PREUGOVOR ALARM

REPORT ON THE PROGRESS OF SERBIA IN CHAPTERS 23 AND 24

Editor:
Milan Aleksić

Belgrade, October 2017

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Kingdom of the Netherlands

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About prEUgovor

Coalition prEUgovor (Eng. *prEUnup*) is the first coalition 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)
www.bezbednost.org

Centre for Applied European Studies (Sr. CPES)
www.cpes.org.rs

Centre for Investigative Journalism (Sr. CINS)
www.cins.org.rs

Group 484
www.grupa484.org.rs

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

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Introduction

It has been a year since the pre-accession negotiations on Chapters 23 and 24 between Serbia and the European Union (EU) took place, as well as since the Action Plans for Chapters 23 and 24 were adopted. In this regard, and relying on their previous practice, the line ministries – the Ministry of Justice (MoJ, for Chapter 23) and the Ministry of Interior (MoI, for Chapter 24) published semi-annual reports on the implementation of action plans for the first six months of 2017. The data from these reports, however, show that in the observed period there was no improvement in the implementation of these Action Plans, compared to the previous period. The Ministry of Justice states that in the first half of 2017, 65% of all planned activities for Chapter 23 were successfully implemented, with the best results recorded in the area of basic rights, where 72% of the planned activities were achieved, which is a poorer score than in 2016. According to the Report of the Ministry of Interior, about 42% of the activities were successfully implemented, which is slight improvement compared to the previous period.[1] However, still a major problem is the fact that for a large number of activities in the Ministry of Interior report, no data regarding the status of implementation have been reported. Bearing in mind the delays in implementing a significant number of planned activities in these action plans, but also proposals to further shift their deadlines, indicated in the state reports and discussed in this Alarm Report, their revision should be considered in the upcoming period.

The lack of data or non-transparency in certain segments of the negotiation process in these two chapters remains one of the most prominent problems in this reporting period (April–September 2017), especially faced by civil society organisations (CSOs). In May 2017, the European Commission published a 'Non-paper' on the current situation in Chapters 23 and 24 for Serbia, in which, among other things, it called for the improvement of the transparency of the process and meaningful cooperation with CSOs. The prEUgovor coalition welcomed the publication of this document on the website of the Serbian European Integration Office as a positive step towards the transparency of the process. In the notice issued on this occasion, prEUgovor also asked for the state reporting to be improved.[2] On the other hand, the unclear measurement of the effects of implemented measures from the Action Plans also continues to be a grave problem in the implementation of reforms related to Chapters 23 and 24.

This reporting period was marked by the reconstruction of the Serbian Government after Aleksandar Vučić won the elections for the President of the Republic of Serbia in April 2017 and left the post of the Prime Minister. The election of the new Government was delayed for almost three months, until the end of June. The new Prime Minister, Ana Brnabić, previously the Minister of Public Administration and Local Self-Government, came to the head of the Government as a non-partisan person, and at the proposal of President Vučić. However, despite such a move, this period was marked by further partisation and politicisation of the institutions of the system, by strengthening the executive in relation to other branches of government, while the Government itself is now in the shadow of the President of the Republic. Aleksandar Vučić continues to be the most powerful political figure because, after being elected President, he has remained the head of the strongest party in the country and in the Parliament – the Serbian Progressive Party (SNS), as well as the security services coordinator, thus becoming the supreme army commander. The controlling role of the Parliament in relation to other branches of government continues to be unsatisfactory, as it keeps on with the practice of not adopting independent bodies' reports, passing laws by urgent procedure and behaving as an extended arm of the Government.

The assessments in this Alarm Report are similar to those of the previous one, which means that no progress has been made in the reform processes relating to Chapters 23 and 24 in the respective period. This further means that the rule of law in Serbia has deteriorated, despite the declarative commitment of the state to make improvements in this area and reiterating the

1 In the period July–December 2016, 71% of the activities from the Action Plan for Chapter 23 were successfully implemented, while in the field of human rights this percentage was 89%. Concerning the Action Plan for Chapter 24, about 37% of the activities were successfully implemented.

2 http://preugovor.org/Press-Releases/1370/Improvement-of-the-reporting-on-progress-in.shtml.

assessment of European officials that it is a key area for Serbia's European path. However, the Belgrade–Priština dialogue as well as the "inner dialogue" on Kosovo, initiated by President Vučić (and perhaps the selection of Ms Ana Brnabić for the Prime Minister), seem to influence the indulgence of official Brussels in this respect. The only positive developments in the observed period are related to the adoption of certain acts, reports or minutes – notably the adoption of the new Strategy for Prevention and Suppression of Trafficking in Humans (2017–2022), though six years after the previous one expired. Bearing in mind the importance of Chapters 23 and 24 not only for the progress in negotiations with the EU, but above all for the democratisation and development of society, more efforts now need to be made by all key actors in order to ensure positive shifts in this process.

1. POLITICAL CRITERIA

1.1. Democracy – Presidential Elections

The presidential elections, held in April 2017, were followed by a long period of waiting for the new Prime Minister to be appointed (as stated in the Introduction, the previous one became President himself). Although there were no changes in the parliamentary majority, the process was allegedly prolonged due to internal relations within the ruling SNS. In the end, the President (and the leader of the ruling party) proposed a non-party candidate for that post. There was no follow-up of the Public Prosecutor in regard to suspicions of various irregularities in the election campaign, including the alleged vote buying, abuse of power, pressure on voters through the collection of "capillary" and "secure" votes, humanitarian actions of the ruling parties, as well as other potential irregularities.

Similarly, the Regulator for Electronic Media (REM) and the Anti-Corruption Agency (ACA) did not identify and publish any violation of election-related rules that they monitored. Instead, in late April 2017 the REM published the report[3] on campaign monitoring, containing only statistical data on commercial advertisement[4] and no information whatsoever about the appearance of candidates in informative programmes. The ACA issued several opinions about possible violation of public officials' duty to distinguish between public office and political campaign, all of them in favour of the presidential candidate who ran the race from the Prime Minister's post.[5] On the other hand, the ODIHR mission[6] notified that "unbalanced media coverage and credible allegations of pressure on voters and employees of state-affiliated structures and the misuse of administrative resources tilted the playing field. Regulatory and oversight mechanisms were not effectively utilised to safeguard the fairness of competition".

RECOMMENDATIONS:

- To improve the campaign finance legislation, on the basis of EU, CoE and ODIHR expert opinions, CSO monitoring findings and Anti-Corruption Agency's proposals;
- To regulate in a comprehensive way public sector and political advertisements;
- To regulate clearly promotional activities of public officials and limit their participation in such activities during the campaign period;
- The REM, ACA and public prosecutors to publish all information about performed oversight and implemented measures in regard to the alleged violation of campaign and campaign finance rules.

3 http://www.rem.rs/sr/arhiva/vesti/2017/04/usvojen-izvestaj-o-predizbornim-oglasnim-porukama-u-kampanji-za-predsednicke-izbore-2017.

4 Even that information was selective, presenting only the number of TV ads and not their length. The REM refused to provide Transparency Serbia with additional data.

5 http://javno.rs/vest/preview/sticena-lica-mogu-da-snimaju-spotove-u-skupstini-srbije.

6 http://www.osce.org/odihr/elections/serbia/322166?download=true.

1.2. Democratic and Civilian Control over the Security Sector

Parliamentary Oversight over the Security Sector

Since the "pause" in the work of the National Assembly, a month before the presidential elections that took place in April, until the end of September, no sessions of the Security Services Control Committee were held. There is still no indication that any of the opposition party members of the Committee received security certificates, so the practice of having only the ruling party's members participating in the work of the Committee's closed sessions is likely to continue.

The Defence and Internal Affairs Committee held three sessions in 2017. One took place in May, when a legislative package of laws concerning defence cooperation agreements needed to be formally cleared by the Committee, and two consecutive sessions in September. During these, the Committee deliberated on the Ministry of Defence (MoD) and Ministry of Interior's long overdue information reports for the period October 2016 – June 2017, including the report of the Ministry of Interior's Sector of Internal Control for 2016.

The Parliament continues to ignore the discussion and adoption of the Ombudsman's report for the third year in a row.

Independent State Bodies' Oversight over the Security Sector

It is a cause of concern that the new Ombudsman, elected in July 2017, openly expressed his unwillingness to further push for investigation of the development in the "Hercegovačka/ Savamala" case, calling it "too politicised" and "a legally and factually closed case."[7] This is especially worrying because to this day the Ministry of Interior has not responded to any of the Ombudsman's recommendations concerning this case.

In May 2017, the Ombudsman conducted the control of the Sector of Internal Control of the Ministry of Interior, concerning the case of the police officer[8] who was suspended after arresting the son of Zvezdan Jovanović, the convicted assassin of Serbian Prime Minister Zoran Đinđić, on account of drug trafficking. The case came to public attention after Jovanović's threatening letter to the Minister of Interior was disclosed to the media, after which the police officer was suspended. This case again raised the question of the controversial provision in the 2016 Law on Police that gives control and oversight over the Sector of Internal Control to the Minister of Interior. The Ombudsman report on this case was not published to this day.

Another Missed Opportunity to Properly Regulate Security Services

On 29 August 2017, the Draft Law on the Amendments to the Law on Security-Intelligence Agency was submitted and will most likely be fast-tracked through the Parliament without any public debate because it will be voted on in an urgent procedure. The proposed amendments would grant extensive powers to the Agency's Director, who would be able to hire employees without public calls, transfer them to different working positions and determine their salaries with no external control whatsoever. These new powers, coupled with the controversial appointment of the former Defence Minister and a high-ranking member of the ruling SNS party, Mr Bratislav Gašić, as the new Director of the Security-Intelligence Agency (BIA) on 22 May 2017, might lead to further politicisation of the BIA. The reasons stated by the Government for this sudden legislative change invoke national security concerns and the need to regulate employment within the BIA separately from the Law on Police, which has been applicable to the recruitment process in the BIA since its adoption in January 2016. Although these can be legitimate concerns, and there are

7 For more details see (available only in Serbian): https://www.krik.rs/pasalic-slucaj-savamala-nije-zavrsen-ali-je-previse-politizovan/ (accessed on 13 September 2017).

8 For more details see: http://pointpulse.net/magazine/vipers-nest/ (accessed on 13 September 2017).

specificities within the BIA that might require a less transparent recruitment process, the question must be asked why the amendments were only proposed a year and a half later, or whether the BIA actually lacked capacities and powers to perform its role during this period. Whatever the situation might be, the proposed amendments have the potential to damage the integrity of BIA's recruitment process and its political impartiality might be jeopardised.

Except public concerns about the role of BIA's director in hiring, some other concerns about the Draft Law arose in public, mainly about the new security checks regulation and resolutions on determining data confidentiality. The Commissioner for Information of Public Importance and Personal Data Protection shared his opinion about the Draft Law with the Government and the public,[9] stating that the proposed regulation on security checks remains unregulated, unclear, fluid, and, contrary to the Constitution, it points to further regulation in by-laws of the Agency's Director. Regarding the manner of managing classified information, the Commissioner pointed out that the solutions contained in the Draft Law are contrary to the fundamental solutions under the Law on Classified Information, which specifically regulates this matter.

RECOMMENDATIONS:

- The National Assembly should dramatically improve its security oversight practice by ensuring regular committee sessions, full participation of the opposition MPs and deliberation of the reports submitted by the independent state bodies.
- The Government immediately needs to ensure that all involved bodies and agencies resume the investigation of the critical "Hercegovačka/Savamala" case and the case of Zvezdan Jovanović's son until their full resolution.
- The Government must harmonise the provisions of the Draft Law on the Amendments to the Law on Security-Intelligence Agency with relevant existing legislation and ensure the effective independent oversight over the envisaged new SIA director powers.

1.3. Regional Issues and Good Neighbourly Relations

Serbia remains committed to developing good neighbourly policies and improving bilateral relations with countries in the region. However, the key step towards this goal is to resolve the so-called open issues that Serbia has with Croatia and Bosnia and Herzegovina, which arose as a result of the collapse of the common state. In the process of joining the EU, it is particularly important for Serbia to resolve bilateral disputes with Croatia, since Croatia became a member of the EU, and in the previous period already tried to bind these issues for the EU-Serbia negotiation process.

During the reporting period, there was no progress in resolving the open issues between the two neighbouring countries, despite the continuous, but declarative efforts of both sides to resolve bilateral problems. The most profound issues between Serbia and Croatia are the ones relating to judicial jurisdiction for war crimes committed on the territory of Croatia, missing persons, the return of cultural goods brought to Serbia from Croatia during and after the war, as well as the common border on the Danube. Serbia and Croatia have established joint intergovernmental bodies to address the issue of the border and return of cultural property, as well as individual bodies to address the issue of missing persons. In mid-2016, the two parties also adopted the joint Declaration on Improving Relations and Resolving Open Issues, which represented a positive political signal. However, the respective bodies rarely meet, while the Declaration neither brought about any practical benefit so far, nor has it initiated the solution of any of the existing disputes.

9 For more details see: http://www.poverenik.rs/en/press-releases-and-publications/2638-ne-treba-zuriti-sa-izmenama-i-dopunama-zakona-o-bia.html (accessed on 13 September 2017).

Relations with other neighbours remained relatively good during this period, with occasional turmoil in relations with the Republic of Macedonia, during and after the general elections held in that country at the end of 2016 and the long-lasting formation of a new government that was elected only in early June 2017. Relations with Hungary, Bulgaria and Romania as old neighbours who became part of the EU have remained good, but they need to be further improved with regard to these countries' interest in the position of the Hungarian, Romanian and Bulgarian minorities living in Serbia. These countries have repeatedly expressed the view that Serbia's progress in joining the EU will be measured based on the position of these minorities, that is, the fulfilment of the agreed obligations that Serbia has undertaken in this regard.

RECOMMENDATIONS:

- Continuously work on the depoliticisation of "sensitive" open issues such as war crimes trials and the issue of missing persons in the segment of identification of the remaining locations of possible gravesites and identifications of found remains;
- Ensure the regular meetings of interstate bodies established to resolve open bilateral issues;
- Fulfil provisions of interstate agreements on the protection and promotion of minority rights.

1.4. Normalisation of Relations between Serbia and Kosovo

During the reporting period there has been little progress in the dialogue between Belgrade and Priština. Full implementation of the agreements reached so far is still pending, while there have been no new agreements reached under the auspices of the EU-mediated talks. This is mainly due to the fact that elections took place both in Serbia and Kosovo – presidential elections in Serbia in April followed by the reconstruction of the Government, and parliamentary elections in Kosovo in June – which drifted attention away from the normalisation process.

However, Presidents of Serbia and Kosovo, Aleksandar Vučić and Hashim Thaci, respectively, had two informal meetings in Brussels, mediated by EU High Representative Federica Mogherini (on 3 July and 31 August). According to official statements, these meetings marked the beginning of a new chapter in the dialogue between Belgrade and Priština. The purpose of the meetings was to set the ground and prepare the new phase of negotiations. However, though all the parties declared their full dedication to the normalisation of relations, in accordance with the EU standards and values, it remains unknown to the public what format the new phase will take and what its content will be. The two meetings indicate that the dialogue will be moved from the level of Prime Ministers to the presidential level.

Between the two above meetings, on 24 July, Serbian President Vučić called for an internal Serbian dialogue about Kosovo in an op-ed published in the "Blic" daily.[10] Vučić appealed to the citizens of Serbia to engage in a dialogue about Kosovo, and stressed the importance of a realistic approach to this issue. The purpose of the dialogue, as the President argued, would be to maintain peace and eliminate conflict as a possibility in the future regional relations. However, in his appeal Vučić did not offer any concrete proposal for the solution of the Kosovo problem. Furthermore, the Serbian President did not specify the form of the proposed internal dialogue. Although he called upon all the citizens of Serbia, it remains unclear who should be the subjects of the dialogue and how it should develop. Having that in mind, the call for the internal dialogue seems like a populist move, rather than a significant turn in the politics of Serbia towards Kosovo.

