that the issue of discrimination on grounds of age could not be raised in the context of measures derogating from human rights during the state of emergency, because age is listed among grounds on which discrimination is prohibited in Article 21 but not in Article 202(2) of the Constitution.

Indeed, Article 202(2) of the Constitution, which states that measures providing for derogation shall not bring about differences based on race, sex, language, religion, national affiliation or social origin, does not prohibit discrimination on grounds of age. What this provision also does not do is entitle the state to adopt measures resulting in unjustified differentiation on grounds of age during a state of emergency. Interpretation of the language used in this provision leads to the conclusion that it essentially does not prohibit discrimination, which is defined as unjustified differentiation based on a personal characteristic; rather, it prohibits any differentiation on the enumerated grounds brought about by measures derogating from human rights during a state of emergency.

Consequently, differentiation on grounds of age caused by measures derogating from human rights is permitted; however, if such differentiation is unjustified, it amounts to discrimination, which is prohibited both in ordinary situations and during a state of emergency. This is reinforced by the general prohibition of discrimination in Article 21 of the Constitution, grouped in the section of the Constitution on the fundamental principles of human and minority rights. As such, it must be at least taken into account when assessing whether the measures undertaken during the state of emergency were discriminatory.

Conversely, the Constitutional Court laconically concluded that the issue of discrimination could not be raised at all. Even if the Court had agreed to review whether the stricter prohibition of movement measures for the elderly amounted to unjustified differentiation on grounds of age, it is unclear what conclusion it would have come to. The Constitutional Court thus deftly avoided the issue, whilst potentially leaving the government room to discriminate against people on account of their age in compliance with the Constitution during any future states of war or emergency.

5. Independent Regulatory Authorities – Independent or Not?

5.1. *Protector of Citizens*

Under the Constitution (Art. 138) and the Protector of Citizens Act,²⁷⁸ the Protector of Citizens shall be an autonomous and independent state authority charged with protecting and improving civil rights and freedoms, minority rights

²⁷⁸ *Sl. glasnik RS*, 79/05 and 54/07.

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.²⁷⁹ 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.²⁸⁰

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 fourth Deputy was not elected by the end of 2020.

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 was reviewed by the Global Alliance for National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation from 7 to 17 December 2020;²⁸¹ its final decision on reaccreditation was to be published in January 2021.

279 More in the *2017 Report*, IV.3.4.1.

280 *Politika*, “Protector of Citizens working without deputies,” 4 April. Available in Serbian at: <http://www.politika.rs/sr/clanak/428746/Zastitnik-gradana-radi-i-bez-zamenika>.

281 More at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx>.

5.1.1. 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.²⁸² The National Assembly reviewed and adopted the Protector's 2019 Annual Report on 26 December 2020.²⁸³

The Protector of Citizens has also been publishing special reports. He published four such reports in 2020: a Special Report on work of groups charged with coordination and cooperation in combatting domestic violence in the City of Belgrade;²⁸⁴ a Special Report on the Activities of the Protector of Citizens during the State of Emergency;²⁸⁵ a Special Report on conditions in Roma settlements during the state of emergency and implementation of anti-COVID-19 measures;²⁸⁶ and a Special Report with recommendations: Analysis of exercise of public powers by National Minority Councils in the 2014–2018 period.²⁸⁷

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 (Art. 18). According to information published on his website, the Protector of Citizens in 2020 filed three initiatives that were still pending. In his Special Report on his activities during the state of emergency,²⁸⁸ the Protector of Citizens said that the line ministries had upheld a number of his initiatives to amend by-laws.²⁸⁹

282 The National Assembly failed to adopt the Protector's 2014–2018 report. In July 2019, it reviewed the 2018 Report.

283 Danas, "Serbian Assembly adopts reports of independent institutions, Palma criticises Ombudsman and Equality Commissioner," 26 December. Available in Serbian at: <https://www.danas.rs/politika/poslanici-raspravljaju-o-izvestajima-nezavisnih-institucija-palma-kritikovao-ombudsmana-i-poverenicu/>.

284 Available in Serbian at: <https://www.rodnaravnopravnost.rs/attachments/article/338/Posebna%20izvestaj%20zastitnika%20gradjana.pdf>.

285 Available at: <https://www.ombudsman.org.rs/attachments/article/192/Report%20on%20Protector%20of%20Citizens%20activities%20during%20COVID-19%20pandemic.pdf>.

286 Available at: <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6656-special-report-of-the-protector-of-citiyens-with-recommendations>.

287 Available in Serbian at: <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6473-2014-2018>.

288 Available at: <https://www.ombudsman.org.rs/attachments/article/192/Report%20on%20Protector%20of%20Citizens%20activities%20during%20COVID-19%20pandemic.pdf>.

289 More in the 2020 *Semi-Annual Report*, VII.1.

The Protector of Citizens plays an important role before the Constitutional Court, which is under the obligation to review the constitutionality of laws, other regulations and general enactments at his initiative (Art. 19). This Court is not under the obligation to review such initiatives filed by members of the public.

Unfortunately, the Protector of Citizens did not exercise this power in 2020, as he was reasonably expected to after the declaration of the state of emergency and the adoption of a number of measures derogating from human rights and freedoms enshrined in the Constitution (freedom of movement, right to liberty and security, right to a fair trial, rights of defendants, etc.).

The Protector of Citizens missed the opportunity to initiate with the Constitutional Court its review of the constitutionality of the Decision on the Proclamation of the State of Emergency of 15 March 2020, despite the fact that a number of eminent experts initiated such a review with the Court, alerting to the invalidation of the National Assembly's role in the procedure in which the state of emergency was proclaimed.²⁹⁰

The Protector of Citizens is also entitled to review complaints of human rights violations by administrative authorities filed by members of the public. Statistics published on his website show a substantial increase in the number of contacts his Office had with members of the public in 2020 – 11,811, or 4,225 more than in 2019. The Protector of Citizens said that his Office had received ten times as many complaints than usual during the state of emergency.²⁹¹

The Protector of Citizens reviewed 4,495 complaints in 2020. He closed 3,356 cases, while the review of 1,139 cases was still ongoing at the end of the reporting period.

The Protector of Citizens issued 445 recommendations in 2020; 78 of them were implemented and 28 were not; the deadlines for the fulfilment of 339 of his recommendations had not expired yet at the end of 2020.

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.

In July, the media quoted the former Assistant Secretary General of the Protector of Citizens as saying that many Office staff were quitting their jobs and that a number of disciplinary proceedings initiated by the Protector of Citizens against his staff were under way.²⁹²

290 More on the proclamation of the state of emergency in Chapter I.3.

291 RTS, "Ten times as many complaints filed with the Protector of Citizens during state of emergency," 6 May. Available in Serbian at: <https://cutt.ly/gjqHj61>.

292 Nova.rs, "Associate accuses Ombudsman of humiliating staff," 17 July. Available in Serbian at: <https://nova.rs/vesti/drustvo/saradnica-optuzila-ombudsmana-za-ponizavanje-zaposlenih/>.

5.1.2. Should the Powers of the Protector of Citizens be Extended?

The Chapter 23 Action Plan envisages the amendment of the Protector of Citizens Act.²⁹³ 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 Study²⁹⁴ 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.

Rather than strengthening the independence and efficiency of the National Preventive Mechanism against Torture (NPM), the new by-law on staffing undermined the NPM's independence by abolishing its status of a Secretariat. The Baseline Studies does not provide any suggestions on how to regulate the relationship between the Protector of Citizens and international human rights mechanisms. It 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.²⁹⁵ 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.²⁹⁶

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, was not fulfilled by the end of 2020.

The efficiency and effectiveness of the work of the Protector of Citizens were not improved despite the critical need to extend the jurisdiction and strengthen the status of this institution, especially with respect to the implementation of its recommendations and decisions issued after its reviews of the operations of administrative authorities.

293 More in the 2017 Report, III.4.4.1.

294 The Baseline Study is available in Serbian at: https://www.paragraf.rs/nacrti_i_predlozi/111217-osnove-nacrt-a-zakona-o-zastiti-gradjana.pdf.

295 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.

296 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.

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.²⁹⁷ 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-2017.²⁹⁸

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.

In May 2020, the Protector of Citizens and representatives of seven press and media associations and three trade unions signed an Agreement on the Establishment of the Platform for the Registration of Cases of Threats to the Safety and Pressures against Journalists and Other Media Professionals. The nationwide platform, modelled after the platform of the Council of Europe, registers all attacks on reporters and the relevant authorities' reactions to them.

The implementation of the project was preceded by the Ombudsman's numerous meetings with representatives of media authorities and press and media associations in 2019.

In early November 2020, the Protector of Citizens condemned the verbal attack on *N1* reporter Žaklina Tatalović on a TV station with national coverage, appealing to all the relevant authorities to take all the requisite measures to ensure that this and similar attacks are adequately penalised.²⁹⁹

On the other hand, the Ombudsman's did not show much interest in the arrest of reporter Ana Lalić, who was placed into 48-hour custody for reporting on difficult conditions Vojvodina Clinical Centre doctors and staff worked in during the coronavirus pandemic.³⁰⁰ Although the incident occurred just one month before the Platform was set up, i.e. when Zoran Pašalić exhibited the greatest interest in pressures against journalists and threats to their safety, his only concern in the matter was how the police treated the arrestee.

297 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>.

298 See more in *2019 Report*, III.4.1.2.

299 *Insajder*, "Press associations, *N1* and Protector of Citizens condemn Aca Lukas' attacks on reporter during a show on a TV station with national coverage," 9 November. Available in Serbian at: <https://insajder.net/sr/sajt/vazno/21184/>.

300 *N1*, "48-hour custody of Nova.rs portal reporter ordered," 2 April. Available in Serbian at: <http://rs.n1info.com/Vesti/a584626/Novinarki-Nova.rs-odredjeno-zadrzavanje-do-48-sati.html>.

5.1.3. Activities of the Protector of Citizens in 2020

The Protector of Citizens performed a greater number of reviews of the operations of administrative authorities on his own motion in 2020, mostly during the state of emergency, and in response to media reports.

An incident that occurred in April, during the state of emergency, drew a lot of public attention. A Belgrade police officer was filmed slapping an arrested man in the police car. The Protector of Citizens found that the police officer's illegal treatment of the arrestee had violated the victim's right to inviolability of his physical and mental integrity and issued recommendations to the Ministry of Internal Affairs. The case was not closed by the end of the reporting period.³⁰¹

During his review of the work of Belgrade, Niš and Novi Sad police departments, the Protector of Citizens found that police officers had failed to respond promptly and efficiently to reports filed by citizens in the 29 April – 3 May period and had not prevented assemblies of unidentified individuals on roofs of buildings in the evenings, during the curfew.³⁰²

The identity of these individuals, suspected of violating the Public Law and Order Act and the curfew imposed under the Decision on State of Emergency Measures, was thus not ascertained.

The Protector of Citizens found that such police conduct had resulted not only in the risk of violation of public law and order during this period, but had also brought into question the efficient implementation of the measures the Serbian Government had introduced to contain and prevent the transmission of COVID-19 and protect the population from that disease. He therefore recommended to the MIA to conduct disciplinary proceedings against officers charged with responding to the reports to ascertain whether they grossly violated their official duties.

The case was not closed by the end of the year. The MIA had not responded to the letter of the Protector of Citizens by the end of 2020. What is interesting in this case is that the Protector of Citizens decided to conduct the oversight in writing, although he could have himself reviewed the operations of all the police stations and thus greatly cut down the time needed to collect the relevant facts and evidence (he issued the recommendations to the MIA seven months after he launched the review).

The Protector of Citizens also launched a review on his own initiative after media reported that an adopted child, who had lived with her adoptive parents for months, was returned to her foster family due to the mistakes of the Subotica Social Work Centre. He launched a review of the operations of the Subotica Social Work

301 More is available in Serbian at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/6697-p-lici-s-i-sluzb-ni-n-z-ni-i-p-niz-v-uc-p-s-up-priv-d-nj>.

302 Available in Serbian at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/6850-n-fi-sn-r-g-v-nj-p-lici-n-uplj-nj-n-p-zn-ih-s-b-n-r-v-vi-zgr-d>.

Centre, the Vojvodina Secretariat for Social Policy, Demography and Gender Equality, and the Ministry of Labour, Employment and Veteran and Social Issues. The Protector of Citizens identified systemic regularities in their operations and issued recommendations on their urgent elimination. He, inter alia, recommended to the Ministry of Labour, Employment and Veteran and Social Issues to order the urgent implementation of the adoption procedure, in accordance with the relevant law and other regulations and in the best interests of the child. The administrative authorities' responses, available on the website of the Protector of Citizens, indicate that they had acted on this recommendation and were still working on eliminating the systemic irregularities.³⁰³

The Protector of Citizens failed to react adequately and promptly to public health concerns that arose when news broke about the major discrepancies between the reported COVID-19 deaths and infections and the data of the COVID-19 Information System. Although BCHR filed an initiative with the Protector of Citizens to review the operations of the Health Ministry in June, it took Zoran Pašalić nearly four months to state (on RTS) that he had initiated such a review.³⁰⁴

However, BCHR learned from a reply to its request for access to information of public importance that the review of the Health Ministry's operations had not been formally initiated; rather on 16 October, the day before Pašalić appeared on RTS, Minister Lončar was asked to notify the Protector of Citizens of the findings of his review of the COVID-19 Information System. The Protector of Citizens rendered meaningless his independent oversight role by requesting of an administrative authority to itself perform the review and notify him of the outcome.

Other important reviews launched by the Protector of Citizens in the first half of 2020, especially during the state of emergency, are analysed in BCHR's 2020 *Semi-Annual Report*.³⁰⁵

BCHR filed 32 reports with the Protector of Citizens during and after the July 2020 protests in Belgrade, Novi Sad and Niš, alerting him to police abuse. Most of the reports were substantiated with video recordings, which had already been published by the media and on social networks.

BCHR was informed that the Protector of Citizens initiated the review of the MIA's operations on his own initiative in only two cases: the case of a police officer who pulled a young man off his bicycle in Novi Sad and the case in which dozens of police officers truncheoned and kicked a man curled up on a Belgrade street. It remained unclear whether and how the Protector of Citizens reacted to all other

303 Available in Serbian at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/6730-z-sh-i-ni-gr-d-n-z-p-c-l-nj-nj-sis-s-ih-n-d-s>.

304 RTS, "Protector of Citizens appeals for urgent and free forensic examinations of victims of violence," 17 October. Available in Serbian at: <https://www.rts.rs/page/stories/sr/story/125/drustvo/4116168/pasalic-nasilje-porodica-dokazi.html>.

305 Available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Human-Rights-in-Serbia-I-VI-2020.pdf>.

cases brought to his attention, except the cases in which the BCHR subsequently assumed legal representation of 18 victims of police abuse.³⁰⁶

5.1.4. 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 Punishment³⁰⁷ in December 2005. The NPM was established in 2011, under the Act Amending the Act on the Ratification of the Optional Protocol.³⁰⁸ In Serbia, the Protector of Citizens performs the duties of the NPM in cooperation with the provincial Ombudsman and human rights organisations.³⁰⁹

The Protector of Citizens is entitled to visit and regularly examine the treatment of persons deprived of liberty in places of detention,³¹⁰ 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.³¹¹

The Lawyers' Committee for Human Rights was the only civic organisation with which the Protector of Citizens continued his cooperation on the performance of NPM duties in 2020; he discontinued cooperation with the Mental Disability Rights Initiative Serbia (MDRI-S) and the International Aid Network (IAN). In June 2020, the Protector of Citizens issued a decision listing the associations with which it would cooperate on the performance of NPM duties in the forthcoming period: the Helsinki Committee, the Victimology Society, the Valjevo Human

306 The Protector of Citizens notified BCHR that reviews of the MIA's operations were initiated in all 18 cases.

307 *Sl. list SCG (Međunarodni ugovori)*, 16/05 and 2/06.

308 *Sl. glasnik RS (Međunarodni ugovori)*, 7/11.

309 Article 2a of the Act Amending the Act on the Ratification of the Optional Protocol.

310 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.

311 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.

Rights Committee, the Youth Integration Centre and the Initiative for Economic and Social Rights – A11.³¹²

The NPM published four reports during the reporting period: a report on the MIA's fulfilment of recommendations made in the Report on Oversight of Forced Removal of Aliens (January-March 2020);³¹³ the NPM 2019 Annual Report;³¹⁴ the Report on Visits to the Reception Centres in Obrenovac and Adaševci and the reply of the Commissariat for Refugees and Migration on the implementation of NPM's recommendations;³¹⁵ the NPM's Thematic Report on the Implementation of CPT principles relating to the treatment of persons deprived of their liberty during the COVID-19 pandemic.³¹⁶

In its 2019 Annual Report, the NPM, notably, found that most police departments and stations visited by the NPM did not have separate interrogation rooms equipped with audio-video recording devices, although the existence of such rooms provides persons deprived of liberty with protection from police abuse.

The NPM expressed concern over the overcrowding of social care institutions and the poor living conditions, lack of privacy, understaffing of front-line services and lack of meaningful activities in them, which could, if experienced cumulatively and in continuity, lead to inhuman and degrading treatment of their residents. The NPM found similar conditions in psychiatric institutions, where it devoted major attention to fixation and alerted that the institutions should apply fixation in compliance with the relevant standards and register all instances of fixation fully and in detail.³¹⁷

An analysis of the NPM's activities in 2020 based on information published on the website of the Protector of Citizens leads to the conclusion that the NPM conducted more visits in 2020 than in the previous years. It commendably did not pre-notify its visits to police stations and departments that were the subject of its reports during the first half of 2020.

Another welcome change in NPM's practice regards its oversight of forced removals of aliens, specifically its insistence that the relevant administrative authorities thoroughly assess the risks of the aliens' ill-treatment if they are expelled from

312 Available in Serbian at: <https://cutt.ly/KjqZkJK>.

313 Available in Serbian at: <https://cutt.ly/VjqXfEE>.

314 Available at: https://npm.lls.rs/index.php?option=com_content&view=category&layout=blog&id=31&Itemid=22.

315 Available in Serbian at: <https://cutt.ly/jjqXUrq>.

316 Available at: <https://npm.rs/attachments/article/916/Report.pdf>.

317 The NPM issued 198 recommendations, 195 in reports on visits to places of detention and three in reports on oversight of forced removals of aliens. Fifty-four of the recommendations regarded individuals arrested and held in police stations, 48 regarded the residents of social care institutions, 43 concerned treatment of detained and convicted prisoners, 42 regarded treatment of psychiatric patients, while eight recommendations were issued to improve the situation in the field of migration.

Serbia (the *non-refoulement* principle). A number of international human rights bodies have alerted to this problem in their reports on Serbia.³¹⁸

In addition to its activities during the state of emergency,³¹⁹ the NPM monitored police treatment of protesters and people deprived of liberty on a daily basis in the 8–25 July period. The NPM team visited the Belgrade District Prison and the penitentiary in Padinska Skela and interviewed people ordered into pre-trial detention and serving prison sentences for the misdemeanours they had committed.

The NPM prepared a Thematic Report on Police Treatment of Persons Deprived of Liberty during the Public Assemblies in Belgrade.³²⁰ BCHR was forwarded a copy of the Report in response to its request for access to information of public importance since it was not published on the website of the Protector of Citizens. The Report confirmed allegations, substantiated by numerous eyewitness testimonies and media footage, of police brutality and excessive use of force during the protests.

The NPM, *inter alia*, noted that most of the individuals brought before Misdemeanour Courts complained they had not been provided with the chance to call their lawyers because the judges “were in a hurry” to finish the proceedings and that a number of people complained that they did not have a chance to consult with their lawyers. Medical examinations of arrestees in police stations were as a rule conducted in the presence of police officers, although the arrestees claimed that the doctors did not request it because they feared for their safety. In their reports on the examinations, the doctors said that the identified injuries had been incurred by “unidentified individuals”, although the arrestees told them they had been injured by police officers. Police officers admitted to the NPM team that some of the people brought in had visible injuries, which were not registered in the custody records. As many as 17 of the 28 people the NPM talked to complained of police treatment during arrest. Many of them had visible injuries which, in the doctors’ opinion, could have been sustained in the manner alleged.

The Report emphasises that the NPM team had been unable to personally monitor all the police activities during the protest, but that the information on the publicly available video footage showed that the issue was not whether the use of means of coercion was legal or not; rather, it clearly showed that violence that had the character of ill-treatment had occurred (use of rubber truncheons against people peacefully sitting on a park bench and showing no sign of resistance, kicking of a man lying in the street).

318 See, e.g. the report of the Special Rapporteur on torture on his visit to Serbia in November 2017, A/HRC/40/59/Add.1, paras. 49–51, available at: <https://digitallibrary.un.org/record/3791992>.

319 More in the *2020 Semi-Annual Report*, VI.1.2.

320 “Main Parts of the National Preventive Mechanism’s Report on Police Brutality during the July Protests,” available in Serbian at: <http://www.bgcentar.org.rs/najvazniji-delovi-izvestaja-nacionalnog-mehanizma-za-prevenciju-torture-o-policijskoj-brutalnosti-tokom-julskim-protesta/>.

The content of the Report obligates the public prosecutors acting on complaints of police violence during the protests to question the team of the Protector of Citizens that themselves saw the events in the capacity of witnesses.

5.2. Commissioner for the Protection of Equality

The Commissioner for the Protection of Equality (hereinafter: Equality Commissioner) was established pursuant to the Anti-Discrimination Act³²¹ 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.³²²

The Equality Commissioner submits annual reports on protection of equality to the National Assembly, which contain an assessment of the work of public authorities, service providers and other persons, the identified shortcomings and recommendations for their elimination.³²³

5.2.1. "Delayed" Re-Election of the Equality Commissioner

The Office of the Equality Commissioner celebrated its 10th anniversary on 27 May 2020. Equality Commissioner Brankica Janković's five-year term in office expired the same day.

The work of her Office was practically blocked the following six months, since none of the staff was legally entitled to act in her name. The Office did not initiate the review of any complaints alleging discrimination filed within that period. Nor did it undertake any procedural actions in the pending anti-discrimination proceedings. Many Serbian citizens were thus deprived of adequate support and were at risk of violations of their rights during the interregnum. This led a group of over 50 NGOs to appeal to all the relevant actors to make sure that the new parliament urgently elected the new Equality Commissioner. They said that the current situation

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

322 More on the election of the Equality Commissioner in Chapter III.5.2.1.

323 Article 48.

additionally victimised all those who have been discriminated against and increased risks of their further or repeated discrimination.³²⁴

Many CSOs that had filed complaints with this institution were notified that the reviews would ensue “after the election of the Equality Commissioner.” The standstill exacerbated the status of victims of discrimination, who were unable to claim adequate protection, and increased risks of their further discrimination.

People belonging to vulnerable and disadvantaged groups, including those resorting to this mechanism to protect themselves from discrimination free of charge, were hit the hardest by interregnum, which was in contravention with international obligations. The situation was all the more alarming given that this anti-discrimination mechanism, the only accessible and effective one for some people, was unavailable amidst the COVID-19 pandemic.

The parliamentary elections in June were followed by a long delay in the forming of the new Government and the constitution of the National Assembly, including the Committee for Constitutional Issues and Legislation (hereinafter: the Committee), which was to review the nominations for the office of Equality Commissioner. On the 10th anniversary of the Office of the Equality Commissioner, the outgoing Assembly Speaker Maja Gojković said that she had already initiated the procedure for electing the new Commissioner within the following three months as prescribed by the law³²⁵ and that the new caucuses formed after the elections would also have the opportunity to nominate their own candidates.³²⁶ This, however, did not happen and the question arose why the pre-election Assembly could not have voted in the new Equality Commissioner given the months-long “vacuum” during which this independent authority was effectively dormant.³²⁷

This was one of the reasons why the Draft Act amending the Anti-Discrimination Act also addresses the election of the Equality Commissioner, with a view to ensuring uninterrupted work of that institution.³²⁸ The Draft Act, however, did

324 The NGOs’ press release of 16 June 2020 is available in Serbian at: https://www.femplatz.org/library/2020-06-16_Zastita_od_diskriminacije_na_pauzi.pdf.

325 Under Article 30 of the Anti-Discrimination Act, the National Assembly shall elect a new Equality Commissioner nominated by the Committee on Constitutional Issues within three months from the day of termination of the prior Commissioner’s term in office.

326 *NI*, “10th anniversary of Equality Commissioner’s Office marked,” 27 May. Available in Serbian at: <http://rs.n1info.com/Vesti/a603938/Obelezeno-deset-godina-institucije-Poverenika-za-zastitu-ravnopravnosti.html>.

327 Unfortunately this is not the first time the legislature has demonstrated such an attitude towards independent institutions. The new Commissioner for Information of Public Importance and Personal Data Protection Milan Marinović was elected on 26 July 2019, although the term in office of his predecessor, Rodoljub Šabić, expired on 22 December 2018.

328 Under Article 9 of the Draft Act Amending the Anti-Discrimination Act, the National Assembly shall initiate the election of the new Equality Commissioner three months before the expiry of the term in office of the outgoing Commissioner, who will remain in office until the election of the new Commissioner.

not make the parliament agenda by the end of the year, due, inter alia, to the state of emergency and parliamentary elections.

After six months, the Committee on 20 November called the session to discuss the only candidate for the office for 23 November. The name of the candidate and which caucus nominated her was publicly unknown at the time. The Committee also planned to vote on the nominee at the same session.

The entire election procedure was thus not only conducted with a delay,³²⁹ but was rushed and non-transparent as well. No dialogue with all the relevant stakeholders was conducted. Nor did the Committee take into account a CSOs' nominee,³³⁰ who has for years been working in the Office of the Equality Commissioner and fulfils all the requirement for the job. The CSOs required of the National Assembly to halt the election procedure to ensure its transparency.³³¹ The Committee session was, however, held as planned, its Chair Jelena Žarić Kovačević qualifying accusations of non-transparency voiced by the CSOs and media as "malicious scribble".³³²

The SNS caucus nominated Brankica Janković at the Committee session. It was only then that the public learned that she was the only candidate because, reportedly, other caucuses had not nominated anyone.³³³ Despite public criticisms, the Assembly debated the election of the new Equality Commissioner at its session on 26 November. Brankica Janković's candidacy was supported by the MPs of the ruling majority³³⁴ and she was officially re-elected.³³⁵

5.2.2. Equality Commissioner's Activities in 2020

True to form, the Equality Commissioner promptly submitted her 2019 Annual Report to the National Assembly.³³⁶

- 329 Pursuant to the Anti-Discrimination Act, the new Equality Commissioner was to have been elected by end August 2020, within three months from the day the outgoing Commissioner's term in office expired.
- 330 The Bujanovac-based Roma Centre for Democracy forwarded its initiative on the nomination of a candidate and its nomination, which was backed by over 60 NGOs, back on 27 August 2020. The nominee, however, was not invited to the Committee session. See more in Serbian at: <https://bityl.co/4idb>.
- 331 *Danas*, "NGO demanding end to non-transparent Equality Commissioner election procedure," 23 November. Available in Serbian at: <https://bityl.co/4e1d>.
- 332 *NI*, "Committee Chair on Commissioner; am I supposed to shout over a megaphone that I called a session?" 23 November. Available in Serbian at: <https://bityl.co/4iiR>.
- 333 *Danas*, "Janković soon to be voted in new-old Commissioner," 23 November. Available in Serbian at: <https://bityl.co/4e2x>.
- 334 *RTS*, "Debate on election of Equality Commissioner ends," 26 November. Available in Serbian at: <https://www.rts.rs/page/stories/sr/story/9/politika/4164675/skupstina-poverenik.html>.
- 335 See the Equality Commissioner's press release of 27 November. Available at: <http://ravno-pravnost.gov.rs/en/national-assembly-of-the-republic-of-serbia-elected-brankica-jankovic-for-commissioner-for-protection-of-equality/>.
- 336 The abridged version of the Equality Commissioner's 2019 Report is available at: <http://ravno-pravnost.gov.rs/wp-content/uploads/2020/05/Skraceni-redovni-godisnji-izvestaj-2019-engl.pdf>.

The Equality Commissioner said in her 2019 Report that she had issued a total of 29 recommendations for suppressing discrimination and improving equality in the reporting period. Most of the complaints concerned discrimination on grounds of disability, gender and health. The Report stated that the Equality Commissioner received equal numbers of complaints of discrimination on grounds of age and membership of political, unionist and other organisations and fewer complaints of discrimination on grounds of marital and family status, ethnicity, financial standing and sexual discrimination, as well as a small number of complaints of discrimination on other grounds. Labour and employment-related discrimination again ranked supreme – one-third of the complaints alleged discrimination in this field. Next came discrimination in procedures before public authorities, in education, social protection, et al.

The general impression is that headway is visible, but that society still faces numerous challenges with respect to equality and protection from discrimination, as corroborated by the large numbers of complaints in the same areas and alleging discrimination against the same categories of the population over the past few years. Hence the need to adopt quality amendments to the Anti-Discrimination Act as soon as possible, in order to align the law with international standards and to ensure it provides more effective protection from discrimination to everyone, especially the most vulnerable categories of the population.

The Equality Commissioner in January 2020 published a Special Report on Discrimination in Labour and Employment³³⁷ and results of her research “Discrimination in the Labour Market”.³³⁸ The Report confirms that one-third of complaints filed with the Equality Commissioner since the institution has been established were related to employment-related discrimination and that there were no prospects of the situation substantially improving in the near future.³³⁹

In the January-May 2020 period, until her term in office expired, the Equality Commissioner adopted opinions and recommendations and submitted initiatives, in accordance with her legal powers. Available data, however, indicate that the Office’s activities were scaled down during the six-month interregnum.³⁴⁰ The Commissioner issued 21 recommendations to public authorities and 11 initiatives,³⁴¹ many of which addressed the status of the most vulnerable categories of the population during the state of emergency.

During the pre-pandemic election campaign, the Equality Commissioner issued a Recommendation³⁴² to all cities and municipalities to ensure greater involve-

337 Available in Serbian at: <https://bityl.co/4if4>.

338 Available in Serbian at: <http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2020/01/diskriminacija-na-trzistu-rada-FINAL.pdf>.

339 More in *2020 Semi-Annual Report*, VII.2.1.

340 More in *2020 Semi-Annual Report* and the Equality Commissioner’s website.

341 See more at: <http://ravnopravnost.gov.rs/en/opinions-and-recommendations/>.

342 Equality Commissioner, “Recommendation to Local Self-Governments on Achieving Equality of Women and Youths,” 21 February 2020, available in Serbian at: <https://bityl.co/4ifQ>.

ment of women and youths in political and public decision-making at the local level. Namely, the Act on the Election of Assembly Deputies³⁴³ lays down that women are to hold offices at all levels of government and administration in Serbia, which is not the case in practice. ³⁴⁴

The Equality Commissioner's Recommendation to the national Social Protection Institute also concerned cities and municipalities, specifically the provision of personal escort services to children with disabilities, because she had received a large number of complaints that individual local self-governments did not provide such services.³⁴⁵

The Equality Commissioner qualified as discriminatory a statement by Health Minister Zlatibor Lončar that he was "conducting a policy to ensure that there are no Montenegrins in his portfolio" and that Montenegrins "who don't speak Serbian" held a number of senior offices in Serbia.³⁴⁶ The Equality Commissioner told the media such views were disturbing, damaged the state's reputation and were, first and foremost in contravention of the Constitution and the principles of equality. Lončar said he was sorry if anyone had felt offended or discriminated against because of his statement.

On 25 April 2020, the Equality Commissioner issued a warning in response to the sexist comments *Informer* editor Dragan Vučićević made about *N1* reporter Žaklina Tatalović on Twitter. All members of the opposition Party of Freedom and Justice earlier called on her to put an end to such actions by the *Informer* editor.³⁴⁷ This was not the first time various individuals, especially those close to the ruling echelons,³⁴⁸ made offensive and sexist comments about Žaklina Tatalović. Nor was she the only victim. The public arena is still rife with hate speech against women, who are often subjected to misogynous insults, abuse and verbal harassment. Even the Equality Commissioner was the target of sexist statements when she rose in defence of a *Danas* reporter in 2019, who was insulted by Serbian Radical Party leader Vojislav Šešelj.³⁴⁹

343 *Sl. glasnik RS*, 35/00, 57/03 – CC decision, 72/03 – other law, 75/03 – correction of other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – CC decision, 36/11, 104/09 – other law and 12/20.

344 More in *2020 Semi-Annual Report*, VII.2.1.

345 The Equality Commissioner's Recommendation of 21 February 2020 is available in Serbian at: <https://bityl.co/4ifi>.

346 *N1*, "Lončar: Montenegrins who don't speak Serbian holding numerous senior offices," 6 February. Available in Serbian at: <http://rs.n1info.com/Vesti/a567200/Loncar-Na-mnogo-vodecih-mesta-imamo-Crnogorke-koji-nisu-srpski-naucili.html>.

347 *N1*, "Equality Commissioner condemns Vučićević's tweets and invites *N1* reporter to file a complaint," 25 April. Available in Serbian at: <http://rs.n1info.com/Vesti/a592866/Povorenica-osudila-tvitove-Vucicevica-i-pozvala-novinarku-N1-da-podnese-pritužbu.html>.

348 During his appearance on *TV Pink* in November 2020, folk singer Aleksandar Aca Lukas made sexist comments about Žaklina Tatalović that no one adequately reacted to. His statements met with harsh NGO, public and media criticisms. See the Journalists' Association of Serbia press release, available in Serbian at: <https://bityl.co/4ihL>.

349 More in the *2019 Report*, III.4.4.1.

5.2.3. State of Emergency and Equality Commissioner's Activities

Members of vulnerable groups faced various specific challenges in practice in 2020, caused primarily by the COVID-19 pandemic, as well as the inability to ask the Equality Commissioner for support and protection of their rights during the six-month interregnum.

The Equality Commissioner issued six recommendations during the state of emergency introduced in Serbia to halt the spread of SARS-CoV-2. All of them aimed at improving the status of individual categories of the population, whose status deteriorated during the state of emergency and who were at greater risk of discrimination. Some of the recommendations concerned measures in support of victims of domestic violence,³⁵⁰ measures regarding supplying of electricity to the elderly and social vulnerable categories of the population,³⁵¹ and measures to improve the situation of Roma in informal settlements.³⁵² Furthermore, in May 2020, the Equality Commissioner issued a Recommendation³⁵³ to the Government regarding its Economic Measures Programme³⁵⁴ to help address the effects of the epidemic on businesses. The Programme envisaged four sets of measures to maintain employment during the state of emergency and help companies pursue their operations.³⁵⁵

Many members of particularly vulnerable groups faced major hardships during the state of emergency lockdowns. The Equality Commissioner on several occasions exercised her legal powers to help them exercise their rights in these extraordinary circumstances. In March 2020, she filed an initiative to exempt from the evening curfew personal assistants of persons with disabilities and providers of other services.³⁵⁶ She also filed an initiative with the Ministry of Labour, Employment and

350 Equality Commissioner, "Recommendation No. 560–2020 of Measures Regarding Curfew Passes, Work of Hotlines, Domestic Violence," 15 April. Available at: <http://ravnopravnost.gov.rs/preporuka-mera-u-vezi-dozvola-za-kretanje-rada-linija-cir/>.

351 Equality Commissioner, "Recommendation No. 340–2020 of Measures Regarding Supplying the Elderly and Social Vulnerable Categories with Electricity," 9 April. Available in Serbian at: <http://ravnopravnost.gov.rs/preporuka-mera-za-slabdevanje-el-energijom-cir/>.

352 The Standing Conference of Roma Associations – Roma League wrote a letter to the Equality Commissioner, alerting her to the grave problems Roma were facing since the declaration of the coronavirus pandemic. The Equality Commissioner's Recommendation No. 596–2020 of 21 April 2020 is available in Serbian at: <http://ravnopravnost.gov.rs/polozaj-roma-u-romskim-nas-cir/>.

353 Equality Commissioner, "Recommendation of Measures to the Government Regarding the Programme of Economic Measures," 7 May. Available in Serbian at: <http://ravnopravnost.gov.rs/rs/preporuka-mera-vladi-povodom-programa-ekonomskih-mera/>.

354 KPMG, Overview of the Programme of Economic Measures, 2 April. Available at: <https://home.kpmg/rs/en/home/insights/2020/04/economic-measures-announced-by-serbian-government-due-to-covid-19-crisis.html>.

355 The Equality Commissioner had received a number of complaints and letters from citizens and guild associations complaining that the Programme did not treat all categories of the population equally, in particular children, women, especially those over 45, the informally employed and unemployed, notably Roma, and independent artists and farmers.

356 More in 2020 *Semi-Annual Report*, VII.2.2.

Veteran and Social Issues to grant the freedom of movement to autistic children and adults, and their parents and guardians during the curfew, for a limited period of time and in the vicinity of their homes, to enable them to maintain their daily routines and habits, which is crucial for autistic people.³⁵⁷ The Equality Commissioner launched some initiatives in response to complaints by CSOs and members of the public. They included, e.g. the initiative to amend the Decree on State of Emergency Measures concerning victims of domestic and intimate partner violence.³⁵⁸ The Equality Commissioner also filed an initiative with the Ministry of Internal Affairs to refrain from punishing people suffering from dementia for violating the curfew.³⁵⁹

According to available data, the Equality Commissioner has issued four opinions on various enactments since her re-election, including on the Draft 2020–2024 Strategy for Improving the Status of Persons with Disabilities,³⁶⁰ and the Draft 2020–2025 Artificial Intelligence Strategy.³⁶¹

5.3. 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)³⁶² and the Personal Data Protection Act (PDPA).³⁶³

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 au-

357 Equality Commissioner Initiative to Allow Movement of Persons with Autism, 13 April. Available at: <http://ravnopravnost.gov.rs/en/initiative-to-allow-moving-for-persons-with-autism/>.

358 The representatives of the Valjevo Human Rights Committee and the Roma Women's Association OSVIT-Niš wrote to the Equality Commissioner, alerting her to the problems victims of domestic violence were facing during the state of emergency. The Equality Commissioner's initiative submitted to the Government on 24 April 2020 is available in Serbian at: <http://ravnopravnost.gov.rs/inicijativa-mup-povodom-kaznjavanja-osoba-oblelih-od-dem-cir/>.

359 The Equality Commissioner on 13 April 2020 filed an initiative with the MIA in response to media allegations that the police were punishing people over 65 for violating the curfew although these people were obviously unable to understand the importance of the lockdown and their obligation to comply with the measure. The initiative is available in Serbian at: <http://ravnopravnost.gov.rs/inicijativa-mup-povodom-kaznjavanja-osoba-oblelih-od-dem-cir/>.

360 Opinion No. 021-01-2/2020-02, available in Serbian at: <https://bit.ly.co/4ihU>.

361 Available in Serbian at: <https://bit.ly.co/4ii7>.

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

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

thorities' 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 Commissioner is elected to a seven-year term in office and may be re-elected once. Milan Marinović has been Serbia's Commissioner since mid-2019. His election was not preceded by a public debate on his candidacy. Nor were the other nominations taken into consideration.³⁶⁴

In March 2020, the Commissioner submitted his 2019 Annual Report, his 15th report on the implementation of the FAIPIA and 11th report on personal data protection.³⁶⁵ The Commissioner noted in his 2019 Report that the National Assembly in 2019 abandoned its years-long practice of not reviewing the Commissioner's reports at plenary sessions – only three of the prior fourteen annual reports (the 2010, 2012 and 2013 Reports) had been reviewed at plenary sessions. The National Assembly failed to review the annual reports of other independent institutions in plenum for years as well, an obligation it has under the law.

The National Assembly adopted all the independent institutions' reports, including the Commissioner's, at its session in late December.

