PREUGOVOR ALARM
REPORT ON THE PROGRESS OF SERBIA IN CHAPTERS 23 AND 24

Editor:
Milan Aleksić

Belgrade, April 2017

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by the European Union

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Editor
Milan Aleksić

Authors
Milan Aleksić, Bojan Elek, Branko Čečen, Gordana Grujičić, Isidora Stakić,
Ivana Radović, Katarina Ivanović, Nemanja Nenadić, Predrag Petrović,
Saša Đorđević, Sofija Mandić, Tanja Ignjatović, Vanja Macanović

Translation
Alisa Koljenšić Radić

Design and layout
Marko Zakovski

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About prEUgovor

Coalition prEUgovor (Eng. *prEUnup*) is the first network of civil society organisations formed in order to monitor the implementation of policies relating to the accession negotiations between Serbia and the EU, with an emphasis on Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security) of the *Acquis*. prEUgovor comprises seven civil society organisations with expertise in the thematic areas covered by Chapters 23 and 24. The coalition was formed in 2013 with the mission of proposing measures to foster improvement in the fields relevant for the negotiation process. In doing so, the coalition aims to use the EU integration process to help accomplish substantial progress in the further democratisation of the Serbian society.

www.prEUgovor.org
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The member organisations of prEUgovor are:

Anti-trafficking Action (ASTRA)
www.astra.rs

Autonomous Women's Centre (AWC)
www.womenngo.org.rs

Belgrade Centre for Security Policy (BCSP)
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Group 484
www.grupa484.org.rs

Transparency Serbia (TS)
www.transparentnost.org.rs

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Introduction

The negotiation process between Serbia and the EU has entered its fourth year, while the negotiations within Chapters 23 and 24 are approaching the end of their first year. To date, Serbia has succeeded in opening eight of the 35 negotiation chapters, some in the previous six-month period. Chapters 5 - Public Procurement and 25 - Science and Research were opened on 13 December 2016, while Chapters 20 – Enterprise and industrial Policy and 26 – Education and Culture, on 27 February 2017. Even though it was expected that Chapter 26 would be opened alongside with Chapters 5 and 25, its opening had to be delayed due to Croatia`s particular claims related to the protection of the Croatian national minority in Serbia. As this problem – ensuring school books for Croatian pupils – was resolved at the beginning of 2017, Croatia has withdrawn its reservations and agreed on the opening of Chapter 26. However, as this issue is also relevant for Chapter 23 (minority rights), it will be further kept track of within this chapter as well.

As for Chapters 23 and 24, which were opened in July 2016, the Government of Serbia adopted two action plans containing measures, activities and the timeframe for the necessary reforms in the areas covered by these two chapters. Councils responsible for the implementation of the Action Plans for Chapters 23 and 24 issued two semi-annual reports at the beginning of 2017, for the period from the opening of the Chapters to the end of 2016. According to the Ministry of Justice, Serbia has realised 71% of the activities from the Action Plan for Chapter 23 planned for 2016 (most successfully in the area of fundamental rights - 89%), while according to the Ministry of Interior (in charge of conducting the reforms in Chapter 24), only 1/3 of the activities envisaged for 2016 (37%) have been implemented successfully. However, the state did not report anything for many of the activities listed in these two plans, leaving the fields in these reports envisaged for the performance assessment empty.[1]

Coalition prEUgovor has identified several obstacles in its independent monitoring of the progress in Chapters 23 and 24, some of which were: restricted/limited access to certain documents issued by the Government in connection to the negotiation process, weak institutional mechanisms for assessing the effects of implemented activities, and poor reporting on the implementation of the Action Plans, as the reports do not contain complete data. In order to primarily improve monitoring of the measures and activities of its particular interest listed in the Action Plans for Chapters 23 and 24, prEUgovor held a meeting with the Negotiation Team on 6 March 2017. It was agreed that prEUgovor would submit a list of questions regarding the areas/activities for which it could not obtain necessary information, and that the Negotiation Team would try to provide these information to the coalition. This also appeared to be a good opportunity to upgrade cooperation between the civil society and state authorities in general, particularly in respect of the negotiation process. As per agreement, prEUgovor submitted a list of questions to the Negotiation Team on 16 March 2017. The core of the requested information concerned the effects of the implemented activities from the Action Plans. However, at the time of this report, prEUgovor has yet to receive an answer from the Negotiation Team. The list of questions with requested information can be found on prEUgovor's website.[2]

The most prominent political event that took place during this reporting period was the election of the new President of the Republic of Serbia. Presidential elections took place on 2 April 2017, with the participation of eleven candidates. The current Prime Minister of Serbia, Aleksandar Vučić, won the elections in the first round with 55% of votes, leaving the second ranked Saša Janković (16%), the former Ombudsman,[3] far behind. Even though the Republic Electoral Commission did not report any major irregularities during the campaign and voting, most of the participating candidates complained about irregular conduct of the elections, unequal treatment by the media (or even total media blockade), violation of the law on the part of the ruling candidate (who

1 The preparation of this report had been completed before the Ministry of Justice published the Report on the Implementation of the Action Plan for Chapter 23 for the first quarter of 2017. The report is available at: http://www.mpravde.gov.rs/tekst/15471/izvestaj-br-12017-o-sprovodjenju-akcionog-plana-za-poglavlje-23.php

2 The list of questions (only in Serbian) is available at: http://preugovor.org/Vesti/1353/Podatke-o-napretku-pregovora-sa-EU-uciniti.shtml

3 Saša Janković was not dismissed from the post of Ombudsman by the Parliament; he resigned on 7 February 2017, at the end of his second term, to run for President.

participated in the campaign while still holding the office of Prime Minister), collecting "secure votes", buying votes, etc. After the elections ended, protests erupted in several major cities; they were initiated by students and are going strong at the time of drafting of this report. Even though the electoral process might be perceived as a trigger for these "Protests against Dictatorship", they were actually provoked by the overall political and economic situation in the country.[4] The elections concentrated even more power in the hands of a single man, as Aleksandar Vučić is at the moment the acting Prime Minister, President Elect, leader of the strongest political party in the country - the Serbian Progressive Party (SNS) - and coordinator of the security services.

Even though Government officials often claim that Serbia's pace in respect of the EU accession process is good when it comes to implementation of the Action Plans for Chapters 23 and 24, as well as in general, concerning the respect for democratic values and the rule of law, everyday developments do not necessary support these claims. Implementation of many envisaged measures has been delayed, while for the implemented ones there is no clear and firm evidence that they brought the expected changes. Furthermore, it has to be noted that the Parliament temporises the adoption of the reports of independent state bodies, and that institutions are becoming less responsive to allegations found in these reports. Many of the long-standing, politically and economically important cases (the majority of the 24 well-known and controversial corruption cases) are still on hold. Despite public pressure and several citizens' protests that have been organised in 2016 and 2017, the Savamala case[5] is still unresolved after a year, even though the Prime Minister himself said that the culprits are known and that this is a minor case. At the same time, the European Union seems to show little interest for the weak institutional performance, increase of political pressure on the judiciary and the strengthening of control over the media.

The present prEUgovor report contains findings in the areas that are of particular interest to the coalition organisations and these were monitored in the previous period. These areas, inter alia, include the normalisation process between Belgrade and Priština, gender equality (political criteria), fight against corruption, rights of the child (Chapter 23), migration policies, and fight against terrorism (Chapter 24). At the end of each section of the report there are recommendations for the improvement of the identified loopholes and deficiencies. However, given that many of the findings from this prEUgovor report correspond to the ones from the previous one (issued in October 2016), many of the recommendations have remained basically the same. Therefore, and despite some of the positive developments (which are also noted in the report), the overall assessment of the state of affairs in the monitored areas in Chapters 23 and 24 and the implementation of the measures envisaged by the respective action plans is negative. This means that in the reported period Serbia did not conduct the reforms in Chapters 23 and 24 in a satisfactory manner, and that more efforts will have to be undertaken in the upcoming period to prevent the worsening of the situation.

4 Some of the demands of the protesters are: dismissal of the Speaker of the National Assembly, the Republic Electoral Commission members, Director of Radio-Television of Serbia, etc.

5 The Savamala case (demolition of several objects during the night on 24 April 2016, with the participation of several masked individuals and no intervention from the police, and consequently a slow and weak reaction of the judiciary) remains a paradigm of the shaken rule of law in Serbia.

1. POLITICAL CRITERIA

1.1. Democracy - Presidential Elections

The discussion and considerations regarding the presidential elections have been the focal point, particularly in the period from January 2017. The fight against corruption and the rule of law were the issues that have been exploited by opposition candidates, while the ruling parties' candidate rather prioritised other subjects (such as political stability, international relations and economic progress).[6] The campaign was marked by serious suspicions of vote buying, abuse of power, pressure on voters through collection of "capillary" and "secure" votes, humanitarian actions of the ruling parties as well as other potential irregularities, but these were not investigated by the Public Prosecutor's Office. Prosecution did not react when one candidate's spouse and another's brother were directly accused of serious crimes. On the other hand, the Special Prosecutor for Organised Crime rejected the criminal charges that were pressed by an opposition candidate against the governmental candidate in less than 48 hours.

Regulator for Electronic Media (REM) and the Anti-Corruption Agency monitored the elections in limited capacity. REM even openly stated that there would be no ex officio actions and demonstrated its powers only twice, by forbidding certain TV spots because of their incompliance with the general Law on Advertisement Rules, but made no comment as to the enormous difference in the media treatment of candidates, including live streaming of ruling parties rallies and the massive presence of the ruling party's candidate in non-political talk shows and in the capacity of Prime Minister. This, once again, exposed the lack of comprehensive political advertisement regulation and REM's independence, as well as media obedience.

The Anti-Corruption Agency (ACA) repeated some of its previous years' general warnings but failed to react in any concrete situation during the campaign. The Parliament again failed to establish an Oversight Board and suspended itself during the campaign period, thus further limiting the already weak mechanisms of the executive's accountability. Moreover, the Republican Electoral Commission started to work with 2/3 majority of one candidate's coalition members, thus violating the electoral rules, and issued several problematic decisions (voting in Kosovo, provision enabling validation of reports that contained mistakes). Hence, the only area in which some progress was noted since the elections of 2016 was the absence of serious problems with forged support signatures (there were however some problems with the availability of notaries required for signature collection, due to shortage in time).

The abuse of promotional resources by public officials was frequent; it confirmed a serious loophole in the legislation that has already been identified by ODIHR mission in 2016. These cases have not been pursued, even when existing laws were clearly violated (such as the case when official vehicles were used by ministers to visit support events of the candidate and Prime Minister Vučić). Another loophole that was clearly exposed during the campaign was the complete absence of rules for financing "campaign before the campaign", which was practiced in particular by candidate Vuk Jeremić.[7]

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6 However, he promised to "continue the fight against organised crime and corruption", to "establish a model of police work that will be guided by intelligence data (POM), and said that a strategic overview will be developed for Serious and Organised Crime Threat Assessment (SOCTA). In order to confront corruption, capacities for investigation will be strengthened, as well as the internal control mechanism within the Ministry of Interior". None of these activities fall under the presidential mandate.

7 http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Sta_institucije_nisu_uradile_u_vezi_sa_izborima_i_kampanjom.pdf and http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/konferencije/9071-izbori2017-funkcionerska-kampanja-mediji-drzavni-organi

1.2. Normalisation of Relations between Serbia and Kosovo

During the reporting period, the normalisation process came to a halt as a result of several incidents.

First, on 5 January 2017 the former Prime Minister of Kosovo Ramush Haradinaj was arrested in France based on the Serbian arrest warrant for alleged war crimes. Haradinaj was previously twice acquitted before the ICTY. Kosovo authorities stated that the arrest was unacceptable and politically motivated, while Serbian officials insisted that Serbia would seek his extradition. The arrest raised tensions between Serbia and Kosovo, both claiming that future relations and the dialogue depend on the Haradinaj case. The completely opposite demands of the two parties in this regard make a compromise hardly possible, which is threatening to the normalisation process.

Second, on 14 January 2017 a train set off from Belgrade to Northern Mitrovica; it was the first train in 18 years that was supposed to run this route (the line between Kraljevo in central Serbia and Zvečan in northern Kosovo has been operating for years and was now extended). The train was painted in the colours of the Serbian flag and bearing the words "Kosovo belongs to Serbia" in 21 different languages, including Albanian. In the end, the train did not enter Kosovo, as the Serbian Prime Minister Aleksandar Vučić stopped it in Raška (town just before the /administrative/ border) claiming that Kosovo Albanians had tried to mine the railway, and accusing Kosovo authorities of sending special units with armoured vehicles to North Kosovo with the aim of igniting a conflict. The Kosovo police strongly denied the allegations that the railway was mined. The Kosovo authorities saw the painted train as a clear political provocation designed by the Serbian Government, contrary to the spirit of the normalisation process. The incident was followed by an escalation of harsh nationalist rhetoric and self-victimisation. The timing of the incident – some months before the presidential elections in Serbia – suggests that it might have been intended for the purpose of gaining support of the part of Serbian electoral body with nationalist attitudes.

Nevertheless, after the "train incident" Belgrade and Priština agreed to continue with high level meetings within the EU-facilitated dialogue, and the next round was held on 1 February 2017. The meeting ended without public statements on what had been discussed, which indicates that the strained relations prevented the parties to reach any agreement. However, only several days after this round of dialogue, Serbian and Albanian sides agreed to tear down the concrete wall in Northern Mitrovica on the banks of Ibar River, which had been built only a month earlier. The Priština authorities saw the wall as the attempt of Serbs to maintain the division between the Southern and Northern parts of Kosovo, while the Serbian side insisted that it was just a communal issue without any political significance. Tearing down of the wall was seen by the Head of EU Office in Kosovo/EU Special Representative, Nataliya Apostolova, as "an extremely good sign, showing that both sides can reach an agreement given sufficient political will."[8]

Increasing tensions between Belgrade and Priština were also provoked by the Law on Trepča (of importance for the Kosovo Serb community), adopted by the Kosovo Parliament in October 2016, and the decision of the Kosovo Government to register all immovable property in its territory (previously registered as Yugoslav and Serbian) under its own name in March 2017. At the same time, as a result of the Brussels process, Kosovo acquired its own international telephone code (+383), which became operational in December 2016. On the other hand, the formation of the Community/Association of Serb Majority Municipalities is still on hold, even though the first agreement on this was reached back in 2013. The Kosovo authorities continued to procrastinate the drafting of the Articles of Association for this entity, causing Serb representatives in the Kosovo institutions to leave their posts for several months at the end of 2016 and the beginning of 2017. The President of Kosovo also tried to pass a law on the transformation of Kosovo security forces (which would turn said forces into an army) in March 2017; even though this was swept over by both Kosovo Serbs and international authorities, Belgrade was nevertheless once again

8 http://www.dw.com/en/serb-bulldozers-demolish-wall-in-kosovos-divided-city/a-37421662

seen by Kosovo authorities as the main troublemaker and obstacle for the development of their country.

It should also be noted that, according to the BCSP public opinion poll conducted in January 2017 using a representative sample, one third of the citizens of Serbia (33.5%) believe that the dialogue between Belgrade and Priština should be continued regardless of EU pressure, while only one in ten respondents (9%) thinks that the dialogue should cease. On the other hand, only 7.7% of the citizens of Serbia see the recognition of Kosovo independence as acceptable and only if this will contribute to the stability and prosperity of the region. More than a quarter of the respondents (26.8%) agree that the dialogue benefits both Serbia and Kosovo, while twice fewer respondents (13.6%) think that both Kosovo and Serbia will lose, which gives reason for mild optimism. However, the fact that young people in Serbia are more against the dialogue than the population viewed as a whole indicates a potential for the rise of nationalism and possible deterioration of Belgrade-Priština relations.

RECOMMENDATIONS:

- All the parties ought to stop manipulating the nationalist rhetoric and using the Kosovo issue for internal/electoral political gains in Serbia;
- The Government must ensure full transparency of the Brussels dialogue and the process of implementation of achieved agreements.

1.3. Anti-Discrimination Policy and Gender Equality

The implementation of activities in this area is assessed as excellent, although there has been no improvement of the real situation. Only half of the measures listed in the Action Plan (AP) for the implementation of the Strategy for Prevention and Protection against Discrimination have been implemented. The new Law on Gender Equality has not yet been adopted. There is no report on the implementation of measures from the National Strategy for Gender Equality and the Action Plan for its implementation in 2016. The National Action Plan for the Implementation of UN Security Council Resolution 1325 - Women, Peace and Security in Serbia for the period 2016-2020 has not yet been adopted.

