Belgrade Centre for Human Rights

HUMAN RIGHTS IN SERBIA

2021

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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Series
Reports

HUMAN RIGHTS IN SERBIA 2021
LAW, PRACTICE AND INTERNATIONAL
HUMAN RIGHTS STANDARDS

Publisher
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Circulation
200 copies

ISBN 978-86-7202-230-8

Prepress and printing
Dosije studio, Belgrade

HUMAN RIGHTS IN SERBIA 2021

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Belgrade Centre for Human Rights
Belgrade, 2022

Embassy
of the Federal Republic of Germany
Belgrade

The research for and the production and translation of this Report were supported by the Ministry of Foreign Affairs of the Federal Republic of Germany through the Embassy of the Federal Republic of Germany in Belgrade

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Abbreviations

2010–2020 Reports	BCHR 2010-2020 Annual Reports on Human Rights in the Republic of Serbia
ADA	Administrative Disputes Act
AEAD	Act on the Election of Assembly Deputies
ANEM	Association of Independent Electronic Media
AP	Action Plan
APV	Autonomous Province of Vojvodina
ATPA	Asylum and Temporary Protection Act
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
CEPRIS	Judicial Research Center
CESCR	Committee on Economic, Social and Cultural Rights
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 Commissioner	– Commissioner for the Protection of Equality
ESC	– Revised European Social Charter
EU	– European Union
FAIPIA	– Free Access to Information of Public Importance Act
FNRJ	– Federal People's Republic of Yugoslavia
FRY	– Federal Republic of Yugoslavia
GAPA	– General Administrative Procedure Act
HJC	– High Judicial Council
HLC	– Humanitarian Law Center
ICCPR	– International Covenant on Civil and Political Rights
ICESCR	– International Covenant on Economic, Social and Cultural Rights
ICTY	– International Criminal Tribunal for the Former Yugoslavia
IEP	– Individual Education Plan
IJAS	– Independent Journalists' Association of Serbia
ILO	– International Labor Organization
JAS	– Journalists' Association of Serbia
JJA	– Juvenile Justice Act
KRIK	– Crime and Corruption Reporting Network
LGBTI	– Lesbian, Gay, Bisexual, Transgender and Intersex Persons
LSG	– Local Self-Government
MDRI-S	– Mental Disability Rights Initiative
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
SaM	–	Serbia and Montenegro
Serbia 2021 Report	–	Commission Staff Working Document Serbia 2021 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2021 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, subsequently, the Republic of Serbia)
Sl. list	–	Official Herald (of the SFRY, FRY and, subsequently, Serbia and Montenegro)
SNS	–	Serbian Progressive Party
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
UN	–	United Nations
UNDP	–	United Nations Development Programme
UNHCR	–	United Nations High Commissioner for Refugees
UNICEF	–	United Nations Children's Fund
UPR	–	Universal Periodic Review
Venice Commission	–	European Commission for Democracy through Law of the 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).

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The 2021 Report reviews legislation that was in force in 2021 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 2021, 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, among others, 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*, *Cenzolovka*, *Krik*, *Raskrikavanje*, *Istinomer*, *Nova.rs*, *Insajderonline.rs*, as well as the *Voice of America*, *Radio Free Europe* and *Deutsche Welle* in Serbian, and other.

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, Lana Avakumović, Tamara Branković, Dragana Ćirić Milovanović, Sara Dereta, Jelena Ilić, Vladica Ilić, Sofija Mandić, Nina Miholjčić, Dušan Pokuševski, Dragan Popović, Ivan Protić, Sanja Radivojević, Vlado Radulović, Vuk Raičević, Goran Sandić, Anja Stefanović, Miloš Stojković, Vlada Šahović, Višnja Šijačić, Miloš Tasovac, Duška Tomanović, Ana Trifunović Ana Trkulja and Nevena Vučković Šahović.

Finally, we would like to express our gratitude to the Ministry of Foreign Affairs of the Federal Republic of Germany and the Embassy of the Federal Republic of Germany in Belgrade for financially supporting the production and translation of this Report and thus helping us make it available to the public. We perceive this support as appreciation of our years-long endeavours to regularly monitor the human rights situation in Serbia and contribute to its advancement.

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

Editor
Dušan Pokuševski

Socio-Political Conditions for the Realisation of Human Rights

Exposed to constant internal political tensions, traumatised by everyday incidents, scandals and verbal and physical violence, Serbia has become a deeply polarised society in which the citizens are forced to seek protection of their rights outside institutions, in the absence of functional institutional mechanisms of protection. The year behind us was marked by numerous protests, strikes and other forms of organisation, the last recourse of citizens whose rights were jeopardised or violated. 2021 was also marked by the process of amending the constitutional provisions on the judiciary, ending with the adoption of the amendments by the National Assembly and their endorsement at a referendum held on 16 January 2022. Nevertheless, the government' persistent refusal to engage in meaningful dialogue, above all with the citizens, remained the crucial problem permeating all social processes and manifesting its most drastic forms and effects in the field of human rights.

The numerous problems concerning the rule of law, alerted to also by the European Parliament and European Commission, exacerbated by the increasingly manifest primacy of the executive undermining the separation of powers and the breakdown of the institutions, continued in 2021. This assessment was corroborated by the results of the World Justice Project survey – Serbia ranked 81st among 139 countries on its Rule of Law Index.

The adoption of the Referendum and People's Initiative Act on 25 November and its amendment on 10 December is perhaps the most illustrative example of the fragility of the fundamental principles underlying the national legal order. The very fact that the new law was amended 16 days after it was adopted indicates that there are serious problems in the work of the legislative branch. The entire legislative process, from the development of the preliminary draft, the simulation of the public debate on it, to numerous attempts to sidestep international standards and ignore public opinion, testifies to the collapse of democracy, rule of law and commitment to European principles and values. The Preliminary Draft of the Act, presented by the Ministry of State Administration and Local Self-Governments in June, brought into question the very essence of civil sovereignty. Even more troubling are the following facts: that the legislator ignored the Constitution and fundamental international and European standards when it developed the law, that the government did not want to engage in public consultations despite numerous appeals, initiatives and petitions, that the MPs voted as they were told, that the President promulgated the law, probably on the advice of his team and in disregard of public opposition, and defended it until they realised the extent of public resolve at the protests. The U-turn that ensued merely confirmed that the Serbian institutions were in shambles. Just one

message from the President was enough for the Government and MPs to let go of their hard-core opinion, which they adamantly expressed for nine months, mostly by ignoring those in whose name they are running the country.

The Serbian authorities paid no heed to the explicit recommendations the Venice Commission made in its Opinion on the draft referendum law: that the fundamental aspects of referendum law should not be open to amendments to be applied during the year following their enactment and that the next referendum should be held late enough to make the revised law really applicable to it. Slightly over a month after the adoption of the Referendum and People's Initiative Act, the citizens had the opportunity to vote at a referendum on amendments to the constitutional provisions on the judiciary. In addition to the haste with which the Act was prepared and voted in, public opinions were also divided on the reach of the proposed amendments. While the government representatives and members of the Working Group were satisfied with the improved amendments, their critics warned that they could not achieve the main goal – preclude the legislative and executive branches from influencing key judicial decisions. Experts agreed that the Act on the Amendment of the Constitution had its good points: it removed the three-year probationary periods for judges and provided judges and prosecutors with the opportunity to themselves elect their representatives in the judicial and prosecutorial councils. The impression, however, remained that the chance was missed to introduce in the Constitution itself stronger guarantees of the separation of powers and independence of the judiciary and lessen the risk of politicisation of the two judicial councils, as the Venice Commission also noted in its Opinion. The provisions that elicited the most criticism concern the composition of the High Prosecutorial Council, which will comprise 11 members: five public prosecutors elected by their peers, four prominent lawyers elected by the National Assembly, the Supreme Public Prosecutor and the Minister of Justice. This is in contravention of the objective set out in the Chapter 23 Action Plan, under which at least 50% of HPC's members are to be elected from amongst the ranks of public prosecutors. The mechanism for electing prominent lawyers to the judicial and prosecutorial councils also gave rise to public polemics. The Act provides for the adoption of the main laws governing the status of judicial bodies within one year from the day the constitutional amendments enter into force. The process of amending the set of judicial laws governing in detail the new constitutional solutions will be extremely important given that the risk of political influence on judges and prosecutors remains alive.

The European Commission also noted in its Serbia 2021 Report the necessity of amending the laws on judicial and prosecutorial councils to empower them to fully assume their independent role to proactively defend judicial independence and prosecutorial autonomy. It qualified Serbia's progress in Chapters 23 and 24 as limited, warned that the political climate remained polarised, that inflammatory language against political opponents and representatives of other institutions expressing diverging political views was still used during parliamentary debates, and that the institutions needed to improve their cooperation with civil society. Some of the activ-

ities envisaged by the action plans, in particular the Chapter 23 Action Plan, which were implemented in 2021 should have actually been implemented a long time ago; the quality of documents developed in non-participatory processes remains dubious.

The European Commission concluded in its Report that the opening benchmarks in Clusters 3 and 4 were fulfilled and recommended they be opened. The Government commendably established the Coordination for Conducting Talks on the Republic of Serbia's Accession to the European Union and the Negotiations Support Team. The appointment of the Minister of European Integration as the chief negotiator ended a nearly two-year long period during which no-one headed Serbia's negotiating team. Cluster 4 – the Green Agenda and Sustainable Connectivity and comprising four chapters – was opened at the Intergovernmental Conference on 14 December. Serbia has opened talks on a total of 20 chapters to date; talks on two chapters have provisionally closed, while talks on another 13 chapters are yet to be opened.

The EC also said in its Serbia 2021 Report that Serbia has achieved some level of preparation in the area of environment and climate change. It, however, clearly recommended to Serbia to ensure strict adherence to rules on environmental impact assessment, close non-compliant landfills, increase investments in waste reduction, separation and recycling, and improve air and water quality, including through phasing out coal.

The general opinion is that Serbia still lags substantially behind European and global trends despite its headway in adopting environmental legislation. Serbia ranked 9th on the global list of pollution-related deaths and 1st on the list of European countries by death rates from combined pollution risk factors.

Such a situation and lack of interest of the authorities to take urgent steps to address numerous environmental problems prompted environmental protests across Serbia throughout the year. An "environmental uprising" was launched on 10 April, when citizens and activists of over 80 environmental organisations rallied in Belgrade. They made 13 demands to the relevant state institutions, including: compliance with the Constitution and the law; alignment of the legislation with the highest environmental standards; halt to the construction of SHPPs and revision of harmful SHPP projects; water preservation; forest protection, halt to felling trees in protected areas, forestation, et al. Thousands of people rallied again in Belgrade on 11 September at the Uprising for Survival protest against the government's attitude towards environmental protection.

The "Jadar" project, envisaging Rio Tinto's mining of lithium and borate in the vicinity of Loznica, became the most important issue of the environmental protests. Although the Serbian authorities denied they had struck any deal with Rio Tinto, in December, the media published the Memorandum of Understanding the Serbian Government signed back in 2017 with this company recognising the Jadar project as a priority geological exploration project and its willingness to provide all the requisite licences for lithium mining and processing.

The protests climaxed at the end of the year after the National Assembly adopted the Referendum and People's Initiative Act and the amendments to the Expropriation Act. Large numbers of people of various political affiliations rallied in the streets of Serbian cities, blocking the main roads and junctions in the country. The incidents during the blockades led government officials and tabloids to brand the protests as purely political; they went so far as to claim that they had been staged to cause a civil war. The incidents and physical altercations during the blockade of the Šabac bridge were the hallmark of the November traffic blockades.

The police cordon withdrew from the blocked Sava Bridge in Šabac just before the protest was scheduled to end and two minutes before an extractor intent on ploughing into the protesters headed towards the crowd. It was followed by a group of men who attacked the protesters with the hammers and wooden poles they were carrying, giving rise to reasonable suspicion that the assailants were in collusion with the police, which left the protesters at their mercy. None of the assailants have been prosecuted yet. Nor have the (non-)action and liability of the police been investigated.

No indictments have been filed against any police officers who physically abused people taking part in the July 2020 protests. An analysis of the prosecutors' actions in these cases revealed numerous deficiencies.

In August 2021, the MIA published the Preliminary Draft of the new Internal Affairs Act, which CSOs and experts unanimously qualified as extremely harmful to human rights and freedoms. In addition to the provisions entitling the MIA to implement massive biometric surveillance of public spaces, which caught the eye of most of the public, the Preliminary Draft suffered from a number of other deficiencies undermining any efforts to suppress police torture and ill-treatment. As opposed to the valid Police Act, the Preliminary Draft did not include the right of citizens to require that a person they trust be present during the exercise of police powers. It also prohibited the "publication of data on the identity" of officers exercising police powers and greatly undermined the independence of the Internal Control Sector. The Preliminary Draft was withdrawn soon after the conclusion of the public debate. The Minister of Internal Affairs publicly said that it was withdrawn at the request of the Serbian President.

The Preliminary Draft of the Internal Affairs Act was not the only law that was withdrawn. So was the Act Amending the Water Act adopted by the National Assembly, after the President refused to promulgate it in response to major public pressures. A similar fate befell the Referendum and People's Initiative Act. No meaningful public debate had been held on any of these pieces of legislation. Experts and civic associations were generally not involved in the drafting of laws and strategic documents; even when they were, the legislator ignored their suggestions and proposals.

The authorities not only ignored the human rights organisations, but frequently targeted them as well. The social climate in which CSOs were branded trai-

tors serving foreign interests and campaigns condoning violence as a legitimate way of opposing CSO actions persisted in 2021.

Freedom of the media remained one of the most jeopardised rights in Serbia. The situation on the media stage continued deteriorating. The number of attacks and pressures against journalists increased, the authorities intensified their rhetoric against impartial media and lavished funding on pro-government outlets, the very same ones that were the subject of most complaints of violations of the press code of conduct, the law and ethical principles.

It thus came as no surprise that Serbia remained in the category of countries in which fundamental freedoms are obstructed on CIVICUS' Index, in which civic space has drastically been narrowed and individuals and organisations criticising the authorities are threatened.

Such threats and attacks against CSOs, as well as journalists, activists and others critical of the government, frequently came from MPs. The session chairs never used the opportunity to condemn such statements, while the MP Code of Conduct, adopted in late 2020, joined the long list of non-functional mechanisms.

The absence of constructive debates is the only way to describe the work of the 12th convocation of the National Assembly, which was destined to dissolve early. President Vučić's unprecedented statement of October 2020 – that the Government's and parliament's terms in office would be shorter and that early parliamentary elections would be held – was confirmed by the October Agreement on Improving the Conditions for Conducting Elections forged without the facilitation of the European Parliament.

The work of this convocation of the parliament, the mandate of which lasted a mere 16 months, was characterised by extremely intensive legislative activity compared with its predecessors. Over 200 enactments were adopted at 32 regular and 14 extraordinary sessions held from October 2020 to end November 2021. However, the pace of the legislative activities and the quality of the adopted legislation were dictated by the executive. As many as 99% of the laws were submitted for adoption by the Serbian Government and nearly 70% of them were voted in without any amendments by the MPs. The people's deputies continuously proved that their role was to merely amen the Government's laws, giving rise to the impression that the parliament merely served to fulfil the Government's legislative needs. Such a practice testifies not only to the poor quality of the laws, the consequence of the non-transparent and almost "privatised" legislative process in which public interests and concerns are not promptly taken into account, but also to the breakdown of the principle of the separation of powers.

The parliament's attitude towards independent human rights institutions was also concerning. Their 2020 reports finally made the agenda at the very end of 2021. Although the National Assembly reviewed, at least formally, the reports of independent bodies representing its prolonged arm in human rights protection for

the second year running, the impression remained that it did not treat their role and recommendations for advancing human rights with sufficient gravitas.

In late May 2021, the parliament adopted amendments to the Anti-Discrimination Act. This law now prohibits discrimination also on grounds of sexual characteristics (thereby recognising intersex persons for the first time in Serbian law); prohibits sexual and gender harassment, incitement to discrimination and segregation; obligates employers to take measures for achieving equality in cases determined by law; prohibits discrimination in housing; entitles the National Assembly to initiate the procedure for the election of the new Equality Commissioner three months before the expiry of the term in office of the incumbent, who will remain in office until the new Equality Commissioner is elected; elaborates when the Equality Commissioner shall not act on a complaint, etc.

The development of the Preliminary Draft Act on Same-Sex Unions, initiated by the Ministry of Human and Minority Rights and Social Dialogue in early 2021, was met with strong resistance by a number of public figures and officials. The Preliminary Draft was not forwarded to the Government for approval or, consequently, to the parliament for adoption. The standstill is attributed to a statement by the Serbian President, who said that he could not promulgate a law governing same-sex unions because such legislation would be in contravention of the Constitution. The Constitution defines marriage as a union between a man and a woman, but the Preliminary Draft Act on Same-Sex Unions does not govern marriage at all.

Serbia failed to adopt a new Anti-Discrimination Strategy in 2021, although the previous one expired nearly three years ago. This means that the state lacks a coordinated system of public policy instruments, measures and requirements that need to be implemented to prevent and suppress all forms and special cases of discrimination, especially against specific individuals or groups of people on grounds of their personal characteristics.

The COVID-19 pandemic further exacerbated the grave difficulties faced by specific vulnerable groups.

The public was appalled when the Mental Disability Rights Serbia (MDRI-S) and Disability Rights International (DRI) published their report "Serbia's Forgotten Children", which concluded that Serbia has neglected to address the egregious human rights violations and abuses perpetrated against those forced to live in sub-human conditions – many of which rose to the level of torture. The report alerted to denial of medical treatment and neglect putting the residents' lives at risk, their sexual abuse and forced contraceptive use. It said that, in some of these institutions, adults and children lived together, exacerbating the risk of further abuse. The authors of the report stated that the residents were denied the right to live with their families and cited many other violations of their rights. The life of women with disabilities in residential care facilities 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), while violence reporting and protection mechanisms are inadequate and/or non-functional.

Data published by UNICEF show that children account for only 17.3% of Serbia's population: 8.3% of the children live in absolute poverty, and as many as 24.2 % live on the poverty line, while 22.2% of people under 24 are unemployed; 31% of children still have not received all their mandatory vaccines. Today, 61% of children between 3 and 5 years old attend kindergarten. This percentage is significantly lower among children from low income families – just 11%, and even lower among children from Roma communities – only 7%. Over one half of girls from Roma communities are married before they turn 18, while in the general population this number stands 5.5%. As many as 45% of the children are subject to physical methods of discipline, which reflects on their development. In 2021, children were still exposed to domestic violence, abuse at school, their local community and other areas they lived or spent time in. Digital violence attracted particular attention.

The Gender Equality Act, adopted in late May 2021, includes a definition of gender equality which is in accordance with international standards. The Act introduces new concepts, such as multiple discrimination, balanced representation of women and men and unpaid care work. The Act provides for the adoption of five strategic documents that will define the gender equality policy. The Act introduces gender-sensitive language, which is defined as language promoting the equality of women and men and a means to raise awareness.

Despite the headway in the field of gender equality, particularly the improvements of the legislative framework, 2021 was unfortunately rife with incidents and scandals revealing misogynous tendencies and widespread gender-based violence against women in Serbia's society. Accusations of rape and pimping of girls by well-known figures, such as actors and politicians, featured prominently in the public arena and highlighted both the issues of gender-based violence and the liability and impunity of public figures.

The situation of Roma remained precarious. They faced numerous problems in exercising their rights in the fields of housing, education and employment. Roma were still victims of discrimination, intolerance and hate speech. Most of the complaints of discrimination on grounds of national affiliation or ethnic origin filed with the Equality Commissioner in 2020 concerned Roma.

The issue of homelessness continued to be marginalised. No standards have been established that define the minimal housing conditions and only relatively broad and insufficiently discriminatory notions of the primary and the secondary homeless are used. The state and society apparently prefer managing the homelessness problem, rather than eradicating and putting an end to it. The existing services aim to address the immediate needs of the homeless: provide them with beds to sleep in from one night to another, put in place mechanisms for food donations, provide them with health care, et al. No long-term solutions are, however, in place.

Serbia and EU Accession

In 2021, the European Union (EU) celebrated the 70th anniversary of the signing of the Treaty establishing the European Coal and Steel Community, its predecessor. Serbia applied for EU membership 12 years ago and opened accession talks seven years ago. The EU did not open negotiations on any new chapters with Serbia in 2020. It did, however, adopt a new enlargement methodology grouping all 35 negotiation chapters in six clusters, which was approved by the Council of the EU.[1] However, Serbia has not yet published its document accepting the revised enlargement methodology by the end of the reporting period wherefore its content remains unknown.

The Ministry of European Integration (MEI) published its last report on the implementation of the National Programme for the Adoption of the *Acquis* in late 2019.[2] The impression was that Serbia was still far from aligning its law with the *acquis* but close enough to access EU funds. On the other hand, after a short pause, the MEI published the results of the public opinion poll showing that 57% of the respondents were for Serbia's accession to the EU, the highest percentage in the last five years.[3]

In April, the Serbian Government adopted a decision establishing the Coordination for Conducting Talks on the Republic of Serbia's Accession to the European Union and the Negotiations Support Team, replacing the prior mechanism – Negotiation Team and Head of the Negotiation Team. The Minister of European Integration is now the chief negotiator. The Support Team comprises coordinators of areas and members charged with the six clusters, Ministry and Government representatives, Head of Serbia's Mission to the EU and experts.

The Serbian Government in January also amended the Decision on the Establishment of the Coordination Body for the Implementation of the Action Plan for Chapter 23: Judiciary and fundamental rights.

In 2021, the Justice Ministry commendably started publishing on its website quarterly reports on the implementation of the Chapter 23 Revised Action Plan.

European Parliament representatives Tanja Fajon and Vladimir Bilčik headed the EP's facilitation of the Inter-Party Dialogue on improving the election conditions in Serbia in 2021.[4] A set of 16 measures aiming at improving the electoral environment was agreed as a result of the second phase of the Dialogue. However, some parties decided against further participation when the document was drafted.[5]

1 "Council agrees on the application of the new methodology to Montenegro and Serbia," *European Western Balkans*, 11 May.

2 Reports on the Implementation of the National Programme for Adoption of the *Acquis* are available on the MEI's website.

3 "Istraživanje javnog mnjenja – Odnos građana Srbije prema Evropskoj uniji," MEI, August.

4 "Inter-Party Dialogue Will Be Led By Bilčík And Fajon," *CorD*, 2 February.

5 "Delays and criticism cast shadow over EU's initial positive assessments of the Inter-Party Dialogue in Serbia, *European Western Balkans*, 21 November.

The EU-Western Balkans Summit was held on 6 October. The EU officials reaffirmed unequivocal support for the European perspective of the Western Balkans but noted the need to step up the reforms.[6]

Statements, especially of the Minister of European Integration, about Serbia's readiness to open talks on two clusters (Clusters 3 and 4) intensified in 2021, after the European Commission published its Serbia 2021 Report but, in mid-November, the officials lowered their expectations to opening "at least" on cluster. Cluster 4 comprising four chapters – the Green Agenda and Sustainable Connectivity – was opened at the Intergovernmental Conference on 14 December.[7] Serbia has opened talks on a total of 20 chapters to date; talks on two chapters have provisionally closed, while talks on another 13 chapters are yet to be opened.

In its *2020 Report*, the BCHR noted that state institutions and officials tended to invite CSOs to participate in consultations and public debates to create the illusion of civic participation but that they essentially did not take their comments into account. This practice was further developed in the simulations of reforms in 2021, where numerous laws, by-laws and strategies were adopted in haste under the excuse that deadlines had to be met, merely in order to formally tick the boxes and quantify the envisaged activities. The authorities still refused to establish meaningful dialogue with CSOs although it can be said that it conducted public debates on these documents in a sense – if exclusively e-mail communication under extremely tight deadlines can be qualified as a public debate. Consequently, the implementation of the adopted documents is unlikely to advance the rights of citizens in many walks of life.

The European Commission published its Serbia 2021 Report on 19 October.[8] The Report was assessed differently. The Prime Minister said it was the "best in the last couple of years",[9] while CSOs qualified it as a "false positive" because, despite headway in some areas, no progress had been made in the key areas.[10] The Report qualified Serbia's headway in Chapters 23 and 24 as limited, warning that the political climate remained polarised and that inflammatory language against political opponents and representatives of other institutions expressing diverging political views was still used during parliamentary debates. It further noted that the institutions needed to improve their cooperation with the civil sector,[11] and create an enabling environment for developing and financing CSOs.[12] The EC noted limited progress

6 "EU Leaders Reaffirm Western Balkans' 'European Perspective,' Give No Timeline for Accessions," *RFE,* 6 October.

7 Serbia opens cluster 4 in accession negotiations with EU, Government press release, 14 December.

8 *Serbia 2021 Report*, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2021 Communication on EU Enlargement Policy European Commission, 19 October.

9 "Brnabic: "The best report of European Commission in the last few years," *B92*, 19 October.

10 "Burazer: Veštački pozitivan izveštaj o napretku Srbije," *Voice of America,* 20 October; "Vučković: Izveštaj EK dobio pozitivne ocene jer ga je vlast tako predstavila," *N1*, 25 October.

11 *Serbia 2021 Report*, p. 8.

12 *Ibid.*, pp. 4–5.

in the fight against organised crime,[13] and that the parliament significantly reduced the use of urgent procedures.[14] The EC noted that the Serbian government further delivered on a number of important outstanding benchmarks under clusters 3 and 4, wherefore it has recommended that the clusters should be opened.[15] As per the external relations cluster, the EC said that Serbia's overall patterns in aligning with the EU's common foreign and security policy remained broadly unchanged and that a number of actions by Serbia went contrary to EU positions on foreign policy. In 2020, Serbia's alignment rate with relevant High Representative statements on behalf of the EU and Council Decisions stood at 56%, but rose to 61% as of August 2021.[16] The EC said that the overall pace of negotiations would continue to depend in particular on the pace of rule of law reforms and on the normalisation of Serbia's relations with Kosovo.[17]

Some of the activities envisaged by the action plans, in particular the Chapter 23 Action Plan, which were implemented in 2021 should have actually been implemented a long time ago; the quality of documents developed in non-participatory processes remains dubious.

The European Parliament adopted two resolutions on Serbia in 2021. The first, adopted in March, concerned the EC's Serbia 2020 Report,[18] while the second, adopted in December, focused on forced labour in the Chinese Linglong factory in Zrenjanin and the environmental protests in Serbia.[19] In the latter resolution, the European Parliament expressed deep concern over serious problems with corruption and the rule of law in the environment area, the general lack of transparency and environmental and social impact assessments of infrastructure projects, and over alleged forced labour, violation of human rights and human trafficking of around 500 Vietnamese people at the Chinese Linglong Tire factory construction site in Serbia.

On 15 September, the European Parliament adopted a regulation on IPA III pre-accession assistance for the 2021–2027 period. The Regulation, under which Serbia and other countries have nearly €14.2 billion at their disposal, applies with retroactive effect from 1 January 2021.[20] The EU has also allocated €30 million for the implementation of the three-year EU PRO Plus project, which aims to contribute to the overall social and economic development of 99 LSGs in Serbia.[21]

13 *Ibid.*, p. 5.

14 *Ibid.*, p. 4.

15 *Ibid.*, p. 3.

16 *Ibid.*, pp. 124–125.

17 *Ibid.*, p. 3.

18 Resolution P9_TA(2021)0115, European Parliament, 25 March.

19 Resolution P9_TA(2021)0511, European Parliament, 16 December.

20 Regulation (EU) 2021/1529 of the European Parliament and of the Council of 15 September 2021 establishing the Instrument for Pre-Accession Assistance (IPA III), European Parliament, 20 September.

21 "Start of the New European Union for Local Development programme – EU PRO Plus," EU in Serbia, 14 April.

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. In 2010, Serbia 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. The Ministry of Human and Minority Rights and Social Dialogue has been charged with coordinating the Council's activities since 2020. The Council held three (10^{th}, 11^{th} and 12^{th}) sessions in 2021. It amended its Rules of Procedure at the 11^{th} session, which now provides for inviting to the Council sessions CSOs that have signed Memoranda of Understanding with the Council and two permanent representatives of the Platform of Organisations for Cooperation with UN Mechanisms. CSO representatives do not have voting rights, but they are entitled to participate in discussions and propose initiatives to the Council. The Council is also entitled to establish thematic working groups in

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 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 it's Protocol and the International Convention for the Protection of All Persons from Enforced Disappearance.

which CSOs can also take part. The Council's work to date indicates that this body may become one of the rare fora facilitating dialogue between ministry and CSO representatives. The Council has discussed numerous CSO initiatives and suggestions and taken some of them on board. Further improvements, however, need to be made before it can be concluded the conclusion that a constructive dialogue on the implementation of the UN human rights mechanisms' recommendations has been established. The achievement of this goal requires the more active engagement of those who have voting rights, notably, the Council members.[2] The dialogue at the 2021 sessions was conducted exclusively between the representatives of the Ministry of Human and Minority Rights, which coordinates the Council's work, and civil society representatives.

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

Discussions about Serbia ratifying the Optional Protocol to the ICESCR finally began in 2021. The CSO A11 launched a public advocacy campaign for the ratification of this document in order to improve the system for the protection of economic and social rights, which have been the most endangered rights for years now.[3] The issue was also raised at the sessions of the Council for Monitoring the Implementation of Recommendations of United Nations Human Rights Mechanisms. Minister Gordana Čomić said that talks have opened to facilitate the initiation of the ratification procedure.[4]

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.

2 The Council members were appointed by the Government Decision establishing the Council. They include, for the most part, senior public officials, such as state secretaries and assistant ministers. The Council's meetings are, however, usually attended by lower-ranking ministry officials, who rarely join in the discussions or launch initiatives the Council should discuss.

3 "Javna rasprava – Zašto nam je potrebna ratifikacija Opcionog protokola?," A11, 18 October.

4 The minutes of the Council's 11th session are available in Serbian in the Ministry's website.

On 1 December, the UN Committee against Torture adopted its Concluding observations on Serbia's third periodic report on the implementation of the Convention against Torture.[5]

Although it welcomed the adoption of specific strategic documents and amendments to individual laws, the Committee issued Serbia a number of recommendations and expressed concern about respect for the rights enshrined in the Convention. The Committee reiterated some of the recommendations it made in its prior Concluding observations since Serbia regrettably did not make sufficient effort to fulfil them. The Committee, inter alia, again recommended that Serbia, as a matter of priority, expedite the drafting and adoption of amendments to Articles 136 and 137 of the Criminal Code in order to incorporate into the legal definition of torture all the elements contained in article 1 of the Convention and ensure that penalties for torture were appropriate to the gravity of the crime, as set out in article 4 (2) of the Convention.

The Committee again urged Serbia to ensure that all fundamental legal safeguards against torture were guaranteed in practice and not merely in law for all detained persons from the outset of their deprivation of liberty, in accordance with international standards.

The Committee called on Serbia to intensify its efforts to significantly reduce prison overcrowding and improve the quality of health care extended to inmates.

The Committee said that Serbia should reconsider the introduction of the penalty of life imprisonment without parole and ensure that convicted persons currently serving such a life sentence were entitled to a judicial review of their sentences and were eligible for parole.

The Committee called on Serbia to ensure that all cases of domestic and gender-based violence were promptly and thoroughly investigated, that the alleged perpetrators were prosecuted and, if convicted, were punished appropriately, and that the victims received redress, including adequate compensation and rehabilitation. It also urged Serbia to ensure prevention of violence, including measures that women victims of domestic violence faced no legal impediments to immediately petition the authorities for protection measures, including restraining orders and legal separation.

In February, the Government adopted the Mid-Term Report within the third cycle of the Universal Periodic Review and forwarded it to the Human Rights Council. Serbia's development of its first mid-term report is a good practice example since UN Member States are not under the obligation to draw them up.[6] The Report follows the structure of the state's reports to UN human rights mechanisms. In addition to important information, the Report also lists numerous technical activities

5 Concluding observations on the third periodic report of Serbia, CAT/SRB/CO/3, available on OHCHR's website.

6 Available on OHCHR's website.

or activities that cannot be said to be directly aiming to fulfil the recommendations; however, it does not identify the pressing human rights issues.

Serbia submitted its Fourth periodic report on the implementation of the International Covenant on Civil and Political Rights[7] to the Human Rights Committee in July. The Report on the Work of the Council for Monitoring the Implementation of Recommendations of United Nations Human Rights Mechanisms for the 1 October 2019 – 14 July 2021 period said that Serbia implemented 17 out of 24 recommendations and that the fulfilment of the remaining four recommendations was under way. Interestingly, the Fourth periodic report said that the Council was planning on establishing a mechanism for monitoring the implementation of the Committee's decisions on individual petitions and that it held one meeting dedicated to the issue in 2019 and two thematic meetings on the implementation of CAT's decision in the *Ayaz v. Serbia* case. [8] Although these meetings were, indeed held, it needs to be noted that the establishment of the mechanism was raised at the Council's meeting by CSOs and that the state has not undertaken any steps to that end. Serbia again violated its international obligations in a similar way in early 2022, when it extradited a Bahraini national despite an interim measure issued by the European Court of Human Rights.[9]

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) 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.[10]

7 Available on the website of the Ministry of Human and Minority Rights and Social Dialogue.

8 "Committee against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment Finds Serbia in Violation of the Convention against Torture for Extraditing Kurdish Political Activist Cevdet Ayaz," BCHR, 2 September 2019.

9 "Serbia wrongfully extradited Bahraini national despite European Court of Human Rights interim measure," BCHR, 24 January 2022.

10 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.

Serbia ratified the Revised European Social Charter (ESC) in 2009. Nationals of Serbia are not entitled to file collective complaints to the European Committee of Social Rights under the ESC because Serbia has not agreed to the submission of such complaints.

Serbia is also party to the CoE Convention on Action against Trafficking in Human Beings 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. Serbian nationals may file applications with the European Court of Human Rights (ECtHR). Protocol 15 to the ECHR, amending specific formal and substantive requirements for filing applications with the ECtHR, entered into force on 1 August 2021. The Protocol also reduces from six to four months the time-limit within which an application may be made to the Court following the date of a final domestic decision and upon exhaustion of domestic legal remedies.[11]

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 2020, the ECtHR reviewed 1,421 applications against Serbia; it declared 1,413 of them inadmissible and it delivered five judgments concerning eight applications, finding violations of at least one ECHR right in four of them.[12]

According to the January-July 2021 statistical data published on ECtHR's website, 871 applications against Serbia registered in 2021 were allocated to a judicial formation; 526 of them were communicated to the Government. The Court dismissed 722 of them as inadmissible and delivered judgments in 20 cases. [13]

The Council of Europe's Committee of Ministers is charged with the execution of ECtHR's judgments. In practice, supervision of the Respondent States' execution of the judgments is performed by the ECtHR's Department for the Execution of

11 "Protocol No. 15 to the European Convention on Human Rights enters into force", ECtHR, Press Release Issued by the Registrar of the Court, 1 August.

12 ECtHR, Press Country Profile Serbia. Updated in July 2021.

13 *Ibid*.

Judgments. The total number of cases against Serbia transmitted for supervision by 15 March 2021 since the entry into force of the Convention stood at 530; 492 of the cases were closed by final resolution.[14]

ECtHR statistics show that 37 judgments were transmitted for supervision of their execution in 2021, that supervision was ongoing with respect to 45 cases and that 30 were closed by final resolution. The statistics also show that Serbia was to pay €422,150 of just satisfaction awarded by the ECtHR in 2021.[15]

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. Consequently, international law shall prevail in the event of a conflict between Serbian and international law, unless the ratified international treaty is in contravention of the Constitution.

14 Council of Europe Department for the Execution of Judgments of the European Court of Human Rights, Country Profile Serbia, data as of 3 December 2021.

15 *Ibid*.

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,[16] performed by the working group charged with analysing the changes of the constitutional framework, paragraph 3 of Article 4 is not in compliance with paragraph 3 of Article 145 of the Constitution, under which "[C]ourt decisions shall be binding on everyone and may not be subject to extrajudicial control". The Act on the Amendment of the Constitution, which was voted on at the referendum on 16 January 2022, provides for the amendment of paragraph 3 of Article 4. Under the amended provision, the relation-

16 Available on the Justice Ministry's website.

ship between the three branches of government shall be based on mutual checks and balances. Some of the participants in the debate on constitutional amendments had a totally different opinion on how the provision on the separation of powers should be amended.[17] They said that paragraphs 3 and 4 of Article were not in collision because all three branches of government controlled each other by various mechanisms provided by the Constitution; since paragraph 3 had been used as a recipe to politicise the judiciary, they argued that the provision should be deleted from the Constitution to avoid any misunderstandings, while the provision guaranteeing judicial independence should be moved to the part of the Constitution governing the status of the judiciary.

Although the part of the Constitution defining the constitutional status of the judiciary is extremely important, so are some other of its provisions that could have been improved during the constitutional reform.[18] 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.[19] 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 fre-

17 See CEPRIS' Model Amendments I-XXXVI available in Serbian on its website.

18 More on constitutional amendments in the section on the judiciary III.3.

19 '*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.

edom of assembly only to nationals, but not to non-nationals. Most European Constitutions guarantee the freedom of assembly to everyone.

In addition to the rights guaranteed to all citizens by the Constitution, persons belonging to national minorities shall be guaranteed special individual and collective rights which they may exercise individually and together with others.

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

The provisions on restrictions of human rights need to be brought into compliance with the wording of the ECHR, under which restrictions must pursue a *legitimate* aim.[21]

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.[22]

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

20 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.

21 In its Opinion on the Constitution of Serbia, the Venice Commission noted that the provision did not require the existence of a legitimate aim for the restrictions to be allowed, but it also concluded 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, paras. 28–30. More on the issue in prior BCHR Reports.

22 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).

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).[23] 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)).[24]

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.[25]

3.3. New Referendum and People's Initiative Act

The National Assembly adopted the new Referendum and People's Initiative Act on 25 November and its amendments on 10 December. The very fact that the new law was amended 16 days later indicates that there are serious problems in the work of the legislative branch. However, the entire legislative process, from the development of the preliminary draft, the simulation of the public debate on it, to numerous attempts to sidestep international standards and ignore public opinion, testifies to the collapse of democracy, rule of law and commitment to European principles and values, that is, the fundamental principles underlying the national legal order. Last but not the least, the entire process of amending the law and the goal the proposed provisions pursued aimed at rendering meaningless the principles of civil sovereignty and the way in which the citizens exercise sovereign power via referendums and people's initiatives.

23 Article 202(1) of the Constitution.

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

25 Analysis *Ustavne odredbe u oblasti bezbednosti: uporedna tabela za 50 država i entiteta širom sveta,* available on the website of the Belgrade Centre for Security Policy.

The need to bring the law on referendum and people's initiatives into compliance with the Constitution and international standards to ensure direct civic participation in the exercise of power was evident as soon as the Constitution entered into force in 2006. Back in 2009, the Ministry of State Administration and Local Self-Governments prepared a preliminary draft of the law. The Venice Commission criticised it extensively in its Opinion No. 551/2009. The law was not adopted.

The need to amend the referendum law resurfaced in 2018 and 2019 in the context of consultations on the amendments of the constitutional provisions on the judiciary. A new preliminary draft was prepared and put up for public debate. The process was not completed, leaving very little time for debating the third Preliminary Draft published on 9 July if the constitutional amendment procedure was to be completed by the deadline set out in the Chapter 23 Action Plan.

By the time the Preliminary Draft was published, the National Assembly had already endorsed the draft amendments to the Constitution, the Working Group set up by the parliamentary Committee on Constitutional Issues had already started working and government and parliamentary officials announced that a referendum on the constitutional amendments would be held by the end of 2021. It is worth recalling that the Venice Commission recommended that rules of referendum law should not be adopted *ad hoc* for a specific referendum and that the fundamental aspects of referendum law should not be open to amendments to be applied during the year following their enactment.[26] The authorities disregarded both of these guidelines, as well as the general obligation to hold extensive public consultations with all the stakeholders. The question legitimately arises whether any public consultations were actually held.

First of all, the public debate was organised in the second half of July. As opposed to the 2019 public debate, no discussions of stakeholders in any format were envisaged. The stakeholders were given 20 days to forward their comments in writing, initially to a non-existent e-mail address published by the Ministry of State Administration and Local Self-Governments. Several CSOs called for the repeat of the public debate.[27]

The CSOs said that the provisions of the Preliminary Draft jeopardised direct civic participation in decision-making and lowered the achieved level of human rights and freedoms. They particularly criticised the provisions on the duration of the referendum, its validity, conditions for voting and establishing the results during the pandemic, the two-year bindingness of the referendum decision, the implementation and funding of referendum activities, and the protection of civic rights before the election authorities and courts.

26 Venice Commission, Revised Guidelines on the Holding of Referendums, Guidelines (II.3. a and b), CDL-AD(2020)031.

27 "Ponoviti javnu raspravu o Nacrtu zakona o referendumu i narodnoj inicijativi," BCHR, 30 July.

Due to the vague definition of referendum campaign organisers, the Preliminary Draft envisaged extremely high fines for anyone publicly commenting the referendum issue who did not fulfil a number of formal requirements. The Preliminary Draft did not clearly distinguish between, e.g. people publishing posts on social media calling on people to vote at the referendum and people intending to wage referendum campaigns. The fee for authenticating the signatures requisite for calling a referendum at the citizens' request or a people's initiative was so high that the exercise of these rights would have been limited in practice only to those who could afford the exorbitant costs of these mechanisms for exercising civil sovereignty.

Apart from their public appeal, the CSOs made the same request directly to Minister Marija Obradović, who did not deign to answer the letter. [28] Not only did the Ministry fail to organise another public debate. The same day the public debate ended, it sent the Preliminary Draft to the Venice Commission asking it to issue an urgent opinion on the text.[29] The fact that the Preliminary Draft was sent to the Venice Commission although the Ministry had not even taken a look at the comments it received merely testifies to the conclusion that the public debate was sheer simulation. As it turned out later, the translation of some of the articles of the Preliminary Draft differed from the original to such an extent that it totally changed the meaning of the provisions.

In early September, the Venice Commission invited the CSOs to a meeting, at which they extensively criticised the provisions of the Preliminary Draft. The Venice Commission asked them to forward their comments of the Draft, as well as help identify the discrepancies between the original text and the translation to provide them with better insight in the proposed provisions.[30]

On 24 September, the Venice Commission forwarded its Urgent Opinion[31] to Serbia, in which it noted the numerous deficiencies and inconsistencies of the Preliminary Draft CSOs already initially alerted to in their comments. The Venice Commission, inter alia, said that the fundamental aspects of referendum law should not be open to amendments to be applied during the year following their enactment, and recommended that the next referendum be held late enough to make the revised law really applicable to it; it also said that the exception to the principle of stability of referendum law (the one-year rule) had to be understood as implying a broad political agreement and therefore related to the requirement of a broad consensus. The Venice Commission recommended extending the deadline between

28 The Letter to the Minister of 2 August is on file with the BCHR.

29 In her letter to the Venice Commission, the Minister quoted the amendment of the Constitution as the reason why Serbia was requesting its urgent opinion, although such a reason is directly in contravention of international standards and the Venice Commission's views.

30 The CSO representatives hand an online meeting with the Venice Commission members on 3 September.

31 Venice Commission, Urgent Opinion on the Draft Law on the Referendum and the People's Initiative, CDL-PI(2021)015, 24 September.

the decision of calling a referendum and the vote. It also said that the delegation of electoral commissions with the power to issue special rules in specific situations, including epidemics, was too broad and should not lead to excessive restrictions of fundamental political rights. It was extremely critical of provisions entitling the authorities to ignore the will of the people and adopt an act contrary to the decision made in a referendum after the expiration of one year from the day of the referendum. The Venice Commission also recommended that the bodies in charge of the referendum (election commissions at all levels) be independent, that an impartial body, not the Government, be charged with promptly and accurately providing the citizens with objective information on the issue submitted to referendum, and that the provisions on referendum campaigns needed to be amended and elaborated. As per the signatures for initiating a referendum or people's initiative, the Venice Commission said that no fees or very low fees should be charged for the authentication of the signatures.

In mid-October, the Ministry of State Administration and Local Self-Governments published the revised Preliminary Draft, which it had already forwarded to the Venice Commission.[32] Although the legislator took on board a number of the Commission's recommendations, the revised Preliminary Draft was still full of problematic provisions. Since the Ministry did not organise a public debate on the revised Preliminary Draft, the Venice Commission went ahead and organised a number of meetings on 21 October, with the Government, the MPs of the ruling coalition and the opposition, members of the Republican Election Commission and CSOs.

The Venice Commission published its Opinion on the Revised Preliminary Draft on 9 November.[33] It said that most of its recommendations in the prior Opinion had been adopted and that most of the new provisions were in accordance with international standards. The Venice Commission, however, again alerted to specific deficiencies and recommended, inter alia: the abolition or substantial reduction of the signature authentication fees; extension of the deadlines for calling a new referendum on an issue the citizens already voted on, either positively or negatively; elaboration of the provision on mandatory deadlines; extension of the right to appeal to all voters, etc. Finally, the Venice Commission expressed regret "that the revision of the law on referendums started only when a constitutional referendum was imminent. For the sake of stability of the electoral law, amendments to the fundamental provisions on referendums should be applied less than one year after their adoption only if they ensure conformity with the standards of the European electoral heritage or implement recommendations by international organisations. Moreover, changes need to be really implementable before the actual referendum takes place. [...] Furthermore, the amendments should be adopted by broad consensus and by taking account of the public consultations with all relevant stakeholders."

32 The Ministry published the revised draft on its website on 14 October.

33 Venice Commission, Urgent Opinion on the Revised Draft Law on the Referendum and the People's Initiative, CDL-PI(2021)018, 9 November.

Given that the Referendum and People's Initiative Act was amended exclusively for the purpose of holding a referendum on the constitutional amendments, the Serbian authorities decided to submit the revised Draft to the parliament for urgent adoption without improving it in line with the Venice Commission's suggestions.[34] The Kreni-Promeni initiative and the organisations that had participated in the development of the law launched a petition for the withdrawal of the Draft already on 12 November. The petition – calling, inter alia, for the abolition of the signature authentication fee, extension of the deadline when a new referendum may be called on an issue the citizens already voted for and elimination of the risk of the parliament adopting an act contrary to a decision made in a referendum – was signed by over 75,000 people. Notwithstanding, the Draft was put up for vote on 25 November – 178 deputies voted for it and two against it.[35]

Alongside the adoption of amendments to the Expropriation Act and, above all, general dissatisfaction with the state of the environment in Serbia, the authorities' disregard of all initiatives, appeals and calls for consultations since the publication of the first Preliminary Draft of the Referendum and People's Initiative Act triggered large-scale protests and blockades of traffic at the major junctions across Serbia in late November and early December.[36]

The protests led the President, who had already signed the Referendum and People's Initiative Act, to appeal to the Government to amend the disputed provisions. The Amending Act was submitted to parliament rapidly and adopted by all 193 MPs present in the hall without any debate even more rapidly.[37]

Although the citizens' demands were ultimately upheld and the Act is now much better than the initial Preliminary Draft, the entire legislative process confirms the vanquishment of Serbia as a state based on rule of law and democratic principles. The very fact that the Ministry offered a Preliminary Draft that was so bad that it brought into question the very essence of civil sovereignty is concerning. Even more troubling are the following facts: that the legislator ignored the Constitution and fundamental international and European standards when it developed the law, that the government did not want to engage in public consultations despite numerous appeals, initiatives and petitions, that the MPs voted as they were told, that the President promulgated the law, probably on the advice of his team and in disregard of public opposition, and defended it until they realised the extent of public resolve at the protests. The U-turn that ensued merely confirmed that the Serbian institutions were in shambles. Just one message from the President was enough for the Government and MPs to let go of their hard-core opinion, which they adamantly

34 "Vlada i pored kritika nastavlja sa hitnim usvajanjem zakona o referendumu," *Danas*, 12 November.

35 "Usvojen Zakon o referendumu i narodnoj inicijativi," Serbian Government press release, 25 November.

36 "Mass protests in Serbia over recent laws on referendum and expropriation," *N1*, 27 November.

37 "Skupština Srbije usvojila izmene Zakona o referendumu," *Radio Free Europe*, 10 December.

expressed for nine months, mostly by ignoring those in whose name they are running the country.

3.4. Ordinary and Extraordinary Legal Remedies and Constitutional Appeals[38]

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). Civil appeals are reviewed by the next higher courts with real and territorial jurisdiction. A motion for the review of a final judgment is an extraordinary legal remedy envisaged by the CPA (Art. 403). Reviews are always allowed if so prescribed by another law; in the event the second-instance court modified the judgment and ruled on the parties' claims; in the event the second-instance court upheld the appeal, overturned the judgment and ruled on the parties' claims. The motions for review are reviewed by the Supreme Court of Cassation.

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

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

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

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) envisages the right of appeal (Art. 432 of the CPC). The appellants may claim substantive violations of the criminal procedure, violations of substantive criminal law, incorrect and insufficient findings of fact or challenge the penalties. The CPC also allows for retrials and the submission of motions for the protection of legality. The latter remedy primarily serves to reverse human rights violations in criminal proceedings established by the Constitutional Court of Serbia or the ECtHR. The CPC allows for initiating criminal proceedings regarding specific crimes by private citizens, whereas the proceedings related to other criminal offences prosecuted *ex officio* may be launched only by the public prosecutor. Only if the public prosecutor establishes no grounds for criminal prosecution may the injured party undertake prosecution (Art. 52 CPC).

Article 485 of the CPC provides for the submission of a motion for the protection of legality in the event it is established by a decision of the ECtHR or the Constitutional Court that a human right or freedom of the defendant or another participant in the proceedings enshrined in the Constitution or the ECHR and the Protocols thereto had been violated or denied by the final judgment or a prior decision rendered in the course of the proceedings. This extraordinary legal remedy may be filed by the defendants via their legal counsels or by the Republican Public Prosecutor and it is ruled on by the Supreme Court of Cassation.

Provisions governing the right of appeal can be found in the General Administrative Procedure Act (GAPA), the Non-Contentious Procedure Act (NCPA) and the Act on the Enforcement and Security of Claims 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).[39]

39 More on constitutional appeals in the *2018 Report*, I.3.3.2.

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 of punishment.[1] Therefore, the legal framework, practice and progress in complying with the absolute prohibition of torture and ill-treatment are subject to periodic reviews by universal and regional human rights bodies.[2]

The constitutional framework is mostly in compliance with international standards. The prohibition of ill-treatment and safeguards against it are laid down in Articles 25, 27, 28 and 29 of the Constitution. 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) 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 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.

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

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

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) 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.[3]

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,[4] the UN Human Rights Committee,[5] the European Commission (EC)[6] the European Committee for the Prevention of Torture[7] and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (UN Special Rapporteur).[8]

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

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

3 The offence has to be either perpetrated directly by public officials or other persons acting in an official capacity, or instigated by them, or perpetrated with their consent or acquiescence.

4 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.

5 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.

6 *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.

7 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.

8 Report of the UN Special Rapporteur on torture, A/HRC/40/59/Add.1, paras. 10–12.

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.[9]

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, appeals of decisions ordering aliens to leave Serbia did not have suspensive effect. Under Articles 38 and 80 of the new Aliens Act, appeals of return and denial of entry decisions shall not stay enforcement of such decisions except on grounds specified in Article 83 of that law, prohibiting the forcible return of aliens to a territory where they are at risk of ill-treatment. This legal solution is unclear. If the authority reaching one of these decisions is aware of the existence of the grounds under Article 83 of the Aliens Act, it will have violated the *non-refoulement* principle if it renders a return or denial of entry return decision.

If these provisions of the Aliens Act are interpreted as providing for appeals stating the grounds regarding the *non-refoulement* principle with suspensive effect, these decisions would still be enforceable from the moment the aliens are notified of them until the moment they lodge their appeals. On the other hand, appeals of rulings revoking the aliens' short-term residence permits do not have suspensive effect (Art. 39). Neither do motions to stay enforcement of administrative enactments provided by the Administrative Disputes Act (ADA). The Administrative Court is under the obligation to review such motions within five days and it may order the suspension of enforcement (Art. 23); 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

9 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.

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.[10]

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

The impunity of public officials accused of torture or inhuman or degrading treatment, was noted, inter alia, in the latest reports of the Committee against Torture[11] and the Human Rights Committee.[12] 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.[13]

BCHR's research of prosecutorial investigations and court proceedings against public officials suspected of/charged with the extortion of confessions (Art. 136 of the CC) and torture and ill-treatment (Art. 137(3) of the CC) from January 2018 to end June 2020 showed that most criminal reports against them were dismissed; that indictments were filed in less than 5% of the cases; that courts still dismissed cases as out of time; that most suspects were police officers; that police collegiality went beyond professional i.e. that, as a rule, police officers neither reported their fellow officers who tortured or ill-treated people nor testified against them (at least 226 officers testified in such cases but none of them confirmed that the defendants had used excessive force against the victims); that investigations against public officials were neither prompt nor thorough, and that, in many cases, they were not independent; that 90% of all public officials found guilty of these crimes were handed down suspended sentences and that the courts sometimes did not take into account the aggravating circumstances during sentencing. In the analysed period, only two police officers found guilty of ill-treating an individual in Niš were convicted by a final judgment to five and eight months' imprisonment, and only five officers found guilty in one case (of ill-treatment during the 2014 Pride Parade in Belgrade) lost their jobs. In all other analysed cases, the convicted officers did not suffer any work-related consequences, except for one officer whose salary was cut by 20%. In all cases ending with a final decision, the courts instructed the victims of ill-treatment to claim damages in civil proceedings.[14]

10 A/HRC/40/59/Add.1, paras. 49–51.

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

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

13 CPT/Inf (2018) 21, pp. 3–5 and paras. 9–32, A/HRC/40/59/Add. 1, paras. 20–28.

14 More in: Vladica Ilić, Luka Mihajlović, Sanja Radivojević, *Prohibition of Torture and Other Forms of Ill-Treatment in Serbia 2018–2020: Law, Investigations and Sentencing Practices*, BCHR, 2021, pp. 41–79.

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 safeguards 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.[15] These three rights are crucial for protecting these persons from the very outset of their deprivation of liberty, when the risk of ill-treatment by police officers is the greatest, given that the latter often resort to illicit means to collect as much evidence as they can. The importance of protecting the rights of persons deprived of liberty is also reflected in the fact that compliance with these procedural guarantees facilitates the preservation of any evidence of their ill-treatment (e.g. the description of the injuries by their doctor or *ex officio* lawyer) and the rapid identification of the perpetrator.

However, enjoyment of these three rights may be brought into question in Serbia not only because of the vague laws and by-laws, but also because of the inadequate practices of doctors to whom persons with visible traces of violence are brought. The fact that the Serbian Bar Association established a nationwide call centre for the appointment of *ex officio* lawyers is, however, encouraging.[16] 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.[17] Similar criticisms of the work of *ex officio* lawyers in Serbia were voiced by the UN Special Rapporteur on torture in his 2019 report.[18]

The 2018 Legal Aid Act guarantees legal aid, which includes representation in specific proceedings before the relevant authorities, "to individuals exercising legal protection from torture and inhuman or degrading treatment or punishment" regardless of their financial standing (Art. 4(3)). Commendable as this guarantee is, it needs to be noted that the procedure in which legal aid is approved is not tailored to the needs of persons deprived of liberty in police stations or other institutions, who intend to use such legal aid to protect themselves from the abuse of public officials

15 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.

16 More on the call centre on the website of the Serbian Bar Association.

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

18 A/HRC/40/59/Add.1, para. 14.

working in those institutions. Since the applicants must apply for legal aid with the relevant city or municipal administrative body in their place of habitual or temporary residence or the place where the legal aid is to be provided (Art. 27), persons deprived of liberty clearly have difficulty initiating the application procedure as rapidly as people who are free. On the other hand, the eight– and three-day deadlines for ruling on legal aid applications and the 15-day deadline for ruling on appeals of negative city/municipal decisions are overly long in many situations in which the applicants are trying to obtain protection from ill-treatment. Individuals requiring legal aid because of the ill-treatment they allegedly suffered often need to receive such aid within a very short period of time, e.g. because the eight-day deadline for filing an objection against the public prosecutor's decision is running or because there is a risk that the evidence of ill-treatment will soon disappear.

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."[19] 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.[20]

1.5. Main Developments in 2021

1.5.1. Police Abuse during July 2020 Civic Protests

After reviewing the MIA's operations, the Protector of Citizens published in mid-February 2021 an enactment in which he found violations of human rights in eight cases of police abuse during the 2020 civic protests. He found that the police officers had illegally and disproportionately used their truncheons and chemical substances and violated the mental and physical integrity and human dignity of protesters in those eight cases, that they did not wear distinctive insignia facilitating their identification and investigations of abuse allegations, and that the MIA Internal Control Sector (ICS) failed to promptly undertake all the requisite steps to establish the facts, collect the evidence and ascertain the liability of individual police officers.[21] Unfortunately, the Protector of Citizens did not issue adequate recommendations after he identified these shortcomings. All his recommendations referred to the MIA's

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

20 A/HRC/40/59/Add.1, para. 23.

21 Protector of Citizens press release and enactment No. 3122–870/20, Reg. No. 3163 of 5 February, available on his website.

future operations. He, for instance, recommended that the MIA senior management send a clear message to officers that ill-treatment was prohibited and punishable, that the MIA ensure officers wore distinctive identification insignia at protests, that the ICS hereinafter promptly take the requisite actions to investigate ill-treatment allegations, that the police be provided with training on human rights standards related to the prohibition of torture, and that all MIA units be familiarised with his recommendations. He, however, made no mention that victims of ill-treatment should be redressed or that ICS officers should be taken to task if they fail to react promptly in each individual case. In early June 2021, the Protector of Citizens issued a press release stating that the MIA was acting on his recommendations; he, however, did not indicate whether anything would be done to redress the victims and ascertain the liability of ICS officers. In his explanatory note in the enactment, the Protector of Citizens noted the statements of some police officers to the ICS during the preliminary investigation, to the effect that the man beaten up by the police on Terazije on 8 July was "communicating, had no visible injuries and said he did not need medical assistance". The obvious falsity of the statements (contradicted by video footage of the incident) did not spark the interest of the Protector of Citizens. Neither did the fact that the ICS forwarded all criminal reports and corroborating evidence filed by BCHR and others to the police units in which the implicated officers were working before it took any preliminary investigation actions, providing them thus with the opportunity to synchronise their testimonies. Moreover, the Protector of Citizens expressed satisfaction that the criminal reports had been forwarded to the Police Directorate, failing to recognise that such "sharing" may obstruct investigation.[22] The fact that the Protector of Citizens and the ICS communicated in writing indirectly, via the Police Minister's Office and the MIA Secretariat, could only have further facilitated such obstruction. The Protector of Citizens did not complete by the end of 2021 reviews of MIA's operations concerning more than 30 other cases of alleged police abuse during the July 2020 protests.

The Belgrade First Basic Public Prosecution Service (BPPS) and the Novi Sad BPPS failed to file any indictments against police who physically ill-treated protesters during the July 2020 protests by the end of 2021. The analysis of their work and that of the ICS identified a number of deficiencies, including, notably: forwarding criminal reports and evidence of ill-treatment (victims' statements, medical documentation, video footage, proposed evidentiary actions, etc.) to police units in which the implicated officers worked before taking any action on the reports (interrogation of the suspects, collection of documents) – enabling the suspects and their co-workers to prepare and synchronise their statements; written communication between the Belgrade First BPPS and the ICS during investigation via the Belgrade police, compromising the confidentiality of investigations; taking statements from police officers more than two months after the incidents; taking statements from witnesses more than seven months after the incidents; failure to commission forensic

22 Protector of Citizens enactment No. 3122–967/20, Reg. No. 30160 of 10 September 2020, available on his website.

medical examinations of and reports on injuries; delays in obtaining video recordings potentially including footage of ill-treatment and failure to check the MIA's claims that some of its surveillance cameras on Belgrade streets were not working; failure to organise identification parades of suspects in cases where the victims said they might be able to identify their abusers, who were not wearing visors and masks at the time; failure to take to task officers who obviously lied during the preliminary investigation; failure to take statements from all officers implicated in the events and uncritical acceptance as true of their superiors' assessments that their use of force was lawful. The unlikelihood of these cases ending with the identification and punishment of the liable officers is corroborated by the fact that deputy prosecutors working in the Belgrade First BPPS instructed the Registry Office to keep several cases in the Registry until the unidentified perpetrators of the crime were found or until the statute of limitations expired.[23]

1.5.2. Police Ill-Treatment and Inaction during the Traffic Blockades on 27 November 2021

Several incidents were registered during the traffic blockades staged across Serbia on 27 November in protest against the adoption of the Referendum and People's Initiative Act and amendments to the Expropriation Act. Several video recordings posted on social media showed a police officer, who was later identified as a commander of the Savski venac Police Station, coming up to a man who asked him: "What're you going to do, push unarmed people?", and answering: "That's right!" and pushing him back roughly twice for no reason. Other video footage showed that officer taking hold of a woman and pulling her towards the Jersey barrier, throwing her over it and leaving her lying on the road, although she was obviously not offering any resistance warranting use of force. This police officer paradoxically appeared in a video clip presenting the work of the MIA within the "We're Always Here" campaign on the MIA's website last year. BCHR did not receive any response from the MIA by the end of 2021 to the official request that it made the same day, that the MIA establish the disciplinary liability of the officer.

Video footage showing misconduct by several gendarmes in Novi Sad was also made public. It is, however, impossible to establish their identity based on the video footage because they did not have any identification insignia on their uniforms.

The most striking incident during the 27 November protests occurred on the Sava Bridge in Šabac, where the police did not respond to calls from protesters assaulted by a group of unidentified men carrying hammers and wooden poles and following an extractor intent on ploughing into the protesters. The withdrawal of the police from the bridge around 10 minutes before the blockade was scheduled to end and just two minutes before the extractor and the men following it headed towards

23 More in: Vladica Ilić, Luka Mihajlović, Sanja Radivojević, *op. cit.*, pp. 88–99.

the protesters, the police's failure to respond to phone calls for help and their return to the bridge several minutes after the incident ended and the assailants drove away give rise to reasonable suspicion that the assailants were in collusion with the police, who left the protesters to their mercy. The scenario was very similar to the 2016 Savamala demolition incident.

Several eyewitnesses at the Sava Bridge claimed that ten or so people called up the on-duty police in Šabac during the incident, appealing they come to the scene as soon as possible and protect them from the assailants, but that the officers hung up on them. They also reported that a traffic patrol unit standing some 300m away from the bridge did not react to the incident it was watching and that it returned to the bridge as soon as the physical assaults ended. After the incident and physical altercations with the protesters, including women and children, the assailants got into their cars, reportedly official vehicles of state and municipal officials, and drove away. The CSOs' Three Freedoms platform[24] called for the urgent reaction of the Šabac Higher PPS, the ICS and the Protector of Citizens, but none of these authorities issued any public statements on the incident by the end of 2021.

1.5.3. Preliminary Draft of the Act on Internal Affairs

In August 2021, the MIA published the Preliminary Draft of the new Internal Affairs Act, which CSOs and experts unanimously qualified as extremely harmful to human rights and freedoms. In addition to the provisions entitling the MIA to implement massive biometric surveillance of public spaces, which caught the eye of most of the public, the Preliminary Draft suffered from a number of other deficiencies undermining any efforts to suppress police torture and ill-treatment.

As opposed to the valid Police Act, the Preliminary Draft did not include the right of citizens to require that a person they trust be present during the exercise of police powers. It also prohibited, without any explanation, the "publication of data on the identity" of officers exercising police powers; violation of this prohibition carried a fine of 1.5 million RSD. Such protection of the identity of police officers is not only in contravention of public information law (Art. 82); it would also prevent citizens from documenting and making publicly available video footage of police misconduct during protests and in similar circumstances. In the experience of BCHR, which represented a number of victims of police abuse during the July 2020 civic protests, video recordings of the ill-treatment are often the only or the strongest piece of evidence corroborating the victims' allegations.

Furthermore, the Preliminary Draft laid down that police officers shall wear on their uniforms visible identification insignia comprised of "a combination of letters and/or numbers". In addition to the fact that the Draft did not specify the complexity or length of the combination of letters and/or numbers identifying the

24 The Police Must be Held Accountable for the Breakdown of the Rule of Law in Šabac, Three Platforms, 1 December.

officers, there was no doubt that this method of identification would not facilitate bringing to justice police officers violating the law and human rights.

The Preliminary Draft did not provide for effective investigations of police ill-treatment either. The proclaimed independence of the Internal Control Sector could be greatly undermined in practice by the Minister's power to control the work of all Sector staff via a special commission he was to establish, the composition of which was not specified. The Sector's independence was also brought into question by the fact that, like the valid Police Act, the Preliminary Draft did not specify who shall be employed in this Sector.

The provisions on the suspension and dismissal of police officers in the Preliminary Draft were not in compliance with the valid standards in the field of torture and ill-treatment either. The Preliminary Draft did not provide for the mandatory suspension of officers suspected of torture and other forms of ill-treatment during investigation and trial and their dismissal if they were found guilty. Under the Preliminary Draft, the dismissal of convicted police officers depended on the type and severity of the penal sanction and/or the qualification of the offence as one rendering the officer unworthy of performing the duties of a public official, while the list of such crimes was to be drawn up by the Minister of Internal Affairs.

The Preliminary Draft was withdrawn soon after the public debate on it ended. The Minister of Internal Affairs said that it was withdrawn at the request of the Serbian President and that "you (presumably critics of the Preliminary Draft – comment ours) will have to find another reason for blood to flow in Belgrade streets."[25]

1.5.4. International Oversight of Serbia's Compliance with the Prohibition of Torture

A CPT delegation conducted its fifth periodic visit to Serbia on 9–19 March 2021, during which it visited the following places of deprivation of liberty: Metropolitan Police Headquarters in Belgrade, the Belgrade Police stations in Savski Venac, Voždovac and Zvezdara, the Požarevac Police Administration, the Niš Medijana Police Station, the Belgrade District Prison including the Special Prison Hospital and the separate Special Organised Crime Pre-trial Detention in Ustanička Street, the Pančevo and Požarevac Zabela Penal Correctional Institutions, Laza Lazarević Psychiatric Clinic, Belgrade and Padinska Skela sites, and the Slavoljub Bakalović Special Psychiatric Hospital in Vršac, the Home for mentally impaired adults in Kulina, and the Home for Children and Youth "Duško Radović" in Niš. The CPT did not publish a report on its visit by the end of 2021.

In late November, the UN Committee against Torture (CAT) reviewed Serbia's Third periodic report on the implementation of the Convention against Torture. In its Concluding observations, the CAT made a number of criticisms and negative assessments. For the third time running, it noted that the definition of torture in

25 "Serbia's Interior Minister withdraws disputed law on President's request," *N1*, 23 September.

the Criminal Code was not in compliance with Article 1 of the Convention against Torture, that the acts of torture or ill-treatment were not punished with penalties commensurate with their grave nature, and that the statute of limitations for the crime of torture remained in place. It expressed concern that the legal framework guaranteeing legal safeguards for detained persons was not effectively implemented in practice, including cases where individuals did not receive notification of their rights at the initial stages of detention, the low performance of *ex officio* lawyers, the presence of police officers during medical examinations, the failure of medical professionals to document injuries and other traces of torture and ill-treatment in line with international standards and a lapse in the referral of medical reports to public prosecutors and the relevant judicial authorities.

The CAT was dissatisfied with Serbia's efforts to combat the impunity of officials for torture and ill-treatment. It noted the disproportionately low ratio of convictions as compared to acquittals and case dismissals, further observing that where penalties were handed down to public officials, these were largely inadequate and not proportionate to the gravity of the act of torture. The CAT also expressed regret that Serbia did not indicate whether victims of torture have received redress and compensation, or medical or psychosocial rehabilitation.

CAT's attention was also drawn to reports of the compromised independence, effectiveness and visibility of the Protector of Citizens. It was further concerned about the notable reduction in the number of visits carried out by the National Preventive Mechanism, particularly within police detention units and during the period of pandemic-related restrictions, the delayed publishing of its findings and recommendations and the perceived lack of trust by civil society organisations formerly cooperating with the mechanism.

The CAT recommended to Serbia to reconsider the introduction of the penalty of life imprisonment without parole and ensure that convicted persons currently serving such a life sentence were entitled to a judicial review of their sentences and were eligible for parole.

The CAT regretted lack of progress in the deinstitutionalisation of persons with mental and psychosocial disabilities. It was particularly concerned about the situation of women with disabilities in residential institutions who were exposed to high levels of violence without any prevention or protection measures in place, about the poor living conditions, inadequate access to health care, education, and rehabilitation experienced by children with disabilities in residential care and who were exposed to cruel, inhuman and degrading treatment. Recalling its previous recommendations (CAT/C/SRB/CO/2, para. 18), the Committee recommended that Serbia ensure that national legislation provided guarantees for effective legal safeguards for all persons with mental and psychosocial disabilities concerning involuntary hospitalisation, including the complaint mechanism and the effective judicial review, as well as concerning involuntary psychiatric and medical treatment in psychiatric institutions, including with regard to the strict regulation of the use of chemical and

physical restraints; investigate effectively, promptly and impartially all complaints of ill-treatment of persons with mental and psychosocial disabilities, including children, hospitalised in psychiatric institutions; and ensure that mental health services in the community were sufficiently and adequately funded.

The CAT issued a number of recommendations to Serbia on the protection of asylum seekers and compliance with the *non-refoulement* principle. It expressed concern that, in practice, asylum seekers were prevented from accessing the asylum procedure and being identified at an early stage due to the insufficient procedural safeguards regarding the assessment of claims and the granting of international protection, particularly in the transit zone of the Belgrade international airport and at the border entry points, and including the absence of a protection-sensitive screening mechanism within the Refugee Status Determination process and the insufficiency of well-trained staff, including within the Border Police and the Asylum Office, to ensure fair and effective decision-making in line with relevant international standards. It recommended that Serbia, inter alia, introduce a border monitoring mechanism which would include representatives of independent entities such as international organisations and civil society possessing expertise in international refugee law and international human rights law, to ensure that border authorities were acting in line with the principle of non-*refoulement* and the prohibition of collective expulsion, as well as for the purpose of collecting accurate data; and to ensure that asylum seekers and migrants held in detention were provided with adequate medical and mental health care, including a medical examination upon arrival and routine assessments, that any indications as to their claims of being subject to torture or ill-treatment were recorded and that they were provided with support services.[26]

2. Right to Liberty and Security of Person

2.1. Legal Framework

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

In its interpretation of Article 5 of the ECHR, the European Court of Human Rights (ECtHR) found that, in addition to refraining from actively violating the

26 More in: Concluding observations on the third periodic report of Serbia (CCPR/C/SRB/CO/3), CAT, 1 December.

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 ECtHR 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.[27]

Articles 27–31 of the Constitution of the Republic of Serbia guarantee the right to liberty and security of person. As opposed to most of the other rights it enshrines, the Constitution does not lay down the grounds for restricting the right to liberty and security of person; Article 27 merely sets out that deprivation of liberty shall be allowed on the grounds and in a procedure stipulated by the law. However, the law may restrict the right to liberty and security only on the grounds and in a procedure not in contravention of ratified international treaties, given that Article 194 of the Constitution lays down that ratified international treaties and generally recognised rules of international law are part of Serbia's legal order and that Serbian laws may not be in contravention of them.

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

Under Article 30 of the Constitution, the court may order pre-trial detention of a person reasonably suspected of committing a crime and if his pre-trial detention is necessary to conduct criminal proceedings. The Constitution guarantees the right of that person to be questioned during the hearing on pre-trial detention. In the event that his pre-trial detention was ordered without hearing him first, he must be brought before the competent judge within 48 hours from the moment of dep-

27 See the ECtHR judgments in cases *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.

rivation of liberty and the judge shall review the pre-trial detention order. A reasoned and written court decision ordering pre-trial detention must be served on the detainee within 12 hours from the moment of detention; the court is under the obligation to rule on an appeal of the pre-trial detention order within 48 hours from the moment of its submission. Under the Constitution, the court is under the obligation to keep the duration of pre-trial detention of the defendant to a minimum, taking into account the grounds for pre-trial detention. Pre-trial detention during investigation may not exceed six months. The detainee must be released as soon as the grounds for his pre-trial detention have ceased to exist.

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

The Criminal Code (CC) envisages terms of imprisonment that may be enforced in a penitentiary or in the convict's home (Art. 45) 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 alcohol and substance abuse treatment).[28] The Juvenile Justice Act (JJA) 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, Arts. 21–23 and 28–32). The Criminal Procedure Code (CPC) sets out a number of measures restricting the freedom of movement, primarily of suspects (Arts. 288–292); some of these measures amount to deprivation of liberty (e.g. pre-trial detention, house arrest – with or without electronic surveillance, maximum 48-hour police custody of suspects, Arts. 208–223 and 294). 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* (Art. 292).

The police have other important powers interfering in the right to liberty and security in addition to the ones vested in them with respect to preliminary investigation proceedings. For instance, the Police Act authorises the police to bring individuals in,[29] hold them in custody and temporarily restrict their freedom of

28 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*.

29 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.

movement (Arts. 82–90); the Misdemeanour Act allows the police to bring individuals in and hold them in custody (Arts. 190–193); the Road Traffic Safety Act 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 (Arts. 283 and 284). The Police Act (Art. 56) and the Act on the Protection of Persons with Mental Disabilities (Arts. 21–37) govern the mandatory hospitalisation of persons with mental disabilities in the relevant health institutions. The Domestic Violence Act authorises police officers to bring in domestic violence suspects to the relevant police units and hold them in custody for up to eight hours (Art. 14).

The Aliens Act 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 (Arts. 87–88). Similarly, the Asylum and Temporary Protection Act (ATPA) allows the deprivation of asylum seekers in the Aliens Shelter for up to three months; their detention may be extended another three months.

The national legislation and its implementation suffer from numerous deficiencies with respect to compliance with the aforementioned constitutional guarantees and safeguards laid down in the ratified international treaties. For example, although the Constitution guarantees the right of people to be questioned before the *decision* on their pre-trial detention is taken (Art. 30(2)), judges have in practice been extending pre-trial detention without questioning them about the reasons for extending their pre-trial detention, although they are available to the court. The reason for such an unconstitutional practice may lie in the distinction between the concepts of *ordering and extending* pre-trial detention in the text of the CPC (Art. 214(1)), and its misinterpretation to the effect that the courts are only under the obligation to hear the detainees the first time they order their pre-trial detention[30] (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 (Arts. 25–29). Furthermore, the Aliens Act and the ATPA allow persons detained in

30 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.

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

And, finally, national law (specifically, the Aliens Act, ATPA and the Border Control Act) does not regulate the deprivation of liberty of aliens and asylum seekers in the airport transit zone. Aliens who, in the view of the police officers, do not fulfil the requirements to enter Serbia and are to be returned to their country of origin or a third country, are detained in the transit zone of the Belgrade airport for periods lasting between several hours and several days. They are not treated as persons deprived of liberty either by the law or by the police officers (they are not served with detention orders or informed of the rights of persons deprived of liberty, the courts do not review the decisions ordering their deprivation of liberty in the airport transit zone, etc.), although their detention in the airport transit zone fulfils all the requirements to be considered deprivation of liberty.[31]

2.2. Major Developments in 2021 with Respect to the Right to Liberty and Security

2.2.1. Review of the restrictions of the Right to Liberty and Security during the 2020 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. [32]

In addition to complaining on behalf of its client to the ECtHR and the UN Human Rights Committee about the Order Restricting and Prohibiting Movement of Individuals in the Territory of the Republic of Serbia, under which everyone over 65(70) was prohibited from leaving their home at all times in the 18–22 March 2020 period, the BCHR filed a discrimination claim against the Republic of Serbia on behalf of its client with the relevant Serbian court. It alleged discrimination of people over 65(70) in the 18 March-6 May 2020 period, whose liberty was restricted for a month to the extent comparable to house arrest and home incarceration. This lockdown regime applied to this category of the population at the same time hair salons and betting and catering establishments were allowed to work.

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

32 More in the *2020 Report*, II.2.2.1.

Despite the manifestly disproportionate measures, the Belgrade Higher Court rejected BCHR's claim against the state. The Court held that the state had not discriminated against people over 65(70) and that a justified derogation was at issue, especially in view of the fact that the health of all citizens was in danger during the epidemic, but that the health of people over 65 was at even greater risk, because it is a well-known fact that people over 65 were more apt to suffer from chronic diseases, wherefore there was a greater likelihood of them contracting COVID-19 and their health was in greater danger.[33]

Residents of old people's homes have been constantly living under a strict regime since the declaration of the pandemic. At times, this regime was stricter than the one in maximum security prison wards. The Order Prohibiting Visits to and Restricting Movement in Facilities Accommodating the Elderly still applied at the end of the reporting period. Visits to residents of old people's homes were allowed only in exceptional circumstances; they had to be scheduled in advance, provided that there were no confirmed COVID-19 cases among the staff or residents in the institution in the 14 days preceding the visit, and that the resident to be visited has been fully vaccinated, most recently at least seven days before the visit. Needless to say, these visiting conditions caused dissatisfaction among the residents and their immediate family. Moreover, they do not apply to members of election committees, indicating that the state is attaching more importance to the residents' right to vote than to them maintaining contact with their immediate family.

2.2.2. Two years 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 Yemen[34] and one day before BIRN published its report confirming that the company represented by the then police minister Nebojša Stefanović's father bought weapons at privileged rates.[35] Obradović's arrest and subsequent detention went unnoticed until the Belgrade weekly *NiN* published the news in October 2019. Obradović was being investigated for revealing trade secrets under Article 240 of the Criminal Code.[36]

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.

33 Belgrade Higher Court judgment 9P No. 2590/20 of 3 November.

34 "Leaked arms dealers' passports reveal who supplies terrorists in Yemen: Serbia files (Part 3)". *Arms Watch*, 15 September 2019.

35 "Trgovina oružjem: Povlašćena cena za oca ministra policije," *BIRN*, 19 September 2019.

36 "Storm over Serbia Whistleblower Arrest in State Arms Scam," *BIRN*, 15 October 2019.

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.[37] The Higher Court soon replaced the pre-trial detention order with a house arrest order,[38] which was not lifted until 18 December 2019.

The Cyber Crime Prosecution Service has not filed an indictment against Obradović although over two years have passed since his arrest. In September 2020, 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 *Newsmax Adria* that the prosecutors have not filed an indictment for two years now since the prosecutors did not have evidence against Obradović, whereas the case files include ample evidence confirming his claims of abuse benefitting the then police minister and his father.[39]

2.2.3. Arrests of Activists during the Protest in Front of the Mural of Convicted War Criminal

Activists Aida Ćorović and Jelena Jaćimović were arrested during a protest against the mural of convicted war criminal Ratko Mladić in the heart of Belgrade on 9 November.[40] Unidentified plain-clothes policemen deprived them of liberty for pelting the mural with eggs. The activists insisted that the officers, who used excessive force throughout, identify themselves, but to no avail. The incident was preceded by the MIA's prohibition of the protest planned by the Youth Initiative for Human Rights (YIHR) allegedly because of the security risks it carried.[41] Strong police forces secured the mural the entire day the rally had initially been scheduled for. Notwithstanding the MIA ban, some activists rallied in front of the mural at the scheduled time to protest against it and the two activists were illegally deprived of liberty. The MIA said that it had filed misdemeanour reports against them and released them the same evening.

2.2.4. Restrictions of the Right to Liberty and Security during Protesters' Traffic Blockades

In late November, environmental organisations organised one-hour traffic blockades across Serbia in protest against the newly-adopted Referendum and People's Initiative Act and amendments to the Expropriation Act, which they consider

37 "Serbia's court annuls decision on detention of man who links Interior Minister father to arms deals," *N1*, 14 October 2019.

38 *Ibid.*

39 "Lawyer: Serbia's whistleblower's rights violated in proceedings," *N1*, 17 October.

40 "Belgrade Protesters Rally to Support Activists Who Threw Eggs at Mladic Mural," *Radio Free Europe*, 10 November.

41 Open Letter on the Occasion of the Mladić Monument in Njegoševa, YIHR, 8 November.

extremely disputable and subject to abuse to the benefit of the multinational company Rio Tinto, which has been planning on mining lithium in the Jadar River Valley.[42] The many incidents during the blockades indicate that the police securing the protests grossly violated their statutory duty to protect the lives, rights and freedoms of the people and uphold the rule of law. Ample footage posted on social media showed the police cordon withdrawing from the Sava Bridge in Šabac ten minutes before the scheduled end of the protest and several minutes before an extractor headed towards the crowd. The excavator was followed by a group of men who attacked the protesters with the hammers and wooden poles they were carrying. Several eyewitnesses at the Sava Bridge claimed that ten or so people called up the on-duty police during the incident, asking them to come to the scene and protect them, but that the officers hung up on them. Witnesses also claimed that a traffic police patrol standing not too far away watched but failed to respond to the assaults by the men with hammers and wooden poles and returned to the bridge when the incident ended. After the incident and physical altercations with the protesters, which included women and children, the assailants got into their cars, reportedly official vehicles of state and municipal officials, and drove away. Not one of the armed assailants was arrested,[43] as opposed to the people who had blocked access to the bridge with their tractors[44] and the protester who physically assaulted the excavator driver as he tried to plough through the protesters on the bridge.[45] The events give rise to reasonable suspicion that the assailants were in collusion with the police, which essentially let them "take the law into own hands" by withdrawing and leaving the protesters at their mercy.

The police arrested a number of people across Serbia during the day. Eight people were deprived of liberty during the blockade of the Freedom Bridge in Novi Sad,[46] several people were arrested in Zrenjanin when they tried to prevent a bus of SNS supporters from reaching a scheduled party event,[47] while the police in Lazarevac arrested a man for assaulting a public official after he helped a female police officer, who had fallen down in the crowd of protesters, get back on her feet.[48] Large numbers of people again rallied in the streets of Belgrade, Šabac and Zrenjanin that evening to protest against the arrests. All the arrestees were released that night or the following day.

