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COMMISSIONER FOR HUMAN RIGHTS
OF THE COUNCIL OF EUROPE

**FOLLOWING HIS VISIT TO SERBIA
FROM 16 TO 20 MARCH 2015**

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SUMMARY

Commissioner Muižnieks and his delegation visited Serbia from 16 to 20 March 2015. In the course of this visit the Commissioner held discussions with state authorities and non-governmental, national and international organisations. The present report draws on the themes of the Commissioner's visit and focuses on the following issues:

I. Major issues pertaining to transitional justice and reconciliation

The Commissioner welcomes the strengthening of regional co-operation in the prosecution of wartime crimes committed during the 1990s' wars and the recent arrests of wartime crime suspects in Serbia and Bosnia and Herzegovina as a result of that co-operation. However, he remains concerned by the persistent impunity for certain serious violations of international human rights and humanitarian law in Serbia, which adversely affects the ongoing efforts aimed at achieving justice and durable peace in the region. Serbia is urged to take all necessary measures to end impunity, and effectively prosecute, try, and sanction wartime crimes in line with international and European standards. To this end, the authorities are called on to strengthen and provide the War Crimes Prosecutor's Office ('WCPO') with all necessary resources and public support. The witness protection system should also be urgently reinforced while all reported cases of threats and intimidation of witnesses are to be effectively investigated and prosecuted. The new legislation that is under preparation should ensure that all victims should have effective access to justice and to full and effective reparations. Commissioner Muižnieks stresses that additional efforts at national and regional level are necessary to resolve the pending cases of missing persons in Serbia and in the region, in line with the obligations stemming notably from the European Convention on Human Rights ('ECHR') and the case-law of the European Court of Human Rights (the Court).

The Commissioner urges Serbia to execute promptly, fully and effectively the judgments of the Court, in particular the pilot judgments concerning serious structural human rights questions. The capacity of legal professionals in this context needs to be strengthened through systematic training drawing notably on the valuable expertise available through the Council of Europe. Serbia is also encouraged to pursue and implement the plan to systematically second legal professionals to the Court's Registry and to the Department for the Execution of the Court's judgments.

The Commissioner is concerned by the plight of about 88 000 forcibly displaced persons in Serbia who are still in need of durable solutions. He urges the authorities to address this issue with determination and in close co-operation with UNHCR. He is particularly concerned about the situation of approximately 23 000 forcibly displaced Roma from Kosovo*, most of them living in seriously substandard conditions in a number of informal settlements, two of which he visited. The Commissioner is seriously concerned by the fact that many Roma, including those forcibly displaced by the wars, remain without access to adequate housing and quality education. While commending the authorities' efforts to address the lack of birth registration and personal documentation of Roma, the Commissioner notes with concern that approximately 3 800 Roma remain stateless or at risk of statelessness and without access to basic social and economic rights. Serbia is urged to accede to the Council of Europe treaties concerning nationality and statelessness and to redouble its efforts to resolve these serious, long-standing issues.

II. Action against discrimination

Serbia has enhanced its legal and institutional framework for the fight against discrimination, including by introducing a criminal code provision making it possible for courts to impose heavier sentences in hate crime cases. The implementation of this legislation must be improved and adequate, dissuasive sanctions imposed for all hate crimes in order to prevent recurrence. Serbia has efficient and well-respected national human rights structures which play a significant role in this context. The authorities are urged to provide them with all necessary resources and support, while fully respecting their independence.

*Throughout this text, all references to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

Persons with disabilities remain among those most discriminated against and they continue to suffer from excessively high rates of unemployment. The government's incentives to private employers for the employment of persons with disabilities are an important step forward which needs to be sustained. The Commissioner is deeply concerned that many persons with intellectual and psycho-social disabilities, including children, remain in large institutions for social care despite the commitment of the authorities to moving towards deinstitutionalisation. Of particular concern are reports showing inadequate living conditions, social marginalisation and neglect faced by children and adults with intellectual and psycho-social disabilities in institutions, many of them fully deprived of their legal capacity.

The authorities are called on to draw up and implement, with the active involvement of persons with disabilities, a comprehensive and ambitious plan that should be based on a policy of zero admission to institutions and their replacement with community-based services. It is of particular concern to the Commissioner that persons with disabilities in Serbia may be fully deprived of legal capacity and consequently of their civil and political rights. He calls on the authorities to fully and effectively align domestic law and practice with the standards of the UN Convention on the Rights of Persons with Disabilities and the relevant case-law of the Court in order to ensure that all these persons enjoy legal capacity on an equal basis with others in all aspects of life.

Of equal concern to the Commissioner is the fact that the principle of gender equality is far from being fully reflected on the ground in Serbia, given that women continue to be discriminated against in many fields, in particular employment. Commissioner Muižnieks welcomes the 2013 ratification by Serbia of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ('the Istanbul Convention') and calls on the authorities to give full effect to the domestic laws and policies aimed at advancing women's rights. He also calls on the authorities to ensure that all acts of violence against women, including domestic violence, are effectively investigated and prosecuted, and that dissuasive penalties are imposed on all perpetrators. In this regard, Serbia is called upon to collect disaggregated data on gender-based violence, including domestic violence, with a view to assessing the root causes of this phenomenon and better combating it.

As regards LGBTI persons, certain progress has been made in the protection and promotion of their human rights which is reflected in particular in this community's strengthened dialogue and co-operation with the authorities. Nevertheless, homophobia and discrimination against LGBTI persons persist, in particular in the workplace. The Commissioner urges the Serbian authorities to continue taking strong public positions against discrimination in this field and to promote public awareness of the value of diversity and respect for all persons' sexual orientation and gender identity.

III. Freedom of the media

The Commissioner welcomes the strengthening of the legislative framework concerning media freedoms, in particular the adoption in 2014 of a set of media laws aiming to promote transparency and pluralism, which should be implemented effectively. However, he is seriously concerned that issues pertaining to media freedoms are discussed in a highly polarised and politicised environment, which seriously undermines the prospects for advancing in this field. The Commissioner urges politicians to put an end to inflammatory remarks against journalists and other forms of pressure on the media that have led to self-censorship and discouraged journalists from performing their important service of imparting information and critically feeding into open debates on issues of public interest which are necessary in democratic societies.

The Commissioner is worried at the fact that four journalists remain under 24-hour police protection, while acts of violence against journalists continue to affect their freedom of expression. The Serbian authorities are called on to live up to their positive obligation to initiate effective investigations in all cases of physical violence or verbal threats against journalists, and to bring all perpetrators to justice. The authorities are also urged to carry out effective investigations and conclude by bringing to justice all those responsible for the three assassinations of journalists that occurred between 1994 and 2001.

Lastly, the Commissioner underlines the importance of ethical journalism, whose principles must be promoted and nurtured by all media professionals and associations, notably through systematic training and enhanced media self-regulation.

The report contains the Commissioner's conclusions and recommendations addressed to the authorities of Serbia and is published on the Commissioner's website.

INTRODUCTION

1. The present report follows a visit to Serbia by the Council of Europe Commissioner for Human Rights (hereinafter "the Commissioner") from 16 to 20 March 2015.¹ The visit focused on certain major issues concerning transitional justice and reconciliation, action against discrimination, and freedom of the media.
2. During his visit, the Commissioner held discussions with the national authorities, including the Prime Minister, Mr Aleksandar Vučić; the Deputy Prime Minister and the Minister of Trade, Tourism and Telecommunications, Mr Rasim Ljajić; the Minister of Justice, Mr Nikola Selaković; the Minister of the Interior, Mr Nebojša Stefanović; the Minister for Labour, Employment, Veterans and Social Affairs, Mr Aleksandar Vulin; the Government Agent before the European Court of Human Rights, Ms Vanja Rodić; the State Secretary of the Ministry for Culture and Information, Mr Saša Mirković; the Prosecutor for War Crimes, Mr Vladimir Vukčević; the Committee for Human and Minority Rights and Gender Equality of the Serbian Parliament; the Director of the Office for Human and Minority Rights, Ms Suzana Paunović; and the Commissioner for Refugees and Migration, Mr Vladimir Cucić. In addition, Commissioner Muižnieks met with the Commissioner for the Protection of Equality, Ms Nevena Petrušić; the Commissioner for Information of Public Importance and Personal Data Protection, Mr Rodoljub Šabić; and the Ombudsman, Mr Saša Janković. He also met with representatives of the associations of judges and of prosecutors of Serbia.
3. Meetings were also held with civil society organisations active in the field of human rights, representatives of the media sector and international organisations. In addition, the Commissioner visited the Veternik institution for persons with intellectual and psycho-social disabilities (Novi Sad), and two informal Roma settlements in Antena and Čukarička Padina (Belgrade).
4. The Commissioner wishes to sincerely thank the Serbian authorities in Strasbourg and in Belgrade for their assistance in organising his visit and facilitating its independent and smooth execution. He also extends his thanks to all his interlocutors for their willingness to share with him their knowledge and views.
5. The visit provided the Commissioner with an opportunity to assess the progress made since his predecessor's 2011 visit. The Commissioner noted with satisfaction that the regional co-operation in the prosecution of wartime crimes has started to bear fruit and commends the authorities' recent steps in this context. He is also pleased that Serbia has signed an international declaration pertaining to the role of states in the resolution of cases of persons missing as a result of armed conflicts. Several important steps were taken to further align Serbian law and practice with Council of Europe standards in the field of action against discrimination. The authorities' commitment to preventing and combating violence against women and domestic violence was shown by the ratification in 2013 of the Istanbul Convention. An important step aiming to advance media freedoms was the adoption in 2014 of the set of media laws in the context of the implementation of the 2011 Media Strategy.
6. Nonetheless, a number of human rights issues in the aforementioned fields still remain to be addressed effectively by the authorities. The Commissioner trusts that his dialogue with the authorities will be facilitated by the present report and its recommendations.

¹ During his visit the Commissioner was accompanied by Mr Nikolaos Sitaropoulos, Deputy to the Director of his Office, and Ms Erliha Bičakčić, Adviser.

1 MAJOR ISSUES PERTAINING TO TRANSITIONAL JUSTICE AND RECONCILIATION

1.1 THE NEED TO END IMPUNITY FOR WARTIME CRIMES AND PROVIDE EFFECTIVE REDRESS TO ALL WAR VICTIMS

1.1.1 INTERNATIONAL AND REGIONAL CO-OPERATION

7. Serbia continues to play a constructive role in the completion of the remaining proceedings in the International Criminal Tribunal for the Former Yugoslavia (ICTY), by providing access to documents and archives in Serbia and processing ICTY's requests for assistance.
8. As regards the regional co-operation in this field, the Commissioner commends the signing in January 2013 by Serbia and Bosnia and Herzegovina of a protocol on co-operation in prosecuting perpetrators of war crimes, crimes against humanity and genocide. The protocol aims, *inter alia*, to address the issue of parallel investigations in these countries² and to enable the exchange of evidence. Serbia signed a similar co-operation agreement with Croatia in 2005 and with Montenegro in 2007.
9. However, in November 2014 the ICTY Prosecutor expressed his concern that since the signing of the 2013 co-operation protocol, no indictments had been issued following the transfer of investigative material from Bosnia and Herzegovina to Serbia. He underlined that tangible results were urgently needed to demonstrate that co-operation efforts have an impact.³
10. The Commissioner notes with satisfaction that the implementation of the 2013 co-operation protocol has now started to yield results. In December 2014 five persons were arrested in Serbia and ten in Bosnia and Herzegovina in relation to the *Štrpci* case,⁴ while eight persons were arrested in March 2015 in Serbia in relation to the *Kravica*⁵ case. According to the War Crimes Prosecutor's Office (WCPO), the information and evidence related to wartime crimes which Serbia exchanged with other countries in the region has increased almost fourfold since 2002.
11. Co-operation between the war crimes prosecutors' offices of Croatia and Serbia in recent years resulted in convictions in several important cases in both countries, including the one concerning the military operation "*Storm*"⁶ in Croatia. Also inter-state co-operation in the *Sotin*⁷ case resulted in the discovery of the remains of 13 missing persons in the village of Sotin near the town of Vukovar, Croatia.
12. Nonetheless, Commissioner Muižnieks notes with concern that Serbia and Bosnia and Herzegovina continue to ban extradition of their own nationals, including war crimes fugitives. One such fugitive is Novak Djukić, former commander of the Republika Srpska army, sentenced by the State Court of Bosnia and Herzegovina to 20 years' imprisonment for wartime crimes. In October 2014 the Bosnian authorities issued an international arrest warrant for Djukic. The ICTY Prosecutor has noted⁸ that Serbia can enforce Djukic's sentence through the 2010 agreement between Serbia and Bosnia and Herzegovina on the mutual execution of court decisions in criminal matters.