Although the existing reports[9] of the Council for the Implementation of the Action Plan for Chapter 23 (hereinafter: the Council) state that most of the planned activities in the field of **anti-discrimination policy and gender equality** (recommendation 3.6.1) have been "fully implemented" or are "being successfully implemented", our opinion is that the **real situation does not correspond to that assessment**. Most of the planned activities relate to the implementation of the analyses, preparation and adoption of the laws, strategies, action plans, establishment of mechanisms or capacity building and training implementation, and very rarely to the "full implementation" of relevant policies and laws. This certainly contributes to the achievement of the results, but tells us nothing about the actual changes.

The assessment review of the Council on the fulfilment of the planned activities in this area (recommendation 3.6.1) indicates that out of 22 activities whose implementation took place at the time of reporting, almost one third (27.3%) have been "fully implemented", one tenth (9%) have been "almost completely realised", and that a bit more than half of the activities (54.5%) are "being successfully implemented". This means that the implementation success of the planned activities is excellent, since as many as 91% of the activities have been either successfully completed or are being successfully implemented.

9 Report 1-2/2016: http://www.mpravde.gov.rs/tekst/13178/izvestaj-br-1-22016-o-sprovodjenju-akcionog-plana-za-poglavlje-23.php
Report 3/2016: http://www.mpravde.gov.rs/tekst/14618/izvestaj-br-42016-o-sprovodjenju-akcionog-plana-za-poglavlje-23.php
Report 4/2016: http://www.mpravde.gov.rs/tekst/14618/izvestaj-br-42016-o-sprovodjenju-akcionog-plana-za-poglavlje-23.php

However, if we analyse the content of the report, it is clear that the Council's assessment is given **unjustifiably and without appropriate consideration.** The content of the report unambiguously confirms that 18.2% of the activities have been "fully realised", 9% "almost completely" realised, and that only 18.2% of the activities are "being successfully implemented". In other words, the success of realisation of the planned activities is **average and partial** – as many as 54.5% of the activities whose implementation is assessed as successful are actually only partially successful.

Therefore, reports on the implementation of the **Action Plan for the Implementation of the Strategy for Prevention and Protection against Discrimination**[10] clearly confirm that the relevant implementers are able to meet only half of the planned measures and activities. Although the percentage of unfulfilled obligations is lower in the second reporting period, the percentage of missing data has increased (even though the data collection system has been improved). As the AP has been designed according to the measures and activities, it is not possible to follow the implementation of measures and activities regarding the nine target groups listed in the Strategy. As regards measures and activities relating to women, although it is difficult to extract them from the report our analysis confirms that the majority of measures lack implementation reports.

The situation is similar with the activities related to the **establishment of mechanisms of the Government of the Republic of Serbia for the implementation of all the recommendations of the UN Human Rights Mechanisms** (3.6.1.3). The formal aspects[11] are stated, but there is **no data** on the content, results and effects of the activities.[12] The Council for Monitoring the Implementation of the Recommendations of UN Human Rights Mechanisms **does not submit** reports on its work on specified time and to designated bodies.[13] Serbia has submitted information to the UN CEDAW Committee with a delay of 7 months.[14] The shadow report submitted by AWC confirms that the majority of the recommendations have not been implemented.[15] The 65th Session of the CEDAW Committee[16] examined the state report: the delay and the fact that seven recommendations were implemented partially and one not at all were noted, and it was said that the state was expected to provide information on further actions in its next periodic report regarding all eight recommendations of particular concern for the Committee.

The new **Law on Gender Equality** (3.6.1.8) has not been adopted, although the activity has been assessed as "almost fully realised". The draft of this law **is missing** from the internet presentation of the Coordination Body for Gender Equality.[17] If a public hearing is organised after the law's harmonisation in the relevant ministries, adoption should not be expected before mid-2017.

Although the new **National Strategy for Gender Equality for the period 2016-2020 and the Action Plan for its implementation for the period 2016-2018** (3.6.1.10) have been adopted, and given that the Council's report states that a system has been established to coordinate the monitoring and reporting on the implementation of AP, **there is no report on the implementation of measures and activities in 2016** on the internet presentation of the Coordination Body for Gender Equality.[18]

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10 First report (November 2015) – available at: http://www.ljudskaprava.gov.rs/sr/node/19991
Second report (December 2016) – available at: http://www.ljudskaprava.gov.rs/sr/node/19991

11 For example, the Decision on Establishing the Council for Monitoring the Implementation of the Recommendations of the UN Human Rights Mechanisms, the number of held sessions, established mechanisms and indicators for monitoring, list of visits of UN special rapporteurs (2), the documents submitted to the UN treaty bodies (10), etc.

12 Serbia is responsible for monitoring 144 recommendations of the Universal Periodic Review and 233 recommendations of the UN treaty bodies.

13 The Council is obliged to submit to the competent committee the report on its work at least once every 60 days, and to the Government at least once every 90 days (Decision on Establishing the Council for Monitoring the Implementation of the Recommendations of the UN Human Rights Mechanisms, *Official Gazette of RS*, No. 140/2014. Available at: http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/reg/viewAct/512d700e-47e5-413b-9ca3-106ae3d40981). **Third** session of the Council was held on 28 February 2017, available at: http://www.ljudskaprava.gov.rs/sr/node/19962

14 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FSRB%2FCO%2F2-3%2FAdd.1&Lang=en

15 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGS%2fSRB%2f23731&Lang=en

16 http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_SED_65_25562_E.pdf

17 https://rodnaravnopravnost.gov.rs/sr/dokumenti/zakoni (accessed on 1 April 2017)

18 https://rodnaravnopravnost.gov.rs/sr/dokumenti/strategije/nacionalna-strategija-za-rodnu-ravnopravnost-za-period-od-2016-do-2020-godine (accessed on 1 April 2017)

The National Action Plan (NAP) for the implementation of UN Security Council Resolution 1325 - Women, Peace and Security in Serbia for the period 2016-2020 has **not yet been adopted**. Although civil society organisations had been invited to submit suggestions on the draft NAP,[19] it should be emphasised that this Working Group, composed of 31 members,[20] **did not include** representatives of women's and peace organisations, which clearly indicates the Group's attitude towards women's organisations and the document's content.

RECOMMENDATIONS:

- Define the activities in Chapter 23 so that they relate to full implementation, not just the adoption of legislation, strategies and action plans;
- Adopt the missing laws, strategic documents and action plans and allocate relevant budget funds for their implementation;
- Define clear and measurable indicators to monitor and assess the effects of implementation of laws, national strategies and action plans;
- Establish functional mechanisms to implement and monitor the implementation of policies for combating discrimination and gender equality, which allow horizontal and vertical communication and coordination with the strategic sector policies;
- Ensure participation of civil society organisations, particularly women's organisations, in working groups for drafting laws, strategic and action plans, with the obligation to report on the results of the consultation processes.

19 http://www.civilnodrustvo.gov.rs/vest/rezolucija-1325:-javni-poziv-za-dostavu-sugestija-na-nacrt-nacionalnog-akcionog-plana.37.html?newsId=724.

20 Decision on Establishing the Working Group for Drafting the National Action Plan of the Republic of Serbia for the Implementation of the UN Security Council Resolution 1325 - Women, Peace and Security (2016-2020), Official Gazette of RS No. 109/2015, available at: http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/reg/viewAct/18545947-1d0d-4cd4-9757-1c261576cab8

2. CHAPTER 23 – JUDICIARY AND FUNDAMENTAL RIGHTS

2.1. Judiciary

2.1.1. Impartiality and Accountability

After more than a year and a half, the Ministry of Justice (MoJ) finally made available the minutes from the meetings of the Commission for the implementation of National Strategy for the Reform of Judiciary for the period March 2015 - December 2016.[21] On the Ministry's web site, the next meeting of the Commission is announced for 31 March 2017, but only for the media.

As it could be concluded from the MoJ website, the Commission for the implementation of National Strategy for the Reform of Judiciary currently has nine Working Groups (there used to be seven). Minutes of most meetings of these Working Groups are either outdated or the Groups didn't hold any meetings for more than two years.[22] With the exception of the associations of judges, prosecutors and judicial associates, non-government organisations (NGOs) haven't been consulted in any manner by this Commission or its Working Groups. It is clear from the minutes of the meetings that only invited members presented their reports. Although the representative of the Office for the Cooperation with Civil Organisations is a member of the Commission, no initiative has been made to consult the civil society organisations (CSOs) on the effect of the reform of the judiciary from the aspect of citizens. The Commission is focused only on the aspect of judges, prosecutors and other employees in the judiciary, and has never asked about the aspect of citizens, whom judiciary should serve.

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 keeps on reporting in all its submitted reports that activities 1.1.7.1. to 1.1.7.4. are being implemented successfully because the Negotiation Group for Chapter 23 has been meeting within NCEU. If these activities are listed in the part of the Action Plan for Chapter 23 titled 'Impartiality and Accountability of Judiciary', the Council for the implementation of the Action Plan for the negotiations for Chapter 23 didn't explain how general meetings of the NCEU on the entire AP 23 had any influence on the reform of the judiciary, i.e. on what basis it was concluded that they are being successfully implemented. Also, they didn't provide any additional reference to the quarterly reports on comments and suggestions of civil society organisations on defining further steps in the reform process (activity 1.1.7.2), except for the process of adoption of the Action Plan for Chapter 23 which was completed in May 2015. The same lack of reference is detected in the activity 1.1.7.4.

RECOMMENDATIONS:

- The Council for the implementation of the Action Plan for the negotiations for Chapter 23 should state references regarding each activity that is considered to be successfully or partially implemented;
- The Council for the implementation of the Action Plan for the negotiations for Chapter 23 should not include the activities of the NKEU that are focused on the entire AP 23 in the activities that are planned for the Impartiality and Accountability of Judiciary.

21 Available only in Serbia, at: http://www.mpravde.gov.rs/tekst/5269/dnevni-red-i-zapisnici-.php

22 For example, last minutes of the meeting of the Working Group on Amendments of the Constitution are from September 2014, available only in Serbian, at: http://www.mpravde.gov.rs/tekst/5847/radna-grupa-za-izradu-analize-izmene-ustavnog-okvira.php

2.1.2. Professionalism/Competence/Efficiency

Strengthen the enforcement of judgments, in particular in civil cases

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 stated that the activity 1.3.6.1., which involves amending the Civil Procedure Code (CPC), was partially implemented because the Working Group for drafting these amendments has been established and an external expert has been contracted by the JEP Project. In the Report of the Council there is no reference to the official document on the establishment of this Working Group, the date when it was established, and who its members are. Also, there is no reference to the JEP project under which the external expert has been contracted.

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 stated that the activity 1.3.6.3. is being implemented successfully because the new Law on Enforcement and Security, which was adopted on 18 December 2015 and came into force on 1 July 2016, **decreased the number of unresolved enforcement cases pending before the basic courts by 33%** (from the total of 1,464,958 on 31 August 2016 to 1,136,963 on 1 December 2016 – 305,670 cases have been suspended and 7,858 transferred to enforcement agents).

The Ministry of Justice presented this data without mentioning Article 547 of the new Law. This article obliges the citizens to inform the court, within a period of two months prior to the Law coming onto effect, whether they want their enforcement cases to be enforced by the court or by an enforcement agent. If the citizens miss this deadline, their enforcement cases are automatically dismissed. At the expense and to the detriment of the citizens, the courts in Serbia thus ''resolved'' these 305,670 (30%) previously unresolved enforcement cases.

This Article 547 paragraph 1 stipulated differently in the Drafts of the Law on Enforcement and Security dated 11 September and 1 November 2015, previously stating that citizens shall have 60 days once the Law comes into force to express their intention. It remains unknown who had changed this Article of the Law.

In general, this Article should never have stipulated an obligation of the citizens themselves to inform the court, as most of them possess no legal knowledge. It should have prescribed an obligation of the courts to ask the citizens to declare themselves, prior to dismissing the cases. **We can say that at least 305,670 citizens of Serbia, some of them children, have suffered direct damage from this Article**. Now they have to initiate new enforcement proceedings, although they might not have sufficient funds to do so, while some might have lost their right to seek enforcement because of the statute of limitations.

As a result of the non-adoption of AWC's amendments and comments on the draft law regarding the improvement of enforcement in child support cases, **the new Law on Enforcement and Security now has a direct negative effect on children who do not receive child support**. In order to instigate enforcement in child support, mothers now have to first submit an enforcement claim to the court, naming the enforcement agent who will conduct the enforcement, and then pay both the court's and enforcement agent's fees before the enforcement begins. The minimum fee for initiating enforcement is approximately EUR 80.

Data show that in 2016 AWC provided free legal aid for writing claims for the enforcement of court decisions for 9 clients[23] - more than 50% less than in previous years.[24] Decrease in the number of written enforcement claims is related directly to coming into force of the new Law on Enforcement and Security. During 6 months of the implementation of the Law in 2016, AWC had only one client who was able to pay this fee in advance and to whom the enforcement claim was written. AWC now advises clients to file criminal charges, as these proceedings are free of charge.[25]

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23 One for the enforcement of issued eviction protection measure, and 8 in the cases of unpaid child support.

24 In 2015 – 21 (one for the enforcement of an issued eviction protection measure and 20 in the cases of unpaid child support), in 2014 - 25 (one for the enforcement of an issued eviction protection measure and 24 in the cases of unpaid child support), and in 2013 - 18 (two for the enforcement of an issued eviction protection measure, and 16 in the cases of unpaid child support).

25 23 such criminal charges were pressed in 2013, 9 in 2014, 16 in 2015, and 16 in 2016.

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 stated that activities 1.3.10.1, 1.3.10.2. and 1.3.10.3. are being implemented successfully because the Strategy Implementation Commission periodically holds meetings dedicated to the implementation of the Criminal Procedure Code, at which competent institutions present their reports. These are the Republic Public Prosecutor's Office, the Supreme Court of Cassation, the High Judicial Council (HJC) and the State Prosecutorial Council (SPC), and in the reports they state problems that have been identified in the implementation of the Criminal Procedure Code.

In AP it is stated (activity 1.3.10.1) that the Commission for Monitoring the Implementation of the Criminal Procedure Code reports quarterly and annually to the Strategy Implementation Commission, while competent institutions like the Republic Public Prosecutor's Office, the Supreme Court of Cassation, the High Judicial Council and the State Prosecutorial Council do not. The same applies to activities 1.3.10.2. and 1.3.10.3.

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 failed to explain how this change occurred and what happened to the Commission for monitoring the implementation of the Criminal Procedure Code which had been formed on 1 November 2013. It also failed to mention that the commission issued only one report, for the period 4 November 2013 – 31 January 2014.[26]

RECOMMENDATIONS:

- The Council for the implementation of the Action Plan for the negotiations for Chapter 23 should state references regarding each activity that is considered to be successfully or partially implemented;
- The Council for the implementation of the Action Plan for the negotiations for Chapter 23 should revise the articles of the new Law on Enforcement and Security that have direct negative effect on children who do not receive child support;
- The Council for the implementation of the Action Plan for the negotiations for Chapter 23 should explain why, instead of reporting to the Commission for Monitoring the Implementation of the Criminal Procedure Code, the competent institutions like the Republic Public Prosecutor's Office, the Supreme Court of Cassation, the High Judicial Council and the State Prosecutorial Council now report to the Strategy Implementation Commission, and what has happened to the Commission for Monitoring the Implementation of the Criminal Procedure Code.

2.1.3. War Crimes

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 stated that the report submitted for the activity 1.4.4.5. - linked to activity 6.2.11.11. from Chapter 24 – did not contain data on implementation.

RECOMMENDATIONS:

- The Council for the implementation of the Action Plan for the negotiations for Chapter 23 should name the report of a specific Ministry or state institution that doesn't contain data on implementation.