42 "Road blocks to protest expropriation law," *N1*, 26 November.

43 "Terzić: Niko od huligana iz Šapca nije uhapšen," *Danas,* 28 November.

44 "Uhapšeni traktoristi iz Šapca koji su blokirali put, novi protest večeras," *Nova S*, 27 November.

45 "Nova.rs: Pritvor muškarcu koji je zaustavio bager u Šapcu," *N1*, 28 November.

46 "Završeni protesti u Srbiji, incidenti u Šapcu i Novom Sadu," *Al Jazeera*, 27 November.

47 "SSP: Uhapšeni naši članovi, pokušali da spreče pristalice SNS da odu u Beograd," *N1*, 27 November.

48 "Lazarevčanin, koji je uhapšen nakon što je pomogao policajki, pušten na slobodu," *N1*, 29 November.

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 Proceedings[49]

Measures	2016	2017	2018	2019	2020	From 1, January – 30, June 2021
Pre-Trial Detention	5,634	6,754	6,107	5,840	5,213	2,519
Bail	31	33	23	45	18	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)	475 (180 of whom under electronic surveillance)	294 (183 of whom under electronic surveillance)
Prohibition of Leaving One's Place of Residence	612	512	452	396	413	180
Restraining Order	372	1,029	1,797	1,744	1,391	721

49 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[50]

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

50 The data were obtained from the Penal Sanctions Enforcement Administration in response to BCHR's request for access to information of public importance. Until the conclusion of the report, the Belgrade Centre for Human Rights did not receive data for the previous year.

16,057 days and were altogether awarded 72,232,935,00 RSD (around €617,000) in damages, almost twice as much as in 2019.

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

Statistical Data on Imposed Terms of Imprisonment[51]

Duration	2014	2015	2016	2017	2018	2019	2020	Total
1–3 Months	2,529	1,194	1,293	950	912	723	649	8,250
3–6 Months	3,772	2,116	2,269	2,000	1,835	1,498	1,481	14,971
6–12 Months	3,184	2,422	2,423	2,199	1,860	1,664	1,562	15,315
1–2 Years	1,631	1,438	1,520	1,448	1,256	1,239	1,137	9,669
2–3 Years	947	875	930	770	753	798	631	5,704
3–5 Years	677	550	705	628	616	589	480	4,247
5–10 Years	191	171	192	156	125	150	138	1,122
10–15 Years	59	34	49	38	29	36	50	295
15–20 Years	23	3	24	18	12	13	14	105
30–40 Years	11	13	9	11	7	4	8	63
40 Years	2	4	5	2	3	4	0	19
Total	13,026	8,820	9,419	8,220	7,408	6,718	6,142	59,753

Statistical Data on the Number of Convicts Admitted to Penitentiaries to Serve Their Terms of Imprisonment[52]

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

51 See the Statistical Office of the Republic of Serbia website. Until the conclusion of the report, the Belgrade Centre for Human Rights did not receive data for the previous year.

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

Duration	2015	2016	2017	2018	2019	Total
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
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 Year[53]

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)[54]

2014	2015	2016	2017	2018	2019	2020
18,307	19,290	17,541	17,948	16,880	16,093	14,179

53 *Ibid*. Until the conclusion of the report, the Belgrade Centre for Human Rights did not receive data for the previous year.

54 See the SORS website. Until the conclusion of the report, the Belgrade Centre for Human Rights did not receive data for the previous year.

Number of Conditional Sentences under Protective Supervision[55]

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

Community Service Sentences[56]

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[57]

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[58]

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

Number of Early Release Decisions[59]

2015	2016	2017	2018	2019
10	45	21	37	27

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

56 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. Until the conclusion of the report, the Belgrade Centre for Human Rights did not receive data for the previous year.

57 *Ibid*. Until the conclusion of the report, the Belgrade Centre for Human Rights did not receive data for the previous year.

58 Data obtained from the Penal Sanctions Enforcement Administration in response to a request for access to information of public importance. Until the conclusion of the report, the Belgrade Centre for Human Rights did not receive data for the previous year.

59 *Ibid*. Until the conclusion of the report, the Belgrade Centre for Human Rights did not receive data for the previous year.

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 light of the above statistics and the fact that home incarceration may be imposed for offences warranting up to one year imprisonment (Art. 45(5) CC) and that community service may be imposed for offences warranting up to three years' imprisonment (Art. 52 CC), 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. Both Serbian nationals and everyone falling under the jurisdiction of Serbian courts are entitled to a fair trial. This right therefore stands shoulder to shoulder with other constitutional rights, whilst simultaneously being their foundation and only genuine guarantor. Without the realisation of the right to a free trial, there can be no other human rights or freedoms. The specificity of the right to a fair trial is evident not only in practical, but in formal legal terms as well. It is reflected in the prohibition of derogation from this right, even in extreme circumstances, such as a state of emergency or a state of war. The importance of this right is also reflected in its complexity. It entails the right to an independent and impartial court established by law, which will rule fairly, publicly and within a reasonable time on rights and obligations of individuals, grounds for suspicion grounds for suspicion that led to the initiation of the proceedings and charges against them. It also guarantees the right to free translation/interpretation and enumerates the reasons when the public may be

excluded from court hearings. Therefore, the right to a fair trial comprises a number of intrinsically interrelated rights, each of which is equally complex in its elements, just like the right to a fair trial is.[60]

3.1. Public Character of Court Hearings

Under the Serbian Constitution, the courts shall decide on individuals' rights and obligations in public hearings (Art. 32) and court hearings shall be public (Art. 142). Therefore, the Constitution does not explicitly guarantee the public pronouncement of judgments, just the public character of court hearings. Notwithstanding experts' criticisms of this deficiency, the authors of the amendments to the Constitution, including Article 142, failed to extend the guarantee of publicity to the entire hearing – the courts' deliberations of cases and pronouncement of judgments.

The Constitution lists the instances in which the public may be excluded from all or part of the court proceedings in accordance with the law only to protect the interests of national security, public order and morals in a democratic society, the interests of minors or privacy of the parties to the proceedings.

The public character of court hearings is a general rule in national criminal, civil, misdemeanour and administrative law, as is the exclusion of the public from all proceedings involving minors. All procedural laws lay down that the rulings excluding the public must be reasoned and made public.[61] Pursuant to Article 6 of the ECHR, a reasoning of a ruling excluding the public must be of a quality justifying derogation from the general rule on the public character of hearings 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.[62]

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, CPA 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. For instance, Article 58 of the Court Rules of Procedure lays 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.

60 S. Mandić, "Zaštita prava na pravično suđenje u odlukama Ustavnog suda Srbije i Evropskog suda za ljudska prava o Srbiji," *Deset rasprava o pravosuđu,* CEPRIS, Belgrade, 2020.

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

62 Article 353 of the CPA and Article 425 of the CPC.

There are no consolidated data on publicity of trials in Serbia. Annual reports and records of court performance do not publish statistical data on the number of trials held in camera or the most common reasons for excluding the public from the hearings. While the exclusion of the public goes without saying in some cases, e.g. when the courts are ruling on the interests of minors, holding trials in camera in order to protect national security, public order and morals in a democratic society is much more complex in character. A comprehensive picture of how the courts perceive the publicity of their trials can only be gained by perusing their cases and their reasons for excluding the public on these grounds.

The publicity of the Constitutional Court's sessions is governed by the Constitutional Court Act, under which the Court shall ensure the public character of its work not only at its public hearings but also at its sessions on particular cases. The Constitutional Court, however, brought such publicity of its work into question when it adopted a Conclusion, stating that its regular sessions were open to the public only exceptionally, when it was deliberating "cases of broader social importance given the type of impugned general enactment or constitutional law issue." The Constitutional Court is the one that decides which cases are of broader social importance. This form of ensuring publicity of the Court's work was deleted when its Rules of Procedure were amended.[63] Consequently, public hearings before the Constitutional Court have become the exception and the exclusion of the public the rule. Like in the case of courts of general and special jurisdiction, there is no detailed information on the key reasons for allowing or prohibiting the public from attending specific proceedings.

3.2. Trials within a Reasonable Time

Under the Constitution, everyone is entitled to a public hearing *within a reasonable time* before an independent and impartial tribunal 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.

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. According to the most recent report of the Supreme Court of Cassation, a total of 382,646 cases were pending before Serbian courts, while 95,173 final judgments remained unexecuted at the end of 2020. The number of pending cases dropped, while the number of unexecuted judgments increased mildly year on year.[64]

63 S. Beljanski, M. Pajvančić, T. Marinković, D. Valić Nedeljković, *Odnos Ustavnog suda i sudske vlasti – stanje i perspektive*, CEPRIS, Belgrade, 2019, p. 26.

64 Godišnji izveštaj o radu sudova u Republici Srbiji za 2020. godinu, Supreme Court of Cassation, p. 25.

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 Corruption 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, the Public Information and Media Act, as well as the Act Amending the Notaries Public Act, which led to a surge in new cases filed with the Belgrade Higher Court.[65] The problem of this Court's efficiency has affected the efficiency of the judicial system on the whole.[66]

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

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 cases, 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,

65 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.

66 Strategija razvoja pravosuđa za period 2020–2025, p. 16, Serbian Government, 2020.

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."[67]

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

3.3. Right to a Fair Trial and Decisions of the Constitutional Court of Serbia

The Constitutional Court can provide a genuine and documented assessment of respect of the right to a fair trial in Serbia in proceedings in which it extends protection of human rights. The right to a fair trial is one of those rights. Specifically, the Constitutional Court's role is to establish whether courts of general and special jurisdiction are violating the right to a fair trial, which they often are.

Ruling on direct constitutional law protection of human rights in proceedings on constitutional appeals has become the Constitutional Court's dominant role.[68] According to the most recent publicly available data, constitutional appeals accounted for as much as 98.56% of its caseload in 2020.[69]

According to the data on the Constitutional Court's operations, available in its 2008–2020 annual reports, the right to a trial within a reasonable time (on the whole) was the constitutionally guaranteed right which it found had been violated the most often. In that period, the Constitutional Court issued decisions on 410 constitutional appeals in which it found breaches of (various elements of) this right.[70] In its most recent report, covering 2020, the Court found a violation of the right to a trial within a reasonable time (an element of the right to a fair trial) in seven cases.[71] It did not rule on any cases in which it found violations of the other statistically registered elements of the right to a fair trial (right to a fair trial; right

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

68 S. Beljanski, M. Pajvančić, T. Marinković, D. Valić Nedeljković, *op. cit.,* p. 39.

69 Pregled rada Ustavnog suda u 2020. godini, p. 16, Constitutional Court of Serbia, 2021.

70 S. Mandić, *op. cit*.

71 Pregled rada Ustavnog suda u 2020. godini, p. 22, Constitutional Court of Serbia, 2021.

to an impartial court; right of access to a court, right to legal certainty, right to a trial within a reasonable time).

The Constitutional Court does not analyse in detail the reasons why constitutional rights have been violated; nor does it provide overviews of all the cases in which it found such violations.[72] Nevertheless, the available data illustrate the prevalence of violations of the right to a fair trial by Serbian courts and, thus the (in) efficiency and (in)effectiveness of the court system.[73]

3.4. ECtHR Decisions Concerning the Right to a Fair Trial in Serbia

The right to a fair trial is defined in almost identical terms in Article 6 of the ECHR and Article 32 of the Serbian Constitution. For the ECtHR to declare an application admissible, the applicant must, inter alia, first exhaust all domestic legal remedies that this Court considers effective. The ECtHR still considers a constitutional appeal an effective legal remedy in principle.[74]

ECtHR's data show that it found violations of (various elements of) the right to a fair trial under Article 6 of the ECHR in 158 of the 199 judgments (79%) in which it found Serbia in violation of the Convention until the end of 2020. [75]

ECtHR's judgments are publicly available and most of them have been translated into Serbian.[76] This is why the Court's arguments and reasons for declaring applications admissible can and should be taken into account not only by the regular courts and the Constitutional Court ruling on individual cases, but also by policy-makers now taking strategic decisions on interventions in the work of prosecution services and courts.[77]

The ECtHR's decisions and arguments in its judgments finding Serbia in violation of Article 6 of the Convention over the past ten years (2010–2020) show that most of the applications in the observed period concerned breaches of the right to a fair trial, including the non-execution of court decisions. The number of cases in which it found violations of the right to a fair hearing in criminal and civil matters was slightly lower; in these cases, the ECtHR found that public hearings were characterised by arbitrariness, non-transparency, undue delays or retrials, inconsistency, lack of access to a court and justice, exacerbating legal uncertainty and fundamental public mistrust in the judiciary, although such trust is an important component of the rule of law.[78]

72 *Ibid.*
73 S. Mandić, *op. cit.*
74 *Ibid.*
75 Statistics of the ECHR – Facts and Figures, available on ECtHR's website.
76 The ECtHR's case law is available in its HUDOC database.
77 S. Mandić, *op. cit.*
78 *Ibid.*

3.5. *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 Act in early November 2018. The Legal Aid Act entered into force on 1 October 2019.[79]

The legal aid system, although functional, suffers from some shortcomings, including, notably, the small number of lawyers employed in municipal administrations. In its March 2021 Report on the Implementation of the Legal Aid Act, the Justice Ministry said that the Register of Legal Aid Providers included 150 local self-governments (no legal aid providers were registered by over 20 cities and municipalities), 3,672 lawyers, 43 mediators, 16 notaries public and 23 civic associations.[80]

The initially collected data[81] presented in the Report showed that a total 6,883 applications for legal aid were filed and that 5,367 of them (80%) were approved from 1 October 2019 to 31 March 2021. Most of the recipients were provided legal aid by the municipal services, while 954 recipients were extended legal aid by lawyers.[82]

The Report concluded that a public information campaign needed to be conducted because members of the public were still insufficiently informed of the possibility of exercising the right to legal aid. It also concluded that local self-governments still faced problems funding the provision of legal aid and that some of them lacked staff with law degrees.

The Report also noted that the reporting parameters needed to be improved to facilitate analysis of the data on the matters regarding which legal aid was provided. Such data have not been consolidated or made available yet.

3.6. *Draft Amendments to the Civil Procedure Act, Supreme Court of Cassation View's Amendment of Its Legal Opinion, Lawyer Protests and Strikes*

The Justice Ministry published the Preliminary Draft Act Amending the Civil Procedure Act on 19 May and invited all interested parties to forward their objections, suggestions and comments by 14 June.[83] Experts, NGOs and lawyers imme-

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

80 Godišnji izveštaj Ministarstva pravde o pružanju besplatne pravne pomoći, available on the Justice Ministry's website.

81 The data are not comprehensive because some local self-governments had not forwarded their reports.

82 Godišnji izveštaj Ministarstva pravde o pružanju besplatne pravne pomoći, available on the Justice Ministry's website.

83 Available in Serbian on the Justice Ministry website.

diately spoke out against the draft amendments. They warned that the substantial increase in court fees rendered access to court even more difficult and directly violated constitutional rights, such as the rights to a fair trial, to equal protection and a legal remedy, thus discriminating against individuals on grounds of their financial standing.[84] Under the amendments, submissions (lawsuits, replies to lawsuits and appeals) for which a court fee has not been paid within the statutory eight-day deadline shall be considered withdrawn. This means that individuals will be denied court protection for the first time because of their failure to pay the court fees in such a short period of time.

The amendments were publicly mostly associated directly with the state's attempt to put an end to numerous proceedings private individuals have initiated against banks for charging loan processing fees and mortgage premium insurance. Some estimate that between 100,000 and 160,000 lawsuits had been filed against banks by mid-2021, filling the dockets of the courts, particularly the Belgrade Basic Court, already staggering under their caseloads.[85]

The Serbian Bar Association issued a press release on 31 May rejecting the amendments to the CPA because they included many provisions that were experimental in character and drastically precluded citizens from their realising their constitutional rights in court and imposed on lawyers solutions leaving it with no choice but to react.[86] It said that the Chamber would in the last resort call a strike if its talks with the Ministry failed. The lawyers' protests began the following day. Protests of lesser or greater proportions continued until the end of the year.[87]

In its 2018 legal opinion,[88] the Supreme Court of Cassation (SCC) held that loan processing fees charged by banks were illegal, wherefore courts ruled in favour of the banks' clients in tens of thousands of cases. In mid-September, the Court amended its legal opinion and took a totally opposite view. It said that banks were entitled to charge fees for their services, wherefore the provision in loan agreements obligating the borrower to pay the bank's loan processing fees was not invalid provided the bank's offer contained clear and undisputable information on loan processing fees.[89] The SCC's legal opinion will inevitably result in a U-turn in all pending cases. The question immediately arose whether bank clients would have to repay the banks the sums awarded to them by the courts.[90] The Serbian Bar Association

84 "Expensive Justice is Unachievable Justice," Human Rights House press release, 27 May.

85 "Novi Zakon o parničnom postupku kraj za masovne tužbe protiv banaka?," *Danas*, 31 May.

86 "Advokatska komora Srbije ne prihvata izmene Zakona o parničnom postupku," *Danas*, 31 May.

87 "Danas protest advokata koji su protiv predloženog nacrta zakona o parničnom postupku," *Danas*, 1 June and "Advokati u četvrtak protestuju ispred ministarstva," *Danas*, 29 June.

88 Available in Serbian on SCC's website .

89 The SCC said in the amendment of its opinion that the loan processing and approval fees could be expressed in percentages and that banks were not under the obligation to separately prove the structure and amount of each cost included in the aggregate amount of loan costs disclosed in the offer which the borrower accepted when concluding the loan agreement.

90 "Da li će građani morati bankama da vraćaju novac dobijen na sudu?," *Danas*, 17 September.

issued a press release stating that the SCC's legal opinion that provisions in loan agreements binding the borrowers to pay the mortgage insurance premium to the National Mortgage Insurance Corporation (NKOSK) were directly in contravention of the well-established case-law of all Serbian courts, including the SCC. It said that the SCC opinion would result in the court rulings to the detriment of the citizens and in favour of the banks.[91] The SCC's U-turn is in violation of one of the main principles of the rule of law – legal certainty, which requires that law (and case-law) be sufficiently precise to allow the person to foresee the consequences which a given action may entail.

The lawyers staged a protest in front of the SCC on 20 September, demanding it withdraw its legal opinion. Some lawyers stormed the Court building.[92] The attorneys' continuously protested against the draft amendments to the CPA and SCC's legal opinion from late September to the end of the year. They staged several strikes.[93] At the end of the year, the Belgrade Bar Association,[94] soon joined by lawyers in other Serbian cities,[95] launched a strike until their three main demands were fulfilled – withdrawal of the draft amendments to the CPA, repeal of the amendment of the SCC legal opinion and lowering the taxes they had to pay back to the 2018 level.

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.[96] According to ECtHR case-law, privacy encompasses, inter alia, the physical and the moral integrity of a person, sexual orientation,[97] relationships with other people, including both business and professional relationships.[98] The ECtHR accepts a wider interpretation

91 The Serbian Bar Association's press release is available in Serbian on its website.

92 "Upad advokata u sedište najvišeg suda u Srbiji," *Radio Free Europe*, 20 September.

93 "Dvodnevna obustava rada advokata u Srbiji zbog odluke Vrhovnog kasacionog suda" *Radio Free Europe*, 20 October.

94 "Članovi Advokatske komore Beograda obustavili rad," *N1*, 24. decembar.

95 "I advokati iz Šapca, Loznice i Valjeva u štrajku, izneli dodatne zahteve," *N1*, 27 December.

96 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).

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

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

of the concept of privacy and considers that the content of this right cannot be predetermined in an exhaustive manner.[99]

The Constitution of Serbia guarantees the inviolability of physical and mental integrity (Art. 25), inviolability of the home (Art. 40), and confidentiality of letters and other means of communication (Art. 41). Although the Constitution does not include an explicit provision on the respect for the right to private life, the Constitutional Court of Serbia is of the view that this right is an integral part of the constitutional right to dignity and the free development of the personality,[100] enshrined in Article 23 of the Constitution.

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.[101]

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

100 CC Decision Už – 3238/2011, p. 9.

101 CC Decision IUz – 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, 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.[102]

Article 142 of the Criminal Code 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 Code 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 officio* 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.

102 See the *2017 Report,* II.5.2.

The Security Intelligence Agency Act 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. 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.[103] 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.[104]

4.2.2. Confidentiality of Correspondence in 2021

The issue concerning confidentiality of correspondence that caused the most public attention worldwide in 2021 was the revelation of a leaked database by a consortium of news organisations in July indicating that the Israeli company NSO Group has been supplying its Pegasus malware to hack over 50,000 smartphones. The people whose phones were infected included at least 180 journalists, 600 politicians and 85 human rights activists; the governments of 10 countries were the clients of the Israeli company. Pegasus, which can infect any smartphone without their users' knowledge and without any indication that their smartphones are infected, provides operators of the tool with full access to all the data on the smartphones and even control of the hardware. This malware also allows them to extract all messages, contacts, photographs and notes of the smartphone users, as well as the activation of microphones, cameras or the GPS service, facilitating full surveillance of the users. Although such software can play an exceptional role in the fight against terrorism and organised crime, the fact is that authoritarian regimes have been using it to spy on their political opponents, journalists and human rights activists.[105]

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

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

105 "Revealed: leak uncovers global abuse of cyber-surveillance weapon," *The Guardian*, 18 July.

There is no indication that anyone in Serbia was targeted by Pegasus, but Meta (Facebook) said at the end of the year that it has banned seven "surveillance-for-hire" companies Meta's platforms for carrying out a combination of reconnaissance, engagement and exploitation. One of the companies, Cognyte, reportedly had clients from Serbia. That company sold access to its platform enabling managing fake accounts across social media platforms including Facebook, Instagram, Twitter, YouTube and VKontakte (VK) and other websites to social-engineer people and collect data. Meta's investigation identified customers, inter alia, in Serbia, whose targets included journalists and politicians. Meta did not identify the company's clients.[106]

In Serbia, the reported violations of the President's right to confidentiality of correspondence attracted the most public attention during the reporting period. Vučić said in late 2020 that he knew he was bugged by the national intelligence agencies. The MIA confirmed his claims in January, saying that a large number of people have been interrogated and that proof that the President had been unlawfully wiretapped have been collected. The Organised Crime Prosecution Service launched a preliminary investigation in January to check all the information and claims and said it would publish its findings.[107] In May, the Minister of Internal Affairs said that the conversations Vučić and members of his family had with 26 individuals, whose secret surveillance had been ordered by the courts, had been intercepted.[108] In June, Minister Vulin said they knew the name of the police official who had developed the system for wiretapping the President,[109] and that there was proof that the President's communication had been intercepted 1,882 times in one year.[110] However, no details about the identity of the people who bugged the President were published by the end of the year; nor has an indictment been filed.[111] The case was one of the most frequent topics of many political and criminal reports, such as the ones about the links between Veljko Belivuk's criminal clan with high-ranking police officials, including even Defence Minister Nebojša Stefanović,[112] as well as reports on the planned state coup and assassination of the President.[113]

Although accusations of wiretapping are usually made to score political points and discredit political opponents, the issue cannot remain in the realm of daily politicking and must be reviewed from the perspective of the potential violations of

106 "Srbija i Severna Makedonija na Fejsbukovoj listi špijunaže," *Radio Free Europe*, 17 December.

107 "Prosecution: Pre-probe proceedings after Serbia's Vucic claimed was wiretapped" *N1*, 21 January.

108 "Minister says no evidence of crimes in Serbian president's intercepted calls," *N1*, 11 May.

109 "Serbia's Interior Minister: We know who ordered wiretapping of Vucic's talks" *N1*, 14 June.

110 "Ministar Vulin: Cilj je kompromitovati predsednika Vučića i naterati ga da ode," MIA press release, 13 October.

111 "Attorney: Phone Tapping Scandal Is a Farce Showing Judiciary is Controlled by the Regime," *Beta*, 4 January 2022.

112 "'Belivuk radio za Nebojšu', kum Papić prodao Stefanovića, a ministar se šlihta Vučiću," *Direktno*, 23 July.

113 "PM claims Vucic's assassination planned in January this year," *N1*, 24 October.

constitutionally guaranteed rights and the lack of liability and impunity for violating anyone's right to privacy. The BCHR already alerted to the problems of electronic communication and access to retained data in its prior reports.[114] The Electronic Communications Act, which regulates this field inadequately, has been undergoing amendment for four years now; the Government's most recent draft amendments of 2017, which have been withdrawn in the meantime, did not even include provisions on interception of electronic communication and access to retained data.[115]

The extent to and grounds on which the police and intelligence services access retained data cannot be ascertained. Although Articles 128 and 130a of the Electronic Communications Act lay down the obligation of intelligence agencies, mobile phone operators and Internet providers to keep records of access to retained data, the reports submitted to the Commissioner have included less and less information both on access on the request of state authorities and on direct access to the operators' databases from one year to another. Telenor, the only operator that registered direct access, stopped forwarding such data to the Commissioner back in 2018, as the SHARE Foundation noted in its Overview of Records of Access to Retained Data in Serbia in 2020.[116] In addition to the substantial decrease in transparency in the service providers' and relevant authorities' reports on their access to retained data practices, the SHARE Foundation also qualified as problematic the visible discrepancies in their reports. One of the reasons lies in the vagueness of the Electronic Communications Act, which fails to govern in detail the content of the reports and oversight of the operations of all entities obligated to keep records, as well the liability for failure to keep up-to-date records and prepare detailed reports on access to retained data.

The SHARE Foundation reported that, in 2020, Telenor received and processed 422 written requests for access filed by the relevant state authorities, but that it rejected 46 as legally inadmissible and partly granted eight requests. Of the 422 requests, 265 concerned base station data on registration of mobile terminals to base stations not falling in the category of retained data, vis-à-vis which over 8,000 searches of signalised recordings on base stations were conducted. Telenor, however, stopped forwarding to the Commissioner data on the state authorities' direct access to the retained data in 2018 (they accessed retained data directly 381,758 times in 2017.

Telekom Serbia received 1,417 requests for access to retained data, 1,370 of which it granted. The Telekom submitted only data on the total number of received and granted requests.

A1 (formerly VIP) also submitted reports containing just the basic information, the request submission date, mode of reply, whether the request was granted, date of reply, type of data (e.g. call lists), time of data retention and information car-

114 More in the *2018 Report,* II.4.3. and the *2019 Report,* II.4.3.

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

116 Pregled evidencije pristupa zadržanim podacima u Srbiji za 2020*,* SHARE Foundation, 2021.

rier. It rejected seven of the 122 requests it received, but provided no information on whether or not it responded to five requests in January and one request in February. The number of requests it received was halved in 2019, compared to 2018, when it received 222 requests.

Internet operators received a total of 519 requests for access to retained data in 2020, twice as many as in 2018; it granted 436 of them. The SHARE Foundation noted in its report that the number of requests for access to retained data on use of IP addresses has been doubling every year.

The data state authorities[117] submitted to the Commissioner show that the MIA had filed the most requests for access to retained data – 110,305 requests, 110,297 of which were granted. The Security Information Agency (BIA) filed a total of 1,073 requests; the courts approved all but ten of them.[118]

In 2020, the Military Security Agency filed 3,480 requests, all of which were approved. The Agency noted in its report that it also directly accessed the data, but failed to specify how many times.

Serbia still lacks an effective mechanism of civilian oversight of the intelligence agencies. The parliamentary Security Service Oversight Committee again acted as a merely protocolary body in 2021. The Committee held 13 sessions in seven days at which it adopted the intelligence agencies' reports on their operations. The Committee concluded that the intelligence agencies' work was flawless and applauded them on the lawfulness of their operations. Press releases on all the sessions were posted on the National Assembly website; the only press release that included video footage was the one on the session held on 24 March and the clip was less than five minutes long. The Committee endorsed its report on oversight of intelligence agencies in 2020. None of the Committee members took the floor during the session.

4.3. Families and Family Life

According to the ECtHR, family life is interpreted in terms of the actual existence of close personal ties.[119] It comprises a series of relationships, such as marriage, children, parent-child relationships,[120] and unmarried couples living with their children.[121] Even the possibility of establishing a family life may be sufficient to invoke protection under Article 8.[122] Other relationships that have been found to be pro-

117 Given that mobile phone operators, with the exception of Telenor, do not specify which authorities requested access, it is impossible to perform a comparative analysis of the data submitted by the operators and those submitted by the state authorities.

118 BIA has been referring to two legal grounds in its requests for access to retained data: Article 168 of the CPC and Article 14 of the Security-Intelligence Agency Act.

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

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

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

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

tected by Article 8 include relationships between siblings, uncles/aunts and nieces/nephews,[123] adoptive parents and adopted children, and grandparents and grandchildren.[124] 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.[125]

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.[126] These cases also give rise to the problem of recognising the parental rights of the person who had undergone a sex change.

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

The provisions of the Family Act 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

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

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

125 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.

126 CC Decision Už – 3238/2011.

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). Serbia thus at least formally executed the part of the European Court of Human Rights judgment in the *Jovanović v. Serbia* case[127] 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 2020.

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.[128]

According to publicly available information, over 700 parents in Serbia, most of them living in Vojvodina, initiated proceedings to establish the fate of their missing children. The courts have delivered numerous judgments in their favour, awarding them non-pecuniary damages for spiritual anguish and suffering caused by the disruption of their lives, intentional concealment and cover-up of information about the fates of their children and impunity.[129] The courts have been awarding damages in the amount of around €10,000 to each claimant. The Attorney General's Office regularly appealed the first-instance courts' decisions, but their appeals were dismissed by the appeals courts. In one case, even a motion was filed with the Supreme Court of Cassation to review the final judgment, which that Court dismissed as ill-founded.[130]

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 adoption of the Act and establishment of a mechanism aiming to ascertain the facts about the disappearance of the children and provide individual redress to all parents whose children had disappeared from the maternity wards due to the state's fault was the reason why the European Court of Human Rights dismissed two applications against Serbia.[131] The ECtHR noted that the Act provided for both judicial and extrajudicial procedures

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

128 More about the procedure established by this law in the *2020 Report*, II.4.3.1.

129 "Država ima novu taktiku: Revizije na presude o nestalim bebama, veliki broj postupaka u Novom Sadu," *021,* 14 July.

130 "Vrhovni sud podržao roditelje: Odbijena revizija na presude novosadskog suda o nestalim bebama," *021*, 6 November.

131 *Ljubinka Mik v. Serbia*, ECtHR, App. No. 9291/14 and *Svetlana Jovanović v. Serbia*, ECtHR, App. No. 63798/14.

with respect to the situation faced by the applicants and others and was aimed at discovering the children. The Act provides, *inter alia*, for a system in which the domestic courts shall have the power to investigate and obtain evidence not only at the request of the petitioner but also *proprio motu* in order to establish all the relevant facts of the case, as well as the power to award compensation where appropriate. The Act also provides for a Commission with extensive investigatory, data collection and reporting powers. Although it noted that the setting up and functioning of the DNA database remained to be fully implemented, the ECtHR concluded that any issues which could arise in that respect could not be considered *in abstracto* but rather in the particular circumstances of a possible future application. The ECtHR dismissed a number of applications against Serbia for the same reasons in 2021.[132]

4.4. ECtHR's Judgment in the Case of Nikolić v. Serbia

On 19 October, the ECtHR delivered a judgment in the case of *Nikolić v. Serbia*[133] finding Serbia in violation of the applicant's right to a private life under Article 8 of the ECHR.

The applicant brought a private criminal action against her neighbour D.V. and his friend for inflicting minor bodily harm on 20 April 2006. On 26 March 2006, the applicant's neighbour, D.V., allegedly punched the applicant several times in the head and pulled her hair, causing her to fall to the ground. According to her medical records, the applicant sustained a number of injuries to her head and leg and also had a few wisps of hair pulled out. The applicant claimed that D.V. had allegedly been verbally abusive towards her before the incident and that she had already lodged several criminal complaints with the police, but to no avail.

Four of the ten scheduled hearings were held from April 2007 to June 2010. Throughout the proceedings, the applicant complained of a lack of diligence on the part of the courts. In November 2009, the applicant wrote to the Second Municipal Court and the Supreme Court, alerting them that her criminal proceedings might be terminated as statute-barred owing to the delays, but she soon received replies from the two court presidents that her complaints about the possible expiry of the limitation period were unfounded. The Municipal Court terminated the proceedings as time-barred in June 2010. In December 2009, the applicant filed a constitutional appeal with the Constitutional Court of Serbia, asking it to prevent the criminal proceedings becoming statute-barred. She alleged that if the proceedings became time-barred, it would lead to further impunity for the defendant and would prevent her from exercising her rights, achieving moral satisfaction and obtaining compensation for her injuries. In July 2010, the Constitutional Court found a violation of the applicant's right to a trial within a reasonable time, that the applicant had not contributed to the procedural delays in any way and that she was entitled to non-pecuniary damages. The

132 See paras. 43–54 of the ECtHR's decision to strike the two applications out of its list of cases.

133 *Nikolić v. Serbia*, ECtHR, App. no. 15352/11.

Commission for Compensation offered to draw up a draft agreement under which the applicant would be paid 20,000 RSD (approximately EUR 185 at the time), but she refused and brought civil proceedings against the Justice Ministry, seeking 1,500,000 RSD for non-pecuniary damage. After its review of the appeal of the first-instance decision, the appeals court ultimately awarded the applicant 141,000 RSD.

Although the applicant complained of violations of Articles 6, 13 and 41 of the ECHR, about the manner in which the criminal proceedings had been conducted, effectively resulting in D.V.'s impunity, as well as the state's subsequent failure to provide her with any redress, the Court considered that the main legal issue raised by the application fell to be examined from the standpoint of the state's obligations under Article 8 of the Convention.

The ECtHR observed that the facts of the impugned attack were not established by the first-instance court as the criminal proceedings were terminated as statute-barred although the applicant had medical records of the sustained injuries. Given that the applicant had previously been subjected to repeated verbal attacks from her neighbour, the Court considered that the attack to which the applicant had been subjected had had a sufficiently adverse impact on her physical and moral integrity to engage the positive obligations of the State within the meaning of Article 8. In its view, acts of violence, such as those in the instant case, require the states to adopt adequate positive measures in the sphere of criminal-law protection. Although the ECtHR noted that domestic law afforded the applicant adequate protection, the facts that the case became time-barred, that only four hearings were held in four years and that the applicant's attempts to prevent non-prosecution of the perpetrators were disregarded raised doubts as to the effectiveness of the system put in place by the state and left the private criminal proceedings in the case devoid of meaning. The ECtHR considered that the impugned practices in the specific circumstances of the present case had not provided adequate protection to the applicant against an attack on her physical integrity and showed that the manner in which the criminal-law mechanisms were implemented were defective to the point of constituting a violation of Serbia's positive obligations under Article 8 of the Convention.

The ECtHR found a violation of Article 8 of the ECHR and awarded the applicant €3,000 in respect of non-pecuniary damages.

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), which the National Assembly adopted in November 2018, entered into force on 21 August 2019.[134]

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.

134 More on the Personal Data Protection Act in the *2018 Report*, II.5.1., the *2019 Report*, II.5.1. and the *2020 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 anonymyse 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.

The alignment of laws and other regulations with the PDPA, which should have been completed by the end of 2020, was still pending at the end of the reporting period. 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.[135]

Serbian criminal law also protects personal data. Article 146 of the Criminal Code incriminates unauthorised collection of personal data. The simple form of the crime warrants a fine or up to one year imprisonment for anyone who obtains, communicates or misuses personal data collected, processed and used in accordance with the law. The same penalty awaits anyone who has illegally collected personal data or used them. Criminal prosecution for the simple form of the crime is initiated by the victim. The qualified form of the crime is committed by public officials exercising their duties; it is prosecuted ex officio and warrants up to three years' imprisonment.

This protection mechanism has, however, proven inefficient and ineffective. An analysis conducted by the organisation Partners – Serbia shows that 25 cases of violations of Article 146 of the CC were formed in 2015; two of the indictments were

135 See the *2018 Report*, II.5.2.

filed by public prosecutors and 26 cases were formed in response to complaints filed by private individuals.[136] Only two cases ended in convictions, albeit the perpetrators were handed down suspended sentences. The authors of the analysis ascribe the inefficiency of protection under criminal law to the indifference of the police and public prosecutors, lack of preliminary and full-scale investigations and the public prosecutors' non-fulfilment of their statutory obligations.

5.2. Personal Data Protection in 2021

Both experts and the Commissioner for Information of Public Importance and Personal Data Protection (Commissioner) have for years been warning that personal data protection remained at an extremely low level despite the Personal Data Protection Act (PDPA), which entered into force in August 2019, and its predecessor, the 2008 Personal Data Protection Act, which had been amended several times. Many cases actually or potentially leading to personal data violations were registered in 2021.

Serbia still lacks a Personal Data Protection Strategy. Such a strategy needs to be adopted as soon as possible, given the increasing importance of personal data protection, the incompatibility of national law and absence of provisions governing specific forms of personal data processing, such as video surveillance and biometric data processing. In June, the Government adopted a decision establishing a working group tasked with drafting the strategy and its action plan. The Commissioner said that the Working Group has begun work on the strategy that would cover the 2021–2028 period.[137] The strategy was not adopted by the end of the year.

Although delays in implementing the activities set out in the Chapter 23 Action Plan, and even the Revised Action Plan adopted in 2020, are commonplace, note needs to be taken that the deadline for implementing Activity 3.9.1.7 (development and adoption of a law and by-laws on use of video surveillance) expired in mid-2021.[138] The Report on the Implementation of the Chapter 23 Revised Action Plan covering the third quarter of 2021 said that the activity had been partly implemented.[139] It mentioned the adoption of the Guidance on requirements for the installation, use and maintenance of a video surveillance system in the Ministry of Internal Affairs and the Rulebook on filming in public places and communal police's announcement of its intention to carry out filming. It, however, remains disputable whether the Rulebook provides for proper notification of people that their data are

136 Postupanje javnih tužilaštava i sudova u Republici Srbiji u predmetima iz oblasti zaštite podataka o ličnosti, Partners-Serbia, January 2021.

137 "Nasušno potrebno zanimanje u Srbiji: Tek svaki deseti ima osobu za ovaj posao, a kazne su ogromne," *Telegraf*, 7 June.

138 Available on the website of the Justice Ministry.

139 Available on the website of the Justice Ministry.

processed and their rights in this area in light of the principle of transparency of data processing.[140]

The BCHR has over the past few years been reporting on the installation of smart video surveillance cameras and alerting to potential risks to privacy and personal data protection, as well as the state's unacceptable attitude towards the issue, in particular the MIA's Data Protection Impact Assessment.[141]

The state tried to take a step further. In September, it published the text of the Preliminary Draft of the Internal Affairs Act, the provisions of which essentially put in place legal grounds for the introduction of massive video surveillance by use of via facial detection and recognition technology. Article 44 allowed to the police to use data processing systems, such as: audio and video surveillance systems, access control system, mobile and radio communications systems, a registrophonic system and a geographic information system. The audio and video surveillance systems consist of a set of fixed and mobile cameras, software and hardware solutions with analytical tools, as well as other devices and equipment designed for recording in public places, audio and video recording and processing of audio and video recordings and photos of faces, vehicles and events, with information about the location and time of the audio or video recording and photos. Parts of the audio and video surveillance systems referred to in paragraph 2 of this Article are also used for automatic face detection, which includes processing biometric data of a detected face and bodily characteristics, time and location and participation of a person in an event, automatic vehicle detection, licence plate recognition or other markings on the vehicle, and violation detection. Article 71 of the Preliminary Draft entitled authorised officers to perform identification on the basis of people's biometric characteristics in order to find: perpetrators of criminal offences prosecuted ex officio, individuals reasonably suspected of preparing to commit a criminal offense, and wanted persons.

However, these provisions left ample room for abuse, prompting CSOs and Serbian and international experts to appeal for the withdrawal of the Preliminary Draft. They emphasised that an adequate data protection impact assessment had not been conducted, that use of the technology was not proportionate to the risks to civil rights and freedoms and that people's right to privacy was in jeopardy because the technology allowed for the reconstruction of their movement.[142]

Police minister Aleksandar Vulin sad on 23 September that he withdrew the Preliminary Draft from the procedure at President Vučić's request.[143]

Commissioner Marinović said that, notwithstanding plans to install cameras with greater resolution, biometric data could not be processed at the moment because software for processing them was not installed yet.[144]

140 "MUP mora da obeleži sve kamere u Beogradu," *SHARE Foundation*, 11 September 2020.

141 More in the *2019 Report*, II.5.2. and the *2020 Report*, II.5.2.2.

142 "Zašto kamere menjaju Zakon o policiji u Srbiji?," *Radio Free Europe*, 17 September.

143 "Vulin: Povučen Nacrt zakona o unutrašnjim poslovima," *Danas*, 23 September.

144 "Da li se s pravom plašimo da kamere u Beogradu prepoznaju lica," *Nova S*, 16 October.

In its resolution on artificial intelligence in criminal law and its use by the police and judicial authorities in criminal matters adopted on 6 October,[145] the European Parliament inter alia called on the European Commission to implement a ban on any processing of biometric data, including facial images, for law enforcement purposes that leads to mass surveillance in publicly accessible spaces. It also called on the Commission to stop funding biometric research or deployment or programmes that are likely to result in indiscriminate mass surveillance in public spaces, and highlighted, in this context, that special attention should be paid, and a strict framework applied, to the use of drones in police operations.

Some EU Member States responded swiftly to the EP's initiative. On 1 December, the Italian Parliament introduced a moratorium on video surveillance systems that use facial recognition technologies. This law introduces, for the first time in an EU Member State, a temporary ban for private entities to use these systems in public places or places accessible to the public.[146] The new ruling coalition in Germany called for a ban on facial recognition and other biometric surveillance in public places across Europe.[147]

A similar initiative was launched by the SHARE Foundation in its Comment of the Preliminary Draft Act on Internal Affairs.[148] The Foundation requested of the relevant authorities to declare a moratorium on the use of such systems and technologies in Serbia without delay.

Widespread protests were held across Serbia in late November and early December. People, who rallied primarily to protest against numerous environmental problems and the adoption of the Referendum and People's Initiative Act and the amendments to the Expropriation Act, blocked the main roads and traffic junctions.[149] Soon after the protests, the protesters started receiving at their home addresses misdemeanour orders to pay a 5,000 RSD fine for violating the Traffic Safety Act, although the police had not asked them to produce their IDs during the events. Questions about how the MIA established the identity of the people blocking traffic were raised. Suspicions were voiced that the police used smart video surveillance and facial recognition software and compared the photographs from the protests with those in the database of biometric photos of the population. The police use the smart video surveillance cameras installed in Belgrade, but there were indications that officers were recording the rallies with Huawei mobile phones with facial recognition software.[150] The Ministry of Internal Affairs kept mum on how they

145 European Parliament resolution of 6 October 2021 on artificial intelligence in criminal law and its use by the police and judicial authorities in criminal matters (2020/2016(INI)).

146 "Italy introduces a moratorium on video surveillance systems that use facial recognition," *EDRi*, 15 December.

147 "German coalition backs ban on facial recognition in public places," *Politico*, 24 November.

148 "Total surveliance law proposed in Serbia," *SHARE Foundation*, 21 September.

149 More in II.7.

150 "Demonstranti u Srbiji sumnjaju da su snimani Huawei opremom," *Radio Free Europe*, 8 December.

established the identity of the protesters who received misdemeanour orders. Lawyers and personal data protection experts advised the latter not to pay the fines and to require that their guilt be established by misdemeanour courts precisely to ascertain the evidence on which the orders were issued. In the event the police used the cameras installed in Belgrade or cell phones with facial recognition software, they broke the law because since there are no legal grounds for such personal data collection and processing.[151] The Commissioner said that he would examine the allegations of the protest organisers that the police had used facial recognition technology.

6. Freedom of Thought, Conscience and Religion

6.1. 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, 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)).[152] It prescribes that freedom of expression may be restricted by law 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.[153]

Censorship of the press and other media is prohibited by the same article. Only a competent court may prevent the dissemination of information. This preventive measure may be imposed only if it is "necessary in a democratic society to

151 "Rodoljub Šabić pozvao MUP da obustavi akciju emitovanja prekršajnih naloga u vezi protesta," *Danas*, 12 December.

152 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).

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

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 a 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.[154] Exercise of the freedom of public information is governed by the Public Information and Media Act (PIMA), while the right of access to information of public importance is governed by the Free Access to Information of Public Importance Act (FAIPIA), which also defines information of public importance.

6.2. 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.[155] 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.[156] Restriction

154 General Comment No. 34, para. 18.

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

156 *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

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.[157] 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.[158]

The Criminal Code explicitly prohibits incitement to national, racial and religious hate, dissension or intolerance (Art. 317). Hate speech, which is unfortunately still frequent in both public discourse and the media, is also incriminated. Article 387(4) of the Criminal Code prohibits promotion of ideas and theories advocating or inciting hate, discrimination or violence on grounds of race, skin colour, religious or ethnic affiliation or other personal characteristics. The Criminal Code was amended in 2013 and now includes Article 54a, under which courts shall consider 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.[159]

The Public Information and Media Act also prohibits hate speech. It is forbidden to publish ideas, information and opinions that incite discrimination, hatred or violence against persons or groups of persons on the grounds of their race, religion, nationality, ethnic group, gender or sexual 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 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. 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

insults and reliance on civil proceedings in which the injured parties would pursue their right to compensation of non-pecuniary damages.

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

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

159 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.

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, 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.

Article 11 of 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."

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 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 is 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.[160]

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,[161] particularly with regard to issues affecting their financial integrity.[162] The

160 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).

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

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

ECtHR affirmed the view in its judgment in the case *Lepojić v. Serbia*.[163] 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.[164]

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).

6.3. Freedom of Expression in 2021

Freedom of expression, especially the freedom of the media, has for years been on the list of particularly jeopardised human rights in Serbia. In its Serbia 2021 Report, the European Commission said that "limited headway was made by adopting and starting to implement a limited number of measures under the action plan related to the media strategy".[165] It, however, also noted that verbal attacks against journalists by high-level officials continued and that cases of threats and violence remained a concern.[166] The Coalition for Media Freedoms said that EC's Report listed the undertaken formal and procedural measures, e.g. the introduction of a hotline for journalists, implementation of a limited set of measures in the Media Strategy Action Plan, the forming of two working groups for monitoring the implementation of the strategy and safety of journalists et al, but that "formal actions do not bring essential changes on the media stage".[167] A cloud of suspicion was cast on the EC's Report when the eminent Politico published an article quoting various sources as saying that Enlargement Commissioner Olivér Várhelyi, member of Victor Orban's ruling party, exerted pressures to have Serbia rated better on rule of law than it deserved.[168]

Serbia remained 93rd on the Reporters without Borders 2021 World Press Freedom Index, although its rating continued falling, this time by 0.4 index points year on year.[169] Head of this organisation's EU/Balkan Desk Balkans Pavol Szalai specified that "verbal, political attacks on the media, harassment by the state institutions, and many violent cases have not been sufficiently investigated" in Serbia,

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

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

165 *Serbia 2021 Report*, p. 5.

166 *Ibid*.

167 "Koalicija za slobodu medija o izveštaju EK: Ključni problemi ostaju nerešeni," *Beta*, 20 October.

168 "Olivér Várhelyi: Europe's under-fire gatekeeper," *Politico*, 5 October.

169 "RSF: No journalism, but political war in pro-government media in Serbia," *N1*, Reporters without Borders, 22. April.

adding that the slandering campaigns in pro-government media were not journalism but a "political war".[170] The Swedish Institute V-Dem ranked Serbia 5th on the list of 10 countries with sharpest declines in the level of democracy**,** saying that its downward decline continued after continued assaults on the judiciary and restrictions on the media and civil society.[171] Freedom House also said that democracy in Serbia continued falling and that media freedoms were under threat.[172] In its 2020 Country Reports on Human Rights Practices, the State Department said that, in Serbia, "significant human rights issues included: serious restrictions on free expression and the press, including violence, threats of violence, and unjustified arrests and prosecutions against journalists."[173]

The Centre for Media, Data and Society within the Budapest-based Central European University (CEU) published a comparative analysis of media independence in the world entitled "State of State Media – A Global Analysis of the Editorial Independence of State Media and an Introduction of a New State Media Typology".[174] The Report categorises Serbia among countries seeing a very concerning trend – the rise of the private capture model where state authorities and political parties in power gain control over the editorial agenda of numerous privately owned media outlets. Poland, Hungary and Turkey are also on the list. The Study specifies which outlets were analysed and qualifies the Serbian and Vojvodina public service broadcasters and the daily *Politika* as captured state media, and *B92*, *TV Prva*, *Kurir*, *Tanjug* and *Večernje novosti* as captured private media.[175]

Analyses of Serbian CSOs paint the same if not bleaker picture of media freedoms. CRTA's analysis of prime-time news on TV stations with nationwide coverage in the July 2020 – June 2021 period showed that ruling parties took up 93% and opposition parties just 7% of airtime devoted to political events.[176] Coverage of the ruling parties was exclusively positive or neutral, while 60% of the coverage of opposition parties was negative.[177]

Twitter labelled accounts belonging to 10 pro-government media in Serbia as state-affiliated media. In its rules and regulations, Twitter defines state-affiliated media as "outlets where the state exercises control over editorial content through financial resources, direct or indirect political pressures, and/or control over production and distribution." "Unlike independent media, state-affiliated media frequently

170 *Ibid*.

171 "V-Dem Institute Democracy report says Serbia among top autocratic countries," *N1*, 31 August.

172 Serbia: Nations in Transit 2021 Report, Freedom House, 2021.

173 "Izveštaj Stejt departmenta: Ozbiljna ograničenja slobode izražavanja u Srbiji," *Cenzolovka*, 31 March.

174 "Dragomir's The State of State Media Study Featured in Several Media Outlets," CEU Democracy Institute – Center for Media, Data and Society, 19 November.

175 *Ibid*.

176 "Political Pluralism Media Monitoring in Serbia, July 2020-June 2021," CRTA, 8 July.

177 *Ibid*.

use their news coverage as a means to advance a political agenda. We believe that people have the right to know when a media account is affiliated directly or indirectly with a state actor," Twitter said.[178] The Serbian and Vojvodina public service broadcasters were among the media labelled by Twitter. Twitter's labelling provoked fresh government attacks on the media and CSOs. Over 60 organisations and media outlets sent an open letter to the Minister for Human and Minority Rights and Social Dialogue Gordana Čomić, calling on her to "recognise, condemn and prevent attacks on civil society and media which are being perpetrated by the Government". They emphasised that international organisations have been qualifying the status of media in Serbia as unfavourable for a long time now and that the government's latest campaign merely confirmed their assessments.[179]

A Standing Working Group on Safety of Journalists, comprising representatives of media associations, prosecutors and the police, was set up in December 2016 to address individual cases of attacks on journalists.[180] A commission investigating unsolved murders of journalists during the 1990s was set up in 2013. In May 2020, the Protector of Citizens 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. In December 2020, the Government set up two new working groups, one charged with the implementation of the Media Strategy Action Plan and the other with the safety and protection of journalists. Representatives of CSOs and independent press and media associations (Slavko Ćuruvija Foundation, IJAS, the Independent Association of Vojvodina Journalists, Local Press, Association of Media and Online Media Association) left the Working Group for the Safety and Protection of Journalists in protest against the campaign waged against the investigative reporting network KRIK.[181] The Working Group singled out the launch of a hotline for reporting threats and attacks against journalists as the main result.[182] The inflation of working group and commissions with overlapping competences, which should allegedly protect journalists, has not yielded any results. Moreover, the number of attacks and pressures against journalists has been steadily growing from one year to another. Only the government has benefitted from the new Media Strategy (and its Action Plan) and the working groups, because it got a passing grade in the EC's annual report thanks to this formal ticking of boxes.

178 "Twitter Labels Numerous Media Accounts in Serbia 'State Affiliated'," *BIRN*, 16 August; "New labels for government and state-affiliated media accounts," Twitter Blog, 6 August.

179 "An Open Letter to Minister Gordana Čomić regarding attacks on civil society and media," Civic Initiatives, 26 August.

180 More is available in Serbian on the Bezbedni novinari (Safe Journalists) website.

181 "Serbian media associations leave Government's Working group for the safety of journalists in protest," *European Western Balkans*, 17 March.

182 "Objavljen monitoring rada vladinih radnih grupa u oblasti slobode izražavanja i medija," NCEU press release, 2 July.

6.4. Amendment of Laws Relevant to the Media Sector

The Media Strategy lays down the foundations for the media reform in the 2020–2025 period. Unlike the prior strategies,[183] this document addresses a broad scope of issues directly or indirectly associated with improving the situation in the media sector. Such an approach to defining policies in the media policy sphere resulted in the inclusion of activities providing for the amendment of numerous laws and by-laws with a view to achieving the Strategy goals. The Action Plan for the Implementation of the Media Strategy, which was adopted in October 2020, envisages the amendment of media laws (the Public Information and Media Act, the Electronic Media Act and the Public Media Services Act), as well as a number of other laws impacting on issues relevant to the media and journalists. The following laws are to be amended: the Criminal Procedure Code, in the context of relieving journalists of the obligation to testify if they would thus reveal their confidential sources; the Budget System Act, to exempt staff of public media services (PMS) from the public sector wage and employment restrictions in order to increase the level of the PMS' functional independence; the National Councils of National Minorities Act, to ensure that the appointment and dismissal of PMS boards and editors is carried out only by PMS boards, in the absence of any third parties, including National Minority Councils, again in order to increase the level of the PMS' functional independence; the Free Access to Information of Public Importance Act, to ensure the execution of the Commissioner's final enforceable decisions and mandatory reviews of the Commissioner's reports; the Copyright and Neighbouring Rights Act, to put in place a more flexible model for submission of data relevant to calculation of fees, establish a fairer system for adopting fee tariffs taking equally into account the interests of the media (as the users) and collective organisations, set out the basic tariff elements and ensure subsidised tariffs for civil sector media; Act on Fees for Use of Public Goods, to encourage the development of so-called civil sector media by reducing the radio frequency fees; the Public Procurement Act, to reduce the risk of abuse of the public procurement system to obtain various types of media services by increasing transparency, defining services that may be commissioned from media publishers and media content producers, and determining criteria for the selection of providers of such services; the Donations and Humanitarian Aid Act, to determine the conditions for and restrictions of donations/sponsorships to media publishers by public authorities; the Property Tax Act, to ensure the equal treatment of media publishers, non-profit organisations and large companies. The Action Plan also envisages the

183 Chapter IX of the prior Media Strategy, which expired in 2016, and its Action Plan envisaged the amendment of regulations applying only to the media, specifically the laws on public information, electronic media, public media services and regulations governing the status of publicly owned media (Tanjug, Radio Yugoslavia, etc.). The prior Strategy recognised the importance of other regulations as well but merely provided for the "re-examination of the possibility" of amending them. These regulations included the Advertising Act, the Act on the Right to Free Shares and Pecuniary Compensation to be Realised by Citizens in the Privatisation Procedure, the VAT Act, the Customs Act and the State Aid Control Act.

repealing of the Act on Temporary Regulation of the Manner of Collection of Public Media Service Fees, because it is not compliant with the Public Media Services Act provisions on sources of funding.

The Media Strategy also proposes the amendment of other laws, including, notably, the Criminal Code, to improve the safety of journalists, and the Electronic Communications Act, to improve the privacy and safety of the journalists' sources of information and re-examine the concept of communication data retention.

The Action Plan provided for the amendment of seven of the 13 laws, including the umbrella Public Information and Media Act, by the end of 2021.

The process of amending the Public Information and Media Act began in July 2021, when the Ministry of Culture and Information formed a working group in which 14 state officials and eight representatives of GONGOs accounted for two-thirds of its members.[184] Press and media associations and CSOs, whose members sat on the Group, warned in September 2021 that the Group was reviewing provisions in contravention of both the Media Strategy and the Constitution and international freedom of expression norms.[185] They included the preliminary ban on publishing fake news, a definition of the term journalist, direct state subsidies to media informing persons with disabilities, reintroduction of publicly-owned media and scrapping of the obligation to take into account the Press Council's decisions when allocating budget funds to the media. They said that they would not back any of these provisions which had the potential to gravely undermine the freedom of information.[186] The deadline set by the Action Plan was not met since the drafting of the amendments was still under way at the end of the reporting period.

The Union of Discographers of Serbia said in October that the Ministry of Economy had formed a working group for amending the Copyright and Neighbouring Rights Act on 7 October and that all interested parties would have the opportunity to comment the draft amendments at a public debate that would be organised once they were completed.[187] Given that the published list of Working Group members does not include any representatives of the Ministry of Culture or Information or copyright users (media, operators, etc.), it remains unclear whether and how the activities set out in the Media Strategy will be incorporated. The draft amendments were not published, let alone adopted by the end of the reporting period, as the Action Plan envisages.

The National Assembly adopted amendments to the FAIPIA in November 2021, as provided by the Action Plan. The Coalition for Free Access to Information[188]

184 "Izmene medijskih zakona kao predstava za javnost: Dve trećine članova Radne grupe predstavnici države i organizacija koje podržavaju vlast," *Cenzolovka*, 9 July.

185 "Medijska i novinarska udruženja: Pojedini predlozi izmena Zakona o javnom informisanju odstupaju od Medijske strategije i prava na slobodu izražavanja," *Cenzolovka*, 7 September.

186 *Ibid.*

187 "Formirana Radna grupa za izradu Nacrta novog zakona o autorskom i srodnim pravima," Union of Discographers of Serbia press release, 8 October.

188 "Draft Amendments to the Law on Free Access to Information of Public Importance render supreme public bodies untouchable," *Mašina*, 14 October.

said that its suggestions substantially improved the text of the draft but that it was still rife with deficiencies. The CSOs' conclusions indicate that the resolution of the main problem set out in the Media Strategy (the inadequate execution of the Commissioner's enforceable and binding decisions) has not been addressed fully or adequately.[189]

The public debate on the Preliminary Draft Act on Internal Affairs was held in September 2021. Although neither the Media Strategy nor its Action Plan envisage amendments to the law on police, the Preliminary Draft caused grave concerns about human rights and media freedoms among CSOs because it generally lowered the level of human rights[190] and risked to undermine the journalists' protection of their confidential sources. As many as 29 CSOs, including a number of press and media associations, spoke out against the Preliminary Draft. They issued a joint press release[191] warning, inter alia, that Articles 44 and 156–158 of the Preliminary Act on data processing systems and surveillance and recording in public places undermined the right to privacy and introduced total surveillance without any court control, which was totally in contravention of the GDPR and the Personal Data Protection Act. They alerted that these provisions could fatally jeopardise the confidentiality of journalistic sources, which would result in self-censorship and preclude journalists, especially those investigating and reporting on corruption and organised crime, from doing their jobs. They also said that the provisions were in contravention of the Media Strategy goals envisaging greater protection of journalistic sources.

Vehement expert and public reactions led to the withdrawal of the Preliminary Draft. The explanation given by the Minister of Internal Affairs, Aleksandar Vulin, did not address the CSOs' objections. He said that President Vučić had asked him to withdraw the Preliminary Draft but that he would "continue fighting for Serbia's safety despite agents and their financiers" and that "you (presumably critics of the Preliminary Draft – comment ours) will have to find another reason for blood to flow in Belgrade streets."[192] Vulin's comments indicate that he had withdrawn the Preliminary Draft at the President's request, not because of the public criticisms. He later even claimed that it was an excellent piece of legislation, confirming that the criticisms had fallen on his deaf ears, and reiterating his offensive qualifications of the organisations that criticised it.[193] The President did not acknowledge the public criticisms of the Preliminary Act either; he said that the law was being withdrawn for formal reasons, because he did not want to have such important laws adopted in the six months left until the elections.[194] Their statements to the media indicate that the adoption of the impugned law has merely

189 More in II.6.10.

190 "The draft Law on Internal Affairs threatens a wide range of human rights," BCHR, 23 September.

191 *Ibid*.

192 "Serbia's Interior Minister withdraws disputed law on President's request," *N1*, 23 September.

193 "Vulin: Nacrt zakona o unutrašnjim poslovima je odličan," *RTV*, 24 September.

194 "Serbia's Vucic blames himself for withdrawal of law on internal affairs," *N1*, 24 September.

been put off. It remains to be seen whether and how the legislator will address the issues raised by CSOs after the elections.

A public debate on the Preliminary Draft of the Electronic Communications Act was held in July and August 2021.[195] As noted, the Media Strategy envisaged amendments to the Act's provisions on retention of communication data. To recall, the data retention concept was introduced to align the national law with the controversial Directive 2006/24/EC on retention of data,[196] which obligated electronic communication operators to retain data on communication not revealing the content of communication, defined the categories of such data and their retention periods. Data on communication "do not reveal the content of communication but they do provide information about everything else relevant to the communication, e.g. to whom an e-mail was sent, how often somebody talked to with someone else, where they were when they were talking, which website they visited and how long they stayed on it, etc. This is precisely where the possibility of mapping people's communication and profiling their habits and movements lurks."[197] The legislator did not even consider changing the system; a "Solomon's solution" was found: the valid provisions on data retention shall remain in force even when the new Act enters into force, "until the adoption of a law governing lawful interception and retention of data".[198] The Preliminary Draft thus does not address at all the Media Strategy's main finding about the valid Electronic Communications Act.

The process of amending the Criminal Code and introducing provisions providing better protection to journalists and media professionals did not pass without controversy either. In October and November, the Ministry of Justice, which is proposing the amendments, held a public debate on the Preliminary Draft Act Amending the Criminal Code[199] that:

> Penalises coercion of journalists and other media professionals to do or not do something in the provision on the aggravated form of the crime of under Article 135č the offence carries imprisonment ranging from six months to five years;
>
> Expands the legal definition of the crime of endangerment of safety under Article 138 of the Criminal Code, adding threats to liberty and property of substantial value to threats to life and limb;

195 Available in Serbian on the website of the Ministry of Trade, Tourism and Telecommunications.

196 Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.

197 Stojković/Krivokapić, Zaštita novinarskih izvora u svetlu primene Strategije razvoja sistema javnog informisanja u Republici Srbiji za period 2020–2025. godine, 2021, p. 10.

198 Art. 175 of the Preliminary Draft Electronic Communications Act, available in Serbian on the website of the Ministry of Trade, Tourism and Telecommunications.

199 The Preliminary Draft is available on the website of the Ministry of Justice.

> Adds a new aggravated form of the crime of prevention of printing and distribution of printed material and broadcasts under Article 149 of the Criminal Code, penalising anyone for unauthorised prevention or obstruction of publication of information of public importance via the media and anyone who, prompted by the published information or opinion, undermines the tranquillity of the individual who published the information or opinion by subjecting them to gross insults or harassment, or arrogant and ruthless conduct. Kaznom.

The amendments to Article 149 were the ones that prompted the most greatest public outcry, which escalated after lawyer Slobodan Beljanski published an article on *Peščanik*, stating that the proposed amendments would essentially result in the introduction of an offence similar to the erstwhile "crime of opinion" conducive to unfathomable abuse and directed at arbitrary suppression of any more freely expressed criticism.[200] The criticisms prompted the Ministry to extend the public debate to 2 December. The status of the amendments remained unclear at the end of the reporting period.

Negligible amendments to the Electronic Media Act, a consequence of the agreement between the authorities and part of the opposition on improving the election conditions, were adopted in late December. The amendments 1) obligate media service providers to publish their fees for political advertisements before the start of the election campaign and the criteria against which they set them (Art. 47(1(5))); and 2) prohibit media service providers from reporting on official public events – launch and opening of infrastructural and other facilities (roads, bridges, schools, hospitals, factories, et al) when such events are attended by public officials running for President, seats in the national, provincial or local self-government assemblies (Art. 47(2)). The amendments of provisions on media campaign coverage envisaged by the Media Strategy were more ambitious. They included amending the Electronic Media Act, the manner in which the Regulatory Authority for Electronic Media (REM) oversees election media coverage and extending REM's powers to overseeing all aspects of election coverage reporting (with particular focus on the public officials' abuse of office for campaigning) and the imposition of more effective sanctions, including the rapid and prompt issuance of the relevant decisions during election campaigns. The Media Strategy also envisages the possibility of amending the provisions on election campaigning with regard to media not subject to REM's oversight. Finally, the Action Plan provides for the adoption of these amendments in 2022. Judging by everything, the amendments to the Electronic Media Act adopted in late 2021 are ad hoc amendments not related to the implementation of the Media Strategy activities.

200 "Čuvajte se mišljenja o mišljenju," *Peščanik*, 21 October.

6.5. *Media Funding Awarded at Competitions*

Serbia introduced public competitions for funding media content in 2011. This public interest funding model aims to preclude the state's funding of the media and thus its influence on their editorial policies, whilst recognising the importance of the provision of public information as an undisputable public interest. The law thus provides for the funding of such interest, primarily by local self-governments, via public competitions, commissions comprising media professionals and representatives of press associations, and transparent monitoring of use of public funds. However, this form of funding has turned into its opposite in nearly all cities and municipalities, where the local authorities have been allocating the funds to outlets toeing their line, siphoning money from the budget for themselves and ensuring influence on the outlets' editorial policies. Each segment of the process has been distorted, by gross violations or creative interpretations of the law. Problems arise at the very start, during the establishment of the commissions that are to allocate the funds. Surveys by journalists and associations conducted over a number of years have shown that anonymous representatives of pro-government media and associations, who are treated as independent media experts, are appointed to the commissions.[201] Such commissions grant funds to pro-government media or those sharing business interests with the commission members.

The Belgrade commission, which did not include any members of the representative press or media associations, allocated more than half of the budget to *Studio B* and companies associated with this TV station.[202] The rest of the money was also allocated to pro-government media, including tabloids infamous for their violations of the Press Code of Conduct, such as *Informer* and *Kurir*.[203] Over 80% of the Niš city budget was allocated to pro-government outlets; nearly 60% of all funds went to media owned by or directly associated with the Radomirović family.[204] Apart from limiting media freedoms, such competitions also provide the representatives of the local governments and outlets close to them with opportunities for corruption. Controversial Šabac businessman, Radoica Milosavljević, who bought a large number of outlets in Serbia and turned them into the regime's propaganda service, has been reaping huge amounts of money at media funding competitions every year. In 2021, his outlets were granted over 45 million RSD in competitions called by the Ministry of Culture and Information.[205] The Novi Kneževac Information

201 "Koalicija za slobodu medija: Objaviti kriterijume za izbor medijskih stručnjaka," *Cenzolovka*, 2 April.

202 "Beogradski medijski konkurs: Studiju B i povezanim firmama više od polovine novca," *Cenzolovka*, 13 May.

203 *Ibid*.

204 "Četiri petine novca u Nišu za medije bliske vlasti, 40 miliona medijima povezanim sa porodicom Radomirović," *Cenzolovka*, 6 May.

205 "Tri miliona evra za gospodina Milosavljevića," *Cenzolovka*, 24 May.

Centre, which Milosavljević bought for €480, was granted over €70,000 at competitions over the past five years.[206] Milosavljević's outlets in Kruševac, Zrenjanin, Leskovac, Pirota, Požega and other towns have regularly been granted the most funds from the cities' coffers.[207]

The conclusions and recommendations press associations published in their White Book on Project Co-Funding in 2016 still stand. They identified the following main problems; vagueness of the law, lack of transparency of the competition process, non-evaluation of co-funded projects and non-existence of penalties for violating procedures and regulations.[208] Media and CSOs have persistently been alerting to the unavailability of evaluation reports and media content allegedly produced thanks to the funds allocated at the competitions.[209]

In late 2021, the State Aid Control Commission held public consultations on the Draft Decree on State Aid Requirements and Compliance Criteria in the Field of Public Information, which sets out the requirements and criteria that must be fulfilled for compliance of state aid allocated to public media services (funds from fees and budgets) and project co-funding granted to outlets with regulations on state aid.[210] The Draft Decree also disregards the Media Strategy findings on state aid to media. Many of its provisions are in contravention of the media laws (Public Media Services Act and the Public Information and Media Act).

6.6. Media Funding from Advertising and Public Procurement Contracts

Allocation of funding to media through public procurement contracting of their services amounts to avoidance of the rules on competition-based funding of media content of public importance and renders the media reforms meaningless. The authors of the 2016 Public Procurement Act missed the chance to govern this area in greater detail. The opinion of the Ministry of Culture and Information – that media can exceptionally be funded through the public procurement of their services for broadcasting parliamentary sessions, publishing the city/municipal bulletins and maintaining the city/municipal websites – is still considered authoritative.[211] Nevertheless, many local self-governments, as well as republican authorities, continued

206 *Ibid*.

207 *Ibid*.

208 Bela knjiga konkursnog sufinansiranja javnog interesa u sferi javnog informisanja, Coalition of Media and Press Associations, 2016.

209 Transparentnost podataka o državnom finansiranju medija – tri slučaja neprimerenog postupanja institucija, IJAS, 2021.

210 The State Aid Control Commission's press release of 23 December is available in Serbian on its website.

211 "Opštine raspisuju tendere umesto konkursa," *Danas*, 27 September 2015.

with their practice of funding media via public contracts concluded for other reasons as well, thus indirectly influencing their editorial policies through covert subsidies.

The state news agency *Tanjug* was the most drastic example. Although it was officially shut down by a Government decision back in 2015,[212] it continued operating until March 2021, when it was finally closed. However, its trademark was bought by a pro-government outlet and companies owned by Željko Joksimović and Minja Grčić, known for their ties with the ruling party.[213] They continued using the name *Tanjug* and enjoying privileged treatment "*de facto* if not *de jure*", as *FONET* editor Zoran Sekulić put it.[214] The state continued funding *Tanjug*, mostly through the public procurement of its services, as well as direct deals. In 2021, *Tanjug* concluded seven contracts with ministries "on media coverage" of their activities, earning 15 million RSD.[215] All the competitions were formulated identically to ensure that *Tanjug* was the only eligible bidder, because it was the only agency cooperating with all five TV stations with national frequencies.[216]

In its legal analysis of project co-funding of content of public interest, [217] the IJAS criticised the use of the public procurement system to covertly subsidise media and illegally influence their editorial policies. Its authors recommend that public procurement be limited only to the publication of city/municipal bulletins and maintenance of their websites and, under special circumstances, broadcasts of local assembly sessions.[218] Various CSO coalitions focusing on this area also called on the Government to regulate public procurement in this area more clearly.[219] In their Shadow Report on the Implementation of the 2013–2018 Anti-Corruption Strategy and Action Plan, the organisations *Pravni skener* and *Tri tačke* alerted to the widespread practice of abusing public procurement for covert funding of media in contravention of the regulations on project co-funding.[220] However, barely any of these recommendations were upheld by the authors of the 2016 Public Procurement Act.

212 "Serbia shuts state news agency Tanjug, once voice of Yugoslavia," *Reuters*, 4 November 2015.

213 "Firma Radoice Milosavljevića i Željka Joksimovića dobila prava na Tanjug," *Raskrikavanje*, 25 December 2020.

214 "Zeljko Joksimovic's Tanjug received almost 9 million from the state in 15 months!", *Srbin.info*, 16 October.

215 *Ibid*.

216 *Ibid*.

217 Pravna analiza projektnog sufinansiranja sadržaja od interesa za javnost u Republici Srbiji, IJAS, 2021.

218 *Ibid*.

219 See the following two analyses "Problemi u primeni Zakona o javnim nabavkama i predlozi građanskog društva za izmene i unapređenje postojećih rešenja," available on the website of the Public Finance Oversight Coalition and "Praćenje medijskih sloboda i slobode izražavanja u procesu EU integracija," available on the Civic Initiatives website.

220 Alternativni izveštaj o sprovođenju Strategije za borbu protiv korupcije 2013–2018 i Akcionog plana, Pravni skener, 2016.

Advertising and similar forms of funding (including donations and sponsorships) are the third important pillar of state investments in media, in addition to competition-based funding and public procurements. Due to the above mentioned lack of regulation, the problems in this area are even greater than in the latter two. The first to alert to them was the Anti-Corruption Council, a government advisory body, which published reports on the state's influence on the media in 2011 and 2015.[221] Both reports concluded that public funding continued to be abused to control the media. In its general conclusion in the 2015 report, the Anti-Corruption Council said that "[A]dvertising and marketing are the channels through which editorial policies of the media can be influenced, while at the same time none of the officials or their associates appears as a part of media ownership structure. A strong relationship between the media and representatives of all levels of governmental authorities is created through advertising and marketing. The media have a financial benefit in this relationship, and the authorities have a more "flexible" and servile media, who are blackmailed by the possibility of losing the funding they obtain from advertising and marketing services."[222]

In its 2015 Report, the Anti-Corruption Council identified and described numerous problems in the advertising of public entities, including discretionary decisions, contracting based on ties between the politicians and owners of marketing agencies, lack of oversight of public companies, engagement of companies not registered for marketing, commissioning of public opinion surveys or goods and services unnecessary for the institutions' operations, et al. The Council issued 24 recommendations for eliminating all the deficiencies. None of its conclusions and recommendations have been taken on board yet.

The advertising market in Serbia is chaotic and unregulated. There are no reliable estimates of how much money is set aside for advertising every year. Guestimates put it at around €200 million per annum over the past few years but it remains unknown how much of it is spent by public entities.[223] However, everyone agrees that the state and other public entities, including public enterprises and institutions, are the main participants in the market. There are no special regulations about public entity advertising despite suggestions that the issue be regulated. ANEM's and Transparency Serbia's suggestion that the umbrella Advertising Act at least include basic provisions on public entity advertising was rejected.[224] The Media Reform Five Years after the Adoption of the Media Strategy Expert Report singled out regulation

221 Report on Pressures on & Control of Media in Serbia, 2011, and Report on the Possible Impact of Public Sector Institutions on Media, through Financing of Advertising and Marketing Services, Anti-Corruption Council, 2015.

222 Report on the Possible Impact of Public Sector Institutions on Media, through Financing of Advertising and Marketing Services, p. 9, Anti-Corruption Council, 2015.

223 Medijski trendovi – Srbija 2020, Foundation Propulsion Fond, Belgrade, 2021.

224 Javno oglašavanje – pravna analiza i preporuke, februar 2020, available in Serbian at *kazitrazi.rs*.

of public advertising as a priority of the media reform.[225] It suggested that the entire field of advertising by the state and other public entities be regulated by a separate law, drafted in tandem with CSOs and guild and media associations.[226]

6.7. Regulatory Authority for Electronic Media

The Regulatory Authority for Electronic Media (REM) lost all public credibility due to the numerous scandals and irregular appointment of its Council members, as well as its extremely poor performance in the past few years. This was also confirmed during the EP-facilitated talks between the government and the opposition on election conditions that went on for most of 2021 and included discussions about oversight of electronic media. They ultimately found a Solomon's solution, which further undermined trust both in the REM and the rule of law – they agreed to set up a new temporary body that would monitor the media during the election campaign, a competence the law entrusts to the REM. Pursuant to this political agreement, the Serbian Government adopted a decision on the establishment of a Temporary Supervisory Body, an institution with an undefined legal status, charged with "media monitoring; consultations; reporting on the implementation of the rulebook for the RTS and RTV; issuing opinions on the work of independent institutions and their decisions; informing the public of its assessments and work; monitoring the fulfilment of recommendations for private national broadcasters; and, organising regular press conferences."[227] Monitoring enforcement of the rulebook for public media services and the fulfilment of recommendations for private national broadcasters also fall within the REM's remit. The Government, the executive branch, thus gave itself the right to entrust the Body with competences it itself does not have. Further confusion was created by the provision under which the REM shall itself appoint half of the members of the Temporary Supervisory Body.

The REM Council continued with its practice of ignoring drastic violations of the law by pro-government TV and radio stations, including campaigns against regime critics and hate speech.[228] Its refusal to react to the Serbian President and police minister showing photographs of brutal mob killings on TV stations with nationwide frequencies caused astonishment. REM Council Chairwoman Olivera Zekić explained that the photographs were "educational in character".[229]

225 Ekspertski izveštaj Medijska reforma nakon pet godina od usvajanja Medijske strategije: Presek stanja i preporuke za budućnost, Transparency Serbia, 2016.

226 *Ibid.*

227 Odluka o obrazovanju Privremenog nadzornog tela za praćenje medija tokom izborne kampanje, No. 029386/2021, Serbian Government, 14 October.

228 "Kampanja tabloida protiv KRIK-a, medijska udruženja upozoravaju na crtanje mete novinarima," *Južne vesti*, 10 March.

229 Three Freedoms under the Magnifying Glass 16–27 July 2021, Civic Initiatives, 2021.

In December, the REM Council adopted a controversial decision to grant a broadcasting licence to RT (formerly *Russia Today*) in German (*RT Deutsch*).[230] REM Council Chairwoman Olivera Zekić referred to Articles 45 and 83 of the Electronic Media Act and the CoE European Convention on Transfrontier Television,[231] ratified by both the Republic of Serbia and the Federal Republic of Germany. She said that the REM had issued licences to cross-border televisions *Nova S* and *N1* in the same way, "solely in compliance with the law and the Convention and without going into the stations' political views or editorial policies".[232] The minutes of the session at which the decision to issue a licence to Russia's state TV do not include a detailed explanation of the legal grounds on which it is based, except that it was issued in accordance with Article 83 of the Electronic Media Act.[233] On the other hand, REM Council member Judita Popović told *Cenzolovka* that the decision was unlawful and an attempt to circumvent German regulations.[234] *RT Deutsch* tried to obtain a licence from the Luxembourg regulator ALIA in August but was rejected under the explanation that it was headquartered in Germany and that a substantial share of its staff were stationed in Berlin. The media regulator for Berlin and the surrounding state of Brandenburg MABB said that RT had not applied nor been granted a licence by this body,[235] while the representative of the European Regulators Group for Audiovisual Media Services (ERGA) said that the registered company was still the company based in Berlin and thus subject to German jurisdiction, so if the licence in Germany was to be granted, the application should also be made there.[236] The European Convention on Transfrontier Television and the Electronic Media Act include the so-called country of origin principle – free reception of media services licenced in one jurisdiction in other jurisdictions without the necessity of obtaining a separate licence. The rules determining which state has jurisdiction over a specific media service provider and media service were harmonised accordingly. The determination of the state that has jurisdiction is important also for licencing and oversight of the media service provider at issue. For a media service provider to be under the jurisdiction of the Republic of Serbia, it must be established in it. A media service provider shall be deemed to have been established in the Republic of Serbia if its head office is located in the Republic of Serbia and its editorial decisions about media services are made in the Republic of Serbia. If both of these primary criteria

230 Licence No. K494–1 issued by REM on 17 December and available on its website.

231 European Convention on Transfrontier Television (ETS No. 132) of 5 May 1989.

232 "Belgrade weekly: Serbia's REM approves license to Russian channel in German," *N1*, 17 December.

233 Minutes of the REM Council's 408th extraordinary session held on 6 December, No. 01–257/21, available in Serbian on REM's website.

234 "Belgrade weekly: Serbia's REM approves license to Russian channel in German," *N1*, 17 December.

235 "German Regulator Says Russian State Media Broadcasting Without a License," *Radio Free Europe*, 18 December.

236 *Ibid*.

are fulfilled, the secondary criteria are irrelevant for determining jurisdiction. However, the secondary criteria – where the media service provider initially commenced its activity and the location of its workforce – come into play if the head office of the media service provider is in one state but editorial decisions are taken in another. In this specific case, at least judging by the publicly available data in REM's Register of Media Services,[237] *RT Deutsch* does not fulfil either the primary or the secondary criteria to be under Serbia's jurisdiction. Namely, its head office is in Russia, while the place where the editorial decisions are made remains unknown. Even if they were made in Serbia, Serbia would have jurisdiction if most of the workforce was in Serbia. Judging by everything, the workforce is in Germany and *RT Deutsch* neither commenced nor plans to commence its activity in the territory of Serbia, wherefore the secondary criteria are not fulfilled either. Therefore, Serbia could not have jurisdiction and could not issue it a licence. It is also worth mentioning that *Nova S* and *N1* have not been issued any licences by Serbia, i.e. the REM, since these media service providers are under the jurisdiction of the Luxembourg regulator ALIA under the primary criteria; they are available in Serbia as cross-border channels, which means that they cannot be compared with *RT Deutsch*. It is also worth noting that REM earlier analysed and elaborated in detail methods for determining jurisdiction,[238] wherefore its licencing of *RT Deutsch* can be disputed not only because it is incompatible with the law, but because it deviates from REM's well-established practice as well.

The European Commission said in its Serbia 2021 Report that REM's independence needed to be strengthened to enable it to efficiently safeguard media pluralism. It said that the Commissioner had requested of the REM to publish its databases on monitoring of broadcasters, which the REM rejected, due to contractual arrangements. The EC also noted that hate speech and discriminatory terminology were often used and tolerated in the media and rarely tackled by regulatory authorities or prosecutors.[239]

6.8. Media Registers

The Media Register kept by the Business Registers Agency (APR) was established under the Public Information and Media Act. Over 2,600 outlets were registered in it at the end of the reporting period. The numerous deficiencies of the Register have been alerted to by media and press associations and CSOs ever since it was set up. They include the broad classification of funding granted media (state aid and non-state aid); obsolete data, APR's lack of jurisdiction for keeping such a register,

237 Data on *RT Deutsch* are available in REM's Register of Media Services.

238 Reemitovanje stranih TV programa u Republici Srbiji, Ref. No. 05–1652/14/16–24 of 7 June 2016, available on REM's website.