Judging by the Commissioner's most recent Report, the situation in the fields of free access to information of public importance and personal data protection did not change much in 2019. The year behind us was marked by persisting difficulties in exercising the right to free access to information without the Commissioner's intervention, with many state authorities often quoting the risk of violating confidentiality or privacy as the reason for denying access to information. The Commissioner's requests to the topmost state authorities to provide access to information remained unanswered in many cases. A lot of them, such as the planned construction of a cable car at Kalemegdan park or illegal construction on the Sava River embankment, were high-profile cases eliciting harsh public criticisms.³⁶⁶

The Commissioner said in the Annual Report that the new PDPA, which entered into force in mid-2019, suffered from a number of deficiencies. He quoted in example the lack of provisions on video surveillance, an issue that has provoked a lot of public speculation. He also found abuse of personal data in a number of cases.³⁶⁷

364 More on the election of Milan Marinović in the *2019 Report*, III.4.2.1.

365 Available at: <https://www.poverenik.rs/en/o-nama/annual-reports>.

366 More about the Commissioner's 2019 Annual Report in *2020 Semi-Annual Report*, VII.3.

367 For instance, the Commissioner launched a review of the work of the national Pension and Disability Insurance Fund in Novi Sad in 2019, because its staff disclosed the data of the insured

The Commissioner again failed to fully perform his role and guarantee realisation of the two rights within his remit. According to the Commissioner's January-November monthly statistical reports, a total of 7,838 cases were filed with his office; 8,876 cases were dealt with in the same period. Of the 3,115 cases still pending, 2,880 concerned access to information, 165 personal data protection and 70 both. These figures indicate public trust in this independent institution, but also, unfortunately, extensive violations of the two rights by state authorities and their lack of will to fulfil their obligations and provide access to data of public importance and adequately protect the citizens' personal data.

On 28 September 2020, the Commissioner traditionally marked the International Access to Information Day.³⁶⁸ He said that the right to access information of public importance had not been restricted at any point in time, even during the state of emergency. However, numerous examples from practice indicate otherwise – that its exercise was extremely difficult, especially during the state of emergency (from 15 March to 6 May 2020) when its realisation was more critical than ever given the circumstances. According to available data, the Commissioner's Office received 10 complaints during the state of emergency and 43 complaints after it was lifted. Most complaints were filed against local authorities, which refused to disclose information on the COVID-19 epidemic.³⁶⁹

The challenges brought on by the pandemic merely confirmed that the right to know is one of the most important rights for the lives and health of all people and that the authorities are under the duty to facilitate its realisation by promptly communicating accurate and complete information.

5.3.1. Impact of COVID-19 on Personal Data Protection

After the state of emergency was introduced, many members of the public approached the Commissioner with their dilemmas on the operations of numerous institutions and individuals in the new circumstances. Complaints were filed by parents, whose children were asked by their teachers to report on the health of their entire families, under the excuse that the regional school administrations and the Education Ministry requested it.³⁷⁰ The Commissioner appealed to all citizens under lockdown, especially the elderly, not to disclose their personal data to people they did not know³⁷¹ lest the latter abuse them. He also appealed to personal data controllers and processors to perform their activities in compliance with the PD-PA.³⁷² In his view, some rights, like the right to personal data protection, cannot be

beneficiaries to unauthorised individuals. He also launched a review of the work of the Vojvodina Clinical Centre due to the disclosure of a patient's personal data.

368 See the Commissioner's press release, available in Serbian at: <https://bityl.co/4iio>.

369 See the Commissioner's press release, available in Serbian at: <https://bityl.co/4hZU>.

370 More in: *2020 Semi-Annual Report*, VII.3.2.

371 The Commissioner's press release of 30 March is available in Serbian at: <https://bit.ly/2WsxpyF>.

372 More in: *2020 Semi-Annual Report*, VII.3.2.

restricted even emergencies like the one Serbia and the entire world found themselves in during most of 2020.

Unfortunately, some examples showed that personal data are unprotected and susceptible to abuse. Such an issue arose with respect to the announced one-off financial aid for all adult citizens of Serbia to dampen the effects of the COVID-19 pandemic.³⁷³ The applicants were required to disclose some of their personal data, but there was no information on who would have access to or process the data. The Commissioner confirmed that there was scope for abuse and that it was unnecessary to require of the citizens to provide all the requested data. He said that the risk of abuse would be smaller if the authorities merely required of the applicants to specify just their main data.³⁷⁴ The SHARE Foundation also said it was unclear why the applicants had to give their personal identification numbers, which contained other personal data as well.³⁷⁵

The Commissioner contacted the company managing the Belgrade Štark Arena after photographs of a patient of the temporary COVID-19 hospital in the Arena were published on social networks and in the media in November 2020. It was ascertained that her photographs had not originated from the video surveillance system and had probably been taken by an unidentified individual on their cell phone, who posted them on the social networks. The Commissioner filed a criminal report with the Cyber Crime Department of the Belgrade Higher Prosecution Service, claiming violations of the Criminal Code, specifically Article 144 (unauthorised photographing) and Article 145 (unauthorised publication and presentation of another's texts, portraits or recordings).³⁷⁶

A similar incident occurred in April, when the Clinical Centre of Serbia management allowed a *TV Pink* crew to enter the Belgrade Clinic for Infectious and Tropical Diseases treating gravely ill COVID-19 patients, film the rooms and take close-ups of the patients. The first and last names of one of the patients was also visible, which is in contravention of the regulations on personal data protection as it amounts to unauthorised disclosure of a patient's health.³⁷⁷ The Šid Emergency HQ published on its media platforms the personal data of the first resident of that town infected by COVID-19, fully disclosing her identity and exposing her to stigmatisation. The Commissioner launched a review because of the violation of the PDPA.³⁷⁸

373 *Ibid.*

374 *N1*, "Potential abuse of personal data lurks on the 'road to €100,'" 2 May. Available in Serbian at: <http://rs.n1info.com/Vesti/a595309/Na-putu-do-100-evra-gradjane-vrebaju-moguće-zloupotrebe-licnih-podataka.html>.

375 *Radio 021*, "SHARE Foundation: ID Card Number Suffices for €100 Payment, Unclear why PIN Required," 7 May. Available in Serbian at: <https://www.021.rs/story/Info/Srbija/242677/SHARE-Za-isplatu-100-evra-dovoljan-broj-licne-karte-nejasno-zbog-cega-se-trazi-i-JMBG.html>.

376 The Commissioner's press release of 17 November is available in Serbian at: <https://bityl.co/4hhn>.

377 See the Commissioner's press release of 6 April. Available in Serbian at: <https://bityl.co/4hiX>.

378 *021*, "Šid published address and other personal data of coronavirus patient. Commissioner launching review," 6 April. Available in Serbian at: <https://bityl.co/4hit>.

The municipality did not react to the violation or the vulnerable situation the woman found herself in.

5.3.2. Impact of COVID-19 on Access to Information of Public Importance

As noted, there are major difficulties in applying the FAIPIA in practice. The state authorities are the most to blame, since they do not comply with their legal obligation to provide access to the information requested to the applicants and often ignore the Commissioner's follow-up requests, mostly under the excuse that the information is confidential. This widespread non-compliance has been ongoing for years.³⁷⁹

The number of complaints regarding free access to information filed with the Commissioner in 2020 illustrates that this unfortunate practice has not changed. The Commissioner said that his Office had received over 100 complaints because the public authorities refused to provide access to requested information on the pandemic;³⁸⁰ one out of three complaints regarding COVID-19 were filed by the press.³⁸¹

To make things worse, public authorities have been denying access to information to the Commissioner, even after he sent them a number of warnings. One such institution was the National Health Insurance Fund (NHIF), which did not forward data on medical equipment it procured from 12 March to mid-April 2020. Namely, the Centre for Investigative Journalism of Serbia (CINS) reported in mid-April³⁸² that two tenders for the public procurement of large quantities of protective masks, gloves, gowns, protective glasses, disinfectants and other protective equipment were discontinued after the Government adopted a strictly confidential conclusion. It filed a request for access to information of public importance to the NHIF in order to ascertain when the NHIF had procured the equipment and at what cost. The NHIF, however, dismissed its request as inadmissible,³⁸³ explaining that the data were classified as strictly confidential. CINS appealed the NHIF decision with the Commissioner,

379 For instance, the Security Intelligence Agency (SIA) ignored several of the Commissioner's orders to reply to *TV N1* whether it was in possession of the documents classified as a state secret, which President Aleksandar Vučić read out in a morning show in TV Pink in August 2019. The Pension and Disability Insurance Fund has for several years now denied access to information on the President's years of service. Documents confirming reasonable suspicion that Finance Minister Siniša Mali laundered money are missing as well, etc. See more in *Cenzolovka*, "SIA mum on *N1*'s requests despite Commissioner's orders, is there anyone who can enforce the law?" 9 November. Available in Serbian at: <https://bit.ly.co/4i7k>.

380 *Cenzolovka*, "Commissioner: we received over 100 complaints during corona crisis," 26 September. Available in Serbian at: <https://bit.ly.co/4i7G>.

381 *N1*, "Commissioner: Journalists complaining that authorities are denying them information on COVID-19," 2 October. Available in Serbian at <https://bit.ly.co/4hgS>.

382 *CINS*, "Medical Equipment and Health Insurance Fund: Government's Secret Conclusion and Invisible Procurements, 15 April. Available at: <https://www.cins.rs/en/medical-equipment-and-health-insurance-fund-governments-secret-conclusion-and-invisible-procurements/>.

383 *CINS*, "Data on procurement of ventilators and number of tests are secret," 7 July. Available in Serbian at: <https://bit.ly.co/4hgk>.

who upheld it. Since the NHIF failed to communicate the requested information, the Commissioner issued a fresh ruling on 21 September, requiring of it to act on it within two days on pain of a fine.³⁸⁴ No information on whether NHIF communicated the requested information was available by the end of the reporting period.

The Commissioner himself alerted to the problem in his 2019 Report, in which he said: “The fact is that the mechanisms of compulsory enforcement of the Commissioner’s decision, i.e. the imposition of fines, are completely blocked, which also makes it difficult for the applicants to exercise their right to access information. Also, for years, the support of the Government of RS to ensure the execution of the Commissioner’s decision by direct coercion, in accordance with the law, has been persistently lacking, which together represents the biggest obstacle in exercising the right.”³⁸⁵

Serbia’s citizens were denied of a lot of other important information on health care amidst the pandemic. The Government attempted to centralise information and restrict the right to know during the state of emergency by adopting the Conclusion on Provision of Information about COVID-19³⁸⁶ on 28 March 2020.³⁸⁷ The Conclusion laid down that only the Prime Minister and the Crisis Headquarters or a person they designated could provide information about the virus and collect data on the infection. This meant that provincial and local authorities (mayors, emergency headquarters, etc.), as well as health institutions and professionals, were precluded from providing the citizens with accurate and timely information on the pandemic. The Commissioner did not voice his views on the impugned Conclusion, which had prompted an avalanche of protests both in Serbia and abroad. The Government soon revoked it “at the explicit request of the President”, as Prime Minister Brnabić explained.³⁸⁸

Various public manipulations of statistical data on COVID-19 caused much public anxiety. The inconsistent information that was published during the year gave rise to doubts about the accuracy of official data on the number of COVID-19 deaths and infections in Serbia.

In June 2020, the Balkan Investigative Reporting Network (BIRN) published an article that its analysis of data obtained from the state’s COVID-19 Information System showed that the actual number of COVID-19 deaths and infections was much higher than officially announced.³⁸⁹ It said that 632 people died of COVID-19 from 19 March to 1 June 2020, while the authorities reported 244 deaths. BIRN

384 CINS, “NHIF still hiding data on ventilators, Commissioner threatening to fine it,” 28 September. Available in Serbian at: <https://bityl.co/4hh9>.

385 Available at: <https://www.poverenik.rs/en/o-nama/annual-reports.html>.

386 *Sl. glasnik RS*, 48/20.

387 More in *2020 Semi-Annual Report*, VII.3.2.

388 Serbian Government, “Government to Withdraw Conclusion on Information in State of Emergency,” 2 April. Available at: <https://www.srbija.gov.rs/vest/en/153089/government-to-withdraw-conclusion-on-information-in-state-of-emergency.php>.

389 BIRN, “Serbia underreported COVID-19 deaths and infections, data shows,” 22 June. Available at: <https://balkaninsight.com/2020/06/22/serbia-under-reported-covid-19-deaths-and-infections-data-shows/>.

mentioned several health institutions that underreported COVID-19 deaths and that it found the greatest discrepancy between the data of the Clinical Centre in Niš – the data in the COVID-19 Information System showed that 243 people had succumbed to COVID-19, while the official data put the number at 77.

Given that the public undoubtedly has the interest to know information relevant to protection of public health, a group of organisations rallied in the Coalition for Free Access to Information in mid-July sent the Serbian Public Health Institute Dr Milan Jovanović Batut a request for access to information about the epidemiological situation in Serbia.³⁹⁰ Rather than supply the information within 48 hours as it was obligated to, the Institute referred Coalition to the IT and e-Government Office, the reply of which indicated that it did not have at its disposal all the requested information from the COVID-19 Information System. The Coalition complained to the Commissioner, who issued a ruling ordering the Institute to comply with the request for access to information within seven days. Since the Institute failed to comply with the ruling it received on 4 September within the deadline, the Coalition requested of the Commissioner to initiate the administrative enforcement of the ruling and facilitate access to information requested.³⁹¹

Re the data released at news conferences, epidemiologist Predrag Kon, a member of the national Crisis HQ, said that the Crisis HQ had published all the data they had and had not hidden anything, that the IT specialists were responsible for the discrepancy between the actual and reported numbers of COVID-19 deaths, and that “even the Prime Minister said that the system was not infallible and that there were a number of errors”.³⁹² All of this corroborates suspicions about the accuracy of reported COVID-19 deaths and infections. Credible data from the COVID-19 Information System have to be published because that is the only way to establish whether there were any errors during the entry of the data or whether they were later altered intentionally.

5.4. Anti-Corruption Agency

5.4.1. Legal Framework

Serbia has ratified the UN Convention against Corruption (UNCAC),³⁹³ the UN Convention against Transnational Organized Crime and its Protocols (UN-TOC)³⁹⁴ and the Council of Europe anti-corruption regulations – the Criminal Law

390 See the Coalition's press release of 28 September. Available in Serbian at: <https://bit.ly.co/4het>.

391 See the Coalition's press release of 1 October. Available in Serbian at: <http://www.bgcentar.org.rs/javnost-jos-uvek-ocekuje-potpune-i-proverljive-informacije-o-testiranju-i-preminulim-licima-iz-informacionog-sistema-covid-19/>.

392 *N1*, “Kon: IT specialists to blame, they gave us inaccurate data,” 30 September. Available in Serbian at: <https://bit.ly.co/4hfH>.

393 *Sl. list SCG (Međunarodni ugovori)*, 12/05.

394 *Sl. list SRJ (Međunarodni ugovori)*, 6/01.

Convention on Corruption and its Additional Protocol³⁹⁵ and the Civil Law Convention on Corruption.³⁹⁶

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 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 Act³⁹⁷ 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 2013–2018 National Anti-Corruption Strategy³⁹⁸ and its Action Plan,³⁹⁹ issue recommendations and opinions on the enforcement of Anti-Corruption Agency Act and institute procedures and impose measures against those who violate this law.

In its prior Reports, the BCHR noted the reasons why the Agency's work was perceived as inefficient and with good reason; they included its inadequate reaction to corruption cases, a degree of political dependence, and lack of public visibility.⁴⁰⁰ The delay in the adoption of a new anti-corruption law and a new Anti-Corruption Strategy, with the aim of improving the work of the Agency and bringing national law into compliance with international anti-corruption standards, corroborated the impression.

The new Anti-Corruption Act (ACA), which was adopted in late 2019 and replaced the Anti-Corruption Agency Act, entered into force on 1 September 2020. The name of the agency was changed to Agency for the Prevention of Corruption.⁴⁰¹

395 *Sl. list SRJ (Međunarodni ugovori)*, 2/02 and *Sl. list SCG (Međunarodni ugovori)*, 18/05.

396 *Sl. glasnik RS (Međunarodni ugovori)*, 102/07.

397 *Sl. glasnik RS*, 97/08, 53/10, 66/11 – CC Decision, 67/13 – CC Decision, 112/13 and 8/15 – CC Decision.

398 *Sl. glasnik RS*, 57/13. The 2013–2018 National Anti-Corruption Strategy is available at: <http://mpravde.gov.rs/tekst/38/protiv-korupcije.php>.

399 The Action Plan is available in Serbian at: http://www.acas.rs/wp-content/uploads/2010/06/Akcioni_plan_za_sprovodjenje_Strategije.pdf.

400 More in the 2018 Report, III.3.3.1. and the 2019 Report, III.4.3.1.

401 See the Agency press release of 1 September. Available in Serbian at: <https://bitly.co/4iXU>.

5.4.1.1. Anti-Corruption Act

The Anti-Corruption Act⁴⁰² takes on board the recommendations of the Council of Europe Group of States against Corruption (GRECO). Its main goals are to protect public interest, reduce risk of corruption and strengthen the integrity and accountability of public authorities and public officials.

Transparency Serbia Programme Director Nemanja Nenadić said that the scope of the law was almost identical to that of its predecessor, that some of the new provisions were useful, but that some others had been qualified as a “step backwards” while the law was still in its draft form.⁴⁰³ The ACA commendably now entitles the Agency also to control the assets of public officials and to act on anonymous reports, which it had been unable to do under the prior law. State administration authorities will be under the obligation to forward to the Agency preliminary draft laws in areas most vulnerable to corruption and those governing issues covered by ratified international anti-corruption treaties on anti-corruption so that the Agency can issue opinions on anti-risk corruption assessments.

The Agency is formally now charged also with monitoring amendments to the part of the Chapter 23 Action Plan on the fight against corruption. This is why Guidelines on Reporting on the Oversight of Implementation of the Revised Chapter 23 Action Plan, sub-chapter Fight against Corruption were drafted in November.⁴⁰⁴ The Guidelines set out the rules on designation of persons that must report on the implementation of the Revised Action Plan activities, on reporting to the Agency and the National Assembly, on Agency’s issuance of opinions and recommendations, etc.

The Agency now has a Council, comprising five instead of nine members. The procedure for the election of the Agency Director is also different; the vacancy will hereinafter be published by Ministry of Justice, the Management Committee of the Judicial Academy will form a three-member recruitment commission and the final decision on the candidate proposed by the Justice Ministry will be taken by the National Assembly. On 22 October 2020, the Justice Ministry published a call for the election of the five Agency Council members, in accordance with the new law.⁴⁰⁵ These provisions leave open the possibility of abuse and various forms of pressure in the future. That said, the prior procedure, under which the Agency officials were appointed, did not guarantee political independence either.⁴⁰⁶ A call for the election of members of the Council was announced in October, but no information on which stage the appointment of the Council members “was in was available by the end of the reporting period.

402 *Sl. glasnik RS*, 35/19 and 88/19.

403 VoA, “New anti-corruption law enters into force, Nemanja Nenadić claims its implementation will be a bigger problem,” 2 September. Available in Serbian at: <https://bityl.co/4iOq>.

404 The Guidelines are available in Serbian at: <https://bityl.co/4iY8>.

405 The Ministry of Justice press release is available in Serbian at: <https://bityl.co/4iQ0>.

406 More on the election of the current Agency Director, who was a member of the ruling party, in the 2019 Report, III.4.3.2.

There may be a problem in implementing the ACA in the future notwithstanding the new provisions, which are generally a step forward in the fight against corruption in Serbia. Namely, no headway will be made as long as the enforcement of this law is selective and Serbia lacks political will to make genuine effort to prevent and protect from corruption and fulfil international obligations.

In its Serbia 2020 Report adopted on 6 October,⁴⁰⁷ the European Commission said that Serbia had made limited progress in the fight against corruption and organised crime and in reforming public administration, and that, overall, corruption remained an issue of concern. It noted the operational steps taken to strengthen the mandate and to ensure the independence of the Agency, as well as to enhance its capacities with a view to implementing the Anti-Corruption Act upon its entry into force in September 2020, but concluded that Serbia needed to increase its efforts and step up the prevention and repression of corruption.

The CoE Group of States against Corruption said in its 2019 report that Serbia had not implemented seven of GRECO's 17 recommendations at all and had partly implemented ten of them. The GRECO report assessed the measures Member States have undertaken to prevent the corruption of parliamentarians, judges, prosecutors, government officials and intelligence officers. Serbia, the Czech Republic and Bosnia and Herzegovina were the only three states that had not fully implemented any of the recommendations to prevent the corruption of MPs, judges and prosecutors. Serbia was one of the eleven countries that had not implemented any recommendations to prevent the corruption of judges.⁴⁰⁸ The Ministry of Justice responded by issuing a press release saying that GRECO had issued 13 not 17 recommendations to Serbia, as the media incorrectly stated, and that their number has not changed.⁴⁰⁹

In its Second Compliance Report within the Fourth Evaluation Round, published in November 2020,⁴¹⁰ GRECO said that Serbia fully implemented two recommendations, partly implemented 10 recommendations and had not implemented one recommendation. It specified that the implemented recommendations concerned the Lobbying Act, strengthening the role of the Agency in prevention of corruption, and in the prevention and resolution of conflicts of interest of MPs, judges and prosecutors. GRECO noted that the pending recommendations could not be implemented until the Constitution was amended. It called on Serbia to provide a

407 The EC report is available at: <https://bit.ly.co/4iLt>.

408 *NI*, "GRECO report: Serbia has not implemented 7 of 17 recommendations at all and has partly fulfilled 10 recommendations," 3 June. Available in Serbian at: <http://rs.n1info.com/Vesti/a606149/Izvestaj-GRECO-Srbija-nije-primenila-sedam-od-17-preporuka-10-delimicno.html>.

409 The Ministry of Justice press release of 3 June is available in Serbian at: <https://www.drzavnauprava.gov.rs/sr/vest/30012/-13-preporuka-greko-a-za-srbiju.php>.

410 The Report, which was adopted on 29 October 2020, is available at: [https://www.mpravde.gov.rs/files/GrecoRC4\(2020\)3-FINAL-eng-Serbia-2ndRC4-PUBLIC%202759-3923-9426%20v.1.pdf](https://www.mpravde.gov.rs/files/GrecoRC4(2020)3-FINAL-eng-Serbia-2ndRC4-PUBLIC%202759-3923-9426%20v.1.pdf).

report on the progress made in implementing the remaining recommendations by 31 October 2021.⁴¹¹

The US State Department's 2019 Report on Human Rights Practices in Serbia⁴¹² said that corruption was prevalent and remained an issue of concern. It noted that Serbia had prosecuted a number of low profile corruption cases but was less successful in prosecuting high-profile corruption. It also said that there was a widespread public perception that the law was not being implemented consistently and systematically and that some high-level officials engaged in corrupt practices with impunity.⁴¹³

The Anti-Corruption Agency submitted its 2019 Report to the National Assembly on 31 March 2020.⁴¹⁴ The Agency said that it had achieved better results in the reporting period and applied the preventive mechanisms more efficiently, which resulted, inter alia, in the strengthening of the public officials' personal integrity and of institutional integrity. The Agency, an independent authority that should play a preventive role in suppressing and fighting corruption, registered a number of violations of the Anti-Corruption Agency Act in 2019. It said that it had launched 866 proceedings and imposed 604 measures for violations of the Anti-Corruption Agency Act in cases under its sole authority⁴¹⁵ in the reporting period and that the other proceedings were pending. The Agency also said that it had filed 182 misdemeanour motions and 38 criminal reports or reports with the relevant prosecution services against public officials, companies and responsible persons in companies in 2019.

5.4.2. Anti-Corruption Agency's Activities in 2020

According to information on the Agency website, the Agency issued nine opinions in 2020: six concerned conflicts of interest⁴¹⁶ and three lobbying.⁴¹⁷ In 2020, the Agency also initiated proceedings and imposed measures for violations of the prior Anti-Corruption Agency Act. Herewith a few examples.⁴¹⁸

On 15 May, the Agency issued an opinion on Aleksandar Vučić's simultaneous performance of the office of Serbian President and of a political party office.⁴¹⁹

411 See the Agency press release available in Serbian at: <https://bit.ly.co/4iNL>.

412 Available at: <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/serbia/>.

413 See more in *2020 Semi-Annual Report*, VII.4.

414 Anti-Corruption Agency, 2019 Annual Report, Belgrade 2020. Available in Serbian at: <http://www.acas.rs/wp-content/uploads/2020/03/ACASizvestaj2019WEB.pdf>.

415 Issues regarding officials' assets, conflicts of interest, financing of political activities, and other cases.

416 Available in Serbian at: <https://bit.ly.co/4iVw>.

417 Available in Serbian at: <https://bit.ly.co/4iVx>.

418 Other examples of opinions issued in the first half of the year are available in *2020 Semi-Annual Report*, VII.4.1.

419 The opinion is available in Serbian at: <https://bit.ly.co/4iWW>.

Having analysed the Constitution and several relevant laws, including the Anti-Corruption Agency Act, it found that there were no constitutional or legal limitations prohibiting the President's membership of a political party and election to a political party body, and that this did not amount to a conflict of interests because no private interest was at stake.

In January 2020, the Agency found the Dean of the Belgrade University College of Veterinary Medicine Vlado Teodorović guilty of nepotism, because he hired both his daughters, his brother-in-law and maid of honour. The Agency recommended he be dismissed from office because he violated the Anti-Corruption Agency Act.⁴²⁰ The Agency also ascertained that Teodorović simultaneously held another public office without the Agency's consent, that of Chairman of the Managing Board of the Belgrade Meat Hygiene and Technology Institute. It thus published its recommendation on Teodorović's dismissal.⁴²¹

In July, the Agency recommended the dismissal of the Director of the Kikinda General Hospital, who had concluded a contract on volunteering with his wife, who was also working in the Hospital, but had also issued a ruling on bonuses for her and several other employees.⁴²²

After *Insajder* reported that former Brus Mayor and now councillor in Municipal Assembly Milutin Jeličić Jutka failed to report his apartment in the heart of Belgrade, the Agency in February 2020 initiated an *ad hoc* check of the data in his asset declaration. It transpired in the meantime that Jeličić was registered in the cadastre as the owner of the real estate he bought back in 2011; this means that he concealed that information for nine years, which is a criminal offence.⁴²³

The Agency filed a criminal report against Jeličić. He was sentenced by the Brus Basic Court to a seven months' prison sentence suspended for two years.⁴²⁴ The Court found Jeličić had violated Article 72 of the Anti-Corruption Agency Act, because he had failed to disclose the following assets to the Agency: a one-bedroom apartment in Belgrade, seven pieces of real estate in Brus, one delivery and four freight vehicles, and 100% ownership of the company "Panikop" and his claim against it arising from his 2.4 million RSD loan to that company.

420 021, "Agency seeking dismissal of Vet Med College Dean, who hired both daughters, maid of honour and brother," 24 January. Available in Serbian at: <https://www.021.rs/story/Info/Srbija/232857/Agencija-Dekan-Fakulteta-veterinarske-medicine-zaposlio-obe-cerke-kumu-i-suraka-trazi-se-smena.html>.

421 *Nova ekonomija*, "Agency recommends dismissal of Vet College Dean: hired his wife, brother-in-law and maid of honour," 31 October. Available in Serbian at: <https://bityl.co/4iBP>.

422 021, "Agency requires dismissal of Kikinda Hospital Director, concluded a contract with his wife," 16 July. Available in Serbian at: <https://www.021.rs/story/Info/Vojvodina/248408/Agencija-trazi-smenu-direktora-kikindske-bolnice-sklopio-volonterski-ugovor-sa-suprugom.html>.

423 *Insajder*, "Milutin Jeličić violates suspended sentence: hid ownership of apartment in heart of Belgrade for nine years," 9 June. Available in Serbian at: <https://insajder.net/sr/sajt/tema/18833/>.

424 *N1*, "Assets Milutin Jeličić Jutka did not declare to the Anti-Corruption Agency," 28 October. Available in Serbian at: <http://rs.n1info.com/Vesti/a538947/Sta-Milutin-Jelicic-Jutka-nije-prijavio-Agenciji-za-borbu-protiv-korupcije.html>.

In July 2020, the Agency issued its final decision in the case of outgoing Minister without Portfolio charged with public companies, Milan Krkobabić, recommending his dismissal from this public office because of conflict of interest.⁴²⁵ The Agency issued such a recommendation in late November 2019 because, whilst in office, Krkobabić participated in the Serbian Government's decision to appoint his son, Stefan Krkobabić, Acting Director of the Public Company Stara Planina in June that year. It took the Agency seven months to rule on Krkobabić's appeal and it rendered its final decision at a time when Krkobabić was no longer Minister. At its session on 27 November 2020, the Serbian Government relieved Stefan Krkobabić from office.⁴²⁶ His father Milan was appointed Minister of Rural Welfare in the new Serbian Government formed in October 2020.⁴²⁷

5.4.3. Assessments of the Anti-Corruption Agency's Work in 2020

Although the Agency did exercise its statutory powers, its "trend" of selectively reacting to manifest violations by dismissing them or by refusing to publish its views on public officials' potentially corruptive actions and conflicts of interest alerted to by experts and members of the public continued in 2020.

For instance, Transparency Serbia recalled that the Agency had failed to launch a procedure to ascertain whether the then Interior Minister (now Defence Minister) Nebojša Stefanović was in a conflict of interest in regards to the Krušik scandal. Namely, media reports implicated the Minister's father, Branko Stefanović, i.e. the private company he was representing, in the sale of weapons manufactured in the Krušik plant in Valjevo; the company made profits at the detriment of the plant by selling the weapons at lower prices.⁴²⁸ Notwithstanding all the evidence, the Agency merely issued a press release denying the existence of a conflict of interest, specifying that the Minister's father was not formally engaged by the company that sold the weapons.

Transparency Serbia also called on the Agency to respond to BIRN's report that companies associated with Bojan Kisić, the brother of Dr Darija Kisić Tepavčević, a member of the COVID-19 Crisis Headquarters, and the husband of the then Justice Minister Nela Kuburović, signed over 20 contracts worth €26.8 million with public companies and ministries. Transparency Serbia said that that it was highly unlikely that the Agency looked into the case, although all the claims should be in the interest of the institutions and not only the public.⁴²⁹

425 *Nova.rs*, "Agency recommends Krkobabić's dismissal now that he's no longer minister," 12 July. Available in Serbian at: <https://bit.ly.co/4iGm>.

426 *Insajder*, "Stefan Krkobabić dismissed from office of Acting Director of Stara Planina PC," 1 December. Available in Serbian at: <https://bit.ly.co/4iG5>.

427 *BBC in Serbian*, "Milan Krkobabić in Friday interview: Our goal is the rural youth do not have to climb on top of hills to get an Internet signal," 30 October. Available in Serbian at: <https://bit.ly.co/4iGX>.

428 More on the Krušik case in the *2019 Report*, III.4.3.2.

429 More in *2020 Semi-Annual Report*, VII.4.2.

CINS also found that most officials managing Serbian public institutions in Kosovo, whose salaries were paid by Serbian tax-payers, had not declared their real estate, income or other valuables to the Anti-Corruption Agency, although they were obliged to under the law.⁴³⁰ The Anti-Corruption Agency in late May initiated procedures against six Kosovo officials, including the Kosovska Mitrovica Mayor, Milan Rakić, who, as the Agency reported, failed to report the two offices he held and his assets and property.⁴³¹ The Council for the Protection of Human Rights and Freedoms, a Kosovo-based NGO, issued a press release⁴³² qualifying the Agency's move as "Serbia's interference in Kosovo's internal affairs" and "Serbian President Aleksandar Vučić's political message on Serbia's sovereignty".⁴³³

In May, BIRN reported that SNS MP Vladimir Orlić was again teaching at the Higher Medical School in Čuprija since late 2019 although he said he had quit the job.⁴³⁴ It had earlier been established that Orlić, along with his party comrades, were illegally working for this educational institution but that he had not reported his income to the Agency as he was obligated to.⁴³⁵ The documents in BIRN's possession⁴³⁶ show that he earned a 40,000 RSD monthly salary and received another 4,500 RSD to cover his travel expenses every time he went to Čuprija in the 2019/2020 school year and that he earned same amounts in 2018.⁴³⁷

The Crime and Corruption Reporting Network (KRIK) researched the property and undeclared assets of unidentified origin of public officials in 2020.⁴³⁸ One of them concerned a judge of the Belgrade Appellate Court Organised Crime Department, Zoran Savić.⁴³⁹ Judge Savić and his business partner Zoran Kocić⁴⁴⁰ fund-

430 CINS, "Serbian officials in Kosovo not declaring assets under Serbian law," 27 May. Available in Serbian at: <https://www.cins.rs/srpski-funkcioneri-na-kosovu-ne-prijavljuju-imovinu-i-prihode-po-srpskom-zakonu/>.

431 CINS, "Agency Initiating Procedure against Six Public Officials Employed in Kosovo," 28 May. Available in Serbian at: <https://www.cins.rs/agencija-pokrece-postupak-protiv-sest-funkcionera-zaposlenih-na-kosovu/>.

432 KoSSev, "CPHRF: Initiation of Rakić's review constitutes interference in Kosovo's internal affairs," 28 July. Available in Serbian at: <https://bit.ly.co/4iEM>.

433 CINS, "Kosovo NGO: Agency review of Rakić is politically motivated," 29 July. Available in Serbian at: <https://bit.ly.co/4iEX>.

434 BIRN, "Orlić didn't declare his Čuprija salary," 27 May. Available in Serbian at: <https://bit.ly.co/4iJd>.

435 Specifically, Aleksandar Martinović, Ivan Bošnjak and Darko Laketić. For example, Aleksandar Martinović declared the salary he received as a teacher in Čuprija after BIRN published its report. More in BIRN's 2018 article available in Serbian at: <https://bit.ly.co/4iJY>.

436 See the contract on supplementary work, available in Serbian at: <https://bit.ly.co/4iJi>.

437 BIRN, "Orlić and the Higher Medical School in Čuprija: What the documents show," 11 June. Available in Serbian at: <https://bit.ly.co/4iJf>.

438 See KRIK's research on property and biographies of six Vojvodina mayors of 19 June. Available in Serbian at: <https://bit.ly.co/4icU>.

439 KRIK, "Million EUR judge: how the Snowflake was built," 3 November. Available in Serbian at: <https://bit.ly.co/4icT>.

440 Zoran Kocić's construction company won state contracts but did not pay its taxes for years, ending up on the list of the greatest tax debtors.

ed the construction of the Snowflake Villa with 13 apartments in the heart of the Kopaonik ski resort; the amount of money he invested remained unknown.⁴⁴¹ Furthermore, Savić and his wife, who is also a judge, own several pieces of real estate and movable property estimated at over €1.2 million by KRIK's assessors. Given the salaries judges earn, the question arises how they managed to acquire property of such value. Savić would not comment KRIK's report or provide more detailed information. He only said he had declared his assets where he was supposed to.

A number of accusations implicating Prime Minister Ana Brnabić were voiced publicly concerning the company Asseco SEE, in which her brother is a manager, and the €180 million contract it concluded with the IT and e-Government Office that directly reports to the Serbian Government.⁴⁴² Media also reported that the company had contracted deals worth around €40 million with state authorities and public companies. Given suspicions of a conflict of interest, prohibited under the Anti-Corruption Act, the Agency is entitled to review the case and propose measures to eliminate the violation. The Agency has not commented the case yet despite media calls to investigate it.⁴⁴³

The Center for Research, Transparency and Accountability (CRTA) reported Leskovac Mayor and SNS member Goran Cvetanović to the Agency for mentioning political parties and political leaders at the news conference of the Emergency HQ he heads on 4 May 2020. The Agency in June dismissed CRTA's report against the Mayor for abuse of public resources and party campaigning as ill-founded.⁴⁴⁴

5.4.4. Anti-Corruption Agency's Activities during and after the Election Campaign

The Anti-Corruption Agency in February selected 120 observers (33 city and municipal coordinators and 87 field observers) of the 2020 election campaign.⁴⁴⁵ The observers collected the data the Agency uses for its comparative analysis of the reports of election campaign expenses political entities must submit within 30 days from the day the final election results are proclaimed.⁴⁴⁶

CRTA's observer mission launched its long-term monitoring of the election campaign in accordance with international standards on independent civic election

441 According to the real estate agency engaged by KRIK, the Snowflake is worth over €1 million.

442 According to available information, only one supplier submitted his tender bid.

443 *Radio Free Europe*, "Business deals of the Serbian Prime Minister's brother: could private interest have prevailed," 25 September. Available in Serbian at: <https://bityl.co/4icy>.

444 *Jugmedia*, "Anti-Corruption Agency dismisses report against Goran Cvetanović," 18 June. Available in Serbian at: <https://bityl.co/4iSQ>.

445 *Radio 021*, "Anti-Corruption Agency Selects Election Campaign Observers," 24 February. Available in Serbian at: <https://www.021.rs/story/Izbori-2020/235187/Agencija-za-borbu-protiv-korupcije-izabrala-posmatrace-izborne-kampanje.html>.

446 *Politika*, "120 Anti-Corruption Agency Observers Monitoring Election Campaign," 4 June. Available in Serbian at: <http://www.politika.rs/sr/clanak/455418/Izbornu-kampanju-prati-120-posmatraca-Agencije-za-borbu-protiv-korupcije>.

monitoring. CRTA said that it filed nine reports in the 14 October 2019 – 3 March 2020 period with the Anti-Corruption Agency; seven concerned abuse of public resources, two concerned public officials' abuse of office for party campaigning, while three alleged violations of the Act on the Financing of Political Activities.⁴⁴⁷

The Agency mostly ignored allegations and dismissed reports of these election campaign abuses, even the blatant ones. On 27 December 2019, CRTA filed a report with the Agency against Prime Minister Ana Brnabić for violating the Anti-Corruption Agency Act⁴⁴⁸ because she had said during a show on a TV station with a national frequency that the Government's results were good and that she would give her trust to the Serbian Progressive Party at the parliamentary elections. The Agency initiated the review of the report and decided⁴⁴⁹ to discontinue it, under the explanation that the law had not been violated and that Brnabić was speaking, and had made the impugned statement, in her capacity of Prime Minister.⁴⁵⁰ The Agency decision is disputable for at least two reasons – it initiated the review with an (un)intentional delay and rendered absolutely senseless the provision of the law the Prime Minister had violated. The Agency thus gave the green light to public officials to promote election candidates and their programmes in contravention of the law under the excuse that they are acting in official capacity.⁴⁵¹

Disappointed with the unfulfilled promises of government officials, residents of the Leskovac village Kukulovce⁴⁵² decided to boycott the 2020 parliamentary elections⁴⁵³ and prevent them from taking place in their community. After the media reported on their decision, by Leskovac Mayor Goran Cvetanović and the Director of the Public Company Roads of Serbia, Zoran Drobnjak, paid a visit to the village amidst the election campaign, promising its residents that the village roads would be paved before the elections.⁴⁵⁴ Transparency Serbia on 16 June filed a criminal report with the Anti-Corruption Department of the Niš Higher Prosecution Service for abuse of public funds to buy votes. The HPS dismissed the report,⁴⁵⁵ but the Appellate Public Prosecution Service reviewed it in response to Transparency

447 More in the *2020 Semi-Annual Report*, VII.4.3.

448 Article 29, Anti-Corruption Agency Act.

449 The Agency's letter is available in Serbian at: <https://crt.rs/wp-content/uploads/2020/06/Odgovo-na-prijavu-Ana-Brnabi%C4%87.pdf>.