26 Posted on 14 April 2014 on the MoJ website, only in Serbian, at: http://www.mpravde.gov.rs/obavestenje/5369/izvestaj-komisije-za-pracenje-primene-i-sprovodjenje-novog-zakonika-o-krivicnom-postupku-o-svom-radu-za-period-od-04112013-godine-do-31012014-godine-sa-zakljuccima.php

2.2. Fight against Corruption

Overall there have been some improvements in the legislative framework for fight against corruption since October 2016, but progress remains far from what was planned in the strategic acts and the official programme of the 2016 Government of Serbia. On the other hand, negative trends from the previous reporting period have continued when it comes to the implementation of the laws. Particularly, as regards the treatment of independent state bodies by the Government and Parliament, there is a lack of application of national anti-corruption regulations to inter-state agreements, and a lack of political will as a major factor which prevents the implementation of the existing legislation or its reform. During the campaign for presidential elections, several factors created environment unfavorable for constitutional checks and balances, including the fact that the Prime Minister ran for the office of President of the Republic while still performing the other function in full capacity, emphasis placed on national unity, absent parliamentary oversight and weak independent and media oversight created an environment unfavourable for achieving constitutional checks and balances.

2.2.1. Strategic Plans

The implementation of the Anti-Corruption Strategy/Action Plan for 2013-2018 and Action Plan (AP) for Chapter 23 is not yet ensured. According to the monitoring performed by a governmental body, only 52% of the planned activities from AP 23 have been fully implemented in the second half of 2016. The absence of legislative activities in the first quarter of 2017 produced further delays. For some activities (app. 4%), there was no sufficient information, 10% have clearly not been implemented, and the rest have been implemented in part. Furthermore, governmental evaluation is doubtful for several activities (e.g. as in the case of activity 2.1.4.1., related to the duty of the Executive to report to the Parliament about independent institutions' recommendations). Finally, even when activities were fully implemented, they failed to reduce corruption or make its suppression more effective.[27] It is already clear that AP 23 needs to be seriously improved in order to bring substantial change to the Serbian society when it comes to fight against corruption.

However bad the situation with the implementation of AP for Chapter 23 may be, the one involving the implementation of the 2013 National Anti-Corruption (AC) Strategy is even worse. Implementation of the rest of the Anti-Corruption Strategy (that did not become part of AP 23) is even less in focus.[28] According to the latest Anti-Corruption Agency's report, as many as 51% of the activities cannot be evaluated due to lack of information while further 31% are clearly unfulfilled! This situation is partly caused by the fact that the National AC Strategy was treated as a "second class" strategic document even before the negotiations for Chapter 23 had started. Another reason is the lack of effective accountability mechanisms in case of failure to implement strategic measures - the very same thing that made the previous anti-corruption Strategy (2005) ineffective. Finally, the lack of political will to implement the Strategy was clearly demonstrated by the Parliament, which did not make any effort to act upon the Agency's reports in previous years.

The Anti-Corruption Agency is currently charged with monitoring the implementation of the AP for the National Anti-Corruption Strategy. Draft amendments to the legislation regulating the work of the ACA envisage that ACA should extend its oversight to include implementation of the AP for Chapter 23. Adoption of the amendments is, however, more than two years overdue (in comparison to NACS original 2013 AP). According to the AP for Chapter 23, they should have been adopted in the third quarter of 2016. However, only a draft, to be used for public debate, has been published by the end of that period. According to unofficial information, the appointment of new management of ACA is awaited to finalise the process of adoption of the law.

27 http://preugovor.org/Tekstovi/1346/Izvestaj-o-nedelotvornosti-procesa-evropskih.shtml

28 http://www.acas.rs/wp-content/uploads/2017/03/Izvestaj-o-sprovodjenju-2016-za-net.pdf

2.2.2. Governmental Priorities and Their Implementation

In the plans put forward by the Government elected in August 2016, the fight against corruption was last on the list of 10 priorities outlined by the Prime Minister during his post-election address. He emphasised the importance of reporting more cases of corruption but failed to elaborate on the measures that should lead to this goal. Currently, more attention is devoted to investigations of financial crimes and reorganisation of the public prosecutor's offices. These measures could have beneficial anti-corruption effects, especially in cases that ended unsuccessfully due to a lack of expertise on the part of prosecutors. In November 2016, the Parliament adopted a set of amendments to the laws governing suppression of organised crime and corruption. Most provisions, however, will come into effect no earlier than in March 2018.[29] This set of laws, which relies on the Strategy for Financial Crime Investigations and partly on the anti-corruption strategic documents, brings improvements that may result in more effective investigation of corruption cases, better specialisation of prosecutors who will be dealing with petty corruption, and cooperation with other governmental bodies, including the possibility of establishing special task forces for specific investigations. The scope of potential application of special rules is wide, but some corruption-related offences are still not covered.

The Prime Minister's announcement of the Law on Origin of Property in August 2016 was not followed by any visible legislative action or analyses of implementation of similar legal mechanisms that have been in existence for 14 years, such as cross-verification of property and income. Promised support to the Anti-Corruption Agency and the enactment of the new law did not yet result in the adoption of these changes or in dealing with other problems identified by ACA's reports. To the contrary, ACA was significantly weakened in several ways: through the promotion of its Board member and Director to the Constitutional Court, by failure to appoint joint candidate of the Ombudsman/Commissioner for information and the journalist associations to the appropriate parliamentary committee, and finally, by two unsuccessful attempts to appoint a new Director with a partisan pro-governmental background and allegedly weaker qualifications and a party member.[30] This decision was temporarily prevented by two Board members, refusing to support the other four (five votes are needed for the election).

2.2.3. Work of the Parliament

The Parliament still hasn't discussed conclusions of its committees concerning the 2014 annual reports submitted by independent bodies (including the Anti-Corruption Agency's report on Strategy Implementation), and the Government has not reported on the implementation of the Parliament's conclusions concerning the 2013 reports. Reports for 2015 were discussed in committee sessions in late September 2016. Committees proposed conclusions only for some annual reports (those submitted by the Fiscal Council, the State Audit Institution, RATEL, and the Agency for Energy) but failed to do the same for most of the independent oversight bodies.

The Parliament adopted a number of laws in the last months of 2016, but none in 2017 due to its Speaker's "self-suspension" decision after the announcement of the presidential elections. Among other documents, the Parliament adopted:

- Amendments to the Law on Salary System in Public Sector, which delayed the application of new rules for various categories of employees, including local administration, police and army;
- Amendments to the Law on Public Media Services, which extended the possibility for their financing from the budget to the year 2017;
- Amendments to the Law on Organisation of Courts, which delayed, yet again (for one year), the transfer of powers related to court administration from Ministry of Justice to High Judicial Council;

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29 http://www.parlament.gov.rs/%D0%B0%D0%BA%D1%82%D0%B8/%D0%B4%D0%BE%D0%BD%D0%B5%D1%82%D0%B8-%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B8/%D0%B4%D0%BE%D0%BD%D0%B5%D1%82%D0%B8-%D0%B7-%D0%B0%D0%BA%D0%BE%D0%BD%D0%B8.45.html

30 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9052-partijska-direktorka

- Amendments to the Law on Capital Market were extensive and concerned the EU screening recommendations. The Law regulates insider trade and acting upon insider information, as well as sanctions for illegal disclosure of and recommending insider information;
- Amendments to Tax Administration Law introduced the Ministry of Finance as the body in charge of deciding in the appeals procedure, thus making that process more independent than it used to be;
- Similarly, under the amended Customs law, the appeals are now submitted to an external body – the Ministry of Finance;
- Law on Airport Management, adopted with the aim to enable concession of Belgrade airport;
- Law on Building Maintenance;
- Amendments to the Law on Communal Activities, aimed to introduce protection against monopoly in certain areas;
- Amendments to the Law on Public-Private Partnerships (PPP), which clarified some disputable issues but did not even consider comprehensive addressing of corruption risks, as envisaged in the National Anti-Corruption Strategy;
- Amendments to the Budget System Law, which improved the provisions related to budget reporting, in accordance with the programme budgeting principles (reporting on outcomes), codified some good transparency practices, clarified some aspects of budget inspection work, and extended the statute of limitation for misdemeanours;
- Amendments to the Criminal Code, which revised the entire economic crime section, including some criminal offences relevant for bribery that occurs exclusively within the private sector. This will, hopefully, help to make a distinction between economic crimes and corruption in the future. Officials are currently still mixing these two, presenting economic crime investigations as fighting corruption. The changes made to corruption-related criminal offences are insignificant. But once again the Ministry of Justice, the Government and the Parliament have missed the opportunity to improve the provisions of the Criminal Code related to corruption (by introducing "illicit enrichment", redefining bribery aimed to influence work within discretionary powers, releasing from liability extorted bribe-givers who report the crime, redefining abuses related to public procurement, redefining criminal offences related to vote–buying, illegal party financing and fake assets declaration, specifying criminal offences for violation of the Whistle-Blower Protection Law, etc.);
- The Law on Seizure of Property Originating from Crime was also changed within the same package, to allow for widespread application of these measures, make procedure more efficient and facilitate management of seized property;
- Amendments to the Law on Organisation and Powers of State Bodies in suppressing organised crime, terrorism and corruption.

As regards **legislative work**, major problems are failure to discuss potential corruption risks and anti-corruption effects of legislation due to violation of public debate rules and absence of duty to thoroughly analyse such risks, and insufficient consistency of a legislative and planning system. The Anti-Corruption Agency continued to elaborate these risks on its own initiative, managing to at least trigger a parliamentary and public debate in order not to adopt the problematic provisions. There were nine such opinions in the second half of 2016 and three in 2017. Another problem is the fact that the Parliament shows its inferiority to the Government by granting urgent procedure and joint discussion about incompatible law proposals. These two practices significantly limit time for both preparation and discussion of legislative proposals. The most prominent example of this was the discussion of the 2017 Budget, when MPs had less than two days to read more than a thousand pages and prepare appropriate amendments.

The Parliament performed its electoral function selectively. On 27 December 2016, it appointed one member of the Anti-Corruption Agency Board but failed to vote on two other nominations that have been waiting for several years/months. Two members of REM were also appointed,

but only after the previous proposals of civil society organisations – disliked by the politicians in power – were annulled. The Parliament also elected members of the Competition Commission and the Commission for the Protection of Rights in Public Procurement. Due to insufficient qualifications of some of the candidates, the election of judges appointed to the Constitutional Court was also controversial. Election of judges and prosecutors by the High Judicial Council and the State Prosecutorial Council was also disputable in its previous phases, as exposed during parliamentary discussions.[31]

2.2.4. Unfulfilled Action Plans' Measures

A large number of plans, mostly those contained in the Action Plan for Implementation of the Anti-Corruption Strategy (2013-2018), **have remained unfulfilled**. Consequently, although the deadlines from the Action Plan have expired, there have been no improvements to the **Law on the Anti-Corruption Agency**. The drafting of this Law was completed without a full consensus of the Working Group, and the Ministry of Justice published the draft on 1 October 2016 for the purpose of a public debate. Although significantly better than the current law, it still leaves many issues open, such are the status of top public officials' advisors, the scope of assets declarations' control to be performed by the Agency, and the need to ensure a clearer division between public and political functions. There have been no attempts to amend the **Law on Financing Political Activities**, although this was envisaged in the Action Plan. There is no record of any consideration of TAIEX expert advice issued in September 2016[32] or any other effort to improve legislation. There has been no effort to address problems listed in the ODIHR 2016 mission report either. As for the **Law on Lobbying**, also planned to be enacted, not even a draft has been published. There has been no record of any activity in that field despite the fact that the deadline for implementation of GRECO's Fourth Round recommendations, which also deals with this issue, has expired on 31 December 201633. There has been no progress related to the **legislative procedure** and the work of the Government and the National Assembly, but draft amendments to the Law on Public Administration that refer to public debates are currently being considered. Also, there has been no progress with the long-expected amendments to the **Law on Free Access to Information**.

Once ACA brings its suspicions of corruption and violation of the law before the judiciary, it remains uncertain, however, whether and when the latter will react. This is particularly true in respect of irregularities related to the election campaign financing. During the 2013 election campaign - as investigative journalists revealed[34] - the Serbian Progressive Party activists had more than one thousand overnight stays in Zaječar, but the bills had been paid in cash and the payments never reported to the Anti-Corruption Agency – the body in charge of controlling campaign financing. The Agency found irregularities in the campaign financing of most political parties, but in most of the cases no sanctions were ever imposed. SNS failed to report some of the costs of organising Rudolph Giuliani's visit to Belgrade in 2012, the Socialist Party of Serbia (SPS) concealed the costs of its advertising, while the Democratic Party (DS) never reported the costs of conventions and the printing of its promotional material.

The Law on Financing Political Activities[35] makes it obligatory for political parties to report all their campaign costs, and income concealment is a criminal offence punishable by up to three years of imprisonment. Illegally obtained funds are confiscated by the court, while the party, if found guilty, loses part of the funds from public sources. Anti-corruption experts claim that the Zaječar case represents a violation of law, that there would certainly be sufficient evidence for misdemeanour charges, and that there is a possibility that said case might also include elements of a criminal offence. However, no motions to initiate either misdemeanour or criminal proceedings have been filed against responsible persons until the story came out in the press.

The Anti-Corruption Agency informed the journalists that it had informed the local prosecutor's office in Zaječar about its findings soon after the elections in 2012, but the investigation was not opened until the story was published. Soon after, the case reached the statute of limitations and was dropped. The Agency and the prosecution are at odds regarding whether the evidence supporting the Agency's claims had been submitted to the prosecution in 2012 or not.

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31 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/8724-objaviti-podatke-kako-se-biraju-nove-sudije

32 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/8673-korisne-preporuke-za-finansiranje-stranaka

33 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca35d

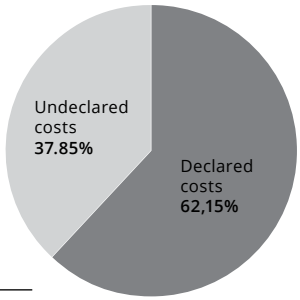
34 https://www.cins.rs/english/research_stories/article/serbian-progressive-party-conceals-costs-of-electoral-campaign

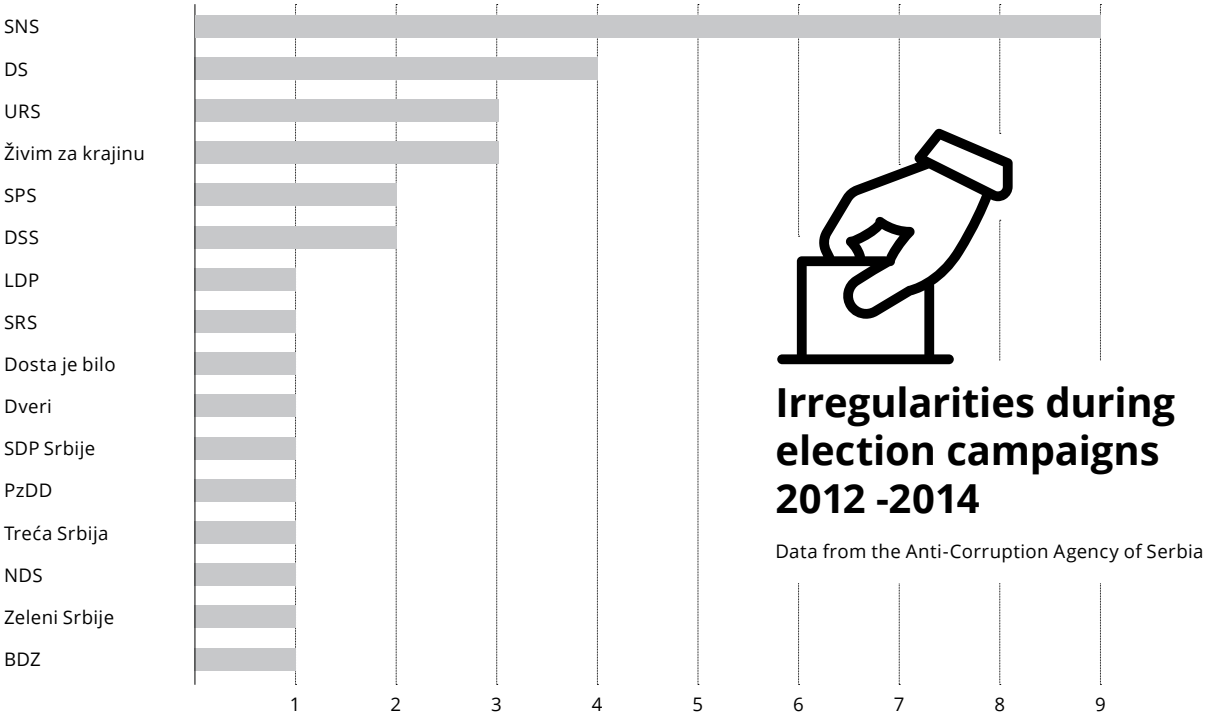
35 http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2014)035-e

1020

Number of nights activists of the SNS party spent in a hotel in Zaječar

Costs of Serbian Progressive Party (SNS) before the elections in Zaječar in 2013





Irregularities during election campaigns 2012 -2014

Data from the Anti-Corruption Agency of Serbia

The Government Coordination Body for the implementation of the 2013-2018 National Anti-Corruption Strategy, established with the aim of enhancing the execution of anti-corruption duties, meets only rarely. No information is available on any effects of this coordination. Moreover, in July 2016 the Constitutional Court announced that it would consider an initiative for assessing whether the Government's establishment of a coordination body headed by Prime Minister is even constitutional. In this regard there are several problematic issues such as the Government's attempt to coordinate parliamentary, judicial and independent bodies, inconsistencies with the Anti-Corruption Strategy, and the heading of the body by Prime Minister.[36] No further information has been published concerning this issue.