239 *Serbia 2021 Report,* pp. 35–36.

impractical search engines, and vague provisions on documents public authorities are to submit to the Register.[240]

Another problem arises from the fact that the Media Register is not the only database on funds allocated to the media and that it does not comprise all such data. Article 86 of the Electronic Media Act provided for the establishment of the Register of Media Service Providers including data on providers of audio-visual media services. This Register, kept by the REM and available on its website, should complement the Media Register and provide numerous data on electronic media, which are relevant for a more transparent consideration of the media market.[241] Media and press associations have, however, concluded that the Register of Media Service Providers is overly complicated and terminologically confusing and that even the names of the categories in the two Registers differed.[242]

The State Aid Control Commission keeps its own register for de minimis state aid (aid of small value) in which data on the funds granted to media in competitions (falling under de minimis under the law) are entered,[243] while public procurements are registered on a public procurement portal kept by the Public Procurement Administration. These registers are not user-friendly either and are definitely incompatible with the Media Register. BIRN, the Slavko Ćuruvija Foundation and IJAS analysed in detail all the data on media the state has been collecting and publishing in various registers, the problem of the incompatibility of the registers and the deficiencies of each of them.[244] The authors of the Analysis recommended the reform of the Media Register and that it be a central hub for all data on media funding.[245]

6.9. New Forms of Pressure – SLAPPs and Ugly Twins

Companies close to the government and pro-government tabloids started filing so-called Strategic Lawsuits against Public Participation *(SLAPPs*) against media and individuals with the aim of censoring, intimidating and silencing critics. In early April 2021, the Belgrade company *Milenijum tim,* engaged in some of the biggest construction projects in the country and generally perceived as close to the Serbian Progressive Party, sought non-pecuniary damages in the amount of €300,000 from two local media outlets (the Leskovac portal *JUGpress* and Vranje-based *Infovran-*

240 See the analysis "Transparentnost podataka o državnoj potrošnji na medijski sektor – pravna analiza i preporuke," available in Serbian on the kazitrazi.rs website.

241 Registar pružalaca medijskih usluga dostupan je na internet stranici REM.

242 "Prilozi za izradu Strategije razvoja sistema javnog informisanja do 2023. godine," Vojvodina Media Centre, p. 30, 2018.

243 More on the website of the State Aid Control Commission.

244 Transparentnost podataka o državnoj potrošnji na medijski sector, 2017, available on BIRN's website.

245 *Ibid*.

jske), a sum that would definitely bankrupt them.[246] The company then sued two other outlets – the daily *Danas* and the *N1* TV station. The Vojvodina Investigative-Analytical Centre (VOICE) was targeted just a few weeks later, by the Gornji Milanovac Niveus tim, which filed a two-million RSD damage claim for its report on the 103 public procurement contracts this company won, the first of which concerned the provision of social protection services, which it was not licenced to extend.[247] Adria Media Group, the publisher of the pro-government tabloid *Kurir*, sued one NGO and four outlets for reporting on fake news and hate speech in *Kurir*.[248]

The application of the ugly twins mechanism was another, novel form of pressure on media freedoms. Ugly twins are websites copying the name and visual identity of real outlets but publishing misinformation, intentionally causing confusion and incurring harm to credible media. Such fake sites copying the eminent independent local portals *Južne vesti, Kolubarske, Ozon press* and *GM info* appeared in Serbia over a short period of time. Investigation showed that the pro-government network Info 24 was behind all four websites.[249] Reporters without Borders said that the sites "have the same name, logo, description, and color scheme as the real independent outlets. They primarily publish the news communicated by the ruling party."[250] *Južne vesti* succeeded in obtaining a court order shutting its ugly twin down. The Ministry of Culture and Information did not react to the ugly twins which were registered in the APR's Media Register without any problem.[251]

6.10. Free Access to Information

Three sets of draft amendments to the FAIPIA were drafted over a period of five years. The first preliminary draft, published in May 2021, was fiercely criticised by the civil sector.[252] Some of the criticisms were taken on board and the Government endorsed the Draft Act Amending the FAIPIA and submitted it to parliament for adoption. Although the most dangerous provisions were deleted, the adopted amendments nevertheless narrow the right of free access to information, primarily because they extend the list of institutions exempt from the Commissioner's oversight, by adding the National Bank of Serbia to it. The problem of forcing the Serbian

246 "Astronomske tužbe Milenijum tima: Dobro znaju da lokalni mediji nemaju taj novac, ovako brutalno kažnjavanje značilo bi njihovo zatvaranje," *Cenzolovka*, 7 April.

247 "Astronomske tužbe i protiv VOICE: Novi pokušaj ućutkivanja medija," *Cenzolovka*, 19 April.

248 "Izdavač Kurira tužio Cenzolovku, Raskrikavanje, Danas, Javni servis i jednu NVO, traži 11 miliona," *Cenzolovka*, 12 August.

249 "Ugly Twins: a novel type of attacks on local independent media in Serbia," Reporters without Borders, 21 July.

250 *Ibid*.

251 "Ružni blizanci: Kako su plagirani sajtovi postali novi vid pritiska na profesionalne medije", *Cenzolovka*, 13 October.

252 "Izmene Zakona o slobodnom pristupu informacijama od javnog značaja – novi Nacrt ugrožava dostignuti nivo prava građana," Open Society Foundation, 1 June.

Government to comply with the law remained outstanding. It has never fulfilled its obligation to ensure the enforcement of the Commissioner's rulings ordering public authorities to provide access to information requested. Oversight of the implementation of the FAIPIA remained in the hands of the Administrative Inspectorate, which has so far demonstrated absolute indifference to doing its job.[253]

The amendments provide the Commissioner with much broader powers, e.g. to file indictments and initiate misdemeanour proceedings against responsible persons in public authorities for breaking the FAIPIA. The amendments also entitle the Commissioner to require access to the requested documents in order to ensure that the institutions' decisions to deny access to them are warranted. The Commissioner is now also entitled to open offices in the interior of the country.[254]

Similar assessments were made by Partners Serbia, the representatives of which took part in developing the amendments. This organisation concluded that the law would bring limited and insufficient headway in the transparency of public institutions, but that it commendably extended the list of authorities that must comply with it and the Commissioner's powers in case institutions ignored requests for access to information of public importance. In its view, the amendments do not address years-long problems in realising the right of access to information, primarily the inefficient oversight, mild penal policy, and the lack of a mechanism to force institutions to provide access to information they are unlawfully concealing. It concluded that these problems were likely to persist.[255]

The fact that the Ministry of State Administration and Local Self-Governments refused to provide a group– of CSOs with access to documents about the work of the Working Group tasked with drafting the amendments under the explanation that they were not information of public importance is not only paradoxical but also an indicator of the Government's attitude towards free access to information.[256]

Information on the state's efforts to suppress the COVID-19 pandemic also remained confidential. Numerous press and CSO requests for access to information about the number of COVID-19 deaths, the price of ventilators and public procurement details, even the price of ambulance cars for COVID-19 hospitals went unheeded.[257] No details were publicly revealed in 2021 about the death of lawyer Vladimir Cvijan, a close associate of former Serbian President Boris Tadić and subsequently of Aleksandar Vučić, whose body was found in the Danube on 5 January 2018. The Belgrade Higher Public Prosecution Office denied lawyer Ivan Ninić access to the Cvijan case file although the Commissioner had issued two rulings ordering it to.[258]

253 "Partneri Srbija: Nacrtom nisu rešeni svi problemi uočeni u primeni Zakona o slobodnom pristupu informacijama od javnog značaja," *Cenzolovka*, 14 September.

254 "Izmene zakona predviđaju šira ovlašćenja Poverenika u Srbiji," *Radio Free Europe,* 27 September.

255 "Novi Zakon o slobodnom pristupu informacijama od javnog značaja; propuštena prilika da se značajnije unapredi javnost rada javnih institucija," Partners Serbia press release, 5 November.

256 "Šta nismo saznali u 2021. godini," *Cenzolovka*, 24 September.

257 *Ibid*.

258 *Ibid*.

7. Freedom of Peaceful Assembly

7.1. 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).

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.[259]

The ECHR and the ICCPR provide everyone with the right to freedom of assembly and "recognise" the right to free peaceful assembly. The ECHR allows restrictions of activities of aliens,[260] 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,[261] 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

259 *Guide on Article 11 of the European Convention on Human Rights – Freedom of Assembly and Association*, CoE/ECtHR, 2019, p. 10. In August 2021, in cooperation with the ECtHR, BCHR translated into Serbian and published the Guide on Article 11 of the ECHR. The translation of the Guide is available on BCHR's and ECtHR's websites.

260 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.

261 A thorough analysis of the Public Assembly Act is available in the *2016 Report,* II.9.2.

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.[262]

The provisions of the Act on the Protection of the Population from Communicable Diseases, were of relevance to the freedom of assembly in 2020 and 2021 due to the coronavirus epidemic. Article 52 od 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.

The freedom of peaceful assembly is not an absolute right. That means that there are specific legitimate reasons for banning assemblies at specific venues and at specific times.

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 specify that restrictions of the freedom of assembly must be proportionate to the goal and necessary in a democratic society, a legal standard the Constitutional Court also noted in its 2015 decision declaring the prior law on public assembly unconstitutional[263] 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 prohi-

262 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.

263 IUz – 204/13 of 9 April 2015.

bition.[264] 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).

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 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.

However, the practice of holding spontaneous assemblies and the MIA's interpretation of a spontaneous assembly under the Act indicate 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

264 *Guidelines on Freedom of Peaceful Assembly*, OSCE/ODIHR and Venice Commission, Warsaw/Strasbourg 2010, para. 39.

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 for 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 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 complying with the regulations or 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.[265]

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."[266]

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.

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

265 *Ibid*., para. 197.

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

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 surveillance was, however, adopted only in August 2020.

In its Serbia 2021 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.[267] It said that Serbia needed to ensure respect for freedom of expression and assembly in the environmental sector.[268]

7.1.1. 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 in 2020 and 2021 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.[269]

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 Act on the Protection of the Population from Communicable Diseases remained the basis for issuing orders prohibiting or restricting assemblies in 2021. The lack of distinction between assembly as defined in the Public Assembly Act and a random agglomeration of individuals each pursuing their own cause (such as a queue to enter a public building or a shopping mall) persisted as well.

The Order of 6 November 2020 prohibiting assemblies of more than five people at indoor and outdoor public venues remained in place until mid-2021. It was amended on 16 June 2021, and the number of people was increased to 500, provided they maintain a two-metre physical distance and comply with other epidemiological measures. More than 500 people may rally in two cases: 1) if the organisers obtain approval from the COVID-19 Crisis HQ beforehand, and 2) if a sports event organised as part of a registered official competition is at issue and the audience capacity 50% limit at outdoor and 30% limit at indoor venues is complied with.

The Decree on Measures to Prevent and Contain COVID-19 still prohibits assemblies of more of five people at indoor or outdoor venues in the territory of a local

267 *Serbia 2021 Report,* p. 36.

268 *Ibid*., p. 114.

269 An overview of the situation in 2020 is available in the *2020 Report*, II.8.1.1.

self-government unit that declared an emergency COVID-19 situation if compliance with the two-meter physical distance requirement and relevant personal protection measures cannot be secured (Art. 13).

Although, as noted, entertainment events should not be considered public assemblies in the meaning of the Public Assembly Act and the freedom of peaceful assembly, the Public Assembly Act provides them with protection. Entertainment events were indirectly restricted in 2021 by the introduction of the obligation to produce a COVID-19 vaccination certificate on entry into catering facilities and facilities hosting entertainment or formal events after 8 pm (Art. 13a).

The Decree on Measures to Prevent and Contain COVID-19 still provided for a special regime restricting art and cultural events in 2021. A maximum of 500 people were allowed to attend indoor and outdoor events at the same time, but the organisers were entitled to obtain approval from the Crisis HQ to host a larger audience (Art. 10b).

7.2. Exercise of the Right to Freedom of Assembly in 2021

The number and size of protests increased in 2021 although the pandemic was in full swing. The reasons for the protests varied. They ranged from those staged at the level of local communities to nationwide environmental "uprisings".

What all these assemblies had in common was that its participants did not comply with protection measures, such as wearing masks or maintaining physical distance, even when the organisers called on them to respect them.

Thousands of Niš residents protested on several occasions demanding the amendment of the law and stricter penalties after a reckless driver mowed down two pedestrians.[270] Residents of the Belgrade suburb Karaburma blocked a street for several days in July after a car hit a boy on the crosswalk.[271] Lack of potable water was again the leitmotif of a number of rallies and car processions in Zrenjanin.[272]

Several months of the year were marked by protests of freelancers,[273] entrepreneurs,[274] musicians, photographers and hairdressers,[275] fitness centre owners and

270 "Nišlije se opet okupile na mestu nesreće, protestom traže strože kazne za saobraćajke," *Južne vesti*, 23 January.

271 "Građani nastavljaju protest na Karaburmi zbog smrti dečaka do ispunjenja zahteva," *Danas*, 25 July.

272 "Zrenjanin in Serbia determined to radicalize protests after 17 years of thirst," *Balkan Green Energy News*, 20 August.

273 "Protest frilensera u Beogradu: Sastanak sa Vladom o porezu 18Januarya," *Radio Free Europe*, 16 January; "Završen protest, frilenseri za povlačenje zakona i pregovore; Brnabić: Razgovori da ali ne ultimatum," *RTV*, 8 April.

274 "Protest malih privrednika ispred Skupštine, objavili spisak od pet zahteva," *N1*, 6 February.

275 "Protest muzičara i privrednika ispred Skupštine," *Blic*, 14 March.

staff,[276] and event professionals,[277] all of whom alerted to their dismal status and the impact of the pandemic and the measures to suppress it on their livelihoods.

Environmental protection and anti-COVID-19 measures dominated the agenda in 2021. Eco protests were held across Serbia almost every month. Belgraders demanded a life without air pollution and smog,[278] the residents of Bosilegrad[279] and Užice[280] protested against the construction of small hydro-power plants, while the Loznica residents protested against Rio Tinto's lithium mining project.[281]

The protests rallying thousands of citizens mostly took place in Belgrade. The first, in front of the National Assembly in April, marked the beginning of the "environmental uprising".[282] A series of protests under the slogan "Rio Tinto get away from the Drina" held throughout the year were coordinated by a number of movements and associations.[283] The "environmental uprising" continued, including on 6 November, in front of the building of the public service broadcaster *RTS* that broadcast Rio Tinto's commercial,[284] and then again two weeks later, after *RTS* refused to broadcast the video spot against Rio Tinto "Serbia's not for sale".[285]

The topmost state officials tried to discredit the protests, their organisers and participants. The Prime Minister qualified the protests as "political", claiming that "the political elite was hiding" behind them.[286] The Serbian President, for his part, said that they were organised by the "anti-mine movement" that wanted to dismantle mines and power plants "and leave us without electricity".[287] The Minister of Mining and Energy said that individual politicians used the eco-protest for election campaigning.[288] Such statements obviously did not go unnoticed by the European Commission, which called on Serbia to ensure respect for freedom of expression and assembly in the environmental sector.[289]

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276 "Protestovali vlasnici i radnici fitnes centara, očekuju razgovor s premijerkom," *N1*, 19 March.

277 "Završen protest ivent industrije, ugostitelja i muzičara, normalizovan saobraćaj," *Beta*, 12 April.

278 "Protest protiv zagađenja, građani traže – gradove bez smoga," *N1*, 10 January; "Održana protestna šetnja zbog zagađenja, okupljeni poručili gušite nas," *N1*, 4 September.

279 "Meštani i aktivisti održali drugi protest protiv gradnje mini-hidroelektrane u Bosilegradu," *Južne vesti*, 13 July.

280 "Protest u Užicu protiv izgradnje nove MHE Vrutci," *Danas*, 5 March.

281 "Završen protest u Loznici zbog prostornog plana koji predviđa izgradnju rudnika litijuma," *Danas*, 30 November.

282 "Protest ekoloških aktivista u Beogradu," *Radio Free Europe*, 10 April.

283 "U Beogradu održan protestni performans Rio Tinto: Marš sa Drine," *Danas*, 24 July; "Srbija, protest i životna sredina: "Ako Srbija misli da ide napred, moraće da stane," *BBC News in Serbian,* 24 November.

284 "Protest 'Ekološki ustanak' održan ispred zgrade RTS," *Euronews*, 6 November.

285 "Održan protest ispred RTS zbog neemitovanja spota protiv Rio Tinta," *N1*, 19 November.

286 "Brnabić: Ekološki protesti su politizovani," *N1*, 14 June.

287 "Vučić o ekološkom protestu: Pored antivaksera, u Srbiji se pojavili i antirudari i antiputari," *Danas*, 12 September.

288 "Mihajlović: Ko je protiv litijuma, neka baci svoj mobilni," *Politika*, 12 September.

289 *Serbia 2021 Report*, p. 114.

Another form of pressure against people exercising their freedom of assembly involved the submission of criminal reports against them for alleged violations of health and epidemiological measures. That fate befell activists in Leskovac, who staged protests against investors planning to build a building on the site of a park. The Three Freedoms platform noted in its report that the selection of individuals who would be criminally charged indicated that the intention to stifle the freedom of assembly rather than genuine concern for public health was at issue.[290]

In June, members of the Cobra unit, the Serbian President's security detail, temporarily seized a banner "Girl Means Courage" (in reaction to him calling his opposition rivals "girls") at an arms parade he was attending in Kragujevac.[291] Under ECtHR case-law, a penalty for shouting slogans and holding banners during a demonstration on account of their content is considered an interference with the right to freedom of peaceful assembly under Article 11.[292]

Activists and CSO representatives rallied in front of the Serbian Presidency on the anniversary of the Srebrenica genocide in July. The police were present to ensure safety. Around 30 rightists gathered nearby, shouting insults at the activists.[293] Although the police performed their duties professionally, police minister Aleksandar Vulin's statement that "Nataša Kandić deserves to be scorned by the Serbian people" was concerning.[294] The authorities must duly address any hate speech uttered by counter-demonstrators;[295] however, extremist groups are pandered to and not taken to task, which clearly indicates that they enjoy the protection of the state.

SNS activists and representatives impeded opposition rallies on several occasions. SNS activists organised a counter-rally in response to a Democratic Party rally in late September,[296] and another one in response to a Don't Let Belgrade D(r)own event in early October.[297] DS and Don't Let Belgrade D(r)own representatives said that they had properly reported their rallies to the relevant MIA unit but that the police failed to respond to SNS activities encroaching on their freedom of assembly. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate;[298] the SNS activists' actions in these cases aimed to overshadow the messages of the initially reported events.

290 Three Freedoms under the Magnifying Glass: 7–20 May 2021, Civic Initiatives.

291 "Kobre u Kragujevcu nakratko oduzele transparent Devojčica znači hrabrost," *N1*, 28 June.

292 *Kemal Çetin v. Turkey*, ECtHR, App. no. 3704/13 (2020), para. 26.

293 "U Beogradu zapaljene svijeće za žrtve Srebrenice, desničari vrijeđali," *Al Jazeera Balkans*, 11 July.

294 "Vulin: Nataša Kandić zaslužuje prezir srpskog naroda," *Tanjug*, 11 July.

295 *Berkman v. Russia*, ECtHR, App. no. 46712/15 (2020), para. 56.

296 "DS: Aktivisti SNS ometali skup na Voždovcu," *N1*, 25 September.

297 "Naprednjaci pokušali da spreče pojekciju filma i događaj Ne davimo Beograd," Don't Let Belgrade D(r)own, 2 October.

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

People opposing COVID-19 vaccination and measures continued protesting in 2021. They mostly criticised what they perceived as excessive state restriction.[299] The participants also performed a "COVID-19 round dance" whilst wearing no masks on a Belgrade square in April.[300] A new series of these protests ensued after COVID-19 "passes" were introduced, in Belgrade[301] and Niš.[302] Dozens of protesters rallied in front of the Belgrade home of epidemiologist Dr Predrag Kon, hurling insults at him,[303] and in front of the home of epidemiologist Dr Branislav Tiodorović in Niš.[304]

Lawyers organised protests and staged temporary strikes three times in 2021: first in May and June after the Civil Procedure Act was amended;[305] and in July, protesting attempted authentic interpretations of the Obligations Act, the Consumer Protection Act and the Act on the Protection of Financial Service Consumers to the benefit of banks rather than citizens.[306] The third wave of protests by lawyers ensued after the Supreme Court of Cassation issued a legal opinion on the banks' entitlement to charge loan processing fees without explaining their level or structure.[307]

No incidents occurred at the 2021 Pride Parade held in Belgrade. Around 1,000 people rallied under the slogan "Love is the Law" and called on the authorities to adopt the law on same-sex unions.[308]

The MIA prohibited a rally planned for 9 November by the Youth Initiative for Human Rights (YIHR). They were planning on removing a mural of convicted war criminal Ratko Mladić in Njegoševa Street in the heart of Belgrade together with the residents of the building.[309] The Vračar police station said in its ruling[310] that it was prohibiting the event in light of the information that "a large number of people may rally to express their annoyance and opposition to" the YIHR event, which may "give rise to risks of physical showdowns between the two groups and

299 "Protesti zbog korona mera u Beogradu: Okupili se i ugostitelji i antivakseri," *N1*, 20 March.

300 "Serbian anti-vaxxers revive the medieval 'Danse Macabre,' while pandemic deaths rise," *Global Voices*, 29 April.

301 "Održan još jedan protest protiv kovid propusnica u Beogradu, Dveri dale podršku," *Danas*, 27 October.

302 "Još jedan protest grupe Nišlija zbog uvođenja kovid propusnica," *Južne vesti*, 29 October.

303 "Protivnici mera vikali uvrede ispred zgrada u kojima žive lekari," *N1*, 25 October.

304 "Pretnje i uvrede Šekleru i Tiodoroviću zbog stavova o koronavirusu," *N1*, 25 October.

305 "Protest advokata: Ne kompromis, povucite Zakon o parničnom postupku iz procedure," *N1*, 1 June.

306 "Protest advokata ispred Skupštine zbog pokušaja tumačenja zakona u korist banaka," *N1*, 5 July.

307 "Bunt advokata – na ivici incidenta, ako sud ne ukine stav o bankama novi protest," *N1*, 20 September; "Dvodnevna obustava rada advokata u Srbiji zbog odluke Vrhovnog kasacionog suda," *Radio Free Europe*, 20 October.

308 "Belgrade Pride: Participants demand adoption of Law on Same-Sex Communities," *N1*, 18 September.

309 "Zabranom skupa za 9. november MUP Srbije brani zločinca Mladića," *YIHR*, 5 November.

310 Ruling 01.15.11.2. Ref. No. 212–70/21 of 4 November.

larger-scale disruption of public order". The police also said that, in addition to the supporters of the two groups, "many other people transit through the area on a daily basis". Even in case of counter-demonstrations, it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully.[311] The state failed to take all the requisite measures to enable YIHR's event to proceed peacefully. The question arises how good the police security assessment was, given that members of the public rallied spontaneously after the police arrested Aida Ćorović and Jelena Jaćimović for egging the mural on 9 November.[312] Although the police prevented access to the mural on 9 November, despite insults and intimidation attempts, they nevertheless demonstrated that they were capable of enabling that both demonstrations and counter-demonstrations and spontaneous unnotified assemblies, proceed. Under ECtHR case-law, the mere existence of a risk is insufficient for banning the event.[313]

Protests against the adoption of the Referendum and People's Initiative Act and amendments to the Expropriation Act were staged in several Serbian cities on 27 November. Given that the protests and one-hour blockades of roads at a number of locations in Serbia were prompted by the adoption of the Referendum and People's Initiative Act (promulgated on 25 November) but also aimed at dissuading the President from signing a decree promulgating the Act Amending the Expropriation Act (adopted on 26 November), these assemblies can be considered spontaneous.[314] The right to hold spontaneous demonstrations may override the obligation to give prior notification of public assemblies only in special circumstances, namely if an immediate response to a current event is warranted in the form of a demonstration. In particular, such derogation from the general rule may be justified if a delay would have rendered that response obsolete.[315] The pre-notification procedures may not encroach upon the freedom of assembly; rather, they should serve to inform the authorities of an assembly and allow them to take measures to guarantee its smooth conduct. The MIA's press release stating that the police could not secure the event just because it was not notified amounts to a violation of the state's positive obligation to safeguard the assembly, since the MIA said in the same press release that it

311 The *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, ECtHR, App. no. 46336/99 (2005), para. 115.

312 "Graffiti War: Battle In The Streets Over Ratko Mladic Mural," *Radio Free Europe*, 10 November.

313 *Fáber v. Hungary*, ECtHR, App. no 40721/08 (2012), para. 40; *Barankevich v. Russia*, ECtHR, App. no. 10519/03 (2007), para. 33.

314 Given that the Public Assembly Act lays down that the police must be notified of outdoor assemblies at least five days in advance and that the Constitution and the law allow the President to adopt a decree promulgating a law the same day it is adopted by parliament, protests pressuring the President from signing the decree promulgating the Act Amending the Expropriation Act would have been impossible if the procedure for notifying the MIA of an outdoor assembly were complied with.

315 *Éva Molnár v. Hungary*, ECtHR, App. no. 10346/05 (2008), paras. 37–38 and *Budaházy v. Hungary*, ECtHR, App. no. 41479/10 (2015), para. 34.

knew the rallies would be held. Finally, the chilling effect of such police conduct or lack of reaction can have on the participants and those planning on participating in future assemblies also needs to be taken into account. Under ECtHR case-law, the authorities' refusal to secure an assembly just because it is not officially authorised can also have a chilling effect.[316]

These protests did not pass without incident: arrests of peaceful protesters and excessive use of force by the police, showdowns between individual counter-protesters and protesters, and violent dispersal of the protests at some venues. Particularly concerning were allegations and video footage posted on social media testifying that the police cordon withdrew from the blockade on the Sava Bridge in Šabac on 27 November, just before its end and two minutes before an excavator followed by a group of men with poles and hammers headed towards the protesters. There is reasonable suspicion that the armed assailants were acting in collusion with the police, who provided them with the opportunity to attack the protesters by their withdrawal. No proceedings were launched by the end of the reporting period although the relevant state authorities are under the obligation to immediately take the measures within their remit to investigate violations of human rights and establish the criminal and disciplinary liability of the assailants.[317]

The protests that began on 27 November continued the following Saturday, 4 December. Representatives of the executive authorities continued delegitimising not only protesters' demands, but also their freedom of assembly and temporary blockades of traffic and the normal course of life in parts of some cities.[318] The Ministry of Internal Affairs opened a hotline via which citizens could report road and traffic blockades, the licence plate numbers of the vehicles that took part in them and information about the perpetrators.[319] The MIA's move was qualified as further deepening of divisions in society and giving advantage to the freedom of movement over the freedom of peaceful assembly.[320]

Exceeding his constitutional and statutory powers, the Serbian President said that the police would not be deployed during the protests because "they could not protect anyone acting illegally" [321] although both the police have the statutory obligation and the state has a positive obligation under international law to secure safety

316 *Bączkowski and Others v. Poland*, ECtHR, App. no. 1543/06 (2007), paras. 66–68.

317 "Zahtevamo odgovornost policije za slom pravne države u Šapcu," BCHR, 30 November.

318 "Vulin: Protesti nemaju veze s ekologijom, policija će ako mora primeniti nasilje," *N1*, 30 November; "Dačić: Ekološki protesti imaju logističku i finansijsku podršku iz inostranstva," *N1*, 3 December; "Zekić: Sve koji protestuju treba uhapsiti, naši građani nemaju ekološku svest," *N1*, 4 December; "Ministri o protestima: Teror nad građanima, akt nasilja, šteta narodu i zemlji," *N1*, 4 December.

319 "Ministarstvo unutrašnjih poslova uvelo broj za prijavu nasilja i blokadu saobraćaja," MIA press release, 2 December.

320 "Institutions should not push citizens into conflict," Human Rights House press release, 2 December.

321 "Prelević: Ne može predsednik da odlučuje da li će biti policije na protestima," *N1*, 8 December.

at public assemblies, even unreported and/or illegal ones. The Minister of Internal Affairs had no doubt that the Serbian President was "merely stating the obvious" and that "the police neither can nor want to take part in violating the law by providing security support to anyone who decides to block traffic or go out into the streets without permission."[322] The state thus left the maintenance of order, peace and security to the citizens.

A particular form of pressure was exerted by police officers who knocked on the doors of numerous activists, journalists and citizens in the morning of 4 December, recommending they do not go to the protests and threatening with penalties those they qualified as organisers. The National Coalition for Decentralisation said that eight people had reported to it that the police visited them before of the protests.[323] In one of the registered cases, the police entered the home of Milorad Petrović in Ub with a court warrant the day after he published a post about the anti-Rio Tinto protest on social media.[324] The chilling effect the police resorted to is in contravention of international standards on the freedom of assembly.

Although uniformed police were not visible during the three Saturday protests, the protesters started receiving misdemeanour reports, although they had not been ID-ed by any public officials.[325] They included journalists reporting on the protests, a move the Journalists' Association of Serbia qualified as impermissible.[326]

One of the organizers of the protest, the organization Kreni-Promeni, after the withdrawal of the Law on Expropriation and amendments to the Law on Referendum and People's Initiative, decided to withdraw from the protest organization, and the protests continued under the leadership of several environmental organizations.[327]

7.2.1. New Noise Protection Act and Silencing Protests

Organisations rallied in the Three Freedoms platform are of the view that the new Act on Protection from Noise Pollution in the Environment, which entered into force on 16 November, is not in compliance with the Public Assembly Act and international standards on the freedom of peaceful assembly.

Under Article 20 of the new noise control law, local self-governments (LSGs) shall decide whether to allow assemblies that may exceed the noise limits. Such

322 "Ministar Vulin: Za postupanje policije odgovornost je moja," MIA press release, 12 December.

323 "Aktivista iz Niša: Policija me probudila u 7h zbog poziva na protest na Fejsbuku," *N1*, 6 December; "Kad policija zbog protesta dođe na vrata samohranih majki, novinara i aktivista," *N1*, 6 December.

324 "Milorad zvao ljude na protest, a onda mu je policija upala u stan," *Nova*, 3 December.

325 "Članovi NDNV iz Pančeva dobili prekršajne prijave zbog učešća na protestu iako nisu legitimisani," *Danas*, 3 December.

326 "UNS: Prekršajno gonjenje i novčano kažnjavanje urednika SD kafea zbog izveštavanja s protesta nedopustivo," Journalists' Association of Serbia, 12 December.

327 "Ekološki ustanak odlučio da nastavi sa protestima i blokadom u subotu," *N1*, 9 December.

assemblies must be notified 20 days in advance. The local self-governments shall specify in which streets, parts of streets and settlements such assemblies may be held. These provisions are in contravention of the Public Assembly Act, which: 1) lays down that the police must be notified of an assembly five days in advance; and, 2) specifies that LSGs may identify only venues at which assemblies are prohibited under the Act, not the ones where assemblies may be held.[328] Article 20 thus provides the local authorities with the opportunity to abuse noise control regulations to restrict political assemblies.

Restriction of the freedom of assembly does not entail only banning an assembly; rather, it also entails any disproportionate or unnecessary interference by the public authorities and imposition of excessive obligations on the assembly organisers. The Act on Protection from Noise Pollution in the Environment thus limits the assembly participants in conveying their messages loudly, either through a loudspeaker system, or by banging pots, blowing their whistles or chanting slogans. The Act does not distinguish clearly between rallies at the heart of the freedom of peaceful assembly (such as civic and political rallies) and cultural and sports events and provides for the seizure of the means of commission of the misdemeanour.

7.3. Five 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 October 2021, 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 LSG assemblies.

7.3.1. 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 an increase in the number of notified assemblies over 2020.[329] At least 98 of the rallies in the analysed period are considered spontaneous and 12 are considered unnotified. In the five 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.[330] The MIA did not issue any rulings banning assemblies by 20 October 2021. From 2016 to mid-2020,

328 The Constitutional Court took this view as well, in its decision in Case IUz – 204/2013 of 2015.

329 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); 21,274 in the first ten months of 2021.

330 Twenty-three of the rulings concerned assemblies in Belgrade.

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 most cases (24); 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 banned any 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)).

7.3.2. 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 August 2020 to October 2021.[331] Sixteen courts reported that they had conducted 44 proceedings, while the remaining 28 courts said that they had not conducted any misdemeanour proceedings concerning assemblies. BCHR analysed 14 court decisions (29 proceedings were still pending and some courts dismissed its requests). A total of 9 judgments of conviction and three judgments of acquittal were rendered. Two proceedings were discontinued as out of time (upon the expiry of the two-year statute of limitations).

None of the 44 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. Twelve cases concerned Article 21. As many as 20 proceedings had been initiated under Article 22: at least seven 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 (14) and Kragujevac (9).

7.3.3. 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 LSGs failed to adopt such decisions within 60 days from the day the Act entered into force, as they were obliged to. BCHR ascertained that 66 of 146 LSGs have 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. Most of these decisions date back to the 1990s, or still include provisions on the payment of a deposit.

331 An overview of the Misdemeanour Courts' case-law from 2016 to August 2020 is available in the *2020 Report*, II.8.3.2.

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 banned 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. Kosjerić, Dimitrovgrad, Jagodina, Prokuplje, Srbobran, Ub and Velika Plana amended their decisions since the beginning of 2020, after BCHR alerted them to their inconsistency with the law. This is a good practice example of LSGs willing to take on board the suggestions of CSOs. In 2021, the BCHR filed four initiatives with the Constitutional Court to review the constitutionality and legality of the freedom of assembly enactments of the Loznica, Bela Crkva, Šabac and Vršac LSGs.

8. Freedom of Association

8.1. 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. Article 55 of the Serbian Constitution specifies that the Constitutional Court may ban only associations the activities of which are aimed at the violent change of the constitutional order, violation of guaranteed human and minority rights or incitement to racial, ethnic or religious hate.

The Act on Associations, 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.

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. 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.[332]

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 Insignia 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

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

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".

The Act on Endowments and Foundations governs the establishment of endowments, foundations and funds. Under the law, these types of civil society organisations shall be established to foster creativity and the achievement of humanitarian and other goals benefitting society. Endowments and foundations may be set up by one or more domestic or foreign natural or legal persons.

8.2. Enjoyment of the Freedom of Association in 2021 – Increasingly Shrinking Space 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.

With a rating of 60.39 on CIVICUS' Index, Serbia remained in the category of countries in which fundamental freedoms are obstructed; only two other European countries, Hungary and Ukraine, are in this category. According to this international organisation, Serbia's civic space has drastically been narrowed and individuals and organisations criticising the authorities are threatened.[333]

To recall, the gravest institutional pressures on CSOs in 2020 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.[334] Six months after news of AMLA's intention broke, the Financial Action Task Force (FATF) said that such requests without grounds of reasonable suspicion were not in line with the requirements set out in the FATF Standards.[335] The Three Freedoms platform said that this case did not have only legal implications, but also further strengthened the stereotype prevailing in the public that CSOs were national traitors and foreign mercenaries.[336]

333 "Serbia's civic space downgraded," CIVICUS, 2019.

334 "Government of Serbia demands access to bank records of journalists and CSOs," *European Western Balkans*, 28 July.

335 FATF President's letter to the Office of the UN High Commissioner for Human Rights of 18 December 2020, p. 2.

336 Three freedoms under the magnifying glass: 15–28 January 2021, Civic Initiatives.

Financial police combed through the financial records of the Judicial Research Center (CEPRIS) for a month on the order of the Belgrade First Public Prosecution Service within its pre-criminal proceedings.[337] Financial investigations conducted in a healthy atmosphere are not unusual, but they do give rise to concerns when they are part of a campaign against civil society and amount to abuse of institutions, especially the AMLA.

Republican, provincial and local public calls for proposals still provide breeding ground for GONGOs.[338] The trend of public authorities granting public funding and co-funding to disputable CSOs through such calls continued in 2021. The Openly about Open Calls coalition said in August that the Ministry of Environmental Protection illegally granted 70 million RSD to organisations not fulfilling the eligibility criteria.[339] BIRN also alerted that most of the funding allocated through calls by the Ministry of Family Welfare and Demography went to organisations the public knew nothing about, the same ones that were granted funding in a similar call in 2014, which was suspended because of abuse.[340]

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.

8.3. 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 2021 as well. Human rights NGOs bore the brunt of the attacks.

337 "Istraga sudija i pravnika," *Vreme*, 15 April.

338 Government-organised non-governmental organisations.

339 "Coalition "Openly about open calls": The Ministry of Environmental Protection allocated 70 million dinars in an illegal process; we demand a reaction from the prosecutor's office!," Civic Initiatives, 2 August.

340 "Sporni konkursi Ministarstva za brigu o porodici," *BIRN*, 23 November.

The MPs' years-long campaign against CSOs continued in 2021. The organisation CRTA was the target of a number of such attacks,[341] prompting it to report the MPs for violating the MP Code of Conduct. However, this protection mechanism proved inefficient, probably because the reports are reviewed by the very people violating the Code – the MPs.[342] The Crime and Corruption Reporting Network *(KRIK)* and its Chief Editor Stevan Dojčinović were also targeted by the MPs.[343]

In its Resolution on Serbia, the European Parliament regretted the increase in abusive language, intimidation and even hate speech towards members of the parliamentary opposition, independent intellectuals, NGOs, journalists and prominent individuals. It noted with concern that the CSOs' work was taking place in an environment that was "not open to criticism" and called on the Serbian authorities to counter the shrinking space for civil society and independent media and ensure that they can work free from all restrictions, including intimidation or criminalisation of these organisations. It urged the authorities to foster an atmosphere which was conducive to the work of all civil society organisations as soon as possible.[344]

Tabloid campaigns have become the new normal. In its article "MEDIA FILE: This is why Twitter is introducing brutal censorship: the West's megaphones got millions!", the tabloid *Srpski telegraf* published a number of unverified claims and insinuations about the projects, funding and financial transactions of the Trag Foundation, Civic Initiatives, YUCOM and a number of other organisations.[345] The Three Freedoms platform said that there were strong indications that the individuals who provided *Srpski telegraph*'s journalists with access to data protected by the law had committed grave breaches of the law and abused their office.[346] Several NGOs filed reports against the AMLA, accusing it of illegally collecting data on their financial transactions and disclosing them to *Srpski telegraf*.[347]

A series of articles published by pro-government media illustrate the extent of attacks on civil society and attempts to publicly discredit it. When large-scale protests organised by numerous CSOs, primarily environmental NGOs, erupted in Serbia in late November, pro-government outlets reported that "citizens are brutally (ab)used for a devastating crusade wreaking havoc for havoc's sake and drastically endangering the freedom of movement"[348] by organisations funded from abroad.[349]

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341 "Martinović u Skupštini ponovo napao Crtu i KRIK, predsedavajuća nije reagovala," *N1*, 17 March.

342 This protection mechanism would probably be more effective if the Serbian parliament were pluralist.

343 "Martinović u skupštini lažno optužio urednika KRIK-a da pere novac," IJAS, 18 March.

344 European Parliament Resolution No. A9–0032/2021.

345 "DOSIJE MEDIJI! Otkrivamo zašto Tviter zavodi brutalnu cenzuru: zapadni megafoni dobili milione!," *Srpski telegraf*, 23 August.

346 Three Freedoms under the Spotlight: 13–26 August 2021, Civic Initiatives.

347 "NVO podnele prijavu protiv Uprave za sprečavanje pranja novca," *Danas*, 24 September.

348 "Sumnjivo! Aktivistkinja protesta pokušala da sakrije da primaju novac od Rokfeler fondacije! Zašto kriju da ih finansiraju stranci," *Kurir*, 28 November.

349 "Veliki novac: Pogledajte ko finansira "ekologe" koji blokiraju puteve," *Novosti*, 28 November.

Offices of many organisations were targeted by extremists, who left a number of threatening and Fascist graffiti on their office walls and doors. The wall of the Magacin Culture Centre was vandalised in May.[350] Graffiti "Whores in Black" and "Ratko Mladić" were painted on the door of the association Women in Black, a number of times;[351] the vandals also wrote "Ratko Mladić Hero" and "Staša Ustasha" on this NGO's door in November.[352] "We're waiting for you" was written on the walls of the building in which members of the Initiative for Požega live after they condemned the arrests of Aida Ćorović and Jelena Jaćimović for egging the mural of convicted war criminal Ratko Mladić in downtown Belgrade.[353] A number of graffiti were written on the office door and wall of the Youth Initiative for Human Rights (YIHR) office during the year, including, in November, "Ratko Mladić – Serbian Hero" and the Celtic cross, the white supremacist symbol.[354]

In early December, the European Court of Human Rights requested of the Serbian Government to explain why the institutions failed to act in response to attacks against and threats to the safety of YIHR's activists after the police prohibited the public assembly scheduled for 9 November, during which they planned to remove the mural of convicted war criminal Ratko Mladić. The ECtHR requested of the Serbian Government to provide information about, inter alia, the following issues: what steps were undertaken after threats of violence and regarding the repeated vandalism attacks on the NGO's premises, was the source of the threats identified and were criminal proceedings instituted.[355]

In early December, news broke about the existence of a secret working group of the Republic of Serbia and the Russian Federation on combating "colour revolutions".[356] The document that emerged after a meeting in Moscow on 14 May states that the working group has two tasks: "normative regulation of NGOs' operations" and "reviewing ways of preventing large-scale unrest and attempts to destabilise the order".[357] The document discusses the work, not the establishment of the working group against colour revolutions. Judging by the comments of Nikolai Petrushev, the Secretary of the Russian Federation's Security Council, the group has existed at least since 2020. The AMLA's action against organisations and individuals critical of the Government ensued one month after the working group met in Belgrade in 2020.

350 "NDMBGD: Fašistički grafiti na zgradi kulturnog centra," *Beta*, 11 May.

351 "Napadnute prostorije Žena u crnom," *Danas*, 25 October.

352 "Prostorije Žena u crnom ponovo napadnute," *Danas*, 29 November.

353 "U Požegi grafiti kao reakcija na osudu hapšenja Aide Ćorović i Jelene Jaćimović," *Danas*, 11 November.

354 "Ponovo grafiti na Inicijativinoj kancelariji," YIHR, 16 November.

355 "The European Court of Human Rights obliged the Government of Serbia to explain the inaction of the institutions after the attacks on the activists of YIHR Serbia," YIHR press release, 9 December.

356 "Serbia and Russia pledge to combat 'color revolutions'," *Associated Press*, 3 December.

357 "Srpska policija od Rusije traži tehniku za praćenje sumnjivih lica da bi se suprotstavila masovnim neredima," *Danas*, 9 December.

Surveillance of activists, NGOs and independent journalists is a step further towards shrinking Serbia's already narrow civic space and plunges Serbia back to the 1990s.

Although the circumstances that prompted the AMLA to open investigations into dozens of NGOs and individuals remained unclear, the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) reiterated in its report on Serbia the statement it made at its 61st Plenary meeting that all members should ensure that the FATF Recommendations were not intentionally or unintentionally used to suppress the legitimate activities of civil society.[358]

8.4. Limited CSO Participation in the Legislative and EU Accession Processes

In 2021, the executive continued with its policy of essentially excluding experts and professionals from public debates on major legislative amendments. Even where the public was formally engaged, its suggestions, proposals and objections were mostly not taken into account, which did not stop the Government from alleging in its reports that the draft legislation was informed by public consultation. The practice of adopting laws under an urgent procedure was replaced by simulations of public debates on draft laws.

The NGOs' and guild associations' contributions were merely used to "tick the box" on civil society's participation in the legislative process and paint a façade of democracy and rule of law. While 2020 was marked by simulated consultations on amending the Chapter 23 Action Plan, 2021 was characterised by extremely short deadlines, failure to even make public initiatives to amend regulations or adopt new ones, and public "debates" conducted via e-mail and boiling down to filling of comment templates.

The public debate on the preliminary draft of the Referendum and People's Initiative Act was defective and non-transparent. Not only was a non-existent e-mail address provided to those who wanted to comment it (resulting in the "extension" of the public debate); as soon as the deadline for sending the comments expired, the authorities sent the text to the Venice Commission for comment, i.e. not even formal, let alone substantial consideration was given to the public comments on the preliminary draft.[359]

The extremely intolerant attitudes towards CSOs prompted them in April 2021 to decide not to take part in consultations with the Ministry for Human and Minority Rights and Social Dialogue on the development of a public policy docu-

358 Anti-money laundering and counter-terrorist financing measures – Serbia – 4th Enhanced Follow-up Report & Technical Compliance Re-Rating, November 2021, p. 10.

359 "Potrebno usvojiti preporuke Venecijanske komisije, sprečiti donošenje nedemokratskog Zakona o referendumu i narodnoj inicijativi," BCHR, 29 September.

ment on the creation of an enabling environment for the development of civil society in the Republic of Serbia. CSOs repeatedly requested of the relevant authorities to halt attacks and media campaigns against NGOs and investigative reporters, that AMLA publish its report on the "List" case and that the MPs comply with their Code of Conduct rather than abuse the parliament dais for attacking CSOs.[360]

In August, the media and CSOs called on Minister Gordana Čomić, who is charged with creating an enabling environment for the work of civil society, to recognise, condemn and prevent the authorities' attacks on civil society and media.[361] She did not take any steps in that direction by the end of the reporting period.

8.5. 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 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.

9. Right to Citizenship

9.1. Introduction

Access to citizenship (or nationality) and the ways and requirements for acquiring it are always governed by the law of the state granting it. The issue of citizenship is extremely sensitive, given that citizenship is an expression of sovereignty and identity. Therefore, citizenship is a two-way relationship and, as such, entails not only the rights but the duties of citizens as well. Citizenship not only provides people with a sense of identity, it entitles individuals to the protection of the state and to

360 "Still without conditions for CSO participation in the development of the Strategy for an Enabling Environment for Civil Society," Civic Initiatives, 9 July.

361 "An Open Letter to Minister Gordana Čomić regarding attacks on civil society and media," Civic Initiatives, 24 August.

many civil and political rights. Indeed, citizenship has been described as "the right to have rights."[362]

In principle, questions of nationality fall within the domestic jurisdiction of each state. However, the applicability of a State's internal decisions can be limited by the similar actions of other states and by international law. For example, the Permanent Court of International Justice stated the following in its Advisory Opinion: "The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations." [363] This essentially means that states must honour their obligation to other states as governed by the rules of international law.

The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws was essentially the first international attempt to provide everyone with the right to a nationality. Under Article 1 of the Hague Convention, "[I]t is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality."

The rise in statelessness across the world is the main problem arising from denial of the right to citizenship. It is merely a cruel reminder that, although citizenship often goes without saying, its denial results in numerous human rights violations. Stateless persons and persons who lost their citizenship are thus quite often forced to leave their places of residence, thus becoming refugees. According to the latest estimates, there are over four million stateless people in the world.[364] But this number is a "guesstimate". It has been very difficult for organisations to collect comprehensive data on the number of stateless persons because the concept of statelessness is disputed among countries, governments are often reluctant to disclose information about statelessness.

9.2. Legal Framework

Article 15 of the Universal Declaration of Human Rights reads as follows: "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." This right is founded on the existence of a genuine and effective link between an individual and a state.

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. Article 24 of the ICCPR reads as follows: "Every child shall have, without any

362 *Nationality and Statelessness: A Handbook for Parliamentarians*, UNHCR, 2005.

363 Advisory Opinion No. 4, Nationality Decrees Issued in Tunis and Morocco, 4, Permanent Court of International Justice, 7 February 1923.

364 Better statistics to help end statelessness, UNHCR, 21 January 2020.

discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. Every child shall be registered immediately after birth and shall have a name. Every child has the right to acquire a nationality." The right to acquire a nationality is guaranteed to every child also under Article 7 of the Convention on the Rights of the Child, which also prohibits statelessness of children. Article 18 of the Convention on the Rights of Persons with Disabilities provides the right to recognition of a nationality of persons with disabilities and guarantees children with disabilities the right to a nationality.

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. 11 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.

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. 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, states shall accord to stateless persons the same treatment as is accorded to aliens generally. The Convention on the Reduction of Statelessness 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,[365] 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.[366]

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

365 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).

366 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).

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 lays down the prerequisites, requirements and procedures for acquiring and terminating Serbian citizenship and prescribes the keeping of citizenship records and the proof of citizenship procedure (Arts. 46–49b).

The entry of citizenship in citizenship records is governed in greater detail by the Rulebook on the entry of citizenship in the birth register, templates for keeping records of citizenship acquisition and termination rulings and the citizenship certificate template. Another Rulebook 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.

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), which means that the GAPA applies to procedural issues not explicitly governed by the Citizenship Act.[367]

9.3. 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 children: whose both parents are citizens of Serbia at the time of their birth; born in Serbia, whose one parent is a citizen of Serbia at the time of their birth; born abroad, whose one parent is a citizen of Serbia at the time of their birth and the other parent is either a foreign citizen, of unknown citizenship or stateless.

Children born or found in the territory of the Republic of Serbia shall acquire Serbian citizenship by birth if both their parents are unknown or of unknown citizenship or stateless or if they are is stateless. The citizenship of such children may be terminated at the request of their parents if it is ascertained that both their parents are foreign nationals before they turn 18; children over 14 have to consent to termination of their Serbian citizenship (Art. 13 Citizenship Act).

Aliens granted permanent residence under the law on movement and residence of aliens are eligible for Serbian citizenship provided they are: over 18 years

367 Stevan Lilić, *Upravno pravo – upravno procesno pravo,* 8th edition, Belgrade University Law School, Belgrade, 2014, pp. 124–125.

old; have not been deprived of legal capacity; have been released from foreign citizenship or submit proof they will be released if they are granted Serbian citizenship by naturalisation; have continuously resided at a registered address in Serbia for at least three years; and submit a written statement recognising the Republic of Serbia as their state (Art. 14). Individuals released from Serbian citizenship who have acquired foreign citizenship and individuals whose Serbian citizenship was terminated by release or renunciation at their parents' request may again acquire Serbian citizenship if they fulfil the requirements specified in Article 34 of the Citizenship Act.

Under Article 23(1) of the Citizenship 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 (Art. 19(3)). Namely, Serbian citizenship may be granted also to aliens whose acquisition of Serbian citizenship is in Serbia's interest.

As of 6 December, 15 aliens[368] were granted Serbian citizenship under Article 19(1) of the Citizenship Act. Most of them were nationals of the Russian Federation, while several were nationals of Australia, Iraq, the United Kingdom, Italy, etc. Since over 30 aliens were granted citizenship on these grounds in 2020, the question arises whether the COVID-19 pandemic has given rise to this practice.

9.4. Acquisition of Serbian Citizenship by Refugees

Acquisition of the citizenship of the receiving state, i.e. naturalisation is the highest degree of integration of a refugee. Treatment of refugees brings to light their need to acquire citizenship i.e. the state's obligation to prevent statelessness, which are causally connected. Acquisition of the nationality of the state of asylum puts an end to the refugee status and is thus a lasting solution for the refugees. Non-discrimination, more precisely, the state's obligation not to lay down stricter citizenship requirements for refugees than other categories of aliens, should always be borne in mind.

Serbia has not granted citizenship to any aliens granted refuge or subsidiary protection although 13 years have passed since the adoption of the Asylum Act and four years have passed since it was replaced by the Asylum and Temporary Protection Act (ATPA). According to official Asylum Office statistics, Serbia granted

368 The 15 rulings granting citizenship are available on the: www.paragraf.rs website.

refuge to 90 aliens and subsidiary protection to 104 aliens from 2008 to 2020. The importance of addressing this years-long problem is not lessened by the fact that the number of aliens granted international protection is not that large. 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. 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." Serbia has thus not only been disregarding its national law, but international sources of law it incorporated in its legislation as well.

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.[369] This would facilitate their full naturalisation and entitle them to apply for Serbian citizenship

Refugees have only one possibility of fulfilling the statutory requirement for permanent residence – three or five years of uninterrupted temporary residence at the moment: they can "replace" residence based on granted refuge or subsidiary protection by another form 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.[370]

9.5. 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. 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.

369 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."

370 *Right to Asylum in the Republic of Serbia 2020*, BCHR, Belgrade, 2020, 6.9.

Article 36 of the Citizenship Act lays down that citizenship of the Republic of Serbia may be terminated pursuant to a ratified international treaty.

Citizenship of the Republic of Serbia is terminated on the day of service of the decision on release from Serbian citizenship and, in case of termination of citizenship by renunciation, on the day the renunciation statement is made (Art. 37, Citizenship Act).

9.6. 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, enshrining the freedom of movement, guarantees everyone the right to leave and return to Serbia. Many states kept their borders shut in 2021 or introduced quite restrictive entry requirements in response to the COVID-19 pandemic. A number of Serbian nationals found themselves in other states. Some of them were temporarily or habitually residing and working or studying in them, while some were vacationing there. The Taliban capture of Afghanistan in mid-August 2021 gave rise to the need to evacuate Serbian citizens in that country to safety.

The anti-COVID-19 measures did not impact substantially on the freedom of movement and return of Serbian nationals to Serbia in 2021, as opposed to 2020, when a number of Serbian nationals were stranded at airports or faced other difficulties returning to Serbia amidst the global lockdown.

For example, at the beginning of the year, the state required of Serbian and foreign nationals granted temporary or habitual residence in Serbia, foreign diplomatic and consular staff stationed in Serbia and their families to spend 10 days in home quarantine unless they produced a negative PCR test not older than 48 hours and issued by the reference laboratory of the state they were coming from.[371]

In 2021, Serbia allowed individuals with certificates of complete COVID-19 certificates issued by the relevant authority or institution of a state Serbia has an agreement on the recognition of vaccination or with which there is de facto reciprocity in the recognition of the vaccination certificate to enter Serbia without a negative PCR test or an antigen FIA RAPID test. It may be concluded that Serbia gave priority to individuals immunised by the registered vaccines and that these people faced hardly any obstacles to entering and returning to Serbia.

There were, however, some sporadic problems. They were mostly caused by the unstable political and security situation in Afghanistan after the Taliban seized Kabul in mid-August 2021, rather than COVID-19 measures. Although the Serbian Embassy in New Delhi initially reported that there were no Serbian nationals in Afghanistan who sought help and evacuation, two Serbian nationals stranded in

371 COVID-19 – Entry Conditions, Ministry of Foreign Affairs, 2021.

Afghanistan contacted N1, who wanted to leave Kabul as soon as possible.[372] One other Serbian national – a woman, working for a humanitarian mission, was in Afghanistan at the time as well. Before contacting the media, the two Serbian nationals tried to catch a commercial flight from Afghanistan and return home, but such flights were cancelled one after another and they found themselves in Kabul at the time the Taliban entered it. Their efforts to establish e-mail and phone contact with the Serbian Embassy in India, which also looks after Serbia's interests in Afghanistan, were unsuccessful. After a few days, they managed to contact the Serbian Charge d'Affaires on his cell phone and appealed via the media. The two Serbian nationals were evacuated on 17 August; the Serbian humanitarian worker was also evacuated on 22 August.[373]

The rapid response of the Ministry of Foreign Affairs in this case is commendable, but the question arises what would have happened to the two Serbian nationals if they had not gotten through to the Charge d'Affaires and media since their attempts to reach the Consular Section of the Embassy through regular and official channels were unsuccessful. Serbian Embassies and Consulates are key in such situations, they are the first ones Serbian nationals should turn to when they are in need of assistance or evacuation.

372 "Neizvestan povratak srpskih državljana, ali izvesne – migracije iz Avganistana," *N1*, 16 August.

373 "Dvojica državljana Srbije evakuisana iz Kabula, jedna državljanka ostala u Avganistanu," *Radio Free Europe*, 17 August; "Jedina preostala državljanka Srbije evakuisana iz Avganistana," *Radio Free Europe*, 22 August.

III. HUMAN RIGHTS IN PRACTICE – SELECT TOPICS

1. Electoral Rights and Civic Participation

The 2020 elections at all three levels were marked by numerous irregularities during the campaign, complaints about the work of the election commissions, uneven media coverage of the activities of political parties and impermissible activities of the ruling party's activists on election day. The relevant institutions failed to react to most of the identified irregularities. To recall, the 2020 elections differed from the previous ones because they were held amidst the COVID-19 pandemic and after the state of emergency; the epidemiological measures precluded the implementation of the usual pre-election activities. Most opposition parties boycotted the elections, wherefore the ruling coalition won the vast majority of seats in the National Assembly. Its MPs continued using the time set aside for debates to clamp down on the non-parliamentary opposition and sing praises to the Serbian President. Their synchronised and unsuitable public appearances, often characterised by hate speech, also targeted media, eminent cultural and other public figures and CSOs critical of the government. Many important laws were adopted in an emergency procedure. It should also be noted that, during the reporting period, the parliament Speaker called a referendum on the amendments of the constitutional provisions on the judiciary for 16 January 2022.[1] Given that early parliamentary, regular presidential and Belgrade local elections are slated for 3 April 2022,[2] the year behind us served, *inter alia,* to gauge the electorate's views and the opposition's attempts to agree on common values and goals. Nonetheless, 2021 was definitely marked the most by the civic protests staged throughout the year and culminating in November and December, prompted by numerous environmental problems and the government's facilitation of Rio Tinto's plans to implement the *Jadar* project.

1.1. Hasty Adoption of New Election Laws – Threat to the Integrity of the Electoral Process

The Preliminary Drafts of three brand new election laws – the Act on the Election of Assembly Deputies, the Act on the Election of the President of the Republic and the Local Elections Act – which were presented just several months

1 "Referendum on amendments to Serbian constitution in January," *N1*, 30 November.

2 "Nova.rs: Presidential, parliamentary, Belgrade elections scheduled for April 3," *N1*, 23 October.

before the pre-election campaign,[3] introduce substantial changes in the election process. Elections at all three levels have been announced for 3 April, in which case the presidential elections will be called on 2 March and the parliamentary elections between 2 and 17 February 2022. Their hasty adoption and implementation in the spring would be in contravention of the international standard, according to which the key elements of the electoral process should not be changed at least a year before the elections. None of the participants, primarily authorities charged with implementing the elections, will have enough time to prepare adequately for the upcoming elections.

A comprehensive assessment of the Preliminary Drafts will be possible only once the final texts of the laws are adopted and applied in practice. The versions available at the time this Report was developed indicate that the preparations for the 2022 elections will face major challenges.[4]

The scope of changes in the implementation of the election process proposed by the Preliminary Drafts is concerning. The greatest change – introduction of an intermediate electoral administration level in the parliamentary and presidential elections – will change the decades-long practice all authorities and voters have grown used to. It may give rise to additional lapses in the coordination and work of election authorities, since they will have a very short time to familiarise themselves with their new powers and obligations, as well as result in disparities and uncertainties concerning the key aspects of the election process, such as the protection of electoral rights, i.e. deepen mistrust in the work of the electoral administration and thus the electoral process.

The Preliminary Drafts lay down some changes that may have positive effects and bring the electoral process in Serbia closer to international standards. They include provisions regulating the status of election observers, improving the transparency of the election process and prohibiting the keeping of parallel voter registers. These changes are, however, overshadowed by the sudden changes of the important elements of elections that have the potential of undermining the integrity of the election process.

Especially concerning are the changes marginalising voters in terms of the legal remedies they have at their disposal, the deadlines by which they can apply them, and the broader scope of protection of electoral rights. It remains unclear why specific types of complaints are reserved solely for the submitters of the proclaimed election tickets (even conditioned, in case of parliamentary elections, by the number of won votes based on the preliminary results), while the voters' right to react to potential irregularities during the election process is substantially limited.

3 The Ministry of State Administration and Local Self-Governments on 24 November published an invitation to public debates on the three Preliminary Drafts on 24 November. The debates ended on 13 December.

4 "Crtini komentari na nacrte novih izbornih zakona," CRTA, 14 December.

The provisions governing the status of election tickets of national minority parties again deviate from the rights minority parties acquire by registering with the Ministry of State Administration and Local Self-Governments under the Act on Political Parties and give rise to risks of abuse, wherefore this issue needs to be regulated differently, taking also into account the need not to deceive the voters about who they can vote for. Namely, under the draft provisions, the REC shall issue separate rulings determining whether an election ticket has the status of a minority election ticket. The legislator, however, did not clearly explain why the status of the minority tickets is determined differently from the way the status of minority parties is, especially since election tickets do not have programmes the election commission could examine to ascertain whether they represent and advocate minority rights and since there are no criteria against which the REC can determine the status of minority election tickets. In addition, the status of the election ticket of a national minority needs to be clear to the voters, to prevent their deception, which can be achieved by the obligation to include the name of the national minority in the name of the election ticket.

Finally, the proposed changes put at risk the achieved standards of independence of MPs and local assembly councillors and provide for the political parties' greater control over people's representatives, since they practically remove the legal obstacles to the political parties' use of undated letters of resignation as they abolish the obligation of the MPs/councillors to resign in person, within three days from the day their signature is certified.

The adoption of the Preliminary Drafts on which the Ministry of State Administration and Local Self-Governments organised public debates would seriously jeopardise the integrity of the electoral process, further exacerbating the inequalities between the election participants to the benefit of the ruling parties.

1.2. Limited Reach of Inter-Party Dialogues on Election Conditions

A large number of provisions of the Preliminary Drafts were the result of "two-track" inter-party dialogues on election conditions in 2021. The two parallel dialogues were announced by the Serbian Government Working Group for Cooperation with the OSCE/ODIHR in its Opinion on Measures to be Taken to Improve the Election Process published in early March.[5] In it, the Working Group proposed the measures to be taken to address the ODIHR's recommendations to Serbia. In its analysis of the proposed measures,[6] CRTA concluded that Government's Working Group totally ignored the need to address some of the key problems, such as abuse of public resources, pressures on voters and election campaign funding. In CRTA's

5 "The state keeps ignoring the essential election problems," CRTA, 2 March.

6 "Crta's analysis of measures proposed by the Working Group for Cooperation with OSCE/ODIHR to improve the election process," CRTA, March 2021.

view, the Working Group's suggestions concerning the role of media in the election process, one of the key problems recognised by international and domestic observer missions, create an illusion of the protection of pluralism but will not essentially resolve the problem.[7]

As the Working Group announced, the dialogue on election conditions was conducted on two tracks: the first involved the facilitation of the European Parliament and the second was held under the auspices of the Speaker of the National Assembly within the so-called Working Group for Inter-Party Dialogue without Foreign Mediation. While the first track was to continue the processes initiated in 2019, the second track was the result of internal, mostly non-transparent meetings the ruling coalition had with a number of political actors opposed to the EP's mediation. During the dialogues, the state representatives gave visible advantage to the second track in their public appearances, creating the illusion that it was more important and marginalising the years-long mediation of the international community. This manoeuvre ostensibly equated the two tracks, despite the fact that most of the opposition parties and parties that took part in the EP-facilitated dialogue did not participate in the other dialogue.

The first-track dialogue resulted in the adoption of "Measures to improve the conduct of the electoral process Agreed by the Co-facilitators in the 2nd phase in the Inter-Party Dialogue" on 18 September 2021 (hereinafter: Measures). The second track resulted in the adoption of the Agreement on Improving the Conditions for Conducting Elections on 29 October 2021 (hereinafter: Agreement). The analysis of both documents leads to the conclusion that neither recognises the key problems of the election process or addresses them adequately.

The Measures, if fully implemented, would result in limited improvements, but are insufficient to ensure free and fair elections in accordance with international standards.[8] These measures would not result in achieving equality of the election participants, in light of the prerequisites for fair elections – equality of campaign participants and equal media presence.

The Agreement provided for substantial changes of the election process, but failed to meaningfully address the problems concerning pressures on voters, officials' abuse of public resources for campaigning and the equal representation of the election participants in the media.[9] Although some of the measures envisaged in the Agreement can be qualified as positive and in keeping with specific OSCE/ODIHR recommendations, their contribution to improving the quality of elections in Serbia will be limited.

7 *Ibid.*

8 CRTA Analysis: Measures proposed by the co-facilitators in the EP mediated Inter-Party Dialogue will not ensure conditions for fair and free elections, CRTA, 22 September.

9 CRTA: Inter-Party Dialogue under the auspices of the Speaker of the National Assembly, Analysis of the Agreement on Improving the Conditions for Holding Elections, CRTA, 5 November.

The results of the dialogues on election conditions in Serbia generally had limited, and in some aspects, negative impact on the quality of elections. The purpose of the processes can be qualified as essentially political, focusing more on the interests of individual political actors than on providing equal conditions for all participants. The voters and the public were marginalised, while the Preliminary Drafts developed in the wake of the dialogues merely corroborated these fears.

1.3. Local Elections

Local elections were held in the following five cities/municipalities in 2021: Zaječar, Kosjerić, Preševo, Mionica and Negotin. The parliament Speaker on 5 March called local elections in Zaječar, Kosjerić and Preševo, which were held on 28 March.[10] In August, he scheduled the elections in Mionica and Negotin, which were held on 17 October.[11]

With the exception of Preševo, where ethnic Albanians account for the vast majority of the population, the Serbian Progressive Party (SNS) won the local elections in all other towns. The turnout stood at around 70% in Mionica and Kosjerić, at around 50% in Zaječar and at slightly over 35% in Negotin, like in the past.[12]

The opposition parties that boycotted the elections in 2020 did not field any candidates at these local elections, with the exception of the People's Party in Negotin.

Independent candidates, especially the ticket led by Dr Nenad Ristović – a doctor who returned the medal the Serbian President awarded him for contributing to the fight against COVID-19, scored very good results in Zaječar. The SNS-led ticket (that included the incumbent Mayor) won the elections but 12 seats less in the local assembly than the last time round (when it won 36 seats).[13]

Irregularities at polling stations and suspicious activities of unidentified individuals or local officials in the towns, like the ones that characterised the prior local and parliamentary elections, were reported in Kosjerić, Zaječar and Negotin. The local opposition activities, journalists and ordinary citizens reported that large numbers of vehicles with out of town licence plates were driving people in to vote. The door-to-door campaign continued during election day, with SNS activists going around with voter registers and checking who had voted. The local officials again abused public resources for campaigning. Transparency Serbia reported that Government members visited Zaječar and Kosjerić 37.6 times more often than in the

10 "Raspisani lokalni izbori u tri opštine za 28 March," Serbian Government press release, 5 February.

11 "Dačić raspisao lokalne izbore u Mionici i Negotinu," *RTS*, 30 August.

12 "Ubedljiva pobeda SNS u Negotinu i Mionici, Narodna stranka izrazila sumnju," *N1*, 17 October; "Naprednjacima apsolutna većina u Zaječaru i Kosjeriću, u Preševu šest odsto glasova," *N1*, 23 March; "Lokalni izbori u Negotinu", *NG Portal*, 17 October.

13 "Doktor koji je vratio medalju Vučiću: Neću ući u koaliciju sa SNS," *N1*, 30 March.

four years since the prior local elections.[14] Zaječar alone was visited by eight ministers, the Prime Minister and the President in the run-up to the elections.[15] In Kosjerić, the representatives of opposition parties alerted to the large number of voters who cast their votes at home under the explanation that they had to isolate because they had COVID-19. Milena Đukić Orubović of the Civic Association "Clean People for Clean Kosjerić," which ran in the elections, voiced doubts that 900 voters were in isolation, saying that the figure should be checked with the Public Health Institute in Užice.[16]

The Negotin local elections were specific inasmuch as the People's Party, which boycotted the 2020 election, took part in them. A number of incidents occurred during election day, including the detention of this party's election committee members. The representatives of this party claimed that there were dual voter registers at the polling stations, as the video footage published on Twitter[17] corroborated; that its members were hauled in for no reason, just to ensure that no-one could control the polling stations; that the representative of the People's Party in the Municipal Election Commission and his deputy were also detained, whereby they were precluded from performing their duties;[18] that an ad hoc disinfection of a polling station was conducted on election day; and that pressures were exerted on voters and staff of the municipal administration and public companies to vote for the ruling party in the days preceding the election. The People's Party claimed that its perusal of votes showed that over 80% of the ballots declared invalid were those on which its name was circled.[19]

The elections in Preševo were called because a caretaker government took over after the municipal Assembly failed to hold any sessions for three months. These were the second early elections in this politically unstable and ethnically monolith municipality.[20] The election campaign passed in the ethnic Albanian parties' trade of accusations that they were acting in the interests of the SNS, while all the Serbian parties ran together with the SNS. The dominant ethnic Albanian parties had different views about the Serbs' participation in the local government. While the chairman of the Alternative for Changes and incumbent head of the caretaker government Shqiprim Arifi was for their participation in the local government, the candidate of the Party for Democratic Action, Ardita Sinani, conditioned their involvement by the ethnic Alba-

14 "I Stonsi bi od umora pali s bine, ali ne i ministri: Svi – u Kosjerić i Zaječar," *N1*, 26 March.

15 "Doktor koji je vratio medalju Vučiću: Neću ući u koaliciju sa SNS," *N1*, 30 March.

16 "Naprednjacima apsolutna većina u Zaječaru i Kosjeriću, u Preševu šest odsto glasova," *Danas*, 28 March.

17 "Narodna stranka tvrdi – privedeno više njihovih članova iz odbora u Negotinu," *N1*, 17 October.

18 "Narodna stranka: Policija ignorisala krađu glasova na lokalnim izborima u Negotinu," *RFE*, 17 October.

19 "Lokalni izboru u Negotinu: na 80% nevažećih listića zaokružena Narodna stranka," *NG Portal*, 23 October.

20 "Izbori u Preševu: Dojučerašnji partneri sada su suparnici," *RFE*, 22 March.

nians' participation in the Medveđa municipal government.[21] Serbs are not in government in Bujanovac either, where the Albanians account for the majority in the local assembly.[22] None of the parties won a clear majority in Preševo; the previous mayor and Serbian parties are in the opposition, while a coalition of several parties that supported Ardita Sinani are running the municipal administration.[23]

1.4. National Assembly – People's Representatives in the Service of the Executive

The absence of constructive debates is the only way to describe the work of the 12th convocation of the National Assembly, the mandate of which will apparently last a mere 16 months. President Vučić's unprecedented statement of October 2020 – that the Government's and parliament's terms in office would be shorter and that early parliamentary elections would be held – was confirmed by the October Agreement on Improving the Conditions for Conducting Elections forged without the facilitation of the European Parliament.

The work of this convocation of the parliament, the mandate of which will in all likelihood cease by February 2022, was characterised by extremely intensive legislative activity compared with its predecessors. Over 200 enactments were adopted at 32 regular and 14 extraordinary sessions held from October 2020 to end November 2021. However, the pace of the legislative activities and the quality of the adopted legislation were dictated by the executive. As many as 99% of the laws were submitted for adoption by the Serbian Government; nearly 70% were voted in without any amendments by the MPs. The people's deputies continuously proved that their role was to merely amen the Government's laws, giving rise to the impression that the parliament merely served to fulfil the Government's legislative needs.

The parliamentary committees' track record shows that they have not been fulfilling one of their main roles – to perform crucial oversight of the Government's work and that the Assembly procedures are implemented only for formal reasons. The parliamentary committees were more active than usual, and held over 500 sessions from October 2020 to the time this Report was finalised. However, data published by Open Parliament,[24] showing that 36% of the committee sessions lasted less than 10 minutes and that nearly two-thirds of the sessions were completed in less than 20 minutes,[25] corroborate that the MPs sitting on them merely fulfilled the

21 *Ibid.*

22 "Srbi u Bujanovcu: Zbog 'svealbanske' koalicije podižu se tenzije," *Al Jazeera*, 13 November.

23 "Preševo dobilo novu predsednicu Opštine, Arifi sa srpskim partijama prešao u opoziciju," *Južne vesti*, 10 May.

24 Open Parliament (*Otvoreni parlament*), which has been initiated by CRTA, has been monitoring and analysing the work of the national parliament on a daily basis since 2012.

25 Assembly committees held over 500 sessions from 26 October to the end of the reporting period; 23 were closed to the public, while data on 13 sessions were unavailable to the public. The

formal requirements to hold the sessions, but set aside no time to actually discuss the matters before them.

The quality of the many adopted laws and documents adopted by this convocation undoubtedly suffered due to the absence of meaningful public engagement and institutional deliberation, which is sure to have serious negative consequences on society.

The MPs also unanimously adopted laws making room for corruption and impinging on human rights and achieved standards in an emergency procedure and without conducting meaningful debates on them. They included amendments to the Water and Expropriation Acts and the new Referendum and People's Initiative Act, which were withdrawn or amended after they were adopted in response to fierce public reactions. In late December 2020, the MPs adopted the Code of Conduct of People's Deputies in an emergency procedure and without public debate. In February 2021, the draft authentic interpretation of the term 'public official' in the Anti-Corruption Act underwent several changes before it was adopted, under the excuse that "technical mistakes" had been made; the initial authentic interpretation threatened to enable the legalisation of abuse of public office.[26]

The controversial legislation would be in effect to this day had the public not assumed the role of corrective factor, launching petitions, alerting the media to its deficiencies and staging protests. Another specificity of the situation is that in nearly all the cases, the harmful consequences of the National Assembly's actions were eliminated by one word of the President. The breakdown of the separation of powers is best illustrated by the two occasions when he used his "suspensive veto" to send the already adopted laws back to parliament and his "no" that was enough for the MPs to give up on the authentic interpretations of the Obligations Act, the Consumer Protection Act and the Act on the Protection of Financial Service Consumers.

For instance, in December 2021, the President refused to sign the adopted amendments to the Expropriation Act. However, instead of the MPs voting on them, the Government withdrew them from the procedure.[27] Such cracks in the constitutional order come as no surprise in a country in which 97% of the MPs are members of the ruling coalition and support the Government and the head of state is simultaneously the leader of the strongest parliamentary party, wherefore it would be illusory to expect mutual checks and balances and compliance with the Constitution. Hence situations in which none of the relevant institutions notice any deficiencies of

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analysis included the remaining 465 sessions that were broadcast live and the footage of which is available on the parliament's official YouTube channel, and the analysis authors measured the duration of each individual session. The research was conducted within the development of Open Parliament's report on the activities of the National Assembly.

26 "Usvajanje predloga autentičnog tumačenja pojma javni funkcioner otvorilo bi prostor za legalizovanje zloupotrebe javne funkcije," CRTA, 10 February.

27 "Procedures in Case of Returning the Law to the National Assembly for Reconsideration," Open Parliament, 9 December.

the adopted laws until the public alerts to them. Such a practice testifies not only to the **poor quality of law**, which is the consequence of the non-transparent and practically "privatised" legislative process in which the public's interests and concerns are not taken into account on time, but to the **collapse of the principle of separation of powers** as well.

When it comes to independent institutions – the Agency for the Prevention of Corruption, the Commissioner for Information of Public Importance and Personal Data Protection, the Protector of Citizens and the Commissioner for the Protection of Equality – their reports for 2020 came on the agenda in the last days of 2021. Although it can now be stated that the National Assembly has been considering, for two years in a row, at least formally, reports of independent bodies that are its extended arm in the protection of human rights, the impression remains that their role and recommendations for improving human rights are not considered seriously.

1.4.1. Orchestrated Campaigns against CSOs, Media and Judges in the National Assembly

The MPs of the ruling majority spent most of the time allocated for debates attacking the non-parliamentary opposition. Their smear campaigns, which often amounted to hate speech, targeted not only their political opponents, but independent media, CSOs and civic activists, and eminent cultural and other public figures critical of the government as well. They used words such as "traitor", "foreign mercenary", "looter" and "tycoon", questioning their targets' patriotism and calling on them to leave the country.

The long and dangerous chain of the MPs' accusations spreading intolerance against critical voices and advocates of democracy culminated in March 2021. After accusing the independent investigative portal KRIK of being part of the arrested crime group headed by Belivuk,[28] they moved on to CRTA, an organisation focusing on monitoring elections and the work of the parliament, implicating it in planning nothing less than a coup in Serbia and the attempt to assassinate Serbian President Aleksandar Vučić.[29] This event was a pattern of conduct, rather than an isolated incident, given the context in which the parliamentary dais has been used by the ruling majority for waging orchestrated campaigns against anyone asking questions, re-examining the decisions of the authorities and the President and calling them to account.

Independent outlets, such as *N1*, *Nova S*, *Danas*, KRIK, CINS and BIRN, were mentioned over 100 times from April to July 2021. CRTA's parliamentary observers registered numerous repetitions of the following words spreading intolerance and hate against independent newsrooms: Luxembourg media, hate mongering media,

28 "U skupštini o KRIK-u: Poslanici se pridružili hajci provladinih medija," *KRIK*, 11 March.

29 "CRTA: Tužilaštvo da ispita Aleksandra Martinovića i Vladimira Orlića," *N1*, 13 March.

Šolak's media, media darkness, media dictatorship, tycoon's portals, tycoon's media machinery, media supporting Dragan Đilas, media of yellow tycoons, etc.

Furthermore, when the National Assembly at long last started drafting the constitutional amendments in May 2021, the MPs used the parliament dais to oppose the idea of strengthening the independence of the judiciary, staging a campaign in which they fiercely attacked individual judges, prosecutors and guild associations. The European Commission also recognised the parliament's active involvement in deepening distrust of the judiciary and the narrative on "unsuitable" judges and prosecutors. In its Serbia 2021 Report, it noted that "[S]tatements regarding ongoing cases and seemingly coordinated insulting campaigns and attacks against judges and prosecutors continued in mainstream media and tabloids but worryingly also from government and in the Parliament, including during debates on judicial elections. Members of Parliament negatively influenced the public opinion and trust in judiciary and individual judges."[30]

Not once did chairs of the sessions try to put an end to or condemn such statements. On the other hand, the MPs' Code of Conduct has been relegated to the already large arsenal of ineffective instruments. This mechanism has not improved the quality of parliamentary debates or the MPs' conduct although it was adopted a year ago. The MPs of the parliamentary majority have not yet understood its purpose; nor have they been willing to put an end to the way they talk about their political opponents in parliament, their malicious and erroneous interpretations of the civil sector's role or their open and fierce verbal attacks on independent media and CSOs. As the European Commission noted, "[T]he code of conduct for members of the government also recommends avoiding such behaviour. However, there is a need to prohibit and efficiently enforce sanctions to eliminate such behaviour. Overall, effective sanctions for undue influence on judges and prosecutors and attacks on individuals or public comments that undermine their independence and reputation are both inadequate and not being implemented. A monitoring mechanism aimed at changing this practice has yet to be established."[31]

Soon after the MPs' Code of Conduct was adopted, Open Parliament made use of the opportunity to file a report against MPs who had violated it.[32] It filed 10 reports against MPs of the ruling majority who had engaged in the continuous campaign against CSOs and independent media in Serbia.[33] In that context, the issuance of a single reprimand to MP Srbislav Filipović and the dismissal of the other nine reports as ill-founded can be interpreted as an attempt to maintain the illusion that

30 *Serbia 2021 Report*, pp. 20–21.

31 *Ibid*., p. 21.

32 Under Article 8 of the Code of Conduct, the MPs shall exercise their duties diligently, and shall not incite hate or violence or use expressions, words or gestures offending or undermining human dignity or the integrity of the National Assembly.

33 "Otvoreni parlament: Izmene Kodeksa neće poboljšati atmosferu u Skupštini," *Danas*, 23 September.

the Code is applied, just like the National Assembly is increasingly used to maintain the illusion that Serbia is a democratic and orderly society. This conclusion is corroborated by the atmosphere at the sessions of the Committee on Administrative-Budgetary, Mandate and Immunity Issues, which reviews reports of violations of the Code of Conduct. The MPs said that the reports were malicious and filed to discredit them, and that a political reckoning was at issue.

2. Media Freedoms in Serbia

2.1. Assessments of the Media Situation

The situation on Serbia's media stage further deteriorated in 2021. Accusations and attacks by senior public officials, pro-government media and individual companies against media criticising them were increasingly frequent and brutal.

Court protection of journalists and media was slow and inconsistent. Trials for the assassination of Slavko Ćuruvija in 1999 and for setting on fire the house of journalist Milan Jovanović were still ongoing. The courts already have ample experience in defamation suits against tabloids filed by reporters, public figures and opposition politicians; in many of these cases, the courts ruled for the plaintiffs. Nevertheless, such rulings apparently do not have a deterrent effect – hate speech has pervaded communication in the public sphere; it is rampant not only in tabloids, but also among those dictating the public narrative, government and parliamentary officials.

At the same time, the state increased its stake in the media, rather than relinquishing it in accordance with the law and the Media Strategy. It launched *Euronews Serbia* via Telekom Srbija, in which it has a majority stake. Telekom's agreement with Telenor was perceived as the state's bid to take over even more of the cable TV market, 48% of which it already controlled.

The state continued co-funding media content of outlets toeing the government line, including those infamous for their many violations of ethical and professional codes, as well as the law.

All of this confirms extensive government control of the media in Serbia. Such conclusions were drawn also by international organisations and professional associations and CSOs. In its Serbia 2021 Report, the European Commission said that verbal attacks against journalists by high-level officials continued and that cases of threats and violence remained a concern.[34] Similar assessments were made by the Council of Europe, the State Department, Amnesty International, Freedom House and Reporters without Borders, which described Serbia as a country with

34 *Serbia 2021 Report*, p. 18.

"weak institutions that is prey to fake news spread by government-backed sensational media".[35] In an interview to *Beta* on 14 November, Deputy General Secretary of the International Federation of Journalists Jeremy Dear said that ignoring criminal acts against journalists in Serbia encouraged more attacks against them. IREX said that Serbia had the weakest information system in the region, dominated by media not hesitating to publish obvious untruths; it quoted panellists as saying that authorities extensively spread fake news to present themselves in a good light.[36] The Swedish V DEM Institute said that Serbia was one of the five countries with sharpest declines in the level of democracy.[37] The Balkan Free Media Initiative said that the deterioration of media freedoms gained in momentum under the current government and called on the EU to stop being a passive observer.[38] In August, Twitter labelled accounts belonging to 10 pro-government media in Serbia as state-affiliated media; they included five TV stations with nationwide coverage, one news agency, three tabloids and the daily *Politika*.[39] The relevant ministry accused Twitter of censoring individual outlets in Serbia.[40]

Five news organisations decided to leave the government working group for the safety and protection of journalists, accusing it of ignoring serious attacks and threats to the safety of journalists and media in Serbia, essentially for not doing its job.[41]

Serbian authorities paid no heed to these facts. For instance, in his assessment of the European Parliament's resolution, President Vučić said that the MEPs were "lost in time and space" and that he was reacting to it only so the citizens could see how some factors treated Serbia.[42] Serbian Prime Minister Brnabić said that journalists were at greater risk in some EU countries, notably the ones critical of Serbia, than in Serbia.[43] Minister of Information Maja Gojković said that the number of attacks against journalists had not increased, that they were just more visible now.[44] Protector of Citizens Zoran Pašalić disagreed. He opined that journalists in Serbia were still subject to numerous threats and verbal and physical attacks.[45]

35 "Srbija kao crna rupa medijskog kosmosa," IJAS, 27 May.