450 More in the *2020 Semi-Annual Report*, VII.4.3.

451 *Ibid.*

452 This village made the public limelight during the 2017 presidential elections, because of its residents' huge support for Aleksandar Vučić.

453 *Južne vesti*, "Residents of Leskovac village where Vučić won 95 % of the votes will not go to the polls now," 9 June. Available in Serbian at: <https://bit.ly.co/4iK9>.

454 *Južne vesti*, "Cvetanović and Drobnjak promise residents of the Leskovac village who decided to boycott the elections they will pave their roads," 11 June. Available in Serbian at: <https://bit.ly.co/4iKU>.

455 Niš Higher Public Prosecution Service Ruling No. 9 KTKo 274/20 of 8 September 2020. Available in Serbian at: <https://bit.ly.co/4iLA>.

Serbia's complaint and issued a decision⁴⁵⁶ qualifying the HPS' decision as erroneous and advising it to reconsider it.⁴⁵⁷ No information was publicly available on any comments or steps the Agency has taken in this case.

On the other hand, the Agency in June found that two officials running in the Valjevo local elections had violated the Anti-Corruption Agency Act and publicly recommended their dismissal.⁴⁵⁸ The Agency established that Đorđe Milanović,⁴⁵⁹ who was running for Mayor, and Zoran Stepanović, who was running for the Valjevo Municipal Assembly, misused public resources to present their election programmes and invite the voters to vote for the Socialist Party of Serbia-United Serbia coalition.⁴⁶⁰

After the elections, the Agency filed motions with the Belgrade Misdemeanour Court to institute misdemeanour proceedings against seven political entities that had run in the campaign.⁴⁶¹ They had failed to submit their reports on campaign costs within 30 days from the day the final results were published, as prescribed by law.⁴⁶²

In late August, the Agency issued a press release saying that it had encountered technical problems in the presentation of the data in the reports on parliamentary election campaign costs on its website and apologised to the political entities the reports of which had been inaccurately presented.⁴⁶³ The Agency said that it had been warned of the illogicalities in the presented numerical data and decided to thoroughly review the presentations of all the submitted reports.⁴⁶⁴ Transparency Serbia⁴⁶⁵ alerted the Agency to the illogicalities in the published reports on parliamentary election campaign funding.⁴⁶⁶ For instance, the cumulative campaign costs in the reports were much lower than the amounts of spent funds under "revenue" and substantial amounts were left out of the totals of specific costs, such as the costs of TV advertising, which are usually the highest, et al.

456 Appellate Public Prosecution Service decision, available in Serbian at: <https://bit.ly.co/4iLf>.

457 See Transparency Serbia's press release, available in Serbian at: <https://bit.ly.co/4iLj>.

458 See the Agency press release of 8 June, available in Serbian at: <https://bit.ly.co/4iVf>.

459 Đorđe Milanović, who headed the ticket, had arranged the filming of the election spot posted on YouTube in the building of the Valjevo water supply public company, which he had been a Director of since 2014.

460 *Insajder*, "Agency recommends dismissal of two Valjevo public officials for abuse of public resources during election campaign," 8 June. Available in Serbian at: <https://bit.ly.co/4iIm>.

461 See the Agency press release: <https://bit.ly.co/4iNp>.

462 Under Article 42 of the Act on the Financing of Political Activities.

463 The reports on campaign costs can be searched on the Agency website: <https://bit.ly.co/4iR1>. A note is published at the top of the website specifying that there may be numerical inconsistencies due to technical problems in implementing the new data processing software.

464 Agency press release of 28 August. Available in Serbian at: <https://bit.ly.co/4iRC>.

465 *N1*, "Transparency: Illogicalities in reports on campaign funding," 27 August. Available in Serbian at: <https://bit.ly.co/4iRl>.

466 More on the campaign costs in Zlatko Minić's article *Technical and Ethical Problems* of 29 August 2020, available in Serbian at: <https://pescanik.net/tehnicki-i-moralni-problemi/>.

6. Right to a Healthy Environment

6.1. Legal Framework

The right to a healthy environment is guaranteed by international treaties, as well as Serbian law. The increasing development of environmental law has been accompanied by the adoption of a number of international multilateral and bilateral agreements. Serbia has also witnessed an increase in laws and by-laws on the protection of the environment.

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 Change⁴⁶⁷ and Protocol to the Framework Convention on Climate Change (Kyoto Protocol),⁴⁶⁸ the Convention on Long-Range Transboundary Air Pollution,⁴⁶⁹ its Protocol on Heavy Metals⁴⁷⁰ and Protocol on Persistent Organic Pollutants,⁴⁷¹ the Vienna Convention for the Protection of the Ozone Layer,⁴⁷² the Montreal Protocol on Substances that Deplete the Ozone Layer⁴⁷³ 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),⁴⁷⁴ which lays down three important rights: of access to information, public participation in decision making and access to justice.⁴⁷⁵ Serbia also acceded to the European Landscape Convention,⁴⁷⁶ 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”.⁴⁷⁷

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

467 *Sl. list SRJ (Međunarodni ugovori)*, 2/97.

468 *Sl. glasnik RS (Međunarodni ugovori)*, 88/07.

469 *Sl. list SFRJ (Međunarodni ugovori)*, 11/86.

470 *Sl. glasnik RS (Međunarodni ugovori)*, 1/12.

471 *Sl. glasnik RS (Međunarodni ugovori)*, 1/12.

472 *Sl. list SFRJ (Međunarodni ugovori)*, 1/90.

473 *Sl. list SFRJ (Međunarodni ugovori)*, 16/90 and *Sl. list SCG (Međunarodni ugovori)*, 24/04 – other law.

474 *Sl. glasnik RS (Međunarodni ugovori)*, 38/09.

475 Article 1, Aarhus Convention.

476 *Sl. glasnik RS (Međunarodni ugovori)*, 4/11.

477 Article 1(1(a)), European Landscape Convention.

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.⁴⁷⁸

The Serbian Constitution guarantees the right to a healthy environment in the section on fundamental human rights and freedoms.⁴⁷⁹ 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 Act⁴⁸⁰ is the main environmental law, governing the integral environment protection system facilitating the exercise of the human rights to life and development in a healthy environment and the balance between economic development and the environment in the Republic of Serbia. Other systemic laws governing environmental protection include the Environmental Impact Assessment Act,⁴⁸¹ the Strategic Environmental Impact Assessment Act,⁴⁸² and the Act on Integrated Environmental Pollution Prevention and Control.⁴⁸³ 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.⁴⁸⁴

Serbia adopted a number of laws ratifying international agreements directly or indirectly addressing environmental protection by September 2020. They include: the Act Ratifying the Agreement between the Governments of the Republic of Serbia and Romania on Cooperation in Sustainable Transboundary Water Management;⁴⁸⁵ the Act Ratifying the Agreement between the Governments of the Republic of Serbia and Hungary on Cooperation in Environmental Protection;⁴⁸⁶ the Act Ratifying the Agreement on Cooperation in the Field of Waters between the Government of the

478 V. Dimitrijević, D. Popović, T. Papić, V. Petrović, *International Human Rights Law*, Belgrade Centre for Human Rights, Belgrade, p. 336.

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

480 *Sl. glasnik RS*, 135/04, 36/09, 36/09 – other law, 72/09 – other law, 43/11 – CC Decision, 14/16, 76/18, 95/18 – other law and 95/18 – other law.

481 *Sl. glasnik RS*, 135/04 and 88/10.

482 *Ibid.*

483 *Sl. glasnik RS*, 135/04 and 25/15.

484 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).

485 *Sl. glasnik RS (Međunarodni ugovori)*, 4/20.

486 *Sl. glasnik RS (Međunarodni ugovori)*, 4/20.

Republic of Serbia and the Government of the Republic of Turkey;⁴⁸⁷ the Act Ratifying the Agreement between the Government of the Republic of Serbia and the Government of Hungary on Cooperation in Sustainable Management of Transboundary Waters and Basins of Common Interest;⁴⁸⁸ the Act Ratifying the Loan Agreement (Climate and Irrigation Resilience Programme – Stage I) between the Republic of Serbia and the European Bank for Reconstruction and Development;⁴⁸⁹ and the Act Ratifying the Agreement between the Government of the Republic of Serbia and the Government of the Republic of Azerbaijan on Cooperation in the Field of Plant Quarantine and Plant Protection.⁴⁹⁰

The National Assembly, however, failed to adopt the Climate Change Act, although the public debate on the draft law was completed back in 2018.⁴⁹¹

6.2. State of the Environment

The general opinion is that Serbia still lags behind European and global trends despite its headway in adopting environmental legislation.⁴⁹² This is corroborated by the 2020 EPI (Environmental Performance Index), where, with its score of 55.2, Serbia ranked 15th among East European countries, far behind Slovenia, which ranked first with a 72 score; only four East European countries were ranked lower than Serbia.⁴⁹³

In its Serbia 2020 Report, the European Commission said that Serbia had submitted its negotiating position on Chapter 27 (environment and climate change) at the beginning of the year. It went on to say that “[S]ome 4 years after its creation, Serbia’s green fund has yet to become fully operational. Its 2019 financial allocations were not fully used. Its 2020 budget was reduced by 25% to address needs arisen from the COVID-19 crisis. Income generated from environmental fees is not earmarked for environmental purposes. This leads to a diversion of funds for other purposes. Serbia needs an effective institutional set-up to manage environmental investments, which need to increase much faster than previously. The investment plan needs to be turned into an investment programme, targeting projects with the highest environmental impact. Investment decisions need to be based on feasibility studies and technical designs in line with EU best practices and transparent competitive procurement procedures, ensuring best value for money.”⁴⁹⁴

487 *Sl. glasnik RS (Međunarodni ugovori)*, 4/20.

488 *Sl. glasnik RS (Međunarodni ugovori)*, 4/20.

489 *Sl. glasnik RS (Međunarodni ugovori)*, 4/20.

490 *Sl. glasnik RS (Međunarodni ugovori)*, 4/20.

491 More in the 2018 Report, II.14.3.

492 N1, “Experts: Serbia lags the most in environmental protection,” 20 February. Available in Serbian at: <https://bit.ly/3607NH0>.

493 See: <https://epi.yale.edu/downloads/epi2020report20200911.pdf>.

494 *Serbia 2020 Report*, p. 116, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf.

The issue of climate change is gaining in significance across the world but it is apparently not taken seriously in Serbia. A Climate Change Act, announced time and again was not adopted by the end of 2020. Only a few of the many comments on the Preliminary Draft of the Climate Change Act experts and CSOs sent to the Ministry in 2018 were upheld.⁴⁹⁵

6.2.1. Air Quality

The Air Protection Act⁴⁹⁶ 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.⁴⁹⁷ The Act defines three categories of air quality.⁴⁹⁸ The relevant ministry, Vojvodina and local self-government authorities are under the obligation to alert the public via the media of excessive air pollution.⁴⁹⁹

Many Serbian cities are among the most polluted cities in Europe. The Swiss IQAir ranked three Serbian cities – Valjevo, Niš and Kosjerić – amongst the most polluted European cities in 2019.⁵⁰⁰ Serbia's capital, Belgrade, often topped the list of the most polluted cities in the world: it ranked third on 24 October 2020,⁵⁰¹ and 11th on 25 November 2020. Although Belgrade was 42nd on the list of the most polluted cities in Europe in 2019, it was at the same time the 4th most polluted capital on the continent.⁵⁰² Such high pollution levels are especially alarming in the context of the COVID-19 pandemic and the general health situation in the country it has led to. Bor is another Serbian city with poor air quality. A pilot study conducted by the Serbian Environmental Protection Agency said that both women and men in that city were at higher risk of falling ill and dying of respiratory diseases and various forms of cancer and that the pollution levels were much higher than prescribed.⁵⁰³

People staged environmental protests Belgrade, demanding of the Government to take concrete anti-pollution measures. The petition was signed by around 14,000 citizens.⁵⁰⁴

495 More in the *2018 Report*, II.14.3.

496 *Sl. glasnik RS*, 36/09 and 10/13.

497 Article 1(1), Air Protection Act.

498 Article 21, Air Protection Act.

499 Article 23, Air Protection Act.

500 Available at: <https://bit.ly/3fydijx>.

501 *Danas*, “Belgrade is third most polluted city in the world,” 24 October. Available in Serbian at: <https://bit.ly/2IYqKBH>.

502 Available at: <https://bit.ly/2V0gpr9>.

503 *RTS*, “Bor residents suffocating, concentration of harmful particles hundreds of times higher than permitted,” 11 September. Available in Serbian at: <https://bit.ly/2IYFctr>.

504 *Radio Free Europe*, “Protest for clean air,” 17 January. Available in Serbian at: <https://bit.ly/33d-6fb1>.

Protests against environmental and air pollution were staged in Smederevo in late August as well,⁵⁰⁵ after years-long dissatisfaction with the quality of air culminated when a cloud of black dust covered the houses in the immediate vicinity of the Iron Works in late July.⁵⁰⁶

In addition to the Smederevo Iron Works and other heavy industry facilities, the coal a number of Serbian households use for heating contributes the most to air pollution. Concerns grew when Director of the Petnica Research Station Vigor Majić said that the air was polluted because the Kolubara mine was selling the population low quality coal with high concentrations of clay.⁵⁰⁷

Although Belgrade has for years been struggling with high pollution levels, the city authorities decided to invest less in addressing the problem next year; it earmarked 45 million RSD less for the purpose in the 2021 draft budget than in the 2020 budget.⁵⁰⁸

According to a survey conducted by the Vršac-based environmental centre Stanište, a large share of almost half a billion EUR the authorities collected through various environmental fees over the past nine years were not spend on environmental programmes, but for other budget purposes.⁵⁰⁹

The change in the air quality assessment criteria gave rise to further concerns both about the quality of air and the state's attitude toward the problem. In late 2020, the Serbian Environmental Protection Agency changed these criteria without explanation: due to the increase in the upper limits, air pollution that used to be rated as "polluted" is now rated as "acceptable". The Agency's new criteria differ substantially from those applied by the European Environment Agency.⁵¹⁰

6.2.2. Water

The Water Act⁵¹¹ 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.

505 RTS, "Air pollution prompts protest in Smederevo," 22 August. Available in Serbian at: <https://bit.ly/3fBKpCW>.

506 RTS, "What's that black dust that covered houses in Smederevo's vicinity," 4 August. Available in Serbian at: <https://bit.ly/3pX8OrE>.

507 Danas, "Kolubara lignite of 'extremely poor quality' to blame for pollution," 12 November. Available in Serbian at: <https://bit.ly/3pZTP0a>.

508 See: <https://budzet.beograd.rs/>.

509 Available in Serbian at: <https://staniste.org.rs/wp-content/uploads/2019/10/Kako-smo-protracili-pola-milijarde-evra-sazetak.pdf>.

510 Nova ekonomija, "Organisations: Agency changed air quality assessment criteria," 4 December. Available in Serbian at: <https://cutt.ly/AhEiZUS>. See also: <https://www.reri.org.rs/en/why-is-the-air-that-is-considered-polluted-in-the-european-union-classified-as-acceptable-in-serbia/>.

511 *Sl. glasnik RS*, 30/10, 93/12, 101/16 and 95/18 – other law.

Untreated industrial and communal wastewater, agricultural drainage water, landfill water and pollution caused by river navigation and the work of thermal power plants are the main sources of water pollution. Only a small number of cities in Serbia have wastewater treatment facilities. Even Belgrade discharged most of its wastewater into rivers in 2020. Belgrade is the only European city that releases its unfiltered wastewater into the Danube, the second longest European river.⁵¹²

Serbia's score of 1.7 on the EPI 2020 Index with respect to wastewater treatment. Latvia, which ranked first in East Europe, scored 90.07. Only two East European countries ranked worse than Serbia – Bosnia and Herzegovina and North Macedonia.⁵¹³

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. Their construction provoked protests of the local residents in 2018 and throughout 2019. The authorities promised they would ban SHPPs.⁵¹⁴ The protesters disputed the SHPP environmental impact assessments, doubting that their authors had conducted the required research.⁵¹⁵

The anti-SHPP protests continued in 2020. These protests, organised by environment NGOs and the citizens, culminated in Rakita in August, when the citizens went down to the river and tore out the pipes.⁵¹⁶

The City of Pirot's draft spatial plan, prohibiting the construction of SHPPs on Stara Planina until 2035, was a small victory for the protesters. The news came after years of struggle put up by the Stara Planina villagers, activists and environment champions who staged innumerable protests, blocking roads and clashing with the investors, insisting that the 58 SHPPs not be built in this nature park.⁵¹⁷

A Cadastre of SHPPs 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

512 NI, "AFP: Belgrade is only European city that pollutes international Danube river," 17 September. Available at: <http://rs.n1info.com/English/NEWS/a640933/AFP-Belgrade-is-only-city-that-pollutes-international-Danube-river.html>.

513 Available at: <https://epi.yale.edu/epi-results/2020/country/srb>.

514 See the 2019 Report, III.8.2.

515 See the *Insajder* report, available in Serbian at: <https://goo.gl/P11ZDZ>.

516 See: <https://www.euronews.com/2020/08/16/villagers-in-serbia-tear-out-hydropower-pipes-in-protest-over-river>.

517 Blic, "Defence of Rivers: Pirot votes in spatial plan prohibiting construction of SHPPs for 15 years, Ministry's move awaited," 6 August. Available in Serbian at: <https://bit.ly/3o2AIkp>.

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.⁵¹⁸

In its Serbia 2020 Report, the European Commission noted that Serbia's level of alignment with the EU *acquis* on water quality was moderate and that work on an action plan for implementing the water management strategy had not progressed. "Untreated sewage and wastewaters are still the main source of water pollution. Non-compliance with water quality standards remains a big concern in some areas, such as that on arsenic. Serbia needs to make significant efforts to align further its legislation with the EU *acquis*, and to strengthen administrative capacity, in particular for monitoring, enforcement and inter-institutional coordination. Work on the river basin management plan is progressing slowly. Improving local governance, in particular for operating and maintaining water and wastewater facilities, remains a priority. Work on adequate water fees and tariffs is at an early stage. Lack of human and financial resources and data availability hinder the development of flood hazard and flood risk maps for all relevant areas."⁵¹⁹

It may be concluded that more political attention needs to be devoted to environmental protection, which would be reflected in improved cooperation among the state authorities and the NGO sector, stronger institutions and more funding. Greater use of green energy and lesser use of coal should be Serbia's priorities. The entire society needs to invest much more effort in addressing air pollution. The environment transcends political, legal and national boundaries, wherefore cross-border cooperation is crucial for ensuring a healthy and safe environment in Serbia and the world.

518 CRTA, "What can you do in Serbia when you build a small hydropower plant". Available at: <https://crt.rs/wp-content/uploads/2019/07/What-can-you-do-in-Serbia-when-you-build-a-small-hydropower-plant.pdf>.

519 Serbia 2020 Report, p. 105.

IV PROTECTION AND REALISATION OF THE RIGHTS OF SPECIFIC CATEGORIES OF THE POPULATION

1. Prohibition of Discrimination

1.1. Legal Framework

Discrimination was first prohibited back in 1945 by the United Nations Charter. Article 55 of the Charter obligates all Member States to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Under Articles 1 and 2 of the 1948 Universal Declaration of Human Rights, all human beings are born free and equal in dignity and rights, and everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Discrimination is prohibited under various international conventions ratified by the Republic of Serbia, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Serbia is also party to UN conventions on the elimination of discrimination, such as the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Elimination of All Forms of Racial Discrimination. Some other Conventions ratified by Serbia also include anti-discrimination provisions, such as the UN Convention on the Rights of the Child (Art. 2) and the UN Convention on the Rights of Persons with Disabilities (Art. 5).

Discrimination is prohibited also by Article 21 of the Serbian Constitution,¹ which reads as follows:

- All are equal before the Constitution and law.
- Everyone shall have the right to equal legal protection, without discrimination.

¹ *Sl. glasnik RS*, 98/06.

- All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited.
- Special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination.

Therefore, the Serbian Constitution provides for a non-exhaustive list of personal characteristics, since Article 21 prohibits all discrimination on any grounds and then highlights particular personal characteristics. Two other articles of the Constitution prohibit discrimination as well: Article 48 on promotion of respect for diversity and Article 49, which prohibits any incitement of racial, ethnic, religious or other inequality, hate or intolerance. Article 76 of the Constitution specifically prohibits discrimination against national minorities.

Article 202(2) of the Constitution on derogations from human and minority rights during a state of emergency or war sets out that measures providing for derogation shall not bring about differences based on race, sex, language, religion, national affiliation or social origin.

1.1.1. Anti-Discrimination Act

The 2009 Anti-Discrimination Act² is the first Serbian law to comprehensively govern the prohibition of discrimination. Under Article 2 of the Act, the expressions “discrimination” and “discriminatory treatment” shall denote any overt or covert unjustifiable distinction, exclusion, restriction or preference of persons or groups, as well as their family members or people close to them, based on race, colour, descent, citizenship, national affiliation or ethnic origin, language, religious or political convictions, sex, gender identity, sexual orientation, economic status, birth, genetic characteristics, health, disability, marital status and family responsibilities, criminal record, age, physical appearance, membership of a political organisation, trade union or another organisation and other actual or assumed personal characteristics.

Article 3 of the Act sets out the obligation of courts and other public authorities to protect everyone from all forms of discrimination. Paragraph 3 of this Article prohibits exercise of the rights provided by this law in contravention of their purpose or with a view to denying, violating or limiting the rights and freedoms of others. Paragraph 2 of this Article guarantees aliens in Serbia all the rights enshrined in the Constitution and national law, except rights belonging solely to Serbian nationals.

Articles 5 and 6 of the Act define direct and indirect discrimination. This law also prohibits violations of the principle of equal rights and obligations (Art. 7), unfair treatment of people seeking or intending to seek protection from discrimination

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

or providing or intending to provide proof of discrimination (Art. 8), conspiracy to commit discrimination (Art. 9), hate speech (Art. 10) and harassment and degrading treatment (Art. 11).

Special measures, introduced in order to achieve full equality, protection and prosperity of a disadvantaged person or group of persons, shall not be deemed discrimination.³

An independent institution – the Commissioner for the Protection of Equality (hereinafter: Equality Commissioner), was established under the Anti-Discrimination Act. The Equality Commissioner is nominated by the parliamentary committee charged with constitutional issues and elected by a majority of votes of all deputies of the National Assembly.⁴ The Equality Commissioner is elected to a five-year term in office and may be re-elected once.⁵ The Equality Commissioner is assisted in performing their duties by a professional department.⁶

1.1.1.1. Anti-Discrimination Safeguards under the Anti-Discrimination Act

Individuals who believe they have been discriminated against may file a complaint with the Equality Commissioner in writing, and exceptionally orally for the record. Complaints are filed free of charge. They need to submit proof of discrimination together with their complaints. Complaints may also be filed on their behalf by human rights organisations or other persons, with their consent.

The Equality Commissioner shall forward the complaint to the person against which it has been submitted within 15 days from the day of receipt.⁷ The Equality Commissioner shall issue an opinion on whether the Anti-Discrimination Act has been violated within 90 days from the day the complaint was filed and notify the complainant and the person, against which it has been submitted, thereof.

Together with the opinion, the Equality Commissioner shall recommend to the person against which the complaint has been filed measures to eliminate the violation. That person is under the obligation to act on the recommendation and eliminate the violation within 30 days from the day of receipt of the recommendation, and to notify the Equality Commissioner thereof.⁸

Anyone who has been discriminated against may file a lawsuit with the court. The review of the lawsuit is urgent and the Civil Procedure Act applies accordingly. Revision of proceedings is permitted at all times.⁹ In the event the plaintiff satisfies the court that the defendant committed the act of discrimination, the latter bears

3 Article 14.

4 Article 28.

5 Article 29.

6 Article 32.

7 Article 35.

8 Article 39.

9 Article 41.

the burden of proving that the act had not resulted in a violation of the principle of equality or the principle of equal rights and obligations.¹⁰

Legal and natural persons found in violation of the prohibition of discrimination may be found guilty of a misdemeanour and fined.¹¹

1.1.1.2. Absence of a Meaningful Public Debate on Amendments to the Anti-Discrimination Act

The need to amend the Anti-Discrimination Act to address some of the weaknesses identified during its implementation had been reiterated by state authorities and civil society for years, but no steps in that direction were taken until 2019.

In early 2019, the Serbian Government approved the Draft Act Amending the Anti-Discrimination Act (hereinafter: Draft Act).¹² However, the authorities failed to invite all the stakeholders to take part in the development of the amendments, in contravention of regulations on the drafting and adoption of preliminary drafts;¹³ nor did they organise a debate on the proposed amendments before the Government formally endorsed them.

The authorities said several times that two round tables on the amendments had been held with CSOs, but they failed to publish any information on the events, wherefore it remains unknown who took part in them and what, if any conclusions, they reached.

Lack of a broad debate on the draft directly prevented stakeholders from contributing to the quality of the Draft Act, notably, from eliminating its many shortcomings. Civil society sharply reacted to its exclusion from the process,¹⁴ and the Anti-Discrimination Coalition issued a press release supported by 45 CSOs.¹⁵ The main criticisms were grouped in four categories.¹⁶

10 Article 45(2).

11 See Part VIII of the Anti-Discrimination Act.

12 Available in Serbian at: <https://www.paragraf.rs/dnevne-vesti/050919/050919-vest13.html>.

13 See the Act on the Planning System of the Republic of Serbia, *Sl. glasnik RS*, 30/18, available at: <https://rsjp.gov.rs/wp-content/uploads/Law-on-Planning-System.pdf>.

14 Danas, "The authorities should withdraw the draft amendments to the Anti-Discrimination Act," 1 March 2019. Available in Serbian at: <https://www.paragraf.rs/dnevne-vesti/050919/050919-vest13.html>.

15 See: <http://www.atina.org.rs/en/ngo-atina-part-appeal-coalition-against-discrimination-and-partner-organizations>.

16 The first group comprises linguistically senseless or impossible formulations, as well as spelling errors. The second group consists of shortcomings arising from the legislator's failure to comply with the rules on legislative drafting. The third group includes legal and systemic shortcomings precluding the adequate enforcement of the Act, such as the deletion of general procedural guarantees in complain proceedings, thus jeopardising the rights of the parties in the proceedings and paving the way for arbitrary decision-making on the part of the Equality Commissioner. The fourth group comprises shortcomings that are legal and political in character and bring into question the legislator's actual intention. For instance, the Equality Commissioner may decide

Finally, in September 2019, the relevant authorities allowed stakeholders to comment the Draft Act and offer their suggestions at several public debates organised across the country and electronically. The public debates were scheduled at the last minute, wherefore many CSOs were unable to attend them or prepare adequately for them. Furthermore, the stakeholders could only comment the amendments proposed in the Draft Act; they could not comment the entire Anti-Discrimination Act or propose additional amendments.

The Equality Commissioner issued her Opinion on the Draft Act in October 2019.¹⁷ She specified that the competent Ministry had sent her a letter on 27 September 2019 asking her to comment the text, which indicates that this institution had not been adequately involved in the preparation of the draft amendments before the Serbian Government approved them.

The authorities did not continue their dialogue with all the stakeholders in 2020. Nor was there any publicly available information on whether they took on board the CSOs' comments on the Draft Act.

On 21 September 2020, the Ministry of Labour, Employment and Veteran and Social Issues said it had developed five important laws, including the Draft Act, which the parliament would adopt during its autumn sitting and which would improve the living standards and quality of life of Serbia's citizens and ensure their equal rights.¹⁸ The Draft Act was not in the parliament pipeline by the end of the reporting period.

1.1.2. Other Laws

Many other Serbian laws include anti-discrimination provisions, many of which are, however, mutually inconsistent.

The prohibition of discrimination was governed by several laws before the Anti-Discrimination Act was adopted. One of them is the Act on the Protection of the Rights and Freedoms of National Minorities, which was adopted in 2003.¹⁹ The 2006 Act on Prevention of Discrimination against Persons with Disabilities²⁰ comprehensively regulates the prohibition of discrimination against persons with disabilities.

not to act on a complaint if he is of the view that the purpose of the procedure can be achieved by a public warning; or, the amendments provide for ten times higher fines for violating the Act than the ones prescribed now, without explanation.

17 Equality Commissioner's Opinion No. 011-00-00031/2019-02 of 14 October 2019, available in Serbian at: <http://ravnopravnost.gov.rs/36547-cir/>.

18 The Ministry press release is available in Serbian at: <https://www.minrzs.gov.rs/srb-lat/aktuelnosti/vesti/na-jesen-pet-zakona-pred-skupstinom-i-pocetak-izrade-zakona-o-zaposljavanju-stranaca>.

19 *Sl. glasnik RS*, 11/02, *Sl. list SCG*, 1/03 – Constitutional Charter and *Sl. glasnik RS*, 72/09 – other law, 97/13 – CC Decision and 47/18.

20 *Sl. glasnik RS*, 33/06 and 13/06.

The following laws also prohibit discrimination in their respective fields: the Family Act,²¹ the Sports Act,²² the Protector of Citizens Act,²³ the Constitutional Court Act,²⁴ the Official Use of Scripts and Languages Act,²⁵ and the Health Care Act.²⁶

The following laws in the field of media and information include provisions prohibiting discrimination: the Public Information and Media Act,²⁷ the Public Media Services Act,²⁸ and the Free Access to Information of Public Importance Act.²⁹

The following labour and employment related laws include provisions prohibiting discrimination: the Labour Act³⁰, the Peaceful Settlement of Labour Disputes Act,³¹ the Act on the Professional Rehabilitation and Employment of Persons with Disabilities³² and the Employment and Unemployment Insurance Act³³.

Discrimination is also prohibited in education, specifically by the Primary Education Act,³⁴ the Higher Education Act³⁵ and the Textbook Act.³⁶

In criminal law, discrimination is prohibited by the Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia,³⁷ the Juvenile Justice Act³⁸ and the Penal Sanctions Enforcement Act.³⁹ The Criminal Code incriminates a number of offences associated with discrimination. Offences directly associated with the prohibition of discrimination are incriminated in: Article 128 (violation of equality), Article 317 (incitement of national, racial or religious hate or intolerance) and Article 387 (racial and other discrimination).

21 *Sl. glasnik RS*, 18/05, 72/11 – other law and 6/15.

22 *Sl. glasnik RS*, 10/16.

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

24 *Sl. glasnik RS*, 109/07, 99/11, 18/13 – CC Decision, 40/15 and 103/15.

25 *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05 – other law, 30/10, 47/18 and 48/18 – corr.

26 *Sl. glasnik RS*, 107/05.

27 *Sl. glasnik RS*, 83/14, 58/15 and 12/16.

28 *Sl. glasnik RS*, 83/14, 103/15 and 108/16.

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

30 *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13, 75/14 and 13/17 – CC Decision, and 113/17.

31 *Sl. glasnik RS* 125/04, 104/09 and 50/18.

32 *Sl. glasnik RS* 36/09 and 32/13.

33 *Sl. glasnik RS* 36/09, 88/10, 38/15 and 113/17 – other law.

34 *Sl. glasnik RS*, 55/13, 101/17, 27/18 – other law and 10/19.

35 *Sl. glasnik RS*, 88/17, 27/18 – other law and 73/18.

36 *Sl. glasnik RS*, 27/18.

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

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

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

1.2. Adoption of Anti-Discrimination Strategy Still Pending

The national 2013–2018 Anti-Discrimination Strategy⁴⁰ (hereinafter: Strategy) was the first strategy providing for a coordinated system of public policy instruments, measures and conditions the state was to implement to prevent and suppress all forms and special cases of discrimination, especially against specific individuals or groups of people because of their personal characteristics.

The Strategy was accompanied by an Action Plan for its implementation in the 2014–2018 period.⁴¹ The Strategy listed the following key priorities: to strengthen and improve oversight mechanisms; adopt adequate laws and by-laws; that the state fulfil and actually implement standards to eliminate or substantially reduce discrimination and discriminatory actions, especially against vulnerable categories of the population. Many of the measures set out in the Strategy and Action Plan have, however, remained unimplemented.

Notwithstanding, Serbia still lacks a new Anti-Discrimination Strategy although nearly two years have passed since the 2013–2018 Strategy expired. This means that the state lacks a coordinated system of public policy instruments, measures and conditions that need to be implemented to prevent and suppress all forms and special cases of discrimination, especially against specific individuals or groups of people. Hence the need to adopt a new Strategy and its Action Plan and fulfil all the measures set out in the 2013–2018 Strategy without delay.

1.3. Discrimination Cases⁴²

In late April 2020, the BCHR complained to the Equality Commissioner about discrimination against a number of refugees, aliens granted refugee or subsidiary protection, and asylum seekers in Serbia.⁴³ These people had tried to open a foreign currency account in a bank but the bank told them they could not according to a new bank policy, applied as of 2020.

The bank was asked to clarify whether such a policy has actually been in place since January 2020 or whether a misunderstanding was at issue, since aliens had had no problems opening foreign currency accounts earlier. Correspondence with the bank failed to shed light on the reasons behind the policy. As per the Iranian complainant, it said that “in accordance with strict rules, ... is unable to establish a business relationship with an individual born in Iran,” that Iran is designated as a “high-risk jurisdiction” and blacklisted by the Financial Action Task Force on Mon-

40 *Sl. glasnik RS*, 60/13.

41 The Action Plan did not cover 2013 since it was adopted with a delay.

42 Filed by the BCHR.

43 The complainants are BCHR clients, nationals of Iran, Afghanistan and Iraq. They complained of discrimination on grounds of their national or ethnic origin and nationality.

ey Laundering (FATF), which is combating specific illegal activities. The bank added that Serbia had been on FATF's "grey list" until recently.

Although no one brings into question the banks' obligation to assess the risks of their operations, the assumption that all people born in Iran may be terrorists and are involved in money laundering is unacceptable. The bank also failed to provide any reason to believe that someone born in Iran is a security risk just because of his place of birth. Furthermore, all aliens granted a legal status in Serbia must undergo security clearance by the relevant authorities under the law.

The BCHR also filed a lawsuit claiming discrimination caused by a number of decisions restricting the movement of people over 65(70) during the state of emergency in Serbia. The plaintiff claims she had been discriminated against on account of her age, because the prohibition/restriction of movement she had been subjected to for nearly 50 days, unjustifiably distinguished between citizens over 65(70) and younger categories of the population, who had been subjected to much milder restrictions of the freedom of movement in the evenings, at nights and on weekends.

Furthermore, the authorities failed to justify or explain adequately the substantial differences in the restrictions of the freedom of movement. Prohibition of movement of the population over 65(70) was not based on an assessment of the individuals' particular circumstances (their health, hygiene conditions, et al), but on the authorities' general assessment that people over 65 were at greatest risk of contracting severe forms of COVID-19 because of the chronic illnesses many of them suffered from. However, the relevant authorities never explained the difference between people over 65 and those under 65 suffering from grave chronic diseases associated with severe COVID-19 outcomes. As opposed to all individuals over 65 (70), regardless of their health, other categories of people at high medical risk of severe COVID-19 outcomes were not subject to such strict restrictions of their movement.

People over 65(70) had not been informed which, if any, milder measures the Government had taken into consideration (wearing of personal protection equipment, use of disinfectants, mandatory physical distancing) and why it assessed them as ineffective or insufficient. It should be borne in mind that many people in Serbia under 65 live in the same households (homes) as people over 65 (70), and this fact in and of itself brings into question the justification of the major difference in the intensity of the restrictions of movement between the population over and the population under 65(70) years of age.

1.4. Restrictions of the Freedom of Movement of Asylum Seekers and Migrants in Asylum and Reception Centres

The COVID-19 pandemic impinged on the freedom of movement of migrants and asylum seekers in 2020. Pursuant to the State of Emergency Decision, the Serbian Government on 16 March 2020 adopted the Decision on the Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum and

Reception Centres in the Republic of Serbia (Decision).⁴⁴ The Decision “temporarily restricted the movement” of migrants and asylum seekers,⁴⁵ who were allowed to leave the Asylum and Reception Centres only in exceptional situations and with the consent of the CRM.⁴⁶ The Government thus gave the CRM the discretion to itself assess the relevance of the reasons why the migrants had to leave the Asylum or Reception Centres. The Decision was repealed on 9 April 2020, but its provisions were included verbatim in the Decree on State of Emergency Measures.⁴⁷ The prohibition to leave the Asylum and Reception Centres was thus moved from the “regular legal regime” to the “emergency legal framework”, rendering it derogable.⁴⁸

At its session on 17 September 2020, the Constitutional Court adopted a decision on a number of CSO initiatives to review the constitutionality and legality of several decisions restricting freedom of movement during the state of emergency.⁴⁹ It held, inter alia, that the “temporary restriction of movement of asylum seekers and irregular migrants living in ACs and RTCs during the state of emergency did not amount to deprivation of liberty”. Since the Constitutional Court did not find violations of constitutionality and legality and rights enshrined in the European Convention on Human Rights (ECHR) are at issue, the BCHR filed an application with the European Court of Human Rights (ECtHR).⁵⁰

In its application, BCHR complained that the prohibition of movement imposed against migrants and asylum seekers for over 50 days, was in contravention of Articles 5 and 14 of the ECHR.⁵¹ It argued that the restriction imposed against this

44 *Sl. glasnik RS*, 32/20.

45 The Decision specified that the measure was introduced to protect against the transmission of contagious diseases in the territory of the RS and to “prevent the uncontrolled movement of potential carriers of the virus and their arbitrary departure from asylum and reception centres”. The Decision also provided for enhanced supervision and security of all facilities accommodating migrants.

46 For instance, to see a doctor or for another justifiable reasons. The Decision, however, did not specify the procedure for seeking permission to leave the centres, the exceptional and justifiable reasons for which it could be granted, the deadlines by which the decisions on the requests had to be made, or the right to appeal negative decisions.

47 *Sl. glasnik RS*, 31/20, 36/20, 38/20, 39/20, 43/20, 47/20, 49/20 and 53/20.

48 A11, Deprivation of liberty of refugees, asylum seekers and migrants in the Republic of Serbia through measures of restriction and measures of derogation from human and minority rights made under the auspices of the state of emergency, Belgrade, 2020, p. 4, available at: <https://www.a11initiative.org/wp-content/uploads/2020/05/Deprivation-of-liberty-of-refugees.pdf>.

49 Constitutional Court Decision IUo – 45 adopted on 17 September 2020. The decision regards a number of initiatives for the review of the constitutionality and legality of several decisions restricting the freedom of movement during the state of emergency in Serbia.

50 More in BCHR’s *Right to Asylum in the Republic of Serbia 2020* report, available at: www.azil.rs.

51 Article 5 of the ECHR enshrines the right to liberty and security, while Article 14 of the ECHR prohibits discrimination in the enjoyment of the rights and freedoms set forth in the ECHR. The ECtHR was established to ensure compliance of the High Contracting States (including Serbia) with their obligations under the ECHR. Under the ECHR, the Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the

category of the population was comparable with the degree of restrictions of liberty during house arrest or home imprisonment, which are considered deprivation of liberty.⁵² BCHR also argued that the measure was discriminatory, because it unjustifiably distinguished between migrants and asylum seekers accommodated in Asylum and Reception Centres and other categories of the population in Serbia.⁵³

2. LGBTI Rights

2.1. Legal Framework

The ECHR and ICCPR do not explicitly mention sexual orientation, gender identity, gender expression or sex characteristics as grounds on which discrimination is prohibited but they leave the possibility open as they specify that discrimination is prohibited on any ground or status in addition to the listed ones, thus allowing for such an interpretation of Article 1 of Protocol No. 12 to the ECHR and Article 26 of the ICCPR.