On the other hand, Kosovo succeeded in forming its institutions only three months after the general elections held on 11 June 2017. This standstill was caused by the inability of two major pre-election coalitions to secure parliamentary majority and the long negotiations with other

10 The op-ed is available in Serbian only at: http://www.blic.rs/vesti/politika/ekskluzivno-autorski-tekst-predsednika-aleksandra-vucica-za-blic-zasto-nam-je/v7xgl6q (accessed on 12 September 2017).

parliamentary parties that followed. The new government is now led by Ramush Haradinaj, who is accused in Serbia for war crimes and was once tried before the Hague Tribunal. The Serbian List ("Srpska lista"), as the main political subject representing Serbs in Kosovo and under direct influence of official Belgrade, is also participating in the newly elected government, holding three ministries. Moreover, Haradinaj's government could not be elected without the votes of the Serbian List and therefore the Kosovo opposition openly fears that the government will be under the influence of Belgrade and President Vučić. Nevertheless, the increased impact of the Serbian List on Kosovo institutions may affect the further dialogue between Belgrade and Priština as well as the implementation of the previously arranged agreements, in the way to put more pressure on the Kosovan side.

RECOMMENDATIONS:

- The Government must ensure full transparency of the Brussels dialogue and the process of implementation of the achieved agreements;
- The Government must ensure that the internal dialogue takes place in an open and inclusive manner, taking into account viewpoints of the multitude of stakeholders.

1.5. Anti-Discrimination Policy and Gender Equality

The implementation of activities in this area is again assessed as excellent, although there has been no improvement of the real situation. Less than a 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, and for a quarter of activities there are no data on the fulfilment. There are no publicly available data about the consultation process regarding amendments to the Law on the Prohibition of Discrimination. The new Law on Gender Equality has not yet been adopted, because the two ministries have not given their consent to the second draft of the Law. There is no publicly available 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 was adopted. The Fourth Periodic Report on the implementation of the CEDAW Convention was not submitted by 1 July 2017, as requested by the CEDAW Committee.

Although the existing reports 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", close monitoring shows that the **real situation does not correspond to this assessment.**

Reports on the implementation of the **Action Plan for the Implementation of the Strategy for Prevention and Protection against Discrimination**[11] clearly confirm that the relevant implementers are able to meet **less than a half** of the planned measures and activities. The percentage of missing data has increased (even though the data collection system has been improved). As the Action Plan (AP) has been designed according to the measures and activities, it is not possible, without secondary analyses of the data in the periodic reports, to follow the implementation of measures and activities regarding the nine target groups listed in the Strategy.

As the Council noted in activity 3.6.1.1, the Third Report on the implementation of the AP against discrimination (for the first and second quarters of 2016) was drafted and adopted.[12] The Fourth Periodic Report is being prepared (covering the third and fourth quarters of 2016). Trainings for the improvement of capacities of the contact persons in monitoring AP in 18 state organs/ministries

11 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.

12 Available only in Serbian at: http://www.ljudskaprava.gov.rs/sr/node/21991.

have been conducted. But, data undoubtedly confirm that in the reports that follow, the **number of missing data on the realisation of activities is increasing** (in the First Report, data for 14% of activities were missing, and in the Third – 24.5%). The percentages of fulfilled activities remain the same – less than a half of planned (in the First Report – 47.8% and 46.2% in the Third).

The analyses of the fulfilment of the special measures planned for the target group **women** (in the third reporting period) show that the percentage of missing data is **twice as much** the average missing data in the Action Plan. Therefore, 50% of data regarding the implementation of the planned activities for the target group women are missing, 40% of the activities have been realised and 10% partially realised.

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[13] are stated, but there are no data on the content, results and effects of the activities.[14] Serbia has not submitted its Fourth Periodic Report to the UN CEDAW Committee in due time (the deadline was 1 July 2017).[15] At its 65th session, the CEDAW Committee[16] examined the state report regarding two prioritised recommendations from the concluding observations on the Second and the Third Periodic Report. The Committee concluded that the delay with submitting the report and the fact that seven recommendations were implemented partially and one not, obliges the state of Serbia to provide information on further actions in its next periodic report regarding all eight recommendations of particular concern for the Committee.

As stated for activity 3.6.1.3, the Government adopted the **National Action Plan (NAP) for the implementation of UN Security Council Resolution 1325 – Women, Peace and Security** in the Republic of Serbia (2017–2020) in May 2017. Although CSOs were invited to submit suggestions on the draft NAP,[17] it should be emphasised again that this Working Group, composed of 31 members,[18] 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. Suggestions to include into the NAP special procedures for reporting and treating perpetrators of domestic violence and violence in partner relationships for members of the security sector, as well as the specific (internal) procedures for reporting and processing cases of sexual harassment in the security sector at all organisational levels, were **not accepted**. In our opinion, that is because these measures would confront the system with its own responsibility. In addition, the NAP puts insufficient emphasis on the concept of human security and the issue of disarmament, which is a prerequisite for the safety of women, but also the issue of control of trade in firearms and military equipment.

In the state report it is concluded that activity 3.6.1.4 is fully implemented because the analysis of the implementation of the Law on the Prohibition of Discrimination has been conducted by a domestic legal expert. Again, there are no data in the report on the source or reference to this analysis.

There is not a single piece of information on the website of the Commissioner for the Protection of Equality regarding activity 3.6.1.5 that is reported not to be implemented. There are differences in what the Council for the Implementation of the Action Plan for Chapter 23 stated in the English

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13 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.

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

15 http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=SRB&Lang=EN.

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

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

18 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.

version of the report for the second quarter from the version in Serbian. The English version reads that the Commissioner for the Protection of Equality has finished the consultative process relating to implementation of the Law, and that the result of this consultative process is the consensus of all participants regarding the final text of the working version of the Law on Amendments to the Law on the Prohibition of Discrimination. In the Serbian version it was added that during February and March 2017 two consultation meetings were held with all relevant actors including CSOs.[19] Relevant CSOs that are acting in the sphere of antidiscrimination have not been invited nor consulted regarding the amendments to this Law.[20] It is also stated that the Ministry for Social Policy prepared the Draft Law on the Amendments to the Law on the Prohibition of Discrimination, but it is not publicly available.

The new **Law on Gender Equality** (3.6.1.8) has **not been adopted**, not just because of "the process of presidential elections and the forming of the new Government" (June 2017). The latest version of the Draft Law, which, as the state noted, was "drafted in accordance with all required and obtained opinions of relevant authorities", did not receive the consent of the two Ministers during August 2017 (the Minister of Defence, who was during drafting of the Law in the previous Government the Minister for Social Policy, and the Minister for Social Policy, who used to be the Minister of Defence). The AWC have opposed the proposition of the new Minister for Social Policy to form the new working group and start drafting the Law from the beginning, by sending the Open Letter to the Prime Minister.[21]

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, but there is no report on the implementation of measures and activities in 2016 on the website of the Coordination Body for Gender Equality.[22]

As specified in the state report, activity 3.6.1.11 concerning the creation of the new National Strategy and Action Plan for Combating Violence against Women in Family and Partner Relationships has not been implemented. After the Government refused to adopt the proposed conclusion on the creation of the new Strategy on 4 May 2017, there was no further information on when it will be created and adopted, having in mind that the previous Strategy expired at the end of 2015. Women's CSOs do not have the information written in the state report that "currently, an analysis of the previous strategy and drafting of recommendations for the adoption of a new one has been conducted", nor information on who is conducting these activities.

After the complaint of the AWC, the Commissioner for the Protection of Equality, for the first time in Serbia, established multiple discrimination against a woman with experience of domestic violence, on the grounds of her personal characteristics – sex and nationality[23]. In the Commissioner's opinion it was stated that the experts working at the Centre for Social Work in Belgrade committed multiple discrimination against a woman by refusing to record her report on domestic violence, despite the fact that they knew that "her former partner was convicted of domestic violence". It was found that discrimination was made on the grounds of her sex, because the experts working in the Centre for Social Work in Belgrade were guided by prejudices about the role of women, which is the violation of the woman's rights. It was found that the treatment of professionals in social service in this case indicated their stereotypical attitudes about the roles and behaviour of Roma women, "the so-called customs and the lifestyle of the Roma population in which violence is viewed as something that is implicit". This case pointed to another 'invisible problem' in the centres for social work which implement the programme of work with the perpetrators of violence, because the Commissioner determined that the woman had been discriminated against on the basis of the services provided – while the perpetrator was provided with the service of the perpetrators' programme, the woman victim was not offered any service.

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19 Pg. 426 in the Report for the second quarter in Serbian https://www.mpravde.gov.rs/files/Izve%C5%A1taj%20br.%202-2017%20o%20sprovo%C4%91enju%20Akcionog%20plana%20za%20Poglavlje%2023.pdf.

20 The AWC asked CSOs, members of the Coalition against discrimination at the beginning of September 2017.

21 Available only in Serbian at: https://www.womenngo.org.rs/vesti/1013-otvoreno-pismo-premijerki-ani-brnabic.

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

23 https://www.womenngo.org.rs/en/news/986-press-release-the-commissioner-for-the-protection-of-equality-confirmed-multiple-discrimination-after-the-complaint-of-awc.

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;
- Adopt the new Law on Gender Equality;
- The Action Plan for the Implementation of the Strategy for Prevention and Protection against Discrimination should be better monitored in order to enhance the percentage of conducted activities;
- Prepare the First Report on the Implementation of the National Strategy for Gender Equality for the period 2016–2020 and the Action Plan for its implementation for the period 2016–2018;
- 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 CSOs, 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.

2. CHAPTER 23 – JUDICIARY AND FUNDAMENTAL RIGHTS

2.1. Judiciary

2.1.1. Impartiality and Accountability

Although it seemed as an improvement of work of the Ministry of Justice when it 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,[24] this practice did not continue. Now, there are no minutes from the meetings in 2017, and therefore it is impossible for CSOs, which are not invited even to observe the meetings, to keep track of the fulfilled activities.

Finally, there has been an improvement regarding reporting on activities 1.1.7.1 to 1.1.7.4. The Office for Cooperation with Civil Society, together with the Ministry of Justice, announced a public call for CSOs to contribute to the consultative process regarding potential changes in the segment of the Constitution of the Republic of Serbia related to the judiciary. All CSOs' proposals and suggestions have been made available on the MoJ website,[25] but minutes from the two organised round tables have not. CSOs, predominately the ones that gather representatives of the judiciary and YUKOM, publicly complained[26] on the quality and substance of the held consultations, as well on the fact that the state proposals for the constitutional changes have still not been presented.

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 remind the MoJ and the Office for Cooperation with Civil Society that meetings of the Commission for the Implementation of National Strategy for the Reform of Judiciary should be open to all interested CSOs and minutes and reports regularly posted on the MoJ website.

2.1.2. Professionalism/Competence/Efficiency

Strengthen the enforcement of judgments, in particular in civil cases

The deadline for the amendments to the Civil Procedure Code expired in the fourth quarter of 2016 and no explanation or expected date of the full completion has not been given by the Council. The Criminal Procedure Code was delayed for almost two years. The Supreme Court of Cassation issued the Conclusion regarding alimony by which, after one year of the implementation of the Law on Enforcement and Security (LoES), the practice regarding enforcement of the right to alimony is changed. The Council for the implementation of the Action Plan for the negotiations for Chapter 23 repeated the information about activity 1.3.6.1 of amending the Civil Procedure Code (CPC). Additionally, the Serbian version of the report states that a judge of the Supreme Court of Cassation is a member of this Working Group, which held its first meeting on 1 June 2017. There is no reference to the JEP

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

25 Available only in Serbian at: https://www.mpravde.gov.rs/tekst/16110/konsultacije-u-vezi-sa-izmenom-ustava-republike-srbije-u-delu-koji-se-odnosi-na-pravosudje.php.

26 http://en.yucom.org.rs/press-release-on-public-debate-on-amendments-to-constitutional-provisions-on-the-judiciary/.

project under which the external expert was contracted. Having in mind that the deadline for this activity expired in the fourth quarter of 2016, the Council, after almost a year, did not provide an additional explanation or the expected date of the full completion of this activity.

Activity 1.3.6.2 concerning the amendments to the Criminal Procedure Code (CPC), expected to be finished in 2017, now has a new deadline – the third quarter of 2018. The Council for the implementation of the Action Plan for the negotiations for Chapter 23 gave the explanation of the delay and changes of the deadline while reporting on activity 3.7.1.10.

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 repeated that activity 1.3.6.3 was being implemented successfully because the new Law on Enforcement and Security was adopted on 18 December 2015 and was to enter into force, in its major part, on 1 July 2016. Unlike the previous report in which the Council presented the decrease in the number of unresolved enforcement cases pending before the basic courts by 33% (for the period from 31 August 2016 to 1 December 2016), in the First and Second Reports for 2017 these data are missing from the English version of the report. In the report in Serbian it was stated that in the period 1 June – 31 December 2016, 828,462 or 46% of all old execution cases were resolved with dismissal on the basis of ''questionable'' Article 547 of the Law. For the period 30 April – 30 June 2017 the Council stated that 1,532,434 execution cases before basic courts and 124,938 execution cases before commercial courts were dismissed on the same grounds. The Council reminded that at the end of 2015, there were 1,793,187 unresolved execution cases. These data show that almost all of the unresolved cases were resolved by the breach of the rights of citizens, because the majority of citizens had no knowledge that they had to inform the court with regard to this Article.

The Council stated that the LoES adopted many recommendations given in the IPA RoLE Report, which are based on international standards and best practice, again without providing reference to these reports. It is also stated that the MoJ and the Supreme Court of Cassation (SCC) continuously monitor the LoES implementation and report to the Commission and to the Council for the implementation of the Action Plan for Chapter 23 (predominately in commercial matters). Unfortunately, women and their children that seek free legal aid from the AWC do not see these "standards and best practices".

Data show that in the first six months of 2017, the AWC provided free legal aid of writing claims for the enforcement of court decisions for seven clients[27] out of whom only three clients had financial means to initiate the process of enforcement of the decision on alimony.[28] Eleven clients opted for filing criminal charges, as these proceedings are free of charge.[29]

The Supreme Court of Cassation, at the meeting of its civil department, reached a legal conclusion in which it stated that the basic court has sole jurisdiction for the enforcement in all family relations, as well as alimony. By this conclusion, after one year of the implementation of the Law on Enforcement and Security (LoES), the Supreme Court of Cassation changed the practice regarding enforcement of the right to alimony having in mind that prior to this the enforcement officers had sole jurisdiction.

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 repeated 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 activities cannot be confirmed for the first and second quarters of 2017 since there are no minutes from the Commission meetings publically available.

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27 Two regarding the enforcement of child contact, one regarding the enforcement of a protection measure and three regarding the enforcement of alimony.

28 Two in cases of unpaid child support and one in case of unpaid spousal alimony.

29 Total 23 of such criminal charges were pressed in 2013, nine in 2014, 16 in 2015, and 16 in 2016.

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 recommend the MoJ and the SCC to revise the articles of the Law on Enforcement and Security that have a 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 the deadline for the amendments to the Criminal Procedure Code was moved for almost two years and what is happening with the amendments to the Civil Procedure Code.