1.1.2 DOMESTIC WARTIME CRIMINAL PROCEEDINGS

13. The Commissioner wishes to underline that perpetrators of serious violations of international human rights and humanitarian law should be subject to effective investigation, prosecution and a fair trial.

² This issue was addressed in the Commissioner's 2011 [report](#) on Bosnia and Herzegovina, paragraph 130.

³ Serge Brammertz, [Report](#) to the UN Security Council, November 2014, page 33.

⁴ It concerns the 1993 abduction from a train from Belgrade to Bar, Montenegro, and the subsequent killing of 19 citizens of Serbia and Montenegro by paramilitary forces of Republika Srpska.

⁵ This case concerns the killing in 1995 by military forces of Republika Srpska of about 1 300 Bosniak men and boys in Kravica, near Srebrenica.

⁶ During and in the aftermath of this military operation carried out by the Croatian army in August 1995, reportedly about 200 000 ethnic Serbs fled Croatia and several dozen Serb civilians were killed.

⁷ This case concerns the killing in 1991 of 16 Croat civilians by the police of the self-proclaimed Republic of Srpska Krajina in Croatia.

⁸ Serge Brammertz, [Report](#) to the UN Security Council, November 2014, page 33.

Impunity encourages the committal and repetition of crimes, inflicts additional suffering on victims and has adverse effects on the rule of law and public trust in justice.

14. According to information provided by the WCPO, as of March 2015 37 cases involving 68 defendants had reached an appeal stage and been completed, in 21 cases trials were pending, and in 23 other cases involving 81 persons, investigations were ongoing. Concerns have been expressed that the number of prosecutions brought by the WCPO to date remains extremely low in relation to the number, scale and intensity of the crimes committed during the 1990s' wars involving Serbian forces.⁹
15. The need for Serbia to strengthen domestic wartime criminal proceedings has been noted by several national and international institutions, including the European Parliament in its 2015 resolution on the 2014 EC progress report on Serbia. A report issued in 2014¹⁰ by an expert national NGO on the monitoring of wartime crimes proceedings in Serbia from 2004 to 2013 noted that the lack of a long-term strategy and of political vision concerning the fight against impunity were the main reasons for the slow progress in this field. The Commissioner was informed about the authorities' plan to develop a wartime crimes processing strategy in the context of its accession negotiations with the European Union (EU).
16. Reports have indicated that criminal proceedings initiated by the WCPO so far have targeted only low-level police and military officers, and that only six of the 149 persons indicted for war crimes until 2013 had held high positions in the military during the wars.¹¹ The serious issue of the WCPO's lack of human resources was brought to the Commissioner's attention by the War Crimes Prosecutor, Mr Vladimir Vukčević, who stressed that he has only six deputies, compared to 30 deputy prosecutors working on wartime crimes cases in Bosnia and Herzegovina.
17. Another issue of concern to the Commissioner is the reported pressure and verbal attacks on the WCPO from various actors, including certain Serbian MPs, which has had a serious negative impact on its work. One such verbal attack concerns the claim by some MPs that the WCPO contributed to the 2012 ICTY's acquittal decision in *Gotovina*.¹² Following these accusations, a Deputy War Crimes Prosecutor publicly stated that the prosecution feared negative reactions from the public if they continued to systematically indict former members of Serbian forces for wartime crimes.¹³
18. The most recent verbal attack against Prosecutor Vukčević concerned the public announcement he made last January concerning his investigation into the [allegations](#) relating to the responsibility of the current chief of Staff of Serbian army, Ljubiša Diković, in the *Drenica* case.¹⁴ In February it was reported that the President of Serbia refuted this evidence through a public statement denying Diković's alleged role in those crimes and condemning the prosecution's intent to carry out investigations.¹⁵
19. The Commissioner has noted reports¹⁶ indicating that in certain cases domestic courts' lack of expertise in international criminal and humanitarian law has resulted in an erroneous application of

⁹ See, *inter alia*, Amnesty International, Serbia – [Ending Impunity for Crimes under International Law](#), December 2014, page 7.

¹⁰ Humanitarian Law Center (HLC), [Ten Years of War Crimes Prosecutions in Serbia: Contours of Justice](#) - Analysis of the war crimes prosecutions in Serbia 2004-2013, page 7. In April 2015 the HLC published a [model strategy](#) on the prosecution of wartime crimes committed in the armed conflicts in the former Yugoslavia.

¹¹ *Ibid.* page 21.

¹² In November 2012, the Appeals Chamber of the ICTY acquitted two former Croatian generals, Ante Gotovina and Mladen Markač, accused of war crimes and crimes against humanity committed against Croatian Serbs during the military operations "Storm" and "Flash". This led to the reversal of their convictions under which they had received sentences of 24 and 18 years' imprisonment, respectively.

¹³ Humanitarian Law Center, [Ten Years of War Crimes Prosecutions in Serbia: Contours of Justice](#) - Analysis of the war crimes prosecutions in Serbia 2004-2013, page 20.

¹⁴ This case concerns alleged wartime crimes committed against the Kosovo Albanian population in 1998 and 1999 in the Drenica area in Kosovo

¹⁵ Balkan Insight, [Serbia's Leader Finds new 'Enemies Within'](#), 23 February 2015.

¹⁶ For example, in the aforementioned 2014 report (pp. 44-45) the Humanitarian Law Centre noted that in the *Scorpions* case, concerning the murder in July 1995 of six Bosniak civilians from Srebrenica, the War Crimes Panel of the Belgrade District Court, *inter alia*, ignored the relevant testimonies of the victims' family members who claimed to have last seen the victims after the Army of the Republika Srpska entered Srebrenica in 1995.

relevant international standards. Continuous education and training of legal professionals is crucial for the effective resolution of wartime crimes cases pending in national jurisdictions. The National Strategy for Judicial Reform for 2013-2018 provides for continuous training for judges and prosecutors which is organised by the Serbian Judicial Academy. The Commissioner encourages the authorities to consider the possibility of including more systematic education and training in international criminal law and humanitarian law in the Judicial Academy's curricula.

20. In this regard, the Commissioner wishes to highlight the steps taken by the Council of Europe (Directorate General of Human Rights and the Rule of Law) for developing and implementing an online training in transitional justice for legal professionals in Serbia and Bosnia and Herzegovina, in the context of the ongoing HELP (Human Rights Education for Legal Professionals) programmes targeting these countries. He encourages the authorities to provide all necessary support for the effective implementation of this programme in Serbia.

1.1.3 PROTECTION OF WITNESSES IN THE CONTEXT OF DOMESTIC WARTIME CRIMINAL PROCEEDINGS

21. In its [resolution 1784](#) (2011) on the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans, the Council of Europe Parliamentary Assembly called on Serbia to ensure that the Witness Protection Unit (WPU) is aligned with international standards, and is staffed with suitably qualified and trained personnel, in order to ensure its impartial operation free of political or other interference. It also stressed the need for Serbia to allocate adequate resources to the WPU for its proper functioning and consider its transfer from the Ministry of Interior to the Ministry of Justice, in order to avoid any possible conflict of interest between the members of this unit and the witnesses they are tasked to protect.
22. In his 2011 report on Serbia the Commissioner's predecessor expressed his concern about serious allegations of threats and intimidation of witnesses by members of the WPU and about other shortcomings in the witness protection system. He welcomed the authorities' determination to improve the witness protection system, notably by transferring the relevant competence from the Ministry of Interior to the Ministry of Justice.
23. The Commissioner notes with serious concern that these issues have not yet been addressed effectively by the authorities, nor has the relevant competence been transferred to the Ministry of Justice. In its 2013 [resolution](#) on Serbia, the European Parliament noted considerable shortcomings in the functioning of the witness protection programme in the context of war crimes proceedings which resulted in a number of witnesses opting out of the programme.
24. It has also been reported¹⁷ that there has been no effective follow-up by the WPU to serious allegations concerning intimidation of witnesses. Most of the recurrent allegations of intimidation relate to witnesses in war crimes proceedings against members of the Serbian police who participated in the Kosovo conflict. Some witnesses have alleged that members of their families had also been threatened. Reportedly this has not only discouraged those witnesses from testifying, but has also impacted negatively on other potential witnesses' decisions to come forward. Despite the existence in the criminal code of a specific criminal offence relating to violence or threats against witnesses, no legal action has so far been taken to counter such practices¹⁸. In 2015¹⁹ the UN Committee on Enforced Disappearances called on Serbia to adopt necessary measures to ensure that all cases of threats or intimidation against witnesses in wartime related judicial proceedings are thoroughly and impartially investigated and lead to prosecution and appropriate penalties, even if there has been no formal complaint.
25. In his discussion with the Commissioner, the War Crimes Prosecutor confirmed the veracity of the aforementioned allegations and underlined the need to transfer the WPU to the Ministry of Justice. The issue of the witness protection system was also raised during the Commissioner's meeting with Prime Minister Vučić who undertook to look closely into it with a view to enhancing its effectiveness.

¹⁷ Amnesty International Report: Serbia – [Ending Impunity for Crimes under International Law](#), December 2014.

¹⁸ Ibid. page 33.

¹⁹ UN Committee on Enforced Disappearances, [Concluding Observations](#) on the report submitted by Serbia, 12 February 2015.

The Commissioner looks forward to receiving more information from the authorities on this important issue.

26. In a communication submitted in January 2015 to the UN Committee on Enforced Disappearances, Serbia noted²⁰ that it would prepare a national action plan for improving the witness protection system. Several measures have been envisaged in this context including carrying out an evaluation of the WPU's work, amending the unit's recruitment rules and criteria, and analysing the application by domestic courts of criminal code provisions relating to the prosecution of cases involving threats and intimidation of witnesses. The Commissioner would appreciate receiving more detailed information about this plan and its progress.

1.1.4 PROVISION OF ADEQUATE AND EFFECTIVE REPARATION TO ALL WAR VICTIMS

27. All victims of gross violations of international human rights law and serious violations of international humanitarian law have the right to adequate, effective and prompt reparation for the harm suffered in line with the [2005 UN Basic Principles and Guidelines](#) on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ('2005 UN Basic Principles and Guidelines'). These principles and guidelines usefully highlight various forms of remedies that need to be introduced at national level in order to provide redress to victims. They underline that reparation should be proportional to the gravity of the violations and the harm suffered by victims.
28. The Commissioner remains concerned that many victims of wartime crimes committed by Serbian forces remain without access to adequate and effective reparations, despite the repeated calls in this regard by various national and international authorities, including the Commissioner's predecessor²¹ and the European Parliament.²²
29. The current administrative legal framework providing for certain benefits to war victims, such as disability pension, monthly financial aid and free healthcare, is based on the 1996 Law on civilian disabled war victims. However, reportedly it only applies to a limited group of war victims, and excludes victims whose injuries or loss of life were the result of the action of Serbian state agents, as well as victims of enforced disappearance, as long as the disappeared person is not declared dead.
30. A new bill on the rights of veterans, disabled veterans, civilian disabled war victims and their family members has been prepared by the Ministry of Labour, Employment, Veteran and Social Policy, and relevant public consultations were completed last December. Some national expert organisations have expressed serious concerns that the bill lacked inclusiveness and requested its withdrawal. They argued that it significantly improves the legal status of veterans and military victims of war, but still excludes about 15 000 civilian war victims, including the families of missing persons, victims of wartime sexual violence, and the victims of action by Serbian armed forces.
31. In its 2015 [concluding observations](#) on Serbia the UN Committee on Enforced Disappearances urged Serbia to avail of the opportunity provided by the above bill to ensure that all victims of enforced disappearances obtain full reparation without discrimination and without having to declare the disappeared person dead.
32. As regards compensation granted following judicial proceedings, the high standard of proof and the statutes of limitation continue to be the major stumbling blocks to victims' claims. Given that the domestic law only provides for compensation in relation to violations committed on Serbian territory, the majority of compensation claims reportedly come from ethnic Albanians concerning the conflict in Kosovo, and from Bosniaks of the Sandžak region who were victims of Serbian police and military force action from 1992 to 1995. According to expert monitor reports, Serbian courts have rarely upheld

²⁰ The Government of Serbia, Office for Minority and Human Rights, answers to additional questions by the UN Committee on Enforced Disappearances, January 2015, page 8.

