

PREUGOVOR ALARM

REPORT ON THE PROGRESS OF SERBIA IN CLUSTER 1

Jelena Pejić Nikić, ed.

Belgrade, November 2022

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About prEUgovor

The prEUgovor coalition (Eng. prEUunup) is the first coalition of civil society organisations formed 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. It is comprised of seven civil society organisations with expertise in the thematic areas covered by the “Fundamentals” Cluster. 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.



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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 (BCBP)

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

On prEUgovor Alarm Report

The *prEUgovor Alarm Report on the Progress of Serbia in Cluster 1* is a regular, semi-annual shadow report jointly produced and published by the seven civil society organisations comprising the prEUgovor coalition. The Alarm reports have been the corner-stone of prEUgovor monitoring efforts ever since its inception, focusing on tracking the progress and performance of the Serbian Government on delivering rule of law related reforms. The prEUgovor Alarm reports focus primarily on the selected policy areas from the Political Criteria, Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Liberty, Security) of the accession process of the Republic of Serbia to the European Union, i.e. from Cluster 1 in the new enlargement methodology.

Alarm Reports monitor the extent to which the responsible authorities fulfil their obligations envisaged by the Action Plans for Chapters 23 and 24, as well as other complementary initiatives relevant for the rule of law (e.g. reporting to the UN and Council of Europe on specific conventions). In Alarms, prEUgovor members assess the extent of fulfilment of relevant recommendations, activities, and adherence to the timeframe, provide qualitative analysis of the legislative and policy initiatives and assess to what extent these provisions are aligned with the EU regulatory framework. The Alarm Reports neither cover all policy areas from the Political Criteria and Chapters 23 and 24 nor intend to serve as a comprehensive assessment of the Government's reform agenda. The Alarm Reports rather focus on key policies from the above-mentioned areas, those that correspond to the field of expertise of each member organisation and in which they possess relevant knowledge and experience. Moreover, the Alarm Reports tend to focus on the most salient policy issues at any given time, which is why their content and length may vary based on the reform priorities.

When writing Alarm Reports, prEUgovor coalition relies exclusively on publically available data relevant to the ongoing reform processes. This includes relevant legislation, bylaws, strategic documents, analyses and reports produced by state authorities and international organisations, media reports, official statements, etc. In addition, prEUgovor relies on findings of other civil society organisations, investigative journalists, testimonies and interviews of relevant stakeholders. Finally, prEUgovor members draw a significant amount of data from their everyday work and research they conduct, which is incorporated into the Alarm Reports and serves the purpose of enriching the findings and informing the debate. Each Alarm Report is drafted by several authors from each of the seven prEUgovor member organisations in a collaborative effort. Depending on the topicality and importance of other topics within cluster 1, the coalition seeks to engage external authors from other civil society organizations that have expertise in these topics. Best practices are put in place regarding quality control, fact-checking, revising and editing the findings. However, if there are errors and omissions to be found, these are not due to the malintent of the authors but rather due to challenges in undertaking the work of this scope.

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List of Abbreviations

AP	Action Plan
AP 23	Action Plan for Chapter 23
AP 24	Action Plan for Chapter 24
BIA	Security Information Agency of Serbia
B&H	Bosnia and Herzegovina
CB	Coordination Body for Monitoring the Implementation of the Action Plan for Chapter 23
CC	Criminal Code
CEDAW	UN Committee on the Elimination of Discrimination against Women
CPC	Criminal Procedure Code
CPL	Civil Procedure Law
CPWG	Child Protection Working Group
CRM	Common Regional Market
CSO	Civil society organisation
EC	European Commission
ECtHR	European Court of Human Rights
EP	European Parliament
EPS	Electric Company of Serbia
ERCC	Electronic Register of Corruption Cases
FATF	Financial Action Task Force
GOPAC	Global Organization of Parliamentarians Against Corruption
GRECO	Council of Europe's Group of States against Corruption
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
HJC	High Judicial Council
HLC	Humanitarian Law Center
HPC	High Prosecutorial Council
HPPO	Higher Public Prosecutor's Office
LGBTQ+	lesbian, gay, bisexual, transgender, queer and other
MODS	Network of Children's Organisations of Serbia
MoI	Ministry of the Interior
MoJ	Ministry of Justice
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (in the framework of the Council of Europe)

MP	Member of Parliament
MSP	Media Service Provider
NCEU	National Convention on the European Union
NGO	Non-governmental organisation
NPM	National Preventive Mechanism
NRM	National Referral System
NUNS	Independent Journalists' Association of Serbia
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Cooperation in Europe
POOC	Prosecutor's Office for Organised Crime
REM	Regulatory Authority for Electronic Media
RTS	Public Broadcasting Service of Serbia
SLAPP	Strategic lawsuits against public participation
SNS	Serbian Progressive Party
SOP	Standard operating procedure
SPS	Socialist Party of Serbia
SPC	Serbian Orthodox Church
SRS	Serbian Radical Party
SVM	Alliance of Hungarians of Vojvodina
TCN	Third country nationals
THB	Trafficking in human beings
UN	United Nations
UPS	United for the Victory of Serbia
US	United States (of America)
VSU	Victim Support Unit

Introduction with Summary

The reporting period – from May to October 2022 – Serbia spent with the Government in a technical mandate. The formation of the Government that should act as an engine of European integration waited until the deadline, even though the parliamentary majority was clear and the international and domestic circumstances demanded decisive action. Most of the reform activities in Cluster 1 have therefore been put on hold, starting with the drafting and adoption of regulations. Serbia is still far from achieving visible results in the areas monitored by the prEUgovor coalition. Moreover, in the previous six months, even the hitherto prevailing approach of “ticking the boxes”, i.e. piling up activities to feign reform efforts, was absent. The rule of law is temporarily marginalized by geopolitical considerations due to the consequences of Russian aggression against Ukraine and strained relations between Belgrade and Priština. Still, it remains at the core of European integration.

The intensive work on writing five judicial laws to implement the constitutional amendments adopted in February 2022 was an exception. As in the previous fall, this area remains the backbone of the progress that the Government is trying to present in Cluster 1 of the accession negotiations with the European Union.

Inconsistent words and unconvincing deeds have characterized Serbia's conduct in the past period, the annual report of the European Commission from October 2022 showed.¹ Since 2015, when the European Commission started quantifying its assessments, the overall level of Serbia's preparation for membership has increased only slightly, and since 2020 it has not moved past halfway.² In Chapters 23 and 24, which cover the judiciary and fundamental rights, the fight against corruption and organized crime, Serbia has only reached a certain level of preparation for membership. That's a score of 2 out of 5. North Macedonia and Albania, which only opened accession negotiations in July 2022, received higher scores.³ Regarding average annual progress, Serbia achieved its most modest result so far and even backslid for the first time – in alignment with the EU's foreign and security policy.

In the given geopolitical situation, Serbia's clear positioning towards the Russian invasion of Ukraine is interpreted as crucial for expressing the country's strategic commitment to European integration. Although Serbian officials can be criticized for sending ambivalent messages about the European Union, diverse voices about Serbia's progress are also heard from the other side.⁴ As a result, the support of Serbian citizens for joining the EU has dropped,⁵ and such findings serve as an excuse for further delaying the adoption of critical decisions and the implementation of essential reforms.

It is necessary to revive the transformational potential of the EU enlargement policy with credible words and deeds. The coalition prEUgovor reminds that the accession process must not be a goal in itself, but a means to achieve essential progress in the further democratization and organization of the state, based on the rule of law.

1 "The European Commission's New Report on Serbia: Inconsistent Words, Unconvincing Deeds", prEUgovor, 18. 10. 2022, <https://www.preugovor.org/Articles/1769/The-European-Commissions-New-Report-on-Serbia.shtml>

2 The average level of Serbia's preparedness for membership amounts to 3,03 out of 5. "Srbija i Evropska unija: Dokle smo stigli sa reformama?", prEUgovor, 12 Oct 2022, <https://www.preugovor.org/Infografici/1765/Srbija-i-Evropska-unija-dokle-smo-stigli-sa.shtml>

3 "Evropske integracije Zapadnog Balkana: Srbija u odnosu na region", prEUgovor, 18 Oct 2022, <https://www.preugovor.org/Infografici/1767/Evropske-integracije-Zapadnog-Balkana-Srbija-u.shtml>

4 During her visit to Serbia at the end of October, the President of the European Commission made an uncritical comment on Serbia's progress, contrary to the facts and assessments presented by her Commission in the annual report: <https://twitter.com/vonderleyen/status/1586072227874852866>

5 See e.g. Demostat, "Spoljno-političke orijentacije građana Srbije", [Foreign-political orientation of citizens of Serbia] 29 June 2022, <https://demostat.rs/upload/Prezentacija%2029062022%20Demostat.pdf>

POLITICAL CRITERIA

Due to the repetition of **elections** in one polling station that influenced the distribution of one mandate, the results of the parliamentary elections were announced three months after they were held. In its final report, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) pointed out the shortcomings that made the election race unequal, and called for changes to the regulations to be made in a timely, transparent and consultative process. The Regulatory Authority for Electronic Media (REM) published the findings of its monitoring of the presentation of election participants in the media with great delay, applying a somewhat disputed methodology. There were significant deficiencies in almost all reports on campaign expenses. The Agency for the Prevention of Corruption has published its reports on campaign financing within the legal time limit, but their quality needs to be improved.

The new convocation of the **National Assembly** started working on 1 August 2022. The return of the opposition MPs to the parliamentary benches has somewhat revived parliamentary life, but the ruling majority is already bringing back old practices, aimed at obstructing the oversight of the executive, including the security sector, by abusing parliamentary procedures. Parliamentary committees have only just begun to deal with numerous obligations whose deadlines have expired in the first half of the year. There was no improvement in implementation of the Code of Ethics.

Ahead of the election of the new **Government**, amendments to the Law on Ministries were adopted only in late October. The organisation of the executive power in Serbia has once again been altered without providing an explanation as to how the changes will affect the performance of the state administration. This encourages speculation that the real reason for such changes is primarily personnel combinatorics. The new Government of Ana Brnabić, consisting of 25 line ministers and three ministers without portfolio, was elected on 26 October.

The new Government kept the Ministry for Human and Minority Rights and Social Dialogue. The legitimacy of the future Council for the Development of and Cooperation with the Civil Society is under question. Pressures and attacks on representatives of the **civil society**, especially environmental and LGBTQ+ activists, have continued. The European Commission underlined the importance of the work of organisations that provide assistance and support to citizens, thus making up for the passive role of the state.

There have been no significant positive developments in the **relations between Serbia and its neighbours**. Relations with Kosovo entered a crisis phase during the summer due to the disputed issue of vehicles' license plates and entry/exit documents, while the issue of overall normalisation became significant after the start of the war in Ukraine. Political and rhetorical conflicts between Belgrade and Zagreb regarding several new topics only highlighted the fragility of bilateral relations. On the other hand, the positive trend of relaxation and improvement of relations continued with several other neighbours. In multilateral forums, Serbia maintained its constructive role in principle, and Belgrade kept an extremely strong focus on the Open Balkans initiative.

The critical speech of Serbian officials about the European Union was again dominantly related to the local perception of the Russian attack on Ukraine, the introduction of a series of European Union sanctions against Russia, and the indirect and direct impact on Serbia of the collapse of relations between the Union and Russia. Given the mutual interaction of the Eurosceptic messages sent by the political elite and the entrenched attitudes of the public in general, public opinion polls showed a drop in Serbian citizens' support for EU integration.

CHAPTER 23

Coordinating Body for the Implementation of the Action Plan for Chapter 23 (AP 23) has continued its regular quarterly reporting. However, the announced report on the fulfilment of interim benchmarks has not been published yet.

By February 2023, Serbia needs to adopt five key judicial laws so as to implement constitutional changes aimed at strengthening guarantees of the independence of the **judiciary**. The work of the judicial and prosecutorial group of the Ministry of Justice was marked by the extraordinary speed with which the working versions of the texts were drafted, but the key decisions were made by the Ministry of Justice. The proposed solutions allow the legislative and executive branches of power to maintain the possibility of influencing the most important decisions in the judiciary. The working version of the texts of prosecutorial laws are fundamentally limited by previously adopted constitutional solutions that maintain the strict hierarchical nature of this body. Despite certain procedural and terminological changes, the connection between the prosecution and the executive power is still present.

Amendments to the Civil Procedure Law and the Criminal Procedure Code have been delayed for more than 18 months. Despite increased human resources, the performance of the War Crimes Prosecutor's Office over the past five years has been more than modest. The number of indictments filed annually by this prosecutor's office is decreasing, the indictments are insufficiently substantiated, and there are numerous shortcomings in the judgments of domestic courts in **war crimes** proceedings, as constantly pointed out by the civil society. There are no investigations against the most responsible members of the army and police who had occupied high positions during the conflict and are still active in today's public life. In Serbia and the region, the application of the institute of trial in absentia is proving to be disastrous for the process of dealing with the past, and represents a step backwards when it comes to the prosecution of these crimes.

During the reporting period, no **anti-corruption** regulations were amended and no new ones prepared (with the exception of the judicial ones) in relation to the earlier GRECO recommendations. Serbia received some highly significant recommendations from GRECO and ODIHR; however, the state authorities have yet to take any action regarding these. Work on the new Strategy for the Fight against Corruption has not started, nor are there any visible results of the implementation of Operational Plans for the fight against corruption in areas of special risk. All the negative trends that had been noted in previous reports have continued or intensified, especially when it comes to public procurement, management of state-owned enterprises and public administration. Competent authorities have not reacted to potential cases of high-level corruption revealed by the media.

This reporting period, too, was marked by an unfavourable environment for the exercise of **freedom of expression and media** in Serbia. Attacks and pressure on journalists are continuing, including the so-called SLAPP lawsuits. At the end of July, four licenses for televisions with national coverage were granted to the same TV companies that had violated laws and the journalistic code in the previous period.

There have been delays in adopting necessary action plans in the areas of **non-discrimination, gender equality and violence against women**. Although the official documents mention numerous "successfully implemented activities", a series of events from the reporting period shows the parallel reality. There are no investigations or appropriate measures to prevent femicide in cases of violence that state authorities knew about, or could have known about. Relevant regulatory bodies have no intention of stopping the degrading media coverage of violence against women. The criminal offence of rape has yet to be harmonised with the Istanbul Convention. The state consistently either avoids funding support activities for victims of violence, or allocates the largest portion of the budget funds to pre-registered organisations without any field knowledge, including those led by convicted perpetrators of violence. A central record of all acts of gender-based violence has not yet been established.

Activities from the AP 23 concerning the **rights of the child** have still not been implemented. The inability of the system to recognise the risk of a child's visitation by a violent father will not result in systemic changes to the organisation and expertise of the competent bodies. Preventing children from

enrolling in kindergarten because of their parents' political affiliations is another form of gross violation of children's rights. In regard to **strengthening procedural safeguards**, implementation of the National Strategy for Exercising the Rights of Victims and Witnesses of Criminal Acts has not led to real effects.

The Law on **Personal Data Protection** is still to be improved, and many other regulations should be harmonised with it. The Personal Data Protection Strategy is still being drafted. An extensive promotional campaign was carried out during the summer. The Ministry of the Interior still intends to introduce and legalise the technology for mass smart surveillance of the population, although it did not prove the necessity of its application, and it underestimated the risks to fundamental rights and freedoms.

CHAPTER 24

The key obstacle in the field of **police reform** as part of Chapter 24 is the improvement of the integrity of this institution, primarily in connection with the benchmark referring to the need to ensure the operational autonomy of the police. The first, most important step will be to draft a high-quality Law on Internal Affairs, whose entry into the parliamentary procedure and adoption are expected after the formation of the new Government. It is necessary for the police to show respect for the highest standards of integrity in practice, primarily by processing cases that involve problematic behaviour of police officers.

There was no significant progress in the reporting period in adoption of amendments to the set of laws on **asylum and migration**, nor in the implementation of the Law on Foreigners. It is necessary to enhance implementation of legal concepts provided by the Law on Foreigners and the Law on Asylum and Temporary Protection whose purpose is to regulate the legal status of migrants and refugees in the territory of the Republic of Serbia. The transit of migrants through Serbia on the Western Balkans route has been continuously increasing. Sensationalist media reporting contributes to strengthening / spreading the anti-migrant narrative.

The narrative about the success of the **fight against organised crime** is unjustifiably dominant in Serbia, because the data on said fight are not public. The narrative is promoted mostly by the representatives of the executive branch of power, reminding us that this fight depends largely on political will. Unfortunately, instead of a strategic approach, the individual approach to cases of organised crime still prevails. Nothing has been done to review the role of security intelligence agencies in criminal investigations.

More than two thirds of the planned activities from the Action Plan for Chapter 24 (AP 24) in the field of suppressing and **combating trafficking in human beings** (THB) have not been realised. The umbrella national strategy in this area is in the final stage of its implementation without the Action Plan being adopted. There is no information on drafting new strategic documents. The responses of Serbia to more and more complex international challenges in this area are becoming ever weaker and more indecisive. Numerous appeals by international institutions and organisations concerning the "Linglong" case, led to no (visible) reaction by competent authorities. The position of THB in court proceedings has not been improved. SOS hotlines of civil society organisations keep operating without any financial support by the state.

In the area of **fighting violent extremism and terrorism**, the trend of increasing activity of the extreme right in Serbia is still present, while the response of state institutions is inadequate and weak. Support for Russia's invasion of Ukraine, visible ties to the Russian (militant) extreme right, threats of violence if Serbia imposes sanctions on Russia and hate speech directed against the LGBTQ+ minority have dominated the activities of the extreme right in Serbia during the reporting period.

1. DEMOCRACY

1.1. Elections

Due to the repetition of elections in one polling station that influenced the distribution of one mandate, the results of the parliamentary elections were announced three months after they were held. The Republic Electoral Commission publishes many documents, but not yet in searchable form. In its final report, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) recalled its previously unfulfilled recommendations, made a number of new ones, pointed out the shortcomings that made the election race unequal, and called for changes to the regulations to be made in a timely, transparent and consultative process. The Regulatory Authority for Electronic Media published the findings of the monitoring of the presentation of election participants in the media with great delay, applying a somewhat disputed methodology. Reports on campaign expenses show that the campaign was financed almost entirely from the budget, directly or with funds that parliamentary parties received earlier, to finance their regular work. The analysis shows significant deficiencies in almost all reports, such as e.g. incorrectly classified or insufficiently detailed expenses, and there is a suspicion that certain expenses were not reported at all or were exaggerated to avoid returning the surplus to the budget. The report of the Agency for the Prevention of Corruption on the conducted control (of the presidential elections) did not convincingly dispel any of the above suspicions.

1.1.1. Completion of the election process

The results of the election for the president of the Republic were announced on 9 May 2022,⁶ and the results of the parliamentary elections on 5 July 2022.⁷ The reason for the latter delay was the repetition of the parliamentary elections at one polling station, in Veliki Trnovac, an Albanian village in the municipality of Bujanovac.⁸ The reasons for repeating the elections differed, as did the proponents. The importance of voting at this polling station was reflected in the fact that the outcome of said voting was to determine whether the coalition of several parties of the Albanian national minority would succeed in reaching the reduced "natural threshold", i.e. a special census defined for minority parties. That did happen in the end, so the coalition won one seat in the parliament, having received 0.28% of the total number of valid votes. Had it not succeeded, the seat would have gone to the coalition of the Socialist Party of Serbia and United Serbia (SPS-JS).

In accordance with the changes that were made to the electoral laws before the elections and the inter-party agreements, by publishing numerous decisions on its website⁹ the Republic Electoral Commission ensured a higher level of transparency of its work, as well as the work of other electoral commissions and polling committees. Although the list of decisions can be searched by certain criteria, the database is not fully searchable since most of the documents are published in the form of scans. In addition, certain data that could provide interesting and significant insight into the costs of the election are not published in a systematic way. This primarily refers to the number of representatives of individual election lists and candidate nominators in electoral committees, as well as the amount of total compensation paid to them from the budget on that basis.

There are still doubts regarding the practice of considering objections to the course of the election procedure, both by the election commissions and the Administrative Court, especially regarding the equality of treatment in similar situations. Also, based on the search of published data, it is not possible to determine in how many cases voting at polling stations was annulled for a specific reason.

6 <https://www.euronews.rs/izbori-2022/vesti/47648/rik-objavila-konacne-rezultate-predsednickih-izbora/vest>

7 <https://www.slobodnaevropa.org/a/srbija-rezultati-izbora/31929832.html>

8 <https://www.slobodnaevropa.org/a/izbori-veliki-trnovac/31913802.html>

9 <http://bit.ly/3sZVF3L>

1.1.2. Key Findings and Recommendations of ODIHR

The observation mission of OSCE's Office for Democratic Institutions and Human Rights (ODIHR) for the April Elections published its Final Report on 19 August 2022.¹⁰ The Report contains comprehensive findings about previous elections, as well as nine principal and 17 other recommendations that Serbia needs to implement to hold the next elections according to democratic standards.

ODIHR evaluates that besides respecting fundamental rights, the "combined impact of unbalanced access to media, undue pressure on public sector employees to support the incumbents, significant campaign finance disparities and misuse of administrative resources led to unequal conditions for contestants".¹¹ In addition, ODIHR reminded of its numerous recommendations which haven't been taken into account during legislative reform, including those on the matter of "contestants" access to media, enhanced transparency and accountability of campaign finance, and measures to tackle pressure on voters and misuse of administrative resources.¹² Besides this, ODIHR pointed out to presentation of numerous infrastructural projects in the campaign by the President and the Prime Minister, as well as activities which made election conditions unfair, "blurring the line between state and the party."¹³

Regarding the Law on Financing of Political Activities, ODIHR reminds of their previous recommendation on introducing maximum campaign costs per election list/candidate. PrEUgovor Coalition reminded of this obligation during the public debate and presented its proposal on this matter, while Transparentnost Srbija – member of the Coalition, repeated and further explained these proposals during the parliamentary discussion.¹⁴ Modelled by neighbouring countries, the proposal envisaged a limitation of 300 million dinars per one list/candidate for parliamentary and 200 million dinars for presidential elections (300 million dinars in case of a runoff). However, this proposal was rejected without any clarification.

"Public campaign subsidies were disbursed shortly before election day, limiting the possibility for contestants to use them effectively"¹⁵, ODIHR noticed. "The newly introduced interim reports only covered the period until 15 days prior to the elections, leaving significant expenditures unreported. The Agency for Prevention of Corruption, responsible for campaign finance oversight, did not effectively respond to alleged violations"¹⁶ – it is stated in the Report. With this, TS' warnings¹⁷ are confirmed – the concept of preliminary reports is insufficient to provide appropriate election financing transparency. Instead, a "transparent bills" system is proposed, which has already been tested in Czechia.

Moreover, ODIHR requires Serbia to regulate campaign management by "third parties", to impose effective, proportional and deterring penalties in case of non-submission of campaign expense reports, and to amend the Criminal Code. "Distributing public funding for election campaigns should be adjusted to allow meaningful possibilities for campaigning. Also, misuse of the campaign expenditure should be prevented"¹⁸ – it is stated in one of the recommendations.

It is no less significant recommendation that states "The Anti-Corruption Agency should be obliged by law to identify violations proactively and in a timely manner, and respond to complaints by issuing formal decisions, subject to a judicial review. The law should prescribe expedited deadlines for the entire dispute resolution process related to campaign finance violations."¹⁹ This recommendation is in

10 OSCE ODIHR. *Presidential and Early Parliamentary Elections 3 April 2022. ODIHR Election Observation Mission Final Report*, Warsaw, 19 Aug 2022, <https://www.osce.org/files/f/documents/0/0/524385.pdf>

11 Ibid, p. 1.

12 Ibid.

13 Ibid, p. 2.

14 Transparency Serbia. "Proposals for amendments to improve the election process", Belgrade, 1 Feb 2022, <https://bit.ly/3hxJicV>.

15 OSCE ODIHR. *Presidential and Early Parliamentary Elections 3 April 2022*, op. cit, p. 3.

16 Ibid.

17 Transparency Serbia. "Proposals for amendments to improve the election process", op. cit.

18 OSCE ODIHR. *Presidential and Early Parliamentary Elections 3 April 2022*, op. cit.

19 Ibid.

connection with the Agency's²⁰ routine to reject reports of election campaign abuses without issuing an official decision, as well as with the absence of deadlines for the Administrative Court decision in cases when the complainant disputes the Agency's decision. Due to the lack of deadlines, among other things, the lawsuits filed by Transparency Serbia in connection with disputes from the 2020 elections have not yet been considered.

ODIHR states that there "must be established a clear legal boundary between the performance of public office and activities in the election campaign, and be taken measures to prevent misuse of position and public resources. Competent authorities should work to prevent violations of these rules and impose penalties that will deter such behavior. Effective legal and institutional monitoring mechanisms must be established and implemented to prevent pressure on voters, including employees of public institutions and companies."²¹ The regulation of the media coverage of officials who are also candidates could be further strengthened, including by extending the ban on the media coverage of all opening and inaugurating events for the entire duration of the campaign period.

Among other things, ODIHR recommended extending the ban on the media coverage of certain activities of public officials to the entire campaign, not just the last ten days. This part can be seen as one of the weak points in the otherwise excellent ODIHR report. The problem of the extensive "public officials' campaign" must be nipped in the bud – by clearly prescribing the regular activities of public officials and what activities they must not carry out during the campaign. The right place for that is Article 50 of the Law on Prevention of Corruption, for which prEUgovor and TS also made amendment proposals, not the media regulation.²²

According to ODIHR, public TV broadcasters have covered activities of campaign participants "but provided extensive uncritical news coverage to public officials who were also candidates".²³ "Private broadcast media with national coverage presented the election campaign without meaningful editorial input and focused their news coverage on state officials. Despite its mandate to oversee the broadcast media, the Electronic Media Regulatory Authority (REM) remained overall passive in the campaign period."²⁴

Regarding other questions, ODIHR points out that regardless of numerous claims of abuse and pressure, the Prosecutor's Office received just seven reports and pressed no charges. ODIHR highlights as a problem that the Administrative Court considered election disputes in closed sessions. The Republic Electoral Commission was recommended to publish the results of the elections in an accessible format immediately after receiving them and comprehensive information on the reports submitted to the electoral commissions. "The election administration should take measures to enhance the effectiveness of dispute resolution, by substantive reviewing all election-day related complaints and facilitating the reporting of administrative and criminal offences to the competent authorities"²⁵ – states one more important recommendation from the Report.

One remark is very important – the laws should be improved well before the next elections take place, "within an inclusive and transparent consultation process."²⁶

Only at the beginning of October (from the 3rd to the 7th), ODIHR representatives visited Serbia²⁷ and presented the previously published recommendations at a series of closed meetings. ODIHR experts met with representatives of the Republic Election Commission, the Ministry of Foreign Affairs, the Ministry of State Administration and Local Self-Government, the Administrative Court, the Agency for the Prevention

20 TS lawsuit against the Agency for Prevention of Corruption regarding administrative silence, submitted to the Administrative Court in Belgrade on 7 April 2022, <https://bit.ly/3hcqDDg>

21 OSCE ODIHR. *Presidential and Early Parliamentary Elections 3 April 2022*, op. cit. p. 33

22 prEUgovor, *How to Improve Transparency and Control of Campaign Financing*, Belgrade, December 2021, <https://www.preugovor.org/Amendments/1705/How-to-Improve-Transparency-and-Control-of.shtml>

23 OSCE ODIHR. *Presidential and Early Parliamentary Elections 3 April 2022*, op. cit. p. 3

24 Ibid.

25 Ibid, p. 30

26 Ibid, p. 32

27 <http://bit.ly/3Gd6XcC>

of Corruption, the Regulatory Authority for Electronic Media (REM), representatives of the national public broadcaster (RTS), the Ombudsman and the parliamentary Committee for Constitutional and Legislative Issues, as well as with representatives of several CSOs that monitor the election process and the media.

The ODIHR's recommendations did not resonate with the representatives of the state institutions of the Republic of Serbia. So far, not one of them has announced whether they will take any action to implement the received recommendations, nor what those steps could be. It is striking that, during this period, the Government's Working Group for cooperation with the ODIHR did not publish any information about its work, including the recommendations of the ODIHR and the meetings held. The last information about its work was posted on 16 April, 2021.²⁸

1.1.3. Final report of the Regulatory Authority for Electronic Media on the elections

It was only on 8 August 2022 that the Regulatory Authority for Electronic Media (REM) published the final report on the supervision of the work of Media Service Providers (MSPs) during the election campaign.²⁹ During the election campaign itself, sections of the report were published on a regular basis (ending on 20 March 2022), but data concerning the last ten days of the campaign, when the campaign was at its most intense, were published only four months later, with no explanation offered for the delay. This confirmed the suspicions that in this way the REM Council wanted to conceal from the public information that undoubtedly shows the dominance of the ruling political party and its presidential candidate, even with the application of the monitoring Methodology that was subjected to harsh criticism.³⁰ The outcome of applying the methodological framework received the same amount of criticism.³¹

Among other things, critics pointed out that the monitoring should have included, when it comes to cable TV stations, not only N1 and NovaS, which are represented by the distributor SBB, but also channels that are broadcast only by the distributor MTS (Tanjung, Euronews, K1, TV Kurir).

One of the objections was that the analysis was not carried out according to actors, that is, participants in the election process, as defined in the OSCE guide for media monitoring,³² but according to pieces of media programme. Another objection was that it was not determined whether state officials, i.e. their political parties had too much advantage from extensive reporting on their activities (for example, through uncritical reporting), and that it is not clear whether monitoring was carried out only in cases when officials themselves spoke, or also when someone else spoke about them.

According to the REM methodology, public officials were highly represented in the analysed programmes of individual TV stations - 21% on RTS 1, 39% on TV Pink, 40% on TV B92, 29% on TV Prva, and 22% on TV Happy. It was also stated that the presence of public officials decreased in the last ten days of the campaign, which was explained by the newly introduced rules for broadcasting certain activities of (individual) public officials. The report also mentioned a significant representation of analysts in regular election-themed news programmes (TV Pink - 30%, Happy - 24%, B92 - 42%), which made representation of election list representatives lower on those TV stations. It was also noted that the electoral list of Aleksandar Vučić was the most represented on all commercial broadcasters.

The REM recommended the following: that media service providers take responsibility for the adequate connection and application of self-regulation and regulatory measures; that the rules of regulation and self-regulation be impartially applied in all program contents; that the bad practice of participation of MSPs in the election campaign by showing clips in which participants of the electoral process are

28 Last time accessed on 4 Nov 2022, <http://bit.ly/3fJntXn>

29 Regulatory Authority for Electronic Media, *Elections 2022 – Final Report*, Belgrade, Aug 2022, <https://bit.ly/3WBsXUG>

30 https://crt.rs/wp-content/uploads/2022/02/CRTA_Analiza-metodologije-REM-a_2022.pdf

31 <https://www.birodi.rs/wp-content/uploads/2022/08/Analiza-izvestaja-REM-monitoringa-parlamentarnih-i-predsednickih-izbora-2022.-godine.docx>

32 OSCE ODIHR, *Handbook on Media Monitoring for Election Observation Missions*, Warsaw, 2018, p. 40, https://www.osce.org/files/f/documents/b/1/384831_0.pdf

presented in an unambiguous way, either negatively or positively, be banned; that commercial MSPs be encouraged to apply the rules of presenting lists and candidates the way public media services do it; that the so-called public officials' campaign be precisely defined and that it be clearly distinguished from informing the public about the regular activities of state officials during the election campaign; and that prepared party video materials that were not produced by MSPs not be shown as regular journalistic activity, but that these contents instead be broadcast as election advertising messages. Finally, REM also added the following recommendation: "Additionally strengthen the independence of the regulatory body from the influence of state authorities, political and financial power centres, as well as from the influence of non-governmental organisations, that is, the civil sector, by clearly defining its role in electoral processes".³³ Although some of the recommendations are useful and appropriate, it is not clear at whom the last one is directed. Namely, it was precisely REM that set its own limits by adopting by-laws and the monitoring methodology - in terms of what issues it would be dealing with during the election campaign and in what way it would do it - not accepting proposals from the civil sector that aimed to make the role of REM more powerful in the electoral process.

Investigative story 1:

REM's belated reaction to the unlawfully long paid promotion of SNS on Pink TV

Right before the beginning of the election silence (during the elections of 3 April 2022), Pink television broadcast a two-hour show dedicated to the Serbian Progressive Party and its leader, which the public remembers as the show in which Aleksandar Vučić came out of the fridge. The "paid programme" label, which appeared from time to time in the upper left corner of the screen, indicated that this programme was in fact a paid promotion of the Progressives. The media warned that TV Pink violated³⁴ the Law on Advertising by doing this show because it lasted significantly longer than allowed (this was not the first time that this TV station did such a thing),³⁵ but the Regulatory Authority for Electronic Media (REM) did not file a misdemeanour report for three months after the elections.

It was only in September 2022, after the REM Council adopted a report on media coverage during the election campaign in August (in which, coincidentally, one can read that TV Pink's shows can serve as an example for other commercial television stations) that REM filed a misdemeanour report against the founder of this TV station. Among other things, said report stated that the above show was actually an advertisement that lasted almost two full hours instead of the legally allowed 12 minutes per one hour of programme, and that it was not separated from the rest of the programme in the prescribed manner. In the misdemeanour report, REM also stated that during the last election campaign TV Pink spent 43 minutes broadcasting the Progressives' election convention live from Niš. REM also filed misdemeanour charges against television stations Prva and Happy. The former had also broadcast the SNS convention from Niš, while Happy promoted Ivica Dačić in one of its shows longer than the law allowed.

Since REM, according to its established practice, does not file individual misdemeanour reports in cases of violation of the law, but rather summarises all the violations of one broadcaster on a monthly basis, it can be expected that the court will impose a unified fine both for this gross violation of the rules and for numerous other minor offences by the same broadcaster. This case is very important also in the context of compliance with the rules on election campaign financing. As the prEUgovor coalition pointed out while monitoring the election campaign expenses,³⁶ TV stations did not publish special price lists for leased time slots. If their full value per second were to be calculated, as if this were an ordinary advertisement, the price of this type of promotion would be very high (approximately EUR 200,000, even with the maximum discount). The report of the Agency for the Prevention of Corruption on the control of the financing of the campaign for the presidential elections does not clearly show whether the price paid by the parties for TV advertising was even considered, and whether there were any non-market discounts in connection with it.

33 REM, *Elections 2022 – Final Report*, op. cit, p. 307

34 <https://www.cins.rs/prekrsajna-prijava-pinku-zbog-emisije-u-kojoj-je-vucic-izasao-iz-frizidera/>

35 <https://www.danas.rs/vesti/drustvo/cins-pinkova-emisija-gde-vucic-izlazi-iz-frizidera-je-krsenje-zakona-rem-to-ignorise/>

36 Jelena Pejić Nikić (ed), *prEUgovor Alarm: Report on the Progress of Serbia in Cluster 1 - May 2022*, prEUgovor, Belgrade, 2022, pp. 23-27, <https://bit.ly/AlarmMay2022>

1.1.4. Control of the Previous Election Campaign and Control Plans

No timely information on who has not submitted reports

The deadlines for submitting reports on campaign expenses were calculated in relation to the date of the announcement of the final election results, so they expired on 20 June 2022 for the presidential elections and on 4 August 2022 for the parliamentary elections. The Agency for the Prevention of Corruption published reports on campaign expenses successively. In contrast to its previous good practice, the Agency did not publish information on which political entities did submit reports and which failed to do so, immediately after the deadline.³⁷

Judging by the data published in the Agency's register, the representatives of three electoral lists for the parliamentary elections and the proponent of one presidential candidate did not submit reports.³⁸ The two coalitions representing the Albanian national minority, as well as the Justice and Reconciliation Party, submitted their reports with a great delay. Although more than two months have passed since the expiry of the deadline, the report has not been submitted regarding the presidential candidate Miša Vacić either. Some of the above mentioned (the Roma Party, the Russian Minority Union, Miša Vacić) did not even submit preliminary financial reports, whose deadlines expired at the end of March.

This campaign was more expensive than the previous ones; the costs of the Belgrade campaign were artificially reduced

About RSD 2.15 billion or approximately EUR 18.3 million³⁹ was spent on the campaign for the presidential and parliamentary elections. For the sake of comparison, in the previous election campaign, which was boycotted by a significant part of the opposition, the reported expenses were 40% lower – EUR 10.4 million. Six years ago, the reported expenses amounted to EUR 12.8 million, while the 2017 presidential election cost about EUR 10.7 million.

In terms of spending, this year's campaign can be compared to the 2014 parliamentary elections (EUR 17.8 million), which was held at a time when numerous SNS competitors still had significant resources, and when there were media outlets and companies that agreed to advertise and provide them with other services on a deferred payment basis.

The record from 2012, when costs of approximately EUR 25 million were reported for the combined parliamentary and presidential elections, has not been reached. Besides the fact that the number of parties that able to pay has drastically decreased in the last ten years, the situation was also affected by the duration of the elections – this time, there was no second round of presidential elections.⁴⁰

For the elections for the City of Belgrade, which was in fact the main arena for political opponents, the reported cost was less than EUR 1 million. The explanation is simple: much less money was allocated from the City budget for the campaign, so the expenses, whenever possible, were attributed to those that were held at the level of the Republic.

Less debt after the campaign, negligible income from private sources

On the income side, the main novelty this year was the complete absence of loans. While the ruling parties obviously did not need this type of financing, there are indications that the opposition parties, which would have definitely benefited from this type of assistance, encountered obstacles in banks, i.e. could not provide sufficiently firm guarantees that they would be able to repay the loans in the event

37 <https://www.acas.rs/lat/news/288>

38 The reports were not submitted by the Roma Party, the "Stolen Babies" list and the list submitted under the name "The Russian Minority Union", <https://publicacas.acas.rs/#/acas/pretragaKampanja>

39 <https://izbori.transparentnost.org.rs/nelogicni-i-manjkavi-izvestaji-o-troskovima-izborne-kampanje/>

40 Nemanja Nenadić. "Campaign financing rules and their application", *Serbian Political Thought*, special edition from April 2022, p. 337-367, <https://doi.org/10.22182/spm.specijal42022.15>

that they did not pass the census. The ODIHR report also pointed to the problem of obtaining loans due to the “banks’ business policies”.

In addition to the absence of loans, the good news is the continuation of the trend of relatively low representation of reported campaign expenses that remained unpaid after reporting, compared to previous elections. Their total value was approximately RSD 80 million, i.e. 6.4% of the total reported costs of the campaign.

In these elections too, the budget of the Republic was the dominant source of the election campaign funding. Due to the simultaneous presidential and parliamentary elections, RSD 1,845 million (about EUR 15.7 million) was distributed for this purpose. Another RSD 144 million (EUR 1.2 million) should be added to this, as that is the amount of money that the participants in the elections transferred and spent from their standing party accounts. Namely, judging by the data from their annual financial reports, that money also came from the budget, but it was given to the parliamentary parties to finance their regular work, that is, *everything except the election campaign*.

An unusual thing happened during these elections. Namely, a group of citizens who nominated Dr. Biljana Stojković for the position of President of the Republic returned RSD 24.5 million of unspent funds to the budget. All other election participants either spent their budget funds in full or returned negligible amounts.

The actual private sources of financing the campaign could have included only about RSD 123 million of reported contributions from individuals and legal entities (6.5% of the total volume of the campaign), of which 80% refers to only one parliamentary list, the one that was led by the SPS.

Investigative story 2:

Five years later, the testimonies of fake SNS donors remained without an epilogue

In 2017 the *Anti-Corruption Agency* submitted a report to the Higher Public Prosecutor’s Office on suspicion of illegal funding by SNS, the *Socialist Party of Serbia* (SPS) and the *United Regions of Serbia* (URS).⁴¹ Five years later, the *Prosecutor’s Office* (PPO) decided not to initiate criminal proceedings for any of the reported acts by the Agency.⁴² CINS uncovered an official note from the PPO showing the testimonies of people who were used by SNS as fake donors. Donations cost some of them their social benefits, and even though everything was pointing to an organized illegal financing scheme, the PPO ended up dropping the case.

A statement D. M. gave to the police said that as an SNS member, she attended the meetings of the local SNS board in Zaječar. At the meeting, the local board’s president asked if any of the members had a current account through which money could be transferred to the party. D. applied because she was unemployed and wanted to prove herself as a cooperative member of the party. After a few days, she was sent to the office for cooperation with citizens at the building of the *Zaječar City Administration*. She received a filled-out payment slip and 40,000 RSD in an envelope with no inscription. She followed the procedure – she paid the money into her own account, and then transferred it to SNS. She paid the commission of 400 RSD out of her own pocket. She claims that she did not receive any money for that, but she did “suffer for it”, because the *Center for Social Work* cut her social benefits.