2.2. Fight against Corruption

Overall there has been no improvement in the legislative framework for the fight against corruption since April 2017. It means that already a significant delay in implementation of priority normative interventions, identified in strategic acts, has even increased. This poses significant risks for the implementation of goals set in the Action plan for Chapter 23, part 2, and makes it almost impossible to achieve the goals of the National Anti-Corruption Strategy for the 2013–2018 period. Amendments to one of the laws (on judges, adopted on 15 May 2017), might even have negative effects on the independence of the judiciary.[30] Discussions on changes of the Constitution, aimed to decrease political influence on the judicial system, are initiated by the Ministry of Justice, but there are no legal rules for the public debate. Furthermore, the Government did not put forward any proposal of its own for the discussion. The Ministry of Justice in particular stressed that no proposal to regulate other issues in the Constitution will be considered at the moment.

The previous Government of Serbia broke its mandate prematurely, after less than ten months of work (out of which almost a half spent in a campaign or post-election waiting for dismissal). Plans of the August 2016 Government concerning the fight against corruption were only partly fulfilled, and the adoption of the new Law on Anti-Corruption Agency and the Law on Investigation of Property Origin, mentioned in the 2016 exposé is still on hold.

The new Prime Minister, Ana Brnabić, in her June 2017 exposé, did not prioritise anti-corruption. It is now only one of six issues discussed within one of seven exposé chapters. The diminishing importance given to the resolution of this serious problem of Serbian society in governmental plans is an undeniable trend since 2014. The progress achieved in this field does not support such policies. The new exposé actually deals more with the previous results than future activities of the government, and focuses on the implementation of the set of repressive legislation adopted in late 2016 (cooperation of institutions, financial investigations and the like). Ms Brnabić also announced the specialisation of misdemeanour courts to deal with customs and budget offences, and offences identified by independent bodies. She also announced the strengthening of public prosecution powers in investigations. As in 2016, the Prime Minister announced the adoption of the Law on Investigation of Property Origin (whose content is a little bit more elaborated than before) and the adoption of the Law on ACA. She mentioned one of the explicit obligations from AP for Chapter 23 – measures to improve work of the Government's Anti-Corruption Council. In terms of the institutional framework, she announced the strengthening of capacities of law enforcement bodies dealing with corruption, but also fostering of integrity and improvement of the internal control within the Ministry of Interior (that is already more than a year late).[31] There is no sufficient information about possible progress in the implementation of these measures.

30 http://www.sudije.rs/files/2017_05_15_Saoptenje_Drrutva_sudija_Srbije.pdf.

31 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9257-ekspoze-o-korupciji.

The failure to adopt the new Law on Anti-Corruption Agency, to amend the Law on Financing of Political Activities and the Law on Free Access to Information, to adopt the Law on Lobbying and even to produce drafts of these legislative proposals, will slow down even those anti-corruption reforms that were included in relevant plans.

The negative trends from the previous reporting period continued when it comes to the implementation of laws. This is particularly visible in the treatment of independent state bodies by the Government and Parliament, whose reports were ignored with rare exceptions.[32] There is no change in Government policy in regard to the inter-state agreements (that may annul the application of national transparency and competition legislation).[33] The lack of political will is still a major factor which prevents the implementation of the existing legislation or its reform, as proven most clearly in the absence of professionalisation of public enterprises and public administration, contrary to the provisions of relevant legislation.

Statistics on the repression of corruption are still unreliable, incomparable and non-transparent.[34] The Minister of Interior continued to promote mass-arrests of non-connected suspects within a single action. Public prosecutor's offices did not make any progress in pro-activity of their actions and denied information about their activities in some "politically sensitive" cases.[35] The Special Unit of Belgrade Higher Court issued in July 2017 a first-instance sentence for a high-profile abuse of public office case. The verdict is against the former minister and current acting director of a public enterprise. There are some controversies, at least about the scope of the indictment.[36]

There was no high-profile decision about the violation of any of preventive anti-corruption laws in this period. The sanctioning system for the violation of the Public Procurement Law does not function effectively, the Anti-Corruption Agency did not publicly promote any case where a public official or political party was either sentenced by a misdemeanour court or where the Agency initiated an action against them, and there was no punishment. None of the most blatant violations of duty to provide public access to official documents was punished either.

The Parliament elected the new Ombudsman with delay – in July 2017, as well as four members of the Anti-Corruption Agency Board. The Board is still incomplete (six out of nine members), due to the lack of will of the Parliament to discuss the joint proposal of the Commissioner for Information and Ombudsman, and rejection of journalist associations' proposal.[37] The Bar Chamber did not propose its candidate. The Board finalised the February 2017 recruitment process, by choosing the new director in September 2017. There was no other information on the selection process and the programme of the new director available,[38] but there is no indication of any political or other improper background of new directors, as it was the case during the previous recruitment efforts. The process of election of the Supreme Audit Institution's president did not start in a timely manner and the mandate of the current one expired in September 2017.[39] The Government, for the first time since 2001, appointed two new members of its Anti-Corruption Council, without looking for existing Council members' proposals.[40]

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32 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9339-izvestaj-komisije-za-zastitu-prava-nepotpuni-zakljucci-skupstinskog-odbora.

33 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9196-putni-i-informativni-prioriteti.

34 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9385-nepotpuna-i-varljiva-statistika-antikorupcije.

35 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9146-pokazna-vezba-pranja-novca.

36 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9263-prvostepene-osude-za-slucaj-nuba-invest.

37 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9260-kandidati-za-odbor-antikorupcijske-agencije-za-apsurdnu-odluku-jos-apsurdnije-obrazlozenje.

38 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9378-kakav-je-program-nove-direktorke-agencije.

39 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9386-uticaj-partija-na-izbor-saveta-dri.

40 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9330-vlada-srbije-imenovala-je-vladana-joncica-i-edvarda-jerina-za-nove-clanove-saveta-za-borbu-protiv-korupcije.

2.2.1. Strategic Plans

The implementation of the Anti-Corruption Strategy/Action Plan for 2013–2018 and Action Plan for Chapter 23 in the section 'fight against corruption', is not yet ensured. According to the monitoring performed by a governmental body, only 52% of the planned activities from the AP for Chapter 23 have been fully implemented in the first half of 2017. Unlike before, the status of the implementation is now known for all activities. Implementing bodies claim partial implementation for 26% of activities, while the rest (22% activities) are not implemented at all. Some claims about full or partial implementation not supported by facts, as noticed in the previous Alarm reports, are now corrected. While the Government's Council for the Implementation of the Action Plan reporting is a useful source of information, as a collection of various bodies' inputs, it would be more valuable with a clearly stated governmental conclusion about the implementation level and achieved goals. In particular, it would be useful to have such an assessment in advance of the announced revision of the Action Plan, expected for 2018. Our assessment is that even when activities were fully implemented, they failed to reduce corruption or make its suppression more effective. There is no doubt that the AP for Chapter 23 needs to be seriously improved in order to bring about a substantial change to the Serbian society when it comes to the fight against corruption.

However bad the situation with the implementation of the AP for Chapter 23 may be, the one involving the implementation of the 2013 National Anti-Corruption (AC) Strategy is even worse. The implementation of the rest of the Anti-Corruption Strategy (i.e. what did not become part of the AP for Chapter 23) was not at all in focus.[41] As notified in the previous prEUgovor Alarm, according to the latest Anti-Corruption Agency's report, as many as 51% of the activities cannot be evaluated due to the lack of information, while further 31% are clearly unfulfilled. The lack of political will to implement the Strategy was most 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 (NACS). The Draft new Law on ACA envisage that the Agency should extend its oversight to include the implementation of the AP for Chapter 23, subchapter corruption. The adoption of the amendments is, however, almost three years overdue (in comparison to the NACS original 2013 AP). According to the AP for Chapter 23, they should have been adopted in the third quarter of 2016. However, only the Ministry of Justice draft was published by the end of that period. According to unofficial information, the appointment of the new ACA management was awaited to finalise the process of the adoption of the law.

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 ten 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. The Government never reported about the achievement of this goal in a comprehensive way. Police statements or periodical reports of the Ministry of Interior to the Parliamentary Committee, covering criminal charges submitted by the police, do not support such expectations.[42] In its legislative work and anti-corruption public outreach activities, the government representatives were devoted mostly to the legislative and training measures aimed to improve investigations of financial crimes and reorganisation of the public prosecutor's offices. These measures could have beneficial anti-corruption effects, especially in cases that would have otherwise ended unsuccessfully due to the lack of expertise on the part of prosecutors. A set of amendments to the laws governing the suppression of organised crime and corruption, adopted in November 2016, will come into effect on 1 March 2018.[43] This set of

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

42 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9385-nepotpuna-i-varljiva-statistika-antikorupcije.

43 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.

laws, which relies on the Strategy for Financial Crime Investigations (2015/2016) 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 these special rules is wide, but some corruption-related offences are still not covered. Trainings are organised for employees of relevant agencies and many others are planned, mostly with international technical support.

The Prime Minister's announcement of the Law on Property Origin in August 2016 was not followed by any visible legislative action or analyses of the implementation of similar legal mechanisms that have been in existence for 15 years, such as the cross-verification of property and income. The new Prime Minister repeated the announcement and confirmed that the Law would be most probably a part of the taxation legislation. The promised support to the Anti-Corruption Agency and the enactment of the new Law have not yet resulted in the adoption of these changes or in dealing with other problems identified by ACA's reports. To the contrary, the ACA was significantly weakened in several ways. After the Agency's Director and a Board member were promoted to the Constitutional Court, the Parliament failed to discuss a candidate of the Ombudsman/ Commissioner for Information of Public Importance and Personal Data Protection and failed to elect the candidate of journalist associations. Furthermore, the Parliament did not discuss any Board member candidate between April and August 2017, due to its "self-suspension" during the presidential elections and post-elections waiting for the new Prime Minister.

Charges against public officials for unreported property are most often dismissed by the prosecutors, as shown by the CINS research.[44] Every public official is obliged to report regularly about his property to the Anti-Corruption Agency. If he hides or falsely reports it, he can be punished by a prison term of three months to five years. Despite 62 criminal charges filed against ACA officials since 2010 (38 finalised and 24 ongoing), only one official was sentenced to just three months in prison, which was replaced by house arrest. Of 62 charges filed by the ACA, 15 were dismissed by prosecutors, 15 by courts, 12 were dismissed after officials gave financial compensation, officials were acquitted in three cases, and one proceeding was dismissed. There were seven sentences by which courts found officials guilty. One official sentenced to a prison term has failed to report that he had 220,000 EUR in a safe deposit box in a bank, and was breaching this Law repeatedly before. Most of the charges were filed against managers of public companies, followed by MPs, as well as against ministers, mayors and other officials.

Most verdicts were probationary, threatening imprisonment if officials committed felony over a set period of time. Six verdicts involved three to eight months in prison, threatened during the probationary period of one to two years. Courts mostly justified probationary sentences by circumstances such as: an official is married, has small children and similar.

2.2.3. Work of the Parliament

The Parliament has still not 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, State Audit Institution, RATEL, and Agency for Energy) but failed to do the same for most of the independent oversight bodies. Reports for 2016 were also discussed selectively. Committees proposed conclusions for the RATEL (September 2017), BIA (August 2017), Commission for Public Procurement and Fiscal Council (July 2017). There are some useful recommendations in the Conclusion proposed for the SAI report,[45] but without obligation for the Government to report on the implementation.

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44 https://www.cins.rs/srpski/research_stories/article/vaspitne-kazne-za-neodgovorne-funkcionere.

45 http://www.parlament.gov.rs/upload/archive/files/cir/pdf/izvestaji/2017/807-17%20F.pdf.

The Parliament adopted several laws in 2017, but almost none of them have relevance for the fight against corruption. On the contrary, there were some controversial amendments to the Law on Judges (strengthening of court presidents, which are often suspected to be promoters of politicians' influence in the judiciary). Overall, the Parliament continued to accept governmental requests for "urgent procedure" laws, including those that were never publicly debated, despite the fact that such debates were mandatory by the Law on Public Administration.[46] With the new Law on Ministries, the Parliament continued the practice of government-tailoring, i.e. not based on clear pre-set criteria, but on the need to fit with coalition partners' and/or ministers' personal interests. Some significant changes in the structure of the executive were not elaborated at all.[47]

As regards **legislative work**, major problems in a longer period of time are the failures to discuss potential corruption risks and anti-corruption effects of legislation due to the violation of public debate rules and the absence of the obligation to thoroughly analyse such risks, including the insufficient consistency of legislative and planning system. The Anti-Corruption Agency continued to elaborate these risks on its own initiative. Since April 2017, there were 13 such opinions, all of them covering very important governmental proposals or ministries' drafts – on bankruptcy, higher education, general education, professions of particular importance, educational inspections, local civil servants, civil servants and the national academy for civil servants education.

The Parliament performed its electoral function selectively and with delay, as explained on the example of the Anti-Corruption Agency Board case. In part of its electoral function, the Parliament's work is blocked due to the Constitutional Court decision, related to the consideration of legality of the State Prosecutorial Council by-law that the nomination of new prosecutors is based on.[48]

2.2.4. Unfulfilled Action Plan Measures

A **large number of measures**, 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 stopped 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. It is uncertain whether there will be a new round of consultations after the election of a new ACA director, in September 2017. Although significantly better than the current law in some aspects, the current draft still leaves many of the issues open, such as the status of top public officials' advisors, the scope of assets declaration 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 the TAIEX expert advice issued in September 2016[49] or any other effort to improve legislation. There has been no effort to address problems listed in the ODIHR 2016 and 2017 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 the GRECO's Fourth Evaluation Round, which also deals with this issue, expired on 31 December 2016.[50] The review of Serbia's compliance with GRECO's fourth-round recommendations will take place at the 16-20 October plenary.[51] There has been no progress related to the **legislative procedure** and the work of the Government and the National Assembly. Draft amendments to the Law on Public Administration that relate to public debates are being considered in 2017, but not yet proposed to the Parliament. Also, there has been no progress with the long-expected amendments to the **Law on Free Access to Information**.

46 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9369-zakoni-bez-javne-rasprave.

47 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9250-nova-ministarstva-i-nestanak-direkcije-za-e-upravu.

48 https://www.alumni-pars.rs/ustavni-sud-dostavio-svoju-odluku/.

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

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

51 https://rm.coe.int/168070b138

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 obligations, meets extremely rarely. It is uncertain whether it had any session after the election of the new Prime Minister in June 2017, who should also preside over this body. No information is available on any effects of this coordination either. In July 2016 the Constitutional Court announced that it would consider an initiative for assessing whether the Government's establishment of a coordination body is even constitutional, but there is no update about this case. In this regard there are several problematic issues such as the Government's attempt to coordinate parliament, judiciary and independent bodies, inconsistencies with the Anti-Corruption Strategy, and the heading of the body by the Prime Minister.[52]

"Professionalisation of public enterprise management" – one of the Government's main goals since 2012 has not been implemented even though the obligation, under law, has been in existence for more than four years now. It is no more part of the governmental plan. Legal provisions for the appointment of directors and members of supervisory committees in public enterprises contain numerous deficiencies. However, though deficient as they are, these mechanisms are not being implemented. The process of appointment of directors on central government level has been completed only in a small number of public enterprises on the central government level. The Government, instead, kept the majority of the previous directors as "acting directors", and violated in some cases even the "acting director" status time limits. Instead of implementing the existing accountability mechanisms, the quality of these directors is discussed by politicians and the media in an arbitrary manner or by using irrelevant arguments. In March 2017, after the new legal deadline for the finalisation of recruitment for all public enterprises expired, the Government published only announcements. According to the September 2017 research of Transparency Serbia[53] in 30 sampled enterprises irregularities were found **in relation to directors and the selection of directors in 28 cases,** including the expired deadline for the competition for the selection of the director, appointing of the acting director for the period longer than maximum 12 months and the lack of qualifications. Even worse is the situation when it comes to the compliance in nominating supervisory board members of public enterprises. When compared to the previous research of this kind, there is some progress only when it comes to the transparency of public enterprises work.