²¹ Commissioner Hammarberg's 2011 report of following his visit to Serbia, paragraph 60.

²² European Parliament, Resolution on the 2014 progress report in Serbia, 11 March 2015, paragraph 13.

compensation claims, and where compensation has been awarded it most often failed to reflect the gravity of the crime and the harm suffered.²³

1.2 MISSING PERSONS

33. According to the International Committee of the Red Cross (ICRC), as of May 2015, 10860 persons remained missing in the Western Balkans as a result of the 1990s' wars, about 1650 of them from the Kosovo conflict.
34. In its 2013 initial report on the implementation of the UN Convention on Enforced Disappearances, Serbia expressed its commitment to resolving these cases as a humanitarian issue of vital importance for social cohesion in the country and the region. The search for missing persons, exhumations and identifications are carried out by the Commission for Missing Persons, a state body comprising representatives of six ministries, the War Crimes Prosecutor's Office, the Office for Kosovo and Metohija, the Commissariat for Refugees and Migration and the Serbian Red Cross.
35. The Commissioner welcomes the signing in August 2014 by Serbia, Montenegro, Croatia and Bosnia and Herzegovina of a [declaration](#) highlighting states' primary responsibility in addressing the issue of missing persons. He reiterates the importance of regional co-operation for the successful completion of the process of clarifying the fate of missing persons and for providing relief to their families. As a result of judicial co-operation between Serbia and Croatia, in April 2013 the remains of 13 Croat civilians, who were killed in December 1991 by Croatian Serb forces, were found and exhumed from a mass grave in Sotin, near Vukovar.
36. As concerns missing persons from the Kosovo conflict, the ICRC-chaired working group, which was established in 2005, continues to be the framework within which Belgrade and Priština maintain the related dialogue under UN auspices. An important development was the discovery of the Rudnica mass grave site in south Serbia and the beginning of exhumations in May 2014. This site reportedly contains approximately 250 bodies. As of February 2015, the remains of 52 missing persons (their ages ranged from 14 to 87) were identified. The victims were ethnic Albanian civilians from Kosovo, who were reportedly killed in 1998 in the area of Drenica, Kosovo. In his discussion with the Commissioner, the Serbian War Crimes Prosecutor noted a number of difficulties that his office encountered in the process of discovering this mass gravesite, underlining the support that his Office received from the Serbian government.
37. Notwithstanding these positive developments, the lack of information on potential gravesites and difficulties in identifying the already exhumed human remains continues to hamper work in this area. In his discussions with the authorities and the Commissioner for Information of Public Importance and Personal Data Protection, Commissioner Muižnieks stressed the importance in this context of opening the army and police archives that contain valuable information.
38. In its 2015 [concluding observations](#) on Serbia, the UN Committee on Enforced Disappearances noted with concern reports indicating that no one had been held responsible in Serbia for the concealment of the hundreds of bodies found in mass graves in Batajnica, Petrovo Selo, Lake Perucac and Rudnica. The UN Committee recommended that Serbia ensure that all cases involving state agents or persons or groups of persons acting with their authorisation, support or acquiescence in the context of past armed conflicts, be investigated thoroughly and impartially without delay, including guarantees for full access to the relevant archives. The UN Committee added that those found responsible for enforced disappearances, including the commanders and civilian superiors, should be sanctioned in accordance with the gravity of their acts.
39. The Commissioner is concerned by the lack of a systematic, human rights-based approach by Serbia in addressing the issue of missing persons and the human rights of their relatives. Similar concerns are reflected in the aforementioned 2015 concluding observations of the UN Committee which noted that Serbia's legal framework does not adequately address the legal situation of missing persons and that

²³ For example, in July 2013 the Belgrade first instance court ordered Serbia to pay each of three Kosovo Albanian claimants non-pecuniary damages amounting to 150 000 RS dinars (about €1 200) for torture they suffered during their unlawful detention in 1999 by agents of the Serbian Ministry of the Interior, see Humanitarian Law Centre [press release](#) of 8 July 2013.

of their relatives, in fields such as social welfare, financial matters, family law and property rights. The Commissioner supports this and the calls made by civil society organisations and associations of families of missing persons inviting Serbia to draw up a specific law on missing persons which would address these issues in a holistic and effective manner.

1.3 CERTAIN SYSTEMIC PROBLEMS IDENTIFIED IN THE EUROPEAN COURT'S JUDGMENTS

40. The Court has noted in a number of judgments that the primary responsibility for implementing and enforcing the human rights and fundamental freedoms guaranteed by the European Convention on Human Rights (ECHR) lies with the national authorities. The ECHR system is thus subsidiary to national systems which bear the ultimate responsibility of safeguarding human rights and fundamental freedoms.
41. As of January 2015 there were 2 698 pending applications against Serbia. The supervision of the execution of 194 judgments was pending before the Council of Europe Committee of Ministers, 43 of which were placed under 'the enhanced procedure'.
42. The Commissioner notes with concern the existence in the Serbian justice and administrative systems of longstanding, structural problems identified in the Court's judgments, concerning in particular the non-enforcement of final domestic court and administrative decisions and excessively lengthy judicial proceedings. The largest number of the Court's judgments against Serbia concern violations of the right to a fair trial due to the non-enforcement of final domestic court and administrative decisions (*EVT group* of cases)²⁴ and excessively lengthy court proceedings (*Jevremovic* group of cases).²⁵ Another group of repetitive cases is the one concerning the non-payment by the Serbian Pensions and Disability Insurance Fund of retirement pensions earned in Kosovo (*Grudić* group of cases).²⁶ There are currently 480 cases pending before the Court concerning the same subject-matter as in the *EVT* group, along with about 100 cases similar to the *Grudić* group, and 45 length-of-proceedings cases.
43. Another major case revealing serious issues concerning the justice system and the administration is the Court's 2013 pilot judgment in *Zorica Jovanović*. It concerns the lack of effective investigations into the alleged deaths or disappearances of newborns in maternity wards in Serbia which occurred mostly between the 1970s and the 1990s and appears to affect hundreds of families. In December 2014 the Committee of Ministers noted that the Serbian authorities were in the process of setting up a mechanism that was capable of providing individual redress to the parents of "missing babies" and strongly encouraged them to vigorously pursue their efforts with a view to ensuring that these measures are adopted within the deadlines set at domestic level. It also invited the Serbian authorities to provide information concerning some outstanding questions relating to the mandate of the mechanism and compensation available to the families. In its submission to the Committee of Ministers last January Serbia stressed that a special law concerning this issue is expected to be prepared by the end of May 2015. As of June 2015 the special law was not prepared by the authorities.
44. The Commissioner notes with interest the steps taken to address some of the above issues in the context of the ongoing justice reform. In 2014 amendments to the Law on the Organisation of the Courts were introduced aiming to reduce the high number of cases concerning excessively lengthy proceedings in the Constitutional Court. The amendments provide, *inter alia*, that complaints related to excessively lengthy proceedings are dealt with by the next higher court. Moreover, a bill aimed at safeguarding the right to a trial within a reasonable time was adopted last May.

²⁴ Lead [judgment](#) of 21 June 2007.

²⁵ Lead [judgment](#) of 17 July 2007.

²⁶ Lead pilot [judgment](#) of 17 April 2012.

45. As regards the need to strengthen the capacity of legal professionals, there are two ongoing Council of Europe co-operation programmes²⁷ aiming to support the Serbian judiciary in the implementation of the Court's judgments and to strengthen its capacity in the fight against corruption.
46. Lastly, another important means for strengthening national legal professionals' capacities, in particular judges, are secondments to the Court's Registry and the Department for Execution of the Court's judgments. In his discussion with the Commissioner, the Minister of Justice, Mr Nikola Selaković, stressed that secondments were planned but have not been implemented due to current financial restrictions. The Commissioner encourages the authorities to pursue and implement these plans since secondments have proved to be a useful tool in ensuring that the principle of subsidiarity is effectively implemented by member states.

1.4 FORCIBLY DISPLACED PERSONS DUE TO THE 1990S' WARS

47. According to the authorities there are about 200 000 registered displaced persons from Kosovo in Serbia. 75 per cent are ethnic Serbs, about 10 per cent are Roma, and the rest belong to a total of 29 other minority groups. UNHCR estimates that approximately 88 000 of these persons have forced displacement-related needs which require durable solutions.
48. The Commissioner notes with concern that, 16 years after the Kosovo wars, the situation of displaced persons, which include elderly persons, some who are ill, disabled persons, female-headed households and families of missing persons remains precarious. In his 2014 report²⁸ following visits to Serbia and Kosovo the UN Special Rapporteur on the human rights of displaced persons stressed the urgent need to find durable solutions for these populations.
49. As of January 2015 there were 12 collective centres in Serbia accommodating 940 displaced persons. The living conditions in these centres remain dire with limited access to running water, electricity and heating fuel, and shared kitchens and bathrooms.²⁹ The Commissioner appreciates the authorities' commitment to closing the remaining collective centres, making use of the available IPA (EU) funds.
50. During his visit interlocutors expressed concerns to the Commissioner that the authorities have prioritised the solution of returning displaced persons to their former homes over the option of facilitating local integration. However, the lack of sustainable return programmes in Kosovo has left many displaced persons in a limbo situation. The Commissioner is afraid that for many of these persons, after more than a decade in this situation, return home is not a realistic option. UNHCR has reported that in 2014 only 285 displaced persons returned to Kosovo. Among the reported reasons for the low number of returns to Kosovo are: security concerns; lack of funding for housing reconstruction; lack of political will for creating conditions for sustainable returns; and serious shortcomings in the process of the restitution of displaced persons' property there. The Commissioner was informed by the authorities that a new national strategy for resolving the problems of refugees and displaced persons (2015-2020) is currently under preparation. He looks forward to receiving more detailed information on the progress of this highly important project.
51. Some local integration programmes have been implemented in the past. For example, three social apartment buildings (60 apartments) were built with the IPA (EU) funds and a US government donation targeting displaced persons from collective centres. Local integration housing projects in rural areas have also been implemented. However reportedly only a limited number of displaced persons have so far benefited from those programmes.
52. As concerns the situation of refugees (forcibly displaced persons holding a nationality other than Serbian) from the wars in the regions, in 1996 Serbia hosted around 540 000 refugees, 46% of them from Bosnia and Herzegovina and 54% from Croatia. As of January 2015, there were about 43 700 refugees in Serbia. Durable solutions for these persons, who consider local integration as the most suitable solution, are expected to be provided in the context of the Regional Housing Programme

²⁷ Support to the judiciary in Serbia in the implementation of the European Convention on Human Rights at the national level (2013-2015), and the Joint EU/CoE Programme on strengthening the capacities of law enforcement and judiciary in the fight against corruption in Serbia (PACS) (2012-2015).

²⁸ UN Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, [Report on the follow-up mission to Serbia, including Kosovo](#), June 2014.

²⁹ Ibid, pp. 2 and 5.

supported by the international community, including the European Union, the United States, UNHCR, OSCE and the Council of Europe Development Bank (CEB). CEB is responsible for the managing of the multi-donor fund and assisting the partner countries in preparing and implementing their housing projects. There is an ongoing process of selecting beneficiaries which is carried out by the Commissariat for Refugees and Migration. The Commissioner urges Serbia to reinforce the Commissariat's resources to enable it to work more efficiently for the implementation of this programme.