The Constitution of the Republic of Serbia does not explicitly list sexual orientation, gender identity, gender expression or sex characteristics among the personal features that constitute prohibited discrimination grounds.⁵⁴ The Anti-Discrimination Act prohibits discrimination on grounds of sexual orientation (in Art. 2), but makes no explicit mention of gender identity.⁵⁵ 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.⁵⁶

Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right. The ECtHR may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law.

52 In light of the intensity of the restrictions of the freedom of movement and social contacts, duration, degree of supervision and severity of the penalties for violating the measure at issue.

53 Including privately accommodated refugees and asylum seekers and those living outside Asylum and Reception Centres. Specifically, they were subject to much milder restrictions of their freedom of movement, in the evenings, at nights and on weekends, during the state of emergency.

54 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.

55 More in the 2009 Report, I.4.1.2.

56 E.g., the Labour Act prohibits discrimination on grounds of sexual orientation (an obsolete and derogatory term), and the Act on Youths prohibits discrimination on grounds of gender identity.

Discrimination in education is prohibited under a number of national laws, including the Anti-Discrimination Act (Art. 19), the Education System Act (Art. 9),⁵⁷ the Higher Education Act (Art. 4),⁵⁸ the Textbook Act (Art. 13),⁵⁹ etc. The 2016 Rulebook on Detailed Criteria for Recognising Forms of Discrimination in Education Institutions by Staff, Children, Pupils or Third Parties⁶⁰ 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 2020 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 Declaration⁶¹ 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, gender identity, gender expression or sex characteristics, and to prepare a law regulating all the legal consequences of gender confirmation.

The Act Amending the Civil Registers Act⁶² and the new Rulebook on Sex Change Certificates and Their Issuance by Health Institutions entered into force on 1 January 2019.

2.2. Discrimination, Violence and Hate Crimes 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, gender identity, gender expression or sex characteristics. Serbia ranked 26th on the ILGA-Europe Rainbow Map as regards respect for the human rights and full equality of the LGBTI population.⁶³

In its Serbia 2020 Report, the European Commission said that Serbia needed to step up measures to protect the rights of persons facing discrimination, including LGBTI) persons and actively pursue investigation and convictions for hate-motivat-

57 *Sl. glasnik RS*, 55/13, 101/17, 27/18 – other law and 10/19.

58 *Sl. glasnik RS*, 88/17, 27/17, 27/18 – other law and 73/18.

59 *Sl. glasnik RS*, 27/18.

60 *Sl. glasnik RS*, 22/16.

61 See the *NI* Report, available in Serbian at: <http://rs.n1info.com/a192039/Vesti/Vesti/Predlog-da-Skupstina-usvoji-Deklaraciju-protiv-homofobije.html>.

62 *Sl. glasnik RS*, 47/18.

63 Rainbow Map, ILGA Europe. Available at: <https://www.ilga-europe.org/sites/default/files/2020/serbia.pdf>.

ed crimes.⁶⁴ The EC also held that the implementation of the hate crime legislation, including on grounds of sexual orientation, remained inadequate, noting that centralised official data on hate crimes broken down by bias motivation were still lacking.⁶⁵ 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.⁶⁶

The 2020–2023 Strategy for the Prevention and Protection of Children from Violence⁶⁷ recognises violence against LGBTI youth, including, inter alia, in education, and alerts to their precarious situation as corroborated by research. The 2020–2021 Action Plan for the Implementation of the Strategy does not envisage any activities addressing specifically the prevention of violence against LGBTI children and their protection.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).

Some state officials openly expressed their intolerance of the LGBTI population. One of them was Nenad Popović, the Serbian Minister without Portfolio tasked with innovations and technological development and leader of the Serbian People's Party, who criticised initiatives to allow homosexual couples to adopt children under the law.⁶⁹ This was not the first time Popović voiced his homophobic views, in violation of the Anti-Discrimination Act.⁷⁰

Many 2020 media reports on LGBTI persons were tendentious and negative. Media continued publishing negative comments about actor Goran Jevtić in 2020,⁷¹ especially after the Sombor Higher Court decided that he should serve his sentence at home, but without electronic monitoring.⁷²

Actor Miloš Timotijević was the target of attacks and hate speech on social networks for playing a character who kissed another man in the local series *South Wind*. The premiere of the 13th episode containing that scene was shown on RTS

64 *Serbia 2020 Report*, p. 36, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf.

65 *Ibid*, p. 38.

66 *Ibid.*, p. 38.

67 *Sl. glasnik RS*, 80/20.

68 More on the situation of LGBTI children and youth in the education system in Kosana Beker, Miroslava Vuković, *Improvement of the Status of LGBTI Children and Youth in the Education System of the Republic of Serbia*, LABRIS, Belgrade, June 2020.

69 *Danas*, “Nenad Popović for Danas: I’m not abandoning my policy,” 1 February. Available in Serbian at: <https://www.danas.rs/politika/nenad-popovic-za-danas-ne-odricemo-se-svoje-politike/>.

70 More in the *2018 Report*, IV.2.2.2.

71 More about Goran Jevtić’s case in the *2019 Report*, IV.2.2.2.

72 *Blic*, “Goran Jevtić not going to prison to serve 10-month sentence for illicit sex with a minor at home,” 4 March. Available in Serbian at: <https://www.blic.rs/vesti/hronika/goran-jevtic-ne-ide-u-zatvor-kaznu-od-10-meseci-zbog-nedozvoljenih-polnih-radnji-nad/ldfnrgs>.

on 29 March, but a pirated copy of it appeared on the Internet already on 23 March. Numerous offensive comments against the actor were posted on the social networks and he received a large number of threatening messages.⁷³ The Equality Commissioner condemned the attacks on Miloš Timotijević.⁷⁴

In cooperation with the Regional Info Centre, the association IDEAS published in April its *Annual LGBTI+ Survey*.⁷⁵ None of the respondents thought Serbia was a good place to live, while as many as 82% of them said that Serbia was not a good place to live if one was LGBTI+. ⁷⁶ The survey showed that most LGBTI+ persons distrusted the state; as many as 77% were of the view that it was not in the least concerned about the status of LGBTI+ persons, while the remaining 23% thought it cared about it only to an extent.⁷⁷

The IDEAS survey results also showed that 46% of LGBTI+ persons believed that they had been discriminated against in 2019; 16%, who had applied for jobs in 2019, were convinced that they had not been hired just because of their sexual orientation and gender identity, i.e. membership of a minority group; 24% of employed respondents said that they had been discriminated against at work in 2019, 20% were not sure, while 56% did not report any discrimination at work; 92% of the respondents believed that the state systems and protection mechanisms could not protect them from discrimination at work.⁷⁸

The IDEAS survey showed that 48% of the respondents did not feel free to express their identity in everyday life, while 38% felt only partly free. Only 14% of the respondents felt they were absolutely free to express their LGBTI+ identity.⁷⁹

Although 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, 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.

The 11th attack on the Pride Info Centre in the heart of Belgrade since it opened⁸⁰ occurred on 29 February 2020. A group of masked young men kicked the

73 *Danas*, “Love is the only bright point of that character and that’s exactly what bothers people,” 2 April. Available in Serbian at: <https://www.danas.rs/kultura/jedina-svetla-tacka-u-tom-liku-je-ljubav-a-ljudima-upravo-to-smeta/>.

74 *Nova.rs*, “Kids lynch Serbian actor on networks because of gay scene,” 1 April. Available in Serbian at: <https://nova.rs/drustvo/srpskog-glumca-klinci-lincovali-na-mrezama-zbog-gej-scena/>.

75 The survey covered 2019.

76 IDEAS, *Annual LGBTI+ Survey*, Belgrade, May 2020, p. 14. Available in Serbian at: <https://www.lgbti-era.org/sites/default/files/pdfdocs/Godi%C5%A1nje%20LGBTI%20istra%C5%BEivanje.2020.pdf>.

77 *Ibid.*, p. 4.

78 *Ibid.*, p. 9.

79 *Ibid.*, p. 11.

80 Pride Info Centre opened in the heart of Belgrade, close to the main state institutions in August 2018.

door and window of the Centre, damaging the lock and the window.⁸¹ The attack was condemned by the Protector of Citizens⁸² and the Equality Commissioner.⁸³ On 20 May, the Protector of Citizens required of the Ministry of Internal Affairs to notify him within a fortnight which measures it had undertaken or planned to undertake in cooperation with the other relevant authorities to identify, prosecute and adequately punish the perpetrators of the attack on the Belgrade Pride Info Centre.⁸⁴ He subsequently said that during his monitoring of the MIA's activities in response to the attack, he established that the police had identified the perpetrators and taken measures to prosecute them. This was the first time the police identified the perpetrators of any of the 11 attacks on the Centre.⁸⁵

The Office of the Protector of Citizens said that the Criminal Code had to be amended and that crimes committed on grounds of sexual orientation and gender identity should be treated as racism and intolerance.⁸⁶ The Protector of Citizens, however, did not propose such draft amendments to criminal law.

Around 200 local high-schoolers staged a spontaneous protest via social media in Leskovac in early March after fake news – that a pride parade would be held in their home town – was published on Facebook the previous day. They chanted homophobic slogans. Reporters of the *Beta* news agency and *Jug Media* covering the protest were assaulted and the police hauled in two perpetrators.⁸⁷ The Protector of Citizens condemned the protest and initiated a review of the work of the relevant authorities.⁸⁸ Member of the Leskovac *Dveri* Movement Slavoljub Milenković justified

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- 81 RTS, "Attack on Pride Info Centre, Pašalić reacts," 1 March. Available in Serbian at: <https://www.rts.rs/page/stories/sr/story/125/drustvo/3871581/prajd-info-centar-lgbt-napad-pasalic.html>.
- 82 See the Protector of Citizens press release of 1 March. Available in Serbian at: <https://www.danas.rs/drustvo/pasalic-seksualna-orijentacija-je-licna-stvar-pojedince-ali-se-zastita-prava-na-razlicitost-tice-svih-nas/>
- 83 Equality Commissioner, "Warning on Incidents at High-School Students' Rally in Leskovac," 2 March. Available at: <http://ravnopravnost.gov.rs/en/warning-on-incidents-at-high-school-students-rally-in-leskovac/>.
- 84 See the Protector of Citizens press release of 20 May. Available in Serbian at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6616-z-sh-i-ni-gr-d-n-z-r-zi-b-v-sh-nj-d-up-r-pr-duz-u-pr-n-l-z-nju-izvrshi-c-n-p-d-n-pr-d-inf-c-n-r>.
- 85 See the Protector of Citizens press release of 21 August. Available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=287:the-protector-of-citizens-monitors-the-work-of-the-moi-assailants-on-the-pride-info-center-identified&catid=44:opinions-and-views&Itemid=4.
- 86 See the Protector of Citizens press release of 17 May. Available at: <https://www.ombudsman.org.rs/index.php?limitstart=96>.
- 87 *Danas*, "Leskovac High-Schoolers' Protest against Pride Parade, Journalist Arrested," 2 March. Available in Serbian at: <https://www.danas.rs/drustvo/protest-srednjoskolaca-u-leskovcu-protiv-parade-ponosa-napadnuti-novinari/>.
- 88 Protector of Citizens press release of 3 March is available in Serbian at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6526-p-v-d-pr-s-pr-iv-p-r-d-p-n-s-u-l-s-vcu-z-sh-i-ni-gr-d-n-p-r-nu-p-s-up-n-r-l>.

the violence that broke out during the protest and hurled insults at the assaulted *Jug Media* reporter.⁸⁹

The Smederevo Basic Court in February 2020 delivered a judgment⁹⁰ finding D.M. guilty of violent conduct (under Art. 344(2) of the Criminal Code). In 2015, D.M. assaulted his victim because of their presumed sexual orientation; both the victim and the individual they were with sustained light physical injuries. The perpetrator also threatened to kill the victim. He assaulted him in a public place in the heart of Smederevo, in front of a large number of people. The Court sentenced him to six-month home imprisonment with electronic monitoring. In its decision on the penalty, the Court took into account Article 54a of the Criminal Code, 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 victim was instructed to claim damages in civil proceedings.

The Court commendably recognised that a hate crime was at issue and relied on Article 54a of the Criminal Code. Two questions, however, arise in this case. The first regards the efficiency of the authorities prosecuting crimes with elements of hate: the judgment was delivered after more than four years had passed since the commission of the crime (which involved the infliction of physical injuries, death threats, assault on more than one person, commission of the offence in a public area in front of a large number of people, et al). Furthermore, the Court's decision to impose such a short and lenient sentence is also questionable: first of all, the offence incriminated in Article 344(2) of the Criminal Code warrants a prison sentence ranging from six months to five years, and, second, the Court itself relied on Article 54a but apparently did not consider the fact that the crime had elements of hate as an aggravating circumstance warranting a harsher penalty, at the very least the one prescribed by the Criminal Code.

In 2020, the association *Da se zna!* published its 2020 annual report on hate crimes against LGBTI persons in 2019. It documented 63 offences that can be qualified as hate crimes in 2019; 50 (79.4%) hate crimes involved criminal offences, two (3.2%) involved criminal offences and discriminatory conduct, and 11 (17.5%) involved exclusively discriminatory conduct.⁹¹ Most of the incidents occurred in outdoor public areas.⁹² 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.

89 *Danas*, "Dveri Member Justifies High-Schoolers' Violence in Leskovac," 2 March. Available in Serbian at: <https://www.danas.rs/drustvo/clan-dveri-opravdao-nasilje-srednjoskolaca-u-leskovcu/>.

90 Smederevo Basic Court, Main Hearing Records, Case 4 K No. 81/17, 4 February 2020.

91 See: Miloš Kovačević, Nikola Planojević, "Grasp the Truth Based on Facts, Report on hate-motivated incidents against LGBT + people in Serbia from January 2017 to June 2020," *Da se zna*, Belgrade, 2020, p. 25.

92 *Ibid.*, p. 29.

Thirty-three (52.4%) of the incidents motivated by hate were not reported to any institution or CSO except *Da se zna!* Of the 29 (46%) of the reported incidents, 23 were reported to the police, eight to prosecutors, while court proceedings were initiated in two cases.⁹³ The Report quoted the following reasons why the victims did not report hate crimes: distrust of the institutions (21.2%), they are not outed (42.4%), fear of the perpetrator (30.3%), unfamiliarity with the procedure (24.2%), and other reasons (9.1%).

IDEAS obtained the following data about violence against LGBTI persons in its Survey⁹⁴: 56% of the respondents suffered from emotional abuse and 8% from physical abuse in 2019; physical abuse was more frequently reported by children and youth under 24 (15%); 14% of the respondents reported sexual abuse in 2019; 59% said that they had suffered at least one form of abuse while 16% reported multiple forms of abuse.⁹⁵

2.3. Events Organised by the LGBTI Population

Both of the planned Pride Parades were cancelled due to the coronavirus pandemic in 2020. Like in other walks of public life, most public events were replaced by online events. CSOs held various seminars, presentations, workshops and other activities online as well.

The NGO Haver Serbia was criticised on the Illinois-based International Family News (IFN) portal for organising pro-tolerance workshops for primary and secondary school students. The unsigned text published on the portal contained hate speech against Haver Serbia and the Jewish community.⁹⁶

The International Day against Homophobia, Transphobia and Biphobia was marked by the award of the 2020 Rainbow prize⁹⁷ to actor Miloš Timotijević, nominated because of his response to the attacks against him over the gay scenes in the series *South Wind*, in which he played one of the roles.⁹⁸

Some twenty feature and short films were shown at the 12th international queer film festival *Merlinka*, held in the Belgrade Youth Centre on 3–6 December 2020.⁹⁹

93 *Ibid.*, p. 42.

94 IDEAS, *Annual LGBTI+ Survey*, Belgrade, May 2020.

95 *Ibid.*, p. 7.

96 *Danas*, “Viličić: LGBTI persons subject to discrimination and violence,” 12 June. Available in Serbian at: <https://www.danas.rs/drustvo/vladavina-prava/vilicic-lgbti-osobe-izlozene-diskriminaciji-i-nasilju/>.

97 The Rainbow has been awarded by the organisation Gay Straight Alliance since 2013.

98 *NI*, “Actor Miloš Timotijević awarded the Rainbow,” 25 June. Available in Serbian at: <http://rs.n1info.com/Showbiz/a613500/Glumac-Milos-Timotijevic-dobitnik-nagrade-Duga.html>.

99 See: <https://merlinka.com/>.

2.4. Same-Sex Partnerships

Same-sex partnerships were not regulated by law in 2020 despite Prime Minister Ana Brnabić's announcement. Some CSOs and activities reacted to her passivity. In mid-2020, the organisation *Da se zna!* launched a campaign dubbed "Comrade, Liar" and sent her an open letter signed by over 600 people.¹⁰⁰

In April, LABRIS published its Model Act on Civil Partnerships (hereinafter: Model Act).¹⁰¹ This comprehensive legal document governs same-sex partnerships and the rights and obligations of the partners. If and when it adopts the law, Serbia will join the majority of European countries that have legislated same-sex unions. Non-recognition of same-sex partnerships has multiple consequences and affects many LGBTI persons.¹⁰² Furthermore, the European Court of Human Rights has dealt with a number of cases concerning the rights of same-sex partners.¹⁰³

The Model Act comprises 57 Articles divided into seven Chapters. It governs registered and unregistered civil partnerships, the main principles on which they are based, the registration procedure, requirements and legal effects and dissolution of civil partnerships.¹⁰⁴ If adopted, the Model Act will be a *lex specialis* vis-à-vis the Family Act,¹⁰⁵ since its Articles 8(1) and 15 lay down the requirements for entry into and registration of civil partnerships. The Act on Resolution of Conflicts of Laws with Regulations of Other Countries¹⁰⁶ will apply accordingly to civil partnerships concluded and registered between Serbian and foreign nationals. Under Article 19(1) of the Model Act, the Civil Registers Act shall apply accordingly to registration of civil partnerships in the Register of Civil Partnerships.

The Model Act provides for two forms of civil partnerships – registered and unregistered (Art. 2(1)). A registered partnership is defined as "a family union of two adult individuals of the same sex registered before the relevant public authority" in accordance with this law. A civil partnership also denotes a more permanent family union of two adults of the same sex that is not registered before a public authority but fulfils the requirements for legal recognition under this law.

100 See: <http://blog.dasezna.lgbt/2020/07/13/drugarice-lazljivice-otvoreno-pismo-ani-brnabic/>.

101 LABRIS, Model Act on Civil Partnerships, April 2020. Available in Serbian at: <http://labris.org.rs/sites/default/files/Model%20zakona%20o%20gra%C4%91anskom%20partnerstvu.pdf>. The prior Model Act on Registered Same-Sex Partnerships was developed in 2013 (by (LABRIS, Centre for Advanced Legal Studies and the AIRE Centre).

102 Same-sex partners are inter alia now unable to exercise their right to parenthood. More in Zorica Mršević, *Analysis of Biomedically Assisted Reproduction in Serbia Requirements and Procedure*, LABRIS, Belgrade 2020, pp. 27–31.

103 See, e.g. the ECtHR's judgment in the case of *Oliari v. Italy*, ECtHR, App. nos. 18766/11 and 36030/11 (2015).

104 Article 1 of the Model Act.

105 *Sl. glasnik RS*, 18/05, 72/11 – other law and 6/15.

106 *Sl. list SFRJ*, 43/82 and 72/82 – corr., *Sl. list SRJ*, 46/96 and *Sl. glasnik RS*, 46/06 – other law. See Articles 8(1) and 15 of the Model Act.

Under Article 3 of the Model Act, civil partnerships shall be based on the principles of equality, respect of dignity and gender identity. All forms of discrimination shall be prohibited. The Model Act sets out formal and substantive requirements that have to be fulfilled to enter into a civil partnership. Civil partnerships shall be registered before the relevant civil registrar; the persons entering into civil partnerships must be of the same gender and freely consent to the conclusion of the partnership.¹⁰⁷ Under Article 7 of the Model Acts, a civil partnership may not be entered into by individuals who are: incapable of reason; under 18 years of age; already in a civil partnership, married or in an extramarital union; related to each other by blood directly or laterally to the fourth degree of kinship or by marriage to the first degree of kinship; one individual is the other's guardian or adoptive or foster parent.

Article 9 of the Model Act provides registered and unregistered civil partners with the same rights and obligations. Article 10 envisages the proving of both forms of partnership in the same way as extramarital unions are proven.

Registration of civil partnerships includes several stages. The first preliminary stage is the one in which the individuals, who want to enter into a civil partnership, schedule the submission of the application to the registrar of the municipality in which they want to register their partnership. They must attach: proof of nationality and birth certificates (foreign nationals must submit their travel documents or IDs for foreigners); partners, who had been married or in a registered partnership, must submit proof of dissolution of their prior marriage/partnership (foreign applicants must submit written proof that they are not married or in a civil partnership). The second stage involves the registrar's verification that the applicants fulfil the requirements; if they do not, the registrar shall issue a written ruling rejecting their application within eight days.¹⁰⁸ Appeals of such rulings may be filed with the ministry charged with family protection within 15 days.¹⁰⁹ The third stage involves the very act of registration of the civil partnership, which is entered in the Birth Register and the Register of Civil Partnerships.¹¹⁰ The latter, which will be a nationwide register of civil partnerships kept in hard copy and electronic format,¹¹¹ will be established by the ministry in charge of state administration and local self-governments and kept by the LSG registrars.¹¹²

The Model Act provides for the following rights of civil partners: maintenance; support each other's children; to property; inheritance; compensation of damages; tax relief and other benefits; a series of health-related, pension/health insurance and welfare rights. The Model Act provides civil partners with rights equal

107 Article 6 of the Model Act.

108 Article 11(2) of the Model Act.

109 Article 11(3) of the Model Act.

110 Article 12(6) of the Model Act.

111 Article 16 of the Model Act.

112 Article 17 of the Model Act.

to those of spouses, inter alia, in criminal proceedings. The Model Act also governs dissolution of partnerships and the relevant procedure.

2.5. Legal Consequences of Gender Confirmation

The Act Amending the Civil Registers Act¹¹³ introduced provisions facilitating gender confirmation.¹¹⁴ 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).¹¹⁵

Sex change certificates are defined as public documents.¹¹⁶ 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.¹¹⁷ 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 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 2020.¹¹⁸

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-

113 *Sl. glasnik RS*, 47/18.

114 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>.

115 *Sl. glasnik RS*, 103/18.

116 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.

117 Article 2(1(1 and 2)) of the Rulebook.

118 Article 8 of the Rulebook.

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.¹¹⁹

During his review of a complaint over the applicant's inability to register gender reassignment performed abroad in Serbia's civil registers, the Protector of Citizens identified shortcomings in the work of the relevant authorities, the elimination of which provided the complainant with a certificate on her gender reassignment and the registration of her gender in the municipal civil registers. On receipt of the complaint filed by a Serbian national living abroad, he initiated a review of the work of the Cabinet for Transgender Conditions of the Psychiatric Clinic within the Clinical Centre of Serbia, which is tasked with issuing gender reassignment certificates, and of the work of the national Expert Commission for Transgender Conditions within the Ministry of Health. The Ministry of Health inspectorate, tasked with overseeing the work of health institutions, found irregularities and ambiguities in the Cabinet's and the Commission's application of the Rulebook on Gender Reassignment Certificates. The Protector of Citizens required of the Ministry of Health to take all legal measures to rectify the identified irregularities and to ensure the issuance of the certificate to the complainant. The Ministry of Health inspectorate notified the Protector of Citizens that it had undertaken all the measures prescribed by law and that the relevant health institution issued the certificate and sent it to the relevant civil registry office in Serbia.¹²⁰

2.6. Status of Trans* Persons¹²¹

The Serbian legal system does not recognise transpersons. The health system recognises only transgender, which it categorises as a mental disorder.¹²² 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

119 *Večernje novosti*, "Easy to change sex in birth certificate," 11 January 2019. Available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:770833-Lako-menjaju-pol-u-krs-tenici?fbclid=IwAR1J5OwjsSbv2TuMgWv3oTNRJduYVxr-2JLcpIPkuaQNOsRVsk7i3MxejmE>.

120 The Protector of Citizens press release of 24 November is available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=276:possible-to-register-gender-re-assignment-abroad-into-the-registry-books-in-serbia&catid=44:opinions-and-views&Itemid=4Zaštiti.

121 Trans is an umbrella term for people whose gender identity/ies differ/s from sex/gender assigned at birth.

122 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%20ji%20-%20analiza%20poloaja%20i%20predlog%20pravnog%20reenja.pdf>.

from the Chapter on Mental and Behavioral Disorders, which means that trans identities are now formally de-psycho-pathologised in the ICD-11.¹²³

In its Serbia 2020 Report, the European Commission said that transgender persons were particularly vulnerable to violence, abuse and discrimination.¹²⁴

The civil sector prepared two texts, a Model Act on the Recognition of the Legal Consequences of Sex Change and Determination of Transsexualism¹²⁵ in 2012 and the Model Gender Identity Act¹²⁶ in 2016.

2.7. People Living with HIV/AIDS

The 2018–2025 HIV/AIDS Strategy and its Action Plan covering the 2018–2021 period were in place during the reporting period.¹²⁷

The legal framework governing care for people living with HIV/AIDS also includes the Healthcare Programme to Protect the Population from Communicable Diseases,¹²⁸ 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,¹²⁹ which also acts as the Council monitoring the implementation of projects funded from the GFATM donation.¹³⁰

According to the national Public Health Institute Dr Milan Jovanović Batut, as of 20 November 2020, 4,123 HIV-positive people have been registered in Serbia since 1985, when the epidemic broke out. Of them, 2,047 contracted and 1,159 died of AIDS; another 121 HIV-positive people died of diseases or conditions unrelated to HIV. According to official data, 2,843 HIV-positive people are living in

123 See Transgender Europe: <https://tgeu.org/icd-11-depathologizes-trans-and-gender-diverse-identities/> and <https://news.un.org/en/story/2019/05/1039531>.

124 *Serbia 2019 Report*, p. 28.

125 Prepared by CUPS, Gayten LGBT and AIRE Centre, S. Gajin (ed.), *Model Act on the Recognition of the Legal Consequences of Sex Change and Determination of Transsexualism*, CUPS, Belgrade 2012. Available in Serbian at: <http://cups.rs/wp-content/uploads/2010/03/Model-zakona-o-priznavanju-pravnih-posledica-promene-pola-i-utvr%C4%91ivanja-transeksualizma.pdf>.

126 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>.

127 *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. More on the Strategy in the *2019 Report*, IV.2.7.

128 *Sl. glasnik RS*, 22/16.

129 *Sl. glasnik RS*, 5/18 and 8/18 – corrigendum.

130 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.

Serbia at the moment. Estimates are that another 400 people are unaware that they are HIV-positive. Fifty-five people were diagnosed with HIV from the beginning of the year to 20 November 2020, i.e. 69% less than in the same period last year, when 175 people were diagnosed with HIV. Ten new AIDS patients were diagnosed and four AIDS patients died in the same period (or 5.5 times and four times less over the same period last year).¹³¹

In its Serbia 2020 Report, the European Commission said that Serbia needed to devote attention to effective, sustainable financing of disease-specific strategies, including the national HIV/AIDS strategy.¹³² Regarding health inequalities, it said that access to healthcare services needed to be improved, inter alia, for people living with HIV.¹³³

The situation of LGBTI persons in Serbia deteriorated during the state of emergency (15 March-6 May 2020). Access to HIV drugs, which was difficult even before the pandemic, was impossible during the state of emergency since everything focused on coronavirus.¹³⁴

2.8. *Intersex*¹³⁵ *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 relevant ministry on the statistical data or treatment of intersex persons.¹³⁶ 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.¹³⁷

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

131 HIV Infection and AIDS Epidemiological Determinants in the Republic of Serbia in Late November 2020, available in Serbian at: <http://www.batut.org.rs/index.php?content=2145>.

132 *Serbia 2020 Report*, p. 110.

133 *Ibid.*, p. 112.

134 OutRight Action International, *Vulnerability Amplified – The Impact of the COVID-19*, 2020, p. 55, available at: https://outrightinternational.org/sites/default/files/COVIDsReportDesign_FINAL_LR_0.pdf.

135 “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_Fact-sheet_ENGLISH.pdf.

136 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>.

137 See: <http://www.transserbia.org/interseks/595-podraska-i-poziv-interseks-osobama>.

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.¹³⁸

In its Serbia 2020 Report, the European Commission said that intersex persons were still invisible both socially and legally.¹³⁹

3. Rights of the Child

3.1. Legislative Framework

By ratifying the Convention on the Rights of the Child (CRC),¹⁴⁰ Serbia assumed the obligation to respect and promote the rights of the child, and to comply with the four core CRC principles: underlying the CRC: right to life, survival and development; right to protection from discrimination, paramount importance of the best interests of the child and due weight to the views of the child (the latter is often called the right to the participation of the child). Serbia submitted reports to the Committee on the Rights of the Child in 2007 and 2015. The Committee in 2017 adopted Concluding observations on the combined second and third periodic reports of Serbia,¹⁴¹ recommending the measures the state was to undertake to improve the realisation of the rights of the child. Serbia is to submit its report on the implementation of the recommendations to the Committee by 24 May 2022.

The Republic of Serbia is also party to two out of three optional protocols to the Convention – the Optional Protocol on the Involvement of Children in Armed Conflict¹⁴² and the Optional Protocol on the sale of children, child prostitution and child pornography.¹⁴³ However, Serbia still has not ratified the Third Optional Protocol to the CRC on a communications procedure, which allows parents and their representatives to complain of violations of child rights to the Committee on the Rights of the Child. The Committee recommended Serbia ratify the Protocol in order to further strengthen the fulfilment of children's rights.¹⁴⁴

138 *Ibid.*

139 *Serbia 2020 Report*, p. 38.

140 *Sl. list SFRJ (Međunarodni ugovori)*, 15/90 and *Sl. list SRJ (Međunarodni ugovori)*, 4/96 and 2/97.

141 Concluding observations on the combined second and third periodic reports of Serbia, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7y-hsvbbsmSbdrUo%2fJYBx5OfDhOO7%2bQBbVI9wXsq7oeQOPr3yRIbxmlQ3VRQ0E1ojTH-B4LQ132IHm6hUqzJFgcBHRPmUisL7tU8kh6tVRiAPRZJu>.

142 *Sl. list SRJ (Međunarodni ugovori)*, 7/02.

143 *Sl. list SRJ (Međunarodni ugovori)*, 7/02.

144 Paragraph 73, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7y-hsvbbsmSbdrUo%2fJYBx5OfDhOO7%2bQBbVI9wXsq7oeQOPr3yRIbxmlQ3VRQ0E1ojTHB4LQ132IHm6hUqzJFgcBHRPmUisL7tU8kh6tVRiAPRZJu>.

Under Article 64 of the Serbian Constitution,¹⁴⁵ children shall enjoy human rights suitable to their age and mental maturity. This Article also guarantees protection of children from psychological, physical, economic and any other form of exploitation or abuse and equal rights to children born in and out of wedlock. It further specifies that rights of the child and their protection shall be regulated by the law. The legislator should, however, elaborate the legal framework in greater detail and check compliance of national regulations with international law, notably the CRC and other ratified international treaties relevant to the rights of the child.

Laws governing the rights of the child, such as the Family Act, the Social Protection Act and the Juvenile Justice Act need to be amended substantially. The draft amendments were to have been submitted to the parliament for adoption in 2020.¹⁴⁶ The failure to enact them can be justified by the COVID-19 crisis. Nevertheless, the rights of the child must be of paramount importance in emergencies as well, as confirmed by the Committee on the Rights of the Child, which warned of the grave physical, emotional and psychological effect of the pandemic on children and called on states to protect the rights of the child.

The Committee called on states to consider the health, social, educational, economic and recreational impacts of the pandemic on the rights of the child; explore alternative and creative solutions for children to enjoy their rights to rest, leisure, recreation and cultural and artistic activities; and ensure that online learning did not exacerbate existing inequalities or replace student-teacher interaction. The Committee warned states that they should activate immediate measures to ensure that children are fed nutritious food and to maintain the provision of basic services for children, including water and health care, and provide professional mental health services for children living in lockdown. It also called on them not to detain children and prevent arrests or detention of children for violating state guidance and directives relating to COVID-19. The Committee also called on states to disseminate accurate information about COVID-19 and how to prevent infection in languages and formats that are child-friendly and accessible to all children, including children with disabilities, migrant children and children with limited access to the Internet, and to provide opportunities for children's views to be heard and taken into account in decision-making processes on the pandemic.¹⁴⁷

The adoption of the Act on the Rights of the Child and the Protector of the Rights of the Child, which would comprehensively govern the rights of the child in Serbia, and provide for the establishment of the Ombudsman for Children, are essential for improving the status and rights of the child. The Preliminary Draft of this law, *inter alia*, defines the right of children to express their views in all matters af-

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

146 Serbian Government 2020 Work Plan, available in Serbian at: http://www.gs.gov.rs/doc/PLAN_RADA_VLADE_2020.pdf.

147 See: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/STA/9095&Lang=en.

fecting them, the right to ascertain the best interests of the child in matters affecting them. It also prohibits corporal punishment of children.¹⁴⁸ Articles 5 and 6 of the Preliminary Draft set out the fundamental rights and status of children in court and other proceedings in which their rights are protected or decided on. The Preliminary Draft elaborates the fundamental civil rights of children, such as the right to preserve their identity, the right to privacy, freedom of expression and assembly, etc. The Preliminary Draft includes sections on the children's right to protection from violence, their rights within the family, and the rights and safeguards for particular groups of children (aliens, migrants and refugees, national minority members...). The Preliminary Draft provides for the establishment of the Protector of the Rights of the Child and defines function and competences. A public debate on the Preliminary Draft was conducted in 2019, but the law was not adopted or submitted to parliament for adoption by the end of 2020. In its latest recommendations to Serbia, the Committee on the Rights of the Child noted the need to adopt such a comprehensive law and expressed regret by the absence of a comprehensive children's act, noting that the reluctance to enact such an act posed a significant challenge to advancing children's rights in Serbia.¹⁴⁹

3.2. Strategic Documents on the Rights of the Child and Activities of the Relevant Authorities

Serbia has lacked a comprehensive strategy on the rights of the child for five years now. The only step forward in the realisation of the rights of the child was made with the adoption of the following two strategies and their action plans: the 2020–2023 Strategy on the Prevention of and Protection of Children from Violence¹⁵⁰ adopted in May 2020 and the 2020–2025 National Strategy on the Rights of Victims and Witnesses of Crimes¹⁵¹ in July 2020. Serbia, however, did not begin implementing the activities envisaged by these Strategies by the end of the year.

The National Action Plan for Children, a relatively comprehensive strategic document, was adopted in 2004 and applied until 2015. Ever since, Serbia has lacked a strategically determined public policy on children based on which measures and activities resulting in the realisation, protection and improvement of child rights

148 The Preliminary Draft Act on the Rights of the Child and the Protector of the Rights of the Child is available in Serbian at: <https://www.paragraf.rs/dnevne-vesti/070619/070619-vest15.html>.

149 Paragraph 7, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6Qk-G1d%2fPPRiCAqhKb7yhsvbbsmSbdrUo%2fjYBx5OfDhOO7%2bQBbVI9wXsq7oeQO-Pr3yRIBxmlQ3VRQ0E1ojTHB4LQ132IHm6hUqzJFgcBHRPmUISL7tU8kh6tVRiAPRZJu>.

150 *Sl. glasnik RS*, 80/20. Available in Serbian at: <https://www.minrzs.gov.rs/sr/dokumenti/ostalo/strategija-i-akcioni-plan-za-prevenciju-i-zastitu-dece-od-nasilja-za-period-od-2020-do-2023-godine>.

151 The draft of the Strategy is available at: <https://www.mpravde.gov.rs/files/Working%20Document%20-%20NATIONAL%20STRATEGY%20ON%20THE%20RIGHTS%20OF%20VICTIMS%20AND%20WITNESSES%20OF%20CRIME.pdf>.

would be defined. The adoption of a new national action plan for children, which should be a state priority, was not adopted by the end of 2020, despite promises that it would be enacted by the end of 2019. The Committee on the Rights of the Child expressed concern over Serbia's failure to develop a new similar policy framework and recommended it adopt a consistent policy framework that would replace the national plan of action for children and serve as a basis for effective budgeting for and monitoring of respective policies.¹⁵²

Neither the parliamentary Committee on the Rights of the Child nor the Council for the Rights of the Child were active in 2020. The Council, which is a Government advisory and coordination body, did not meet in 2020 at all, while the parliamentary Committee held two sessions, one on 20 February and the other on 26 October 2020. Neither of these bodies were sufficiently active during the pandemic, when child rights were particularly jeopardised. On the other hand, the Council for Monitoring and Improving the Work of Criminal Justice Authorities and Enforcement of Juvenile Justice was active throughout the year and regularly held its sessions.

3.3. *Right to Education*

The education system in Serbia is governed by the Education System Act,¹⁵³ and laws regulating preschool, primary, secondary and higher education.¹⁵⁴ The Education Development Strategy expired in 2020. Consultations on the development of a new strategy on the development of education until 2027 began in February 2020, with a meeting on the development of a strategy on preschool and primary education. Minister of Education, Science and Technological Development Mladen Šarčević said at the meeting that the new strategy aimed to: improve the quality of education; harmonise the education system with the immediate and developmental needs of individuals; increase coverage of children by education; ensure quality and inclusive education for all; and reaffirm the role of education in society and the state.¹⁵⁵ The part of the strategy on secondary education was presented in June. The Ministry said that secondary education would be mandatory and that the strategy would provide for the introduction of a state graduation exam and extended single

152 Paragraph 9, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6Qk-G1d%2fPPRiCAqhKb7yhsvbbsmSbdrUo%2fJYBx5OfDhOO7%2bQBbVI9wXsq7oeQO-Pr3yRiBxmlQ3VRQ0E1ojTHB4LQ132IHm6hUqzJFgcBHRPmUisL7tU8kh6tVRiAPRZJu>.

153 *Sl. glasnik RS*, 88/17, 27/18 – other law, 10/19, 27/18 – other law and 6/20.

154 Preschool Education Act, *Sl. glasnik RS*, 18/10, 101/17, 113/17 – other law, 95/18 – other law and 10/19; Primary Education Act, *Sl. glasnik RS*, 55/13, 101/17, 10/19 and 27/18 – other law; Secondary Education Act, *Sl. glasnik RS*, 55/13, 101/17, 27/18 – other law and 6/20; Higher Education Act, *Sl. glasnik RS*, 88/17, 73/18, 27/18 – other law, 67/19 and 6/20 – other laws.

155 See the Ministry of Education press release of 13 February 2020, available at: <http://www.mpn.gov.rs/predstavljjen-okvir-za-izradu-nove-strategije-razvoja-obrazovanja-i-vaspitanja-do-2027/>.

shifts in secondary schools.¹⁵⁶ It remained unknown when the strategy and action plan for its implementation would be adopted.

The need to improve the education system was noted also by the European Commission, which stated that only half the children of preschool age attended kindergarten and that the drop-out rate was still high, standing at 6.8%.

The EC noted that drop-out rates were particularly high among Roma children and that only 67% of Roma children completed primary education, compared with 96% of non-Roma children, while the percentage of Roma completing tertiary education remained at a mere 1%.¹⁵⁷ The drop-out rate for Roma secondary school students is close to 50% relative to the 12% rate for their non-Roma peers.¹⁵⁸ The Ministry of Education, Science and Technological Development implemented a survey on early school leaving by Roma children, which focused on girls.¹⁵⁹ The analysis yielded useful data, but the absence of a comprehensive approach to early school leaving by all children can substantially undermine the implementation of the Chapter 23 Action Plan activity: Establishment of a mechanism to prevent drop-outs and early school drop-outs, along with the support to transition at all levels of education.¹⁶⁰ Absence of schools or public transportation that would take the children to and from them was identified as one of the main and most widespread reasons why rural children drop out of school.¹⁶¹

Discrimination and segregation of Roma children in education is a systemic problem and the legislative framework is unable to respond to discrimination-related challenges.¹⁶² Roma children still lack efficient support in education.¹⁶³ Furthermore, there is no systemic approach to preventing segregation in education; the

156 See the Serbian Government report, available in Serbian at: <https://www.srbija.gov.rs/vest/469794/osnovni-cilj-nove-strategije-kvalitetno-obrazovanje-za-sve.php>.