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 the political influence in the media is achieved through discretionary financing or other types of media discrimination. These problems have been identified in the 2011-2016 Media Strategy and in the Anti-Corruption Council Report; they were listed among the political priorities for 2012 but no solution has been implemented. No such change is announced yet, neither in the context of the new media strategy drafting, which started in July 2017, nor in the context of the new Public Procurement Law (announced for the last quarter of 2017). The implementation of **media regulations** has introduced some beneficial effects, but overall it has failed to bring the undisputable financing of programmes of public interest in the media. Measures concerning the transparency of media ownership have not resulted in any fundamental progress and there is still no reliable information on the ownership of some of the leading print media.

The 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 courts, there have been 295 new cases involving people seeking protection based on this Law, while in 2015 there were only 71.[54] The courts do not keep statistics on the outcome of such cases. According to court information, the number of cases decreased in the first half of 2017. The bigger problem however is the lack of comprehensive data on the number of reported irregularities. It seems that there is a problem of distinguishing whistle-blowing from

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

53 http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_Political_influence_on_public_enterprises_and_media_ENG.pdf.

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

other types of reporting irregularities.[55] The Law contains numerous loopholes, many of which have been identified during the public debate.[56]

Marija Beretka, a clerk, needed to initiate three different court proceedings in order to obtain protection as a whistle-blower, after she reported to the police that her superiors at the City Administration of Novi Sad concealed information about improperly parked vehicles, says the CINS research.[57] In one ruling, the Novi Sad High Court even said the police are not an authorised recipient of whistle-blower reports. It is yet to be established what are the actual effects and benefits of the Law on Protection of Whistle-Blowers in the struggle against corruption.

The investigation into the alleged irregularities about which Beretka warned authorities is still in progress. In the meantime she has been forced to seek protection in three separate trials. Courts have brought different decisions on her case, most recently in July 2016, when the Novi Sad Appellate Court overturned a High Court verdict ordering her employer to reinstate her at her previous position.

Beretka began warning managers about wrongdoing since early 2015, after which she was twice transferred to new workplaces. Still, Novi Sad courts said it was not possible to determine the moment when she obtained the legal right to whistle-blower protection, and therefore they could not make a firm connection between her reports and the retaliation she faced. Further, the courts said she could not prove she reported the wrongdoing internally. The High Court even noted that the police are not an authorised agency to whom whistle-blowers can report irregularities.

Although courts are disputing Beretka's internal whistle-blowing, the Law does not specify that internal whistle-blowing must precede external whistle-blowing, in which irregularities are reported to authorised agencies. In another proceeding before the High Court, judge Jadranka Mali brought a different decision and ruled in Beretka's favour, explaining that by going to the police, Beretka began the process of external whistle-blowing. Therefore, the City Administration executed an adverse action towards her. The judgment of April 2016 binds them to return her to work and pay compensation of 100,000 Serbian dinars (about 810 EUR). The Appellate Court revoked this verdict on 14 July 2016, stating that her addressing to the police and transfer to the new position had nothing to do with each other. Thus, the process is returned to the High Court. Meanwhile, Beretka's friend ***Zoran Pandurov*** *asked for court protection, as a related party, stating he experienced retaliation because he helped her.*

The Law on Protection of Whistle-Blowers in Serbia was adopted on 25 November 2014, and its implementation began in June 2015. A working group consisted of people from the judiciary, CSOs, governmental institutions and whistle-blowers participated in drafting of the Law. In the first year of implementation of the Law, courts in Serbia engaged in 254 proceedings for the protection of whistle-blowers, of which 163 cases were resolved during this period. The judges dealing with these cases have gone through special training, but the practice of decision-making has been inconsistent. Among other things, some courts have refused to provide a temporary measure for protection, citing for example that the connection between the dismissal and reporting of irregularities was not proven. Appellate courts often change decisions of the first instance, when appeal is submitted.

The problems with **public debates** remain unchanged. According to the research of Transparency Serbia, in the April–August 2017 period there were 11 publicly announced and finalised legislative public debates (in the relevant section of the Government's web portal). However, even in these acts, mandatory elements defined by the Government's Rules of Procedure were missing, i.e. the names of the members of the working group, and a report from the public debate (in all but three cases). It is possible that public debates were organised, but they were announced only on the Ministry's web page, not on the central Government portal. Some important laws, including amendments to the Law on Security Intelligence Agency, lacked any public debate.

There is still no comprehensive information on what has been determined with regard 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[58] issued by the Council after 2012, although this has happened in

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

56 http://www.transparentnost.org.rs/images/stories/inicijativeianalize/Zakon%20o%20zastiti%20uzbunjivaca%20-%20koje%20znacenje%20normi%20igde%20se%20mogu%20poboljsati.pdf.

57 https://www.cins.rs/english/news/article/safe-and-sound-jury-still-out-on-serbias-whistleblower-protection-law.

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

rare instances.[59] The Council did not prepare reports on experiences and obstacles related to the implementation of the NACS and its Action Plan after May 2015. The Government did not consider in 2014, 2015 and 2016 proposals for new nominations, and the Council operated with five members only, instead of the originally envisaged fifteen. In July 2017 the Government appointed two new members, without informing the Council about that, which is contrary to the previous tradition to nominate new members only on the basis of current members' proposal.[60] Furthermore, there are some controversies about new members' eligibility for that post.[61]

Expectations that the status of **civil servants on post** 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 official data of the Government, slightly more than one quarter of top public officials are appointed as envisaged by the Law, while the rest are on acting positions. The first legal deadline to finalise recruitments expired a decade ago.

There have been no changes to the **Law on Public Procurement**; some are however expected in 2017, based on strategic acts. The process of drafting has started, but there is no information available yet about the composition of the working group or deadlines. The decision to open negotiations in Chapter 5 (Public Procurement) could be a significant step forward[62] as it clearly notes an unacceptable level of exemptions from the general public procurement and public-private partnership rules, based on inter-state agreements. 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 the **suppression of corruption**, as in previous years, the Government tried to demonstrate its willingness to fight corruption mostly through mass arrests. There is a 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 promoted by the Minister of Interior in person. In such arrests, corruption cases are mixed with various other types of crimes, mostly economic ones.[63] However, the last action of mass arrests, from July 2017,[64] brought only one case of a potential corruption charge.[65] This raises the question of whether there is a change in governmental priorities, since there is no ground to conclude that the occurrence of corruption was drastically reduced.

The investigation against the most prominent tycoon of Slobodan Milošević's era, Bogoljub Karić, initiated in February 2006, marked by a slow pace and the lack of efficiency of judicial institutions in obtaining evidence, was suspended in the end of 2016, after almost eleven years, without an indictment, just months before the statute of limitations was to end the case anyway, says the CINS research.[66] Karić left the country for Russia at the beginning of the process and returned at the very end of 2016, praising the present government. He was declared to be on the wanted list on 4 February 2006. The case was included in the so-called "24 privatisations", the resolution of which was requested from Serbia by the European Commission and European Parliament.

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

60 http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/saopstenja/cid1011-3243/saopstenje-saveta-o-imenovanju-novih-clanova.

61 http://www.blic.rs/vesti/politika/sporni-novi-clanovi-saveta-za-borbu-protiv-korupcije-jednog-optuzili-za-plagijat/3hxmfgk.

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

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

64 http://www.rts.rs/page/stories/ci/story/134/hronika/2805435/stefanovic-uhapseno-360-osoba-zbog-vise-krivicnih-dela.html.

65 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9336-djuture.

66 https://www.cins.rs/english/news/article/investigation-against-bogoljub-kari-11-years-of-waiting-for-witnesses-documents-and-translations.

*In its request to carry out the investigation, the Prosecutor's Office stated that Karić and other suspects damaged the then public company **PTT Serbia** (Serbian postal services) by fictitiously increasing the value of assets his company BK Trade was supposed to bring in to **Mobtel. BK Trade** and **PTT Serbia** had established Mobtel in 1994 in order to introduce mobile telephony into Serbia. Except for the fictitious enlargement of value of the equipment brought in during the establishment of Mobtel, members of the Karić family were also suspected of transferring assets originating from Mobtel to private accounts though a private company; according to prosecutors, Karić thus earned illegal profit in the amount of then 757.5 million dinars. Following Karić's departure from Serbia in the beginning of 2006, the authorities took over the majority ownership in Mobtel, changed its name, and later sold it to Norwegian **Telenor**.*

*Among other facts concerning this case, the CINS has discovered that not a single document was translated into a foreign language for seven years though at least two more countries were involved, while almost every attempt to obtain any kind of documents lasted for months or years. Furthermore, between 2007 and 2015 (for over eight years) there was not a single hearing. In its press release from December last year, the Prosecutor's Office stated that the new expert evaluation from 2015, which indicated that **BK Trade** had not obtained any illegal asset-related benefits, was the main reason for suspending the investigation. The document which was subject to the expert evaluation had already been analysed in 2011, with the conclusion opposite to the new one. The Karić's case is not the only of the kind – the CINS reported on several occasions on investigations and court proceedings of cases of corruption and organised crime which lasted for a number of years. In the end of 2016, there were 533 criminal cases in Serbian courts which lasted for more than ten years.*

While occasional announcements have been made by individual ministers about **reporting corruption**, or making some special corruption investigative teams,[67] 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 have done even less, showing insufficient interest even in publicly available information that indicates corruption, or in information that other institutions shared with them. Typical examples are those of potential irregularities related to the assets declarations of Belgrade Mayor Siniša Mali[68] and current Defence Minister Aleksandar Vulin.[69] While it is true that prosecutors needed and still need more resources and training to fight corruption and other crime more successfully (particularly after the full implementation of "prosecutors' investigation" started) - therefore financial investigations are also envisaged, the main problem remains the lack of will to do so, as clearly demonstrated by the failure to investigate the landmark "politically sensitive" Savamala case. Public prosecutor's offices also denied information about their activities in some "politically sensitive" cases,[70] even after mandatory decisions of the Commissioner for Information of Public Importance and Personal Data Protection. Furthermore, in such cases, Government representatives and pro-Government media go to great lengths to discourage NGO activists, media, and public officials who are ready to point out serious flaws in the rule of law.

During the reporting period **there were no final convictions** in high-level corruption cases or publicly visible final rulings for violations of the Law on the Anti-Corruption Agency or the Law on the Financing of Political Activities. The court issued in July 2017 the first-instance sentence for an abuse of public office case, against the former minister, his deputy and current acting director of a public enterprise, but there are some controversies, at least about the scope of the indictment.[71] Some previously initiated criminal charges are still in progress. On the other hand, in some instances, cases of economic crime where no public officials or civil servants are indicted, are presented to the public (mostly in a political context) as the suppression of corruption.

Statistics on the repression of corruption are still unreliable, incomparable and non-transparent.[72]

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67 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9379-nova-komisija.

68 http://www.acas.rs/%d0%be%d0%b1%d0%b0%d0%b2%d0%b5%d1%88%d1%82%d0%b5%d1%9a%d0%b5-2/

69 https://www.krik.rs/tetka-iz-kanade-platila-vulinu-stan/

70 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9146-pokazna-vezba-pranja-novca.

71 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9263-prvostepene-osude-za-slucaj-nuba-invest.

72 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9385-nepotpuna-i-varljiva-statistika-antikorupcije.

RECOMMENDATIONS:

- The National Assembly should ask the Government and Anti-Corruption Agency to **open the process of drafting the new Anti-Corruption Strategy** (the current one expires in 2018) based on the Anti-Corruption Agency's reports on implementation. Furthermore, serious revision of the AP for Chapter 23 should take place as well, in parallel, given that its implementation brought about little or no changes. The National Assembly should also hold accountable the officials who failed to produce results or provide information about the fulfilment of the 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 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 partnerships;**
- **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 the 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 prevent 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 and their deputies should be appointed as soon as legal dilemmas on the recruiting procedure are clarified The State Prosecutorial Council should ensure that prosecutors 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 officials, 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 the 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 of government bodies work;
- The Government should **consider recommendations of independent authorities** (in particular the Anti-Corruption Agency, Commissioner for Access to Information of Public Importance, Ombudsman)and report to the Parliament on the fulfilment of recommendations;
- The 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 improving rules on misuse of public resources. The Parliament should elect the Oversight Board, while the public prosecution, ACA and REM should be active in prevention and investigation of misconduct;
- The Government should speed up its work on the remaining **necessary legislative changes** and enable the process to be participatory. This includes areas such as **free access to information and lobbying. The Government should significantly improve the legal framework for public debates,** but also improve provisions in laws regulating public procurement, state aid, budget system, public-private partnerships, whistle-blower protection, the media, political and state advertisement, the work of public enterprises, public administration, etc;

- The Parliament should swiftly **elect missing public officials** of independent bodies (three board members of the ACA) and elect president of the State Audit Institution based on as wide as possible consensus about impartial and qualified candidates;
- **The Government should ensure full implementation of existing rules**, in particular through the appointment of top officials of public enterprises, public administration and public services, organising of meaningful **public debates** in a legislative process, and **execution** of the final decisions of the Commissioner for Information of Public Importance and Personal Data Protection;
- The Government should also **increase the transparency** of its operations by regularly publishing explanatory notes to by-laws, 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 with a view to curbing corruptive practices within the police. Since 2008 there has been a steady increase in the number of criminal charges brought against police officers, filed by the Internal Control Sector (ICS) within the Ministry of Interior, which is a positive development. Moreover, several group arrests of police officers on the suspicion of corruptive behaviour were conducted.

However, it is still difficult to find out about the court epilogues regarding the filed criminal charges against these police officers. The BCSP submitted requests for information based on the Freedom of Information Act to public prosecutors' offices in Serbia with the intention to learn about the outcomes of the criminal proceedings brought against the arrested police officers. The full analysis will be produced by December 2017, but preliminary findings suggest that a proportionally miniscule number of these cases ended with a final conviction. For instance, after six police officers were arrested in the town of Knić on corruption charges, all of them were reinstituted to their previous working posts with no convictions. Another illustrative case happened in Čačak in December 2016, when the ICS brought corruption-based criminal charges against 34 police officers, 33 of whom were arrested with one remaining at large. The outcome was as follows: the Public Prosecutor's Office brought criminal charges against 28 of them; three police officers were released on the grounds of insufficient evidence; three charges were dismissed since the police officers used the opportunity principle, i.e. they donated money for humanitarian purposes; there were no final convictions as of September 2017.

The perception of corruption within the police is still very high, with 2/3 of citizens believing that corruption is widespread within this institution.[73] Traditionally, the public opinion poll conducted in June–July 2017 showed that the traffic police are the most corrupt organisational unit, whereas the Belgrade police are the most corrupt (75%) when regional variations are taken into account. Another finding that is a reason for concern is the fact that only 6% of citizens think the Director of Police should take a lead in curbing corruption within this institution. This finding suggests that citizens perceive the highest-ranking police officer in the country as someone who does not have the authority or operational independence to fight corruption within the institution he heads.