Although at least 135 donors first paid funds into their own accounts and then transferred it to SNS’s account, the police took statements from nine people. The *Prosecutor’s Office* had grounds for extending the investigation to other donors, because four out of nine admitted that they had not donated their own money. Moreover, the PPO failed to investigate the origin of the money donated to SNS.⁴³

41 <https://www.cins.rs/en/testimonies-of-fake-sns-donors/>

42 <https://www.cins.rs/utakmica-bez-sudije-kako-su-propali-slucajevi-zloupotreba-finansiranja-sns-a/>

43 <https://www.cins.rs/nenadic-tuzilastvo-propustilo-da-utvrdi-poreklo-novca-koji-je-doniran-sns-u/>

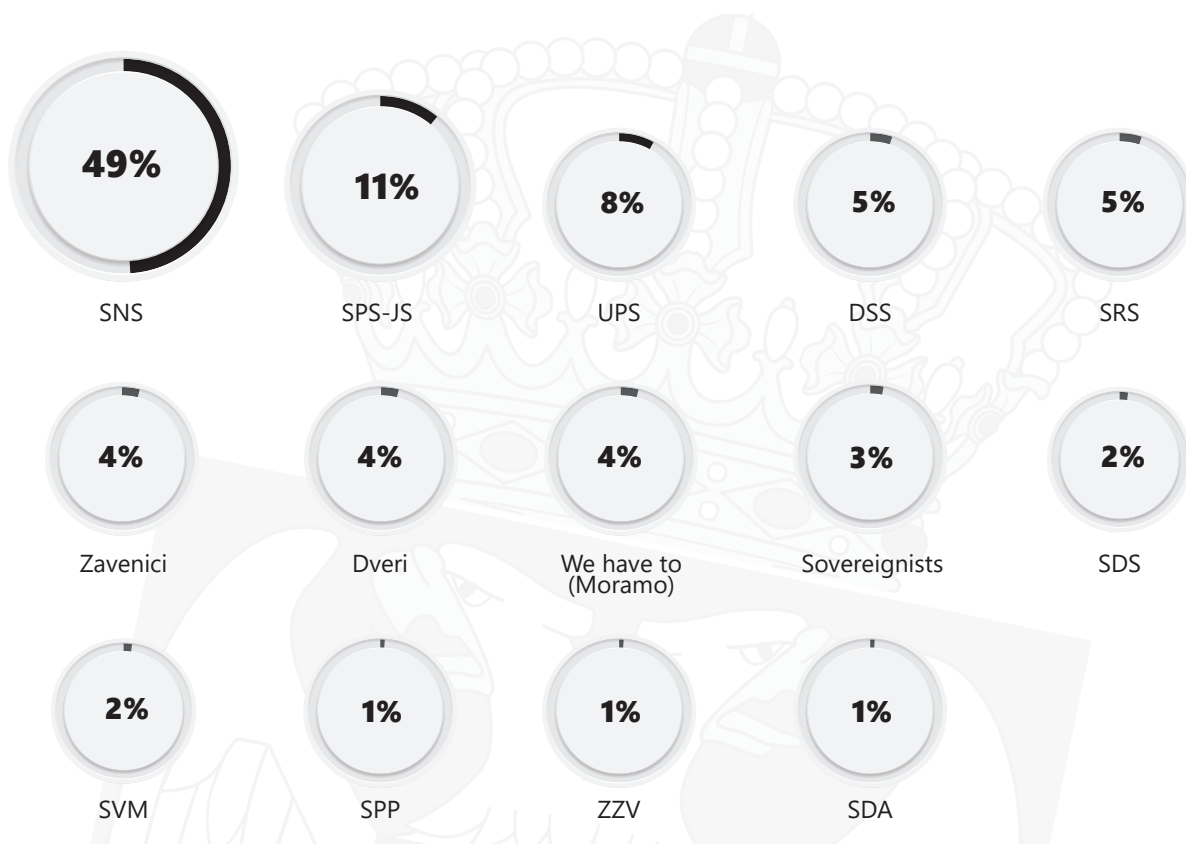
Half of the expenses were those of Vučić and the SNS; a large part of the expenses was improperly classified

As expected, this time too the election campaign financially benefitted TV stations the most, as their share was almost half of the total reported costs (47.3%), i.e. close to RSD 1 billion. The actual amount of internet advertising was far higher than the reported 2.17%, but part of the cost was incorrectly attributed to "other advertising costs", where almost a fifth of the total amount, i.e. 403 million, ended up. This was also one of the main problems regarding the clarity of this year's reports, because many of the included expenses should have been entered elsewhere (e.g. 178 million in marketing agencies' costs).

More than RSD 1 billion, or approximately half of the total reported campaign expenses for the presidential and parliamentary elections, refers to the SNS list and its presidential candidate.⁴⁴ Thus continued the trend of marked disparity in the investments of different election participants, which became particularly noticeable after 2014. The situation where there is such a pronounced financial dominance of the ruling party, and the campaign is almost entirely financed from the budget, provides an additional reason to legally limit the allowed expenditures in Serbia, as has been done in most European countries and as recommended by the ODIHR.

As expected, the transparency of funding data was not significantly improved by the introduction of preliminary reports. According to the new statutory solutions, the "preliminary reports" were supposed to show income and expenses as at 19 March 2022, two weeks before the elections. In the end, it turned out that only 16% of the total costs of the campaign were shown in these reports, that is, RSD 227 million for the parliamentary elections (compared to 1.45 billion from the final reports) and only 107 million for the presidential elections (out of the 963 from the final reports). An additional problem with the preliminary reports is the application of different recording methodologies (showing either contracted or paid costs), which could lead the public to a wrong conclusion.

Figure 1: The share of political entities in the reported expenses of the elections at the level of the republic



44 <https://izbori.transparentnost.org.rs/finansiranje-kampanje-za-predsednicke-izbore/>

Financial statements that raise numerous questions

Analyses of individual reports on campaign expenses prepared by *Transparency Serbia* showed that the control of the Agency for the Prevention of Corruption were supposed to include⁴⁵ the comparison of data from various reports, as that is the only way to figure out certain "illogicalities" - for example, that some participants in elections report the costs of distribution or design of promotional materials, travel and telephone communication, while others do not; that the value of similar services varies significantly among different parties; that the rental price paid for a billboard is significantly different, and so on.

Many sections of the parties' reports, however, are unusable for the purposes of control and require additional data (e.g. on the unit price of renting billboards, on the websites where advertising was published, etc.). In most cases, companies that were paid several million RSD were listed in the column titled "Other", including those that do not even have their own websites, without any additional notes on why said payments were made.

Generally speaking, while conducting control, the Agency should have taken into account the possibility that the reports (in addition to random errors) could also be intentionally incorrect, for at least three possible reasons. The first would be to hide data concerning illegal sources of funding (e.g. in cash, through publicly-owned and blackmailed private companies), which would lead to the omission of data concerning such activities. The second reason is the complete opposite, that is, the exaggeration of costs in cases where the campaign was smaller than the amount that was received from the budget, to avoid the obligation to return unspent funds. The third reason is specific to this year, due to the simultaneous holding of the presidential, parliamentary and Belgrade elections - the transfer of the costs of one campaign into the report on another, in order to pay for everything from the item that has more budget money.

Unreported and incorrectly presented campaign costs

When it comes to the reports of the coalition gathered around the SNS,⁴⁶ to which most of the reported campaign expenses refer, it was noted *inter alia* that the cost of creating the website⁴⁷ which displayed numerous investments financed from the budget, was not reported. There are no reported contributions whatsoever, either in cash or in kind, and there are also known cases of activists of this party distributing gifts to citizens during the campaign. The costs of two long time slots that were leased on TV Prva and Pink were not shown (at least not in the provided column), and neither was the cost of advertising on TV K1. Also, the costs of advertising on billboards were many times lower than the estimates based on monitoring, which indicates extremely high discounts and raises the question of equal treatment of other participants in the elections. The ruling party did not show all observed costs related to its first pre-election rally in Merošina, and did not report the costs of telephone communication, despite the numerous calls that citizens received from this party, or the costs of pre-election booths. No less than RSD 76.4 million was presented as "other costs of hiring a marketing agency" instead of being classified into appropriate positions. It is interesting that this party has published the information on "SNS expenses until 31 March 2022" on its website, which raises a number of questions since the reported amount does not correspond to the amount of expenses that were reported in the financial statements.

The reports on the campaigns of other presidential candidates and election lists also contain numerous deficiencies, or at least reasons for which the Agency should have requested supplements and corrections.⁴⁸

45 Transparency Serbia, *Analysis of the report on the expenses of the 2022 election campaign, with recommendations for the Agency for the Prevention of Corruption*, Belgrade, Aug 2022, <https://bit.ly/3TayTKi>

46 <https://transparentnost.org.rs/index.php/sr/projekti/276-monitoring-izbora-2022>

47 <https://www.delagovore.rs/>

48 As regards other election lists and candidates, the main observations made based on insight into the reports are available at: <https://transparentnost.org.rs/index.php/sr/projekti/276-monitoring-izbora-2022>

Following the Agency's control, almost all the questions remain unanswered

The Agency for the Prevention of Corruption has so far published its report on the control of campaign financing conducted in all the cities and municipalities where the elections were held in April 2022,⁴⁹ as well as a special report related to the presidential and Belgrade elections.⁵⁰

These reports were published within the statutory deadline that was prescribed for the first time for this year's elections (political entities had 120 days from the expiry of the deadline to submit reports on campaign expenses). Apart from this, however, there is almost nothing else that could be commended. As *Transparency Serbia* pointed out at the time of the adoption of the "new" Law on the Financing of Political Activities, the opportunity to precisely specify what the Agency must control and what would be the minimum information that the Agency should present in its report on the implemented control, was missed.⁵¹

The Agency stated that while analysing and controlling the reports of political parties, coalitions and citizens' groups, it also submitted requests for supplementing reports and requests for data specification. It also stated that it requested data from other public institutions and that they all provided these data. Data on transfers for the purpose of financing political entities were obtained this way, but no other data seem to have been requested from institutions (e.g. data on the use of publically owned buildings). All the commercial banks have submitted the data the Agency requested regarding transactions that were made using current accounts. Finally, the Agency summarily stated that information was requested from service providers as well (marketing agencies, billboard publishers, media outlets).

A significant part of the Agency's report is dedicated to "financial indicators", i.e. presentations of total income and expenditure as well as data from certain categories, which are not subject to control. Control of the preliminary reports was carried out together with the control of the final ones. The agency stated that it found no irregularities in the reports of the presidential candidates of coalitions "We have to" [Moramo], "For a united, fair and stable Serbia" and "Aleksandar Vučić - Together we can do anything". Irregularities "indicating possible violations of the Law"⁵² were found in the report of the coalition "Sovereignists". In the case of the candidate of "Zavetnici", it was stated that some of the advertising expenses were not shown and that expenses for several election campaigns were paid from the same account. In the case of the presidential candidate of "Dveri", irregularities were found regarding certain expenses (amounting to slightly more than RSD 500,000).

Although the Agency stated that it also carried out monitoring itself, its findings are in no way visible in the report on the conducted control. The Agency neither presented the findings of its own monitoring of individual campaign expenses, nor indicated that it has identified all the noted expenses in the party reports (or that it has not identified some of them).

Although it was stated that the Agency collected data from service providers, it was not possible to see whether mutual comparisons of discounts enjoyed by certain political subjects were made. Similarly, there are no signs that any consideration was given to the question of whether certain costs had to be shown in the reports for multiple types of elections, that is, whether some of the costs ended up in the "wrong" reports. Although the Agency had a list of numerous questions that were opened - if for no other reason, then based on the findings of *Transparency Serbia* - it does not appear that any of them were examined, or that principled positions were taken regarding issues that could be interpreted in various ways.

49 <https://bit.ly/3NyGYhL>

50 <https://bit.ly/3h5Wwgx>

51 In the proposals of the coalition prEUgovor, it was stated that the Agency's control report must contain a description of information the Agency obtained in the process of controlling individual reports, as well information it obtained by comparing data related to the same types of expenses contained in the reports of political entities; identification of income and expenses which have been verified by the Agency as credible and legal, as well as those that were not subject to verification on the part of the Agency, Coalition prEUgovor, *How to improve transparency and the control of campaign financing*, op. cit, p. 24.

52 It was stated that one account, to which funds were transferred from public sources, was not shown in the report; that the costs of election materials and other campaign costs were shown in the amount that was higher than that on the issued invoices; that most of the campaign costs were paid from the account of the citizens' association "Enough is Enough – Restart", and that the Agency is in the process of verifying facts for the purpose of establishing whether the law has been violated or not.

Finally, even in the few situations where the Agency found elements that indicated a violation of the law, it continued to call them “possible violations”, which made the report on the conducted control lose any meaning. Namely, the Law envisages the obligation of the Agency to publish only one report, within a period of 120 days, which implicitly implies the obligation to complete the entire control procedure by that time. Bearing all the above in mind, *Transparency Serbia* submitted a series of detailed recommendations to the Agency.⁵³

RECOMMENDATIONS

- The Government’s Working Group in charge of cooperation with ODIHR should publish information about its meetings, as well as plans for fulfilling ODIHR’s recommendations from August 2022. Also, it should initiate a debate with the civil society and political parties on the effects of the implementation of laws that have been adopted or amended ahead of the elections of April 2022;
- In cooperation with the Agency for the Prevention of Corruption and the Government’s Working Group for the Implementation of ODIHR’s Recommendations, the National Assembly should organise a public hearing to discuss the implementation of ODIHR’s recommendations related to the 2022 elections and the effects of amendments to the laws and other measures that were adopted after the inter-party dialogue conducted in 2021/2022;
- The legal framework and practice related to elections, election campaign rules and control of election campaign financing should be improved. This should include changes to the Law on the Financing of Political Activities, statutory regulation of the “public officials’ campaign”, and the improvement of the rules on the misuse of public resources. It is also necessary to ensure a more proactive role of the public prosecutor’s office, the Agency for the Prevention of Corruption, the Republic Election Commission and REM, both in the prevention and investigation of possible violations of the law, as well as the protection of whistleblowers;
- The Agency for the Prevention of Corruption should include the following in the procedure of control of reports on parliamentary elections: a cross-check of similar expenses reported by different political entities, a clear overview of all expenses that were verified and those that were found to be inconsistent, as well as information on all the procedures that were initiated due to established offences and the imposed sanctions. In that sense, the Agency should also supplement its report on control of the presidential and Belgrade elections;
- The National Assembly should open a debate on the work of the Supervisory Committee for monitoring the 2022 elections, and improve this legal mechanism by amending the Law on the Election of People’s Deputies.

53 Transparency Serbia, *Analysis of the report on the expenses of the 2022 election campaign*, op.cit.

1.2. The Work of the Parliament

The new convocation of the National Assembly started working on 1 August 2022, although the final election results were announced almost a month earlier. Opposition electoral lists are once again represented in the parliament. Some of them submitted proposals for the adoption of several acts, to which the members of the ruling majority responded with "counter-proposals", showing that the work of the parliament could be characterised by the same obstructions as during the work of the convocation from 2016. Parliamentary committees have only just begun to deal with numerous obligations whose deadlines have expired in the first half of the year. There was no improvement in implementation of the Code of Ethics.

Despite the fact that the elections were held at the beginning of April 2022, the mandate of the previous convocation of the National Assembly lasted until 1 August 2022. There has been almost no parliamentary activity since the announcement of the elections in mid-February 2022, the day when the re-elected President of the Republic swore the oath on 31 May 2022⁵⁴ being the only notable exception. This happened because the results of the presidential elections were announced significantly before the final results of the elections for people's deputies (on 9 May, that is, 5 July 2022).⁵⁵

1.2.1. Constitution of the new convocation of the National Assembly

More opposition deputies and a similar parliamentary majority - SNS, SPS and minority parties

The new Government, and thus the parliamentary majority as well, will be made up - as before - of the representatives of the Serbian Progressive Party (SNS) and the Socialist Party of Serbia (SPS) (with smaller coalition partners from their electoral lists), and the majority of the parties of national minorities.⁵⁶ It can therefore be expected that the ruling majority will consist of 157 (which is the number of deputies who have voted for the election of the Government)⁵⁷ to 160 of the total of 250 deputies.

Fifteen parliamentary groups were formed in the Assembly itself.⁵⁸ From the electoral list of Aleksandar Vučić, the parliamentary groups of the Social Democratic Party (SDP) and the Party of United Pensioners of Serbia (PUPS) were formed in addition to the SNS group. The electoral list of SPS-JS formed two parliamentary clubs. The opposition parliamentary list 'United for the Victory of Serbia' will participate in the work of the parliament through three parliamentary groups (the People's Party and the Democratic Party have separate groups). The electoral list 'We have to' [Moramo] also formed two parliamentary groups. 'Zavetnici', 'NADA' coalition and 'Dveri' have their own parliamentary groups.⁵⁹ The Union of Hungarians of Vojvodina (SVM) also has its own group, while representatives of three minority lists (SDA, ZZV and KAD) formed a joint parliamentary group 'European Regions - Vojvodina, Sandžak and Preševo Valley'. This parliamentary group (temporarily?) ceased to exist when people's deputy Tomislav Žigmanov was elected minister.⁶⁰ Three representatives of the Party of Justice and Reconciliation did not join any of the above-mentioned groups.

54 <https://www.predsednik.rs/pres-centar/vesti/predsednik-vucic-položio-zakletvu>

55 <https://www.danas.rs/vesti/politika/rik-proglasio-konacne-rezultate-parlamentarnih-izbora>

56 http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/13_saziv/RS19-22.pdf

57 Temporary shorthand notes from the session of the National Assembly, 26 Oct 2022, <https://bit.ly/3T0mu2c>

58 <http://www.parlament.gov.rs/narodna-skupstina/-sastav-poslanicke-grupe/poslanicke-grupe.901.html>

59 Four members of the Movement for the Restoration of the Kingdom of Serbia (POKS) from the DVERI list remained outside that parliamentary group.

60 <https://rs.n1info.com/vesti/igmanov-otisao-medju-ministre-poslanici-evropskih-regiona-bez-prava-da-govore/>

Controversial consequences of mandate verification

An interesting episode that did not have a clear legal epilogue occurred during the verification of the new deputies' mandates. Among others, the parliamentary mandate was verified also for Ana Brnabić, Prime Minister in a 'technical Government'. Based on Article 39, paragraph 2 of the Law on the National Assembly, all other public functions that are incompatible with the function of a people's deputy shall cease on the day of verification of the mandate.⁶¹ Based on Article 126, paragraph 1 of the Constitution, a member of the Government cannot simultaneously be a people's deputy.⁶² This means that by confirming the mandate of Ana Brnabić, her position as Prime Minister automatically ended.

The problem, however, lies in the fact that based on Article 128, paragraph 1 of the Constitution, the mandate of the entire Government, including that of its Prime Minister, had already ended with the expiry of the mandate of the Assembly that had elected it (convocation from 2020), i.e. at that moment, she was already the Prime Minister of a 'technical Government'. The Constitution and laws do not contain additional rules for such cases. A member of the Government whose mandate has ended "shall have the same rights and duties as a member of the Government who resigned" (Article 17 of the Law on Government). The same Law prescribes only the powers and duty of a minister who resigned (Article 24)⁶³ "to perform current tasks until the end of his/her mandate", but does not mention similar duties of the Prime Minister. Therefore, the dilemma remains as to whether Ana Brnabić was in the 'double technical mandate' as Prime Minister starting from 1 August 2022, or whether she performed technical tasks completely without authorisation after that date, instead of Branko Ružić, who was the first Deputy Prime Minister. After an opposition MP drew attention to the incompatibility of the positions, Ana Brnabić resigned from her post of MP the very next day after the mandate verification.⁶⁴ By doing this, she certainly ceased to be a member of the National Assembly, but she could not become prime minister again under the interpretation that her mandate as Prime Minister had ended.⁶⁵

The case of the Prime Minister is not the only one, because the parliamentary mandate was verified also for the mayor of Novi Sad, Miloš Vučević. According to the well known interpretation of the Agency for the Prevention of Corruption, the function of the mayor is also incompatible with that of a deputy,⁶⁶ although, unlike the incompatibility in the case of members of the Government, this is not prescribed in the Constitution itself. Four days after the verification of his mandate,⁶⁷ Vučević resigned from the position of people's deputy, although all that time he held (and is continuing to hold) the position of mayor, despite the fact that said function should have ceased in his case by force of law.

The mandates were verified also for several members of the outgoing Government - Tatjana Matić, Milan Krkobabić and Nenad Popović. Only Tatjana Matić resigned, while the other two 'technical' ministers continued to unconstitutionally simultaneously perform these two functions for three months.

Election of public officials

Dr. Vladimir Orlić, former president of the SNS parliamentary group and Vice Speaker of the Assembly, has been elected president of the National Assembly. Representatives of most opposition parties opposed this, pointing out that Orlić was known for "insulting political opponents".⁶⁸ Srđan Smiljanić was elected as the new Secretary General of the Assembly; he had held that position from March 2019 to October 2020. In line with tradition, representatives of parliamentary groups that do not belong to the majority were also elected as vice speakers of the Assembly, and the ruling majority met the opposition half way

61 <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2010/9/1/reg>

62 <http://www.ustavni.sud.rs/page/view/139-100028/ustav-republike-srbije>

63 https://www.paragraf.rs/propisi/zakon_o_vladi.html

64 <https://www.danas.rs/vesti/politika/ana-brnabic-podnela-ostavku-na-mesto-poslanika/>

65 <https://autonomija.info/pravnici-premierka-poslanica-flagrantno-krsenje-ustava-nije-jedini-primer-i-vucevic-verifikovan-kao-poslanik/>

66 https://rtv.rs/sk/politika/izjasnjavanje-poslanika-o-dve-funkcije_181467.html

67 <http://www.parlament.gov.rs/narodna-skupstina-/sastav/narodni-poslanici/aktuelni-saziv.890.html>

68 <https://beta.rs/vesti/politika-vesti-srbija/167065-marinika-tepic-protiv-izbora-orlica-za-predsednika-parlamenta>

by increasing the number of vice-speaker's positions to 7⁶⁹ (one passed away in the meantime,⁷⁰ and the proposed new candidate has not yet been elected).⁷¹ One vice-speaker's position went to SNS and SPS each, while two were given to representatives of minority parties.

Based on the agreement, opposition representatives were given the opportunity to appoint leaders in a total of five parliamentary committees - for culture and public information, for defence and internal affairs, for diaspora, for foreign affairs and for the environment. Among the deputies from the ruling parties, portfolios were kept by, among others, the chairman of the Committee for Justice and Administration, attorney Vladimir Djukanović, which is particularly significant in the context of the adoption of new judicial laws and the completion of the constitutional reform, and Jelena Žarić-Kovačević - the Committee for constitutional issues and legislation. The Committee for European Integration will be headed by Elvira Kovač from SVM. There have been no meetings of informal parliamentary groups, including the national branch of the Global Organisation of Parliamentarians against Corruption (GOPAC), which is supposed to be dealing with anti-corruption issues.

1.2.2. Pending appointments, dilemmas regarding the election of judges

The new convocation of the Assembly has not made any appointments yet. At the beginning of September, two proposals of the High Judicial Council (HJC) were submitted to the Assembly for the election of judges (7 candidates) and 11 court presidents. Based on the proposal the HJC submitted to the Assembly in March 2022, on 17 October the Committee for the Judiciary proposed the dismissal of the President of the Basic Court in Bečej due to established serious disciplinary violation. The Vice Governor of the National Bank of Serbia was proposed as well.⁷²

The previous convocation of the National Assembly received a proposal for the election of 17 new judges in April 2022. They are still pending, as are the proposals for the election of new judges and court presidents from 25 March 2022.⁷³ These proposals were the reason for *Transparency Serbia*, a member of the prEUgovor coalition, to address the Speaker of the National Assembly in August 2022.⁷⁴ In the letter, *Transparency Serbia* recalled that amendments to the Constitution (Amendment III) abolished the authority of the National Assembly in the "first election" of judges and public prosecutors, as well as in the election of court presidents and chief public prosecutors.

On the other hand, the Constitutional Law stipulates that the High Judicial Council, the State Prosecutorial Council, the Government and the National Assembly shall continue to exercise their competences concerning judges, court presidents, public prosecutors and deputy public prosecutors based on the existing laws. This is how we ended up a situation where people's deputies, contrary to what is clearly prescribed in the adopted constitutional amendments, are now continuing to discharge their elected offices when it comes to the judiciary. *Transparency Serbia* proposed to the National Assembly to refrain from electing court presidents and chief public prosecutors until the start of the application of new judicial laws, which would be aligned with the Constitution, i.e. to elect only those judges and deputy public prosecutors whose election is necessary to prevent gross violation or irreparable damage to the rights and interests of a large number of citizens. Since the amendments to the Constitution of the Republic of Serbia excluded the jurisdiction of the National Assembly in the "first election" of judges and public prosecutors, the second recommendation for deputies is to refrain from contesting the proposed candidates whose names they will receive from the High Judicial Council and the State Prosecutorial Council during the possible election.

69 <https://www.danas.rs/vesti/politika/izabrano-sedam-potpredsednika-skupstine/>

70 <https://www.danas.rs/vesti/politika/umro-bozidar-delic-potpredsednik-skupstine-i-bivsi-komandat-549-motorizovane-brigade/>

71 http://www.parlament.gov.rs/upload/archive/files/cir/pdf/akta_procedura/13_saziv/2167-22.pdf

72 <http://www.parlament.gov.rs/akti/ostala-akta/akta-u-proceduri/akta-u-proceduri.1043.html>

73 <http://www.parlament.gov.rs/akti/ostala-akta/akta-u-proceduri/u-sazivu-od-3-avgusta-2020.4689.html>

74 https://www.transparency.org.rs/images/dokumenti_uz_vesti/LAP/Inicijativa_Skupstina_-_unapredenje_postupka_izbora.pdf

The five-year mandate of the Protector of Citizens (Ombudsman) ended in July 2022,⁷⁵ but the procedure for electing a new one did not begin. Pursuant to the provisions of the Law on the Protector of Citizens, this procedure had to be initiated no later than in January 2022,⁷⁶ where the Speaker of the National Assembly was supposed to issue a public invitation to all interested persons to apply. The invitation was to be published on the website of the National Assembly and at least one daily newspaper distributed in the territory of the entire country. It should be noted that there would have been a delay even if the above deadline had been respected. Namely, according to the law, the deadline for submitting applications is 30 days, followed by 15 days during which the Committee is obliged to publish the list of applicants who meet the requirements and their biographies, and deliver the list to the parliamentary groups. The deadline for submitting proposals would have expired on 20 May 2022. However, the National Assembly was not working during that period. Even if this situation could have served an excuse for the previous Speaker of the National Assembly to miss his obligation, from the beginning of August 2022 this reason for postponing the competition no longer existed. The fact that, based on the new Law, the existing Ombudsman shall continue to perform his/her duties until the new one takes office (Article 18) is a mitigating circumstance.

1.2.3. Reports of independent bodies – The 6-month delay and the continuation of bad practices

The Assembly continued to violate the provisions of its own Rules of Procedure when it comes to the deadlines for considering the reports of independent and regulatory bodies. Here, too, early and prolonged elections were (for a time) the reason for delays and breaking deadlines. However, the committees did not realise that one of their first tasks was to consider these reports and propose conclusions thereon. The only exception was the Committee for Finances, the Republic Budget and the Control of Spending of Public Funds, which provided its conclusions regarding three such reports in October 2022. As for the report of the Office of Public Procurement on the implemented monitoring⁷⁷ and the annual report of the Republic Commission for the Protection of Rights in Public Procurements,⁷⁸ the conclusions contained therein had no substance whatsoever, stating only that the report was accepted.

Greater effort was however invested in the annual report of the State Audit Institution.⁷⁹ Regarding this report, it was stated that the State Audit Institution fully presented its activities in the execution of its competences. The Assembly then recommended the Government to “take measures within its purview to eliminate irregularities that were identified among the users of public funds ... and to propose, that is, adopt necessary regulations and other acts that are specifically indicated in the Report”.⁸⁰ Finally, in connection with the system of internal control, the Assembly “noted that it is necessary for the Government ... to ensure consistent implementation of the Law on the Budget System...”.⁸¹ It is obvious from the above that, even when it is indicated that the Government should take action in relation to the reports of independent bodies, the Assembly, as the body that supervises the work of the executive power, fails to set any obligations, providing just recommendations and findings instead.

The report on the work of the Government for the year 2021 (submitted on October 3, 2022) was also among the reports the Assembly received during this period.⁸² There is a large number of reports from the previous period that have not been discussed by the committees yet.⁸³

75 <https://www.politika.rs/sr/clanak/385272/Zoran-Pasalic-izabran-za-Zastitnika-gradana>

76 <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2021/105/1>

77 http://www.parlament.gov.rs/upload/archive/files/cir/pdf/akta_procedura/13_saziv/550-22.pdf

78 http://www.parlament.gov.rs/upload/archive/files/cir/pdf/akta_procedura/13_saziv/555-22.pdf

79 http://www.parlament.gov.rs/upload/archive/files/cir/pdf/akta_procedura/13_saziv/497-22.pdf

80 *Ibid.*

81 *Ibid.*

82 Government of the Republic of Serbia, *Report on the work of the Government for the year 2021*, Belgrade, Sept 2022, <https://bit.ly/3WBH7Fg>

83 <http://www.parlament.gov.rs/акти/извештаји-у-сазиву-од-3-августа-2020.4683>

Member of the coalition preEUgovor, *Transparency Serbia*, submitted a number of proposals to the parliamentary committees for considering reports of independent state bodies, making meaningful conclusions and organising public hearings.⁸⁴

1.2.4. War of proposals for the establishment of inquiry committees and commissions

The reappearance of the opposition in the Assembly led to the submission of a large number of proposals for the exercise of the supervisory role of the National Assembly through the formation of inquiry committees and commissions. Among others, such proposals⁸⁵ were received in connection with the sale of the company *PKB*, the events related to excavations in Majdanpek, the way the police behaved during citizens' protests, the illegal demolition of buildings in Savamala, the "Jovanjica" scandal and the "Belgrade Waterfront" project.

On the other hand, members of the Government asked that inquiry committees investigate topics such as the "media attack on President Aleksandar Vučić by the president of the DS Zoran Lutovac on behalf of the fake state of Kosovo" or other similar formulations in which certain opposition politicians were regularly mentioned. Twenty such initiatives were submitted by 15 deputies of the majority, by way of 20 initiatives that were all submitted on the same day, 28 September 2022. In mid-September 2022, Dveri submitted a series of proposals requesting the establishment of three inquiry committees in connection with various issues (the Electric Company of Serbia - EPS, the EuroPride, the Republic Geodetic Authority), as well as the adoption of numerous resolutions, decisions and recommendations.⁸⁶ At the very beginning of the work of the Assembly, the establishment of inquiry committees was requested regarding the accident in the "Soko" mine, the murder of Oliver Ivanović, police brutality at the protests of previous years, the wiretapping of Aleksandar Vučić, and accidents in EPS.

All these initiatives have yet to find their way into the Assembly agenda. The submission of counter-proposals, as a form of reaction of the government to the proposals of the opposition, indicates that there chances are high that the work of this convocation of the Assembly will resemble that of 2016, when the deputies of the majority prevented the discussion of amendments to the laws submitted by their opposition colleagues by submitting a large number of pointless amendments that served only to use up the time allotted for discussion. Another option would be to simply ignore such initiatives - which is also possible according to the Rules of Procedure - and to not discuss the proposals at all.

In one case that caused great public concern in early October 2022, opposition deputies tried to organise a discussion at the session of the Committee for Culture and Information; it was the chairman of that committee, coincidentally an opposition deputy, that put the item on the proposed agenda. However, the deputies of the majority in the committee did not approve the agenda, so in the end there was no formal discussion.⁸⁷

84 <https://bit.ly/3SW9HxO>, <https://bit.ly/3h2Er2S>, <https://bit.ly/3NnCOsZ>, <https://bit.ly/3WoqFrw>

85 <http://www.parlament.gov.rs/akti/ostala-akta/akta-u-proceduri/akta-u-proceduri.1043.html>

86 <https://dveri.rs/ko-smo-mi/dveri-u-skupstini/skupstinske-inicijative>

87 Interview with a rapist, published in the tabloid "Informer", for additional information see the section of this Report on violence against women: <https://www.rts.rs/page/stories/sr/story/9/politika/4972518/odbor-za-kulturu-i-informisanje-informer.html>

1.2.5. Code of Ethics without the implementation report

As regards the Code of Ethics,⁸⁸ the practice of the Assembly has not improved in the slightest. Although the Code of Ethics and the establishment of the Ethics Commission are indirectly mentioned in the report of the European Commission for 2022 as a factor that influenced the decision to give Serbia a positive assessment of progress in the fight against corruption,⁸⁹ there was no sign of the Code's implementation in this period.

As can be seen from the web-page of the Assembly dedicated to the Code of Ethics,⁹⁰ the Committee for Administrative-Budgetary and Mandate-Immunity Issues has not discussed reported violations of the Code since September 2021. Apart from information about its composition, there is no other published information about the work of the Ethics Commission.

Moreover, acting on the request for access to information submitted by a member of the prEUgovor coalition *Transparency Serbia*, on 26 July 2022 the Assembly confirmed⁹¹ that the Ethics Commission and the competent parliamentary committee did not prepare a report on the implementation of the Code in 2021 until that date, because due to the dissolution of the Assembly they were allegedly "unable to meet". However, the Parliamentary Committee has already met 12 times in the new convocation, but issues related to the Code were not on the agenda at any of the sessions.

1.2.6. Legislative work and non-work: The Assembly remains in the shadow of the President of the Republic

The new convocation of the Assembly continued with old trends as soon as it began to work. At a randomly selected 9-hour session, where changes to the Law on Ministries were discussed, deputies from the ruling SNS mentioned the president of their party, who also happens to be the President of the Republic, no less than 50 times.⁹² The above Law will be discussed below, in section 1.3 of this report.

The adoption of 10 more laws relating to various issues have been proposed so far (mainly by the Dveri parliamentary group). Two deputies from the ruling majority also submitted their draft laws.

As regards the civic initiatives for the adoption of laws, it is obvious that there is a problem in the implementation of new statutory solutions. According to published information, the initiative for the adoption of the Law on Prohibition of Research and Mining of Lithium and Boron on the territory of Serbia was signed by 38,191 citizens and was submitted to the National Assembly back on 18 June 2022.⁹³ As the applicants (SEOS and *Kreni-promeni*) announced, the Assembly had a 7-day deadline to verify the citizens' signatures and a 30-day deadline to respond to the applicants. However, that has not yet happened.⁹⁴

88 http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala_akta/2021/RS55-21-kodeks-LAT.pdf.

89 The report lists the implementation of GRECO's recommendations from the fourth round of evaluation as one of the two factors of the observed progress, because it allegedly contributed to better rules for resolving conflicts of interest among the deputies, which refers to the amendments to the Law on Prevention of Corruption of 2019 and the Code of Ethics.

90 <http://www.parlament.gov.rs/aktivnosti/narodna-skupstina/kodeks-ponasanja-narodnih-poslanika.4455.html>

91 https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Odgovor_Narodne_skup%C5%A1tine_Kodeks.pdf

92 <https://bit.ly/3NnzD11>

93 <https://balkangreenenergynews.com/rs/novoizabrana-skupstina-srbije-dobila-rok-od-sedam-dana-da-verifikuje-potpise-narodne-inicijative-protiv-litijuma/>

94 Ending with 1 Jan 2022, <https://beta.rs/zeleni-srbija/zs-srbija/170327-kreni-promeni-svega-11-poslanika-ce-podrzati-narodnu-inicijativu-protiv-eksploatacije-litijuma>

✖ **ALARM: Review the constitutionality and legality of the National Assembly's authority to issue authentic interpretations of laws**

From 2013 to 2022, the Assembly issued a total of 21 authentic interpretations of laws. No new requests for authentic interpretation were submitted in the reporting period. Bearing in mind the frequent use of this mechanism in previous convocations and the great importance of this issue for the rule of law in general, on 2 August 2022 member of *preUgovor Transparency Serbia* submitted an initiative to the Constitutional Court to review the constitutionality and legality of the provisions of the Law on the National Assembly and the parliamentary Rules of Procedure, in the parts referring to the authentic interpretation.⁹⁵

The Constitution of Serbia does not even mention the authority of the parliament to issue authentic interpretations, and therefore does not contain any restrictions when issuing such an act. The following possibilities, which arise from the existing incomplete provisions of the Law on the National Assembly, could be dangerous to the legal order:

The possibility of issuing an authentic interpretation is not limited only to the provisions of the laws enacted by the convocation of the National Assembly that also issues the authentic interpretation, which in practice causes situations where one composition of the National Assembly passes a law, and a completely different composition issues the “authentic” interpretation of the purpose of the law that was established by the earlier convocation of the Assembly, in a procedure that does not imply the obligation to respect the purpose and reason for the adoption defined by the original legislator. Moreover, in practice, there have been proposals for issuing authentic interpretations of laws that had been passed by *other bodies* (the Federal Assembly of the SFRY). Thus, *the will of the interpreter* replaces the originally, authentically established purpose of the law, which had a precisely defined content and explained reasons for its enactment, simultaneously changing the law while circumventing the prescribed procedure for amending and supplementing laws.

There are no obstacles to adopt, in the form of “authentic interpretation”, something that does not represent any of the possible linguistic meanings of a certain legal norm but is instead a completely new type of regulation of the relation at hand - the rights and obligations of subjects to which the norm applies. Moreover, in this way a norm can be “interpreted” despite the fact that it is unambiguous and clear, and therefore needing no interpretation whatsoever, as it happened in the case of the authentic interpretation of the Law on Prevention of Corruption.⁹⁶

An authentic interpretation is issued by the body responsible for adopting laws. It is then published in the “Official Gazette of the Republic of Serbia”, following which it is accepted as the source of law, i.e. as part of the legal order, regardless of the fact that there is no basis for this in the Constitution. Authentic interpretations lack some of the basic and mandatory elements of legal regulations - their constitutionality and legality cannot be challenged, none of the forms of public participation are envisaged, and – as the most dangerous aspect - they have a retroactive effect.

Transparency Serbia emphasised the need for the Constitutional Court to consider this initiative as soon as possible, in order to indicate to the new convocation of the National Assembly in a timely manner whether the adoption of authentic interpretations is an acceptable way of governing relations between legal entities by interpretative determination of their rights and obligations in the legal order of the Republic of Serbia. A decision to accept the initiative to review the constitutionality and legality, that is, to begin the procedure for assessing constitutionality and legality, would provide an opportunity for the National Assembly to eliminate said unconstitutionality and illegality.

⁹⁵ https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_inicijativa_Ustavnom_sudu_autenticna_tumacenja.pdf

⁹⁶ For additional information, see: Jelena Pejić Nikić (ed.), *preUgovor Alarm: Report on the Progress of Serbia in Chapters 23 and 24 – May 2021*, coalition *preUgovor*, Belgrade, 2021, pp. 22-23, <https://bit.ly/prEUgovorAlarmMay2021EN>.

RECOMMENDATIONS

- The Assembly should consider the European Commission's annual report on Serbia; in the conclusions regarding said report, it should refer to the implementation of the Commission's key recommendations that were not implemented in the previous year and those that were made for the next year, instead of focusing on EC's observations that have a positive undertone;
- The Assembly should organise public hearings on the most controversial issues, both in connection with the adoption of new laws and the implementation of existing ones, as well as in connection with the fulfilment of recommendations made by international organisations (ODIHR, GRECO);
- The Assembly should consider the 2021 reports of independent institutions and, based thereon, formulate more relevant conclusions and define clear tasks and deadlines for the Government's actions;
- The Assembly should discuss bills that were submitted in the form of civic initiatives, as well as proposals to establish inquiry committees on certain important issues for which it may be competent;
- The Assembly should publish a report on the implementation of the Code of Conduct for Members of the National Assembly, review all reported violations of the Code in a timely manner, improve the provisions of the Code and the practice in case of violations, and then promote the Code among citizens;
- The Assembly should stop issuing "authentic interpretations" because they create a great risk for the rule of law and legal certainty, and consider the legal basis for their issuance and the need to make the Law on the National Assembly and the Rules of Procedure more specific.

1.2.7. Parliamentary oversight of the security sector

The ruling majority responds to the return of the opposition with new abuses of parliamentary procedures

The return of the opposition MPs to the parliamentary benches has somewhat revived parliamentary life by bringing back different voices after almost four years of the ruling coalition's complete capture of this institution. Nevertheless, along with the return of opposition MPs, old practices of the ruling majority are already making a comeback, aimed at obstructing the oversight of the executive, including the security sector, by abusing parliamentary procedures.

For instance, opposition MPs have requested the establishment of inquiry committees for highly controversial cases, many of which - either directly or indirectly - relate to the security sector.⁹⁷ They have submitted a request for the establishment of an inquiry committee regarding the Krušik scandal (which was highlighted in the European Commission's reports in the past three years), i.e. the case of the whistleblower who uncovered how public resources were taken out of state-owned defence company and poured into a private company close to the father of the then Minister of the Interior.⁹⁸ There were also requests for inquiry committees about the infamous 'Savamala' case, police misconduct during the July 2020 protests, wiretapping of the President of the Republic, the 'Jovanjica' case and so on.⁹⁹ Forming these inquiry committees would be of great importance not only to shed some light on the above affairs, but also to enable substantial security sector oversight and bring back some trust in the democratic procedures of the National Assembly.