"Professionalisation of public enterprise management" – one of the Government's main goals for the period 2012-2016 – still has not been implemented even though the obligation, under the law, has been in existence for four years now. Legal mechanisms for the appointment of directors and members of supervisory committees in public enterprises contain numerous deficiencies; however, even deficient as they are, these mechanisms are not being implemented and the process of appointment of directors has been completed only in a small number of public enterprises. The Government, instead, kept the majority of the existing directors as "acting directors". Instead of implementing the existing accountability mechanisms, the quality of these directors is discussed

36 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/8664-ustavni-sud-i-vladin-koordinator-antikorupcije

by politicians and the media in an arbitrary manner or using irrelevant arguments. The 2016 Public Enterprises Law, which has rectified some of the shortcomings of the previous one, is not being implemented either. In March 2017, after the deadline for the finalisation of recruitment for all public enterprises expired, the Government published only announcements.[37] Furthermore, some of the previous announcements were annulled without a published decision and statement of the reasons. It should be noted that the governmental decree aiming to regulate the selection process of directors contains selection criteria and a scoring system that should also be improved.

No effort was made to improve the **public sector and political advertisement** rules, which are neither consistent nor sufficient. As a consequence, public resources are wasted and political influence in the media is achieved through discretionary financing or media discrimination. These problems have been identified in the 2011 Media Strategy and Anti-Corruption Council Report; they were listed among the political priorities for 2012 but no solution was ever implemented. Implementation of **media regulations** has introduced some beneficial effects, but overall it has failed to bring undisputable financing of programmes of public interest in the media. Measures concerning transparency of media ownership have not resulted in any fundamental progress and there is still no reliable information on the ownership of leading print media. According to some statements,[38] the new Media Strategy will be drafted in the first half of 2017 but it is not clear who is working on it.

S Investigative journalists have discovered some examples of unlawful state-financing of local media[39] as well as media with national coverage.[40]

TV Best and F Kanal, the media connected with the ruling SNS officials from the Serbian town of Zaječar, were granted significantly higher amounts of budget funds in the last several years than in the period when these officials were not in power. Owing to the agreements signed with the city and the local institutions, TV Best from Zaječar generated more than RSD 147 million in income since 2013, after SNS came into power in this city. TV Best, on the other hand, encountered serious problems as soon as its owner left SNS and resigned from the position of Speaker of the Zaječar City Assembly. TV Best began recording an increase in income deriving from the institutions' budgets. Treasury Administration data show that payments made to TV Best kept rising in correspondence to its closeness to the local power positions, amounting to almost RSD 44 million in 2014, while in 2015 this TV station was allocated RSD 61 million from the budget. In 2016, however, once the owner left SNS, it was granted only RSD 732,554; a series of bank account blockages soon followed.

From June 2014 until January 2016, the Export Credit and Insurance Agency (AOFI)[41] granted more than EUR 7 million in loans to the Pink International Company[42] - the owner of the most popular national frequency TV channel which strongly and uncritically supports the Prime Minister Aleksandar Vučić. AOFI also used to issue financial guarantees to Pink for credit lines and loans from banks and business contracts. In practice, this means that if Pink fails to meet its contractual obligations to a bank or another business entity, it is allowed to draw money from the AOFI's account. The money in that account is the money of the citizens of Serbia. In 2014 Pink was listed by the Tax Administration as one of the largest tax debtors. At the moment of signing the guarantee agreement in favour of AIK Bank, a postponed payment of a portion of the loan had not yet been approved. It therefore remains unclear how this company had managed to meet the AOFI's requirement that their clients must be free of any tax debts. AOFI and Pink refused to comment. Acting upon a complaint, the Commissioner for Information of Public Importance[43] punished AOFI twice, issuing fines in the total amount of RSD 200,000. The Commissioner requested that the Serbian Government ensures the enforcement of his decision, namely that it forces AOFI to submit information. The Government neither reacted to the Commissioner's requests nor responded to CINS inquiry referring to this issue. The amount of money that Pink received from AOFI, as proven by the journalists (it is, however, possible there was more) was close to the amount of Pink's tax debt at one point in 2014. It is unclear if Pink had actually exported TV shows for which it was awarded financial assistance, and if so, to which business entity abroad.

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37 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/8664-ustavni-sud-i-vladin-koordinator-antikorupcije

38 https://www.cenzolovka.rs/drzava-i-mediji/nino-brajovic-nova-medijska-strategija-do-sredine-godine/

39 https://www.cins.rs/english/research_stories/article/zajear-a-lot-more-money-provided-to-the-media-while-they-are-close-to-serbian-progressive-party-sns

40 https://www.cins.rs/english/research_stories/article/pink-received-at-least-7-million-in-loans-from-the-state

41 http://www.aofi.rs/en/

42 http://www.pinkmediagroup.net/

43 http://www.poverenik.org.rs/en.html

Back in April 2016, the Anti-Corruption Agency published on its web page 81 final recommendations for dismissals of public officials[44] for various violations of the Law on the Agency.[45] The analyses of these recommendations show that institutions often simply decide not to accept them, providing various justifications for such behaviour: from listing mistakes on the part of the Agency, to stating that penalties are too harsh since a reprimand issued to a public official would suffice. Out of 54 public officials who replied to the inquiries, only 11 have been dismissed from function.[46] Public officials were not dismissed in 23 cases, while in the remaining cases recommendations of the Agency were not discussed as the officials either resigned on their own or were dismissed unrelated to the recommendation. In some of the cases in which the Agency issued a recommendation for dismissal, public officials left their positions for other reasons, while the initiative of the Agency was either not discussed or was rejected. Public officials frequently employ their relatives, pay for services provided by their own private companies using public money, or perform several functions at the same time. In addition to a recommendation for dismissal, the Agency can also issue a reprimand, or the measure of making the decision on law infringement public. Due to the institutions' failure to act, the Agency proposes that the current Law be modified and that recommendations for dismissal become final. The adoption of a new law takes more than two years. Regardless of whether the Agency requested their replacement and whether they were replaced or not, some public officials later sought re-election for the same or similar positions.

Implementation of the **Law on Whistle-Blower Protection** began in June 2015 but there is no evidence that the number of reported cases of corruption has increased significantly. According to the 2016 report of the courts, there has been a total of 295 new cases involving people seeking protection based on this Law, while in 2015 there were only 71.[47] The courts do not keep statistics on the outcome of such cases. In contrast to the lawmakers' expectations, protection was related to labour disputes in only 14 cases., The bigger problem however is the lack of comprehensive data on the number of reported irregularities. According to the Ministry of Justice report, after one year of implementation there were only 15 cases of internal and 5 cases of external irregularities across all the ministries. It seems that there is a problem of distinguishing whistle-blowing from other types of reporting irregularities.[48] The Law contains numerous loopholes, many of which have been identified during the public debate.[49]

The problems with **public debates** remain unchanged. According to the research of Transparency Serbia, in October 2016/March 2017 there were 13 publicly announced legislative public debates (in the relevant section of the Government's web portal *e-uprava*). However, even in those acts, mandatory elements defined by the Government's Rules of Procedure were missing, i.e. the names of the members of the working group, analyses of the effects of the law (in all but one case), and a report from the public debate (in all but two cases). In several cases public debates were organised, but they were announced only on the respective Ministry`s web page, not the central Government portal (i.e. this was the case with laws adopted in late 2016 on the set of proposals made by the Ministry of Justice and the Law on Building Maintenance). Some important laws, including amendments to the Budget System Law, lacked any public debate.

There is still no comprehensive information on what has been determined with regards to 24 reports produced by the Government's Anti-Corruption Council between 2002 and 2012. Similarly, there is no information based on which one may conclude that the Government has begun to systemically discuss reports[50] issued by the Council after 2012, although it has happened in rare instances.[51] The Council did not prepare reports on experiences and obstacles related to the implementation of NACS and its Action Plan after May 2015. As the Government did not consider 2014 and 2015 proposals for new nominations, the Council now operates with five members only, instead of the originally envisaged fifteen.

44 http://www.acas.rs/mere-javnog-objavljivanja-preporuke-za-2/

45 http://www.osce.org/serbia/35100?download=true

46 The fully browsable database of all proceedings filed against public officials by the Anti-Corruption Agency: https://www.cins.rs/srpski/postupci-protiv-funkcionera

47 http://www.vk.sud.rs/sr-lat/godi%C5%A1nji-izve%C5%A1taj-o-radu-sudova

48 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/konferencije/9035-zakon-o-zastiti-uzbunjivaca-norme-i-rezultati-primene

49 http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/uzbunjivaci_publikacija_analiza_zakona.pdf

50 http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/izvestaji/cid1028/index/

51 http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/saopstenja/cid1011-3230/vlada-republike-srbije-prihvatila-preporuku-saveta-za-borbu-protiv-korupcije

Expectations that the status of **civil servants** will finally be organised in accordance with the Law on Civil Servants were not fulfilled. In many instances the Government continued to appoint "acting civil servants" and has not yet awarded posts based on competitive recruitment. According to the Transparency Serbia research, in the period 1 October 2016 - 5 March 2017 there were only 10 appointments based on regular procedure, and there were 307 instances where the Government appointed or dismissed senior acting officials based on Article 67a of the Law. In 43 cases such acting officials were appointed for the first time for a six-month period, while in 224 cases there was repeated appointment of acting official for a three-month period. In 39 instances, acting officials were dismissed. In the same period the Government opened recruitment calls for only 15 senior officials, and by 8 April 2017 only for 20. There were a total of 18 internal vacation notes for senior officials in the same period. This indicates serious violation of the rules. Namely, according to Article 67a paragraph 3, an internal or open recruitment call is mandatory within 30 days following a recruitment call. According to paragraph 4, appointment of an acting official for an additional period of up to three months is possible only when the competition is still ongoing, and only once. This means that a vast majority of the three-month appointments represent a violation of the rules.

Back in April 2016, the Anti-Corruption Agency published on its web page 81 final recommendations for dismissals of public officials[52] for various violations of the Law on the Agency.[53] The analyses of the recommendations show that in a large number of cases institutions decide not to accept them. Justifications given are various, from mistakes on part of the Agency, to penalties being too harsh, as a reprimand to a public official would suffice. Out of the 54 public officials who replied to enquiry, only 11 have been dismissed from the function.[54] Public officials were not dismissed in 23 cases, while in the remaining cases recommendations of the Agency were not discussed as the officials either resigned by themselves or were dismissed unrelated to the recommendation In some of the cases in which the Agency issued a recommendation for dismissal, public officials left their positions for other reasons, while the initiative of the Agency was either not discussed, or was rejected. Most frequently, public officials employ their relatives, pay services of their private companies using public money, or perform several functions at the same time. Except for recommendations for dismissal, the Agency may also pronounce the measure of reprimand, or the measure of publicizing the decision on law infringement. Due to the failure to act on part of institutions, the Agency proposes that the current Law is modified and that recommendations for dismissal become final. Adoption of the new law lasts for more than two years. Regardless of whether the Agency requested their replacement and whether they were replaced or not, some public officials later sought re-election for the same or similar positions.

There have been no changes to the **Law on Public Procurement**; some are however expected in 2017, based on strategic acts. A decision to open negotiations in Chapter 5 (Public Procurement) could be a significant step forward[55] as it clearly notes an unacceptable level of exemptions of local Laws and from the general public procurement and public-private partnership rules, based on inter-state agreements.[56] Results of the implementation of existing anti-corruption provisions in this Law have been very limited due to the shortcomings of certain provisions and, to a greater degree, limited supervisory capacities, primarily those of the Public Procurement Office. The mechanism for sanctioning infractions remains ineffective due to inconsistencies between the Law on Public Procurement and the Law on Misdemeanours. Furthermore, neither the Strategy for Promotion of the Public Procurement System nor the short term Action Plan identifies all the important problems in this area.

In the area of **suppression of corruption**, as in previous years, the Government tried to demonstrate its willingness to fight corruption mostly through mass arrests. There is practice of arresting large numbers of individuals in a single day through unified police operations, even when there are no obvious links between various groups or individuals arrested and the criminal offences of which they are suspected. The idea behind such actions is largely promotional, and they are traditionally

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52 http://www.acas.rs/mere-javnog-objavljivanja-preporuke-za-2/

53 http://www.osce.org/serbia/35100?download=true

54 The full browsable data-base of all procedures against public officials by Anti-Corruption Agency: https://www.cins.rs/srpski/postupci-protiv-funkcionera

55 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/8885-sto-pre-unaprediti-javne-nabavke

56 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/8885-sto-pre-unaprediti-javne-nabavke

promoted by the Minister of Interior in person. In such arrests – the last of which occurred in March 2017 - corruption cases are mixed with various other types of crimes, mostly economic.[57]

Branislav Švonja, a politician convicted of buying votes, was appointed a director of Autonomous Region of Vojvodina's Refugee Relief Fund by a Serbian Progressive Party led municipal government of Vojvodina in April 2015. Investigative journalists have reminded the public of their stories about Švonja's fraudulent business practices in November the same year. Almost exactly a year later, in November 2016, Mr Švonja was arrested in a police action coded "Pluto 2", and his charges have read one by one exact claim by journalists' stories. It is unclear why was he appointed in the first place, since all of the stories were published long before his appointment and, more importantly, his conviction for vote buying was public and, therefore known to the regional government. The government of Vojvodina has published the information of relieving Branislav Švonja of his function at the Agency in the regional state gazette on 22 March 2017.

In late 2015 Švonja was convicted of vote buying at local polls in the municipality of Odžaci, according to the District Court in Sombor. With another accomplice he organized a network of people who had been offering 1,000 or 2,000 RSD, as well as consumer goods, to local residents in exchange for casting ballots for his Serbian Democratic Party (DSS) in the local election held on 15 December 2013.

A private company, owned by him until recently, whose representatives were posing as state institutions' officials, made millions by peddling information which is otherwise free of charge and counterfeiting documents to create nonexistent contracts with institutions and companies. By mid-March 2016, sixty-four cases involving Švonja's company had been brought to the Commercial Court in Belgrade.

While occasional announcements have been made by individual ministers about **reporting corruption**, there has been no campaign that would encourage citizens to do so. Legislation protecting whistle-blowers has brought little or no change in this regard. Public prosecutors in charge of criminal investigations of corruption and other crimes have done even less, showing insufficient interest even in publically available information that indicates corruption. While it is true that prosecutors need more resources and training to fight corruption and other crime more successfully - particularly after the full implementation of "prosecutors' investigation" started - and financial investigations envisaged, the main problem remains a lack of will to do so, as clearly demonstrated by failure to investigate the landmark 'politically sensitive' Savamala case. Furthermore, in such cases, Government representatives and pro-Government media go to great lengths to discourage NGO activists, media, and even those few public officials who are ready to point out serious flaws in the rule of law. Another worrying practice in this regards is the direct support of the Republic Public Prosecutor to the lower level prosecutors in such instances, demonstrated by initiatives to annul decisions of the Commissioner for Information of Public Importance.[58]

During the reporting period **there were no final convictions** in high-level corruption cases or publically visible final rulings for violations of the Law on the Anti-Corruption Agency or the Law on the Financing of Political Activities. There was the first instance decision against the former Mayor of Novi Sad in the case of alleged abuse of power in the procurement of works.[59] Some previously initiated criminal procedures are still in progress. In some instances, cases with no elements of corruption are presented to the public (mostly in a political context) as suppression of corruption. In the presidential campaign of the current Prime Minister, information on the work of state bodies was presented without making a distinction between party and public functions: "We continued with the decisive fight against crime and corruption. In 2016 criminal charges were filed against 1,056 individuals suspected of 1,611 criminal corruption offences. The majority of the charges were filed for abuse of position of responsible official, abuse of office, embezzlement, abuse in relation to public procurement, taking a bribe and giving a bribe. Managers in public directorates and ministries, local self-government officials, public enterprises, judges, policemen and doctors were targeted by law."[60]

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57 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9043-zajednicka-akcija-hapsenja-nepovezanih-kriminalnih-grupa

58 http://www.poverenik.rs/sr/saopstenja-i-aktuelnosti/2567-hronicna-qtajnovitostq-slucaja-qsavamalaq-krsenje-zakona-i-prava-javnosti.html

59 http://www.blic.rs/vesti/hronika/borislav-novakovic-osuden-na-tri-i-po-godine-zatvora/8ty2p8r

60 https://vucic.rs/postigli-smo/protiv-kriminala-korupcije/a69-Protiv-kriminala-i-korupcije.html

Generally speaking, when it comes to suppression of corruption, trends evident in the previous years have continued, i.e. there is most probably a small increase in the number of detected and processed cases. There is, however, no practice of publishing these data regularly and it is questionable whether police and prosecutors are using the same methodology when providing statistics.