The internal police control system has not been established in a satisfactory manner and the competencies of the five different internal police bodies with the authority to conduct internal control have not been delineated. The new anti-corruption measures (preventive control, integrity test, analysis of the risk of corruption, verification of the changes in the financial status) prescribed by the new Law on Police from 2016 (Article 230) have not been adequately operationalised and none of the required by-laws for their implementation has been adopted. The application of the integrity test is still a cause of most dilemmas because it may limit the rights of inviolability of

73 Elek, B. (2017). *The Citizens' Opinion of the Police in Serbia*. BCSP. Available at: http://pointpulse.net/wp-content/uploads/2017/09/SRB-Survey-2017-ENG.pdf (accessed on 24 September 2017)

the place of residence, confidentiality of correspondence, the right to work, the right to equal protection, and the right to a fair trial. The secondary employment of police officers still remains to be operationalised in line with the Law, yet the by-law required is still not adopted.

The rules relating to the procedure of filing complaints against police officers are complicated and not easily visible or promoted, and as such deter citizens from filing complaints. The new MoI website does not provide an explanation of the complaints procedure: there is no easily accessible information, no documents that are available for downloading and no searchable content.

RECOMMENDATIONS:

- The complaints procedure for police misconduct needs to be clear, simple and accessible to every citizen;
- The internal control structures of the MoI, more precisely the relations between the various internal controllers in the Ministry, need to be consolidated and their mandates delineated;
- The MoI needs to urgently adopt the necessary by-laws, as envisaged by the new Law on Police, following an inclusive public debate with the aim to take into account various standpoints of all relevant stakeholders.

2.3. Fundamental Rights

2.3.1. Personal Data Protection

No progress has been made in the area of personal data protection. Delays in the adoption of the Action Plan for Implementation of the Strategy for Personal Data Protection are on-going for more than seven years. Also, adoption of the new Law on Personal Data Protection is also postponed for the first quarter of 2018, again breaching all time targets set in the Action Plan for Chapter 23.

The new Model Law on Personal Data Protection[74] was submitted to the Government and Ministry of Justice by the Commissioner for Information of Public Importance and Personal Data Protection. In comparison to the Model Law submitted by the Commissioner in October 2014, the New Model included provisions of the EU General Data Protection Regulation, adopted in April 2016 by the European Parliament and the Council of the European Union. The new Model Law was presented to the public in June 2017 by the Commissioner. Also, 17 civil society organisations[75] submitted, in May 2017, the initiative to the Government of Serbia,[76] asking for the adoption of the new Model Law as quickly as possible, emphasising current and possible consequences of a further delay of adoption of the new Law. The signed organisations also pointed to the quality of the two-month public debate about the Model Law organised and carried out by the Commissioner, where all interested stakeholders were consulted about the new Model Law solutions.

The Commissioner published several press releases,[77] where he once more warned that the applicable Law on Personal Data Protection does not contain even the minimum provisions referring to some, from the standpoint of personal data processing, very important and delicate areas such as video surveillance and biometrics. This leads to continuous jeopardising of the exercise of citizens' rights guaranteed by the Constitution and the Law.

74 http://www.poverenik.rs/en/2017-03-06-09-09-59.html.

75 SHARE Foundation, Partners for Democratic Change Serbia, Belgrade Centre for Security Policy, Lawyer's Committee for Human Rights, Judges' Association of Serbia, Center for Euro-Atlantic Studies – CEAS, Network of the Committees for Human Rights – CHRIS, Center for Investigative Journalism of Serbia – CINS, Center for Practical Policy, Belgrade Center for Human Rights, Foundation Center for Democracy, Youth Initiative for Human Rights, Center for Research, Transparency and Accountability – CRTA, Link plus, 15. Independent Journalists' Association of Vojvodina – NDNV, Association of Online Media – AOM, Autonomous Women's Center.

76 http://www.poverenik.rs/en/press-releases-and-publications/2602-nov-zakon-o-zastiti-podataka-o-licnosti-nuzan-sto-pre.html.

77 http://www.poverenik.rs/en/press-releases-and-publications/2643-strategija-zastite-podataka-o-licnosti-sedam-godina-qpraznaq-proklamacija.html.

Except non-adoption of the new Law, Serbian citizens face ongoing problems with implementation of personal data prescribed by the applicable Law on Personal Data Protection. Some of the examples of these problems are warnings of the Commissioner about unlawful practices of video surveillance in psychiatric hospitals,[78] the collection of psychiatric diagnoses by local police stations,[79] the plan for the development of a joint register of personal data by the Ministry of interior and Ministry for Local-Self Government[80] and publicly-used personal data from the official documentation of the Ministry of Defence and the Ministry of Internal Affairs in a parliamentary debate.[81] Also, in the prEUgovor reporting period, the CSO Share Foundation published research on massive collection of personal communication of citizens in Serbia, where only one mobile operator (out of three) enabled over 300,000 instances of unique access to citizens' communication.[82]

As in previous reports, the Draft Law on Records and Personal Data Processing in Internal Affairs is still not adopted. Also, the Private Detective Law (PDL) is still not aligned with the applicable Law on Personal Data Protection. The PDL prescribes that a contract between a private detective and a client is needed for personal data processing of third parties, which is contrary to the Serbian Constitution and the standard of personal data collection only in cases prescribed by law (not by-laws and contracts).

RECOMMENDATIONS:

- Adopt the new Law on Personal Data Protection, based on the Model Law developed by the Commissioner for Information of Public Importance and 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 the 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. Principle of Non-Discrimination and Social Position of Vulnerable Groups

Violence against women. *Women murdered in the context of domestic and intimate partner violence remain the worrying issue. In July 2017, within a week, two cases of femicide happened on the premises of centres for social work in Belgrade, in which one perpetrator killed his ex-wife in front of three children and the second strangled his own four-year old child prior to stabbing his ex-wife. These murders happened in cases in which very dangerous perpetrators demanded contacts with children. The AWC publicly requested from relevant ministries and state institutions in charge to inform the public about the possible responsibilities of professionals in these two cases. 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. However, not all the amendments to the Criminal Code have been made in accordance with the standards of the Council of Europe Convention. Only one women's CSO received funds collected as a result of deferred prosecution upon the call of the Ministry of Justice to submit project proposals.*

78 http://www.poverenik.rs/en/press-releases-and-publications/2633-video-nadzor-u-prihijatrijskim-ustanovama-mora-biti-zakonit-i-opravdan-svrhom.html.

79 http://www.poverenik.rs/en/press-releases-and-publications/2606-upozorenje-poverenika-mup-u-nedopustena-je-obrada-licnih-podataka-bez-osnova-u-zakonu.html.

80 http://www.poverenik.rs/en/press-releases-and-publications/2631-protokoli-i-sporazumi-ne-mogu-zameniti-zakon.html.

81 http://www.poverenik.rs/en/press-releases-and-publications/2617-zloupotreba-podataka-o-licnosti-je-i-krivicno-delo.html.

82 http://www.shareconference.net/sh/defence/nova-analiza-share-fondacije-masovno-prikupljanje-podataka-o-komunikaciji-u-srbiji.

In the first half of 2017, before the new Law on Prevention of Domestic Violence came into force, at **least 15 women were murdered** in the territory of Serbia in the context of domestic and intimate partner violence.[83] Reports of femicide are still based on the analysis of newspaper articles and records of women's organisations. In July 2017, within a week, two cases of femicide happened on the premises of centres for social work in Belgrade, in which one perpetrator killed his ex-wife in front of three children and the second strangled his own four-year old child prior to stabbing his ex-wife. These murders happened in cases in which very dangerous perpetrators demanded contacts with children and in a dramatic way they confirmed the systematic nature of omissions of institutions in charge of the protection of women and children victims of violence. The same omissions were found in the Ombudsman's Special Report on femicide in 2016.[84] The AWC publicly requested from relevant ministries and state institutions in charge (the MoI, Ministry for Social Policy, Republic Prosecutor's Office, State Prosecutorial Council and High Judicial Council) to inform the public about the possible responsibilities of professionals in these two cases.[85] It remains unclear what the institutions in charge of the protection have done to systematically enhance the assessment of risk of dangerous violence and murder.

Only one women's CSO in Serbia that provides services to women victims of violence has received funds collected from deferred prosecution upon the call of the Ministry of Justice (June 2017).[86] The funds have been given for the project of providing free legal aid to women victims of violence.

Regarding the amendments to the Criminal Code (3.6.1.7) in line with the analysis, this activity has not been "completely" realised. Besides the adopted amendments to the Criminal Code,[87] it is necessary to examine the amendments to at least 20 articles[88] 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). The Criminal Procedure Code also needs to be harmonised with the standards of the Convention, which is necessary89 for these two activities to be considered "fully implemented".

In relation to the planned activities concerning the **model of community policing** (3.6.1.21), **appointing specially trained and selected police liaison officers for socially vulnerable groups** (3.6.1.22) and **continuous meetings of the police with representatives of socially vulnerable groups** (3.6.1.23), the Council in its report in English stated only the activities related to the LGBT population, while in the report in Serbian additional information on activity 3.6.1.21 can be found regarding initiatives and actions related to other socially vulnerable groups. The Council assessed that activities 3.6.1.22 and 3.6.1.23 were successfully implemented; however, if only one third of the activities has been fulfilled, then the Council does not monitor the implementation of this activity correctly.

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83 Available only in Serbian at: http://www.zeneprotivnasilja.net/images/pdf/FEMICID_Kvantitativno-narativni_izvestaj_01.januar-30.jun_2017.pdf.

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

85 Available only in Serbian at: https://www.womenngo.org.rs/vesti/991-otvorena-pisma-ministrima-povodom-dva-slucaja-femicida-ispred-beogradskih-centara-za-socijalni-rad.
https://www.womenngo.org.rs/vesti/992-otvorena-pisma-republickom-javnom-tuzilastvu-visokom-savetu-sudstva-i-drzavnom-vecu-tuzilaca.

86 Available only in Serbian at: http://www.mpravde.gov.rs/vest/13226/resenje-o-dodeli-sredstava-prikupljenih-po-osnovu-odlaganja-krivicnog-gonjenja.php.

87 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.

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

89 The 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.

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;
- Ensure effective and accessible legal protection and psychosocial support for victims of gender-based violence.

2.3.3. Rights of the Child

*Adoption of the **Draft Law on Juveniles** is postponed due to the postponement of the adoption of the CPC. This prolongation will have a further negative impact on juveniles, because the judges that preside in these cases are not implementing the current Criminal Procedure Code from 2013, but the previous one where there is no prosecutorial investigation. The latest version of the Draft Law on Financial Support to Families with Children is not available, nor is there information about the "on-going work" on the new Law on Social Protection. The SCC uniform case law regarding the application of children's rights to express their opinion could not be found on the SCC website even though this activity was stated to be fully implemented.*

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 stated that activity 3.6.2.1 is being successfully implemented because the Council for Child Rights in its new composition was established by the Government's Decision dated 9 November 2016. After the meeting of the Council for Child Rights held in December 2016, the Ministry for Social Policy formed the Working Group for development of the new Strategy for the protection of children in June 2017. The AWC accepted to be a member of this working group and the work on the new Strategy is in progress.

The Council noted that activity 3.6.2.4 of **drafting the new Law on Financial Support to Families with Children** is partially implemented, because the Law is being finalised and is in the phase of adjustment with the Ministry of Finance. On the Ministry for Social Policy's website the latest draft cannot be found having in mind that the public discussion on this Law took place in January 2016 and that the changes of the Draft after the public discussion were presented only in the media.[90] The same is true for the Law on Social Protection, because even if the Council reported that the work on amendments to the Law on Social Protection is on-going, there are no data on this activity on any website nor a reference in the state report.

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 stated that activity 3.6.2.10 has not been implemented. The Council issued the explanation that the adoption of the **Draft Law on Juveniles** is postponed due to the broad scope of forthcoming amendments to the CPC and the need to align the new Law on Juveniles with the new CPC, so the adoption is planned for the third quarter of 2018. This prolongation will have a further negative impact on juveniles, because the judges that preside in these cases are not implementing the current Criminal Procedure Code from 2013, but the previous one where there is no prosecutorial investigation.

90 Available only in Serbian at: http://www.blic.rs/vesti/drustvo/blic-otkriva-jednokratna-pomoc-za-svako-dete-bice-veca-a-evo-sta-ce-roditelji/e9h05ek.

Even though the Council for the implementation of the Action Plan for the negotiations for Chapter 23 admitted that activity 3.6.2.11 has not been implemented, because of the need to re-appoint certain members of the Council for Child Rights, which took place in November 2016, it cannot be determined why the Council's work has not been improved in the period December 2016 – June 2017.

In the state report under activity 3.6.2.20 concerning the establishment of uniform case law in terms of children's rights to express their opinion and the right to have that opinion taken into account in the court proceedings, it is stated that this activity is being successfully implemented, because the Supreme Court of Cassation regularly publishes, on its web page in the "Caselaw" section, all its decisions related to the application of children's rights to express their opinion. The case law regarding children's right to have and to express an opinion cannot be found on the SCC website.[91] There is no subsection devoted to this issue. Under other subsections (criminal, civil...) decisions regarding this issue are very difficult to be searched and found even if they exist, which could not be confirmed.

The AWC helped a mother of two girls, victims of child sexual abuse, to file a petition before the ECtHR.[92] In this case the perpetrator was acquitted after seven years of court proceedings (twice before a first-instance and twice before a second-instance court) and three years of waiting for the decision of the Constitutional Court, which rejected the claim of multiple breaches of children's rights.

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 in the light of the prolongation of the adoption of the new Law on Juveniles;
- Ensure that the latest version of the draft laws (on juveniles, financial aid to families, social protection) are available on relevant ministries' websites.

2.3.4. Strengthening of Procedural Safeguards in Line with EU Standards

An unresolved dispute between bar associations and CSOs is the cause of the prolongation of the adoption of the Free Legal Aid (FLA) Law. Bar associations are threatening again with a strike, putting their own personal interest before the interests of the most vulnerable citizens in need of free legal aid. The conducted analysis of the 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 are mostly publicly available, but the information regarding the Working Group for the amendments to the Criminal Procedure Code is still missing. There are no data on who / what body decided to prolong the adoption of the amendments to the CPC for almost two years. Women's CSOs were only given a chance to fill in the questionnaire on mapping the victims' services, but have not been consulted during the analyses and drafting of recommendations submitted to the MoJ. The implementation of the Law on Prevention of Domestic Violence in the first two months is good regardless of the fact that a unique and centralised electronic database has not been created.

91 http://www.vk.sud.rs/en/court-practice-database.

92 Application No. 40763/17 A. and B. v. Serbia.

Activity 3.7.1.1 of adopting the Law on Free Legal Aid remains unimplemented, since there are still huge differences in understanding the purpose of the Law, its beneficiaries and providers between bar associations and CSOs. In this unresolved dispute, bar associations are again threatening with a strike, putting their own personal interest before the interests of the most vulnerable citizens in need of free legal aid.

The activity of conducting an analysis of alignment of the normative framework with the EU acquis and standards in the field of procedural safeguards (3.7.1.9.) is stated to be fully implemented, because the members of the Working Group for the CPC have been tasked to analyse different aspects of procedural safeguards; this analysis has been submitted to the Ministry of Justice together with recommendations for amendments to the CPC. There are again no references in the state report to who are the members of the Working Group for the CPC, when were they appointed or whether the analysis is publicly available.

The Council for the implementation of the Action Plan for the negotiations for Chapter 23 stated that activities 3.7.1.16, 3.7.1.20 and 3.7.1.23 were fully/successfully implemented as the package of analyses – concerning the alignment of the Serbian legal framework with the Victims Directive, best comparative practices in five states, the position of victims in the normative system, the new EU acquis on procedural safeguards including recommendations for amendments to the Criminal Procedure Code – has been prepared, submitted and approved by the Ministry of Justice and used for the preparation of the **Victim Support Strategy**. Even though it was not specified in the Report, some of the stated analyses are available on the website of the Multi Donor Trust Fund for Justice Sector Support[93] but evidently not all that are mentioned above. There is no information about the experts who conducted these analyses, except in the case of the analyses conducted by the local expert in December 2015. Women's CSOs were only given a chance to fill in the questionnaire on mapping the victims' services, but have not been consulted during the performed analyses and drafting of recommendations submitted to the MoJ.