97 N. Todorović Štipleja (ed.), *Shadow Report – State of Democracy in Serbia-2022*, Centre for Contemporary Policy, Belgrade, October 2022, p. 13, <https://bit.ly/3UshuVu>

98 Predrag Petrović and Jelena Pejić Nikić (eds.), *Security Sector Capture in Serbia - An Early Study* (Belgrade: Belgrade Centre for Security Policy, 2020), pp. 61-62, <https://bit.ly/3tixlVL>

99 During the 11th convocation of the National Assembly (2016-2020), 24 proposals to establish an inquiry committee regarding the 'Savamala' case were submitted. However, none of them made it to the agenda. See: M. Novković and U. Miladinović, "Parliamentary Oversight of the Security Sector 2016-2019", *prEUgovor*, Belgrade, Dec 2019, <http://preugovor.org/Infografici/1576/Parlamentarni-nadzor-nad-sektorom-bezbednosti.shtml>

On the other side, the ruling party MPs flooded the administration with their own proposals for inquiry committees, ranging from a suggestion to establish a committee about a rock that an MP brought to the National Assembly five years ago, to different alleged misdeeds of opposition deputies.¹⁰⁰ All these proposals were submitted by the same group of ruling party MPs, on the same day and with similar explanations, which indicates that they were orchestrated in order to create a smokescreen and render the opposition MPs' proposals senseless, which happens to be a tactic that was already tried and tested by previous parliamentary convocations.¹⁰¹ The case of the inquiry committees and the flooding of the parliamentary administration with counter-proposals shows the mechanisms and practices that can be expected in the new convocation, and it is therefore important to pay attention to potential abuses of parliamentary procedures, especially during the discussion of highly important documents such as the Budget Law at the end of November 2022.

Opposition MPs have been appointed as vice speakers of the National Assembly and presidents of certain committees, which is a positive step compared to previous convocations. The Security Services Control Committee will be chaired by the representative of the ruling party and a long-time member and president of that body, Igor Bečić.¹⁰² On the other hand, the Defence and Internal Affairs Committee will be headed by Miloš Jovanović, member of the opposition parliamentary group NADA-New DSS-POKS.¹⁰³ However, it should be closely monitored whether they will manage to exercise their powers in practice or will be outvoted or obstructed by the ruling coalition. There have already been cases where committee presidents failed to influence and put burning issues on the agenda.¹⁰⁴

As regards committees that are relevant for security sector oversight, they were formed in line with all parliamentary procedures and have so far organised the constitutive and procedural sessions. Hence, their effectiveness in overseeing the security sector during the reporting period cannot be analysed at this point. Only the Security Services Control Committee discussed the regular reports of the Inspector General of the Ministry of Defence for the previous year and a half, at a session which was closed to the public.¹⁰⁵ In previous convocations, the work of the committees was reduced to mere confirmation of international agreements and legal amendments, and to automatic stamping of reports on the work of security institutions accompanied by words of praise directed at their leaders and the ruling party.¹⁰⁶ It is therefore important to insist that the relevant committees hold substantial discussions on current security challenges and policies, international security cooperation, but also about the work of security institutions and the planning and spending of their budgets, which grow bigger every year.

RECOMMENDATIONS

- The European Union should monitor the work of the National Assembly more carefully and insist that the new convocation exercise effective control of the work of the security sector;
- The European Union should strongly condemn the abuse of parliamentary procedures that render important democratic mechanisms meaningless and prevent the supervision of the security sector;
- Deputies of the new convocation should meaningfully control the security sector by thoroughly assessing and approving the budget, by adequately performing their legislative role, and by discussing security issues at plenary sessions;

100 E. Kovačević, "A recipe for sabotage: Instead of the amendments war, we now have an inquiry committee war", *N1*, 9 Oct 2022, <http://bit.ly/3UjPFPe>

101 For instance, during the 2016 convocation, the ruling coalition would submit hundreds of nearly the same nonsensical amendments to the annual budget to occupy time for discussion and prevent opposition MPs from expressing criticism. Predrag Petrović and Jelena Pejić Nikić (eds.), *Security Sector Capture in Serbia - An Early Study*, op.cit, pp. 81-82

102 "Igor Bečić", Open Parliament, <https://otvoreniparlament.rs/poslanik/9363>

103 "Miloš Jovanović", Open Parliament, <https://otvoreniparlament.rs/poslanik/9504>

104 "By majority vote, the Committee for Culture refused to discuss the interview that was published in *Informer*", *N1*, 3 Oct 2022, <https://bit.ly/3zJZnSQ>

105 "The third session of the Security Services Control Committee", National Assembly of the Republic of Serbia, 20 Oct 2022, <https://bit.ly/3Uqlrc5>

106 Jelena Pejić Nikić (ed), *prEUgovor Alarm: Report on the Progress of Serbia in Cluster 1 - May 2022*, prEUgovor, Belgrade, 2022, pp.44-45, <https://bit.ly/AlarmMay2022>

- The Speaker of the Assembly should regularly schedule sessions that will be dedicated to deputies' questions, and deputies should regularly use this institute (its written and oral modality) to hold relevant ministers and institutions accountable;
- Deputies should act proactively, initiate inquiries and inform the public about controversial subjects and issues, significant events or scandals involving security institutions. The National Assembly should establish inquiry committees to investigate controversial cases and scandals such as the case of Savamala, Krušik, the actions of the police at the protests of July 2021, and the like;
- Parliamentary committees (the Committee for Defence and Internal Affairs and the Committee for the Control of Security Services) should be engaged in essential supervision of the security sector and should stop the current practice of merely confirming the decisions of the executive branch of power;
- Members of the parliamentary committees responsible for the security sector (of the new convocation) should obtain certificates that will allow them to access to confidential information, in order to be able to carefully consider reports on the work of security institutions, monitor budget spending, organise control visits, etc.;
- Parliamentary committees should proactively organise thematic sessions and public debates to discuss specific issues, and should include the interested expert community (the academic community, the civil society, etc.).

1.3. Governance: Unreasonably enlarged composition of the Government

The first step traditionally preceding the election of a new Government – amending the Law on Ministries¹⁰⁷ – was taken, only in the second half of October. The proposal was submitted by 146 deputies. This year's amendments to the Law on Ministries did not deviate from the bad tradition of changing the organisation of the executive power in Serbia without providing an explanation as to how the changes will affect the performance of the state administration. This encourages speculation that the real reason for such changes is primarily personnel combinatorics, i.e. satisfying the ambitions of coalition partners or individuals who have been tapped for ministerial positions. The new Government of Ana Brnabić, consisting of 25 line ministers and three ministers without portfolio, was elected on 26 October.

Since at the time the person in charge of the composition of the new Government had not yet presented her programme, it remained unclear how the deputies could have known why it would be better to distribute the work of the existing four ministries among the 7 new ones. Although the explanation states that this change "will contribute to strengthening the capacity of public administration in the given areas, which should further result in improving the situation in these areas", there are no grounds for such an optimistic conclusion. It is in fact a mere redistribution of jobs, which will be followed by a redistribution of existing employees from four ministries to 7 new ones. The only thing that is certain is that there will be three more ministers than before, and that the number of state secretaries, secretaries of ministries, cabinet chiefs and special advisers to ministers will increase. Certain details testify to the fact that these are in fact insignificant changes. The existing Ministry of Trade will lose tourism and telecommunications, but will become the ministry of "domestic and foreign" trade, although it is obvious that such an emphasis is quite unnecessary.

The exposé of the Prime Minister¹⁰⁸ also does not contain an explanation of the need for these changes, although some of the issues for which the new ministries will be responsible are mentioned among the five key priorities (education and science). As for the increase in the number of government members and supporting officials, advisors and employees, besides the provisions of the Law on Ministries, the

¹⁰⁷ http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/13_saziv/2098-22.pdf

¹⁰⁸ One part of the exposé was presented orally, at the Assembly session held on 25 November 2022, becoming available in its entirety only after the election of the new Government, two days later. It is available at: <https://www.srbija.gov.rs/tekst/330252/ekspoze.php>

fact that the new Government will have three ministers without a portfolio, instead of two, will contribute to the increase. The need to elect those members of the Government was not explained in any way.¹⁰⁹

The same Law also envisages changing the status of two existing Government services. The Government Office for Information Technologies and Electronic Administration will be granted the status of a special organisation within the state administration. No explanation was given for this change either, just as none was provided when five years ago a special organisation in charge of the same tasks (it was called the Directorate for Electronic Administration at the time) suddenly became a Government service and thereby lost part of its organisational independence.

The establishment of a special Ministry for Public Investments (instead of the existing Government Office that dealt with these issues) is controversial because it deviates from the departmental approach that was applied regarding all other ministries, as public investments can be related to any area (e.g. transport, health or education). It should be noted that this is not the first time that capital investments and infrastructure, highly attractive for the promotion of politicians, were elevated to the ministerial level.¹¹⁰ Reading the description of the responsibilities of the new ministry and the explanation, it remains unclear whether in the future this new ministry will be in charge of all capital projects (e.g. those under the jurisdiction of the Ministry of Construction). Another confusing fact is that the Ministry of Finance retains the authority to evaluate and monitor capital projects despite the establishment of a separate ministry for public investments. Finally, the fact that the selection and prioritisation of these projects is still not regulated by law, but only by a Government decree, remains the biggest problem.

RECOMMENDATIONS

- The Law on Ministries should provide for the number of ministers and the division of responsibilities exclusively in the function of work efficiency, and not to satisfy the needs of parties that support the Government;
- The existing number and structure of special organisations and government services, as well as other forms of organising the public sector, should be reviewed;
- Determining the priorities and methods of realisation of capital projects should be regulated by law, and not by a Government decree, and the competences of the newly established Ministry of Public Investments and other state authorities should be clearly separated.

109 Temporary shorthand notes from the session of the National Assembly held on 25 October 2022, <https://bit.ly/3fr4TTu>

110 Ministries with similar names, although with somewhat different competences, existed in the period 2004-2012.

1.4. The position of the civil society has not improved

The new Government kept the Ministry for Human and Minority Rights and Social Dialogue. The legitimacy of the future Council for the Development of and Cooperation with the Civil Society is under question. Pressures and attacks on representatives of the civil society, especially environmental and LGBTQ+ activists, have continued.

The National Assembly formed the new Government of the Republic of Serbia on 26 October 2022,¹¹¹ more than six months after the parliamentary elections. In the meantime, the relations between the civil society and the state authorities were reduced primarily to cooperation with the technical Government, including the line ministry. Now that the new Government has been formed, relations between the civil society and the state authorities will remain under the jurisdiction of the Ministry for Human and Minority Rights and Social Dialogue, now headed by Tomislav Žigmanov, president of the Democratic Union of Croats from Vojvodina.¹¹²

After the adoption of the Strategy for the creation of an environment in the Republic of Serbia encouraging for the development of civil society 2022-2030 (hereinafter: the Strategy), several civil society organisations started consultations on the establishment of the Council for the Development of and Cooperation with the Civil Society.¹¹³ It remains unclear how legitimate this body will be, considering that its formation was envisaged in the Strategy whose drafting was boycotted by a large number of civil society organisations, including those that are considered most prominent.¹¹⁴

The Ministry of Justice made an effort to improve communication and cooperation with civil society organisations regarding the drafting of judicial laws as an obligation under the Action Plan for Chapter 23. It organised two consultative meetings on the subject and – at the request of the Working Group of the National Convention on the European Union for Chapter 23 – submitted some of the minutes of the meetings of the working groups charged with drafting the judicial laws. However, it refused to allow representatives of civil society organisations to attend meetings of the working groups in the capacity of observers. The statement of the Minister of Justice, that she was “exposed to the pressure of certain non-governmental organisations and associations”¹¹⁵ spoiled the impression of the newly established cooperation.¹¹⁶

Continued pressure and attacks on representatives of the civil society – Intensified attacks on environmental and LGBTQ+ activists

The “Solidarity for the Rights of All” network continued to monitor pressures and attacks on human rights defenders and activists, and has recorded 18 attacks on human rights defenders¹¹⁷ in the first half of the year. The right to freedom of expression fared the worst, with 16 recorded attacks, while the right to freedom of association¹¹⁸ was targeted in 9 cases. The attackers were mostly physical persons (in 7 cases), followed by members of the Ministry of the Interior (in three cases). Attackers also included representatives of judicial bodies (in two cases) and a public official (in one case).¹¹⁹

111 “Serbia has a new Government”, *Radio Free Europe*, 26 Oct 2022, <https://www.slobodnaevropa.org/a/srbija-sednica-parlament-izbor-vlade/32100996.html>

112 “Minister Žigmanov speaks for Večernji list [Evening Newspaper]: I will advocate for the normalisation of relations between Serbia and Croatia”, *Danas*, 30 Oct 2022, <http://bit.ly/3EfQVwf>

113 “MODS’ consultations on the process of establishing the Council for Development of and Cooperation with the Civil Society”, *MODS*, 16 Aug 2022, <http://bit.ly/3V2Rikm>

114 Jelena Pejić Nikić (ed.), *PrEUgovor Alarm: Report on the Progress of Serbia in Cluster 1 – November 2021*, op. cit, p. 29

115 Ministry of Justice, *Vesti*, 27 Sept 2022, <https://www.mpravde.gov.rs/sr/vest/37409/predstavljani-radni-tekstovi-novih-pravosudnih-zakona.php>

116 For additional information, see this Report’s section on the judiciary.

117 For the six-month analysis of attacks on human rights defenders, see: <https://www.yucom.org.rs/wp-content/uploads/2022/08/Polugodisnji-presek-02.pdf>

118 *Ibid.*

119 *Ibid.*

From the standpoint of geography, attacks on activists have intensified especially in Novi Sad, where activists and civil society organisations were attacked several times by private security (hired by the city government) during the July protests against the adoption of the city's general urban plan.¹²⁰ In October 2022, there was a new attack on environmental activists in the same city, this time at Šodroš, where citizens gathered to protest against the beginning of construction of a bridge at a location that activists believe is of great importance for the city's environmental protection. At two rallies held in October, several activists suffered physical injuries due to excessive use of force by the police, while at least ten were detained.¹²¹

A particularly worrying case of pressure on activists occurred during the EuroPride week in Belgrade. The state did not make it possible for the LGBTQ+ community and the citizens who wanted to support its demands to hold a walk within EuroPride, despite the fact that the state had supported Belgrade's candidacy to host this event.¹²² The Ministry of the Interior banned the walk that was planned as part of the event, while the public was not given sufficient information about the security assessments based on which said decision was made. The walk was nevertheless held, using a modified, shorter route, but only after extensive pressure was applied by the European Union, EU member states and the United States of America. This example is particularly worrying because it involved an event that promoted the rights of a vulnerable group of people who are constantly discriminated against, and due to the fact that both before and after EuroPride there were numerous attacks on those who participated (for additional information, see this Report's section on the fight against extremism).¹²³

The European Commission's latest report on Serbia's progress particularly criticised campaigns of attacks and pressures against human rights defenders and civil society organisations, emphasising above all the attacks on activists dealing with the rule of law (environmental activists). The report further emphasised the need for greater participation of the civil society in the process of adopting acts, and underlined the importance of the work of organisations that provide assistance and support to citizens, thus making up for the passive role of the state.¹²⁴ The latter role of the civil society will be discussed further in the Alarm Report's sections on violence against women and the fight against human trafficking.

RECOMMENDATIONS

- People's deputies of the new convocation of the National Assembly should refrain from calling civil society organisations and activists traitors, and should work to create space for constructive dialogue with such organisations;
- The police and the prosecutor's office should effectively and indiscriminately investigate all attacks on human rights activists and defenders so that they can be adequately prosecuted;
- The government must work to improve the protection of the right to freedom of expression and freedom of association, especially when it comes to discriminated communities.

120 Activists from Novi Sad resist the government's private security, *Radio Free Europe*, 28 July 2022, <https://www.slobodnaevropa.org/a/novi-sad-privatno-obebedjenje-vlast/31962629.html>

121 "Protest in Šodroš, three persons injured and several detained", *N1*, 23 Oct 2022, www.rs.n1info.com/vesti/aktivisti-se-okupili-na-sodrosu-policija-cuva-zonu-radova/

122 Hercigonja: The ban of the Europride walk is a new blow to the state of human rights in Serbia, *Danas*, 15 Sept 2022, <http://bit.ly/3fr9NQw>

123 "Several people were attacked while returning from the EuroPride walk", *Radio Free Europe*, 18 Sept 2022, <https://www.slobodnaevropa.org/a/nekoliko-osoba-napadnuto-po-povratku-sa-evroprajda/32038967.html>

124 European Commission, *Serbia 2022 Report*, Brussels, 12 Oct 2022, SWD(2022) 338 final, https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2022_en

2. REGIONAL ISSUES AND GOOD NEIGHBOURLY RELATIONS

Since the previous Alarm report, there have been no significant positive developments in the relations between Serbia and its neighbours. Relations with Kosovo entered a crisis phase during the summer due to the disputed issue of vehicles' license plates and entry/exit documents, while the issue of overall normalisation became significant after the start of the war in Ukraine. Political and rhetorical conflicts between Belgrade and Zagreb regarding several new topics only highlighted the fragility of bilateral relations. On the other hand, the positive trend of relaxation and improvement of relations continued with several other neighbours. In multilateral forums, Serbia maintained its constructive role in principle, and Belgrade kept an extremely strong focus on the Open Balkans initiative.

As regards issues that are directly related to the legacy of wars, in October 2021 the Government of the Republic of Serbia adopted a new National Strategy for Prosecuting War Crimes for the period until 2026. The first report on its implementation was completed for the period until March 2022.¹²⁵ The report mainly listed the obligations that have started at the end of 2021, without mentioning any specific measurable results, with the exception of work on better coordination of the activities of the War Crimes Prosecutor's Office, the Commission for Missing Persons and the Protection Unit, as well as the preparation of the Draft Law on Missing Persons.¹²⁶

In May 2022, the leader of the Serbian Radical Party (SRS) Vojislav Šešelj and 7 other members received a summons for a hearing before the International Residual Mechanism for Criminal Tribunals (IRMCT), for violating the Tribunal's regulations on the protection of the identity of protected witnesses and confidential documentation. The hearing was supposed to take place on 27 September, in the premises of the War Crimes Chamber, but V. Šešelj refused to be heard in the building, because, according to him, his attorney and legal advisor Vjerica Radeta was not allowed to attend the hearing. Radeta had already been convicted by the IRMCT for revealing the identity of protected witnesses at V. Šešelj's trial.¹²⁷ Her case remains disputed due to the judgment of the War Crimes Chamber of the Higher Court in Belgrade from 2016 that there had been no legal grounds to arrest and extradite Vjerica Radeta and Petar Jojić, also a member of the SRS.

In the report that was presented to the UN Security Council in mid-June, the Chief Prosecutor of the IRMCT stated that there were certain developments in the cooperation of the prosecutor's offices of Serbia and Bosnia and Herzegovina, but that insufficient mutual cooperation of the judiciary in the region nevertheless remains the main systemic problem. He also repeated his earlier criticism of official Belgrade for its position in the case of Vjerica Radeta and Petar Jojić, and for the overall slowness of the work of institutions responsible for prosecuting war crimes.¹²⁸ In the same report, it was stated that "Serbia is at an important crossroads. Although impunity continues for many well-documented crimes, Serbia has a chance to set war crimes justice on the right course".¹²⁹

125 Report on the implementation of the National Strategy for Prosecuting War Crimes, Ministry of Justice of the Republic of Serbia, <https://bit.ly/3SOLfz7>, 29 Sept 2022

126 Report no. 1 on the implementation of the National Strategy for Prosecuting War Crimes, Ministry of Justice of Republic of Serbia, <https://bit.ly/3SOLfz7>, 29 Sept 2022

127 "Šešelj refused to be heard by the Hague Tribunal prosecutor because Radeta was not present, *Danas*, 27 Sept 2022, <https://bit.ly/3CZ6300>, 2 Oct 2022

128 "Chief Hague prosecutor Serge Bramertz: There is progress in cooperation between prosecutors from B&H and Serbia", *Tanjug*, 14 June 2022, <https://bit.ly/3CMvxPK>, 2 Oct 2022

129 Assessment and progress report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Carmel Agius, for the period from 16 November 2021 to 18 May 2022, International Residual Mechanism for Criminal Tribunals, p. 46, <https://bit.ly/3SRa5i5>, 29 Sept 2022

In addition, the visible presence of war crimes convicts in public took on new forms when the Serbian Orthodox Church (its Nova Gračanica Diocese of Midwestern America) presented Vojislav Šešelj with the Order of St. Bishop Mardarije,¹³⁰ and when Vladimir Lazarević - who was convicted of assisting in the persecution of the Albanian population in 1999 - received the Order of the Martyrs of Surdulica in October. With the previous blessing of the Holy Synod of Bishops, the proposal was made by the Council of the Eparchy of Vranje.¹³¹

The existing institutions are still slow in resolving cases of missing persons from the wars of the 1990s. The Group for Missing Persons held its 7th regular meeting in early August in Podgorica, to prepare a report for the next summit of the Berlin Process. The Group is preparing to release the "Base of active cases of persons missing in conflicts in the territory of former Yugoslavia",¹³² which will represent an important element for solving the remaining missing persons cases and was agreed upon in the Framework Plan from November 2018. The publication of this database should speed up work on identifying the remaining cases and facilitate greater involvement of the families of missing persons in that work.

2.1. Negotiations on the normalisation of relations with Kosovo: Increased efforts of the international community

In the reporting period, the dialogue on the normalisation of relations between Serbia and Kosovo took place at the technical level, in the form of regular meetings, with partial results that were not clearly confirmed and whose disputed points were not completely resolved at the highest political level. The adoption of the Roadmap for the implementation of the two earlier energy agreements on 21 June 2022 should be singled out among the results. The Roadmap envisages the start of operation of the local distributor (Elektrosever, owned by the Serbian Electric Company - EPS) in the area of four northern municipalities that fall under the Kosovo regulatory framework. By the time of completion of this report, the company has not yet started to work effectively, apparently due to technical reasons although it has received a license.¹³³ As a whole, the implementation of the Roadmap should enable technical normalisation of the supply of electricity to Serbian-majority municipalities, introduce local consumers into the system as buyers of electricity with concrete rights and obligations, and close one of the topics from the dialogue on the normalisation of relations.

A moment of crisis in the relations between the two parties and a particularly tense situation on the ground occurred at the end of July, after the Priština Government announced that from 1 August the previously adopted decisions on the re-registration of vehicles with license plates of cities in Kosovo issued by the Serbian authorities, will start to apply to RKS (Republic of Kosovo) plates, as well as the decision on the reciprocal issuance of entry/exit documents. This document will be issued by Kosovo at all land and air crossings and will be valid for 90 days, same as the document that the Serbian authorities issue to citizens of Kosovo when they enter Serbia. On the evening of 31 July, street blockades were set up in several places in parts of the northern municipalities, populated mostly by Serbs. Despite the obvious political tension and much false information about people who were wounded and a conflict between the Serbian Army and the Kosovo Police, there were no serious conflicts or casualties.¹³⁴ The official Belgrade opposed Priština's announcements on making the above decisions, while the action of the international community was aimed at postponing their implementation. As a mechanism for resolving this situation, which was caused by the absence of a meeting at the highest level during the

130 "Serbian Orthodox Church awards a medal to Šešelj, presented by Irinej, Bishop of Bačka", *Danas*, 11 Sept 2022, <https://bit.ly/3ep7Rav>, Oct 2022.

131 "Pahomije presents Hague convict Vladimir Lazarević with a medal", *N1*, 10 Oct 2022, <https://bit.ly/3em9KVE>, 10 Oct 2022.

132 "Seventh session of the Group on Missing Persons held in Podgorica", Commission on Missing Persons, 2 Aug 2022, <https://bit.ly/3V8MWcz>, 4 Oct 2022.

133 "Stano: Technical reasons for the delay in the implementation of the energy Roadmap", *Kosovo Online*, 6 Oct 2022, <https://bit.ly/3MqjhaB>, 7 Oct 2022.

134 "How another 'Kosovo armed conflict' started on TV Pink", *KosSev*, 3 Aug 2022, <https://bit.ly/3VmtE3r>, 7 Oct 2022.

previous year, the “shuttle diplomacy” of the European Union, the USA, France and Germany organised a meeting between the President of Serbia, Aleksandar Vučić, and the Prime Minister of Kosovo, Albin Kurti, as well as a series of separate meetings to coordinate efforts that would lead to the solution of the acute crisis. The result of these meetings was the agreement that was reached on 27 August, in which Serbia undertook to abandon the issuance of the standing entry/exit documents to Kosovo citizens, and Kosovo undertook to abandon the introduction of its parallel documents. No final agreement was reached regarding the license plates. Postponing the implementation of its earlier decisions, the Government of Kosovo announced that implementation would begin on 1 November 2022.¹³⁵ After the Kosovo Government stood by its decision on registration of vehicles with RKS license plates, and after its repeated rejection of the formation of Community of Serbian Municipalities, Serbs employed in Kosovo institutions have left them in large numbers starting on 5 November. Presidents of four northern municipalities with Serb majority, as well as Serb parliamentarians and ministers have also vacated their positions.¹³⁶ Through these steps, the crisis in relations of Belgrade and Priština, but also of Priština and Kosovo Serb community, has additionally worsened.

In addition to the above issues, which are of a narrower thematic character, the “fight” over Kosovo’s membership in international organisations is intensifying as well. In June, Kosovo withdrew its request for membership in Interpol,¹³⁷ but has been lobbying more actively since autumn to become a member of the Council of Europe, with the argument that it does not require it to be a member of the United Nations.¹³⁸ President Vučić confirmed that Germany and France have presented a general proposal for an umbrella solution for the next period, according to which Serbia would allow Kosovo to join all international organisations and institutions, including the United Nations, without being expected to formally recognise its independence. In return, Serbia would be granted a quick entry into the EU accompanied by significant, although not precisely defined, economic benefits.¹³⁹ President Vučić decided against such an idea, stating that the Serbian public has a clear opinion of the issue of recognition of Kosovo and on trading said recognition for membership in the EU.¹⁴⁰ He frequently announces to the public that Serbia will experience a difficult period when it comes to negotiations with Kosovo in the international context, saying that the country will suffer pressures and negative trends because of its international position.

135 “Traffic ban for vehicles with KM licence plates in Kosovo from 1 November”, *Radio Free Europe*, 21 Sept 2022, <https://bit.ly/3ThdQgt>, 7 Oct 2022

136 “Kosovo and license plates: What does leaving the institutions change in the lives of Kosovo Serbs”, *BBC News na srpskom*, 8. 11. 2022, <https://bbc.in/3GvSCZI>, 13. 11. 2022.

137 “Kosovo withdraws its application for membership in Interpol”, *Kosovo Online*, 30 June 2022, <https://bit.ly/3Drg5c5>, 24 Oct 2022

138 “Kosovo’s non-paper: Admission to the UN is not a prerequisite for membership in the Council of Europe”, *Kosovo Online*, 20 Sept 2022, <https://bit.ly/3gEUd49>, 24 Oct 2022.

139 “Vučić: The French and German proposal for Kosovo to enter the UN is at the table, Serbia’s biggest mistake was the acceptance of the EU handling the process of the final solution for Kosovo”, *KosSev*, 8 Oct 2022, <https://bit.ly/3DsFXUI>, 24 Oct 2022.

140 *Project “National interests of the Republic of Serbia: From Contestation to Legitimation”*, Results of the public opinion survey, Aug 2022, <https://bit.ly/3D5u45Q>

2.2. Multilateral relations – The Open Balkans as a focal point of Belgrade’s regional policy

Within the multilateral frameworks, Serbia continued to support European integration. It did so in broad outlines and declaratively, while continuing to operationally develop its neighbourhood policies by selectively focusing just on some of them.

The informal summit of the leaders of the Western Balkans and the EU, held on 23 June in Brussels, was an opportunity to exchange views on the humanitarian and economic consequences of the war and their mitigation following the Russian attack on Ukraine. In addition to Serbia’s position – that it will not introduce sanctions against Russia – the dialogue with Kosovo was also a topic of discussion, as well as other regional issues (the Bosnia and Herzegovina’s candidate status and the start of negotiations with North Macedonia and Albania). Immediately prior to the summit it was not certain whether the Albanian and North Macedonian Prime Ministers would even attend the meeting, which would have represented a form of potential boycott, caused by the fact that the Union did not give a clear green light for the date of the start of negotiations with these two countries.¹⁴¹ The Serbian leadership publicly expressed solidarity with their position in order to, in essence, relax its own position once it became clear that, due to the non-introduction of sanctions against Russia and the stalling of reforms, there would be no formal progress for Serbia in the negotiations. Thus, the leaders of the three countries also acted opportunistically, *de facto* as a bloc, when they did make a joint decision to eventually go to Brussels.

The summit of the leaders of the Open Balkans initiative was held in Ohrid at the beginning of June. The three countries that are formally involved in this initiative agreed and signed four agreements: the Agreement on mutual recognition of academic qualifications, the Agreement on understanding in the field of tourism in the Western Balkans, the Agreement on understanding in the field of culture and the Agreement on cooperation in the field of tax administrations in the Western Balkans.¹⁴² Although Montenegrin Prime Minister Dritan Abazović and Chairman of the BiH Council of Ministers Zoran Tegeltija were also present as guests of the summit, no steps were taken towards the eventual expansion of the initiative, that is, towards the inclusion of these countries. The next summit was organised in Belgrade in September and was, thematically, partly related to the joint coordination of measures prompted by the rise in energy and food prices and the preparation for challenges that will be brought about by the upcoming winter. In addition to the repeat guests from Montenegro, the ministers of foreign affairs of Hungary and Turkey were also present at the summit, while the invited ministers from Italy and Greece did not come. The ministers of agriculture of the three countries signed the Agreement on mechanisms for establishing food security in the Western Balkans. The Ministers responsible for energy and infrastructure of Serbia and Albania signed a Memorandum of Understanding which envisaged mutual support when investing in new capacities, especially in connection with terminals for liquefied natural gas in Albania.

Montenegrin Prime Minister Dritan Abazović indicated the possibility of Podgorica taking the first steps and joining the initiative, as he hoped that Montenegro would become a part of the agreement of the Open Balkan countries to help each other in crisis situations related to the supply of food and energy.¹⁴³ Shots towards the EU were specifically directed by Albanian Prime Minister Rama, who underlined the negative experience of the Balkan countries with the EU’s first reactions to the COVID-19 pandemic, noting that he would “once again call on the EU not to treat us in the shameful way it did during the pandemic. We remember very well that countries of the Balkans had to turn to Russia, China and Turkey for doctors, vaccines and medicines”.¹⁴⁴ The Serbian media continued to give much coverage and report positively on this initiative, with President Vučić playing a prominent role in its promotion. He gave the initiative a special place in the speech he delivered at the United Nations General Assembly in New York on 21

141 “Vučić, Rama and Kovačević confirmed joint participation at the EU-Western Balkans summit”, *Danas*, 22 June 2022, <https://bit.ly/3Ms7ubL>, 30 Sept 2022

142 Open Balkan Initiative – Signed Agreements, Serbian Chamber of Commerce, <https://bit.ly/3MjpuoN>, 3 Oct 2022

143 “Agreements on cooperation signed within the Open Balkan Initiative”, *Beta*, 2 Sept 2022, <https://bit.ly/3efl11Y>, 3 Sept 2022

144 *Ibid.*

September, where he said that “in addition to the unquestionable economic benefits, [the Initiative] has a wider dimension as it connects people of different cultures and promotes diversity”, and that “Serbia is thus trying to contribute to the peace, stability and reconciliation in the region”.¹⁴⁵

The content of the Open Balkans partially overlaps with the Common Regional Market (CRM). The two projects remain declaratively committed to the same goals of mutual market opening. However, while the CRM is based on the fact that all 6 members of the Western Balkans should move uniformly towards a common market based on the principles of the four freedoms, the Open Balkans initiative opens up space for politically interested countries to work faster on this, without certain bilateral problems that could interfere in that process. Thus, bilateral disputes between Belgrade and Priština can be “bypassed” in the existing form of the Open Balkans initiative, while the CRM depends on the normalisation of relations between the two sides, especially in the area of freedom of movement.¹⁴⁶ Also, if one compares the Open Balkan initiative with the CRM, one can see that the work of state administrations within the initiative is often non-transparent, and that future steps are not always clear.¹⁴⁷ It is obvious that, unlike the Open Balkans, the CRM does not have anywhere near the political support of Belgrade (or Skopje and Tirana) and that little has been done besides the declarative commitment to the construction of a common market of the six Western Balkan states, made at the Sofia summit of the Berlin Process in November 2020.¹⁴⁸ The political support for CRM is largely related to the importance and activity of the Berlin Process as a whole.¹⁴⁹ The signing of three agreements on the freedom of movement was announced for the next summit of the Berlin Process, which also includes agreements on mutual recognition of identity cards to enable easier crossing of borders, and on the mutual recognition of university and professional diplomas and certificates, all of which are closely related to the functioning of the CRM.¹⁵⁰ The progress report for 2021 in the field of CRM development notes the successes and records the obstacles such as bilateral and status problems (the relationship between Serbia and Kosovo), lack of political commitment, and consensus at the regional level regarding the development of freedom of movement of people in a broader sense. As particular obstacles, the report singles out certain weaknesses of administrative apparatuses and the differences that exist among the countries of the Western Balkans in the degree of adoption of the EU *acquis*.¹⁵¹

The Ministerial Summit of the Cooperation Process in Southeast Europe was held in Thessaloniki at the beginning of June. German Chancellor Olaf Scholz also attended it as part of his multilateral visit to the Balkans. In his speech at the summit, the Minister of Foreign Affairs of Serbia reiterated that “the development of the region is not possible without preserving stability and improving good-neighbourly relations, which Serbia is fully committed to doing”.¹⁵²

145 “Vučić: Serbia supports the territorial integrity of all UN members, including Ukraine”, *Radio Free Europe*, 22 Sept 2022, <https://bit.ly/3EBeiBZ>, 4 Oct 2022

146 *European engagement with the Western Balkans under the Berlin Process: Analysing progress in 2020–2021*, Balkan Forum, May 2022, pp. 13–14, <https://bit.ly/3f2Mdte>

147 “Western Balkans, From the Berlin Process to the Open Balkan Initiative, Prospects for the Accession Process”, *IEMed Mediterranean Yearbook 2022*, <https://bit.ly/3DsYoJf>

148 *Western Balkans Leaders’ Declaration on the Common Regional Market*, Berlin Process Summit, Sofia, 10 Nov 2020, <https://bit.ly/3rNbJoW>, 6 Oct 2022

149 “The Berlin process is unique, says German diplomat”, *DW*, 14 Oct 2022, <https://bit.ly/3TFTrlw>, 15 Oct 2022

150 “The Berlin Process: Annalena Baerbock is stepping up the tempo”, *DW*, 21 Oct 2022, <https://bit.ly/3sqCy2l>, 24 Oct 2022

151 *Common Regional Market Report on Implementation for 2021*, Regional Cooperation Council, Apr 2022, p. 37, <https://bit.ly/3ExozPP>, 6 Oct 2022

152 “Selaković in Thessaloniki: Stability and good neighbourly relations are important for the region”, *RTV*, 10 June 2022, <https://bit.ly/3fXpfn6>, 3 Oct 2022

2.3. Bilateral relations – A cycle of public conflicts with Croatian officials

Overall, Serbia's bilateral relations with its neighbours remain positive and productive. Relations with Montenegro have entered a period of reduced tensions and mutual media attacks, although the diplomatic dispute over the replacement of the Serbian ambassador, who was denied tenure in Podgorica, remains unresolved.

As regards Bosnia and Herzegovina, the policy is still conducted on two tracks, one with the official Sarajevo and the other with the official Banja Luka. President Vučić emphasised this duality in his speech before the UN General Assembly, when he pointed out that "Serbia, despite many untruths and falsifications, supports the Dayton Peace Agreement, the territorial integrity of Bosnia and Herzegovina, and the integrity of the Republic of Srpska within Bosnia and Herzegovina...".¹⁵³ A week earlier, at a meeting in Bijeljina as a guest of the Republic of Srpska, he said the following at the celebration of the newly established holiday, i.e. the Day of Serbian Unity, Freedom and Flag (15 September): "If you knew how much we love the Republic of Srpska, and how much it means to us regardless of the fact that we respect Bosnia and Herzegovina and all others...".¹⁵⁴ At the same time, this celebration was the reason for the ceremonial opening of the works on the Bijeljina-Rača highway (the border crossing with Serbia), which will provide better connection of the Semberija region and north-eastern Bosnia and Herzegovina with Belgrade.

In the relations with Croatia, there were no new positive steps or closing the gap between the two sides on the issue of the border dispute. Since July, relations have entered a new phase of tension. Namely, on 17 July the Croatian authorities did not allow President Vučić to "privately" visit Jasenovac, a memorial complex dedicated to the victims of Ustasha crimes from World War II - as he announced in the media. Official Zagreb refused the visit because it was not initiated in a proper fashion. After that, President Vučić informed the public that his visit to Jasenovac in September 2021 was postponed by Croatia, that Croatia's internal political situation was given as the reason for the postponement, and that in March 2022 he was told that "the visit is not welcome at that moment".¹⁵⁵ President Vučić said that Croatia does not want to let him make an official visit to Jasenovac and that, for official Zagreb, it is in fact the location that is the problem: "We tried everything to reach an agreement, but there was never a proper time to go to Jasenovac, and such a time will never come".¹⁵⁶ The immediate consequence of that diplomatic conflict was the cancellation of the agreed official visit of the Minister of Energy Zorana Mihajlović to Zagreb.

The Serbian War Crimes Prosecutor's early August indictment against four Croatian pilots for war crimes committed against Serbian refugees in August 1995 during the Operation "Storm" caused a tension in relations between the two countries and a new round of public clashes between state officials. The Speaker of the Croatian Parliament Gordan Jandroković and Croatian Defence Minister Tomo Medved rejected the indictment against the Croatian pilots, directed harsh criticism at the Serbian authorities, and hinted that Zagreb would block Serbia's negotiations with the European Union because of this. The Prime Minister of Serbia, Ana Brnabić, responded with a rhetorical question: "A member of the EU dares to publicly say that if you are seeking justice for the murder of Serbian children... you cannot be a part of the EU. Is that the rule of law? Are these the European values?"¹⁵⁷ Croatian Prime Minister Andrej Plenković reiterated Croatia's already known opposition to the incorporation of the legal principle of universal jurisdiction into the Serbian legislation on the prosecution of war crimes: "Serbia's jurisdiction

153 "Vučić: Serbia supports the territorial integrity of all UN members, including Ukraine", *Radio Free Europe*, 22 Sept 2022, <https://bit.ly/3EBeiBZ>, 4 Oct 2022.

154 "Serbia and the Republic of Srpska commemorate the Day of Serbian Unity in Bijeljina", *Radio Free Europe*, 15 Sept 2022, <https://bit.ly/3ThDTEc>, 5 Oct 2022.

155 "Is Aleksandar Vučić 'playing' according to the protocol?", *Radio Free Europe*, 18 July 2022, <https://bit.ly/3CNjvFO>, 5 Oct 2022.

156 "Aleksandar Vučić, Jasenovac, Serbia and Croatia: How a state official can travel abroad", *BBC News in Serbian*, 18 July 2022, <https://bbc.in/3ViayeH>, 5 Oct 2022.

157 Ana Brnabic @anabrnabic, 21 Aug 2022, <https://twitter.com/anabrnabic/status/1561414874709868551>, 5 Oct 2022.

in cases of purported criminal acts committed in the territories of other states, by citizens of other states, has been unacceptable for us for years, that issue is out of the question”.¹⁵⁸

A new round of mutual public accusations came at the beginning of October, caused by the effect of the 6th package of sanctions against Russia, which prohibits the import of seaborne Russian oil through the EU territory. For the NIS company, this means that Russian oil can no longer be imported via the established route, by tankers to the Croatian port of Omišalj and then via the JANAF pipeline to the refinery in Pančevo. No agreement was made within the EU on the exemption of third countries (including Serbia), while the official Belgrade accused Zagreb of being behind this form of sanctions. On that occasion, Serbian state officials addressed perhaps the harshest words to Croatia so far. During the summit of the European Political Community in Prague on 6 October, President Vučić stated that “Croatia was only doing its job, the same job it has been doing since 1941. I repeat, Croatia is simply doing its job, as it has in the previous 70, 80 years”, alluding to the similarity of today’s Croatia with the Ustasha NDH.¹⁵⁹ Minister of Internal Affairs Aleksandar Vulin also publicly attacked Zagreb, much like he did on some earlier occasions: “It is not important for the Ustashes and their allies whether something makes sense, but whether it will harm Serbia. With the Ustasha’s request adopted by the European Union, Serbia is now forced to buy more expensive Iraqi oil, losing hundreds of millions of Euros it could have used in a much better way”.¹⁶⁰ Prime Minister Brnabić linked this case to the indictments against the Croatian pilots: “Croatia requested these sanctions because Serbia is seeking to punish those responsible for the crime that was committed near Bosanski Petrovac in August 1995, when Croatian planes killed civilians, including children”.¹⁶¹ A number of Serbian media, more or less connected to the main party in power, used similar language in both news and commentary.