36 "Ajreks: Srbija ima najslabiji informacioni sistem u regionu, u javnosti dominiraju dezinformacije i jezik mržnje," *Cenzolovka,* 9 September.

37 "Izveštaj o demokratiji: Srbija u pet zemalja koje najbrže klize u autokratiju," *N1,* 31 August.

38 "BFMI: Ubrzan pad slobode medija u Srbiji, EU pasivan posmatrač," IJAS, 12 October.

39 "Tviter označio medije iz Srbije koji 'sarađuju sa vladom'," *Danas,* 16 August.

40 "Tviter cenzuriše pojedine medije u Srbiji, to ne vodi demokratskom dijalogu: Oglasilo se ministarstvo!" *Espreso*, 17 August.

41 "Serbian media associations leave Government's Working group for the safety of journalists in protest," European Western Balkans, 17 March.

42 "Vučić novinarima čitao delove rezolucije EP – 'izgubili se u vremenu i prostoru'," *N1*, 26 March.

43 "Brnabić: Novinari u Srbiji bezbedniji nego u nekim zemljama EU," *N1*, 9 July.

44 "Kad kažu da se povećao broj nasilja ili pretnji nad novinarima, u stvari se povećala vidljivost," *Istinomer*, 11 November.

45 "Pašalić: Novinari i dalje izloženi napadima, uvesti prekršajne sankcije koje će se izvršavati odmah," *Danas*, 3 November.

2.2. *State Reasserting Control through Co-Funding and Increasing Share in the Cable TV Market. State of Emergency and the Role of the Media*

The state was supposed to relinquish its ownership of media both under the Media Strategy and the 2014 media laws (with the exception of public media services, minority language media and media providing information to citizens in Kosovo and Metohija). It, however, failed to fulfil its obligation even formally by the end of the reporting period. It was still one of the two owners of the daily *Politika* (the Prime Minister's Chief of Cabinet chairs the daily's Supervisory Committee). The Kragujevac local authorities in 2020 reassumed control of the local RTV after its privatisation failed; their promise to conduct a new, faster privatisation of the station remained unfulfilled.

The case of state news agency *Tanjug* is an illustrative example of government malfeasance. Although officially dismantled on 31 October 2015, it continued operating thanks to the state's financial assistance,[46] until March 2021, when it was deleted from the Business Registers Agency register.[47] In late 2020, the media reported that a private company Tačno Ltd (with a founding capital of 1,000 RSD) paid €628,000 for using Tanjug's property rights the following 10 years. *Tanjug* earned 14.9 million RSD from the services it rendered ministries in the first nine months of the year.[48] It *de facto* continued operating as the state news agency. In late November, the media reported that the European Commission decided to invite *Tanjug* to join the first "European Newsroom".[49] The EC was quoted as saying that it had nothing to do with the selection of news agencies to form the European Newsroom, that some news agencies decide to put forward a joint proposal and included partners that they believed were relevant to get European Union support and that it was a private initiative.[50]

The authorities ensured their informal yet efficient restoration of control of media through co-funding media content. The idea of supporting public interest turned into rewarding outlets promoting the authorities. The road was paved by the problematic privatisation of state-owned media, when most of them were sold for next to nothing to people in power, close to the authorities, and relatives or business partners of public officials. For instance, Radoica Milosavljević, owner of a plastics plant in Kruševac and member of the ruling SPS openly sympathising the SNS, bought 14 outlets in Serbia. Co-funding practically became a "reward for violating the Press Code of Conduct" because most of the money went to outlets supporting

46 "Tanjugu duplo više od ostalih," JAS, 26 April.

47 "Tanjug obrisan iz registra APR," *021.rs*, 9 March.

48 "Promocija ministara: Milionski poslovi za Tanjug," *BIRN*, 18 October.

49 "EU osniva 'evropsku novinsku redakciju'," *RTS*, 29 November.

50 "Raskrikavanje: Evropska komisija nije odabrala Tanjug za panevropsku redakciju," *Beta*, 2 December.

the government and frequently violating both the Press Code of Conduct and ethical and legal norms.[51]

Tax deferral was another way the state helped media toeing its line. The Tax Administration allowed *Pink TV* to defer payment of 35.6 million RSD of taxes, taking 19 of its used vehicles as collateral.[52]

Another step the state took to bolster its control of media involved increasing its share in the cable TV market, 48% of which it controlled in the first quarter of 2021.[53] Telekom Srbija, in which the state has a majority stake, is its weapon. In January, Telekom signed an infrastructure sharing agreement with Telenor, allowing the latter to begin offering fixed broadband services.[54] Published documents showed that the agreement aimed to push *N1* and its sister service *Nova S* out of the market.[55] This was corroborated by Telekom's press release stating that the arrangement was made "to put an end to the operations of United Media and SBB in Serbia", as well as by the offer made to Telenor: to pay €17 million over the first three years and use the infrastructure free of charge thereinafter.[56] President Vučić and Prime Minister Brnabić commented Telenor's and Telekom's arrangement as ordinary market competition.[57]

Telekom went on to launch Euronews Serbia, in violation of the law. Critics pointed out that under Serbia's public information law, state and state-owned enterprises were not allowed to be owners of media outlets.[58] In June, Telekom outbid SBB and paid €600 million for the right to broadcast Premier League matches in former Yugoslav states. France paid €40 million and Germany €25 million a year, i.e. a quarter of the sum paid by Serbia. To recall, Telekom ended 2000 with a €1.4 billion debt.[59]

2.3. Electronic Media Regulatory Authority (REM) – Problem on Serbia's Media Scene

As an independent body, REM is charged with protecting public interests in electronic media. Although it itself concluded in its reports that commercial TV sta-

51 More on competition-based funding of media content in section II.6. Freedom of Expression and the Right to Know.

52 "Mitrovićevim firmama država ponovo odložila plaćanje milionskog poreskog duga" *CINS*, 19 May.

53 "Na tržištu telekomunikacija najžešća bitka u segmentu distribucije medijskih sadržaja," *Danas,* 26 July.

54 "RSF: Sporazum Telekoma i Telenora može negativno da utiče na slobodu medija," *Beta,* 5 February.

55 "Najavljeni sporazum Telekoma i Telenora ugrožava medijski pluralizam u Srbiji," IJAS, 2 February.

56 "Telekom Srbija outlines Telenor stance," Broadbandtvnews.com, 1 February.

57 "Brnabić: Tržišna utakmica Telekoma i Telenora sa SBB, nema veze sa slobodom medija," *Cenzolovka*, 5 February.

58 "Telekom nezakonito pokreće tv kanal," *Danas*, 12 May.

59 "Zašto je Telekom odlučio da za 600 miliona evra otkupi pravo prenosa Premijer lige?," *Danas*, 22 July.

tions with nationwide frequencies were not fulfilling even their minimum obligations, it did hardly anything to remedy the situation. Such assessments of REM's work, as well as the conclusion that it is a tool in the government's hands, were corroborated by its response to the 12 TV stations' broadcasts of the photographs of the decapitated members of Veljko Belivuk's criminal group. The photographs were first shown by President Vučić at a news conference. The Organised Crime Prosecution Service opined that the photographs would help identify the victims, Minister of Information and Culture Maja Gojković said that a ban on showing the photographs would undermine media freedoms,[60] while REM concluded that their publication was in public interest, that the decision to publish them was taken by the National Security Council, the ultimate authority.[61] The REM Chairwoman said that police minister Vulin's showing of the photographs on *Hepi TV* was "educational in character".[62]

REM's decisions show that pro-government *Pink* and *Hepi TV*s can do whatever they like. They have been constantly violating rules on advertising, broadcasting political party events, election campaigning, as well as broadcasting reality shows rife with violence, obscenities and sex scenes. In the view of REM's monitoring department, by its frequent broadcasts of clashes, quarrels, grave insults, threats and violence, *Pink TV* has been affirming and condoning such conduct. Its opinion, however, did not sway the REM Council. Its Chairwoman Olivera Zekić said that broadcasts of such content had to be punished but that not enough Council members voted for the penalties.[63]

For instance, REM discontinued its review of a complaint against *Pink TV* for a death threat voiced in a reality show in February,[64] and dismissed seven other complaints against *Pink* and *Hepi* in May because not enough Council members were for punishing them.[65] The Council also dismissed a complaint against *Hepi* for insults and lies about Bosnian Serb camps during the war in BiH,[66] and a complaint against this TV station for making excuses for men charged with rape.[67]

In October, REM discontinued the review of a report against *Pink* and *RTS* complaining of its excessive positive coverage of President Vučić, explaining that positive coverage of political topics did not per se violate the rules, that excessive positive coverage was not a legal category and that the law did not limit the length

60 "Gojković: Zabrana objave fotogafija zločina dovela bi u pitanje slobodu medija," *N1*, 21 July.

61 "Slike odsečenih glava po zakonu," *Danas,* 18 March.

62 Three Freedoms under the Magnifying Glass 16–27 July 2021, Civic Initiatives.

63 "REM ne kažnjava Pink i Hepi zbog napada i pretnji smrću, dok zabranjuje Radio Puls zbog uvreda," *Cenzolovka*, 28 May.

64 "REM obustavio postupak protiv Pinka zbog pretnje smrću u rijalitiju," JAS, 24 February.

65 "REM ne kažnjava Pink i Hepi zbog napada i pretnji smrću, dok zabranjuje Radio Puls zbog uvreda," *Cenzolovka*, 28 May.

66 "Šegačili se sa izgladnelim ljudima u logorima u BiH," *Danas,* 19 March.

67 "REM ponovo nije kaznio Pink i Hepi čak ni zbog ruganja žrtvama silovanja," *Cenzolovka,* 18 March.

of coverage of any public official, including the President.[68] BIRODI had filed the complaint when it ascertained that these two stations devoted over 8.5 hours of their primetime news to Vučić in September and that 90% of the coverage was positive.[69]

The fines imposed by REM are mild in light of the broadcasters' profits, the complaint form is overly complicated and must be filed within 30 days.[70]

REM's practice concerning outlets critical of the government was totally different. For instance, it placed cable TV stations *N1*, *Nova S* and *Al Jazeera* under supervision in February "because they have substantial audiences" although they broadcast their programmes under the European Convention on Transfrontier Television.[71] That same month, REM found that the hosts of the *Nova S*' "Mentalno razgibavanje" show had violated the Electronic Media Act and by-laws in November 2020 and notified the Luxembourg ALIA thereof. No new information about this case was published by the end of the reporting period.[72] In May, REM suspended *Radio Puls*' licence, after its owner criticised a local public official (SNS member) on Facebook.[73] In July, it issued a national broadcasting licence to *Radio Čeri*, which does not broadcast a programme and is not on REM's list of media service providers.[74]

In December, REM urgently issued a licence to Russian RT to broadcast its programme in German. Just days later, EUTELSAT took RT Deutsch off the air in Germany, saying that the European Convention on Transfrontier Television was inapplicable because Russia was not a party to it, although Serbia and Germany were.[75]

2.4. Journalists and Media Targeted

The number of incidents targeting journalists and outlets continued growing in 2021. The President, Prime Minister and MPs spearheaded the attacks, insults, false accusations and pressures and against journalists and obstructing their work. The portal Open Parliament reported that the MPs mentioned independent journalists and media in a negative context 199 times in the April-June 2021 period.[76] They were accused of spreading hate, terrorism (*Danas, Vreme, NiN*) and jeopardising

68 "REM: Bez postupka protiv RTS i Pinka zbog prekomernog pozitivnog izveštavanja," IJAS, 4 November.

69 "BIRODI podneo zahtev REM-u da utvrdi da li su RTS i PINK prekršili Zakon o elektronskim medijima," *Danas*, 18 October.

70 "Kako se krše prava najmlađih," *Vreme,* 4 November.

71 "REM: pod nadzor staviti televizije Al Jazeera, Novu 1 i Novu S," *Danas*, 24 February.

72 "Darko Mitrović: Vlast demonstrira silu," *Danas*, 25 February.

73 "REM ne kažnjava Pink i Hepi zbog napada i pretnji smrću, dok zabranjuje Radio Puls zbog uvreda," *Cenzolovka*, 28 May.

74 "Nacionalna frekvencija za radio koji se ne emituje, iza kojeg stoji firma koja se bavi bojama," *021*, 26 July.

75 "MABB: Prekinuto satelitsko emitovanje ruskog kanala RT DE sa dozvolom iz Srbije," *Cenzolovka*, 23 December. More in section II 6 Freedom of Expression and the Right to Know.

76 "Igra brojkama (1): Tužilaštvo, novinari, prijave i napadi," IJAS, 29 July.

the safety of President Vučić and his family. The MPs mentioned the media and opposition in the context of media dictatorship, treason, working for foreign powers, supporting criminal groups, money laundering, warning that anyone criticising the government would be "put into a sack and beaten".[77] By June 2021, Open Parliament filed 10 complaints against the MPs of the ruling coalition, who actively took part in the continuous campaign against civil society and independent media in Serbia.[78] In that context, the issuance of one reprimand to MP Srbislav Filipović and the dismissal of the other nine reports as ill-founded can be construed as the need to maintain the illusion that the Code of Conduct of MPs is applied, just as the National Assembly increasingly serves to maintain the illusion that Serbia is a democratic and well-ordered society. The President's message from Brussels that *Danas* was the "worst Fascist propaganda" [79] and Prime Minister Ana Brnabić's statement that this daily was calling for an assassination of the Vučić brothers[80] stood out among the many attacks against reporters and media.

The dismal situation of journalists is corroborated by the fact that around 100 journalists called the new hotline in the March-June period reporting they had been threatened or felt that their safety was in danger.[81]

IJAS' database of attacks on journalists registered 149 attacks on journalists in 2021; six were physical assaults, three were attacks on their property and two were threats to destroy their property. The database also registered 96 cases of pressures and 42 cases of verbal threats against journalists.[82]

Only some of these incidents will be described in the ensuing paragraphs. Journalist Daško Milinović[83] was assaulted in Novi Sad in April; his assailants were sentenced to prison by the first-instance court.[84] In May and June, the security guards of the Chinese factory Linglong in Zrenjanin prevented a Dutch TV crew[85] and a NewsMax Adria crew from doing their job; the relevant authorities did not react.[86] The Administrator of *Sjeničke novine*'s Facebook profile was shot and wounded in Sjenica in August,[87] while an *N1 TV* crew was attacked in Bel-

77 "Dnevnik poslaničkih uvreda (2): Kritičke medije optužuju za kriminal, terorizam, divljanje i, naravno, ugrožavanje Vučića," *Cenzolovka,* 30 July.

78 "Otvoreni parlament: Izmene Kodeksa neće poboljšati atmosferu u Skupštini," *Danas*, 23 September.

79 "Opasna izjava Vučića da je Danas 'fašistička propaganda'," *Danas,* 16 June.

80 "Premijerka povezala naslovnu stranu Danasa i tvit s pozivom na ubistvo Vučića," *Danas*, 17 June.

81 "Vlast normalizovala nasilje nad novinarima u Srbiji," IJAS, 9 July.

82 The database is available on IJAS' website www.nuns.rs.

83 "Šipkama napadnut novosadski novinar Daško Milinović," *021*, 16 April.

84 "Napadači na Daška Milinovića osuđeni na zatvorske kazne, dvojica nakon presude puštena na slobodu," *021*, 8 December.

85 "Obezbeđenje fabrike 'Linglong' pokušalo da spreči holandske novinare da snime izjavu aktiviste Građanskog preokreta (VIDEO)," *Danas*, 18 May.

86 "Obezbeđenje Linglonga ponovo u akciji sprečavanja novinara da rade svoj posao," *N1*, 7 June.

87 "Upucan administrator Facebook stranice 'Sjeničke novine'," *Danas*, 7 August.

grade in September (and received an apology the following day).[88] A journalist of the *Srpski telegraf* tabloid was assaulted on a Belgrade street in October.[89] Physical assaults and pressures against journalists intensified in December, especially during the civic protests. The victims included a *FoNet* journalist in Belgrade, the *Valjevo Plus* TV crew, whose camera was smashed, and a *Voice* reporter in Novi Sad.[90] The police did not react to these incidents but they some journalists reported that police officers paid them a visit at home to advise them not to report on the protests because they were labelled as the protest organisers. SNS authorities in Šabac posted high-quality "wanted" posters in colour across town against a journalist of *Podrinske*, who had been attacked earlier as well, claiming she organised the civic protests. The local police did not react to this open incitement to lynch.[91] Senta journalist Mina Delić was served a misdemeanour report and threatened with a fine ranging between 100 and 150 thousand RSD as the organiser of the environmental protest;[92] misdemeanour reports were filed also against journalists in Aleksinac, Subotica and Smederevo, who were covering the protests. The REM Council Chairwoman did not stay mum during the protests; she said on *Prva TV* that she had information that various foreign factors funnelled around €100 million for the environmental protests; BIRODI accused her of violating the REM Council's Code of Conduct.[93]

The number of verbal attacks, threats and insults against journalists and obstruction of their work was much greater.[94]

2.5. Trials for Attacks on Journalists – Difficult Access to Justice

Two types of trials concerning journalists can be distinguished. The first, slightly faster one, comprised trials for damaged honour or reputation. The courts ruled on quite a few defamation cases, mainly brought by opposition politicians, CSOs and journalists against pro-government tabloids, usually several years after the incidents.

The situation was somewhat different when it came to trials for insulting, threatening and attacking and killing journalists. The indictment for the assassination of Slavko Ćuruvija in 1999 was filed in 2014; the first-instance judgment was delivered in 2019, the case was retried, and the new first-instance judgment con-

88 "Obezbeđenje pretilo ekipi TV N1, kompanija Aseko se izvinila," *N1*, 23 September.

89 "Napadnut glavni urednik Srpskog telegrafa Milan Lađević," *Danas*, 1 October.

90 "Novinari napadani tokom subotnjih protesta, udruženja: Gde je bila policija?," *N1*, 5 December.

91 "Osude poziva na linč urednice 'Podrinskih'," *Danas*, 17 December.

92 "Novinarka iz Sente: Čaša je napunjena, ljudima počinje da bude dosta svega," *N1*, 20 December.

93 "BIRODI: Zekić prekršila Kodeks ponašanja članova Saveta REM-a," *Cenzolovka*, 13 December.

94 The many reports of attacks on journalists and media that were perused but not included in the Report are on file with BCHR.

victing the defendants to identical penalties was delivered on 2 December 2021. The defendants' lawyers said they would appeal the judgment.[95] The deaths of journalists Dada Vujasinović, Milan Pantić and attempted assassination of Dejan Anastasijević were still in the pre-investigation stage.[96]

A survey published in February showed that courts rendered final decisions against the defendants in only one out of ten cases concerning threats and attacks against journalists.[97]

By the end of October, prosecutors formed 66 cases concerning the safety of journalists, a third of which were dismissed. Only six convictions were handed down in 125 such cases formed in 2020 and 2021.[98]

A first-instance judgment in the case of arson of the home of journalist Milan Jovanović in Grocka in 2018 was delivered in 2021. The court sentenced both the former mayor of Grocka, who incited the arson, and the arsonist to four years and three months' imprisonment.[99] The Appellate Court overturned the first-instance judgment and remitted the case for reconsideration in late December.[100]

Many SLAPPs against media critical of the government were filed by companies close to the authorities in 2021. In April, the *Milenijum tim* company sued six outlets for carrying credible information opposition politician Vuk Jeremić revealed at his press conference. *Milenijum tim*, however, neither denied any of the information nor required the publication of a correction, a right it has under the law; instead, it claimed €100,000 in damages from each outlet. In response to public criticisms and pressures, it subsequently reduced the claims to €100 per outlet.[101] Similar SLAPPs against four media outlets and one NGO were filed by *Adria Media Group*, which also sought enormous damage claims.[102] It complained that its reputation had been damaged by allegations that its tabloid *Kurir* often published fake and manipulative news and nurtured hate speech.

SLAPPs are filed to embroil media outlets in expensive court proceedings that may result in their closure or to gag them. This is why they are often called "gag lawsuits against public interest defenders".

95 "Bivšim pripadnicima Državne bezbednosti 100 godina zatvora za ubistvo Ćuruvije," IJAS, 2 December.

96 "Matić: Znamo ko je ubio Milana Pantića," *Danas*, 14 April.

97 "Kažnjava se svaki deseti napad na novinare," *Danas*, 23 February.

98 "Napadnuto 74 novinara, samo šest osuđujućih presuda," *Danas*, 8 December.

99 "Former Serbian Mayor Convicted over Arson Attack on Journalist's Home," *Radio Free Europe,* 23 February.

100 "Belgrade court overturns verdict in setting a journalist's house on fire case," *N1*, 25 December.

101 "Milenijum Tim: Sudu predati podnesci da se tužbeni zahtevi prema medijima smanje na 100 evra," *Danas*, 11 August.

102 "Izdavač Kurira tužio Cenzolovku, Raskrikavanje, Danas, Javni servis i jednu NVO, traži 11 miliona," *Cenzolovka*, 12 August.

2.6. Unprofessional Media Conduct

The number of violations of the Press Code of Conduct continued growing in 2021. The journalists usually violated the presumption of innocence and respect for privacy, published inaccurate reports, failed to distinguish between facts and presumptions, and ignored the obligation to clearly label promotional reports.

The Press Council's data show that the Press Code of Conduct was violated at least once in 993 articles published in September 2021, an increase of 50% over September 2020 (when 661 violations were registered). Its data show that the Press Code of Conduct was violated over 50 times a day in June, August and October 2021.[103]

Data on hate speech are also concerning. Hate speech was identified in 232 articles published by five dailies in the 18 January-18 February 2021 period.[104] An analysis conducted by the Novi Sad Inter-Cultural Communication Centre (CINK) showed that four dailies – *Informer, Kurir, Alo* and *Večernje novosti* – nurtured hate speech as part of their orchestrated editorial policies dictated by external parties. The hate speech in regime dailies primarily targeted political opponents and ethnic Croats and Albanians.

Serbia ranked 29th among 35 European countries in the resilience to fake news category on the 2021 Media Literacy Index of the Open Society Institute in Sofia. Fifteen of the 20 analysed media in the region with fake news on COVID-19 and vaccination were from Serbia. Nine out of ten media that published fake news on medications were from Serbia.[105]

Pro-government outlets often published groundless accusations against critical media and opposition politicians. They accused them of calling for Vučić's assassination, cooperating with criminals, trying to cause chaos in the country, etc.[106] For instance, during the September crisis in Kosovo, the tabloid *Alo* accused opposition leader Dragan Đilas of helping Kosovo Albanians i.e. of treason.[107] The tabloid *Srpski telegraf* front-paged an article headlined "West's Megaphones Got Millions," accusing critical media of serving foreign powers.[108]

On the other hand, pro-government media often simply ignored information of public importance, e.g. that the name of the Serbian Finance Minister appeared in the Pandora Papers, an international investigative project exposing the offshore system that government leaders and politicians use to hide their riches.[109] In its report

103 "Savet za štampu: Novine i po 50 puta dnevno prekrše Kodeks," *Danas*, 25 October.

104 "Istraživanja: Štampana porcija mržnje u beogradskim dnevnim tabloidima," IJAS, 18 May.

105 "Godinu dana laganja: Dominantna uloga medija iz Srbije u širenju lažnih informacija," IJAS, 13 May.

106 "Tabloidi optužuju Danas da poziva na likvidaciju Vučića," *Danas*, 30 July.

107 "Albancima pomažu Đilas i Hrvati – Srbi na snajperskom nišanu ROSU hrabro poručuju: Nema povlačenja!," *Alo*, 21 September.

108 "Organizacije civilnog društva podnele prijavu protiv Uprave za sprečavanje pranja novca i urednika Srpskog telegrafa," *Južne vesti,* 25 September.

109 "Stanovi Siniše Malog nevidljivi za proreživimske medije," IJAS, 6 October.

on Freedom House's report, *RTS* ignored the sections on SNS' violations of political rights and civil freedoms and pressures on the media.[110] SNS MP Vladimir Đukanović, who is a lawyer, chairs the parliamentary judiciary committee and sits on the State Prosecutorial and High Judicial Councils, but also dabbles in journalism, made a precedent in Serbian journalism. He conducted an extensive TV interview with his client, Koluvija, the main defendant in the Jovanjica marijuana plantation case, in his home. Koluvija spoke about his innocence and that of Andrej Vučić, the brother of the President, accusing the Defence Minister of being behind the scandal. He also voiced numerous accusations against the opposition. Đukanović did not ask Koluvija to corroborate any of his allegations, merely encouraged him to keep on talking. Other government representatives confirmed that Koluvija was telling the truth. President Vučić spoke in his defence as well, and even said that marijuana was legal in Germany, which is untrue.[111]

The tabloids' violations of the Press Code of Conduct were frequent also in their reports of grave crimes, such as rape. *Danas* reported in March that they either downplayed the crimes[112] or accused the victims of accepting money to accuse someone of rape in order to satanise them or Serbs in general. The media revealed the identity of the victims[113] in 75% of their reports on violence. Tabloids also often published data from police investigations or pending trials, which is why the police and prosecutors are sometimes dubbed "tabloid's delivery services".[114] The former Belgrade criminal police chief was sentenced to seven months' home imprisonment for disclosing police information to the tabloid *Objektiv*.[115]

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. Judicial independence and impartiality, as well as efficiency, is the main prerequisite for achieving this principle and providing everyone access to justice.

110 "RTS prećutao ključne delove izveštaja Fridom hausa," *Raskrikavanje*, 5 March.

111 "Medijsko pranje Koluvije i Vučićevo (ne)čitanje Danasa," IJAS, 7 October.

112 "Kako da relativizujete silovanje u nekoliko minuta: Javni ispadi popularnog radijskog dvojca," *021.rs,* 14 October.

113 "UN Women: Mediji da poštuju etički i profesionalni kodeks," *Tanjug,* 10 August.

114 "Tabloid intimidation of victims", *Danas*, 30. March.

115 "Bivši načelnik UKP-a odavao tajne tabloidu 'Objektiv'," *Raskrikavanje,* 2 April.

Under the Serbian Constitution, judges shall be appointed by the National Assembly and the High Judicial Council (HJC). 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 HJC and elected by the National Assembly, while the HJC appoints judges on permanent tenure.[116]

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 (SCC), 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 SCC President 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.

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. The autonomy of public prosecutors and deputy public prosecutors shall be secured and guaranteed by the State Prosecutorial Council (SPC), an autonomous authority established under the Constitution.

The appointment of prosecutors is governed by the Public Prosecution Services Act. 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.

116 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.

3.2. 2018–2020 Preparations for Amending the Constitution

In its 2007 Opinion on Serbia's Constitution,[117] 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.[118]

However, the initiative to amend the constitutional provisions on the judiciary was only initiated in the spring of 2017. The two-year public debate on the amendments organised by the Ministry of Justice, which was characterised by verbal clashes between the representatives of the legislative and executive, on the one hand, and judges and prosecutors, on the other, did not yield any results. Representatives of the judiciary, constitutional law professors and civil society made a number of objections to 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 held. However, the procedures laid down in the Constitution and the Chapter 23 Action Plan were not complied with. First and foremost, the Justice Ministry should not have been involved in proposing the constitutional amendments, which are under the exclusive jurisdiction of the National Assembly.[119]

Pursuant to 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.

The constitutional reform returned to the constitutional framework after the Government submitted, 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.[120] The Committee on Consti-

117 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.

118 Chapter 23 Action Plan, p. 31.

119 More on the constitutional reform of the judiciary in the *2017 Report*, III.1.1, *2018 Report*, III.1.2, *2019 Report,* III.2.1. and *2020 Report*, III.3.4.

120 The draft constitutional amendments are available on the Justice Ministry's website.

tutional 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.[121]

The draft constitutional amendments, along with other draft regulations proposed by the Government, were withdrawn from the parliament before the 21 June2020 parliamentary elections. The Government endorsed the identical text again, after more than two years, at its session on 3 December 2020 and forwarded it to the National Assembly. The Chapter 23 Revised Action Plan envisages the adoption of the constitutional amendments in the fourth quarter of 2021.

3.3. Drafting of the Constitutional Amendments in 2021

Activities on drafting the constitutional amendments intensified in 2021, resulting in the parliament's adoption of the Act on the Amendment to the Constitution Amendments on 30 November 2021.[122] The Speaker called a referendum on the amendments for 16 January 2022.[123]

The first important step in that direction was taken on 16 April, when the parliamentary Committee on Constitutional Issues and Legislation adopted the Decision initiating constitutional amendment activities, whereupon public hearings were organised in Belgrade, Novi Sad, Niš and Kragujevac. The public hearings mostly focused on the need to amend the Constitution, without going into details.

On 7 June, the Government's Draft Amendments to the Constitution were adopted by a two-thirds parliamentary majority.[124] The Government proposed amendments of the following Articles of the Constitution: Article 4 on the relationship between the legislative, executive and judicial branches; Articles 142–165 on courts and public prosecution services; Articles 99, 105 and 172 on the competences of the National Assembly, decision-making in the National Assembly and election and appointment of Constitutional Court judges.[125]

121 "Kuburović: Izmene Ustava nakon izbora," *Novi magazin*, 18 August 2020.

122 The Act on the Amendment of the Constitution was voted in by a two-thirds majority (193 MPs voted for and three against it).

123 The referendum was called on 30 November 2021. The referendum question is: Are you for the confirmation of the Act on the Amendment of the Constitution?

124 A total of 207 MPs voted for the Draft Amendments to the Constitution.

125 "Odluka o prihvatanju predloga za promenu Ustava Republike Srbije," available on the Open Parliament website.

Before the MPs cast their votes, Prime Minister Ana Brnabić said that the amendments aimed to ensure that Serbia had a judiciary that would ensure the rule of law, fast and attainable justice and economic progress.[126]

Soon afterwards, on 23 June, the Committee on Constitutional Issues and Legislation formed the Working Group for Drafting the Act on the Amendment of the Constitution[127] under substantial pressure of the public and the National Convention on the EU (NCEU).[128] The Working Group comprised 11 members,[129] and was chaired by the Chairwoman of the Committee on Constitutional Issues and Legislation. At the insistence of experts, the Committee appointed representatives of the Judges' Association of Serbia (JAS) and the Association of Prosecutors and Deputy Public Prosecutors of Serbia (UTS) to the Working Group. The establishment of the Working Group was marred by the appointment of Kragujevac University Law School Professor Dr. Srđan Đorđević, convicted by a first-instance court in the so-called Index scandal in which a number of Kragujevac Law School professors and staff were prosecuted for bribery and other offences. The public outcry led Đorđević to decide against participating in the Working Group[130] and he was replaced six days later by Belgrade University Law School Professor Dr. Bojan Milisavljević.

At the very outset, the Chairwoman of the Committee on Constitutional Issues and the Legislation and the Working Group said that she expected that the Preliminary Draft Act on the Amendment of the Constitution would be completed by the end of July, just a month after this body held its first session.[131] Although the drafting of the amendments took longer, the short deadline she gave prompted justified criticisms, especially because of the risk that it would be impossible to meaningfully examine and discuss the preliminary draft.[132]

The Committee on Constitutional Issues and Legislation endorsed the First Preliminary Draft Act on the Amendment of the Constitution on 6 September,

126 "Serbian parliament accepts proposal to change Constitution," press release, Serbian Government, 7 June.

127 "Formirana Radna grupa za izradu akta o promeni Ustava Srbije," *RTV*, 23 June.

128 "Nacionalni konvent: Formirati radnu grupu za izradu akta o promeni Ustava," *Danas*, 14 June.

129 The Working Group, chaired by Committee Chairwoman Jelena Žarić Kovačević, comprised Belgrade University Law School Full Professor, Constitutional Court judge and Venice Commission member in respect of Serbia Dr. Vladan Petrov; National Assembly Deputy Secretary General Branko Marinković; Assistant Justice Minister Jovan Ćosić; Assistant Director of the Republican Legislation Secretariat Darko Radojičić; Senior Adviser at the Justice Ministry Vladimir Vinš; Belgrade University Law School Full Professor Dr. Bojan Milisavljević; Institute of Comparative Law Research Associates Dr. Miloš Stanić and Dr. Miroslav Đorđević; Belgrade Appellate Court judge and Honorary JAS Chair Dragana Boljević; and, Deputy Chief Public Prosecutor, SPC Deputy Chairman, Commissioner for the Autonomy of Prosecutors and Member of the UTS Presidency Goran Ilić.

130 "Srđan Đorđević: Ne učestvujem u radnoj grupi za izmenu Ustava," *Danas*, 30 June.

131 The first session was held on 30 June 2021.

132 "Akt o promeni Ustava doraditi argumentima struke," *Danas*, 17 September.

whereupon the parliament Speaker asked the Venice Commission to issue an urgent opinion on it. After the Venice Commission issued its opinion on 18 October,[133] the Committee endorsed the new text at its session on 28 October. After the Venice Commission issued another urgent opinion,[134] the Committee endorsed the Draft Act on the Amendment of the Constitution on 29 November. The Draft Act was put to vote in parliament the following day.

In addition to the haste with which the Act was prepared and voted in, public opinions were also divided on the reach of the proposed amendments. While the government representatives and Working Group members were satisfied with the improved amendments, their critics warned that they could not achieve the main goal – preclude the legislative and executive branches from influencing the key judicial decisions.

The Act on the Amendment of the Constitution commendably removes the three-year probationary periods for judges and provides judges and prosecutors with the opportunity to themselves elect their representatives in the Councils. Those who think that the Act's key provisions should include stronger safeguards of the separation of powers, refer to the Venice Commission's Opinion, in which it stated that, although the solutions proposed in the revised draft amendments did not go against any international standards as such, the Commission wished to insist once again on the need to reduce the risks of politicisation of the two Councils.[135]

The main objections concern, first of all, the composition of the High Prosecutorial Council (HPC), which is regulated by Amendment XXV, under which this body will comprise 11 members: five public prosecutors elected by their peers, four prominent lawyers elected by the National Assembly, the Supreme Public Prosecutor and the Minister of Justice. This is not in line with the Chapter 23 Revised Action Plan, under which at least 50% of HPC's members will be elected from amongst the ranks of public prosecutors.[136] The Venice Commission also expressed concern about the composition of the Council, recommending that "the *ex officio* membership of the Minister of Justice and of the Supreme Prosecutor General should be abolished and replaced by two additional prosecutors elected by their peers".[137] Given the extent to which public prosecutors have been under political influence thus far, it can only be concluded that the government's willingness to continue the

133 Venice Commission, Serbia, Opinion on the Draft Constitutional Amendments on the Judiciary and the Draft Constitutional Law for the Implementation of the Constitutional Amendments of 18 October, Nos. 1027/2021 and 1047/2021.

134 Venice Commission, Serbia Urgent Opinion on the Revised Draft Constitutional Amendments on the Judiciary, issued on 24 November, Nos. 1027/2021 and 1067/2021.

135 *Ibid*., para. 52.

136 Activity 1.1.1 of the Chapter 23 Revised Action Plan, available on the Justice Ministry's website.

137 Paragraph 31 of the Urgent Opinion on the Revised Draft Constitutional Amendments on the Judiciary, CDL-AD (2021)048, Venice Commission, 24 November, Opinions Nos. 1027/2021 and 1067/2021.

practice prevailed over the recommendations of experts, international organisations, numerous strategies it itself adopted, as well as public calls for the independence of judges and prosecutors. Although the Amendment prohibits the Justice Minister from voting on the disciplinary liability of public prosecutors, the legislator missed yet another chance to eliminate, if only formally, the risk of political influence on public prosecutors.

The mechanism for electing prominent lawyers to the High Judicial and Prosecutorial Councils also gave rise to public polemics. Under Amendments XIII and XXV, the National Assembly shall elect four prominent lawyers to each of these councils by a two-thirds majority vote of all MPs. Although such a high majority aims at achieving consensus of the ruling and opposition party MPs, it is more realistic to assume that the mechanism will result in a deadlock and that the antideadlock mechanism will have to be applied. Namely, if the National Assembly does not elect all four members within the statutory deadline, the remaining (unelected) members will be elected after the deadline expires from among all eligible candidates by a commission comprised of the parliament Speaker, the Presidents of the Constitutional and Supreme Courts, the Supreme Public Prosecutor and the Ombudsman, by a majority vote. Given that all members of the commission are elected by the National Assembly it is not impossible that the proposed antideadlock mechanism might lead to politicised appointments, as the Venice Commission also noted. Such a high majority is even more difficult to justify when one bears in mind that the 2006 Constitution provides for the election of Constitutional Court judges, the President of the Supreme Court of Cassation and the Chief Prosecutor by a (mere) absolute majority.

3.4. Election of the President of the Supreme Court of Cassation

On 8 April, the National Assembly unanimously elected[138] Jasmina Vasović President of the Supreme Court of Cassation (SCC).[139] The term in office of her predecessor, the Acting SCC President, expired *ex lege* in mid-2018.[140] The fact that he remained president of the highest court and HJC Chairman in contravention of the law for two years best illustrates the status of the judiciary on the whole.

Some experts, including HJC members[141] voiced their concerns because only one candidate applied for the office of SCC President and because the election

138 She was voted in by 185 MPs.

139 "Jasmina Vasović izabrana za predsednicu Vrhovnog kasacionog suda," *Danas*, 8 April.

140 The former SCC President was elected by the National Assembly in October 2013. Under the law, his mandate of Acting President –pending the election of his successor – could be extended by a maximum of six months.

141 "Sporan postupak predlaganja kandidata za izbor predsednika Vrhovnog kasacionog suda," *Otvorena vrata pravosuđa*, 15 March.

procedure was for the most part conducted behind closed doors. HJC members reported that the decision to publish the vacancy was taken without prior notice, at a session on 23 December 2020, where it was discussed under Any Other Business. The vacancy was published the following day and the application deadline expired during the New Year holidays.

Although the HJC did not nominate Jasmina Vasović to the National Assembly, as the Constitution lays down, the SCC held a plenary session comprising all the judges in February, who unanimously, publicly and prematurely supported her, the only applicant. The SCC, known for its promptness in posting important news, published a press release on the session on its website with a delay.

Vasović's election in the year in which the Constitution is amended should be viewed in the context of paragraph 104 of the Venice Commission's Opinion,[142] in which it said the following: "The only issue of concern is Article 10 regarding the President of the Supreme Court of Cassation, who will retain this position until the expiry of his/her term. While this is not objectionable as such, the Commission observes that this President would be eligible to be elected to this post again – which is not in line with draft Amendment XI, which sets out that "The same person cannot be elected more than once as a President of the Supreme Court". Considering that the Supreme Court will be the continuation of the Supreme Court of Cassation, the Venice Commission recommends that this Article be reconsidered in the light of draft Amendment XI."

3.5. Election of the Chief Public Prosecutor

The National Assembly elected another extremely important senior judicial official in 2021. In late July, it elected, for the third time running, Zagorka Dolovac to the office of Chief Public Prosecutor.[143] She was voted in by 168 of the 171 present MPs; three MPs abstained from voting.

Before her re-election, the Deputy Chief Public Prosecutor and until recently the Commissioner for the Autonomy of Prosecutors said that he was unaware that any European democracy had the same supreme prosecutor for 18 years, which is how long Dolovac would remain in office if she was re-elected.[144] Experts who criticised Dolovac's second re-election agreed with him, questioning her candidacy given that the prosecution service was evidently toeing the government line in the so-called politically sensitive cases and its absence of any communication with the public on pressing criminal prosecution issues.

142 Venice Commission, Serbia, Opinion on the Draft Constitutional Amendments on the Judiciary and the Draft Constitutional Law for the Implementation of the Constitutional Amendments of 18 October, Nos. 1027/2021 and 1047/2021.

143 "Zagorki Dolovac treći mandat na čelu Republičkog javnog tužilaštva," *Danas*, 22 July.

144 "Zagorka Dolovac jedini kandidat za novog Republičkog tužioca," *Insajder*, 28 May.

Like in the case of the SCC President, the draft constitutional amendments allowing Dolovac to be elected to her fourth term in office remained disputable.

3.6. 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 endorsed by their peers. On the same day, the National Assembly also elected the SPC member from amongst the ranks of law school professors. The HJC and SPC held their constituent sessions on 6 April 2021.

The HJC held 26 regular sessions,[145] while the SPC held only seven sessions[146] in 2021. The HJC refused to allow observers to attend its sessions; the SPC did not respond to such a request, although the law provides for the public character of the two Councils' sessions (unless the public is excluded from them).[147]

To recall, 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, 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.

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. 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" were made by the Chief Public Prosecutor. The Justice Ministry State Secretary Ilić

145 See the HJC's website.

146 See the SPC's website.

147 "CEPRIS: Visoki savet sudstva i Državno veće tužilaca sprečavaju prisustvo sednicama," *Danas*, 27 October.

resigned in late October after his dismissal was requested[148] and a criminal report was filed against him for pressuring prosecutors. He was soon appointed First Counsellor of the Serbian Embassy in the USA.

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. 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. Like the UTS, the JAS alerted to potential irregularities that needed to be eliminated to ensure free and democratic elections.[149]

3.7. Persisting 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".[150] 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.

MPs continued attacking the judiciary in parliament in 2021 despite the ongoing constitutional reform aimed at ensuring the independence of the judiciary. The attacks illustrated their disrespect of not only individual judges and prosecutors but of the judiciary in its entirety as well. Judges were again qualified as political foes and associated with organised crime groups.

Miodrag Majić, a Belgrade Appellate Court judge and member of the Management Board of the Judicial Research Center (CEPRIS), remained a thorn in the

148 "Pritiskao tužioce: Državni sekretar razrešen u tajnosti," *Nova.rs*, 30 October 2020.

149 "Dopis Društva sudija Izbornoj komisiji VSS," JAS press release, 23 October 2020.

150 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).

ruling coalition's eye. Its MPs again targeted Majić, claiming he was morally responsible for the loss of Kosovo, while the pro-government tabloids alleged he would be the presidential candidate of the "Western forces", which wanted to depose Aleksandar Vučić. One such article quoted the Chairman of the parliamentary Committee on the Judiciary and HJC Member who associated Majić with criminal activities, including the bugging of the President and plans to liquidate his brother, all of which was aimed at "breaking him down emotionally" and at taking power. The Serbian Prime Minister also claimed that there were plans to stage a coup and oust Vučić.[151]

At the same time, seven candidates for first-time judges nominated by the HJC were not elected by the National Assembly; two MPs of the ruling coalition explained that they "had not passed the security check". It remained unclear what kind of security check they had been subjected to and who had conducted it and based on which regulations, given that competence, qualifications and worthiness are the statutory criteria judicial candidates must fulfil.[152]

Experts warned that those repeatedly attacking and openly intimidating judges publicly commenting the situation in the judiciary still went unpunished, thus conveying the message to aspiring judges on how they should comport themselves.

4. Constitutional Court

4.1. Composition and Election of Judges and Jurisdiction of the Constitutional Court

The Constitutional Court has 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)).

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

151 "CEPRIS: Sudijama ugrožena bezbednost tvrdnjama o kriminalnom delovanju," *Nova.rs*, 25 October.

152 "Parlament kao podrška državniku," *Istinomer*, 18 October.

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.

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 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)); 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 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 Procedure and the Constitutional Court's views on constitutional appeals.[153]

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 Time 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.

153 Available in Serbian on the Constitutional Court's website.

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 sessions thus became an exception rather than the rule The Constitutional Court Rules of Procedure 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 (Art. 29).

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.[154] 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.[155]

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))).

In 2021, 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.

154 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.

155 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 and the Court publishes its most important decisions in its Annual Bulletins.

4.3. *Statistical Overview of the Constitutional Court's Performance in 2020*

This section presents the publicly available data on the Constitutional Court's work in 2020.[156]

The Constitutional Court opened 13,421 cases in 2020, i.e. 998 less than in 2019, when it opened 14,419 cases. The vast majority (13,164) of the new cases concerned constitutional appeals. The data on the number of constitutional appeals filed with the Constitutional Court show a 6.71% decrease in 2020 over 2019. In its 2020 annual report, the Constitutional Court said that the number of filed constitutional appeals was higher, but that it again formed so-called typical cases comprising 10 or more constitutional appeals, like it did in 2019, to relieve congestion and improve efficiency. These typical cases concern breaches of the same rights in the same proceedings or the same impugned individual enactments.

The remaining new cases included 63 cases in which the applicants' complaints did not concern matters falling under the Constitutional Court's jurisdiction and 194 cases falling under its other competences, specifically: 180 cases in which the applicants requested it review the compliance of laws with the Constitution and ratified international treaties and compliance of ratified international treaties with the Constitution, and the constitutionality and/or legality of regulations and other general enactments; 10 conflict of jurisdiction cases; one case concerning an electoral dispute; one appeal of a decision on an MP's term in office; a judge's appeal of decision terminating his office; and one request to eliminate the legal consequences in the execution of the Constitutional Court's decision.

Together with cases pending from previous years, the Constitutional Court reviewed 35,211 cases in 2020, or 1,681 less than in 2019. It closed 12,315 cases in 2020; 12,056 were constitutional appeals, 183 were normative control cases and 24 concerned other matters falling under the Constitutional Court's jurisdiction.

Most of the cases deliberated by the Constitutional Court in 2020 regarded constitutional appeals (34,702); it rendered decisions in 12,056 of them. It, however, had another 22,646 cases pending, 10,972 of which were filed in the 2011–2019 period. The Court ruled on 11.32% constitutional appeals submitted in 2020. It upheld the constitutional appeals and confirmed violations of constitutionally guaranteed rights in 917 cases; like in 2019, 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.

Like in the past, the Constitutional Court dealt with the greatest number of constitutional appeals by issuing rulings dismissing them (7,498 or 62.19%); the remaining 3,486, or 28.92% were dealt with in other procedural ways. In light of Article 46 of the CCA entitling the Constitutional Court to issue a ruling dismissing

156 The Constitutional Court's 2020 annual report, entitled Pregled rada Ustavnog suda u 2020. godini, is available in Serbian on its website.

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 444 such cases (92 cases less than in 2019) and rendered decisions in 207 of them. The Court ruled on the merits in only 17 of these cases, finding that the general enactments were not compliant with higher general legal enactments.

4.4. Noteworthy Constitutional Court Decisions in 2021

4.4.1. Select Constitutional Court Decisions on Incompatibility of Statutory Provisions with the Constitution and Ratified International Treaties

In 2021, the Constitutional Court found, inter alia, that specific provisions of the Criminal Procedure Code, the Human Organ Transplantation Act and the Human Cells and Tissues Act were incompatible with the Constitution.

The Constitutional Court adopted two decisions finding specific provisions of the Criminal Procedure Code (CPC) incompatible with the Constitution and ratified international treaties. In its first decision, the Court established that the impugned CPC provisions limited the right to a fair trial enshrined in Art. 32(3) in contravention of Art. 20(1) of the Constitution, while, in its second decision, it ascertained that the impugned CPC provisions jeopardised the realisation of the right to equal protection of rights and a legal remedy and the right to a fair trial enshrined in Articles 36 and 32 of the Constitution. In both cases, the National Assembly failed to issue its opinion on the initiative as requested the Constitutional Court, pursuant to Articles 33 and 34 of the CCA, either within the deadline or after its expiry.

Constitutional Court Decision Iuz – 96/2015 – Criminal Procedure Code – Anti-Constitutional Exclusion of the Public from the Main Hearing

In response to an initiative, the Constitutional Court launched a review of the constitutionality of Articles 363(1(5)) and 366 of the CPC on 2 June 2020. It rendered its decision finding that the impugned provisions were not in compliance with the Constitution on 20 May 2021. In this case, it reviewed whether these provisions restricted the right to a public hearing for the reasons enumerated in Article 32(3) of the Constitution.

Namely, under Article 363(1(5)) of the CPC, the public could be excluded from the (entire or part of the) main hearing to protect other justified interests in a democratic society. Article 366 of the CPC allowed the public prosecutor to request of the court to exclude the public from the main hearing during the questioning of a cooperating defendant or convict and obligated the president of the panel to request of the defendant and his defence counsel to state their position on the request. Given that the right to a public hearing is one of the elements of the right to a fair trial, the Constitutional Court also reviewed whether the impugned provisions restricted the right to a fair trial in compliance with the conditions set out in Article 20(1) of the Constitution.

The Constitutional Court first noted that the right to a public hearing, as one of the rights guaranteed within the right to a fair trial, was not absolute and that the cases when it could be restricted were enumerated in Article 32(3) of the Constitution. Under this provision, the public may be excluded from the entire or part of the court proceedings only to protect the interests of national security, public order and morals in a democratic society, the interests of minors or the privacy of the participants in the proceedings, in accordance with the law.

The Constitutional Court held that the provision in Article 363(5) of the CPC, allowing for excluding the public from the (entire or part of the) main hearing in order to protect other justified interests in a democratic society, limited the right to a public hearing for reasons going beyond the scope of restrictions permitted by Art. 32(3) of the Constitution.

The Constitutional Court also drew attention to Art. 20(1) of the Constitution, under which constitutionally guaranteed human and minority rights may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right. Given that the right to a public hearing is one of the rights guaranteed within the right to a fair trial, the Constitutional Court found in this case that the impugned provision restricted the right to a fair trial in contravention of the conditions set out in Art. 20(1) of the Constitution.

In its review of Art. 366 of the CPC, which allowed the public prosecutor to request of the court to exclude the public from the main hearing during the examination of a cooperating defendant or convict and laid down that the president of the panel would request of the defendant and his defence counsel to state their position on the request, the Constitutional Court first noted that this Article was titled "Special Case of Excluding the Public".

The Constitutional Court ascertained that the provisions of the impugned Article limited the exclusion of the public only to the questioning of cooperating defendants and convicts. Bearing in mind the subject of the cooperating defendants' or convicts' testimonies and the fact that the Article did not specify the reasons for

which the court could exclude the public from the hearing at which they were examined, and that it could not rule on the exclusion of the public *ex officio*, like in all other cases, but solely on the request of the public prosecutor, the Constitutional Court concluded that this special case of excluding the public was not covered by the reasons for excluding the public under Art. 363 of the CPC, which it already found non-compliant with the Constitution. Namely, had this special case of excluding the public been covered by the reasons enumerated in Art. 363, there would have been no reason for the provisions in Art. 366 of the CPC.

Due to all of the above considerations, the Constitutional Court found that a special reason for excluding the public was at issue, rather than exclusion for reasons enumerated Article 363 of the CPC, and that the only provision in Article 363 that could have been linked to this special case of exclusion of the public was the one in sub-paragraph 5, which it found non-compliant with the Constitution. The Constitutional Court therefore found that Article 366 of the CPC was not in compliance with the Constitution as well.

Constitutional Court Decision Iuz – 134/2019 – Criminal Procedure Code – Threat to the Right to Equal Protection of Rights and a Legal Remedy and the Right to a Fair Trial

In response to an initiative, the Constitutional Court on 19 November 2020 launched a review of the constitutionality of Article 262(2) of the Criminal Procedure Code on the determination of the costs of proceedings and its compliance with a ratified international treaty. Under this provision, data on the amount of costs and the claims for their compensation may be submitted no later than one year from the date when the judgment or ruling referred to in paragraph 1 of this Article becomes final. The Constitutional Court rendered its decision finding the provision not in compliance with the Constitution and the European Convention on Human Rights on 4 February 2021.

Who will ultimately bear the costs of criminal proceedings depends on the outcome of the case. The defendants bear the costs in the event they are found guilty. In case the defendants are acquitted, the costs of proceedings on crimes prosecuted *ex officio* are covered by the state, whereas the costs of criminal proceedings initiated by private prosecutors are covered by the latter (Art. 265 (1, 3 and 6) CPC). The Constitutional Court noted that the major importance of the costs of proceedings and, consequently, the general relevance of provisions on coverage of the costs of proceedings in constitutional law, emanated from their character under procedural law.

Article 262 of the CPC imposes upon the courts the duty to decide in each judgment or ruling corresponding to a judgment who will bear the costs of the proceedings and their amount, depending on the outcome of the proceedings. If data on the amount of the costs are missing, a separate ruling on the amount of costs shall be issued by the president of the panel or a single judge when such data are obtained. Data on the amount of costs and the claims for their compensation may

be submitted no later than one year from the date when the judgment or the ruling corresponding to a judgment becomes final.[157]

The Constitutional Court noted that the CPC provided for several procedural ways when court decisions could become final, but that not all the situations were disputable under constitutional law when it came to ascertaining the constitutionality of the concrete CPC provision. It qualified as disputable situations in which the appeals courts uphold the appeal and modify the first-instance decision, which becomes final on the day it is adopted and which entitles the party to the coverage of its costs of proceedings, an entitlement it did not have until the decision was modified.

In such situations, Article 461 of the CPC imposes upon the appeals court the obligation to forward its decision on the appeal of the first-instance judgment and the case file to the first-instance court within four months (or three months in pre-trial detention cases) from the day the judge rapporteur received the court's case file with the public prosecutor's request; the deadline may be extended by another 60 days (30 days in pre-trial detention cases). When appeals of rulings are at issue, the second-instance court must forward its decision on the appeal and the case file to the first-instance court within 30 days from the day it received the case file with the public prosecutor's request (Art. 467(5), CPC).

The Constitutional Court concluded that the deadlines imposed upon the second-instance courts were instructive and that the CPC did not specify the deadline by which the first-instance court had to forward the appeals court's decision to the parties. It further noted that there was no doubt that parties to proceedings and other persons to whom the appeals court's decision is forwarded could not expedite the communication of the second-instance court's decision before the expiry of the deadline laid down in the impugned provision of the CPC, and that this decision was prerequisite for filing a claim for the compensation of costs and specifying their amount. This statutory deadline may not be extended (Art. 224(1), CPC).

Based on all of these considerations, the Constitutional Court found that there was a contradiction between the existence of merely instructive deadlines for the appeals court and the non-existence of any deadlines by which the first-instance court had to communicate the appeals court's decision to the parties, on the one hand, and the objective and preclusive deadline in the CPC, upon the expiry of which the party loses the right it could have exercised before it expired.

Departing from the state's constitutional obligation to ensure the realisation of human rights, including the right to a fair trial and the right of access to a court, which are guaranteed by the European Convention on Human Rights, which Serbia has ratified, the Constitutional Court found that the imposition of an objective deadline for submitting data on the costs of proceedings and the claim for their

157 The deadline in Art. 262(2) of the CPC regards only the costs of criminal proceedings the court does not decide on *ex officio*.

compensation under Art. 262(2) of the CPC, i.e. by linking the running of the one-year deadline to the conclusion of a criminal proceeding by a final decision, upon the expiry of which the parties are no longer entitled to submit the data and the claim, undermined the realisation of the rights enshrined in Articles 32(1) and 36 of the Constitution.

Constitutional Court Decision Iuz – 223/2018 – Human Organ Transplantation Act

On 16 July 2020, the Constitutional Court launched a review of the constitutionality of Article 23 of the Human Organ Transplantation Act in response to initiatives filed with it. It rendered a decision finding all the provisions of this Article incompatible with the constitutional principle of the rule of law under Article 3 of the Constitution on 20 May 2021, but postponed the publication of the decision and its reasoning in the Official Gazette of the Republic of Serbia by six months.

The impugned Article originally read as follows: Human organs of deceased adults with legal capacity may be removed for transplantation in the event they had not opposed their removal orally or in writing while they were alive, or in the event their parent, spouse, civil partner or adult child do not oppose the removal at the time of death (para. 1); Exceptionally, in the event the deceased did not have any relatives referred to in paragraph 1, their human organs may be removed unless their collateral relatives to the second degree of kinship explicitly oppose the removal at the time of death (para. 2); The human organ donation coordinators or members of coordination teams are under the obligation to duly familiarise the family members of the deceased referred to in paragraph 1 of this Article of further actions and conditions for donating human organs referred to in paragraph 1 of the Article after the death of the deceased is confirmed (para. 3); The organs of deceased children, who were under their parents' guardianship while they were alive, may be removed only with the written consent of their parents, or one parent if the other parent is deceased or unknown (para. 4); The organs of children, who were not under their parents' guardianship while they were alive, may be removed only with the consent of the health institution's ethics committee established in compliance with the law governing health care (para. 5); Organs of deceased adults partially or fully deprived of their legal capacity while they were alive may be removed only with the consent of the health institution's ethics committee established in compliance with the law governing health care (para. 6); Organs of deceased individuals who were not nationals of Serbia or did not habitually reside in Serbia may be removed only with the written consent of their spouse, civil partner, parent, adult sibling or child (para. 7).

Acknowledging the fact that the transplantation of organs, both of live and dead donors, was a medically, ethically and socially justified method of medical treatment, the Constitutional Court noted that it pursued a legitimate aim – the protection of the lives and health of people, as constitutionally protected goods.

The Constitutional Court first focused on paragraph 1 of Article 23 of the Human Organ Transplantation Act. It found that, by laying down that the organs of deceased adults with legal capacity could be removed in the event they had not opposed such removal while they were alive, the legislator opted for the assumed consent model applied in most EU Member States. The Court said that the assumed consent concept was not disputable in terms of constitutional law, but that respect for the deceased individuals' will and right to freely decide whether or not to donate their organs while they were alive imposed upon the legislator the duty to clearly and precisely regulate the realisation of that right in accordance with the constitutional principle of the rule of law. It referred to a view it has reiterated in a number of its decisions (e.g. IUz – 27/2009, IUz – 107/2011, IUz – 299/2011 et al.) on the quality of legal norms, departing from the ECtHR's view on the "autonomous concept of law" under which for a general act to be considered a law, not only formally but substantively as well, "it should be both adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual [...] to regulate his conduct," in order to ensure that imprecise or defective norms do not deprive individuals of their guaranteed rights or legal interests. The Constitutional Court also noted that the ECtHR listed in its case-law the qualities laws and other general enactments must have, and specified the term "law" did not boil down to the mere existence of a law, but to the quality of the law as well, requiring that it be compatible with the rule of law and that its provisions are sufficiently precise, clear and foreseeable.

In light of the above, the Constitutional Court concluded that Article 23 of the Human Organ Transplantation Act brought into question the very standards that must be respected to secure the constitutional principle of the rule of law.

Firstly, the Constitutional Court found that paragraph 1 of Article 23 did not clearly and precisely govern the relationship between the will expressed by the potential donors while they were alive and the will of their relatives, i.e. the scope of rights of the relatives, i.e. whether they had an autonomous right to oppose the removal of the donor's organs or whether their will was limited by the will of the deceased and essentially amounted to their right to convey the deceased's will expressed orally or in writing.

The Constitutional Court concluded that paragraphs 1 and 3 on the whole were unclear and unforeseeable as regards the obligations of the coordinators, both with respect to ascertaining the will of the deceased while they were alive and the relatives' right to oppose the removal of the organs. Namely, if the coordinators are obligated not only to familiarise the family members of the deceased of the conditions for organ donation but also to ascertain what the deceased wanted while they were alive, and whether the family members opposed the removal of the organs, it remains unclear until what time the will of the deceased is investigated and in which form the relatives can oppose the removal of the organs. It also remains unclear how the status of the civil partners is established, particularly in view of the short

period of time within which the decision on the (non-)removal of the organs has to be made, and whether and until which moment the relatives' decision is revocable.

The Constitutional Court further concluded that Article 23 of the impugned law set a negative requirement – that the relatives did not explicitly oppose the removal of the deceased's organs; the (non-)existence of their opposition is linked to the moment of death, while the relatives are notified of further actions and conditions for the donation of organs after determination of death. The Constitutional Court assessed that the use of different concepts about something that logically occurs after death could result in various interpretations of the moment until which the relatives of the deceased can exercise their right to oppose the removal of the latter's organs and, ultimately the denial of the right, given that the Rulebook on Medical Criteria, Methods and Conditions for the Determination of Death defines the time of death as the moment of confirmation of brain death, i.e. the moment the commission members sign the report. Departing from the above ambiguities and given that Article 10 of the impugned law lays down that the establishment and implementation of the procedure for securing appropriate consent for the donation of human organs is the responsibility of the human organ donation coordinator or coordination team in every in-patient health institution with an intensive care unit, the Constitutional Court assessed that the provisions of paragraphs 1 and 2 of Article 23 provided for the possibility of different interpretations and establishing different procedures, both with respect to ascertaining the will of the deceased expressed while they were alive, and with respect to the (non-)existence of disagreement on part of their relatives, and for unequal treatment in identical legal situations.

The Constitutional Court qualified as unacceptable the National Assembly's assertion in its reply, that the standard operating procedure (SOP) for obtaining consent for human organ donations has been established and that all transplantation centres across the country had to apply this document. The Court noted that Article 18(2) of the Constitution applied also to the realisation of rights guaranteed under Articles 23(1) and 25(1) of the Constitution, i.e. that the relationships, rights and obligations concerning the donation of organs of a deceased must be governed by law and in accordance with the quality of law requirements emanating from the constitutional principle of the rule of law, not in accordance with the SOP, as the National Assembly stated in its reply. Although the parliament's reply indicates that the nationwide SOP (although the Human Organ Transplantation Act does not provide for the existence of one procedure binding on all health institutions) governs some of the disputed issues concerning the deceased's expression of their will while they were alive and the will of their relatives, the scope of the relatives' rights, and the coordinators' obligation, these types of issues must be regulated by law, not by SOPs. The Constitutional Court also noted that the Human Organ Transplantation Act did not explicitly charge the Biomedicine Directorate with keeping records of individuals who did not want to be organ donors, and that, pursuant to Article 136(3) of the Constitution, the affairs of the state administration shall be stipulated by law, while

Article 16 of the State Administration Act clearly lays down that the competences of state administrative authorities shall be prescribed by law.

The Constitutional Court found that paragraphs 4 and 5 of Article 23 of the impugned Act laid down special rules for removal of organs of minors under or without parental guardianship, without explicitly listing adopted children. First, Article 104 of the Family Act provides for the establishment of rights and duties between the adoptees and their descendants and the adoptive parents and their relatives identical to those between children and their biological parents and relatives. Furthermore, under Article 52 of the Civil Registers Act, adopted children shall be entered into the birth register based on a ruling on the new entry of their birth; the parents' data shall be replaced by the data of the adoptive parents and the ruling shall void the adoptees' prior entry of birth; once the new data are entered in the birth register, only the adoptees and their adoptive parents are entitled access to the birth register. The Constitutional Court thus concluded that rules applying to children under their parents' guardianship also applied to adopted children and that the relevant provision of the impugned Act was not defective in that respect.

On the other hand, given that the removal of organs from deceased children, who were under parental guardianship while they were alive, is allowed only with the written consent of both parents, or one parent if the other parent is dead or unknown, the Constitutional Court found that paragraph 4 of the impugned Article was unclear and imprecise in light of the Family Act, as regards consent in the event one of the parents is fully deprived of parental rights or legal capacity, given the legal consequences of a court decision on the full deprivation of parental rights or legal capacity.

Departing from the fact that the Family Act provides for placing children without parental guardianship under guardianship, primarily of their relatives, and the guardians' duty to represent their wards, the Constitutional Court assessed that it was unclear in paragraph 5 of the impugned Article whether the guardians' consent or the consent of the ethics committee should be sought for removing organs in such cases.

The Constitutional Court also found that the requirements for removing organs from deceased adults fully or partially deprived of legal capacity while they were alive under paragraph 6 of the impugned Article were unclear and imprecise. Namely, it is unclear whether the rule on the relatives' assumed consent under paragraphs 1 and 2 of the Article applies, given the special regimes of removal of organs of specific categories under paragraphs 4–7 and that the situations governed by paragraphs 4, 5 and 7 obviously exclude the application of paragraphs 1 and 2 of the Article and that, under Article 124 of the Family Act, adults deprived of legal capacity are placed under guardianship, while guardians are not listed among individuals who may oppose organ donation.

Constitutional Court Decision Iuz – 69/2020 – Human Cells and Tissues Act

On 19 November 2020, the Constitutional Court launched a review of the constitutionality of Article 28 of the Human Cells and Tissues Act in response to an initiative. On 20 May 2021, it rendered its decision finding that the provisions of this article were incompatible in their entirety with the constitutional principle of the rule of law set out in Article 3 of the Constitution. It deferred the publication of the decision in the Official Gazette of the Republic of Serbia by six months.

Article 28 of the Human Cells and Tissues Act originally read as follows: Tissues of deceased adults with legal capacity may be removed for transplantation in the event they had not opposed their removal orally or in writing while they were alive, or in the event their parent, spouse, civil partner or adult child do not oppose the removal at the time of death (para. 1); Exceptionally, in the event the deceased did not have any relatives referred to in paragraph 1, their tissues may be removed unless their collateral relatives to the second degree of kinship explicitly oppose the removal at the time of death (para. 2); Tissues may be removed from deceased children, who were under their parents' guardianship while they were alive, only with the written consent of both their parents, or one parent if the other parent is dead or unknown (para. 3); Tissues may be removed from deceased children, who were not under their parents' guardianship while they were alive, only with the consent of health institution's ethics committee established in compliance with the law governing health care (para. 4); Tissues of deceased adults partially or fully deprived of their legal capacity while they were alive may be removed only with the consent of the health institution's ethics committee established in compliance with the law governing health care (para. 5); Tissues of deceased individuals who were not nationals of Serbia or did not habitually reside in Serbia may be removed only with the written consent of their spouse, civil partner, parent, adult sibling or child (para. 6).

The Constitutional Court noted that the transplantation of human tissue was a medically, ethically and socially justified method of medical treatment and that the legal possibility of removing human tissues from both live and dead donors for medical treatment pursued a legitimate aim – protection of the lives and health of people, as constitutionally protected goods.

The Constitutional Court found that the impugned Article 28 brought into question the standards that must be complied with to secure the constitutional principle of the rule of law. Namely, given that paragraph 1 of this Article lays down that tissues of the deceased adults with legal capacity may be removed for transplantation in the event they had not opposed such removal orally or in writing before they died (assumed consent) or in the event their parent, spouse, civil partner or adult child do not oppose such removal at the time of death, the Constitutional Court concluded

that this provision did not regulate clearly and precisely the relationship between the potential tissue donors' will and the will of their relatives, i.e. the scope of rights of the relatives of the deceased. This provision did not reply to the question whether the relatives' right to oppose the removal of the tissues from the deceased was autonomous or limited by the will of the deceased and essentially amounted to their right to convey the will of the deceased expressed orally or in writing.

The Constitutional Court said that this was particularly relevant given that the impugned law did not set out any requirements concerning the format of the statement on non-donation of tissues live people can give. Furthermore, the law does not provide for keeping records of individuals refusing to donate their tissues; nor does it set out the health institutions' obligations to ascertain the will of the deceased while they were alive or the rights of their relatives. In this decision, like in the one on the Human Organ Transplantation Act, the Constitutional Court stated that there were different interpretations of the legal character of the bodies of the deceased and rights concerning the bodies of the deceased, and that Serbian law did not regulate the issue comprehensively, wherefore the legislator needed to clearly and precisely regulate the relationships and rights concerning use of the tissues of the deceased.

Having ascertained the lack of precision of paragraph 1 of Article 28 of the impugned law and the fact that the law did not prescribe the health institutions' obligations concerning the determination of the fulfilment of the conditions for the removal of tissues, the Constitutional Court further noted that Article 28 was unclear and unforeseeable also when it came to investigating and ascertaining the will of the deceased while they were alive and the relatives' right to oppose the removal of their tissues. The Court concluded that it was unclear who was to ascertain the deceased's wishes concerning the donation of their tissues, how and by what time, and how, in what form and when the relatives could realise their right to oppose the removal of the tissues. It is also unclear how the status of a civil partner is ascertained given the short period of time in which the decision on the (non-) removal of the tissues has to be taken, and whether and by when the relatives' decision is revocable. The Constitutional Court therefore concluded that those who had such a right could not foresee what was expected of them if they wanted to exercise it.

As per the preciseness of provisions on removing tissues from deceased children and the requisite consent, and the clarity and preciseness of statutory conditions for removing tissues of deceased adults fully or partially deprived of legal capacity while they were alive, the Constitutional Court reiterated the views it stated in its decision declaring Article 23 of the Human Organ Transplantation Act unconstitutional and found that paragraphs 4–6 of the impugned Article 28 of the Human Cells and Tissues Act were not in accordance with the Constitution.

4.4.2. Select Constitutional Court Decisions on Constitutional Appeals

Constitutional Court Decision Už – 1526/2017 – Violations of the Prohibition of Trafficking in Humans under Article 26(1) of the Constitution and of the Right to a Trial within a Reasonable Time under Article 32 of the Constitution

At its session on 4 March 2021, the Constitutional Court upheld the constitutional appeal in its Decision Už – 1526/2017, finding a violation of the applicant's right to a trial within a reasonable time enshrined in Article 32 of the Constitution in criminal proceedings before the Belgrade Higher Court (case K. 4219/10) and awarded her €800 in RSD in respect of non-pecuniary damages. The Constitutional Court also found that the Belgrade Higher Court's ruling in the case violated the applicant's right to prohibition of human trafficking under Article 26(2) of the Serbian Constitution and awarded her €5,000 in RSD in respect of non-pecuniary damages.

Referring to Article 26(2) of the Constitution prohibiting all forms of trafficking in humans, the Constitutional Court noted that the prohibition involved three groups of positive state obligations: 1) the duty to put in place a legislative and administrative framework to prohibit and punish trafficking; 2)) the duty, in certain circumstances, to take operational measures to protect victims, or potential victims, of trafficking; and 3) a procedural obligation to investigate situations of potential trafficking. In general, the first two aspects of the positive obligations can be denoted as substantive, whereas the third aspect designates the States' (positive) procedural obligation.

The substantive aspect of the state's positive obligations is reflected in its establishment of a legal and administrative legal framework concerning individuals charged with human trafficking and a legal and administrative legal framework concerning victims of human trafficking, while the procedural aspect is reflected in the implementation of these provisions, both in the investigation and the trial stages.

Whilst reviewing the substantive aspect of the state's obligations, the Constitutional Court noted that trafficking in humans was defined in international treaties and in the Serbian Criminal Code and that, when children were victims of human trafficking, the substantive aspect of the state's positive obligation could be examined in the context of the position of the child under the Convention on the Rights of the Child generally, and under the CoE Convention on Action against Trafficking in Human Beings, specifically. The Constitutional Court said that Serbia had fulfilled the substantive aspect of its positive obligation to put in place a legislative framework for combatting human trafficking, that it has continuously been undertaking measures to train the network of bodies preventing human trafficking and protecting human trafficking victims, that it has been cooperating with NGOs and adopting national strategies on combatting human trafficking.

As per the procedural aspect of the state's positive obligations, the Constitutional Court noted that the applicant (victim in the criminal proceeding) was 16 and 17 years old at the time the crime was committed, that she was questioned twice during the criminal proceeding, that she orally requested not to be questioned in the presence of the defendants during the main hearing, and that her legal counsel requested of the Belgrade Higher Court to issue a ruling granting her the status of a particularly vulnerable witness to "prevent the repetition of secondary victimisation the victim had been subjected to during the previous examination". The Higher Court, however, did not decide on these requests. The victim's defence counsel had also requested that she testify remotely because attendance of the main hearing provoked feelings of fear and stress in her. The Higher Court, however, never decided on this request either. On the other hand, the Constitutional Court noted that the public was excluded both times the applicant was questioned in the capacity of witness, but only once, the first time, in the absence of the defendants.

The Constitutional Court further noted that the Belgrade Higher Court had not undertaken any measures to assist the victim during the proceeding, specifically to provide her with counselling and information about the rights and services she was entitled to under the law, and that it had not taken any measures to facilitate her physical, psychological and social recovery. Having perused the case file, it concluded that a representative of the NGO ASTRA – Anti-Trafficking Action was present during part of the proceeding and extended psychological support to the victim during the main hearings, but that the presence of the psychologist during the court proceeding was secured by the victim's sister not the court. It also noted that the court had not undertaken any measures to ensure cooperation with other organisations and state authorities charged with registering, protecting and assisting victims of human trafficking.

The Constitutional Court found a violation of the state's positive obligation, in contravention of Article 26(2) of the Constitution. It reached such a conclusion primarily because the court had not extended any measures of protection and assistance to the victim who was, at the time of the crime, a child under international treaties i.e. a minor under the Serbian Criminal Code. The Constitutional Court also noted that the Higher Court had failed to conform the proceedings to the court expert's finding that the victim was traumatised, that it had failed to respond to the request to grant her the status of a particularly vulnerable witness or to the request that she testify remotely, which resulted in the victim's secondary victimisation.

The Constitutional Court concluded that the Belgrade Higher Public Prosecution Service and Belgrade Higher Court had been under the duty to conduct the proceedings based on all the constituent elements of the case at hand and all the available evidence and ultimately adopt the relevant court decision. The Constitutional Court concluded that the criminal proceeding was ineffective because it lasted five and a half years, five of the 24 scheduled main hearings were held, the victim testified twice, whereupon the deputy public prosecutor modified the charges after

the evidence was presented and "deferred criminal prosecution" under Article 283 of the CPC and the court discontinued the proceeding. The Constitutional Court found another violation of the procedural aspect of the state's positive obligations: the Belgrade Higher Court failed to forward its decision to discontinue the proceeding to the victim and thus denied her the opportunity to take over the prosecution of the case as a private prosecutor. However, the Constitutional Court did not void the Higher Court's ruling since the statute of limitations for the crime the defendant was charged with (accessoryship after the fact under Article 333(2) in conjunction with paragraph 1 of that Article) expired.

The Constitutional Court also upheld the applicant's arguments that the public prosecutor could not have applied the deferral institute vis-à-vis one of the defendants since the indictment had already been confirmed. Given that the deferral institute was applied based on the reclassification of the crime, from a serious offence of human trafficking to a minor offence of accessoryship after the fact – which amounted to misapplication of procedural rules – and the victim was a child, the Constitutional Court reiterated that the prohibition of trafficking in humans was guaranteed by the Constitution and that, in view of the procedural aspect of the constitutional prohibition of all forms of trafficking in humans, a criminal trial of a human trafficking case had to involve a thorough examination of all the constituent elements and available evidence until the court renders its decision. It therefore awarded the applicant €5,000 in RSD in respect of non-pecuniary damages because of the violation of this right.

The Constitutional Court upheld the applicant's complaint that her right to a trial within a reasonable time had been violated during the criminal proceeding. Having reviewed all the circumstances of the case, specifically that only five of the 24 scheduled hearings had actually been held, that the hearings were usually rescheduled because of the justified absence of the defendants' defence counsel, which neither the court nor the applicant could be responsible for, the Constitutional Court also took into account that the applicant and her defence counsel had in no way contributed to the duration of the criminal proceeding, that the applicant was a minor (16/17 years old) at the time the crime was committed, and that one of the defendants had initially been charged with human trafficking and subsequently with accessoryship after the fact.

The Constitutional Court took particular note of the fact that the applicant had applied for the status of a particularly vulnerable witness on 9 October 2015 due to "additional traumatisation she has experiencing by repeatedly testifying", as specified in the request, and that these facts demonstrated the exceptional importance and gravity of the criminal proceeding for the applicant. The Constitutional Court also took into account that the lawyers had been on strike during the proceeding, the factual and legal complexity of the criminal proceeding (three defendants, a number of witnesses, engagement of court experts in psychiatry, the modification of the indictment). It found that these circumstances had no bearing on its determination

of the violation of the right to a trial within a reasonable time, but that they were relevant for its decision on the amount of compensation for non-pecuniary damages to be awarded the applicant.

Bearing in mind all of the above considerations, the Constitutional Court found that the applicant's right to a trial within a reasonable time under Article 32 of the Constitution had been violated and awarded her non-pecuniary damages in the amount of €800 in RSD.

Constitutional Court Decision Už – 1823/2017 – Violation of the Right to Liberty and Security under Article 27(3) of the Constitution in Conjunction with Article 29(1) of the Constitution and the Right to Freedom of Movement/Prohibition of Expulsion under Article 39(3) of the Constitution in Conjunction with Article 25 of the Constitution

At its session on 29 December 2020, the Constitutional Court adopted its decision Už – 1823/17 partly upholding the BCHR's constitutional appeal filed on behalf of a group of 17 Afghan nationals, who were pushed back to Bulgaria although they had expressed the intention to seek asylum in the Republic of Serbia. The group included eight children and one individual over 50 years old. In its Decision, the Constitutional Court found that the officers of Gradina Border Police Station (BPS) violated the applicants' right to liberty and security enshrined in Article 27(3) in conjunction with Art. 29(1) of the Constitution and their freedom of movement under Article 39(3) of the Constitution in conjunction with Article 25 of the Constitution. It awarded each of the applicants €1,000 in respect of non-pecuniary damages. The Constitutional Court dismissed[158] and rejected[159] the other complaints in the appeal.

The BCHR described the incident and the treatment of the applicants in its Right to Asylum reports.[160] In July 2016, the Serbian Government adopted the Decision Establishing Joint Police and Army Forces[161], under which the joint Ministry of Defence and MIA patrols are to reinforce Serbia's borders with Bulgaria and Macedonia. This move provided fertile ground for collective expulsions, i.e. pushing back aliens to the neighbouring countries without conducting the adequate procedures or providing them with access to the asylum procedure in Serbia.

On 3 February 2017, 17 nationals of Afghanistan were deprived of liberty on the road to Dimitrovgrad by a patrol of Gradina Border Police Station (BPS),

158 The Constitutional Court dismissed the claim of violations of Article 25 (inviolability of physical and mental integrity) and Article 28 (treatment of persons deprived of liberty) of the RS Constitution.

159 The Constitutional Court rejected the complaint under Art. 27(1) of the RS Constitution (right to liberty and security of person).

160 *Right to Asylum in the Republic of Serbia – Periodic Report for January–March 2017* and *2021 Right to Asylum in the Republic of Serbia – Periodic Report for January–March*, p. 40–44, BCHR, 2021.

161 "Serbia, Macedonia, Boost Controls to Stop Migrants," *BIRN*, 16 March 2016.

acting together with the members of the Serbian Gendarmerie and Army. After bringing them to the police premises, the Gradina BPS called the BCHR interpreter in to help them communicate with the asylum seekers. Members of the group were handed the custody ruling, after which they were placed in holding cells in the BPS basement.[162] They spent almost 12 hours in those cells, in inhuman and degrading conditions, without the possibility of engaging a lawyer, after which they were driven to the Pirot Misdemeanour Court, where the police filed motions for their prosecution.

The proceedings before the Pirot Misdemeanour Court ended with a ruling discontinuing the misdemeanour proceedings. Namely, the judge found that the defendants were in need of international protection and that they had left country of origin in fear of persecution and generalised violence, and that there was reasonable doubt that they were victims of human trafficking. The judge also concluded that their return to Bulgaria under the Serbia-EU Readmission Agreement was impossible due to the risk of them being subjected to treatment in contravention of the absolute prohibition of ill-treatment in case they were returned to Bulgaria.[163]

After the judge established the aforesaid and notified them of their right to seek asylum in Serbia, the Afghan nationals expressed the intention to seek asylum. In its decisions, the Misdemeanour Court ordered the representatives of the Gradina PBS and the Commissariat for Refugees and Migration (CRM) to issue them certificates of intent to seek asylum.

The Gradina BPS acted on the Pirot Misdemeanour Court's order and issued certificates of intent to the Afghan nationals referring them to the Reception Centre in Divljana.[164] After they were handed their certificates, they boarded a police van in the presence of a Farsi interpreter. They spent around an hour and a half in the van, convinced the officers were driving them to the Divljana Reception Centre. However, the van stopped at one point and the police officers ordered them to disembark. The asylum seekers alleged that they were then searched and that all the documents they had been issued in Serbia and all other items indicating they had been in Serbia were seized and destroyed. The officers then used threats and derogatory language and ordered them to go through the woods back to Bulgaria, across the so-called "green line". Those who refused to obey the orders were kicked several times. The group spent the night outdoors, in the woods, at below zero temperatures and then

162 The Gradina BPS officers took the Afghan nationals' personal data, fingerprinted and photographed them and entered their data in the MIA Afis and OKS databases. They then handed them a leaflet on their rights based on the Guidance on Treatment of Persons Taken into and Held in Custody.

163 The Afghan asylum seekers described the dire conditions in the Bulgarian refugee centres and claimed that the Bulgarian police had abused them and seized their money.

164 The asylum seekers were initially to have been referred to the Asylum Centre in Krnjača. However, as the Krnjača Centre was overcrowded at the time, the aliens were referred to the Reception Centre in Divljana at Bela Palanka.

headed towards Sofia, the capital of Bulgaria, where they alerted BCHR's interpreter to the incident.[165]

In its decision, the Constitutional Court found that the applicants had not been extended adequate legal aid from the moment they were deprived of liberty, given that they had not been provided with a lawyer either before or during the misdemeanour proceedings against them although their deprivation of liberty had not been ordered by the court. It observed that the applicants were foreign nationals who could reasonably be presumed to be refugees and unable to engage a lawyer themselves. The Court held that they had been in need of professional legal aid so that they could be familiarised with their rights and the procedure that would be subject to.