RECOMMENDATIONS:

- Since the process of revising the 2016 Action Plan for Implementation of the Anti-Corruption Strategy was not consultative and further constrained the potential benefits of the Strategy's implementation, the National Assembly should ask the Government to **re-open the revision** process and to base it on the Anti-Corruption Agency's report. Furthermore, the serious revision of AP for Chapter 23 should take place as well, in parallel, given that its implementation brought little or no changes. The National Assembly should consider ACA's report and hold accountable the officials who failed to produce results or provide information about the fulfilment of AP;
- The process of negotiations and transparency of information **pertaining to the signing of international agreements and credit arrangements must become more transparent,** so that parliamentarians (MPs) and the public can have an insight into **whether the potential benefits are greater than the damage that occurs due to the non-implementation of regulations governing public procurement and public-private partnership;**
- **The Criminal Code must be improved** to ensure a more effective legislative framework for curbing corruption through the incorporation of "illicit enrichment", based on UNCAC's Article 20, revision of criminal offences of bribery, bribery related to voting and offences related to declaration of assets, public procurement and party financing, as well as by criminal sanctioning of reprisals against whistle-blowers;
- Clearly define the **jurisdiction and powers of anti-corruption state organs**: In that sense it is especially important to organise the powers of the Government Coordinator for the Fight Against Corruption, if this concept is to be retained, removing the **overlapping jurisdictions** between the Government Coordination Body and the Anti-Corruption Agency (when it comes to prevention), or the police Office for the Fight against Organised Crime and Corruption and the security services (when it comes to detecting cases of corruption);
- **Public prosecution** has to be provided with necessary resources to fully implement their tasks, including those necessary for financial investigations, and heads of prosecutor's offices should be appointed swiftly. The State Prosecutorial Council should ensure that prosecutors will be held accountable if they fail to investigate corruption and abuse of power or act pro-actively;
- The Government should regularly **consider the reports and recommendations of its Anti-Corruption Council** and undertake measures to resolve problems identified in these reports. When the Council publishes its reports, the Government should inform the public of actions taken to resolve systemic problems (e. g. changes to regulations), individual problems (e. g. accelerating or cancelling procedures, dismissal of responsible managers, inspection or criminal charges) or further verification of the facts;
- **Amending the Constitution** is necessary to narrow down the existing broad immunities from criminal prosecution, decrease the number of MPs, redefine the status of independent state bodies, set up a barrier to violation of rules on use of public funds through excessive borrowing and international contracts, better organise the resolving of conflicts of interest, and provide firmer guarantees for transparency;
- The Government should consider recommendations of independent authorities (Anti-Corruption Agency, Commissioner for Access to Information of Public Importance, Ombudsman) and conclusions on the recommendations adopted by the Parliament, and report to the Parliament on the fulfilment of recommendations;
- Legal framework and practice regarding elections, campaign rules and oversight and campaign financing should be improved. This includes changes to the Law on Financing Political Subjects,

regulating "public officials campaigning" and misuse of public resources, Parliament electing Oversight Board, and active approach by prosecution and ACA in prevention and detection of violations of rules and procedures;

- The Government should open work on other **necessary legislative changes** and enable the process to be participatory in areas such are **free access to information and lobbying, and significantly improve legal framework for public debates** but also improve provisions in a number of other laws regulating public procurement, state aid, budget system, public – private partnerships, whistle-blower protection, media, political and state advertisement, public enterprise, public administration, etc.
- The Parliament should swiftly **elect missing public officials** of independent bodies (board members of ACA, Ombudsman, Fiscal Council members) based on as wide as possible consensus about impartial and qualified candidates;
- **The Government should ensure full implementation of existing rules**, in particular through appointment of public enterprise, public administration and public services top officials, organising of meaningful **public debates** in a legislative process, and **execution** of the final decisions of the Commissioner for Information. The Government should also **increase the transparency** of its operations by regularly publishing the by-laws' explanatory notes, conclusions that are not of confidential nature, contracts signed, information about advisors and lobbying, and findings based on Government's oversight of other public bodies.

2.2.5 Anti-Corruption Policy in the Police

Limited progress has been made in developing police integrity. Since 2008 there has been a steady increase in the number of criminal charges against police officers filed by the Internal Control Sector (ICS) within the Ministry of Interior (MoI), which is a positive development. However, inability to learn about the court epilogue of filed criminal charges is a problem, and the perception of police corruption is very high. The Republic Public Prosecutor's Office does not keep separate statistics on the number of criminal charges filed against police officers, and it is therefore impossible to know how the judiciary resolves cases of police corruption since there are no publicly available data on the number and ranks of officials against whom criminal reports have been filed, the nature of the offences, or the outcome of the proceedings. Moreover, only three percent of the citizens of Serbia believe that there are no corrupt police officers, and seven out of ten feel that corruption in the police does exist.

In March 2017 the ICS continued with the publication of annual comprehensive report on its activities and work for 2016. The ICS pressed 201 criminal charges in 2016 involving 183 police officers and 35 citizens, which is an increase of 5.7 % compared to 2015. Pressed criminal charges covered 235 crimes and the most common were the abuse of office (94) and bribery (77). However, the analysis of the 2017 Report indicates that the ICS is still working on cases of "petty" corruption. Almost half the criminal charges (45%) involve members of the traffic police. The number of criminal charges filed against the managerial part of the police decreased by nearly a half in 2016 compared to the previous year (18 and 31, respectively). The vast majority of criminal charges are submitted for abuse of office and bribery.

The internal police control system has not been established in a satisfactory manner. Competencies of the five different internal police bodies within the Ministry of Interior have not been delimited, and there are no clear coordination paths. Statutory, organisational and resource assumptions that would make the ICS independent in its actions are still missing.

The new anti-corruption measures (preventive control, integrity test, analysis of the risk of corruption, verification of the changes in the financial status) provided by the Law on Police (Article 230) have not been satisfactorily and accurately specified. The application of integrity test causes the most dilemmas because it may limit the rights of inviolability of the place of residence, confidentiality of correspondence, the right to work, the right to equal protection, and the right to a fair trial. The Constitution requires that these rights be restricted by a law, not a by-law.

Engagement in activities incompatible with police work has yet to be regulated, and the new rules on collection of property data and assessment of job positions in the police concerning the risk of corruption have not been implemented. The police is sometimes, directly or indirectly, still used to protect an individual and not the public interest.

The rules relating to the procedure of filing complaints against police officers are unclear and unavailable, and as such deter citizens from filing complaints. As a result, 90% of the filed complaints are resolved by a conclusion that there had been no violation of the citizens' rights. The new MoI website does not provide an explanation of the complaints procedure: there is no easily visible information, no documents that are available for downloading, and no searchable content.

There is a noticeable, year-long absence of a reaction by the ICS regarding the findings and recommendations of the Ombudsman Office on the failure of the police to respond to citizens' requests for assistance during the above mentioned illegal demolition of a Belgrade quarter Savamala. Higher Public Prosecution in Belgrade has requested the Internal Affairs Sector apply the control procedure. To this day, it is unclear why the police refused to respond to citizens' calls even though it is evident from the recording that a police phone operator said to one of the citizens that they were ordered "by the top of the police" not to react and to redirect them to Communal Police.

Two additional cases of issuance of illegal orders and police failure have occurred during the reporting period. One was the refusal of the police to secure the demolition of a building owned by the Member of the Parliament of the ruling majority, Muamer Zukorlić "for security reasons." The decision not to act – as stated in the decision of the MoI – has been taken in consultation with the Police Directorate and the Police Administration, and backed up, to a certain extent, by the President of the Government when he said that "he does not want any heads cracked open," and "someone shooting at police officers," and the Minister of Interior who said that the case could have involved "loss of human life."

The other is the case of Ksenija Radovanović, an activist with the initiative "Let Us Not Drown Belgrade" to whom two persons falsely presented themselves as police officers at a public gathering and tried to arrest her. One person had been identified, and it was established that said person was not a policeman. However, from the official note of a member of the MoI who was present on the spot, it was discovered that the top echelons of the Police Administration Belgrade, more specifically the Deputy Chief of Administration, had issued an order that the person who falsely represented himself and tried to arrest Ksenija Radovanović be allowed to leave, without any consequences at the time or in the future (for example, filing of charges for misrepresentation).

Finally, there have been no debates on regulations that govern the details of the internal control of the police. The ICS has prepared the working versions of all the bylaws in accordance with the new competencies under the new Law on Police, as stated in the 2016 Report on the Implementation of the Action Plan for Chapter 23 and the ICS 2017 Report. In 2016, BCSP submitted a request for access to public information to the MoI seeking insight into the copies of the working versions of the by-laws in electronic form, for the purpose of encouraging a public debate and as a result of the fact that MoI employees had been submitting inquires to BCSP about the anticipated new anti-corruption measures. However, the MoI responded that it did not have these documents in its possession.

RECOMMENDATIONS:

- The complaints procedure should be clear, simple and accessible to every citizen; it is important to collect and make publicly available the data on the rights whose violation citizens have most often complained about, i.e. the reasons for their submission of complaints;
- Legally regulate the relations between the various internal controllers in the Ministry, or instead consolidate all the internal control competencies in one organisational unit, including keeping the central register of complaints and petitions received concerning the work of all the employees of the Ministry;

- Initiate a public debate during the drafting and adoption of by-laws that govern the forms and method of integrity testing, risk analysis implementation and control of changes to the property status;
- Enact a law and by-laws necessary for the implementation of the measure to collect data on the property of MoI officials, and make this information publicly available;
- Adopt regulations necessary for sanctioning performance of incompatible activities, collect information on the proceedings and make them available to the public;
- Within the framework of the existing records, the Anti-Corruption Department of the Republic Public Prosecutor's Office should introduce indicators on the basis of which it would be possible to determine against whom the proceedings are carried out, including the members of the MoI.

2.3. Fundamental Rights

2.3.1. Personal Data Protection

No progress has been made in the area of personal data protection. There are continuous delays to the adoption of the Action Plan for Implementation of the Strategy for Personal Data Protection and a new Law on Personal Data Protection, which was submitted by the Commissioner to the Government and Ministry of Justice in October 2014. The draft Law on Records and Personal Data Processing in Internal Affairs was not adopted.

Moreover, the Private Detective Law (PDL) adopted in November 2013 is not aligned with the Law on Personal Data Protection. PDL prescribes that only a contract between a private detective and a client is needed for personal data processing of third parties. Furthermore, paragraph 5 of Article 20 of the PDL, which regulates the methods of collecting and processing personal data, obliges state and other institutions with public powers to provide access to their databases containing personal data to private detectives. Other paragraphs of the same article are general and vague, providing room for private detectives to use methods of data collection which could infringe upon human rights.

RECOMMENDATIONS:

- Use already developed proposals for necessary change in personal data protection;
- Adopt the Action Plan for the implementation of the Strategy for Personal Data Protection and the new Law on Personal Data Protection;
- Adopt a new Law on Records and Personal Data Processing in Internal Affairs and take action to amend provisions that can lead to unlawful disclosure or misuse of personal data;
- Amend the Private Detective Law and the Law on Personal Data Protection to enable their alignment.

2.3.2. Access to Information of Public Importance

There has been some backtracking when it comes to access to information of public importance in the EU accession process. In the course of the reporting period the Government changed its rules on access to information related to the EU accession process, for the third time since they were adopted in 2013. The last regulation was initiated upon an intervention of the Commissioner for Access to Information of Public Importance and Personal Data Protection, who asked that the rules adopted in June 2016 be amended. The ensuing changes enabled classification of EU-related information as "official" and not available to public.

In reaction to the Commissioner's request, the Government adopted a by-law[61] introducing a classification category "restricted/*limite*" for negotiation positions in EU accession and all related acts and information. This act enabled limited access to information until the official opening of negotiating chapters.

Still, in January and February 2017 the Government adopted three other by-laws. One of them[62] enables classification for an unlimited period of time, with no criteria for such a decision. The other two prescribe that classified information not be made available to the public,[63] and order that these data be marked as if they were documents classified in line with Law on Confidential Data (Top Secret, Secret, Confidential and Restricted).[64]

At a public discussion on the new regulation, organised by the civil society,[65] representatives of the Commissioner emphasised once more that the Constitution prescribes access to information and that this right can be limited only by a law - as an exception to the general rule of availability of information of public importance. More on personal data protection in relation to anti-corruption measures can be found in the 'Fight against Corruption' section of this report.

RECOMMENDATIONS:

- The Government should eliminate the possibility of classifying information based on secondary legislation and in advance, without clear criteria. Information that should not be disclosed to the public need to be classified on a case-by-case basis in accordance with the criteria and classification procedures stipulated by the Law on Confidential Data.

2.3.3. Principle of Non-Discrimination and Social Position of Vulnerable Groups

Violence against women. *The number of women murdered in the context of domestic and intimate partner violence is still worryingly high. There have been serious omissions and unacceptable conduct in the work of the competent institutions that have not ensured the protection of women's lives. Most of the activities related to increasing the safety of women from gender-based violence have not been realised. A detailed analysis of compliance of domestic criminal justice legislation with the Council of Europe Convention on preventing and combating violence against women and domestic violence has not been completely implemented. The new Law on the Prevention of Domestic Violence has been adopted, introducing emergency protective measures, improving coordination and cooperation of the competent institutions, providing specialised training of professionals, and improving records of domestic violence cases. However, not all the amendments to the Criminal Code have been made in accordance with the standards of the Council of Europe Convention. Women's organisations have not received any of the funds collected as a result of deferred prosecution upon the call of the Ministry of Justice to submit their proposals.*

In 2016 at **least 33 women were murdered** in the territory of Serbia in the context of domestic and intimate partner violence.[66] Reports of femicide are still made based on the analysis of newspaper articles and records of women's organisations. According to the Ombudsman's Report, in 12 of 14 cases of femicide serious shortcomings have been registered in the work

61 Regulation on Office Operations of State Administration Bodies ("Official Gazette of RS" No. 80/92, 45/2016 and 98/2016).

62 Conclusion of the Government No. 05 337-8064/2013 which serves to direct and coordinate the work of state administration authorities in the implementation of screening and assessment of regulations of the Republic of Serbia compliance with the EU acquis and their implementation.

63 Conclusion of the Government which serves to direct and coordinate the state administration authorities in the drafting of negotiating positions in the negotiations on the accession of Serbia and the EU ("Official Gazette of RS" No. 50/2016 and 13/2017).

64 Guidelines on the Office Operations of State Administration Bodies ("Official Gazette of RS" No. 10/93, 14/93 - amend., 67/2016 and 3/2017)

65 See (in Serbian only): http://bezbednost.org/Vesti-iz-BCBP/6507/Gradjanima-Srbije-ogranicen-pristup-informacijama.shtml

66 *Femicide – Murders of Women in Serbia, Report 2016 – Women against Violence Network*, available on: http://www.zeneprotivnasilja.net/images/pdf/FEMICID-Kvantitativno-narativni_izvestaj_za_2016_godinu.pdf

of competent institutions. The Ombudsman has issued 45 systemic recommendations to the Ministry of Interior, Ministry of Social Affairs, Ministry of Health and the Secretariat of Social Policy, Demography and Gender Equality of the Autonomous Province of Vojvodina.[67] He has also issued 59 systemic recommendations in 45 cases of domestic violence and child abuse in which monitoring procedures have been conducted,[68] to the same Ministries and the provincial Secretariat, as he has found omissions in the work of most institutions in all the cases. With the exception of three cases of femicide in which the police administration conducted disciplinary proceedings (punished police officers by reducing their salaries by 20% for a period of one month[69]), other ministries and institutions have not even initiated disciplinary proceedings against their employees.