RECOMMENDATIONS

- It is necessary to increase the effectiveness of the War Crimes Prosecutor’s Office and strengthen institutional cooperation with partner institutions in the neighbourhood, primarily in Croatia and Bosnia and Herzegovina;
- It is necessary to put the solving of the remaining border issues with Croatia and Bosnia and Herzegovina on the political agenda;
- When developing regional economic initiatives, it is necessary to consider the connection between the progress of the Common Regional Market and the Economic and Investment Plan of the European Union;
- It is necessary to continue the dialogue between Serbia and Kosovo in order to reach an agreement on the normalisation of relations, with a clear commitment of the most responsible politicians to a transparent and accurate interpretation of the negotiation process, the importance and scope of the agreements reached, and their practical application. The conflict potential of the current state of affairs is obvious in the absence of long-term and mutually agreed solutions.

158 “Plenković: Serbia’s indictment against the pilots does not exist for Croatia”, *N1*, 29 Aug 2022, <https://bit.ly/3TbVu00>, 5 Oct 2022.

159 “Vučić: Croatia is simply doing what it has been doing since 1941”, *N1*, 6 Oct 2022, <https://bit.ly/3Mp4JrV>, 10 Oct 2022.

160 “Vulin on the oil import: Croatia is a complex Ustasha state”, *N1*, 6 Oct 2022, <https://bit.ly/3ywlWZM>, 10 Oct 2022.

161 “No Russian oil for Serbia from 1 November, says Brnabić – that is the Croatian ultimatum”, *N1*, 6 Oct 2022, <https://bit.ly/3CMj8Ls>, 10 Oct 2022.

3. DECLARATIVE COMMITMENT TO EUROPEAN INTEGRATION

As in the previous reporting period, the critical speech of Serbian officials about the European Union was dominantly related to the local perception of the Russian attack on Ukraine, the introduction of a series of European Union sanctions against Russia, and the indirect and direct impact on Serbia of the collapse of relations between the Union and Russia. The established policy of rejecting the European Union's call for Serbia to join sanctions against Russia is closely related to this, although Serbia diplomatically condemns Russian actions in the United Nations and other forums and does not recognise the recent annexation of four Ukrainian regions by Russia.

In the speeches of President Vučić, who is by far the most visible figure in the media, one can observe complex, ambivalent and contradictory rhetoric about the European Union. It implies casual use of negative remarks, with occasional emphasis on the positive importance of the Union for Serbia, primarily in the economic sense. He needs such messages to keep in touch with the largest possible spectrum of the electorate and relevant political actors, and to maintain the freedom of political manoeuvre when making specific decisions. In a captured state, such messages sent through the media have a dominant influence on the formation of the Government's political agenda and the creation of public opinion about the European Union.¹⁶² Given the mutual interaction of the Eurosceptic messages sent by the political elite and the entrenched attitudes of the public in general, one can understand the results of public opinion polls on the orientation of the citizens of Serbia. Shortly after the start of the Russian attack on Ukraine, polls showed a drop in Serbian citizens' support for EU integration. According to the Ipsos survey, 35% of the citizens were "for", while 44% were against it.¹⁶³ The Demostat survey conducted in June showed similar results: that 30%-34% of citizens clearly support the process of integration into the EU and alignment with its foreign policy (explicitly regarding the sanctions against Russia), while 43%-56% of citizens do not.¹⁶⁴

We can use President Vučić's statement made in mid-September at the summit of the Brdo-Brioni Initiative as an example of such messages: "I come from a country that is on the European path and will not give up that path, but in which the EU is the least popular. If you held a referendum today on joining the EU, the citizens of Serbia would say no". At the same time, he also expressed hope that "this will change in the coming months and years". He stated that the issue of the territorial integrity of Serbia is one of the main reasons for such an attitude, because "everyone's mouth is full of the territorial integrity of Ukraine, while they have trampled on the territorial integrity of Serbia like a herd of elephants. People in Serbia cannot accept that kind of hypocrisy, but I hope that a rational impulse will prevail in the future, that we will understand what our real interests are, and that we will be able to separate these from our emotions".¹⁶⁵ After the summit of the EU and the Western Balkans countries in June, in a public address in Serbia President Vučić said that he saw "a lot of hysteria against the European Union" in the country, and that people should not forget that "whatever money we have, we have it thanks to the enormous number of investments mostly from the EU and the support we have from the EU."¹⁶⁶ With these words, he once again presented the EU as the dominant economic partner, only to then connect the war in Ukraine with the position of Serbia, in a way that clearly directed the emotional experience against the EU countries: "You must understand, one part of the EU is in a direct war against Russia. How do you expect someone who sends 12 large howitzers, 30 tanks and 6 planes (to Ukraine) to think positively of Serbia, how do you think that country feels about us?"¹⁶⁷ In the mid-September parliamentary debate

162 "Can Vučić influence the change of public opinion to the benefit of EU?", *Danas*, 2 July 2022, <https://bit.ly/3TeMgR1>, 10 Oct 2022.

163 "For the first time in history, the majority of Serbian citizens are against joining the EU – A big Ipsos survey: Key reasons are pressures from the Brussels regarding Russia", *Blic*, 21 Apr 2022, <https://bit.ly/3DqytSd>, 24 Oct 2022.

164 "Foreign policy orientation of Serbian citizens", *Demostat*, June 2022, <https://bit.ly/3CZmaLf>, 24 Oct 2022.

165 "Vučić: The European Union is not popular in Serbia", *Radio Free Europe*, 12 Sept 2022, <https://bit.ly/3VrftKj>, 10 Oct 2022.

166 "Vučić on the EU-Western Balkans summit: Serbia is continuing its European journey", *Anadolu Agency*, 25 June 2022, <https://bit.ly/3CqPoCt>, 10 Oct 2022.

167 *Ibid.*

dedicated to the relationship with Kosovo, President Vučić expanded his position, declaring that he does not think “that the European Union is as desirable a place as it used to be” and that none of his trips to the dialogue with Priština in Brussels “involved anything nice”.¹⁶⁸

Criticism of the EU was a striking part of the state leadership’s conduct in the previous months also regarding the local disputes with Croatia and Kosovo, where the EU was criticised either because it did not react strongly enough to certain steps taken by Zagreb or Priština,¹⁶⁹ or because it was too passive when it came to Serbia’s interests (e.g. criticism regarding the JANAF oil pipeline through Croatia). Prime Minister Brnabić accused the EU by saying that “everything that the EU says Russia does - that it uses energy for political purposes, that it is an unsafe and unreliable partner, and that it is an unsafe producer - they have done all these things to us”. “[It is a] shameful decision”,¹⁷⁰ she concluded, referring to the ban on the flow of Russian oil through the JANAF pipeline after the EU sanctions on Russian oil come into force. Overall, the words of the highest state officials are often at odds with Serbia’s declared determination to become a member of the European Union, which was noted as a particular problem in the European Commission’s report on Serbia’s progress in 2022,¹⁷¹ as well as in our previous Alarm Report.¹⁷²

168 “The EU is not as desirable as it used to be”, *FoNet*, 13 Sept 2022, <https://bit.ly/3DqOE1V>, 24 Oct 2022.

169 “Strong words on the EU from Belgrade before the dialogue in Brussels”, *Radio Free Europe*, 15 Aug 2022, <https://bit.ly/3T10B3Y>, 10 Oct 2022.

170 “Brnabić: An open act of hostility by Croatia towards Serbia”, *Politika*, 6 Oct 2022, <https://bit.ly/3rK3zxA>, 10 Oct 2022.

171 European Commission, Serbia 2022 Report, 12 Oct 2022, *op. cit.*, pp. 3 and 13.

172 Jelena Pejić Nikić (ed.), *Alarm Report on Progress of Serbia in Cluster 1 – May 2022*, *op. cit.*, p. 55.

4. CHAPTER 23 – JUDICIARY AND FUNDAMENTAL RIGHTS

4.1. Introduction

Reports of the *Coordinating Body for the Implementation of the Revised Action Plan for Chapter 23* (AP 23) on the first and second quarter of 2022 were published during the reporting period with repeated general recommendations.¹⁷³ Some of them are that the institutions should submit clear reports related to the result indicator; that the assessment that “there was no activity” should be avoided, when it comes to activities that are carried out continuously, but that instead it should be stated that the activity was completed for the given year; that it is necessary to specify the reasons for the delay in more detail; that the reports adopted by the Coordinating Body should be available on the websites of the relevant institutions (which is still not the case), that all operational plans for the prevention of corruption be published on the websites of the ministries that adopted them; to improve reporting within the early warning mechanism.¹⁷⁴

The Ministry of Justice announced that it would prepare and publish a report on the fulfilment of benchmarks from Chapter 23 back in the spring of 2022, but at the end of the reporting period (May - October 2022) this has yet to be done. Within the project entitled “Support for Judicial Reform in Serbia” and financed by the European Union and the Council of Europe, the Ministry of Justice made an effort to improve cooperation with civil society organisations in relation to the drafting of judicial laws.

RECOMMENDATIONS

- Improve reporting on the fulfilment of the Revised AP 23 so that the reports contain data, analyses, reports and documents confirming that the activity was successfully implemented. Reports should also be made publicly available on the websites of the competent ministries or the Government.
- The recommendations of the Coordinating Body for the implementation of AP 23 must also apply to the Ministry of Justice, not just to other authorities within the Coordination Body and those in charge of the AP 23 activities.

4.2. Judiciary

4.2.1. Strengthening Guarantees of the Independence of the Judiciary: Drafting Judicial Laws to Align Them with the Constitutional Amendments

By February 2023, Serbia needs to adopt five key judicial laws so as to implement constitutional changes aimed at strengthening guarantees of the independence of the judiciary. The work of the judicial and prosecutorial group of the Ministry of Justice was marked by the extraordinary speed with which the working versions of the texts were drafted, the absence of public in this process, the absence of any real influence of the legal expert public, and the key decisions that were made by the Ministry of Justice. The working versions of the texts of judicial laws did not meet expectations regarding the establishment of solid foundations for the independence of the judiciary. The proposed solutions allow the legislative and executive branches of power to maintain the possibility of influencing the most important decisions in the judiciary. The working version of the texts of prosecutorial laws are fundamentally limited by previously adopted constitutional solutions that maintain the strict hierarchical nature of this body. Despite certain procedural and terminological changes, the connection between the prosecution and the executive power is still present.

¹⁷³ The third quarterly report was published end of October and thus couldn't have been analysed in this Alarm Report.

¹⁷⁴ <http://bit.ly/3UUUnrs>

Insufficiently used potential of constitutional changes

In the previous report of the coalition prEUgovor it was established that changing the Constitution of Serbia represents a significant initial step towards strengthening the independence of the judiciary, although there is still some room for political influence on this branch of power.¹⁷⁵ Almost all relevant actors - representatives of the Government, which happens to be the proponent of changing the Constitution,¹⁷⁶ a part of the domestic professional public,¹⁷⁷ as well as international actors¹⁷⁸ - agree that the constitutional changes did open up the *possibility* of strengthening the independence of the judiciary, but did not establish guarantees for the independence of the courts and the autonomy of the prosecutor's office.

All agree that only the adoption of the laws governing the position of the judiciary will show the true scope of the changes made to the Constitution in February 2022. However, the goal of the constitutional amendments was not to just 'scratch the surface' of the achievement of the separation of powers, leaving its essential elements to legislative solutions. On the contrary, the goal was for the highest legal act to establish a solid foundation for the independence of the judiciary and the autonomy of the prosecutor's office. Since at the time when the Constitution was changed there was not enough political will to make more serious cuts towards freeing the judiciary, and especially towards freeing the prosecution from the influence of the legislative and executive branches of power, what now remains is faith that this will be done through the adoption of new laws that need to be aligned with constitutional changes. In the meantime, the Government of Serbia keeps presenting constitutional changes and activities to amend judicial regulations as the basis of Serbia's progress in key areas of European integration.

The Constitutional Law¹⁷⁹ set a term of one year from the date of entry into force of the constitutional changes for the adoption of five key laws in the area of the judiciary - the Law on Judges, the Law on the Organisation of Courts, the Law on the High Judicial Council, the Law on the Public Prosecutor's Office and the Law on the High Prosecutorial Council. The above term will expire on 9 February 2023.

The process of drafting the working versions of judicial laws: Accelerated and accompanied by crucial influence of the Ministry of Justice

On 15 April 2022, the Ministry of Justice formed two working groups to draft the judicial laws - the Working Group in charge of drafting the working version of the Law on Judges, the Law on the Organisation of Courts, and the Law on the High Judicial Council (hereinafter: the Working Group in charge of judicial laws) and the Working Group in charge of drafting the working version of the Law on the Public Prosecutor's Office and the Law on the High Prosecutorial Council (hereinafter: the Working Group in charge of prosecutorial laws).

Controversial issues appeared at the very beginning, in the process of forming the working groups. The Ministry of Justice announced that the working groups began their work on 6 May 2022,¹⁸⁰ stating that they were composed of distinguished legal experts from state authorities, courts i.e. public prosecutor's offices, scientific institutes, professors of law faculties and representatives of the legal profession, that is, attorneys. However, the Ministry announced the composition of the two working groups only at the insistence of the civil society, during the meeting of the Ministry and the National Convention on the European Union (NCEU).¹⁸¹ The composition of the working groups was published two months after they were established, when the drafting of the working versions of the laws was already well under way.

175 Jelena Pejić Nikić (ed.), *PrEUgovor Alarm: Report on the Progress of Serbia in Cluster 1 – May 2022*, prEUgovor, Belgrade, 2022, p. 10, <https://bit.ly/AlarmMay2022>

176 <https://www.mpravde.gov.rs/sr/vest/37503/radni-tekstovi-sudskih-zakona-pred-izvestiocima-venecijanske-komisije.php>

177 https://www.rtv.rs/sr_lat/drustvo/boljevic-novi-zakoni-ce-jacati-nezavisnost-i-rad-sudstva_1344477.html

178 This position was clearly expressed in the European Commission's report on Serbia from October 2022, as well as the Opinion of the Venice Commission from November 2021.

179 This deadline is set forth in Article 4 of the Constitutional Law for the implementation of the Act on Amending the Constitution.

180 <https://www.mpravde.gov.rs/sr/vest/36480/pocela-sa-radom-radne-grupe-za-izradu-seta-pravosudnih-zakona.php>

181 <https://www.yucom.org.rs/izvestaj-sa-redovne-sednice-radne-grupe-nacionalnog-konventa-o-evropskoj-uniji-za-poglavlje-23-2/>

The composition of the working groups was determined by the decision of the Minister of Justice, which caused the managing board of the Bar Association of Serbia to react with a statement¹⁸² expressing dissatisfaction with the fact that the Ministry had appointed four attorneys to the working groups without consulting the Bar Association, despite the fact that the Association was interested in delegating representatives to the working groups, of which it had informed the Ministry in a timely manner. The Minister responded to this announcement by stating that she was under pressure from NGOs and associations when she was deciding on the composition of the working groups, and that she used her discretionary right to choose the members of the working groups, which she did not perceive as arbitrariness, but as a possibility to select persons who would make the greatest contribution to the creation of the set of judicial laws.¹⁸³

Although the Ministry made a commitment to make the work on drafting the working versions of the laws public, it refused to have a representative of the NCEU attend the working group meetings as an observer without the right to vote. Also, the total number of meetings of the working groups is not known. Minutes of the working groups meetings are not available to the public, while only some of the minutes were submitted to the members of the NCEU after a delay of several months. The drafting of the working versions of five important and extensive judicial laws was completed in just four months – it took from the beginning of May to the beginning of September.

Table 1: Meetings of the working groups of the Ministry of Justice charged with drafting the judicial laws

Meetings		Judicial working group	Prosecutorial working group
I (constitutive)		6 May 2022	6 May 2022
II		13 May 2022	27 May 2022
III		10-12 June 2022	3-5 June 2022
IV		23-25 June 2022	13-15 June 2022
V		2-4 July 2022	20 June 2022
VI		13-15 July 2022	6-8 July 2022
VII		19-21 July 2022	16-18 July 2022
VIII		29-31 August 2022	22-24 July 2022

It is not known whether minutes were taken The minutes were made available to NCEU members, but are otherwise not publicly available

The minutes, which were made available to only a small number of professional associations, show that members of the working groups did not vote on the solutions that were to become an integral part of the working texts of the law, but instead presented their proposals in the form of series of alternative solutions. In the work of the judicial group, it is possible to identify the proposer of alternative solutions in some cases, while in the work of the prosecutorial group not even this not possible – the minutes list only proposals, without the names of the initiators. The exchange of opinions and discussions among the members of the working group on proposals (arguments for or against them) are presented in the minutes of the judicial working group very curtly (only a third of the members of the group asked to speak), while such discussion is completely absent in the minutes of the work of the prosecutorial group.

182 https://aks.org.rs/sr_lat/odluka-i-saopstenje-upravnog-odbora-aks/

183 <https://rs.n1info.com/vesti/ministarka-pravde-bila-sam-pod-pritiskom-nvo-i-udruzenja/>

The members of the working groups agreed that the Ministry of Justice should carry out the technical preparation of the working texts of the law, which included the selection of solutions that will have a decisive impact on the future position of the judiciary. Therefore, the final decision on the content of the working texts was in fact in the hands of the Ministry. This is an unfavorable starting point for continuing work on the texts of judicial laws, because they are not the result of consensus, debate or even compromise, but rather a set of solutions that are acceptable to the executive power. As the public consultations and public debates continue, the possibility of influencing the legal bases formulated in this way will be very limited.

On the website of the Ministry of Justice, we can find the comments¹⁸⁴ of two members of the judicial working group - Judge Dragana Boljević and Judge Snežana Bjelogrić. In their comments on the working text of the Law on Judges, the Law on the Organisation of Courts and the Law on the High Judicial Council, members of the working group indicated that the texts that were published on 13 September deviated from the proposals made by the judicial working group, and that said deviations were introduced by the Ministry of Justice on two occasions - at the end of August and at the beginning of September 2022. Bearing in mind the importance of these judicial laws, the question arises as to the legitimacy of the comprehensive influence of the Ministry of Justice of the Government of Serbia - which Government was in a technical mandate during the drafting of all the working texts of the judicial laws - on the legal scope of the reform of the judicial system.¹⁸⁵

The working versions of the five judicial laws were first submitted to the Venice Commission, and then presented to the domestic public. At the end of September, the Ministry of Justice invited all interested parties to submit their comments on the published versions. At the meeting held on 23 September with members of the prEUgovor coalition and the NCEU Working Group for Chapter 23, representatives of the Ministry of Justice presented the new working versions of legal solutions and heard the general comments of the participants, but did not enter into a discussion. Among other things, on 29 September the Venice Commission held an online meeting with representatives of civil society organisations regarding the working versions of the judicial laws. The NCEU Working Group for Chapter 23 published a summary comment on the drafts of five judicial laws at the end of October.¹⁸⁶

Working versions of judicial laws – Expectations unfulfilled

The key solutions of the working texts of judicial laws, those that refer to the establishment of the separation of powers, did not meet the announced expectations. To put it more clearly, despite the changes to the Constitution, not even the working texts of the law create solid foundations for the independence of the judiciary. The proposed solutions allow the legislative and executive branches of power to retain the ability to influence the most important decisions, while some of the solutions are subject to broad interpretations that could negatively affect the independence of the judiciary.

One of the points of contention is certainly the proposed method of decision-making by the High Judicial Council (HJC), which is to completely take over from the National Assembly the competence of electing judges, as well as almost any other issues related to the management of the judiciary. The authors of the constitutional amendments "imposed" the decision-making method of the HJC on the text of the law, avoiding defining this issue in the constitutional text. The way decisions are made (quorum and the number of votes required to make a decision) has a decisive influence on the possibility of political structures maintaining their influence over decision-making in the judiciary.

184 <https://www.mpravde.gov.rs/sr/sekcija/53/radne-verzije-propisa.php>

185 The Law on the Government stipulates that the Government whose mandate has ended can only perform current tasks, and that it cannot propose laws and other general acts to the National Assembly or pass regulations. An exception to this rule is possible only if the adoption of a certain regulation is related to a statutory deadline or is dictated by the needs of the state, the interests of defence, or by a natural, economic or technical disaster.

186 <https://eukonvent.org/zbirni-komentar-radne-grupe-za-poglavlje-23-na-nacrte-pravosudnih-zakona/>

The working version of the Draft Law on the High Judicial Council envisages that the HJC can decide only if 8 of its members are present, which *de facto* means that prominent lawyers elected by the National Assembly will be able to block the work of the Council by not being present, or make their attendance at sessions conditional on a vote by the majority of judges (7) that is favourable for them. The secret voting for the President and Vice-President of the High Judicial Council and the President of the Supreme Court, as an exception to the rules on public voting, also raises doubts about the political motives for establishing such exceptions. The retention of the solution according to which the Court Rules of Procedure are adopted by the Minister of Justice instead of the HJC (with the consent of the Ministry) is also disputable, as well as the complete lack of budgetary autonomy of the judicial branch of power. According to the presented proposals, the executive power, that is, the Government of Serbia, will still have the final say in approving the budget for the courts. This will be the case regardless of the fact that the working text of the Law on the High Judicial Council envisages consultations between the HJC and the Ministry of Finance on the proposal of the court budget and the budget of the HJC. However, in case of failure to reach a common solution, when adopting the law the National Assembly, i.e. the political authority will make the final decision on the budget that will be at the disposal of the judiciary.

The proposed rules on the transparency of the work of the High Judicial Council are not in line with the new competences of this body and are limited to the publication of the annual work report. Instead, it would be necessary for the HJC to fully open its sessions to the public, and to enable audio and/or video recording of the work of the HJC and all its bodies such as e.g. the election commissions that evaluate and propose candidates for election to judicial positions. Transparency of the work of the HJC would have to be the same as that of the work of the National Assembly, in the committees and the plenum, when deciding on the judiciary. Committee meetings and plenary sessions were completely public.

The Law on Judges defines the right of judges to associate in a way that is too narrow and underdefined, namely as the right to professional association in order to protect one's interests and preserve independence in work. Such a concept of the right of judges to associate is not in line with international standards and excludes the right of a judge to act publicly to protect the rule of law. The adoption of the proposed solution could further discourage judges from ever speaking publicly to protect the separation of powers. The provision on the incompatibility of a judge's work with other offices or private interests was formulated in a similar, insufficiently defined way. The proposal stipulates that a judge may not discharge another office, or have a job or private interest that is contrary to dignity, that is, that damages the judge's reputation and independence. The Ethics Committee will decide which jobs are contrary to dignity, i.e. damage the reputation and independence of a judge, which makes this type of incompatibility uncertain, undeterminable and therefore unfavourable for judges, who should know beforehand which jobs are considered incompatible with their office.

The Law on the Organisation of Courts defines in an overly broad way the prohibition of inappropriate influence on a judge while s/he is discharging judicial office, including inappropriate use of a public position and the media, and the publicity of appearances that could influence the course and outcome of court proceedings. This open definition of inappropriate influence, which applies not only to political officials but to all persons, could include any statement that criticises the work of judicial authorities.

Opinion of the Venice Commission on the working versions of texts of judicial laws

At the plenary session held on 21-22 October 2022, the Venice Commission adopted the opinion on the working texts of the Law on Judges, the Law on the Organisation of Courts and the Law on the High Judicial Council,¹⁸⁷ while the laws governing prosecution will be evaluated in a separate opinion which is expected by the end of 2022.

The Commission generally welcomed the effort and time the Serbian authorities invested in the preparation of the working texts of the laws, which they found to be well structured, clearly written and defining all important issues concerning the position of the judiciary. As for the content of the working texts, the Commission concluded that, despite many positive changes, the Serbian judicial system is still characterised by a strict hierarchical spirit consisting of multiple mechanisms of evaluation and control.

¹⁸⁷ European Commission for Democracy through Law (the Venice Commission), Opinion no. 1088/2022 of 24 Oct 2022, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)030-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)030-e)

The Commission cited the following as the most problematic points of the system proposed by the working texts of the laws: the still present broad powers of the Ministry of Justice in the adoption and control of the application of the Court Rules of Procedure; the Ministry's consent regarding the act on the classification of job positions in the courts; the nomination of lay judges by the Ministry; and the continued strong influence of the Ministry on the process of approving the court budget. Similar criticism was directed at the numerous mechanisms of control exercised by court presidents, both in the functioning of their own courts and in the control of the work of lower-level courts. The quorum required for decision-making in the HJC (8 votes) was assessed as too high from the point of view of the possibility of blocking the work of this body.

The commission also criticised the overly broad definition of impermissible influence on judges, which equates the influence of political authorities on court proceedings with legitimate criticism of the work of the judiciary by civil society or citizens. The Venice Commission asked that the ban on judges' "acting politically in other ways" be defined more precisely, because in the form in which it is now written it could prevent judges from participating in public discussions and even voting in elections.

Working versions of prosecutorial laws – Constitutional framework and lack of room for maneuver

Even with the best intentions, the working versions of the Law on the Public Prosecutor's Office and the Law on the High Prosecutorial Council could hardly avoid the stumbling points defined by the text of the Constitution. Let us recall that the Act on Amending the Constitution made it possible for the National Assembly to continue to elect the Supreme Public Prosecutor, and for the High Prosecutorial Council to have one less elected prosecutor (5) than in the previous solution, rendering prosecutors a minority in the highest prosecutorial body. The Minister of Justice remained a member of the HPC, despite numerous warnings from international institutions - primarily the Venice Commission - that this solution was not acceptable and that the representative of the executive power, along with four prominent lawyers elected by the National Assembly, could not enable the independence of the public prosecutor's office from political influences.¹⁸⁸ Certain progress, which was made possible by constitutional amendments - for example, the prohibition of re-election of the Supreme Public Prosecutor - was rendered insignificant by the solutions contained in the constitutional law, which enabled the newly re-elected Republic Public Prosecutor to be re-elected once again after the end of the current mandate. Thus, her possible fourth election will be viewed as the first election.

During and after the adoption of the constitutional amendments, representatives of the executive power and prosecutors who supported the constitutional changes claimed that the biggest change to be brought about by the constitutional changes would be the abolition of the so-called monocratic, strictly hierarchical system of public prosecution.¹⁸⁹ The Constitution stipulates that the function of public prosecution is no longer performed only by the Republic Public Prosecutor, but by three categories of prosecutors: the Supreme Public Prosecutor (former Republic Public Prosecutor), chief public prosecutors (former public prosecutors) and public prosecutors (former deputy public prosecutors). However, this improvement is subject to criticism from the point of view of its substantive and not merely terminological scope.

If we look at the solution contained in the working text of the Law on the Public Prosecutor's Office, it is questionable whether the hierarchical relations in the public prosecution will seriously change. Article 4, paragraph 4 of the working version of the Law on Public Prosecutor's Office stipulates that, in managing the Public Prosecutor's Office, the Supreme Public Prosecutor and the Chief Public Prosecutor have hierarchical powers in relation to the actions of lower-ranking public prosecutors in specific cases. Mechanisms for ensuring hierarchical influence were retained as well: mandatory instruction, devolution (the immediately higher public prosecutor's office taking the actions of a lower-ranking public prosecutor's office) and substitution (the immediately higher public prosecutor's office referring a case to another public prosecutor's office). Legal remedies against hierarchical powers, such as objections to

188 European Commission for Democracy through Law (the Venice Commission), Opinions no. 1027/2021 and 1067/2021 of 24 Nov 2021, paragraph 28, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)019-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)019-e).

189 <https://uts.org.rs/brosure-o-radnim-verzijama-zakona-o-javnom-tuzilastvu-i-zakona-o-visokom-savetu-tuzilastva/>

mandatory instructions, already exist in the current legislation, while in the newly proposed form they do not provide sufficient grounds to conclude that the monocratic system has been abolished; it rather looks like individual acts will be reviewed by other prosecutorial bodies, instead of exclusively by the Republic Public Prosecutor.

The most significant positive changes brought about by the amendments to the Constitution - which are regulated more specifically in the working text of the Law on the High Prosecutorial Council - are those according to which the prosecutors' status issues will be under the jurisdiction of the High Prosecutorial Council, and not the exclusive competence of the Republic Public Prosecutor. However, even this positive change remains overshadowed by the fact that the majority of the members of the High Prosecutorial Council will be elected by the National Assembly, and especially by the possibility of establishing disciplinary responsibility of a prosecutor based on the votes of 7 members of the Council (that is, with the vote of only one member from the ranks of prosecutors).

Considering the above-mentioned limitations of the constitutional text, the proponents of the Law on the Public Prosecutor's Office and the Law on the High Prosecutorial Council now have little room to improve the position of the prosecution, i.e. to increase its independence from the executive power in terms of structure, finances and operation/organisation.

RECOMMENDATIONS

- The Ministry of Justice should publish all the materials (minutes, documents) that were used in the work of the judicial and prosecutorial working groups it had established;
- The process of adoption of judicial laws should be fundamentally opened to the public during the upcoming public debate - it is necessary to consider reasoned legal opinions related to changes to the working versions of the laws;
- The content of the judicial laws needs to be harmonised with the goals of changing the Constitution of Serbia as defined in the Proposal to Amend the Constitution;
- It is necessary to publish, in accordance with the Government's Rules of Procedure, a report on the public debate. The report should describe the course of the debate and explain the acceptability or inadmissibility of the proposals that were submitted during the debate;
- In the upcoming changes, the working versions of the judicial laws should additionally exclude the influence of the Ministry of Justice from making key decisions on the functioning of the judiciary and prosecution, and reduce the influence of court presidents on the work of judges (limiting it to technical and organisational issues);
- There is a need to review the rules on the way judicial councils make decisions, in terms of the quorum, the number of votes required for decision-making, and the exceptions in which the voting can be secret;
- It is necessary to redefine the notions of 'impermissible influence on a judge' and 'prohibition of political activity in other ways', in accordance with the opinion of the Venice Commission;
- It is necessary to open the work of the High Judicial Council and the High Prosecutorial Council to the public. The level of publicity should be the same as that which was present when the National Assembly was deciding on the judiciary (openness of sessions, recording of sessions, etc.);
- The parliamentary Committee for the Judiciary, State Administration and Local Self-Government should ensure full transparency in the election of „prominent lawyers“ for members of judicial councils.

4.2.2. Professionalism/Competence/Efficiency of the Judiciary

Amendments to the Civil Procedure Law (CPL) and the Criminal Procedure Code (CPC)¹⁹⁰ have been delayed for more than 18 months.

In the latest quarterly report on the implementation of AP 23 in Serbian¹⁹¹, it is stated that the extended working group for amendments to the Civil Procedure Law, which also includes representatives of the Bar Association of Serbia, will continue their work after the formation of the new Government, and that adoption is expected by the 4th quarter of 2022. It is still not possible to find information on who the members of the Working Group are in the expanded composition, which included representatives of the Bar Associations¹⁹², nor is the new Draft Law on Amendments and Supplements to the CPL available on the website of the Ministry of Justice in the section of the *working version of the regulations*¹⁹³.

Although the Coordinating Body for the Implementation of the Revised AP 23 announced at the meeting with the National Convention on the European Union (NCEU) in December 2021 that the current drafts of the Law will be submitted to civil society so that they can give their comments,¹⁹⁴ not even after ten months has the last version of the Draft Civil Procedure Law been submitted to the NCEU.

The Ministry of Justice stated that the related activity 3.5.1.1. *Analysis of compliance of procedural laws with the Law on Free Legal Aid and subsequent amendments*, was fully realized by the fact that the proposed amendments are contained in the Draft Amendments to the Civil Procedure Law. The largest number of comments that the Autonomous Women's Center had on the Draft Civil Procedure Law, during the public hearing in June 2021, precisely concerned the inconsistency of the proposed changes with the Law on Free Legal Aid, which is why it is important that the current version of the Draft Law be made available to the public as soon as possible.

The coordinating body for the implementation of the Revised AP 23 stated, only in Serbian version of the Report, that, due to the complexity of the changes and the need for coordination of various institutions, the work on drafting the Law on Amendments to the Criminal Procedure Code requires additional time, and that adoption is planned for the 4th quarter of 2022.¹⁹⁵ There is no data that the Ministry of Justice, in order to gather opinions, also addressed civil society organizations whom on daily bases provide free legal aid and support to victims.

Investigative story 3:

Government error cost people their home, no one has been held accountable yet

The home of Mandić family from the eponymous village near the Zaovine Lake was destroyed in a landslide in 2019. Zaovine Lake is an artificial lake, created in order for the water to be extracted from it for the nearby pumped-storage hydroelectric plant Bajina Bašta, but only when absolutely necessary – in cases of failures (on the power grid), power shortages or incidents affecting the country's energy system. Once water is pumped out of the lake, it needs to be filled up again. The *Electric Power Industry of Serbia* (EPS) abruptly withdrew a large amount of water from the lake in March 2019, triggering the landslide.

An investigation carried out by the *Center for Investigative Journalism of Serbia* (CINS)¹⁹⁶ shows that even after three years have passed, EPS has not compensated these people for the damage incurred, nor has anyone been held accountable for the environmental damage caused.

190 Activities 1.3.6.1. and 1.3.6.2

191 Ministry of Justice, Report 2/2022 on the implementation of the Revised Action Plan for Chapter 23 in Serbian, <https://bit.ly/3Wmwk1y>, p. 55

192 Available only in Serbian at <https://www.mpravde.gov.rs/vest/33635/saopštenje-sa-sastanka-odrzanog-dana-11062021-izmedju-ministra-pravde-i-predsednika-advokatske-komore-srbije-.php>

193 <https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>

194 Report 4/2021 on the implementation of Revised Action plan for Chapter 23, available at the MoJ website: <https://www.mpravde.gov.rs/files/Report%20on%20AP%2023%20implementation%20in%20IV%20quarter%20of%202021.docx>, *op. cit.*, p.10

195 Ministry of Justice, Report 2/2022 on the implementation of the Revised Action Plan for Chapter 23 in Serbian, <https://bit.ly/3Wmwk1y>, p. 55

196 <https://www.cins.rs/en/government-error-cost-these-people-their-home-no-one-has-been-held-accountable-yet/>

The local inhabitants are seeking justice before the *High Court in Užice*. They are asking EPS for compensation for the destroyed buildings, forests, orchards and meadows. Apart from that, criminal proceedings initiated by the *Ministry of Environmental Protection* against Grčić and EPS for environmental destruction were quickly resolved – they were dismissed after six months. Because EPS did not extract water to below the lake’s biological minimum, but to 16 meters above it, Deputy Public Prosecutor Saša Nešović rejected the complaint because “disruptions to the ecosystem were not the result of any violation of regulations”.

Water level fluctuations have a bad effect on dozens of fish species in Zaovine Lake. Locals claim that the company keeps rapidly withdrawing water from the lake, thereby endangering those who live from it, including the lake’s wildlife.

RECOMMENDATION

- Introduce the obligation of public invitations for representatives of civil society organizations in the working groups of the Ministry of Justice for amendments to the Law, like the invitations that are sent for the creation of strategies and action plans that foresee these legislative amendments.

4.2.3. War Crimes

Despite increased human resources, the performance of the War Crimes Prosecutor’s Office over the past five years has been more than modest. The number of indictments filed annually by this prosecutor’s office is decreasing, the indictments are insufficiently substantiated, and there are numerous shortcomings in the judgments of domestic courts in war crimes proceedings, as constantly pointed out by the civil society. There are no investigations against the most responsible members of the army and police who had occupied high positions during the conflict and are still active in today’s public life. In Serbia and the region, the application of the institute of trial in absentia is proving to be disastrous for the process of dealing with the past, and represents a step backwards when it comes to the prosecution of these crimes.

Establishing individual criminal responsibility for war crimes committed during the 1990s is part of the formal requirements for Serbia’s accession to the European Union under Chapter 23.¹⁹⁷ In its annual reports, the European Commission regularly reminds Serbia of its obligation to prosecute persons responsible for war crimes, especially those who occupied high positions during the wars, provide a legal framework that would make it possible to hold trials based on command responsibility, and improve regional cooperation and cooperation with the Residual Mechanism. In the report on the progress of Serbia for the year 2022, it was stressed that Serbia has an obligation to respect the judgments of the ICTY, and that the representatives of the authorities should stop the practice of glorifying persons convicted of war crimes.¹⁹⁸

The Humanitarian Law Center (HLC) is the only non-governmental organisation in Serbia that continuously monitors and analyses all war crimes trials that are pending before the domestic court and informs the local and international public thereof. In recent years, the HLC has informed the public on several occasions about the trend of a reduced number of War Crimes Prosecutor’s Office’s indictments at the annual level, insufficiently substantiated indictments, as well as shortcomings of the judgments of domestic courts in war crimes trials. For years now, the HLC has been submitting criminal complaints to the War Crimes Prosecutor’s Office and calling for investigations against the most responsible members of the army and police who held high positions during the conflict. In 2006, the HLC informed the War Crimes Prosecutor’s Office about the suspicion that Svetozar Andrić was responsible for the crimes

197 Benchmark 1.4.

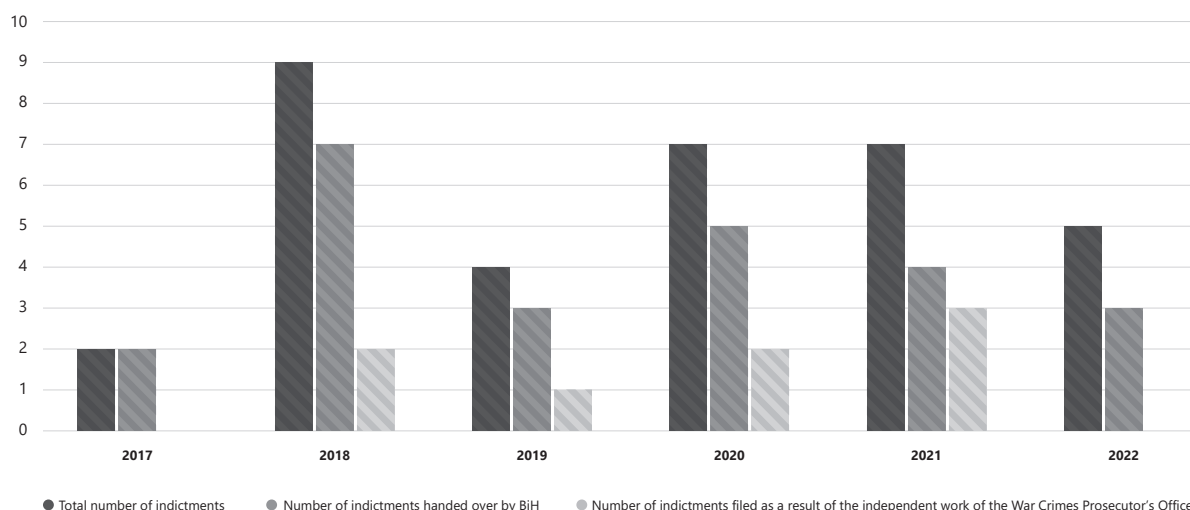
198 European Commission, Serbia 2022 Report, op. cit, pp. 26-27.

committed in Vlasenica (BiH) and Camp Sušica.¹⁹⁹ In 2018, they also filed a criminal complaint.²⁰⁰ At that moment, Andrić was the deputy mayor of the municipality of New Belgrade. In the meantime, he became a member of the Belgrade City Council, at the suggestion of the mayor of the city of Belgrade, Aleksandar Šapić.²⁰¹

Svetozar Andrić is not the only high-ranking member of the army who is currently active in the public life of Serbia despite the fact that the HLC has filed a criminal complaint against him. Complaints were also filed against Ljubiša Diković,²⁰² Dragan Živanović²⁰³ and Božidar Delić,²⁰⁴ who commanded Yugoslav Army brigades during the conflict in Kosovo. The War Crimes Prosecutor's Office did not act on any of the criminal complaints filed by the HLC, that is, it did not file indictments against any of the reported persons.

The five-year mandate of the War Crimes Prosecutor Snežana Stanojković will end at the end of 2022. The beginning of her mandate, in 2017, coincided with the start of the implementation of the first National Strategy for Prosecuting War Crimes. From 2017 to date, the War Crimes Prosecutor's Office has filed a total of 34 indictments for war crimes. Of that number, 24 were the result of regional cooperation with the judiciary of BiH, while only 10 indictments were the product of the work of the War Crimes Prosecutor's Office itself.²⁰⁵ If we consider the fact that the number of deputy war crimes prosecutors kept increasing over the years, and that today the War Crimes Prosecutor's Office has a total of 11 deputies, the performance of this prosecutor's office is more than modest.

Figure 2: Number of indictments filed for war crimes in Serbia in the period 2017-2022



199 The Humanitarian Law Center is calling for the investigation of Svetozar Andrić and Toma Kovač, <http://www.hlc-rdc.org/?p=13587>.