The Constitutional Court established that the applicants had been illegally expelled from the RS in the night of 3/4 February 2017.[166] It ascertained that the police officers had pushed back the applicants although they were qualified as refugees from a war-torn area and expressed the intention to seek asylum. It said that police actions included elements of inhuman treatment, and that the police violated the prohibition of expulsion in contravention of the Pirot Misdemeanour Court's decision. The Constitutional Court further supported its conclusion on inhuman treatment by the fact that the asylum seekers were pushed back to Bulgaria, driven to a forest and left there at night and at below freezing temperatures. The Constitutional Court noted, in particular, that the group included eight children, four of whom were under five and three of whom were under seven. Finally, the Constitutional Court emphasised that the applicants had been expelled after they had already filed their intentions to seek asylum and thus initiated the asylum procedure, which was pending at the time of expulsion.

On the other hand, the Constitutional Court held that there were grounds to restrict the applicants' liberty at the time they were arrested and placed into custody.[167] Accordingly, it dismissed the complaint about their illegal and arbitrary deprivation of liberty.

The Constitutional Court said that it had taken into account the claims in the constitutional appeal that the applicants had spent the night in inhuman and degrading conditions, because the police holding cells in the basement they were held in had neither a toilet nor drinking water. The Constitutional Court referred to a 2017 Report of the Protector of Citizens[168] stating that the custody cells in the Gradina

165 More about the incident in *Right to Asylum in the Republic of Serbia, Periodic Report for January-March 2017*, BCHR, 2017.

166 Which is in contravention of the prohibition of expulsion of aliens under Art. 39(3) of the RS Constitution and Art. 4 of Protocol No. 4 to the ECHR prohibiting the collective expulsion of aliens.

167 The Constitutional Court referred to Art. 27(1) of the RS Constitution and Art. 5(1) of the ECHR.

168 Izveštaj Zaštitnika građana o poseti Regionalnom centru granične policije prema Bugarskoj, Ref. No. 281–15/17, Belgrade, February 2017, pp. 3–4.

BPS did not satisfy even the minimum standards. However, the Court observed, inter alia, that the applicants had been given food during that critical night,[169] and that UNHCR representatives donated them clothing and footwear. Commenting the inhuman conditions in the police holding cells, the Court said that a large number of people were exceptionally placed in the cells due to the migrant crisis and the unexpected surge in arrivals into the RS of people falling under a special legal regime. It also noted that the applicants had spent less than 12 hours in the basement cell. Accordingly, it did not find a violation of Art. 25 of the RS Constitution.

In view of all the above considerations, the Constitutional Court ordered the state to pay just satisfaction to the applicants for the violations of their rights, specifically €1,000 (in RSD) to each of them in respect of non-pecuniary damages.

5. Independent Regulatory Authorities – Independent or Not?

5.1. Protector of Citizens

5.1.1. Legal Framework

Under the Constitution (Art. 138) and the Protector of Citizens Act, the Protector of Citizens shall be an autonomous and independent state authority charged with protecting and improving civil rights and freedoms, minority rights and overseeing the work of state administration authorities, the authority charged with the legal protection of the property rights and interests of the Republic of Serbia and other authorities and organisations, and companies and institutions vested with public powers. The Constitution ranks the Protector of Citizens among the highest government authorities, together with the National Assembly, the President, the Government, the Army, the state administration, courts and public prosecution services. The Protector of Citizens is not entitled to control the work of the National Assembly, the President, the Government, the Constitutional Court, the courts or the public prosecution services. The Protector of Citizens is elected and dismissed by the National Assembly, in accordance with the Constitution and the law. The Protector of Citizens accounts for his work to the National Assembly. The Constitution authorises the Protector of Citizens to propose laws (Art. 107(2)).

Although the Government committed to amending the Protector of Citizens Act by the 4th quarter of 2016 in the Chapter 23 Action Plan, it was only in October 2021 that the National Assembly adopted a new Protector of Citizens Act, which entered into force on 16 November 2021.

169 The applicants were delivered food by the Manager of the Dimitrovgrad Reception-Transit Centre and by the representatives of the Danish Refugee Council (DRC) and BCHR.

The legislator unfortunately failed to eliminate most of the deficiencies identified in the prior law. The procedure in which the Protector of Citizens is elected does not differ essentially from the one provided for in the previous Act. The procedure remains unclear, non-transparent, non-participative, and based on non-objective and publicly unavailable criteria, wherefore it will again fail to ensure the independence of and public confidence in this institution.

Although the new Act extends the Ombudsman's term in office to eight years and prohibits his re-election, the transitional and final provisions are in breach of this rule to the advantage of the incumbent Protector of Citizens and his deputies, since they provide them with the opportunity to again apply for and be re-elected to eight-year terms in office. These provisions, which were initially included in the preliminary draft, were fiercely criticised during the public debate. The Working Group of the Ministry of State Administration and Local Self-Governments took the criticisms on board and replaced the impugned provisions. The Draft Act submitted to parliament for adoption allowed the incumbent Protector of Citizens and his deputies to remain in office until the expiry of their five-year terms in office, to which they were elected, and did not provide for their re-election. However, during the parliamentary procedure, the parliamentary Committee on the Judiciary, State Administration and Local Self-Governments submitted an amendment reintroducing the re-election of the Protector of Citizens and his deputies, providing the incumbent Protector of Citizens, Zoran Pašalić with the chance to remain in office another nine years (i.e. 13 years altogether).

Under Article 11 (5) of the Protector of Citizens Act, all public, professional and other functions [...], as well as political party membership of the Protector of Citizens and his deputies shall cease on the day of their election/appointment. The formulation of the provision infers that political party membership is not an obstacle to running for the office of Protector of Citizens or Deputy Protector of Citizens, given that the Act provides for the *ex lege* termination of membership only upon election/appointment. This provision is undoubtedly inadequate, since it allows the Protector of Citizens and his deputies to be members of political parties until they are elected (like some other public officials appointed to independent institutions were until recently). It would have been more appropriate if the law prohibited the candidacy of anyone who has been a member of a political party in the past (e.g. in the past two or three years).

As opposed to the prior Act, under which the Protector of Citizens had four deputies specialised 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 new Act leaves open the possibility of the Protector of Citizens having fewer deputies, because it lays down that the Protector of Citizens may have up to four Deputies assisting him in performing his duties.

The Global Alliance for National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation reviewed the Protector of Citizens A-Status

Accreditation Certificate in 2020.[170] It said in January 2021 that it decided to defer its decision to its next 2021 session and asked the Protector of Citizens to respond to concerns relating to the following areas: information received from CSOs indicating that the 2017 selection and appointment process for the Protector of Citizens lacked transparency and the involvement of civil society; information received from CSOs that the number of individual complaints received by the Protector has declined in recent years, which may be indication of dwindling public trust in the institution, and that there have been delays in processing individual complaints; the Protector's activities in relation to economic, social and cultural rights and information received from civil society indicating that national authorities are less responsive to recommendations concerning socio-economic rights; the Protector's approach to dealing with allegations of abuse by police authorities and information received from CSOs that the number of visits carried out by the National Preventive Mechanism (NPM) to police stations has declined significantly in recent years; and the Protector's engagement and cooperation with civil society.

In late October 2021, the Protector of Citizens was reaccredited with A status, which means that the mechanism fully complies with the Paris Principles. In its report and recommendations,[171] the Sub-Committee on Accreditation emphasised the importance that the Protector of Citizens take reasonable steps to improve his effectiveness and independence in line with its recommendations.

5.1.2. Jurisdiction of the Protector of Citizens

Under the new Act, the Protector of Citizens is now also charged with exercising the duties of National Rapporteur for monitoring anti-trafficking activities, pursuant to the Act Ratifying the Council of Europe Convention on Action against Trafficking in Human Beings. The Protector shall designate a deputy who will assist him in exercising these duties.

The Protector of Citizens submits his annual reports to the National Assembly, which is under the obligation to review them at its plenary sessions.[172] The Protector of Citizens submitted his 2020 Annual Report to the National Assembly in March 2021. Although the Assembly Rules of Procedure lay down that the reports shall be reviewed within 30 days from the day of submission, the National Assembly discussed and upheld the Ombudsman's 2020 Annual Report only on 29 December 2021.[173] Such a delay was also registered in 2020, when the National Assembly reviewed the Ombudsman's 2019 Annual Report on the last Saturday of the year. The

170 GANHRI granted A status to the Protector of Citizens for the first time in 2010 and re-accredited him with A status on 2015.

171 Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 18–29 October 2021.

172 The National Assembly failed to adopt the Protector's 2014–2017 Annual Reports. In July 2019, it reviewed the 2018 Report.

173 "Zaštitnik građana: Broj pritužbi veći za 54 odsto u 2020. godini," *N1*, 29 December.

parliament's failure to review the reports of independent institutions for four years[174] and major delays in deliberating them when it resumed its obligation have rendered the institutions' recommendations and the adopted conclusions senseless given the substantial passage of time and the fact that it considers the flagged issues for the first time while the preparation of the new annual reports is already well under way.

The Protector of Citizens did not publish any special reports in 2021, as opposed to the previous period, when he published up to five special reports every year.

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 2021 filed four initiatives that were still pending and 30 opinions and various views.

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.

The Protector of Citizens is also entitled to review complaints of human rights violations by administrative authorities filed by members of the public. Under the new Act, complaints may also be filed by human rights associations on behalf of individuals and by children over 10 without the consent of their parents or guardians. Whereas the prior law did not set any time limits within which the Protector of Citizens had to review a complaint, the valid Act lays down that the Protector of Citizens is to act on a complaint within 15 days from the day of its receipt: dismiss a complaint if the admissibility requirements are not fulfilled, rule on the complaint in a summary procedure, or initiate a review, which must be completed within 90 days. The Protector of Citizens may extend the review in exceptional and justified situations and shall notify the complainant thereof. The Protector of Citizens may initiate a review of the operations of an administrative authority on his own motion when he himself becomes aware or other sources, including, exceptionally, anonymous complaints, bring to his attention that an administrative authority's action, non-action or enactment has resulted in a breach of human rights or freedoms.

174 The National Assembly did not review the independent institutions' annual reports at all in the 2014–2018 period. Its resumed its duty in 2019, when it discussed the Ombudsman's 2018 Annual Report, albeit again with a delay, in July.

The legislator failed to regulate in the new law the relationship between a complaint filed with the Protector of Citizens after the exhaustion of legal remedies before administrative authorities and a claim filed with the Administrative Court. After exhausting legal remedies before administrative authorities, citizens often simultaneously file a complaint with the Protector of Citizens and a claim with the Administrative Court. The Administrative Court's adoption of a decision has frequently undermined the importance of the Protector's decision on the same issue, because administrative authorities tend to comply with binding court decisions rather than non-binding recommendations of the Protector of Citizens. This has occurred a number of times in practice, in cases in which the Protector of Citizens and the Administrative Court had different views on the merits of the complaints/claims.

Although the new Act does not entrust the Protector of Citizens with addressing pressures and safety threats against journalists, he proceeded with the activities geared at setting up a nationwide media platform registering all attacks on journalists, modelled after the Council of Europe platform. In May 2020, he signed an agreement with representatives of seven press and media associations and three trade unions of journalists on the establishment of the platform.[175]

Statistics published on the website of the Protector of Citizens show that fewer members of the public – 10,244 in total – contacted his office than in 2020; their number is much lower than in the 2014–2017 period, when over 17,000 people on average complained to the Protector of Citizens every year.

The Protector of Citizens reviewed 4,048 complaints in 2021. He closed 2,988 cases, while the review of 1,060 cases was still ongoing at the end of the reporting period.

The Protector of Citizens issued 341 recommendations in 2021; 95 of them were implemented and 9 were not; the deadlines for the fulfilment of 237 of his recommendations had not expired yet at the end of 2021.

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 ministry charged with preparing the budget. The solution does not guarantee the financial independence of the Protector of Citizens, because the Government has been known to restrict or suspend the use of already approved budget allocations. Such a solution renders senseless the concept of an "independent authority".

The Protector of Citizens still does not employ all 106 members of staff envisaged in its rulebook. The data in his 2020 Annual Report show that the number of staff in his Office continued falling and that only 84 positions were filled.[176]

175 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.

176 Regular Annual Report of the Protector of Citizens for 2020, Protector of Citizens, 15 March.

In September, the media quoted a member of staff in the professional service 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.[177]

5.1.3. Activities of the Protector of Citizens in 2021

The Protector of Citizens initiated a substantially smaller number of reviews of operations of administrative authorities both in response to complaints and on his own motion in 2021 compared with 2020.

He addressed only 342 recommendations to state authorities during the reporting period, as opposed to 2015 and 2016, when the number of such recommendations rose up to 900, although those years were not marked by any exceptional developments, such as pandemics or protests.[178]

The quality of the recommendations is also questionable. The vast majority of them regard the administrative authorities' future actions, while only a negligible few call for the elimination of an identified violation of a civil right or the establishment of individual liability.

For instance, the Protector of Citizens completed his review of the operations of the Ministry of Internal Affairs prompted by police brutality and excessive use of force during the July 2020 protests after seven months, in early February 2021. He found that police officers had violated the individuals' rights in eight cases.

Perusal of the Protector's explanatory notes in these cases leaves the impression that he took the MIA for its word, not insisting on further clarifications or that it establish the liability of individual police officers. Although he found violations of the rights to respect for physical and mental integrity and human dignity, all his recommendations concerned this administrative authority's future operations; he did not remind it of its obligation to identify the liability of the police officers in the relevant procedure.[179]

Similarly, it took the Protector of Citizens a year to complete the review of a complaint filed by a man who was arrested and abused by the police in the police station in Kula and who submitted in evidence a forensic medical report confirming that the diagnosed injures were consistent with his claims about how he had sustained them. The Protector of Citizens found numerous deficiencies in the work of the police resulting in violations of the complainant's right to respect for physical and mental integrity and to protection from torture. He, however, again failed to issue the police recommendations to establish the liability of individual officers.[180]

177 "Za Pašalića ne postojim, kod mene retko ko svraća," *Nova S,* 8 September.

178 Data available on the website of the Protector of Citizens.

179 The recommendation of 12 February is available on the website of the Protector of Citizens.

180 The recommendation of 27 May is available on the website of the Protector of Citizens.

The BCHR filed an initiative with the Protector of Citizens in early 2021, asking him to review the operations of the relevant authorities[181] after the Chairman of the Trade Union of Doctors and Pharmacists of Serbia and many other eminent doctors said that 70 doctors had died of COVID-19 and that it was impossible to obtain any official data on the deaths.[182] Not only did his decision not to respond to the initiative cause surprise;[183] he caused additional public concern when he told the media that "no-one took into account the number of doctors who committed suicide due to pressures on the health system".[184]

Alerting to the importance of preserving the highest A status, civil society organisations called on the Protector of Citizens to rectify the identified deficiencies in the operations of the institution as soon as possible in order to ensure better protection of human rights of all citizens. The Protector of Citizens, however, reacted sharply to the criticisms and attempted to discredit the CSOs that voiced them in the media in January 2021. He issued a press release[185] qualifying them as "marginal civic associations" voicing "malicious allegations" and interpreting "in an unprofessional and malicious manner the events related to the Protector of Citizens".

Serbia's Forgotten Children, a report prepared by Disability Rights International and the Mental Disability Rights Initiative – Serbia[186] caused much public concern. The report says that Serbia has failed to address severe human rights violations and abuses that constitute inhumane and degrading treatment in residential institutions. The authorities formed a team of representatives of several ministries, including the Protector of Citizens, to investigate whether children in such institutions were victims of severe neglect and lacked access to health care, placing their lives and health at risk. Zoran Pašalić vehemently denied the Report findings in his statements to the media, claiming that the situation in the homes was excellent, that the photographs published in the Report were several years old and that the main problem was that the children were not being visited by their parents and relatives.[187]

In response to media reports of sexual abuse of girls attending the Petnica Research Station programme run by a civic association, the Protector of Citizens in late June 2021 launched a review of the operations of the relevant authorities with a view to protecting the rights and best interests of the child,[188] whereupon he

181 BCHR Initiative to the Protector of Citizens to Review the Operations of the Health Ministry No. 68/8 of 18 January.

182 "Panić: Srbija na crnoj listi po broju preminulih zdravstvenih radnika od korona virusa," *Danas*, 11 November.

183 Protector of Citizens enactment 423–8/21 Ref. No. 1614 of 20 January.

184 "Pašalić: Joksimoviću deca nisu oduzeta zbog siromaštva, pregledamo dokumentaciju," *N1*, 26 January.

185 The press release of the Protector of Citizens of 29 January is available on his website.

186 *Serbia's Forgotten Children*, DRI and MDRI-S, June 2021.

187 "Pašalić: Stanje u domovima za decu izuzetno dobro, radi se i izveštaj o Petnici," *N1*, 3 September.

188 The press release of 1 July is available on the website of the Protector of Citizens.

proposed that education laws be amended to enable him to check the operations of all organisations involved in child care and education.[189]

Unfortunately, this is one of the few cases in 2021 where the Protector of Citizens recognised the important role he should play in improving the rights of citizens by initiating legislative amendments and issuing opinions on draft laws. However, justified expectations that he would exercise his powers in case of the Draft Referendum and People's Initiative Act, the draft amendments to the Expropriation Act and other regulations filling the headlines did not materialise despite the major importance of the issues they govern and huge public interest in them.

In 2021, the Protector of Citizens also took action in the case of 500 Vietnamese workers the Chinese company Linglong hired to build a tire factory. They lived in overcrowded barracks in Zrenjanin, without electricity or water for months. Their plight gave rise to suspicions that they were victims of human trafficking for the purpose of labour exploitation.[190] Many journalists and NGO activists visited the workers, interviewed them and saw for themselves the conditions they were living in. They alerted to clear indications of human trafficking, entailing, inter alia, deceptive recruitment, promises of lawful employment and decent wages, questionable contracts and engagement, as well as the employer's seizure of the victims' personal documents. During his visit to the Vietnamese workers, the Protector of Citizens found that their lives were in danger because of the TNG bottles and diesel barrels stored in the barracks and requested that they be moved to better accommodation. After talking with the Zrenjanin police, the Vietnamese workers and the representatives of the company that hired them, the Protector of Citizens said that all of them had proper registration papers and work licences, and that their passports were not seized but deposited with the employer, and that they could retrieve them whenever they wanted.[191] His conclusion met with vehement public criticism in light of the numerous incidents that occurred in the preceding days, including Linglong management's threats to the safety of journalists reporting on the case and physical altercations with activists who tried to help one of the dissatisfied workers leave the camp.[192]

The Protector of Citizens failed to promptly exercise his powers and react to several cases of illegal and humiliating treatment of protesters taking part in traffic blockades staged by eco-activists in late November, to deploy his teams to monitor the police officers' actions in the field or initiate a review of the MIA's operations.[193] Video footage and live broadcasts showed gendarmes disregarding the Protector's earlier recommendations; they were not wearing standard uniforms, had no visible

189 The Initiative No. 351– 2 21 available on the website of the Protector of Citizens.

190 "Mistreatment of Vietnamese Workers in Serbia 'Criminal', Lawyer Claims," BIRN, 17 November.

191 The press release of the Protector of Citizens of 18 November is available on his website.

192 "Zrenjanin: Štrajk, opkoljavanje radnika, novinara i aktivista, nehumani uslovi za rad i život." *N1*, 17 November.

193 "Blokada upozorenja završena uz koškanja, privođenja, pa i motke...," *N1*, 28 November.

identification insignia on their uniforms or badges, and wore masks on their faces, precluding the identification of any of those who abused their powers.

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 Punishment in December 2005. The NPM was established in 2011, under the Act Amending the Act on the Ratification of the Optional Protocol. In Serbia, the Protector of Citizens performs the duties of the NPM in cooperation with the provincial Ombudsman and human rights organisations.

The Protector of Citizens is entitled to visit and regularly examine the treatment of persons deprived of liberty in places of detention,[194] 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.[195]

During the public debate on the preliminary draft of the Protector of Citizens Act, the representatives of the National Convention on the European Union alerted to prior recommendations on the transparent selection of NPM members with the active participation of civil society, from amongst individuals with extensive experience, on setting out the NPM's mandate in the legislation and on the establishment of a 'flat' rather than a hierarchical relationship between the Protector of Citizens and the Head of the NPM.[196] Unfortunately, their comments were not taken on board. The Protector of Citizens said that he did not think that a distinct official should be in charge of the NPM given the share of complaints and issues the NPM dealt with.

Quite a few civic associations stopped cooperating over the past few years on the performance of NPM duties. The number of associations who will pull out of the

194 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.

195 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 mirrors the NPM's mandate under the Optional Protocol.

196 NPM Observatory, Observation visits to the National Preventive Mechanism of Serbia 19 and 20 June 2017 & 18 and 22 June 2018, available on BCHR's website.

NPM can be expected to grow given that Zoran Pašalić qualified some of the CSOs that are still members of the NPM as "marginal" "partial" and "incompetent" in response to their statements on the GANHRI re-accreditation.[197]

During the reporting period, the NPM published its 2020 Annual Report and Special Reports on visits to institutions accommodating unaccompanied minors and on treatment of migrants at the border with Bulgaria.

Since people deprived of liberty have been hit particularly hard by the COVID-19 pandemic, the NPM focused in its Annual Report on the implementation of anti-COVID-19 measures in places of detention and ways in which these institutions ensured that people deprived of liberty exercised their fundamental rights.

The NPM's 2020 Annual Report also addressed the public officials' treatment of July 2020 protesters deprived of liberty, finding it illegal and in violation of international treaties and standards.

Like in the past, 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.

The NPM made a substantial number of visits to places of detention in 2021 as well. It continued with its good practice launched the previous year – monitoring the forcible removal of aliens and making unannounced visits to police directorates and stations. As of 23 October 2020, when the Ministry of Labour, Employment and Veteran and Social Issues prevented the NPM team from visiting two social care institutions in Belgrade, the NPM team visited only two such institutions, the Zemun home for persons with disabilities, on 29 January 2021, and the home for children and adults with disabilities Dr Nikola Šumenković in Stamnica, on 19 April 2021. Reports on those visits were not published by the end of the reporting period, wherefore it remained unknown whether the NPM team identified any violations of the residents' rights or which recommendations it made to the institutions and the relevant ministry.

The NPM visited Pavilion IV of the Sremska Mitrovica penitentiary and established that the facility was overcrowded and fell short of the standards and regulations on accommodation.[198] The dismal conditions in this Pavilion had already been alerted to both by the NPM and CSOs allowed to visit the inmates. The NPM recommended that measures be taken without delay to ensure that the accommodation of all inmates was in accordance with the valid regulations and standards. A large number of inmates who contacted the BCHR afterwards confirmed that all the prisoners had been moved to other penitentiary pavilions.

197 "Otvoreno pismo Zaštitniku građana: Agresivnim javnim nastupima problemi u poštovanju ljudskih prava neće nestati," A11 – Initiative for Economic and Social Rights, 8 February.

198 See Recommendation 42421 of 31 December 2020, available on the website of the Protector of Citizens.

In response to NPM's thematic report "Treatment by the Police of Persons Deprived of their Liberty during Public Assemblies in Belgrade,"[199] which concludes that the July 2020 protests were characterised by police brutality and excessive use of force, the MIA notified the NPM that it fully accepted all its recommendations for improving its operations set out in the Report.[200] Although the MIA said that it fully took on board the recommendation that police should wear visible identification insignia on their uniforms, the gendarmes exercising their powers against participants in the November 2021 environmental protests were not wearing standard uniforms with their last names or badges. The Protector of Citizens failed to react although footage of the gendarmes on the streets was broadcast live on TV and on social media.

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 Act 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 their remit. The Equality Commissioner is also authorised to initiate the adoption or amendments of regulations and issue opinions on drafts laws and regulations related to the prohibition of discrimination, as well as recommend measures ensuring equality to the state authorities and others.

At its May session, the Serbian parliament at long last adopted amendments to the Anti-Discrimination Act that are expected to contribute to the prevention of discrimination based on any personal characteristic. The amendments define in greater detail the Equality Commissioner's competences and include important provisions aiming to eliminate difficulties faced by this institution and ensure the continuity of its work.[201] Under the amendments, the National Assembly shall initiate the election of a new Equality Commissioner three months before expiry of the term in office of the incumbent. The new Article 40a provides for the establishment of a register of all the Equality Commissioner's cases; the register will include anonymised final judgments and decisions on discrimination and violations of the principle of equality which the courts will forward to the Commissioner (Art. 40b(1(2)). The register is

199 Available on the NPM website.

200 The MIA's letter of 9 April is available on the NPM website.

201 More in the *2020 Report*, III.5.2.1.

expected to facilitate adequate monitoring of the situation in the anti-discrimination field. Article 32 of the Anti-Discrimination Act now entitles the Equality Commissioner to designate the Assistant Commissioner who will stand in for him or her in case of absence or inability to discharge his or her duties.

5.2.1. Equality Commissioner's Activities in 2021

Brankica Janković was re-elected by the National Assembly to a five-year term in office in November 2020. She was the only candidate the parliamentary Committee for Constitutional and Legislative Issues nominated for the office. Since her initial term in office expired in May 2020, the work of the institution was blocked until her re-election because none of the other staff were entitled to act in her name.[202]

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 (Art. 48).

In her 2020 Annual Report, the Equality Commissioner said that she had recommended 476 measures to achieve equality to public authorities and other persons; launched 12 initiatives to amend regulations; adopted 12 opinions on draft laws and other general enactments; issued 12 public warnings and 23 press releases; and submitted two criminal reports. She said her office issued fewer opinions in 2020 due to the COVID-19 state of emergency and because members of the public tended to complain to the office informally.[203] A larger number of cases than usual were thus pending at the end of the year, given that the institution did not have an Acting Equality Commissioner from May, when her first term in office expired, to November 2020, when she was elected.[204]

The 2020 Report says that the grounds of discrimination complained of the most differed from those that predominated in the past due to the COVID-19 crisis.[205] This was the first time since the institution was established that the largest share of complaints – 15% – alleged discrimination on grounds of health,[206] specifically in the field of labour and employment. The cases reviewed by the Equality Commissioner indicate that specific groups of the population were particularly disadvantaged and at greater risk of vulnerability during the state of emergency and that access to health care was difficult except for people infected with COVID-19.[207]

202 *Ibid*.

203 The Equality Commissioner said in the Report that her office rendered 29 opinions.

204 More in the *2020 Report*, III.5.2.1.

205 For instance, the Equality Commissioner received fewer complaints in 2020 than in the past (89 in 2020 compared with 118 in 2019) from persons with disabilities, one of the most vulnerable groups.

206 The Report notes that, like in the past, the complainants reported that they had been discriminated on this ground in combination with other personal characteristics, such as disability, age, et al.

207 These groups include, notably, persons with disabilities, persons living with HIV, children, the chronically ill, cancer patients, dialysis patients, persons suffering from rare diseases, etc.

The Report states that complaints of age-based discrimination again accounted for a large share of the complaints, and actually increased year on year (from 72 in 2019 to 115 in 2020), which can directly be ascribed to the treatment of the elderly during the March-May 2020 state of emergency.[208] The Report also noted an increase in the number of complaints of discrimination on grounds of national affiliation or ethnic origin compared with the previous four years[209], specifying that most of them concerned discrimination against Roma.

As far as various areas of social relations are concerned, the greatest number of complaints concerned discrimination in procedures before public authorities, recruitment and work, provision of public services, and inaccessibility of buildings, followed by complaints of discrimination in the fields of education, social protection and public information.

Most of the Equality Commissioner's recommendations regarded strengthening the health system and access to health care, especially of the elderly, youth and persons with disabilities. She also issued recommendations on reducing the disparities between urban and rural communities, development of public policies diminishing insecurity at work, etc. The Equality Commissioner's general conclusion in the Report is that 2020 was a year of major challenges all people in Serbia faced both individually and as a society, that these challenges still existed, and that it was particularly important to continue preventing and protecting from discrimination and improving equality in society.

In May 2021, the Equality Commissioner presented her Special Report on Discrimination against the Elderly,[210] prepared with the support of the United Nations Population Fund (UNFPA). The Report, inter alia, presents the results of a 2020 research on the position of the elderly in Serbia. A section of the Report is devoted to proactive policies and recommendations for improving the status of the elderly, which regard, among others, social security, social inclusion, prevention of violence and discrimination, improvement of the health care system and amendments to social protection law.[211] During her appearance on *RTS* on International Day of the Elderly, the Equality Commissioner said that the demographic situation in Serbia was unfavourable and that discrimination on grounds of age (ageism) was threatening to become a global phenomenon.[212]

On World Children's Day, the Equality Commissioner said her office would present the special report on discrimination against children it had prepared. She said that the complaints she has been dealing with showed that the past two years

208 The Report states that most complaints alleged discrimination on grounds of age of people over 65, then people between 18 and 65, and complaints of discrimination against children.

209 A total of 114 complaints of discrimination on this ground were filed in 2020.

210 Equality Commissioner, April 2021.

211 Presentation of the Special Report on Discrimination against the Elderly, Equality Commissioner's press release of 14 May.

212 "Poverenica za RTS: Ejdžizam preti da postane najčešći oblik diskriminacije," *RTS*, 1 October.

had been difficult for everyone, especially children, and that children with disabilities, poor and institutionalised children, and abused and neglected children were the worst off. Their plight is further exacerbated by peer violence, especially online, where they spend most of their time.[213]

Allegations of prostitution and solicitation of underage girls and women in Jagodina, in which MP and the chairman of the Jagodina City Assembly Dragan Marković aka Palma was reportedly implicated, caused a lot of public attention in 2021. In her interview to *N1*,[214] the Commissioner said that the opening of the prosecution case against Marković was an opportunity to "see rule of law and non-selective justice" in action, but that the public should "refrain from sensationalism and politicisation" although a public figure was at issue.[215] After hearing a number of testimonies, the relevant prosecution service said in August that there were no grounds for suspicion or proof to initiate criminal proceedings,[216] whereupon the entire case was practically put under wraps.

In 2021, the Equality Commissioner issued a number of press releases and warnings about discrimination on various grounds in the public sphere. In February, she condemned a show on *TV Happy*, during which astrologists, numerologists and graphologists interpreted the natal charts of actress Milena Radulović and acting coach Miroslav Aleksić, whom the actress reported for sexual abuse in January 2021. In her public warning, the Equality Commission said that such action, especially on a TV station with nationwide coverage, amounted to impermissible humiliation and ridicule of a woman who reported abuse and trivialised this case, which was extremely sensitive and required a careful approach and adequate selection of interlocutors on that specific topic.[217]

During his appearance on a *TV Pink* morning show in August, the Director of the Public Enterprise Stara Planina, Goran Karadžić, insulted Director of the Institute of European Affairs Neim Leo Beširi because of his national affiliation, alluding to his last name and the fact that he is not a Serb.[218] In her press release condemning Karadžić's statements, the Equality Commissioner said that all criticisms and different opinions were welcome as long as they did not insult anyone because of their national affiliation.[219] In late November, film director Dragoslav Bokan appeared on *TV Pink* and insulted the deputy leader of the Party of Freedom and Justice Marinika Tepić, whom he declared an enemy of the state because she belongs "to a national

213 "Poverenica Janković: Poslednje dve godine izuzetno teške, naročito za decu," *N1*, 20 November.

214 "Najbitnije da se suzdržimo od senzacionalizma i politizacije," *N1*, 22 April.

215 The Equality Commissioner issued a press release on 15 April saying that political and public figures should be careful when making public accusations and that "no generalisations are good," that some women may feel offended and that it was crucial that the problem did not remain in the shadow of inadequate communication in the public space.

216 "Slučaj 'Palma': Tužilaštvo nije našlo dokaze o podvođenju," *Al Jazeera*, 28 August.

217 Equality Commissioner's public warning issued on 2 February, available on her website.

218 "Ako se ne prezivate na –ić, na Pinku vas vređaju na nacionalnoj osnovi," *NovaS*, 22 August.

219 Equality Commissioner's press release of 23 August, available on her website.

minority that hates Serbia and the Serbian people." His statements were condemned by numerous individuals and institutions; the Equality Commissioner issued a press release saying that associating anyone's national or ethnic origin with their job was absolutely inappropriate, discriminatory and illegal and that such moves incurred damage to Serbia's society.[220]

In August, the Military Trade Union of Serbia filed a lawsuit against the Equality Commissioner with the Higher Court, claiming she had discriminated against it.[221] Namely, she had issued an opinion that the Trade Union had not proven it had been discriminated against by the administration of the then Defence Minister Aleksandar Vulin. The Equality Commissioner reacted to the Trade Union's public statement criticising her opinion and said that its allegations were baseless and that "suing the Equality Commissioner because of an opinion she adopted is the same as suing a judge for a judgment he delivered and is subject to the same rules."[222]

The Equality Commissioner commented anti-COVID-19 measures on several occasions during the year. COVID-19 passes, introduced in October 2021, provoked various public comments. The Equality Commissioner qualified the measure as proportionate to the legitimate aim of protecting public health, which was one of the state's obligations, that it did not amount to positive discrimination, and that she personally considered that it was not efficient enough.[223] She qualified protests in front of the homes of doctors because of the views they expressed as experts or COVID-19 Crisis HQ members as concerning and endangering their safety,[224] and comments about putting "yellow armbands" on citizens opposing COVID-19 vaccination as inappropriate and disparaging Holocaust victims.[225]

5.2.2.1. Equality Commissioner's Opinions, Recommendations, Initiatives and Proceedings Initiated in 2021

The Equality Commissioner exercised her statutory powers and issued opinions and recommendations for achieving equality in response to complaints. She also issued opinions on regulations and launched initiatives to amend them. Available

220 "Poverenica o napadu na Tepić: Time se nanosi velika šteta našem društvu," *N1*, 30 November.

221 Press release of 6 August, available on the website of the Military Trade Union of Serbia.

222 Equality Commissioner's press release of 9 August, available on her website.

223 "Poverenica za zaštitu ravnopravnosti: Kovid propusnice nisu diskriminacija," *Blic*, 26 October.

224 At the 3rd Moscow International *Conference* on Combating *Anti-Semitism*, *Xenophobia*, and *Racism* "Protecting the Future" in November, which was organised by the Russian Jewish Congress with the support of the Russian Federation's Ministry of Foreign Affairs, the Equality Commissioner said that Serbia was one of the rare countries not witnessing the global rise in anti-Semitism, but that she had issued seven public warnings about it in the past few years. She singled out a 2021 case, the comparison of Dr. Predrag Kon, a member of the COVID-19 Crisis HQ with Nazi doctor Mengele, qualifying it as impermissible. More in *Politika*'s article of 22 November "Srbija ne beleži rast antisemitizma, izdato sedam upozorenja za javnost".

225 "Poverenica za ravnopravnost: Antivakseri žutim trakama vređaju žrtve holokausta," *Euronews.rs*, 26 October.

data show that she issued 17 opinions and recommendations on improving equality in the first ten months of the year.

The Equality Commissioner reviewed BCHR's complaint and found that Banca Intesa in Belgrade broke the Anti-Discrimination Act (Art. 27) and directly discriminated against refugees and asylum seekers when it refused to let them open bank accounts. The Bank thus negatively generalised these individuals merely on account of their nationality or place of birth, without reviewing whether they fulfilled the legal requirements to open a bank account.[226] In another similar case, opened in response to a complaint filed by BCHR and A11-Initiative for Economic and Social Rights, the Equality Commissioner found that Raiffeisen Bank had discriminated against refugees and asylum seekers from specific states on the same grounds.[227]

The Equality Commissioner also issued an opinion in response to a complaint alleging age discrimination by a student-youth cooperative that publish the following job ad "Support Associate (student – under 26)". The complainant alleged that the cooperative discriminated against potential applicants on grounds of their age and other actual or assumed personal characteristics, specifically the status of a student. Having reviewed the facts and relevant law, the Equality Commissioner concluded that the cooperative had violated the Anti-Discrimination Act and instructed it to remove the impugned job ad and refrain from publishing similar ads in the future.[228]

In response to a complaint by the NGO *Da se zna!*, the Equality Commissioner found in November that the former deputy leader of *Dveri* Jugoslav Kiprijanović violated the Anti-Discrimination Act, because he said that same-sex unions were "unnatural, immoral and damned" in an article entitled "How Ideological Colonisers Are Boiling the Frog in Serbia", which was published on the Serbian page of the International Family News portal.[229] He also insulted the Minister of Human and Minority Rights and Social Dialogue in the article, qualifying the drafting of a law on same-sex unions as "the zombisation of Serbian society" and "the imposition of a totalitarian ideology of homosexuality under the excuse of human rights".

The European Roma Rights Centre (ERRC) said that, after reviewing numerous complaints, the Equality Commissioner issued an opinion finding that the Levijatan movement had discriminated against Roma on social media. The Equality Commissioner instructed the movement to halt the practice and delete all comments inciting hate of Roma within 30 days. Levijatan denied it had been instructed to remove the impugned content.[230]

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226 BCHR press release of 12 July, available on its website.

227 "The Commissioner for the Protection of Equality finds that Raiffeisen Bank discriminated against refugees," A11 press release, 2 November.

228 Opinion 691–20 of 13 May, available on the Equality Commissioner's website.

229 "NVO: Poverenik utvrdio – bivši funkcioner Dveri diskriminisao LGBT," *N1*, 2 November.

230 "ERRC: Poverenik utvrdio da je Levijatan diskriminisao Rome," *N1*, 28 May.

The Equality Commissioner found a breach of the Anti-Discrimination Act after reviewing a complaint a civic association filed against a media outlet, BB, claiming ethnic-based discrimination. The author of an article about the rape of a child published in January 2021 discriminated against and further stigmatised Roma, violated the Press Code of Conduct and the presumption of innocence.[231]

Available data indicate that the Equality Commissioner issued 18 recommendations to public authorities.[232] Three of them were addressed to the Ministry of Labour, Employment and Veteran and Social Issues,[233] three to the Ministry of Education, Science and Technological Development,[234] and two to the Ministry of Health.[235]

In September, the Equality Commissioner issued a recommendation to city/municipal administrations reminding them that the law entitled not only individuals who have undergone a sex change operation, but also individuals with certificates that they have undergone hormone therapy for at least a year as indicated by medical specialists in endocrinology and psychiatry, to change their sex designation in the birth register. Furthermore, she instructed the administrations to permit transgender and transsexual persons to change their name to conform it their sex or gender identity without setting any conditions or restrictions.[236]

In October, the Equality Commissioner received a complaint against the Protector of Citizens accusing him of discrimination on grounds of sex. Namely, in his Decision No. 363–401/21 of 9 June 2021, the Protector entitled his female staff who have children under two to work from home, whereby he reportedly discriminated against the male staff with children of that age. In his letter to the Equality Commissioner,[237] the Protector of Citizens said that none of the male staff had children under two at the time he adopted the Decision, and that the use of the word "mothers"

231 Opinion 68–21, 26 May, available on the Equality Commissioner's website.

232 Available on the Equality Commissioner's website.

233 The Equality Commissioner recommended measures in response to the ban on visits to and restrictions of movement of residents in old people's homes on 19 February, on the Guidance on the Provision of In-Home Help Services of 5 March, and a recommendation concerning the Guidance to Municipal/City Administrations and Social Work Centres in Implementing Constitutional Court Decisions IUz-216/2018, IUz-247/2018 and IUz-266/2017 of 2 August.

234 Recommendations of measures regarding school classes of 8 April, amendment of Art. 6(3) of the Secondary School Enrolment Rulebook and its harmonisation with the Act Ratifying the Convention on the Rights of Persons with Disabilities, the Education System Act, the Secondary Education Act and the Anti-Discrimination Act of 20 July, and a recommendation of measures to bring approved 8th grade Serbian Language textbooks into compliance with anti-discrimination law and the ratified Charter for Regional or Minority Languages of 19 October.

235 Recommendations of measures in response to the ban on visits to and restriction of movement of residents of old people's homes and the closure of the Students Health Care Institute, both issued on 19 February and available on the Equality Commissioner's website.

236 Recommendation of measures to civil registries of 21 September, available on the Equality Commissioner's website.

237 Letter 363–401/21, Ref. No. 24002 of 7 September.

rather than "parents" was merely a technical error and that he had no intention of violating gender equality. The Equality Commission recommended that the Protector of Citizens correct the error in the Decision, ensuring that it applies to all staff with children under two, regardless of their gender.[238]

The Equality Commissioner issued 27 opinions about draft laws, action plans, strategies, conclusions, decrees et al.[239] She launched five initiatives, including, notably, to amend the Criminal Code article on sexual intercourse with helpless persons. She sent the initiative to the Ministry of Justice asking it to bring the provisions of this article into compliance with ratified conventions, anti-discrimination law and international standards.[240]

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) and the Personal Data Protection Act (PDPA).

Under the FAIPIA, the Commissioner is, inter alia, charged with monitoring the state authorities' fulfilment of the obligations set out in that law and reporting to the public and the National Assembly thereof, initiating the adoption or amendment of regulations to ensure the implementation and improvement of the right of access to information of public importance, proposing measures to state authorities with a view to improving their work, and reviewing complaints against the state authorities' decisions violating the rights governed by this law. Under the PDPA, the Commissioner shall oversee the implementation of personal data protection, rule on complaints, keep the Central Register of personal data filing systems, monitor and permit the transfer of personal data outside the Republic of Serbia, alert to abuse during personal data collection, render opinions on the establishment of new data filing systems and introduction of new data processing IT, monitor the enforcement of data protection measures and propose improvements of such measures, render opinions on whether proposed data processing methods constitute specific risks to civil rights and freedoms, et al.

The amendments to the FAIPIA, which entered into force in November 2021 and will be discussed below, changed the provisions on the term in office of the Commissioner. The Commissioner was originally elected to a seven-year term in office and could be re-elected once. Under Article 30 of the Act Amending the FAIPIA,

238 Recommendation of measures to the Protector of Citizens of 13 October, available on the Equality Commissioner's website.

239 Available on the Equality Commissioner's website.

240 More on Initiative 011-00–34/2021-02 of 15 November on the Equality Commissioner's website.

the Commissioner shall be elected to an eight-year term in office but may not stand for re-election. 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.[241]

Sanja Unković was elected Deputy Commissioner charged with personal data protection by the National Assembly on 25 March. In the Commissioner's view, her election at long last normalised the situation[242] allowing his Office to operate without interruption in case he was unable to exercise his duties. This is particularly important given the steady increase in the number of cases filed with the Commissioner's Office, which led to an increase in its organisational, staffing and technical capacities.[243]

In March 2021, the Commissioner submitted his 2020 Annual Report, his 16th report on the implementation of the FAIPIA and 12th report on personal data protection.[244] At its session on 29 December, the National Assembly adopted conclusions upholding the Commissioner's 2020 Annual Report.

The Commissioner reported that the situation in the fields of access to information and personal data protection had not changed substantially in 2020 and could not be qualified as satisfactory, particularly given the challenges and difficulties brought on by the pandemic and the state of emergency.[245] Exercise of the right of free access to information was still difficult without filing a complaint with the Commissioner or a lawsuit with the Administrative Court where a complaint was not allowed, which "best illustrates the government's attitude towards human rights".[246] Many state authorities continued denying access to information under the pretext that it was confidential or that its disclosure would violate someone's privacy, often without providing adequate argumentation or proof. The Commissioner illustrated the public authorities' unwarranted denial of access to information in 2020 by quoting the cases concerning spending of public sources,[247] health protection and

241 More on the election of Milan Marinović in the *2019 Report*, III.4.2.1.

242 The Commissioner had no Deputies for over a year and no Deputy charged with personal data protection for nearly four years.

243 "Poverenik Milan Marinović: 'Vanredno stanje je za nas bila potpuno nova i neočekivana situacija. Opšti je utisak da smo se dobro snašli...,'" *Nedeljnik*, 30 April.

244 Report on Work of the Commissioner for Information of Public Importance and Personal Data Protection for 2020, Commissioner, March 2021.

245 More in the *2020 Report*, III.5.3.

246 The Commissioner reported that, in a large number of cases, the public authorities provided access to information only after the persons requesting it complained to the Commissioner, who then intervened, which demonstrated that they essentially had no real reason for refusing the requests in the first place. The Commissioner qualified the authorities' attitude towards members of the public and public resources as irresponsible and irrational, which could and should have been avoided.

247 The Commissioner referred in the Report to the unveiling of the Stefan Nemanja monument in Belgrade and the denial of access to information about the travel costs of the Surdulica Mayor.

risks posed by COVID-19[248], and environmental protection.[249] Access to information was mostly requested by ordinary citizens, journalists and civil society organisations. The Commissioner also reported that the state authorities continued denying access to information he had requested,[250] wherefore he suggested that the FAIPIA be amended and his Office be entrusted with oversight of its implementation (instead of the Administrative Inspectorate) and entitled to issue misdemeanour orders for specific violations of the FAIPIA, notably for silence of the administration.

The Commissioner said in the Annual Report that the PDPA, which entered into force in mid-2019, suffered from a number of deficiencies, although it expanded the scope of duties and responsibilities of all data processors. In his opinion, the PDPA is vague and copy-pastes mechanisms that do not exist in the national legal system, which brings into question its adequate applicability in practice. Furthermore, the Commissioner alerted that the PDPA was not compatible with other regulations governing the processing of personal data and that an action plan for the implementation of the Personal Data Protection Strategy, which was adopted back in 2010, was still pending. The Commissioner found a number of violations of the PDPA in 2020, including, notably, the threat of disclosure of the citizens' private data in the COVID-19 Information System, which provoked fierce public reactions.[251]

According to the Commissioner's January-November 2021 monthly statistical reports[252], a total of 12,255 cases were filed with his office; 12,163 cases were dealt with in the same period. According to the Commissioner's November monthly statistical report, of the 3,118 cases still pending, 2,751 concerned access to information, 308 personal data protection and 59 both rights. 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.

The Commissioner held a number of lectures and trainings for state authorities and participated in various conferences[253] and seminars on the two rights he is

248 The continuous problem of the "silence of the administration" warrants mention in this context. It is especially problematic when information concerning public health is at issue. The Commissioner reported that the number of complaints about the silence of the administration accounted for the majority of complaints about lack of access to information on COVID-19.

249 One of the cases in this area that drew a lot of public attention was the case of the company Zijin, which released sulphur dioxide and polluted the air in the city of Bor.

250 For instance, information about medical treatment costs, procurement of –COVID-19 vaccines, ventilators and other medical equipment, etc.

251 More in the *2020 Report*, III.5.3.2.

252 Available on the Commissioner's website.

253 For instance, on 28 May, the Commissioner took part in an online regional conference Initiative 2017 organised by his Slovenian counterpart. The conference focused on personal data protection in the pandemic era and challenges and problems in practice. The participants concluded that all the countries in the region faced the same problems and that fundamental human rights were threatened during the pandemic. On 27 May, the Commissioner co-organised the conference marking the upcoming anniversary of the adoption of the Council of Europe Convention

charged with protecting. In November, the Commissioner and 17 state authorities signed an Agreement on Cooperation in Providing Public Administration Support to Higher Education Institutions in the Education Process, on internships of students of five Serbian state universities (in Belgrade, Niš, Kragujevac, Novi Sad and Novi Pazar). This was the first time such a systemic approach to improving the theoretical knowledge and practical work in the public administration authorities was taken. The students were to intern in the public administration in the 2021/2021 school-year.[254] In his interview to *RTS*,[255] the Commissioner said that personal data protection managers would play an extremely important role and be in demand, because the PDPA obligated all state authorities and processors of personal data, e.g. on the health of individuals, to have such managers and that staff processing personal data are undertrained.

The Commissioner was appointed to the World Bank's Organizing Committee of the Joint Initiative for Transparency and Accountability in Serbia, the overall aim of which is to identify vulnerabilities that undermine transparency and accountability, and to design interventions for improvements in the field, building on legal and regulatory provisions already in place.[256]

The Commissioner traditionally marked the International Right to Know Day on 28 September 2021 in, as he said in his press release, [257] anticipation of the adoption of the amendments to the FAIPIA. The Commissioner awarded prizes to authorities that contributed to the promotion of the right of access to information in 2021, including the Supreme Court of Cassation (in the category of highest state bodies), the Ministry of State Administration and Local Self-Governments (in the category of republican bodies), the Kragujevac Appellate Court (in the category of judicial bodies), the Vojvodina Assembly (in the category of provincial bodies), in the category of local public authorities to the Municipality of Despotovac and for the best work informant the award was given to the High Court in Kragujevac.

5.3.1. Access to Information of Public Importance

Available data show that most of the complaints the Commissioner received in the first 11 months of the year were filed by private individuals (2,590), lawyers (1,321), CSOs (392), media outlets (311) and other entities. Most of the complaints

on Access to Official Documents (CEST No. 205), known as the Tromsø Convention, and presented the situation in Serbia. The Tromsø Convention is the most important instrument that recognises a general right to access to official documents held by public authorities. More on the Commissioner's website.

254 Commissioner signed an Agreement between state bodies and universities on the provision of student internships, Commissioner's press release, 15 October.

255 "Šta će raditi menadžeri za zaštitu podataka o ličnosti i zašto su važni za svakog građanina," *RTS*, 24 May.

256 Commissioner Marinovic Elected Member of the Organizing Committee of the World Bank Initiative for Improving Joint Transparency and Accountability in Serbia, Commissioner's press release, 10 June.

257 Institution of the Commissioner marked the International Right to Know Day, Commissioner's press release, 28 September.

concerned denial of access to information by local public companies, city and municipal authorities and local communities, ministries and judicial institutions, national agencies, directorates, institutes et al, health institutions, while the reason for filing complaints, most often is the silence of the administration.

Most of the Commissioner's measures on improving transparency were addressed to public authorities, primary and secondary schools, city and municipal authorities and local communities, judicial institutions, etc. Most of the Commissioner's requests to enforce rulings on free access to information were addressed to city and municipal authorities.

An analysis conducted by the Centre for Investigative Reporting of Serbia (CINS)[258] showed that the number of Commissioner's decisions referring for reconsideration requests of citizens, journalists and others for access to information to various public authorities nearly doubled in the past two years. CINS said that the increase in these decisions coincided with Milan Marinović's election to the office of Commissioner. The Commissioner ascribed the situation to the application of the PDPA as of end August 2019, when the public authorities started denying access to information to a greater extent, under the pretext of protecting privacy. The Commissioner said: "we can't tell public authorities whether or not to disclose information because we don't know which private data they have," which is why "we refer the requests to them for reconsideration asking them to ascertain which personal data they have and instruct them which personal data they have to protect and which they may disclose." Marinović's predecessor Rodoljub Šabić, however, told CINS that the circumstances had not changed that much to warrant such a large increase, that the denial of access to data "has always been an open issue" but that the Act "gives clear instructions concerning privacy and other rights". The procedure in which access to information is granted should be as rapid as possible and the Commissioner should refer the cases for reconsideration to the authorities only when necessary, because referrals prolong the procedure and demotivate the requesters of information, he opined.

The amendment of the FAIPIA lasted nearly five years, during which three sets of amendments were proposed. Under the Chapter 23 Action Plan, the development of the Preliminary Draft should have, but was not, preceded by an analysis of the regulations in place and the situation. Instead, the Ministry of State Administration and Local Self Governments formed a working group[259] which continued work on the November 2019 Preliminary Draft at the beginning of the year; the plan was to have them adopted during the first quarter of 2021.[260] Prompted by the non-transparency

258 "Poverenik sve češće traži institucijama da ponovo odlučuju o zahtevima," *CINS*, 30 September.

259 Započet rad na izmenama i dopunama Zakona o slobodnom pristupu informacijama od javnog značaja, Ministry of State Administration and Local Self-Governments press release, 25 December 2020.

260 "Zakon o slobodnom pristupu informacijama – šta mora, a šta ne sme da se menja," *Peščanik*, 12 May.

of the process, in which neither the public nor the relevant experts were included, CSOs rallied in the Coalition for Free Access to Information[261] submitted a request for free access to information to the Ministry, requiring information about the work of the Working Group, access to the minutes of its meetings, analysis and other documents legislators are required to prepare under the Planning System Act. The Ministry, however, refused to release any of the information or documents to the Coalition, explaining that they were not of public importance.

The last Preliminary Draft, published by the Ministry on its website on 26 July and ultimately adopted, entitled the Commissioner to file indictments and initiate misdemeanour proceedings against public officials suspected of denying access to information (so-called silence of the administration) and fine them.[262] The Preliminary Draft also entitled the Commissioner to open offices in other parts of Serbia and extended the scope of public authorities obligated to publish and update Information Booklets.[263] The Commissioner's term in office was extended from seven to eight years but prohibited his re-election.

The previous version of the Preliminary Draft, published a month earlier, entitled companies to deny access to information if it would "violate their equal legal status" in the market and abolished the public interest test, i.e. prevented challenges of public authorities' decisions to declare documents confidential. Furthermore, political parties were totally exempt, since the amendments laid down that requests for access to information of public importance could not be submitted to them. These provisions were deleted in the meantime, in response to CSOs' and experts' vehement criticisms.[264] International experts also criticised the provisions, which probably contributed to the improvement of the draft amendments and abandonment of most of the unfavourable solutions.[265]

However, notwithstanding the commendable provisions, there are still deficiencies and essential problems that will remain outstanding in practice, as CSOs

261 "Predlog izmena Zakona o slobodnom pristupu informacijama u Skupštini: Bolje od prethodnih verzija, ali najviši organi i dalje nedodirljivi," Coalition for Access to Information of Public Importance, 11 October.

262 The high fines (15,000 RSD if the fine is not paid within seven days) are expected to result in the reduction of the number of complaints to the Commissioner about the public authorities' denial of access to information or failure to issue rulings denying access, which is the most frequent situation in practice.

263 Public authorities are under the obligation to publish important information in their Information Booklets, whether or not anyone seeks access to it. This obligation now extends also to local public companies and public institutions.

264 For instance, the legislator deleted entire Article 13 (abuse of the right); the provision allowing public authorities to deny access to information because the fulfilment of the request would hinder their operations; the provision fining public authorities to force them to comply with the Commissioner's rulings and the detailed provisions on the content of the Information Booklet (e.g. in the fields of public procurement, inspections and revisions.

265 "Pravo javnosti da zna: Još gubljenja vremena na štetu građana i novinara," *BIRN*, 10 August.

and independent media alerted.[266] For instance, citizens will still be deprived of effective legal protection when individual state authorities, such as the Government and its services, the National Assembly, the President, the Supreme and Constitutional Courts and the Chief Public Prosecution Office, and, since the adoption of the amendments, the National Bankn of Serbia, [267] refuse to provide them access to information. They will only be able to initiate administrative disputes in such cases, which last for years in practice.

Article 24 of the Act Amending the FAIPIA, which extends the deadline by which the Commissioner needs to respond to a complaint – from 30 to 60 days – is also problematic. This provision will probably impinge primarily on the journalists, since the new deadline will obstruct their prompt and professional reporting on important topics.

The Act Amending the FAIPIA was adopted in October and entered into force on 16 November.[268] Pursuant to its Article 34, its implementation will begin after the expiry of three months. Practice will show whether the new provisions will facilitate the elimination to the described long-standing problems and improve the situation and effective realisation of the people's right of access to information, as well as the status and powers of the Commissioner.

5.3.2. Personal Data Protection

As the BCHR already noted, [269] problems concerning personal data protection mostly stem from the non-compliance of regulations governing personal data processing with the PDPA, the incomplete provisions of the PDPA and, in particular, its failure to regulate some extremely important forms of personal data processing,[270] as well as insufficient public awareness of their rights in the context of personal data processing. The priority is to adopt a Personal Data Protection Strategy that will reflect the state of play and provide for the resolution of the problems in this area.

266 See, e.g.: "Poverenik ističe prednosti novog zakona, Transparentnost ukazuje na propuste," *N1*, 27 September; "Zakon o slobodnom pristupu informacijama – šta je poboljšano, a koji problemi nisu rešeni," *Peščanik*, 13 October; "Izmene Zakona o slobodnom pristupu informacijama pre svega štite organe vlasti," Transparency Serbia press release; "Pravo javnosti da zna: Još gubljenja vremena na štetu građana i novinara," *BIRN*, 10 August.

267 As per the National Bank of Serbia, *BIRN* qualified as critical, the new provision allowing public authorities to deny access to information if that would "jeopardise or threaten to jeopardise the implementation of monetary, fiscal and foreign currency policies, financial stability, management of foreign currency reserves, oversight of financial institutions or issuance of banknotes and coins". The National Bank has found itself on the list of "untouchable" authorities vis-à-vis which complaints may not be filed since over half of the provision regards its competences.

268 National Assembly passed the Law on Amendments to the Law on Free Access to Information of Public Importance, Commissioner press release, 15 November.

269 See, e.g., the *2020 Report,* III.5.3.

270 Such as, e.g. biometric data processing, et al.

Available data indicate that the Commissioner performed 175 checks of the implementation of the PDPA in the first 11 months of the year. These checks were performed in 175 private companies, 38 local self-government bodies, 27 provincial authorities, 16 ministries, 14 public companies, 12 health institutions, et al.

In April, the Commissioner issued a press release in response to media claims that debt collection agencies processed personal data of citizens, stating that he had established that there were no legal grounds for such processing because the loans had already been paid or the claims were not due. The Commissioner emphasised that that the processing of data by debt collection agencies was legal only if it was based on the law and the contracts by which creditors entrusted the recovery of outstanding debts to these agencies.[271]

Claims of sexual abuse of children in the Petnica Research Station that were published in June[272] prompted the Commissioner to initiate proceedings[273] in July on the initiative of the Protector of Citizens[274] to ascertain the facts and, if necessary, initiate an inspection under the PDPA. No further news on headway in this case were publicly available at the time this Report was completed.

The Commissioner told the *RTS*[275] that the Health Ministry adopted a new Rulebook on Forms in the Health System, under which employers need not know which particular illness their employees on sick leave were suffering from. Namely, the Rulebook voided Sick Leave Form OZ6 which included the code of the illness/diagnosis, which means that the Sick Leave Form may not include detailed information on the illness.[276] Staff no longer need to explain why they went on sick leave or share sensitive personal information about their health.

In June, the Commissioner said he would perform a check to establish the relevant facts when news broke that the privacy of visitors of a shopping mall was violated by cameras pointed at the dressing booths in which the shoppers were trying on clothes.[277]

Biometric surveillance, a topical issue in Serbia, for several years now, again made the agenda when Minister of Internal Affairs Vulin withdrew the flawed Pre-

271 Processing of debtor's personal data by debt collection agencies, Commissioner's press release, 22 April.

272 "Zavera ćutanja koja je dugo trajala," *Vreme*, 23 June.

273 Processing of children's personal data in Petnica Science Center, Commissioner's press release, 1 July.

274 The Protector of Citizens had asked the Commissioner to check whether the Petnica Research Station had collected the personal data of children and youth attending its programmes in accordance with the law.

275 "Šef ne mora da zna zašto ste na bolovanju – da li je razgovor o bolestima i u Srbiji nepristojan," *RTS*, 10 September.

276 The Rulebook is now in compliance with the Patient Rights Act, prohibiting health workers from disclosing information about the patients.

277 Privacy Violation of Shopping Mall Visitors, Commissioner's press release, 2 June.

liminary Draft Act on Internal Affairs at the request of the President and in response to public and CSO pressures. A project the MIA has been implementing with *Huawei* involves the installation of over a thousand "smart" cameras, prompting speculations that the authorities have facial recognition software. The Commissioner, however, said that, as far as he knew, Serbia still did not have facial recognition software, that an impact assessment had to be performed before the introduction of new personal data processing technologies and processing of data of an unlimited or great number of people or particularly sensitive data, and that measures had to be undertaken to minimise risks to privacy.[278]

The Serbian Tax Administration requested of 12 tourist agencies that had a turnover exceeding €200 million in 2019 to forward within seven days data of natural persons who went on their tours costing over €5,000 in 2018–2020, regardless of the number of travellers. The Tax Administration requested of the agencies to forward their PINs, first and last names, trip costs in RSD, date of payment and the number of people who went on the trips. A number of associations of tourist agencies asked the Commissioner whether they were legally under the obligation to disclose such data. The Commissioner told *Danas*[279] that the TAS Initiative – Association of Tourist Agencies and Agents had already contacted him on the issue and that he was deliberating it. He said that, irrespective of his findings, he thought that the Tax Administration's Origin of Property and Special Tax Sector was in violation of both the PDPA and the Origin of Property and Special Tax Act because their provisions concerned specific natural persons, not the data of an indeterminate number of people.

In November, the reporters working for the tabloid *Informer* and *Pink TV* came up to the Commissioner's staff planning on performing their pre-notified inspection of the Belgrade "Wine and Pleasure" establishment to check whether it complied with personal data protection regulations. The journalists' interest was prompted by the fact that President Vučić's son works in the establishment, which the Commissioner's Office had been unaware of. The footage of the event was broadcast during a morning show on *Happy TV*, during which *Informer* Chief Editor Dragan J. Vučićević asked why this establishment where the President's son was working was being inspected when the Commissioner's Office had not inspected any other catering establishments, and claimed that such inspections were not within his jurisdiction.[280] The Commissioner was also criticised by Prime Minister Ana Brnabić, who said that the office of Commissioner had been "abused" in this case, that such inspections were not in his job description and that he was acting on the orders of the opposition.[281] The same accusations were voiced in an article pub-

278 "Da li se s pravom plašimo da kamere u Beogradu prepoznaju lica," *Nova S*, 16 October.

279 "Poverenik: Poreska uprava prekršila zakon zahtevom turističkim agencijama," *Danas,* 19 October.

280 "Sačekuša Informera i Pinka za inspektore u vinoteci, jer tu radi Danilo Vučić," *Nova S*, 12 November.

281 "Brnabić: Poverenik kontrolom vinoteke zloupotrebio svoju funkciju," *N1*, 13 November.

lished in *Informer*.[282] The Commissioner[283] denied that the inspection had targeted any particular employee and said that the reports had nothing to do with reality, that the journalists had not identified themselves and that his staff were caught by surprise. He said that the check on 10 November was performed pursuant to the 2021 Inspection Plan adopted on 31 March and that the case was opened on 20 April, that it did not target any natural persons, especially not the President or his son. The Commissioner said that his staff had not identified any irregularities and that the establishment fully complied with the PDPA. This case will nevertheless remain as yet another illustration of violations of the independence of and pressures on independent human rights institutions.

The Commissioner gave a number of statements to the media on the situation caused by the pandemic and the stepped up anti-COVID-19 measures in 2021.[284] Thus, regarding the COVID-19 passes introduced in October, the Commissioner pointed out that he did not consider it discriminatory, because "the protection of personal data alone would not be problematic if it is for the purpose of health protection" but that care should be taken to data storage, who can access them and where they are contained. COCID-19 passes do not contain a personal photography of the holder, and in the opinion of the Commissioner, they would not be disputable if they were an integral part of the database to which the passes relate.[285]

5.4. Agency for the Prevention of Corruption

5.4.1. Legal Framework

Serbia has ratified the UN Convention against Corruption (UNCAC), the UN Convention against Transnational Organized Crime and its Protocols (UNTOC) and the Council of Europe anti-corruption regulations – the Criminal Law Convention on Corruption and its Additional Protocol and the Civil Law Convention on Corruption.

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 leg-

282 "Istražujemo! Šta se zapravo krije iza afere 'poverenik'? – Hteli su da Danila lažno optuže za pranje para?!?" *Informer*, 13 November.

283 Commissioner's statement on the occasion of the regular inspection supervision over the application of the Law on Personal Data Protection by the controller, whose one of the activities is the online sale of wine, on November 10, 2021 according to the Inspection Plan for 2021, Commissioner's press release of 12 November.

284 See, e.g. "Poverenik: Kovid propusnice ne krše ljudska prava, sve smo bliže uvođenju," *N1*, 19 October.

285 "Poverenik rešava dileme o kovid propusnicama – sa fotografijom ili bez nje, kada se krši zakon," *RTS*, 19 October.

islation 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.

The Agency for the Prevention of Corruption was established under the 2019 Anti-Corruption Act[286] as an independent and autonomous body charged with issuing opinions and recommendations about the implementation of the Act, reviewing applications by natural and legal persons, initiating criminal, misdemeanour and disciplinary proceedings and measures in case it is violated, keeping and publishing the Register of Public Officials and Register of Assets and Income of Public Officials, and monitoring the implementation of strategic documents and the Anti-Corruption Strategy and Action Plan.

The Agency's bodies include the Agency Director and Council. Under the Anti-Corruption Act, the five-member Council was to have started working on 1 September 2020, but the Justice Ministry forwarded the list of candidates to the National Assembly only on 18 February 2021.[287] The Agency was thus practically non-operational for months, since it did not have the second-instance body tasked, inter alia, with overseeing the work of the Director, ruling on complaints about his decisions and issuing final decisions on potential abuse by political officials. The five-member Council replaced the nine-member Committee under the prior Act. Article 111(2) of the new Anti-Corruption Act allowed the current Director Dragan Sikimić to remain in office until the expiry of his term in office. One of the major changes brought by the new Act is that the Agency Director and Council members are nominated for election to the National Assembly solely by the Justice Minister from among candidates selected in the Judicial Academy's recruitment process, which leaves open the possibility of abuse and various forms of pressure in the future.[288]

In January, the portal *Insajder* asked the Justice Ministry why the Judicial Academy had initiated the recruitment process with a delay and why it had allowed the Agency to go without a Council for months.[289] The Bureau for Social Research (BIRODI) issued a press release[290] on 4 March qualifying the recruitment process as mostly non-transparent and the potential candidates' awareness of the process as

286 The Anti-Corruption Act, which entered into force on 1 September 2020, replaced the prior Anti-Corruption Agency Act. The name of the agency was changed to Agency for the Prevention of Corruption. More in the *2020 Report,* III.5.4.1.

287 "Skupština bira članove veća Agencije za sprečavanje korupcije," *Danas*, 9 March.

288 More in the *2019 Report*, III.4.3.1. and the *2020 Report*, III.5.4.1.

289 "Agencija za sprečavanje korupcije mesecima bez drugostepenog veća: Konkurs raspisan nakon isteka roka za formiranje," *Insajder,* 3 February.

290 Available on BIRODI's website.

poor. In particular, BIRODI highlighted the risk of conflict of interest of individual candidates,[291] noting that "many candidates were Agency staff, Judicial Academy recruitment commission members and Justice Ministry associates", and that the "recruitment instrument" was imprecise. BIRODI also warned that the commission rated the candidates on their psychological readiness to sit on the Council rather than their professional integrity. It therefore appealed to the MPs to defer their votes on the new Agency Council members[292] and check the lawfulness and integrity of the selection process.[293]

In its prior Reports,[294] 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, as well as the delays in the adoption of a new anti-corruption law, new anti-corruption strategy and action plan for establishing anti-corruption mechanisms, and alignment of national law with international anti-corruption standards. All this has precluded the Agency from improving its operations and the effective fight against corruption, one of the main prerequisites Serbia is to fulfil to accede to the EU.

5.4.1.1. Anti-Corruption Act

The Anti-Corruption Act, which entered into force on 1 September 2020, 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.

On 28 January, the parliamentary Committee for Constitutional Issues and Legislation submitted to the National Assembly the Draft Authentic Interpretation of Article 2(1(3)) of the Anti-Corruption Act in order to "dispel any dilemmas about the definition of 'public officials' and in implementing the Act" although there were no official written criticisms indicating the existence of such dilemmas[295] and the

291 BIRODI also said it had filed a request for access to information of public importance to the Judicial Academy on 1 February, asking it whether Radomir Ilić was a member at the moment its Management Board appointed the Agency Council Recruitment Commission and the Appeals Commission. It called on the Agency to ascertain whether there was a conflict of interest in the casew of Radomir Ilić and potential member Krsman Ilić before the parliament voted on the new Council members. BIRODI said that the Judicial Academy never replied to its request nor forwarded it the instrument by which it measured the candidates' professional integrity.

292 The election of the Agency Council members was on the agenda of the parliament session scheduled for 9 March.

293 "BIRODI: Odložiti glasanje o novim članovima Veća Agencije za borbu protiv korupcije," *Danas,* 9 March.

294 See the *2018 Report*, III.3.3.1., the *2019 Report,* III.4.3.1, and the *2020 Report*, III.5.4.

295 The law initially defined public officials as all persons elected, appointed or nominated to public authorities, with the exception of individuals representing private capital in the management bodies of companies that are public authorities. The authentic interpretation reads as follows: "This provision should be understood to regard and apply to individuals directly elected by the

Agency did not notify either the public or the National Assembly that it had any problems in interpreting or applying the provision. However, after experts[296] warned that the new interpretation would exempt a large number of public officials, the parliamentary Committee amended the Draft Authentic Interpretation, extending the definition of public officials to include also those appointed by the President, the High Judicial Council, the State Prosecutorial Council and the Supreme Court of Cassation.[297] The parliament adopted the Authentic Interpretation at its session on 11 February. No public debate was held on it since it was submitted for adoption under an emergency procedure and none of the institutions charged with the fight against corruption had the chance to comment it. In the view of the Anti-Corruption Council, rather than strengthening the fight against corruption, the Authentic Interpretation precluded determination of the liability of officials whose powers provided them with the greatest corruption opportunities. It opined that the reduction in the number of public officials subject to oversight illustrated that the state was exempting a large number of public officials from the Agency's control rather than extending its powers.[298]

In early September, the Serbian Government submitted to the parliament draft amendments to the Anti-Corruption Act, expanding the content of the public officials' asset declarations, crimes related to non-disclosure of assets and the concept of corruption. The amendments were drafted in line with GRECO's recommendations in its Second Compliance Report in the Fourth Evaluation Round. Transparency Serbia[299] warned that the August public debate on the amendments was not published on the e-Government portal in accordance with the Government Rules of Procedure, because it was published only on the Justice Ministry website, in the section on public debates, and that it should be held again.[300] Transparency Serbia said that yet another chance was missed to properly regulate the simultaneous exercise of public and political offices and to eliminate the harmful effects of the adopted Authentic Interpretation of the definition of public officials. The Agency for the Prevention of Corruption, on the other hand, said that the amendments would

citizens and individuals elected, appointed or nominated by the National Assembly, the Government of the Republic of Serbia, the Assembly of the Autonomous Province, the Government of the Autonomous Province and local self-government authorities."

296 "Prestanak zabrana, ograničenja i obaveza za nekoliko hiljada javnih funkcionera 'na mala vrata'," Transparency Serbia, 9 February; "Rasprava o autentičnom tumačenju pojma 'javni funkcioner'," CRTA analysis, 9 February.

297 The Chair of the Committee for Constitutional Issues and Legislation changed the wording of the Authentic Interpretation during her explanation of the Draft Authentic Interpretation on 10 February.

298 "Zašto se traži autentično tumačenje Zakona o sprečavanju korupcije," Anti-Corruption Council press release, 17 February.

299 Press release of 8 September, available on Transparency Serbia's website.

300 The public debate was not envisaged by the Government's 2021 Work Plan. This is why no-one, except those who knew the public debate would be organised, had any idea that the law would be amended.

improve the anti-corruption legal framework, and that this was the right time to improve some provisions of the law now that it has been implemented for a year.[301]

The plenary session of the National Assembly upheld the Government's draft amendments and opened a debate on them on 21 September.[302] At its session held on the same day, the parliamentary Committee for the Judiciary, State Administration and Local Self-Governments reviewed the draft amendments and decided to reject them in principle[303] because, as it specified, some of the amendments were inappropriate. Committee Chairman Vladimir Đukanović commented that he did "not know how many evaluation rounds there are" and that such provisions departed from the presumption that all public officials were thieves, "we're adopting all kinds of laws and we'll end up in a situation in which no-one will want to be a public official anymore."[304] Transparency Serbia Director Nemanja Nenadić said that no other than the Committee missed the opportunity to hold a public hearing that would help clarify the dilemmas before the amending law found itself before the MPs and set out the ten amendments Transparency Serbia proposed on behalf of the PrEUgovor coalition to improve the Government amendments.[305]

The Act Amending the Anti-Corruption Act was adopted on 23 September and entered into force on 5 October. The Agency for the Prevention of Corruption issued a press release stating that public officials were under the duty to list in their asset declarations also their cash, digital property, valuables and other movable property the value of which exceeds €5,000 (in RSD at the National Bank of Serbia median exchange rate).[306]

There may be a problem in implementing the ACA in the future notwithstanding the new provisions. 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 2021 Report,[307] reflecting the new enlargement methodology (grouping chapters in clusters), the European Commission said that Serbia had some level of preparation in the fight against corruption and made limited progress in the reporting period.[308] It said that GRECO concluded that its recommendation concerning the Agency for the Prevention of Corruption[309] was fulfilled in a satis-

301 "Izmena Zakona o sprečavanju korupcije: Funkcioneri će morati da prijavljuju i gotov novac, dragocenosti i digitalnu imovinu," *Blic,* 13 September.

302 Available on the National Assembly website, 21 September.

303 *Ibid*.

304 "Odbor za pravosuđe nije prihvatio izmene Zakona o sprečavanju korupcije," *N1*, 21 September.

305 "Funkcionerski keš, GRECO obaveze i 'neposlušni' odbor," *Peščanik*, 22 September.

306 Agency for the Prevention of Corruption press release of 8 October, available on its website.

307 *2021 Serbia Report*, p. 26.

308 The *2021 Serbia Report* covers the June 2020-June 2021 period, but in some areas analyses the situation and the developments in Serbia until mid-October 2021.

309 GRECO recommended that the role of the Agency for the Prevention of Corruption be further strengthened, inter alia, i) by taking appropriate measures to ensure an adequate degree of inde-

factory manner. On the other hand, the EC said that Serbia has not yet prepared a new anti-corruption strategy, accompanied by an action plan or established an effective coordination mechanism to operationalise prevention and repression policy goals and effectively address corruption. It noted that the number of indictments and the number of first-instance convictions for high-level corruption cases further decreased compared to previous years. It stated that there was a need for strong political will to effectively implement the full mandate of the Agency, and mentioned the Krušik scandal to illustrate problems in properly dealing with whistleblower cases. The Report mentioned the authentic interpretation of "public officials" and narrowing of the scope of officials subject to the Anti-Corruption Act, but did not assess it. The EC recommended that Serbia increase efforts to address the specified deficiencies.

In its 2020 General Activity Report,[310] GRECO rated Serbia's compliance with its recommendations as globally unsatisfactory, wherefore it put it on the list of 16 countries vis-à-vis which GRECO is implementing a special non-compliance procedure. Serbia did not fulfil four of GRECO's 17 recommendations, it partly implemented 12 recommendations and did not implement one recommendation by the end of 2020. The Report assessed the measures GRECO members have undertaken to prevent the corruption of members of parliament, judges, prosecutors (in the 4th evaluation round), and persons with top executive functions (PTEFs) and law enforcement (in the 5th evaluation round). The Report ranked Serbia, with 23.5% fully implemented recommendations, among countries with a very low share of fully implemented recommendations. The fewest fully implemented recommendations were those concerning judges and prosecutors – 16.7% in each area. The largest number of unimplemented recommendations (20%) were those concerning the prevention of corruption among members of parliament.

Serbia ranked 92nd on this year's Global Corruption Index published by Global Risk Profile, moving up 15 places since 2020.[311]

The Anti-Corruption submitted its 2020 Annual Report to the National Assembly in late March.[312] In this 11th annual report, it presented the results of its work in 2020, the challenges it faced and its recommendations to the National Assembly to improve the Agency's work. It said that 2020 was characterised by unprecedented epidemiological challenges which increased the importance of building integrity and of consistent implementation of anti-corruption mechanisms. It said that, owing to the adopted normative framework, it now had at its disposal "new, as well as reinforced already existing mechanisms for preventing corruption, aimed

pendence and by providing adequate financial and personnel resources and ii) by extending the Agency's competences and rights.

310 21st General Activity Report (2020) of the Group of States against Corruption (GRECO), March 2021, Council of Europe.

311 "Globalni indeks korupcije: Srbija napredovala 15. mesta na listi," *Euronews*, 12 November.

312 Work Report for 2020, Agency for the Prevention of Corruption, Belgrade, 2021.

at strengthening personal and institutional integrity, compliance with the rules, but also actions in accordance with the set values, as well as transparency and accountability in the work of public administration, with the aim of systematic protection of the public interest."

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 Act in 2020. It said that it had imposed 412 measures for violations of the Anti-Corruption Act in cases under its sole authority[313] in the reporting period. The Agency also said it received 1,096 conflict of interest cases in 2020, an increase of 33.5% over 2019.

The Agency also said that it had filed 286 misdemeanour and 14 criminal reports or reports with the relevant prosecution services against public officials, companies and responsible persons in companies in 2020.

The Agency for the Prevention of Corruption also submitted its first Report on the Implementation of the Chapter 23 Revised Action Plan – Sub-Chapter: Fight against Corruption,[314] since the new ACA entrusts the Agency with overseeing the implementation of strategic documents. The Revised Action Plan charges the Agency with overseeing the implementation of the Operational Plan for Preventing Corruption in Areas of Particular Risk, which the Government adopted on 30 September. The Agency fulfilled its task and by end October developed the Guidelines on Reporting on Oversight of the Implementation of the Operational Plan.[315]

In November, the Agency published its Report on Oversight of Campaign Funding of Political Entities in Zaječar City, Kosjerić Municipal and Preševo Municipal Elections in 2021.[316]

In November, the Serbian Government adopted a decision establishing the Coordination Body for Implementing the Operational Plan for Preventing Corruption in Areas of Particular Risk. The Body will coordinate the implementation of anti-corruption measures at the topmost political level, and senior managements will have political and institutional responsibility for implementing the strategic measures. The Government decision defines the coordination and cooperation among various stakeholders charged with implementing and overseeing

313 Issues regarding officials' assets, conflicts of interest, financing of political activities, and other cases.

314 Report on Implementation of the Revised Action Plan for Chapter 23 – Sub-Chapter: Fight Against Corruption, Agency for the Prevention of Corruption, 2021.

315 Smernice za izveštavanje o sprovođenju i vršenju nadzora nad sprovođenjem Operativnog plana za sprečavanje korupcije u oblastima od posebnog rizika, Agency for the Prevention of Corruption, October 2021.

316 Izveštaj o kontroli finansiranja troškova političkih subjekata za izbor odbornika u Skupštini grada Zaječara, opštinu Kosjerić i opštinu Preševo za 2021. godinu, Agency for the Prevention of Corruption, November 2021.

the implementation of the Operational Plan, an integral part of the Chapter 23 Revised Action Plan.[317]

5.4.2. Anti-Corruption Agency's Activities in 2021

In September, the Agency for the Prevention of Corruption joined the Network of Corruption Prevention Authorities, which has a register of lobbyists (ELRN). The Network was set up in 2018 to share experiences and good practices in applying lobbying regulations.[318] The Network Presidency in 2021 was entrusted to the Serbian Agency's Director Dragan Sikimić.[319]

According to information on the Agency website, the Agency issued seven opinions in 2021, all of them concerning conflicts of interest.[320] In 2020, the Agency also initiated proceedings and imposed measures for violations of the prior Anti-Corruption Act. Herewith a few examples.

The Agency issued a warning to five Kosovo officials running Serbian institutions in Kosovo, who had failed to declare their assets to the Agency for years. In the meantime, they submitted their declarations listing all their real estate, movables and money. To recall, the Agency initiated proceedings against six Kosovo senior officials in 2020 in response to a report published by Centre for Investigative Reporting of Serbia (CINS).[321] A warning is the mildest measure the Agency can impose and it is supposed to be issued for minor infractions. In the opinion of Transparency Serbia's Director Nemanja Nenadić, the Agency should have notified the prosecutor and initiated criminal proceedings. The Agency said that it had not initiated even misdemeanour proceedings because the case was out of time. CINS reported that the case of the sixth official, former Acting Director of the Kosovska Mitrovica Out-Patient Health Clinic, was still pending.[322]

Radio Free Europe reported that most officials of the Serb List, the leading Belgrade-backed Serb party in Kosovo, had at least one job in Kosovo and another in Serbia, receiving double salaries, which they selectively reported to respective anti-corruption agencies.[323]

In May, the Agency notified journalist Živojin Rakočević, the Director of the Gračanica Cultural Centre, that there were no legal obstacles to him chairing the Jour-

317 "Vlada Srbije osnovala telo za sprečavanje korupcije i izdvojila 1,2 milijarde dinara za sportske klubove," *Euronews*, 25 November.

318 Agency for the Prevention of Corruption press release of 15 September, available on its website.

319 Agency for the Prevention of Corruption press release of 17 December 2020, available on its website.

320 The opinions are available on the Agency for the Prevention of Corruption's website, which does not provide any information on whether the Agency issued any opinions on lobbying.

321 More in the *2020 Report*, III.5.4.3.

322 "Goran Rakić i drugi funkcioneri sa Kosova opomenuti zbog neprijavljivanja imovine," *CINS*, 14 July.

323 "RFE: Serb List officials from Kosovo selectively report double salaries," *N1,* 12 August.

nalists' Association of Serbia (JAS) if he was elected to that office. Twelve members of the JAS Management had issued a press release stating he had asked the Agency for the Prevention of Corruption whether he would be in conflict of interest if he were elected to the office after the relevant JAS commission upheld two objections to his candidacy. Some members of the Commission claimed Rakočević was ineligible and referred to JAS' Articles of Association prohibiting candidacies of individuals employed by or holding office in the national and provincial governments. The Agency found that he would not violate Articles 40 and 49 of the Anti-Corruption Act or Article 20 of the JAS Articles of Association if he held the offices of JAS Chairman and Director of the Cultural Centre at the same time. The Agency also said Rakočević did not belong to the category of individuals prohibited from holding office in association bodies, i.e. the category of employees and officials of national or provincial governments, ministries and secretariats or local administrative authorities.[324] After the Agency published its opinion, the JAS said that it and its Director Dragan Sikimić were interfering in the upcoming election of the JAS Chairperson "judging who can be a candidate and interpreting JAS' Articles of Association" to the benefit of "the state official and former member of the Agency Board".[325] The Agency issued a press release denying JAS' claims, specifying that the fact that Živojin Rakočević had been a member of its Board until 1 September 2020 had no bearing on its decision and that, as a public official – the Director of the Gračanica Cultural Centre – he was both entitled and obligated under the law to request of the Agency to issue an opinion.[326]

In October, the Agency found that Minister without Portfolio Novica Tončev had been in a conflict of interest at the time he was Surdulica Mayor, because 136.2 million RSD were paid from the municipal budget to the Radnik soccer club his son Stanislav was managing. The sum was paid to the club from May 2016 to July 2020. Since Tončev did not report the payments to the Agency, it published a decision on his violation of the law. The Agency said in the decision that this was the only appropriate measure since Tončev was no longer Surdulica Mayor after the 2020 local elections.[327] Tončev told the daily *Danas* that he had done nothing wrong and that he had challenged the Agency decision before the Administrative Court.[328]

According to the Crime and Corruption Reporting Network (KRIK), Pandora Papers[329] associate Tončev with the offshore company Service for Efficient Energy,

324 "Agencija za borbu protiv korupcije: Rakočević nema smetnji da bi obavljao dužnost predsednika UNS-a," *Danas*, 22 May.