1.5 HUMAN RIGHTS ISSUES CONCERNING ROMA IN PARTICULAR

1.5.1 THE SITUATION OF FORCIBLY DISPLACED ROMA

53. Among the most vulnerable of the forcibly displaced persons in Serbia remain the displaced Roma from Kosovo. According to UNHCR they are in a more precarious situation than the local Roma, and few of them wish to return to Kosovo. Due to their chronic marginalisation, poverty and discrimination, displaced Roma are at risk of exclusion from discussions and plans aimed at finding durable solutions.
54. Approximately 23 000 displaced Roma live in informal settlements without adequate housing, employment or access to water and sanitation, and with limited enjoyment of their social and economic rights. Of 593 Roma settlements accommodating displaced and local Roma, 217 are informal, of which 140 are in the Belgrade area. During his visit, the Commissioner witnessed the seriously substandard living conditions in two such settlements in the Belgrade area, in Antena and in Čukarička Padina. The first settlement hosts about 30 families, including refugees from Bosnia and Herzegovina and local Roma. About 30 children living there, without access to water, do not attend school. They are also faced with the problem of lack of personal identity documents. The settlement in Čukarička Padina hosts about 70 displaced Roma families from Kosovo. In discussions with the Commissioner some of the residents stressed that none of them wished to return to Kosovo, some out of fear of reprisals because of their participation in the Kosovo conflict. PRAXIS, a local NGO and UNHCR implementing partner, has successfully assisted displaced Roma in this settlement in accessing personal identity documents.
55. The Commissioner is concerned by the continuing practice of forced evictions of Roma, in particular displaced Roma, from informal settlements and the authorities' reported failure to comply with legal safeguards during these operations. Reports have indicated that 19 large-scale evictions of thousands of Roma were carried out in Belgrade between 2009 and 2013, most of them without prior consultation with the families concerned and often at very short notice, while adequate alternative accommodation was not always provided.³⁰ In its 2013 [Third Opinion](#) the Advisory Committee on the Framework Convention on the National Minorities (FCNM) urged Serbia to put an immediate end to forced evictions of Roma and to introduce in domestic law provisions guaranteeing the right to adequate housing. Where evictions occur, these must be carried out in full compliance with international standards. The authorities should establish, in consultation with Roma representatives, a clear overall plan as to which informal settlements should be improved and legalised and which should be vacated while providing adequate alternative housing to their inhabitants.
56. In the past Serbia implemented several projects aimed at providing displaced Roma with adequate accommodation, such as the construction of settlements for 20 Roma families in Požarevac and 23 families in Smederevo. As concerns the ongoing plans in this context, € 200 000 have been earmarked in the national budget for addressing the housing situation of the displaced Roma in a collective centre in Kraljevo. Furthermore, the construction of a settlement for 40 families in Novi Pazar is expected to begin once the local authorities provide an adequate land plot. Lastly, 15 out of 20 social housing units which are under construction in the Bujanovac municipality are planned to be allocated to displaced Roma families.

³⁰ See *inter alia* Amnesty International, [Serbia: Roma still waiting for adequate housing](#), 7 April 2015. This briefing notes that three years after the forced eviction of more than one hundred Roma families from the Belvil settlement in Belgrade, and despite the availability of a multi-million euro EU-funded project, most of these families still live in squalid, racially segregated metal containers.

57. Commissioner Muižnieks is pleased that training on human rights standards concerning the protection of national minorities and the implementation of anti-discrimination policies have been organised by the authorities, including two training events in 2014 in Vrnjačka Banja and Sremska Kamenica which were attended by 51 police officers. In this context he draws the authorities' attention to the useful guidance contained in [ECRI's General Policy Recommendation No11](#) on combating racism and racial discrimination in policing. The Commissioner has also noted with interest that in 2015 the authorities implemented a project concerning the inclusion of Roma women and men in the security sector which aimed at increasing Roma participation in the police and strengthening Roma confidence in the police. 282 Roma attended the relevant workshops. Several other similar projects were organised in 2012 and 2013 at national and local level.

1.5.2 LACK OF PERSONAL IDENTITY DOCUMENTS AND STATELESSNESS

58. As of December 2014, there were 3 868 stateless persons or persons at risk of statelessness in Serbia, who are mostly Roma without birth registration or personal identity documents. Two important legislative steps have been taken by the authorities in this context: the 2011 Law on Permanent and Temporary Residence of Citizens which provided that persons without registered residence may acquire temporary personal identity documents using the address of the nearest social care centre; and the 2012 Law on Amendments to the Law on Non-Contentious Procedure which established a simplified procedure for registering births. Moreover, the implementation of a 2012 memorandum of understanding between UNHCR, the Ombudsman and the Ministry of Public Administration and Local Self Government included an effective national mechanism for resolving these issues. The Commissioner was informed that the implementation of the 2012 memorandum of understanding has been extended until the end of 2016, when Serbia should have the full ownership of this process and the systemic underlying problems are expected to be resolved.
59. Despite these important steps the Commissioner is concerned by the reported restrictive interpretation and application of the 2011 Law on Permanent and Temporary Residence of Citizens according to which displaced persons who have a registered residence in Kosovo cannot receive temporary personal identity documents using the address of the nearest social care centre. This has affected thousands of Roma residing in informal settlements without a legal address, seriously hampering their and their children's effective enjoyment of their social and economic rights, including access to basic healthcare services.
60. Lastly, the Commissioner remains concerned at the fact that Serbia has not as yet acceded to two important Council of Europe treaties related to statelessness, the 1997 European Convention on Nationality and the 2006 Council of Europe Convention for the avoidance of statelessness in relation to State succession. He urges Serbia to accede to them. In the meantime all necessary measures should be taken to ensure the effective registration upon their birth of all Roma children whose parents lack personal documentation. As stressed by the Advisory Committee on the FCNM, the authorities should carefully review the impact in practice of the measures taken so far to facilitate registration of residence for persons living in informal settlements and to establish a procedure for the late registration of the birth of all Roma children.

1.5.3 ACCESS OF ROMA TO QUALITY EDUCATION

61. The lack of access to quality education by Roma, including through segregation in education, continues to affect many displaced and local Roma in Serbia, despite the authorities' stated commitment to ensuring equal access to mainstream education for all children without discrimination on any ground. Several pieces of legislation have been adopted to that end, including the 2009 Law on the Foundations of the Education System, the 2013 Law on Primary Education and the relevant implementing decrees.³¹
62. This issue has been addressed in several reports on Serbia by international human rights institutions, including the 2011 [concluding observations](#) of the UN Committee on the Elimination of Racial Discrimination (CERD) and the 2014 [concluding observations](#) of the UN Committee on Economic, Social

³¹ In particular the 2010 Rulebooks on Additional Educational, Medical and Social Support to Pupils and on Assessment and Evaluation of the Individual Education Plan, as well as the 2011 Rulebook on Grading Pupils in Elementary Education.

and Cultural Rights (CESCR). The Advisory Committee on the FCNM has also called on the authorities to eliminate segregation of Roma children in education and devise without delay measures to effectively increase access to mainstream education as well as to improve education outcomes for Roma children.

63. In 2014 the European Roma Rights Center (ERRC)³² reported that four years after the adoption of the Law on the Foundations of the Education System, which set the ground for inclusive education policies, the promise of inclusive education remained unfulfilled for the majority of Roma children and institutionalised children with disabilities. It was also noted that even though there was a slight decrease in the number of Roma children attending special schools/classes for children with intellectual and psycho-social disabilities (21% in 2012/2013 as compared to 23% in 2011/2012), Roma children continued to be over-represented in those settings. In fact in three 'special' schools, in Bore, Prokuplje and Kruševac, more than 50% of pupils were Roma. ERRC noted that the reasons underlying this problem include the lack of adequate assistance to Roma children to stay in mainstream education; lack of Roma parents' access to information which would help them make adequate education choices for their children; and discriminatory treatment of Roma children in mainstream education by education staff, including instances of humiliation by teachers in front of their peers.

1.6 CONCLUSIONS AND RECOMMENDATIONS

64. The Commissioner urges Serbia to end impunity by effectively prosecuting and sanctioning wartime crimes, in line with the 2005 UN Basic Principles and Guidelines and the [2011 Council of Europe Committee of Ministers' Guidelines on Eradicating Impunity for Serious Human Rights Violations](#).
65. The Commissioner considers that the lack of full accountability for serious violations of international human rights and humanitarian law committed during the 1990s' wars in the former Yugoslavia is a serious impediment to the process of achieving justice and lasting reconciliation in the region as a whole. Underlining the importance of effective regional co-operation in this regard, the Commissioner welcomes the signing in January 2013 of the protocol on co-operation in prosecuting perpetrators of wartime crimes between Serbia and Bosnia and Herzegovina and the recent progress made in this field as a result of this protocol's implementation.
66. Serbia is called on to ensure that the WCPO is provided with urgently needed, adequate human resources and to further support its work. Commissioner Muižnieks is seriously concerned by the verbal attacks made against the WCPO by some high level politicians in Serbia. Such statements seriously affect the process of prosecution of wartime crimes, and undermine the valuable work which is carried out by the WCPO and the regional efforts to achieve much-needed social cohesion and reconciliation.
67. The Commissioner considers crucial the provision of effective protection and support to witnesses in the context of wartime criminal proceedings. He is seriously concerned that the authorities have not as yet taken sufficient steps to fully protect witnesses from acts of harassment and intimidation, including by members of the service responsible for their protection, and to enable them to participate in full dignity. Serbia is called on to address these serious issues as a matter of priority in order to ensure that witnesses are fully and effectively protected, including by transferring the relevant competence from the Ministry of Interior to the Ministry of Justice. The authorities are also called upon to investigate promptly all reported cases of threats and intimidation of witnesses, initiate criminal proceedings and impose dissuasive penalties on all perpetrators.
68. Everyone claiming to be a victim of wartime crimes should have effective access to justice and be provided with effective remedies, making full reparation possible. The Commissioner urges Serbia to adopt all necessary measures to ensure the provision of prompt, adequate and effective reparation to all victims of wartime crimes and to their families, in line with internationally established standards.
69. The Commissioner welcomes the signing in 2014 by Serbia, Montenegro, Croatia and Bosnia and Herzegovina of the declaration on missing persons. He underlines that additional efforts are needed to resolve the pending cases of missing persons in the region. He calls on the authorities to continue with determination their efforts, at national and regional level, in line with their obligations stemming

³² ERRC, [A Long Way to Go](#): Overrepresentation of Romani Children in "Special Schools" in Serbia, January 2014.

notably from Article 2 and 3 of the ECHR, including by opening the relevant military and police archives that contain valuable information.

70. The Commissioner stresses the need for Serbia to give effect to the Court's judgments promptly, fully and effectively. In this context, the authorities are urged to immediately take all necessary measures that would ensure the effective implementation of domestic court and administrative decisions in accordance with the Council of Europe Committee of Ministers' Recommendation Rec(2003)17 on enforcement, and Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of the Court's judgments.
71. Serbia is urged to continue in a determined and principled manner addressing the issues related to forced displacement due to the wars, in close co-operation with UNHCR, while ensuring the full participation of the displaced persons in the planning and management of the required measures.
72. The Commissioner remains deeply concerned by the situation of approximately 23 000 forcibly displaced Roma from Kosovo, in particular concerning their access to adequate housing, quality education and personal identity documents. He calls on Serbia to ensure that all actions concerning access by Roma to adequate housing are in line with the [2005 Recommendation](#) of the Committee of Ministers of the Council of Europe on improving the housing conditions of Roma in Europe.
73. While commending the significant progress made in recent years in addressing the lack of birth registration and personal documentation of Roma, the Commissioner is concerned that about 3 800 Roma, mostly displaced Roma from Kosovo, remain stateless or at risk of statelessness in Serbia. He calls on Serbia to redouble its efforts in resolving the remaining cases of undocumented Roma and to ensure registration upon their birth of all children whose parents lack personal identity documents. Serbia is also urged to accede to two important Council of Europe treaties: the 1997 [European Convention on Nationality](#) and the 2006 Council of Europe [Convention for the avoidance of statelessness in relation to State succession](#).
74. Last but not least, the Commissioner wishes to draw the Serbian authorities' attention to the long-term, serious societal risks and costs associated with the fact that quality education is not accessible by a large number of Roma children. He is seriously concerned that many of them continue to be over-represented in special schools or classes for children with intellectual and psycho-social disabilities and that these settings for children with disabilities still exist. Urgent steps are needed to ensure that the legislation and policies providing for inclusive education³³ are fully implemented and that quality education is accessible by all children without any distinction.

³³ Commissioner for Human Rights, Human Rights Comment '[Inclusive education vital for social cohesion in diverse societies](#)', 5 May 2015.