200 Criminal complaint against Svetozar Andrić, <http://www.hlc-rdc.org/?p=34855>

201 Nova: Svetozar Andrić, founder of Camp Sušica, is the new member of the Belgrade City Council, <https://rs.n1info.com/vesti/nova-svetozar-andric-osnivač-logora-susica-novi-clan-gradskog-veca-beograda/>

202 During the conflict in Kosovo, Ljubiša Diković was the commander of the Yugoslav Army's 37th motorised brigade. According to HLC data, some 1,400 Albanian civilians were killed in his area of responsibility. From 2011 to 2018, he was the Chief of the General Staff of the Yugoslav Army. The HLC presented two files to the public – "Ljubiša Diković" and "Rudnica" – containing evidence of murders, rapes, robberies and expulsion of Albanian civilians in 10 different locations that were committed during the conflict in Kosovo. To date, the War Crimes Prosecutor's Office has not filed indictments for any of these crimes, and the HLC has no information as to whether it had ever investigated any of them. Diković retired in 2018. On that occasion, the President of Serbia, Aleksandar Vučić, presented him with the Star of Karađorđe of the first order.

203 During the conflict in Kosovo, Dragan Živanović was the commander of the Yugoslav Army's 125th motorised brigade. According to HLC data, some 1,800 Albanian civilians were killed in his area of responsibility. In 2014, the War Crimes Prosecutor's Office launched an investigation against him, but decided to drop the criminal prosecution after three years.

204 Božidar Delić was the commander of the Yugoslav Army's 549th motorised brigade. According to HLC data, some 2,100 Albanian civilians were killed in his area of responsibility. The HLC filed two criminal complaints against Delić with the War Crimes Prosecutor's Office, i.e. for crimes committed in villages Landovica and Trnje. Although the War Crimes Prosecutor's Office did file an indictment for the crime committed in the village of Trnje, said indictment did not include Božidar Delić. During his career, Delić was a member of the Serbian Radical Party, the "Love, Faith, Hope" movement and the Serbian Progressive Party. He passed away in 2022. At that time, he was the Vice-Speaker of the National Assembly.

205 The data of the Humanitarian Law Center.

Prosecution of war crimes in Serbia: Review of the situation

The conflicts of the 1990s that took place in the territory of former Yugoslavia were marked by serious, systematic and massive violations of international humanitarian law. The conflict resulted in the loss of 130,000 lives, most of them civilian. More than 10,000 people are still missing. Tens of thousands of people were imprisoned in camps and subjected to torture, sexual violence, inhuman treatment and other forms of violence and humiliation. About 4.5 million people were forced to leave their homes. The conflicts were marked by great destruction and looting of private and state property, economic goods, as well as cultural and religious buildings.²⁰⁶

Once the United Nations Security Council adopted the Resolution 1503 in 2003, announcing the end of the mandate of the International Criminal Tribunal for former Yugoslavia (ICTY), and the successor states of former Yugoslavia were invited to strengthen their domestic capacities for prosecuting war crimes, the Republic of Serbia adopted the Law on the Organisation of Competences of State Authorities in War Crimes Proceedings, which established specialised institutions for the prosecution of war crimes - the War Crimes Prosecutor's Office of Serbia, specialised panels of judges, police units for investigations and witness protection, and the witness and victim support service.²⁰⁷ The government also adopted other laws and by-laws and signed bilateral agreements. This created important conditions for the prosecution of war crimes and regional cooperation.²⁰⁸

In the 19 years of the existence of these specialised institutions, 88 persons were convicted for crimes committed in Croatia, Bosnia and Herzegovina (BiH) and Kosovo. A total of 222 people were charged in 96 cases.²⁰⁹ 1,731 cases are still in the pre-investigative phase

✂ ALARM: The beginning of war crimes trials *in absentia* in the court in Serbia

At the beginning of August 1995, planes of the Croatian Air Force shelled a column of civilians on two occasions - on the road to Petrovac [*Petrovačka cesta*] and near the town of Svodna in the territory of BiH. A total of 12 Serbian civilians were killed in those two attacks, including four children, while more than a dozen people were wounded.

In June 2022, the War Crimes Prosecutor's Office filed an indictment against four Croatian pilots²¹⁰ for this crime, proposing that defendants be tried *in absentia*. At the beginning of June, the higher court confirmed the indictment, and the defendants' defence attorneys filed an appeal against this decision with the Appellate Court. At the end of August, the Appellate Court confirmed the indictment.²¹¹ The preliminary hearing, scheduled for October 2022 before the war crimes department of the Higher Court in Belgrade, was never held because there was no evidence that the defendants had received the summonses. The court has not yet made a decision to hold the trial *in absentia*.²¹²

A lot was said and written about this case in the media. But although this may be the most famous case, it is not the only one. Namely, the proceedings for war crimes in the absence of the defendant are currently under way before a court in Serbia.²¹³ Just like in the case of the crime committed on the road

206 *Ibid.*

207 Law on the Organisation of Competences of State Authorities in War Crimes Proceedings ("Official Gazette of the Republic of Serbia", nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015), Articles 2 and 4.

208 The War Crimes Prosecutor's Office of the Republic of Serbia, <https://www.tuzilastvorz.org.rs/sr-lat/propisi/me%C4%91unardni-i-bilateralni-ugovori>

209 Data of the Humanitarian Law Center

210 Vladimir Mikac, Zdenko Radulja, Željko Jelenić and Danijel Borović were accused in this case.

211 The Appellate Court in Belgrade – Judgments, war crimes, August 2022, <http://www.bg.ap.sud.rs/lt/articles/sluzba-za-odnose-sa-javnoscju/aktuelni-predmeti/ratni-zlocini/rz-donete-odluke/>, 3 Oct 2022

212 *Euronews Serbia*, "Prosecution after 27 years: The hearing of the Croatian pilots regarding the Petrovac road has been postponed because Zagreb refused to serve the summonses", 14 Oct 2022, <https://bit.ly/3sMaebe>

213 An indictment was filed against a member of the National Guard, Branko Tunić, for the ill-treatment, torture and murder of a member of the Yugoslav National Army. Based on the anonymised document that can be found on the website of the War Crimes Prosecutor's Office, this indictment was filed in March 2022.

to Petrovac, a Croatian citizen is being tried for crimes committed against Serbs. The institution of trial *in absentia* is recognised by most legal systems, and in certain situations and in relation to certain types of criminal offences it can be useful and indeed necessary. However, in the context of war crimes that were committed during the wars in the territory of former Yugoslavia, the application of this institute is disastrous for the process of dealing with the past and represents a step backwards in the processing of these crimes.

The Criminal Procedure Code of Serbia allows trials *in absentia* if the conditions are met; namely, the reasons for such a trial have to be particularly justified, and the defendant needs to be on the run or otherwise unavailable to the state authorities of Serbia. Therefore, in order for the accused to be tried *in absentia*, these two conditions must exist simultaneously.²¹⁴ Although she announced this form of trial in her program back in 2016, the Serbian War Crimes Prosecutor did not resort to filing indictments in the absence of the defendant until this year.²¹⁵

Trials *in absentia* – Practice of other Western Balkan countries

Croatian county courts have been trying defendants who are not available to Croatian state authorities *in absentia* for quite a while now. According to the reports of non-governmental organisations from Croatia, as much as 70% of the total number of war crimes cases are tried *in absentia*. In 90% of the situations, they involve Serbian citizens who live in the territory of Serbia and are being tried for crimes committed against Croats during the conflict.²¹⁶

The legislation of BiH does not allow trials of defendants who are unavailable to the BiH state authorities. When a case involves a defendant, who lives in the territory of Serbia, and is a Serbian citizen against whom the Prosecutor's Office of Bosnia and Herzegovina has conducted an investigation and filed an indictment, such a case is handed over to the War Crimes Prosecutor's Office after obtaining the consent of the victims to conduct the process before the Serbian authorities. This is how regional cooperation between the domestic and BiH Prosecutor's Office works.²¹⁷

The situation in Kosovo is quite similar. It has been talked about for a long time that Kosovo institutions should introduce the institute of trial *in absentia* into their legislation. The Criminal Procedure Code has also been amended several times to that end. The last change was made in August 2022 and will come into force next year. Based on that latest amendment, a trial *in absentia* will be possible in Kosovo if the court establishes that the defendant is voluntarily absent from the main hearing, after previously appearing at the preliminary or main hearing.²¹⁸

In addition to being a waste of resources - because the entire proceeding must be repeated the moment the accused becomes available to the prosecuting authorities - trial *in absentia* also becomes an instrument to prosecute only defendants who are not members of the population of the country in which the trial is taking place. In this way, the courts in Serbia will only try members of the Croatian forces, or Kosovo Albanians, because they are not available to the Serbian authorities. On the other hand, the institutions of Croatia will continue to try mostly Serbian citizens *in absentia*, which is what it has been doing to date. If the legislation of BiH is amended, that country will be prosecuting mostly Croatian and Serbian citizens, while in Kosovo, trials *in absentia* will be conducted mainly against Serbs who do not live in the territory of Kosovo. That way, regional cooperation - which even in previous years, despite numerous signed agreements, was not enviable and was the subject of criticism of the EU and the Chief

214 Criminal Procedure Code ("Official Gazette of the Republic of Serbia", nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – decision of the Constitutional Court, and 62/2021 - decision of the Constitutional Court), Article 381.

215 Snezana Stanojković's programme for the organisation and improvement of the work of the War Crimes Prosecutor's Office, <https://bit.ly/3DNN8qS>

216 War crimes trials, report for 2020/2021: Slow road to justice, Document and the Centre for Peace, Nonviolence and Human Rights from Osijek, https://documenta.hr/wp-content/uploads/2022/07/Izvjestaj_Sudjenja_za_ratne_zlocine_2020-2021.pdf, pp. 7-8.

217 PROTOCOL of the Prosecutor's Office of Bosnia and Herzegovina and the War Crimes Prosecutor's Office of the Republic of Serbia on cooperation in the prosecution of perpetrators of war crimes, crimes against humanity and genocide.

218 Criminal Procedure Code no. 08/I-032, Article 303.

Prosecutor of the Residual Mechanism for Criminal Courts, Serge Brammertz - will become completely irrelevant. Each state will hold trials only for members of other nations who are not available to them, which will only deepen the gap between neighbours and create the image that only members of another nation are responsible for committed war crimes. Having in mind the fact that trials for war crimes in Serbia have always depended on political will and have never reflected a sincere will of the authorities to punish the perpetrators and provide the victims with some satisfaction, the start of trials *in absentia* in Serbia could have far-reaching negative consequences, both on relations in the region and on the effectiveness of the trials themselves.

War crimes and their prosecution can be neither the right nor the obligation of only one state; crimes had been committed in the territory of the entire former Yugoslavia, while defendants, witnesses and victims often live in several different states. Trials for this type of crime must not be a daily political issue to be used as a means of 'settling accounts with other nations'. They should be used to prosecute and punish those who had murdered, raped and looted, or had participated in mass executions and the establishment of camps, in order to send a message that institutions will punish unlawful behaviour regardless of the perpetrators' nationality. Almost 30 years after the end of the conflict, there is simply no justification for holding a trial against an empty chair. It will not make the victims feel that justice has been served, or that decades of their suffering have been acknowledged.

RECOMMENDATIONS

- Process war crimes more efficiently, that is, increase the number of indictments for war crimes and give priority to cases that involve a larger number of victims and high-ranking members of the military and police;
- Abandon the practice of holding trials *in absentia* for crimes where the victims are of Serbian nationality and the defendants are citizens of neighbouring countries;
- Representatives of Serbian institutions should stop the practice of supporting, glorifying and giving space in public life to persons convicted of war crimes;
- Strengthen regional cooperation between the prosecutor's offices; to end impunity for committed crimes, exchange of evidence, cases and information must be a priority of the domestic judiciary.

4.3. Fight against Corruption

Since the Government operated in a technical mandate during the reporting period, no anti-corruption regulations were amended and no new ones prepared (with the exception of the judicial ones) in relation to the earlier GRECO recommendations. Within the fifth round of the GRECO evaluation and in the final report of the ODIHR mission, Serbia received some highly significant recommendations for the improvement of several laws; however, the state authorities have yet to take any action regarding these. Work on the new Strategy for the Fight against Corruption has not started, nor are there any visible results of the implementation of Operational Plans for the fight against corruption in areas of special risk. Analyses of the effects of previous anti-corruption measures, prepared within the framework of the implementation of the Revised Action Plan for Chapter 23 (AP 23), do not provide sufficient information for planning further reforms. In its report, the European Commission noted "some progress", yet all the key recommendations contained in said report are the same as in the previous two years. All the negative trends that had been noted in previous reports have continued or intensified, especially when it comes to public procurement, management of state-owned enterprises and public administration. This period was also marked by the absence of reaction of the competent authorities to potential cases of high-level corruption revealed by the media or arising from mutual accusations by politicians, including those from the ruling party.

4.3.1. Strategic framework for the fight against corruption: New delays and activities that were "implemented" without substantial results

During the reporting period, the Government and the Assembly did not pass the acts that were envisaged in the Revised Action Plan for Chapter 23. Many activities from that Plan were implemented by other parties, but the goal for which they were planned was not achieved. Although there was a plan to establish the Working Group for the development of the new national strategy for the fight against corruption in the first quarter of 2022,²¹⁹ this has not been done to date; consequently, it is quite obvious that the adoption of this act - highlighted in the European Commission's latest report as one of the key priorities²²⁰ - will be delayed.

In this period, no changes were made to the system for monitoring and controlling the implementation of AP 23; thus, when it comes to the fight against corruption, monitoring and control are performed by the Coordinating Body for Monitoring the Implementation of the Action Plan for Chapter 23 (quarterly reporting) and the Agency for the Prevention of Corruption - sub-chapter "Fight against corruption" (annual reporting), which apply different methodologies. The Ministry of Justice published the report of the Coordinating Body (CB) for the implementation of the Revised AP 23 for the second quarter of 2022 at the end of July (hereinafter: Report AP 23 II/2022).²²¹ The National Assembly has not yet considered the report of the Agency for the Prevention of Corruption on the implementation of the Action Plan in 2021.²²² Moreover, the National Assembly did not even publish this report on its website, although the cover letter to the Agency's annual work report shows that it was submitted.²²³

There is a need for additional amendments to the Law on Prevention of Corruption

A very illustrative example of the need to periodically improve the AP 23 concerns the activities related to the Law on Prevention of Corruption. If one were to look at the text of the AP, one could conclude that the reform was successfully completed because amendments to that Law²²⁴ were adopted on 23 September 2021 based on the recommendations from the analysis financed by the EU, following which GRECO gave this a positive rating within the fourth round of evaluation.²²⁵ That was one (out of a total

219 <https://bit.ly/3E2YQOI>

220 European Commission, Serbia 2022 Report, 12 Oct 2022, *op. cit.*

221 The report on the third quarter was not available at the time of preparation of this Alarm report, <https://bit.ly/3NKqbZa>, 20 Oct 2022.

222 <https://bit.ly/3WBI41e>

223 <http://www.parlament.gov.rs/akti/izvestaji/-u-sazivu-od-3-avgusta-2020.4690.html>

224 <https://www.slobodnaevropa.org/a/srbija-skupstina-zakon-sprecavanje-korupcije/31471220.html>

225 <https://rm.coe.int/-greco-greco-90-/1680a5ff35>

of two) reasons for the European Commission to conclude in its annual report that Serbia made “certain progress”²²⁶ in the fight against corruption. However, the same Law was amended once again²²⁷ before the April 2022 elections and the recommendations made by GRECO in the fifth round of evaluation²²⁸ clearly indicate that it will have to be revised yet again.

According to the assessments of the Government’s Coordinating Body, the implementation of the Law on the Prevention of Corruption is being “successfully realised”. This conclusion was drawn based on the presentation of statistical indicators showing the number of conducted and completed proceedings. The EC applies a similar approach in its reports. In reality, this assessment lacks sufficient substantiation. Much like in the era before the amendments to the Law, not all decisions made by the Agency for the Prevention of Corruption when it is suspected that public officials have violated legal obligations are available to the public, and it is therefore not possible to conclude whether the Agency’s actions were consistent, how up-to-date they were, and how the rules were violated. Namely, the Agency publishes only decisions from cases in which it had taken some of the more severe measures (e.g. recommendation for dismissal); it does not publish decisions on issued warnings, information on those against whom misdemeanor proceedings have been initiated or criminal charges filed, or decisions on termination of other public offices by force of law.

Party financing: The law was changed without prior analysis

The Coordinating Body stated that the activity to “amend the Law on the Financing of Political Activities so that the obligations of the Agency, the State Audit Institution and other authorities in the process of controlling political activities and entities are clearly defined and delineated, and the obligations and mechanisms for the transparency of political financing are clearly defined in accordance with the qualitative analysis of the application of the provisions of the Law”²²⁹ has been fully implemented. However, this Law was not changed based on such an analysis, so the claim is clearly false. Had the analysis been done, it would have had to show e.g. that the newly introduced system of submitting preliminary reports on campaign financing is not managing to ensure adequate transparency of financing.

The superficiality in the implementation of the AP for Chapter 23 is even more obvious when it comes to the introduction of “the obligation of the Director of the Tax Administration to include in the annual or extraordinary tax control plan the providers of financial resources and other services to political entities in accordance with the Agency’s report on the financing of political activities and entities”.²³⁰ The activity was implemented in such a way that it created numerous new dangers (which were discussed in earlier Alarm reports), because the text from item 2.2.2.2 was only transferred, *verbatim*, to Article 36 of the Law on the Financing of Political Activities, instead of it being given thought and elaborated.

As regards “Monitoring the implementation of the Law on the Financing of Political Activities, including the implementation of deterrent measures”, the Coordinating Body stated that this activity is being successfully implemented. However, here, once again, only statistical data were provided, i.e. another description that revealed neither essence nor progress. The statistical reports show how many proceedings were initiated, but not the number of violations committed; it is impossible to see the reasons for the initiation of misdemeanour proceedings (e.g. whether the political entity simply did not submit a report, or some other irregularities were observed as well); individual decisions of the Agency are not published and it is therefore not possible to judge how up-to-date and consistent they are. The decisions of public prosecutors and courts that rule in criminal proceedings are not published either. When it comes to trainings on the implementation of this Law, they were organised in the third quarter of 2022,²³¹ but, unfortunately, not at the time when the parties needed them the most, that is, at the time of the election campaign and reporting on expenses.

226 European Commission, Serbia 2022 Report, 12 Oct 2022, *op. cit.*

227 <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2022/89-22%20-%20Lat..pdf>

228 <https://pescanik.net/greco-za-ponavljacke/>

229 Report on AP 23 II/2022, p. 113.

230 *Ibid*, p. 113.

231 <https://www.acas.rs/cyr/news/297>

Access to information: Insufficient data

Another activity declared as being “successfully implemented” is the strengthening of the staffing capacities of the Commissioner for Information of Public Importance and Protection of Personal Data. However, the report does not specify how many staff members should be employed and whether new hires are related to the change of the Law in one way or another. Also, capacity building and other activities in the area of access to information are not matters that concern only the Commissioner, but other authorities as well, especially the Administrative Court. However, this is not monitored through reports on the implementation of AP 23, even though the problems are significantly greater. Namely, experience shows that administrative disputes last for years, and that many decisions end up disputable.²³²

Investigative story 4:

A new mechanism of abuse of the right to access information for financial gain

Although one of the reasons for amending the Law on Free Access to Information of Public Importance was to establish a mechanism to prevent abuse of rights for the purpose of obtaining financial gain, it looks like the new Law, too, provides a way to get to budget funds. Before these changes, the legal possibility of initiating misdemeanour proceedings against the responsible persons in the authorities in case of silence of the administration was used to collect the costs of conducting such proceedings and hiring an attorney, despite the fact that these are very simple proceedings in which almost no one needs legal assistance. That is why this provision was changed at the suggestion of the Commissioner for Information of Public Importance and Personal Data Protection. The injured information seeker must now first address the Commissioner, who then issues a misdemeanour order against the responsible person. Consequently, there are no costs of representation to be charged.²³³

A recent case, when the Commissioner received more than 5,000 complaints from Vranje in one month,²³⁴ suggests that a new way to extract money from the budget has been found. After the media published this information, one person - who had submitted one fifth of all the above-mentioned complaints - withdrew them. Other complaints (all of which were exactly the same and referred to information related to public procurement) were submitted by three more people and one association from Vranje. The billing system is now slightly different, functioning as follows: a large number of requests for access to information is submitted to the authorities in an organised fashion, followed by complaints to the Commissioner due to the authorities' actions or their decisions. The Commissioner has 60 days to issue a decision on each complaint, and cannot meet that deadline because of the large inflow of cases. If the Commissioner fails to make a decision within the set deadline, or within 7 days after the submission of the subsequent urgent request, the applicant can file a lawsuit against the Commissioner with the Administrative Court, with guaranteed success.

The real purpose of these requests, complaints and lawsuits is to collect the costs of court proceedings, not to obtain information. The solution to this type of abuse should be sought first of all in the simplification and automation of the process of filing lawsuits due to the Commissioner's failure to act within the set deadline (which would make representation redundant), or in a significant reduction of the attorney's fees for representation in such cases, which would eliminate the main motive for using this legal remedy. However, it would be very dangerous to use this case to restore to the Law on Free Access to Information the possibility to reject a request due to “abuse of rights”, as that would be subject to arbitrary assessment, or to introduce the possibility for authorities to reject requests by stating that they are simply too busy.

232 For example: <https://bit.ly/3UKlqRI>

233 <https://spikoalicija.rs/usvojene-izmene-zakona-o-pristupu-informacijama-od-javnog-znacaja/>

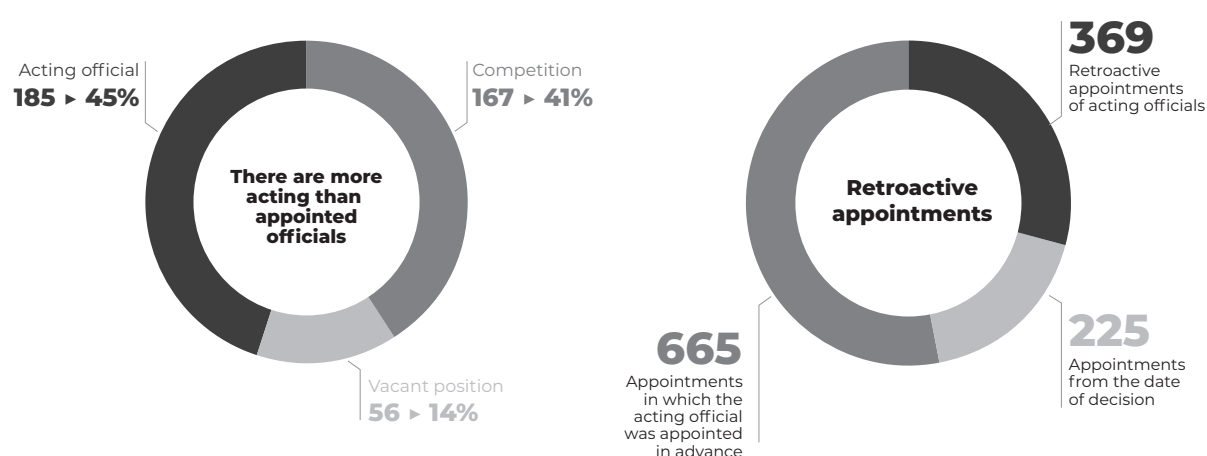
234 <https://www.cins.rs/nakon-pisanja-cins-a-povuceno-vise-od-1-000-zalbi-poslatih-povereniku/>

Professionalisation of public administration: A drastic gap between reports and reality

The assessment that the activity “Complete all started competitions for filling job positions and start competition procedures for all vacant positions (including the positions currently occupied by acting officials)”²³⁵ was “successfully implemented” speaks volumes of the drastic gap between the reports and reality. Although some competitions were indeed announced and brought to conclusion, most state administration authorities have been headed by acting officials for years. As the prEUgovor coalition showed in its Quick Reaction,²³⁶ the problem is even more serious because more than three quarters of the decisions of the Government of Serbia on the appointment of acting officials in the state administration in the last two years were unlawful. In 30% of the cases, the Government violated not only the provisions of the Law on Civil Servants, but also the laws of physics, deciding that officials would take office on a day that had at that point already passed.

In less than two years of work, ending with the session that was held on 1 September 2022, the outgoing Government passed as many as 1,258 decisions on the appointment of acting officials in the state administration, referring to 290 persons. Of these, 230 were appointed between two and eight times consecutively for a period of three months, although the Law allows this to be done only once. 972 decisions (77%) were unlawful on this basis alone, which means that appointed persons unlawfully managed state administration bodies for a total of 2,916 months. In addition, in 369 cases, the Government made decisions retroactively, setting as the date of commencement of duties a day that had at the time already passed. On average, the Government sent these officials back in time for 13 days, and, in the most drastic case, for no less than 188. Unfortunately, the European Commission’s report spoke about this problem only from the point of view of incomplete professionalisation, instead of a serious violation of the rule of law.

Figure 3: Acting positions and retroactive appointments in state administration during the mandate of Ana Brnabić’s second Government



Source: prEUgovor²³⁷

As regards anti-corruption measures in the state administration, the indicators of the implementation of the Code of Conduct, which is monitored by the High Civil Service Council, are no more telling. The activity is being “successfully implemented”, but not even statistical indicators on the number of sanctions imposed due to violations of the Code are presented, let alone an analysis of the effects of its existence on improving the integrity of civil servants.

²³⁵ Report on AP 23 II/2022, p. 123

²³⁶ prEUgovor, *Stop Illegal Appointments in the State Administration*, Belgrade, Oct 2022, <https://www.preugovor.org/Brief-Alert/1764/Stop-Illegal-Appointments-in-the-State.shtml>

²³⁷ prEUgovor, *Stop Illegal Appointments in the State Administration*, op. cit. Note: data as of 1 September 2022.

Protection of whistleblowers: Incomplete reporting

The activity of continuously monitoring the implementation of the Law on the Protection of Whistleblowers was also rated as being “successfully implemented”. The 2021 report on the implementation of the Law on the Protection of Whistleblowers was prepared and published on the official website of the Ministry of Justice,²³⁸ but it contains data on the application of the Law only regarding a small number of taxpayers and courts that provide protection to whistleblowers. On the other hand, the effects of the implementation of this Law are still not being monitored in terms of the actions of state authorities following whistleblowers’ reports. It was precisely the lack of action by state authorities following whistleblowers’ reports that was highlighted in the European Commission’s report as the main problem. The “Krušik”²³⁹ case was cited as the most prominent of its kind. In the report of the Ministry of Justice, there was no mention of consideration of the possible need to improve the Law, which was also indicated by the European Commission. In the report of the Coordinating Body, it was noted that there were no activities to raise the level of awareness among citizens about the Law on the Protection of Whistleblowers and increase their willingness to become whistleblowers.

Internal audits are conducted in only half of the state enterprises

According to the data available from the Central Harmonisation Unit (CHU) and reported by the Coordinating Body, out of a total of 41 state-owned enterprises that perform activities that are of general interest, only 22 of them, i.e. 54%, have a functional internal audit unit. Eight of the 14 taxpayers have a full internal audit unit with a minimum of three auditors. This is one of the strongest illustrations of the absence of awareness and will to establish the system as it was planned and provided for by the regulations. The State Audit Institution provided similar data in its report.²⁴⁰

Investigations

According to the report of the Coordinating Body, the activity that implied the interconnection of data on criminal investigations, i.e. a secure system for electronic exchange of information among the public prosecutor’s office, the police, the Customs Administration, the Tax Administration, the Agency for the Prevention of Corruption and other relevant authorities, was “partially implemented”. It is unclear, however, what this partial implementation might consist of. Also, the report of the Coordinating Body from July 2022 contains an assessment that the publication of statistics on court proceedings is being “implemented successfully”, although statistics for the previous year had not yet been published on the website of the Ministry of Justice at the time.

According to the information contained in the report of the Coordinating Body, trainings on financial investigations are being successfully implemented, while financial forensic experts were not employed everywhere as planned (Higher Public Prosecutor’s Offices in Niš, Kraljevo and Novi Sad). It is interesting that the Coordinating Body stated that the Prosecutor’s Office for Organised Crime (POOC) has two financial forensic experts, while the EC report from October 2022 states that there is only one. Higher public prosecutor’s offices’ special departments for combating corruption have been operating for five years now, following a period of 1.5 years which was left to prepare the conditions for their work. The Coordinating Body’s report admits that the capacities of the POOC are not sufficient to fill all the job positions, and that they will not be sufficient until the new facility intended for this prosecutor’s office is built.

The Coordinating Body’s report admits that the training of judges and prosecutors on the application of the Criminal Code was not carried out, and that no analysis was conducted on the compliance of the normative framework of the Republic of Serbia with FATF recommendations for conducting financial investigations in parallel with criminal investigations, on the basis of which a planning document in the field of combating financial crime was supposed to be prepared.

238 <https://bit.ly/3EieHc3>

239 European Commission, *Republic of Serbia – Report for 2022*, op. cit, p. 30

240 <https://www.dri.rs/php/document/download/4724/1>

Likewise, we are still waiting for the adoption of the by-law from Article 16, paragraph 4 of the Law on the Organisation and Competence of State Authorities in the Suppression of Organised Crime, Terrorism and Corruption, which is supposed to regulate the deadlines, the manner of acting, and the methods of official communication between the police and the public prosecutor's office in cases of organised crime and corruption.

On the other hand, the activity of amending regulations in order to establish a uniform methodology for data collection, recording and statistical reporting on corruption-related criminal acts was listed as successfully implemented. The analysis, it is claimed, showed that it was not necessary to change the regulations in order to realise this goal.

For better planning of activities related to the suppression of corruption, it would be very important to establish a single record of criminal acts with a corruption element. With regard to this activity, the report stated that a register has been established and that data is collected within it in accordance with the rules on the protection of personal data (Electronic Register of Corruption Cases, ERCC). The properties of the system are discussed in the future tense - that the ERCC will discover 'bottlenecks' in the investigations of these types of cases "through regular and *ad hoc* reports containing timely information on the status of corruption cases",²⁴¹ and that it will enable the identification of strategies to increase the efficiency of the work of four special departments for combating corruption in higher courts and higher public prosecutor's offices. It is also stated that the registry will communicate with the case management systems that exist in courts and public prosecutor's offices (AVP, SAPO) and that using the application will not require the introduction of new or changes to existing work processes in registry offices. However, due to its dependence on the SAPO program, the system is expected to be implemented from 1 January 2023.

Changes to the strategic framework with anti-corruption elements

During the reporting period, the Government adopted several strategic acts that might prove relevant for the fight against corruption.²⁴²

The Strategy of Integrated Border Management in the Republic of Serbia for the period 2022-2027, listed under the item of Quality Control Mechanisms, envisages special measures for the prevention and fight against corruption at border crossings. The Action Plan for the implementation of the Public Procurement Development Programme in the Republic of Serbia (for 2022)²⁴³ is discussed in the chapter on public procurement. The Fiscal Strategy for 2023²⁴⁴ was published at the beginning of June, which is in compliance with the Law on the Budget System. It is interesting that this strategy, just like before, does not recognise corruption as one of the risks for achieving fiscal goals.

Anti-Corruption Council - No change in treatment

When it comes to the relationship between the Government and the Anti-Corruption Council, the last quarterly report for the AP 23 correctly noted the absence of any progress. Similar information was repeated also in the EC report. The Council does not receive feedback on whether the Government considered its recommendations and conclusions. The Government did not change the decision on the establishment of the Council in this period either, nor did it strengthen the Council's budgetary and staffing capacities. The last report on the actions of public prosecutors' offices upon the reports of the Council refers to the year 2021, without information on actions that might have been taken in those cases in the first half of 2022.

241 Report on AP 23 II/2022, p. 153

242 <https://www.srbija.gov.rs/dokument/45678/strategije.php>.

243 <https://bit.ly/3NVjovQ>

244 https://www.srbija.gov.rs/extfile/sr/632845/fiskalna-strategija-2023_138-cyr.zip

4.3.2. Preventive anti-corruption laws

Even when there are reports, lobbying is invisible to the public

As regards the implementation of the Law on Lobbying, which entered into force on 14 August 2019, training and registration of new lobbyists is still under way, although - judging by the available data - very few of them get the opportunity to engage in this type of work (lobbying). The Agency for the Prevention of Corruption held three training sessions for lobbyists in 2022, which ended in October. Serbia currently has 44 registered individual lobbyists and three lobbying firms. No new information on the implementation of the Law on Lobbying was published on the Agency's website, with the exception of information on trainings and workshops.

The Law did not improve the transparency of the legislative procedure in any way. Based on the data that *Transparency Serbia*, a member of the pre-EU coalition, obtained from the Agency for the Prevention of Corruption, the Agency has received only 8 lobbyists' reports since the beginning of the implementation of the Law – 6 in 2021, and two in 2022. In all reported cases, lobbying was carried out by professional lobbyists on behalf of their clients (companies, associations and attorneys). The following persons were subjected to lobbying: acting directors of agencies, and assistant ministers or ministers. It is reasonable to assume that the number of cases of lobbying - if not by registered lobbyists, then by those that are unregistered (representatives of directly interested business entities and their associations) is much higher. Namely, not a single case of lobbying by unregistered lobbyists has been reported, so there is a strong suspicion that such cases are not being reported at all.

In its annual report, which has not yet been considered by the National Assembly, the Agency recommended that the Law be amended to ensure the transparency of data contained in lobbyists' reports, as well as data on contacts between lobbyists and public officials or persons employed in the public sector. However, the Agency did not make an effort to increase the transparency of the work of lobbyists or the actions of authorities and lobbied persons by publishing the information it already possesses. Although the Agency did create a new website in 2022, it does not even have a column under which such data would be published.

GRECO subsequently becomes aware of the major shortcomings of the Law on Lobbying

The GRECO report prepared as part of the fifth round of evaluation, which was adopted on 25 March 2022 and published on 5 July 2022,²⁴⁵ contains some highly significant comments regarding the quality of the Law on Lobbying.

Although the Law on Lobbying was adopted precisely on the recommendation that was provided by GRECO in the previous evaluation round, after which Serbia received a positive assessment in this regard, it is very important that the same institution has now shown its willingness to point out the two biggest shortcomings of that Law, of which some were obvious even as the text of the Law was being prepared. Namely, GRECO has now recognised as a problem the fact that this Law regulates only lobbying that takes place according to formal rules, and not that which takes place through informal contacts of lobbyists with the President, Prime Minister, ministers and their advisers. Another big problem pointed out by GRECO is that there is no obligation for public officials and state authorities to publish which formal or informal lobbyists have actually approached them.

Viewed more broadly, this issue carries with it the problem of non-compliance with the rules on holding public hearings while preparing laws, which GRECO also pointed out referring to the study²⁴⁶ which *Transparency Serbia* prepared on the weaknesses of the legislative procedure. GRECO additionally recommended the need to explain the reasons and impacts of changes to the Law that occur after the end of the public debate.

245 <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a7216d>

246 *Transparency Serbia, Grand Corruption and Tailor-Made Laws in Serbia*, Belgrade, 2021, <https://bit.ly/3G5Z3lo>

In its report, the European Commission also paid great attention to fulfilling GRECO's recommendations, but did not elaborate on these problems independently. So far, there have been no activities by state authorities to improve this Law or practice. The first opportunity to do this could be the consideration of the report of the Agency for the Prevention of Corruption, which, as already discussed, also contains a proposal to increase the transparency of data on lobbying.

Risks of corruption in draft laws: The opinions of the Agency were not sought because no work was done on the laws

From 1 September 2020, whenever the ministries are preparing a draft law, they are required to ask the Agency for the Prevention of Corruption for an opinion on whether it contains risks of corruption. However, this obligation only applies to laws regulating certain areas,²⁴⁷ despite the fact that any regulation can contain such risks. In the reporting period, the Agency did not receive any draft laws from the ministries for the purpose of providing opinions (because there were none). Coincidentally, the Agency has yet to publish the opinions and recommendations it gave to the ministries, as well as information about the ministries' subsequent actions, which additionally limits the effects of this anti-corruption measure. There is a section on the website that is dedicated to these, but it contains only the opinions that the Agency provided even before it was granted relevant statutory powers.²⁴⁸

Public procurement: Even less competition, insufficient control

In the field of public procurement, there were no significant changes in 2022 compared to the previous year. Looking at the data from the Public Procurement Portal, based on the first 9 months it can be expected that a similar number of procedures will be announced in 2022 as in 2021 - it is estimated that there will be between 48,000 and 49,000 of them. Also, in 2022, we should expect a similar number of negotiation procedures conducted without announcing a public call for bids - between 1,400 and 1,500. We can also expect the total value of public procurement to increase due to the increase in the prices of many goods, services and works. The war in Ukraine, the energy crisis in Europe and the inflation in Serbia contributed the most to this, but it is only the annual report of the Public Procurement Office (PPO) that will show whether and how much the value of all public procurements increased, as well as their share in the GDP.

The report of the Public Procurement Office on monitoring²⁴⁹ was published on the website of the National Assembly only after its new convocation was constituted in August 2022, and was discussed before the parliamentary committee in October.²⁵⁰ However, the discussion was not focused on the data contained in the report, and the draft conclusion does not contain anything other than the proposal to accept the report, as well as the annual report on the work of the Republic Commission for the Protection of Rights in Public Procurement Procedures.

Like the previous one, this report of the Public Procurement Office was published in the form of a barely legible scanned document. It states that the Office monitored 258 procedures in 2021, which happens to be less than in 2020 (when there were 274). Since only 0.5% of the procedures were subjected to monitoring, the extent of monitoring of the legality of public procurement procedures can be assessed as extremely small. In its comments on the Draft Action Plan, member of prEUgovor *Transparency Serbia* proposed that the number of monitorings be increased to 500 in 2022, and the proposal was accepted. There is also a need to improve the way applicants are informed about the outcome of their submitted monitoring initiatives. *Transparency Serbia* submitted several such initiatives, but did not receive feedback on any of them, regardless of the fact that some were in fact adopted (such as e.g. the one related to the functionality of the Public Procurement Portal).²⁵¹

247 These are: health, education, privatisation, public procurement, police, customs, taxes and local self-government. The areas were defined in the Action Plan for Chapter 23.

248 <https://www.acas.rs/cyr/opinions/33>

249 http://www.parlament.gov.rs/upload/archive/files/cir/pdf/izvestaji/2022/02-550_22.pdf

250 <https://bit.ly/3UEo0Zg>

251 <https://bit.ly/3UIDXUA>

From the report that was published by the Republic Public Prosecutor's Office, one was able to learn that, in 2021, there were a total of 235 reports pending before the Special Departments of the Higher Public Prosecutor's Offices in Belgrade, Novi Sad, Niš and Kragujevac, as well as in the Prosecutor's Office for Organised Crime in connection with the criminal offence 'misuse in connection with public procurement'. Nine indictments were filed in 2021. The same report shows that a total of 9 judgments were handed down in the course of the year - three prison sentences, one fine and five suspended sentences. No data has been published on the basis of which it would be possible to understand why a large number of criminal charges were dismissed.

There is no data on the monitoring of contract execution in 2022, which should be carried out by the Ministry of Finance. The new Law on Budget Inspection, adopted in December 2021, stipulates that such monitoring is to be carried out by the Budget Inspection that operates within this ministry, but the Law will be applied only from 1 January 2023. In connection with monitoring, potentially significant is news about two (contracted) procurements by the Ministry of Finance to purchase software for monitoring contracts²⁵² outside the Public Procurement Portal, as well as a platform for viewing and analysing public procurement data.²⁵³ The establishment of this type of monitoring is significant because it would make it possible to establish supervision over procurements that are carried out outside the Public Procurement Portal (those below the thresholds defined by law, those that are exempted from the law, etc.), as well as their implementation. In addition, the platform for viewing and analysing data should enable the monitoring of contract execution, as well as provide more opportunities for the analysis of public procurement procedures. The development of this software should be completed by the end of 2022, and next year it should be installed and integrated with the existing Public Procurement Portal.

As for the legal framework, it was planned to amend the Law on Public Procurement at the end of 2021 in order to implement the measures from the Media Strategy and its accompanying Action Plan. Those amendments, however, were never made. Based on the statements of representatives of the Public Procurement Office made at several public meetings that were held within the NCEU Working Group for Chapter 5 and the absence of any information about such activities from the Ministry of Finance, which is formally in charge of the activity, there are currently no indications that they will be made in the near future either.

Transparency Serbia has repeatedly emphasised that this opportunity should have been used to also eliminate other shortcomings in the current application of the Law, such as insufficient monitoring of the execution of concluded contracts, publication of tender documents and opinions on the justification of negotiation procedures without announcing a public call for bids, and the like. Because of these shortcomings, the public remains deprived of crucial transparency and competition information regarding these proceedings. There is still no progress when it comes to changing the Law on Public-Private Partnerships and Concessions, although amendments have been planned for years.²⁵⁴ A good illustration of the unavailability of data is the case of the concession for the Belgrade airport. Although the concession was contracted five years ago, many significant data are still marked as confidential, including the "feasibility study" (which had to be prepared before the procedure was even started) and the concession deed itself. The Government of Serbia refused *Transparency Serbia's* request for access to these data, explaining that they were declared highly confidential. In the lawsuit against that decision, which was filed in February 2018,²⁵⁵ the Administrative Court held an oral hearing in October 2022. Representatives of the Government did not appear at the hearing, nor did they submit a reply to the lawsuit.