325 More in "Agencija za sprečavanje korupcije odbacila optužbe UNS-a o mešanju u izbore tog udruženja," *Danas*, 24 May.

326 Agency for the Prevention of Corruption press release of 24 May, available on its website.

327 "Agencija utvrdila da je ministar Tončev bio u sukobu interesa, izrečena mu mera javnog objavljivanja odluke," *Južne vesti*, 10 November.

328 "Tončev tvrdi da nije uticao na dodelu 136 miliona klubu koji vodi njegov sin," *Danas*, 13 November.

329 "Pandorini papiri: Šta političari i milijarderi skrivaju u poreskim oazama?," *Deutsche Welle*, 3 October.

which was founded on the British Virgin Islands in 2010,[330] and which he did not declare to the Agency for the Prevention of Corruption. At the time, Tončev was a member of the Socialist Party of Serbia (SPS) Main Board and headed a successful construction company *Tončev gradnja*, which did business with the state.[331] Tončev first denied that he had anything to do with the company, claiming that his "signature may have been forged" and that he did not even know where the Virgin Islands were. According to KRIK, Tončev subsequently remembered that he had owned the company Service for Efficient Energy, but that he had not reported it to the Agency because it was not operational.[332]

The Agency also found the newly-appointed Head of the Communal Police Department in Zrenjanin Nemanja Malinić in conflict of interest, because his mother had hired him. She was the Head of the Zrenjanin City Administration at the time. Malinić denied any conflict of interest because his mother had resigned from office for personal reasons and was reportedly assigned to another job in the City Administration on 27 March.[333]

In October, the Agency initiated proceedings against Niš Mayor Dragana Sotirovski to establish whether she was in conflict of interest concerning the list of potential buyers of community apartments built by the city housing agency. The Mayor sent a letter to the Agency two days after the deadline for notifying it whether she was in conflict of interest expired. Her son-in-law, the Deputy Director of the Niš Pharmacies, was 24th on the list of potential buyers of these community flats. The list was published on 10 September and Sotirovski notified the Agency that her son-in-law was on the list on 17 September. When the Agency initiated the proceedings, the Mayor defended her son-in-law, claiming that this was not social housing, but apartments sold at non-profit prices and that her son-in-law was on the list "totally legally and legitimately".[334]

In November, the Agency recommended that Kovin Mayor Sanja Petrović be dismissed from office because she paid 4.2 million RSD from the municipal budget to the Kovin Municipality Sports Association represented by her cousin Saša Đorđević, in violation of the Anti-Corruption Act.[335] The Agency explained that

330 "Pandora Papers Reveal Second Serbian Minister's Hidden Offshore," *BIRN*, 7 October. KRIK found out that other Serbian officials also owned offshore companies in the British Virgin Islands and had not declared them to the Agency and that the Agency did not initiate proceedings it is entitled to under the law.

331 *Tončev gradnja* built roads, did work on the Niš Clinical Centre, reconstructed MIA buildings and the Irongate Hydro Power Plant. That same year, the company bought a house worth €1.2 million in the elite Belgrade suburb of Dedinje.

332 "Pandora Papers Reveal Second Serbian Minister's Hidden Offshore," *BIRN*, 7 October.

333 "Agencija: Načelnik odeljenja komunalne milicije u Zrenjaninu Nemanja Malinić u sukobu interesa," *VOICE*, 25 May.

334 "Agencija za sprečavanje korupcije: Gradonačelnica Niša prijavila potencijalni sukob interesa sa zakašnjenjem," *Euronews*, 14 October.

335 Arts. 40 and 42(1), Anti-Corruption Act.

the Mayor signed a contract based on which the Association received a grant for the project "Implementation of Sports Activities in 2021" and that it was not notified in writing of the conflict of interest.[336]

The Agency rendered a final decision finding Belgrade Deputy Mayor and SNS member Goran Vesić in violation of the Anti-Corruption Act and issued him a warning, one year after CRTA reported him for abuse of office for party campaigning, which is prohibited under the law. The Agency explained that, on 27 May 2020, Vesić published on his Facebook profile an ad made on the new Belville parking lot in New Belgrade, the construction of which was funded from the Belgrade City budget. The ad shows Vesić, in his capacity of Deputy Mayor, mentioning the SNS, whereby he used a public resource, a parking lot built by the city, for promoting the party he is a member of. CRTA said that Agency Council dismissed Vesić's appeal of the decision.[337]

Media[338] reported that the Agency had reviewed 190 asset declarations by end August and established that 52 public officials had submitted inaccurate or incomplete data on their property or income or submitted the asset declarations after the deadline expired.[339] It performed seven ad hoc reviews since the beginning of the year, on suspicion that the data in the asset declarations were inaccurate or incomplete; four reviews were initiated *ex officio* and three in response to reports by natural persons. The Agency was to check 314 asset declarations in 2021; 200 of the reviews concerned this year's asset declarations and 114 asset declarations filed in the past.

Democratic Party (DS) spokesperson Alisa Kockar submitted an aplication to the Anti-Corruption Agency and suggested that procedures be initiated to determine the existence of conflicts of interest and the "cumulation of public functions" in the case of European Integration Minister Jadranka Joksimovic. Namely, Joksimović was one of those appointed to the Council of the Faculty of Political Sciences, while at the same time she is a doctoral student at the same faculty, which is why, according to the DS, she violated the provisions of the Law on Prevention of Corruption.[340]

5.4.3. Assessments of the Anti-Corruption Agency's Work in 2021

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 2021.

336 "Agencija za borbu protiv korupcije traži smenu predsednice opštine Kovin: Bratu iz budžeta 4,2 miliona dinara," *Euronews*, 28 November.

337 "Agencija utvrdila: Vesić prekršio Zakon o sprečavanju korupcije," CRTA press release, 23 June.

338 "Mediji: Agenciji za sprečavanje korupcije 52 funkcionera poslala netačne ili nepotpune podatke," *Danas*, 20 September.

339 The data published on the Agency website show that this is one of the most frequent violations of the Anti-Corruption Act the Agency has identified in its reviews of the public officials' property and income.

340 DS statement of 20 April, available on the party's website.

The Pandora Papers and KRIK confirmed that Siniša Mali owned 24 luxury flats in Bulgaria, the value of which was much higher than his legal income. The scandal has been in the public limelight since 2015.[341] Mali, an owner of two companies on the British Virgin Islands, bought 23 apartments and bought the 24th flat in his own name, as he subsequently admitted. Mali accused KRIK's reporters of lying, saying he would hand them over the keys to the apartments the minute they confirmed that he owned any of them. The Agency acted on the case in 2015, when KRIK first broke the story. It forwarded the case to the Belgrade Higher Public Prosecution Service (HPPS), which involved the Anti-Money Laundering Administration, but ultimately discontinued the proceedings explaining it had found no evidence of a crime.[342] When evidence in the Pandora Papers appeared, the HPPS said that it was irrelevant, that it did not find that Mali had committed any crimes and that it would take into account any new relevant evidence it became aware of.[343] The Agency did not react at all; nor did it conclude that there were grounds to initiate the proceedings again.

CINS[344] discovered a network of websites and social media profiles opened across Serbia over the past three years, usually ahead of elections. The IT company Wireless Media (WM), owned by Igor Žeželj, who also owns Adria Media Group, which designs websites and other digital content for companies promoting themselves on the internet, set up a separate department in 2017 focusing on the promotion of local authorities and the Serbian Progressive Party[345] and lobbying people to vote for them. CINS reported that Žeželj's company helped the City of Sombor, by donating it recording equipment (a drone, computers and equipment) the value of which is estimated at 500,000 RSD. CINS published the "Sombor Contract" in its story, which had not been publicly available until then, but, unfortunately, the contract does not specify how much this cooperation cost the residents of Sombor. Such promotion of the ruling party was not reported to the Agency for the Prevention of Corruption.

CINS also found that the Agency has not yet initiated misdemeanour proceedings in the case of a prohibited donation to SNS in 2017, when it was given premises in New Belgrade valued at around €1.3 million, exceeding the statutory threshold. CINS reporters filed a request for access to information of public importance with the Agency at the time, asking it if it had initiated misdemeanour proceedings. The Agency replied that it had not because it was still collecting facts and evidence, but only after CINS complained to the Access to Information Commissioner. In its 2018

341 "KRIK: Serbia's Fin Min did own 24 luxury properties on Bulgaria's coast," *N1*, 4 October.

342 "Nova dokumenta sa Devičanskih Ostrva: Mali je definitivno bio vlasnik 24 stana," *KRIK*, 3 October.

343 Belgrade HPPS press release of 8 October, available on its website.

344 "Prikrivene donacije: Kako firma Igora Žeželja kreira kampanje naprednjaka," *CINS*, 28 October.

345 WM designed websites and social media profiles for Belgrade and Sombor and also set up social media profiles for the authorities in Pančevo, Novi Sad, Subotica and Sremska Mitrovica.

financial statement, SNS listed the Kruševac SNS councillor Velibor Jovanović as the donor and the value of the property, which in itself may be indication that there are grounds to initiate misdemeanour proceedings, as well as give rise to suspicions that the Agency is waiting for the five-year statute of limitations to expire.[346]

The portal *Pištaljka*[347] reported that the Agency's records of the public officials' assets were unreliable because the Agency rarely checked the declared data,[348] some ad hoc checks have been ongoing for several years[349] and the data did not coincide with data in other official public databases, such as the Real Estate Cadastre. *Pištaljka* therefore asked the Agency what was the purpose of the register of the public officials' property and income when the data in it were inaccurate. It received no reply.

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 Change and Protocol to the Framework Convention on Climate Change (Kyoto Protocol), the Convention on Long-Range Transboundary Air Pollution, its Protocol on Heavy Metals and Protocol on Persistent Organic Pollutants, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, 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), which lays down three important rights: of access to information, public participation in decision making and access to justice. Serbia also acceded to the European Landscape Convention, adopted under the auspices of the Council

346 "Agencija godinama ne pokreće postupak zbog spornih prostorija SNS-a," *CINS*, 12 October.

347 "Imovina funkcionera koji su na vlasti devet godina nije kontrolisana poslednjih sedam," *Pištaljka*, 1 July.

348 The assets of most of the current ministers, the Assembly Speaker Ivica Dačić and the Serbian President, were last checked as many as seven years ago.

349 Ad hoc reviews of the assets of Ministers Ratko Dmitrović and Siniša Mali have been pending for four years now.

of Europe 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".

Given that Article 11 of the European Social Charter (ESC) lays down that States Parties shall undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed to prevent as far as possible epidemic, endemic and other diseases, as well as accidents with a view to ensuring the effective exercise of the right to protection of health, states should undertake, inter alia, measures ensuring protection from air and water pollution and the adverse effects of radiation and food control measures. This is why the right to a healthy environment is considered an integral part of the right to life and the right to health.

The Serbian Constitution guarantees the right to a healthy environment in the section on fundamental human rights and freedoms. Under Article 74(1) of the Constitution, "[E]veryone shall have the right to a healthy environment and the right to timely and full information about the state of environment." Paragraph 2 introduces the obligation of everyone, especially the Republic of Serbia and the autonomous provinces, to protect the environment. The obligation to protect the environment is general in character – paragraph 3 of this Article lays down that everyone has the duty to preserve and improve the environment.

The Environmental Protection Act 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, the Strategic Environmental Impact Assessment Act, the Climate Change Act, and the Act on Integrated Environmental Pollution Prevention and Control. 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.

Serbia adopted a number of laws directly or indirectly addressing environmental protection by December 2021. They include: the Act Amending the Act on Integrated Environmental Pollution Prevention and Control, the Biocidal Products Act, the Act on Protection from Noise Pollution in the Environment, the Act on Energy Efficiency and Rational Use of Energy, the Act Amending the Act on Mining and Geological Surveys, the Act on Use of Renewable Sources of Energy, the Act Amending the Energy Act, and the Act Amending the Nature Protection Act.

The Serbian parliament commendably adopted the Climate Change Act in March 2021. The authorities are now to develop the integrated national energy and climate plan in a transparent and effective manner and focus on Serbia's commitment to the Green Agenda for the Western Balkans.

6.2. Green Agenda for the Western Balkans

By signing the Sofia Declaration on the Green Agenda for the Western Balkans,[350] Serbia and other countries in the region acknowledged the European Green Deal as the EU new growth strategy towards a modern, climate neutral, resource-efficient and competitive economy.

Some of the actions will be applied to align with the EU Climate Law once it is adopted with a vision of achieving climate neutrality by 2050 and set forward-looking 2030 energy and climate targets in line with the Energy Community framework and the EU *acquis*, as well as develop and implement integrated Energy and Climate Plans with clear measures designed to reduce greenhouse gas emissions in the Western Balkans economies.

By signing the Declaration, Western Balkan countries committed to implement actions in five pillars: I – Climate, energy, mobility – to work towards the 2050 target of a carbon-neutral continent together with the EU through mainstreaming a strict climate policy and reforming energy and transport sectors; II – Circular economy –the process of transition from linear to a circular economy being fully aware of the necessity for research and innovation system to support this transition; III – Depollution – depollution of air, water and soil in the Western Balkans; IV – Sustainable agriculture and food production – to work towards ensuring transformation of the agriculture sector, minimising its negative environmental and climate impact and safeguarding affordable and healthy food for WB citizens and export markets; and, V – Biodiversity – to work on defining the post-2020 biodiversity framework and developing a long-term strategy for halting biodiversity loss, protection and restoration of ecosystems and abundant biological diversity.

6.3. Climate Change and the Climate Change Act

Global warming is the gradual heating of Earth's climate system due to the greenhouse gas (GHG) effect and resulting in global climate change. Climate change has undoubtedly marked the entire history of our planet, but scientists ascribe the ongoing global warming to global human activities, primarily fossil fuel burning, which increases heat-trapping greenhouse gas levels in Earth's atmosphere. Most experts agree that global warming since the pre-industrial era will continue, and that the projected increase in the temperature by 1.5°C over the next two decades unless GHG emissions are cut will have major and, in some parts of the world, disastrous consequences.[351]

350 *Guidelines* for the Implementation of the *Green Agenda* for the *Western Balkans* of 6 October 2020.

351 "STATEMENT: New IPCC Report Is "Alarming," Shows Narrow Path to Limit Warming to 1.5 C by 2100," World Resource Institute, 9 August.

The new Climate Change Act is one of the main components of the institutional and legal framework for combatting climate change as it lays the foundation for establishing a system for reducing GHG emissions and climate change adaptation. The Act, inter alia, envisages the development of the national low carbon development strategy and an action plan for its implementation in the following two years. The adoption of the Act is a step towards the fulfilment of Serbia's international commitments under the UN Framework Convention on Climate Change and the Paris Agreement. Under the Act, Serbia reserves the right to design the legislative framework and set development goals, whilst taking into account all the specificities of the economic and energy sectors and other national socio-economic parameters. The halt in the construction of the new coal-fired power plant Kolubara B in May 2021 was an important step in combatting climate change.

6.4. State of the Environment in Serbia

The general opinion is that Serbia still lags behind European and global trends despite its headway in adopting environmental legislation.[352] Serbia ranked ninth on the global list of pollution-related deaths and first on the list of European countries by death rates from combined pollution risk factors.[353]

In its Serbia 2021 Report, the European Commission said that Serbia has achieved some level of preparation in the area of environment and climate change. It said that Serbia should focus on: developing an ambitious national energy and climate plan in a transparent manner, consistent with the European Green Deal's zero emission target for 2050 and the Green Agenda for the Western Balkans; adopting and starting implementing the plan; intensifying implementation and enforcement work, such as ensuring strict adherence to rules on environmental impact assessment, closing non-compliant landfills, increasing investments in waste reduction, separation and recycling, improving air and water quality including through phasing out coal, etc.; and on enhancing administrative and financial capacity of central and local authorities, in particular in the Environmental Protection Agency and environmental inspectorates. The EC noted that Serbia's budget for environment increased by 48% in 2020 compared to the previous year, mainly through foreign borrowing. It said that all income generated from environmental fees should be earmarked for environmental purposes. The EC noted that the green fund was not yet fully operational although Serbia increased its investments into environmental protection substantially, and that it needed an effective institutional set-up to improve strategic planning, co-financing and managing its

352 "Stručnjaci: Srbija najviše zaostaje za svetom u oblasti zaštite životne sredine," *N1*, 20 February 2020.

353 "Report: Pollution and Health Metrics," Global Alliance on Health and Pollution, 2019.

environmental investments. The EC also noted that legislative alignment on environmental liability and environmental criminal law had not progressed.[354]

6.4.1. Air Quality

Article 1 of the Air Protection Act 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. Article 21 of the Act defines three categories of air quality. Article 23 obligates the relevant ministry and Vojvodina and local self-government authorities to alert the public via the media of excessive air pollution.

Many Serbian cities have been among the most polluted cities in Europe for years now. The Swiss IQ Air ranked three Serbian cities – Valjevo, Niš and Kosjerić – amongst the most polluted European cities in 2019. Serbia's capital, Belgrade, often topped the list of the most polluted cities in the world: it ranked first on 28 October.[355] As many as six Serbian cities (Valjevo, Kosjerić, Niš, Užice, Čačak and Kragujevac) found themselves on IQ Air's list of the 20 most polluted cities in Europe in 2020; no other European country had as many cities on the "top twenty" list. 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 concluded 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.[356]

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.[357] The halt in the construction of the new coal-fired thermal plant Kolubara B in May 2021 was a step in the right direction.

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

354 *Serbia 2021 Report*, p. 114.

355 "Beograd danas ponovo najzagađeniji grad na svetu," *Danas*, 28 October.

356 "Građani Bora se guše, koncentracija štetnih supstanci stotinama puta veća od dozvoljene," *RTS*, 11 September 2020.

357 "Kolubara's "very poor quality" lignite is to blame for the pollution – Economy," tricksfast.com, 13 November 2020.

from those applied by the European Environment Agency.[358] The EC also noted this problem in its Serbia 2021 Report, qualifying as its key recommendation the adoption of the EU air quality index, as well as ensuring adequate staffing of the Serbian Environmental Protection Agency.[359]

6.4.2. Water

The Water Act 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.

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.[360] The situation remained unchanged in 2021 and wastewater treatment plans are mentioned only in the future tense. Experts have been warning that the existing wastewater treatment plans for Belgrade and cities Serbia envisage the use of obsolete technology and that wastewater facility planning and contracting is being conducted behind the public's back.[361]

Serbia's scored 1.7 on Yale's 2020 Environmental Performance 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. The 2021 results were not published by the end of the reporting period but there were no indications that the situation greatly improved in the meantime. Serbia practically has no wastewater treatment facilities and needs to build between 250 and 300 of them.[362]

In mid-2021, Belgrade Mayor Zoran Radojičić spoke about the capital project involving the construction of a wastewater treatment system and plant in Veliko Selo.[363] Environmental organisations criticised this project worth €270 million, which will be borrowed from Chinese banks. They claim the technology to be installed is outdated and will not be cost-effective.[364]

358 "Organizacije: Agencija primenila kriterijume za ocenjivanje kvaliteta vazduha," *Nova ekonomija*, 4 December 2020.

359 *Serbia 2021 Report,* p. 114.

360 "AFP: Beograd jedini u Evropi pušta nefiltrirane otpadne vode u Dunav," *N1*, 17 September 2020.

361 "Belgrade wastewater treatment," *environmentsee.eu*, 6 May.

362 "Srbiji treba do 300 novih postrojenja za otpadne vode," *Nova ekonomija*, 19 April.

363 "Radojičić: Veliko Selo rešiće problem kanalizacije N. Beograda i Zemuna," *Studio B*, 3 January.

364 "Srbiji treba do 300 novih postrojenja za otpadne vode," *Nova ekonomija*, 19 April.

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 adoption of the Act on Use of Renewable Sources of Energy was a step in the right direction. Its prohibition of the construction of SHPPs in protected areas does not mean that these areas will actually be SHPP-free zones, since all 33 SHPPs with a total power of 34.4 megawatts, five of which are being built at the moment, will continue operating. Furthermore, the statutory ban on building SHPPs in protected areas is no guarantee that new ones will not be constructed, since the new law exceptionally allows the Government to approve their construction if the project is of public and general interest or of particular interest to the Republic of Serbia.[365]

In its Serbia 2021 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. The EC said that untreated sewage and wastewaters were still the main source of water pollution and that non-compliance with water quality standards remained a big concern in some areas, such as that on arsenic. It noted that Serbia needed 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. The EC said that work on the river basin management plan was progressing slowly, that improving local governance, in particular for operating and maintaining water and wastewater facilities, remained a priority and that work on adequate water fees and tariffs was at an early stage." [366]

6.4.3. Waste Management and Industrial Pollution

With the EU's financial assistance, Serbia has developed the national waste and sludge management strategies.[367] These strategic documents were not adopted by the end of the year, although the prior Waste Management Strategy expired in 2019.

In its Serbia 2021 Report, the EC said that Serbia needed to redouble its efforts to close its non-compliant landfills and invest in waste reduction, separation and recycling. The Environmental Protection Agency warned back in 2019 that most landfills in Serbia did not fulfil the sanitary standards, meaning that harmful and dangerous substances ended up in the soil, the plants and animals, the air we breathe, the water we drink and the food we eat.[368] According to the Agency's data, Serbia has around 2,305 illegal dump sites, and only 11 official landfills for

365 "Ekologija, reke u Srbiji i male hidroelektrane: Šta donose izmene Zakona o zaštiti prirode i gde je zabranjena gradnja MHE," *BBC in Serbian, 11 August*.

366 *Serbia 2021 Report*, p. 114.

367 *Ibid*., p. 115.

368 "Deponije u Srbiji: Ekološke tempirane bombe," *BBC in Serbian*, 9 August 2019.

non-hazardous waste.[369] A *Deutsche Welle* analysis showed that one out of four dump sites were near settlements and rivers. The ones in southern Serbia are mostly smaller in size and have several tons of waste, while some of the dump sites in Vojvodina sprawl over as many as ten square kilometres.[370]

As regards industrial pollution and risk management, the EC said in its Serbia 2021 Report that alignment with most of the EU *acquis* was at an early stage across the industrial sector, that the national emission reduction plan was not implemented in practice for sulphur dioxide and dust and that the Serbian Kostolac B thermal power plant was Europe's biggest sulphur dioxide polluter. It noted that a desulphurisation unit built in 2017 was only put into operation in the fourth quarter of 2020 and that inspection and law enforcement remained areas of concern. The EC said that Serbia needed to increase capacities for managing the integrated permitting processes and should tackle industrial pollution by enforcing the polluters pay principle in order to encourage the industry to invest in green solutions.[371]

A fire on the Vinča landfill near Belgrade, which was built back in 1977, caused much public alarm in 2021. This landfill, which was not built even in accordance with the regulations that were valid at the time, is a major environmental risk factor. The quantity of poisonous substances released into the air remained unknown but experts qualified the fire as one of the gravest environmental disasters in Serbia in the last two decades.[372] It remained unclear who was to blame for the fire.

6.5. Jadar Project, Increase in Environmental Awareness and Number of Environmental Movements in Serbia

The Jadar project and the Rio Tinto company have for several years been among the topical environmental issues. The topic definitely dominated the environmental agenda in 2021 as the experts' criticisms of the project and its impact on the environment caused numerous polemics in both the public and the political arenas. Although the Serbian authorities denied any deal with Rio Tinto on mining lithium near Loznica,[373] in early December, the media published the Memorandum of Understanding the Serbian Government signed with this company recognising the Jadar project as a priority geological exploration project and its willingness to provide all the requisite licences for lithium mining and processing.[374]

369 "Cela Srbija je deponija," *reciklaža.biz*, 4 June.

370 "Divlje deponije u Srbiji – to je nekultura," *Deutsche Welle*, 2 June.

371 *Serbia 2021 Report*, p. 115.

372 "Jovović: Požar na deponiji u Vinči najveći akcident od NATO bombardovanja," *Danas,* 20 August.

373 "Mihajlović: Ne postoji dogovor Vlade Srbije i Rio Tinta o otvaranju rudnika," *Danas*, 29 October.

374 "EKSKLUZIVNO: Dokument Vlade Srbije u kom obećava dozvole Rio Tintu," *Nova S*, 1 December.

The Engineering Academy of Serbia (AINS) said that the Serbian Government's strategic decision to support the implementation of the Jadar project in 2017 had not been not preceded by adequate, independent and expert analyses at the national level. In its opinion, the implementation of the Jadar project will leave permanent negative consequences on the environment and prevent the potential development of green agriculture and healthy food production in the region. It said that this project did not involve the manufacturing of "green lithium" but borate which, unlike lithium, has a stable outlook based on dispersed demand, a large number of products and the experience of Rio Tinto. AINS warned that the realisation of the Jadar project carried the risk of natural sources of radioactivity, although there was no information about that, and that this sensitive and high-risk issue had been completely neglected in the process of analysis and approval of the Jadar spatial plan.[375]

The Jadar project and Rio Tinto caused huge public interest, becoming one of the most important social and political topics in 2021. The project brought to the fore environmental protection, sustainable development and a healthy future, issues that never ranked high on the public agenda. Green parties and numerous environmental movements, the activities of which used to be on the media margins, started filling the headlines.

Environmental protests staged across Serbia throughout the year drew the most attention. An "environmental uprising" was launched on 10 April, with activists of 80 environmental organisations and citizens rallying in Belgrade.[376] Thirteen demands were addressed to the relevant state institutions, including: compliance with the Constitution and the law; alignment of the legislation with the highest environmental standards; halt to the construction of SHPPs and revision of harmful SHPP projects; water preservation; forest protection, halt to felling trees in protected areas and forestation, et al.[377] Thousands of people again rallied in Belgrade on 11 September at the so-called Uprising for Survival (*Ustanak za opstanak*), protesting against the state's attitude towards environmental protection.[378]

The protests climaxed at the end of the year after the National Assembly adopted the Referendum and People's Initiative Act and the amendments to the Expropriation Act. Large numbers of people of various political affiliations rallied in the streets of Serbian cities, blocking the main roads and junctions in the country.[379] The incidents during the protests led government officials and tabloids to brand the protests as purely political; they went so far as to claim that they had been staged to

375 "Serbian Academy of Engineering: the "Jadar" project will decimate biodiversity," tekdeeps.com, 10 November.

376 "Životna sredina i protesti u Srbiji: Počeo je ekološki ustanak – bez vode nema slobode," *BBC in Serbian*, 10 April.

377 "Protesters Rally in Belgrade to Call for Action on Environment," *Radio Free Europe*, 11 April.

378 "Ekološki ustanak – 'marš Rio Tinto' i kritike vlastima uz tenzije na mostu," *N1*, 11 September.

379 "Protesti i blokade puteva u Beogradu i više gradova Srbije," *RTS*, 27 November.

cause a civil war. The incidents and physical altercations during the blockade of the Šabac bridge were the hallmark of the November traffic blockades.

Although they were unfortunately not violence free, the protests show an increase in environmental awareness, indicating that environmental protection will play a much more important role in Serbia's public life and that all serious political players will have to take a stance on it.

6.6. Conclusion

Although environmental protection drew more public attention in 2021 than before, the importance of this topic is apparently not understood, primarily in government ranks. This greater interest in environmental issues should be harnessed to improve coordination among the relevant state agencies and to establish constructive cooperation between them and the NGO sector. Greater use of green energy and lesser dependence on coal should be among Serbia's main goals. The entire society needs to invest much more effort in reducing air and water pollution. The construction of a green economy based on sustainable development and reducing GHG emissions must be one of the chief priorities of society's overall development. By its nature, the environment transcends all politics and law, as well as state borders, wherefore cross-border cooperation is crucial for ensuring a healthy and safe environment in Serbia, the region, and more broadly, the world.

7. Confrontation with the Past – Transitional Justice

Transitional justice is a new discipline within the broader framework of human rights. It deals with the challenges faced by societies with a legacy of massive human rights violations, both societies in transition from an autocratic to democratic system and post-conflict societies. Such societies have to achieve specific goals: confront the past, establish rule of law and reinforce the possibilities to preserve peace, reconciliation and prevent the recurrence of massive human rights violations.[380]

7.1. War Crime Trials in Serbia in 2021

The Serbian War Crimes Prosecution Service (WCPS) filed four indictments against five individuals by the time this Report was finalised. Three indictments were the result of regional cooperation with the BiH prosecutors,[381] while only one

380 *What is transitional justice?,* Mark Freeman, 2008.

381 The indictment against against Danko Vladičić, charged with killing two Bosniak civilians in Brod on the Drina; the indictment against Branko Basara, the Commander of the 6th Sana Brigade,

indictment was the result of an investigation conducted by the WCPS.[382] Although the WCPS formally charged two former high-ranking officers of the Yugoslav People's Army (JNA)[383] in 2021, the conclusion that it continued demonstrating its reluctance to indict high-ranking police and army officers still stands, given that the case was taken over from the BiH prosecutors after the confirmation of the indictment.

The Belgrade Higher Court War Crimes Department (WCD) delivered four judgments and discontinued the deliberation of one case in 2021.

On 2 February, the WCD found defendant Milorad Jovanović guilty of war crimes against the civilian population under Article 142(1) of the FRY Criminal Code and sentenced him to nine years' imprisonment. Milorad Jovanović, who was a militia reservist in the Bosnian Serbia MIA at the time, was convicted for war crimes against Moslem civilians held in a museum in Lušci Palanka (Sanski Most municipality, BiH), specifically, for the torture, inhuman treatment, infliction of physical injuries to a number of civilians and the death of one civilian, who succumbed to the injuries the defendant inflicted on him, in June and July 1992.[384]

On 26 April, the WCD found defendant Miloš Čajević guilty of war crimes against the civilian population – of terrorising nine Bosniak civilians, including two children, in Brčko in 1992 and of inhuman treatment of two Bosniak civilians. The court sentenced him to 13 years' imprisonment altogether – seven and a half years' imprisonment for these crimes plus the six-year prison sentence handed down by the Sremska Mitrovica Higher Court in case K 22/15 on 12 February 2016.[385]

On 23 May, the WCD found Dalibor Krstović, a member of the Bosnian Serb Army, guilty of war crimes against the civilian population under Article 142(1) of the FRY Criminal Code, specifically for raping a Bosniak woman in Kalinovik in August 1992, and convicted him to nine years' imprisonment.[386]

On 14 June, the WCD found Joja Plavanjac and Zdravko Narančić guilty of war crimes against the civilian population under Article 142 of the FRY Criminal Code and convicted Plavanjac to 15 and Narančić to seven years' imprisonment. Plavanjac was found guilty of killing 11 detained Bosniak civilians in Bosanska Krupa in August 1992, while Narančić was found guilty of aiding and abetting him.[387]

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and Nedeljko Aničić, the Commander of the Sanski Most Territorial Defence, both JNA Colonels, charged with 21 counts, including murder, forced displacement, imprisonment and attacks on the civilian population; indictment against A.A., a member of the Military Police of the 15th Bihać Brigade of the Bosnian Serb Army, charged with killing at least five Bosniak civilians; indictment against Edin Vranj, charged with ill-treating and beating up Bosnian Serb Army POWs in the Goražde camp where he worked as an interrogator, in the January 1993-October 1994 period.

382 Indictment against Edin Vranj.

383 Indictees Branko Basara and Nedeljko Aničić.

384 "Povodom presude za zločin u mestu Lušci Palanka," HLC, 3 February.

385 HLC's report on the delivery of the judgment on 26 April, available on its website.

386 HLC's report on the delivery of the judgment on 13 May, available on its website.

387 HLC's report on the delivery of the judgment on 14 June, available on its website.

The WCD discontinued the trial of Drago Samardžija because he died. He had been charged with war crimes against the civilian population under Article 142 of the FRY Criminal Code. Samardžija, the Commander of the 17th Light Infantry Brigade during the war, was indicted for ordering attacks on undefended Bosniak settlements in the Ključ municipality and the unlawful detention and inhuman treatment of Bosniak civilians living in them, resulting in the death of at least 219 people.

By the time this Report was finalised, the Belgrade Appellate Court delivered six judgments. It also delivered two rulings quashing the first-instance judgments and ordering retrials of the cases.

On 1 February, the Appellate Court delivered a judgment increasing Milan Dragišić's prison sentence to five years. The WCD had initially convicted Dragišić to four years' imprisonment, for murder, wounding and attempted murder of one Bosniak civilian in Bosanski Petrovac in September 1992.[388]

On 5 February, the Appellate Court upheld the WCD's judgment convicting Bosnian Serb Army member Željko Maričić to two years' imprisonment for grave physical ill-treatment of detained Bosniak civilians in the Ključ municipality in May 1992.[389]

On 22 March, the Appellate Court upheld the WCD's judgment convicting Nebojša Stojanović to eight years' imprisonment for killing a POW in Kožuhe (Doboj municipality, BiH) in early May 1992.[390]

On 11 June, the Appellate Court upheld the WCD's judgment convicting Boško Soldatović, a former JNA member, to 15 years' imprisonment for killing nine civilians in the Croatian village of Bogdanovci on 11 November 1991.[391]

On 7 October, the Appellate Court upheld the WCD's judgment convicting Željko Budimir to two years' imprisonment for ill-treatment and violating the physical integrity of a Bosniak civilian in the Rejzovići settlement in Ključ on 21 November 1992.[392]

On 4 November, the Belgrade Appellate Court delivered a judgment mitigating the first-instance sentence against Miloš Čajević and convicting him to 10 years' imprisonment altogether. The Court mitigated the WCD's 7.5 years' imprisonment sentence for intimidation and inhuman treatment of Bosniak civilians in Brčko in May 1992 to five years' imprisonment, to which it added the final six-year prison sentence imposed on him by a final judgment of the Sremska Mitrovica Higher Court in case K 22/15 of 12 February 2016.[393]

On 3 February, the Belgrade Appellate Court issued a ruling quashing the first-instance judgment finding Husein Mujanović guilty of war crimes against the

388 Belgrade Appellate Court's judgment in Case Kž1 Po2 5/20 of 1 February, available on its website.
389 Belgrade Appellate Court's judgment in Case Kž1 Po2 6/20 of 5 February, available on its website.
390 Belgrade Appellate Court's judgment in Case Kž1 Po2 8/20 of 22 March, available on its website.
391 Belgrade Appellate Court's judgment in Case Kž1 Po2 1/21 of 1 June, available on its website.
392 Belgrade Appellate Court's judgment in Case Kž1 Po2 3/21 of 7 October, available on its website.
393 Belgrade Appellate Court's judgment in Case Kž1 Po2 4/21 of 4 November, available on its website.

civilian population and convicting him to 10 years' imprisonment and ordered a retrial.[394]

On 29 October, the Appellate Court issued a ruling quashing the first-instance judgment finding Milorad Jovanović guilty of war crimes against the civilian population and convicting him to nine years' imprisonment and ordered a retrial.[395]

Two war crimes cases were pending before the Belgrade Appellate Court at the end of the reporting period.[396]

7.2. 2021–2026 War Crimes Prosecution Strategy

The National War Crimes Prosecution Strategy for the 2021–2026 period (hereinafter: Strategy) was adopted in October 2021.[397]

The Humanitarian Law Center (HLC) noted that the Strategy analysed the prosecution of war crimes mostly in descriptive terms, by listing only the information obtained from the relevant institutions, but that it failed to go into an in-depth analysis necessary for a critical review. The defective analysis does not show the actual situation, which consequently resulted in the determination of baseline values not fully corresponding to the facts, and of measures and activities that cannot essentially contribute to the efficiency of war crimes prosecution. Recommendations not informed by a critical analysis of the data cannot help overcome the challenges and problems that arose during the implementation of the prior 2016–2020 War Crimes Prosecution Strategy.[398]

The new Strategy does not address problems arising from the policy of prosecuting "less challenging" cases concerning fewer victims, cases concerning isolated and minor incidents, and the absence of cases in which high-ranking perpetrators are indicted. Instead, the absence of clear criteria for determining priority cases can result in the continuation of the practice of prosecuting "less challenging" war crimes cases.

One of the key flaws of the new Strategy is that it failed to devote sufficient attention to informing the public in Serbia of war crime trials and issues relevant to the process of confrontation with the past. As opposed to its predecessor, the new Strategy does not include a separate section including such outreach activities. The Strategy's goals include: improvement of the efficiency of war crimes proceedings; improvement of protection and support extended to victims and witnesses in war

394 Belgrade Appellate Court's ruling in Case Kž1 Po2 7/20 of 3 February, available on its website.

395 Belgrade Appellate Court's ruling in Case Kž1 Po2 2/21 of 20 October, available on its website.

396 The appeals of the WCD's judgments convicting Dalibor Krstović, and Joja Plavanjac and Zdravko Narančić.

397 Available in Serbian on the WCPS's website.

398 Milica Stojanović, Serbia's New War Crimes Strategy: Route to Justice or Dead End?, *BIRN*, 25 October.

crime proceedings; improvement of the mechanism for determining the fate of missing persons; improvement of cooperation with the International Residual Mechanism for Criminal Tribunals (IRMCT); and improvement of regional and broader international cooperation and other transitional justice mechanisms.

7.3. Reform of Institutions, Vetting and Attitude towards War Crimes

By reforming or building fair and efficient public institutions, institutional reform enables post-conflict and transitional governments to prevent the recurrence of future human rights violations. Vetting members of the public service, particularly in the security and justice sectors, is critical to facilitating this transformation, by removing from office or refraining from recruiting those public employees personally responsible for gross violations of human rights. By striving to address the spectrum of violations in an integrated and interdependent manner, transitional justice can contribute to achieving the broader objectives of prevention of further conflict, peacebuilding and reconciliation.[399]

7.3.1. Historical Revisionism of the Wars in the 1990s through the Promotion of Convicted War Criminals, Films, TV Shows and Books

The state continued supporting the historical revisionism of the wars in the 1990s and the rehabilitation of convicted war criminals. By building a narrative on Serbia's liberation wars[400] – ascribing the attribute "liberation" to all wars Serbia ever took part in – the state institutions have been ignoring and minimising the facts ascertained by courts and ample evidence of crimes committed in the 1990s.

Former FRY Vice-President Nikola Šainović and Former Army of Yugoslavia (VJ) General Vladimir Lazarević, both convicted for crimes against humanity in Kosovo by the ICTY, appeared in a prime-time show on the public service broadcaster *RTS*. They both denied they were guilty of any crimes in this show on the anniversary of NATO air strikes against the FRY.[401]

In August, Vladimir Lazarević was declared an honorary citizen of the Niš municipality Pantelej.[402] The decision to award him that title was endorsed by the Municipal Assembly, in which the Serbian Progressive Party (SNS) holds the majority.

In late December, the Chief of the General Staff of the Serbian Army awarded a commemorative military medal to former JNA general Vinko Pandurović, whom

399 *Guidance Note of the Secretary General of the UN, United Nations Approach to Transitional Justice*, March 2010.

400 Jelena Đureinović, *Memory Politics of the 1990s Wars in Serbia: Historical Revisionism and Challenges of Memory Activism*, HLC, Belgrade, 2021, p. 24.

401 Milica Stojanović, Serbian Public Broadcaster Airs War Crime Convicts' Denials, *BIRN*, 24 March.

402 "'Glory' Day: Convicted War Criminal Receives Local Honor In Serbia" *RFE*, 5 August.

the ICTY convicted for crimes against humanity and war crimes in Srebrenica in July 1995, including killings, persecution, and forced displacement.[403]

In early September, the Negotin public library "Dositej Novaković" announced the promotion of the book entitled "This is My Land, I'm in Command Here," by Veselin Šljivančanin, found guilty of war crimes in Ovčara by the ICTY. Šljivančanin, a member of the SNS Main Board, was to have presented his book in the children's section of the library, but the event was moved to the library's pavilion in the city park in response to civil society protests.[404] Šljivančanin has presented his books in public institutions across Serbia over 30 times since he was released from prison in 2011.

A book co-authored by Nebojša Pavković, found guilty of crimes against humanity and war crimes in Kosovo, was presented in the Serbian Army Centre on 22 September. The book, "Košare and Paštrik – the Serbian Thermopylae", was published by the "Defence" Media Centre, an institution operating within the Ministry of Defence's PR Department.[405]

On 23 September, the Defence Ministry organised a similar event: it premiered the documentary "Heroic 125th Motorised Brigade" in the Belgrade *Kinoteka*;[406] 1,813 Albanian civilians were killed in its area of responsibility during the war in Kosovo.[407] The trial of 12 former members of the 177th military-territorial squad "Peć" under the command of the 125th Motorised Brigade was still ongoing. The Defence Ministry's PR Department and the Military Film Centre *Zastava film* presented the film as part of its series of six documentaries filmed within the project "War Brigades Awarded the Order of National Hero in 1999".

In November, the MIA and *RTS* announced a new series of documentary-feature films under the title "Kosovo File", which will focus on the "fates of civilians and police in Kosovo in the 1998–2001 period". Police Minister Aleksandar Vulin said that "Serbia had for decades been prohibited from remembering, from recollecting, from writing its history" and that the series would help preserve the truth.[408]

7.3.2. Ethnocentric Commemoration Practices

Memory policies and commemoration practices in Serbia were extremely ethnocentric in the year behind us, i.e. they focused solely on Serbian victims. Only anniversaries of crimes against Serbs were commemorated, while non-Serb victims

403 "During 2021, Serbia has continued with the revisionism of the wars of the 1990s," HLC, press release, 30 December 2021.

404 "Cultural Centers – Places That Cultivate a Culture of War Crime Denial," DWP-Balkan, 8 September.

405 "Predstavljena knjiga Pavkovića i Antića o Košarama i Paštriku, poruka iz zatvora," *N1*, 22 September.

406 "Premiere of "Heroic 125th Motorized Brigade" documentary," Ministry of Defence press release, 23 September.

407 "Dossier: 125th Motorized Brigade of the Yugoslav Army," HLC, Belgrade, 2013.

408 "Ministar Vulin: 'Dosije Kosovo' sistematičan, dokumentovan i na istini i dokazima zasnovan serijal o istini," MIA press release, 15 November.

were downplayed (through comparisons with Serb victims), denied (e.g. the number of people killed in Srebrenica), or not discussed (e.g. Albanian victims, whose remains have been found in mass graves in Serbia).

One of the official commemorations in Serbia was Remembrance Day devoted to the victims of the 1995 Storm campaign in Croatia. The central state event was held on 4 August in the refugee settlement Busije in Batajnica, and it was directed by Dragoslav Bokan, the commander of the paramilitary group "White Eagles" in the 1990s. In his speech, Serbian President Aleksandar Vučić said he would "not apologise to those who killed tens and hundreds of thousands of Serbs" and warned critics of wartime commanders that he would not let "anyone in Serbia trample on those who safeguarded and protected Serbia as well, who protected Serbian first and last names, more than anyone else."[409]

In September, Vučić, the Serbian Orthodox Church Patriarch Porfirije and BiH Presidency Member Milorad Dodik discussed the construction of a "pan-Serbian shrine" in Donja Gradina (BiH) – a memorial centre devoted to all Serb victims of all wars.[410] This is yet another example of a memory policy nurtured by the Serbian institutions, focusing exclusively on crimes against Serbs and Serb victims and attempting to establish continuity with their plight in WWII and the 1990s wars.

7.3.3. Final Judgment against Ratko Mladić

The International Residual Mechanism for Criminal Tribunals (IRMCT) on 8 June upheld the judgment convicting Bosnian Serb Army Commander Ratko Mladić of genocide, crimes against humanity and war crimes. The judgment prompted Serbian President Aleksandar Vučić[411] and Prime Minister Ana Brnabić[412] to say that this was a difficult situation for the Serbian people. Minister of Internal Affairs Aleksandar Vulin said that the judgment against Mladić was not "a judgment but revenge".[413] His statement is another illustration of the topmost state officials' denial of genocide and other crimes committed by Serbs.

7.3.4. Mural of Ratko Mladić and Prohibition of Its Removal

Mladić's portrait was painted on a façade of a building in the heart of Belgrade in July. This is just one of the scores of graffiti and murals of Ratko Mladić across Serbia. The one in Njegoševa Street was scrawled over a number of times during the summer, but was fixed every time. The Youth Initiative for Human Rights scheduled its removal for 9 September but the MIA prohibited the event, under the

409 "President Vučić: There will be no more "Storms," that is the pledge we have made," Ministry of Defence press release, 4 August.

410 "Vučić: Gradimo memorijal u Republici Srpskoj za srpske žrtve zločina," *RFE*, 10 September.

411 "Presudu Mladiću Srbija dočekuje uz dominantno negiranje genocida," *RFE*, 7 June.

412 "Vučić to UN SC: Don't humiliate Serbia; we follow our laws," *N1*, 8 June.

413 "Vulin: Doživotni zatvor Mladiću je osveta, a ne presuda", *RFE*, 8 June.

excuse that it would disrupt public law and order. The police minister qualified the attempt to remove the mural as "hypocritical, nefarious and malicious".[414]

Citizens organised several protests after two activists were arrested for pelting the mural with eggs, voicing their displeasure with the official memory policy and police repression against the activists. By prohibiting the removal of the mural, the state institutions clearly demonstrated what they think of Ratko Mladić and his role in the wars in the 1990s. When the representatives of international institutions criticised the developments, the authorities tried to minimise the problem and present it as a communal one.

Meanwhile the chief prosecutor at the Mechanism for International Criminal Tribunals in The Hague, Serge Brammertz, said in his speech to the UN Security Council in December that murals of Ratko Mladic in Belgrade showed that "there are still those who deny, relativise and minimise the judicially-established facts of genocide, crimes against humanity and war crimes". "How can so many still see Mladic as a hero of the Serbian people, after his conviction to life imprisonment in a court of law based on immense evidence of his crimes?" Brammertz asked.[415]

7.3.5. Simatović and Stanišić convicted of war crimes

On June 30, the UN's Mechanism for International Criminal Tribunals in The Hague passed a first-instance verdict sentencing Jovica Stanišić and Franko Simatović, former heads of the state security service, to 12 years in prison each for supporting and aiding and abetting the killings, deportations and persecutions in Bosanski Šamac municipality in Bosnia and Herzegovina in the spring of 1992.[416] This is the second first-instance verdict against Stanišić and Simatović, which is pronounced after the retrial, because the first one, which acquitted them of all charges, was revoked upon the prosecutor's appeal. Both Stanišić and Simatović and the Prosecution appealed the judgment.

7.4. State's Attitude towards the Victims – Reparation

Reparation programmes serve to rectify the injustice committed against victims of large-scale human rights violations. Reparations, which take the form of material and symbolic reparations, comprise measures and mechanisms aimed at alleviating the consequences of violence, acknowledging the victims' suffering, respecting their dignity and assisting their reintegration into society.[417] Serbia's obligation to

414 "Ministar Vulin: Ne sakrivajte se iza antifašizma," MIA, 5 November.

415 Milica Stojanović, "Serbia: War Criminals Convicted in The Hague, Glorified in Belgrade," *BIRN*, 30 December.

416 "Stanišiću i Simatoviću po 12 godina zatvora", *Al Jazeera*, 30 June.

417 Administrative reparations in Serbia – an analysis of the existing legal framework, HLC, Belgrade, 2013.

provide reparation to all victims of human rights violations emanates from the international human rights conventions it has ratified. However, the exercise of this right still falls far short of European standards.[418]

7.4.1. Administrative Reparations

Until the adoption of the 2020 Act on Rights of Veterans, War-Disabled Veterans and Civilians and Their Family Members (hereinafter: the 2020 Act), the administrative procedure for recognising the status of war-disabled civilians and their family members and civilian victims of war was governed by the Act on the Rights of War-Disabled Civilians passed back in 1996 during the rule of Slobodan Milošević (hereinafter: the 1996 Act). Although the procedure is one of the three mechanisms[419] for exercising the right to reparation in Serbia, the treatment of the civilian victims of war has remained unchanged since the Milošević era. The HLC has for years been warning that the legal framework does not respond to the victims' actual needs and that the 1996 Act enabled only slightly over 1,200 people to acquire the status of civilian victim of war in Serbia.[420]

The Ministry of Labour, Employment and Veteran and Social Issues formed a working group in 2018 to draft a new law on the protection of army veterans, army veterans disabled in war and peacetime, civilians disabled in war and civilian victims of war. This gave rise to hopes that victims of the crimes in the Storm Campaign, Sjeverin and Štrpci and the victims of sexual and other forms of violence would acquire the status of civilian victims of war. The Ministry, however, conducted a non-transparent consultation process, resulting in the development of a preliminary draft that retained the discriminatory provisions of the 1996 Act and left civilians disabled in war and civilian victims of war at a disadvantage compared to the disabled army veterans. With a view to improving the text of the preliminary draft, the HLC forwarded to the Ministry its detailed comments on the Preliminary Draft,[421] and took part in the public debate on it in Belgrade, at which it alerted that the provisions governing the status of civilians disabled in war and civilian victims of war were in contravention of the Serbian Constitution and Serbia's obligation to guarantee human rights and freedoms which it assumed when it acceded to the European Convention on Human Rights.

Notwithstanding, the parliament on 29 February 2020 adopted the Act with all the discriminatory provisions HLC had alerted to. Its implementation in practice has

418 Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards, HLC, Belgrade, 2016.

419 The other two mechanisms include: compensation lawsuits against the state and damage claims in criminal proceedings.

420 The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war, HLC, Belgrade, 2017.

421 Comments of the Humanitarian Law Center on the Draft Law on the Protection of Veterans and Civilian Invalids of War prepared by the Ministry of Labour, Employment and Veteran and Social Affairs, HLC, January 2020.

virtually precluded most of the victims of human rights violations in the 1990s from exercising this right by applying the administrative mechanism. HLC data show that the new law has disenfranchised at least 15,000 civilian victims of war and their families. The following victims will be unable to exercise their right to the status of civilian disabled in war: 1) victims who have not suffered a physical disability of at least 50%; 2) victims of sexual violence; 3) victims of torture and inhuman treatment; 4) refugees from Croatia and BiH forcibly mobilised by the Serbian MIA; Bosniaks illegally detained in Sandžak during the conflicts in BiH, Bosniaks killed and forcibly expelled from border villages in the Priboj municipality and others whose rights were violated by troops Serbia considers friendly – notably, the Serbian MIA, the Army of Yugoslavia and the Bosnian Serb Army; and, 5) victims who did not sustain their injuries in Serbia – e.g. Sjeverin and Štrpci abduction and murder victims, refugees from Croatia who entered Serbia after the Lightning and Storm campaigns.

The fact that Serbia did not improve the administrative mechanism of reparation for civilian victims of war and failed to bring it into compliance with ratified international treaties[422] shows that it still lacks political will and readiness to face the legacy of mass crimes. The dissatisfaction of individuals and associations of civilian victims of war conveys the unanimous message to Serbian institutions that they feel like second-rate citizens, because the 2020 Act improves the status of veterans and disabled veterans whilst totally ignoring the civilian victims of war. The latter evidently still face numerous difficulties accessing justice and their rights; most of them will continue to since the 2020 Act has not regulated their status.

7.4.2. Judicial Reparations

The judicial reparation mechanism involves lawsuits filed for the compensation of pecuniary and non-pecuniary damages. The Serbian Constitution, ratified international human rights conventions and the Obligations Act form the legal framework for claiming damages from the Republic of Serbia. The years-long problems arising in these proceedings are primarily reflected in the narrow interpretation of the provisions on the statute of limitations, overly long proceedings and the courts' awards of extremely low amounts of compensation.

7.4.2.1. Judgments in Compensation Cases – "Ovčara" Cases

Three final judgments in compensation cases filed by the families of people killed on the "Ovčara" farm were delivered in 2021.

All the proceedings were based on the final judgment of conviction delivered by the Belgrade District Court's War Crimes Department in case K.V. 4/2006 of 12

422 The European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the European Convention on the Compensation of Victims of Violent Crimes.

March 2009, finding Miroljub Vujović, Stanko Vujanović, Milan Lančužanin, Jovica Perić, Ivan Atanasijević, Milan Vojnović, Predrag Milojević, Goran Mugoša, Đorđe Šošić, Miroslav Đanković, Predrag Dragović, Nada Kalaba and Saša Radak guilty of war crimes against prisoners of war under Article 144 of the FRY Criminal Code in conjunction with Article 22 of the FRY Criminal Code. Immediately after seizing Vukovar, on 20/21 November 1991, JNA troops took the wounded and ill civilians and members of the Croatian Armed Forces from the Vukovar hospital to hangars on the Ovčara farm. Members of the Vukovar Territorial Defence and the "Leva Supoderica" unit (both were part of the then JNA) killed, injured and inhumanely treated the POWs and civilians. They killed at least 200 people (193 of whom were listed in the judgment).

The Belgrade First Basic Court delivered a total of three judgments that were upheld by the Belgrade Appellate Court in 2021 and awarded the family members of the killed people damages ranging from 700 to 900 thousand RSD. Although the awarded sums are much too low given the severity of the crime (and are contested in constitutional appeals filed with the Constitutional Court), the fact is that the domestic courts acknowledged the link between the Territorial Defence and the JNA, and ordered the Serbian Defence Ministry to pay the damages.

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, which reads as follows:

> All are equal before the Constitution and law.
>
> Everyone shall have the right to equal legal protection, without discrimination.
>
> 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 Act 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, gender identity, sexual orientation, gender characteristics, income level, 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.

Article 5 of the Act recognises the following forms of discrimination: direct and indirect discrimination, violation of the principle of equal rights and obligations, unfair treatment of people seeking or intending to seek protection from discrimination or providing or intending to provide proof of discrimination, conspiracy to commit discrimination, hate speech, harassment, degrading treatment, sexual and gender-based harassment, segregation, and incitement to discrimination.

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.

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. The Equality Commissioner is elected to a five-year term in office and may be re-elected once. The Equality Commissioner is assisted in performing his duties by a professional department.

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.

Under Article 35 of the Anti-Discrimination Act, the Equality Commissioner shall forward the complaint to the person against which it has been submitted within 15 days from the day of receipt. 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 (Art. 39).

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 (Art. 41). In the event the plaintiff satisfies the court that the defendant committed the act of discrimination, the latter bears 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 (Art. 45(2)).

Legal and natural persons found in violation of the prohibition of discrimination may be found guilty of a misdemeanour and fined.

1.1.1.2. 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. The entire process was characterised by disrespect of statutory provisions on the development and adoption of preliminary drafts of laws, provoking the protest of CSOs.[1] The state relaunched the amendment process in late 2020.

1 More in the *2020 Report*, IV.1.1.1.2.

In late May, the Serbian parliament adopted the amendments to the Anti-Discrimination Act, the first since it was adopted in 2009. The adoption of the amendments was preceded by a public debate and a social dialogue staged by the Ministry for Human and Minority Rights and Social Dialogue in March 2021, whereupon the Ministry finalised the amendments. The amendments were drafted by a Working Group the Ministry formed in February. CSO representatives took part in its work.[2] The Equality Commissioner[3] and the Protector of Citizens[4] issued their opinions on the draft amendments.

CSOs criticised the legislative process. They complained that the Ministry for Human and Minority Rights and Social Dialogue formulated provisions deviating from the legal standards of the Council of Europe and, in particular, of the ECtHR and the European Commission against Racism and Intolerance (ECRI), without justification and in contravention of CSOs' recommendations. They also complained that the amendments deviated from EU standards on the prohibition of discrimination in the field of labour and employment. They stated that some provisions were not in line with other systemic laws, such as the General Administrative Procedure Act and the Personal Data Protection Act. These deficiencies were not eliminated from the Draft Act Amending the Anti-Discrimination Act the Government endorsed on 22 April 2021. The CSOs thus appealed to the MPs to submit amendments to the Draft Act and eliminate the shortcomings.[5]

1.1.1.3. Novelties in the Anti-Discrimination Act

Although it contains an open list of protected personal characteristics, the Anti-Discrimination Act now also explicitly prohibits discrimination also on grounds of gender, sexual characteristics and income level. The introduction of sexual characteristics in the law is the first legal recognition of intersex persons in Serbian law.[6]

In addition to the existing forms of discrimination, the Act now also prohibits: sexual and gender harassment, incitement to discrimination and segregation. The definition of indirect discrimination has been amended in line with EU law.

Sexual harassment is defined as any unwanted verbal, non-verbal or physical conduct with the purpose or effect of violating an individual's dignity or personal identity, causing fear or creating an intimidating, hostile, degrading, humiliating or offensive environment.[7]

2 The Ministry's ruling No. 011-00–00002/2021-01 on the establishment of the Working Group of 3 February is available in Serbian on its website.

3 Opinion No. 011-00–9/2021-02 is available in Serbian on the Equality Commissioner's website.

4 Opinion Ref. No. 9944 is available in Serbian on the website of the Protector of Citizens.

5 "Zahtev za uklanjanje nedostataka antidiskriminacionih zakona," Geten, 27 April.

6 More in the section IV.2.

7 Venice Commission in its Opinion on the proposed amendments to the Law on the Prohibition of Discrimination of Serbia said taht The Draft Law definition of sexual harassment is insufficient because it does not specify that the described "unwanted conduct" must be "of a sexual nature".

Segregation is defined as any act by which a natural or legal person separates other individuals or a group of individuals on account of their personal characteristics without an objective and reasonable justification. It is considered a grave form of discrimination. Age-based discrimination is also considered a grave form of discrimination. Discrimination on grounds of sexual orientation also constitutes a grave form of discrimination (the derogatory term 'seksualno opredeljenje' has been replaced by the term 'seksualna orijentacija'). Discrimination on two or more personal grounds, as a grave form of discrimination, is now divided into multiple and intersectional discrimination based on whether or not the effects of individual personal characteristics can be distinguished.

The Anti-Discrimination Act now also obligates employers to take measures for achieving equality in cases determined by law. It also obligates public authorities drafting regulations and public policies of relevance to the realisation of the rights of socio-economically disadvantaged individuals or groups of individuals to conduct risk assessments of the regulations or policies on the principle of equality.

The adopted amendments clearly define discrimination on grounds of sex, gender, gender identity, sex change, conforming sex to gender identity, pregnancy, maternity leave and child care leave. Discrimination exists also if treatment is in contravention of the principle of gender equality. Discrimination against children is now also prohibited on grounds of disability, sexual orientation, gender identity, sexual characteristics, and ethnicity or national affiliation. The law also addresses discrimination in housing. Such discrimination occurs in the event an individual or group of individuals are denied or impeded access to housing support programmes, denied their housing-related rights, required to fulfil requirements to access housing support programmes that are not imposed on other individuals or groups of individuals, or in the event other individuals or groups of individuals are given precedence in accessing housing support programmes without justification.

The Anti-Discrimination Act now entitles the National Assembly to initiate the procedure for the election of the new Equality Commissioner three months before the expiry of the term in office of the incumbent. The incumbent shall remain in office until the new Equality Commissioner is elected. The Equality Commissioner shall designate the Assistant Commissioner who will stand in for him or her in case of absence or inability to discharge his or her duties. These provisions were included to avoid the problems that arose in 2020, when the work of the Equality Commissioner's office was blocked for several months.[8]

The Anti-Discrimination Act entitles human rights associations to file a complaint with the Equality Commissioner on behalf of a group of individuals whose right has been violated without their individual consent, provided that the right of an indeterminate number of members of a group sharing a personal characteristic has been violated. The Act now also entitles inspectorates to file complaints on behalf of individuals whose right has been violated with their consent, in accordance

8 More in the *2020 Report*, III.5.2.

with the law governing inspection oversight. The Act now specifies that each party is entitled to use data in civil and administrative registers to prove facts in respect of which it bears the burden of proof.

Furthermore, the Act elaborates when the Equality Commissioner shall not act on a complaint, the Commissioner's discontinuation of the complaint review in the event the person complaint against eliminated the consequences of the treatment that occasioned the complaint provided that the complainant concurs that the consequences have been eliminated.

The Equality Commissioner is now entitled to propose the implementation of a reconciliation procedure free of charge throughout the complaint review procedure preceding the adoption of an opinion. The review of the complaint shall be discontinued in the event the reconciliation is successful or continued in the event it fails.

A major novelty of the Act is the Article that provides for the establishment of a register of all the Equality Commissioner's cases; the register will include anonymised final judgments and decisions on discrimination and violations of the principle of equality that the courts will forward to the Commissioner. The register is expected to facilitate adequate monitoring of the situation in the anti-discrimination field. A by-law on the register and submission of the relevant records to the Equality Commissioner is to be adopted within six months from the day the amendments enter into force.

1.1.2. Other Laws

A number of 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. The 2006 Act on Prevention of Discrimination against Persons with Disabilities comprehensively regulates the prohibition of discrimination against persons with disabilities.

The following laws also prohibit discrimination in their respective fields: the Family Act, the Sports Act, the Protector of Citizens Act, the Constitutional Court Act, the Official Use of Scripts and Languages Act, and the Health Care Act.

The following laws in the field of media and information include provisions prohibiting discrimination: the Public Information and Media Act, the Public Media Services Act, and the Free Access to Information of Public Importance Act.

The following labour and employment related laws include provisions prohibiting discrimination: the Labour Act, the Peaceful Settlement of Labour Disputes Act, the Act on the Professional Rehabilitation and Employment of Persons with Disabilities and the Employment and Unemployment Insurance Act.

Discrimination is also prohibited in education, specifically by the Primary Education Act, the Higher Education Act and the Textbook Act.

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, the Juvenile Justice Act and the Penal Sanctions Enforcement Act. 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).

1.2. Adoption of Anti-Discrimination Strategy Still Pending

The national 2013–2018 Anti-Discrimination Strategy (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. 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 three 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 Cases

First Final Judgment for Discrimination on Grounds of Presumed Sexual Orientation

On 23 August 2021, the Kragujevac Appellate Court delivered a judgment rejecting the appeal by the defendants, the "Ras" restaurant and Jasmin Šemsović from Novi Pazar, and upholding the judgment of the Novi Pazar Higher Court of March 2021 in a case brought by 11 activists and the Tutin-based association Impuls. The Appellate Court found the defendants guilty of discrimination, harassment and degrading treatment violating the plaintiffs' dignity and creating fear, hostility and a humiliating and offensive environment on grounds of the plaintiffs' presumed LGBT sexual orientation. The defendants cancelled the dinner the booked by the plaintiffs

and did not let them enter the restaurant. The Appellate Court prohibited the defendants from committing discrimination again. The Novi Pazar Higher Court earlier found that the Ras restaurant in Pazarište i.e. the company "Code Trade JNJ" and Jasmin Šemsović were guilty on four counts of grave discrimination, because they had harassed the plaintiffs and humiliated them and discriminated against them by denying them public services on account of their sex and presumed sexual orientation. The Kragujevac Appellate Court's decision confirmed that this was indeed the case. The Appellate Court obligated the defendants to cease and desist from discrimination hereinafter and to cover the costs of proceedings.[9]

(In)Ability to Take the College Enrolment Exam in One's Native Language Still without Clear Answer of Relevant Courts

In mid-2021, the Supreme Court of Cassation delivered a judgment quashing the first– and second-instance courts' decisions on discrimination against persons belonging to a national minority. The case concerned a dispute between the Alliance of [Ethnic] Hungarian Pupils of Vojvodina and the Novi Sad Law School. The lower courts had found that the Law School had discriminated against ethnic Hungarian pupils because it did not allow them to take the enrolment exam in their native language. The Alliance claimed that the Law School was under the obligation to allow the pupils to take the enrolment exam in their native language, referring to the Vojvodina Assembly's decision that pupils belonging to national minorities were entitled to take college enrolment exams in the minority languages officially in use in Vojvodina. The courts found in favour of the plaintiffs until 2018, when the Novi Sad Law School adopted a rulebook on enrolment exams, under which minority pupils were entitled to take the enrolment exam in their native languages but they also had to take an oral and written Serbian language exam at the B2 proficiency level before a commission appointed by the Law School's Dean. At the same time, minority pupils who took the test in Serbian did not need to take the Serbian language exam; they and foreign applicants only had to submit a B2 Serbian proficiency certificate. The Supreme Court of Cassation referred to some of the lower courts' conclusions – that the language proficiency test was not discriminatory because proficiency in Serbian was prerequisite for following class. However, the way in which the candidates' proficiency in Serbian was established was not the same for everyone and it remained unknown how the candidates' proficiency level was actually ascertained. The Supreme Court of Cassation therefore ordered the lower courts to establish: whether the oral and written Serbian B2 proficiency exam requirement actually deterred candidates from applying to the Law School; how exactly proficiency in Serbian of persons belonging to national minorities was checked; and why foreign nationals submitted proof of proficiency in Serbian. These issues will be discussed in a retrial before the Higher Court.[10]

9 More in Impuls' press release of 19 October, available on its website.

10 "Kasacioni sud odlučio: Spor o diskriminaciji mađarskih učenika na Pravnom fakultetu ide ispočetka," *021*, 9 June.

First-Instance Courts Reject Two Lawsuits Concerning Discrimination on Grounds of Sexual Orientation

Serbian first-instance courts delivered two judgments dismissing lawsuits filed by the organisation *Da se zna!* concerning press articles with discriminatory content. This NGO sued the author of the article Vladimir Dimitrijević and editor Milovan Brkić for discrimination on grounds of sexual orientation. The court that ruled on the claim against Dimitrijević said that the impugned article had been published on his *private website*, i.e. that he had not been imposing a particular view on a specific or unspecific group. It held that such imposition would have entailed dissemination of leaflets, holding speech at a rally, et al. Therefore, the court concluded that the publication of the articles on *a private website* could not have resulted in consequences that would justify restricting the defendant's rights, and that Vladimir Dimitrijević actually had no *intention* of imposing his views on others. The court said that it had not explored whether the impugned texts were discriminatory or Dimitrijević's views in detail, given that it considered that lack of intention constituted sufficient grounds for its rejection of the claim.[11] As per Milovan Brkić, the first-instance court found that the author of the impugned article, rather than the editor of the outlet that published it, could have been sued. In its view, Brkić, as the responsible editor, could be held liable for the publication of an article inciting discrimination, hate or violence against an individual or a group of individuals because of their personal characteristic, specifically sexual orientation, albeit under the Public Information and Media Act (PIMA). Given that, in this case, the lawsuit had been filed to claim protection from discrimination under the Anti-Discrimination Act, not the PIMA, the court found that Milovan Brkić, in his capacity of responsible editor, could not be sued and could thus not be held liable for discrimination in the impugned article. [12] *Da se zna!* appealed the two judgments.

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

11 Miloš Kovačević, Nikola Planojević, "Grasp the Truth Based on Facts 4: Report on hate-motivated incidents against LGBT + people in Serbia from for the Period of 2017–2020," *Da se zna!*, Belgrade, October 2021, pp. 91–110.

12 *Ibid*., pp. 112–123.

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.[13] The Anti-Discrimination Act prohibits discrimination on grounds of sexual orientation (in Art. 2), 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.[14]

Amendments to the Anti-Discrimination Act now explicitly prohibit discrimination on grounds of sex, gender and gender identity. Article 20(2) prohibits denial of rights or overt or covert allowance of privileges on grounds of sex, gender, gender identity, sex change, pregnancy, maternity or child care leave.

Discrimination in education is prohibited under a number of national laws, including the Anti-Discrimination Act (Art. 19), the Primary Education Act (Art. 9), the Higher Education Act (Art. 4), the Textbook Act (Art. 13), etc. The 2016 Rulebook on Detailed Criteria for Recognising Forms of Discrimination in Education Institutions by Staff, Children, Pupils or Third Parties 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 2021 although, after their September 2016 joint session, attended also by representatives of LGBTI organisations, the parliamentary Human and Minority Rights and Gender Equality and EU Accession Committees called on the parliament to enact an Anti-Homophobia Declaration 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.

13 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.

14 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.

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 slipped two places over 2020, ranking 28th on the ILGA-Europe Rainbow Map as regards respect for the human rights and full equality of the LGBTI population.

In its Serbia 2021 Report, the European Commission said that difficulties remained, especially in smaller municipalities, in implementing the amendments of the law on birth registry, which enable data on gender change to be entered into the registry and that implementation of hate crime legislation, including on grounds of sexual orientation, remained inadequate. The EC noted that centralised official data on hate crimes broken down by bias motivation was still lacking and that, due to lack of trust in institutions, cases of violence and discrimination towards LGBTIQ persons were often unreported. It emphasised that transgender persons were particularly vulnerable to violence, abuse and discrimination and that intersex persons remained invisible both socially and legally.[15]

The 2020–2023 Strategy for the Prevention and Protection of Children from Violence 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.[16]

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). The Government should also adopt a new Anti-Discrimination Strategy without delay.

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.

On International Day against Homophobia, Transphobia and Biphobia, the Equality Commissioner issued a press release saying that LGBT persons still faced problems in exercising their rights, social exclusion, disparagement and even violence, wherefore activities aimed at improving their status should continue. She un-

15 *Serbia 2021 Report,* p. 39.

16 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.

derlined that our LGBTI fellow citizens were equal citizens of Serbia and must not be discriminated against because of their gender identity or sexual orientation. She observed that they must be ensured equitable and dignified realisation of all their human rights, without fear of condemnation or violence, and that they should be empowered to report discrimination and file complaints with her office.[17]

In his press release on Global Pride Day, the Protector of Citizens said that visible headway has been made in legally improving the status of LGBTI persons in Serbia, but that the law should further be amended to improve the quality of life and realisation of rights of this vulnerable group of the population. He said the institution he was heading has for years been initiating better systemic protection of LGBTI persons, who still encountered discrimination, abuse and violence, and that the pandemic revealed the health and economic challenges faced by persons of a different sexual orientation and gender identity. The Protector of Citizens called for amending the Legal Aid Act to include LGBTI persons in the category of vulnerable beneficiaries, and for changing the Textbook Act, which should explicitly prohibit content reproducing bias and stereotypes. He recalled that he had submitted his opinion on the preliminary draft law on same-sex unions to the Ministry for Human and Minority Rights and Social Dialogue in April 2021 and that he called for the legal regulation of the consequences of sex change and gender identity as soon as possible. He also said that he has for quite some time now been calling for amendments to the Criminal Code, which should treat crimes motivated by sexual orientation as acts of racism and intolerance.[18]

The civic association *Da se zna*! published its 2020 annual report on hate crimes against LGBTI persons in November. It documented at least 52 offences motivated by bias against LGBTI persons in 2020, 17% less than in 2019. The Report said that the year-on-year increase in the percentage of incidents which took place on the Internet and the decrease of incidents in open public spaces can be attributed to the introduction of COVID-19 prevention measures. It said that crimes motivated by hate still accounted for most documented and reported incidents, while discrimination happened to a lesser extent or was recognised as an issue worthy of complaint to a lesser extent. At least 60% of the incidents remained invisible to the authorities. The Report also registered a decrease in the number of reports submitted to the police and prosecutors and in the number of complaints filed with the Equality Commissioner, mostly due to lack of trust in the institutions. The severity of hate crimes also decreased in 2020. Physical violence was committed in 11 (21%) of the incidents, the lowest registered share of physical violence in the overall sum of incidents to date. The share of incidents ending in physical injuries also fell in 2020 over 2019.[19]

17 Statement on the Occasion of the International Day against Homophobia and Transphobia, Equality Commissioner, 17 May.

18 Vidljivi pomaci u zaštiti prava LGBTI osoba, Protector of Citizens press release, 27 June.

19 Miloš Kovačević, Nikola Planojević, "Grasp the Truth Based on Facts 4: Report on hate-motivated incidents against LGBT + people in Serbia from for the Period of 2017–2020," *Da se zna!*, Belgrade, October 2021.

Results of a survey on the degree of social integration of the LGBTI population in Serbia was presented in June 2021. The survey, implemented by Geten, showed that over 90% of LGBTI respondents said that they had experienced discrimination, various kinds of verbal abuse and threats and that they had to hide their sexual orientation and gender identity. The survey also showed improvement in the general population's attitudes towards LGBTI persons: over 70% of the respondents agree that LGBTI persons must be protected from discrimination and violence. The survey, conducted from 1 February to 30 April, involved face-to-face interviews and an online questionnaire and covered a total of 1,151 respondents – 687 adult respondents from the so-called general population (249 men and 438 women) and 464 adult individuals who self-identified as LGBTI. The survey showed that of the respondents from the general population who had negative attitudes towards LGBTI persons: 79% disagreed with the statement that Western countries were lobbying for LGBTI rights in order to diminish Serbia's birth rate; 75% disagreed with the statement that LGBTI propaganda should be prohibited like in Russian schools; 71% disagreed with the statement that LGBTI persons contributed to Serbia's falling birth rate; 66% disagreed with the statement that Pride Parades were a breeding ground for immorality: and, 65.5% disagreed that granting equal rights to LGBTI persons was contrary to Serbian tradition, religion and culture.[20]

The National Youth Council of Serbia (KOMS) published five surveys on the situation of LGBTI youth, specifically on the visibility and acceptance of LGBTI youth in school and the community, violence and peer violence against LGBTI youth, and needs for psychological support. The surveys were conducted in the following cities: Sombor, Čačak, Vranje, Vrnjačka Banja and Kraljevo.[21]

In November, *Da se zna!* reported that the Equality Commissioner found that former deputy leader Dveri Jugoslav Kiprijanović had discriminated against the LGBTI community, when he qualified same-sex unions as unnatural, immoral and damned. Kiprijanović went on to say that the intention of the Minister of Human and Minority Rights and Social Dialogue to draft a law on same-sex unions was "the zombisation of Serbian society" and amounted to "the imposition of a totalitarian ideology of homosexuality under the excuse of human rights", and that the adoption of such a law would be a "step deeper into the abyss of equating the natural and the unnatural, the moral and the immoral, the blessed and the damned". The Commissioner concluded that freedom of speech was not limitless, rather, that it was limited by the prohibition of speech insulting and humiliating someone on the basis of their personal characteristics, and that freedom of speech could not serve as an excuse for discrimination. The Commissioner recommended to Kiprijanović to remove the

20 "Predstavljeni rezultati istraživanja Stepen društvene integrisanosti LGBT+ populacije u Srbiji," Geten, 30 June.

21 "Srušimo četiri zida" – istraživanja o položaju LGBT+ mladih, National Youth Council of Serbia, 2021.

impugned article from the website, on pain of a reprimand, and refrain from actions and statements discriminating against individuals on any personal characteristics in the future.[22]

In response to a suggestion of the Protector of Citizens, the Ministry of Health amended the Rulebook on Donation of Reproductive Cells and Embryos, which now allows LGBTI persons to donate them. The Rulebook laid down that individuals "with a homosexual anamnesis over the past five years" could not donate cells and embryos. This provision provoked harsh criticisms of several LGBTI associations in 2019, which claimed that it was in violation of the prohibition of discrimination and the Serbian Constitution and complained both to the Health Minister, and the Equality Commissioner and Protector of Citizens.[23]

Graffiti and drawings of convicted war criminal Ratko Mladić were scrawled on the window of the Belgrade Pride Info Centre in the night of 23/24 December. The vandals crossed out the words on the window Belgrade Pride – EuroPride 2022[24] and wrote "Ratko Mladić – Serbian Hero". Pride Info Centre has been targeted 12 times since it opened. Most of the perpetrators have not been identified, let alone prosecuted.[25]

2.3. Events Organised by the LGBTI Population

The Pride Parade was held in Belgrade on 18 September. The organisers recalled the first Pride Parade, held two decades ago, concluding that the protest element of the event was still the most important one, since it was a protest against violence, hate, all forms of discrimination, Fascism, as well as pressures on LGBTI persons hiding behind their "four walls". The Pride Parade was preceded by Pride Week, which began on 12 September and included 40 events, including theatre and movie shows, panel discussions, conferences, workshops, parties and other art, cultural and educational programmes. The LGBTI community still has the following demands: adoption of a law on same-sex unions; adoption of a law on gender identity and improvement of health services for transpersons; rapid and adequate response to and public condemnation of hate speech and crimes motivated by hate against LGBTI persons by the state authorities and government representatives; adoption of local action plans for the LGBTI community; an apology to all Serbian citizens persecuted in court or otherwise because of their sexual orientation or gender identity before 1994; youth education and trainings on sexual orientation and gender identity.

22 "NVO: Poverenik utvrdio – bivši funkcioner Dveri diskriminisao LGBT," *N1*, 2 November.

23 "Ombudsman: Pripadnicima LGBT zajednice u Srbiji dozvoljeno doniranje polnih ćelija," *Radio Free Europe*, 14 July.

24 Belgrade Pride will host the 2022 EuroPride scheduled for 12–18 September 2022.

25 More in the *2020 Report*, IV.2.2.

The Merlinka film festival was held in Belgrade on 9–12 December. Around 20 feature and short films were shown during the four days. The festival was held in the Novi Sad Cultural Centre on 10–13 December.[26]

2.4. Same-Sex Unions

In early February, the Ministry for Human and Minority Rights and Social Dialogue started work on a law on same-sex unions. The Preliminary Draft was developed after public consultations on the baseline text. A working group formed to prepare the Preliminary Draft included civil society representatives. The Ministry held a public debate on the Preliminary Draft and a so-called social dialogue on it in March.

The baseline text and the Preliminary Draft broadly regulate the legal status of same-sex unions, including family relationships, protection from violence and prohibition of discrimination. The Preliminary Draft governs in detail the establishment and dissolution of same-sex unions and their legal consequences, the same-sex partners' rights and obligations in criminal proceedings and in case of deprivation of liberty, illness and hospital treatment, support of dependent partners and their children. The Preliminary Draft also regulates in detail property relationships of same-sex partners, and their health, social and child protection rights. The scope of rights of married couples is much broader than that of rights granted same-sex partners under the Preliminary Draft.

CSOs criticised the entire process, especially since the authors of the text did not take into account the Model Act on Civil Partnerships.[27] They also alerted to numerous errors in the document, that it failed to govern specific issues of exceptional relevance to the cohabitation of same-sex partners,[28] and to the inadequate application of the Planning System Act.[29] Furthermore, they complained that the CSOs' suggestions on how to improve the text of the law were not fully taken on board during the dialogue with the Ministry for Human and Minority Rights and Social Dialogue.[30] The Preliminary Draft was forwarded for comment to other ministries. It was also commented by the Protector of Citizens,[31] the Equality Commissioner[32] and the Council of Europe.[33]

26 "U Beogradu svečano otvoren 13. Međunarodni festival Merlinka," *Danas*, 9 December.

27 More on the Model Act in the *2020 Report*, IV.2.4.

28 Komentari na polazne osnove za izradu Nacrta zakona o istopolnim zajednicama, LABRIS, 12. februar.

29 "Politika srednjeg prsta 4," *Peščanik*, 16 April.

30 "Politika srednjeg prsta 7," *Peščanik*, 25 February.

31 Mišljenje na Nacrt zakona o istopolnim zajednicama, Ref. No. 9947, 14 April.

32 Mišljenje na Nacrt zakona o istopolnim zajednicama, No. 011-00–10/2021-02, 12 April.

33 Expert Opinion on the Draft Law on Same-Sex Unions of Serbia, Council of Europe, 28 May.

The development of this law was strongly resisted by some members of the public, who claimed that there was no need to adopt a separate law and that the rights of same-sex partners could be governed through amendments of several valid laws.[34] Over 500 members of the academia, intellectuals, journalists, sociologists, artists and public figures soon responded, signing a petition for the adoption of the law on same-sex unions.[35] Some politicians insisted that a referendum on the law be called,[36] although a referendum on the issue would not be in compliance with the Constitution.[37]

Although the entire process was expected to be completed by the end of 2021, the Preliminary Draft Act on Same-Sex Unions was not forwarded to the Government for approval or, consequently, to the parliament for adoption. The standstill is attributed to a statement by the Serbian President, who said he could not promulgate a law governing same-sex unions because such legislation would be in contravention of the Constitution.[38] The Constitution defines marriage as a union between a man and a woman, but the Preliminary Draft Act on Same-Sex Unions does not govern marriage at all.

Minister of Human and Minority Rights and Social Dialogue Gordana Čomić said in late November that her Ministry had completed its work on the Preliminary Draft and that it was now up to the Government to decide when it would endorse it. In her presentation of the Ministry's work before the parliamentary Human and Minority Rights Committee, Čomić said that all debates on the Preliminary Draft had been completed and that the CoE experts' opinion had been incorporated in the text.[39]

2.5. Status of Transpersons

The Act Amending the Civil Registers Act introduced provisions facilitating gender confirmation.[40] Article 41 of the Act now lays down that, upon the registra-

34 "Apel 212 javnih ličnosti protiv usvajanja zakona o istopolnim zajednicama," *Politika*, 19 March.

35 "Više od 500 naučnika i javnih ličnosti potpisalo peticiju za usvajanje zakona o istopolnim zajednicama," *Danas*, 20 March.

36 "Obradović: Referendum bi bio demokratski način rešavanja pitanja istopolnih zajednica," *Danas*, 7 March.

37 Art. 108(2) of the Constitution reads as follows: "The subject of the referendum may not include duties deriving from international contracts, laws pertaining to human and minority rights and freedoms, fiscal and other financial laws, the budget and financial statement, introduction of the state of emergency and amnesty, as well as issues pertaining to election competences of the National Assembly."