In relation to previous activities, the state report noted that activity 3.7.1.17 of amending the normative framework in accordance with the Victims Directive was not implemented because of the scope of necessary changes of the CPC arising from Chapters 23 and 24, as well as other negotiating chapters. The Council reported that it has been decided to introduce comprehensive amendments to the CPC by the third quarter of 2018, as these changes require a longer period for the work of the working group. The Council did not provide data on who / what body decided to postpone the adoption of the CPC.

As noted in the previous reports of the prEUgovor coalition, there is still no publicly available information on the Ministry of Justice's website as to 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 Law on the Prevention of Domestic Violence (LPDV) was adopted in November 2016 and came into force on 1 June 2017. Implementation of the LPDV started very successfully in the first two months. As it was noted in the state report (activity 3.7.1.24) during the first month (June 2017) after the imposition of an urgent measure to prevent domestic violence by the competent police officers, the public prosecutors filed motions to the courts to prolong the emergency measure in relation to 1,219 cases. The courts have adopted the proposals of the public prosecutors in relation to 1,182 cases, and decided to prolong the emergency measure.[94] Similarly, in July 2017, public prosecutors filed motions for the prolongation of the emergency measures in 1,339 cases, and courts issued 1,292 prolonged emergency protection measures.[95] On the other hand, the number of proposals for the prolongation of protection measures varies with respect to the number of cases being discussed during meetings of the groups for coordination (from 5 to 100%). There is an extremely low number of *ex officio* initiated civil proceedings for the issuance

93 http://www.mdtfjss.org.rs/en/mdtf_activities/2017#.WbbKKvkjG71.

94 Available only in Serbian at: https://www.womenngo.org.rs/images/vesti-17/Prvi_izvestaj_Savetu_o_primeni_zakona.pdf.

95 Available only in Serbian at: https://www.womenngo.org.rs/images/vesti-17/Drugi_nezavisni_izvestaj_AZC_o_primeni_Zakona_o_sprecavanju_nasilja_u_porodici.pdf.

of protection measures (by prosecutor's offices or centres for social work) that enable long-term protection of a victim. Not all prosecutor's offices hold coordination meetings in accordance with the Law (at least once in 15 days). The number of individual plans for protection is insufficient in correlation with the number of cases discussed at the meetings. These data confirm that there are insufficient capacities and non-appropriate knowledge and skills of members of the Groups for coordination and cooperation.

Implementation of the LPDV is not complete without adoption of the by-laws, for which the deadline expired. A unique and centralised electronic data base has still not been created, which is obligatory by the Law, making it difficult to regularly monitor effects of the implementation of the Law. The MoI and Republic Prosecutor's Office sent to professionals the precise instructions and relevant forms that are to be fulfilled while applying the Law in each concrete case at the end of May. Only the Ministry for Social Policy did not provide instructions or forms for the professionals working in the centres for social work (CSW) before the Law came into force, but with a delay of one month. On the request for publicly available data on actions of CSW in accordance with the LPDV, the response was that neither the Ministry nor the Republic Office for Social Protection gather data prescribed by the LPDV.

Women's CSOs together with the UNDP, Ministry of Justice and Provincial Secretariat for Health helped professionals in almost all relevant institutions in Vojvodina and six municipalities in central Serbia to have additional or only training on the LPDV, provided expert support in pilot municipalities to organise meetings of the groups for coordination and cooperation and piloted proposed draft forms for better implementation of the Law. But for the few enthusiastic experts (the State Secretary in the MoJ, prosecutors, social workers, members of the UNDP and AWC) who had a vision on how the implementation should look like and turned these ideas into concrete actions and proposals, all these good results in the implementation of the LPDV would not have been achieved.

Activity 3.7.1.25 was assessed by the Council as being successfully implemented in the second quarter of 2017, because the Judicial Academy conducted 59 trainings for judges and deputy public prosecutors, attended by 2,242 participants. At the same time, the Police Academy held three-day trainings for 450 future specialised police officers. In April 2017, after hearing complaints from police officers, the AWC sent a letter of protest to the MoI with the requests to improve the curriculum of the training and triple the number of trained police officers.[96] Only the Ministry of Social Policy did not provide trainings on the LPDV for the professionals in centres for social work.

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 the Law on Free Legal Aid enabling all lawyers, no matter where they work, to provide specialised and free legal aid;
- Include women's 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's CSOs that provide 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 phases of criminal proceedings;
- Adopt by-laws and create a unique and centralised electronic database in accordance with the Law on Prevention of Domestic Violence.

96 Available only in Serbian at: https://www.womenngo.org.rs/vesti/965-ministarstvo-unutrasnjih-poslova-prihvatilo-sugestije-azc-a-u-vezi-sa-zakonom-o-sprecavanju-nasilja-u-porodici.

2.3.5. Access to Information of Public Importance

The EU accession process, particularly reforms listed in the Chapter 23 Action Plan, insists that Serbia should improve the free access to information rules and their practical implementation. In the reporting period, there were no results concerning the amending of the Law on Free Access to Information of Public Importance. With this, the period of postponing the adoption of the amendments increased to six years and the uncertainty of solving numerous implementation problems of the existing legislation persists. Some of those problems are the lack of obligations for proactive publishing of information for public authorities, a limited number of subjects exercising public functions sanctioned by the Law on Information of Public Importance and serious obstacles in the execution of decisions of the Administrative Court and decisions of the Commissioner for Information of Public Importance and Personal Data Protection.

The Action Plan for Chapter 23 sets a special request for improving access to information on privatisation deals, public procurement, public expenditures or donations from abroad to political parties, including other information considered 'sensitive'. Still, the analysis of implementation of the Law on Free Access to Information of Public Importance in these areas is still not developed by the Ministry of Justice, as prescribed in the Action Plan for Chapter 23. Also, communication of the Commissioner for Information of Public Importance and Personal Data Protection to the public emphasises that crucial troubles in the access to information are those mentioned above. These problems are well illustrated in troubles of citizens and journalists to determine progress in criminal investigation in the Savamala case, and unsuccessful requests for publishing information on assets owned by Belgrade Mayor Siniša Mali and Minister of Defence Aleksandar Vulin, including information on potential criminal proceedings initiated in relation to the discrepancy between their income and property.

The situation regarding access to information in the EU accession process remained unchanged in comparison to the previous prEUgovor reporting period. The Government did not change the by-law adopted in December 2016, introducing the 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. Also unchanged are three other by-laws of the Government adopted in January and February 2017. One of them enables the classification of EU-related information for an unlimited period of time, with no criteria for such a decision. The other by-law prescribes that classified information is not available to the public, and orders that these data be handled as if they were documents classified in line with the Law on Confidential Data (top secret, secret, confidential and restricted).

In the reporting period the Government did not respond or react to remarks of the Commissioner for Information of Public Importance and Personal Data Protection and the civil society, which jointly emphasised that the Constitution prescribes access to information as the right that can be limited only by a law – as an exception to the general rule of availability of information of public importance.

In April 2017, the Ministry of Defence initiated a consultation process with relevant state institutions over the Draft By-Law which could restrict research in the field of defence, but potentially almost all research in Serbia because of the wide definition of defence, which includes almost all social research. The scope of the Draft By-Law extends far beyond the legitimate restrictions to research prescribed by Serbian laws and laws in other democratic countries. The list of sanctioned research areas mentioned in it originates from a By-Law of the same name from 1994, the time of Milošević's rule and the international isolation of Serbia. After this document was leaked from state institutions, several Serbian CSOs and other legal entities put a great deal of pressure through various channels to withdraw it from the adoption procedure, an initiative that eventually succeeded. However, in September, information was received from academic institutions that a new round of consultations regarding the adoption of the same Draft By-Law commenced again, with no changes to the controversial provisions contained in the document. If this Draft By-Law is adopted, it will not only infringe upon the freedom and the autonomy of research and the University, but will also subordinate other state institutions and legal entities

to the MoD and impede international scientific and research cooperation. Additionally, the By-Law will specially influence activities of international businesses and international organisations, where every socially-related activity or research of an international entity can be proclaimed as contradictory to Serbia's defence policies.

RECOMMENDATIONS:

- The Government should, as soon as possible, adopt amendments to Law on Free Access to Information of Public Importance. The new Law should be in line with Serbia's international obligations and should solve the main obstacles to implementation of the applicable Law;
- 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 needs to be classified on a case-by-case basis in accordance with the criteria and classification procedures stipulated by the Law on Confidential Data;
- The Ministry of Defence should withdraw the Draft By-Law on research in defence, enabling the implementation of general rules on access to information to research covered by the Draft By-Law;

3. CHAPTER 24 – JUSTICE, FREEDOM AND SECURITY

3.1. Migration and Asylum

The Government has adopted the Draft of the new Law on Asylum and Temporary Protection[97] *that had entered into parliamentary procedure. The Draft of the new Law on Foreigners has not yet been enacted.*

It is necessary to revise the Action Plan for Chapter 24 in order to reflect the challenges that the country is facing in the context of current migration flows. The situation 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. The issue of redefining the existing strategic framework must include: the question of status, access to rights and integration, return policies (including voluntary return) and coordination with international organisations in the context of resettlement. There are no segregated data by sex/gender in the state report for Chapter 24.

During the reporting period, progress was made in regard to the issue of education of migrant children. In coordination with the Commissariat for Refugees and Migrants (SCRM), Ministry of Education, Science and Technological Development and local schools, and in cooperation with international and civil society organisations, the Ministry of Labour, Employment, Veteran and Social Policy, significant steps have been taken in order to include migrant children in the formal education system. Based on the previously conducted survey in all reception and asylum centres, the list of 645 children interested in going to school was put together. The Ministry of Education, Science and Technological Development complied the Professional Instruction for the Inclusion of Refugee / Asylum Seekers Children in the Education System of the Republic of Serbia[98] in order to systematically prepare for the enrolment of these children in school. Further, a set of coordination meetings were organised between the SCRM and administration of local schools in all cities and municipalities where asylum and reception centres are located, as well as with CSOs. It was decided that children from almost all centres would start attending school from mid-September and that the only formal requirements for their enrolment are: a conducted health check-up and a submitted written request for enrolment in school for each child. Children from reception centres in Subotica, Sombor and Kikinda will not engage in school classes, but instead proper educational programmes will be organised for them in camps. The issue of transportation of children to and from school was resolved with the support of international and civil society organisations. Additionally, it was agreed that CSOs would provide cultural mediators to follow children in schools and help them during the adjustment period. Appropriate trainings for teachers for collaborative planning and support of students from vulnerable groups are planned.

According to the *Programme to encourage local governments to implement the measures and activities necessary for achieving the stated objectives in the field of migration management*[99] (''Programme''), during the previous period certain local self-governments: Bačka Palanka, Zrenjanin, Zemun,

97 http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/2445-17.pdf, 6 October 2017.

98 http://www.mpn.gov.rs/wp-content/uploads/2017/05/%D1%81%D1%82%D1%80%D1%83%D1%87%D0%BD%D0%BE-%D1%83%D0%BF%D1%83%D1%82%D1%81%D1%82%D0%B2%D0%BE-%D0%B7%D0%B0-%D1%83%D0%BF%D0%B8%D1%81-%D1%83%D1%87%D0%B5%D0%BD%D0%B8%D0%BA%D0%B0-%D1%82%D1%80%D0%B0%D0%B6%D0%B8%D0%BE%D1%86%D0%B0-%D0%B0%D0%B7%D0%B8%D0%BB%D0%B0-scan-1-1.pdf.
http://www.kirs.gov.rs/articles/uredbe.php?type1=32&lang=SER&date=0
6 October 2017

99 Available only in Serbian at: http://www.kirs.gov.rs/articles/javpozjls.php?type1=52&lang=SER&date=0.

Negotin, Novi Kneževac, Tutin, Voždovac and Vrnjačka Banja have carried out activities to promote and increase tolerance towards migrants such as: organising round tables, lectures, preparation of leaflets, etc. The SCRM continues to announce public calls for local governments in order to support measures and activities necessary for strengthening the capacity of local self-government units according to the objectives of the Programme.[100]

In July 2017, the Government adopted a Decision[101] appointing the Minister of Defence as the President of the Working Group for solving problems of mixed migration flows.

During the reporting period, the number of migrants and refugees present in Serbia ran between 7,364[102] and 4,230.[103] Approximately 94% of them were accommodated in the existing governmental facilities.

According to the UNHCR report from August 2017, 12 to 27%104 of them are women (older than 18) who usually travel with their partners, children or other members of the family. Almost all of the refugee shelters in Serbia registered cases of domestic violence towards refugee women, but it is very difficult to get insight into the overall situation, since a uniform database of domestic violence cases on the national level has not been established. It is not known how many cases of domestic violence among the migrant population have been registered, whether criminal proceedings or civil proceedings in such cases have been initiated and protective measures issued.

Regarding violence against migrant children, the Ombudsman issued a recommendation to the Ministry of Health[105] because a medical institution did not act in accordance with the Special protocol on the protection of children against neglect and abuse in the case in which a four-year old migrant child, with head injuries, was accompanied by the person claiming to be child's uncle.

According to the UNHCR data from April to July 2017, 1,755 migrants expressed the intention to seek asylum in Serbia, 66 submitted asylum applications, but only one was granted this status to date. In this period, there was a slight decrease in the number of expressed intentions to seek asylum (from 552 in April to 297 in July). The majority of accommodated migrants are from Afghanistan – 62%, followed by Iraq – 13%, and Syria – 12%.

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. Current accommodation capacities offer around 6,000 places, and responsible authorities are continuously working on adjusting the existing capacities in order prepare for colder months.

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. According to the UNHCR data, the number of observed new arrivals decreased in the reporting period, from 699 in March to 141 in July.[106] The main entry border continues to be Bulgaria, followed by Macedonia. 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. A special by-law which will regulate the question of status of those who are illegally present in Serbia but

100 Available only in Serbian at: http://www.kirs.gov.rs/articles/javpozjls.php?type1=52&lang=SER&date=0.

101 Decision on Amendments to the Decision on the Establishment of the Working Group for Solving the Problem of Mixed Migration Flows, Official Gazette of RS, No. 73/2017, 28/7/2017.

102 UNHCR Interagency Operational Update, April 2017.

103 UNHCR Serbia Update, 25 Sep-1 Oct 2017.

104 The UNHCR report *Serbia centers profiles* available at: https://data2.unhcr.org/en/documents/download/55034.

105 Available only in Serbian at: http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/5268-inis-rs-v-zdr-vlj-d-p-n-vi-insp-ci-s-i-n-dz-r-u-zdr-vs-v-ni-us-n-v-nisu-pruzil-d-v-nu-z-sh-i-u-c-v-r-g-dishnj-d-u-izb-glici.

106 UNHCR, Serbia monthly snapshot-July 2017. (06.October 2017.) https://data2.unhcr.org/en/search?country=722&situation%5B0%5D=11&text=&type%5B0%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=&page=2

cannot be returned (regulation on tolerated stay) was initiated but was delayed due to internal procedures. Migrants who have not expressed the 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. Hungarian authorities continue to admit around 50 persons per week on two border check points. Romania also reinforced border control activities at the common border with Serbia by deploying personnel from other national and territorial structures to the area which decreased irregular movement at this border.