2 ACTION AGAINST DISCRIMINATION

2.1 INSTITUTIONAL AND LEGISLATIVE FRAMEWORK

75. Serbia has a sound legal and institutional framework for protection against discrimination, including a comprehensive anti-discrimination law in place since 2009. In June 2013 the government adopted the Strategy for the Prevention and Protection from Discrimination (2013-2018), and an accompanying action plan focusing on the protection of members of national minorities, women, LGBTI persons, persons with disabilities, elderly persons, children, refugees, displaced persons and migrants in October 2014.
76. As regards prosecution of hate crime, a 2012 provision³⁴ in the criminal code made it possible for courts to impose harsher sentences when a crime is committed out of hatred on the ground of race, religion, national or ethnic origin, sex, sexual orientation or gender identity. Training on issues related to discrimination and hate crime has been provided to legal professionals including in the context of the Council of Europe's [HELP](#) programme. However, the Commissioner recalls that in 2014³⁵ ECRI noted that the specific objective of improving sentencing practices for racially motivated offences had not been fully met and that its pertinent 2011 recommendation had not yet been fully implemented.
77. The large numbers of recorded hate crimes committed against Roma are of serious concern to the Commissioner. According to the authorities 14 such crimes were registered in 2013, 11 in 2014 and three attacks happened from January to March 2015, mainly in the Belgrade area where most of the displaced Roma live. Three Roma were seriously injured in those attacks. In 13 of the 16 cases in which the perpetrators have been found, criminal proceedings were initiated and seven persons were charged with provoking national, racial and religious hatred and intolerance. Other such incidents against Roma concerned verbal attacks, damaging of Roma property, including a Roma monument, and distributing leaflets with anti-Roma content. The Commissioner would appreciate receiving information from the authorities concerning the follow-up given by Serbian prosecutors and courts to these cases.
78. The Commissioner notes that Serbia has strong and well-respected national human rights structures which have contributed to progressing towards a more democratic, equality-driven and socially inclusive society. However, he is concerned that the Equality Commissioner has not yet been provided with adequate resources, including adequate premises which would be easily accessible by persons with disabilities. In July 2013 the Serbian National Assembly called on the government to settle the question of inadequate human and financial resources and expressed support for the setting up of regional offices by the Equality Commissioner.³⁶
79. In the Equality Commissioner's 2013 [survey](#) on the perceptions of discrimination it was noted that most citizens thought that in Serbia discrimination was widespread. 46% of the survey respondents noted that there was more discrimination in Serbia in 2013 compared to 2012. According to the survey, women, Roma, persons with disabilities, the poor and elderly persons are the most discriminated against in the society. High on this list are also children and LGBTI persons. The survey showed that tolerance towards national minorities, in particular Croats and Bosniaks, has improved, whereas intolerance towards LGBTI persons, persons with HIV, migrants and asylum seekers has been on the rise. 16% of the survey respondents experienced discrimination, mostly in the workplace, and 56% of them stressed that media pay very little attention to the problem of discrimination. As concerns the population's awareness of the existence of national anti-discrimination mechanisms, 63% of the surveyed persons stressed that anti-discrimination bodies failed to adequately inform citizens of issues related to discrimination and of the authorities' activities in this context.

³⁴ Article 54a reads : "If the offence was committed out of hatred or because of another person's race and religion, national or ethnic origin, gender, sexual orientation or gender identity, the court will appreciate that fact as an aggravating circumstance [...]"

³⁵ See ECRI, [Conclusions](#) on the Implementation of the Recommendations in respect of Serbia subject to Interim Follow-up, 19 March 2014.

³⁶ *Ibid*, page 5.

80. The Commissioner underlines the importance of effective access to justice for vulnerable social groups, in particular those in a poor economic situation. He was informed by the authorities that final consultations concerning a bill on legal aid prepared by the Ministry of Justice were ongoing and that it is expected to be sent to the Serbian parliament for adoption by the end of this year. The Commissioner noted with satisfaction the authorities' awareness of the need to strengthen the relevant administrative capacities for the implementation of this law and draws their attention in this regard to [the Council of Europe Committee of Ministers' Resolution \(78\) 8 on legal aid and advice](#) and its [Recommendation R \(93\) 1 on effective access to the law and to justice for the very poor](#).

2.2 HUMAN RIGHTS OF PERSONS WITH DISABILITIES, WITH SPECIAL REFERENCE TO THEIR LEGAL CAPACITY AND DEINSTITUTIONALISATION

2.2.1 GENERAL BACKGROUND

81. The Commissioner is seriously concerned by the situation of persons with disabilities (between 700 000 and 800 000 persons) in Serbia that remains extremely difficult. During his visit, the Equality Commissioner noted that they are among the most vulnerable social groups and are discriminated against in education and employment, access to justice, community living and access to public spaces.
82. Serbia acceded to the UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol in 2009, and submitted its initial report under this convention in 2012. Prior to the CRPD ratification, Serbia had taken some steps to strengthen the legislative and institutional framework for the protection of the human rights of persons with disabilities. The Law on the Prevention of Discrimination against Persons with Disabilities, and the Strategy for the Improvement of the Situation of Persons with Disabilities (2007-2015) were adopted in 2006 and 2007 respectively. The strategy aims, *inter alia*, at facilitating persons' with disabilities access to justice and social and health services; raising awareness of anti-discrimination policies; and developing policies and programmes in education, employment and housing while ensuring that they foster independence, personal development and the active inclusion of persons with disabilities. The action plan for the implementation of the strategy was adopted in 2013. In 2013 a Law on the Protection of Persons with Mental Disabilities introduced basic legal safeguards for the placement and treatment of persons with mental disabilities in psychiatric hospitals and social care institutions. The Commissioner notes that various training events have been organised for law enforcement officers in order to raise their members' awareness of the need to fight discrimination in this field. Two police directorates, in Jagodina and in Sremska Mitrovica, implemented in 2012 and 2014 respectively local action plans aimed at improving communication between law enforcement officers and hearing victims of discrimination, including by establishing an SOS telephone line for these persons.
83. The Commissioner is worried by the data contained in Serbia's [2012 report](#) to the CRPD Committee, according to which only 13% of persons with disabilities are employed, 10% of them work in non-governmental organisations, and only 1 % are employed in the public or private sector. Steps have been taken to address this serious issue. In 2013 the parliament adopted amendments to the Law on Vocational Rehabilitation and Employment of Persons with Disabilities, providing for incentives to employers of persons with disabilities. The Commissioner was informed by the Minister for Labour, Employment, Veterans and Social Affairs, Mr Aleksandar Vulin, that as a result of the implementation of these amendments, 4 123 persons with disabilities were employed in 2014. According to the Minister in previous years the relevant numbers varied between 200 and 250 annually. Minister Vulin also stressed that 46 private companies that employ persons with disabilities now receive regular state subsidies.

2.2.2 THE RIGHT TO LEGAL CAPACITY

84. Article 12 of the CRPD guarantees the right to equal recognition before the law for persons with disabilities and, in particular, the right to enjoy legal capacity on an equal basis with others in all aspects of life. The CRPD Committee has reaffirmed "that a person's status as a person with a disability or the existence of an impairment (including a physical or sensory impairment) must never be grounds

for denying legal capacity or any of the rights provided for in article 12.”³⁷ It has called on states parties to “review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will and preferences.”³⁸

85. Serbian law provides for the possibility to fully deprive persons with psycho-social and intellectual disabilities of their legal capacity and to place them under guardianship. The extent to which a person with disability can be deprived of their legal capacity is determined by a court decision in non-contentious proceedings, while the appointment of a guardian is dealt with through administrative proceedings. The Law on Non-Contentious Proceedings was amended in 2014 to provide for a mandatory judicial re-assessment of a decision on deprivation of legal capacity every three years. Before this amendment courts were not obliged to review *ex officio* these decisions.
86. The above law provides that in proceedings relating to deprivation of legal capacity, the person concerned will be heard in person either in a court or in an institution in case of that person’s institutionalisation. The Equality Commissioner has noted³⁹ that a 2011 survey showed that in 87% of the legal capacity-related proceedings, the courts did not hear the person subject to the measure of deprivation of legal capacity.
87. The Commissioner is concerned by the reported overuse of legal capacity deprivation measures affecting persons with disabilities. An expert analysis of over 1 000 legal capacity-related court cases from 2008 to 2010 showed that in about 76% of the cases the person concerned had intellectual disabilities. More than half of the persons deprived of legal capacity (57%) were institutionalised at some point of their life, including pending the legal capacity-related proceedings. In 99% of the cases the reason for deprivation of legal capacity was the concerned persons’ disability.⁴⁰
88. As concerns guardianship, the 2013 [report](#) by the National Institute for Social Care noted an increase in the number of adults living in institutions placed under guardianship: in 2012 there were 17 463 persons, as compared to 16 015 persons in 2011 and 11 721 in 2010. The Commissioner is concerned by reports showing that the responsibilities borne by guardians are not clearly elaborated in the law, and there are no sanctions if a guardian fails to fulfil their obligations, such as visiting and consulting with the person under their protection.⁴¹
89. The Equality Commissioner has recommended that the authorities amend the legislation pertaining to the deprivation of legal capacity and fully align it with international standards, in order to ensure that persons with disabilities enjoy fully and without discrimination their human rights, including voting rights, and the right to marry and establish a family life. The Commissioner was pleased to note the authorities’ awareness of the need to bring the relevant provisions in line with Article 12 of the CRPD, also emphasised in Serbia’s 2012 report to the CRPD Committee.

2.2.3 THE RIGHT TO LIVE INDEPENDENTLY AND BE INCLUDED IN THE COMMUNITY

90. There are about 142 000 persons with intellectual and psycho-social disabilities in Serbia. According to the aforementioned 2013 national social care [report](#), in 2012 4 552 persons were accommodated in 15⁴² institutions for social care of adults, and 2% of them were children (3.3% in 2011). The report noted the problem of overcrowding and that more than 50% of the residents had lived in institutions for more than 11 years.
91. Although deinstitutionalisation has been one of the aims of Serbia’s social care policies since 2002, few steps have been taken in this regard. Additional investments in institutions have been made in recent

³⁷ Committee on the Rights of Persons with Disabilities, General Comment on Article 12 on Equal recognition before the law, paragraph 9.

³⁸ Ibid. paragraph 22.

³⁹ Equality Commissioner, [Special report on discrimination against persons with disabilities in Serbia](#), (in Serbian), page 39.

⁴⁰ Mental Disability Rights Initiative, [Serbian country report on legal capacity reform](#), May 2014.

⁴¹ Ibid, page 9.

⁴² It is noted in the report that of 18 institutions for social care operating in Serbia, there is a separate reporting system for two while one institution has not provided data to the National Institute for Social Care.

years. In its 2012 report to the CRDP Committee, Serbia noted that in the three years preceding this report about €3.2 million (RSD 384 386,267) were allocated to facilities accommodating persons with intellectual and psycho-social disabilities. These funds were mostly used for various repairs, renovations and construction as well as for the procurement of various equipment. The investments in institutions in 2010 were reportedly four or five times higher than in previous years.⁴³

92. The Commissioner is seriously concerned by reports⁴⁴ showing overcrowding, neglect and abuse, over-medication, and the lack of rules on the use of mechanical restraints and isolation in institutions. The situation in the Veternik institution for children and youth with intellectual and psycho-social disabilities, located in Novi Sad (Vojvodina), which the Commissioner visited is particularly difficult. Of 548 institutionalised persons there, 61 were below the age of 18. 50 children go to a nearby 'special' school for children with intellectual disabilities, while only three children are included in mainstream education. The problems of overcrowding and the mixing of children and adults were evident. This situation is in clear violation of the Law of Social Protection which provides that a social care institution which accommodates children cannot have more than 50 residents and children must be separated from adults. In Veternik it was striking that persons of a wide range of ages and of different levels of disability live together. The Commissioner is seriously worried by the situation of bed-ridden persons accommodated on the first floor of one of the institution's buildings. Some of them have lived there in this state for more than 20 years. Reportedly only recently the institution's staff started to lift these persons regularly out of their beds. The Commissioner was informed of certain improvements of living conditions in Veternik made since the 2014 visit and the [report of the Serbian Ombudsman and the Mental Disability Rights Initiative \(MDRI-S\)](#). For example, the barred doors in the rooms for 'increased surveillance' were replaced by regular doors. In Veternik the Commissioner also met a group of residents who live in a house which was presented to him as a community-based setting. He is concerned that the incorrect understanding of what the right to live in the community means risks replacing one type of exclusion with another,⁴⁵ which seems to be the case here.
93. The Serbian parliament has supported the Ombudsman's calls for the deinstitutionalisation of persons with disabilities, as the only adequate way to prevent torture and other inhuman and degrading treatment of these persons deprived of their liberty. In December 2014 the Ombudsman presented to the parliamentary committee on human and minority rights the [Map of De-institutionalisation](#), prepared in close co-operation with expert NGOs. The Map contains an analysis of the current situation, identifies the key actors in the deinstitutionalisation process and presents the steps that need to be taken in this context.
94. In his discussions with the authorities, the Commissioner stressed that ambitious plans should be developed in this context starting with the adoption of a no-admission policy to prevent new placements of persons with disabilities in institutional settings. For this process to be successful, a mentality shift is needed from seeing persons with disabilities as objects to ensuring their full inclusion and participation in society. The Commissioner is concerned that recent public statements⁴⁶ made by a leading politician which stigmatised institutionalised persons with disabilities do not contribute to achieving that goal.
95. The Commissioner was informed by the authorities that a national plan for the transition from institutional care into community-based services is under preparation and expected to be finalised in the second half of 2015. The important role of local authorities in this process has been underlined and a legislative amendment has been planned to provide for a possibility for transferring funds to these authorities for community-living initiatives implemented at the local level. Four institutions for

⁴³ [Initial Report](#) of Serbia to the CRPD Committee, 2012, page 10.