As regards the implementation of the **Action Plan for the Implementation of the National Strategy for Gender Equality**, the specific objective 1.5. refers to increasing the safety of women from gender-based violence, domestic, and intimate partner violence. It can be said with certainty that the following activities **have not been implemented** in 2016: the adoption of a new strategic document for combating violence against women and implementing the Council of Europe Convention on preventing and combating violence against women and domestic violence; establishing a unified and standardised system of collecting, recording and exchanging data on all forms of violence against women,[70] providing conditions for sustainable, continuous, accessible services to women's associations specialised in supporting women in situations of violence; allocating funds for the functioning of the single SOS helpline and other specialised support services to women in situations of violence; reducing sensationalist media reporting that justifies and normalises violence against women; regularly informing the public about the effects of measures to prevent and eliminate violence against women and the protection mechanisms; regular sessions of the Council of the Regulatory Body for Electronic Media dedicated to reporting on violence against women where findings of monitoring media on violence against women and femicide are presented, developed by the Women against Violence Network. Although the legislative framework has been improved,[71] it is not fully compatible with the Convention. Implementation of the new legislative changes starts from 1 June 2017, so their effectiveness and efficiency is yet to be seen.

None of the women's organisations in Serbia that provide services to women victims of violence has received funds upon the call of the Ministry of Justice (June 2016), from the funds collected from deferred prosecution.[72] A significant portion of these funds has been collected in cases of domestic violence (in 2014, for example, prosecutors in Serbia dismissed criminal charges for domestic violence in at least 15%[73] of cases. Bearing in mind that the lowest payment amount for humanitarian purposes is around 320 EUR, it can be concluded at least EUR 192,000 has been collected from perpetrators). The Law on Free Legal Aid has not yet been adopted, and the specialised women's organisations that provide legal and psychosocial support are still dependent on foreign donations and irregular and small funds from the local budget.

Although in the reports on the activities related to the implementation of the **detailed analysis of the harmonisation of criminal justice legislation** with the Council of Europe Convention on preventing and combating violence against women and domestic violence (3.6.1.6) and the amendment to the Criminal Code in accordance with this analysis (3.6.1.7) the Council claims that activities have been "fully realised", this conclusion is **not correct**. In other words, a detailed

67 Available (only in Serbian) at: http://www.zastitnik.rs/index.php/2012-02-07-14-03-33/4833-2016-07-28-08-59-32.

68 Available (only in Serbian) at: http://www.zastitnik.rs/index.php/2012-02-07-14-03-33/4869-z-sh-i-ni-gr-d-n-pr-p-zn-i-n-silj-u-p-r-dici.

69 Page 15, footnote 21 of the Report on the Ombudsman: http://www.zastitnik.rs/index.php/2012-02-07-14-03-33/4869-z-sh-i-ni-gr-d-n-pr-p-zn-i-n-silj-u-p-r-dici.

70 The Law on the Prevention of Domestic Violence envisages the establishment of a central register of data on domestic violence, not on all forms of violence against women.

71 Adoption of the Law on the Prevention of Domestic Violence and the Law on Amendments to the Criminal Code.

72 http://www.mpravde.gov.rs/vest/13226/resenje-o-dodeli-sredstava-prikupljenih-po-osnovu-odlaganja-krivicnog-gonjenja.php.

73 Special Report of the Ombudsman on the Implementation of the General and Special Protocols on the Protection of Women against Violence, p. 3, paragraph 15, available in English at: http://www.ombudsman.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/3711-special-report-of-the-protector-of-citizens-on-the-implementation-of-the-general-and-special-protocols-on-protection-of-women-against-violence.

analysis of compliance of the Criminal Code with the Convention[74] has been conducted, but the **analysis** of compliance of the Criminal Procedure Code, which is also part of the criminal justice legislation, has not. Therefore, one might conclude that only half of the planned activities have been realised.

Regarding the amendments to the Criminal Code in line with the analysis, they have also not been "completely" realised. Besides the adopted amendments to the Criminal Code,[75] it is necessary to examine the amendments to at least 20 articles[76] in order for the Code to be considered compliant with the standards of the Convention. It should be noted that a number of amendments to the Criminal Code relate only to the severity of the penalty, not to the changes in definitions of offences in accordance with the Convention (this applies to all criminal offences against sexual freedoms, since the criminal offence of rape in Article 178 has remained inconsistent with the Convention). As already mentioned, the Criminal Procedure Code **has not been harmonised** with the standards of the Convention, which is necessary[77] for these two activities to be considered "fully implemented".

The report also states that the activity related to the continuation of the development of **model of community policing** (3.6.1.21) is being "successfully implemented", as well as the activity of **appointing specially trained and selected police liaison officers for socially vulnerable groups** (3.6.1.21) and the activity of **continuous meetings of the police with representatives of socially vulnerable groups** (3.6.1.22). The report content clearly shows that the model of community policing is being implemented in a **very small number of municipalities** (not more than 10% of the total number of municipalities in the Republic of Serbia), which certainly could not be considered "successful" implementation. One conference and one seminar have been focused on women as a target group.[78] In terms of liaison officers for socially vulnerable groups, the activities exclusively relate to the LGBT community and organisations. Although women - victims of domestic and intimate partner violence are mentioned as a target group, not a single activity was realised in the reporting period in relation to the needs and the safety situation of this group, or in cooperation with specialised women's organisations from the Women against Violence Network. The same applies to the activity involving meetings with representatives of vulnerable groups (all the mentioned activities are with LGBT community and organisations). In this way, the prevention in the achievement of security protection and protection of human and minority rights in the local community has been unduly reduced to only one target group, although different sources unambiguously point to the fact that many social groups, including women, are endangered in terms of security.

RECOMMENDATIONS:

- Focus the implementation assessment of the planned activities on real effects, not on listing individual actions that do not lead to, or do not indicate, change;
- Completely harmonise criminal legislation with the standards of the Council of Europe Convention on preventing and combating violence against women and domestic violence, and ensure monitoring of the legislation implementation in order to assess real effects;
- Ensure implementation of all planned measures and activities related to increasing the security of women against gender-based violence, and the inclusion of specialised women's organisations in this activity;

74 Assistant Professor Vesna Ratković PhD, *Compliance Analysis of the Serbian CC with the EU Acquis, including Recommendation for the Amendments to the Legislative Framework and a Planning Framework*, Policy & Legal Advice Centre (PLAC), 2015.

75 The Law on Amendments to the Criminal Code, *Official Gazette of RS*, No. 94/2016; available at: http://www.paragraf.rs/izmene_i_dopune/241116-zakon_o_izmenama_i_dopunama_krivicnog_zakonika.html

76 According to the analysis, Vesna Ratković PhD, Policy & Legal Advice Centre (PLAC), 2015. The analysis of Autonomous Women's Centre confirms that it is necessary to amend at least 8 offenses (available only in Serbian): http://www.potpisujem.org/srb/882/analiza-uskladenosti-zakonodavnog-i-strateskog-okvira-sa-standardima-konvencije

77 Autonomous Women's Centre has proposed amendments to at least 15 articles of the Criminal Procedure Code (available only in Serbian): http://www.potpisujem.org/srb/882/analiza-uskladenosti-zakonodavnog-i-strateskog-okvira-sa-standardima-konvencije

78 Conference, Women in the Police Force - development of gender equality in the Ministry of Interior and one forensic seminar on gender-based violence.

- Fulfil the Ombudsman's recommendations provided in special reports on femicide cases, and cases of violence against women and child abuse;
- Ensure effective and accessible legal protection and psychosocial support for victims of gender-based violence.

2.3.4. Rights of the Child

Committee for the Rights of the Child issued Concluding observations on the combined second and third periodic reports of Serbia. The Working Group of the Ministry of Justice did not publish a report on the public discussion of the draft new Law on Juveniles that was conducted 15 months ago, nor is the final version of the draft Law on Juveniles publicly available.

On 7 March 2017, the Committee for the Rights of the Child issued the Concluding observations on the combined second and third periodic reports of Serbia,[79] in which it stated that *inadequate harmonisation between the Criminal Procedure Code and the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, in relation to the criteria for questioning particularly vulnerable witnesses, often leads to re-victimisation of child witnesses. It was also noted that legislative reform to ensure child-sensitive procedures is slow, while lengthy court cases and a lack of support services for children and their parents often result in the re-victimisation of children during court proceedings (par. 66).*

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 stated that the activity 3.6.2.10. involving amendments and supplements to the Law on Juveniles was almost completely implemented, because the Draft Law on Juveniles has been prepared, a public debate took place, and adoption is expected in the forthcoming period.

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 did not explain how this change occurred, nor did it mention the fact that from the amendments and supplements to the existing law the Ministry decided to adopt a new law. Also, the Council didn't provide reference to the final version of the Draft Law after the public debate held in December 2015[80] or to the Report on the public debate. AWC didn't receive any answer from the Working Group concerning their suggested comments to the Draft Law.

Missing babies

According to the judgment of European Court of Human Rights delivered in the case Zorica Jovanović vs Serbia,[81] which became final on 9 September 2013 except for individual redress to the applicant, the ECHR prescribed a general obligation for the Republic of Serbia. According to this judgment, the Republic of Serbia is obliged, within one year from the date of judgment's becoming final, to take all appropriate measures to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as the applicant's or sufficiently similar.

RECOMMENDATIONS

- The Council for the implementation of the Action Plan for the negotiations for Chapter 23 should state references regarding each activity that is considered to be successfully or partially implemented;
- Ensure the highest standards of protection for juvenile victims of crime in accordance with the Directive 2012/29/EU and Convention on the Rights of the Child;
- Adopt a law on establishing the facts concerning the status of newborns suspected to have disappeared from the maternity wards in the Republic of Serbia, as soon as possible.

79 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSRB%2fCO%2f2-3&Lang=en

80 From 11-31 December 2015, http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php

81 The case of Zorica Jovanović v. Serbia, Application No. 21794/08, Strasbourg, 26 March 2013.

2.3.5. Strengthening of Procedural Safeguards in Line with EU Standards

The Ministry of Justice made available versions of the Draft Law on Free Legal Aid and held a round table with CSOs and Bar Associations. The conducted analysis of normative framework for the implementation of minimum standards concerning the rights, support and protection of victims of crime / injured parties in accordance with the Directive 2012/29/EU is still not publicly available. No information is publicly available concerning the engagement of the Working Group in charge of the Criminal Procedure Code. Women's CSOs that are providing support only to women victims of violence have been asked by the Victimology Society of Serbia to fill out a questionnaire on the support they provide to victims. The Law on Prevention of Domestic Violence will come into force on 1 June 2017, bringing novelties in the area of actions of the police and judiciary.

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 stated that the activity 3.7.1.1. involving the adoption of the Draft Law on Free Legal Aid aligned with EU acquis was almost completely implemented, because the Draft Law has been prepared and the Working Group holds regular meetings at the Ministry of Justice within the framework of negotiations with the bar associations and civil society organisations, along with representatives of the EU Delegation as observers, and as soon as the agreement is reached the Draft will be passed to relevant ministries for an opinion.

In November and December 2016, CSOs interested in the Law on Free Legal Aid received 3 new drafts of this Law, the last version of which was from 14 December 2016. There was only one public Round Table organised by the Ministry of Justice with representatives of CSOs and Bar Associations on 26 January 2017.[82] Even though CSOs are recognised in the latest version of the Draft Law as providers of free legal aid, this applies only to cases of collective complaints and not to individual cases (for example, if the latest version is adopted, AWC's lawyers will not be allowed to provide free legal aid to women victims of intimate partnership and sexual violence, although it has been doing so for more than 20 years).

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 stated that the activities 3.7.1.16. and 3.7.1.23. were fully implemented, as the analysis of normative framework for the implementation of minimum standards concerning the rights, support and protection of victims of crime/injured parties in accordance with Directive 2012/29/EU has been completed by a local expert in December 2015. The Council stated that the analysis was submitted and circulated to the members of the Working Group in charge of drafting amendments to the Criminal Procedure Code, and that the recommendations from the analysis will be used by the Working Group.

On the Ministry of Justice's web site there is still no publicly available information when this new Working Group on CPC was created or who its members are, and there are no excerpts from the Working Group meetings. The Council did not provide any reference to this Report or the Working Group in charge of the Criminal Procedure Code.

The Council reported that the activity 3.7.1.20. concerning the establishment of a country-wide network of services in support to the victims, witnesses and injured parties in the investigative phase and all phases of criminal proceeding is being implemented successfully, and then repeated everything that had been written in the First Report on the implementation of the AP 23. It can therefore be concluded that in the 9 months period there have been no further activities. In February 2017, NGOs that provide support to women victims of violence have been asked by the Victimology Society of Serbia to fill out a questionnaire on the support they provide.

Activity 3.7.1.24. - adoption of the Special Law governing prevention of violence against women in the family and partner relationships - is the only one that can be considered fully implemented,

82 http://www.mdtfjss.org.rs/en/mdtf_activities/2017/key-controversies-in-the-process-of-drafting-the-law-on-free-legal-aid#.WOUfytJ97IU

and the trainings of judiciary and police have started prior to Law comes into force 1 June 2017. The Law makes a shift in paradigm, as prosecutors and the police will play not only repressive, but also very important preventive roles in cases of domestic violence. The police was assigned new powers: they can now issue, within 8 hours, emergency protection measures in the form of barring and restraining orders which will last 48 hours. Within these 48 hours, the prosecutor will have 24 hours to ask the court for the prolongation of the emergency protection measure, while the court will have 24 hours to decide whether to extend the emergency protection measure to last 30 days. The court procedure is *ex parte*. The Law also obliges prosecutors to hold multi-sectoral meetings to discuss all the reported cases of gender based violence at least every 15 days. If not, prosecutors could be subjected to disciplinary proceedings.

RECOMMENDATIONS:

- The Council for the implementation of the Action Plan for the negotiations for Chapter 23 should state references regarding each activity that is considered successfully or partially implemented;
- Adopt an appropriate Law on Free Legal Aid;
- Include women CSOs in the process of revising and harmonising laws and by-laws in line with the minimum standards concerning the rights, support and protection of victims of crime/ injured parties in accordance with Directive 2012/29/EU;
- Include women CSOs that are providing support only to women victims of violence in the activities of establishing a country-wide network of services for support to the victims, witnesses and injured parties in the investigative phase and all the phases of criminal proceedings.

3. CHAPTER 24 – JUSTICE, FREEDOM AND SECURITY

3.1. Migration and Asylum

The dynamic of the implementation of the Action of Plan for Chapter 24 was evidently influenced by the migrant refugee crisis. Key reform measures envisaged in the sub-chapters Migration and Asylum have yet to be realised: two systemic laws - the Law on Asylum and Temporary Protection and the Law on Foreign Nationals - have not yet been enacted.

It is necessary to revise the Action Plan for Chapter 24 so that it reflects the challenges the country is facing in the context of the migrant refugee crisis. The crisis is linked to the following needs: redefining the strategic framework of migration management, the question of coordination, infrastructure and functioning of the system, primarily in the context of vulnerable groups of migrants and refugees. Redefining the existing strategic framework must include: the issue of status, access to the rights, return policies (including voluntary return) and coordination with international organisations in the context of resettlement.

Some progress has been made in the areas of migration and asylum in the reporting period: in December 2016 the Government adopted a Regulation on the inclusion of persons granted the refugee status in the social, cultural and economic life.[83] According to the provisions of the Regulations, the main components of the programme to support the integration of recognised refugees include: complete and timely informational assistance to refugees regarding their rights and obligations, possibilities of employment, education and personal development, as well as information regarding the existing programmes and projects aimed at their inclusion in the social, cultural and economic life; ways to exercise the right to learn Serbian language, culture and the Serbian Constitution; scope of assistance in the process of inclusion of children into the educational system, as well as assistance with the labour market inclusion of recognised refugees. In terms of providing access to education for children, certain steps have been made in the course of the reporting period. In coordination with the Minister of Labour, Employment, Veteran and Social Policy, the Commissariat for Refugees and Migrants, and in cooperation with international and civil society organisations, the Ministry of Education has begun the process of including children in the formal educational system (primary and secondary schools in Belgrade and Lajkovac), and is creating informal educational programs which will enable efficient integration of children into the formal educational system. At the local level, this process is coordinated by the management of schools.