The issue of pushbacks and informal readmission of third country nationals to Serbia remains one of the main concerns.

RECOMMENDATIONS:

- The Government of Serbia should adopt a new Law on Foreigners which must be accompanied by appropriate sub-legislative regulations and 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 on 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 assisted voluntary return;
- 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;
- The Council for Chapter 24 should provide gender-segregated data in the report, as well as data on the number of reported cases of violence against women and children in the refugee shelters.

3.2. Police Reform

Limited progress has been made in the area of police reform, as per the EC recommendation to "Assess the need to further reform and rationalise police/Ministry of Interior structures with a view to increasing their efficiency."[107] The activities for implementing this recommendation are not listed in AP24, which is the case for other recommendations, but which has been only briefly described in the introduction of this document. This means that the key milestones, measures, deadlines and expected outcomes are not explained in detail, and the MoI does not report on the state of play regarding the recommendation in their semi-annual reports on the implementation of AP24. This remains an issue when it comes to the possibility to independently verify the progress achieved.

The initial prerequisites for human resources management in the police have been met after the new Law on Police was adopted in January 2016. Namely, the Human Resources Sector (HRS) within the MoI was established and became operational, and the new Law prescribes the rules for hiring and merit-based promotion. A number of by-laws envisaged by the Law on Police in the area of human resources management have been adopted, including enumeration of promotion

107 EC. *Screening Report Serbia, Chapter 24: Justice, Freedom, Security*, p. 28. Available at: https://goo.gl/nkS3dP (accessed on 18 September 2017).

criteria and regular security checks of the employees. The public calls for employment in the police are publicly available, and these include the high positions in the MoI, such as the Minister Assistant, or the Head of Secretariat. However, limited information is available about internal calls within the Ministry of Interior and it is almost impossible to track the effects of internal calls on human resources management. In 2017 the BCSP tried several times to gain more data through the request for free access to information about the dynamics of publication of internal calls and the results of those completed from January 2017 onwards. Until now, the MoI has not responded to any request by the BCSP, thus violating the Freedom of Information Act. It is known, based on the press release by the MoI, that in February 2017 ten internal calls for the position of the head of regional police directorates were announced. The media reported that one of the candidates got the position even though he did not pass the psychological test, which is prohibited by the Law.

No progress was made regarding the interim benchmark from Chapter 24, i.e. establishment of "robust safeguards to ensure that the police integrity is strengthened and that police services are operationally independent from political interests and shielded from criminal influence."[108] Major decisions regarding recruitment are still made by the Minister of Interior, which is not a good solution from the perspective of the integrity of the hiring process and depoliticisation. This is especially concerning given that the Minister of Interior still appoints and dismisses heads of regional police departments and heads of organisational units in the Police Directorate. Moreover, a recent incident regarding a threatening letter written by Zvezdan Jovanović to the Minister of Interior, after which a police officer was suspended (see the section on Democratic and Civilian Oversight of the Security Sector), raised concerns as to the influence criminal groups wield over the Ministry and the police.

There is a noticeable, year and a half long absence of the ISC reaction regarding the findings and recommendations of the Ombudsman Office on the failure of the police to respond to citizens' requests for assistance during the illegal demolition of the Belgrade's quarter of Savamala. The Higher Public Prosecutor's Office in Belgrade requested from the Internal Affairs Sector to apply the control procedure, yet there is no evidence that the control procedure actually took place. 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 redirected him to the Communal Police.

A recent public opinion poll conducted by the BCSP shows high levels of perceived politicisation of the police among the general public.[109] Namely, 1/4 of Serbian citizens believe that politics has complete influence over the operational work of the police, whereas additional 46% think it has a high level of influence, making up a total of 70% of those who think the police are not operationally independent. Moreover, only slightly over 1/3 of respondents (37%) believe that the police work as a service to citizens, whereas the rest think they serve the political elites and top-ranking police officials.

The MoI maintains a selective approach towards the media and CSOs. 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, daily newspapers and CSOs.

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 the police need to be continued and monitored independently;

108 Interim Benchmarks for Chapter 24, p. 6. Available at: https://goo.gl/ZhhR78 (accessed on 18 September 2017).

109 Elek, B. (2017), The Citizens' Opinion of Police Force in Serbia, BCSP, Available at: http://pointpulse.net/wp-content/uploads/2017/09/SRB-Survey-2017-ENG.pdf (accessed on 24 September 2017)

- 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 to 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.

3.3. Fight against Organised Crime

In the area of fight against organised crime some progress was evident, although more concrete efforts are needed in order to establish an initial track record of investigations, prosecution and final convictions, especially in the organised crime cases.[110] In the latest Government's semi-annual Report on the Implementation of Action Plan for Chapter 24,[111] for the period of January–July 2017, many of the activities were delayed and proposals were put forward to move the deadlines for their completion well beyond the originally planned dates.

The Government continued[112] with its practice of conducting grand-scale arrests of individuals in a manner of a public relations stunt. This was done most recently on 16 July 2017 in the police action named Ares, when 360 people were arrested in 27 municipalities and cities across Serbia,[113] for what appear to be unrelated crimes (including drug production and trafficking, rape, torture, child pornography, etc.). The action continued on 20 July, as Ares II, again with mass arrests of individuals across Serbia for various types of unrelated criminal activities, including illicit arm possession, robbery, bribery, etc. Apart from unrelated criminal activities, these actions continue to be characterised by detailed media coverage and with most of those arrested later released with comparatively low numbers of criminal charges brought against the potential perpetrators.

Little progress was made regarding the inter-institutional cooperation between the law enforcement agencies and interconnectedness of their respective databases, as the activities from the AP 24 pertaining to the establishment of the centralised criminal-intelligence system (recommendation 6.2.2) are, once again, well behind the schedule. Moreover, the MoI suggested the extension of the deadline until the last quarter of 2018, one year after the originally planned date.

Despite the good implementation rate of all activities pertaining to the introduction of the intelligence-led policing concept (ILP) reported by the Government (recommendation 6.2.1 from the AP24), it still remains unclear what the status of this key reform is or how it is related to other strategic processes that are currently taking place in the MoI and the Police Directorate. Serbia produced its first national Serious and Organised Crime Threat Assessment (SOCTA) in line with the EUROPOL methodology, in December 2015. Moreover, the Handbook on Intelligence-led Policing[114] was produced and published by the MoI in November 2016. Most recently, the Strategic Assessment of Public Safety was recently produced by the MoI and published.[115] Despite its intended purpose, this Assessment mostly contains statistical data with limited analytical material. Moreover, the MoI was the leading author of the publication and only a limited number of other state and academic institutions were consulted or involved in its production.

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110 This is a priority area for Serbia in Chapter 24, as stipulated in the recommendation from the 2016 Country Report for Serbia, p. 66. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf (accessed on 13 September 2017).

111 Available at: www.goo.gl/9z7qqd (accessed on 13 September 2017).

112 Previously with actions Cutter, Thunder, Scanner, Plato, etc. See: prEUgovor Alarm: Report on the Progress of Serbia in Chapters 23 and 24, p. 36, April 2017. Available at: http://preugovor.org/upload/document/coalition_preugovor_report_on_progress_of_serbia_i.pdf (accessed on 13 September 2017).

113 See (available only in Serbian): http://www.rts.rs/page/stories/sr/story/135/hronika/2805438/stefanovic-uhapseno-360-osoba-zbog-vise-krivicnih-dela.html (accessed on 13 September 2017).

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

115 Available only in Serbian: http://mup.gov.rs/wps/wcm/connect/98632591-2b0d-4cba-9cd1-e7ff993705a6/Strateska+procena+javne+bezbednosti+konacno+za+internet+%282%29.pdf?MOD=AJPERES&CVID=lThnbP0.

However, the organisational adjustments needed for the introduction of ILP, namely the formation of strategic and operation groups at the central, regional and local level, are behind the schedule and the MoI suggested extending the deadline for their completion. When taking into account that the successful transition to the ILP model of police work is preconditioned on a number of other activities, such as the establishment of the previously mentioned centralised criminal-intelligence system which will be postponed for the last quarter of 2018, it is very unlikely that the ILP model will be successfully introduced within the suggested timeframe. Despite several requests on the part of CSOs submitted to the MoI in order to obtain more information as to the relations between these important strategic processes taking place within the police, no explanation was provided whatsoever.

Regarding the recommendation 6.2.3 from the AP 24, i.e. the revision of the role of intelligence services (Security-Information Agency) in the criminal investigation phase, no progress was made. The planned analysis was produced in 2015, submitted to the Bureau for Coordination of Security Services and since then there have been no developments in this regard. The deadline for completion of the related activities was first postponed from the fourth quarter of 2016 to the second half of 2017, and then once again for the fourth quarter of 2018.

When it comes to the area of fighting cyber-crime, little progress was made and the adoption of a number of by-laws and regulations is pending. The MoI announced that there are plans at the Government's level to produce and adopt the Strategy for Fighting Cyber-Crime[116] due to the relevance of this issue, regardless of the fact it was not required by the EU during the accession negotiations. Regarding the recommendation 6.2.9.2 from the AP24, namely strengthening cooperation among state authorities and civil society institutions in fighting cyber-crime, no progress could be independently verified, despite the fact that the MoI reported continued cooperation and potential signing of agreements on cooperation. Interviews with the representatives of CSOs most active in the area of fighting cyber-crime and cyber security[117] showed that no concerted effort on the MoI's part towards implementing this activity was shown.

Among other important activities, the working arrangement between the CEPOL and the Serbian MoI in the area of police cooperation (recommendation 6.1.5 from the AP24) was signed on 1 September 2017, one year later than originally planned. This arrangement will allow Serbian police officers to increase their knowledge and skills by participating in educational and training programmes organised by this EU agency.

RECOMMENDATIONS:

- Concerted efforts need to be invested by the competent authorities in order to establish an initial track record of investigations, prosecution and final convictions in organised crime cases;
- More efforts need to be invested in the introduction of the ILP model and all relevant information regarding the state of play, completed phases and the connection between other key strategic reform processes need to be made publicly available.

3.3.1. Suppressing and Combating Human Trafficking

On 4 August 2017, the Serbian Government adopted the Strategy for Prevention and Suppression of Trafficking in Humans, Especially Women and Children, and Protection of the Victims from 2017 to 2022, as well as the respective Action Plan for 2017 and 2018, six years after the previous one had expired. As emphasised in the previous reports, in the last five years, the field of suppression and prevention of human trafficking in the Republic of Serbia has been stagnant, due to the lack

116 The Negotiating Group for Chapter 24 provided this information at a meeting with the representatives of CSOs held on 25 July 2017. The report (only in Serbian) is available at: www.bezbednost.org/Vesti-iz-BCBP/6568/Srbija-napredovala-u-okviru-Poglavlja-24-iako.shtml (accessed on 13 September 2017).

117 Two interviews were conducted in the period 11–12 September 2017 and the identities of interviewees are known to the authors of this report.

of preconditions for planned and systematic problem-solving and establishing a new institutional and coordination framework. The result of this stagnation was shown in applying *ad hoc* solutions with no long-term plans, which led to Serbia being put on the so-called watch list in the Trafficking in Persons report of the U.S. State Department (for year 2016, but also 2017).[118] The adoption of the Strategy and the Action Plan is good news in the context of the National Action Plan for Chapter 24, because this is the central activity (6.2.8.1) of the part dealing with human trafficking suppression, directly related to the implementation of other four activities (6.2.8.2, 6.2.8.3, 6.2.8.6 and 6.2.8.7).

As we mentioned above, in June 2017, the U.S. State Department issued their regular Trafficking in Persons Report (TIP Report), in which the state of Serbia has been left on the watch list in Tier 2 for the second year in a row. This Report states the following:

"The Government of Serbia does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government demonstrated significant efforts during the reporting period by operationalising a permanent human smuggling and trafficking law enforcement taskforce. The government identified more victims and provided guidelines to prosecutors and judges on non-penalization of trafficking victims. The government developed and distributed guidance on trafficking indicators and trained 630 first responders on applying these indicators. However, the government did not demonstrate increasing efforts compared to the previous reporting period. The government did not provide sufficient protection to victims participating in criminal proceedings, which exposed them to intimidation and secondary traumatisation. The absence of formalized victim identification procedures and an outdated national referral mechanism hindered victim protection efforts."[119] From the abovementioned, we see that even the outside actors have noticed that this field had been neglected in the previous period and that there is a large number of unresolved problems repeated year after year and that the systemic approach to solving the problems of trafficking in humans has not been established.

The work on the Strategy for Prevention and Suppression of Trafficking in Humans, Especially Women and Children, and Protection of the Victims from was initiated in May 2012. The initial text, created during several months in a participative process involving all key anti-trafficking actors, was foreseen to be valid from 2013 to 2018. Due to the fact that the aims were formulated loosely, targeting key challenges in responding to human trafficking in the Republic of Serbia, they have remained current. Fields needing further development, listed in the conditions analysis which is an integral part of this document, are those thattheASTRA has been continuously pointing out in their ALARM reports, for example – 1) the system for institutional and operative co-ordination is not yet fully functional; 2) the police management of the suppression of human trafficking is not consolidated or specialised (several units have the jurisdiction); 3) there is no common and comprehensive system for collecting and analysing data on human trafficking; 7) the system for identification, protection, and supporting the victims of human trafficking, especially children and vulnerable migrants is not fully developed; 8) the system has not yet developed special programmes of support for risk groups and vulnerable migrants when dealing with the prevention of human trafficking and supporting the victims of human trafficking; 9) the system does not yet have enough human resources at its disposal (those employed in the field of detecting and prosecuting the cases of human trafficking are not fully competent) or the material resources (there are no permanent funds for financing prevention, protection, and suppression of trafficking in humans) for high-quality support to human trafficking victims; 11) a fund to support the victims of human trafficking has not been established; 12) the process for compensation of the victims of human trafficking within civil proceedings is inefficient and does not provide adequate compensation to the victims of human trafficking; 13) the shelter for urgent care of victims of human trafficking, founded within the Centre for Human Trafficking Victims Protection, is still not in function.

It is planned by the Strategy to establish a Working Group for implementing and monitoring the strategy "which will be composed of ministries' representatives and state authorities who are experts in the fields important for the implementation of the Strategy", all explicitly listed. This

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118 Annual Trafficking in Persons Report by the U.S. State Department, issued on 28 June 2017, available at https://www.state.gov/documents/organization/271339.pdf.

119 Ibid.

Working Group is supposed to take over the role of the former National Team for Combating Trafficking in Humans. Interestingly enough, CSOs with long-standing expertise in suppressing trafficking in humans were not directly named as members of the working group, but are only mentioned in the next paragraph as follows: "Civil society organisations will equally participate in the process of monitoring, reporting, and evaluating of the Strategy", despite the previously cited assessment that "the system does not yet have enough human resources (those employed in the field of detecting and processing the cases of human trafficking are not fully competent)". Five organisations chosen by the Government Office for Cooperation with Civil Society will partake in thus formulated activity. Other than these being organisations "involved in the human trafficking problems", no further criteria for choosing were cited, even though this was discussed during the initial process of developing the Strategy.

As for the financing, both the Strategy and the Action Plan will be financed from the budget of the Republic of Serbia, IPA funds of the Technical Assistance and Information Exchange Instrument of the European Commission –TAIEX, with the help of the OSCE, UNODC, ICMPD, as well as the support of the US Department of Labour's project "Acting and supporting on a national level to reduce the incidence of child labour".[120] Although these two documents were adopted in the third quarter of 2017, and the Action Plan refers to the period of 2017/18, meaning that only four months are left for its implementation in the first year, there is no noticeable difference in the funds allocated from the budget of the Republic of Serbia. What is also interesting is that most of the funds – more than a fourth of total non-project budget – are allocated for the Ministry of Culture and Information (1,234,000 dinars / around 10,000 EUR for 2017 and the same amount for 2018), while the Ministry of Interior, and the Ministry of Labour, Employment, Veteran and Social Policy as the key state institutions in suppressing human trafficking, were given substantially lesser funds.