⁴⁴ Mental Disability Rights Initiative, [The Hidden and Forgotten](#) – Segregation and neglect of children and adults with disabilities in Serbia, 2013.

⁴⁵ See the Commissioner's [Issue Paper](#) on the right of people with disabilities to live independently and be included in the community, page 12.

⁴⁶ In February 2015 several organisations, including the Human Rights House and the Journalists Association NUNS, expressed serious concerns about the statement of the Minister of Labour, Employment, Veterans and Social Policy, Mr Aleksandar Vulin, in which he called persons with disabilities 'unfortunate human beings' and mentioned that in the Veternik institution there were serious cases of self-destruction and cannibalism. See: <http://www.tanjug.rs/novosti/161930/nuns-pojedini-predstavnici-vlasti-vode-hajku-protiv-jankovic.htm>

social care have been included in the projects of assisted living in the community. For example, 12 former residents of an institution located in the Jabuka village live independently in a house there, while eight residents live in apartments in Novi Sad with assistants hired with the aid of the local community.

96. The ongoing EU-funded project [Open Arms](#) implemented since September 2012 by a consortium of INGOs in co-operation with the Ministry of Labour, Employment, Veterans and Social Policy and the Ministry of Health, supports the process of de-institutionalisation through the development of plans for transition from institutional care to community-based services and providing grants for developing services in the community. It covers 11 social care institutions and five special psychiatric hospitals. The Commissioner noted however the concerns expressed by expert NGOs that due to social care professionals' lack of full understanding of the right to live in the community, the process of transition to community-based services may lead to another kind of exclusion and segregation of persons with disabilities.

2.3 HUMAN RIGHTS OF LGBTI PERSONS

97. In his 2011 report on Serbia, the Commissioner's predecessor noted that notwithstanding the progress made in the fight against discrimination, homophobia remained a serious problem. The Commissioner notes that this situation persists and is corroborated by various national and international reports. ILGA-Europe stressed in its [2013 annual report](#) that the situation of LGBTI persons in Serbia remained difficult. In its 2014 progress report on Serbia, the European Commission (EC) noted that a systematic and more visible political commitment to promoting a culture of respect and raising human rights awareness is needed. According to the EC, discrimination based on sexual orientation is still regularly reported in employment, and LGBTI activists continue to be subjected to threats and hate speech.
98. The 2013-2018 [Anti-Discrimination Strategy](#) elaborated by Serbia acknowledges the problem of homophobia and identifies the fields in which more work needs to be done, including education, social welfare, employment and healthcare. The implementation of the Strategy aims, *inter alia*, at bringing the relevant legislation into line with international standards; eradicating discrimination against LGBTI persons; and strengthening institutional capacities for the protection of LGBTI persons.
99. The Ministry of Interior has taken some important concrete steps in this field. In February 2014 it drafted an Action Plan for the Improvement of Work and Co-operation of the Police with Representatives and Associations of Persons of Different Sexual Orientation. LGBTI representatives informed the Commissioner about the improved co-operation between the LGBTI community and the police, following in particular the appointment in 2014 by the Ministry of Interior of 11 liaison officers for the LGBTI community, one at national and 10 at local level. Various training events concerning the rights of LGBTI persons and their relationship with the police have been organised, including the 2014 seminar "Same Sex Orientation and Gender Identity in the Context of Policing" which was attended by 130 law enforcement officers.
100. In September 2014, amid extensive security protection, the Belgrade pride parade took place for the first time since 2010. The Minister of Interior and the Minister without Portfolio in charge of EU Integration attended this event. The Commissioner noted with interest that in February 2015 the Deputy Prime Minister and the Minister for Foreign Affairs, Mr Ivica Dačić, met with and apologised to representatives of a lesbian NGO for an insulting statement he had made in 2013. This meeting was organised as a follow-up to the Equality Commissioner's intervention in this case.
101. Notwithstanding these positive developments, the Commissioner notes that homophobia and violence against LGBTI persons persist. There have been several physical attacks by private individuals against LGBTI activists in recent years including the brutal attack on a German LGBTI activist in 2014 which prompted the Commissioner's public reaction. The Ministry of Interior recorded 14 physical and 15 verbal attacks against LGBTI persons in the last two years. In ten cases criminal complaints were lodged. Moreover, criminal complaints have been lodged against 74 persons in 38 cases of threats against LGBTI persons on social networks. The Commissioner would appreciate receiving more information from the authorities about the follow-up given to these cases by prosecutors and courts. He reiterates his call on the authorities to continue taking strong public positions against the human rights violations of LGBTI persons and to systematically promote human rights awareness in the country, especially in schools.

102. The Commissioner notes with interest that in 2013 in two domestic judgments rendered in civil proceedings, the principle of anti-discrimination was upheld and hate speech against LGBTI persons was sanctioned. The courts concluded that anti-LGBTI comments published online in local media constituted hate speech.
103. Concerning the prosecution of instances of hate speech, in November 2013 the Belgrade Court of Appeal overturned a first instance court judgment which sentenced the leader of the banned extreme right-wing movement *Obraz* ('Honour'), Mladen Obradović, to ten months' imprisonment for incitement to hatred against LGBTI persons, and returned the case for re-trial. Obradović had already been sentenced to two years in prison for his leading role in the riots around the 2010 Belgrade pride parade. In June 2013, the Constitutional Court had banned *Obraz* and ordered the organisation's removal from the Register of Associations.
104. As regards trans persons' right to the legal recognition of their preferred gender, Serbia is among the countries which make surgical intervention a requirement for legal gender recognition. In January 2013 the Serbian LGBT Network and ILGA-Europe submitted their [comments](#) on Serbia's second report on the implementation of the European Social Charter (ESC), in which they stressed that Serbia violated Article 11 (right to protection of health) of the ESC by imposing surgical intervention and additional medical treatment, such as hormonal treatment, as preconditions for legal gender reassignment. Serbia's report which should include information concerning this provision of the ESC is due in October 2016.
105. ILGA-Europe has [reported](#) cases where local authorities in Serbia refused to amend civil register entries even though a surgical intervention had been carried out. In one such case, in March 2013, the Constitutional Court found a violation of the applicant's right to dignity and personal development and ordered the authorities to change his gender in the civil register.
106. In June 2013 the Equality Commissioner published a comprehensive [analysis](#) of the legislation pertaining to the rights of trans persons and recommendations in that regard. The analysis draws upon the Commissioner's recommendations in this field and the case-law of the Court. It follows the work of a working group established by the Equality Commissioner and the Ombudsman, with the participation of several expert NGOs. The Commissioner would appreciate receiving more information from the authorities about their follow up to the Equality Commissioner's report and recommendations.

2.4 HUMAN RIGHTS OF WOMEN

2.4.1 DISCRIMINATION AGAINST WOMEN

107. In the former Commissioner's 2009 report on Serbia it was noted that patriarchal stereotypes concerning the respective roles of women and men in Serbian society were deeply rooted, leading to inequalities between the two sexes, particularly in the fields of employment and public participation. In the south of Serbia, women are especially vulnerable as they tend to marry young and face economic hardship. It was also noted that violence against women, including domestic violence, remained a persisting problem in Council of Europe countries and Serbia was no exception. The former Commissioner also noted NGO reports about domestic courts' leniency when it came to sentencing men for acts of domestic violence against women, even though violence against women was on the rise. While the police were quicker to react than in the past, they were not yet sufficiently effective in their response.
108. Discrimination based on sex is prohibited by the constitution, the 2009 Anti-Discrimination Law and the 2009 Law on Gender Equality. Several instruments aiming to improve the status of women, promote gender equality and eradicate violence against women have been adopted by Serbia in recent years, such as the National Strategy for the Improvement of the Status of Women and Promotion of Gender Equality (2009-2015), and the National Strategy for Prevention and Elimination of Violence against Women in the Family and in Intimate Partner Relationships (2010-2015). The Deputy Ombudsman for Gender Equality and the Equality Commissioner are responsible for handling complaints concerning gender-based discrimination. Also, the Minister of Interior has a special adviser for gender equality issues.

109. Serbia is one of the countries which have adopted legislation providing for quotas for women's political participation. The 2011 amendment to the Law on the Election of Members of the Parliament provides that candidate lists for political parties must include at least 30% of candidates of each sex.⁴⁷ Of 250 MPs in the current parliament, 85 are women. The number of women employed in the law enforcement sector has increased by about 7.5% since 2000. However, in her 2015 special report⁴⁸ on discrimination against women, the Equality Commissioner noted that women are discriminated against in all spheres of public and private life, in particular the employment sector. It was also noted that women are underrepresented in national and local government bodies and public sector positions. According to official data in the fourth quarter of 2014, 33.6% of women were employed, while the employment rate of men was 47.6%. Reports have shown that the gender pay gap is 16%. The Equality Commissioner noted that during employment interviews women are systematically asked questions about their family planning, they face sexual harassment in the workplace and have little or no chance of being promoted after having returned from maternity leave. The report also noted that there are few women entrepreneurs or in managerial positions in private and public companies.⁴⁹ Disabled women, Roma women, elderly women, and migrant women are those most discriminated against.
110. In its 2013 [concluding observations](#) on Serbia the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) stressed the need for the authorities to effectively implement the relevant legislation and raise public awareness, in particular among women from disadvantaged groups, such as women in a difficult economic situation and victims of violence. CEDAW also called on Serbia to allocate substantial and sustained resources, both human and financial, to all national strategies, mechanisms and action plans aimed at the elimination of discrimination against women, especially disadvantaged women, and to ensure their effective implementation.
111. Lastly, in 2014 the UN Committee on Economic, Social and Cultural Rights⁵⁰ (CESCR) expressed its concern about the low employment rate of women, the prevalence of gender discrimination in employment and, in particular, the disproportionately high unemployment rate of young women, women with minimal education and older women. The Committee was also concerned about the underrepresentation of women in national and local government bodies and public sector positions.

2.4.2 DOMESTIC VIOLENCE AGAINST WOMEN

112. In November 2013 Serbia ratified the [Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence](#) ('Istanbul Convention'). Violence against women is prohibited and regulated in law and strategies, including the 2009 Law on Gender Equality and the National Strategy for Prevention and Elimination of Violence against Women in the Family and in Intimate Partner Relationships (2010-2015). Moreover, the Programme for the Protection of Women from Violence in the Family and in Intimate Partnership of the Autonomous Province of Vojvodina (2014-2020) is fully aligned with the Istanbul Convention. The criminal offence of domestic violence is provided for in the criminal code. The Law on Family, the Criminal Procedure Code and the Law on Misdemeanour provide for restraining and protection orders to ensure the protection of victims of violence, including domestic violence, such as the prohibition of approaching and communicating with the victim.
113. In 2011 the government adopted a general protocol for the work of national and local bodies in cases of domestic and partnership violence against women. Four special protocols were adopted in 2013 and 2014 for the work of the judiciary, the police, social welfare services and health care workers in this context. In August 2013 the Ministry of the Interior established a working group tasked with monitoring and implementing the special protocol concerning the police. Numerous training and education activities have been organised in this field for law enforcement officers in 2013 and 2014.