A Programme to encourage local governments to implement the measures and activities necessary for achieving the stated objectives in the field of migration management for 2017[84] was adopted in March this year. It includes, *inter alia*, measures and activities to promote and strengthen tolerance towards migrants in the local communities in which they are accommodated, as well as activities that must be considered in order to improve the capacities of local governments for planning actions and measures relating to migration management.

During the reporting period, the number of migrants and refugees present in Serbia ran between 6,500 and 8,000; approximately 86% of them were accommodated in the existing governmental facilities. According to the UNHCR data from November 2016 to 8 March 2017, 3,876[85] migrants

83 "Official Gazette of RS" No. 101/2016.

84 "Official Gazette of RS" No. 26/2017.

85 Source: https://data2.unhcr.org/en/search?country=722&situation%5B%5D=11&text=&type%5B%5D=document&partner=&sector=&date_from=&date_to=&country_json=%7B%220%22%3A%22722%22%7D&sector_json=%7B%220%22%3A%22%22%7D&apply=

have expressed intention to seek asylum in Serbia, but only 8 were granted this status to date. In the first two months of 2017, there has been a slight decrease in the number of expressed intentions to seek asylum (from 1,503[86] in November 2016 to 502[87] in February 2017). The majority of asylum seekers are from Afghanistan - 45%, followed by Iraq - 26%, and Syria - 13%.

Current accommodation capacities offer more than 6,000 places, and responsible authorities are continuously working on preparing new shelters. During the reporting period, reception centres have been opened in: Sombor, Dimitrovgrad, Bosilegrad, Pirot, Divljana and Obrenovac, while the process of adaptation of new accommodation centres in Aleksinac, Vranje and Kikinda are underway.

Competent authorities have maintained a humanitarian approach in addressing the current migration challenges, and all measures and actions were taken with the aim of securing shelter and access to the rights to all the migrants that are presently in Serbia. The main humanitarian challenge during cold weather was securing shelter and access to the rights for refugees/migrants staying in the barracks in Belgrade. There was a problem with accommodating and providing assistance to this category of migrants, as they did not show willingness to be registered and thereby exercise their right to accommodation in one of the existing asylum centres. In this regard, authorities have opened a new reception centre in the City of Belgrade`s municipality of Obrenovac, with the current capacity of 850 places, and are providing, along with international and civil society organisations, informational assistance as well as referral and transportation to governmental capacities that are available for accommodation. This facility is intended for the accommodation of migrants - only men and minors - from the barracks located in Belgrade. Serbian authorities have also been preparing for the outcome of the latest changes in the Hungarian legal framework related to increasing the strictness of border management procedures: accommodation facilities in the north of Serbia are currently in the process of preparation, to secure certain capacities for urgent sheltering of migrants who will be returned from Hungary upon the implementation of the new legal provisions.

Migrants continue to use irregular ways to enter the country. They usually travel using the smuggling channels, avoiding contact with the relevant authorities and continuing irregular movement through the territory. Mostly due to the Hungarian migration policies and limited possibilities of entry into the country, the number of persons residing in illegal status for a longer period of time in the Republic of Serbia is still significant. Migrants who have not expressed intention to seek asylum in the Republic of Serbia, and are waiting to be admitted into Hungary, are still present in the asylum and reception centres.

The issue of push backs and informal readmission of third country nationals to and from Serbia remains one of the main concerns.[88] In a number of these cases, proceedings were initiated before the European Court of Human Rights.[89]

RECOMMENDATIONS:

- The Government of Serbia should adopt a new Law on Foreign Nationals which must be accompanied by appropriate sub-legislative regulations and which should be in line with the EU *acquis* and the international human rights standards, but should also take into account the particularities of the legal system of the Republic of Serbia;
- Take the necessary steps to intensify efforts for effective implementation of re-admission agreements concerning third country nationals, taking into account the standards of protection for returnees. Establish clear and strict procedures regarding migrants in the return process, including AVR;

86 UNHCR, Inter – Agency Operational Update, November 2016.

87 UNHCR, Inter – Agency Operational Update, February 2017.

88 Just in the period between 17 January and 26 February, about 1,107 migrants were pushed back from Hungary, 184 from Croatia, and 212 persons to FYR Macedonia. Information obtained at the UNCT Partners Briefing on 27 February 2017.

89 Source: Right to Asylum in the Republic of Serbia, 2016, BCHR.

- The Government of Serbia should continue with reforms in order to create and establish a comprehensive asylum policy that will ensure efficient and fair asylum procedures. Changes to the policy should (at the very least) include: adoption of the Law on Asylum and Temporary Protection as soon as possible, including specific legal solutions for the integration of refugees and persons enjoying other forms of protection, as well as the development of a mechanism for functional integration;
- For the established legal framework it is necessary to provide infrastructural capacities and human resources that will be sufficient for effective implementation.

3.2. The Fight against Organised Crime

Some positive developments were noted in the area of fight against organised crime, yet more robust and concrete efforts to prove a positive track record in the form of final convictions are still missing. No progress was made regarding the inter-institutional cooperation between the law enforcement agencies and the inter-connectedness of their respective data bases, as the activities from the AP 24 pertaining to the establishment of the centralised criminal-intelligence system (recommendation 6.2.2) are well behind the schedule.

Despite the fact that Serbia had produced its first national Serious and Organised Crime Threat Assessment (SOCTA) in line with the EUROPOL methodology, its usefulness is preconditioned on the successful introduction of the intelligence-led policing (ILP) concept and internal adaptations and restructuring of the MoI and Police Directorate (recommendation 6.2.1 from the AP 24). Apart from the *Handbook on Intelligence-Led Policing*,[90] which was created and published by the MoI, all other activities pertaining to the ILP are at the early stages of implementation.

Regarding the revision of the role of intelligence services in criminal procedure, i.e. the need to assure operational independence of police from the Security-Information Agency (Ser. BIA) when it comes to the application of special investigative measures (recommendation 6.2.3 from the AP 24), no progress has been made. The planned analysis was produced in 2015, submitted to the Bureau for Coordination of Security Services and from then on there were no developments in this regard, with the deadline postponed for the second half of 2017. Despite this latency, the first semi-annual governmental Report on the Implementation of the AP 24[91] states that the succeeding measure - namely the implementation of the plan based on this analysis - has been implemented in a timely manner. When confronted with this illogical sequence of events, the Negotiating Group for Chapter 24 stated that it was a technical mistake and that actually no progress was made.[92] This mistake also raises the issue of the quality of Government's reporting and communication of reforms, both to the policy community and the public at large.

Finally, instead of working towards proving a positive track record in fighting organised crime by increasing the number of final convictions, the Government continued with its practice of mass arrests of individuals that resemble public relations stunts.[93] Since the end of 2015 there were police actions of mass arrests named Cutter, Thunder, Scanner, while actions Plato[94] and Plato II took place in the first week of March 2017. All of these continue to be characterised by: group arrests of suspects for diverse types of crimes and largely unrelated cases; in various cities across Serbia; detailed media coverage with live video and footage of arrests; most of those arrested are later released, with no criminal charges filed against them.

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90 Klisarić, M. and Kostadinović, N. (2016). *Policijsko-obaveštajni model: priručnik [The Intelligence Policing Model: Manual].* MoI of the Republic of Serbia, Belgrade. Available only in Serbian, at: http://mup.gov.rs/wps/wcm/connect/23a0498f-e93a-4fd3-a507-6ebc568cd10e/Prirucnik+POM+sajt+7.10.2016.pdf?MOD=AJPERES&CVID=lwFqozE

91 Available only in Serbian, at: http://www.bezbednost.org/upload/document/akcioni_plan_za_poglavlje_24_izvestaj.pdf

92 Meeting with the Negotiating Group for Chapter 24, February 2017.

93 See: Elek, B. *et al.* (2016). *Monitoring and Evaluation of the Rule of Law in the Republic of Serbia*. Belgrade Centre for Security Policy, Belgrade. p. 16.

94 See: http://rs.n1info.com/a231642/Vesti/Vesti/Uhapsene-53-osobe-zbog-zloupotreba-u-drzavnim-organima.html

3.2.1. Police Reform

Limited progress has been made in reforming the police. The initial prerequisites for human resources management in the police have been met. The Human Resources Sector (HRS) within the MoI has begun to operate, and the new Law on Police has largely prescribed the rules for hiring and promotion. However, major decisions are made by the Minister of Interior, which is not a good solution.

The organisational structure of the HRS was largely covered in the conclusion of the analysis of the situation in the MoI conducted in 2014. A public competition for the position of the Head of HRS was announced in late October 2016, representing the first step towards the abandonment of bad practice of appointing acting heads to high positions in the MoI. However, in the part of the competition which describes the requirements it was not stated that the candidate must have work experience in human resources management or any experience related to the job description; it was only pointed out that the candidate must have at least nine years of professional experience. Such a formulation is not sufficiently precise. Usually, a candidate for a senior position in the public administration must have at least two years of experience in performing tasks similar or identical to those of the job described in the competition.

It is positive that criteria for promotion have been enumerated and that regular security checks are planned to be conducted throughout a person's career in the police, not only at the time of hiring. Moreover, the ICS will be responsible for carrying out the vetting of police officers in high positions, which is also commendable. However, there are problems as to who will be responsible for the appointment and dismissal. The fact that the Minister of Interior still appoints and dismisses heads of regional police departments and heads of organisational units in the Police Directorate is not a good solution, as it represents a way for politicians to influence the operational work of the police.

Nine months have passed since the competition for the position of Director of Police was (finally) announced on 2 September 2016. The real reasons for the dismissal of the former Police Director, Milorad Veljović, who later became an adviser to the Prime Minister, remained unknown to the public. Ten candidates applied and two are shortlisted for the position of Director of Police. At that time, acting Police Director Vladimir Rebić and the former Chief of Police in Užice, Dragica Jevtović, had passed all the stages of verification in the race for the position of Director of Police. Since the beginning, the two of them were the only ones who passed all the stages of the selection process governed by the Regulation on the Implementation of Open Competitions in the MoI. The selection process was completed on 22 November 2016, when the Competition Commission made the final ranking list based on the assessment and forwarded it to the Minister of Interior. Vladimir Rebić and Dragica Jevtović have passed the final stage of the appointment process. In December 2016, the Government appointed Vladimir Rebić as new Director of Police. The selection process was partially transparent. The fact that information that allows citizens to understand how the selection process works was published for the first time is a positive step forward, but documents used by the Competition Commission to assess potential candidates are not publicly available.

Prosecutors are unhappy with their competencies regarding the police. Introduction of prosecutorial investigation in Serbia completely changed the roles of, and the relationship between, the main actors in criminal proceedings: the police, the public prosecutor's office, the defence counsel and the court. The transfer of power from a former "investigating judge" to a public prosecutor was not accompanied by the transfer of resources and guarantees of independence. Since the beginning of implementation of the new CPC, approximately 38,000 cases have been transferred from the courts to the public prosecutor's offices, but without an adequate increase in human resources. Public prosecutors are nominated by the Government and appointed by the National Assembly, which allows an impact of the executive and legislative authorities on the work of public prosecution. A recent CESID survey showed disturbing data concerning the training of public prosecutors. Almost half (48%) of the surveyed public prosecutors have attended only one training – which is believed not to be enough – while only 33% claimed to have had sufficient training. Also, prosecutors believe that they also need greater authority over the police in order to conduct investigations more effectively (84%).

The MoI has a selective approach towards the media. Several media organisations complained about the lack of transparency from the police. Obtaining official information from the police has become a problem for news agencies, TV stations and daily newspapers in Serbia.

RECOMMENDATIONS:

- Police reform needs to remain a top priority as part of the negotiations with the EU and especially within the monitoring of the implementation of Chapter 24. Further professionalisation and development of more effective public management structures and practices in governing of police need to be continued and monitored independently;
- In order to enable monitoring of police reform, it is necessary to clearly list the key measures, deadlines, responsible authorities, necessary funding and indicators for the implementation of the EC recommendation "Assess the need for further reform and rationalisation of the police/MoI in order to increase its effectiveness" in accordance with the methodology used in the rest of the Action Plan for Chapter 24;
- It is necessary to continue reform in human resources management in the police, especially in the area of internal competition process, through further defining of public policies, procedures and by-laws and their implementation in practice.

3.2.2. Combating and Suppressing Human Trafficking

The main activity in the field of combating and suppressing human trafficking - the adoption of the Anti-Trafficking Strategy - has not been completed. As this Strategy and the accompanying Action Plan should establish the direction of all other activities, and a significant part of the Action Plan for Chapter 24 in this specific area is directly linked to their adoption, it can be reasonably concluded that little progress has been made during the reporting period.

Adoption of the new Strategy for Preventing and Combating Trafficking in Human Beings and Protecting Victims in the Republic of Serbia and the initial Action Plan (6.2.8.1) is the central activity in the Action Plan for Chapter 24 in the area of combating trafficking in human beings. Out of 15 activities listed in the Action Plan relating to this area, the implementation of other four (6.2.8.2, 6.2.8.3, 6.2.8.6 and 6.2.8.7) directly depends on this one. It should be mentioned again that the initial text of the Strategy and of the Action Plan were produced in a broad participative process in 2013 and that the adoption of these two documents has been pending ever since. Even though it became and activity envisaged by the Action Plan for Chapter 24, it was postponed several times and only the period of the documents' validity was changed. This is clearly visible in the State Report on the Implementation of Activities for the period July-December 2016.[95] Namely, in the Activity 6.2.8.1, the Strategy was to be valid for the period 2016-2022 and the Action Plan was to be implemented in 2016-2017. Only one line below, in the activity 6.2.8.2., we have 2015-2020 for the Strategy and 2015-2016 for the Action Plan. Furthermore, although the Action Plan, when it comes to the pure act of adoption, was to be implemented in 2016-2017, the Ministry of Labour, Employment, Veteran and Social Policy was to send its comments and proposals for amendments in the first quarter of 2017.

The adoption of these two documents is not important for formal reasons only. Namely, in the four years during which the adoption of the Strategy and Action Plan has been continuously postponed, the system of human trafficking suppression stagnated because former coordination bodies have in the meantime ceased to operate, and the new ones envisaged by the Strategy have not yet been established. The position of National Anti-Trafficking Coordinator –a police officer sitting in the Border Police Directorate of the Ministry of the Interior - is not yet clear. The Anti-Trafficking Council is not an active body and most of its members have not been informed about their roles, duties and expectations. Further, the National Anti-Trafficking Team practically does not exist, since its last meeting took place in 2013. It can be said that the only body with a clearly

95 http://www.bezbednost.org/upload/document/akcioni_plan_za_poglavlje_24_izvestaj.pdf

defined role within the anti-trafficking referral mechanism is the Centre for Trafficking Victims' Protection. However, cooperation between the relevant institutions and organisations specialised for victim assistance is still weak (in 2016 only one person was referred to ASTRA by the Centre for Trafficking Victim's Protection, 2 were referred by the social welfare centres, 2 by CSO from abroad and 1 by the prosecutor's office). Institutions are not always open for cooperation unless they come to the point where they feel completely helpless in resolving problems that emerge in relation to specific trafficking cases. It is the victims of trafficking who suffer the most because of such approach, because assistance to which they are entitled is either missing, delayed or incomplete.