157 The *Serbia 2019 Report* is available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>.

158 Availability of Local Support Services and Measures for Roma Children, Serbian Government Social Inclusion and Poverty Reduction Unit, p. 11. Available at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2020/05/Availability_of_local_support_services_and_measures_for_Roma_children.pdf in Serbian at: <https://bit.ly/2ZWtNQ3>.

159 Rights of the Child in Serbia's EU Accession Process – Fifth Alternative Report on the Implementation of Chapter 23 Action Plan Activities Concerning the Rights of the Child, Užice Centre for the Rights of the Child. Available at: <https://bit.ly/33UmU2K>.

160 Revised Chapter 23 Action Plan, Activity 3.6.2.15, available at: <https://www.pars.rs/images/dokumenta/Poglavlje-23/Revised-AP23.pdf>.

161 Rights of the Child in the Republic of Serbia 2019, Child Rights Centre. Available in Serbian at: <https://bit.ly/3iUohF6>.

162 NGO Praxis' Contribution to the European Commission's Serbia 2019 Annual Report, p. 6, available at: <https://bit.ly/3kHPqM0>.

163 The European Commission also alerted to the necessity of addressing segregation in education and highlighted the importance of improving measures to cut drop-out rates and segregation. See the *Serbia 2019 Report*.

existing mechanisms are not applied consistently in practice, since they require the cooperation and engagement of numerous stakeholders in the community.¹⁶⁴

Headway was made in the enrolment of Roma children in secondary schools under affirmative action measures; their number grew from 330 in the 2014/2015 school-year to 2,200 in the 2018/2019 school-year.¹⁶⁵ Efforts to improve the educational status of Roma should nevertheless be stepped up. Numerous activities, such as scholarships, monitoring of the implementation of measures to improve Roma education and implementation of social inclusion measures are mostly supported *ad hoc*, through project funding. Additional efforts also need to be made to increase the coverage of Roma children by education. Available data indicate that only 5.7% of Roma pre-schoolers attend kindergarten, as opposed to around 50% of the non-Roma peers.¹⁶⁶

Rulebooks governing in greater detail additional support to children and the right to individual education plans were adopted in 2018 and 2019.¹⁶⁷ However, the provision of these additional support services is not optimal in practice. The Protector of Citizens concluded in his Report on Inclusive Education that “the additional education support services have not been established to the requisite extent because they depend on the economic strength of the local self-government units, while the provision of additional support in education is affected at the national level by economic policies and measures.”¹⁶⁸

Major problems were also identified in the provision of the services of special education needs teaching and personal assistants.¹⁶⁹ Their network needs to be extended and training for them needs to be organised. Furthermore, the number of

164 NGO Praxis’ Contribution to the European Commission’s Serbia 2019 Annual Report, p. 6, available at: <https://bit.ly/3kHPqM0>.

165 Rights of the Child in the Republic of Serbia 2019, Child Rights Centre. Available in Serbian at: <https://bit.ly/3iUohF6>.

166 Rights of the Child in Serbia’s EU Accession Process – Fifth Alternative Report on the Implementation of Chapter 23 Action Plan Activities Concerning the Rights of the Child, Užice Centre for the Rights of the Child. Available at: <https://bit.ly/33UmU2K>.

167 Rulebook on Additional Educational, Health and Social Support to Children, Pupils and Adults, *Sl. glasnik RS* 80/18; Rulebook with Detailed Guidance on Recognition of the Right to an Individual Education Plan, Its Implementation and Evaluation, *Sl. glasnik RS*, 74/18; Rulebook on Criteria and Standards for Extending Additional Support to the Education of Children, Pupils and Adults with Physical and Intellectual Disabilities in Kindergartens, Other Schools and Families, *Sl. glasnik RS*, 70/18; Rulebook on Pedagogical and Andragogical Assistants, *Sl. glasnik RS*, 87/19.

168 Available in Serbian at: <https://www.ombudsman.rs/attachments/article/5927/Izve%C5%A1taj%20o%20inkluzivnom%20obrazovanju.pdf>.

169 Availability of Local Support Services and Measures for Roma Children, Serbian Government Social Inclusion and Poverty Reduction Unit, p. 33. Available at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2020/05/Availability_of_local_support_services_and_measures_for_Roma_children.pdf.

expert associates in education institutions is far from sufficient for extending additional support to children and pupils.¹⁷⁰

Education of children during the 2019/2020 school-year and the COVID-19 pandemic faced was fraught with numerous difficulties for both the children and the teachers. One of the major obstacles was the lack of training in use of distance learning platforms. Inclusion of pupils from vulnerable groups in the education system and the new online teaching model was also problematic. A survey of coverage of pupils by online education showed that 93% of the children attending schools for pupils with intellectual and physical disabilities followed online classes.¹⁷¹

A study of the impact of the COVID-19 pandemic on families with children conducted by UNICEF showed that 99% of the children had access to distance learning (via TV and the Internet) and availed themselves of it.¹⁷² However, the Serbia Multiple Indicator Cluster Survey 2019 and Serbia Roma Settlements Multiple Indicator Cluster Survey 2019 showed that 64.4% of the households in Serbia had computers or tablets, while around 75% of the households had access to the Internet.¹⁷³ Data, however, indicated that only 26.4% Roma households had a computer or a tablet and that 68.3% of them had access to the Internet.¹⁷⁴ This brings into question the access of children living in informal settlements to education; quite a few of them do not have even access to electricity, let alone the Internet or TV. They were clearly denied access to education, if one bears in mind also the lack of support this group of children needs to follow class.

3.4. Right to Health and Social Protection

The right to health is one of the fundamental human rights enshrined in the Constitution,¹⁷⁵ under which everyone is entitled to the protection of their physical and mental health. The Committee on the Rights of the Child recommended to Serbia to ensure equal access to health care to all children in the country.¹⁷⁶ However,

170 Protector of Citizens 2019 Annual Report. Available at: <https://www.ombudsman.org.rs/attachments/article/175/Regular%20Annual%20Report%20of%20the%20Protector%20of%20Citizens%20for%202019%20pdf.pdf>.

171 Available in Serbian at: <http://www.mpn.gov.rs/izvestaj-o-uključenosti-ucenika-iz-osetljivih-grupa-u-obrazovno-vaspitni-rad-tokom-nastave-na-daljinu/>.

172 Study on the impact of the COVID-19 pandemic on families with children in Serbia, UNICEF, Serbia, April-May 2020, p. 19. Available in Serbian at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2020/08/Istrazivanje_o_uticaju_pandemije_Covid-19_na_porodice_sa_decom_u_Srbiji.pdf.

173 Available at: <https://www.unicef.org/serbia/media/16076/file/MICS%206%20Multiple%20Indicator%20Cluster%20Survey.pdf>.

174 *Ibid.*

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

176 Paragraph 46 available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6Qk-G1d%2fPPRiCAqhKb7yhsvbbsmSbdrUo%2fJYBx5OfDhOO7%2bQBbV19wXsq7oeQO-Pr3yRIBxmlQ3VRQ0E1ojTHB4LQ132IHm6hUqzJFgcBHRPmUISL7tU8kh6tVRiAPRZJu>.

this was one of the most endangered human rights in 2020. The UNICEF study¹⁷⁷ showed that only 69% of the 23% children in need of health care at the beginning of the COVID-19 crisis (April/May 2020) actually exercised this right, while 31% of them were denied access to health care services,¹⁷⁸ mostly because of the unavailability of health services in the out-patient health centres and the unavailability of doctors.

As many as 93% beneficiaries of social protection services exercised their right to such protection during the first few months of the pandemic. The Statistical Office of the Republic of Serbia said that the share of recipients of child allowance has been falling, and dropped from 24.8% in 2013 to 17.7% in 2019.¹⁷⁹ Seventeen percent of the children covered by the UNICEF study received child benefits.¹⁸⁰

3.5. *Role of Independent Institutions in the Protection of the Rights of the Child*

The work of the Office of the Equality Commissioner was blocked from end May 2020, when the Equality Commissioner's term in office expired, until end November 2020, when she was re-elected. Serbian citizens were denied protection from discrimination during these six months, since the Office did not act on any of the complaints during that period.¹⁸¹ The fact that the Equality Commissioner did not issue any opinions or recommendations with respect to complaints of discrimination against children does not indicate the absence of such discrimination. For example, complaints alleging discrimination on grounds of age accounted for nearly a quarter of all complaints filed with the Equality Commissioner in 2019; 18% of these 72 complaints alleged discrimination against children. Based on her analysis of the complaints, the Equality Commissioner concluded that age, as a ground of discrimination, often appeared in combination with some other personal characteristics – disability, health, etc.¹⁸²

The importance of adopting the Act on the Rights of the Child and the Protector of the Rights of the Child is corroborated by the fact that reviews of complaints by the Protector of Citizens are not tailored to children and that complaints

177 Study on the impact of the COVID-19 pandemic on families with children in Serbia, UNICEF, Serbia, April-May 2020, p. 17.

178 *Ibid.* p. 16.

179 See more in: <http://socijalnoukljucivanje.gov.rs/en/assessment-of-the-trends-of-poverty-and-living-standard-and-the-response-to-the-impact-of-the-covid-19-pandemic/http://socijalnoukljucivanje.gov.rs/rs/ocena-kretanja-siromastva-zivotnog-standarda-i-odgovor-na-posledice-covid-19-pandemije/>.

180 Study on the impact of the COVID-19 pandemic on families with children in Serbia, UNICEF, Serbia, April-May 2020, p. 19.

181 More in Chapter III.5.2. on the activities of the Equality Commissioner.

182 Abridged Version of the Equality Commissioner's 2019 Report, p. 42, available at: <http://ravno-pravnost.gov.rs/wp-content/uploads/2020/05/Skraceni-redovni-godisnji-izvestaj-2019-engl.pdf>.

of violations of the rights of the child may be submitted on their behalf by their parents/legal guardians. Furthermore, child rights are within the remit of the Sector for the Protection of the Rights of the Child, Gender Equality and the Rights of Persons with Disabilities. A major shortcoming of the Protector of Citizens Act is that it does not provide for Deputy Protectors who will focus specifically on child rights, gender equality and the rights of persons with disabilities, wherefore it does not provide for independent protection of the rights of the child. Rather, it leaves it to the Protector of Citizens to decide which areas of human rights his Deputies will concentrate on. The Deputies are thus invisible and unrecognisable, as well as unavailable to the children and their representatives.

Notwithstanding, the Protector of Citizens has opined that establishment of a new institution that would focus just on the rights of the child was unnecessary and that the realisation of the rights of the child would improve under the new Protector of Citizens Act, which would provide for strengthening the capacity and autonomy of the Deputy Protector of Citizens charged with the rights of the child.¹⁸³ His staff also said that the establishment of a new institution would unnecessarily strain the budget and that the Protector of the Rights of the Child would not have any more competences or powers than the ones the institution of the Protector of Citizens already has.

Note should, however, also be made of the fact that the Office of the Protector of Citizens operated without a Deputy Protector charged with the rights of the child and gender equality for a year, from December 2018 to December 2019, when the new Deputy was appointed. Given the importance of respecting child rights, such an extremely negative practice further corroborates the need to establish a separate, visible and independent institution for the protection of the rights of the child, as confirmed by the Committee on the Rights of the Child¹⁸⁴ as well.

3.6. Rights of the Child and Serbia's Accession to the EU

Serbia's EU accession means that it needs to follow EU law and harmonise its laws, by-laws and strategies with European standards. This obligation applies also to its policies and regulations on the rights of the child.

In its Serbia 2020 Report,¹⁸⁵ the European Commission provided a brief overview of the rights of the child in the Republic of Serbia. It, inter alia, noted that

183 Danas, "Protector of Citizens on better protection of the rights of the child in Serbia, new Ministry of Labour law unnecessary," 25 September. Available in Serbian at: <https://www.danas.rs/drustvo/zastitnik-gradjana-o-boljoj-zastiti-prava-deteta-u-srbiji-novi-zakon-ministarstva-za-rad-nepotreban/>.

184 See: Committee on the Rights of the Child, General Comment No. 2: The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child, CRC/GC/2002/2, available at: <https://www.refworld.org/docid/4538834e4.html>.

185 Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf.

statistical data on vulnerable groups, including Roma children and children with disabilities, were still not disaggregated. The same fact was highlighted by the Committee on the Rights of the Child, which recommended to Serbia to expeditiously strengthen information management and data-collection systems at central and local government levels to cover all areas of the Convention and ensure that data were disaggregated by, among others, age, sex, disability, geographic location, ethnic and national origin and socio-economic background.¹⁸⁶

The European Commission adopted the new EU Roma strategic framework for equality, inclusion and participation for 2020 – 2030.¹⁸⁷ Although full equality at the European level is the goal of the plan, it sets minimum targets that should be achieved by 2030. One of them is to cut the poverty gap between Roma and other children by at least half. The document underlines the importance of cutting the gap in participation in early childhood education and care by at least half, to ensure that at least 70% of Roma children participate in pre-school, and to work towards eliminating segregation by cutting at least in half the proportion of Roma children attending segregated primary schools. The European Commission encourages states to set out in their national strategic frameworks national baselines and targets towards the EU objectives and targets based on a comprehensive needs-assessment and targets and measures for specific vulnerable groups, including Roma children.

The European Commission also adopted Proposal for a Council Recommendation on Roma equality, inclusion and participation¹⁸⁸ focusing on the equality, inclusion, participation, education, employment, health and housing. It, inter alia, states that Roma children living in marginalised communities are among the hardest hit by the COVID-19 pandemic, that distance learning has been impossible for too many Roma children living in households without IT facilities or electricity and that the crisis has also revealed the urgent need for a more efficient policy response at European level.

The EU recognises reform of education in Serbia as one of the key components, as confirmed by the fact that Serbian officials and EU representatives signed amendments to the financial agreement on EU budget support to education reform in September 2020; €1.8 million of the funds will be used to eliminate the impact of the crisis caused by the COVID-19 pandemic.¹⁸⁹

186 Paragraph 15, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6Qk-G1d%2fPPRiCAqhKb7yhsvbbsmSbdrUo%2fjYBx5OfDhOO7%2bQBbVI9wXsq7oeQO-Pr3yRIbxmlQ3VRQ0E1ojTHB4LQ132IHm6hUqzJFgcBHRPmU1SL7tU8kh6tVRiAPRZJu>.

187 Available at: https://ec.europa.eu/info/sites/info/files/union_of_equality_eu_roma_strategic_framework_for_equality_inclusion_and_participation_en.pdf.

188 Available at: https://ec.europa.eu/info/sites/info/files/commission_proposal_for_a_draft_council_recommendation_for_roma_equality_inclusion_and_participation_en.pdf.

189 See: <https://www.mei.gov.rs/eng/news/1289/189/335/details/j-joksimovic-eur-1-8-million-from-eu-for-education-of-socially-vulnerable-children/>.

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. 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.¹⁹⁰

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 minority rights with Croatia, Hungary, North Macedonia and Romania; these agreements provide for the preservation and development of the national, linguistic, cultural and religious identity of the national minorities in the signatory states.¹⁹¹

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.

¹⁹⁰ See more at: <https://goo.gl/U2bLhc>.

¹⁹¹ The agreements are available in Serbian at: <https://ljudskaprava.gov.rs/sh/dokumenta/nacionalne-manjine/bilateralni/sporazum>.

The Act on the Protection of the Rights and Freedoms of National Minorities (hereinafter: Minority Protection Act)¹⁹² is the main law governing the realisation of individual and collective rights of national minorities and their protection, while the legal status and powers of the National Minority Councils (NMCs), and their election and funding are regulated by the National Councils of National Minorities Act (NCN-MA).¹⁹³ The Official Use of Scripts and Languages Act¹⁹⁴ is also relevant to the rights of national minorities. All three laws were amended in June 2018. The 2018 amendments to the Vital Records Act¹⁹⁵ and the Guidance on the Keeping of Vital Records and Templates,¹⁹⁶ which was adopted the same year, provides for the realisation of the minorities' right to enter their ethnic affiliation data in the birth records.¹⁹⁷

In order to facilitate exercise of the right to official use of the Albanian language and script and the right of ethnic Albanians to use their personal names and enter them in the vital records, the Ministry of State Administration and Local Self-Governments in late 2019 presented a Catalogue of the Most Common First and Last Names of the Albanian National Minority and their transcription into Serbian and the Cyrillic script.¹⁹⁸ The Catalogue was developed for staff in vital records offices, hospitals and maternity wards to simplify the enforcement of regulations on the entry of Albanian first and last names in the records. The preparation of the catalogue was recommended by the Protector of Citizens in his Special Report on the Official Use of the Albanian Script and Language.¹⁹⁹

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 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 2020.²⁰¹

192 *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.

193 *Sl. glasnik RS*, 72/09, 20/14 – CC Decision, 55/14 and 47/18.

194 *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05 – other law, 30/10, 47/18 and 48/18 – corr.

195 *Sl. glasnik RS*, 20/09, 145/14 and 47/18.

196 *Sl. glasnik RS*, 93/18.

197 More in the 2019 Report, IV.4.4.1.

198 The Catalogue is available at: http://mduls.gov.rs/wp-content/uploads/Imenik-SRB_ALB.pdf.

199 Special Report on the Official Use of the Albanian Script and Language, p. 30, Protector of Citizens, available in Serbian at: <https://cutt.ly/EhYolkX>.

200 *Sl. glasnik RS*, 72/09, 20/14 – CC Decision, 55/14 and 47/18.

201 Extract of the NMC Register. Available in Serbian at: <http://mduls.gov.rs/wp-content/uploads/Izvod-iz-Registra-nacionalnih-saveta-2492020.pdf>.

Political parties of national minorities are established and operate in accordance with the Act on Political Parties.²⁰² By end November 2020, 69 active national minority parties were entered in the register of political parties kept by the Ministry of State Administration and Local Self-Governments.²⁰³

A number of major changes to the Serbian election system were made on the eve of the 2020 local and parliamentary elections, in the absence of a broad public debate or a consensus among political actors; the CSOs' opinions were not taken into account either.

Under the amendments to the Act on the Election of Assembly Deputies (AEAD),²⁰⁴ on the request of a submitter of an election ticket, which must be submitted together with the ticket, the Republican Election Commission (REC) shall establish whether the submitter has the status of a minority political party or a coalition of minority political parties and issue a separate ruling thereof when declaring the election ticket (Article 81(4)). The amendments have resulted in a collision between the AEAD and the Act on Political Parties, which clearly governs the status of minority parties and their establishment and specifies that political parties shall acquire the status of legal persons on entry in the Registry of Political Parties (Art. 5). Under the Act on Political Parties, the Registry shall be public and the data entered in it shall be considered accurate (Article 32). Article 23 mandates the entry of the status of a minority political party in terms of this law in the Registry. The amended AEAD, however, clearly entitles the REC to determine such status.

With respect to the REC's power to determine the status of minority political parties during the election process, there have been collisions between the legal views of the REC and the Administrative Court, which reviews election complaints.²⁰⁵

The latest amendments to election law changed the way in which seats are allocated to minority parties. Article 81(2) of the AEAD and Article 40(5) of the Local Elections Act²⁰⁶ lay down that minority political parties and coalitions of minority political parties shall win seats in parliament even if they win less than 3% of all votes cast. The system of highest quotients applies. The law now provides for the increase in the quotients of all election tickets of minority parties and coalitions of minority parties by 35%. The reason for the additional weighting of minority votes

202 *Sl. glasnik RS*, 36/09 and 61/15 – CC decision.

203 Extract of the register of political parties. Available in Serbian at: <http://mduls.gov.rs/wp-content/uploads/IZVOD-IZ-REGISTRA-19112020.pdf>.

204 *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, 104/09 – other law, 12/20 and 68/20.

205 Report on the Quality of the Election Process, CeSID, pp. 33–35. Available in Serbian at: http://www.cesid.rs/wp-content/uploads/2020/09/Finalni-izve%C5%A1taj-o-kvalitetu-izbornog-procesa_CeSID.pdf.

206 *Sl. glasnik RS*, 129/07, 34/10 – CC Decision, 54/11, 12/20, 16/20 – authentic interpretation and 68/20.

remains unclear as it results in a situation in which the number of won votes does not correspond to the number of won seats.

Five of the 21 runners in the parliamentary elections held on 21 June 2020 had the status of minority parties: the Alliance of Vojvodina Hungarians – Isztvan Pastor (SVM, Hungarian minority party); Academic Muamer Zukorlić – Straight Ahead – Party of Justice and Reconciliation (SPP) – Democratic Party of Macedonians (DPM) (a coalition of Bosniak and Macedonian minority parties); Sandžak Party of Democratic Action – Dr Sulejman Ugljanin (Bosniak minority party); Albanian Democratic Alternative – United Valley (coalition of Albanian minority parties in southern Serbia); and, the Russian Minority Party – Slobodan Nikolić (Russian minority party). Four of them made parliament: SVM – nine seats, the Zukorlić coalition – four seats, the Albanian Democratic Alternative – three seats and Ugljanin's SDA – three seats.

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 2020 Report,²⁰⁷ 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 the Council of Europe Framework Convention on National Minorities.

The EC said that the implementation of Serbia's Action Plan for the Realisation of the Rights of National Minorities and relevant legislation needed to lead to a tangible improvement in the effective exercise of the rights of individuals belonging to national minorities throughout the country. It further noted that, despite the legal obligation to take into account the ethnic composition of the population, national minorities remained underrepresented in the public administration.²⁰⁸ Following the privatisation of the media, broadcasting of programmes in minority languages is still a sensitive issue and depends on funding. The EC said that content intended for national minorities was limited to only one short news programme in Albanian on RTS 2, concluding that RTS was not fulfilling its obligation as the national broadcaster to provide relevant content for other national minorities.²⁰⁹

The EC noted further progress in the area of education. It noted that the process of preparing and printing textbooks in minority languages had continued and produced positive results and that an additional nine textbooks in Albanian were provided. The Ministry of Education, Science and Technological Development in-

²⁰⁷ *Serbia 2020 Report*, p. 43.

²⁰⁸ *Ibid*, pp. 38–39.

²⁰⁹ *Ibid*, p. 82.

cluded 24 new sets of textbooks in Albanian in its catalogue of textbooks for primary school.

On 17 January 2020, the Serbian Government adopted the Fifth Periodic Report on the Implementation of the European Charter for Regional and Minority Languages and submitted it to the Council of Europe.²¹⁰ The visit of the CoE delegation that was to have commented the Report was cancelled because of the pandemic.

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.²¹¹ The Council last met when it held its ninth regular session on 5 February 2020.²¹² The Human and Minority Rights Office extended the Council its expert, administrative and technical support, until it was disbanded under the new Act on Ministries, which entered into force on 26 October 2020.²¹³ Its duties are now fulfilled by the newly-formed Ministry for Human and Minority Rights and Social Dialogue.

In March 2016, the Serbian Government adopted the Action Plan for the Realisation of the Rights of National Minorities.²¹⁴ The Human and Minority Rights Office published four reports on the implementation of the Action Plan in 2019. No such reports on the implementation of the Action Plan in 2020 were published by the end of the reporting period.²¹⁵

The Action Plan comprises 11 chapters and outlines 115 activities aiming at improving the status of national minorities and the consistent realisation of their rights. The National Minority Council is charged with monitoring their implementation. Fourteen quarterly implementation reports were prepared during the five

210 The Report is available at: <https://ljudskaprava.gov.rs/sh/node/22785>.

211 *Sl. glasnik RS*, 32/15, 91/16 and 78/17. The Council is chaired by the Prime Minister, and co-chaired by the Minister of State Administration and Local Self-Governments. Its other members include the Ministers of 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.

212 RTV, "Most money from the Budget Fund allocated for education of national minorities," 5 February. Available in Serbian at: https://www.rtv.rs/sr_lat/mladi/obrazovanje/najvise-novca-iz-budzetskog-fonda-za-obrazovanje-nacionalnih-manjina_1091038.html.

213 *Sl. glasnik RS*, 128/20.

214 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>.

215 The Reports are available at: <https://www.ljudskaprava.gov.rs/sr/node/21794>.

years the Action Plan has been implemented. The quarterly reports include information on the adoption and enforcement of regulations envisaged in this strategic document, and on the implementation of the activities, notably in the field of education (e.g. provision of missing textbooks in minority languages for primary school). The reports are, however, inconsistent and do not include all the data on the implementation of individual activities, while the indicators are not measureable. Given that the Action Plan is a comprehensive strategic document on the rights of national minorities, specific activities need to be revised and the goals need to be elaborated and include clearly set indicators, deadlines and implementers.

In her 2019 Annual Report published in March 2020,²¹⁶ the Equality Commissioner said that the number of complaints alleging discrimination on grounds of national affiliation or ethnic origin ranked eighth among all complaints filed with her office. In 2019, 50 (6.8%) of all complaints concerned discrimination.

The Equality Commissioner reacted to several cases in which the rights of persons belonging to national minorities were violated in 2020. On 4 February, she issued a public warning about the anti-Semitic and neo-Nazi graffiti on the façade of the Croatian Centre in Novi Slankamen, recalling that such impermissible conduct was prohibited by law and did not reflect the general climate in society.²¹⁷

The Equality Commissioner on 7 February issued another public warning about the discriminatory and offensive statement by Health Minister Zlatibor Lončar, who said he was “conducting a policy to ensure that there are no Montenegrins in his Ministry” and that Montenegrins “who don’t speak Serbian” held a number of senior offices in Serbia”.²¹⁸

In his 2019 Annual Report,²¹⁹ the Protector of Citizens said that he had reviewed 71 cases concerning violations of minority rights, which accounted for 2.17% of his caseload.

In February 2020, the Protector of Citizens presented his special report on the work of national minority councils.²²⁰ Based on his analysis of the collected data, he issued recommendations to the relevant state authorities and opinions to the NMCs with a view to addressing the identified problems and improving the realisation of minority rights. The report notes that the NMCs had mostly exercised their rights related to official use of scripts and languages, but that there were powers that none of the NMCs had exercised. The Protector of Citizens concluded that the NMCs

216 The Equality Commissioner’s 2019 Annual Report is available at: <http://ravnopravnost.gov.rs/en/reports/>.

217 Available at: <http://ravnopravnost.gov.rs/en/warning-because-of-anti-semitic-and-nationalistic-graffiti-in-vojvodina/>.

218 Available at: <http://ravnopravnost.gov.rs/en/warning-because-the-statements-of-minister-loncar/>.

219 Available at: <https://www.ombudsman.org.rs/attachments/article/175/Regular%20Annual%20Report%20of%20the%20Protector%20of%20Citizens%20for%202019%20pdf.pdf>.

220 Available in Serbian at: <https://www.pravamanjina.rs/attachments/article/708/Posebna%20izvestaj.pdf>.

did not have mechanisms for contacts with the communities they represented and that most NMCs did not have functional websites. He said that the lack of expert, administrative and technical capacities of the NMCs reflected on the quality of their work, as well as the realisation of the rights of the minorities they represented. In view of these conclusions, the Report recommendations primarily regard building the NMCs' capacities.

The Vojvodina Ombudsman published his 2019 Annual Report in March 2020.²²¹ He said he had dealt with 22 cases concerning the protection of minority rights. The complaints regarded official use of minority languages, ethnic-based discrimination, minority-language broadcasting, education in minority languages and inequality.

5. 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.²²²

The difficulties of people with physical, sensory, intellectual and psychosocial disabilities were compounded during the state of emergency. Their representatives were not involved in planning either the anti-epidemic measures or a crisis exit strategy. The non-participation of persons with disabilities at the national and local levels resulted in the adoption of measures that did not take into account the specific circumstances and needs of persons with disabilities. Due to the relevant authorities' disregard of the situation of persons with disabilities and their fulfilment of their basic needs, associations of persons with disabilities and organisations championing their human rights intensively worked on identifying all the problems and communicating the requests and proposals to the relevant authorities, notably the COV-

221 Available in Serbian at: https://www.ombudsmanapv.org/riv/attachments/article/2273/Godisnji_izvestaj_PZG-ombudsmana_2019.pdf.

222 World Health Organization, World Report on Disability, 2011, p. 44. Available at: https://www.who.int/disabilities/world_report/2011/report/en/.

ID-19 Crisis Headquarters, the Ministry of Labour, Employment and Veteran and Social Issues, the Ministry of Internal Affairs and the Ministry of Health.

5.1. Legal Framework

By ratifying the UN Convention on the Rights of Persons with Disabilities (CRPD)²²³ 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 2009,²²⁴ 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 disabilities²²⁵ were only partially integrated in Serbian law by the adoption of the Act on the Prevention of Discrimination against Persons with Disabilities²²⁶ and the Act on the Vocational Rehabilitation and Employment of Persons with Disabilities.²²⁷

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.²²⁸ Denial of reasonable accommodation is also not recognised as a form of discrimination in laws governing education and employment, including of persons with disabilities.²²⁹

223 *Sl. glasnik RS (Međunarodni ugovori)*, 42/09.

224 *Ibid.*

225 *Sl. list SFRJ (Međunarodni ugovori)*, 3/87.

226 *Sl. glasnik RS*, 33/06 and 13/16.

227 *Sl. glasnik RS*, 36/09 and 32/13.

228 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.

229 *Ibid.*, paras. 50 and 53.

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.

In March 2020, the Government at long last adopted the 2020–2024 Strategy for Improving the Situation of Persons with Disabilities in the Republic of Serbia,²³⁰ five years after the expiry of its predecessor. The Strategy includes numerous data testifying to the extremely difficult situation of persons with disabilities. There are no reliable statistics on the number of persons with disabilities in Serbia. The problems they encounter, including widespread stereotypes and prejudice against them, and their social and economic status rank them among extremely vulnerable and disadvantaged groups. The share of persons with disabilities under the poverty line and at risk of poverty is large. The unemployment and inactivity rates of persons with disabilities are still high. Most of them live on pensions (61.7%) and 20.5% fall in the category of dependents. Deinstitutionalisation is still a major problem; as many as 16,732 persons with disabilities were institutionalised in 2018. Women with disabilities are at risk of multiple discrimination; they are invisible in the public arena, rarely participate in public and political life, face difficulties in exercising their rights and are victims of gender-based violence.

The Strategy's overarching goal is to provide equal opportunities to persons with disabilities to exercise all their civic, political, economic, social and cultural rights, whilst ensuring full respect for their dignity and individual autonomy, and to ensure their independence, freedom of choice and full and effective participation in all walks of life, including community-based living. The target is to increase the participation of persons with disabilities in society by 25%; the baseline will be identified during the first year of the implementation of the Strategy. The Strategy aims to fulfil the following objectives: increase social inclusion of persons with disabilities; ensure that persons with disabilities can exercise their rights to legal capacity and family life on equal terms with others, and ensure their effective protection from discrimination, violence and abuse; and systemic public policy disability mainstreaming.

230 *Sl. glasnik RS*, 44/20. Available in Serbian at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2020/44/1/reg>.

The Strategy provides for the adoption of the 2021–2022 Action Plan for its implementation within 90 days from the day it is published. The Action Plan was not adopted by the end of the year.

The process of amending the Social Protection Act,²³¹ the umbrella law on social protection, which was launched nearly three years ago, was not completed by the end of 2020.²³² The Social Card Act was not adopted by the end of the year, although the Minister of Labour, Employment and Social and Veteran Issues said that it would be presented to the parliament in the autumn.²³³ The Preliminary Draft of the Social Card Act provides for the establishment of a database of the socio-economic status of individuals and persons associated with them.²³⁴ The aim of establishing the database is to create a single register on social protection and introduce mechanisms for extending rational and efficient social protection based on the data about the socio-economic status of the individuals and the families they are living with.

The Revised Chapter 23 Action Plan envisaged the adoption of the Act on Protection of Institutionalised Individuals with Mental Disabilities in the last quarter of 2020. This activity was not implemented by the end of the reporting period.²³⁵

5.2. *Assessment of the Realisation of the Rights of Persons with Disabilities*

In its Serbia 2020 Report,²³⁶ the European Commission said that the placement and treatment in social institutions of people with psychosocial and intellectual disabilities still was “not regulated in accordance with the UN Convention on the Rights of Persons with Disabilities. Women with disabilities in residential institutions are particularly vulnerable to gender-specific forms of violence – forced contraception, forced sterilisation and forced abortion. There is a lack of funding for developing community-based services, and for supporting licensed service providers and social services. During the first three weeks of the COVID-19 state of emergency, persons with disabilities were lacking home assistance services, since the service providers did not have permits for movement during the curfew. Children with development disabilities and autism also particularly suffered from the curfew.”

231 *Sl. glasnik RS*, 24/11.

232 See more in the 2018 Report, IV.3.2.

233 *N1*, “Đorđević: Introduction of social cards will facilitate aiding the poorest,” 17 October. Available in Serbian at: <https://rs.n1info.com/vesti/a661801-djordjevic-uvodjenje-socijalnih-karti-omogucice-pomoc-najsiromasnijima/>.

234 The Preliminary Draft Social Card Act is available in Serbian at: <https://www.paragraf.rs/dnevne-vesti/070619/070619-vest16.html>.

235 The Revised Chapter 23 Action Plan is available at: <https://www.pars.rs/images/dokumenta/Poglavlje-23/Revised-AP23.pdf>.

236 Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf.

In her 2019 Annual Report,²³⁷ the Equality Commissioner said that her office had received 118 complaints of discrimination on grounds of disabilities and that they accounted for 16.2% of all grounds listed in the complaints in 2019. Most of the complaints concerned discrimination in procedures before public authorities (21.9%) and discrimination in the field of social protection (37.7%). Most of the complaints were filed by natural persons.

In 2019, the Protector of Citizens opened 125 cases on rights of persons with disabilities and special rights of the elderly concerning 158 violations.²³⁸ Most of the complaints concerned discrimination on grounds of disabilities and the inaccessibility of public buildings.

5.3. Independent Living and Community Inclusion

The state must pursue deinstitutionalisation if persons with disabilities are to live independently and in the community. Organisations focusing on the protection 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.²³⁹

The Protector of Citizens said in his 2019 Annual Report that the process of deinstitutionalisation had not been completed yet and that a number of persons with disabilities remained institutionalised, which was in contravention with the obligations Serbia undertook when it ratified the Convention on the Rights of Persons with Disabilities.²⁴⁰

No headway was made in 2020 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.

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,²⁴¹ persons living with

237 Available at: <http://ravnopravnost.gov.rs/en/reports/>.

238 The 2019 Annual Report of the Protector of Citizens is available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=category&layout=blog&id=11&Itemid=13.

239 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>.

240 The 2019 Annual Report of the Protector of Citizens is available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=category&layout=blog&id=11&Itemid=13.

241 *Sl. glasnik RS*, 42/13, 89/18 and 73/19.

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.

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 Act²⁴² 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 deinstitutional-

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

isation and amend or repeal regulations allowing the institutionalisation of persons with disabilities against their free will.²⁴³

The life of women with disabilities in residential care facilities²⁴⁴ is particularly hard. They are subjected to specific forms of gender-based violence (forced abortions and sterilisation, administration of contraception without informed consent, sexual harassment and abuse,²⁴⁵ while the mechanisms for reporting violence and protection from it are inadequate and/or non-functional.²⁴⁶

The Minister of Labour, Employment and Veteran and Social Issues said in October that a strategy on deinstitutionalisation and development of community-based services for the period up to 2025 was being developed.²⁴⁷

Some of the CSOs' requests concerning persons with disabilities were fulfilled with major delays during the state of emergency. They, notably, included the appeal to allow the freedom of movement of children and adults with disabilities and of their personal assistants during the curfew.²⁴⁸ Unfortunately, the situation of institutionalised persons with disabilities remained unchanged both during and after the state of emergency, although the decision makers and the public had been alerted to their problems. They were kept under full lockdown longer than the rest of the population.

The residential institutions complied with the instructions and orders of the ministry charged with social issues and the Serbian Government decrees, based on the health recommendations.²⁴⁹ Visits to the residents of these institutions were pro-

243 "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/>.

244 There are a total of 74 residential care facilities founded by the Republic of Serbia and the AP Vojvodina, which can take in 14,512 beneficiaries. There are 229 private residential care facilities, which can take in 8,617 beneficiaries. See: Ministry of Labour, Employment and Veteran and Social Issues, "54 residents and 19 staff infected by COVID-19 in residential care facilities and old people's homes," 27 September. Available in Serbian at: <https://www.minrzs.gov.rs/srb-lat/aktuelnosti/vesti/u-ustanovama-socijalne-zastite-za-smestaj-korisnika-i-domovima-zasmesstaj-odraslih-i-starih-zarazeno-54-korisnika-i-19-zaposlenih>.

245 Biljana Janjić and Dragana Ćirić Milovanović, *Here the Walls Have Ears Too – Testimonies of women with mental disabilities about gender-based violence in residential institutions*, MDRI-S, pp. 42–48, 2017. Available at: <http://www.mdri-s.org/wp-content/uploads/2018/02/Publikacija-engleski.pdf>.

246 Kosana Beker and Valentina Lepojević, COVID-19 and Women with Mental Disabilities in Residential Institutions, 2 June. Available in Serbian at: <https://www.mdri-s.org/blog/covid-19-i-zene-sa-mentalnim-invaliditetom-u-ustanovama-socijalne-zastite/>.

247 *Danas*, "Đorđević: State continuing improvement of situation of the elderly," *Danas*, 1 October. Available in Serbian at: <https://www.danas.rs/drustvo/djordjevic-drzava-nastavlja-unapredjenje-polozaja-starijih-osoba/>.

248 The relaxation of measures did not apply to people living in residential institutions.

249 The Ministry of Labour, Employment and Veteran and Social Issues COVID-19 enactments are available in Serbian at: https://www.minrzs.gov.rs/sites/default/files/2020-06/Pregled%20akata%20minrzs%20o%20delovanju%20V9.pdf?fbclid=IwAR1k8_xdkYkQUe_vI_K4tIPY_TzNV1nB-nCvOcaYpNohJrfN94GUm7iTe04.

hibited from the very start. However, this isolation, although apparently reasonable to prevent the virus from entering the institutions, was not mitigated, for example by increasing the use of accessible forms of electronic communication, such as video calls, as recommended by international bodies. Maintaining and even intensifying family contacts during lockdown is one of the main mechanisms for alleviating the emotional problems caused by the isolation, uncertainty and apprehension most people grapple with. Apart from psychosocial support, contacts with the outside world are important for the residents of the homes because their visitors can identify potential abuses of their rights.

The lockdown exacerbated the work of personal assistants as soon as it was introduced, because they were unable to access their clients at all times. To recall, this service is one of the pillars of independent living. However, only persons who have legal capacity and are employed or actively engaged in the work of associations of persons with disabilities or political parties are entitled to personal assistants. This requirement has precluded most people with intellectual and psychosocial disabilities from availing themselves of this service and has consequently impinged on their integration in society and independent living.

Thanks to associations of persons with disabilities, the authorities agreed to issue curfew passes to personal assistants. In response to the interventions by associations of persons with disabilities and independent human rights bodies, such passes were also issued to informal caregivers of persons with disabilities, who do not extend their services within the social protection system. Needless to say, persons with disabilities in need of auxiliary care and assistance were in dire straits until their assistants and caregivers were granted curfew passes.

5.4. 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.²⁵⁰ 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.