In its annual report on the field of public procurement, the European Commission gave a clear assessment - that there has been no progress whatsoever. An entire paragraph in the section on corruption was dedicated to public procurement, besides an entire chapter of the Report and numerous references thereto in other chapters. According to the European Commission's assessment, a large number of exceptions

252 <https://jnportal.ujn.gov.rs/tender-eo/104048>

253 <https://jnportal.ujn.gov.rs/tender-eo/98296>

254 <https://jnportal.ujn.gov.rs/annual-reports-ppo-public>

255 <https://bit.ly/3fTfCLB>

to the application of the Law on Public Procurement “represent a serious risk for the emergence of corruption”.²⁵⁶ Among those exceptions is the Law on Line Infrastructure, where “selection procedures are unclear and non-transparent”.²⁵⁷ Furthermore, regarding procurements based on interstate agreements, it was very mildly stated that “the principles of equal treatment, non-discrimination, transparency and bidding rules are not always applied”²⁵⁸ (while, in fact, there is no bidding and the job is instead awarded to a pre-selected company). This year too, it was reiterated that the publication of all information on procurement related to COVID would improve transparency and increase trust, although the obvious is missing - that there was no legal basis for treating these procurements as confidential to begin with.

On the positive side, it was stated that users of the Portal can now monitor advertised public procurement procedures (which is actually not a novelty at all), and that the number of procurements monitored by the Public Procurement Office has increased. The reason for this praise is unclear. The comparison is made with the year 2019 (when the current Law on Public Procurement was not in force, as it was only introduced in mid-2020, and no “monitoring” existed). In addition, as we have already explained, in order to understand the data on the number of cases that were monitored, one has to be aware of the fact that less than half of one percent of all procurements in Serbia is covered in this way.

In its report, the European Commission drew attention to the increase in the share and value of procurements that were contracted without applying the Law on Public Procurement. In this regard, it is important to note that the data available to the European Commission are based on information from annual reports, which rely on data submitted to the Public Procurement Office by the contracting authorities. It should also be borne in mind that the form of the report does not recognise procurements that are exempted based on “special laws”, which makes the value of exempted procurements even higher.²⁵⁹

Investigative story 5: A million-dollar upgrade of the newly procured system for reporting environmental issues

The Ministry of Environmental Protection procured gReact system for reporting environmental issues through a controversial tender to which only one company applied – Belgrade’s Tcom.²⁶⁰ For the mobile app, equipment and software 165 million RSD, i.e. 1.4 million EUR, were paid. Then, just a few months after the app was launched, the *Ministry* allocated an additional 120 million RSD for a “system upgrade”.

The previous system for reporting environmental problems was established by the *Ministry* in 2018, and it was paid much less – 24 million RSD. Although it was made for the Ministry of Environmental Protection, ownership of gReact remains in the hands of Tcom. Experts explain that in this way, the Ministry invested in a private company’s product that the company can sell to other customers, while the Ministry can only be its user.²⁶¹ Not long after Tcom got the job, long-term business associate of the Serbian Prime Minister’s brother Miodrag Mirčetić, became its co-owner.²⁶²

So far, more than a thousand users have downloaded the gReact app and several users’ comments were mostly negative. The *Ministry* failed to respond the questions and request for documentation sent by CINS, but the reactions to the app intensified – a lot of praise was heaped on it in one day, starting from the comment by a person previously known as the leader of the SNS Internet team.

256 European Commission, *Republic of Serbia – Report for 2022*, op. cit, p. 30

257 *Ibid.*

258 *Ibid.*

259 Law on the determination of public interest and special procedures for the implementation of the project for the construction of the infrastructure of the E-761 highway, section between Pojate and Preljina (better known as the “Morava Corridor”), the Law on special procedures for the implementation of the project for the construction and reconstruction of line infrastructure facilities of special importance for the Republic of Serbia.

260 <https://www.cins.rs/en/the-ministry-allocated-1-million-eur-for-a-new-system-for-reporting-environmental-issues-four-months-on-a-multi-million-upgrade-is-needed/>

261 <https://www.cins.rs/en/ministry-paying-2-6-million-eur-for-environmental-system-it-doesnt-own/>

262 <https://www.cins.rs/saradnik-brnabickinog-brata-postao-suvlasnik-sistema-za-prijavu-eko-problema/>

Determining the origin of property, and the “public officials’ cash”

The Law on Determining the Origin of Property and Special Tax, which is falsely presented as an anti-corruption law, has been in force since March 2021, but there is still no information on achieved results. Neither the Tax Administration nor the Ministry of Justice, which prepared the Draft and promoted it to the general public, provided comprehensive information about it. Contrary to the previous period, since May of this year there have not even been any media comments on the subject of the possible application of this Law. In its report, the European Commission reiterated the warning that the application must not be discriminatory or influenced by corruption, at the same time making a remark that the impact of this Law on the effectiveness of the verification of assets of natural persons in relation to their income “has yet to be understood”.²⁶³

As for examining the origin of property, there is an interesting question: How will the newly introduced obligation of public officials to also report their cash be interpreted? This statutory obligation undoubtedly applies to all those who have assumed public office after 1 September 2020, but it is debatable whether it also applies to persons who were public officials even before that, and who only need to report “significant changes”. *Transparency Serbia* asked the Agency to provide an official opinion in this regard, that is, to take a legal position on this matter.²⁶⁴ The agency issued an opinion according to which even “old” public officials are obliged to submit information regarding cash funds.²⁶⁵ However, there is still no information on how many officials really did submit this information.²⁶⁶

The “Stražar” case as an example of dysfunctional anti-corruption mechanisms in Serbia

The case in which the procedure was initially opened for a completely different reason (unreported carrying of cultural property across the border) is a very good example of the (dys)functional state of the system for reporting and examining the origin of property and income of public officials. The Higher Public Prosecutor’s office in Belgrade decided not to prosecute the former secretary in the Belgrade city administration, Nikola Kovačević, despite his contradictory explanations and concealment of assets. In July 2021, airport customs officers caught Kovačević with EUR 15,500 in cash and a valuable painting by Paja Jovanović (“The Guard”) for which he had paid EUR 140,000 and which – according to his explanation – he was planning to return to the country because it was a cultural asset. Following this event, the Agency for the Prevention of Corruption carried out an extraordinary verification of Kovačević’s property and income and submitted a report thereon to the Higher Public Prosecutor’s Office in Belgrade. The report showed that Kovačević, even though he was obliged to do so, had also failed to report to the Agency an alleged gift of EUR 170,000 which, as he claimed, he received from his sister, his earnings from trading in bitcoins, the shares he owned in Erste Bank, and 20 weapons. After conducting the procedure, the prosecution determined that there was no criminal liability and decided not to prosecute him²⁶⁷ despite the contradictory explanations he gave to justify the origin of his property. In other words, the prosecution simply accepted Kovačević’s statement that he received a gift from his sister, although there was no evidence to show how her money reached him. The sister was never questioned by the prosecution.

263 European Commission, *Republic of Serbia – Report for 2022*, op. cit, p. 34

264 <https://bit.ly/3ErNiop>

265 <https://bit.ly/3G26GsZ>

266 <https://bit.ly/3G0hx6K>

267 <https://www.cins.rs/od-sestrinog-poklona-preko-bitkoina-put-novca-do-slike-paje-jovanovica/>

4.3.3. Suppression of corruption - Statistical progress in the short term

Based on the data of the Statistical Office of the Republic of Serbia, the number of criminal reports filed against adult perpetrators of crimes against official duty increased slightly in 2021 compared to 2020 (1,396 compared to 1,384), but the share of these crimes decreased (from 1.9% to 1.7%) due to the increase of others. However, as shown in the table below, there has been a significant decrease in the number of indicted and convicted persons.

Table 2: Adult perpetrators of criminal offences, statistics of criminal offences against official duty

Year	2021	2020
Number of criminal reports	1,396	1,384
Number of indicted persons	435	515
Number of convicted persons	294	355
Suspended sentence	62%	62%
Fine	1%	1%
Prison term	17%	15%
House arrest	19%	21%

Source: Statistical Office of the Republic of Serbia²⁶⁸

Although the number of convictions for the criminal offence of 'giving a bribe' is higher than the number of convictions for the criminal offence of 'receiving a bribe' (54 compared to 41), it is common for the number of prison terms imposed for the crime of receiving a bribe to be higher than those imposed for the crime of giving a bribe (12 compared to 3). Only two fines were imposed.

The Republic Public Prosecutor's Office publishes data on the work of the prosecutor's office only once per year,²⁶⁹ in the form of extremely large scanned documents that cannot be searched or copied. However, on the website of the Ministry of Justice, in the section entitled "Fight against Corruption",²⁷⁰ one can find data on the statistics of corruption-related crimes from the special departments for the fight against corruption of the higher public prosecutor's offices and the Prosecutor's Office for Organised Crime. The summary overview of the statistics of corruption-related criminal offences for the year 2021 was published after a long delay.

²⁶⁸ <https://publikacije.stat.gov.rs/G2022/Pdf/G20221189.pdf>

²⁶⁹ <http://www.rjt.gov.rs/docs/rad-javni-tuzilastava-na-suzbijanju-kriminaliteta-i-zastiti-ustavnosti-2022.pdf>

²⁷⁰ <https://mpravde.gov.rs/tekst/33769/statistika-koruptivnih-krivicnih-dela-.php>

Table 3: Statistics of corruption crimes for 2021

	Special departments of the higher public prosecutor's offices	Prosecutor's Office for Organised Crime
Total number of reports	7,745	142
Total number of newly submitted reports	3,035	98
Number of proactive investigations	84	15
Number of indicted persons	325	4
Number of convictions	264	10
Number of plea-bargaining agreements	144	10
Prison term	108	10
Suspended sentence	156	0
Number of acquittals	16	5

Source: Ministry of Justice²⁷¹

There is a noticeable increase in almost all the parameters compared to 2020, which can be explained by the fact that the work of prosecutor's offices and courts was more difficult that year because of the Coronavirus pandemic.

In its report, the European Commission mentioned an increase in the number of judgments in "high" corruption cases as one of the reasons for noting progress. When one looks at the data, however, one can see how misleading this assessment can be. Namely, based on the indictments of the Prosecutor's Office for Organised Crime, *twice fewer* people were convicted in the first instance in 2021 than in 2020 (10 compared to 22), although the number of final convictions really was twice as high (19 compared to 11). That is why it is only logical to believe that a decrease in the number of final convictions can be expected once again in 2022, and that this is not a long-term positive trend. The number of indictments filed by the Prosecutor's Office for Organised Crime was slightly higher than in 2020 (22/19), but still more than twice as low as in 2017, which can also be gleaned from the EC Report. Further, the report lists data concerning higher public prosecutor's offices and courts working on their indictments. They had a negligibly higher number of criminal reports (about 3%) and a slightly greater number of indicted persons (540/470). The number of convictions increased in a similar proportion.

When all the final convictions for corruption from this EC report are added up, one can see that there were 406 of them. It is obvious at first glance that this number is small in relation to the actual spread of corruption. When viewed in retrospect, it becomes even clearer how small this number is. The Strategy and Action Plan for the fight against corruption were adopted in 2013, on the wave of anti-corruption promises of the current government. They contained a (certainly insufficiently ambitious) goal to increase the number of convictions for corruption by 30% by 2017, compared to the starting point in 2012, i.e. to approximately 750 per year.²⁷² A decade later, after the legal reforms²⁷³ and reorganisations,²⁷⁴ the result is still weaker than that from 2012 and none of the mentioned judgments resulted in confiscation of assets acquired through corruption.

²⁷¹ Ibid.

²⁷² <https://preugovor.org/Infografici/1512/Statistika-gonjenja-korupcije-20122017.shtml>

²⁷³ <http://bit.ly/3WP9OyA>

²⁷⁴ <https://bit.ly/3TpnEVn>

Task forces were organised to investigate corruption crimes in only two cases last year, but they were announced²⁷⁵ as one of the key innovations before the establishment of the new anti-corruption organisation in 2018.

An important point in this year's report is the fact that the European Commission has warned prosecutor's offices and courts that their work needs to be more transparent, especially when it comes to decisions on rejecting criminal charges and long-term investigations of corruption cases. In a similar way, they could have also mentioned that the public is left without important information in many cases when the conviction is reached through a plea agreement. The European Commission also reminded that Serbia is the only country in the region that has not joined the project within which the OSCE monitors trials for corruption,²⁷⁶ and called on it to do so.²⁷⁷

On the website of the Government of the Republic of Serbia, there is a section called "Stop Corruption".²⁷⁸ This part of the website is mostly dedicated to police actions that ended in the arrest of persons suspected of, among other things, corruption-related crimes. It also contains information on arrests for embezzlement while performing an economic activity, arrests of persons suspected of money laundering, tax fraud and evasion, as well as persons who were deprived of liberty because they committed other crimes.

During this period, among others, the police arrested three customs officers for the fictitious discharge of goods that never left Serbia, several police officers who abused their powers, several officers who damaged *Srbijagas* by contracting fictitious jobs,²⁷⁹ a former manager in "Resavica", the director of the European University Games 2020 d.o.o. Siniša Jasnić for a rigged public procurement,²⁸⁰ a private company's director for embezzlement of commodity reserves,²⁸¹ a group of employees at the Belgrade Academy of Business and Art Vocational Studies because they issued false certificates of passed exams,²⁸² a group that misused the Provincial Fund for Agricultural Development,²⁸³ the former head of the Niš cadastre,²⁸⁴ etc. In terms of value, the largest case relates to the misuse of commodity reserves (more than EUR 5 million).²⁸⁵

Several newspaper articles indicating possible corruption were published during this period, but the state authorities have not yet reacted.

275 <https://www.politika.rs/sr/clanak/337093/Udarne-grupe-protiv-finansijskog-kriminala>

276 <https://www.osce.org/WesternBalkansTrialMonitoring>

277 European Commission, *Serbia 2022 Report*, op. cit, p. 29

278 <https://www.srbija.gov.rs/sekcija/243/stop-korupciji.php>

279 <http://bit.ly/3NZbLV1>

280 <https://www.srbija.gov.rs/vest/640951/uhapseno-odgovorno-lice-pd-evropske-univerzitetske-igre-2020.php>

281 <http://bit.ly/3tmjDGt>

282 <http://bit.ly/3TpoGkd>

283 <http://bit.ly/3G2vbGO>

284 <https://www.srbija.gov.rs/vest/631291/uhapsena-jedna-osoba-zbog-zloupotrebe-sluzbenog-polozaja.php>

285 <http://bit.ly/3Wlm8Rf>

Investigative story 6: Illegal construction: Still one of the main areas of corruption

Although the Building Legalisation Law was passed in 2015 to solve the problem of illegal construction, nothing has changed in practice and illegal construction remained one of the main arenas of corruption. In recent years, the media often named Nemanja Stajić - until recently the first man of the Secretariat for the Legalisation of Buildings of the City of Belgrade - as the person who was responsible for the urban chaos and numerous scandals in the capital (including the demolition of Savamala), together with his brother Novak Stajić, the owner of an offshore company registered on the Virgin Islands. Based on the testimony of several investors,²⁸⁶ the media reported that it was impossible to build and make a profit without an approval from Nemanja Stajić (who was dismissed in July 2022), i.e. that it was more profitable to construct a building illegally and legalise it at a later date. An order for investigation was issued against Stajić shortly after his dismissal. He was suspected of abuses related to the legalisation of publicly owned land. At the beginning of October 2022, he was questioned in the Higher Public Prosecutor's Office²⁸⁷ on suspicion that he and two other people had legalised non-existent buildings in Gospodara Vučića Street in Belgrade, which later led to an unlawful purchase of construction land on that state-owned plot. At the hearing, Stajić denied that he had committed said criminal act.

Let us recall that the Special Department for Suppression of Corruption of the Belgrade Higher Prosecutor's Office accused the former president of the Palilula municipality and member of the SNS presidency, Aleksandar Jovičić, of facilitating illegal construction²⁸⁸ in this municipality and taking bribes for this activity. Jovičić was arrested on 1 June 2022 and spent two months in detention, after which he was ordered to remain under house arrest.

These cases are among the few in which suspicions of widespread corruption in urban planning provoked a reaction of state authorities. It is therefore not surprising that their reaction is being linked to the political support that certain public officials enjoy, or have ceased to enjoy. As reported, Stajić was dismissed based on the decision of the SNS,²⁸⁹ shortly after the election of the new Mayor, Aleksandar Šapić, who "cleansed" the staff of the previous informal head of the city (Goran Vesić, from the same party).²⁹⁰ The earlier arrest of Jovičić was also being linked with inter-party confrontations with his promoter, former minister and president of the SNS city committee, Nebojša Stefanović.²⁹¹

The case of the current Mayor of Belgrade, Aleksandar Šapić, shows that legalisation of illegally constructed buildings continues without any reaction of the state when there is no political support for such a reaction. At the end of July this year, a month after Šapić took office, the municipality of New Belgrade unlawfully legalised a building that was illegally constructed in Bežanijska Kosa. According to media reports,²⁹² it was a 7-room apartment with a usable surface area of 340 square metres (that is, 403 square metres of gross construction surface). On the satellite image of the Republic Geodetic Authority from 2015 - which, by law, is the main prerequisite for illegally constructed buildings to enter the legalisation procedure - at the time the building did not have its current dimensions. In 2021 - when Šapić was "just" president of the city municipality of New Belgrade - he built an apartment on three levels without a building permit. In July of that year, the City Building Inspection ordered him to stop the works and obtain a building permit, which he did not do. Instead, he filed a complaint with the Ministry of Construction, Transport and Infrastructure. In October 2021, the Ministry annulled the decision of the Inspection and returned the procedure to the beginning. At that time, according to satellite images, the work on Šapić's disputed building was nearing completion. The City Inspection went to the construction location once again in August 2022, but by that time the municipality of New Belgrade had already legalised the building, so the construction inspector terminated the procedure.

286 <https://www.krik.rs/korupcija-i-nelegalna-gradnja-u-beogradu-svedocanstva-gradjevinskih-investitora-o-nemanji-stajicu/>

287 <https://birn.rs/nemanja-stajic-saslasan-u-tuzilastvu-zaprecena-kazna-i-do-12-godina-zatvora/>

288 <https://www.krik.rs/potvrdjena-optuznica-protiv-jovicica/>

289 <https://nova.rs/vesti/politika/stajicu-posle-smene-preti-i-krivica-odgovornost-zbog-nelegalne-gradnje-u-bg/>

290 <https://nova.rs/vesti/politika/sapiceva-cistka-u-beogradu-najureni-direktori-sekretari-i-vesiceve-perjanice/>

291 <https://www.021.rs/story/Info/Srbija/276080/Ko-je-Aleksandar-Jovicic-Mladi-lav-koji-je-liznuo-pekmez.html>

292 <https://birn.rs/gradonacelnik-aleksandar-sapic-ozakonio-nelegalnu-gradnju/>

The documented journalistic investigation of the construction of a garage within the complex of the Clinical Centre of Serbia also remained without reaction. This multi-story garage was built illegally prior to obtaining a building permit, accompanied by an entire series of fictitious actions by the Ministry of Health²⁹³ intended to create the appearance of a public bidding for the concession the Ministry announced in July 2021. At the time when the deadline for the applications of interested concessionaires was about to run out, the garage was already under construction. This and the other two planned garages were obviously known long before the call was announced, which was later confirmed by the subsequently initiated proceeding. Although the Republic Building Inspection discovered the illegal construction (which was nearing completion at the time), ordered the suspension of further construction and the acquisition of an amended building permit, and warned that otherwise the garage would be demolished, nothing happened. The Ministry of Health continued to violate the law even after the garage was constructed; namely, it is unlawfully hiding the main concession information, as well as the calculation which could show why a concession was chosen instead of a public procurement, which would have allowed either the Ministry or the city's Parking Service to collect revenues from said garage.

4.3.4. Areas particularly susceptible to risk of corruption

As explained in earlier Alarm reports,²⁹⁴ the Operational Plan for the Prevention of Corruption in Areas of Special Risk from October 2021 refers to only five of the 8 areas that have been recognised in the AP 23 as particularly susceptible to corruption (public procurement, local self-government, police, customs and privatisation).

A special Operational Plan for the fight against corruption in healthcare was adopted on 28 December 2021. In addition to representatives of the Ministry of Health and competent chambers, unnamed civil society representatives²⁹⁵ allegedly also participated in its preparation. There is no data on its implementation. In its report, the EC listed the content of this plan but did not critically review it, above all the fact that it repeats some activities that should have already been implemented based on previously adopted plans, as we have pointed out in the previous Alarm report.²⁹⁶

The Operational Plan for the prevention of corruption in the field of taxation was adopted on 31 December 2021,²⁹⁷ but cannot be found by searching the websites of the Ministry of Finance and the Tax Administration. As for its realisation, the Report on the Implementation of AP 23 II/2022 contains information about a preparatory meeting that was held with representatives of the Criminal Police University, and the presented proposed training programme for internal control inspectors of the Tax Administration. It was also stated that the proposal to amend the Law on Tax Procedure and Tax Administration and the Rulebook on Internal Control is "in process".

The Ministry of Education also adopted a special Operational Plan to prevent corruption in the field of education (15 October 2021), but this Plan was not published either. The Coordinating Body's report states that certain activities have been implemented, e.g. the verification of student enrollment through inspection supervision and the "continuous verification of the credibility of public documents" at the request of other authorities, and that a training programme for education inspectors has been adopted. As in the case of the Tax Administration, it is not possible to make a conclusion about the degree of fulfilment of this plan, because it has not been published.

293 <https://birn.rs/garaza-ispred-klinickog-centra/>

294 <http://bit.ly/AlarmReports>

295 <https://bit.ly/3UpwpQH>

296 Jelena Pejić Nikić (ed.), *PrEUgovor Alarm Report on Serbia's progress in Cluster 1 - May 2022*, op. cit, p. 61

297 <https://bit.ly/3DF9byH>

Although the Government, in its Decision on the Establishment of the Coordination Body for the Implementation of the Operational Plan for the Prevention of Corruption in Areas of Special Risk from 25 November 2021, envisaged regular meetings with the participation of civil society, there were no such meetings and there is no information about other sessions of that body.

Information from the AP 23 II/2022 Report indirectly tells us that operational plans are not very useful, and that the software used by the Agency to monitor the AP 23 has not been updated to also monitor the Operational Plan because "this type of reporting does not significantly facilitate the process itself".²⁹⁸ Although not stated in the report, it is obvious that the number and scope of activities from the Operational Plan are so small that it was not necessary to look for software solutions, as progress can easily be monitored based on e-mail communication.

The Agency for the Prevention of Corruption (the Agency) developed reporting guidelines²⁹⁹ and in May 2022 published the first report on the implementation of the Operational Plan, which refers to five risk areas³⁰⁰ and covers the period ending with 31 March 2022. According to the evaluations from that report, of the 18 examined activities, 11 were implemented in accordance with the indicator, while 7 were implemented inadequately. In the field of customs, neither of the two activities was implemented, and the plan was fully fulfilled only in the area of privatisation and general supervision and monitoring.

As regards preparation of the future anti-corruption strategy, an invitation was published for civil society organisations to apply for participation in the working group, albeit with a delay. On the other hand, the Ministry of Justice did not determine which state authorities should have appointed representatives for the working group, nor has the group been formed. The Agency has developed a common methodology for assessing the risk of corruption for all areas that will be the subject of the future national strategy and its accompanying action plan.³⁰¹ This is a document that does not refer to any specific areas of the future Strategy (because they have yet to be determined); it is rather a methodology for assessing possible risks of corruption that can be applied to any area. The main possible deficiency of this methodology is that - as it seems at first glance - it relies mainly on the internal knowledge of employees in public institutions, on the analysis of processes and regulations, and on information about irregularities that are already known based on the findings of state authorities. To properly recognise the risks of corruption, at least in some areas, it would probably be necessary to also collect information from other sources - e.g. from representatives of business entities operating in a certain area and users of the services of certain public institutions.

As regards the implementation of the Operational Plan in particular areas, the Customs Administration did not make available internal instructions and procedures for the work of the Internal Control Department within the deadline, nor did it improve the capacities of this department. In the area of local self-government, a working group was established to formulate proposals for improving the content of planning documents, but not to also conduct an analysis of the normative framework and define examples of good practice in the realm of publishing information. In the field of privatisation, employees were "trained to apply the Methodology for assessing the risk of corruption in regulations", and the same training was held also at the Agency for Licensing of Bankruptcy Trustees and for employees of the Ministry of Finance (related to the field of public procurement). Members of the Mol underwent professional training. During the first two quarters, there was not a single meeting of the implementation groups.

298 Report on AP 23 II/2022, p. 111

299 <https://bit.ly/3zYZwSs>

300 <https://bit.ly/3UvqM2Q>

301 <https://bit.ly/3UbqTRp>

No clear results of the application of measures in risky areas

The Agency for the Prevention of Corruption prepared a report on the assessment of the impact of the implementation of anti-corruption measures for 8 risk areas. The report was submitted to the National Assembly, but was not presented anywhere and was not discussed in the parliament.³⁰² There is very little chance that such a discussion will take place, since this document is not an integral part of the annual report on the work of the Agency.

As can be seen from the report itself, the purpose of this analysis, as defined in the Revised AP 23, was to assess the impact of the anti-corruption measures that were taken in 8 risk areas in the earlier period, starting with the National Strategy for Combating Corruption of 2013, as well as the action plans that were adopted regarding that Strategy and Chapter 23. It was necessary to determine whether the corruption situation had changed and, if so, to determine whether it was a consequence of proper strategic planning and the consistent application of strategic documents in this area. All of this should have served to create a basis for the development of future strategic and operational frameworks based on the lessons learned.

However, the Agency pointed to serious challenges right from the start. They concern the quality of defining goals in strategic documents, the absence of indicators for measuring impact in risky areas, the absence of base and target values, the absence of periodical research, and so on. Other challenges listed by the Agency relate to the problem of data collection and their quality. Attempting to fulfill the task that was set before it, the Agency decided to base the assessment of the effects of strategic documents exclusively on external public opinion surveys, which were carried out by third parties for the purpose of examining related phenomena, and not with the aim of analysing the impact achieved by the strategic documents. Those surveys showed mostly negative trends for the period 2013-2021, so it was concluded that the strategic documents did not manage to achieve the desired level of effectiveness. Based on the experiences from this undertaking, the Agency recommended to define the goals of anti-corruption documents, in the future, in a way that would make it possible to conclude with certainty what purpose (social change) they want to achieve and how the eventual (non)occurrence of such change will be detected; to carry out targeted surveys in appropriate time intervals; and to establish statistics and records that could be used to directly or indirectly identify possible changes, before the adoption of the public policy and after its termination.

The Agency is undoubtedly right when it points to the difficulties it faced while performing this thankless task, and even more so when it points to the mandatory elements of future planning documents for the fight against corruption. In addition, although this is not explicitly stated in the Agency's report, it is obvious that the Agency was burdened with too heavy an activity, instead of it being primarily implemented by those institutions that applied anti-corruption measures in specific areas. Had that been the case, the Agency could have been the factor that would objectify their evaluations and provide the necessary methodological instructions.

All this, however, does not change the fact that the entire activity was incorrectly defined from the very beginning, as we kept pointing out during the AP 23 audit and in earlier Alarm reports. Instead of creating 8 methodologies for each of the 8 areas, as envisaged in AP 23, it was decided to create a common one. Instead of the working groups preparing the Impact Assessment, each for its own area, the analysis, unified for all 8 areas, was actually done by the Agency. The end result was a document that speaks volumes of the absence of significant results in the suppression of corruption as a whole and provides an assessment of the quality of planning documents by individual taxpayers, but does not answer the question of the results that *any* of the planned (and allegedly implemented) measures really achieved in practice. Therefore, although it does provide excellent guidelines on how (not) to write the future anti-corruption strategy and the action plan for its implementation, this analysis does not show what specific measures and activities should be undertaken to improve the situation in any of the 8 areas of special risk. Such analyses will have to be carried out as part of the development of the future strategy.

302 http://www.parlament.gov.rs/upload/archive/files/cir/pdf/izvestaji/2022/02-554_22.pdf

A side effect of all this is the creation of a false impression that much of the Chapter 23 Action Plan has been implemented with success. Namely, the AP contains as many as 32 activities related to these assessments, of which 24 are now considered implemented. For example, in the field of education, there are activities that have to do with the development of the Methodology for the preparation of the Impact Assessment, the establishment of the Working Group for the preparation of the Impact Assessment and the collection of all relevant data, the implementation and presentation of the Impact Assessment, plus the corrective measures that should be taken in the end based on the findings of the Impact Assessment. It should be noted that, at this moment, the evaluations of the fulfilment of activities are untrue. Namely, as it can be seen from the Agency's document, it is not just that not "all the necessary data have been collected"; the problem of lack of data for an adequate assessment of the impact is also stated quite explicitly. It still remains unclear what would serve as the basis for the evaluation of the success of the remaining activities for each of the 8 risk areas, i.e. for the implementation of corrective measures. Namely, not a single such measure was listed in the (joint) Impact Assessment regarding specific activities that should be implemented (e.g., in relation to corruption in healthcare, public procurement, etc.).

RECOMMENDATIONS

- The new Anti-Corruption Strategy should be comprehensive and not limited to only certain areas, as envisaged in the Operational Plan for Prevention of Corruption;
- The Coordinating Body and the Agency for the Prevention of Corruption should ensure uniformity of the assessment of progress in the implementation of the Action Plan for Chapter 23 - subchapter "Fight against Corruption", and their reports should be considered by both the Government and the National Assembly;
- The Government should ensure full implementation of the existing rules, in particular by legally appointing managers of public enterprises, public administration and public services. It should also organise meaningful public debates and conduct corruption risk assessments for all regulations, and ensure compliance with final decisions of the Commissioner for Information of Public Importance and Personal Data Protection;
- Improve the Criminal Code to provide a more effective legislative framework for combating corruption, by amending the criminal offences involving bribery, giving and receiving a bribe in connection with voting, criminal offences related to non-reporting of property of public officials, abuse of public procurement and unlawful funding of political parties, and by criminalising retaliation against whistle-blowers and "illicit enrichment" within the meaning of Article 20 of the United Nations Convention against Corruption.
- The Tax Administration should inform the public about the enforcement of the Law on Determining the Origin of Property and the Special Tax, and whether the control of public officials and civil servants was carried out and whether this capacity has been taken into account while drafting plans. The Constitutional Court should review the provisions of said Law, while government officials should refrain from making statements that could affect its application;
- Special anti-corruption prosecution units must be provided with the necessary resources and staff. The list of crimes they are dealing with should be revised and the transparency of their work should be increased. The State Prosecutorial Council (High Prosecutorial Council) should ensure that prosecutors who fail to investigate corruption crimes or act proactively are held accountable;
- The government should regularly consider reports and recommendations of its Anti-Corruption Council and take steps to address the issues identified therein. The Government should inform the public about actions taken to address systemic and individual problems or to verify facts. The Government should also provide other conditions necessary for the work of the Council (appointment of new members, inclusion in working groups);
- Constitution has to be amended to reduce the current broad immunity from prosecution; define the status of independent state bodies; prevent violation of the rules on the use of public funds by excessive borrowing and concluding international agreements; better organise the resolution of

conflicts of interest; and provide better guarantees when it comes to the transparency of the work of state authorities;

- The Government should consider recommendations of independent bodies (especially the Agency for the Prevention of Corruption, the Commissioner for Information of Public Importance and Personal Data Protection, the Protector of Citizens and the Fiscal Council) and submit a report to the Assembly on their fulfilment;
- The Government should increase the transparency of its work by regularly publishing explanations of bylaws, non-confidential conclusions, signed contracts, information on advisors and lobbying, as well as findings obtained by controlling the work of other state authorities;
- The National Assembly, the Government, and the Anti-Corruption Agency should ensure transparent lobbying and consideration of corruption risks in legislation;
- The Government and the National Assembly should stop using international agreements and "special laws" for preventing transparency and competition in public procurement and public-private partnerships;
- The Ministry of Justice should open the process of amending the Law on Lobbying, the Law on Prevention of Corruption and other regulations without delay, in order to fulfill the recommendations from the fifth round of the GRECO evaluation.

4.4. Fundamental Rights

4.4.1. Freedom of Expression and Media

This reporting period, too, was marked by an unfavourable environment for the exercise of freedom of expression and media in Serbia. According to the assessment of the European Commission, there has been no progress in this area in the past year. Amendments and supplements to media laws are waiting for the newly formed Government of Serbia. Attacks and pressure on journalists are continuing, including the so-called SLAPP lawsuits. At the end of July, four licenses for televisions with national coverage were granted to the same TV companies that had violated laws and the journalistic code in the previous period.

In the annual report of the European Commission, freedom of expression and media was the worst rated sub-area of Chapter 23. A certain level of preparedness for membership was noted, with no progress in the previous year.³⁰³ The report also emphasised the importance of objective and professional media in the fight against disinformation in the context of the war in Ukraine and Russian influence in Serbia.³⁰⁴ It very clearly linked the problems in this area with the weaknesses of the electoral process in Serbia. As stated, the obvious dominance of the ruling party and its president in the media had created unequal conditions for the participants in the elections, “limiting the voters’ opportunity to make a fully informed decision”.³⁰⁵ According to the ODIHR report, private television stations with national coverage devoted 90% of their news programmes during the election campaign to positive reporting on the President of the Republic and representatives of the Government, while the Regulatory Authority for Electronic Media (REM) remained mostly passive.³⁰⁶

It is in this context that one should look at the REM’s decision, made at the end of July 2022, to grant four television licenses for national coverage to the same television stations for another 8 years: *Pink, Prva, Happy* and *B92*.³⁰⁷ Fourteen television stations participated in the public competition, while 7 radio stations applied for four national radio frequencies. The Coalition for Media Freedom, made up of relevant journalists’ and media associations, responded by issuing a statement in which it noted that licenses were once again granted to television stations that did not meet the necessary requirements and had spent years violating laws, by-laws and the Code of Journalists of Serbia. According to them, these four television stations committed 12,000 violations of the Law on Advertising in 2020 alone, and several reports were filed against them for hate speech and broadcasting of violence. Also, REM’s earlier reports show that these television stations did not have all the necessary programme elements (informative, scientific-educational, cultural-artistic, documentary and children’s programmes) and did not follow the submitted studies based on which they were granted their earlier licenses.³⁰⁸

The Council of REM did not explain why it first announced the competition for four of the five national television frequencies, while the competition for the fifth frequency was announced only in August 2022. REM’s decision on the latter is expected by December. Only four television companies applied to the new competition.³⁰⁹

Due to the fact that the Government was in a technical mandate until the end of the reporting period, amendments and supplements to the media laws concerning the protection of journalists are still pending, although the deadlines were missed several times.

303 European Commission, *Serbia 2022 Report*, op. cit.

304 For additional information, see sections 3, 5.2 and 5.5 of this Alarm Report.

305 European Commission, *Serbia 2022 Report*, op. cit, p. 10.

306 *Ibid*, p. 40. For additional information, see the section of this Alarm Report on elections.

307 <https://rs.n1info.com/vesti/rem-nacionalne-frekvencije-dodelio-televizijama-pink-prva-hepi-i-b92>

308 <https://bizlife.rs/koalicija-za-slobodu-medija-odluka-rem-a-nastavak-medijskog-mraka-u-srbiji/>

309 These were: BK TV, KCN, Nova S and Kurir TV, <https://www.euronews.rs/srbija/drustvo/65899/zekic-za-petu-nacionalnu-frekvenciju-stigle-cetiri-prijave/vest>

Continuing attacks and pressure on journalists and media outlets

In 2022, the database of the Independent Journalists Association of Serbia (NUNS) recorded 108 attacks on journalists (until 30 October).³¹⁰ Most of these included pressure (61) and verbal threats (29), but there were also 9 physical attacks. In 2022, the public prosecutor's office received 62 reports of acts that were committed to the detriment of journalists.

Table 4: Recorded and prosecuted attacks on journalists, 2016 - 2022

Year	Number of attacks (NUNS)	Number of opened cases	Number of rejected criminal reports	Application of the institute of opportunity	Number of acquittals	Number of convictions
2016	69	58	10	5	0	4
2017	92	38	14	3	1	3
2018	102	57	17	3	1	6
2019	119	62	14	3	1	18
2020	189	58	15	4	1	5
2021	151	87	18	/	1	8
2022	108	63	6	/	0	2

Source: NUNS³¹¹ and the Republic Public Prosecutor's Office³¹²

More and more frequently, pressure on the media is being exerted through the so-called Strategic Lawsuits against Public Participation (SLAPP). There are 11 such proceedings pending against the investigative online portal KRIK (which deals with the topics of corruption and organised crime) based on lawsuits that have been filed by individuals, including people from the political and business elite.³¹³ The above makes this media outlet the record-holder in Europe when it comes to the number of SLAPP lawsuits,³¹⁴ the goal of which is financial and psychological exhaustion, intimidation and disruption of the regular work of journalists. In some of these lawsuits, plaintiffs are even requesting prison sentences for the journalists of this portal, although most of the claims involve payment of steep fines. At the beginning of November, KRIK was convicted in the first instance for violating the honour and reputation of the former director of the Security Information Agency (BIA) and the current Minister of the Interior, Bratislav Gašić, by publishing a quote from a wiretapped conversation that was played as evidence in the courtroom. The quote insinuated Gašić's connections with people from the criminal milieu.³¹⁵

310 <https://www.bazenuns.rs/srpski/napadi-na-novinare>

311 *Ibid*, data for 2022, ending with 30 October 2022

312 "Statistics of the Republic Public Prosecutor's Office: Attacks on journalists 2016-2022", 2 Nov 2022, <https://bezbedninovinari.rs/article/204/rjt-statistika-napada-na-novinare-2016-2022>, data for 2022, ending with 30 September 2022

313 <https://www.krik.rs/krik-zatran-tuzbama-ljudi-bliskih-rezimu/>

314 <https://www.cenzolovka.rs/pritisci-i-napadi/ipi-krik-se-bori-sa-najvise-slapp-tuzbi-u-celoj-evropi/>

315 Bojana Jovanović, "KRIK convicted because of a piece of news from the trial mentioning Gašić", *KRIK*, 4 Nov 2022, <https://www.krik.rs/krik-osudjen-zbog-vesti-sa-sudjenja-u-kojoj-je-spomenut-gasic/>

The Anti-Corruption Council on the “Tanjug case”

On 21 April 2022, the Anti-Corruption Council submitted to the Government of the Republic of Serbia a report on the news agency “Tanjug”. The report was submitted to the General Secretariat of the Government of the RS as well.³¹⁶ In the extensive analysis of the “Tanjug case”, this Government body indicated that the state, as a 100% owner, “missed the opportunity to rationally manage a respectable state agency” during its process of transformation.³¹⁷

“The Council believes that all media outlets could obtain information about all the activities of state institutions from the institutions themselves, if the employees of those institutions would process them in a timely fashion and forward them to the media”, and that “if there is a special need for additional media services for state institutions, these should be provided by the Radio Television Serbia, as citizens of the Republic of Serbia are already paying for it”.³¹⁸

The Council asked the Government of Serbia to “re-examine the contract on the lease of office space” used by the company *Tačno d.o.o.*, to which the Tanjug trademarks were assigned, bearing in mind that the contract was “concluded by free negotiations and the value of that lease is twice as low as the lease price that the city of Belgrade pays from the budget to private companies for the use of the premises of preschool institutions”.³¹⁹ The Council proposed to place information on the total amount owed by the Tanjug news agency on the website of the Republic Directorate for Property, “to which creditors it owes money and how much, including the method of settlement of those liabilities and the source of funds from which they will be settled”. The same was requested regarding the value of 205 works of art owned by Tanjug.

In the report, the Council also highlighted the numerous advantages the buyer *Tačno d.o.o.* obtained by purchasing the trademarks and property rights of Tanjug. Referring to the jobs that this company receives from state institutions, the Council pointed out that “although public procurement procedures are announced regarding media monitoring and other media services concerning certain ministries and other state institutions, the offer is usually submitted by only one bidder. According to the Public Procurement Portal, this is usually Tanjug, i.e. the company *Tačno d.o.o.*”. The Council also stated that the value of such contracts was at least RSD 22.25 million (according to data available on the Public Procurement Portal).

The Council pointed out that the damage from this kind of financing is “even greater (...) if the budget additionally pays for certain private media, which - precisely because of the money they received - will not have an objective approach and will most often lack a critical review of phenomena and events that have consequences that are harmful for the social interest”.³²⁰ It was emphasised that, when it mentioned the consequences harmful for the social interest, “the Council first of all thought that spending public funds unnecessarily promotes state officials elected “along the political lines, and that the owners of private media are being allowed to amass wealth at the expense of the expansion of media freedoms”.³²¹

RECOMMENDATIONS

- The competent institutions should ensure changes to the legal framework that would prevent the filing of SLAPP lawsuits, and should become actively involved in the fight against this type of lawsuit following the example of the EU;
- In developing legal amendments pertaining to the freedom of expression and media, as well as to the protection and security of journalists, the Ministry of Information and Telecommunications and other competent institutions should respect the frameworks and norms agreed upon in the Media Strategy 2020-2025, and all amendments to such laws should be made using transparent and inclusive processes;

316 <http://www.antikorupcija-savet.gov.rs/izvestaji/cid1028-3334/izvestaj-o-novinskoj-agenciji-tanjug>

317 *Ibid.*, p. 2

318 *Ibid.*, p. 16

319 *Ibid.*

320 *Ibid.*, p. 14

321 *Ibid.*

- The authorities must urgently stop pressuring, insulting and discriminating against journalists and media and endangering their security, and all attacks and pressures on journalists must be promptly and adequately addressed.