In 2016, the Centre for Trafficking Victim's Protection has identified 55 ***victims of trafficking****, a 37% increase in comparison with the previous year. Like last year, the majority of the identified victims were women and girls exposed to sexual exploitation; eight victims were male and all except one were exposed to labour exploitation (one man was coerced into criminal activity).* ***Children account for 38%*** *of all identified victims, which is a slight decrease compared to one year earlier. Serbia is still a country of both the origin and exploitation of human trafficking victims. Victims identified in 2016 were mainly citizens of Serbia (52, i.e. 91%), and they were mostly exploited in the territory of Serbia. Multiple forms of exploitation occurred in 11 cases where all the victims were women who were mostly sexually exploited, while forced marriage appeared in 6 cases. According to the Serbian Ministry of Interior, 11 criminal reports were filed in 2016 for trafficking in human beings under Article 388 of the Criminal Code. These criminal reports include 14 perpetrators and 31 victims. Compared to last year, the number of identified victims is not sufficiently higher for one to be able to say that a more proactive approach to the identification of victims has been noted within the police and social welfare system. ASTRA SOS Hotline received more than 3,700 calls, 32 of which were reports received about potential human trafficking cases. Fifteen victims have been identified. In nine cases the victims were men – eight were exposed to labour exploitation in construction sites in France, and one was exploited for petty crime.*

The preliminary results of ASTRA's annual analysis of judgments for trafficking in human beings issued in 2016 (a total of 37 judgments – 20 first instance and 17 second instance judgments) show the following:

- Out of 20 first instance decisions, 4 were made based on a plea agreement; in two of these cases, in addition to the plea agreement, qualification of the case was changed from human trafficking to facilitation of prostitution.
- The duration of the proceedings (analysed from the moment of indictment until the announcement of the first-instance judgment) was 2 years and 4 months on average, similar to one year earlier. The longest trial lasted 5 years and 9 months, the shortest 2 months. Compared to 2015, the percentage of trials that lasted less than one year has increased (40% in 2016, compared to 26% in 2015), but it is still far from the efficiency achieved in 2014 (50% of first-instance judgments made in less than one year). Like in previous years, almost one-third of the proceedings lasted more than 3 years.
- The percentage of convictions in 2016 was very high – 94%. 16 percent of them were based on plea agreements. Further, 20% of the convictions occurred in cases that were changed from human trafficking to facilitation of prostitution.
- The majority of prison sentences range between 3 and 5 years (84%, but it should be kept in mind that imprisonment of 3 years is a statutory minimum for human trafficking, i.e. 5 years when the victim is a child). In 11% of cases prison sentence was longer than 5 years and in 5% of cases shorter than 3 years. Sentences shorter than three years and suspended sentences relate to cases of trafficking in minors for the purpose of adoption, qualifications of 'trafficking in human beings' that have been changed to 'facilitation of prostitution', plus one case of sanctioning a consumer of services in the context of human trafficking. These data do not differ significantly from the sentencing practice of 2015.
- Out of 34 victims, 90% were female and approximately 33% were under-aged.
- 62% of the accused were kept in detention pending trial.

- All the victims that filed compensation claims in criminal proceedings were referred to civil proceedings. No decisions on compensation were made in 2016.

In the last couple of months, ASTRA SOS Hotline received an increased number of calls from Serbian citizens who were planning to go to work (or who are already working) in foreign countries, including EU Member States, based on fraudulent or exploitative offers they received from illegal employment agencies. ASTRA always informed the relevant institutions of such cases, but a proper response to this problem is still missing. Namely, only the Police Department for Organised Crime has contacted ASTRA for more information.

Serbia is not a destination country for migrant workers, but Serbian migrant workers regularly go to work in foreign countries - the EU and the Russian Federation - where they are often subjected to violation of rights, exploitation, and sometimes human trafficking. The state has adopted the Law on Conditions for Sending Employees for Temporary Work in a Foreign Country and Their Protection,[96] which came into force in January 2016. Although this is an important law, it does not respond to the actual protection needs of our workers who go to work abroad, mostly in the construction industry, without official contracts and without a proper work visa. Very few measures are actually available to prevent fraudulent job brokering practices that often result in either financial fraud or some sort of exploitation.

Some pressing issues that remain unsolved are:

- The Budget of Serbia for 2017 has not envisaged any funds for anti-trafficking activities outside the budget of the Centre for Trafficking Victims' Protection (90% of which are operating costs).

The work of the Centre for Human Trafficking Victims' Protection is funded from the budget of the Republic of Serbia, grants or the Centre's own earned income. In practice, funds that do not come from the state budget are granted to the Centre based on the application of the institute of delayed criminal prosecution (the so-called "prosecutor's opportunity").

At the time of reporting, the Centre for the protection of human trafficking victims has not yet presented its Financial Report for 2016.

According to the Financial Report for 2015,[97] the Centre received RSD 12,296,081 (EUR 101,097) from the budget. Out of this amount 91.25% was spent on different kinds of operating costs of the Centre (salaries – 78%; operating costs such as communications (phones, web site etc.), bank charges, insurance costs – 3.17%; business travel costs – 2.6%; vehicle maintenance – 0.87%; costs such as fuel, office supplies, expert literature, inventory etc. – 6%; taxes and penalties – 0.7%). Further, according to the description of the budget items, only 4.37% could be clearly and directly linked to services for victims (the so-called "expert services", i.e. legal assistance, psychotherapy, and the services of a driver).

In 2015, funds obtained from the prosecutor's opportunity amounted to RSD 2,473,497.20 (EUR 20,452, EUR 20,312 unspent in 2014, plus EUR 140 granted in 2015). These funds, intended for direct victim assistance, were not all spent; only 23.8% of the funds have been utilised, while the remaining EUR 15,586 were transferred to 2016. This seems to be a regular practice of the Centre, as half the funds from this source in 2014 were also transferred from 2013 as unspent.[98]

This brief analysis shows that even the so-called 'funds allocated for assisting victims of human trafficking' actually represent running costs of the Centre. On top of this, available funds are not spent in full, which results in reduced transfers each year. Considering the fact that an insignificant number of victims are referred to NGOs for assistance (e.g. out of 55 persons identified, only one was referred to ASTRA and three to Atina in 2016), the following question remains: what is the quality of services and support that victims are receiving from the state if even the scarce funds earmarked for this purpose are not being spent in full?

- The establishment of a state shelter for urgent accommodation of victims of trafficking in Serbia, and a specialised shelter for children. Victims of trafficking in a need of accommodation are provided with alternative accommodation like shelters for family violence coordinated by social welfare centres. The establishment of a state shelter was envisaged in 2012 as an

96 "Official Gazette of RS" No. 91/2015

97 http://www.centarzztlj.rs/images/download/2016/mat%20fin%20poslovanje%202015.pdf, accessed on 30 March 2017.

98 http://www.centarzztlj.rs/images/download/2015/Izvestaj%20o%20MFP%20za%202014.pdf

integral part of the Centre for Trafficking Victims' Protection; five years later, however, such a shelter still does not exist.

- In the previous six months, we witnessed the same trend regarding the identification of victims of human trafficking among the refugee and migrant population as in 2016. State officials do not have an adequate methodology to deal with this mobile and vulnerable population. In cooperation with UNICEF and IDEAS, the Ministry of Labour, Employment, Veteran and Social Policy developed the Standard Operating Procedures for Protecting Migrants and Asylum Seekers from Violence and Exploitation,[99] which have not been officially adopted or implemented in practice. Non-governmental organisations working in the field report that a relationship of trust, which would allow victims to possibly reveal their experiences and request assistance, cannot be established due to the short stay of migrants and inadequate environment. Further, the information provided by the institutions that have been in contact with refugees and migrants indicate that only a small number of persons working in the field were trained to identify victims of human trafficking.

According to official data, 40 reports on suspected human trafficking among the migrants and refugees were submitted in 2016 (31 males, 9 females). In the previous year only two persons among the refugees were officially identified as victims. In both cases the victims were under-aged girls. In one case a girl was exposed to sexual and labour exploitation by her partner (husband) in the country of origin, in the transit country, and in Serbia. Her exploitation was stopped in Serbia. In another case, a girl from Afghanistan was exposed to labour exploitation and forced marriage.

RECOMMENDATIONS:

- The Strategy for Combating Human Trafficking in the Republic of Serbia and the National Action Plan should be adopted without delay, as their absence has a negative impact on the successful fight against human trafficking and the protection of victims;
- To ensure effective prosecution of human trafficking and make victims feel free to testify, and to avoid their secondary victimisation, active use of the possibilities to protect the identity and safety of victim-witnesses should be made during the criminal proceedings, as provided for by the law. This includes actively protecting the victim from intimidation and threats, intervening whenever victim-witnesses are asked questions that are irrelevant to the case, avoiding repeated questionings of victims and their direct confrontation with defendants, awarding the victims of trafficking the status of vulnerable witness, and making use of technical possibilities such as hearing a victim-witness's testimony over a video link. Every trafficked person involved as a witness in the investigation and prosecution of traffickers must have free legal representation, so that someone who will protect his/her rights and interests is participating in the process. Every trafficked person who testifies in criminal proceedings should be informed on a regular basis about all the relevant developments in the case (and not only of the date when he/she has to appear to make a statement or testify);
- Indicators for the identification of children and adult victims in all the phases and for all the forms of human trafficking should be developed and put to use. These indicators should be clearly defined both at the levels of preliminary and final identification. Further, new methods that would facilitate self-identification of (possible) victims should be worked out;
- A policy on minimum standards for the provision of assistance to trafficking victims during all the phases of assistance should be developed and adopted, together with procedures to be observed by relevant actors, based on the principles of respect for the victim's wishes, her/his best interests and non-discrimination;
- The authorities should organise systematic training for officials in charge of refugee protection and irregular migrants, so they too could identify possible trafficking victims and make appropriate referrals, as *ad hoc* project events organised to date have proven to be inadequate;

99 The document is available in Serbian language only, at: https://www.unicef.org/serbia/SOP-za-zastitu-dece-izbeglica-i-migranata.pdf

- A shelter for the urgent accommodation of victims of trafficking should be established without delay, including a specialised shelter for trafficked children.

3.3. The Fight against Terrorism

Serbia has reached a certain level of preparation in the area of fight against terrorism. Its legislative framework is in place and to a good extent aligned with the EU *acquis*, especially due to the recent changes that were made to the Criminal Code with regard to the transposition of the United Nations Security Council Resolution 2178 (2014) on the criminalisation of foreign fighters, which introduced two new criminal offences. In addition, the Law on Freezing of Assets for the Purpose of Preventing Terrorism was also adopted. Likewise, the European Commission stated its satisfaction with the transposition of the Framework Decision 2008/919/JHA on combating terrorism. However, Serbia has failed to adopt National Strategy and Action Plan for Prevention and Fight against Terrorism, even though both documents were drafted in 2016. Civil society organisations (CSOs) took an active role in providing comments on both documents despite the fact that Government did not organise a public debate on this issue. According to the Report on the Implementation of the Action Plan for Chapter 24, the working group for Strategy and Action Plan was disbanded and there is no available information whether the CSOs' comments were accepted and incorporated into the final draft.

Moreover, it was necessary to harmonise the field of protection of critical infrastructure through the transposition of the Directive 2008/114/EC on the identification and designation of critical European infrastructures and the assessment of the need to improve their protection. Very little progress has been made in this area. It was reported that representatives of responsible ministries have learned about the best practices of identifying and protecting critical EU infrastructure through study visits and workshops (activity 7.4.1 from the Action Plan for Chapter 24). However, the report on what has been learned and which model on identifying and protecting EU critical infrastructure was accepted is not available to public. Confusion is even greater if we take into account the fact that Serbia is obliged (activity 7.4.2 from the AP 24) to conduct a gap analysis according to best practices and accepted model, and it was reported that the gap analysis is currently being done. This activity contradicts the conclusion from the previous one (7.4.1). Successful implementation of these two activities should enable drafting of the law that would regulate critical infrastructure identification and protection in accordance with the Directive. It was reported that a "working group for drafting regulation is currently being formed." Finally, a single national terrorism-related database has not been established yet, even though a model for setting up a single national terrorism-related database (individual indexing model) has been determined, and the database model has been made. Necessary legislative changes for putting the database into practice are yet to be made and are delayed due to political instability caused by the presidential elections.

3.3.1. Major Shortcomings of the Draft National Strategy and Action Plan for Prevention and Fight against Terrorism

The drafts of the Strategy[100] and the Action Plan[101] were made public on the web site of the Ministry of Interior, and interested parties were invited to submit their assessments of these two documents. Apart from civil society organisations, opinions were also submitted by some state institutions such as the Office for Human and Minority Rights, the Office for Cooperation with Civil Society and the Directorate for Cooperation with Churches and Religious Communities within the Ministry of Justice.

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100 Draft of the National Strategy for Prevention and Fight against Terrorism, http://www.mup.gov.rs/wps/wcm/connect/7ba665d2-d46d-4a4a-8f6b-2311a766ffa1/2016-04-04-NACIONALNA+STRATEGIJA+TERORIZAM.pdf?MOD=AJPERES&CVID=liv.U7Z&CVID=liv.U7Z&CVID=liv.U7Z&CVID=liv.U7Z&CVID=liv.U7Z&CVID=liv.U7Z&CVID=liv.U7Z&CVID=liv.U7Z&CVID=liv.U7Z&CVID=liv.U7Z&CVID=liv.U7Z

101 Action Plan for the National Strategy for Prevention and Fight against Terrorism, http://www.mup.gov.rs/wps/wcm/connect/ce4a9973-8268-48f9-9799-bd213df8cb3b/2016_05_11_AKCIONI+PLAN_TERORIZAM.pdf?MOD=AJPERES&CVID=liv.MDr&CVID=liv.MDr&CVID=liv.MDr&CVID=liv.MDr&CVID=liv.MDr&CVID=liv.MDr&CVID=liv.MDr&CVID=liv.MDr&CVID=liv.MDr&CVID=liv.MDr

As envisaged in the AP 24, the Strategy was formulated according to the "prevent-protect-pursue-respond" model of the EU Counter-Terrorism Strategy. However, the part dealing with the role of local communities in preventing radicalisation is not well developed in the Strategy, given the importance of the local level in EU's policy on fighting terrorism. The role of the local coordinating mechanisms is paramount in combating terrorism and radicalisation, especially when it comes to identifying individuals at risk of radicalisation, and with the purpose of having a coordinated response in preventing possible terrorist attacks. The role of the local communities in combating terrorism is adequately referred to in the European Commission's Communication supporting the prevention of radicalisation leading to terrorism.[102] Also, within the part of the Draft Strategy dedicated to dealing with persons at risk of radicalisation, there is a limitation only to persons in the prison and probation system, and it does not include other persons in risk of radicalisation such as victims of hate speech, members of extremist groups, etc. It is also unclear on which research the assessment of threats and challenges in the Strategy has been based.

This is perhaps the reason why this document contains some flaws. For instance, the Draft Strategy is focused on Islamic extremism and terrorism, while other forms of extremism (related to the Serbian ethnic majority, such as fascism, extreme nationalism, neo-Nazism, etc.) are neglected. Therefore, findings from the Draft Strategy need to be corroborated by publicly accessible data which would outline the scope and quality of the problems pointed out in the Strategy, especially when it comes to the specificities of the growth of radicalisation and violent extremism. Therefore, it should be clearly stated in the Strategy that violent right-wing groups represent a security threat. Considering their activities and the Government's lack of will to fight these groups, it can be concluded that said groups represent a danger greater than what can be deduced from the Strategy. On the other hand, the reference to ethnically motivated extremism and separatist tendencies, with a special emphasis on Kosovo, should be reconsidered, and the future formulation of such problems should be done in accordance with the framework of Chapter 35 which deals with the comprehensive normalisation of the relations between Belgrade and Priština.

It was wrongly concluded that widespread use of social media facilitates the spreading of extremism, instead of placing emphasis on the misuse of social media and improving prosecution of hate speech on the internet. In the same vein, the importance of relying on the existing civil emergency system in responding to terrorist acts is not recognised despite the fact that this is the approach of the EU. In this regard, transformation of the Sector for Emergency Situations that operates within the MoI into an independent government body (agency or directorate) was once again postponed.

RECOMMENDATIONS:

- The Government needs to step up the implementation of activities dedicated to fight against terrorism from the Action Plan for Chapter 24 by adopting the National Strategy to Prevent and Fight Terrorism that is fully aligned with the EU Counter-Terrorism Strategy, so as to:
    - Address other forms of extremism;
    - Place greater focus on the misuse of social media and the improvement of prosecution of hate speech on the internet;
    - Strengthen the role of local authorities and civil society organisations in early identification and prevention of extremism and radicalisation;
    - Highlight the importance of improving the quality of private security protecting critical infrastructure;
    - Recognise the importance of resorting to the existing civil emergency system and speed up the transformation of the Sector for Emergency Situation, which operates within the MoI, into an independent government body;

102 The Communication is available at: http://ec.europa.eu/dgs/education_culture/repository/education/library/publications/2016/communication-preventing-radicalisation_en.pdf

    - Further align Serbian laws with the *acquis* considering the protection of victims of terrorism;
    - Better clarify the institutional infrastructure surrounding the implementation of the National Strategy and the Action Plan, especially with regard to the coordination and division of competences between various bodies;
- Make publically available reports on activities that are marked as completed so that the public and CSOs interested in these policies can monitor and evaluate progress;
- Adopt legislative changes necessary for putting database on terrorism into practice.

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