The 2020–2023 Strategy on the Prevention and Protection of Children from Violence and its 2020–2021 Action Plan were adopted in May.²⁵¹ The Strategy notes

250 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>.

251 Available in Serbian at: <https://www.minrzs.gov.rs/sr/dokumenti/ostalo/strategija-i-akcioni-plan-za-prevenciju-i-zastitu-dece-od-nasilja-za-period-od-2020-do-2023-godine>.

that the reform of the social protection system, involving deinstitutionalisation, resulted in a decrease in the number of institutionalised children with disabilities, but that the children that were still institutionalised were at major risk of all forms of abuse, including structural, due to the poor material conditions, lack of equipment and lack of competent staff. The Strategy sets as one of the goals faster deinstitutionalisation and more regular and efficient oversight of residential facilities for children.

The measures imposed during the state of emergency to protect public health lacked flexibility; nor were they reasonably tailored to various categories of the population. The lockdowns from 5 pm until 5 am on workdays and during the weekends increased the feelings of distress and anxiety among a number of children and adults with intellectual difficulties/mental disabilities and consequently led to undesirable behaviours; some of them suffered intense mental anguish because their everyday routines were disrupted.²⁵² The authorities responded to the appeals by a number of organisations, associations of parents and independent bodies, albeit with a huge delay, and at long last allowed these people the freedom of movement during curfew as well.²⁵³

5.5. 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 Act²⁵⁴ that launched a long-term reform of the education system. This Act guarantees persons with disabilities the right to education in the mainstream education system, which recognises their needs, and provides for additional, both individual and group, support (Art. 61). The 2017 amendments to the Primary Education Act reintroduced the possibility of opening special classes for children with mental or physical disabilities in primary schools, which has been perceived as a form of segregation. Although improved, the education legal framework still provides for the existence of two parallel education systems –mainstream and special education, which is not in compliance with international norms.

An Individual Education Plan (IEP) is an instrument introduced to tailor the education process to children with disabilities. The IEPs shall be drawn up by the expert inclusive education teams or the teams extending additional support to children (comprising the child's kindergarten and school teachers and the school pedagogue)

252 *BBC in Serbian*, "Coronavirus and autism: 'How do I explain to my child he can't go out?'" 2 April. Available in Serbian at: <https://www.bbc.com/serbian/lat/srbija-52114192>.

253 *NI*, "Vučić: Children with autism can go outside whenever they want," 14 April. Available in Serbian at: <http://rs.n1info.com/Vesti/a589041/Roditelji-sa-decom-sa-zastojem-u-razvoju-moci-ce-u-setnju-od-18-do-20h.html>.

254 *Sl. glasnik RS*, 72/09, 52/11, 55/13, 35/15 – authentic interpretation, 68/15 and 62/16 – authentic interpretation.

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).²⁵⁵

The Rulebook on Pedagogical and Andragogical Assistants²⁵⁶ 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 re-named 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.²⁵⁷ 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.

Lack of personal assistants and physical barriers are the main problems children and youth with motor disabilities face. They often cannot enrol in the school they want to because they cannot access the school buildings or the classrooms.²⁵⁸

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.²⁵⁹ Institutionalised children with disabilities have limited access to education as well; most are not enrolled in school, while the ones who are by and large attend special schools, exacerbating their segregation and isolation.²⁶⁰

255 More in the 2016 Report, III.4.5.

256 *Sl. glasnik RS*, 87/19.

257 *Ibid.*, Art. 8(2(1 and 2)).

258 Danas, “Many children with disabilities excluded from the school system,” 22 December. Available in Serbian at: <https://www.danas.rs/drustvo/mnoga-deca-sa-invaliditetom-iskljuce-na-iz-skolskog-sistema/>.

259 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>.

260 2020–2023 Strategy on the Prevention and Protection of Children from Violence, p. 17. Available in Serbian at: https://www.minrzs.gov.rs/sites/default/files/2020-05/Strategija%20za%20spreccavanje_nasilja_nad%20decom.pdf.

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. Research has shown that parents/guardians are the least interested in enrolling children with disabilities in school, which indicates that they are unfamiliar with the children's education opportunities. In result, the institutions themselves decide who should (not) be enrolled in school, in violation of conventions on the rights of the child and persons with disabilities.²⁶¹ 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.

Some schools did not fulfil their obligation to organise classes for children with learning difficulties during the state of emergency. There were a lot of problems in the education of children for whom individual education plans have been developed – some teachers did not send them assignments, the children lacked adequate materials or the technical conditions for following class. Their parents also complained that the professionals did not work with them, even online. According to a CINS poll of the parents and guardians of children with disabilities, one out of seven of them taught in accordance with individual education plans had no access to education during the state of emergency.²⁶²

5.6. 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 capacity²⁶³ 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 ex-

261 *Danas*, “Many children with disabilities excluded from the school system,” 22 December. Available in Serbian at: <https://www.danas.rs/drustvo/mnoga-deca-sa-invaliditetom-iskljuce-na-iz-skolskog-sistema/>.

262 *CINS*, “Some children with disabilities left without schooling during corona,” 14 May. Available in Serbian at: <https://www.cins.rs/pojedina-deca-sa-poteskocama-u-ucenju-ostala-bez-nastave-tokom-korone/>.

263 Deprivation of legal capacity is governed by the Family Act and the Non-Contentious Procedure Act.

ercise their rights. Under the Family Act,²⁶⁴ 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.

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 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.²⁶⁵ The legislator should give thought to introducing such mechanisms in the Family Act as an alternative to the deprivation of legal capacity.

Ensuring that persons with disabilities can exercise their right to legal capacity is one of the objectives of the 2020–2024 Strategy for Improving the Situation of Persons with Disabilities in the Republic of Serbia.²⁶⁶ The measures facilitating the achievement of this objective include amendment of the law to eliminate the possibility of full denial of legal capacity of persons with disabilities. They also include gradual transition from the system of guardianship protection to the system of supported decision-making, which will allow persons with disabilities to enjoy legal capacity on an equal footing with others in all walks of life. This measure essentially aims to create a legal framework for the equitable participation of persons with disabilities in the civic, political, economic and other spheres of life.

A total of 974 deprivation of legal capacity proceedings were conducted in 2019; 85.9% of them ended in the full deprivation of legal capacity and 14.1% in partial deprivation of legal capacity.²⁶⁷ Social Work Centres filed 665 motions for deprivation of legal capacity and 35 motions for restoration of legal capacity in 2019. The courts restored legal capacity in 27 of the cases.

5.7. 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

264 *Sl. glasnik RS*, 18/05, 72/11 – other law and 6/15, Article 146.

265 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>.

266 The Strategy is available in Serbian at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2020/44/1/reg>.

267 National Social Protection Institute, *Adults in the Social Protection System in 2019*, p. 37. Available in Serbian at: <http://www.zavodsz.gov.rs/media/2001/punoletni-u-sistemu-sz-2019.pdf>.

or provided to the public.²⁶⁸ 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 2020–2024 Strategy for Improving the Situation of Persons with Disabilities in the Republic of Serbia sums up the problems related to physical and IT accessibility.²⁶⁹

Most buildings housing state authorities do not fulfil accessibility standards. Neither do the premises of Social Work Centres. 2018 data show that 72 of the 170 SWCs had (fixed or mobile) ramps, 94 had rails, 118 had accessible ground floors, 156 had elevators (if the building had more floors), while 97 SWCs had accessible toilets. Adaptation of the buildings in which people with disabilities live has not been addressed systematically, wherefore persons with disabilities are forced to themselves find the funds and complete the complicated consent procedures. Roads and public areas, as well as public transportation, remain mostly inaccessible to persons with disabilities.

Persons with sensory disabilities still have difficulties accessing information and communications despite the existence of a legal framework governing IT accessibility. Print media are mostly inaccessible to people with visual impairments, while most radio and TV shows are inaccessible to people with hearing impairments. Serbia has only 22 sign language interpreters.²⁷⁰

The Protector of Citizens also concluded in his 2019 Annual Report that many public institutions, facilities, areas, services and information remained inaccessible to persons with disabilities and motor and communication difficulties. He also said that a large number of precisely those institutions in which people were to exercise their elementary rights, such as the offices of the National Pension and Disability Insurance Fund, health, residential care and educational institutions, police stations, administrative and judicial authorities, were inaccessible or hardly accessible.²⁷¹

268 Article 9 of the Convention on the Rights of Persons with Disabilities.

269 The Strategy is available in Serbian at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2020/44/1/reg>.

270 Electronic records of court-sworn interpreters are available in Serbian on the Ministry of Justice website: <https://www.mpravde.gov.rs/tekst/13861/elektronska-evidencija-stalnih-sudskih-prevodilaca-i-tumaca.php>.

271 The 2019 Annual Report of the Protector of Citizens is available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=category&layout=blog&id=11&Itemid=13.

5.8. Work and Employment

The Act on the Vocational Rehabilitation and Employment of Persons with Disabilities²⁷² 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 Disabilities²⁷³ lays down that the relevant authority shall assess how a person's illness or disability affects his ability to work, find a job and retain it, wherefore it has the discretion to find a person totally incapable of being involved in any employment measures either under general or special conditions on the basis of a very vague and elusive standard despite Article 60 of the Serbian Constitution, which guarantees everyone the right to free choice of occupation.

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)).

A total of 13,331 persons with disabilities (5,574 or 41.8% of them women) were registered as unemployed with the National Employment Service (NES) at the end of 2019.²⁷⁴ Employers forwarded to the NES 1,307 notices of their need to employ 2,663 persons with disabilities in 2019. The NES referred a total of 10,164 job-seeking persons with disabilities to these employers, who hired 1,435 of them.

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 em-

272 *Sl. glasnik RS*, 36/09 and 32/13.

273 *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/>.

274 NES 2019 Annual Report, available in Serbian at: http://www.nsz.gov.rs/live/digitalAssets/14/14387_izvestaj_o_radu_nsz_-_i_-_xii_2019._godine.pdf.

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.²⁷⁵ 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.

5.9. Health Care

Under Article 20 of the Health Care Act,²⁷⁶ 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 Programme²⁷⁷ 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

275 One of them is Our Home. More about its work is available in Serbian at: <http://nashakuca.blogspot.com/>.

276 *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.

277 2019–2026 Mental Health Protection Programme, *Sl. glasnik RS*, 84/19.

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 Disabilities²⁷⁸ despite recommendations by international bodies.²⁷⁹ 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.

6. Women's Rights and Gender Equality

6.1. Gender Equality – Overview

Gender equality is one of the fundamental values of modern democratic societies. It is based on the idea of equity and equality of women and men, and that all human beings are entitled to develop their abilities, improve and realise their personal capacities, and that no-one is entitled to prevent them from doing so by imposing socially constructed gender roles (Art. (4(1(4))).²⁸⁰ Gender equality implies the right to equality and the right to difference, as well as equal opportunities of women and men to participate in and control the goods and resources of their communities and benefit from them equally.²⁸¹

The Republic of Serbia has ratified the main universal instruments guaranteeing human rights and prohibiting discrimination.²⁸² All ratified international instruments prohibit discrimination on grounds of sex or 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.²⁸³ The Con-

278 *Sl. glasnik RS* 45/13.

279 The CRPD in 2016 urged Serbia to repeal this law because it contains provisions grossly violating the rights of persons with mental disabilities.

280 Vesna Jarić and Nadežda Radović, *Gender Equality Dictionary*, 2nd edition, Gender Equality Administration, Ministry of Labour and Social Policy of the Republic of Serbia, Belgrade 2011, p. 135.

281 *Ibid.*

282 The list of ratified international treaties is available in Chapter I.1.

283 Marijana Pajvančić, *Comment of the Constitution of the Republic of Serbia*, Konrad Adenauer Foundation, Belgrade 2009.

stitution 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.²⁸⁴ 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.

Serbia is one of the rare countries that introduced the legal obligation of gender-responsive budgeting when it adopted its 2015 Budget System Act recognising the promotion of gender equality as one of the budget goals.²⁸⁵ 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.²⁸⁶ 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.²⁸⁷ Sixty-six institutions at the national and provincial levels introduced GRB in their 2020 budgets,²⁸⁸ although the authorities said in 2019 that 72 institutions would do so.²⁸⁹

The 2016–2020 National Gender Equality Strategy²⁹⁰ and its 2016–2018 Action Plan were adopted in 2016. The second Action Plan for the implementation of the Strategy²⁹¹ was not adopted in 2020, although public consultations on its draft were held in five Serbian cities in March 2019.²⁹² No information was publicly available on the development of a new Strategy that is to cover 2021 and beyond. A new Gender Equality Act, which has been developed for a few years now, was not adopted by the end of the reporting period either.

284 Constitution, Article 21(4).

285 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, 31/19 and 72/19.

286 Gender Responsive Budgeting, Introduction to 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.

287 *Ibid.*

288 Gender responsive budgeting in the service of all citizens, Government of the Republic of Serbia, 30 September. Available in Serbian at: <https://www.srbija.gov.rs/vest/489027/rodno-odgovorni-budzet-u-sluzbi-svih-gradjana.php>.

289 *Ibid.*

290 *Sl. glasnik RS*, 4/16.

291 The first Action Plan was evaluated in mid-2019. The Final Report on the Evaluation of the Action Plan for the Implementation of the Gender Equality Strategy of the Republic of Serbia, SeConS, Belgrade, 2019, is available in Serbian at: <https://www.secons.net/files/publications/99-publication.pdf>.

292 Consultations on the National Action Plan for the Implementation of the National Gender Equality Strategy for the 2019–2020 Period, Serbian Government Social Inclusion and Poverty Reduction Unit, 1 March. Available in Serbian at: <http://socijalnoukljucivanje.gov.rs/rs/konsultacije-o-nap-za-sprovođenje-nacionalne-strategije-za-rodnu-ravnopravnost-2019–2020/>.

Increase in the quota of women under election law to 40% was the only step forward in women's rights and gender equality in 2020. Election laws were amended several times since 2004, the last time just before the 2020 local and parliamentary elections were called.²⁹³ All political parties are required to fill at least 40% of their election tickets with members of the under-represented gender group. At least two of every five candidates listed on the election ticket shall be members of the under-represented sex.²⁹⁴

The local and parliamentary elections were held on 21 June 2020.²⁹⁵ Only two of the 21 election tickets were headed by women.²⁹⁶ The constituent session of the National Assembly was held on 3 August.²⁹⁷ The Government, headed by Prime Minister Ana Brnabić, was formed on 28 October.²⁹⁸ The Government has 13 male and 10 female ministers. Women head the ministries charged with: energy and mining; culture and information; economy; environmental protection; trade, tourism and telecommunications; state administration and local self-governments; human and minority rights and social dialogue; EU accession; and, labour, employment and veteran and social issues.²⁹⁹ Women account for 39.6% of the MPs (99 out of 250 MPs)³⁰⁰ which is below the 40% quota. Fewer women from marginalised groups participate in public and political life. A survey conducted in 2020³⁰¹ showed that the political participation of older women was extremely low – only 1.2% women MPs were over 65 years old.³⁰²

293 More in: Marijana Pajvančić and Bogdan Urošević (eds), *Parliamentarianism in Serbia from the Female Perspective*, OSCE Mission to Serbia, Belgrade 2020. Available in Serbian at: <http://www.zenskostudije.org.rs/izdavastvo/knjige/knjige-koje-nisu-izdanja-zsi/247-parlamentarizam-u-srbiji-iz-zenskog-ugla>.

294 Article 40a(1), Act on the Election of Assembly Deputies, *Sl. glasnik RS*, 35/00, 57/03 – CC decision, 72/03 – other law, 75/03 – corr. of other law, 18/04, 101/05 – other law, 85/05 – other law, 104/09 – other law, 28/11 – CC decision, 36/11, 12/20 and 68/20.

295 Elections for MPs to the National Assembly – 21 June 2020, Republican Election Commission, available at: <https://www.rik.parlament.gov.rs/tekst/en/437>.

296 *Danas*, “Who’s running in elections?” 21 June. Available in Serbian at: <https://www.danas.rs/politika/izbori-2020/ko-sve-ucestvuje-na-izborima-video/>.

297 First sitting of the National Assembly of the Republic of Serbia, 12th Legislature, National Assembly website, 3 August. Available at: http://www.parlament.gov.rs/First_Sitting_of_the_National_Assembly_of_the_Republic_of_Serbia_12th_Legislature_39063.537.html.

298 Members of Government, Serbian Government website. Available at: <https://www.srbija.gov.rs/sastav/en/10/members-of-government.php>.

299 *Ibid.*

300 Gender Structure, National Assembly website. Available at: <http://www.parlament.gov.rs/nacional-asembly/national-asembly-in-numbers/gender-structure.1745.html>.

301 Nevena Petrušić, Nadežda Satarić and Kosana Beker, *Status and participation of older women in political and public life in Serbia*, Civic Association “Strength of Friendship” – Amity and Fem-Platz, Beograd & Pančevo, October 2020. Available in Serbian at: http://femplatz.org/library/publications/2020-12-Polozaj_i_ucesce_starijih_zena.pdf.

302 E.g., older women account for 3.63% of councillors in the Belgrade City Assembly, while there are no older women councillors in the Novi Sad and Bor Assemblies. *Ibid.*, pp. 36 and 96.

6.2. Equality and Non-Discrimination

Serbian legislation prohibiting discrimination is good. Discrimination, both discrimination on grounds of actual and assumed personal characteristics, is prohibited by the Constitution and anti-discrimination laws in all fields. Laws on labour, employment, education, health care, social protection and other laws include provisions prohibiting discrimination. The Anti-Discrimination Act³⁰³ and the Gender Equality Act³⁰⁴ are particularly relevant in the context of women's rights and gender equality.

The Anti-Discrimination Act highlights special cases of discrimination,³⁰⁵ inter alia on grounds of gender, which occurs when persons are treated contrary to the principle of equality of the sexes and/or the principle of respect of equal rights and freedoms of women and men in political, economic, cultural and other aspects of public, professional, private and family life.³⁰⁶ A public debate on draft amendments³⁰⁷ to the Anti-Discrimination Act was held in September 2019, but the amendments were not adopted by the end of 2020.

In her 2019 Annual Report,³⁰⁸ the Equality Commissioner said she had received 711 complaints, over 80% of which were filed by natural persons, mostly men (51.1%). The majority of complaints concerned discrimination on grounds of disability (16.2%) and discrimination on grounds of gender (13.2%). Nearly 60% of all employment-related complaints filed by natural persons were submitted by women, because of the deterioration of their employment status during pregnancy or upon return from maternity or child-care leave.

Nine of the 23 public warnings issued by the Equality Commissioner in 2019 concerned insults against women.³⁰⁹ Most victims were women journalists and politicians, who were threatened, insulted and the targets of vulgar, misogynous and sexist comments.³¹⁰

303 *Sl. glasnik RS*, 22/09. More about discrimination in Chapter IV.1.

304 *Sl. glasnik RS*, 104/09.

305 Articles 15–27 of the Anti-Discrimination Act deal with special cases of discrimination: prohibiting discrimination in proceedings before public authorities; in labour; provision of public services and use of public facilities and areas; religious discrimination; discrimination in education and vocational training; discrimination on grounds of gender and sexual orientation; discrimination against children; discrimination on grounds of age; discrimination against national minorities; discrimination on grounds of political or union membership; discrimination against persons with disabilities; and discrimination on grounds of health.

306 Art. 20(1), ADA.

307 Public Debate on the Preliminary Draft Act Amending the Anti-Discrimination Act, Serbian Government Social Inclusion and Poverty Reduction Unit, 10 September 2019. Available in Serbian at: <https://cutt.ly/WjizzRL>.

308 Unless otherwise indicated, all statistical data in this part of the Report were published by the Equality Commissioner in her 2019 Annual Report, pp. 301–316.

309 The Equality Commissioner's warnings are available at: <http://ravnopravnost.gov.rs/en/opinions-and-recommendations/warnings/>.

310 Kosana Beker, Biljana Janjić and Valentina Lepojević, *2019 Report on Women's Rights and Gender Equality in Serbia*, FemPlatz, 2020, p. 23. Available in Serbian at: http://femplatz.org/library/reports/2020-08-10_PreneraZena.pdf.

The anti-discrimination system was, however, seriously jeopardised in 2020 since six months passed from the day the Equality Commissioner's term in office expired on 27 May 2020,³¹¹ until she was re-elected on 26 November 2020.³¹²

6.3. *Status of Women in Serbia during the COVID-19 Epidemic*

The coronavirus pandemic that caused a health crisis in the entire world impacted on both women and men, but the measures taken to contain it struck women harder.³¹³ Most health professionals are women. Furthermore, the burden of unpaid care and domestic work has affected women to a greater extent, since more women than men look after children and care for elderly family members. Women have been at greater risk of domestic violence because they have been spending much longer periods of time at home with their abusers and have had less opportunity to report them.

More women than men were adversely affected by the anti-epidemic measures undertaken in Serbia. These measures resulted, notably, in: greater burden of unpaid work (domestic work, online classes, looking after children and older family members);³¹⁴ difficult and/or impossible access to health care services, including reproductive health services (since the health system has focused entirely on responding to COVID-19); work from home, leading some women to work even at nights to balance their family and professional lives (women are overrepresented in many of the industries hardest-hit by COVID-19, including education, social protection and public administration services);³¹⁵ as well as the fact that women are insufficiently involved in decisions on issues affecting their lives and health.³¹⁶ Domestic violence against women has increased since the pandemic broke out. Suspension of public transportation also impinged on women more than men, since women use public transportation more than men.

The situation of some groups of women in Serbia subject to multiple forms of discrimination, including women with disabilities, Roma women, older women,

311 More in the press release signed by 52 organisations, "Protection against Discrimination 'on hold'", 16 June. Available at: <https://www.a11initiative.org/en/protection-against-discrimination-on-hold/>.

312 Decision on the Election of the Equality Commissioner, National Assembly website, 26 November. Available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/os-tala_akta/2020/RS39-20.pdf. More on the election of the Equality Commissioner in Chapter III.5.2.

313 More in *FemPlatz Magazine – special edition*, No. 3, FemPlatz, 2020. Available in Serbian at: http://femplatz.org/library/newsletters/FemPlatz_Magazin_3.pdf.

314 *Care Economy in the Time of the COVID-19 Pandemic and Measures to Prevent It in Serbia*, SeConS, Belgrade 2020. Available in Serbian at: <https://www.secons.net/files/publications/119-publication.pdf>.

315 *Impact of the COVID-19 Pandemic and Measures to Prevent It on Employment and Working Conditions of Women and Men in Serbia*, SeConS, Belgrade 2020. Available in Serbian at: <https://www.secons.net/files/publications/113-publication.pdf>.

316 *Coronavirus puts women in the frontline*, European Institute for Gender Equality (EIGE), 25 March 2020, available at: <https://eige.europa.eu/news/coronavirus-puts-women-frontline>.

rural women and et al, deteriorated further due to the epidemic and anti-COVID-19 measures.³¹⁷

During the state of emergency, the freedom of movement of people over 65 (70 in urban settlements) was suspended for 35 days, 164 hours a week; violations of the curfew were punishable.³¹⁸ Older women highlighted the following problems they faced during the lockdown: concern for their younger family members, inability to take walks, feelings of fear and insecurity, concern for their health, loneliness, et al; some felt humiliated and underappreciated. They missed their old life, spending time with friends and families, and felt imprisoned.³¹⁹

The UNFPA and UN Women said that almost twice as many women as men lost their jobs since the COVID-19 crisis broke out.³²⁰ They said that, in Serbia, 7% of employed women have lost their jobs or been pressured to take forced leave since the pandemic began, compared to 4% of employed men. Women entrepreneurship also found itself on thin ice during the pandemic. In addition to economic uncertainty, lower earnings and underappreciation, women entrepreneurs in Serbia are now facing the challenges of the crisis, which has further exacerbated their economic situation and empowerment efforts.³²¹ One of the reasons for the poorer resiliency of women's entrepreneurship is the fact that women mostly open and run small and family companies, lacking financial reserves and the capacity to implement long-term business strategies.³²²

Rural women faced various challenges. A lot of women working in the private sector lost their jobs after the state of emergency was proclaimed and the companies they were working for suspended operations. More women than men quit as well, for a number of reasons: the kindergartens and schools closed and they had to look after the children and their ability to move was restricted by the suspension of public transportation.³²³ Most rural women are farm hands; hardly any of them head agricultural holdings, own land or decide on which crops will be grown. During the pandemic, they faced challenges arising from the suspension of the sale of their farm products,

317 More on the situation of women with disabilities in Chapter IV.5.

318 Nevena Petrušić, Nadežda Satarić and Kosana Beker, *Status and participation of older women in political and public life in Serbia*, Civic Association "Strength of Friendship" – Amity and FemPlatz, Beograd & Pančevo, October 2020, p. 86. Available in Serbian at: http://femplatz.org/library/publications/2020-12_Polozaj_i_ucesce_starijih_zena.pdf.

319 *Ibid.*

320 Employed women in Serbia more likely to have lost jobs than men during the coronavirus pandemic, new study reveals, UNFPA and UN Women, 24 November. Available at: <https://eeca.unfpa.org/en/news/employed-women-serbia-more-likely-have-lost-jobs-men-during-coronavirus-pandemic-new-study>.

321 BFPE, "COVID-19 Pandemic: women's entrepreneurship on thin ice," 6 July. Available at: <https://en.bfpe.org/in-focus/region-in-focus-focus/covid-19-pandemic-womens-entrepreneurship-on-thin-ice/>.

322 *Ibid.*

323 *Impact of the COVID-19 Pandemic and Measures to Prevent It on the Socio-Economic Status of Rural Women, with Focus on Agriculture*, SeConS, 2020, p. 33. Available in Serbian at: <http://www.secons.net/publications.php?p=117>.

inability to buy raw materials and labour shortage. Most rural women started taking telephone orders, while fewer sold their produce to the state or other vendors, sold them on the Internet, via social networks or delivered them personally.³²⁴

6.4. Violence against Women

Serbia ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence in 2013.³²⁵ The Convention is the first legally binding document at the level of the Council of Europe that governs violence against women. Serbia submitted its first report to GREVIO in 2018.³²⁶ Women rights NGOs submitted their shadow reports to GREVIO, in which they alerted to the problems and challenges in the implementation of the Convention.³²⁷

On 22 January 2020, the Group of Experts on Action against Violence against Women (GREVIO) published its Baseline Evaluation Report on Serbia.³²⁸ The Report includes a number of recommendations to Serbian authorities, including to: continue its activities to eradicate prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men across all pockets of society;³²⁹ further develop and sustain their awareness-raising efforts on all forms of violence covered by the Istanbul Convention, including through the resourcing of campaigns and by engaging in partnerships with the relevant women's specialist support services, community-based grass-roots organisations and the media;³³⁰ continue to engage the media as a key partner to raise awareness on violence against women;³³¹ continue efforts to ensure cooperation between all relevant institutions and with women's support services run by NGOs;³³² provide or arrange for adequate specialist women's support services with a gendered approach throughout the country and for all forms of violence covered by the Istanbul Convention, with the aim of ensuring the provision of immediate, medium- and long-term support by involving and tapping into the long-standing expertise built up by women's

324 *Ibid.*, pp. 33–34.

325 Act Ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence, *Sl. glasnik RS (Međunarodni ugovori)*, 12/13.

326 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>.

327 The seven shadow reports are available at: <https://www.coe.int/en/web/istanbul-convention/serbia>.

328 GREVIO Baseline Evaluation Report Serbia, Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020. Available at: <https://rm.coe.int/grevio-report-on-serbia/16809987e3>.

329 *Ibid.*, para. 65.

330 *Ibid.*, para. 69.

331 *Ibid.*, para. 98.

332 *Ibid.*, para. 105.

specialist support services in civil society;³³³ introduce and apply quality standards for shelters that accommodate victims of domestic violence and other forms of violence based on a gendered understanding of violence against women, the empowerment of victims and a victim-centred and integrated approach to service provision, and, to map and expand, where necessary, the capacity of domestic violence shelters and to ensure practical access for all women, in particular women with disabilities, Roma women and women migrants/asylum seekers.³³⁴

The Domestic Violence Act³³⁵, 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. Women account for the vast majority (92%) victims of domestic abuse.³³⁶ According to data published in November 2020, over 166,000 cases of domestic violence have been reviewed since the Domestic Violence Act entered into force.³³⁷ In the 35 months since it entered into effect, public prosecutors filed 61,249 motions to extend urgent protection measures, 60,055 of which were upheld by courts; 130 people were found guilty of stalking and 84 of sexual harassment.³³⁸ A total of 12,332 victims of domestic violence were registered in the first seven months of the year; 72.4% of them were women.³³⁹ Prosecutors filed 10,999 motions for urgent measures against the abusers, 10,620 of which were extended another 30 days.³⁴⁰

Serbia still lacks reliable official statistics on femicide. Data on the number of killed women are mostly collected from media reports. Twenty-eight women were killed in 2019,³⁴¹ and 25 women were killed in 2020.³⁴² A body that would be charged with monitoring femicide in Serbia was not established by the end of 2020, although such a promise was made back in 2018 by Zorana Mihajlović, the Chairwoman of the Gender Equality Coordination Body.³⁴³

333 *Ibid.*, para. 125.

334 *Ibid.*, paras. 131 and 132.

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

336 See the Ministry of Justice press release of 18 May. Available at: <https://www.mpravde.gov.rs/en/vest/29993/in-35-months-a-total-of-141529-cases-of-domestic-violence-have-been-reviewed.php>.

337 See the Ministry of Justice press release of 25 November. Available at: <https://www.mpravde.gov.rs/en/vest/31757/over-166000-domestic-violence-reviewed-in-nearly-three-and-a-half-years.php>.

338 *Ibid.*

339 RTV, "11,000 domestic violence cases, 15 women killed in 2020," 17 August. Available in Serbian at: https://www.rtv.rs/sr_lat/drustvo/u-2020-11.000-slucajeva-porodicnog-nasilja-ubijeno-15-zena_1153692.html.

340 *Ibid.*

341 Press release on 18 May – Day of Remembrance of Women Victims of Violence, Gender Knowledge Hub, FemPlatz and Women's Education and Communication Research Centre, 18 May. Available in Serbian at: http://femplatz.org/library/2020-05-17_Saopstenje_Femicid.pdf.

342 By 13 December 2020.

343 "Mihajlović: Form a body to monitor femicide," *Danas*, 18 May 2018. Available in Serbian at: <https://www.danas.rs/drustvo/mihajlovic-formirati-telo-za-pracenje-femicida/>.

6.4.1. Sexual Harassment Conviction against Milutin Jeličić

After a year-long trial, Milutin Jeličić aka Jutka was convicted to three months' imprisonment for sexually harassing his employee Marija Lukić in 2020, two and a half years since he was accused of the crime. In November 202, the Kruševac Higher Court upheld the judgment of the Basic Court in that city, finding the former Brus Mayor guilty of prohibited sexual acts.³⁴⁴

To recall, Marija Lukić filed a criminal report against her superior after years of sexual harassment. She said in the report that she had received around 150,000 lewd text messages from him and that he tried to touch her every time he saw her.³⁴⁵ She was fired one day after she reported him. Jeličić continued pressuring, threatening and blackmailing her. The Brus Local Assembly's decision to shut down her husband's hair salon in Brus merely testifies to institutionalised discrimination and victimisation of anyone who dares speak out against abuse.³⁴⁶ Despite the leniency of the penalty imposed in this case, Jeličić's conviction marks an important and encouraging step forward in combatting violence against women.

6.4.2. Increase in Violence against Women during the State of Emergency

Experience from past epidemics clearly shows that a health crisis has always led to a regression of gender equality. Pre-existing violence can escalate, from psychological violence to physical and sexual violence. Many factors may exacerbate the risk of violence against women, such as stress, disruption of social and protective networks, lack of contact with friends and family who may provide support and protection, and decreased access to services.³⁴⁷

According to official data, Serbian state institutions did not register an increase in domestic violence during the state of emergency.³⁴⁸ However, the data of women's organisations providing services to women in situations of violence paint a different picture. During the state of emergency, these organisations published their contact details and hotline phone numbers, many of which were manned 24/7.³⁴⁹

344 "Milutin Jeličić Jutka's conviction upheld, Marija Lukić says she's pleased," *NI*, 3 November. Available in Serbian at: <https://rs.n1info.com/vesti/a667854-milutin-jelicic-jutka-presuda-potvrđena-marija-lukic/>.

345 "Jutka's going away, women in Brus await justice," *Radio Free Europe*, 19 March. Available in Serbian at: <https://www.slobodnaevropa.org/a/brus-jutka-zlostavljanje-marija-lukic/29830058.html>.

346 *Nova.rs*, "I'd do it all over again, Marija Lukić tells Nova.rs," 12 May. Available in Serbian at: <https://nova.rs/vesti/hronika/marija-lukic-za-nova-rs-opet-bih-sve-isto-uradila/>.

347 *New Europe*, The Impact of Covid-19 on women's rights, 2 April. Available at: <https://www.neweurope.eu/article/the-impact-of-covid-19-on-womens-rights/>.

348 Vida Vilić (ed.), Prevention and Eradication of Femicide in Serbia – E-Newsletter No. 5, Femplatz, 2020, p. 16. Available in Serbian at: http://femplatz.org/library/newsletters/Bilten_5_SR.pdf.

349 Available in Serbian at: <https://www.zeneprotivnasilja.net/vesti/1031-radno-vreme-i-kontakti-organizacija-mzpn-tokom-izmenjenih-uslova-rada-usled-corona-virusa>.

Contact details of organisations extending assistance to persons with disabilities³⁵⁰ and the elderly³⁵¹ were also published.

The public learned of the increase in the number of women who reported domestic violence thanks to organisations directly assisting women who have experienced violence.³⁵² The number of calls registered by the Autonomous Women's Centre hotline tripled during the first month of the state of emergency; the Centre registered the provision of 430 services to women seeking help and advice.³⁵³ The National Hotline for Women Who Have Experienced Violence was called up 350 times during the entire state of emergency.³⁵⁴ The Vranje Hotline registered 690 calls in the first nine months of the year; 106 of the women callers asked for help and support. The Vranje Human Rights Committee said that the number of calls during the state of emergency typically increased at night, when the women complained that they had nowhere to go because of the virus, that they were locked down with their abusers and had lost their jobs.³⁵⁵

7. 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.³⁵⁶ Roma are one of the most vulnerable categories of the population in Serbia and victims of deeply-rooted social exclusion. A number of international human rights bodies have alerted to the extremely disadvantaged

350 Contact details of organisations and individuals extending support to persons with disabilities under lockdown during the COVID-19 epidemic, FemPlatz. Available in Serbian at: http://fem-platz.org/library/COVID-19_Zene_sa_invaliditetom-podrska.pdf.

351 *Amity Force of Friendship*, Amity Telephone Counselling for the Elderly, 6 April. Available in Serbian at: <http://www.amity-yu.org/2020/04/06/amity-telefonsko-savetovaliste-za-starije/>.

352 *N1*, "Miona Živić: number of women reporting domestic violence during lockdown on the rise," 12 April. Available in Serbian at: <http://rs.n1info.com/Vesti/a588251/Gosce-N1-Povecan-broj-zena-koje-prijavljaju-nasilje-u-porodici-tokom-karantina.html>.

353 Press release: Protection and support for women victims of violence during the first month of the state of emergency, Autonomous Women's Centre, 16 April. Available at: <https://www.womenngo.org.rs/en/news/1577-press-release-protection-and-support-for-women-victims-of-violence-during-the-first-month-of-the-state-of-emergency>.

354 *Danas*, "350 calls made to hotline for women victims of violence during state of emergency," 18 May. Available in Serbian at: <https://www.danas.rs/drustvo/tokom-vanrednog-stanja-350-poziva-na-broj-za-zene-izlozene-nasilju/>.

355 *Jugpress*, "Vranje Hotline registered 690 calls," 25 November. Available in Serbian at: <https://jugpress.com/sos-telefon-u-vranju-imao-690-poziva/>.

356 See the Statistical Office of the Republic of Serbia publication: <http://media.popis2011.stat.rs/2012/Nacionalna%20pripadnost-Ethnicity.pdf>.

status of Roma in their reports.³⁵⁷ 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.

7.1. Social Inclusion of Roma

The Coordination Body Monitoring the Implementation of the 2016–2025 Roma Social Inclusion Strategy³⁵⁸ held its sixth session in October 2020. It discussed the implementation of projects focusing on improving the housing, social housing and active inclusion of Roma. It also discussed the activities undertaken during the state of emergency to dampen the impact of COVID-19 on the Roma population, including the distribution of 45,396 packages of food, hygiene items and personal protection equipment, the changes in the quotas of Roma students enrolling in junior colleges and university, and expectations from the upcoming summit within the Berlin process.³⁵⁹

The last Roma Social Inclusion Seminar, organised every other year since 2012, was held on 23 October 2019. In their Operational Conclusions, the participants identified the priorities in the field of Roma social inclusion for the 2019–2021 period.³⁶⁰ The Report on the Implementation of the Operational Conclusions for

357 Human Rights Committee, Concluding observations on the third periodic report of Serbia on the implementation of the International Covenant on Civil and Political Rights, CCPR/C/SRB/CO/3, 10 April 2017, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSRB%2fCO%2f3&Lang=en; Committee on the Rights of the Child, Concluding observations on the combined second and third periodic reports of Serbia on the implementation of the Convention on the Rights of the Child, CRC/C/SRB/CO/2–3, 7 March 2017, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSRB%2fCO%2f2–3&Lang=en; UN Economic and Social Council, Concluding observations on the second periodic report of Serbia on the implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/SRB/CO/2, 10 July 2014, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSRB%2fCO%2f2&Lang=en; CEDAW, Concluding observations on the fourth periodic report of Serbia on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/SRB/CO/4, 14 March 2019, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSRB%2fCO%2f4&Lang=en; CERD, Concluding observations on the combined second to fifth reports of Serbia on the implementation of the Convention on the Elimination of All Forms of Racial Discrimination, CERD/C/SRB/CO/2–5, 3 January 2018, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSRB%2fCO%2f2–5&Lang=en; numerous reports by UN special procedures and the European Commission Serbia 2005–2020 Reports, Serbia, available at: https://ec.europa.eu/neighbourhood-enlargement/news_corner/key-documents_en?f%5B0%5D=field_file_country%3A108.

358 Available at: https://www.minrzs.gov.rs/sites/default/files/2018–11/National_Strategy_for_Roma_Inclusion_2016–2025.docx.

359 More is available in Serbian at: https://www.mgsi.gov.rs/sites/default/files/KT%206_0.doc.

360 More is available in Serbian at: <http://socijalnoukljucivanje.gov.rs/rs/odrzani-peti-seminar-o-socijalnom-ukljucivanju-roma-i-romkinja-u-republici-srbiji/>.

the May-October 2020 Period stated that there were still obstacles to the adoption of the 2019–2020 Action Plan.³⁶¹ The non-adoption of the Action Plan by the end of the reporting period also precluded the implementation of other activities set out in the Operational Conclusions, including, naturally, monitoring of the implementation of the Action Plan.³⁶²

Data published by the Serbian Government and its Social Inclusion and Poverty Reduction Unit (SIPRU) show that 38 of the 98 surveyed local self-governments with a substantial Roma population adopted their local Roma inclusion action plans in 2019. These plans varied in scope from one LSG to another, covering the following fields: Roma education, housing, employment, health, welfare, as well as other areas, such as culture, media, information, access to personal documents, et al. The survey also showed that 45.14% of the LSGs engaged pedagogical assistants, that 51.84% engaged Roma coordinators, that 33.6% of them engaged health mediators, and that 28.8% LSGs had mobile teams. The Roma Social Inclusion Strategy recognises the critical importance of LSGs in advancing Roma inclusion and protection of their rights, as well as the need to adopt local action plans for those purposes.³⁶³ The fact that only 38 of the 98 LSGs actually adopted such action plans suggests that the Strategy is not implemented fully, especially at the local level. There were, however, indications that activities were being undertaken to facilitate the development of local action plans.³⁶⁴

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.³⁶⁵

A Working Group charged with coordinating activities to improve the Roma situation was formed in August 2020.³⁶⁶ The decision on its establishment specifies the Working Group members and its duties, involving coordination of and guidance on state administration duties, support and monitoring of the implementation of the defined measures and activities to improve the status of Roma, as well as cooperation with the representatives of the Roma National Minority Council and Roma associations in fulfilling the duties. The purpose of forming the Working Group is

361 Available in Serbian at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2020/10/Izvestaj_o_realizaciji_operativnih_zakljucaka_za_period_2019-2021_drugi_kvartal_2020.pdf.