4.4.2. Non-Discrimination and Gender Equality

The Action Plan for the implementation of the Strategy for the Prevention of and Protection against Discrimination for the period 2022-2023 has not been adopted, whereas the adoption of the Action Plan for the implementation of the Gender Equality Strategy for the period 2022-2023 has been considerably delayed. Although the official documents mention numerous "successfully implemented activities", a series of events from the reporting period shows the parallel reality in which the citizens of Serbia have been living for an entire decade.

The Action Plan for the implementation of the Strategy for the Prevention of and Protection against Discrimination for the period 2022-2023 was not adopted, while the Action Plan for the implementation of the Gender Equality Strategy for the period 2022-2023 was adopted on 25 August 2022, after a serious delay. In the Report II/2022 on the implementation of the Revised Action Plan for Chapter 23 (3.4 - The principle of non-discrimination and the position of vulnerable social groups), a large number of the activities are marked in green as having been successfully implemented. In accordance with this, the now former Deputy Prime Minister and president of the Coordinating Body for Gender Equality, Zorana Mihajlović, offered some positive messages such as: "Serbia is an example of a country with a gender-responsive budget",³²² "Serbia is a leader in supporting women in business" (as "one of the few countries in Europe that has defined the framework in this area"),³²³ "Serbia is an example for others in valuing domestic work; the next goal is to pay women for that work"³²⁴ and "Serbia is 23rd in the world in terms of gender equality".³²⁵ However, a series of events points to a completely different reality, as confirmed by the appointment of new Deputy Prime Minister Maja Gojković as the head of the Coordinating Body for Gender Equality, and the new members of that body including the new Minister of Police, Bratislav Gašić, known for his sexist statement about female journalists.³²⁶ Consequently, the question that arises is: Where is it that decisions on the state's anti-discrimination and gender equality policy are really made?

Bestowing the highest state³²⁷ and church³²⁸ awards (in September 2022) on the Prime Minister of Hungary, whom the President of Serbia calls an "exceptional friend" and whom the head of the Serbian Orthodox Church considers worthy of defending Christian values in Europe,³²⁹ represents a paradigm of state policy in the area of protection against discrimination and gender equality in Serbia. Admiration towards a Prime Minister whose State Audit Institution (Állami Számvüzeszék) has compiled a report on the phenomenon of "pink education" (which could threaten the economy, reduce the birth rate and threaten masculinity),³³⁰ whose government has been accused of stifling media freedom and deviating from democratic norms and fundamental rights, which the European Commission sued before the EU

322 "Mihajlović: Serbia is an example of a country with a gender-responsive budget", Government of the Republic of Serbia, Coordinating Body for Gender Equality, 30 May 2022, <http://bit.ly/3tzlZAS>, 7 Oct 2022

323 "Serbia is a leader in supporting women in business; gender equality improves economic development", Government of the Republic of Serbia, Coordinating Body for Gender Equality, 8 July 2022, <http://bit.ly/3hFkbEV>, 7 Oct 2022

324 "Serbia is an example for others in valuing housework; the next goal is to pay women for that work", Government of the Republic of Serbia, Coordinating Body for Gender Equality, 5 July 2022, <http://bit.ly/3tvZG08>, 7 Oct 2022

325 "Mihajlović: Serbia ranks 23rd in the world in terms of gender equality", Government of the Republic of Serbia, Coordinating Body for Gender Equality, 13 July 2022, <http://bit.ly/3Ai3l5s>, 7 Oct 2022

326 "Did the Government kneel before Gašić?", Kristina Koprivica, *Danas*, 1 Oct 2022, <https://www.danas.rs/vesti/drustvo/da-li-je-vlada-kleknula-pred-gasicem/>, 2 Nov 2022

327 *Ibid.*

328 "The Patriarch of the Serbian Orthodox Church honours the Hungarian Prime Minister", Radio Free Europe, 5 Sept 2022, <https://www.slobodnaevropa.org/a/patrijarh-spc-odlikovao-orbana-/32019125.html>, 7 Oct 2022

329 ... in contrast to "waves of new value systems that are, often aggressively, globally imposed with the aim of dismantling every existing natural and civilisational order", *Ibid.*

330 "ANALYSIS: 'Pink education' phenomenon in Hungary?!", State Audit Office 2022, <http://bit.ly/3tEmV8t>, 7 Oct 2022

Court of Justice for its anti-LGBTQ+³³¹ law only a day after the European Parliament voted on a resolution³³² in which it was assessed that Hungary was no longer a “full democracy”, shows which way Serbia is going.

Was there or wasn't there a walk as part of EuroPride 2022?

“A minority cannot terrorise the majority” was the motto of the movement Dveri, which, strongly supported by the Serbian Orthodox Church, organised three processions and family walks through the streets of Belgrade as a sign of protest against EuroPride 2022.³³³ Announcing a proposal for a special law that would prohibit “promotion of homosexual propaganda to minors” in the next 100 years, the leader of this movement stated the following in the National Assembly of the Republic of Serbia: “We are an independent and sovereign country; we decide, not Brussels and Washington”.³³⁴

Following the decision of the Ministry of Internal Affairs to ban all “walks” in Belgrade on September 17,³³⁵ the Higher Public Prosecutor's Office informed the public (two days before the EuroPride 2022 walk) that they were going to take all measures and actions within their jurisdiction to protect public order and peace. On the day of the event, the Minister of the Interior said that other/changed routes were not allowed either. At the same time, the Prime Minister (of the technical/caretaker government) confirmed in a conversation with EU representatives that there would be a walk after all. After the event, the Minister continued to claim that there had been no walk, and that “members of the MoI had rather escorted the participants from the Constitutional Court through Tašmajdan Park, to the venue of the concert”. This is an illustration of the parallel reality in which the citizens of Serbia have been living for an entire decade, which creates confusion and contributes to the feeling of insecurity. The attention that the European Commission Report for Serbia 2022 paid to the events related to EuroPride speaks of the importance of this topic in the process of Serbia's European integration.³³⁶

Sexual and gender identity, national interests and the “morals police”

Biology textbooks for the 8th grade of elementary school (published by Klett and Vulkan and two years already in use), that is, the content about sexual and gender identity (intersex, transgender and sexual orientation)³³⁷ also came under the attack of the Dveri movement.

The competent Minister of Education requested that the National Education Council verify once again “whether such a programme is in line with the scientific theories accepted by the biological faculties, whether it serves the national interests, and - above all - whether it is in the best interest of our children's education” (even though all textbooks have already undergone appropriate professional procedures and have been approved)³³⁸ Despite the confirmation of the Serbian Biological Society that the marked content of the textbook was fully aligned with the accepted theories, facts, conclusions and interpretations of the biological science,³³⁹ which was the position of all biology departments of universities in Serbia as well as the Institute for Biological Research,³⁴⁰ the working group of the Institute for the Advancement of

331 “Orbán sparks outrage with his comments about ‘race mixing’ in Europe”, Meliha Kešmer, Radio Free Europe, 25 July 2022, <https://www.slobodnaevropa.org/a/orban-rase-evropa-viktor-madjarska/31959048.html>, 7 Oct 2022

332 “Angry reactions from Hungary over European Parliament's bad assessment of its state of democracy”, Radio Free Europe, 16 Sept 2022, <https://www.slobodnaevropa.org/a/madjarska-eu-ep-demokratija/32036660.html>, 7 Oct 2022

333 “Obradović: If the MoI does not ban EuroPride, there will be a family walk of 100,000 people”, FoNet/N1, 31 Aug 2022, <https://rs.n1info.com/vesti/obradovic-ako-mup-ne-zabrani-evroprajd-porodicna-setnja-100-000-ljudi/>, 7 Oct 2022

334 *Ibid.*

335 “Announcement”, Republic of Serbia, Higher Public Prosecutor's Office in Belgrade, 15 Sept 2022, <https://bg.vi.jt.rs/saopstenja/saopstenje-107/>, 7 Oct 2022

336 European Commission, Serbia 2022 Report, 12 Oct 2022, *op. cit.*

337 These textbooks were attacked by a group of conservative intellectuals who carefully monitor Serbia's educational policy, protecting it from the “crude imposition of someone else's view of the world” (which also includes attacks on the national identity, the Serbian Orthodox ethos, the Serbian language, and threatens to destroy the highest natural order), which was successful in stopping teaching packages on sexual education in 2017. “Eighth-graders learn about intersex people: The new biology textbook shocked many parents, teachers and the professional public”, Lj. Begenišić, News, 15 March 2021, <http://bit.ly/3TQ9t1Y>, 7 Oct 2022

338 “Tolerance attacked by concern for tradition”, V. Andrić, Danas, 16 March 2021, <https://www.danas.rs/vesti/drustvo/tolerancija-na-udaru-brige-za-tradiciju/>, 7 Oct 2022

339 “Official position of the Education Council on the Biology textbook expected by the end of next week”, Gordana Petković, Nova.S, 15 Sept 2022, <https://nova.rs/vesti/drustvo/zvanican-stav-prosvetnog-saveta-o-udzbeniku-biologije-do-kraja-naredne-nedelje/>, 7 Oct 2022

340 “Statement of the National Education Council: A Science-Based Biology Curriculum”, Danas, 16 Sept 2022, <https://nova.rs/vesti/drustvo/nacionalni-prosvetni-savet-program-biologije-zasnovan-na-nauci/>, 7 Oct 2022

Education and Training, established at the request of the Ministry of Education, found that there was a need to correct deficiencies in 7 out of 8 approved biology textbooks.³⁴¹ For the time being, the report of the working group is kept confidential.³⁴²

This is not the first victory of the church over science, and it is probably the beginning of the revision of school syllabi and textbooks concerning the “aggressive ideology of homosexuality and transgenderism” and the “gender ideology” (based on the announcement of the movement Dveri, history, sociology and civic education are also targeted, besides biology, as well as the informal educational programmes of civil society organisations).³⁴³ More than 30 organisations and more than 200 individuals have signed a statement demanding that the competent Ministry, the Institute for the Improvement of Education and the Government of the Republic of Serbia urgently return the disputed lesson to the biology textbooks and take all other measures to guarantee the secularity of the state and scientific content in the state’s public education system.³⁴⁴

Women’s sexual and reproductive rights are ignored and there is a lack of financing activities

While the Deputy Prime Minister and the president of the Coordinating Body for Gender Equality are declaring that “abrogation of the right to abortion [is] an attack on democracy and modern values, as well as a violation of basic human rights...”,³⁴⁵ the Government and relevant ministries are doing nothing to prevent and protect said rights. The public education system is rejecting all opportunities to raise the level of knowledge of young people about important topics in this area,³⁴⁶ and appropriate measures in primary health care are not being taken.³⁴⁷ As regards women from marginalised social groups (poor, disabled, victims of human trafficking, women in migration and asylum seekers), there is not even data on what (and whether anything) is being done to protect their sexual and reproductive rights.³⁴⁸ Moreover, the Draft of the new Youth Strategy for the period 2023-2030 would have been left without measures and activities related to sexual and reproductive rights and the health of young people³⁴⁹ had it not been for the intervention of the member of the prEUgovor coalition *Autonomous Women’s Centre* (AWC).³⁵⁰

The population policy of the Hungarian regime (“birth instead of immigration” and fertility as a matter of “strategic importance”³⁵¹) is not losing strength in Serbia (and the region) despite the fact that it represents a constant threat to the realisation of women’s sexual and reproductive rights. At the same

341 “How the Church defeated science: Professor Biljana Stojković on the decision to change biology textbooks”, Danas, 4 Oct 2022, <http://bit.ly/3UUDBNa>, 7 Oct 2022

342 “Biology under the attack of the church and right-wing groups: What is actually written in the 8th grade textbooks”, V. Andrić, Danas, 15 Oct 2022, <http://bit.ly/3Go9DEu>, 7 Oct 2022

343 This refers to the workshops of the E8 organisation, which (according to the Dveri movement) should be prevented by the quick reaction of parents and schools; “Dveri: A direct entry of LGBT propaganda into schools began after controversial textbooks”, Serbian movement Dveri, 22 Sept 2022, <https://dveri.rs/saopstenja/dveri-nakon-spornih-udzbenika-pocao-i-direktan-ulazak-lgbt-propagande-u-skole>, 7 Oct 2022

344 Press release regarding the Ministry’s decision on the ‘disputed’ biology textbooks, 8 Oct 2022, <http://www.befem.org/saopstenje-zajavnost-povodom-odluke-ministarstva-o-spornim-udzbenicima-biologije/>, 10 Oct 2022

345 *Ibid*;

346 Vedrana Lacmanović, Aleksandra Mališić, Jelena Ivković and Tanja Ignjatović, “Systemic education postponed until further - Analysis of education about sexual and reproductive health and rights of children and young people in syllabi of primary and secondary schools in Serbia”, Autonomous Women’s Centre, Belgrade, 2022, <http://bit.ly/3U54LHP>.

347 Tanja Ignjatović and Aleksandra Mališić, “Three years after the adoption of the programme, there are no expected results: Analysis of the implementation of the National Programme for the preservation and improvement of the sexual and reproductive health of citizens of the Republic of Serbia”, Autonomous Women’s Centre, Belgrade, 2021, <https://bit.ly/3UoBsR1>.

348 Autonomous Women’s Centre, ASTRA - Action against Human Trafficking and Group 484, *Sexual and Reproductive Health and Rights of Women in Serbia – Between Human Rights and Pronatalist Policy*, Coalition prEUgovor, Belgrade, 2022, <https://www.preugovor.org/Policy-Papers/1753/Sexual-and-Reproductive-Health-and-Rights-of.html>.

349 Public call for participation in the public debate on the proposal of the National Youth Strategy 2015-2025, <https://www.mos.gov.rs/vest-javni-poziv-za-ucescu-u-javnoj-raspravi-o-predlogu-nacionalne-strategije-za-mlade-2015-2025?lang=lat>, 14 Oct 2022

350 “Sexual and reproductive rights will not be omitted in the new Strategy for Youth in the Republic of Serbia (2023-2030)”, Autonomous Women’s Centre, 8 Sept 2022, <https://bit.ly/3NvV5nS>, 14 Oct 2022

351 “Hungary offers free artificial insemination to increase birth rates”, FoNet, BBC, 14 Jan 2020, <https://rs.n1info.com/svet/a560407-madjarska-nudi-besplatnu-vestacku-oplodnju-za-povecanje-nataliteta/>

time, the problems and violence faced by women in public gynecological-obstetrical institutions are dealt with by self-organised women.³⁵²

The AWC proposed to the Commissioner for Protection of Equality to request from the Republic Health Insurance Fund to increase the number of oral contraceptives on the A list (issued at the expense of the health insurance fund), which would be in accordance with the recommendations of the CEDAW Committee to the Republic of Serbia from 2019. The Commissioner submitted an initiative to amend the Rulebook governing the list of drugs that are prescribed and issued at the expense of mandatory health insurance funds,³⁵³ thus supporting two of the four AWC proposals.³⁵⁴ Proposals related to the exemption of young people (15 to 25 years old) from having to co-pay for contraceptives purchased based on a prescription, and those related to pregnancy terminations being covered from health insurance funds were however rejected (although this was also the recommendation of the CEDAW Committee 38(a) from 2019). It remains to be seen what the reaction of the Republic Health Insurance Fund will be.

✖ **ALARM: Attacks on female human rights defenders are not condemned by the authorities**

Without consequences, intimidation of and attacks on organisations dealing with the protection of human rights can have negative effects on their work and the support given to them by citizens. This was emphasised in the statement of the organisation Front Line Defenders, which was engaged to represent the rights of members of the organisation “Women for Peace” from Leskovac.³⁵⁵ State authorities have been asked to conduct an immediate, thorough and impartial investigation of the attackers, publish the results, publicly condemn these attacks and take all measures to guarantee the (physical and psychological) safety of female human rights defenders and organisations so they can carry out their activities in Serbia without fear of repression and free from restrictions.³⁵⁶

In the same month, in the context of the commemoration of the 27th anniversary of the genocide in Srebrenica, an unidentified man threw a can of red paint at the front door of “Women in Black”, The organisation’s press release stated that this was “yet another in a series of attacks, both on the premises and on female activists” in the context of “the climate of impunity spread and maintained by the ruling regime in Serbia led by Aleksandar Vučić, both at the level of the state and at the level of society”.³⁵⁷

If Serbia wishes to create an environment that is stimulating for the development of civil society by 2030 (as stated in the vision of the recently adopted Strategy),³⁵⁸ it should start reacting immediately to all attacks and threats to the safety of female human rights defenders. No information was found on the website of the competent Ministry for Human and Minority Rights about the condemnation of the above events (either in the announcements³⁵⁹ or in the news section).³⁶⁰

352 The first report on obstetric violence in Serbia (created based on the testimonies of approximately 200 women) pointed to 16 types of violence and violations of women’s rights and their ‘prevalence and brutality’: “Women perceived medical treatments (the Kristeller maneuver, episiotomy, etc.) as violence when these were carried out without their consent or despite their opposition, thereby causing great suffering and pain as well as serious negative consequences for health and life”. “Reports on obstetric violence refer to the actions of doctors and nurses/technicians”. “The first major report on obstetric violence in Serbia: Most reports refer to four hospitals”, Božica Luković, Zadovoljna.rs, 20 Sept 2022, <http://bit.ly/3TKjYxA>.

353 “Initiative of the AWC and the Commissioner for the Protection of Equality: Republic Health Insurance Fund to finance a greater number of contraceptives”, Autonomous Women’s Centre, 23 Sept 2022, <http://bit.ly/3FCLBFz>, 14 Oct 2022

354 ... that the A list should contain a greater number of oral contraceptives (at least all those from the A1 list), as well as two emergency contraceptives;

355 Activists were threatened with sexual violence (rape), their minor children (daughters) were threatened as well, and there were also threats that their organisation would be shut down. In the same city, a month before, during the celebration of the International Day of Women’s Action for Peace, a dozen men harassed, threatened and threw eggs at female activists. Despite several criminal charges that were filed against the perpetrators, no one has been arrested or convicted for these crimes.

356 Announcement and support from Front Line Defenders (with offices in Dublin and Brussels), 22 July 2022, <http://bit.ly/3EwLiLn>, 14 Oct 2022

357 “Premises of Women in Black attacked again”, Women in Black, 12/07/2022, <http://bit.ly/3E66Ahw> 14 Oct 2022.

358 Strategy for creating an encouraging environment for civil society in the Republic of Serbia for the period 2022-2030, 3 Feb, 2022, <https://bit.ly/3WmFLhz>.

359 Press releases, Ministry of Human and Minority Rights and Social Dialogue, <https://www.minlmpdd.gov.rs/aktuelnosti-saopstenja.php>, 14/10/2022.

360 News, Ministry for Human and Minority Rights and Social Dialogue, <https://www.minlmpdd.gov.rs/aktuelnosti-vesti.php>, 14/10/2022.

RECOMMENDATIONS

- Instead of accumulating information on the implementation of activities, ensure that monitoring of the implementation of laws, strategic documents and action plans through the presentation of achieved effects is the only relevant assessment of progress in the area '3.4 - The principle of non-discrimination and the position of vulnerable social groups';.
- To compensate for delays in the adoption of laws and public policy documents (at all levels), these should be accompanied by appropriate budget funds required for their implementation and relevant indicators of progress and change;
- Immediately stop the ongoing trend of curtailment of achieved human rights, especially women's rights, gender equality and sexual and reproductive rights, as well as the rights of members of LGBTQ+, which is happening under the pressure of conservative intellectuals, far-right movements and organisations, as well as the Serbian Orthodox Church. Provide all organisations and human rights defenders with guarantees of physical and psychological safety, ensuring their ability to perform their activities without fear of repression and free from restrictions.

4.4.3. Gender-Based Violence against Women

The Action Plan for the Strategy for Preventing and Combating Gender-Based Violence against Women and Domestic Violence for the period 2021-2025 has not yet been adopted.³⁶¹ There is no mention of efforts to establish accessible general and specialised support services for victims of violence against women and domestic violence, and their funding has been postponed until 2024. There are no investigations or appropriate measures to prevent femicide in cases of violence that state authorities knew about, or could have known about. There are no initiatives to support the resources of experts working in the field of protection from violence against women and domestic violence. Relevant regulatory bodies have no intention of stopping the degrading media coverage of violence against women. The criminal offence of rape has yet to be harmonised with the Istanbul Convention. The state consistently either avoids funding support activities for victims of violence, or allocates the largest portion of the budget funds to pre-registered organisations without any field knowledge, including those led by convicted perpetrators of violence. A central record of all acts of gender-based violence has not yet been established.

The competent Ministry of Social Protection³⁶² does not have any activities concerning women who have experienced violence. The competent Ministry for Family Care and Demography regularly combines this topic with information about the poor demographic situation and parenting, and does it more declaratively than by presenting actual results.³⁶³ The Deputy Prime Minister and the president of the Coordinating Body for Gender Equality lead the way with their "politically correct" announcements on this topic, but they have no influence on the state and institutional policy of prevention and protection of women and their children from gender-based violence.³⁶⁴

In addition to examples of good practice, the Special Report of the Serbian Ombudsman on the work of coordination and cooperation groups,³⁶⁵ which deals with the implementation of the Law on Prevention of Domestic Violence, provides a series of recommendations for improving the procedures and harmonising

361 Ministry of Labour, Employment, Veterans and Social Affairs, Sector for Social Protection, Proposals and draft documents, <https://www.minrzs.gov.rs/sr/dokumenti/predlozi-i-nacrti/sektor-za-socijalnu-zastitu>, 14 Oct 2022

362 ... and only a few announcements that mention women refer to history and women fighters and to the context of preserving tradition, Ministry of Labour, Employment, Veterans and Social Affairs, News, <https://www.minrzs.gov.rs/sr/aktuelnosti/vesti>, 14 Oct 2022

363 For this Ministry, topics related to the bad demographic situation, children's rights and parenting are in the foreground, more descriptively than in real indicators of the effects of the Ministry's work, and all the mentioned activities are connected with donor funds. Ministry of Family Care and Demography, News, <http://minbpd.gov.rs/multidisciplinarnim-i-strateskim-pristupom-protiv-rodno-zasnovanog-nasilja/>, 14 Oct 2022

364 Government of the Republic of Serbia, Coordinating Body for Gender Equality, Press, <https://www.rodnaravnopravnost.gov.rs/sr/press/vesti>, 14 Oct 2022

365 "Special report of the Protector of Citizens on the work of the Coordination and Cooperation Group in the area of the Higher Public Prosecutor's Office in Niš", Protector of Citizens, Belgrade, 2022, <https://www.ombudsman.rs/attachments/article/7518/Poseban%20izvestaj.pdf>, 14 Oct 2022

the interpretation and application of the provisions of the Law. It remains to be seen whether and how the competent authorities and institutions will implement the recommendations, as well as whether and how the Protector of Citizens will monitor the implementation of the provided recommendations. In the absence of public reports, the Autonomous Women's Centre continued to monitor and publish annual reports on the implementation of the Law on Prevention of Domestic Violence.³⁶⁶ The data indicate a halted growth in reported incidents of domestic violence, a reduction in the imposition of measures of temporary eviction of the perpetrator, a worrying increase in the number of perpetrators who repeat acts of violence, a very modest increase in the number of lawsuits *ex officio* for protection measures against domestic violence, as well as a decrease in the number of cases in which information is collected due to the suspicion that a criminal offence has been committed. It seems that these are indicators of the "fatigue" of the system caused by the insufficient number, excessive workload and inadequate training of experts acting in three key systems (the police, the prosecutor's office and the social welfare centres), which are not receiving proper attention of the authorities.

At the beginning of August, by the Decision of the Higher Public Prosecutor's Office (HPPO), a deputy public prosecutor was appointed Coordinator for Gender-Based Violence. The goal of the Coordinator will be to improve and standardise the actions of the basic public prosecutor's offices in the area of jurisdiction of the HPPO in Belgrade, so that all victims of domestic violence can receive a uniform education and comprehensive protection.³⁶⁷

Murders of women and family members – No response from or responsibility of the state!

Appeals to competent state authorities to carry out detailed investigations into cases of femicide remain unanswered.³⁶⁸ The analysis of institutional action in cases of reported domestic violence that ended in the murder of a woman (and often in the murder of other family members, including children) confirms that there are almost no internal analyses of omissions (and thus no learning from mistakes) and almost no supervisory procedures or measures.³⁶⁹ Even when there is publicly available information from the competent Ministry for Family Care about the supervision carried out on official duty in the Social Welfare Centre, there is no information about the outcome of those procedures.³⁷⁰

The initiative of the Coordinator for Gender-Based Violence in the HPPO in Belgrade (after 6 women were murdered in the area of the City of Belgrade) encourages all basic public prosecutor's offices to apply a list of 14 questions when consulting with police officers prior to deciding on taking measures within their purview.³⁷¹

The criminal offence of rape is still awaiting harmonisation with the Istanbul Convention

The Ministry of Justice did not take measures in connection with the recommendation of the European Commission (from 2021) to harmonise the criminal offence of rape with the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention). Member of the Coalition prEUgovor *Autonomous Women's Centre* (AWC) prepared

366 Tanja Ignjatović, "Tenth report on independent monitoring of the implementation of the Law on Prevention of Domestic Violence in Serbia for the period January-December 2021", Autonomous Women's Centre, 2022, <http://bit.ly/3Nuo2Ay>

367 Republic of Serbia, Higher Public Prosecutor's Office in Belgrade, Announcement, 2 Aug 2022, <https://bg.vi.jt.rs/aktuelnosti/saopstenje-192/>, 14 Oct 2022

368 "Press release: React before the crime, not after!", Autonomous Women's Centre, 20 Sept 2022, <https://www.womenngo.org.rs/vesti/1920-saopstenje-za-javnost-reagujete-pre-zlocina-ne-posle-20-09-2022>, 14 Oct 2022

369 "The Autonomous Women's Centre organised three forums on institutional proceedings in cases of high-risk (fatal) domestic violence reports", AWC, 26 May 2022, <https://bit.ly/3TIQml9>, 14 Oct 2022

370 "Controversial actions of the Social Welfare Centre in Čačak", Ministry of Family Care and Demography, 4 May 2022, <http://minbpd.gov.rs/sporno-postupanje-centra-za-socijalni-rad-u-cacku/>, 14 Oct 2022

371 Republic of Serbia, Higher Public Prosecutor's Office in Belgrade, Announcement, 22 Sept 2022, <https://bg.vi.jt.rs/saopstenja/saopstenje-124/>, 14 Oct 2022

proposals for amendments and supplements to that part, and consequently to all related parts of Chapter 18 – Criminal Offences against Sexual Freedom. It was also proposed to add a new article - Misuse of a Video of Sexual Content (the so-called “revenge pornography”) to Chapter 14 - Criminal Acts against the Freedom and Rights of Man and Citizen.³⁷² The proposals were submitted to the Working Group of the Ministry of Justice in May 2022, but have remained without a response. In the meantime, the Government adopted the Conclusion regarding the initiative of the President of the State to amend the Criminal Code “to tighten the penal policy in relation to the crimes of rape and domestic violence”.³⁷³ There is no mention of the obligation to change the definition of the criminal offence of rape and related offences. It is however stated that the Ministry of Justice will form a working group to draft the initiated changes, although there is already a working group that is working on changes to the Criminal Code.

Is there a difference between degrading media coverage and a “scoop”?

The publication of an interview with a repeatedly convicted rapist in the daily newspaper “Informer” and on its YouTube channel is the latest example of the brutality and destructiveness of this pro-government tabloid.³⁷⁴ While the Press Council claims that “Informer” has violated several provisions of the Code of Ethics, humiliated the victims and disturbed the public,³⁷⁵ the president of the Regulatory Authority for Electronic Media (REM) believes that there is nothing controversial in the “exclusivity” of that newspaper, and that she does not fully understand the “hysteria that came from the ranks of neoliberal Serbia”.³⁷⁶ This is yet another example of the reality of parallel values in which the citizens of Serbia have been living for more than a decade. The persistence of “Women’s Solidarity” activists in organising protests which were supported by a significant number of citizens is encouraging, as was the request that the interview be removed from all portals (including the newspapers “Blic”, “Alo” and “Mondo”) to protect women from further re-traumatisation and re-victimisation”.³⁷⁷

Just a few months earlier, the AWC sent an open letter to the REM’s Council with a request to urgently respond to situations of violence against women that continuously and frequently occur in the reality show “Zadruga” [The Coop], which is broadcast nationally on Pink TV.³⁷⁸ The “Slavko Ćuruvija” Foundation filed a formal complaint against TV Pink, emphasising that these occurrences represent a basis for a temporary or permanent ban of that reality show. The President of REM (once again) replied that REM, “regardless of [those] perverse and bizarre desires, will not be a judge, and will follow both the procedure and the law”.³⁷⁹ One member of the REM Council praised the TV Pink’s reality show “because it opens up issues of social importance, such as questions about abortion, tolerance and church”.³⁸⁰ Such views were confirmed by REM’s decision to re-grant TV Pink the national frequency.³⁸¹

372 *Proposals for Amendments and Supplements to the Criminal Code of the Republic of Serbia*, coalition prEUgovor, 2022, <https://www.preugovor.org/Amendments/1750/Proposals-for-Amendments-and-Supplements-to-the.shtml>

373 “The Conclusion on the Initiative to amend the Criminal Code has been adopted”, Government of the Republic of Serbia, 31 Oct 2022, <https://www.srbija.gov.rs/vesti/659974/usvojen-zakljucak-povodom-inicijative-za-izmenu-krivinnogo-zakonika.php>, 2 Nov 2022

374 “Press release regarding the publication of the interview with a repeatedly convicted rapist”, AWC, 28 Sept 2022, <https://www.womenngo.org.rs/vesti/1922-saopstenje-za-javnost-povodom-objavljivanja-intervjua-sa-visestrukim-osudivanim-silovateljem>, 14 Oct 2022

375 “Advice for the press regarding the interview with the rapist: *Informer* violated several provisions of the Code, humiliated the victims and disturbed the public”, *Danas*, 28 Sept 2022, <http://bit.ly/3fvnVD>, 14 Oct 2022

376 ... because *Informer* did the same, “just as the American television ABC published an interview with Osama bin Laden in 1998, because that’s how it’s done”, “Olivera Zekić: Why the hysteria over the interview in *Informer*?”, N. M. Vreme, 3 Oct 2022, <https://www.vreme.com/vesti/olivera-zekic-cemu-histerija-zbog-intervjua-u-informeru/>, 14 Oct 2022

377 “Rage in the streets, freedom for girls”, Women’s Solidarity, 6 Oct 2022, <https://zenskasolidarnost.org/bes-na-ulice-sloboda-za-devojce/>, 14 Oct 2022

378 “Open letter to the Council of the Regulatory Authority for Electronic Media”, AWC, 3 June 2022, <https://www.womenngo.org.rs/vesti/1873-otvoreno-pismo-savetu-regulatornog-tela-za-elektronske-medije>, 14 Oct 2022

379 “Zekić on the scenes of violence in the reality show ‘The Coop’: The REM will not be a court-martial”, *Danas*, K.Ž. 29 May 2022, <https://www.danas.rs/vesti/drustvo/zekic-rem-nece-biti-preki-sud/>, 14 Oct 2022

380 “A member of the REM Council praises TV Pink’s reality show: It opens up issues of social importance”, *Beta*, 13 July 2022, <http://bit.ly/3NvVo20>, 14 Oct 2022

381 “TV Pink, Happy, Prva and B92 once again received national frequencies in Serbia”, Radio Free Europe, 29 July 2022, <https://www.slobodnaevropa.org/a/rem-frekvencije-srbija-pink-happy-b92/31965380.html>, 14 Oct 2022

More money to the state service, more trust in women's organisations

Data show that women who have experienced violence tend to turn to SOS hotlines of women's non-governmental organisations more often than to the national SOS hotline (in the public sector). At the same time, the establishment of the national SOS hotline significantly reduced the budget funding of similar services that are provided by women's organisations.³⁸² It is also devastating that, for five years in a row now, the funds collected by violating the basic rights of victims through the application of the institute of delay of criminal prosecution were not allocated to any project aimed at providing assistance and support to victims of criminal acts and free legal aid.³⁸³

At the same time, the research of "Insider" revealed that the Ministry of Family Care and Demography had allocated EUR 630,000 to obscure civil society associations, i.e., that the 9 organisations that received the most funds for projects to improve the social position of women and prevent domestic violence were founded immediately before the call for the submission of proposals, by changing the registration data of already existing associations that had not been active for years.³⁸⁴ This is not the first time that irregular decisions on the allocation of budget funds to quasi-civil society organisations were made³⁸⁵ (stopping the distribution of money, although without consequences for the authorities). However, the ministries no longer pay attention to the reporting of the media and the reaction of civil society organisations to these phenomena. It is more difficult to monitor the misuse of budget funds at the local level, as evidenced from the following example pointed out by JUGpress from Leskovac.³⁸⁶

✖ **ALARM: Funds from the budget allocated to a convicted perpetrator of violence, to provide support to victims!**

The city of Leskovac allocated budget funds for the SOS hotline for victims of violence to an organisation whose founder and president has two final convictions for domestic violence, and which does not have appropriate knowledge (or a license) to be engaged in this activity. JUGpress received no response from either the competent local authorities or the competent Ministry of Social Protection, which included in the Working Group of the Government of Serbia for the Prevention of Domestic Violence the same person who was in charge of drafting the National Strategy for Combating Violence against Women in Family and Partner Relationships (it later turned out that he is a member of the ruling Serbian Progressive Party). As a result of the public reaction to this decision of the City of Leskovac,³⁸⁷ members of the "Women for Peace" organisation were exposed to multiple threats and intimidation.³⁸⁸

RECOMMENDATIONS

- We repeat the recommendation that all competent ministries should carefully consider the standards of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, as well as the recommendations of the GREVIO expert group given to Serbia, and integrate them into all relevant laws, public policy documents and especially into the practice of state authorities;

382 ... as shown by the data on services and funding, prepared by the AWC and the Women Against Violence Network and presented by the coalition prEUgovor on the infographic, "More money for public service, more trust in women's organisations", coalition prEUgovor, 2022, https://preugovor.org/upload/document/infografika_sos_telefon.pdf

383 "Press release of civil society organisations", AWC, 5 May 2022, <https://www.womenngo.org.rs/vesti/1864-saopstenje-za-javnost-organizacija-civilnog-drustva>, 14 Oct 2022

384 "Insider reveals: The Ministry of Family Care gave EUR 630,000 to obscure associations", 10 May 2022, <http://bit.ly/3UHGxEn>, 1 Oct 2022

385 "Vulin's gesture does not eliminate doubts about the distribution of money at the competition", Katarina Djordjević, Politika, 3 Dec 2014, <https://www.politika.rs/sr/clanak/312436/Vulinov-gest-ne-otklanja-sumnje-u-podelu-novca-na-konkursu>, 14 Oct 2022

386 "The Ministry of Labour is not answering questions about the convicted family abuser, the authorities in Leskovac are silent, and they gave him money for two projects in just one call for applications", JUGpress, 23 July 2022, <http://bit.ly/3ft7o7Z>, 14 Oct 2022

387 "Support of the Network of Women Against Violence to the organisation Women for Peace - Open letter to the competent ministries", 14 July 2022, <https://bit.ly/3Nybd8d/>, 14 Oct 2022

388 See: ALARM: Attacks on female human rights defenders are not being condemned by the authorities in the previous section.

- We repeat the recommendation to systematically solve the problem of the lack of any support services for victims of violence - general or specialised, as well as their budget financing, without delay and without misuse of public funds;
- It is necessary to ensure the monitoring and analysis of the implementation of existing institutes of protection and support for women and other victims of gender-based and domestic violence, in order to increase their safety as well as recovery, empowerment and independence in accordance with their human rights and standards of good practice;
- It is necessary to urgently stop the degrading and destructive media coverage of violence against women and children, with full responsibility for the current situation of the competent regulatory bodies and the competent Ministry.

4.4.4. Rights of the Child

Activities from the Revised Action Plan for the Implementation of Chapter 23 concerning the rights of the child have still not been implemented. The inability of the system to recognise the (fatal) risk of a child's visitation by a violent father will not (this time either) result in systemic changes to the organisation and expertise of the competent bodies. Preventing children from enrolling in kindergarten because of their parents' political affiliations is another form of gross violation of children's rights.

Most of the unrealised activities from the Revised Action Plan for the implementation of Chapter 23 from the area '3.4 - The principle of non-discrimination and the position of vulnerable social groups', refer to children's rights. As many as 41 percent of the activities were not implemented, while another 18 percent were implemented only partially. Amendments to the Law on Juvenile Offenders and Criminal Protection of Minors have not been drafted and adopted, and neither were the new special protocols for the protection of children from abuse and neglect or by-laws governing the implementation of educational orders. There is no supervision of the implementation of the new National Strategy for the Prevention and Protection of Children from Violence, or monitoring of the implementation of the Action Plan. The capacity development of social protection service providers was not ensured in line with the processes of deinstitutionalisation and decentralisation of the system, and the resources in residential institutions for children have not been improved. The introduction of post-traumatic counseling and support for child victims and witnesses in criminal proceedings has not been ensured. A centre for children, young people and families, whose activities would be specifically aimed at members of communities that are deprived in multiple ways, was not established, nor was the system of financial benefits intended for vulnerable families of children with disabilities improved. There is no information about the fate of the preliminary draft of the Family Law.

The Coordinating Body for the implementation of the Revised AP 23 stated that activity '3.4.4.10 - Amending the Law on juvenile offenders and criminal protection of minors' has not been implemented, although the Ministry of Justice has prepared Draft Amendments to the Law and sent it to the European Commission for opinion. In its report, the Coordinating Body did not mention the opinion of the European Commission, which insists that amendments to the Law should be better aligned with the EU acquis.³⁸⁹ Since the requested changes are of such a scope that it is not possible to amend the Law, making it necessary to pass an entirely new law one, the Ministry of Justice stopped all activities relating to the above amendments until the adoption of the amendments to the Criminal Procedure Code (Activity 1.3.6.2).

The Autonomous Women's Centre believes that this opinion of the European Commission will have harmful consequences because the Law on Juvenile Offenders and the Criminal Protection of Minors of 2005 is not aligned with the Criminal Procedure Code of 2011, and has been applied for 11 years in

³⁸⁹ The oral response of the Assistant Minister of Justice, Mr. Stojanović, which was given during the meeting with representatives of civil society organisations held on 21 March 2022 and confirmed during the consultations of representatives of the European Commission with civil society organisations in the premises of the European Delegation in Belgrade on 15 June 2022.

accordance with the Criminal Procedure Law that was valid until 2011, according to which the investigation is conducted by investigative judges and not by prosecutors. In this way, the rights of minors have been violated for more than a decade, both as perpetrators of criminal acts and as victims/injured parties. The decision of the European Commission, which did not give consent to harmonise the Law on Juvenile Offenders and the Criminal Protection of Minors with the current Criminal Procedure Code, only protracts the legal uncertainty and inconsistency of two important criminal procedural laws, and prolongs the violation of rights of children in Serbia.

Discriminatory provisions contained in the Law on Financial Support for Families with Children continue to affect children in Serbia as the ultimate beneficiaries of this Law. The Law was not amended even after the public hearing on the Draft Law on Amendments to the Law on Financial Support to Families with Children³⁹⁰ or after an online petition expressing dissatisfaction with the proposed minimal changes to said Law.³⁹¹ The Constitutional Court decided on four initiatives related to the question of the constitutionality of the provisions of this Law,³⁹² finding 6 paragraphs from four articles of the Law unconstitutional.³⁹³ The Constitutional Court made decisions refusing and/or rejecting initiatives to examine the constitutionality of other contested articles of the Law,³⁹⁴ where two judges of the Constitutional Court provided separate opinions³⁹⁵ referring to the adopted strategic documents and the practice of the European Court of Human Rights. Judge Tijana Šurlan, Ph.D. stated that she believed that the provision of Article 25 represents an indirect form of discrimination against children, because “the main beneficiary of this right is the child whose birth is the *conditio sine qua non* of the right to parental allowance”.³⁹⁶ Judge Tamas Korhecz, Ph.D., on the other hand, was of the opinion that the provisions of Article 25 “improve and amend the Law on the Protection of the Population from Infectious Diseases and the Law on the Basics of the Education and Training System, which are systemic laws in those areas, ... in which way the principle of the unity of the legal order is violated”.³⁹⁷

✖ **ALARM: Systemic failures in assessing the risk of visitation of a child by an abusive father**

Prevention of the murder of children by fathers who have been reported and convicted of domestic violence remains without a systemic response and state responsibility. The case of the murder of a two-year-old girl, whose father was convicted of the crime of domestic violence and who had a restraining order which prevented him from approaching his former wife but did not include his very young child, is just the latest dramatic example of the systemic misunderstanding of the risks in situations of violence against women in which minor children are killed (the same thing also happened earlier, in Sombor and Rakovica). The competent provincial secretariat informed the public that it had undertaken surveillance measures³⁹⁸ and that the Ombudsman³⁹⁹ had initiated the control procedure. Also, the special Department for Combating Corruption at the HPPO in Belgrade⁴⁰⁰ opened a case file in order for the purpose of examining the responsibility of the Social Welfare Centre in Vršac.