⁴⁷ See, Global Data Base Quotas for Women, [Country profile - Serbia](#), accessed in May 2015.

⁴⁸ Equality Commissioner, [Special report](#) on discrimination against women (available in Serbian), May 2015.

⁴⁹ Ibid. page 103.

⁵⁰ UN Committee on Economic, Social and Cultural Rights, [Concluding Observations](#) on the second periodic report of Serbia, 10 July 2014,

114. Civil society interlocutors stressed to the Commissioner that although Serbia has a good legal framework for the protection of women from violence, its harmonisation with the Istanbul Convention is necessary in order to create a sustainable system of women's protection from violence. The Programme for the Protection of Women from Violence in the Family and in Intimate Partnership of the Autonomous Province of Vojvodina (2014-2020) is reportedly the only document which is fully aligned with the Istanbul Convention. In 2014 the Autonomous Women's Centre, a prominent NGO working on women's rights, published and disseminated a comprehensive [analysis](#) of the compatibility of Serbia's legal framework with the Istanbul Convention, as well as [indicators](#) for monitoring its implementation. The paper contains recommendations as to which reforms are necessary in this field, focusing in particular on the criminal code, the Criminal Procedure Code, the Law on Family, the Law on Misdemeanour and the Law on the Police.
115. Another problem highlighted by the Commissioner's interlocutors is the lack of adequate financial support for preventing and combating violence against women, as well as for the work of women's organisations in this field. Moreover, there is a lack of effective co-ordination among different national actors responsible for handling cases of violence against women and of adequate support to the victims who report incidents of violence to the authorities.
116. The Commissioner shares the serious concern expressed by CEDAW and CESCR in their concluding observations on Serbia in 2013 and 2014 respectively, about the increasing number of women murdered by their husbands, ex-husbands or partners, and women victims of other forms of violence, including psychological, physical, economic and sexual violence. Of equally grave concern is the reported significant disparity between the number of police interventions, the number of criminal charges filed and the number of persons convicted of domestic violence against women.
117. In November 2014 the Deputy Ombudsman for Children's Rights and Gender Equality presented to the Serbian parliamentary committee for human and minority rights and gender equality a special report on the implementation of the aforementioned protocols in 16 municipalities in 2014. As concerns prosecutions of cases of violence against women, it was noted that in more than two thirds of these cases the perpetrators received conditional sentences. Of 5 352 criminal reports concerning domestic violence submitted by the police, 4 399 concerned violence against women. In 71 per cent of these cases the outcome was a verbal warning to the perpetrator.
118. The Commissioner is seriously concerned by the reported level of domestic violence against women in Serbia. According to the authorities,⁵¹ in 2014 3 783 cases of domestic violence were reported, an increase of 3.1% as compared to 2013 (3 668 cases). From January to March 2015, 1 014 cases of domestic violence were reported to the police, an increase of 15,2% as compared to 2014 (808 cases). In 2014 criminal charges were brought against 3 564 perpetrators of those crimes. 92.1% of the perpetrators were men. Of 3 837 victims of domestic violence in 2014, 2 958 were women. In 2013 and 2014 criminal charges for domestic violence were filed against 56 police officers, and three criminal charges were brought against police officers who failed to report or investigate domestic violence committed by their peers.
119. In 2014, 27 women were reportedly killed by their partners, while in 2013 there were 43 victims.⁵² The Commissioner is seriously concerned by the recent wave of domestic violence against women in Serbia. From January to March 2015 26 women were killed in domestic violence, seven of them in 48 hours, which almost equals the number of women killed in 2014.⁵³ These developments prompted the Serbian parliament to convene a special session on 26 May to discuss this issue.
120. The most recent survey on the prevalence of violence against women in Serbia is the 2010 Mapping of Domestic Violence against Women in Central Serbia, according to which more than half of women in Serbia had at some point in their life experienced family violence (54.2%). 33% of women have experienced more than one form of violence in their lifetime. The mapping indicates that most of these acts of violence were committed by men (physical: 89.9%; psychological: 79%). The majority of

⁵¹ The information is contained in the Ministry of Interior's submission sent to the Commissioner following his visit.

⁵² Women against Violence Network, [Femicide in Serbia](#), accessed in May 2015.

⁵³ Balkan Insight, Serbia NGOs Demand Action on Violence Against Women, 19 May 2015.

the perpetrators were partners or husbands.⁵⁴ As noted by CEDAW in 2013 there is a lack of disaggregated data on all forms of violence against women in Serbia.

121. Several of the Commissioner's interlocutors, including the Ombudsman, highlighted that the criminal code needs to be amended to provide for harsher sentences for domestic violence. The Commissioner was informed by the authorities that a working group had been tasked with the preparation of legislative amendments to that end. The amendments are expected to be finalised by mid-2016.
122. As regards difficulties facing women victims of domestic violence in criminal proceedings, it has been reported that victims lack access to adequate information about their rights, including compensation, legal aid and the more efficient use of restraining and protection orders and their effective implementation. The significant obstacles faced by women, in particular Roma women and women with disabilities, seeking protection from violence, and the lack of emergency protection orders were also noted in 2013 by CEDAW. CESCRC has stressed that the authorities should provide training to law enforcement officials and judges, and develop public awareness campaigns about the pervasive nature of domestic and gender-based violence, including abuse and neglect of children.
123. Under the Istanbul Convention, member states are bound to set up appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children. The Council of Europe [Task Force](#) to Combat Violence against Women including Domestic Violence has noted that approximately 719 shelter places are needed in Serbia.⁵⁵ There are currently 14 women's shelters with about 160 shelter places in Serbia.⁵⁶ Two of the shelters are run by women's NGOs (one offers emergency accommodation only), and 12 are run by state social services. Only three state-run shelters provide accommodation free of charge, while other shelters charge women and children, sometimes depending on their employment situation. Two NGO-run shelters are free of charge.
124. Lastly, Serbia is yet to comply with its obligation⁵⁷ stemming from the Istanbul Convention concerning the setting up of 24-hour free of charge national telephone helplines to provide advice to victims on all forms of violence covered by the scope of this Convention. There is one helpline run by the Ministry of the Interior for women and men survivors of domestic violence, but reportedly it does not provide assistance to survivors such as information or advice. There are 24 SOS hotlines for women survivors of violence run by women's NGOs.

2.5 CONCLUSIONS AND RECOMMENDATIONS

125. Discrimination and hate crime in Serbia remain issues of concern to the Commissioner. He calls on the authorities to step up their efforts aimed at fully implementing domestic anti-discrimination laws and policies. The authorities are called on to strengthen the courts' sentencing policy related to hate crime, including by making better use of article 54a of the Criminal Code of Serbia.
126. The Commissioner stresses the essential role of national human rights structures in protecting human rights and promoting the principles of equality and non-discrimination, which are complementary to the authorities' work in this field. He calls on Serbia to ensure that these structures are provided with all necessary support and resources and that their decisions are fully and effectively implemented.
127. The Commissioner wishes to recall the case-law of the Court establishing that the non-recognition of a person's legal capacity severely limits their human rights and that full deprivation of legal capacity is a very serious interference with one's right to private life, enshrined in Article 8 of the ECHR. The existence of a mental disorder, even a serious one, cannot by itself justify incapacitation. The authorities are called upon to further review domestic legislation in light of Article 12 CRPD, in order to establish a system recognising the right of persons with disabilities to enjoy legal capacity on an equal

⁵⁴ More detailed information about the survey results is available at:
<http://www.wave-network.org/sites/default/files/04%20SERBIA%20END%20VERSION5.pdf>

⁵⁵ Women against Violence Europe, 2013 [Country Report](#) Serbia.

⁵⁶ Twelve of these centres are run by the state social services and two are run by NGOs. They are located in Belgrade, Novi Sad, Zrenjanin, Sombor and Pančevo.

⁵⁷ Article 24 of the Istanbul Convention provides that states parties shall take the necessary legislative or other measures to set up state-wide round-the-clock (24/7) telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity, in relation to all forms of violence covered by the scope of this Convention.

basis with others. In this regard the Commissioner invites Serbia to draw upon [General Comment No. 1](#) of the UN Committee on the Rights of Persons with Disabilities.

128. The Commissioner urges Serbia to develop laws and policies to replace the regime of substituted decision-making with supported decision-making. Safeguards must be put in place to ensure that the support provided respects the preferences of the beneficiaries, is free of conflict of interest and is subject to effective judicial review.
129. Isolating persons with disabilities in institutions perpetuates their stigmatisation and social marginalisation, in violation of their right to live independently in the community, guaranteed by Article 19 CRPD. Under this provision, Serbia is obliged to take measures to ensure that persons with disabilities have effective access to a range of community-based arrangements, including the personal assistance necessary to support independent living and inclusion in the community.
130. The Commissioner calls on Serbia to develop, with the active involvement of persons with disabilities, an ambitious plan for replacing institutions with community-based services, starting with a determined and sustained policy of zero-admission to institutions. The authorities should prove their commitment to reforming the social care system for persons with disabilities by closing down residential institutions and allocating adequate resources for the development of community-based alternatives.
131. While welcoming the strengthening of dialogue between the LGBTI community and the authorities, the Commissioner stresses that efforts need to be redoubled to eradicate discrimination against LGBTI persons, in particular in the workplace, and to combat homophobia. The authorities are encouraged to systematically take strong public positions against violations of the human rights of LGBTI persons and to promote the public's awareness of diversity and respect for all persons' sexual orientation and gender identity, notably through human rights education and awareness-raising campaigns.
132. The Commissioner underlines that access to procedures to change one's gender and one's first name in identity documents is vital for a transgender person to live in accordance with their preferred gender identity. Serbia is called upon to ensure that legal gender recognition does not require infertility or compulsory medical treatment which may seriously impair the autonomy, health or well-being of the individuals concerned. Any requirement of a medical diagnosis should be reviewed with a view to eliminating obstacles to the effective enjoyment by trans persons of their human rights, including the right to self-determination concerning one's gender, in line with the Court's case-law and the Council of Europe Committee of Ministers' Recommendation [CM/Rec\(2010\)5](#) on measures to combat discrimination on grounds of sexual orientation or gender identity. In this context, useful guidance is also provided by the Commissioner's 2009 [Issue Paper](#) on human rights and gender identity.
133. Gender equality forms part of basic human rights principles and is a requirement for the achievement of social justice, a *sine qua non* of democracy and a prerequisite for economic development. The Commissioner notes however with concern that this principle is not fully applied in Serbia, as women continue to be discriminated against in society, in particular in employment. He urges Serbia to ensure that the law and policies pertaining to women's rights are fully and effectively implemented so that the human rights of women are advanced.
134. Lastly, the Commissioner welcomes the ratification by Serbia in 2013 of the Istanbul Convention. The authorities are urged to fight violence against women vigorously and systematically, including by ensuring that all acts of violence against women, including domestic violence, are effectively investigated, prosecuted and punished. Serbia needs to sustain its efforts to ensure that law enforcement officers and legal professionals are systematically trained to be able to deal adequately with domestic violence cases. Women victims of domestic violence need to receive adequate support and legal aid, in particular in the context of relevant criminal proceedings. This work should be carried out in close co-operation with national civil society actors working on the promotion and protection of women's rights, whose important work in this field is highly appreciated by the Commissioner.