362 *Ibid.*

363 Roma Inclusion Strategy, available at: https://www.minrzs.gov.rs/sites/default/files/2018-11/National_Strategy_for_Roma_Inclusion_2016-2025.docx.

364 See: <http://socijalnoukljucivanje.gov.rs/en/the-introductory-workshop-for-the-preparation-of-the-local-action-plans-for-the-social-inclusion-of-the-roma-held/>.

365 The Special Report is available in Serbian at: <https://www.ombudsman.rs/attachments/article/6359/Zastitnik%20socialno%20ukljucivanje%20roma%2020191129c.pdf>.

366 Pursuant to a Decision published in *Sl. glasnik RS*, 109/20.

unclear given that its competences coincide with those of the Coordination Body Monitoring the Implementation of the Roma Social Inclusion Strategy.³⁶⁷

The COVID-19 crisis had major impact on Roma and their enjoyment of their rights. The UN Human Rights Team in Serbia and SIPRU conducted a survey in June 2020, within which 54 CSOs were polled about the impact of COVID-19 on Roma rights. Most of the CSOs said that a whole range of Roma rights was jeopardised by the pandemic, especially their access to work and sources of income; access to adequate housing, including drinking water and electricity; access to welfare and information; and that Roma were at greater risk of poverty.³⁶⁸

In cooperation with A11 – Initiative for Economic and Social Rights, the Protector of Citizens published a special report with recommendations for improving living conditions in Roma settlements during the state of emergency and implementation of anti-COVID-19 measures. The main findings and recommendations are based on visits to ten informal Roma settlements in Serbia. The Report said that the sanitary conditions were poor in most of the settlements and that their residents were not wearing either face masks or gloves. Only the residents of the Čukarička šuma settlement in Belgrade said they had been distributed masks when the state of emergency was introduced. The Report said that large quantities of waste that were not regularly removed by the utility companies in nearly all the settlements, and that none of the settlements had been disinfected or cleaned during the state of emergency. Furthermore, water supply, especially supply of drinking water, was limited in all the settlements, with the exception of the Sutjeska settlement in Kostolac. Access to electricity was extremely limited and only a small number of residents of informal settlements had legal electricity connections, while, in specific settlements, some of the residents' electricity had been cut off because they had not paid their bills. The Report said that packages of aid had been distributed in most settlements, but that their residents were in need of more aid. The Protector of Citizens thus recommended: disinfection of the substandard settlements; provision of a sufficient number of garbage containers and regular waste removal by the relevant utility companies; provision of unimpeded and regular access to drinking water; regular electricity supply; distribution of additional aid packages to the residents of the settlements; distribution of additional personal protection equipment and provision of information on anti-COVID-19 measures; coordination between the SWCs and LSGs to ensure payment of one-off financial aid as frequently as possible; implementation of all possible measures to facilitate the unimpeded online education of the children living in the

367 *Pirot Plus Online*, "Alliance against Roma Discrimination sends letter to Prime Minister," 10 November. Available in Serbian at: <https://www.plusonline.rs/alijansa-protiv-diskriminacije-roma-uputita-pismo-predsednici-vlade-srbije>.

368 Impact of the COVID-19 on Vulnerable Groups and Groups at Risk – causes, outcomes and recommendations, pp. 6–7. Available at: https://serbia.un.org/sites/default/files/2020-12/Posledice%20Kovid%2019%20na%20polozaj%20osetljivih%20grupa%20i%20grupa%20u%20riziku_web_ENG%20%28003%29_0.pdf.

settlements; and, urgent resumption of activities by health mediators in all Roma settlements.³⁶⁹

7.2. Status of the Roma Community and Serbia's EU Accession Efforts

In its 2020 Serbia Report³⁷⁰ the European Commission noted the serious delay in the adoption of the Action Plan for the Implementation of the Roma Social Inclusion Strategy. It said that the Coordination Body charged with monitoring the implementation of the Strategy met three times during the reporting period, instead of six times as previously agreed in the Roma Seminar conclusions.³⁷¹ The EC also said that institutional structure dealing with Roma integration remained ineffective and complicated, without a clear distribution of tasks and that coordination between the national and local authorities, as well as Roma-sensitive budgeting, still needed to be strengthened. The EC said that there was a serious delay in establishing the legal basis for local Roma coordinators, pedagogical assistants and health mediators, a conclusion it arrived at also in its Serbia 2019 report. 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, primarily those on registration of newborns in the birth registers. The EC noted the increase in the number of Roma high schoolers who benefited from scholarships, but noted that the drop-out rates remained high. It also noted the low coverage of Roma children and the extremely low percentage of those completing tertiary education, stating that transition from education to the labour market was especially challenging for young Roma people.

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.³⁷² 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.³⁷³ The implementation

369 The Report is available at: <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6656-special-report-of-the-protector-of-citiyens-with-recommendations>.

370 Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf.

371 *Ibid*, p. 40.

372 See more at: <http://www.skgo.org/projects/details/50/podrska-eu-inkluziji-roma-osnazivanje-lokalnih-zajednica-za-inkluziju-roma>.

373 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>.

of some activities was delayed due to the COVID-19 pandemic and the coordinators were allowed to extend the implementation of the projects to March 2021.³⁷⁴

In July 2019, Serbia ratified the Declaration of Western Balkans Partners on Roma Integration within the EU Enlargement Process.³⁷⁵ All the states that have ratified the Declaration committed to continuing and enhancing efforts to ensure the equality and full integration of Roma in society and monitoring efforts undertaken to achieve the full equality of Roma. The signatory states committed to increase Roma employment; wherever possible, legalise all informal Roma settlements or provide permanent, decent, affordable and desegregated housing for Roma living in informal settlements that cannot be legalised for justified reasons; increase the enrolment and completion rates of Roma in education; ensure universal health insurance coverage among Roma of at least 95 per cent or to the rate equal to the rest of the population; and strengthen government structures to protect Roma against discrimination.

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.³⁷⁶

7.3. 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. It also noted that there were still 199,584 internally displaced persons (IDPs)³⁷⁷ in Serbia, of whom 68,514 remained vulnerable and with displacement-related needs.³⁷⁸ Roma IDPs remained the most

374 See the Report on the Implementation of the Operational Conclusions in the May–October 2020 Period. Available in Serbian at: http://sociojalnoukljucivanje.gov.rs/wp-content/uploads/2020/10/Izvestaj_o_realizaciji_operativnih_zakljucaka_za_period_2019–2021_drugi_kvartal_2020.pdf.

375 The Declaration is available at: <https://www.rcc.int/docs/464/declaration-of-western-balkans-partners-on-roma-integration-within-the-eu-enlargement-process>.

376 See more at: <http://sociojalnoukljucivanje.gov.rs/en/agreement-signed-on-the-establishment-and-work-of-the-action-team-of-the-regional-cooperation-council-for-roma-integration-2020/>.

377 See the Commissariat for Refugees (CRM) Statistical Overview of Refugees and IDPs by Municipality of 1 July 2020. Available in Serbian at: <https://kirs.gov.rs/media/uploads/Dokumenti-i-publikacije/Statistike/izbirl2020.pdf>.

378 See the CRM report Situation and Needs of IDPs, p. 11. Available in Serbian at: https://kirs.gov.rs/media/uploads/Dokumenti-i-publikacije/Izvestaji/Stanje_i_potrebe_IRL_2018_SR.pdf.

marginalised and vulnerable.³⁷⁹ The most recent publicly available data show that 10,188 Roma IDPs are now living in Serbia.³⁸⁰

After the Western Balkan countries, including Serbia, ratified the Declaration of Western Balkans Partners on Roma Integration within the EU Enlargement Process (Poznan Declaration), RCC Roma Integration prepared the Regional Methodology on Mapping Roma Housing³⁸¹ which focuses on goal 1(b) of the Declaration: “Wherever possible, legalise all informal settlements where Roma live; or provide permanent, decent, affordable and desegregated housing for Roma currently living in informal settlements that cannot be legalised for justified reasons.” At a meeting co-organised by the Albanian Health and Social Protection Ministry and RCC, Ministers of the Western Balkans responsible for Roma Integration/Heads of Delegations welcomed the Methodology and undertook to map Roma settlements in 2021.³⁸² The Report on the Implementation of the Operational Conclusions said that “mapping [...] should be the first step towards formulating Roma housing policies, primarily legalisation of housing, construction of social housing, improvement of the infrastructure and housing units and the general housing situation of Roma” and that “mapping [...] should also be the first step in monitoring the achievement of the goal defined in the Poznan Declaration.”³⁸³

During the first wave of the COVID-19 epidemic in Serbia, the Equality Commissioner issued a Recommendation on the Improvement of the Situation of Roma in Roma Settlements, in which she said that particular attention should be devoted to Roma living in informal settlements. She specified that around 25,000 people living in such settlements did not have access to clear drinking water, which rendered senseless all recommendations on maintaining hygiene to prevent the spread of COVID-19. She also referred to UN Resolution 64/292 explicitly recognising the human right to water.³⁸⁴ In its General Comment no. 14 on the right to the highest attainable standard of health, the UN Committee on Economic, Social and Cultural Rights (CESCR) said that it interpreted the right to health as an inclusive right extending also to the

379 *Serbia 2020 Report*, p. 40, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf.

380 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>.

381 Available at: <https://www.rcc.int/romaintegration2020/docs/126/regional-methodology-on-mapping-of-roma-housing>.

382 Conclusion of the ministerial meeting on Roma integration, Roma Integration Regional Cooperation Council, available at: <https://www.rcc.int/romaintegration2020/news/343/conclusions-of-the-ministerial-meeting-on-roma-integration>. See also the minutes of the 6th session of the Coordination Body Monitoring the Implementation of the Roma Social Inclusion Strategy, available in Serbian at: https://www.mgsi.gov.rs/sites/default/files/KT%206_0.doc.

383 See the Report on the Implementation of the Operational Conclusions in the May–October 2020 Period. Available in Serbian at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2020/10/Izvestaj_o_realizaciji_operativnih_zakljucaka_za_period_2019–2021_drugi_kvartal_2020.pdf.

384 UN General Assembly Resolution A/RES/64/292 of 3 August 2010, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/479/35/PDF/N0947935.pdf?OpenElement>.

underlying determinants of health, such as access to safe and potable water and adequate sanitation and that States Parties that failed to provide access to potable water to people within their jurisdiction could not be considered to be fulfilling their obligations under the Covenant, the implementation of which is monitored by this body.³⁸⁵ Therefore, the Equality Commissioner recommended as one of the anti-COVID-19 measures, that the “Government ensures full access to clean water to the residents of these settlements, by installing cisterns, plastic reservoirs, water bottles, et al.”³⁸⁶

The Equality Commissioner also issued a recommendation to the Belgrade city authorities about the situation in the informal Roma settlement Čukarička šuma in which she referred to the procedure A11-Initiative for Economic and Social Rights initiated under Rule 39 of the ECtHR’s Rules of Court about the situation in this settlement and lack of access to potable water.³⁸⁷

The Report on the Implementation of Operational Results in the May-October 2020 Period said that 270 million RSD were initially to have been earmarked in the budget for improving the living conditions and addressing the housing of IDPs, but that the amount was reduced to 148 million RSD due to the pandemic and that 220 families were left without assistance for housing.³⁸⁸

The UN Human Rights Team in Serbia and SIPRU conducted an analysis “Mapping of Substandard Roma Settlements According to Risks and Access to Rights in the Republic of Serbia”.³⁸⁹ A total of 702 substandard Roma settlements with 167,975 residents in 94 LSGs were mapped. The mapping showed that: 32, 843 residents of 159 settlements did not have any or regular access to potable water; 93,050 residents of 457 settlements did not have any or regular access to the sewage system; 24,104 residents of 64 settlements did not have any or regular access to electricity; and that 14,001 residents of 44 settlements did not have any or regular access to potable water, a sewage system and electricity.³⁹⁰

7.4. Education

Concerns about insufficient coverage of Roma children by education persisted although the number of Roma children attending school increased.

385 CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), E/C.12/2000/4, 14 August 2000, available at: <https://www.refworld.org/pdfid/4538838d0.pdf>.

386 Available in Serbian at: <http://ravnopravnost.gov.rs/rs/preporuka-mera-za-unapredenje-poloza-ja-roma-u-romskim-nasel%d1%98ima/>.

387 Available at: <http://ravnopravnost.gov.rs/en/38550/>.

388 See the Report on the Implementation of the Operational Conclusions in the May-October 2020 Period. Available in Serbian at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2020/10/Izvestaj_o_realizaciji_operativnih_zakljucaka_za_period_2019-2021_drugi_kvartal_2020.pdf.

389 Available at: https://serbia.un.org/sites/default/files/2020-12/web-mapiranje_podstandardnih_romskih_naselja-27-11-eng%20%28002%29.pdf

390 *Ibid*, pp. 10–17.

In its Serbia 2020 Report, the European Commission said that segregation in education needed to be addressed and that only 9% of Roma children attended kindergarten. It also observed that the percentage of Roma completing tertiary education remained extremely low, namely 1% compared with 16% of the non-Roma population.³⁹¹ This is why urgent measures need to be taken to address segregations in schools and reduce the drop-out rate. The EC noted an increase in the number of Roma students benefiting from scholarships, with a total of 2,220 Roma students³⁹² (56% of whom were girls)³⁹³ enrolled at secondary level in 2018/2019, compared with 1,969 students in 2017/2018. The 2019/2020 school-year data were unavailable at the time the EC completed its report.

In the 2018/2019 school-year, the Ministry of Education, Science and Technological Development (MoESTD) awarded 704 Roma students 5,400 RSD monthly scholarships that were paid out by June 2020. Within the project of EU Support to Roma Students to Continue Secondary Education”, the MoESTD also awarded scholarships to 503 Roma students in the 2019/2020 year. Seven hundred applicants were to receive scholarships in the 2020/2021 school year. At the 6th session of the Coordination Body Monitoring the Implementation of the Roma Social Inclusion Strategy, the Roma National Minority Council recommended that the quota of Roma students enrolling in junior colleges and university be raised to at least 3%.³⁹⁴ A Rulebook on Pedagogical and Andragogical Assistants was completed at the end of 2019.³⁹⁵ It defines in greater detail the jobs of andragogical assistants, who are to “extend support to applicants and students in accordance with their needs, cooperate with adult education providers and staff (expert associates et al), as well as the relevant LSG authorities, institutions, organisations and associations, to facilitate quality implementation of adult education activities.”³⁹⁶

Many poor children had difficulty accessing education when the COVID-19 pandemic broke out in Serbia. As noted above, 24,104 residents of informal Roma settlements have no or irregular access to electricity. They inevitably include children, who have difficulties accessing online education on TV and the Internet. Although the authorities said that pedagogical assistants were helping Roma students three times a week when schools switched to remote learning,³⁹⁷ Roma parents and

391 *Serbia 2020 Report*, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf.

392 *Ibid.*

393 Annual Report on the Implementation of the Education Development Strategy Action Plan, May 2019, pp. 134 and 136. Available in Serbian at: <http://www.mpn.gov.rs/wp-content/uploads/2019/08/izvestaj.pdf>.

394 *Ibid.*, p. 48.

395 *Sl. glasnik RS*, 87/19.

396 See the Report on the Implementation of the Operational Conclusions in the May-October 2020 Period. Available in Serbian at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2020/10/Izvestaj_o_realizaciji_operativnih_zakljucaka_za_period_2019-2021_drugi_kvartal_2020.pdf.

397 Available in Serbian at: https://www.mgsi.gov.rs/sites/default/files/KT%206_0.doc.

experts noted that Roma children nevertheless had trouble following online classes.³⁹⁸ States Parties to the ICESCR have “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels” of each of the rights enunciated in the Covenant, including “the most basic forms of education”. In the context of article 13, this core includes an obligation: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis [...].³⁹⁹

7.5. Employment

A total of 25,918 job-seekers registered with the National Employment Service (NES) on 31 December 2019 have declared themselves as Roma; 12,852 of them were women.⁴⁰⁰ Most of them – 89.6% – were unskilled, while a mere 0.6% had high or advanced qualifications.⁴⁰¹

A total of 2,105 Roma (907 of them women) registered with the NES were employed in the first eight months of the year. Most of them were unskilled or low-skilled workers. The drop over 2019 was attributed to the COVID-19 pandemic. In that period, 32,759 Roma were benefitting from active employment measures, 71 (42 of them women) were undergoing additional training or education courses and 193 were engaged in public works. Self-employment subsidies were granted to 154 Roma (50 of them women) during that period. The Decree on the “My First Salary” Youth Employment Incentive Programme entered into force in August 2020;⁴⁰² the programme envisages the training of 10,000 high-school and college first-time job-seekers registered with the NES.⁴⁰³ The Decree and the programme, however, suffer from specific shortcomings; the legal grounds of the Decree and the respect for the labour-related rights of youths covered by the programme have been brought into question.⁴⁰⁴

The year behind us saw the implementation of nine projects in nine LSGs within GIZ’s project Inclusion of Roma and Other Marginalised Groups in Serbia

398 *Istinomer*, “They require of the children to follow online classes and we don’t even have electricity,” 15 September. Available in Serbian at: <https://www.istinomer.rs/analize/analize-analize/traze-od-dece-da-prate-nastavu-preko-interneta-a-mi-nemamo-ni-struju/>.

399 CESCR, General Comment No. 13: The Right to Education (Art. 13), E/C.12/1999/10, 8 December 1999, para 57.

400 NES Report available in Serbian at: http://www.nsz.gov.rs/live/digitalAssets/14/14387_izvestaj_o_radu_nsz_-_i_-_xii_2019_godine.pdf.

401 Report on the Implementation of Operational Conclusions for the May–October 2020 Period. Available in Serbian at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2020/10/Izvestaj_o_realizaciji_operativnih_zakljucaka_za_period_2019-2021_drugi_kvartal_2020.pdf.

402 *Sl. glasnik RS*, 107/20.

403 Report on the Implementation of Operational Conclusions for the May–October 2020 Period. Available in Serbian at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2020/10/Izvestaj_o_realizaciji_operativnih_zakljucaka_za_period_2019-2021_drugi_kvartal_2020.pdf.

404 *Danas*, “My First Salary: None of the salaries are legal, Lj. Bukvić”, 18 August. Available in Serbian at: <https://www.danas.rs/ekonomija/moja-prva-plata-niti-plata-niti-je-po-zakonu/>.

aiming to improve the employability of 1,100 people belonging to the difficult to employ categories of the population and assist 230 of them in finding a job.

7.6. 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. 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.⁴⁰⁵ 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 fourth session on 16 September 2020, the Coalition said that the COVID-19 pandemic substantially impeded the implementation of its activities and that it would be implementing merely preventive and normative measures by the end of the year to increase the visibility of child marriages and changes in expectations from Roma girls, promote good practice examples and convey the message that child marriages constitute violence against Roma girls and are thus unacceptable. The Coalition's 2021 Work Plan includes concrete activities focusing on amendment of the Criminal Code, work with educational institutions, the Ministry of Labour, Employment and Veteran and Social Issues and the Ministry of Health.⁴⁰⁶

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 Marriages⁴⁰⁷ tasking them with taking action to protect children from such negative practices where such risks occur. The Guidance imposes upon the SWCs the obligation to report on their activities aimed at preventing child marriages on an annual basis. The report on the SWCs' operations in 2019 says that the SWCs identified 174 children, most of them Roma, and worked with them to prevent child marriages and extend them assistance and counselling.⁴⁰⁸

405 See more at: <http://socijalnoukljucivanje.gov.rs/en/national-coalition-for-ending-child-marriages-formed/>.

406 Minutes of the 6th session of the Coordination Body Monitoring the Implementation of the Roma Social Inclusion Strategy. Available in Serbian at: https://www.mgsi.gov.rs/sites/default/files/KT%206_0.doc.

407 Guidance No. 551-00-00100/2019-14 of 20 May 2019, available in Serbian at: <https://www.min-rzs.gov.rs/sites/default/files/2019-06/Deciji%20Brakovi%20Instrukcija0001.pdf>.

408 See the Report on the Implementation of the Operational Conclusions in the May-October 2020 Period. Available in Serbian at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2020/10/Izvestaj_o_realizaciji_operativnih_zakljucaka_za_period_2019-2021_drugi_kvartal_2020.pdf.

The Statistical Office of the Republic of Serbia (SORS) conducted two surveys within the global Multiple Indicator Cluster Survey (MICS) programme: Serbia Multiple Indicator Cluster Survey of Women and Children 2019 and the Serbia Roma Settlement Multiple Indicator Cluster Survey.⁴⁰⁹ Whereas data for the entire population indicate that 6% of all women in Serbia married before they turned 18 and that 1% of them married before they turned 15, data on residents living in Roma settlements show that 56% of the women married before they turned 18 and that 16% married before they turn 15. In both samples, the data indicate a correlation between the degree of education and marriage at an early age, and between poverty and entry into marriage.⁴¹⁰ These data, particularly the ones on marriage of girls under 15 years of age, indicate the need to protect children from early marriage. Article 23 of the Family Act clearly prohibits marriages of people under 18; it entitles courts to permit the conclusion of a marriage by children over 16 for justified reasons.⁴¹¹

The National Coalition for Ending Child Marriages – which comprises representatives of the Gender Equality Coordination Body, the Nišava, Mačva, Jablanica and South Banat Districts, the parliamentary committees for human and minority rights and gender equality, as well as rights of the child, the Protector of Citizens, the Equality Commission, *Ternipe*, *Bibija*, Roma Women's Association *Osvit*, *Praksis*, the Roma Association Novi Bečej, Indigo, *Atina*, SIPRU, the National Institute for Social Protection, UNICEF, UNFPA and UNHCR – launched a campaign “Child Marriage is not a Roma tradition” on the International Day for the Elimination of Violence against Women in order to raise awareness of child marriages, which are primarily rooted in extreme poverty and not tradition or customs, as is often believed.⁴¹²

7.7. Discrimination

According to the results of the Equality Commissioner's 2019 public opinion survey on discrimination, 51% respondents believed that Roma were discriminated against in Serbia and that maybe only the poor were more discriminated against.⁴¹³ The respondents also thought that Roma were the most vulnerable group; 36% believed that Roma had a propensity to theft, 19% would not like Roma living in their neighbourhood, 11% would not like to work alongside Roma, 17% would not like Roma to teach their children, while 15% do not want to associate with Roma.⁴¹⁴

409 Available at: https://www.stat.gov.rs/media/5612/mics6_report_serbia.pdf.

410 *Ibid.*, p. 387.

411 *Sl. glasnik RS*, 18/05, 72/11 – other law and 6/15.

412 See more at: <https://www.unicef.org/serbia/en/press-releases/child-marriage-not-roma-tradition>.

413 The report on the survey is available in Serbian at: <http://ravnopravnost.gov.rs/wp-content/uploads/2019/11/izvestaj-o-istrzivanju-javnog-mnjenja.pdf>.

414 *Ibid.*

Comparison of these results with those of the same survey conducted in 2016 show an increase in public recognition of discrimination against Roma, as well as an increase in social distance towards this group of the population.

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. Like in the past, most of the complaints submitted to the Equality Commissioner in 2019 (32 of them) regarded discrimination against Roma; these complaints accounted for 64% of all complaints alleging discrimination on grounds of national affiliation or ethnic origin.⁴¹⁵

The Equality Commissioner intervened in response to a complaint of discrimination on grounds of national affiliation or ethnic origin by a CSO filed on behalf of and with the consent of BB against a department of a City Administration. BB, an ethnic Albanian, applied for *ex post facto* registration of her children in the birth register, but, since she did not speak Serbian, the public officials told her to bring along a court-sworn interpreter at the next oral hearing. The department discontinued the proceedings when she failed to do so. The Equality Commissioner found that the department had failed to comply with the Official Use of Scripts and Languages Act, under which the administrative authorities are under the obligation to enable members of national minorities exercising their rights and obligations before them to use their scripts and languages, ensure that the interpreters assist in the procedure and cover the costs of interpretation.⁴¹⁶ The Equality Commissioner thus issued an opinion concluding that the City Administration had violated Article 6 in conjunction with Article 24 of the Anti-Discrimination Act because it had failed to take instruct BB on her right and enable her to use her own language during the procedure. The Equality Commissioner issued a recommendation to the City Administration to send a written apology to BB and to refrain from violating anti-discrimination regulations in the future.

The Equality Commissioner's term in office expired on 27 May 2020. Due to the state of emergency and dissolution of the parliament before the June parliamentary elections, Brankica Janković was re-elected Equality Commissioner only on 26 November 2020. Since the Equality Commissioner does not have deputies entitled under the law to take action, this independent body was effectively dormant for six months and unable to act on the submitted complaints of discrimination.⁴¹⁷

415 Equality Commissioner, Abridged Version of the 2019 Annual Report, p. 60. Available at: <http://ravnopravnost.gov.rs/wp-content/uploads/2020/05/Skraceni-redovni-godisnji-izvestaj-2019-engl.pdf>.

416 Available at: <http://ravnopravnost.gov.rs/rs/365-2019-prituzba-ocd-protiv-gu-zbog-diskriminacije-na-osnovu-nacionalne-pripadnosti-u-postupku-pred-organima-javne-vlasti/>.

417 More in III.5.2.

8. Economic and Social Rights of Veterans and Disabled Veterans

In early October 2020, veterans and disabled veterans launched a protest against the Preliminary Draft Act on the Rights of Veterans, Disabled Veterans, War-Disabled Civilians and Members of their Families (Preliminary Draft), claiming it placed them at a disadvantage and violated their economic and social rights.

The protest ensued after the completion of the public debate on the Preliminary Draft.⁴¹⁸ During his meeting with representatives of associations of veterans and disabled veterans, Minister of Labour, Employment and Veteran and Social Issues Zoran Đorđević said that all comments, objections and conclusions would be reviewed and forwarded for comment to the other relevant ministries.⁴¹⁹ However, the representatives of the associations, who had attended the meeting, claimed that Minister Đorđević had said that the Government would issue its opinion on the new Preliminary Draft and forward the latter to Serbian President Aleksandar Vučić for approval before it submitted it to the parliament for adoption. As Chairman of the Pančevo Veteran Association Miodrag Mokač explained, the Minister had in that one sentence “explained to all of us in Serbia who decided on life in Serbia and how”.⁴²⁰ Given that laws are forwarded to the Serbian President after they are voted in by the parliament, not before, any other action would be in contravention of Serbia’s regulations.

The representatives of the associations set out their primary demands during a meeting in the Serbian Presidency on 16 October 2019. They demanded of the authorities to withdraw the Preliminary Draft, establish a new working group, and conduct a new public debate to help improve the text of the draft. They also demanded the deletion of the five-year restriction on the exercise of disabled veteran rights by veterans suffering from Posttraumatic Stress Disorder (PTSD) and other illnesses caused by PTSD.⁴²¹ Furthermore, they insisted that a veteran allowance for

418 According to the Public Debate Programme, the panel discussions on the Preliminary Draft were held in: Vranje, Leskovac, Kragujevac, Užice, Sjenica, Kraljevo, Sombor, Zrenjanin, Novi Sad, Zaječar, Belgrade, Niš and Ruma. They were attended by around 1,600 people.

419 The Report on the public debate is available in Serbian at: <https://www.paragraf.rs/dnevne-vesti/250919/250919-vest10.html>.

420 See more at: <https://www.youtube.com/watch?v=TKlsvLL0jwA>.

421 PTSD is a psychiatric disorder that may occur in people who have experienced or witnessed an extremely traumatic event such as death or threat of death, a serious accident or threat to someone’s physical integrity. Studies of populations suffering from various traumas have shown that spontaneous recovery usually occurs in the first three months; if it does not, PTSD becomes chronic. This is why a duration of at least 3 months is a criterion for chronic PTSD. Studies have also shown that symptoms may appear years after the traumatic event. Around one-third of the patients continued suffering from PTSD even after six years, notwithstanding treatment.

veterans under 60 and veteran pensions for veterans over 60 be introduced notwithstanding their financial and social status.

In December 2019, the Equality Commissioner issued her Opinion on the Preliminary Draft. She started out by alerting to the deficiencies in the definitions of specific terms and the need to elaborate provisions relevant to the precise determination of the beneficiaries of the rights, eligibility criteria and exercise of the rights, given that the current provisions undermined the principle of legal certainty in Serbia's legal order and precluded adequate implementation of the legal norms in practice. She pointed out that the Preliminary Draft did not define "families of fallen soldiers" or "war disability" or set the amount of the child allowance or the baseline for determining family and veteran allowances.

Definitions of some terms in the Preliminary Draft were not in accordance with definitions in other valid laws or definitions generally accepted in legal practice. The Equality Commissioner also said that the provisions of the Preliminary Draft needed to be elaborated and brought in compliance with other regulations, first of all the Serbian Constitution, as well as the Family Act, the Act on Financial Support for Families with Children, the Act on Professional Rehabilitation and Employment of Persons with Disabilities, the General Administrative Procedure Act and the Act on Associations.⁴²²

In addition, the 2018 amendments to the Act on the Fundamental Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers⁴²³ reduced the benefits of disabled veterans and families of fallen soldiers in contravention of the Serbian Constitution. Namely, the prior permanent rulings of all beneficiaries of rights based on their status of disabled veterans and members of families of fallen soldiers were replaced by new ones in which the baseline for calculating the benefits was changed and resulted in a cut in their income. Therefore, these people were deprived of their acquired right (to a specific amount of income), in contravention of Article 58 of the Constitution, which guarantees peaceful enjoyment of possessions and other property rights acquired under the law. Furthermore, Article 197 of the Constitution prohibits retroactive application of laws and other general enactments, which was why the veteran associations also demanded the annulment of the impugned provision and all rulings adopted in accordance with it.⁴²⁴

Representatives of the veterans said that the President's Chief of Staff had ordered State Secretary Nenad Nerić and Minister Đorđević to take part in the new talks.⁴²⁵ However, the new negotiations failed after the first meeting because the

422 The Equality Commissioner's Opinion is available in Serbian at: <http://ravnopravnost.gov.rs/misljenje-prava-boraca/>.

423 *Sl. glasnik RS*, 50/18.

424 More on the demands is available in Serbian at: <https://nabranikuotadzbine.org/zahtevi-i-razgovor-s-predsednikom-u-vezi-sa-zakonom-o-pravima-boraca/>.

425 See more at: <https://www.youtube.com/watch?v=TKlsvLL0jwA>.

Ministry representatives broke off all contacts with the veterans.⁴²⁶ The protest organisers reiterated their views and demands to President Vučić on 15 January 2020 and he promised they would receive a reply with proposals within seven days. The reply, however, never came.⁴²⁷

The example of veterans and disabled veterans illustrates why Serbian citizens have lost trust in the state institutions and the Serbian Government. It also illustrates the disruption of checks and balances, the disproportionate share of the government given to the executive and the concentration of power in the hands of the current Serbian President.

Ultimately, the protest ended after the Serbian Assembly adopted the law.⁴²⁸ The legislator upheld only a small number of the veterans' demands.⁴²⁹ The PTSD threshold was moved, but not abolished. Furthermore, veterans are now entitled to dress uniforms and child allowances, as well as formal employment preference. On the other hand, they are practically unable to exercise some rights because of the rigorous eligibility criteria.⁴³⁰ The veterans complained that this law treated them as welfare cases from the very start.⁴³¹ The legislator took on board only some of the comments the Equality Commissioner made in her Opinion.

After spending 157 days in the park across the Serbian Presidency, the veterans decided to discontinue their protest temporarily. They, however, said they were

426 The protesters' dissatisfaction grew after Minister Đorđević said that only representatives of only 0.1% of associations of veterans and disabled veterans were protesting in front of the Serbian President. See *Politika*, "Are 0.1% of the protesting combatants and veterans working in the interest of combatants or against it," 25 October 2019. Available in Serbian at: <https://beta.rs/vesti/politika-vesti-srbija/118402-djordjevic-da-li-0-1-odsto-boraca-i-veterana-koji-protestuju-rade-u-interesu-boraca-ili-protiv>. Thereinafter, they insisted the President receive them although the issues they raised did not fall within his remit.

427 *N1*, "Vučić reneges on promise to veterans "camping" in front of Presidency," 30 January. Available in Serbian at: <http://rs.n1info.com/Vesti/a565110/Vucic-nije-ispunio-obecanje-veteranima.html>.

428 Act on the Rights of Veterans, Disabled Veterans, War-Disabled Civilians and Members of their Families, *Sl. glasnik RS*, 18/20.

429 *Blic*, "Law on veterans' rights adopted, combatants in 1990s wars covered," 29 February. Available in Serbian at: <https://www.blic.rs/vesti/drustvo/usvojen-zakon-o-pravima-boraca-obuhvaceni-ucesnici-ratova-devedesetih-godina/wrdw1kd>.

430 For instance, veterans are entitled to veteran allowances provided they are over 60 and they or their immediate family members with whom they live: 1) are unemployed; 2) do not receive a pension; 3) are not remunerated for work under other kinds of contracts; 4) are not self-employed, i.e. sole proprietors (unless they are earning income from farming the land or forestry on less than 5 hectares or land); 5) are not members of companies, founders or members of cooperatives or other profit-making organisations; 6) are not paying pension and disability insurance contributions; 7) are not exercising ownership or usufruct rights to farmland the area of which exceeds five hectares; 8) do not exercise the right to monthly income under this Act; 9) are not on welfare; 10) do not receive monthly income from other countries for participating in a war or peacetime armed campaigns in the same period.

431 *Sputnik Serbia*, "War veterans meeting Nikola Selaković in Presidency tomorrow," 15 October 2019. Available in Serbian at: <https://sptnkne.ws/Acwc>.

not abandoning their demands and would continue pursuing their rights through other activities.⁴³²

In late August, Minister of Labour, Employment and Veteran and Social Issues Zoran Đorđević said that the Act on the Rights of Veterans, Disabled Veterans, War Disabled Civilians and Their Family Members would be applied of 1 January 2021, claiming that it would substantially improve the status of this category of the population.⁴³³ However, some veteran associations doubted that this promise would be fulfilled since the relevant Ministry prepared only eight of the 16 rulebooks envisaged by the Act by October 2020.⁴³⁴

Judging by everything, a lot of people the Act applies to are dissatisfied with its provisions. They think that many issues concerning their economic and social rights have not been addressed adequately, if at all.

9. Situation of People Living in Homelessness

Homelessness is considered the most complex type of social exclusion. Homeless people have been left without a roof over their heads, jobs and sources of income due to problems in adapting to various challenges in their lives. The notion of homeless people includes those who do not have an adequate roof over their heads and a source of income, and who use shelters and drop-in centres for this category of the population.

Homeless people do not include only people without a roof over their heads, who live in the streets, but also groups of people living in informal settlements or inadequate housing conditions. More specifically, there is primary and secondary homelessness. There are also people at great risk of homelessness: the at-risk-of-poverty rate in Serbia stood at 23.2% in 2019. The at-risk-of-poverty rate -- the share of persons whose equalised disposable income is below the at-risk-of-poverty threshold -- stood at 19,381 RSD a month for single member households. The at-risk-of-poverty threshold for households comprising two adults and one child under 14 stood at 34,886 RSD, and at 40,700 RSD for four-member households comprising two adults and two children under 14.⁴³⁵

432 See more at: <https://www.youtube.com/watch?v=8GfSkXEie-I>.

433 *NI*, "Đorđević: Law on veterans' rights to be applied as of 1 January," 31 August. Available in Serbian at: <http://rs.n1info.com/Vesti/a635103/Djordjevic-Zakon-o-pravima-boraca-pocinje-da-se-primenjuje-1.-januara.html>.

434 *Danas*, "Veterans Association Iron Regiment: Vučić called meeting which he left after eight minutes," 2 October. Available in Serbian at: <https://www.danas.rs/drustvo/udruzenje-boraca-gvozdeni-puk-vucic-sazvao-sastanak-koji-je-napustio-posle-osam-minuta/>.

435 Statistical Office of the Republic of Serbia, Poverty and Social Inequality 2019, 15 October. Available at: <https://www.stat.gov.rs/en-us/vesti/20201015-siromastvo-i-socijalna-nejednakost-2019/?a=0&s=0>.

Unfortunately, Serbia still lacks precise and updated data on the number of people living in homelessness. The latest official data collected during the 2011 Census showed that there were 445 primary homeless people living on the streets and 17,800 secondary homeless people living in informal settlements and unsanitary dwellings. Most of the homeless (39%) were registered in Belgrade and the fewest (14%) in Vojvodina. As many women as men were homeless.⁴³⁶ The number of primary homeless people is probably higher given that the data were collected from the relevant social institutions.

Poverty remained significant despite the registered decrease in the poverty rate in 2018 compared to 2017 (from 7.2% to 7.1%). In a nutshell, over half a million citizens were unable to meet their existential needs.⁴³⁷ In 2019, the at-risk-of-poverty rate was 23.2%, and compared to 2018 it was lower by 1.1 percentage points. The at-risk-of-poverty or social exclusion rate was 31.7%, and compared to 2018 it is lower by 2.6 percentage points.⁴³⁸

Clear statistics, particularly on primary homelessness, would be a good starting point for designing policies to improve the situation of homeless people and develop clear support and protection mechanisms, which are currently lacking. In its research, Housing Center roughly estimated that around 800,000–900,000 people in Serbia were homeless⁴³⁹ according to the European Typology on Homelessness and Housing Exclusion (ETHOS)⁴⁴⁰ developed by the European Federation of National Organisations Working with the Homeless (FEANTSA).⁴⁴¹

Members of broken families, single people, single parent families and children from socially vulnerable groups are often recognised in practice as at risk of homelessness. Entire families can often find themselves on the margins of society. In Serbia, Roma, refugees, IDPs, alcohol addicts and other vulnerable categories of the population are definitely at greatest risk of ending up homeless. The roots of their plight are deep, resulting in their total exclusion. Employment, housing, access to justice, health care and welfare, legal (in)visibility and the fight against discrimination are the key challenges in improving the situation of homeless people. The reintegration of the homeless in society is exacerbated by absence of public attention to homelessness,

436 M. Bobić, “The 2011 Census of Population, Households and Dwellings in the Republic of Serbia THE HOMELESS”, SORS, 2014, available at: <http://publikacije.stat.gov.rs/G2014/PdfE/G20144011.pdf>.

437 Assessment of Absolute Poverty in Serbia in 2018, SIPRU, 2018, available at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2019/10/Assessment_of_Absolute_Poverty_in_2018.pdf.

438 Available at: <https://www.stat.gov.rs/sr-latn/vesti/20201015-siromastvo-i-socijalna-nejednakost-2019/?s=0102>.

439 B. Žarković, M. Petrović, M. Timotijević, “Without a House, without a Home – Results of the research on homelessness in Serbia,” Housing Center – Housing Development Centre for Socially Vulnerable Groups, 2012, available at: https://www.housingcenter.org.rs/download/Research_about_homelessness.pdf.