38 The President said that Article 62 of the Constitution set out that marriage shall be entered into based on the free consent of man and woman before state authorities and that he would violate the Constitution if he promulgated this law. He did not rule out the possibility of including in the pending amendments to the Constitution, which now deal only with the judiciary, provisions enabling "such minority communities to realise their rights" but that the Constitution was "for now clear" on the issue.

39 "Čomić: Nacrt zakona o istopolnim zajednicama spreman," *Politika,* 19 November.

40 Registration of sex change in the birth register is prerequisite for exercising a number of other rights.

tion 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 Governments and Health adopted the Rulebook on Sex Change Certificates and Their Issuance by Health Institutions (hereinafter: Rulebook).

Sex change certificates are defined as public documents.[41] 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 (Art. 3(1(1 and 2)). 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 (Art. 8).

It may be concluded that the Act and Rulebook have facilitated the sex change registration procedure. Their provisions, however, do not fully address the needs of the population they regard. Namely, sex change registration is conditioned by a one-year hormone therapy or sex change surgery, not the feelings of the individuals at issue, which puts at a disadvantage those whose sex differs from the one assigned at birth and who cannot afford hormone therapy or surgery.

In September, the Equality Commissioner issued recommendations to civil register services on the rights of transpersons laid down in the 2018 Rulebook. She reminded city/municipal administrations that the law entitled not only individuals who have undergone a sex change operation, but also individuals with certificates that they have undergone hormone therapy for at least a year as indicated by medical specialists in endocrinology and psychiatry, to change their sex designation in the birth register. Furthermore, she instructed the administrations to permit transgender and transsexual persons to change their name to conform it their sex or gender identity without setting any conditions or restrictions.[42]

41 Under Art. 118(2) General Administrative Procedure Act, public documents prove what they ascertain or confirm.

42 Recommendation of measures to civil registries, Equality Commissioner, 21 September.

The Serbian legal system does not recognise transpersons. The health system recognises only transgender, which it categorises as a mental disorder.[43] During the 72nd World Health Assembly (WHA) held in Geneva in 2019, the World Health Organization officially adopted the International Classification of Diseases – 11th revision (ICD-11). In the ICD-11, trans-related categories have been removed from the Chapter on Mental and Behavioral Disorders, which means that trans identities are now formally de-psycho-pathologised in the ICD-11.[44]

In July, the Protector of Citizens requested of the National Health Insurance Fund (NHIF) to ensure that the list of medications covered by health insurance include drugs raising oestrogen levels of transsexual women, as well as of post-menopausal women and women who have undergone hysterectomy. He recommended that the NHIF Central Commission uphold the suggestion of the national Transgender Expert Commission to include Estradiol vials and Estradiol Valerate pills in the list and that the NHIF Management Board adopt the amended list, on the recommendation of the Ombudsman.[45]

The civil sector prepared two texts, a Model Act on the Recognition of the Legal Consequences of Sex Change and Determination of Transsexualism[46] in 2012 and the Model Gender Identity Act[47] in 2016.

Transgender Day of Remembrance was marked in Belgrade on 20 November. The organisations Geten and Belgrade Parade and their supporters bore banners, flags and lit candles, alerting to the large number of transgender persons killed all over the world over the past year. They also protested against the discrimination and violence transgender persons in Serbia faced on a daily basis. Transpersons in Serbia are still experiencing discrimination, violence and transphobic violence, including verbal and physical abuse, as well as institutional violence. They have been targets of orchestrated online campaigns mounted by groups denying they exist, spreading lies about them and creating a lynch atmosphere.[48]

2.6. 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.[49]

43 "Trans osobe u Srbiji – analiza položaja i predlog pravnog rešenja," Gayten, Belgrade 2015.

44 More on Transgender Europe's website.

45 "Zaštitnik građana tražio od RFZO da se u listu lekova uvrste lekovi za podizanje nivoa estrogena," Geten, 28 July.

46 "Model zakona o priznavanju pravnih posledica promene pola i utvrđivanja transeksualizma Prava trans osoba – od nepostojanja do stvaranja zakonskog okvira," CUPS, 2012.

47 "Trans osobe u Srbiji: analiza položaja i predlog pravnog rešenja," Geten, 2015.

48 "Dan sećanja na žrtve transfobije 2021: Sećamo se!," Geten, 20 November.

49 This is the third HIV/AIDS Strategy adopted by the Serbian Government in 2018. 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.

The legal framework governing care for people living with HIV/AIDS also includes the Healthcare Programme to Protect the Population from Communicable Diseases, 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, which also acts as the Council monitoring the implementation of projects funded from the GFATM donation.[50]

The data of the Serbian Public Health Institute Dr Milan Jovanović Batut show that 4,317 HIV-positive people were registered in Serbia from 1985, when the epidemic broke out, to 20 November 2021. Of them, 2,104 contracted and 1,179 died of AIDS, while another 136 HIV-positive individuals died of diseases or conditions unrelated to HIV.[51]

In its Serbia 2021 Report, the European Commission reiterated that attention should be given to effective, sustainable financing of disease-specific strategies, including the national HIV/AIDS strategy.[52] As per health inequalities, it said that access to healthcare services needed to be improved, inter alia, for people living with HIV.[53]

On World AIDS Day, the Equality Commissioner recalled that people living with HIV/AIDS still faced discrimination, stigmatisation and social distance and that measures should be taken to enable the members of this vulnerable group to live their lives in dignity. She said that she had submitted an initiative to the Justice Ministry to amend the Criminal Code, inter alia, with respect to the crime of HIV transmission, which was introduced in the Criminal Code at the time when little was known about the virus. Given the development of medicine and innovative therapies, she was doubtful whether the transmission of just this contagious disease should be singled out as a separate crime. She suggested that the Criminal Code be amended so that the transmission of HIV alone does not stand out as a separate crime, i.e. to change it so it does not stigmatise only people living with HIV.[54]

2.7. Intersex[55] *Persons*

Intersex persons were recognised by Serbian law for the first time in 2021. The amendments to the Anti-Discrimination Act introduced sexual characteristics

50 The Commission comprises representatives of the relevant ministries, health institutions, 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.

51 "Svetski AIDS dan: Nejednakost, AIDS, pandemije – da stavimo tačku," Batut press release, December 2021.

52 *Serbia 2021 Report,* p. 91.

53 *Ibid.*, p. 93.

54 Communication on the Occasion of the International Day of the Struggle against HIV/AIDS, Equality Commissioner, 1 December.

55 "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

among the protected personal characteristics. This extremely important change may finally mark the beginning of the resolution of numerous problems faced by intersex persons, reflected, above all, in the lack of their legal recognition in regulations crucial for their status and realisation of their rights.

The organisation XY Spectrum especially applauded the amendment of Article 22(2) of the Anti-Discrimination Act, which recognises the sexual characteristics of children among grounds of discrimination. It hopes that the amendments will pave the way for the adoption of adequate subsidiary legislation that will precisely govern the status of intersex newborns, as well as their status as they develop and grow up.[56]

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.[57] 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 back in 2006.[58]

The degree of stigmatisation and auto-stigmatisation of intersex persons in Serbia is high. This problem is particularly evident in rural areas, where awareness of problems faced by intersex persons is extremely low. It is therefore very difficult to obtain data on the number of intersex persons living in Serbia and, due to the small number of activists focusing on the issue, the intersex community is almost totally invisible.[59]

In its 2021 Serbia Report, the European Commission noted that intersex persons remained invisible, both socially and legally.[60]

3. Rights of the Child

3.1. Legislative Framework

By ratifying the Convention on the Rights of the Child (CRC), 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

term used to describe a wide range of natural bodily variations." *Intersex Fact Sheet, Free & Equal*, United Nations for LGBTI Equality.

56 "Napokon vidljivi," XY Spectrum, 27 May.

57 INTERSEKS – ka stvaranju intersekcionalne platforme, Istraživački izveštaj, p. 51, Geten, Belgrade, 2019.

58 Trans Grupa podrške, Geten.

59 *Ibid*.

60 *Serbia 2021 Report*, p. 39.

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, 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. In November 2021, the Ministry for Human and Minority Rights and Social Dialogue hosted a meeting of the Special Working Group charged with developing Serbia's fourth and fifth periodic reports on the implementation of the Convention on the Rights of the Child.[61]

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 Conflict and the Optional Protocol on the sale of children, child prostitution and child pornography. 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.[62]

Under Article 64 of the Serbian Constitution, 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.

In the absence of a comprehensive law on the rights of the child, child rights are governed by a number of regulations, including, notably, the Family Act, the Social Protection Act and the Juvenile Justice Act, which need to be amended substantially. The draft amendments were to have been submitted to the parliament for adoption in 2020. The delay can be largely ascribed to the parliament's chronic paralysis when it comes to reviewing and adopting laws relevant to child rights.

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, is 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 affecting them, the right to ascertain the best interests of the child in matters affecting

61 See the Ministry press release of 26 November on its website.

62 CRC, Concluding observations on the combined second and third periodic reports of Serbia, para. 73.

them. It also prohibits corporal punishment of children.[63] 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...). It also proclaims the right of the child to a healthy environment. The Preliminary Draft provides for the establishment and defines the function and competences of the Protector of the Rights of the Child. Although a public debate on the Preliminary Draft was conducted in 2019 and it was forwarded to the parliamentary Committee on the Rights of the Child, it was apparently withdrawn from the procedure in 2021. 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 at 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.[64]

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 six years now.

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 strategy on the realisation of the rights of the child, and apparently commitment to define and implement measures and activities facilitating the realisation, protection and improvement of the rights of the child. The adoption of a new national action plan for children, which should be a state priority, was still pending at the end of 2021, 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. [65]

Although the 2020–2023 Strategy on the Prevention and Protection of Children from Violence and its 2020–2021 Action Plan have been in place for two years

63 The Preliminary Draft Act on the Rights of the Child and the Protector of the Rights of the Child is available in Serbian on the website of the Ministry of Labour, Employment and Veteran and Social Issues.

64 Concluding Observations on the combined second and third periodic reports of Serbia, para. 7, CRC, 2017.

65 *Ibid*., para. 9.

now,[66] the Working Group for implementing and monitoring the implementation of the Strategy has not been set up yet; nor have the CSOs that should participate in the monitoring been named.[67]

The 2020–2025 National Strategy on the Rights of Victims and Witnesses of Crimes in Criminal Proceedings and its Action Plan were adopted in 2020.[68] The Coordination Body for Supporting Crime Victims and Witnesses was commendably formed on 22 April 2021 to monitor and improve support to victims and witnesses of crimes. The Coordination Body held its first meeting on 3 September 2021, at which it agreed, inter alia, to meet regularly to ensure the successful implementation of the Action Plan activities.

The newly-formed Working Group tasked with drafting amendments to the Family Act met twice, on 12 July and 13 September 2021. It discussed the baseline and said it would work intensively in the upcoming period.[69]

The Working Group charged with drafting amendments to the Social Protection Act held its first meeting on 5 March 2021. It did not meet since.[70]

In April 2021, the Justice Ministry formed a Working Group entrusted with drafting amendments to the Juvenile Justice Act.[71] The Preliminary Draft was forwarded to the European Commission for comment, to establish whether it is in line with international and EU standards.

The adoption of the Gender Equality Act on 20 May 2021 should contribute to equal opportunities for and equal treatment of women and men in various walks of life. The Act also mentions girls and boys as rights bearers.

The parliamentary Committee on the Rights of the Child held six sessions by July 2021, at which it reviewed improvement of valid and adoption of new laws, as well as other issues, such as marking of Parenthood Day.[72]

The Child Rights Council, charged with coordinating Government activities concerning the rights of the child, held its constituent session on 21 July 2021.[73] The Council discussed its tasks and noted some of the main problems children and youth in Serbia faced. Its members emphasised that they would focus on the prohi-

66 The Strategy and Action Plan are available on the website of the Ministry of Labour, Employment and Veteran and Social Issues.

67 CRC-Monitoring-report-July-September-2021, available in Serbian on the Child Rights Centre's website.

68 The Strategy and Action Plan are available on the Justice Ministry's website.

69 Press releases on meetings are available on the website of the Ministry of Family Welfare and Demography.

70 "Sastanak Radne grupe za izradu Nacrta zakona o izmenama i dopunama Zakona o socijalnoj zaštiti," Ministry of Labour, Employment and Veteran and Social Issues, 4 March.

71 Available in Serbian on the Justice Ministry's website.

72 More on the activities of the parliamentary Committee on the Rights of the Child on the National Assembly's website.

73 "Konstituisan Savet za prava deteta, na čelu Ratko Dmitrović," *Nova*, 21 July.

bition of child labour and digital violence. A total of €18,528 have been allocated for the Council's work in the 2020–2022 period.[74] The question remains whether this budget will suffice for ensuring that the Council has sufficient human and technical resources, which is one of the prerequisites for its effective functioning.

3.3. Role of Independent Institutions in the Protection of the Rights of the Child

The Equality Commissioner's second Special Report on Discrimination against Children, [75] prepared in cooperation with UNICEF, was presented to the National Assembly on 9 December. It cannot be clearly concluded from the text of the Anti-Discrimination Act (Art. 35) whether children (i.e. individuals under 18) are entitled to file complaints with the Equality Commissioner. The Report says that 62% (31) of all complaints of age-based discrimination filed with the Equality Commissioner in 2021 concerned discrimination against children. Most of the complaints regarded discrimination in education, in procedures before public authorities and in healthcare. The Equality Commissioner's office accepts complaints filed by children, who fill the complaint form on its website. The Equality Commissioner said in her Report that "nothing has been done" to adopt a National Action Plan for Children and that not even a working group for developing it has been formed.[76] The Report notes that Serbia lacks a "single, comprehensive law on children although the rights of the child are laid down in numerous regulations" and recommends the adoption of a "law on all the rights of the child."[77]

Serbia still lacks an independent institution for the rights of the child, which would be set up and operate in accordance with the Paris Principles and the UN CRC's Comment No. 2.[78] 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 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,

74 More on the website of the Child Rights Council.

75 Poseban izveštaj o diskriminaciji dece, p. 291, available in Serbian on the Equality Commissioner's website.

76 *Ibid*., p. 61.

77 *Ibid.*, p. 23.

78 CRC General Comment No. 2 (2002) The Role of Independent National Human Rights Institutions in the promotion and protection of the rights of the child.

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 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.[79] 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. The Committee on the Rights of the Child also recommended that Serbia establish an independent institution that would be charged with the protection of the rights of the child.[80]

3.4. Selected Topics Concerning the Rights of the Child in Serbia in 2021

On World Children's Day on 20 November 2021, UNICEF published data illustrating the troubling status of children in Serbia: children make up only 17.3% of Serbia's total population; 8.3% of the children live in absolute poverty, and as many as 24.2 % live on the poverty line, while 22.2% of people under 24 are unemployed; 31% of children still have not received all their mandatory vaccines. Today, 61% of children between 3 and 5 years old attend kindergarten. This percentage is significantly lower among children from low income families – just 11%, and for children from Roma communities this comes down to only 7%. Over one half of girls from Roma communities are married before they turn 18, while in the general population this number is 5.5%. As many as 45% of the children are subject to physical methods of discipline, which reflects on their development.[81]

In 2021, children were still exposed to domestic violence, abuse at school, their local community and other areas they lived or spent time in. Digital violence attracted particular attention, while sexual abuse of children was the subject of numerous "scandals" in the public arena. Hardly any psychological support was extended to adolescents. Poverty impinged on the lives of children from the most disadvantaged communities, above all Roma children, children with disabilities, migrant children, children whose parents were unemployed and children living with one parent.

The realisation of the rights of the child did not improve in 2021. On the contrary, it deteriorated in some areas.

79 "Zaštitnik građana o boljoj zaštiti prava deteta u Srbiji, novi zakon Ministarstva za rad nepotreban," *Danas*, 25 September 2020.

80 CRC, Concluding Observations on the combined second and third periodic reports of Serbia, paras. 16 and 17, 2017.

81 "World Children's Day, Blue, for every child," UNICEF, 21 November.

3.4.1. The COVID-19 Pandemic

The measures taken to combat the COVID-19 pandemic have gravely affected the children's realisation of their health and education rights, while the general political and social circumstances amidst the pandemic led to a deterioration in the protection of children from violence, especially the protection of children requiring special measures. Although pandemic measures may justify the stagnation in the realisation of the rights of the child, it seems that sight has been lost of the state's obligation to give priority to child rights at all times, including in emergencies. In her regular report to the UN General Assembly, the Chair of the Committee on the Rights of the Child sent a clear message to States parties about the Committee's concerns regarding the pandemic's impact resulting in numerous violations of the rights of the child in 2021.[82]

3.4.2. The Right to Protection from Climate Change Effects and the Right to Enjoy a Healthy Environment

Protection of children from the effects of climate change and their right to a health environment elicited greater attention in Serbia in 2021. The public became increasingly aware that children might be the greatest victims of climate change and environmental degradation. Children are exposed to persistent risks, such as air pollution and hazardous chemicals, above all due to industrial practices and lack of water, wastewater and waste management infrastructure. Climate change and inadequate environmental protection render the children more vulnerable to disease and inadequate nutrition. Air pollution and hazardous chemicals due to industry and a lack of appropriate infrastructure also increase children's risk of contracting diseases and chronic illnesses and of impaired physical and cognitive development, all of which can have lifelong implications. Unfortunately, the increasingly visible attention attached to this important topic cannot rely sufficiently on research results and even less on the results of strategic measures, which are non-existent (lack of a National Action Plan for Children). In UNICEF's view, the impact of climate change and environmental degradation on children and how existing inequalities affect these impacts to children within the Serbian context are two underexplored, yet critical, areas.[83] It therefore conducted a comprehensive analysis in 2021, which testifies

82 "The Covid-19 pandemic has affected children in countless ways, including through school closures and limited access to essential services. Child poverty is continuing to rise at an alarming rate, and many children have reported anxiety, fear and depressive symptoms due to the pandemic. States must ensure that children can safely return to in-person learning at schools and have access to support necessary for their physical and mental well-being, including vaccines and essential health, social, protection and education services. The long-term and various forms of serious impact of school closures and economic crisis on children need to be addressed with a child rights-based approach and based on the principles of non-discrimination, best interests of the child and child participation." Statement by Mikiko Otani, Chair of the Committee on the Rights of the Child at the 76th session of the General Assembly, 7 October.

83 Climate landscape analysis and its impacts on children in Serbia, UNICEF, 2021.

to the exacerbation of the impacts of environmental degradation on children in Serbia. The authors of the Analysis recommend that impacts on children be seriously considered in decision making and economic activities in the future. The Analysis describes the current level of public sector engagement and the engagement of the private sector and international financers in protecting the rights of the child from the negative effects of climate change and environmental degradation. The relevant Serbian authorities and institutions should devote themselves to the underexplored aspects of the topics, especially their impacts on children.[84]

In its 2021 research on the rights of the child to a healthy environment in the Republic of Serbia, the Child Rights Centre said that one of the main challenges arose from "the high level of environmental pollution in many places where children and young people live, with the most common sources of pollution being inadequate waste management, air pollution, water pollution, food pollution and biodiversity destruction. The causes of these problems lie in the underdeveloped legislative and strategic framework and the inefficient implementation of the existing regulations and policies."[85]

3.4.3. Children's Access to Justice

Children's access to justice and court protection of the rights of the child continued facing major challenges in 2021. Children in Serbia still lacked effective and genuine access to justice; nor were they provided with adequate legal aid in various proceedings, notably civil and administrative proceedings. The non-existence of adequate protection and support of child victims and witnesses of crime and children in conflict with the law is also concerning. Children's access to justice has been rendered difficult due to the absence of mechanisms and procedures that would be available to them in case their rights are violated, as well as the lack of a justice system that would be child-friendly and in which the children would feel safe.[86] Children do not turn to the existing protection mechanisms due to various barriers, which are primarily economic, as well as cultural in character. Hence the low rate of reports of violence against children, especially of sex crimes.

3.4.4. Right to Education

The education system in Serbia is governed by the Education System Act, and laws regulating preschool, primary, secondary and higher education (Preschool Education Act, Primary Education Act, Secondary Education Act, Higher Education Act).

84 *Ibid.*

85 *Rights of the Child to a Healthy Environment in the Republic of Serbia*, Child Rights Centre, June 2021.

86 CRC-Monitoring-report-July-September-2021, available in Serbian on the Child Rights Centre's website.

Education in the Republic of Serbia continued to grapple with the same problems in 2021: high non-attendance and early school leaving rates are still a problem for numerous children across the country; achievement of inclusive education is undermined by regional differences in available funds and resources for schools; lack of teacher training; low rates of enrolment of children with disabilities at all levels and domination of "special classes" in mainstream schools; inequalities preventing children from vulnerable groups, including children with disabilities, migrant and asylum-seeking children, rural children, disadvantaged children and Roma children, from accessing quality education; low rates of Roma children, especially girls, attending kindergartens, primary, secondary and vocational secondary schools and widespread segregation of Roma children in the school system. Other issues of concern include high non-attendance rates of Roma pupils; unreliability of educational support measures due to lack of funding of inter-departmental bodies tasked with assessing individual cases; overcrowded kindergartens in urban areas and substandard kindergarten facilities in rural areas, while public perceptions also affect the decisions of parents of children with developmental difficulties to enrol them in kindergarten. The Equality Commissioner's Special Report confirms the above problems and proposes a number of measures to improve the status of children and their non-discrimination in education.[87]

The national Education Development Strategy until 2030 was adopted on 3 June 2021. The Strategy declares that the vision is to secure quality education so that each and every child, youth and adult in the Republic of Serbia achieves their full potential. The mission of education is to secure high-quality education serving the development of the individual and thus society on the whole.[88] Interestingly, the Strategy's description of the current state of play and the needs of the education system recognises many of the deficiencies impinging on the realisation of the rights of the child in 2021 that are described in the above paragraph, plus: constantly low budget allocations for education (4.5% GDP); insufficient investments in primary and secondary education; insufficient initial and continuous education of teachers; underdeveloped horizontal learning system; inadequate statistics and comparative data on education of pupils from vulnerable groups, et al. However, despite the adoption of the Strategy, the Council for Strategic Issues and Reforms in Education has not met once since it was established in December 2020.

UNICEF's research of the effects of the COVID-19 pandemic on families with children in Serbia conducted in April 2020 showed that 99% of children between 7 and 17 years of age had access to distance learning.[89]As the education crisis continued into 2021, efforts were made to develop distance learning opportunities, and

87 Poseban izveštaj o diskriminaciji dece, pp. 26–27, Equality Commissioner, 2021.

88 Strategija razvoja obrazovanja i vaspitanja u Republici Srbiji do 2030. godine, available on the website of the Ministry of Education, Science and Technological Development.

89 Research of the Effect of the COVID-19 Pandemic on Families with Children in Serbia, UNICEF, 2020.

dampen the effects of unplanned, unstructured and unforeseeable shifts from classrooms to learning at home or the establishment of hybrid systems.

3.4.5. Children with Disabilities: Serbia's Forgotten Children

In 2009, Serbia adopted a law guaranteeing all children the right to inclusive education without discrimination. The 2011 Social Protection Act included a broad range of community services, limited the maximum number of beneficiaries in institutions, and prohibited the institutionalisation of children under three (with some exceptions). The 2009–2013 Comprehensive Plan of Transformation of Residential Care Institutions for Children was the main action document guiding the reform of the system of institutions for children. It departed from the presumption that "non-institutional forms of protection (services) will be unable to address the needs of children with multiple or grave disabilities and that such children will have to remain in residential institutions or be provided with residential accommodation." In result, children with disabilities account for 70% of all children living in institutions.[90]

A new research report by Disability Rights International, entitled "Serbia's Forgotten Children", which comprehensively deals with the status of children with disabilities,[91] elicited a lot of attention in 2021. The report sets out that Serbia has made notable progress in lowering the overall institutional population of children without disabilities,[92] but goes on to say that it has failed children with disabilities – some whom are now adults – who have been left behind by reforms. The Report further says that children with disabilities in the institutions are often mixed up with adults and that infants and children under three years of age continue to be admitted and left in institutions – a practice that will subject them to developmental delays and psychological damage (such as attachment disorder) that may last a lifetime. The Report says that 79% of children and adults in institutions have been there for more than 10 years and that the predominant reason for leaving an institution is death.[93] The Report drew huge media and public attention. The relevant ministries' responses mostly boiled to denials and accusations that the Report authors wanted to "destroy the social protection system".[94]

90 "World Children's Day, Blue, for every child," UNICEF, 21 November.

91 *Serbia's Forgotten Children*, DRI and MDRI-S, June 2021.

92 Official data indicate that the number of children living in institutions – including large facilities, group homes, shelters, residential schools, and children mixed into adult facilities – has decreased by almost 50% in the last 10 years, *Ibid.,* p. 2.

93 In institution 1, DRI found approximately 100 children, most with cerebral palsy, lying in metal cribs with high railings, all day long – effectively functioning as cages for immobile children. Rarely taken out of their cribs except for minimal care, many children appeared much younger than their actual age and many had muscle atrophy due to lack of activity and immobility. Long-term physical inactivity and lack of love and touch can literally kill children – also known as failure to thrive. *Ibid.*, p. 3.

94 "Ministarka Kisić Tepavčević o užasnim uslovima u kojima žive deca sa smetnjama u razvoju: To je sve paušalno, hoće da uruše sistem," NOIZZ, 30 June.

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.[95]

4.1. Legal Framework

Serbia acceded to the Framework Convention for the Protection of National Minorities (FCNM) 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.

The protection of national minorities is guaranteed by Article 14 of the Serbian Constitution, under which the state shall provide special protection to national minorities to facilitate their full equality and preservation of their identity. The rights of national minorities are governed in greater detail in Articles 75–81 of the Constitution, which guarantee additional individual and collective rights to national minorities. The Constitution prohibits any discrimination of national minorities and provides for affirmative measures, which shall not be considered discriminatory if they are aimed at eliminating extremely unfavourable living conditions which particularly affect them. Under the Constitution, special consideration shall be given to ensuring adequate representation of national minorities during recruitment in state authorities, public services, and provincial and local self-government authorities. The Constitution prohibits forced assimilation and grants the minorities the right to preserve their specificities, which, inter alia, entails their right to use their scripts and languages and display their symbols at public venues. Persons belonging to national minorities are entitled to unobstructed relations and cooperation with their ethnic kin outside Serbia and to establish their own educational and cultural associations. The Constitution also lays down that the state shall encourage the development of the spirit of tolerance among all people living in Serbia.

The Act on the Protection of the Rights and Freedoms of National Minorities (hereinafter: Minority Protection Act) is the main law governing the realisation of

95 See the website of the Statistical Office of the Republic of Serbia.

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 (NCNMA). The Official Use of Scripts and Languages Act, the Civil Registers Act and other regulations governing in greater detail areas important for national minorities are also relevant.

4.1.1. Census

The census is a statistical survey conducted every decade to collect data on the number and basic geographic, demographic, socio-economic, ethno-cultural and other characteristics of all basic census units (individuals, households and dwellings) to the lowest territorial level. The 2021 census was postponed due to the COVID-19 pandemic, due to the risk that it might undermine the census activities, especially the selection and training of census instructors and enumerators and the collection of the data in the field.

On 7 April 2021, the Serbian parliament adopted amendments to the Census Act, postponing the census for October 2022.

The 2022 census will be particularly important for national minorities, because the census data will also serve as a framework for defining the scope of the rights they enjoy and informing public policies that will affect the improvement of their status.

4.2. National Minority Councils and Minority Political Parties

The National Councils of National Minorities Act (NCNMA) 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 2021.[96] The regular direct elections and electoral assemblies at which the new members of the NMCs will voted in are slated for 2022.

The Guidelines for the Work of National Councils of National Minorities in the Republic of Serbia,[97] presented by the Ministry for Human and Minority Rights and Social Dialogue and the Council of Europe Office in Belgrade, aim to assist and support NMCs in exercising their public competences. The Guidelines provide in

96 Extract of the NMC Register, available on the website of the Ministry for Human and Minority Rights and Social Dialogue.

97 Available in Serbian on the website of the Council of Europe.

one place practical instructions and advice in each area NMCs exercise their powers and offer templates of enactments facilitating their activities.

Political parties of national minorities are established and operate in accordance with the Act on Political Parties. By end November 2021, 69 active national minority parties were entered in the register of political parties kept by the Ministry of State Administration and Local Self-Governments.[98]

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. [99]

Five of the 21 runners in the most recent parliamentary elections held in 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 coalition headed by the Party of Justice and Reconciliation – 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 2021 Report,[100] 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 national minorities remained underrepresented in the public administration despite the legal obligation to take into account the ethnic composition of the population. It noted that preparations for establishing a register of public employees, with the possibility of voluntary declaration of national affiliation, in order to collect the data, were finalised pursuant to the amended Civil Servants Act, but that the system was not yet operational. Since members of the Albanian national minority raised concerns about how the police carried out controls of resi-

98 Extract of the register of political parties. Available in Serbian on the website of the Ministry of State Administration and Local Self-Governments.

99 More in the *2020 Report*, IV.4.4.2.

100 *Serbia 2021 Report*, p. 39.

dence status in Southern Serbia, resulting in the 'passivisation' of certain addresses, the EC noted that the relevant authorities needed to better explain to the public how these checks were being conducted.[101]

The European Commission noted that *RTS* was still not fulfilling its obligation as the national broadcaster to provide enough relevant content for all national minorities and that content intended for national minorities was limited to only one news programme in Albanian on *RTS* 2.[102]

The EC noted further progress in the area of education. It said that the process of preparing and printing textbooks in minority languages continued and produced positive results, such as an additional 24 textbooks in Albanian, and that new curricula for teaching Serbian as a non-mother tongue have also been adopted.[103]

On 15 April 2021, the Council of Europe Committee of Ministers adopted a Resolution on the Implementation of the Framework Convention for the Protection of National Minorities by Serbia.[104]

The Committee of Ministers issued Serbia recommendations for immediate action. They include, inter alia: to raise awareness of persons belonging to the Roma minority living in informal settlements about the legislative standards and the remedies available to victims of discrimination; to continue and intensify efforts to resolutely address structural discrimination faced by Roma with regard to their citizenship status, as well as housing, healthcare, education and employment; to eliminate all forms of segregation of Roma children and include them in mainstream education; and, to set up and operate a sustainable and human rights-based data collection framework on issues pertaining to the access to rights of persons belonging to national minorities.[105] The Committee of Ministers also issued recommendations to Serbia concerning the functionality of Councils for Inter-Ethnic Relations, promotion of a multicultural and intercultural perspective in education and introduction of measures aimed at producing increasing the representation of national minorities in the public administration.

The Committee of Ministers further recommended that Serbia launch an information campaign well ahead of the next census, targeting specifically persons belonging to national minorities, raising their awareness about the advantages of their participation in the census and how this may be in their interests. It recommended that the state ensure effective participation of persons belonging to national minorities in the census. The Committee of Ministers also set out a number of recommendations on the freedom of religion, the functioning of minority media and the

101 *Ibid.,* pp. 30 and 40.
102 *Ibid.,* p. 96.
103 *Ibid.,* p. 40.
104 Available on the CoE website.
105 *Ibid.*

economic revitalisation of areas where persons belonging to national minorities reside in peripheral and/or economically depressed areas.[106]

4.4. Realisation of Minority Rights

The state Council on National Minorities 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.[107] The Council last met on 31 March 2021, when it held its tenth regular session.[108] The Ministry for Human and Minority Rights and Social Dialogue extends expert and administrative and technical support to the Council.

In March 2016, the Serbian Government adopted the Action Plan for the Realisation of the Rights of National Minorities.[109] Four reports on the implementation of the Action Plan were published in 2020. No such reports on the implementation of the Action Plan in 2021 were published by the end of the reporting period.[110]

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 Council on National Minorities is charged with monitoring their implementation.

The Ex-post Analysis of the Implementation of the Action Plan for the Exercise of the Rights of National Minorities,[111] prepared within the joint EU/CoE programme Promotion of Diversity and Equality in Serbia, concludes, inter alia, that the strategic objectives, results and activities have been achieved, but not fully, primarily because of methodological shortcomings and logical inconsistencies related to imprecise, incomplete and vaguely defined formulations and non-specific, unmeasurable indicators. The Analysis goes on to say that it was difficult to implement the planned activities in the absence of a systematic approach and logic in implementation, and that the process was further affected by unrealistic and ambitious dead-

106 *Ibid*.

107 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.

108 Press release on the 10th session of the National Minority Council, available on the website of the Slovene National Minority.

109 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.

110 The Reports were available at The Ministry for Human and Minority Rights and Social Dialogue website.

111 Available on the CoE website.

lines. It mentions a few other challenges: lack of human resources, a small number of civil servants trained in reporting and an overly broad reporting methodology.[112] These views fully coincide with the succinct analysis of this strategic document in BCHR's 2020 Report.[113]

The Analysis provides clear guidelines on the methodology for developing a new strategic document, which will be based on the EC's Serbia Report and the recommendations the CoE Advisory Committee issued in its Fourth Opinion on Serbia's implementation of the FCNM. The development of the new strategic document will be coordinated by the Ministry for Human and Minority Rights and Social Dialogue.

In her 2020 Annual Report published in March 2021,[114] the Equality Commissioner said that her office had received 114 complaints alleging discrimination on grounds of national affiliation or ethnic origin during the reporting period, twice as many as in the previous four years. Complaints concerning discrimination against Roma accounted for 94 (82.5%) of all complaints of discrimination on these grounds.

The Equality Commissioner reacted to several cases in which the rights of persons belonging to national minorities were violated in 2021. In response to Belgrade lawyer Vladimir Gajić's comments about COVID-19 Crisis HQ member Dr. Predrag Kon, she issued a public warning that association of anyone's actual or presumed national or ethnic origin with their profession and professional opinions was impermissible, offensive and harmful.[115]

The Equality Commissioner issued another public warning about Stara Planina Public Enterprise Director Goran Karadžić's discriminatory and offensive comments about Neim Leo Beširi on *Pink TV*. She warned that criticisms and different views and opinions may not be expressed by insulting and inciting intolerance towards any individual on account of their national affiliation.[116]

The Equality Commissioner issued a statement vehemently condemning and qualifying as impermissible hate speech on grounds of national affiliation after film director Dragoslav Bokan said on *Pink TV* that one of the most popular opposition figures, Marinika Tepić, an ethnic Romanian, was not just an ideological and political enemy, but an enemy of the state as well.[117] His comments elicited an avalanche of reactions, including of members of the Romanian NMC and NGOs, who insisted that Bokan be criminally prosecuted.[118] They also wondered whether the state guaranteed national minorities protection to achieve full equality and preserve their

112 *Ibid.*, p. 60.

113 See the *2020 Report*, IV.4.4.4.

114 Available on the Equality Commissioner's website.

115 Available on the Equality Commissioner's website.

116 Available on the Equality Commissioner's website.

117 "Warning regarding the statement of Dragoslav Bokan," Equality Commissioner press release, 30 November.

118 "Rumunske NVO zatražile da se protiv Bokana pokrene krivični postupak," *N1*. 1 December.

identity, because *Pink TV*'s broadcasts amounted to calls to lynch and satanisation of Romanians.

In his 2020 Annual Report,[119] the Protector of Citizens said that he had reviewed 46 cases concerning violations of minority rights in the reporting period, which accounted for 1% of his caseload.

In response to a complaint of discrimination and denial of the existence of the Croatian language filed by the Croatian NMC, the Protector of Citizens launched a review of the legality and regularity of the operations of the Ministry of Education, Science and Technological Development and the national Education Improvement Institute.[120] The Croatian NMC complained that, at the Education Improvement Institute's request, the Serbian Language Standardisation Board issued an opinion in which it stated that Serbian, Bulgarian, Macedonian and Slovenian should be listed as South Slavic languages, whereas Croats were among the nations that spoke Serbian but called it Croatian, and that such a definition existed in the 8th grade Serbian Language textbooks.

The Protector of Citizens presented his Special Report on the Official Use of the Bulgarian Script and Language.[121] The research conducted by the Protector of Citizens did not identify any major irregularities in the realisation of the right to official use of the Bulgarian script and language or the right to enter one's personal name in the Bulgarian script and language.

In his 2020 Annual Report,[122] the Vojvodina Ombudsman said that he had dealt with 20 cases on the protection of minority rights, which he had opened at his own initiative or in response to individual complaints. It, however, should be noted that the Ombudsman has not been publishing his decisions over the past few years and that the transparency of his activities has visibly diminished. For instance, the last decision in the Opinions and Recommendations on minority rights section of his website was posted in October 2016. The Ombudsman has also refrained from issuing any warnings or press releases in response to numerous human rights issues and violations.

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. The

119 Available on the website of the Protector of Citizens.

120 "Kontrola Zaštitnika građana zbog diskriminacije hrvatske nacionalne manjine," 8 October.

121 "Bez većih nepravilnosti u ostvarivanju prava na službenu upotrebu bugarskog jezika i pisma", 1 November.

122 Available on the Vojvodina Ombudsman's website.

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.[123]

Children and adults with disabilities in Serbia have been facing numerous obstacles and difficulties. They are due, on the one hand, to the incompatibility of national law with international human rights standards, especially the UN Convention on the Rights of Persons with Disabilities (CRPD), and, on the other, the inadequate practices of the relevant state authorities. The situation of persons with disabilities can be attributed to prejudice, lack of resources, undeveloped or inaccessible community services, as well as the fact that they are marginalised and socially excluded and generally not empowered to advocate their rights and interests.

Persons with disabilities are one of the most vulnerable groups of the population in terms of poverty and at risk of poverty. Women with disabilities are at risk of discrimination on multiple grounds. They are invisible in the public sphere, rarely participate in public and political life, face difficulties in realising their rights and often victims of gender-based violence.

The anti-pandemic measures have disproportionately restricted the fundamental rights and freedoms of institutionalised children and adults, who had already been exposed to gross human rights violations, including systematic neglect and abuse and lack of health care putting their health and lives at risk.

5.1. Legal Framework

By ratifying the CRPD 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, 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 (2021–2030), 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 Convention No. 159 concerning vocational rehabilitation and employment of persons with disabilities were only partially integrated in Serbian law by the adoption of the Act on the Prevention of Discrimination against Persons with Disabilities and the Act on the Vocational Rehabilitation and Employment of Persons with Disabilities.

123 World Health Organization, World Report on Disability, 2011, p. 44.

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.[124] Denial of reasonable accommodation is also not recognised as a form of discrimination in laws governing education and employment, including of persons with disabilities.[125]

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,[126] five years after the expiry of its predecessor. The Strategy includes numerous data testifying to the extremely difficult situation of persons with disabilities, especially children and adults in social care and psychiatric institutions.

The Action Plan for Implementing the 2020–2024 Strategy for Improving the Situation of Persons with Disabilities in the 2021–2022 period was adopted in April. The Action Plan envisages the implementation of a number of concrete measures and activities to facilitate the achievement of three goals: greater social inclusion of persons with disabilities; ensuring that persons with disabilities enjoy their rights to legal capacity and family life on an equal footing with others and to effective protec-

124 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.

125 *Ibid.*, paras. 50 and 53.

126 Available in Serbian on the website of the Ministry of Labour, Employment and Veteran and Social Issues.

tion against discrimination, violence and abuse; and systemic mainstreaming of the disability perspective in policy making, implementation and monitoring.

One of the measures explicitly envisages the adoption of a deinstitutionalisation plan.[127] Although the Action Plan provides for the development of services supporting independent living and "encourages deinstitutionalisation and the transformation of institutions," it does not envisage reducing the number of institutionalised persons with disabilities; nor does it consider the specific situation of children with disabilities. Regrettably, the Action Plan does not include a measure supporting the prohibition of further institutionalisation of children laid down in the 2011 Social Protection Act.

A very short public debate on the Draft 2021–2026 Strategy on Deinstitutionalisation and the Development of Community Services was held in May 2021. The drafting of the Strategy was anything but transparent; CSOs with years of experience in advocating and protecting the rights of persons with disabilities and people with disabilities did not take part in it. The Draft Strategy is not gender-sensitive and does not take into account the specificities of the situation of institutionalised women with disabilities. The Mental Disability Rights Initiative of Serbia (MDRI-S) and numerous partner organisations criticised the process and called for a transparent dialogue to ensure that deinstitutionalisation issues were properly addressed.[128]

On 15 December, the Serbian parliament adopted the Act on the Rights of Beneficiaries of Temporary Accommodation in Social Care Institutions as provided for by the Chapter 23 Revised Action Plan. The legislators improved the draft that was submitted for adoption, aligning it with the CRPD and the 2016 recommendations of the Committee on the Rights of Persons with Disabilities.[129] For instance, Article 35 prohibits the application of any measures of coercion or treatment without the beneficiaries' consent, restrictions of movement and isolation. Article 21 provides for protection against gender-based violence and of the reproductive health of girls and women.

The process of amending the Social Protection Act, the umbrella law on social protection, which was launched nearly three years ago, was not completed by the end of 2021.[130] The Social Card Act, adopted in February, provides for the establishment of a database of the socio-economic status of individuals and persons associated with them. 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

127 Measure 1.1.3: Improvement of the quality of life of persons with disabilities and adoption of a deinstitutionalisation plan, coupled with the provision of adequate support to life in the community and the family, including the development of the services supporting independent living.

128 MDRI-S, Letter of Attention – Deinstitutionalization reform in the Republic of Serbia, 4 June.

129 Concluding observations on the initial report of Serbia, CRPD/C/SRB/CO/1, Committee on the Rights of Persons with Disabilities, 2016, para. 9.

130 See more in the *2018 Report*, IV.3.2.

and the families they are living with. The establishment of the database and collection of information will undoubtedly result in speedier administrative procedures, and the greater efficiency of Social Work Centres (SWCs) and their awareness of the socio-economic situation of their current and potential beneficiaries.[131] The system, however, does not recognise individuals who are in need of assistance but are not receiving any social benefits or are, indeed, unaware that they are entitled to welfare. The database will not automatically flag people who have not been exercising their rights and who may be at risk.

Article 2 of the new Protector of Citizens Act entrusts the Protector of Citizens with monitoring the implementation of CRPD.

5.2. Assessment of the Realisation of the Rights of Persons with Disabilities

In its Serbia 2021 Report, the European Commission said that the government was delayed in adopting a strategy on deinstitutionalisation, as well as a law aiming at protecting persons with mental disabilities in institutions of social welfare. [132] It went on to say that women with disabilities in residential institutions continued to face gender-specific forms of violence and that funding for developing community-based services, and for supporting licenced service providers and social services, remained insufficient. The EC noted that COVID-19 pandemic has had negative consequences for persons with disabilities, especially those living in residential institutions.

In her 2020 Annual Report, the Equality Commissioner said that her office had received fewer complaints of discrimination on grounds of a disability (89 in 2020 vis-à-vis 118 in 2019).[133] Most of the complaints concerned discrimination in procedures before public authorities (30), in the fields of labour and employment (18), social protection (17) and provision of public services or inaccessibility of public indoor and outdoor facilities (10). The Equality Commissioner said that specific groups of the population, including persons with disabilities, were at greater risk of vulnerability due to the measures introduced during the state of emergency and difficulties accessing health care other than that provided to COVID-19 patients.

Children with disabilities have been facing problems in exercising their rights to inclusive education and adequate support. Lack of personal child attendants, an important service supporting children with disabilities in exercising their rights to preschool and school education and following online classes, and lack of transportation services were alerted to the most frequently.

131 "Zakon o socijalnoj karti ne rešava ključne probleme, najugroženiji će i dalje ostati nevidljivi," *VOICE*, 24 February.

132 *Serbia 2021 Report*, p. 38.

133 Regular Annual Report of the Commissioner for Protection of Equality for 2020, Equality Commissioner, March 2021.

In 2020, the Protector of Citizens reviewed 200 cases, a 60% increase over 2019.[134] He noted that persons with disabilities again faced substantial risks of poverty and social exclusion due to limited access to education, the labour market and services.

The UN Committee against Torture addressed the realisation of the rights of persons with disabilities in Serbia in its Concluding observations on Serbia's Third periodic report.[135] It regretted "the lack of progress to address its previous concerns towards the involuntary confinement of persons with mental and psychosocial disabilities in psychiatric institutions, their deinstitutionalization and the continued use of restraints." The Committee was "particularly concerned about the situation of women with disabilities in residential institutions who are exposed to high levels of violence without any prevention or protection measures in place." It was further concerned "about the poor living conditions, inadequate access to health care, education, and rehabilitation experienced by children with disabilities in residential care and who are exposed to cruel, inhuman and degrading treatment without redress." The Committee emphasised the importance of regular and unannounced visits to psychiatric and other social care institutions without any restrictions.

5.3. Independent Living and Community Inclusion

The state must pursue deinstutionalisation if persons with disabilities are to live independently and in the community. Organisations focusing on the protection 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.[136]

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.[137]

According to the report on the research entitled "Mapping Social Services and Material Support within the Mandate of Local Self-Government Units in the Republic of Serbia"[138] such social services are underdeveloped and unavailable, the num-

134 Regular Annual Report of the Protector Of Citizens for 2020, Protector of Citizens, 15 March 2021.

135 Concluding observations on the Third periodic report of Serbia on the implementation of the Convention against Torture, CAT/C/SRB/CO/3.

136 Common European Guidelines on Transition from Institutional to Community-based Care, European Expert Group, 2012, Brussels, p. 79.

137 Regular Annual Report of the Protector Of Citizens for 2020, Protector of Citizens, 15 March 2021.

138 Gordana Matković, Milica Stranjaković: *Mapping Social Services and Material Support within the Mandate of Local Self-Government Units in the Republic of Serbia*, SIPRU, Belgrade, 2020.

ber of beneficiaries of such services is small, as is the funding allocated for them, while some services are unsustainable and their provision is inconsistent.

The most widespread services include day care community-based services, in particular domiciliary care for adults and the elderly, personal child attendants and day care for children with disabilities. All other services are undeveloped and extended in only a small number of cities and municipalities. Some services, such as e.g. respite care and family outreach workers, have been launched by a negligible number of LSGs. The Mapping report emphasises that services for independent living for persons with disabilities are especially undeveloped. Personal assistance was established in only 17 LSGs, covering 223 beneficiaries, while protected housing for persons with disabilities was available in only six municipalities and cities, for 107 beneficiaries. As per services for children and adults with disabilities, the problem does not only lie in their number and unavailability, but also in their design, i.e. the expectation that the beneficiaries adapt to the services instead of the other way around. Namely, the services are not developed based on assessments of the needs of children and adults with disabilities living in a specific local community. In addition, the services are limited to particular groups of beneficiaries. For instance, some LSGs have provided domiciliary care for children with disabilities, while others have been extending domiciliary care for the elderly; it would be more effective if they launched a comprehensive domiciliary care service tailored to the needs of individual beneficiaries so that all members of the community who need it can use it.

That is also 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, persons living with mental disabilities cannot avail themselves of this service because such services are available only to persons who are able to independently make decisions and who are working or are actively engaged in the work of civic associations, political parties, sports organisations "and other forms of social engagement" or are attending full-time or part-time education programmes. These conditions amount to violations of the principle of equal rights and obligations enshrined in the Anti-Discrimination Act and the Act on the Prevention of Discrimination against Persons with Disabilities.

The first condition – the ability to independently make decisions –obviously discriminates against persons in need of support in decision-making, i.e. persons deprived of their legal capacity. Direct discrimination is reflected in the unjustified placing of a group of people in a less favourable position because of their personal characteristics, in this case their disability and/or health, impinging on their ability to independently make decisions.

The second condition – employment or engagement in associations, political parties and sports organisations – is also discriminatory. Article 25 of the Anti-Discrimination Act 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 attendant, 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.

5.4. Situation of Institutionalised Children and Adults

A large number of people are still living in Serbian social care institutions: 14,512 are living in state-run and 8,617 in private institutions.[139] In 2018, out-patient treatment was provided to 33,212 persons (15,168 of them women) with mental disabilities.[140] The number of institutionalised children and youth stood at 2,105 during 2020 and at 1,941 on 31 December 2020. A substantial share of adults were still living in institutions designated for children and youth – 45.1% of the residents of 19 institutions were over 26 years old on 31 December 2020, while the share of children and youth living in them stood at 31.9% and 23% respectively.

As of 31 December 2020, 80% of all residents of institutions for children and youth with disabilities had been living in them over a decade, 48.1% of them over two decades. Records on the duration of institutionalisation of children and youth showed that 39% of the children and youth have been residents of such institutions for over five years.

In his 2020 Annual Report, the Protector of Citizens said that individuals confined in psychiatric and social care institutions were the most vulnerable group of persons deprived of liberty.[141] The Protector of Citizens said that their rights had

139 Analysis and results of the work of the Ministry of Labour, Employment and Veteran and Social Issues, May 2020, available in Serbian on the Ministry's website.

140 The 2020–2024 Strategy for Improving the Situation of Persons with Disabilities in the Republic of Serbia, available in Serbian on the website of the Ministry of Labour, Employment and Veteran and Social Issues.

141 Regular Annual Report of the Protector Of Citizens for 2020, Protector of Citizens, 15 March 2021.

further been restricted when the pandemic broke out, that deinstitutionalisation activities have not been carried out and that conditions for supporting persons with mental and intellectual difficulties and their families in the community have not been created.

Many organisations have for years been alerting the Serbian authorities to the dismal conditions in residential institutions and the abuse, neglect and inhuman treatment of their residents. In their latest report, Serbia's Forgotten Children, the MDRI-S and Disability Rights International (DRI) concluded that Serbia has neglected to address the egregious human rights violations and abuses perpetrated against those forced to live in sub-human conditions – many of which rise to the level of torture.[142] The report alerts to denial of medical treatment and neglect putting the residents' lives at risk, their sexual abuse and forced contraceptive use. In some of these institutions, adults and children live together, exacerbating the risk of further abuse. The authors of the report state that residents are denied the right to live with their families and cite many other violations of their rights. Based on observations in Serbian institutions (both large institutions and small group homes), the report found that placement in Serbia's residential facilities was emotionally and physically dangerous for children and likely to result in increased disability. The authors of the report concluded that placement in residential care was dehumanising, socially isolating, and did not contribute to habilitation or the development of skills facilitating further inclusion in society.

Long-term physical inactivity and lack of love and touch can literally kill children – also known as failure to thrive, when a child's growth and development are halted regardless of the amount of available food. Such a situation can only be addressed by halting further institutionalisation. Prevention and family support programmes need to be improved to achieve the children's full social inclusion in the community and further institutionalisation of children should be prohibited.

The life of women with disabilities in residential care facilities[143] 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),[144] while the mechanisms for reporting violence and protection from it are inadequate and/or non-functional.[145]

142 *Serbia's Forgotten Children*, DRI and MDRI-S, 2021.

143 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 facilities, which can take in 8,617 beneficiaries. See "U ustanovama socijalne zaštite za smeštaj korisnika i domovima za smeštaj odraslih i starih zaraženo 54 korisnika i 19 zaposlenih," Ministry of Labour, Employment and Veteran and Social Issues press release, 27 September 2020.

144 Biljana Janjić and Dragana Ćirić Milovanović, *Here the Walls Have Ears Too*, MDRI-S, pp. 42–48, 2017. Available on MDRI-S' website.

145 "COVID-19 i žene sa mentalnim invaliditetom u ustanovama socijalne zaštite," MDRI-S, 2 June 2020.

Institutionalised people were at extremely high risk of contracting COVID-19 in 2021. Given that hundreds of people lived in some of the residential institutions, maintaining physical distance and compliance with other anti-pandemic was quite unlikely, if at all possible.

Despite the exceptionally restrictive measures in the residential institutions during the COVID-19 crisis, which disproportionately affected their residents, perusal of extremely non-transparent data the Ministry published on its website every day leads to the conclusion that nearly 30% of the residents have contracted coronavirus;[146] the number of COVID-19 deaths remained unknown. The fact that the share of infected residents was several higher than the share of the general population infected by COVID-29 corroborates not only that people living in social care institutions are denied their fundamental human rights, but that their very lives and health are at risk as well. Although most of the residents have been vaccinated, COVID-19 cases were still registered in these institutions, testifying to the risk to the lives and health of the residents in case of this or any other epidemic.

On the other hand, institutions charged with protecting the rights of the most vulnerable members of the population did nothing to protect them from abuse and neglect and provide them with a life in dignity. No independent oversight of these institutions was carried out during the first year of the pandemic. The relevant ministry said that internal inspection oversight intensified in homes for the elderly and persons with disabilities during the pandemic, resulting in the initiation of five criminal proceedings, mostly against the institutions' directors for non-compliance with anti-pandemic measures. The webpage devoted to NPM's activities on the website of the Protector of Citizens does not include any information about visits to institutions for children and adults with disabilities in 2020, although their residents were at greater risk of abuse and neglect during the pandemic.

A number of international and regional human rights bodies[147] advised Serbia over the past years to reduce the number of people living in institutions by decisively implementing deinstitutionalisation. In 2016, the Committee on the Rights of Persons with Disabilities expressed its concern at the lack of a general strategy, plan, protocols and tools to protect and assist persons with disabilities in situations of risk and humanitarian emergencies and recommended that Serbia improve its readiness for disasters, an obligation it has under Article 11 of the CRPD.[148] Serbia endangered the lives and rights of thousands of people with disabilities because it failed to

146 The data were not available publicly and the MDRI-S obtained them by filing a request for access to information of public importance to the Ministry.

147 United Nations, Committee on the Rights of Persons with Disabilities, UN Special Rapporteur on Torture, CoE Committee for the Prevention of Torture.

148 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.

conduct an effective deinstitutionalisation process and act on the recommendations of the relevant international bodies during the pandemic.[149]

5.5. 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.[150]

The Serbia's Forgotten Children report noted that infants and children under three continued to be admitted and left in institutions – a practice subjecting them to developmental delays and psychological damage (such as attachment disorder) that may last a lifetime.[151] 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 2020.[152] The Strategy notes 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 as the only efficient way to prevent violence and abuse, along with more regular and effective oversight of residential institutions for children. However, the lack of deinstitutionalisation measures and activities in the Strategy and Action Plan do not reflect the goal. On the contrary, the Strategy includes guidelines for amending the Social Protection Act to facilitate the development of small group homes (Measure 3.1.2).[153] Given the harmful impact institutionalisation, including in small homes, may have on children, such a measure gives rise to major concerns and is

149 Lazar Stefanović, "Implications of anti-pandemic measures of Serbian authorities on the right to life for people living in institutions," *Yearbook Human Rights Protection Right to Life*, Zoran Pavlović (ed.), Vojvodina Ombudsman and the Institute of Criminological and Sociological Research, Belgrade, 4/2021, pp. 603 615.

150 Common European Guidelines on Transition from Institutional to Community-based Care, European Expert Group, Brussels 2012.

151 *Serbia's Forgotten Children*, DRI and MDRI-S, 2021.

152 Available in Serbian at on the website of the Ministry of Labour, Employment and Social and Veteran Issues.

153 Amend the Social Protection Act to improve (1) provisions on the transformation of institutions for children; (2) lay the foundation for setting up centres for families and children facilitating the establishment of small group homes.

in contravention with the government's professed commitment to deinstitutionalisation of children. Furthermore, it is not in compliance with the CRPD and General Comment No. 5 of the Committee on the Rights of Persons with Disabilities, which sets out that "[L]arge or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family. "Family-like" institutions are still institutions and are no substitute for care by a family."[154]

5.6. Inclusive Education

The discriminatory practice of excluding children with disabilities from the formal mainstream education system was applied in Serbia until 2009 when inclusive education was introduced by the new Education System Act that launched a long-term reform of the education system. Article 61 of 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. The 2017 amendments to the Primary Education Act reintroduced the possibility of opening special classes for children with mental or physical disabilities in primary schools, which has been perceived as a form of segregation. Although improved, the education legal framework still provides for the existence of two parallel education systems –mainstream and special education, which is not in compliance with international norms.

An Individual Education Plan (IEP) is an instrument introduced to tailor the education process to children with disabilities. The IEPs shall be drawn up by the expert inclusive education teams or the teams extending additional support to children (comprising the child's kindergarten and school teachers and the school pedagogue) and adopted by the pedagogical teams (comprising chairs of the expert council and team and a representative of the school's professional associates i.e. pedagogue or psychologist).[155]

The Rulebook on Pedagogical and Andragogical Assistants was adopted in December 2019. Pedagogical assistants were introduced in the education system when the Education System Act was amended in 2009; Roma assistants were renamed into pedagogical assistants and their purview was formally extended to include 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

154 Committee on the Rights of Persons with Disabilities, General Comment No. 5 on living independently and being included in the community, 2017, para. 37.

155 More in the *2016 Report*, III.4.5.

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. 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.

Although the Education System Act guarantees all children the right to inclusive education in the closest school or a school of their parents' choosing, the "parallel" education system is still in place, i.e. there are still schools for children with disabilities. There are 48 such schools unevenly distributed in Serbia. Parents who decide to enrol their children in these "special schools" not available in their home towns are forced to place their children in boarding schools, a form of institutionalisation in itself, which is in contravention of Article 7(2(7)) of the Education System Act, under which "particular attention shall be devoted to the realisation of the right to education and inclusion in the education system at various ages and levels, without jeopardising other rights of the child and other human rights." The existence of the special school system is also in contravention of the CRPD, since, in its General Comment No. 4, the Committee on the Rights of Persons with Disabilities said that all children must be guaranteed the right to inclusive education.[156]

There are no publicly available data on the number of children with disabilities attending school, while data on the number of children schooled under IEPs can be found only in individual studies. However, such data do not reveal how many of these children have disabilities given the fact that the right to IEPs may be exercised by "pupils in need of additional educational support due to social deprivation, physical or intellectual disabilities, learning difficulties, who are at risk of early school leaving or for other reasons". Lack of personal assistants and architectural barriers are the main problems children and youth with motor disabilities have; a number of them are unable to enrol in the schools they want to because they cannot access the school buildings or classrooms.[157]

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.[158]

156 General comment No. 4: Article 24: Right to inclusive education (adopted on 26 August 2016).

157 "Mnoga deca sa invaliditetom isključena iz školskog sistema," *Danas*, 22 December 2020.

158 *Ibid.*

Not only are institutionalised children enrolled in special schools; they are further segregated in them because they are assigned to classes comprising only institutionalised children.

The school system has had to adjust to the epidemiological situation since March 2020, when the COVID-19 epidemic was declared in Serbia, especially during the state of emergency. Some schools did not fulfil their obligation to organise classes for children with learning difficulties during the state of emergency.

Children for whom IEPs have been developed faced problems in accessing education, and due to insufficient and inadequate communication between the schools and the children and their parents. Some special schools shut down even at times the mainstream schools operated as normal or applied the hybrid model. According to a CINS poll of the parents and guardians of children with disabilities, one out of seven of them taught in accordance with IEPs had no access to education during the state of emergency.[159]

Staff in some residential institutions for children reported that remote schooling was implemented in the following manner: the children's teachers sent the materials to the institutions and the staff (nurses, caregivers, counsellors, etc.) helped the children master the curriculum and do their homework.[160] Although the approach helped maintain some continuity of education, its quality is questionable given the lack of teaching expertise of the staff to whom the responsibility for the learning and education of these children has been transferred.

5.7. Equal Recognition before the Law and Legal Capacity of Persons with Disabilities

Legal capacity is the main prerequisite for exercising other rights. Deprivation of legal capacity[161] greatly impacts the everyday life and the rights and freedoms of persons with disabilities. Decisions depriving people of legal capacity are taken by courts in a non-contentious procedure, whilst decisions appointing their guardians are taken by Social Work Centres in an administrative procedure. The legal capacity proceedings are based on court medical expert evaluations and may be conducted in the absence of a judge. In their rulings on partial deprivation of legal capacity, the courts determine the type of actions the persons at issue can take apart from the ones they are authorised to take under the law. On the other hand, full deprivation of legal capacity means that the persons in question cannot take any decisions or exercise their rights. Under the Family Act, persons fully deprived of legal capacity have the legal capacity of a 14-year-old child.

159 "Pojedina deca sa poteškoćama u razvoju ostala bez nastave tokom korone," *CINS*, 14 May 2020.

160 More in: L. Stefanović, S. Lazarević and D. Ćirić Milovanović: *Analiza položaja osoba sa invaliditetom tokom Kovid-19 krize,* MDRI-S, 2021.

161 Deprivation of legal capacity is governed by the Family Act and the Non-Contentious Procedure Act.

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 they do not entail supported decision-making in the narrower sense. They include permanent powers of attorney, personal directives and representation agreements.[162] 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. 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 13,436 adults in Serbia were deprived of legal capacity on 31 December 2020. Their number has continuously been growing over the past three years, by 2.1% from 2019 to 2020.[163]

A total of 719 deprivation of legal capacity proceedings were conducted in 2020; 87.3% of them ended in the full deprivation of legal capacity and 1.7% in partial deprivation of legal capacity.[164] The number of rulings ordering full deprivation of legal capacity has fallen by 49.1% compared to 2016, while the number of rulings ordering partial deprivation of legal capacity dropped by 44.5% in the same period. Of all people deprived of legal capacity, 45% were institutionalised, 39.8% were living with their families and 1.7% with foster families.

5.8. Accessibility

Under Article 9 of the CRPD, 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

162 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.

163 Izveštaj o radu centara za socijalni rad za 2020. godinu, p. 18, National Social Protection Institute, 2021.

164 *Punoletni u sistemu socijalne zaštite u 2020. godini*, p. 34, National Social Protection Institute, 2021.

to other facilities and services open or provided to the public. 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.

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.[165]

An Inter-Departmental Working Group for Developing and Implementing the 2020–2024 Accessibility Operational Plan was set up in 2020.[166]

5.9. Work and Employment

The Act on the Vocational Rehabilitation and Employment of Persons with Disabilities 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 Opportu-

165 An electronic register of court-sworn interpreters is available in Serbian on the website of the Ministry of Justice.

166 "NOOIS zastupa interese 800.000 osoba sa invaliditetom," *gledaj.rs*, 3 December.

nities for the Employment and Retention of Employment of Persons with Disabilities 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)).

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.[167] 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.

5.10. Health Care

A number of health laws and by-laws govern the health care of persons with disabilities, guaranteeing them all forms of health care, adequate diagnosis, treatment and rehabilitation, orthopaedic aids, medical instruments and other equipment.

Under Article 20 of the Health Care Act, 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 re-

167 One of them is Our Home (*Naša kuća*).

habilitation in case of illness or injury, and the right to walking and mobility aids, and sight, hearing, and speech aids (hereinafter: medical-technical aids).

High-quality and accessible health care is particularly important for persons with disabilities because intellectual and physical disabilities are diagnosed in health institutions. Primary health care extended in the closest health institutions must be accessible to children and adults with disabilities.

In its Situational Analysis,[168] UNICEF said that parents were often unaware of the possibilities of treatment and therapy their children could access, that many of them relied on the advice of other parents and that they turned to private health institutions for the requisite treatment, which not everyone can afford, when they were unable to access such treatment in the state institutions. On the other hand, the impression is that private institutions are not subject to proper oversight, and that some of them delude the parents by offering "life-saving" treatments.[169]

Adults with disabilities have faced numerous obstacles and difficulties in accessing health care – from the physical inaccessibility of a large number of health institutions, lack of sign language interpreters, health professionals' lack of expertise in treating adults with mental disabilities (for instance, there are child psychiatrists specialising in autism, but the vast majority of psychiatrists treating adults claim that they have no experience in treating autism).

Persons with disabilities and their parents and relatives testify that health professionals lack expertise in treating people with intellectual disabilities and autism, especially in applying invasive medical procedures. The dental care of children and adults with disabilities is particularly problematic since only a few dental offices, state and private alike, have experience in treating such patients.

Women with disabilities have been facing problems with gynaecological check-ups and treatment. Problems in accessing this service existed for years because of the lack of gynaecological tables for this group of women. The situation improved over the past few years thanks to the major efforts of women's organisations and the media now report the towns/regions in which gynaecological check-ups will be organised for women with disabilities.[170]

The situation of hospitalised institutionalised children and adults is much more difficult. The authors of Serbia's Forgotten Children[171] concluded that denial of medical treatment and neglect posed a risk to the children's lives. The staff of one

168 Situational analysis of services for babies and young children with disabilities in Serbia, Development of services for early childhood interventions: opportunities and challenges, UNICEF, Belgrade, 2018.

169 For instance, speech therapists who hold that "treatment of autism involves supplementation, dietetic nutrition (gastroenterologist, medical biochemist) and logopedic therapeutic procedures".

170 "U vranjskom ZC nastavljeni preventivni ginekološki pregledi za žene sa invaliditetom," *Južne vesti*, 5 April.

171 *Serbia's Forgotten Children*, DRI and MDRI-S, 2021.

institution for children told the investigators that the medical staff in hospitals often refused to admit its acutely ill residents.

Staff interviewed by the authors of this report reported that women with disabilities were administered contraceptives without their consent and possibly without their knowledge, while older women were given intra-uterine devices (IUDs), with the consent of their guardians. Institutionalised women are also subject to gross violations of their reproductive rights, including forced abortions, with the consent of the women's guardians i.e. without their informed consent.[172]

Lack of mental health community-based centres is the main reason why confinement in psychiatric hospitals, which is frequently involuntary, is still widespread. 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.

The 2019–2026 national Mental Health Protection Programme, adopted in December 2019, recognises the problem of long-term hospitalisation of people with chronic psychoses and intellectual problems, as well as the poor conditions and overcrowding of the institutions and notes that the human rights of the patients are not respected. Its authors also alert to the lack of community-based mental health centres and other outpatient services prerequisite for deinstitutionalisation. They note that outdated psychiatric methods are often used in the treatment of the patients and specify improvement of the quality of health care and respect for the patients' human rights "in accordance with international standards and best practices" as one of the main objectives of the Programme. The Programme is commendably accompanied by an Action Plan, as opposed to its predecessor, where lack of such a plan impinged on its implementation and fulfilment of its goals.

No amendments have been made to the Act on the Protection of Persons with Mental Disabilities despite recommendations by international bodies.[173] 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. In mid-December, the Health Ministry organised a public debate on the draft amendments to the Act on the Protection of Persons with Mental Disabilities.[174]

172 More in: Biljana Janjić, Dragana Ćirić Milovanović, *Here the Walls Have Ears Too*, MDRI-S, 2017, pp. 46–48.

173 The CRPD in 2016 urged Serbia to repeal this law because it contains provisions grossly violating the rights of persons with mental disabilities.

174 "Javna rasprava o nacrtu zakona o izmenama i dopunama zakona o zaštiti lica sa mentalnim smetnjama: Rasprava će trajati do 17. decembra 2021. godine," *Paragraf*, 29 November.

The health system's focus on COVID-19 has exacerbated all the problems children and adults with mental disabilities have been facing in accessing health care, including diagnosis of disabilities, inaccessibility of health facilities and services, insufficient staff sensitisation and failure to familiarise persons with disabilities with the medical procedures they will be subjected to and to obtain their informed consent, whether or not they are deprived of their legal capacity. The lack of protocols on the hospitalisation of children and adults with disabilities is another major problem. Furthermore, the relevant authorities and residential institutions are unprepared to cope with situations of crisis, including pandemics.

6. Women's Rights and Gender Equality

6.1. Gender Equality – Institutional Framework

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))).[175] 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.[176]

The Republic of Serbia has ratified the main universal instruments guaranteeing human rights and prohibiting discrimination. 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. [177] Article 21 of the Constitution explicitly lays down that special state measures introduced to achieve full equality of individuals or group of individuals in a substantially unequal position compared with other citizens shall not be deemed discrimination. 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.

175 Vesna Jarić and Nadežda Radović, *Rečnik rodne ravnopravnosti*, 2nd edition, Gender Equality Administration, Ministry of Labour and Social Policy of the Republic of Serbia, Belgrade 2011, p. 135.

176 *Ibid*.

177 Marijana Pajvančić, *Komentar Ustava Republike Srbije,* Konrad Adenauer Foundation, Belgrade, 2009.

Serbia has also ratified the Convention on the Elimination of All Forms of Discrimination against Women, assuming the obligation to take appropriate measures to prevent all forms of direct and indirect discrimination against women and to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. The Convention guarantees civil and political rights (election rights, equality before the law, right to a nationality), as well as economic, social and cultural rights (right to work, education, health care and the relevant rights in economic and social life).

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. 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.[178] 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.[179] At the proposal of the Finance Ministry, 47 direct budget beneficiaries involved in the gradual introduction of gender-responsive budgeting were under the obligation to conduct gender analyses and formulate their gender-responsive goals and indicators for measuring their contribution to the improvement of equality between women/girls and men/boys. They were also under the duty to further improve their programme structures to ensure that they contribute to the improvement of gender equality in accordance with the relevant national sectoral and gender equality policies.[180]

In October 2021 the third Gender Equality Index in the Republic of Serbia 2021[181] was presented, based on data from 2018. The value of the Gender Equality Index in the Republic of Serbia is 58.0 points, an increase of 5.6 points compared to the first Gender Equality Index from 2016. Gender Equality Index provides and overview of the timeline and progress made in the field of gender equality in Serbia in the last five years. The progress is monitored in six domains: work, money, knowledge, time, power, health. Observing trends shows that out of six domains two show signs of continuous progress (power and work), two (money and knowledge) show inconsistent trends (periods of increase and periods of decrease of Index value), and two show no change (time due to the lack of data and health due to the factual

178 Gender Responsive Budgeting, Introduction to Gender Responsive Budgeting in the Republic of Serbia 2019, UN Women.

179 *Ibid*.

180 Plan uvođenja rodno odgovornog budžetiranja u postupak primene i donošenja budžeta Republike srbije za 2021. godinu, Ministry of Finance, 31 March 2020.

181 Gender Equality Index for the Republic of Serbia 2021, Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia, October 2021.

trends). The domain of violence also belongs to the last category since data are available only for one year and trends are not monitored yet.

At its session on 14 October, the Serbian Government adopted the 2021–2030 Gender Equality Strategy.[182] Its goal is to eliminate the gender gap and achieve gender equality, which is prerequisite for the development of society and improvement of the everyday lives of women and men and boys and girls. Its four objectives include: 1. Reduce the gender gap in economy, science and education, as the pre-condition and incentive for socio-economic development; 2. Ensure equal opportunities for the exercise and protection of human rights prerequisite for development and a safe society; 3. Establish accessible and comprehensive health care and ensure social security; and, 4. Establish a comprehensive and functional system for designing and implementing gender-responsive public policies and budgets.

The authors of the Strategy took into account the ex-post evaluation of the effectiveness of the prior Gender Equality Strategy. The analysis singled out the following challenges in its implementation: weak institutional gender equality mechanisms, lack of funding for their activities, underused potential of women's CSOs, non-functional legal aid system, lack of HR capacity for gender-responsive policy planning in public authorities, et al.

The Strategy sets out that the 2021–2023 Action Plan for its implementation is to be adopted within 90 days from the day of its adoption.

6.1.1. New Gender Equality Act

The adoption of the new Gender Equality Act in early 2021 is expected to facilitate the consolidation of the institutional framework for implementing equal opportunity and gender equality policies.

The new Act relies on the 2009 Sex Equality Act but introduces several novelties. The main difference is visible already in the name of the new law (gender equality as opposed to sex equality). However, the new Act does not move away from the category of sex to the category of gender – biological categories of women and men dominate, while transgender or transsexual persons are not even mentioned. The Act also fails to define gender identity. Its definition of gender equality is, however, in line with the UN definition. The Act introduces new concepts, such as multiple discrimination, balanced representation of women and men and unpaid care work. The Act provides for the adoption of five planning enactments: the National Gender Strategy and its Action Plan, provincial and LSG action plans; operational plans or programmes of public authorities and employers, which must also contain a section on gender equality in these public authorities and at the employers; and risk management plans in case of violations of the gender equality principle. Various entities

182 Strategija za rodnu ravnopravnost za period od 2021. do 2030. godine, Serbian Government, 14 October.

are charged with the adoption of these plans; they are also under the obligation to report to the ministry in charge of human rights.

The Act specifies the 15 fields in which measures to improve gender equality are to be implemented, and defines in greater detail what they entail and how they will be implemented. The Act commendably provides for the health insurance of individuals performing unpaid home care work if they are not insured on other grounds but it does not define how this provision will be applied in practice; it will essentially remain a dead letter unless regulations on health insurance are amended.

The Act introduced also "gender-sensitive language", which is defined as language promoting the equality of women and men and a means to raise awareness. The Act provides for the use of gender-sensitive language in education, including, inter alia, in textbooks and teaching materials, school certificates and college diplomas, classifications, et al. It also obligates media to use gender-sensitive language in their reports and thus participate in developing awareness of the importance of gender equality, which will result in the eradication of gender stereotypes, sex-based discrimination and gender-based violence, domestic violence and violence against women. Although the Act does not provide any penalties for non-compliance with the provisions on the use of gender-sensitive language, expectations are that use of the female versions of titles and occupations will take root in public discourse.

The provisions on gender-sensitive language caused a lot of public controversy. Those supporting them said that they provided the possibility of choice and that language had the right to evolve. Others, however, perceived the Act as extremely repressive and directly targeting the Serbian language. The Serbian Academy of Arts and Sciences Committee for the Standardisation of the Serbian Language said that the provisions were in conflict with the history of the Serbian literary language norms and that the legislator had confused the semantics of sex with grammatical gender, because the male gender is considered semantically neutral and as such covers both males and females.[183] The opponents of gender-sensitive language are of the view that the provisions are politicising Serbian language and grammar.

However, the Act, as indispensable as it may be, does not address all outstanding issues or regulates them, albeit insufficiently or succinctly. The Act is rife with general principles and general declarative rules; many of its provisions resemble recommendations rather than legal regulations given the underdeveloped mechanisms for their implementation and lack of penalties for non-compliance with the Act.

6.2. Equality and Non-Discrimination

Serbian legislation prohibiting discrimination can be qualified as good. Discrimination, both discrimination on grounds of actual and assumed personal characteristics, is prohibited by the Constitution and anti-discrimination laws in all

183 "Zakon o rodnoj ravnopravnosti je zakon protiv srpskog jezika," Committee for the Standardisation of the Serbian Language, press release, 1 June.

fields. Laws on labour, employment, education, health care, social protection and other laws include provisions prohibiting discrimination. The Anti-Discrimination Act, which was amended in May 2021,[184] and the Gender Equality Act are particularly relevant in the context of women's rights and gender equality.

Article 20 of the Anti-Discrimination Act prohibits discrimination on grounds of sex, 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.

In her 2020 Annual Report,[185] the Equality Commissioner said that she had received 674 complaints, over 85% of which were filed by natural persons, mostly men (54.9%). The majority of complaints concerned discrimination on grounds of health (15.6%), age (14.8%), national affiliation or ethnic origin (14.7%) and discrimination on grounds of gender (13.5%). Nearly 70% 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.

6.3. Violence against Women

Serbia ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence in 2013. 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.[186] Women rights NGOs submitted their shadow reports to GREVIO, in which they alerted to the problems and challenges in the implementation of the Convention.[187]

In March 2021, the UN Special Rapporteur on violence against women invited state institutions, national human rights institutions, CSOs and academia of all UN Member States to submit contributions to her report on femicide she planned on presenting at the 76th session of the UN General Assembly. Women's association FemPlatz[188] submitted its contribution outlining the results of its research of femicide, its characteristics, causes and responses to this most extreme manifestation of violence against women in Serbia.

184 More in section IV.1.

185 Regular Annual Report of the Commissioner for Protection of Equality for 2020, Equality Commissioner, March 2021.

186 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.

187 The seven shadow reports are available on the COE website.

188 Submission to the Special Rapporteur on violence against women, its causes and consequences, FemPlatz, April 2021.

The SOS Vojvodina network developed its own report on the implementation of the CEDAW Committee's Priority Recommendations to Serbia covering the 2019–2021 period,[189] in which it presented the key findings of the monitoring of CEDAW Committee's priority recommendations (12 (a), 26 (a), 44 and 48 (d)). SOS Vojvodina said that, despite the substantial improvement of the legislative and strategic framework on gender equality, these provisions were not fully implemented in practice, which has substantially impinged on the status and rights of women. It concluded that there was a need for continuous advocacy and insistence on the state's responsibility for fulfilling the assumed obligations, as well as for strengthening the CSOs' capacities for monitoring and evidence-based reporting to UN bodies.

The Domestic Violence Act, which has been in force since mid-2017, aims to regulate the state's actions geared at preventing and protecting from domestic violence in a general and uniform manner. Women account for the vast majority (92%) victims of domestic abuse.[190] In three years, starting from November 2018 until October 2021, since the Ministry of Justice has been analysing data on the number of victims of domestic violence, gender and the relationship between victims and perpetrators for whom emergency measures have been extended, a total of 64,335 number of victims of domestic violence were registered. Of the total number of victims, in 73.3% of cases (47,136 persons) the victims were women while in 26.7% (17,199 persons) the victims were men.[191]

The Strategy on Preventing and Combatting Gender-Based Violence against Women and Domestic Violence for the 2021–2025 Period[192] was adopted in late April, six years after its predecessor expired. Its goal is to ensure effective prevention of and protection from all forms of gender-based violence against women and girls and domestic violence, and the development of a system of support services to victims of violence. The Strategy also envisages prevention of femicide as an extreme manifestation of violence against women through the establishment of a body that will monitor femicide cases – Femicide Watch.

This will facilitate the collection of relevant data given that Serbia still lacks reliable official statistics on femicide. Data on the number of killed women are mostly collected from media reports. On 29 December, Femplatz reported on Facebook and Twitter that 25 women were killed in 2021. A body that would be charged with monitoring femicide in Serbia was not established by the end of 2021 although such a promise was made back in 2018 by Zorana Mihajlović, the Chairwoman of the Gender Equality Coordination Body.[193]

189 Independent report of Network SOS Vojvodina on implementation of priority recommendations from the CEDAW Committee to the Republic of Serbia, for period 2019–2021, SOS Vojvodina, March 2021.

190 Available on the website of the Ministry of Justice.

191 "Šesnaest dana aktivizma protiv nasilja nad ženama i devojčicama", Ministarstvo pravde, 2 December.

192 Strategija za sprečavanje i borbu protiv rodno zasnovanog nasilja prema ženama i nasilja u porodici 2021–2025, April 2021.

193 "Mihajlović: Form a body to monitor femicide", *Danas*, 18 May 2018.

6.4. Serbian #MeToo

Despite the headway in the field of gender equality, particularly the improvements of the legislative framework, 2021 was unfortunately rife with incidents and scandals revealing misogynous tendencies and widespread gender-based violence against women in Serbia's societies. Accusations of rape and pimping of girls by well-known figures, such as actors and politicians, featured prominently in the public arena and highlighted both the issues of gender-based violence and the liability and impunity of public figures.

An actress's testimony that she was raped by acting coach Miroslav aka Mika Aleksić was the first scandal that prompted many public debates about gender– and sex-based violence in Serbia in early 2021. Soon afterwards, well-known actor Branislav Lečić was also accused of rape. Opposition politician Marinika Tepić publicly accused the leader of United Serbia, Dragan Marković aka Palma, of pandering girls and women at parties attended, inter alia, by senior state politicians and the local political elite. A few months later, the media reported that dozens of women were sexually harassed and photographed without their consent by Branislav Savić, a former employee of the Petnica Research Station.

Accusations of sexual harassment and violence against women filling the front pages for months can be qualified as Serbia's #MeToo movement.[194] The avalanche was prompted by the accusations voiced against acting coach Miroslav aka Mika Aleksić and the subsequent revelation of numerous cases of gender-based violence committed by well-known public figures.

6.4.1. Miroslav aka Mika Aleksić Case

In early 2021, actress Milena Radulović and two other young women reported to the police that they had been raped and/or sexually harassed by Miroslav Mika Aleksić, owner of an acting school the victims attended while they were still under age.

Milena's testimony prompted several other girls to report their former acting coach for similar offences.[195] Media coverage of the case was extremely problematic. Some print media published the information that the girls had revealed to the prosecutors.[196] Inappropriate and aggressive headlines and articles in the tabloids and comments by public figures defending the coach merely further exacerbated the victims' plight and resulted in their further stigmatisation. [197] The Equality Commissioner issued a public warning[198] after *Happy TV* broadcast a show during

194 #MeToo, with variations of related local or international names, is a social movement against sexual abuse and sexual harassment where people publicize allegations of sex crimes on social media.

195 "Traumatična ispovest Milene Radulović pokrenula lavinu – Glumica nije bila jedina žrtva!," *Gloria*, 18 January.

196 "Tintor: Aleksić prijavljen i za slučaj od pre dva meseca," *Danas*, 26 January.

197 "Po čijem nalogu prorežimski mediji brane Miku Aleksića?" *Danas*, 21 January.

198 Warning for the public on unacceptable content on TV Happy, Equality Commissioner's press release, 2 February.

which astrologists, numerologists and graphologists interpreted Milena Radulović's and Miroslav Aleksić's natal charts and destiny numbers, warning that it amounted to unacceptable humiliation and ridiculing of the woman who had reported the violence, and the trivialisation of the entire case and the violence. The show also prompted the Autonomous Women's Centre to report *Happy TV* to the Electronic Media Regulatory Authority (REM), [199] which initiated a procedure for lack of professionalism against the station.

In early August, the Belgrade Appellate Court confirmed the indictment against Miroslav Mika Aleksić in its entirety. He was charged with nine counts of rape and sexual harassment of seven attendees of his acting school. He was released from pre-trial detention after a month and placed under house arrest. The trial opened in late October. The victims' lawyers claimed that Aleksić's defence counsel tried to obstruct it by filing new evidence with the court, statements of over 50 witnesses, concerned that the trial would last much longer if the judicial panel agreed that they testify. The Belgrade Higher Court decided that the trial would be open to the public.[200]

6.4.2. Branislav Lečić Case

Actress Danijela Štajnfeld accused well-known actor Branislav Lečić of raping her nine years ago, when she was still a teenager. She decided to voice her accusations publicly after he invited the attendees of Aleksić's school to join his acting school following accusations against the latter was accused of sexual abuse and harassment in order to forewarn them of the risk of sexual abuse.