In this reporting period, the Acting Coordinator of the National Office for Combating Trafficking in Humans was also appointed. This Office was founded a couple of years ago within the General Police Directorate, which the Strategy determined as a precondition for its implementation. It is yet unclear as to how this new office will function, as well as if it will have sufficient human and financial resources, but also political support for it to work efficiently. An internal tender is currently underway for the selection of the national coordinator, which is of great importance, because the title of the acting coordinator does not allow for full use of the mandate.

The newly appointed Minister of Labour, Employment, Veteran and Social Policy issued an instruction on the implementation of indicators for the preliminary identification of victims of trafficking in the social protection system at the end of July, making the application of these indicators binding. These indicators were developed in 2015 by the Center for Protection of Trafficking Victims in cooperation with other anti-trafficking actors, but their implementation was not official and binding. This step was significant due to more proactive identification of the trafficking victims, as well as the increased awareness and sensitisation to the problem of trafficking in humans of those employed in the system of social protection, because they are, among other things, in the best position to recognise early signs of human trafficking and react preventively before exploitation occurs. Along with these indicators, a similar set of indicators was being developed for the police and schools, but the relevant ministers have not yet formalised them.

In August, there was a change in the management of the Center for Protection of Trafficking Victims when the previous director was suddenly dismissed, and the person who replaced her, according to available information, has experience neither in the social protection system nor in the field of suppressing human trafficking, which can lead to a standstill in cooperation of the Centre and other relevant participants in this field.

120 According to the Strategy for Prevention and Suppression of Trafficking in Humans, Especially Women and Children, and Protection of the Victims, for the period of 2017–2022.

In the period of January–August 2017, the Center for Protection of Trafficking Victims received 70 reports on the potential victims of human trafficking, amongst whom 18 victims of different types of exploitation were identified. This is a significant decrease when compared to the same period of the previous year, when 106 reports were received and 36 victims identified. The majority of cases are still the cases of sexual exploitation of women and girls (18 cases). There are also other forms of exploitation, such as labour exploitation (five victims), one case of coercion to commit crimes, and two cases of forced marriage. In this period, three separate cases of multiple exploitation were recorded, all of which include sexual exploitation, forced marriage, forced begging, and coercion to commit crimes. Most reports on the potential victims of human trafficking were submitted to the Centre by the police (30), followed by social work centres (23), but there were also others to report exploitation, such as CSOs (7), prosecutor's office (2), relatives (3), those employed in the education system (1), and IOM (2).

In the first eight months of 2017, ASTRA's SOS Hotline received over 3,000 different calls, including those connected with reporting potential victims of human trafficking, direct victim assistance, as well as the preventive-educational call relating to potentially exploitative and fraudulent business proposals.

During this period, seven victims of human trafficking were identified, six females and one male. All the identified victims are the citizens of Serbia, and two of them are underage. Sexual exploitation is still the prevalent form of exploitation (three cases), though there was one case of labour exploitation, one case of forced marriage, and one case of multiple exploitation (one person was simultaneously exposed to sexual exploitation, forced marriage, forced begging, and coercion to commit crimes), while for one case we do not have sufficient information on the type of exploitation. The destination countries of victims of human trafficking in the previous eight months were Serbia (two), Austria (two), and one case in Bosnia, Belgium, and Denmark, respectively.

In 2017, the referring of victims by the Center for Protection of Trafficking Victims to seek help from specialised non-governmental organisations has been poor and reduced to those cases where the institutions of the system were utterly unable to cope with the problems in the specific cases of human trafficking (for example, only two out of 18 victims were referred to the ASTRA, while CSOs referred seven victims to the Centre). Despite the signed memorandums on cooperation between various institutions and CSOs, continuous and stable cooperation is still lacking, harming the victims the most, more often than not leaving them without adequate and timely help and support.

Another burning question left unanswered in this reporting period is that the Republic of Serbia still has no specialised shelter for urgent placement of trafficking victims, nor specialised accommodation for child victims of human trafficking. Namely, a shelter was supposed to be founded in 2012 within the Center for Protection of Trafficking Victims, but has yet to be built.

As for child victims of human trafficking, not only is there no specialised accommodation for them, but there are no developed specialised programmes of support for children either. If they are not going back to their families, child victims are most often placed into children's care homes or foster families, where they are not provided with specialised aid or support to overcome the particular traumas they have survived. Also, under various pretences, children are not being referred to specialised programmes led by CSOs, but instead to the system of social protection, i.e. social work centres. Foster families are unfortunately insufficiently used to accommodate children identified as victims of trafficking in humans. In practice, the risk assessment of a child returning to his family is rarely made in the context of parents' involvement in the sale of the child.

On the occasion of 30 July, the World Day against Trafficking in Persons, the ASTRA reminded and called on all state authorities and relevant actors not to neglect the questions of poor working conditions and the violation of rights of our workers in the country and abroad, especially given that such situations can often lead to human trafficking for the purpose of labour exploitation.

According to official information, 136 victims of labour exploitation[121] have been identified in Serbia so far, while 77 victims have been identified through the ASTRA SOS Hotline.[122]The victims are predominantly economically

121 ASTRA SOS Hotline data from 2012 to June 2017, http://www.astra.rs/sos-telefon-i-pomoc-potencijalnim-zrtvama-trgovine-ljudima/statistika/.

122 The Center for Protection of Trafficking Victims' data from 2012 – August 2017, http://www.centarzztlj.rs/index.php/statistika.

active men exploited in the construction industry, on seasonal jobs of fruit picking or factory labour, but there were also women who were exploited working as maids, carers for the elderly, babysitters, etc.

Only in 2017, in direct contact with the citizens of Serbia, the ASTRA received over 400 calls to check job offers in the country and abroad, and recognised a large number of risky jobs that may be fraudulent or lead to the exploitation of our citizens. Drawing on its long experience in the field of suppressing and preventing human trafficking, the ASTRA continuously warns that normalising undeclared work and other forms of irregular labour and labour rights violation can lead to citizens themselves having difficulty recognising exploitation and exploitative, fraudulent business offers. Furthermore, employment fraud and labour exploitation – even when there is human trafficking involved – are not sufficiently recognised even in the legal framework, cases are not being prosecuted, there is a lack of convictions or any reactions of the relevant actors that would put an end to such cases and punish those responsible for them.

Up to this point only one case of labour exploitation has had a court epilogue in Serbia, ending with the acquittal for the defendants. Consequently, we can almost speak of the impunity of those who are involved or organise the labour exploitation of Serbian citizens. For this reason, it is essential to amend the Criminal Code of the Republic of Serbia, so that such cases can be prosecuted in an adequate manner. The Republic of Serbia should, as soon as possible, systematically react and act in order to protect the labour rights and ensure the conditions for respectful work of our citizens, as well as to prevent and punish the cases of human trafficking as the most extreme form of exploitation.

3.3.2. Position of Human Trafficking Victims in Court Proceedings

The research[123] of the Center for Investigative Journalism of Serbia has shown that due to the practice of Serbian prosecutors and courts, victims of human trafficking are forced to pass two sets of court proceedings so as to claim their rights. Despite having the possibility to determine the financial compensation to the victim themselves,[124] the prosecution and courts choose not to, referring victims to the litigation procedure. This can take years and causes additional trauma, while the outcome is uncertain, so most victims decide not to claim damages. Only one victim has been found by reporters to be awarded the compensation through litigation between 2012 and the end of 2016.

The research indicates that from 2012 to the end of 2016 at least 107 persons were convicted of human trafficking, trafficking of minors for adoption, and intermediary services in prostitution. As some courts refused to file all data, research identified 52 individuals against whom these verdicts were passed. Out of these, new court proceedings for damage compensation, arising from forcing a person to prostitution, were launched in just one case.

In the verdicts obtained, victims of human trafficking and prostitution are mostly described as uneducated and with poor material status, and judges frequently emphasise the strong trauma the persons were subjected to. Nevertheless, courts still decide to refer them to new trials, where they would have to face human traffickers again as equal parties and be exposed to secondary victimisation and repeated trauma, as well as new costs for victims and possible years of litigation.

The CINS analysed the data on guilty verdicts passed by basic and higher courts in Serbia over the last five years, for criminal offences of human trafficking, trafficking in minors for adoption, and intermediary services in prostitution. Some courts did not respond to requests for access to information, while the others passed data through verdicts, or just as a number of verdicts and defendants found guilty. Higher courts passed the total of 70 guilty verdicts for human trafficking, and three verdicts for trafficking in minors for adoption. Basic courts do not prosecute these criminal offences. For intermediation in prostitution, higher courts passed 21 and basic courts 29 guilty verdicts. Together with prison sentences, every fifth convict was also pronounced a fine, while confiscation of property originating from the criminal offence of human trafficking was at the level of incident – four times in the last five years.

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123 https://www.cins.rs/english/research_stories/article/you-survive-prostitution-beating-and-starvation-to-fight-for-damages-yourself.

124 On 31 **August 2009** the Serbian Parliament passed **amendments and supplements to the Criminal Code of Serbia** (Official Gazette of RS, No. 72/09). Novelties in Article 388 – Human Trafficking - http://www.astra.rs/legislation/national-legislation/?lang=en.

Fines ranged from 10,000 to 300,000 dinars (523.5 – 2,510 EUR, at the current exchange rate of the National Bank of Serbia),[125] while the confiscated illegal proceeds amounted to 1.45 million dinars and 8,300 EUR. The CINS collected these data only on the basis of supplied verdicts, as the Ministry of Justice has been refusing to supply data on property confiscated for these criminal offences for months.

RECOMMENDATIONS:

- Consistent implementation of the Strategy for Prevention and Suppression of Trafficking in Humans, Especially Women and Children, and Protection of the Victims from 2017 to 2022, and the involvement of all actors in implementing the activities from the Action Plan for the forthcoming period;
- Amend the Criminal Code of Serbia so that the cases of labour exploitation can be prosecuted in an adequate manner;
- Develop and use indicators to identify child and adult victims in all phases and for all forms of trafficking in humans. They should be clearly defined, both at the preliminary level and at the level of final identification. Furthermore, new methods should be developed to enable the self-identification of (possible) victims;
- Develop and implement the policy of minimum standards to assist victims of trafficking in humans at all stages of assistance, along with the procedures that the relevant partakers should adhere to, based on the principles of respecting the will of the victim, acting in their best interest and non-discrimination;
- Carry out the necessary training for members of the relevant institutions, as well as broaden the capacities of the police, especially members of the criminal police, labour inspectors, and social workers, to identify trafficking victims;
- Establish, without delay, shelters for emergency accommodation of victims of trafficking in human beings, as well as specialised shelters for child victims, and develop specialised programmes of support and protection appropriate to the needs of child victims.

3.4. Fight against Terrorism

Serbia achieved some level of preparation in the field of fight against terrorism. Its legislative framework is in place and to a good extent aligned with the EU acquis. However, Serbia has still not adopted the National Strategy and Action Plan for Prevention and Fight against Terrorism, even though both documents were drafted in 2016 and the AP for Chapter 24 envisaged its adoption in the second quarter of 2016. The Report on the Implementation of Action Plan for Chapter 24 for the period January–July 2017 proposed that the adoption should be postponed for the third quarter of 2017. CSOs submitted extensive comments on both documents, and the MoI recently published the Report from the Public Debate where all received comments were listed and explanations provided regarding whether they were taken into account or not.[126]

Although neither of the two documents with the integrated suggestions has been published, based on this Report it is possible to make an informed guess as to whether the shortcomings identified by a number of civil society actors were resolved. Most of the controversial issues previously identified by the BCSP and other CSOs still remain present in the documents.[127] The

125 The exchange rate has fluctuated in both directions by less than 12% during the observed period (2012–2017). The dinar is approximately 14 percentage points weaker against the euro than in early 2012, according to the National Bank of Serbia.

126 The Report (only in Serbian) is available at: http://mup.gov.rs/wps/wcm/connect/adf1ae97-8da0-47b2-afe6-fa8b70248958/Izvestaj+o+javn.raspr._Strategija_Terorizam.pdf?MOD=AJPERES&CVID=lRQEwHH&CVID=lRQEwHH&CVID=lRQEwHH (accessed on 13 September 2017).

127 For a detailed overview of identified shortcomings see: prEUgovor Alarm: Report on the Progress of Serbia in Chapters 23 and 24, p. 36, April 2017, pp. 42–44. Available at: http://preugovor.org/upload/document/coalition_preugovor_report_on_progress_of_serbia_i.pdf (accessed on 13 September 2017).

role of local communities in preventing radicalisation is still underdeveloped in the Strategy; the section dedicated to dealing with persons at risk of radicalisation will remain limited only to those persons in the prison and probation system whereas other persons at risk of radicalisation are excluded; the Draft Strategy remains focused on Islamic extremism and terrorism, while other forms of extremism are neglected. The Draft Strategy was not corroborated by any kind of publicly accessible data, although the Report refers several times to the conducted SWOT analysis and its findings as the reason for rejecting some of the submitted comments. Finally, the importance of relying on the existing civil emergency system in responding to terrorist acts is still not fully recognised. Among the comments that were accepted by the Working Group for drafting the Strategy, the one suggesting the introduction of an additional column where financial means for the implementation of the Action Plan would be listed will contribute to more transparent implementation and allow for more efficient monitoring.

Moreover, Serbia is obliged to transpose the Directive 2008/114/EC on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection. Very little progress was made in this area, as the deadline for this activity was set for the first quarter of 2017 and an extension was proposed by the MoI for the end of the same year. While the GAP analysis was conducted, the process of drafting the legislative framework has not commenced as of July 2017.

Lastly, a single national terrorism-related database (recommendation 7.3. from AP for Chapter 24) has not yet been established, even though an exact model has been determined. At a meeting with the representatives of CSOs, the Negotiating Group for Chapter 24 declared that the database is being established.[128] The Working Group for the Establishment of a National Database was engaged in drafting a relevant by-law, yet a proposal for postponement for the completion of this activity for the second quarter of 2018 was suggested. The need for alignment with the positive practices of personal data processing was stated as the reason for the delay of implementation of this activity. A statement made by a member of the Working Group, at the aforementioned meeting, suggests that the reason for this delay is the constitutional reform that should take place within the Chapter 23 of accession negotiations. Namely, the Constitution prescribes that personal data processing can only be regulated by law and not by-laws or any other legal acts. An informed guess, based on the above development, is that the planned constitutional reform might take the direction of derogating the personal data protection standards and allow for regulating this area with by-laws, which could be the reason for the postponement of this activity. This would be a step back in the achieved level of fundamental rights as enshrined in the Constitution of the Republic of Serbia.

RECOMMENDATIONS:

- The Government needs to make reports on activities that are marked as completed publicly available, so that the public and CSOs interested in these policies can monitor and evaluate progress.
- The Government needs to step up the implementation of activities dedicated to fight against terrorism within the Action Plan for Chapter 24 by adopting the National Strategy for Prevention and Fight against Terrorism, fully aligned with EU Counter-Terrorism Strategy.

128 The information was disclosed on 25 July 2017. The report (only in Serbian) is available at: www.bezbednost.org/Vesti-iz-BCBP/6568/Srbija-napredovala-u-okviru-Poglavlja-24-iako.shtml (accessed on 13 September, 2017).

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Kingdom of the Netherlands

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