3.1 AN OVERVIEW OF THE SERBIAN MEDIA LANDSCAPE

135. Several important legislative steps have been taken by the authorities in the media field since the visit to Serbia by the Commissioner's predecessor in 2011, including the adoption in 2011 of a Strategy for the Development of the Public Information system until 2016 (the 'Media Strategy'). Defamation was fully decriminalised in 2013. In August 2014, parliament adopted the Law on Public Information and Media, the Law on Electronic Media and the Law on Public Service Broadcasting. Several implementing decrees necessary for the implementation of this set of media laws were adopted in November 2014. The media laws aim at enhancing transparency of media ownership, ensuring media pluralism and aligning relevant legislation and practice with European standards.
136. The Commissioner notes that an important new aspect foreseen in the media legislation is the 'project-based' media financing, instead of the current system of state subsidies. Public funds will now only be spent on media-related projects that are of public interest, as defined by law. Independent commissions comprising representatives of the competent authorities and independent national institutions, such as national human rights structures, and media representatives, will be taking decisions in this context in sessions open to the public.
137. The state is the owner of some of the most influential media outlets, including the news agency Tanjug, and TV and radio stations in major cities. Reportedly €25 million is spent annually on the financing of state-owned media.⁵⁸ The 2014 media legislation provides that all state-owned media should be privatised by July 2015. It is also provided that if a new owner cannot be found for a state-owned media, the ownership of that media will be transferred to the employees. Concerns have been expressed that due to the authorities' lack of adequate preparation for this process, it may not be completed by July 2015. The authorities, on their part, informed the Commissioner that the state-owned media will have no funding after the aforementioned deadline, irrespective of whether the privatisation takes place, and the Law on the News Agency Tanjug will cease to be in force.
138. The 2014 Law on Public Information and Media aims to address one of the main problems in this field: the lack of transparency of media ownership and of sources of media advertising and funding. The 2014 EC progress report on Serbia noted that the media market continues to suffer from non-transparent public funding of selected state-owned media and commercial media through direct budgetary subsidies and contracts with public enterprises and authorities. The Commissioner noted concerns expressed by journalists he met in Belgrade that some media, which are reportedly loyal to the government, have had their tax debts forgiven.
139. In its 2015 report⁵⁹ on the ownership and control of media in Serbia, the Serbian Anti-Corruption Council noted that the main generator of media censorship, self-censorship and tabloidisation is the lack of transparency of media ownership, the close links between media, political elites and big business, and political parties influencing editorial policies. The Commissioner is concerned by reports indicating that the government, one of the largest advertisers in the country, does a large part of its advertising in the media that it considers loyal. The Commissioner urges Serbia to proceed to the application of the newly adopted media legislation that has the potential to enhance much needed media transparency. He will continue to closely follow these developments in this area, which is of crucial importance to all functioning democracies in Europe.

3.2 PROTECTION OF JOURNALISTS FROM VIOLENCE

140. The fact that four Serbian journalists remain under 24-hour police protection is a clear indication that the safety of journalists and impunity for crimes committed against them remain serious human rights issues. They were addressed most recently in the Council of Europe Parliamentary Assembly 2015 [report](#) on the protection of media freedom in Europe. The Assembly noted that the statistics on

⁵⁸ EurActiv Rs, '[Povlačenje države iz vlasništva u medijima](#)', August 2014.

⁵⁹ Anti-Corruption Council of the Government of Serbia, [Report](#) on the ownership and control of media in Serbia (in Serbian), 20 February 2015, page 7.

attacks against journalists indicate that violence and threats against media representatives, and impunity for those crimes, is a widespread and entrenched reality in a number of member states which needs to be addressed by additional sustained and determined measures.

141. According to the authorities in 2013 and 2014 seven cases of physical attack and nine cases of verbal threats against journalists were reported to the police. As a result, ten charges have been filed, while six cases have been submitted to the prosecution. In 2015 two journalists reported verbal threats to the police (in Čačak and Novi Sad) and the prosecution has been informed thereof.
142. According to the data of the Independent Journalists' Association of Serbia,⁶⁰ from 2008 to 2014 the country has witnessed a total of 365 physical and verbal assaults, acts of intimidations and attacks on the property of media professionals. As of January 2015, an EU-funded project 'Mapping Media Freedom' received 48 reports of violations of Serbian media freedoms including attacks on property and intimidation and physical violence.
143. The OSCE Representative on Freedom of the Media has expressed on various occasions her serious concern about attacks against and intimidation of journalists in Serbia. One of the cases which prompted her reaction in July 2014 was the brutal beating in Belgrade of Davor Pašalić, the editor of the news agency FoNet, by a group of young men. The OSCE Representative condemned this attack and joined the calls for a swift and thorough investigation. As of May 2015 none of those who attacked Pašalić had been brought to justice.
144. The most serious cases to date are the still-resonating murders of Radislava Dada Vujasinović, reporter for the newspaper Duga, in 1994, Slavko Ćuruvija, owner and editor of the newspaper Dnevni Telegraf, and Milan Pantić, correspondent of the newspaper Večernje Novosti, in 1999 and 2001 respectively. In 2013, the government established a commission tasked to investigate these three major cases. In June 2014 four former state security officials were charged in connection with the killing of Slavko Ćuruvija, including a former head of the state security service. In the aforementioned 2015 Parliamentary Assembly report it is noted that this development was due to the work of this commission, but that obstructions by some former state officials continued to hinder progress in the other two pending cases. The Commissioner looks forward to receiving more detailed information from the government on the progress of all these extremely serious cases.
145. Commissioner Muižnieks is seriously concerned by the public use by some leading politicians of inflammatory remarks against certain journalists and their work. The Ombudsman's 2014 report noted⁶¹ that it has become common practice that public officials verbally attack journalists, calling them 'traitors' and 'foreign mercenaries' who work against the interests of Serbia. One such case concerns the publication last January by the Balkan Investigative Reporting Network (BIRN) of an article alleging corruption in the post-flood renovation of the biggest mine in Serbia. The publication was followed by certain public statements by the prime minister which were offensive towards the BIRN journalists.⁶²
146. The Commissioner noted with interest that on 6 November 2014 the parliamentary committee for information and culture held a session on media freedoms in Serbia, with the participation of representatives of media and journalists' associations. The committee adopted a set of [conclusions](#) calling on the authorities, *inter alia*, "to react to all attempts of endangering editorial autonomy and independence of media, and to work vigorously on shedding light on all cases of attacks on editors, journalists and other individuals who take part in collecting information, as well as on media".

3.3 OTHER MAJOR ISSUES CONCERNING UNDUE RESTRICTIONS TO MEDIA FREEDOMS

147. The OSCE Representative on Freedom of the Media has been concerned by reports of unexplained hacking attacks on some media websites and removals of content that was critical of the government, and raised those concerns in her dialogue with the authorities. The Commissioner was informed by the Minister of Interior, Mr Nebojša Stevanović, that the relevant investigation showed that most of the

⁶⁰ Index on Censorship, [Long lines of unresolved attacks scars Serbian journalism](#), 12 January 2015.

⁶¹ Ombudsman of Serbia, 2014 Annual Report (available in Serbian on the [Ombudsman's website](#)), March 2015, page 123.

⁶² Index on Censorship, [Serbia: Prime minister calls BIRN's journalists liars](#), 9 January 2015.

media content blocking came from sources located outside the country and one person responsible for the blocking had been identified.

148. Last March the Ministry for Culture and Information organised a meeting with media representatives to discuss and raise their awareness of the importance of increasing their own websites' security. The Commissioner welcomes this initiative and encourages the authorities to continue addressing this and other relevant issues pertaining to the Internet. Useful guidance can be found in the Commissioner's 2014 [Issue paper](#) on the rule of law on the Internet and in the wider digital world.
149. Serious allegations about undue political or corporate influence on some media and increased self-censorship as a result of that pressure have been made by various national and international institutions. In its 2014 progress report on Serbia, the EC noted a growing trend of self-censorship which, combined with undue influence on editorial policies, and a series of cases of intervention against websites, has been detrimental to media freedoms and has adversely affected the development of professional and investigative journalism.
150. In a 2013⁶³ report by two international media organisations it was noted that "soft censorship, facilitated by political and partisan allocation of ill-regulated and non-transparent state media assistance and state advertising, is having profoundly insidious effects on media freedom and on the development of sustainable media markets in Serbia." In a [letter](#) sent on 19 February 2015 to the EU Enlargement Commissioner, the European Federation of Journalists (EFJ) expressed concerns about media freedom violations and listed those that it registered in 2014.
151. The most recent case of alleged self-censorship concerns the cancellation of the broadcasting of TV B92's programme 'Reporter' due to serious threats made to journalist Brankica Stanković who had already been under 24-hour police protection due to her earlier reports on the links between organised crime and domestic political life. Following this development, the Association of Independent Electronic Media called on the government to make additional efforts to ensure the protection of journalists and freedom of expression.⁶⁴
152. In this context, the Commissioner underlines that journalists themselves have to promote and defend high standards of human rights and ethical journalism.⁶⁵ He has noted concerns that some media and journalists systematically resort to sensationalism and unethical reporting, in particular when addressing the situation of vulnerable groups such as persons with disabilities, Roma, women, children, displaced persons and migrants, and LGBTI persons. The use of media for discrediting political opponents by using derogatory language and hate speech is also a common practice.
153. The Press Council of Serbia monitors the compliance of media content with the Journalists' Code of Ethics and handles pertinent complaints submitted by individuals and institutions. Journalists' associations have internal self-regulatory bodies (courts of honour) dealing with complaints concerning media content. It is of concern to the Commissioner that most of the editors of tabloids are not members of journalists' associations and are therefore not subject to any scrutiny of this kind.
154. Issues related to ethical journalism have been addressed in the context of the ongoing Council of Europe regional project "[Promoting freedom of expression and information and freedom of the media in South-Eastern Europe](#)" launched in 2013, which aims to develop legal and institutional guarantees for freedom of expression, higher quality journalism and a pluralistic media landscape in South-Eastern Europe in line with Council of Europe standards in this field. In the context of this project an informal regional network of self-regulatory bodies "Media NEThics" has been created. The network will be used as a platform for regional co-operation and exchange of practice in this field in order to improve the quality of journalism and ensure that the principles of ethical journalism are upheld.

3.4 CONCLUSIONS AND RECOMMENDATIONS

155. The Commissioner underlines that freedom of expression and media freedoms have a crucial role to play in the development and progress of every European democratic society.⁶⁶ They are the pillars

⁶³ World Association of Newspapers and News Publishers, "[Soft Censorship: Strangling Serbia's Media](#)", 2013.

⁶⁴ B92, "[ANEM calls for reaction to attacks against B92 reporter](#)", 10 March 2015.

⁶⁵ Commissioner Muižnieks' "[Ethical Journalism Initiative – Journalism and the Challenge of Intolerance](#)", May 2012.

⁶⁶ See, Commissioner's [thematic webpage](#) on media freedom, independence and diversity.

upon which two major characteristics of democracy are founded: pluralism and openness to dialogue. Particular attention should be paid to the protection of the press, especially investigative journalists – they are “public watchdogs” who inform the public about developments in society, expose state policies and actions to the close scrutiny of the public and stimulate critical public debate on issues of public interest. As stressed by the Court, not only does the press have the task of imparting such information and ideas; the public also has a right to receive them.

156. The Commissioner welcomes the full decriminalisation of defamation and the adoption in 2014 of a new set of media laws. The effective implementation of these laws is of the utmost importance for developing adequate conditions for full respect of freedom of expression and media freedoms.
157. States have an obligation to protect the lives of threatened journalists and all forms of violence targeting media professionals must be effectively investigated, prosecuted, tried and punished. The Commissioner is seriously concerned by the longstanding impunity for crimes against journalists which breeds an atmosphere of passive acceptance of these attacks. He calls on the Serbian authorities to live up to their positive obligation to initiate prompt, thorough and transparent investigations when violence or threats of violence against journalists occur, to bring all perpetrators to justice, and to make sure that sanctions are dissuasive and reflect the seriousness of these offences.
158. The Commissioner urges Serbia to promptly conclude the proceedings by bringing to justice all those responsible for the still-resonating assassinations of the journalists Radislava Dada Vujasinović, Slavko Ćuruvija, and Milan Pantić which took place between 1994 and 2001. Serbia should show zero tolerance towards serious human rights violations in line with the 2011 Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations and the 2014 Council of Europe Committee of Ministers’ Declaration on the protection of journalism and safety of journalists and other media actors.
159. The Commissioner is worried by the public use by certain leading politicians of inflammatory remarks against journalists and their work. Such public discourse is detrimental to media freedom and has led to journalists increasingly withdrawing from performing their important role of public watchdogs in European democracies. The Commissioner underlines that acceptance by political leaders and the government of a higher degree of public criticism and scrutiny, including from journalists, is an inherent part of democratic life. Mature, non-violent responses from them to criticism send an important signal to the public and the media themselves that democracies can only thrive when they are based on openness and dialogue within the contours of the rule of law and human rights standards.
160. Last but not least, journalists themselves must show a high degree of respect for human rights and abide by the ethical standards of journalism. Media actors should promote education and systematic training on ethical journalism, usefully drawing upon the Council of Europe’s relevant rich expertise and standards.