The case against Branislav Lečić was closed in the latter half of 2021 when the Belgrade Higher PPS dismissed the criminal report, stating that there were "no grounds for suspicion that the crime at issue or any other crime prosecuted *ex officio* had been committed."[201] The objection against the ruling dismissing the criminal report filed by Danijela Štajnfeld's lawyer was dismissed by the Belgrade Appellate PPS.

6.4.3. Petnica Case

Another of the many allegations of sexual harassment that made the headlines in 2021 was the case of the Petnica Research Station, where dozens of women were reportedly sexually abused by former Petnica employee Branislav Savić. He was first reported by five young women, who were soon joined by a number of other attendees of the Petnica programmes.

199 "AŽC podneo prijavu REM-u povodom jutarnjeg programa na HAPPY TV u kome su diskutovani uporedni horoskopi Milene Radulović i Miroslava Aleksića," *Autonomous Women's Centre,* 12 February.

200 "Suđenje Miki Aleksiću biće otvoreno za javnost. Sud odbio većinu svedoka koje je predložila odbrana i odredio tonsko snimanje, sledeći pretres u decembru," *Blic*, 15 November.

201 "Apelaciono tužilaštvo odbilo prigovor advokata Danijele Štajnfeld," *Danas*, 3 August.

All the victims alleged that Savić abused them in the 2003–2014 period. Media reported that the Petnica management found out about the problem in 2014 but became aware of its proportions in 2017, when it dismissed the alleged abuser. Savić was, however, still engaged by Petnica until the end of 2019.[202]

Savić's abuse involved either abuse of his authority or coercion and blackmailing of his victims, who were all minors at the time. In addition to verbal harassment and forcing some of them to talk with him in his studio late at night, he also coerced them into being photographed naked. Interestingly, both the former and the then Directors of Petnica totally or partly denied that they had been aware of the alleged sexual harassment, saying that they only knew that he was prone to crass language, which the management obviously tolerated. Petnica's Director Nikola Božić resigned after the accusations against Savić were published by the media.[203]

The Valjevo Basic PPS commendably decided to open the case and investigate the reported sexual abuse in Petnica. It took all the requisite measures to see that justice was done and ordered the police to question individuals who held managerial positions at the time at issue.[204]

6.4.4. Pandering of Girls and Women in Jagodina

In April, politician Marinika Tepić called a news conference at which she spoke about the cases of sexual harassment and pandering of underage girls and women by politician Dragan Marković aka Palma. She claimed that Palma organised parties at a local hotel at which underage girls and women were pandered and that these parties were attended by some senior officials.[205] A protected witness, who used to work in the hotel, testified that the parties had been attended by ministers, such as Ivica Dačić, their deputies, businessmen and Palma's party associates.[206] Public reactions were divided – some were appalled, while others defended Dragan Marković. The latter included the female staff of the Jagodina restaurant Tigar, who accused Tepić of lying.[207] The Jagodina Higher PPS opened an investigation on 21 April to ascertain all the circumstances concerning Tepić's allegations voiced at her news conference; Marković himself walked into its offices at one point and asked them to look into the case. The case was transferred to the Kraljevo Higher PPS, which said in August that it had no grounds for suspicion or evidence to initiate criminal proceedings against Marković for now.[208]

202 "Slučaj Petnica i seksualno nasilje i zlostavljanje: Šta do sada znamo," *BBC in Serbian*, 24 June.

203 *Ibid*.

204 "Pretresi i saslušanja u slučaju 'Petnica'," *Radio Free Europe*, 28 June.

205 "Tepić (SSP): U hotel u Jagodini na Palmine žurke dovođene devojčice od 15, 16, 17 godina," *Danas*, 19 April.

206 Bojana Anđelić, "Ko je sve bio na Palminim žurkama," *Nova S*, 20 April.

207 Danijela Luković and Ivana Mastilović Jasnić, "' Zatvorene žurke u zabranjenom hotelu'. Tajni svedok Marinike Tepić optužuje Palmu za podvođenje devojčica, Palma uzvraća: 'To je najgnusnija laž!'," *Blic*, 19 April.

208 Slučaj 'Palma': Tužilaštvo nije našlo dokaze o podvođenju," *Al Jazeera*, 28 August.

6.4.5. #NisamPrijavila (I Didn't Report It)

A tweet by activist Nina Stojaković on the abuse her sister had suffered on the hands of her boyfriend prompted thousands of women in Serbia and the region to share the gender-based violence they had suffered and the reasons for not reporting it. Over 23,000 tweets were shared under the hashtag #NisamPrijavila (I Didn't Report It) by the end of 2021. In addition to fears that their community would condemn them, most of them said they had not reported the violence they had experienced because of their distrust of the relevant institutions, lack of support and police indifference and tendency to downplay the incidents.[209]

The data of the Statistical Office of the Republic of Serbia show that 411 reports of crimes against sexual freedoms i.e. reports of sexual violence were filed in 2021 and that 117 of them were dismissed. Of the 411 reports, 44 concerned rape (19 were dismissed); 14 concerned sexual intercourse with a helpless person (two were dismissed); 21 concerned sexual intercourse with a child (one was dismissed); and seven concerned sexual intercourse through abuse of position (two were dismissed). Prohibited sexual acts were alleged in 114 reports, 26 of which were dismissed, while 166 reports concerned sexual harassment (53 were dismissed). Pimping and pandering was alleged in one report, which was dismissed, while 14 reports alleged mediation in prostitution (11 of them were dismissed).[210]

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.[211] 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 status of Roma in their reports.[212] Employment, housing, access to education and

209 "Serbian Woman's Tweet About Male Violence Goes Viral," *BIRN,* 27 December.

210 "Bilten – Punoletni učinioci krivičnih dela u Republici Srbiji, 2020," SORS July.

211 S. Radovanović, A. Knežević, "Romi u Srbiji – Popis stanovništva, domaćinstava i stanova 2011. u Republici Srbiji," Republički zavod za statistiku, Beograd 2014.

212 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; 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; 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; CEDAW, Concluding observations on the fourth periodic report of Serbia

health services, as well as the fight against discrimination, are the main challenges standing in the way of improving the situation of Roma.

7.1. Definition of Minorities and Legislative Framework on the Protection of Minority Rights, with Focus on the Roma

Although there is no internationally recognised definition of minorities, the UN Minorities Declaration[213] refers to minorities as based on national or ethnic, cultural, religious and linguistic identity that differs from the identity of the majority population. According to the definition of national minorities offered in 1977 by the then Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities Francesco Capotorti and which also features in the UN human rights protection system, "the term "minority" may be taken to refer to: a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language."[214]

Protection of minority rights is inseparable from the prohibition of discrimination, wherefore the fundamental principles of minority rights protection can be located in international treaties and instruments safeguarding a variety of rights. They include, inter alia, the UN Charter, Article 1 of which sets out among its purposes achievement of international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; this goal is reiterated in Article 55 of the Charter. Articles 1 and 2 of the 1948 Universal Declaration of Human Rights also set out that all human beings are born free and equal in dignity and rights and prohibit discrimination in accessing the rights and freedoms set forth in the 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." Other international instruments prohibiting discrimination are mentioned in the chapter on discrimination in this Report.

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on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/SRB/CO/4, 14 March 2019; 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; numerous reports by UN special procedures and the European Commission Serbia 2005–2021 Reports, Serbia.

213 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, A/RES/47/135

214 Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities (1979), E/CN.4/Sub.2/384/Rev.1, para. 568.

Although minority rights and the prohibition of discrimination are closely related, some international documents clearly call for the protection of minority rights, not just for the prohibition of discrimination. They include, notably, the above-mentioned Minorities Declaration, adopted by the UN General Assembly by a majority vote on 18 December 1992.[215] Under Article 27 of the International Covenant on Civil and Political Rights, "[I]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."[216] The Human Rights Committee, established under the ICCPR to oversee its implementation by States Parties, provided an authoritative interpretation of this Article in its General Comment No. 23 on Rights of Minorities. The International Covenant on Economic, Social and Cultural Rights includes provisions prohibiting discrimination on specific grounds; the Committee charged with monitoring the implementation of this Pact also explicitly listed the States Parties' obligation to ensure minorities have access to their rights, in its General Comment No. 14 on the right to the highest attainable standard of health, General Comment No. 22 on the right to sexual and reproductive health, General Comment No. 24 on State obligations under the ICESCR in the context of business activities, etc. Article 30 of the Convention on the Rights of the Child also sets out that "[I]n those States in which ethnic, religious, or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion or to use his or her own language."[217] The International Convention on the Elimination of All Forms of Racial Discrimination is also of major importance in the context of protecting persons belonging to national minorities, in light of its scope, anti-discrimination and desegregation provisions and the obstacles Roma face in exercising their rights.

The Framework Convention for the Protection of National Minorities, which Serbia ratified on 11 May 2001, is an exceptionally important regional document in the context of Roma rights.

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215 More on the UN States Parties' obligations towards minorities in the Declaration.

216 The OHCHR said that Article 27 of the ICCPR inspired the contents of the United Nations Minorities Declaration, see OHCHR, *Minority Rights: International Standards and Guidance for Implementation* (2010), HR/PUB/10/3, p. 15.

217 This is not an exhaustive list. See the document mentioned in the previous footnote, which provides a detailed overview of international mechanisms for the protection of minority rights. The Human Rights Committee has ample case-law in this field; the best known cases include *Lovelace v Canada,* A/36/40(SUPP. No. 40*)*; *Lubicon Lake Band v Canada,* CCPR/C/38/D/167/1984; *Kitok v Sweden,* CCPR/C/33/D/197/1985; the decision of the Committee on the Elimination of Racial Discrimination in the case of *TBB Turkish Union in Berlin Brandenburg v Germany,* CERD/C/82/D/48/2010 is also interesting.

Article 14 of the Serbian Constitution lays down that the Republic of Serbia shall protect the rights of national minorities and guarantee special protection to national minorities to realise their full equality and preserve their identity. It defines the rights of persons belonging to national minorities in greater detail in Articles 75–81. Article 100 of the Constitution provides for the representation of national minorities in parliament, while Article 202 prohibits the adoption of measures derogating from human and minority rights that may result in distinction on grounds of "race, sex, language, religion, national affiliation or social origin."

The Act on the Protection of the Rights and Freedoms of National Minorities (Minority Protection Act) governs in greater detail the exercise of individual and collective rights of persons belonging to national minorities that are guaranteed by the Serbian Constitution and international treaties, while the National Councils of National Minorities Act (NCNMA) defines the legal status and powers of National Minority Councils (NMCs), their election and funding. The Anti-Discrimination Act is also extremely important.[218]

There are no specific regulations focusing on the protection of the Roma national minority, but all the listed instruments also regard the protection of its rights. A number of laws are also extremely relevant to the Roma's exercise of their rights. They include the Social Protection Act, the Social Card Act, the Civil Registers Act, the Legal Aid Act, the Health Care Act, the Health Insurance Act, the Patient Rights Act, education laws, the Youth Act, the Employment and Unemployment Insurance Act, the Housing Act, and the Act on Financial Support for Families with Children. Other documents relevant to the realisation of Roma rights include the national Strategy on the Development of Education until 2030, the 2021–2026 Employment Strategy, the National Social Housing Strategy, the 2021–2030 Gender Equality Strategy, the Anti-Discrimination Strategy and the Strategy for Preventing and Suppressing Trafficking in Humans, Particularly Women and Children, etc. It goes without saying that the 2016–2025 Roma Inclusion Strategy is particularly important. As described below, this Strategy was revised in 2021 to bring it into compliance with the Poznan Declaration and the EU Roma strategic framework.[219]

7.2. Social Inclusion of Roma

The Coordination Body for Improving the Status and Social Inclusion of Roma and Monitoring the Implementation of the 2016–2025 Roma Inclusion Strategy was established on 25 June 2021.[220] This Body is tasked with monitoring the

218 More on the rights of national minorities in IV.4.

219 The report on public consultations on the Draft Revised Roma Social Inclusion Strategy covering the 2022–2030 period is available in Serbian on the website of the Ministry for Human and Minority Rights and Social Dialogue.

220 Available in Serbian on the website of Ministry for Human and Minority Rights and Social Dialogue.

implementation of the 2016–2025 Roma Inclusion Strategy and "the implementation of set measures and activities for improving the status and social inclusion of Roma" in accordance with the Strategy, and with initiating procedures and coordinating the work of state and local self-government authorities, state companies and other relevant national authorities with a view to achieving the Strategy goals.[221] The Ministry for Human and Minority Rights and Social Dialogue formed a Sector for Improving the Status of Roma, which is charged with extending technical assistance to the Coordination Body. This sector drafted the Revised Roma Social Inclusion Strategy in cooperation with the Body's Expert Group[222] and other state administrative authorities and relevant stakeholders.

Public consultations on the Draft Revised Roma Social Inclusion Strategy for the 2022–2030 Period were conducted from 28 November to 5 December 2021 in accordance with the Planning System Act and the Government Rules of Procedure. Only five workdays were set aside for commenting this nearly 100 pages long document.[223] Only four actors commented the Draft by 5 December, although the report on the public consultations specifies that the invitation was sent to over 1,000 addresses.[224]

The Draft of the Revised Strategy was prepared after a two-year delay in the adoption of the 2019–2020 action plan for its implementation. It is thus questionable how much the revision of valid documents contributes to the improvement of the status of Roma when the relevant institutions did not find it fit to develop an action plan for implementing the valid Strategy for years. It, however, needs to be noted that the Draft Revised Strategy brings some changes, including the formulation of three horizontal goals: equality, which includes the fight against anti-gypsyism and discrimination; inclusion, which entails reduction of poverty and exclusion and closing the socio-economic gap between the Roma and the general population; and participation, which includes empowerment and improvement of cooperation and trust. Like the 2016–2025 Strategy, the Draft Revised Strategy focuses on five primary areas of intervention.

According to the 2020 data compiled by the Serbian Government and its Social Inclusion and Poverty Reduction Unit (SIPRU) based on the Database for Monitoring Roma Inclusion Measures and other mechanisms for monitoring the implementation of the Roma Inclusion Strategy, 49 of the 119 surveyed local self-government

221 Article 2.

222 The Expert Group comprises representatives of various state administration authorities, independent institutions et al, all of them enumerated in Article 7 of the Decision on the Establishment of the Coordination Body.

223 Perusal of invitations to public consultations on other topics and fields shows that most of the time is earmarked for these activities.

224 Izveštaj o obavljenoj javnoj konsultaciji o Predlogu revidirane Strategije za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2022. do 2030. godine, available on the website of the Ministry for Human and Minority Rights and Social Dialogue.

units with substantial Roma populations adopted their Roma Inclusion Local Action Plans (LAPs).[225] Only 5 of the 49 LAPs covered all five priority areas defined in the Strategy;[226] 45 LSGs allocated funding for improving the status of Roma. Fifty percent of the surveyed LSGs engaged pedagogical assistants, 66.3% engaged Roma coordinators, 38.7% engaged health mediators and 35.3% formed mobile teams. The compiled data show headway year-on-year. Both the Strategy and the Draft Revised Strategy recognise the crucial importance of LSGs in promoting the inclusion and protection of the rights of Roma, as well as the necessity of adopting and implementing local action plans.[227]

The Social Card Act, which entered into force on 25 February 2021 and will be applied as of March 2022, is also of relevance to the status of Roma. This Act governs the establishment and keeping of a nationwide Social Card Register, centralised and nationwide records comprising data on the socio-economic status of individuals and persons associated with them in order to ascertain facts relevant to the realisation of rights and services in the area of social protection, ensure *fairer distribution of social assistance* (italics ours), facilitate the work of the relevant authorities and collection of data on the effects of the measures.

Although the Minister of Labour, Employment, and Veteran and Social Issues said that the adoption of the Act would "enable the fairer distribution of money for the most vulnerable groups and better control of welfare,"[228] and the Prime Minister Designate told the parliament in 2020 that the social cards "will enable citizens who are in the most difficult economic position to be more visible in the system, to exercise their entitlements to necessary support in a timely and effective manner,"[229] these statements, especially the latter one, should be taken with a large grain of salt. Namely, Article 17 of the Social Card Act has raised concerns that the law was not being adopted to provide for the greater visibility of the economically most disadvantaged citizens to ensure their prompt and effective exercise of the right to the support they need but "to abolish or suspend assistance in cases in which a life situation makes a beneficiary "go over" the threshold for exercising the right to financial social assistance."[230] Given that "Roma families account for most beneficiaries of social assistance" according to the Labour Minister,[231] the effects of this law i.e. of

225 "Pregled podataka gradova i opština o merama za socijalno uključivanje Roma i Romkinja u 2020. godini," SIPRU, Belgrade, 2021. The data of LSGs that forwarded them concern 102,195 Roma women and men according to the 2011 census.

226 The five priority areas include social protection, employment, education, housing and health.

227 Page 7 of the 2016–2025 Roma Inclusion Strategy and pp. 7–8 of the Revised Strategy.

228 "Kisić-Tepavčević: Zakon o socijalnim kartama pravednije raspoređuje novac," *N1,* 17 February.

229 Keynote Address by Prime Minister Designate Ana Brnabić, 28 October 2020, available on the Government website.

230 Danilo Ćurčić, "An analysis of the Law on Social Card in the context of personal data protection," in *Privacy and Personal Data Protection in Serbia: An Analysis of Selected Sectoral Regulations and Their Implementation,* ed. Uroš Mišljenović, Partners-Serbia, Belgrade, March 2021, p. 32.

231 "Ministarka za rad: Romi najbrojniji korisnici socijalne pomoći," *Danas*, 26 November 2020.

the social card system on Roma access to social protection services has to be closely monitored.

In cooperation with A11 – Initiative for Economic and Social Rights, the Protector of Citizens published in May 2020 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 were based on visits to ten informal Roma settlements in Serbia.[232] Unfortunately, although the survey and report identified substantial deficiencies in ensuring Roma access to human rights, especially economic and social rights, and life in dignity, the opportunity to take any follow-up activities to ascertain whether the recommendations have actually been fulfilled was missed.

7.3. Status of Roma and Serbia's EU Accession Efforts

On 6 May 2021, the European Commission adopted a document[233] entitled "Enhancing the accession process – A credible EU perspective for the Western Balkans"[234] approving a new methodology in pre-accession talks with Serbia and Montenegro. The methodology brings substantial changes to the pre-accession talks: the negotiating chapters are organised in six clusters and negotiations on each cluster are opened as a whole. The changes prompted the Serbian Government to adopt a decision establishing the Coordination for Conducting Talks on the Republic of Serbia's Accession to the European Union and the Negotiations Support Team. None of these changes have affected the realisation of rights by Roma yet since the EU has not opened talks on new clusters touching on the rights of this group of the population.[235]

The EU's adoption of the EU Roma strategic framework for equality, inclusion and participation[236] covering the 2020–2030 period in 2020 (and the 2021 adoption of the Council Recommendation on Roma equality, inclusion and participation[237]) should also be mentioned in the context of Serbia's EU accession ambitions since the Roma strategic framework will affect the design of national policies concerning Roma rights.

The Draft Revised Roma Social Inclusion Strategy for 2022–2030 was developed precisely to bring Serbia closer to the Roma strategic framework and the goals

232 More in the *2020 Report,* IV.7.1.

233 "EU approves implementation of new methodology in pre-accession talks with Serbia, Montenegro," *Euractiv,* 7 May.

234 European Commission, COM (2020) 57, 5 May 2020.

235 Status of vulnerable groups in the process of the accession of the Republic of Serbia to the European Union Situation Overview: Status of Roma, SIPRU, 22 September 2021.

236 Communication from the Commission to the European Parliament and the Council A Union of Equality: EU Roma strategic framework for equality, inclusion and participation, 2020.

237 Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation, 2021/C 93/01, *Official Journal of the European Union C 93,* 19 March 2021.

of the Poznan Declaration,[238] as illustrated by the use of terms such as "civil registration" in the text of the Strategy. In its Serbia 2021 Report,[239] the EC said that a new strategy for the social inclusion of the Roma in Serbia, and the related action plan, were yet to be adopted. The EC merely mentioned in passing the delay in the adoption of the 2019–2020 Action Plan for the still valid 2016–2025 Roma Inclusion Strategy.[240]

The EC also said noted in its report that coordination between the national and local authorities, as well as Roma-sensitive budgeting, still needed to be strengthened. It went on to say that job descriptions for local Roma coordinators, pedagogical assistants, and health mediators had yet to be unified and become an integral part of local self-government services.[241] It highlighted the large gap in school enrolment between Roma and non-Roma children and the need to address the high school drop-out rates of Roma children. The EC said that informal employment continued to be high among the Roma population and the informality gap was the highest in the Western Balkans region. It also noted a delay in the adoption of a law on social entrepreneurship, "which would aim at increasing labour activation of Roma and other vulnerable individuals".[242] The Government has since endorsed the draft law on social entrepreneurship and its adoption was expected in the imminent future.[243] The EC also said that measures aimed at promoting the employment of Roma had yet to deliver results and mentioned the adoption of the national 2021–2026 Employment Strategy.

As per education, the EC said that further effort was required to achieve equitable pre-school education coverage of Roma children because the enrolment rate of mandatory pre-school education was substantially lower for Roma children. It also noted that segregation in education needed to be addressed given the disproportionately high rate of Roma children in special classes and schools.[244] As opposed to the 2020 Report, in which the EC said that nearly 60% of Roma girls married at an early age, the 2021 Report merely states that early and child marriage remained an issue of concern among Roma girls living in settlements.[245] The EC Report also noted the need to improve Roma access to health care and that Roma returnees under readmission agreements and Roma displaced from Kosovo were in a particularly difficult situation.[246]

238 Declaration of Western Balkans Partners on Roma Integration within the EU Enlargement Process, Poznan, 5 July 2019.

239 *Serbia 2021 Report,* p. 40.

240 *Ibid.*, p. 31.

241 *Ibid.*, p. 40.

242 *Ibid*.

243 "Systematic, legal regulation of field of social entrepreneurship," Government press release, 29 December.

244 More below, in section 7.5. on education.

245 *Serbia 2021 Report*, p. 41.

246 *Ibid*.

As noted above, Serbia ratified the Declaration of Western Balkans Partners on Roma Integration within the EU Enlargement Process in 2019.[247] Serbia has, however, failed to make substantial headway in fulfilling the Declaration goals, which included increasing Roma employment; legalisation of all informal Roma settlements or provision of permanent, decent, affordable and desegregated housing for Roma living in informal settlements that cannot be legalised for justified reasons; increasing the enrolment and completion rates of Roma in education; ensuring universal health insurance coverage among Roma of at least 95 per cent or to the rate equal to the rest of the population; and strengthening government structures to protect Roma against discrimination.

In its Sixth Shadow Report on the Rights of the Child in the EU Accession Process and Implementation of the Chapter 23 Action Plan, the Užice Child Rights Centre provided, inter alia, an overview of the implementation of the activities set out in that Action Plan.[248] In addition to registering the undertaken measures, the Report also identified the state's failure to design mechanisms for monitoring the implementation and effectiveness of the measures, obstacles to keeping records provided by the Action Plan, lack of data on undertaken measures and non-implementation of activities set out in that document.

7.4. Housing

The housing problems faced by many Roma were noted also by the European Commission. It said that almost 20% of the population of the Roma settlements that were mapped had no or irregular access to safe drinking water, while over 55% had no or irregular access to sewer networks, and 14.5% had no or irregular access to electricity. These data were taken from an analysis conducted by the UN Human Rights Team in Serbia and SIPRU entitled "Mapping of Substandard Roma Settlements according to risks and access to rights in the Republic of Serbia".[249] The authors of the analysis mapped 702 substandard Roma settlements in 94 LSGs with a total population of 167,975 people. Residents (32,843 people) of 159 mapped settlements had no or irregular access to safe drinking water; 93,050 residents of 457 mapped settlements had no or irregular access to sewer networks; and 24,104 residents of 64 mapped settlements had no or irregular access to electricity. Residents of 44 mapped settlements (14,001 people) had no or irregular access to safe drinking water, sewer networks and electricity.[250]

247 "Srbija potvrdila Deklaraciju partnera Zapadnog Balkana o integraciji Roma," SIPRU, 9 July 2019.

248 Šesti alternativni izveštaj o pravima deteta u procesu pridruživanja Srbije Evropskoj uniji i implementaciji aktivnosti iz Akcionog plana za Poglavlje 23, Užice Child Rights Centre, 27 August 2021.

249 "Mapping of Substandard Roma Settlements according to risks and access to rights in the Republic of Serbia," SIPRU, December 2020.

250 *Ibid.*, pp. 10–17.

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's Roma Integration prepared the Regional Methodology on Mapping Roma Housing,[251] 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.[252] 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."[253] The mapping was not completed by the end of the year as envisaged.

In its Report on the Implementation of Operational Conclusions from the Seminar "Social Inclusion of Roma in the Republic of Serbia" for the Period October 2019 – October 2021, [254] SIPRU said that 200 housing units in which 1,000 people were living were reconstructed and that the living conditions of over 5,000 Roma in 11 cities and municipalities were improved within an IPA 2013 project. It also said that technical documents and urban plans for 115 settlements in 35 LSGs were to be prepared within an IPA 14 project worth €7.5 million. The costs of building facilities in settlements for which the documentation is prepared are estimated at over €50 million. The Geographic Information System (GIS) for substandard Roma settlements is also to be improved and regularly updated within this project. It needs to be noted that "systemic monitoring of the situation and improvement of living conditions in Roma settlements, including communal services and infrastructure, does not exist either at the state or local levels. The database for monitoring Roma inclusion measures in the area of housing at the local level provides only partial data, which mostly concern activities implemented within donor projects."[255]

251 Available on RCC's website.

252 Conclusion of the ministerial meeting on Roma integration, Roma Integration Regional Cooperation Council. See also the minutes of the Sixth Session of the Coordination Body for Monitoring the Implementation of the Roma Social Inclusion Strategy, available in Serbian on the website of the Ministry of Construction, Transport and Infrastructure.

253 Izveštaj o realizaciji Operativnih zaključaka sa seminara "Socijalno uključivanje Roma i Romkinja u Republici Srbiji" za period oktobar 2019-oktobar 2021. godine, p. 85, SIPRU, 2020.

254 Available on SIPRU's website.

255 Zlata Vuksanović-Macura, "Analiza održivih modela za obezbeđivanje pristupa čistoj pijaćoj vodi, kanalizaciji i električnoj energiji stanovnicima i stanovnicama podstandardnih romskih naselja u Republici Srbiji," pp. 14–15, SIPRU, December 2021.

A survey on the legalisation of housing in ten LSGs was conducted within an IPA 2016 project; ten five-year Action Plans for improving the legalisation process in substandard Roma settlements in the supported LSGs were in the final phase of development. Legal aid for the legalisation of the facilities of the Roma community was provided to 563 people. Finally, an IPA 2018 project will extend support to the active inclusion and social housing through the construction of housing units for 1,500 people (Roma being one of the four target groups); the budget is estimated at €14.2 million.

The unaffordability of social housing in Belgrade has to be mentioned in this context. It is perhaps best illustrated by the problems of nearly 600 residents of social apartments in the Akrobata Aleksić Street in Kamendin, Zemun Polje, most of whom are Roma. They are at risk of eviction and homelessness because they cannot pay the exorbitant utility bills. Sixty households have been living without electricity, which was cut off because of their debts.[256] An application was filed with the ECtHR early in 2021 because of the attempt to evict a person with disabilities from one of the apartments without providing him with alternative accommodation.[257]

It needs to be noted that "payment of the utility bills, which are high compared to earnings, is also a major challenge for poor Roma families."[258] A report on systemic barrier to Roma social inclusion[259] includes data collected from the Association of Roma Coordinators in 2018 on the inability of Roma households in specific parts of the country to pay their utility bills. According to the report, 35% of Roma households in Vranje and Požarevac and as many as 60% of the Roma households in Prokuplje and Zaječar could not afford to pay their utility bills. In the Belgrade municipality of Zvezdara, 75% Roma households could not afford to pay their utility bills. The situation was the worst in Vrnjačka Banja, where 98% of the households said they did not have the money to pay their bills.[260] The share of households that could not afford to pay their utility bills was not negligible in any of the 11 LSGs covered by the survey.

The residents of the informal settlement Vijadukt in Resnik had to leave their homes in late 2020 and early 2021. The homes of 74 families (most of them Roma) were demolished to construct a ring road around Belgrade. The Protector of Citizens involved himself in July 2020 after 14 days of intimidation and threats of demolition by the local authorities. The Ombudsman mediated[261] a solution pursuant to Article

256 "Grad za primer – Socijalno stanovanje u Beogradu," *A11 Initiative*, 20 July; "Nikad nam bolje nije bilo," *Marka Žvaka,* 26 November 2020, available on YouTube.

257 "European Court of Human Rights orders Serbia to temporarily cease the forced eviction of B.S. from his social housing accommodation," A11 Initiative, 2 March.

258 Zlata Vuksanović-Macura, *op. cit*., pp. 12–13, 2021.

259 Ivan Sekulović, Systemic Barriers to Social Inclusion of Roma Men and Women at Local Level – Situational Analysis, Council of Europe ROMACTED Programme, 2020.

260 *Ibid*.; See also Zlata Vuksanović-Macura's analysis, pp. 12–13.

261 "The Protector of Citizens monitors the resettlement of the Roma from informal settlement in Resnik," Protector of Citizens press release, 16 December 2020.

27(2) of the Protector of Citizens Act – each household was paid €19.000 to move out. The money was paid on 31 December 2020 and the demolition of the settlement began on the first workday in 2021. The procedure was not in compliance with the right to adequate housing as a component of the right to an adequate standard of living under the ICESCR.[262] Nor was it in compliance with domestic law and the Housing Act provisions on monitoring eviction and resettlement and post-resettlement social inclusion measures. The residents signed a statement waiving their right to appeal, sue or apply other legal remedies; the statement they signed said that the state was no longer under any obligation to address the housing needs of all members of these households.[263]

A public debate on the Draft Housing Strategy, the adoption of which has been pending for four years now, opened on 20 December 2021.

7.5. Education

Concerns about insufficient coverage of Roma children by education persisted although the number of Roma children attending school increased.

In its Serbia 2021 Report, the European Commission noted that segregation in education needed to be addressed and that Roma students were still overrepresented in special schools (18%) and classes (35%). It also identified a large gap between the number of Roma and other children attending the mandatory preschool preparatory programme (76% v. 97%). The gap is several percent lower in the Report on the Implementation of Operational Conclusion – 80% v. 97% but it is still substantial. Although the latest data on Roma children attending primary and secondary school can be found in the 2019 Multiple Indicator Cluster Survey (MICS),[264] the gap between education coverage of children from the general population and children living in Roma settlements also needs to be highlighted. Primary school is attended by 99% of the children from the general population and completed by all of them, while secondary school is attended by 94% of the children from the general population and completed by 88% of them. On the other hand, 92% of children living in Roma settlements attend primary school and 64% complete it, while 55% of them enrol in secondary school and 61% of them complete it. Since the well-being index quintile is one of the indicators, the MICS shows that the gap is actually much greater in case of poorer children. It is particularly large in early childhood education: only 7% of children living in Roma settlements between 36 and 59 months old attend some form of education in that period, as opposed to 61% of the children from the general population.

262 General Comments Nos. 4 and 7 on forced evictions of the Committee on Economic, Social and Cultural Rights are also relevant in this context.

263 Danilo Ćurčić, "Prestanak bilo kakve obaveze Republike Srbije," *Peščanik,* 23 January.

264 Serbia Multiple Indicator Cluster Survey 2019 and Serbia Roma Settlements Multiple Indicator Cluster Survey 2019, UNICEF, October 2020.

The national Strategy on the Development of Education until 2030, adopted in 2021, recognises the particular vulnerabilities of Roma, especially those living in Roma settlements. The Strategy sets the following goals to be achieved by 2030: increase of the primary school completion rate, effective enrolment in secondary school and the secondary school completion rate of children from Roma settlements.[265] Its goals also include training more teachers of the subject called Roma Language with Elements of National Culture, which is to be funded from donor funds rather than the state budget.

A number of poor children had difficulties accessing education after anti-pandemic measures were introduced. Many residents, including inevitably children, of informal Roma settlements (24,104) have no or irregular access to electricity.[266] These children had difficulty following school online – on TV or via the Internet. As noted in the Report on Operational Conclusions, the Ministry of Education, Science and Technological Development consequently implemented an EU-funded project in cooperation with UNICEF "Bridging the Digital Divide for the Most Vulnerable Children," which involved the purchase of technological equipment for school-children to enable them to follow class online. The project was implemented in 30 schools in 30 LSGs schooling particularly vulnerable Roma children; it involved the distribution of 1,890 tablets to the schools (63 to each school), and between one and three laptops to each school. Additional laptops were given to schools engaging pedagogical assistants. The project involved building the capacity of all 900 teachers and granting funds to the schools to set up Learning Clubs, to be used by children who could not follow online classes at home.

Although the implementation of such projects is a step in the right direction, the EC noted in its Report that further efforts were required to compensate for learning gaps caused by digital exclusion, in particular among disadvantaged students. In addition, no systemic solution has been found to the issue of access to distance learning, particularly vulnerable children under that regime.

In his letter to primary and secondary school principals, professional associates, teachers and homeroom teachers of March 2021, the Education Minister simply said that schools were under the obligation to find alternative ways for extending study support to their pupils when they could not communicate with them online, especially to pupils from economically disadvantaged families and all other pupils who did not have access to electronic forms of communication and other modern-day communication resources.[267] The vague instructions in his letter indicate

265 *Ibid.*, 5.1. Goal 1, Impact Indicators 15, 16 and 17.

266 "Mapping of Substandard Roma Settlements according to risks and access to rights in the Republic of Serbia," SIPRU, December 2020. The Report mapped 702 substandard Roma settlement and found that 14.35% of them lacked access to electricity.

267 Pismo ministra prosvete, nauke i tehnološkog razvoja osnovnim i srednjim školama o ostvarivanju obrazovno-vaspitnog rada učenjem na daljinu za učenike osnovnih i srednjih škola, Letter No. 601-00-09/2021 of 16 March, available in Serbian on the Ministry website.

lack of a strategic or targeted approach to addressing the right to education and discrimination in exercising it, leaving it to each individual school to find the adequate solution. In addition to the purchase of technical equipment, the interventions envisaged by the Bridging the Digital Divide for the Most Vulnerable Children project may prove expedient in that sense. However, the project only covers 30 schools in Serbia. It also needs to be borne in mind that various schools across the country have various capacities, a "detail" the Minister neglected in his letter.

7.6. Employment

In its 2020 Annual Report, the National Employment Service (NES) said that an average of 27,694 people declaring themselves as Roma were registered with it in 2020; 13,804 of them were women.[268] In 2020, 1,534 Roma women and 1,730 Roma men were covered by active employment measures (i.e. Roma job-seekers accounted for 5.02% of all beneficiaries of these measures); 739 Roma women and 844 Roma men were included in active job search measures, while 465 Roma women and 294 Roma men took part in upskilling programmes; 230 Roma women and 367 Roma men benefitted from employment subsidy programmes, while 100 Roma women and 225 Roma men participated in public works programmes. In the first quarter of 2021, 381 Roma women and 433 Roma men were covered by active job search measures.[269]

As noted in the BCHR's 2020 Report, the Decree on the "My First Salary" Youth Employment Incentive Programme entered into force in August 2020. The programme envisages the training of 10,000 high-school and college first-time job-seekers registered with the NES.[270] The legal grounds on which the Decree was adopted and the degree of respect for the rights of youth benefitting from it are questionable.[271] Thirty-six Roma men and 22 Roma women were included in the programme from November 2020 to April 2021.[272]

The national 2021–2026 Employment Strategy was adopted in February. The Action Plan for its implementation in the 2021–2023 period, which was adopted in March, defines the following objective "improved status of job-seekers" and Measure 2.7 – improvement of the status of job-seeking Roma men and women. The measure

268 Izveštaj o radu Nacionalne službe za zapošljavanje za 2020. godinu, National Employment Service, Belgrade, 2021, p. 121, available in Serbian on NES' website.

269 Report on the Implementation of Operational Conclusions from the Seminar "Social Inclusion of Roma in the Republic of Serbia" for the Period October 2019–October 2021, p. 32, SIPRU, 15 June 2021.

270 *Ibid*.

271 "'Moja prva plata': Niti plata niti je po zakonu, Lj. Bukvić," *Danas*, 18 August 2020.

272 Report on the Implementation of Operational Conclusions from the Seminar "Social Inclusion of Roma in the Republic of Serbia" for the Period October 2019–October 2021, p. 32, SIPRU, 15 June 2021.

includes activities to improve the status of Roma in the labour market, notably: inclusion of unemployed Roma in the Functional Primary Education of Adults; inclusion of unemployed Roma in motivation-activation trainings; outreach and dissemination of information to Roma about NES measures and services; inclusion of Roma vulnerable on multiple grounds in the package of measures; and encouragement of entrepreneurship, and provision of additional support and mentoring. The Action Plan defines Roma as difficult-to-employ persons, who will therefore have priority inclusion in active employment measures.

7.7. Discrimination

The Serbian parliament adopted the General Equality Act and amendments to the Anti-Discrimination Act in 2021. Article 6 of the Gender Equality Act defines vulnerable social groups, which include "groups of persons who are at a disadvantage as a result of their social background, nationality [...] life in an underdeveloped area or for some other reason or trait." The situation and special needs of girls and women from vulnerable social groups and obligations vis-à-vis them permeate the entire Act, above all in the provisions on: the establishment and monitoring of equal opportunities policies; special measures for improving gender equality; work, employment and self-employment; social protection and health care; education, science and technological development; sexual and reproductive health and rights; general support services; and specialised support services. The 2021–2030 Gender Equality Strategy was adopted in October. Its Action Plan was to be adopted within the following 90 days.

The adopted amendments to the Anti-Discrimination Act improved the framework of protection from discrimination and are of major importance for the Roma's enjoyment of their rights. The Act now prohibits segregation, which is defined as a grave form of discrimination, as well as incitement to discrimination. It also prohibits discrimination against persons belonging to national minorities, including Roma, in the context of employment, upskilling and promotion; assessment of impact of regulations and policies on the realisation of rights of socio-economically disadvantaged individuals; discrimination against children because of their ethnicity or national affiliation; and discrimination in the field of housing (Article 27a), which is of major importance to the Roma's enjoyment of their rights. The Anti-Discrimination Act also entitles human rights organisations to file complaints on behalf of a group of individuals whose right has been violated without their individual consent, provided that the right of an indeterminate number of members of a group sharing a personal characteristic under Art. 2(1(1)) of the Act.

Roma were still victims of discrimination, intolerance and hate speech. Most of the complaints of discrimination on grounds of national affiliation or ethnic

origin filed with the Equality Commissioner in 2020 concerned Roma[273] – as 94 of the 144 complaints of discrimination on these grounds (82.5%) concerned Roma.[274] It should be borne in mind that the work of the Equality Commissioner's Office was blocked for a considerable part of 2020 wherefore it was unable to act on these complaints.[275]

The Equality Commissioner conducted a survey of Roma perceptions of discrimination on a sample of 310 Roma men and women.[276] The survey shed light on the Roma community's perceptions and views of discrimination and protection mechanisms.[277] It found, inter alia, that the respondents believed that poverty was one of the main reasons for discrimination against this group; 88% of the respondents agreed with the statement that Roma who were members of political parties benefitted the most, while 75% agreed that they were not promoted at work because they were less educated; 34% of the respondents agreed that Roma had a harder time finding a job because of their national affiliation; 35% thought that Roma were not treated the same as other citizens, while 55% disagreed with the statement; 26% said they themselves had been discriminated against, while 54% said that neither they nor their family members had been discriminated against. Most of the respondents who reported that they had been discriminated against felt that they had been denied their rights and services by municipalities, other public institutions and Social Work Centres, and while they were looking for a job/during recruitment. As many as 60% of the respondents were of the view that they faced major obstacles in the job search stage, while only 15% identified such barriers at the workplace. Three out of four respondents think that Roma are not promoted at work because they are less educated, while as many as 88% think that education is crucial for equal status in society. A large share of respondents opined that the state recognised the importance of discrimination against Roma and was investing major efforts in improving their status.[278]

Discrimination against Roma men and women was still widespread in Serbia. The Minister of Human and Minority Rights and Social Dialogue, Gordana Čomić, herself asked why Roma were excluded from everything and said that their participation in society had to be improved.[279] EU Ambassador to Serbia Sem Fabrizi also

273 See the Equality Commissioner's Opinion No. 68–21 concerning a complaint association AA filed against media outlet BB, Ref. No. 07–00–75/2021-02, of 25 May 2021, available on her website.

274 Regular Annual Report of the Commissioner for Protection of Equality for 2020, Equality Commissioner, March 2021.

275 More in the *2020 Report*, IV.7.7.

276 *Percepcija romske zajednice o diskriminaciji*, available in Serbian on the Equality Commissioner's website.

277 *Ibid.*, p. 7.

278 *Ibid.,* pp. 7–9.

279 National Dialogue on Social Inclusion and Economic Empowerment of Roma Men and Women Returnees, Centre for Democracy Foundation, 7 December.

said that the inequality problem deteriorated during the pandemic.[280] The European Commission emphasised that Roma women and other women belonging to vulnerable groups continued to experience intersecting forms of discrimination, which was further exacerbated by the COVID-19 crisis.[281] All of the above, above all the greater number of complaints of discrimination against Roma women and men on ethnic grounds, clearly corroborates that Roma are still victims of widespread discrimination.

8. 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.

Unfortunately, facts indicate that the state and society prefer managing the homelessness problem, rather than eradicating and putting an end to it. The existing services aim to address the immediate needs of the homeless: provide them with beds to sleep in from one night to another, put in place mechanisms for food donations, provision of health care, et al. Indeed, all these services provide an important scope of support to this vulnerable category, but do they provide long-term solutions and how effective are they?

Homelessness is denial of fundamental human rights. On the other hand, management of homelessness is very expensive for society, wherefore responses to homelessness actually become part of the problem. There are often major gaps in the provision of social protection services due to lack of a clear strategy. Mere management of the problem without recognising and developing longer-term, more comprehensive and sustainable solutions will not lead to the eradication of homelessness.

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. 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 21.7% in 2020, or 1.5% less than 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 22,000 RSD a month for single member households in 2020. The at-risk-of-poverty threshold for households comprising two adults

280 "Technical Meeting Held on Social Inclusion of Roma in the Republic of Serbia," SIPRU, 29 June 2021.

281 *Serbia 2021 Report*, p. 38.

and one child under 14 stood at 39,600 RSD, and at 46,200 RSD for four-member households comprising two adults and two children under 14. The at-risk-of-poverty or social exclusion rate stood to 29.8%, and it was lower by 1.9 percentage points relative to 2019. The at-risk-of-poverty or social exclusion rate shows the share of individuals who are at risk of poverty or are severely materially deprived or live in households with very low work intensity.[282]

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.[283] The number of primary homeless people is probably higher given that the data were collected from the relevant social institutions. The Red Cross and the associations *Izlazak*, *Klikaktiv* and ADRA estimate that there are between five and 15 thousand people living in homelessness in Serbia.[284]

On 7 April, the Serbian parliament adopted amendments to the Census Act, putting the census off for October 2022. Under this law, the census of people living in homelessness will be conducted exclusively indirectly. The census of the primary homeless will be conducted solely via the relevant social institutions, not where they usually spend their time (in the streets, parks, etc.). Given that the census in Serbia is conducted by place of residence, the census of people living in homelessness should be conducted in another manner; for example, the state should form teams who will work in areas where homeless people have been mapped or in cooperation with service providers who have already gained their trust.

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.[285] In the view of the Social Policy Centre, the at-risk-of-poverty rate illustrates the rate of inequality and the absolute poverty rate needs to be ascertained. It estimates that there are around 500,000 extremely poor people in Serbia.[286]

Precise 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.

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282 "15.10.2021. – Poverty and Social Inequality, 2020", Statistical Office of the Republic of Serbia, Saopštenje br. 282, god. LXXI, 15 October.

283 M. Bobić, "The Homeless – The 2011 Census of Population, Households and Dwellings in the Republic of Serbia," SORS, 2014.

284 "Beskućnici u Srbiji: 'Život na ulici je takav da kad se probudiš ujutru, odmah razmišljaš gde ćeš uveče da spavaš'," *BBC in Serbian*, 10 October.

285 Assessment of Absolute Poverty in Serbia in 2018, SIPRU, 2018.

286 "Srbija napredovala – sada skoro polovina građana jedva sastavlja 'kraj s krajem'," *Danas*, 17 October.

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, 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.

8.1. 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 Charter 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. 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."

Documents[287] 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

287 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).

and his family, and set out sets 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, 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 Act 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 (Art. 4). This means that the law does not recognise homelessness as a problem, although it exists, and that it does not include the aspect of homelessness and housing needs of socially vulnerable individuals.

The phenomenon of homelessness is still marginalised. No standards have been established that define the minimal housing conditions and only relatively broad and insufficiently discriminatory notions of the primary and the secondary homeless are used. For example, the Act on Housing and Maintenance of Residential Buildings defines the homeless as "individuals living in the streets without a shelter that would fall within the scope of living quarters under this law."

Another problem arises from the fact that a substantial number of homeless people does not have personal documents and cannot take part in the 2022 Census or exercise their rights and that they have major problems in obtaining new documents. The Temporary and Permanent Residence Act lays down that everyone living in Serbia must have a registered temporary or habitual place of residence. The status of all individuals is regulated in this manner, they become legally visible and able to exercise all the rights that belong to them.[288] Under the law, individuals without temporary or permanent residence must be registered at the address of the competent social care institution, that is, a shelter, drop-in centre or the relevant Social Work Centre (SWC). The law lays down the registration procedure, which is extremely complicated in practice. The procedure is initiated by the individual filing s an application with a police station. After a field check, the police official issues a ruling. In the experience of CSOs, most first-instance rulings are negative.[289]

288 For example, ADRA's records show that 450 of its beneficiaries in Belgrade do not have any personal documents.

289 Field surveys and experiences of CSOs working with the homeless – Klikaktiv, the A11 Initiative and ADRA – confirm that the police issue negative rulings in the vast majority of cases, in

Eviction also undermines the protection of people living in homelessness. Under the law, the implementation of court eviction orders has to be accompanied by measures protecting the evictees. In the experience of CSOs working with the homeless, such protection measures are either inadequate or not implemented at all.

The 2019–2025 Draft Social Protection Strategy (Draft Strategy)[290] 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,[291] 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.

Protection of economic and social rights would be improved if Serbia ratified the Optional Protocol to the International Covenant of Economic, Social and Cultural Rights. More and more Serbia's citizens have been complaining, and, with good reason, of violations of their economic and social rights, including their right to housing and of risk of poverty resulting in homelessness. Serbia's ratification of the Optional Protocol would provide Serbia's citizens with an additional level of protection of their rights. They would be able to complain to the UN Committee on Economic, Social and Cultural Rights if the domestic courts failed to protect their economic, social and cultural rights.

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contravention of the law, for instance by neglecting the very real possibility that the applicants are not at the specified location when they visit it. The Belgrade City Police Administration commendably overturned such rulings in all 130 cases ADRA was involved in and the applicants managed to register their place of residence. The appeals procedure, however, extends the already long process by another 3–6 months.

290 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 (Art. 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.

291 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.

8.2. 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 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. In addition to state-run 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 2021 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 Belgrade, Novi Sad, 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 survey are presented below.

8.2.1. Shelters for Adults and the Elderly

8.2.1.1. 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 shelters sorely lack capacity: three day centres in Belgrade registered over 8,000 visits last winter and the shelter in Kumodraška Street can take in only 104 people. There has been talk of expanding its capacity for years now, but words have not been translated into deeds yet.[292]

The day centre in the Belgrade municipality of Stari Grad operated throughout the year, providing the homeless with meals, clothing, warm beverages and hygiene packages. Another centre opened in the Belgrade municipality of Vračar in mid-October. It can take in 20 beneficiaries and has an isolation unit with six beds.[293] Another facility at Autokomanda is open only during the winter. In addition to a day centre in the Stari grad municipality, which is open all year round, there are two other day centres in the Belgrade municipalities of Palilula and Vračar, which open when necessary. All the day centres are managed by the Belgrade Red Cross and they are open several hours a day.

292 "U Beogradu opštine sa najviše beskućnika Novi Beograd i Palilula," *Danas*, 10 October 2020.

293 "Prihvatilišta za odrasla i stara lica u Beogradu spremna za zimu," *Euronews Srbija*, 13 October.

Fifty-four homeless people were accommodated in Belgrade shelters in early December, 48 of them in Kumodraška Street and seven in the Vračar centre. As expected, the number of people seeking shelter grew as the weather got cold; 36 men and 18 women between 25 and 75 years of age were provided with shelter. Nearly all of them had health problems and over 80% were psychiatric patients. Some of the homeless beneficiaries did not have personal documents and the procedure for their issuance was under way. The Shelter took in a total of 158 homeless persons from 1 January to mid-November 2021 – 89 were admitted and 101 left the Shelter. The Shelter provides the beneficiaries with accommodation, food, health care, psychosocial aid and support, occupational therapy, the opportunity to shower and wash their clothes. The shelter has 51 staff, including doctors, social workers, psychologists, caregivers, nurses, a lawyer, and kitchen and cleaning staff.

The beneficiaries are referred by the relevant department of the Belgrade City SWC that assesses their needs. All the beneficiaries fulfil the requirements for accommodation in other social care institutions, but their transfer is decided on by the City SWC. A large number of the beneficiaries were referred to the Shelter as soon as they were released from hospital. Permanent accommodation was provided for 40 beneficiaries during the reporting period.

Both centres have isolation units that can take in 11 residents. The new arrivals must present negative PCR tests on admission and spend a fortnight in the isolation unit. The number of beneficiaries accommodated during the year was smaller because of these procedures. PCR testing of people to be admitted to the Shelter is free of charge.

8.2.1.2. Novi Sad Shelter for Adults and the Elderly

This Shelter can take in up to 60 beneficiaries; 54 people (over two thirds of them men) were staying in it in November 2021. The Shelter was full at all times, accommodating 61 people throughout the year. Most of the beneficiaries were between 40 and 60 years old or over 60. Many were of poor health, with addiction backgrounds and mental health problems. There was a visible increase in the number of terminally-ill beneficiaries. Eleven of the beneficiaries did not have any personal documents.

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.[294]

The beneficiaries are accommodated in the Shelter at the request of the relevant SWC. They usually stay between six and 12 months; around a third of them have been living in the Shelter for over a year. The beneficiaries fulfil all the requirements for referral to an old people's home but stay in the Shelter because the homes

294 Data and statistics in the report were collected through surveys and the questionnaire BCHR sent this institution.

are full. A large number of beneficiaries was referred to the Shelter directly from hospital. The Shelter staff single out as the two greatest challenges the increasing number of terminally-ill beneficiaries and of beneficiaries released from psychiatric institutions. The Shelter is understaffed and its staff is insufficiently trained in assisting these groups of beneficiaries.

A decision to build a new shelter for adults and the elderly in Futog was adopted in late 2020. The new facility is to have a ground floor and two floors and the capacity to take in 120 beneficiaries.[295] A tender for the first stage of construction was called in November 2021.

The pandemic did not result in a decrease in the number of new beneficiaries, but the new procedures have led to slower admission of beneficiaries. They must present negative PCR tests on admission, while unvaccinated beneficiaries must spend a fortnight in the isolation unit. The Shelter had sufficient quantities of face masks, gloves and disinfectants.

One homeless person froze to death on a bench in the heart of Novi Sad in mid-November.[296]

8.2.1.3. Niš Shelter

The Gerontology Centre in Niš had a reception unit and shelter for adults until May 2020. In December 2020, the authorities decided to temporarily accommodate the homeless and destitute in the Day Care Centre for Children, Youths and Adults with Intellectual Disabilities "Mara" during the winter. That part of the Centre was separated from the rest of the institution. It had its own entrance, yard, cafeteria and isolation room. It had the capacity to take in 11 beneficiaries, who were provided with clothes and footwear, hygiene products, three meals and two snacks a day, and adequate health care.[297]

The shelter was initially to have been opened from December 2020 to March 2021, whereupon the facilities would be used for the extension of Respite from Parenthood services.[298]

The Deputy Mayor of Niš, the third largest city in Serbia, announced the opening of a shelter for adults and a drop-in centre. She said that the "Mara" Centre would be in charge of the shelter, which would have 15 beds and a reception station for urgent admission in case of emergencies and inclement weather.[299] The media reported that funds for equipping the shelter have been raised and that a new building fulfilling all the requirements has been identified. The shelter did not open by the end of November and the plans were to equip the new facilities in the latter half of

295 "Biće izgrađeno novo prihvatilište za odrasle u Futogu," *Dnevnik*, 20 February.

296 "Ljudi bez doma nevidljivi za sistem – priče iz Kineske četvrti u Novom Sadu," *N1*, 1 December.

297 "Niš dobio privremeno prihvatilište za socijalno ugrožene građane," *Jugpress,* 14 December 2020.

298 *Ibid*.

299 "Nadležni najavljuju: Niš dobija Prihvatilište za odrasle i Svratište za decu ulice," *Južne vesti,* 21 May.

December or in January.[300] The question remained where the homeless would be able to receive help in the meantime and whether the shelter would even open this winter.

The Niš city officials continued claiming that there were no homeless people in Niš and that the city SWC records showed that there were only 11 old and destitute people, who could not live in their homes during the winter because they could not afford to pay their electricity bills in the winter or faced other risks at home.[301] These claims came in response to media reports that the Niš railway station has been locking its doors at 8 pm since the weather got cold and that the people, who came to the waiting areas to warm themselves, spend the night or shelter themselves from inclement weather, were now waiting nearby for it to reopen in the morning.[302]

8.2.1.4. 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. It does not accommodate more than 30 beneficiaries and another eight in the isolation unit. Since the facility has not been renovated yet, it can take in 25 beneficiaries.

The Shelter had 20 residents in November. It was home to 52 beneficiaries since the beginning of the year; 10 were living there for over a year because the SWC was unable to find them permanent accommodation. The numbers of male and female beneficiaries were approximately the same. Nearly half of them had mental problems. Most were between 40 and 65 years old; one was a minor. Around a quarter of the beneficiaries did not have personal documents, wherefore they were unable to exercise their right to welfare. The procedure for issuing personal documents to five beneficiaries was pending in November. Most of the beneficiaries have been referred by the Smederevo SWC, and, to a lesser extent, by SWCs in the nearby towns. Beneficiaries are referred to the Shelter exclusively by the relevant SWCs. The on-duty social worker is contacted in emergencies.

The Shelter is staffed by 14 workers, including caregivers, nurses, a cleaning lady and a cook. The residents were provided with meals, health and other care and transportation to the doctor. The Shelter organises cultural, entertainment, sports-recreational and occupational therapy activities.

The Shelter had fewer beneficiaries last year due to the pandemic. The need for accommodation has generally been growing every year, especially in winter. All new arrivals must produce negative PCR tests and spend a fortnight in the isolation unit. The costs of testing are covered from the Smederevo city budget.

Thanks to donations, especially from the Red Cross, the Shelter had enough PPE and disinfectants in 2020, but was forced to buy most of the supplies in 2021, a

300 "Davidović: Na teritoriji Grada Niša nema beskućnika," *Južne vesti,* 27 November.

301 *Ibid*.

302 "Železnička stanica u Nišu uveče zaključana, ispred beskućnici čekaju jutro da se unutra ugreju," *Južne vesti*, 26 November.

major financial burden. The Red Cross of Serbia decided to halt donations of used wardrobe, but the Shelter received donations of new clothes, hygiene products and disinfectants.

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 SWC issues rulings on their permanent accommodation. The beneficiaries tend to get used to living in the Shelter and do not want to move. The staff singled out funding as a problem, and the fact that the Shelter is licenced until 2024, when they will need additional funds to renovate the Shelter and prepare the requisite documentation. Furthermore, the Shelter prepares food for the soup kitchen and distributes it to rural areas, which further increases the staff's workload. The staff said the Shelter needed at least one full-time doctor given that most beneficiaries are of frail health.

8.2.1.5. 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 18 beds and can add more if necessary. Although the Shelter is always full in winter, it is not open the rest of the year or, for that matter, the entire winter. A major problem arises from the fact that the opening of the Shelter depends on the weather – i.e. the temperature has to be between – 7 and – 10 degrees Centigrade for an entire week. This is why the Shelter was open only for 20 or so days in 2021, from 11 to 22 January and from 10 to 22 February. Only six beneficiaries were accommodated in it during this period.[303] The Shelter did not open at all in November in 2021.

The beneficiaries are provided with three meals a day, clothes and footwear, hygiene products, a general check-up and can consult with SWC representatives.

8.2.1.6. Zrenjanin Shelter for Adults and the Elderly in Crisis Situations, the Homeless and Beggars

The Zrenjanin Shelter was established in 2010 within an NGO project implemented in cooperation with the Zrenjanin local authorities. The Zrenjanin SWC took over its management after the project ended and, as of January 2020, the Shelter has been operating as part of the Zrenjanin Centre for Social Protection Services "MOST". The planned construction of the new Shelter facility has not begun yet.

The Zrenjanin SWC decides who is entitled to Shelter services and issues rulings on the beneficiaries' accommodation in it based on the professionals' assessments. Anyone between 26 and 65, who does not have a habitual place of residence and is in a crisis situation may be granted accommodation in the Shelter. All beneficiaries are provided with accommodation, food, clothing, medications, help in maintaining personal hygiene and eating, health care, support and are escorted to

303 "Ponovo zatvoreno Prihvatilište za beskućnike," *Subotica.com*, 22 February.

their medical examinations; they are also provided with support in finding the best independent living solution. The Shelter has only 10 beds, wherefore it comes as no surprise that it is full all year round. Some beneficiaries have been living in the Shelter every winter for years now. The Shelter has seven members of staff, comprising a psychologist, a pedagogue and five medical technicians and caregivers.[304]

The beneficiaries are tested for COVID-19 before admission and then have to spend a specific period of time in self-isolation. This period depends on their test results, whether or not they have been vaccinated and whether they already had COVID-19.[305]

8.2.2. 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 higher in cities, where children under 14 accounted for 24.4% and youth under 19 for 31.5% of the residents of informal settlements. The Serbian Network of Organisations for Children (MODS) said that 200,000 children in Serbia were living under the absolute poverty line and were at greatest risk of poverty and social exclusion.[306]

8.2.2.1. 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. Their capacity was reduced for epidemiological reasons since COVID-19 struck. They have also extended their opening hours to 8 pm to allow all children access to their services. The staff work in shifts and the number of counsellors has been reduced so that as many children as possible can spend time in the Centres. In 2021, the Centres extended services to 370 boys and girls from 150 families they have been working with for years.[307]

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. More children frequented the Centres in 2020 and the first half of 2021. Their numbers gradually fell during the summer, when between 25 and 30 children dropped in the Centres. Most of the children now come every day, whereas they used to drop in once or twice a week before the pandemic.

304 "U Prihvatilištu za beskućnike najmlađi korisnik ima 26, a najstariji 74 godine," *Ilovezrenjanin*, 8 November.

305 *Ibid*.

306 "Garancije za svako dete," MODS, 20 November.

307 Data and statistics in the report were collected through surveys and the questionnaire BCHR sent the Centre for Youth Integration.

Most of the children coming to the Drop-in Centres are Roma children living in informal settlements. Field teams identify new beneficiaries by visiting the 28 informal settlements in the territory of Belgrade and the locations where the children usually work. Nevertheless, most of the children have been dropping in the Centres for a long period of time.

The children who frequent the Drop-in Centres are between 5 and 15 years old. Younger children come sometimes as well, in the company of their older siblings or parents. Most of them have birth certificates, PINs and attend primary school. 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.[308]

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 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. Centre staff have been notifying the SWC of new beneficiaries, to facilitate its collection of precise data on the number of children from vulnerable families who are living and working in the street.

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. Restrictions of indoor activities were a major problem in 2021. The number of volunteers fell, boiling down only to interns and trainees. Furthermore, the pandemic precluded the implementation of various promotional and other activities involving larger numbers of children, such as choir practice.

Fourteen members of staff work with the children directly. 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.

308 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.

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 again highlighted the problem of education, especially the challenges of distance learning. Most of the beneficiaries had needed study support even in non-pandemic times. When the school-year began, children attending 5th–8th grades went to school or followed class online, or went to school under the so-called "combined model", i.e. did not go to school every day. Classes were divided into groups, each of which had its own schedule. Children attending 1st-4th grades went to school every day and their classes lasted 30 minutes. The shift to online schooling precluded a large number of children from following class. The Belgrade city authorities handed out tablets to 3rd and 4th graders as of September; each tablet has a free Internet card and the children can use them whether or not they have Internet at home.[309] However, a large number of children living in informal settlements do not even have electricity; nor can they count on their parents' help in using the tablets.

The Drop-in Centre staff's priority was to help the children master reading, writing and basic mathematical operations. They said that none of the children flunked a subject or a grade or had to take make-up exams, and that the schools did not organise any make-up classes during the school year. In their opinion, the long-term effects of the numerous challenges to education during the pandemic are yet to be seen.

8.2.2.2. Novi Sad Drop-in Centre for Children and Youth

The Novi Sad Drop-in Centre has one room that can fit 30 children. Between 30 and 40 children and youth frequent the Centre on a daily basis; their number increases to between 50 and 70 in the winter months. A total of 379 children and youth dropped in the Centre from 1 January to mid-October 2021. The number of children coming to the Centre has been increasing every year.

Most of the children frequenting the Drop-in Centres beg or collect secondary raw materials; all of them come from extremely impoverished families. The number of boys is slightly higher. Most of them live with their biological families, which are, as a rule, large. Most of the children live in the Veliki rit and Bangladeš informal settlements, while some of the beneficiaries live in other parts of the city as well. Children of three families who returned to Serbia under readmission agreements also frequent the Drop-in Centre. All the children now coming to the Centre

309 "Vesić predstavio projekat 'Beotablet': Pripremamo decu za digitalizaciju", *B92*, 29 June.

have PINs, but several adult beneficiaries do not have ID cards. Many of the children are Roma, but there are also Ashkali, Hungarian Roma and Serb children.

Most children are enrolled in primary school but many of them do not attend it regularly. The staff highlighted as a good practice example the Centre's cooperation with the "Milan Petrović" school, which holds functional literacy and adult education classes. The school teaches a class of 15–19-year-old children and youth in the Drop-in Centre who have not completed primary school.

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 children are also supported in building their basic life skills and extended psychosocial support. In cooperation with the Novi Sad Red Cross, the Centre organised workshops on human trafficking to familiarise the children with this risk they may be exposed to. 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 (health, educational, social and legal) services. The Drop-in Centre has eight members of staff: a coordinator, counsellors, a housekeeper and a cleaning lady. Volunteers also help out.

The staff single out the children's inclusion in the system and increasing their visibility as the greatest challenges. This is why they are doing their utmost to enrol as many children as possible in school, monitor their results regularly and maintain contact with their teachers and other school staff. They also help eligible youth register with the National Employment Service. The staff also highlight the parents' lack of capacity to provide their children with a proper upbringing and study support and the need to facilitate their contacts with other institutions. They think that the problem should be approached more comprehensively and that the authorities should work with entire families. They suggest that family counsellors should be introduced to provide the families with assistance and support in all walks of life – accompany the parents to PTA meetings, help them fill various forms and money orders, and facilitate their access to other community services.

8.2.2.3. Niš Drop-in Centre

A Drop-in Centre for Children operated in Niš in the 2009–2014 period. Over 250 children availed themselves of its services. The Centre was, however, closed when the then donor withdrew.[310]

Media reported in April 2021 that the Drop-in Centre would reopen thanks to a donation of the Swiss Government. The new Drop-in Centre opened on the ground floor of the Roma Cultural Centre in July. The children are provided with psychosocial and study support, health care, meals, educational and creative work-

310 "Niš dobija svratište za decu ulice, ovog puta kao trajnu uslugu Grada," *Južne vesti,* 12 April.

shops and a place to rest. The premises have been adapted and equipped to enable the children to follow online classes.[311] The Drop-in Centre focuses on work with the children's families, with the aim of extending them support and building their capacities.[312]

The precise number of children living and working in the streets in Niš is unknown. UNICEF data put their number at around 80, but estimates are that there is more of them.[313]

Although the media reported that the Drop-in Centre would be open year round and funded from the city budget, it is now operating thanks to the project "On the way to the shelter", which the Roma Culture Centre has been implementing with the assistance of the Swiss PRO Programme, the Open Club Association and the Roma Association *Cvetno sunce*. The project envisages funding of the Drop-in Centre for 10 months, after which the city authorities will assume full responsibility for it.[314]

8.3. CSOs' Response to the Homelessness Problem

8.3.1. Drumodom

In 2018, the humanitarian organisation ADRA launched *Drumodom*, a mobile programme providing a unique solution to homelessness in the Western Balkan region. A modified bus has been providing homeless people at various locations with the opportunity to use its shower and toilet, wash their laundry, get a haircut, as well as free medical and psychological counselling services. *Drumodrom* has two medical teams, each comprising a doctor and a nurse. *Drumodrom*'s team also includes two staff members charged with hygiene and humanitarian (distribution) activities and two experts (a special pedagogue and a psychologist during the first stage, and two special pedagogues during the second stage) extending a variety of social and psychosocial support services.

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. *Drumodrom* stops at various locations in Belgrade. In 2021, it was parked at three locations frequented by the homeless, and occasionally in informal Roma settlements.

An average of 90 homeless people asked the *Drumodom* for help every day. Nearly 90% of them were men between 55 and 60 years of age. *Drumodrom* staff estimated that 75% of their beneficiaries probably had a family or a close relative. Between 30 and 50 of them lived with their families or relations or kept in touch

311 *Ibid*.

312 "Svratište za decu ulice otvoreno u Romskom kulturnom centru u Nišu," *Danas*, 18 August.

313 "Niš dobija svratište za decu ulice, ovog puta kao trajnu uslugu Grada," *Južne vesti,* 12 April.

314 "Svratište za decu ulice otvoreno u Romskom kulturnom centru u Nišu," *Danas*, 18 August.

with them. Almost 75% of the beneficiaries suffered from addiction and 80% had mental illnesses or mild psychological problems, while nearly 95% of the beneficiaries had health problems. Most of them also had chronic diseases. Three quarters of the beneficiaries 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.

8.3.2. Izlazak Day Club

The association *Izlazak* operates a Day Club in Zemun for poor adults and the elderly in Belgrade. Its beneficiaries have access to numerous services: showers, haircuts, change of clothes, laundry washing, new underwear and used clothes and footwear, food packages and warm beverages, and leisure activities. The Club was open twice a week until November and has since been open three times a week. *Izlazak* occasionally organises food and clothing drives.[315]

8.4. Situation of the Homeless during the COVID-19 Pandemic

The homeless have faced numerous difficulties in accessing their rights to health care during the pandemic, notably because quite a few of them lack any personal documents. They also had problems accessing the latest information about the anti-COVID-19 measures. None of the institutions implemented any measures supporting this vulnerable group.[316]

The vaccination plan drawn up by the Public Health Institute at the beginning of the year included three stages, illustrating the priority the state attached to various categories of the population. Vaccination of residents of informal settlements, the homeless and people living in extreme poverty was planned in the last stage.[317] This plan was concerning given that many of these people do not have access to water or quality food, suffer from chronic illnesses and their immunity is compromised.

Like in 2020, the Serbian Government again adopted a package of aid to businesses and the population in 2021. All adult Serbian nationals could apply for one-off aid in the amount of €60 (in RSD). The money was directly paid to pensioners, welfare beneficiaries registered by the SWCs and inmates.[318] However, anyone who wanted to withdraw the money had to produce 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.

315 Available on its website.

316 "Beskućništvo i zdravlje: iskustva sa terena u doba pandemije," ADRA, Belgrade, 31 March.

317 "Batut objavio plan vakcinacije u Srbiji koji predviđa 3 faze," *Južne vesti,* 10 January.

318 "Počela prijava građana za pomoć od 60 evra," *Danas*, 28 April.

8.5. UN Recommendations and EU Activities

Social protection gained in importance during the crisis caused by the pandemic. In his report, the Special Rapporteur on extreme poverty and human rights said that, by September 2020, over 1,400 social protection measures have been adopted by 208 jurisdictions to cushion the shock but that the intended beneficiaries of these schemes often had to face systemic obstacle courses to access them and that many of the programmes were short-term, temporary measures.[319]

In late 2020 and early 2021, the European Parliament called on EU Member States to eradicate homelessness by 2030. Although housing is a fundamental human right, over 700,000 people across Europe, or 70% more than 10 years ago, are living in the streets. It said that the pandemic has put homeless people at additional risk, as they disproportionally suffered poor health and lack access to hygiene and health care. The EP said that homelessness rates could increase with the current economic recession and jobs losses and lack of affordable housing.[320]

Unfortunately, the homeless are frequently the targets of hate crimes, violence and social stigmatisation. The EP thus said that they needed to be ensured equal access to health, education and social services, as well as integration into the labour market and constant and continuous access to emergency shelters. It called on Member States to adopt the principle of "housing first", which seeks to move homeless people into permanent housing as quickly as possible before addressing other issues. It also called on EU Member States to work on a common definition, improved data collection and coherent indicators to be able to better understand and assess the extent of the problem.[321]

The European Platform on Combating Homelessness was adopted in 2021 as part of the Action Plan to implement the European Pillar of Social Rights. The document outlines 10 elements on homelessness and the right to housing drawn from the international human rights system which may inspire and guide the design of the Platform and measures adopted under the Platform.[322]

The Platform should recognise that homelessness is an egregious violation of human rights, threatening the health and life of the most marginalised. It is the unacceptable result of States failing to implement the right to adequate housing and requires urgent and immediate human rights responses. The Committee on Economic, Social and Cultural Rights and the Human Rights Committee have recognised that distinctions based on socioeconomic status, including homelessness, are a form of discrimination that must be prohibited in domestic law. Furthermore, homelessness

319 "Međunarodni dan borbe protiv siromaštva. Oko pola miliona građana naše zemlje živi u apsolutnom siromaštvu," *Niške vesti*, 17 October.

320 "Evropski parlament želi da iskoreni beskućništvo u EU do 2030," *Euractiv.rs*, 5 April.

321 *Ibid*.

322 "European Platform on Combating Homelessness: 10 Elements for Consideration," *UN Brussels*, 16 June.

results from the violation of multiple human rights in addition to housing, such as the rights to an adequate standard of living, to health, to privacy, to work, to social security and to education, as well as civil and political rights, such as the right to vote. Unfortunately, despite the recognition of these rights in international human rights treaties, very few policies address homelessness as a human rights violation.[323]

The Platform addresses the definition of homelessness and criminalisation in law of persons living in homelessness. Given that all EU Member States have ratified the ICESCR and other relevant international human rights treaties, these existing binding standards should frame the work of the Platform. Furthermore, the Sustainable Development Goals should be the guiding principles of the work of Platform. The Platform should include a comprehensive approach to addressing the problems of the homeless and it is an opportunity for meaningful multi-stakeholder involvement and participation of rights-holders in decision making.[324]

323 *Ibid.*

324 *Ibid.*

Appendix I

The Most Important Human Rights Treaties Binding on Serbia

- 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.
- 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 preventing and combating violence against women and domestic violence, *Sl. glasnik RS* (*Međunarodni ugovori)*, 12/13.
- CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, *Sl. glasnik RS* (*Međunarodni ugovori*), 1/10.
- CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, *Sl. glasnik RS*, 19/09.
- CoE Framework Convention on the Value of Cultural Heritage for Society, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- 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 Concerning Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *Sl. list SFRJ (Addendum)*, 13/64.
- 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 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 for the Suppression on the Trafficking in Persons and of the Exploitation of the Prostitution of Others, *Sl. list FNRJ*, 2/51.
- 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 Environmental Impact Assessment in a Transboundary Context, *Sl. glasnik RS*, 102/07.
- 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 Police Cooperation in South East Europe, *Sl. glasnik RS,* 70/07.
- Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SFRJ* (*Međunarodni ugovori)*, 11/81.
- Convention on the High Seas, *Sl. list SFRJ (Addendum)*, 1/86.
- 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 the Political Rights of Women, *Sl. list FNRJ (Addendum)*, 7/54.
- Convention on the Preservation of Intangible Cultural Heritage (UNESCO), *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 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 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.
- Criminal Law Convention on Corruption and its Additional Protocol, *Sl. list SRJ (Međunarodni ugovori)*, 2/02 and *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, 5/05 and 7/05 – corr. and *Sl. glasnik RS (Međunarodni ugovori*), 12/10 and 10/15.
- European Convention on Extradition with additional protocols, *Sl. list SRJ (Međunarodni ugovori)*, 10/01.
- 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 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 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 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.
- International Criminal Court Statute, *Sl. list SRJ* (*Međunarodni ugovori)*, 5/01.
- Kyoto Protocol to the UN Framework Convention on Climate Change, *Sl. glasnik RS,* 88/07.
- 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, 2/06 and *Sl. glasnik RS (Međunarodni ugovori),* 7/11.
- 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 involvement of children in armed conflicts, *Sl. list SRJ* (*Međunarodni ugovori)*, 7/02.
- 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 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 Convention for the Protection of Individuals with regard to the Processing of Personal Data (Convention 108+), *Sl. glasnik RS* (*Međunarodni ugovori)*, 4/20.
- Protocol amending the Slavery Convention Signed at Geneva 25 September 1926, *Sl. list FNRJ (Addendum)*, 6/55.
- Protocol No. 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG* (*Međunarodni ugovori)*, 5/05 and 7/05.
- Protocol No. 15 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. glasnik* (*Međunarodni ugovori)*, 10/15.
- Protocol on Heavy Metals, *Sl. glasnik RS* (*Međunarodni ugovori)*, 1/12.
- Protocol on Persistent Organic Pollutants, *Sl. glasnik RS* (*Međunarodni ugovori)*, 1/12.
- Protocol Relating to the Status of Refugees, *Sl. list SFRJ (Addendum)*, 15/67.
- 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.
- 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

- 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, 99/11 – other law and i44/18 – other law.
- Act on Defence, *Sl. glasnik RS*, 116/07, 88/09 – other law, 104/09 – other law, 10/15 and 36/18.
- Act on Endowments and Foundations, *Sl. glasnik RS*, 88/19, 99/11 – other law and 44/18 – other law.
- Act on Energy Efficiency and Rational Use of Energy, *Sl. glasnik RS,* 40/21.
- Act on Establishment of Facts about the Status of Newborns Suspected to Have Been Abducted from Maternity Wards in Serbia, *Sl. glasnik RS,* 18/20.
- Act on Fees for Use of Public Goods, *Sl. glasnik RS*, *Sl. glasnik RS,* 95/18, 49/19, 86/19, 156/20 and 15/21.
- Act on Financial Support for Families with Children, *Sl. glasnik RS*, 113/17, 50/18, 46/21 – CC decision, 51/21 – CC decision, 53/21 – CC decision, 66/21 and 130/21.
- Act on Health Documentation and Health Records, *Sl. glasnik RS*, 123/14, 106/15, 105/17 and 25/19 – other law.
- Act on Housing and Maintenance of Residential Buildings, *Sl. glasnik RS,* 104/16 and 9/20 – other law.
- Act on Independent Movement with the Assistance of Guide Dogs, *Sl. glasnik RS*, 38/15.
- Act on Integrated Environmental Pollution Prevention and Control, *Sl. glasnik RS,* 135/04, 25/15 and 109/21.
- 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, 47/17 and 76/21.
- Act on Mediation in Dispute Resolution, *Sl. glasnik RS,* 55/14.

- Act on Mining and Geological Surveys, *Sl. glasnik RS*, 101/15 95/18 – other law and 40/21.
- Act on Ministries, *Sl. glasnik RS*, 128/20.
- 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 from Noise Pollution in the Environment, *Sl. glasnik RS,* 96/21.
- 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, 101/10, 88/11 and 106/15.
- Act on Rights of Veterans, War-Disabled Veterans and Civilians and Their Family Members, *Sl. glasnik RS,* 18/20.
- Act on Temporary Regulation of the Manner of Collection of Public Media Service Fees, *Sl. glasnik RS,* 11/15, 108/16, 95/18, 86/19, 153/20 and 129/21.
- 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 and Jurisdiction of State Authorities in Combatting Organised Crime, Terrorism and Corruption, *Sl. glasnik RS*, 94/16 and 87/18 – other law.
- Act on the Organisation and Jurisdiction of State Authorities in War Crime Proceedings, *Sl. glasnik RS,* 67/03, 135/04, 61/05, 101/07, 104/09, 101/11 – other law and 6/15.
- Act on the Organisation of Courts, *Sl. glasnik RS,* 116/08, 104/09, 101/10, 31/11 – other law, 78/11 – other law, 101/11, 101/13, 106/15, 40/15 – other law, 13/16, 108/16, 113/17, 65/18 – CC Decision, 87/18 and 88/18 – CC Decision.

- Act on the Prevention of Discrimination against Persons with Disabilities, *Sl. glasnik RS*, 33/06 and 13/16.
- Act on the Professional Rehabilitation and Employment of Persons with Disabilities, *Sl. glasnik RS*, 36/09 and 32/13.
- Act on the Protection of Participants in Criminal Proceedings, *Sl. glasnik RS*, 85/05.
- Act on the Protection of People with Mental Disorders, *Sl. glasnik RS,* 45/13.
- Act on the Protection of Persons with Mental Disabilities, *Sl. glasnik RS*, 45/13.
- Act on the Protection of the Population from Communicable Diseases, *Sl. glasnik RS*, 15/16, 68/20–4 and 136/20.
- Act on the Protection of the Rights and Freedoms of National Minorities, *Sl. list SRJ*, 11/02, *Sl. list SCG*, 1/03 and *Sl. glasnik RS*, 72/09 – other law, 97/13 – CC Decision and 47/18.
- Act on the Protection of the Right to a Trial within a Reasonable Time, *Sl. glasnik RS*, 40/15.
- Act on the Rights of Beneficiaries of Temporary Accommodation in Social Care Institutions, *Sl. glasnik RS*, 126/21.
- Act on the Right to Free Shares and Pecuniary Compensation to be Realised by Citizens in the Privatisation Procedure, *Sl. glasnik RS*, 123/07, 30/10, 115/14 and 112/15.
- Act on the Seats and Jurisdictions of Courts and Public Prosecution Services, *Sl. glasnik RS*, 101/13.
- Act on the Temporary Regulation of Public Media Service Licence Fee Collection, *Sl. glasnik RS*, 112/15, 108/16, 95/18, 86/19, 153/20 and 129/21.
- Act on the Vocational Rehabilitation and Employment of Persons with Disabilities, *Sl. glasnik RS*, 36/09 and 32/13.
- Act on Use of Renewable Sources of Energy, *Sl. glasnik RS*, 40/21.
- Act on Youths, *Sl. glasnik RS,* 50/11.
- Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia, *Sl. glasnik RS*, 41/09.
- Administrative Disputes Act, *Sl. glasnik RS,* 111/09.
- Administrative Procedure Act, *Sl. glasnik RS*, 18/16.
- Adult Education Act, *Sl. glasnik RS,* 55/13, 88/17 – other law, 27/18 – other law and 6/20 – other law.
- Advertising Act, *Sl. glasnik RS,* 6/16 and 52/19 – other law.
- Air Protection Act, *Sl. glasnik RS*, 3/09, 10/13 and 26/21 – other law.

- Aliens Act, *Sl. glasnik RS*, 97/08.
- Aliens Act, *Sl. glasnik RS*, 24/18 and 31/19.
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CIP – Каталогизација у публикацији
Народна библиотека Србије, Београд

341.231.14(497.11)"2021"

HUMAN rights in Serbia 2021 : law, practice and international human rights standards / [editor Dušan Pokuševski ; translation Duška Tomanović]. – Belgrade : The Belgrade centre for human rights, 2022 (Belgrade : Dosije studio). – 374 str. ; 23 cm. – (Series Reports ; 39 / [The Belgrade centre for human rights])

Tiraž 200. – Izv. stv. nasl.: Ljudska prava u Srbiji 2021. – Str. 19–20: Foreword / Dušan Pokuševski. – Napomene i bibliografske reference uz tekst.

ISBN 978-86-7202-230-8

1. Pokuševski, Dušan, 1983– [уредник] [аутор додатног текста]
a) Људска права – Србија – 2021

COBISS.SR-ID 59578633

Exposed to constant internal political tensions, traumatised by everyday incidents, scandals and verbal and physical violence, Serbia has become a deeply polarised society. The year behind us was marked by numerous protests, strikes and other forms of organisation, the last recourse of citizens whose rights were jeopardised or violated. Also, 2021 was marked by the process of amending the constitutional provisions on the judiciary, ending with the adoption of the amendments by the National Assembly and their endorsement at a referendum held in early 2022. Nevertheless, the government' persistent refusal to engage in meaningful dialogue, above all with the citizens, remained the crucial problem permeating all social processes and manifesting its most drastic forms and effects in the field of human rights.

The numerous problems concerning the rule of law, exacerbated by the increasingly manifest primacy of the executive undermining the separation of powers and the breakdown of the institutions, continued in 2021.

The general opinion is that Serbia still lags substantially behind European and global trends despite its headway in adopting environmental legislation. Serbia ranked 9th on the global list of pollution-related deaths and 1st on the list of European countries by death rates from combined pollution risk factors. Such a situation and lack of interest of the authorities to take urgent steps to address numerous environmental problems prompted environmental protests across Serbia throughout the year.

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