440 ETHOS covers four categories: roofless, houseless, insecure, and inadequate accommodation, more is available at: <https://www.feantsa.org/download/article-1-33278065727831823087.pdf>.

441 Available at: <https://www.feantsa.org/en>.

their marginalisation, feelings of rejection, stigmatisation and criminalisation. Many of the difficulties faced by the poor are not the consequence of insufficient resources, but of discrimination and disrespect of the principles of social justice.

9.1. Legal Framework

Serbia has ratified over 30 international treaties on economic and social rights. Given this relatively high number of international treaties Serbia incorporated in its legislation, it could be concluded that the legal framework governing this area is relatively satisfactory. However, Serbia is far from applying them in practice, wherefore it comes as no surprise that the protection and improvement of economic, social and cultural rights does not feature as a priority in the state's economic policies and that their importance is for the most part disregarded.

International human rights standards are set out in UN and CoE instruments, which also include rights on prevention of and protection from poverty.

Serbia ratified the Revised Economic Social Charter⁴⁴² in 2009. The Charter devotes a lot of attention to the right to housing, poverty reduction and homelessness prevention measures. Part I of the Charter clearly sets out that everyone is entitled to protection from poverty and social exclusion.⁴⁴³ Under Article 30, States Parties undertake to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance. Pursuant to Article 31 of the Charter, which deals with the right to housing, "[W]ith a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to promote access to housing of an adequate standard; to prevent and reduce homelessness with a view to its gradual elimination; and make the price of housing accessible to those without adequate resources."

Documents⁴⁴⁴ developed under UN auspices also proclaim that everyone has the right to a standard of living adequate for the health and well-being of himself and his family, and set out some of the elements of this right: food, clothing, housing and to the continuous improvement of living conditions. They also impose upon the States Parties the obligation to take appropriate steps to ensure the realisation of this right.

Article 97(8) of the Serbian Constitution proclaims that the Republic of Serbia shall organise and provide for social security and economic and social relations of general interest. Under Article 69 of the Constitution, Under Article 69 of the Consti-

⁴⁴² *Sl. glasnik RS (Međunarodni ugovori)*, 42/09.

⁴⁴³ Part I, para. 30.

⁴⁴⁴ Universal Declaration of Human Rights (Art. 25); International Covenant on Economic, Social and Cultural Rights (Art. 11); Convention on the Rights of the Child (Art. 26).

tution, citizens and families in need of welfare to overcome their social and existential difficulties and begin providing subsistence for themselves shall be entitled to social protection, the provision of which shall be based on the principles of social justice, humanity and respect for human dignity. The Social Protection Act⁴⁴⁵ includes only a general provision entitling all individuals and families in need of social aid and support to overcome their social and existential difficulties and begin providing subsistence for themselves to social protection in accordance with the law.⁴⁴⁶

The 2019–2025 Draft Social Protection Strategy (Draft Strategy)⁴⁴⁷ must be mentioned in the context of homelessness in the Republic of Serbia. Although the idea to regulate this area is commendable, the Draft Strategy suffers from numerous shortcomings. Homeless persons (primary homeless persons) and persons without access to adequate housing (secondary homeless persons) need to be mapped precisely, in accordance with Annex 1 to the Regulation on the European Social Fund,⁴⁴⁸ Furthermore, the Draft Strategy should include data on services extended homeless people by CSOs, the number of such services and the number of beneficiaries; they are almost the only ones focusing on the homeless and are definitely part of the system. The authors of the Draft Strategy should have been guided by the European standard on economic and social rights under which persons without means are entitled to basic income security allowing a life in dignity and effective access to goods and services. The Draft Strategy, for its part, specifies that extreme poverty, hunger, etc. must be eradicated by 2030, but does not specify the instruments by which this strategic goal will be achieved.

9.2. *Institutional Mechanisms and Situation of the Homeless in the Republic of Serbia*

Serbia lacks new and more inclusive policies addressing homelessness. The problem of primary and secondary homelessness was rarely on the public agenda in the past. Consequently, only a small group of CSOs addressed homelessness, while

445 *Sl. glasnik RS*, 24/11.

446 Article 4.

447 The initial version of the Draft Strategy was prepared solely for the Ministry of Labour, Employment and Veteran and Social Issues, within the Support to the Development of Social Welfare Regulatory Mechanisms funded by the EU via IPA 2013. The Social Protection Strategy is a national sectoral strategy (Article 12 of the Planning System Act) and constitutes a social agreement on the development of social protection policies in the forthcoming mid-term period. The Social Protection Strategy responds to social needs and defines the ways for the further development of social protection policies and more effective and efficient interlinking of social protection policies with national developmental priorities and other sectors. More is available in Serbian at: <http://www.zavodsz.gov.rs/sr/aktuelnosti/strategija-socijalne-za%C5%A1tite-2019-2025-konsultacije/>.

448 Regulation (EU) No. 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32013R1304>.

the state's response boiled down to running shelters for adults and the elderly. Only several researches of homelessness have been conducted. There is no national registry of services extended to the homeless; the state has not undertaken any preventive measures against homelessness or systemically assisted the homeless. The state social protection services are extended only in shelters for adults and children. NGOs have also opened various shelters, day centres, mobile services and buses in various Serbian cities. The shelters provide the beneficiaries with meals, health care, psychological aid, donated clothes, the opportunity to wash themselves and their clothes, attend various creative workshops or obtain information.

The BCHR in 2020 conducted a survey of institutions taking in homeless children and adults and the challenges they faced during the COVID-19 pandemic. The staff of institutions in Novi Sad, Vranje, Mala Krsna and Subotica, the Belgrade and Novi Sad shelters, and representatives of the Drumodom project team, took part in the survey. They were interviewed or responded to BCHR's questionnaire. The results of the research are presented below.

9.2.1. Shelters for Adults and the Elderly

9.2.1.1. Belgrade Shelter for Adults and the Elderly

According to the 2011 Census, the largest number of homeless people – 7,129 – were living in Belgrade. The Belgrade Shelter can, however, take in around 150 people. There has been talk of expanding its capacity for years now, but words have not been translated into deeds yet.⁴⁴⁹ A total of 376 people were taken in by the Shelter last year; only 74 of them directly applied for assistance to social care institutions. Estimates of the number of homeless people in Belgrade in 2019 ranged from one to two thousand.⁴⁵⁰

The Shelter suspended admission of new beneficiaries during the state of emergency. It was home to 105 people in April, none of whom contracted COVID-19; the three members of staff that were infected had not been in direct contact with the beneficiaries.⁴⁵¹ Whenever the epidemiological situation deteriorated, the Shelter would go into 15-day preventive lockdown: the staff did not leave the Shelter and worked with the beneficiaries throughout. The Shelter accommodated 82 beneficiaries in July.⁴⁵²

449 *Danas*, "Most homeless in Belgrade living in the New Belgrade and Palilula municipalities," 10 October. Available in Serbian at: <https://www.danas.rs/drustvo/u-beogradu-opstine-sa-najvise-beskucnika-novi-beograd-i-palilula/>.

450 *RTS*, "The homeless are entitled to aid," 19 March 2019. Available in Serbian at: <https://www.rts.rs/page/stories/sr/story/125/drustvo/3449544/beskucnici-imaju-pravo-na-pomoc.html>.

451 *Blic*, "31 children in shelters tested, none of the children or elderly beneficiaries contracted the virus, but some staff were infected," 23 April. Available in Serbian at: <https://www.blic.rs/vesti/beograd/testirano-31-dete-u-prihvatilistima-nema-obolelih-malisana-ni-starijih-sugradana-ali/e2gx2f1>.

452 *Blic*, "Shelter for children under lockdown the next 15 days, special measures introduced in the Shelter for the Elderly as well," 16 July. Available in Serbian at: <https://www.blic.rs/vesti/beograd/prihvatiliste-za-decu-u-izolaciji-narednih-15-dana-i-u-prihvatilistu-za-stara-lica/drjgts>.

The Shelter did not resume normal operations after the state of emergency as had been expected. In November, the A11 Initiative, an NGO focusing on economic and social rights, filed a criminal report against the Shelter Director for refusing to admit a man, who, “upon release from the Emergency Centre, was returned to an abandoned house without water, electricity, heating, doors and windows with open leg sores that needed to be dressed every day.”⁴⁵³ A11 also filed a complaint with the Protector of Citizens. The man was soon admitted to the Shelter, the capacity of which was expanded by another 20 beds.⁴⁵⁴

No-one was admitted to the Shelter in the 15 March-15 October period although the Social Work Centres referred people in need of accommodation to it. The Shelter explained that it did not have an isolation unit for the new arrivals.⁴⁵⁵

9.2.1.2. Novi Sad Shelter for Adults and the Elderly

This Shelter can take in up to 60 beneficiaries; 51 people (39 men and 13 women) were staying in it in November 2020. The beneficiaries were between 40 and 85 years old, most were unemployed, had a secondary education and alcohol or drug addiction problems. Beneficiaries stay in the Shelter around one year on average. The Shelter is manned by 19 employees, including social workers, caregivers, nurses, cleaning ladies, a doctor, psychologist and a hair dresser. The beneficiaries have access to care, meals, health and social services, and occupational therapy.⁴⁵⁶

The Shelter accommodated 92 people from January to November 2020, or less than in 2019,⁴⁵⁷ although, in the experience of the staff, the number of beneficiaries and requests for accommodation were steadily on the rise. The number of new beneficiaries was lower because of the epidemiological situation and the isolation of new arrivals before admission. The Shelter operated all year, and the admission of new beneficiaries was conducted in accordance with the Instructions issued by the Ministry of Labour, Employment and Social and Veteran Issues.⁴⁵⁸ The Shelter had

453 021, “Alarming photo: Injured homeless living in abandoned house rather than in a shelter, A11 filed a criminal report over lock on Shelter’s door,” 12 November. Available in Serbian at: <https://www.021.rs/story/Info/Srbija/258259/UZNEMIRUJUC-FOTO-Povredjeni-beskucnik-umes-to-u-prihvatilistu-zivi-u-napustenij-kuci-A-11-podnela-krivicnu-prijavu-zbog-zatvorenih-vrata-prihvatilista.html>.

454 *Istinomer*, “Shelter opens door to the homeless,” 13 November. Available in Serbian at: <https://www.istinomer.rs/analize/prihvatiliste-otvorilo-vrata-beskucnicima/>.

455 *Infopress*, “Why is the Shelter’s door closed to the homeless, where will they go in the winter,” 2 November. Available in Serbian at: <https://www.infopress.rs/drustvo/zasto-su-vrata-prihvatilista-zatvorena-za-beskucnike-gde-ce-oni-zimus/>.

456 Data and statistics in the report were collected in response the polls and questionnaire BCHR sent this institution.

457 The Shelter accommodated 137 people in 2019.

458 Instructions on Admission of New Beneficiaries by Residential Care Facilities and Residential Care Facilities for Adults and the Elderly. Available in Serbian at: <https://www.minrzs.gov.rs/sites/default/files/2020-05/%D0%98%D0%BD%D1%81%D1%82%D1%80%D1%83%D0%BA%D1%86%D0%B8%D1%98%D0%B0.PDF>.

sufficient quantities of face masks, gloves and disinfectants. One beneficiary and no staff contracted COVID-19 during the year.

9.2.1.3. Niš Shelter

The Gerontology Centre in Niš had a reception unit and shelter for adults. However, a large number of the Centre beneficiaries were infected and 50 of them died of COVID-19, which led to the arrest and indictment of the then Centre Director.⁴⁵⁹ The new Director was appointed in May, when the contract with the City was broken off. The Gerontology Centre has not been officially extending shelter services since because the Ministry of Labour, Employment and Veteran and Social Issues prohibits institutions, such as this one, from working as shelters. Eleven people availed themselves of the Gerontology Centre's services in 2019; 5–6 people used to stay at the Shelter 10–15 days on average.

The decision to accommodate the homeless and destitute in the Day Care Centre for Children, Youths and Adults with Intellectual Disabilities "Mara" in the December 2020–February 2021 period, met with the protests of parents whose children spend time in the Centre in September, even before the decision was adopted and the Centre resumed its work with the children.⁴⁶⁰ The Centre had been closed since March and could not take all the children back in because of the epidemiological situation. Instead of 70 beneficiaries, five groups of five beneficiaries were formed. The parents, inter alia, protested because, in their view, the premises ceded to the shelter could have been used to accommodate the children who used to spend time in the Centre and were now deprived of its services. Niš Deputy Mayor Dušica Davidović said that "the shelter will not accommodate the homeless, only people who cannot heat their houses and apartments during the winter."⁴⁶¹ According to the 2011 Census data, 775 homeless, 699 of them secondary homeless persons, lived in the Niš area.

9.2.1.4. Vranje Shelter for Adults and the Elderly

The Shelter for Adults and the Elderly operates within the Vranje Local Social Protection Development Centre. This is the only shelter in the territory of the Pčinja District, the population of which stands at around 250,000. The Shelter, which can take in 35 people, had 22 residents in November. Most beneficiaries were over 50

459 *Južne vesti*, "Charges filed against former Director of Gerontology Centre in Niš," 2 October. Available in Serbian at: <https://www.juznevesti.com/Hronika/Podignuta-optuznica-protiv-bivseg-direktora-Gerontoloskog-centra-Nis.sr.html>.

460 *NI*, "Parents of children with disabilities protested in yard of the Niš institution," 11 September. Available in Serbian at: <http://rs.n1info.com/Vesti/a638878/Roditelji-dece-ometene-u-razvoju-protestovali-u-dvoristu-ustanove-u-Nisu.html>.

461 *NI*, "Adults in Centre for Children in Niš despite protest," 1 October. Available in Serbian at: <http://rs.n1info.com/Vesti/a655896/Centar-za-boravak-dece-i-odraslih-lica-mentalno-ometenih-u-razvoju-Mara-Nis.html>.

and 60% of them were women. Nearly all the beneficiaries had health problems, and many of them suffered from alcohol or drug addiction. Some beneficiaries were also taking psychiatric medications. All the beneficiaries had IDs or certificates issued by the MIA, a requirement for admission to the Shelter. Most of the beneficiaries did not have a family or the members of their families that could look after them were not living in Vranje. Since Vranje does not have an old people's home, some beneficiaries have been living in the Shelter for 2–3 years now. Seventy percent of the beneficiaries were living in the Shelter for more than six months. The Shelter also often takes in patients released from hospital, who are not in need of 24/7 care.⁴⁶²

The Shelter had around 80 beneficiaries in 2019, like in the previous years. Most of the beneficiaries arrived in the winter, when whole families would come to Vranje from the nearby mountains.

The Shelter had fewer residents in 2020 due to the epidemiological situation. The new arrivals had to produce a negative PCR test taken within the previous 72 hours. The costs of testing were borne by the city. The Shelter admitted new beneficiaries all year. It had at its disposal sufficient quantities of face masks, alcohol and other supplies donated by the city and private companies. COVID-19 entered the Shelter in November, when five beneficiaries and eight members of staff contracted the disease.

9.2.1.5. Smederevo Red Cross Shelter in Mala Krsna

The only Shelter operated by the Serbian Red Cross is situated in Mala Krsna. It was licenced in 2017 and has the capacity to take in 50 beneficiaries. However, it does not accommodate more than 16 beneficiaries at a time because it lacks the funds.

The Shelter had 15 residents in November, although its occupancy rate was frequently much higher than its capacity.⁴⁶³ Men accounted for 60% and women for 40% of the beneficiaries. Most of them had health problems and suffered from multiple diseases. They often lacked IDs and health insurance, wherefore they were unable to exercise their right to welfare.

The Shelter is staffed by 15 workers, including caregivers, nurses, a cleaning lady and a cook. The residents were provided with meals and care, psychosocial workshops and transportation to the doctor.

The number of beneficiaries was on the rise before the pandemic, but then fell because of the PCR test costs. These costs were initially borne by the Social Work Centre and were taken over by the Smederevo City authorities at the initiative of the Red Cross. New arrivals are first referred to an isolation unit, where they spend a fortnight.

462 Data and statistics in the report were collected in response to the polls and questionnaire BCHR sent this institution.

463 The Shelter looked after 30 beneficiaries in January 2020.

The anti-COVID-19 measures were strictly complied with and none of the Shelter staff or residents contracted the disease. The staff worked 14-day shifts. The Shelter had sufficient quantities of protection equipment and disinfectants thanks to donations, primarily those of the Red Cross.

The staff said that the procedures were complicated and bureaucratic. Many of the beneficiaries stayed much longer in the Shelter than the six months they are allowed to before the Social Work Centre issues a ruling on their permanent accommodation. One beneficiary was living in the Shelter for three years. Furthermore, as opposed to other Shelters, people can come to this Shelter even without the referral of the Social Work Centre.

9.2.1.6. Subotica Shelter for the Homeless

The Subotica Shelter operates in the winter months. It is managed by 10 staff, Red Cross and Caritas volunteers and the staff of the Subotica SWC. The Shelter has 20 beds and can add 10 more beds if necessary. Most of the beneficiaries are men over 60, many of whom collect secondary raw materials. A large share of them suffer from addiction diseases. Nearly a quarter of them have no personal documents. The Shelter is usually full; it had 20 residents in 2019 and 16 since the beginning of the year.⁴⁶⁴ Although it is full in the winter period, the Shelter is closed during the rest of the year. The beneficiaries are provided with three meals a day, clothes and footwear, hygiene products, a general check-up and can consult with SWC representatives. None of the Shelter residents or staff were infected by COVID-19.

9.2.1.7. Zrenjanin Shelter for Adults and the Elderly in Crisis Situations, the Homeless and Beggars

The Zrenjanin Shelter for Adults and the Elderly in Crisis Situations, the Homeless and Beggars had 13 residents during the state of emergency. It did not admit new beneficiaries because it was full and lacked an isolation room. The beneficiaries did not leave the Shelter except to see a doctor. The bedridden beneficiaries were accommodated in separate rooms which only the staff could access. Thanks to donations, they had sufficient quantities of face masks, gloves and hygiene items.⁴⁶⁵ Plans to begin the construction of a new Shelter facility were initiated in 2020.

9.2.2. Children in Shelters

According to the 2011 Census, children under 14 accounted for 22.9% and youth under 19 29.4% of the residents of informal settlements. Their numbers were

464 Data and statistics in the report were collected in response to the polls and questionnaire BCHR sent this institution.

465 *Ilovezrenjanin*, "Life of the homeless in the coronavirus era and the state of emergency," 26 March. Available in Serbian at: <https://ilovezrenjanin.com/vesti-zrenjanin/kako-izgleda-zivot-prosjaka-i-beskucnika-u-doba-korona-virusa-i-vanrednog-stanja-prihvatile-za-odrasle/>.

higher in cities, where children under 14 accounted for 24.4% and youth under 19 for 31.5% of the residents of informal settlements.

9.2.2.1. Belgrade Drop-in Centre

The Belgrade Drop-in Centre for Children is a licenced service recognised by the Social Protection Act but it is not part of the state social system. The programme was launched and is managed by the Centre for Youth Integration. There are two Drop-in Centres in Belgrade – one in the Zvezdara and the other in the New Belgrade municipality. Both Centres can take in up to 120 children. In 2020, the Centres extended assistance to 350 boys and girls from 150 families they have been working with for years.⁴⁶⁶

The number of children who came to the Drop-in Centres mostly depended on the weather; more children frequented the Centres when it was cold and during school vacations. However, the number of children coming to the Centres every day surged as of May 2020. An average of 65 children visited the Centres in October 2019; their number doubled in October 2020.⁴⁶⁷ Due to the epidemiological situation, not more than 10 children were allowed in one room. Most of the children coming to the Drop-in Centres are Roma children who are living in informal settlements and whose families collect secondary raw materials. The drop in the prices of secondary raw materials directly exacerbated their difficulties in making ends meet and providing food for their families.⁴⁶⁸

The children who frequent the Drop-in Centres are between 5 and 15 years old. Most of them have birth certificates, PINs and attend primary school. A few of them pursue secondary education – only four of the Centres' beneficiaries went to secondary school in 2020. Children over 16 who do not go to school have the opportunity to acquire new skills and intern within the Café Bar 16 programme and thus increase their employability.⁴⁶⁹

The Drop-in Centre mostly caters to the children's existential needs. They are provided with breakfast, lunch and a snack every day. They can also wash themselves and get clean clothes. The staff help the children and their families get in

466 Data and statistics in the report were collected in response to the polls and questionnaire BCHR sent the Centre for Youth Integration.

467 *N1*, "Infamous record: 112 children came to Drop-in Centre for Children, cause – poverty," 8 October. Available in Serbian at: <http://rs.n1info.com/Vesti/a658428/Svratiste-za-decu-rekord-siromastvo.html>.

468 *Blic*, "Pictures from the Roma settlement in Belgrade: Enis' wife left him WITH FIVE CHILDREN and corona took the little they had, 20 October. Available in Serbian at: <https://www.blic.rs/slobodno-vreme/slike-iz-romskog-naselja-u-beogradu-enisa-je-zena-ostavila-sa-petoro-dece-a-korona-im/eyezg5k>.

469 Café Bar 16 is a social enterprise launched in late 2017 to improve the employability of youth living and working in the street after they leave the Drop-in Centre. See more at: <https://cim.org.rs/en/programs/>.

touch with the institutions, mostly the SWCs, to obtain documents and certificates, and to see a doctor.

The Centre said that there was still room for improving cooperation with state institutions and that cooperation was mostly based on their personal contacts with the civil servants. There has been a visible change in the families' perceptions of the Centre: they used to perceive it as a "threat", whereas now they perceive them as associates. The situation with health professionals is similar. Unfortunately, children often have an easier time accessing primary health services if a Centre employee or volunteer accompanies them to the out-patient health clinic than if they are accompanied by a family member. Education is another important activity. The children are provided with study support and assistance in doing their homework in the Centres. The staff also facilitate the children's enrolment and communication with the schools and teachers. At the beginning of the school-year, they help the children obtain textbooks and school supplies. Children can attend various workshops in the Drop-in Centres and the Centre staff facilitate their integration by organising various activities, including visits to the zoo, cinema and the theatre, and activities involving children not coming to the Drop-in Centre. There is also a field team, which regularly visits the informal settlements and other locations where the children are living or working.

Thirteen members of staff work with the children. They include social workers, special needs teachers, psychologists, counsellors, adult education experts, peer educators and health professionals. The Centre also has hygienists on staff, while the financial and administrative duties are performed by the relevant Centre for Youth Integration employees.

Private citizens have been helping the Drop-in Centres a lot. They usually bring clothes, footwear, hygiene items, towels, bed linen, sweets, school supplies, etc. Private and state companies have been helping the Centre as well. In 2020, the Centre was donated face masks, alcohol and disinfectants and bought the rest itself.

During the state of emergency, the Centre staff stayed in touch with the families by phone. Most of the families complained that their children had nothing to eat or wear during this period, so the staff brought food and hygiene packages to the informal settlements.

The interviewed staff highlighted two major problems they faced during the year. The first was absence of systemic support. With the exception of some CSOs, no-one expressed any concern or proposed any solutions for people living in informal settlements, which often lack both electricity and water, during the state of emergency or after it. The second problem concerns education and the challenges of remote learning. Most children coming to the Drop-in Centres are in need of study and learning support even in normal circumstances. Many children were unable to follow class after the switch to online and TV schooling. Furthermore, they could not avail themselves of study support in the Centres during the state of emergency.

One member of staff and three beneficiary families contracted COVID-19 during the year. The Centre delivered food and packages to the families whose members were infected.

9.2.2.2. Novi Sad Drop-in Centre for Children and Youth

The Novi Sad Drop-in Centre has one room that can fit 30 children. The children frequenting the Centre are between 5 and 19 years old; younger children also come, in the company of their older siblings or parents. Most of the children come from families that have been availing themselves of the Centre's services for a longer time. Most of the children coming to the Centre live in one of the following four informal settlements: Veliki rit, Bangladesh, Adice and Shanghai. Most of the children speak Roma, while some speak Albanian. Around 90% of the children have PINs and health cards. When children without personal documents show up, the Centre staff contact the NGO Praxis, which extends legal aid to people without personal documents.

Most children attend primary school. Lessons are organised in the Centre for children who have dropped out of school. Only a few children pursue secondary education, one child a year on average.

The children are provided with three meals a day in the Drop-in Centre. They can wash themselves, change their clothes and receive clean clothes and footwear. They are also provided with study support and help in completing their homework. The Drop-in Centre organises various educational, creative and sports activities for the children. The Centre staff regularly communicate with the children's schools and teachers. They also help the children contact other state institutions in order to access various services. If necessary, the staff take the children to see a doctor. The Drop-in Centre has psychologists, counsellors, social workers and cleaning ladies on staff, who are assisted by volunteers.

The Drop-in Centre was closed during the state of emergency and reopened in mid-May. Although the children could not frequent it, it received donations, mostly food and hygiene packages, which it further distributed to the children and their families. The Centre staff also mediated between the schools and the children. The teachers sent the children their homework via the Centre e-mail and the staff then forwarded it on to the children. The number of children allowed in the Centre has been halved in response to the pandemic. The staff thus divided the children into "rooms" so that as many children as possible can benefit from the Centre's services. Weekends are the greatest problem, when one on duty counsellor has to organise activities in several rooms at the same time. The Centre has sufficient quantities of face masks, hygiene products and disinfectants, mostly donated by the SWC. The Centre also receives donations from private citizens and companies. However, it cannot receive financial donations since it does not have its own giro account.

9.3. CSOs' Response to the Homelessness Problem

9.3.1. Drumodom

The Drumodom programme implemented by the humanitarian organisation ADRA is unique in the Western Balkan region. A modified bus has been providing showers and toilets, laundry and haircuts, as well as free medical and counselling services to the homeless and at various locations in Belgrade since June. The project "Hygiene, prevention and health care for homeless people in Belgrade during COVID-19" was designed in response to the increased health risks the homeless are exposed to. The programme provides laundry services, distributes clothes and footwear, extends health advice, refers the homeless to health centres if necessary, covers the costs of their treatment, issuance of personal documents and health insurance.

The Drumodom bus has been parked at one of the two locations in Belgrade since the summer. When necessary, the bus also went to informal settlements, while the field staff worked across the city on workdays. Drumodom is staffed by two social workers, four health professionals, two drivers and two people extending hygiene services. An average of 20 homeless people asked the Drumodom for help every day. Nearly 95% of them were men between 55 and 60 years of age. Almost three quarters of the beneficiaries suffered from addiction and mental illnesses or mild psychological problems. Most of them also had chronic diseases. Forty percent did not have personal documents. Most of the homeless regularly used the Drumodom services. The beneficiaries found out about the Drumodom from ADRA's field workers and other organisations, each other, SWC staff or via the media. The number of beneficiaries steadily increased from one month to another.

Drumodom distributed packages of canned food and hygiene packages, specifically face masks and disinfectants, at various locations in Belgrade or near the beneficiaries' dwellings from March to June 2020. Such packages were also distributed to residents of informal settlements. As of June, Drumodom started extending medical services, and stepped up preventive and hygiene services. Although the Belgrade Shelter did not admit new beneficiaries, the Drumodom staff found alternative accommodation for the most vulnerable people and housed some of them in cooperation with the Seventh-Day Adventist Church. Furthermore, the organisation increased its support to beneficiaries in the field, which included visiting locations where the homeless lived and extending them assistance directly. The staff had sufficient quantities of face masks, gloves and disinfectants. One beneficiary was hospitalised after he was diagnosed with COVID-19. None of the staff contracted the disease. Drumodom received donations during the year, from individuals, private companies and NGOs.

9.3.2. *Izlazak Association's Day Club*

The association *Izlazak* operates a Day Club in Zemun for disadvantaged and homeless people with addiction problems. The Club was open three hours twice a week and visited by around 20 people every time. They could take a shower there and help themselves to warm beverages; they were also provided with psycho-social support and with help and mediation in accessing health, educational, welfare and legal services.⁴⁷⁰

9.4. *Situation of the Homeless during the State of Emergency and the COVID-19 Pandemic*

The state of emergency, introduced in Serbia on 15 March 2020 in response to the COVID-19 pandemic, was lifted on 6 May. People were prohibited from leaving their homes during the curfew (prohibition of movement), the duration of which varied. The question of what would happen to people who did not have a home arose. The state of emergency exacerbated the situation of the homeless. Many of them do not have access to water or a healthy diet and suffer from chronic diseases; their immune systems are already compromised and they are constantly exposed to the risk of contracting the virus. They received information about the disease from the passers-by and each other. The Belgrade Shelter did not admit new residents; the public fountains and toilets were closed.

Residents of informal settlements, estimated at around 25,000, were also at grave risk.⁴⁷¹ Most of them do not have access to potable water and/or electricity. They lacked water during the curfew and had major difficulties maintaining their personal hygiene. Furthermore, most of them earned money by collecting secondary raw materials or begging, which meant that they could not earn any money when they were locked down.

The Belgrade City Social Protection Secretariat recommended the suspension of all daily welfare services. Consequently, the Drop-in Centres closed,⁴⁷² while the Shelter for Adults and the Elderly and the Shelter for Children continued operating. However, the Shelter for Adults and the Elderly did not take in new beneficiaries.

470 *Biram oporavak*, "Izlazak Association improved Day Club in Zemun," 23 June. Available in Serbian at: <http://www.biramoporavak.com/23-06-2020-srbija-udruzenje-izlazak-unapredilo-dnevni-klub-u-zemunu/>.

471 *Radio Free Europe*, "Pandemic and substandard settlements: 'We have neither soap nor detergent,'" 25 March. Available in Serbian at: <https://www.slobodnaevropa.org/a/pandemija-neuslovna-naselja/30508525.html>.

472 *Insajder*, "Drop-in Centres for 'street children' closed because of coronavirus: kids left without regular meals and hygiene items (VIDEO)," 22 March. Available in Serbian at: <https://insajder.net/sr/sajt/tema/17447/>.

People in need of help during the state of emergency contacted various organisations: *Liceulice*, *Drumodom*, *Izlazak*, Roof over our Heads and the Faith Charity Stewardship, which distributed free meals to the homeless and extended them psycho-social support. The campaign “Homeless Selling *Danas*” was launched in late April; the “vendors” kept all the money from the sale of the independent Belgrade daily.⁴⁷³

In April, the Serbian Government adopted a Decree⁴⁷⁴ on the payment of one-off aid in the amount of €100 (in RSD) to all adult Serbian nationals. The money was directly paid to pensioners and welfare beneficiaries registered in the SWC records. However, anyone who wanted to withdraw the money had to have a valid ID. Given that not all homeless are registered with the SWCs, that some of them do not have valid documents and that many have mental issues, the question arises whether they were actually able to exercise their right to this aid.

9.5. UN Recommendations

During the first wave of the pandemic in the spring, the UN Special Rapporteur on extreme poverty and human rights warned that most states were not doing enough to protect the poor, who were the most vulnerable. He said that the coronavirus was poised to wreak havoc in poorer countries and that the pandemic exposed the bankruptcy of social support systems in many countries.⁴⁷⁵ The UN Special Rapporteur on the right to adequate housing said that “housing has become the front line defence against the COVID-19 outbreak” and that “[B]y ensuring access to secure housing with adequate sanitation, States will not only protect the lives of those who are homeless or living in informal settlements but will help protect the entire world’s population by flattening the curve of CV19.”⁴⁷⁶ UN experts also said that “[A]s washing hands with soap and clean water is vital in the fight against

473 *Danas*, “Citizens joining in *Danas* campaign of donating newspaper to homeless,” 11 May. Available in Serbian at: <https://www.danas.rs/drustvo/gradjani-se-ukljucuju-u-danasovu-akciju-doniranja-novina-beskucnicima/>.

474 At its session on 24 April 2020, the Serbian Government adopted a Decree on the Establishment of a Temporary Register and Payment of One-off Financial Aid to All Adult Nationals of the Republic of Serbia to Reduce the Negative Effects of the COVID-19 Pandemic Caused by the SARS-CoV-2 Virus (*Sl. glasnik RS*, 60/20). The Decree was adopted to implement Article 15 of the Decree on Fiscal Benefits and Direct Benefits for Private Companies and Financial Aid to Citizens to Alleviate the Economic Effects of COVID-19 (*Sl. glasnik RS*, 54/20 and 60/20), providing for the payment of financial aid in the amount of €100 (in RSD) and specifying that the payment procedure and requirements would be regulated in greater detail by the Government.

475 OHCHR, “Responses to COVID-19 are failing people in poverty worldwide” – UN human rights expert, 22 April. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25815&LangID=E>.

476 OHCHR, “Housing, the front line defence against the COVID-19 outbreak, says UN expert”, 18 March. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>.

COVID-19, governments worldwide must provide continuous access to sufficient water to their populations living in the most vulnerable conditions.”⁴⁷⁷

9.6. Conclusion

The 2014 publication *Homeless* analysed the data collected within the 2011 Census and the demographic and socio-economic features of the homeless.⁴⁷⁸ It could be a good baseline for designing strategies and policies addressing homelessness, an issue which is still ignored.

The number of homeless people has been growing every year. EU research shows that at least 700,000 people are homeless, an increase of 70% over a decade ago. Their numbers are likely to grow in light of the economic crisis brought on by the COVID-19 pandemic, which has affected the poor the most. Estimates are that over 10% of Serbia’s population are socially vulnerable and poor.

In April 2020, CSOs proposed to the Government measures for preventing and dampening the impact of COVID-19 on socially excluded and particularly vulnerable categories of the population.⁴⁷⁹ The Roof over Our Heads organisation called on the state and the Crisis HQ to adopt urgent measures to help the homeless.⁴⁸⁰ One of them was to provide access to water to the homeless and residents of informal settlements by deploying water cisterns, like in the summer months, and provide the homeless with enough bars of soap. However, the state did not take any measures to protect the most vulnerable categories of the population.

The state’s disregard of the most vulnerable is best illustrated by the fact that children frequenting the Drop-in Centres were left without any opportunity to wash themselves, get clean clothes or wholesome meals when the Centres were closed during the state of emergency. Furthermore many children living in informal settlements without electricity, TV or the Internet were unable to follow online classes. Another issue that arose was how these children were graded at the end of the 2019/2020 school-year since all the tests were online. Furthermore, most of them need study support and help in doing their homework, which their parents cannot

477 OHCHR, “COVID-19 will not be stopped without providing safe water to people living in vulnerability – UN experts,” 23 March. Available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25738&LangID=E>.

478 Assessment of Absolute Poverty in Serbia in 2018, SIPRU, 2018, available at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2019/10/Assessment_of_Absolute_Poverty_in_2018.pdf.

479 The measures the NGO A11 Initiative forwarded to the Government are available in Serbian at: https://www.a11initiative.org/wp-content/uploads/2020/04/PREDLO_1.pdf.

480 *Espresso*, “Roof over Our Heads sends a strong message to Serbia: You’ve forgotten the poor and homeless during the crisis, this is an appeal to everyone,” 23 March. Available in Serbian at: <https://www.espreso.rs/vesti/drustvo/530417/iz-krova-nad-glavom-imaju-jaku-poruku-za-srbiju-zaboravili-ste-siromasne-i-beskucnike-u-krizi-ovo-je-poziv-za-sve>.

not provide them. Such assistance, provided in the Drop-in Centres, was not available during the two-month state of emergency.

The inconsistent practices of institutions charged with helping and accommodating the homeless came to the fore during the pandemic. While some Shelters continued operating and admitting new beneficiaries in accordance with the recommendations and in compliance with the anti-COVID-19 measures, the Belgrade Shelter did not admit any new beneficiaries for over six months. On the other hand, the Niš Shelter, which was shut down in the spring, reopened in a temporary facility in December.

The Shelters have been full and frequently overcrowded in wintertime for years now. Shelter services are still unavailable in many Serbian cities and municipalities despite the evident need to increase the number of institutions and the capacity of the existing ones to accommodate people living in homelessness. Furthermore, most Shelter residents have been waiting more than six months, some even more than a year, for the state to provide them with permanent accommodation or other adequate housing. Needless to say, the Shelters are unable to take in other potential beneficiaries.

The state should develop consistent policies and various kinds of assistance, including continuous mentoring support, to the homeless to empower them to overcome homelessness. Shelter services must be strengthened, their capacity and services must be clearly presented to the public and available to the beneficiaries. Prevention of homelessness should be elaborated in greater detail by the relevant strategies. They should define homelessness more clearly and distinguish between primary and secondary homelessness, whilst neglecting neither. Finally, an effective social housing system and new social protection services for the homeless need to be developed.

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.
- ILO Convention No. 159 concerning vocational rehabilitation and employment of persons with disabilities, *Sl. list SFRJ (Međunarodni ugovori)*, 3/87.
- 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 and 2/06.
- 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 amending the Convention for the Protection of Individuals with regard to the Processing of Personal Data (Convention 108+), *Sl. glasnik RS (Međunarodni ugovori)*, 4/20.
- 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

Serbian Human Rights Legislation 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*, 128/20.
- 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, 68/20–4 and 136/20.
- 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.
- Act on the Fundamental Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers, *Sl. glasnik RS*, 18/20.
- Act on the Election of Assembly Deputies, *Sl. glasnik RS*, 35/00, 57/03 – CC decision, 72/03 – other law, 75/03 – corr. of other law, 18/04, 101/05 – other law, 85/05 – other law, 104/09 – other law, 28/11 – CC decision, 36/11, 12/20 and 68/20.
- Act on the Election of the President of the Republic, *Sl. glasnik RS*, 111/07 and 104/09 – other law.
- Act on the Employment of Aliens, *Sl. glasnik RS*, 128/14, 113/17 and 50/18.
- Act on the Enforcement and Security of Claims, *Sl. glasnik RS*, 106/15, 106/16 – authentic interpretation, 113/17 – authentic interpretation and 54/19.
- Act on the Judicial Academy, *Sl. glasnik RS*, 104/09, 32/14 – CC Decision and 106/15.
- Act on the Military Security Agency and the Military Intelligence Agency, *Sl. glasnik RS*, 88/09, 55/12 – CC Decision and 17/13.
- Act on the Organisation of Courts, *Sl. glasnik RS*, 116/08, 104/09, 101/10, 31/11, 78/11, 101/11, 101/13, 106/15, 40/15, 13/16, 108/16, 113/17 and 87/18.
- Act on the Professional Rehabilitation and Employment of Persons with Disabilities, *Sl. glasnik RS*, 36/09 and 32/13.
- Act on the Protection of Participants in Criminal Proceedings, *Sl. glasnik RS*, 85/05.
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The years-long deterioration of socio-political conditions for the realisation of human rights continued in 2020. Economic difficulties pushing many citizens to the brink of poverty, widespread crime and corruption, populist rhetoric lying at the heart of and driving political activity due to the political elites' inability to address core national issues, all this has turned Serbia, a country apparently stuck in transition forever, into a community of widespread prejudice and stereotypes and great social distance towards specific groups of the population. In Serbia's totally politicised society, scoring of cheap political points has led to a deluge of hate speech in public discourse.

The year 2020 was marked by a pandemic of the COVID-19 virus, but also by the measures taken by the government to prevent its spread, primarily the introduction of a state of emergency during which many citizens' rights were derogated. Disproportionate restrictions of the freedom of movement, which can be qualified as deprivation of liberty under international standards in case of the elderly, attempts to centralise the provision of information under a Conclusion prohibiting the publication of information from any other sources except official ones, limitations of the right to a fair trial, potential double jeopardy for non-compliance with the measures restricting the freedom of movement, were just some of the measures trampling on the principles of rule of law and human rights. Measures, which should have yielded clear results in containing the pandemic and provided the population with clear guidance on how to behave in the situation, were more tailored to the political than the epidemiological situation in the country.

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