390 March 2021

391 <https://bit.ly/3vlzsb7>

392 Initiatives were decided upon in cases no. IUZ-216/2018 on 3 Dec 2020, IUZ-247/2018 on 17 Dec 2020, IUZ-266/2017 on 15 Apr 2021 and IUZ-229/2018 on 21 Apr 2022.

393 Paragraph 2 of Article 17, paragraphs 2, 4 and 6 of Article 18, paragraph 8 of Article 14, and paragraph 7 of Article 12 of the Law

394 Paragraph 1 of Article 12, Article 13, paragraphs 1 and 3-9 of Article 17, paragraphs 1, 3, 5, 7, 8 and 9 of Article 18, Article 20, paragraph 2 of the Law from item 1 of article 54, and paragraphs 1 to 3 and 5 to 7 of Article 25.

395 Case IUZ-229/2018, available in the case law database of the Constitutional Court at: <http://www.ustavni.sud.rs/page/jurisprudence/35/>

396 *Ibid.*

397 *Ibid.*

398 Provincial Secretariat for Social Policy, Demography and Gender Equality, Press Release, 6 Oct 2022, <http://www.socijalnapolitika.vojvodina.gov.rs/saopstenje-za-javnost/>, 14 Oct 2022

399 “The Protector of Citizens reacted regarding the murder of a two-year old child in Vršac - The procedure to control the legality of the work of the Social Welfare Center and the MoI has been initiated”, Blic, 6 Oct 2022, <https://bit.ly/3OjB7wY>, 14 Oct 2022

400 Republic of Serbia, Higher Public Prosecutor’s Office in Belgrade, Announcement, 7 Oct 2022, <https://bg.vi.jt.rs/saopstenja/saopstenje-137/>

However, the question remains what the systemic response to improving the knowledge of experts will be if the Republic Institute for Social Protection (responsible for professional training and professional work improvement - supervision, research and information) does not acknowledge domestic violence in the guidelines for organising visits under controlled conditions, or child abuse as a form of abusing the child's mother, while at the same time referring to the scientifically and professionally disputed concept of "child's alienation from parents" (as if this is the only context that requires the organisation of a child's visit with a parent in controlled conditions).⁴⁰¹ The reply of the Republic Institute confirmed the misunderstanding of the problem. There was no response when the AWC forwarded information (to the addresses of 15 decision-makers and 369 relevant institutions) about the Resolution of the European Parliament on the consequences of violence perpetrated by partners in intimate relationships and the right to parental care for women and children.⁴⁰² All unrealised activities from Chapter 23 (area 3.4) related to children's rights confirm the assessment that the cause is the incompetence of the competent state bodies.

Children ineligible for kindergarten due to parents' political affiliation

At the end of August, in Pećinci (a small town in Vojvodina), children of preschool age whose parents and relatives are active members of the opposition Democratic Party were denied a place in the local kindergarten, allegedly by an order of a local commissioner of the (ruling) Serbian Progressive Party.⁴⁰³ Mothers of children who had attended kindergarten since they were one year old, but were now rejected and consequently labeled in the community, appealed to all competent ministries and bodies. They referred them to the Ministry of Education, which remained silent. Although the educational inspector found the procedure unlawful and ordered that the decision be corrected, the kindergarten director did not do this.⁴⁰⁴ The epilogue of this case, which is just another example of how the law in Serbia is not the same for everyone, remains to be seen.

RECOMMENDATIONS

- To make up for the enormous backlog in this area, it is necessary for the new Government to ensure the responsibility of the competent ministers to amend all laws, prepare all by-laws and provide resources (people, finances and knowledge) for all support services for families and children from the Revised Action Plan for Chapter 23;
- It is necessary to adopt, as soon as possible, the amendments to the Law on Juvenile Offenders and the Criminal Protection of Minors, to bring this Law into alignment with the current Criminal Procedure Code;
- It is necessary to amend the unconstitutional and discriminatory provisions of the Law on Financial Support for Families with Children as soon as possible;
- It is necessary to urgently provide systemic knowledge, mechanisms and responsibility regarding the protection of child victims and witnesses of domestic violence, with special emphasis on the abuse of children as a form of violence against their mothers;
- It is necessary to urgently stop any politicisation of children's rights.

401 Republic Institute for Social Protection, "Visitation with the child in controlled conditions – Expert and Methodological guidance for CSW, 28 June 2021, <https://bit.ly/3T34Gny>, 14 Oct 2022. For additional information about the disputed concept, see: Jelena Pejić Nikić (ed.), *PrEUgovor Alarm Report on the Progress of Serbia in Cluster 1 – November 2021*, prEUgovor coalition, Belgrade, 2021, <https://bit.ly/AlarmNov2021EN>, p. 96

402 European Parliament resolution of 6 Oct 2021 on the impact of intimate partner violence and custody rights on women and children (2019/2166(INI)), https://www.europarl.europa.eu/doceo/document/TA-9-2021-0406_EN.html, 14 Oct 2022

403 "Parents from Pećinci: Children left without places in kindergarten by order of the local SNS strongman", *Danas*, 31 Aug 2022, <http://bit.ly/3XguGyP>, 14 Oct 2022

404 "Mothers from Pećinci: How to tell a five-year-old that, this time, he can't go play with his friends?", *Nova.rs*, 5 Oct 2022, <https://bit.ly/3DXQGH8>, 14 Oct 2022

4.4.5. Strengthening Procedural Safeguards

Implementation of the National Strategy for Exercising the Rights of Victims and Witnesses of Criminal Acts without real effects

Although foreseen, there are no publicly available quarterly reports of the Coordinating Body on the implementation of the National Strategy for Exercising the Rights of Victims and Witnesses of Criminal Acts and the accompanying Action Plan, given that the body met only twice⁴⁰⁵.

On June 30, 2022, the Ministry of Justice adopted the First Report on the implementation of the National Strategy for Exercising the Rights of Victims and Witnesses of Criminal Acts (hereinafter the First Report)⁴⁰⁶, for the period from the adoption of the Strategy to the end of the first quarter of 2022. In the period of two years since its adoption, 47 out of 79 (59.5%) activities listed within the four strategic objectives have either not been implemented or there is no information about implementation, while 15 (19%) activities can be considered implemented. Therefore, the conclusion of the Ministry of Justice that activity 3.5.1.17. *Full implementation and regular monitoring of the implementation of the National Strategy for Exercising the Rights of Victims and Witnesses of Criminal Acts with the accompanying Action Plan* is successfully implemented is disputable.

Also, questionable is the conclusion that the activity 3.5.1.18 *The establishment of a nationwide network of services for the support of victims, witnesses and injured parties in the investigation and all phases of criminal proceedings*, is partially implemented, by the fact that, after obtaining the approval of the Ministry of Finance on the proposed personnel plans of judicial authorities, through amendments to the Rulebook on systematization, workplaces of support for victims and witnesses of criminal acts will be introduced at the higher courts in the Republic of Serbia.

According to the data of the First Report, the implementation of those activities planned by the project "Support for Victims and Witnesses of Crime in Serbia", which is implemented by the OSCE Mission to Serbia, are ongoing. All other activities, which are primarily the responsibility of the Ministry of Justice and other state bodies, were not implemented.

An example of a report on the initiated activity under the jurisdiction of the Ministry of Justice

For activity 1.3.1. *Commencement of work of the Support Services Coordinator in the Ministry of Justice* it is stated in the First report as follows: "The Ministry of Justice, with the amendments of the Rulebook on the organization and systematization of jobs, prescribed the position of coordinator of victim and witnesses support services."⁴⁰⁷ The Report did not specify when this was done, as well as whether the Ministry of Justice conducts a public competition for the selection of coordinators of support services for victims and witnesses of criminal acts.

An example of an activity report with missing data on the effects of implementation

In the First Report, for activity 1.2.5. *Adapting special premises at High Courts to ensure unobstructed functioning of newly established support services* it is stated that "the OSCE Mission in Serbia provided and donated furniture to equip special rooms for victims of crimes in five higher courts in the RS (in Belgrade, Novi Sad, Kragujevac, Niš and Novi Pazar). The value of the donation is in the amount of 2,600 EUR. The OSCE Mission in Serbia also donated video-conferencing equipment for five higher courts in the RS (in Belgrade, Novi Sad, Kragujevac, Niš and Novi Pazar) in order to reduce the negative impact of repeated and secondary victimization of the victim of a crime. The value of the donation is in the amount of: EUR 146,000."⁴⁰⁸

405 March 22, 2022 and September 2, 2021, source: Report II/2022 AP 23, op. cit, p. 311.

406 <https://bit.ly/3D6K3R5>

407 Ibid, pp. 15-16

408 Ibid, p. 14

An example of an activity report that lists the effects of the application, even though those effects do not apply to the named activity

For activity 3.1.3. *Producing, printing and distributing informational brochures for victims*, description of the activities of Centers for victims of sexual violence is listed. This activity, which is carried out by state institutions and a women's non-governmental organization in Vojvodina, was also financed with funds provided by an international organization, and the effects of those activities for the 2021/2022 were submitted for the purposes of creating the First Report.⁴⁰⁹

The First Report did not state the effects of the implemented activities, i.e., in what way those activities and the funds invested in their implementation contributed to the improvement of the position of victims of criminal acts in Serbia. Thus, for example, it can be concluded that, a year and a half after the installation of the most modern equipment for video-conferencing in five higher courts in Serbia⁴¹⁰, those courts either did not submit data on how many victims/injured parties testified in specially equipped courtrooms because software package for database had been developed, or because the Coordinating Body for Strategy Implementation did not even request that data.

The First report confirmed that the Strategy and accompanying Action Plan, which were created as a project activity, focused only on the activities of the Ministry of Justice and not on the activities of other Ministries, and the activities of the Centers for victims of sexual violence and their results did not find a more adequate place in the First the report on which they would be listed.

RECOMMENDATION

- It is necessary for the Ministry of Justice to carry out the activities of which it is the principal body in charge, which are foreseen by the National Strategy for Exercising the Rights of Victims and Witnesses of Criminal Acts and the accompanying Action Plan.

4.4.6. Personal Data Protection

The Law on Personal Data Protection from 2018 is still to be improved, and many other regulations should be harmonised with it. The Personal Data Protection Strategy is still being drafted. During the summer, an extensive promotional campaign was carried out about importance of personal data protection and the guaranteed rights. The Ministry of the Interior still intends to introduce and legalise the technology for mass smart surveillance of the population, although it did not prove the necessity of its application, and it underestimated the risks to fundamental rights and freedoms of persons.

The Working Group, established in mid-2021, has not yet drafted the first Personal Data Protection Strategy and its accompanying Action Plan. The last meeting was held on 31 May 2022. The strategy should envisage steps to eliminate the identified normative shortcomings in this area and regulate particular types of data processing such as video surveillance, digitalisation and artificial intelligence. Among other things, it was concluded that amendments to the Law on Personal Data Protection are necessary before proceeding with the long overdue process of harmonising other regulations with its provisions.⁴¹¹

409 Ibid, p. 47

410 <http://bit.ly/3UQjx6i>

411 Report AP 23 II/2022, activity 3.9.1.2.

When it comes to the processing of personal data for special purposes, the shortcomings of the said Law have already been pointed out,⁴¹² as well as the inconsistencies of other regulations in this area.⁴¹³ Although the Coordinating Body for the Implementation of AP 23 has been reporting for a year now that it is working on amendments to the Law on Records and Data Processing in the Field of Internal Affairs,⁴¹⁴ neither the Commissioner for Information of Public Importance and Protection of Personal Data (Commissioner) nor the public know the stage of this process and what the changes encompass.⁴¹⁵ Particularly problematic are the provisions of this law that prescribe the permanent data storage.⁴¹⁶ Acting on complaints, the Commissioner ordered the deletion of data in several individual cases, but the Ministry of the Interior (MoI) refused to do so. Instead, by the end of the reporting period, the MoI filed a total of 39 lawsuits against the Commissioner before the Administrative Court, but there are still no verdicts.⁴¹⁷

From May to July 2022, the Commissioner, with the support of the OSCE, conducted a promotional campaign "Keep it personal", to raise citizens' awareness of the importance of personal data protection and inform them about the guaranteed rights in this area. Five thematic videos were broadcast on national and local TV stations and published on the Commissioner's website. It is estimated that the messages from the campaign reached four-fifths of the total population.⁴¹⁸

The Ministry of the Interior still intends to introduce and legalise the technology for mass smart surveillance of the population. In mid-May, it presented to a group of expert organisations a draft of a new data protection impact assessment of the application of this intrusive technology. Making such an assessment and obtaining a preliminary opinion of the Commissioner is a legal prerequisite before introducing a new type of data processing that represents a high risk for individuals' fundamental rights and freedoms. The Commissioner established that the previous two assessments were not satisfactory.⁴¹⁹ The invited organisations, including the Belgrade Centre for Security Policy (BCSP), a member of the prEUgovor coalition, submitted to the Ministry of the Interior general comments on the draft impact assessment.

Among other things, the BCSP pointed out that neither in the presented draft assessment nor elsewhere did the MoI offer a valid explanation, supported by statistical data and analyses, about the necessity of introducing such a mass surveillance system for the intended purposes.⁴²⁰ That should be the first step, followed by discussions on the details. Regarding proportionality, it is positive that the purposes for using facial recognition software have been narrowed compared to previous impact assessments and the Draft Law on Internal Affairs from August 2021, which has been withdrawn. However, it should be borne in mind that an extensive database of sensitive data of a massive non-selective character is still being created only to extract specific data from it in a few particular cases. The time limit for saving video records is not determined according to the necessity for the purpose of processing, but based on the technical capacity of the data controller, which is unacceptable. The document does not differentiate between the categories of data subjects, which is a legal obligation. The number of identified risks is small (only seven),⁴²¹ and the criteria for determining the total risk exposure are unclear because the MoI generally underestimates the probability of violation of the rights and freedoms of individuals and disregards the possibility of abuses. Risk reduction measures are described in general, and for details, the impact assessment refers to documents that are not publicly available; thus it is impossible to evaluate them. By the end of the reporting period, the MoI did not present an improved version of the draft impact assessment.

412 Jelena Pejić, *Comments and suggestions for improving the provisions of the new Law on Personal Data Protection in the area of criminal justice and national security*, prEUgovor coalition, Belgrade, Aug 2019, <http://preugovor.org/Amendments/1581/Comments-and-Suggestions-for-Improving-the.shtml>

413 Nevena Ružić, Ana Toskić Cvetinović, *Analysis of Regulations Governing the Security Sector from the Aspect of Personal Data Protection*, OSCE Mission to Serbia, 2020, <https://www.osce.org/files/f/documents/8/1/473013.pdf>

414 Activity 3.9.1.7.

415 Commissioner's response to BCSP's questionnaire on 2 Nov 2022

416 Nevena Ružić, Ana Toskić Cvetinović, *Analiza propisa iz koji uređuju sektor bezbednosti iz aspekta zaštite podataka o ličnosti*, op. cit., str. 23.

417 Commissioner's response to BCSP's questionnaire on 2 Nov 2022

418 „Neka ostane lično – kampanja o zaštiti podataka o ličnosti uz podršku Misije OEBS-a u Srbiji”, *Nedeljnik*, 13 Oct 2022, <http://bit.ly/3V87d0U>

419 More in: Jelena Pejić Nikić (ed.), *prEUgovor Alarm Report on the Progress of Serbia in Chapters 23 and 24 - November 2020*, BCSP, Belgrade, 2020, p. 65, <http://bit.ly/AlarmNov2020EN>

420 BCSP, *Comments on Data Protection Impact Assessment Regarding the Introduction of Biometric Face Recognition Software in the Video Surveillance System of the Ministry of Interior*, Belgrade, 3 June 2022

421 Andrej Tomšič, *Analysis of Data Protection Impact Assessment Regarding the Introduction of Biometric Face Recognition System in the Republic of Serbia*, Open Society Foundation Serbia, May 2022

RECOMMENDATIONS

- Adopt a Personal Data Protection Strategy, with the accompanying Action Plan, in an inclusive and transparent process, and establish a working body to oversee the implementation of these acts;
- It is necessary to improve the vague provisions of the Law on Personal Data Protection as soon as possible, especially in the area of data processing for special purposes, and continue the process of harmonising provisions of other laws with this Law;
- The Ministry of Interior should abandon the introduction and legalisation of smart mass biometric surveillance, in accordance with the recommendations of international bodies. Otherwise, it must present detailed statistics that would clearly indicate the need for this type of surveillance, the proportionality of the purpose of this intrusive technology in relation to the encroachment on fundamental human rights and freedoms, and provide for strict mechanisms to protect personal data from possible abuse.

5. CHAPTER 24 – JUSTICE, FREEDOM AND SECURITY

5.1. Police Reform

The key obstacle in the field of police reform as part of Chapter 24 is the improvement of the integrity of this institution, primarily in connection with the benchmark referring to the need to ensure the operational autonomy of the police. The first, most important step will be to draft a high-quality Law on Internal Affairs, whose entry into the parliamentary procedure and adoption are expected after the formation of the new Government. It is necessary for the police to show respect for the highest standards of integrity in practice, primarily by processing cases that involve problematic behaviour of police officers.

The main challenge in building the integrity of the police is still the need to ensure greater operational autonomy of this institution in relation to political decision-makers, primarily those in the Ministry of the Interior. Back in 2016, the European Union issued a recommendation in which it demanded that Serbia implement “detailed steps to establish strong protective measures to ensure the strengthening of the integrity and operational independence of police agencies from political interests and their protection from the influence of crime”.⁴²² Despite the fact that civil society organisations insisted on this benchmark, as did the EC in its annual reports and the reports of numerous experts, no progress has been made.

Therefore, the priority of the new Government of Serbia must be to ensure the autonomy of the operational work of the police during the investigative and pre-investigative phases, and to additionally increase the independence and capacity of the Internal Control Sector as the key institution for ensuring the lawful conduct of police officers.⁴²³ To achieve this, the first step must be to conduct wide consultations on the Law on Internal Affairs, which is expected to be adopted in the near future. After the strong reactions and the withdrawal of the Draft Law on Internal Affairs in September 2021, the MoI organised consultations on problematic provisions related to the processing of biometric data, and a meeting in July 2022 regarding all other objections to the Draft.⁴²⁴ Despite the numerous proposals for improving the Draft that were presented during the consultations, there is every chance that the MoI will insist on introducing new powers related to the processing of biometric data, albeit on a limited scale, while there is a complete absence of will to contribute to limiting political influence on the operational work of the police.

The continuation of the trend of problematic behaviour of the police towards citizens during peaceful gatherings, which started during the protests that were held on 7 and 8 July 2020, is very worrying.⁴²⁵ Despite the fact that almost two and a half years have passed since these events, none of the reports of alleged excessive use of force and allegations of abuse of citizens have moved from the starting point, except for one in which the competent prosecutor’s office rejected the report due to insufficient evidence.⁴²⁶ In the past 6 months there has been a series of peaceful protests, in which the police acted and in connection with which there were indications of excessive use of force and police torture.⁴²⁷ This

422 European Commission, 2016, benchmarks for Chapter 24, p. 6

423 Coalition prEUgovor, *Proposed Priorities for the New Government and the New Convocation of the National Assembly 2022-2026*, Belgrade, 2022, p. 18, <https://www.preugovor.org/Policy-Papers/1730/Proposed-Priorities-for-the-New-Government-and.shtml>

424 For additional information on the consultations and proposals for amendments to the Law on Police, see prEUgovor coalition, *Proposals for Police Reform in View of the Upcoming Drafting of the Law on Internal Affairs*, BCSP, Belgrade 2022, <https://www.preugovor.org/Amendments/1761/Proposals-for-Police-Reform-in-View-of-the.shtml>

425 See: Jelena Pejić Nikić (ed.), *prEUgovor Alarm Report on the Progress of Serbia in Chapters 23 and 24 - November 2020*, BCSP, Belgrade, 2020, p. 67, <http://bit.ly/AlarmNov2020EN>

426 Ilić: *Two years have passed since the protest, but cases of ill-treatment of citizens have not moved an inch*, N1, Beograd, 7 July 2022, rs.n1info.com/vesti/ilic-ni-dve-godine-od-protesta-slucajevi-zlostavljanja-gradjana-ne-mrdaju

427 *Another activist accused the police of torture: They beat me for four hours, in two rounds*, Nikola Milosavić Aleksić, N1, Belgrade, 17 Oct 2022, <https://rs.n1info.com/vesti/jos-jedan-aktivista-optuzio-policiju-za-torturu-tukli-me-cetiri-sata-u-dve-ture/>

includes protests that were organised in Novi Sad in July⁴²⁸ and at the end of October regarding the construction project in Šodroš.⁴²⁹ The police also acted against activists during the demonstrations in Majdanpek in September, when detained protesters were allegedly denied the right to contact their attorneys and detained persons were allegedly ill-treated by police officers.⁴³⁰ In none of these cases is there any information about the initiation of procedures to determine the responsibility of police officers, apart from the official denials of the Mol that rights of citizens were violated by the police.

The above problems occurred in the shadow of the fact that the police have not had a director for the entire year 2022, and that, during the period covered by this report, the Minister of the Interior operated under a technical mandate. All this points to a completely demolished system of internal control of the legality of the actions of police officers, but also to a systematic avoidance of responsibility, not only by the police, but also by other institutions such as the prosecutor's office or the Protector of Citizens, who said nothing regarding these allegations. These events are particularly important as an indicator of the poor performance of the Internal Control Sector, which should have a more visible role in protecting the integrity of the police and the rights of citizens. In anticipation of the adoption of the new Law on Internal Affairs, it is especially important to envisage solutions that would improve the work of the Internal Control Sector.

Two examples can serve as additional evidence of the collapse of the integrity of the police and its susceptibility to political influences. The first refers to the treatment of migrants within the operation that was carried out by the police in Subotica in July and was allegedly aimed at breaking up groups involved in smuggling.⁴³¹ The Minister of the Interior was present on the ground during the execution of this operation, after which the media broadcast pictures of the humiliating behaviour of the police towards the arrested migrants, as well as the racist statement of the Minister who said that "Serbia will not allow its territory to be a place of gathering for bandits and riff-raff from the entire Asia".⁴³²

The operation was carried out by a special task force, which was formed after a newspaper article published a few weeks earlier claimed that high-ranking police officers were involved in the smuggling of migrants in that area.⁴³³ The allegations were never investigated.

The other example involves the Mol's actions during the European Pride Week (EuroPride), which, despite the tensions that were present in the weeks that preceded the event, passed without any major security incidents. However, the fact that the Mol banned the central march for security reasons, that the Prime Minister of Serbia supported the march, and that the march eventually did take place but in the presence of strong police forces, indicates susceptibility to political pressure.⁴³⁴ In addition to the above, the Mol failed to reduce tensions in society by adequately communicating before the event itself. The Mol failed to inform the public about the security risks in relation to the organization of the manifestation by classifying the assessment as "strictly confidential", thereby opening up space for public speculation and dissuading potential participants from attending the walk. Moreover, the Mol failed to reduce tensions in society through adequate communication; the Minister even contributed to the further politicisation of the entire situation, including his announcement of criminal charges that will be filed against the participants of the march and a ban on entering Serbia.⁴³⁵

428 Mol: Two people detained in Novi Sad for attacking an officer on duty, N1, Belgrade, 21 July 2022, <https://rs.n1info.com/vesti/mup-privedene-dve-osobe-u-novom-sadu-zbog-napada-na-sluzbeno-lice/>

429 Brković: Police arrests were unnecessary, N1, Belgrade, 21 Oct 2022, <https://rs.n1info.com/vesti/brkovic-hapsena-bila-bespotreban-potez-policije/>

430 NGO: Stop the violence against activists in Majdanpek, N1, Belgrade, 30 Sept 2022, <https://rs.n1info.com/vesti/nvo-zaustaviti-nasilje-policije-nad-aktivistima-u-majdanpeku/>

431 Vulin in Subotica: Serbia is not a parking for migrants, no passaran when it comes to smugglers, N1, 14 July 2022, <https://rs.n1info.com/vesti/vulin-u-subotici-srbija-nije-parking-za-migrante-krijumcari-nece-proci/>

432 Ibid.

433 Saša Dragojlo, Smuggler-translator and 'Major Deki': Allegations of crimes committed with the help of the police, BIRN, 22 June 2022, <https://birn.rs/krijumcar-prevodilac-i-major-deki-tvrdnje-o-kriminalu-uz-policijsku-pomoc/>

434 Vanja Djurić, The Mol bans the EuroPride march, N1, 13 Sept 2022, <https://rs.n1info.com/vesti/mup-zabranio-odrzavanje-setnje-u-okviru-evropajda/>

435 Serbian Minister of Police announces criminal charges against certain participants in EuroPride, RSE, 22 Sept 2022, <https://www.slobodnaevropa.org/a/32045968.html>

RECOMMENDATIONS

- Primarily the Government of the Republic of Serbia, but also the National Assembly, political actors, institutions and EU member states, civil society organisations and the media must work together to create an environment that contributes to improving the operational independence of the police aimed at achieving the benchmarks;
- In the context of the expected adoption of the Law on Internal Affairs, it is necessary to involve all interested parties and provide solutions to all problems that could potentially threaten the rights of citizens and lower the standards of police work;
- Urgently organise a public and transparent procedure for the appointment of a new Director of Police.

5.2. Migration and Asylum

There was no significant progress in the reporting period in adoption of amendments to the set of laws on asylum and migration, nor in the implementation of the Law on Foreigners. It is necessary to enhance implementation of legal concepts provided by the Law on Foreigners and the Law on Asylum and Temporary Protection whose purpose is to regulate the legal status of migrants and refugees in the territory of the Republic of Serbia. The transit of migrants through Serbia on the Western Balkans route has been continuously increasing. Sensationalist media reporting contributes to strengthening/spreading the anti-migrant narrative.

General overview of the state of affairs

The Western Balkans route is still the most active route of migration movements towards EU countries. In August alone, Frontex recorded about 15,900 irregular border crossing attempts along the Western Balkans route, which is an increase of 141% compared with the previous year. A particularly high increase was recorded on the part of the route through Serbia and North Macedonia.⁴³⁶ One of the potential reasons for the increase in irregular border crossings is a continuous repetition of irregular border crossing attempts by migrants that are already present in the Western Balkans.⁴³⁷

Table 5: UN statistics on migration in Serbia April 2022 - August 2022.

Monthly figures	April 2022	August 2022
The number of migrants and refugees present in Serbia	5,029	7,324
Recorded new arrivals to centres	6,132	17,997
The number of migrants and asylum seekers in government accommodation facilities	4,236	6,272

Source: The UN Refugee Agency (UNHCR), Snapshot for May 2022 and August 2022.

At the national level, available statistics indicate a continuously upward trend of migrants' transition through the Republic of Serbia. On the one hand, the number of estimated new arrivals to Serbia has significantly increased compared to the same period last year,⁴³⁸ whereas the trend of short stays in the accommodation facilities has remained unchanged. In addition, according to the data from the field, the

⁴³⁶ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Report on Migration and Asylum, Brussels 6/10/2022, P. 8.

⁴³⁷ FRONTEX, EU external borders in August: Highest number of arrivals since 2016, FRONTEX, 09/09/2022, <https://bit.ly/3EBVimT>, 10/10/2022.

⁴³⁸ An increase of 164% in 2022 as compared to 2021. Source: Western Balkans Refugees, asylum seekers and other people in mixed movements, as of end of July 2022, UNHCR.

increase in the number of new arrivals in the country has resulted in new informal migrants' gathering places in border areas.⁴³⁹ According to some estimates, there are about 2,000 migrants staying in hostels/hotels or in abandoned facilities in border areas with Hungary, Romania, Croatia, Bosnia and Herzegovina and in downtown Belgrade.⁴⁴⁰

Some changes have been recorded in the national structure of migrants staying in Serbia. According to the field data, over the past several months there has been a significantly higher number of Syria nationals among migrants, refugees and asylum seekers,⁴⁴¹ whereas there has been a mild increase in the number of migrants from the countries with which Serbia has established a visa-free regime (such as Burundi, Tunisia, India, Cuba, etc.)⁴⁴²

In the reporting period, fourteen out of nineteen available accommodation facilities (asylum centres and reception/transit centres) were active (where Vranje asylum centre is still a facility accommodating only refugees from Ukraine). Although currently active accommodation facilities are not filled to full capacity, some reception/transit centres in border areas are still facing high pressure (Adasevci, Obrenovac, Presevo, Sombor and Subotica centres).⁴⁴³

Compared to previous reporting period, there has been an increase in the number of recorded intentions to seek asylum and asylum applications as well. One of key reasons for the increased numbers in the statistics is the increase in the number of Ukrainian nationals wishing to obtain temporary protection, having in mind that the provisions of the Law on Asylum and Temporary Protection provide for registration as a prerequisite for obtaining temporary protection.

Table 6: Asylum statistics for Serbia April - August 2022

	April 2022	May 2022	June 2022	July 2022	August 2022
Registered intentions to seek asylum	387	529	377	672	421
Asylum applications	3	29	81	45	11
Positive decisions	1	0	6	3	6

Source: UNHCR Serbia Statistical Snapshot August 2022

Reports of international organisations and civil society organisations that follow migrants' and refugees' movements indicate that cross-border incidents including elements of violence still occur,⁴⁴⁴ while that the number of recorded cases of collective expulsion (push-backs) from neighbouring countries to Serbia has reduced (from 387 in March to 337 in August 2022).⁴⁴⁵

Despite an increasing body of evidence on violations of human rights at borders of not only Serbia but also along the European continent, there is still the climate of impunity. This is partially caused by the lack of adequate monitoring of findings and recommendations of human rights monitors, and the lack of a clearer accountability system and failure to meet the obligation of protecting human rights.⁴⁴⁶ In such circumstances, it is particularly important to consider establishment of an independent institutional

439 Klikaktiv, "The Second Quarterly Report in 2022 (April – June 2022)", p. 11.

440 UNHCR, UNHCR Serbia update, August 2022.

441 UNHCR, Serbia Statistical Snapshot-August 2022.

442 "Larger groups of migrants and refugees as well are arriving to Serbia! Fleeing war and poverty, hundreds of foreigners are arriving daily to our country as well", *Blic*, 06/10/2022. <https://bit.ly/3eILNh5>.

443 UNHCR, Centre Profiling Serbia September 2022.

444 "Orban's Union, *Novosti*, 21/09/2022, <https://bit.ly/3Ve8Qek>.

445 UNHCR, Serbia Statistical Snapshot-August 2022.

446 Strengthening Human Rights Accountability at Borders ENNHRI Report, July 2022. More: <https://bit.ly/3eqCb4y>

mechanism for monitoring the state border either through the tasks of the National Preventive Mechanism (NPM) or by establishing a new mechanism within the Ombudsperson's institution, or by establishing an independent surveillance mechanism for police officers, in partnership with international stakeholders, the academia and/or civil society organisations.⁴⁴⁷

Migrants staying outside government accommodation facilities risk their safety

The situation in the field again indicates that increased presence of migrants under open skies puts their safety and safety of local population at increased risks. Over the past few months, increasingly frequent armed incidents among migrants have been recorded in border areas. For instance, on 2 July in Makova Sedmica place on the outskirts of Subotica, there was a conflict among smuggling groups that killed one person and injured 6.⁴⁴⁸

In response to this incident, the Ministry of the Interior (MoI) increased the presence of police officers in border areas⁴⁴⁹ and it also established an Operational Task Force comprising representatives of the Criminal Police Directorate, the Gendarmerie, special anti-Terrorist Unit, Border Police Directorate, General Police Directorate, Internal Control Sector, Security Intelligence Agency and police administrations for the cities of Belgrade, Sombor, Subotica and Kikinda⁴⁵⁰ for the purpose of detecting crimes committed by migrants.

Actions carried out by the Task Force over the previous period of time⁴⁵¹ are different to some extent from regular police actions aimed at finding and placing adult irregular migrants in reception and asylum centres. Besides referring migrants to reception centres, police actions were primarily aimed at initiating misdemeanour criminal proceedings or at transport of the detected persons to shelters for foreigners.

However, the fact that regardless of continuous actions of detecting irregular migrants and their referral to reception centres or initiating misdemeanour or criminal proceedings, increased presence of irregular migrants in border area settlements⁴⁵² brings into question the sustainability of the actions and indicates the lack of consistent system response aimed at combating irregular migration.

It is important to bear in mind that asylum and reception centres are open-type accommodation facilities and that after execution of criminal or misdemeanour sanctions, the migrants who entered Serbia illegally or who are staying in Serbia illegally find themselves again outside institutional capacities. This means that without aligned implementation of provisions of the Law on Foreigners and the Law on Asylum and Temporary Protection, migrants who do not wish to stay in Serbia will probably be outside the centres, in border areas or will make attempts of illegal border crossings. In this regard, it is crucial to additionally enhance implementation of the above provisions. This primarily entails adoption of a relevant administrative act establishing the legal status of migrants, and the accompanying corpus of rights and obligations (return order, postponement of forced removal order or, should the foreigner file the appropriate request and meet the statutory conditions, humanitarian residence permit). In addition, if establishing the existence of reasons envisaged by the law, migrant's freedom of movement may be restricted through an individual decision, provided it is limited to a certain place or a closed-type facility - shelter for foreigners, respecting all the guarantees provided by the national legislation and international standards.

447 In Croatia, an Independent Mechanism of monitoring the actions of police officers of the Ministry of the Interior in the area of illegal migration and international protection was established under the Agreement of 8 June 2021 signed by the Ministry of the Interior of the Republic of Croatia on the one hand and the Croatian Academy of Medical Sciences, Croatian Academy of Legal Sciences, Center for Cultural Dialogue, Croatian Red Cross and prof. dr. sc. Iris Goldner Lang on the other hand. More details: 1. Biannual Report of the Independent mechanism of monitoring the actions of police officers of the Ministry of the Interior in the area of illegal migration and international protection, June - December 2021, Zagreb, December 2021 <https://bit.ly/3CKQpGT>, 10/10/2022.

448 "Subotica: Armed conflict among migrants in Makova Sedmica, one person died from injuries" *Danas*, 02/07/2022, <https://bit.ly/3SWvvKu>, 10/10/2022.

449 "Bigger conflict between two groups of migrants in Makova Sedmica was prevented, one person with firearm injury", Subotica, 30/9/2022, <https://bit.ly/3CRmGwc>, 10/10/2022.

450 "Task force action against illegal migrants in Subotica", *RTS*, 14 July 2022, <https://bit.ly/3CtSuFL>, 10/10/2022.

451 Ibid; "TASK FORCE OPERATION EARLY THIS MORNING: About 200 irregular migrants found, their weapons and money confiscated" *Novosti*, 05/10/2022, <https://bit.ly/3TxyZmX>, 10/10/2022.

452 "Protest against migrants - citizens signed a petition and sent an open letter to authorities" *Subotica.com*, 23/07/2022, <https://bit.ly/3COGJLI>

✖ **ALARM: Concerning sensationalist discourse on conflicts among smuggling groups**

Media coverage of the events in Makova Sedmica on 2 July and the response of competent authorities that followed, additionally contribute to dehumanisation of migration population and to fostering an anti-migrant narrative in the public discourse and indicate the lack of awareness of the obligation to protect the rights of migrants in irregular movements. We are referring to newspaper articles such as "MIGRANTS HEADING TOWARDS AUSTRIA HEAVILY ARMED: The media buzz about the action of Serbian special forces and the new wave of asylum seekers",⁴⁵³ creating the image that all migrants staying under open skies belong to criminal structure,⁴⁵⁴ recording and taking photos of migrants in moments when the police are executing their duties.⁴⁵⁵

The events on 2 July also indicate the complexity of migrants' position with regard to smugglers. It often happens that migrants who have been subjected to smuggled in one part of their path towards a country of destination also get involved in carrying out one or more acts of criminal offence of unauthorised crossing of the state border and smuggling of people. The reason for their involvement is sometimes lucrative in nature, but also their vulnerability in their relations with the smugglers. These are all circumstances important for establishing the existence and level of their legal responsibility.

The fact is that the smugglers' mode of operation is constantly changing and adjusting to new circumstances, and that at the same time the security risks for migrants using smugglers' services are increasing, which is why there is a need for further enhancement of the institutional framework and capacities. Particularly important is the cooperation with civil society organisations and individuals working with migrants in the field, as well as with investigative authorities, for the purpose of collecting information that would contribute to building the legal case and to sustainability of indictments in court proceedings.

Legislative activities – process is lagging behind

After the presentation of the first two working versions of the draft laws amending the Law on Asylum and Temporary Protection, Law on Foreigners and Law on Employment of Foreigners, it remains unknown whether the new drafts have been made and whether and to what extent have the proposals and comments provided during the consultation process in November 2021 been included in the new drafts. It is believed that after the establishment of the new Government, the process of amending laws in the field of migration and asylum will intensify, in particular the Law Amending the Law on Employment of Foreigners and the Law on Foreigners, given the increased interest in employment of foreign nationals in the Republic of Serbia.⁴⁵⁶

Protection of Ukrainian refugees

According to some estimates, since the beginning of the war in Ukraine, over 50,000 Ukrainian refugees have passed through Serbia, and over 10,000 of them have remained in Serbia.⁴⁵⁷ As compared to these data, a significantly lower number of the Ukrainian refugees has asked for the international protection, so that by the end of August, 888 persons were granted temporary protection.⁴⁵⁸ Besides the Ukrainian nationals, among the displaced persons who have arrived from Ukraine and who have asked for the temporary protection, there are also nationals of the Russian Federation, Armenia, Belarus, Bosnia and

453 *Novosti*, 17/07/2022, <https://bit.ly/3SVOTHJ>, 10/10/2022.

454 "Dveri Subotica: The authorities and the police should protect the citizens against an increasing number of armed smuggling groups", *Danas*, 03/10/2022, <https://bit.ly/3MyDM55>, 10/10/2022

455 "Migrants kneeling while Vulin is making a statement, for experts - humiliation and a spectacle", *N1*, 18 July 2022, <https://bit.ly/3Ey8Vnn> 10/10/2022

456 "The Government is preparing 'import' of workers from Guatemala, Bangladesh and Vietnam", *Danas*, 30/06/2022, <https://bit.ly/3z8DVGW>, 24/10/2022.

457 "Stories by refugees from Ukraine: After 160 days, they still remember each detail", *N1*, 2 August 2022 <https://bit.ly/3rHzz5p> 10/10/2022

458 UNHCR, Serbia update August 2022.

Herzegovina and China.⁴⁵⁹ The data collected by the civil society organisations providing legal assistance in the asylum procedure, indicate that there are some cases of displaced persons from Ukraine who have filed an asylum application and who have been granted another form of international protection in a regular asylum procedure.⁴⁶⁰

Given the fact that in most of the cases a relatively short time period has elapsed since the decision on granting temporary protection was made, it is still early to speak about potential challenges in accession to rights for the persons granted temporary protection. However, one of the key questions addressed to several institutions is related to access to the labour market and the possibility of exemption from administrative fees payments for issuing a personal working permit to a person granted temporary protection.⁴⁶¹

According to the preliminary results of mapping the needs of Ukrainian refugees in the territory of Serbia, carried out by UNHCR (on the territory of 15 municipalities, where 66 persons were interviewed), the following priority areas of intervention were identified: provision of up-to-date information, legal awareness, health, employment, education and social protection.⁴⁶²

Enrolment of migrant children in regular schools continues

Enrolment of migrant children in regular schools has continued at an ordinary pace. Immediately prior to the beginning of the school year, the Ministry of Education instructed school administrations on the inclusion of migrant children into a formal system of education, providing additional information on the system of education in Ukraine. According to the data of the Commissariat for Refugees and Migration of the Republic of Serbia, out of 100 registered school children in asylum and reception centres, 30 children from Sid, Vranje and Krnjaca enrolled in primary schools and 13 of them enrolled in secondary schools.⁴⁶³ The practice of enrolling Ukrainian children in primary and secondary schools was continued not only in Vranje, but also in Belgrade, Novi Sad, Leskovac, Sombor, Uzice, Zrenjanin and Pozarevac.

RECOMMENDATIONS

- It is necessary to intensify activities aimed at sensitizing local communities and at initiation of the dialogue that would contribute to understanding the needs of migrants and host communities
- It is essential to ensure all the necessary preconditions for full and effective implementation of the Law on Foreigners and the Law on Asylum and Temporary Protection.
- Necessary steps need to be taken to achieve a full application of the Law on Foreigners and creation of legal prerequisites for solving the legal status of persons residing in the Republic of Serbia without a regulated status.
- In this regard, it is particularly important to strengthen the infrastructure and human capacities of the authorities in charge of implementing legal provisions limiting the freedom of movement, provisions on returns and standards of protection and respect of human rights of TCN returnees.
- It is of crucial importance to monitor the effects of the implementation of the Law on Foreigners and the Law on Asylum and Temporary Protection, in particular of the provisions related to the non-refoulement principle.

459 Belgrade Center for Human Rights, Right to Asylum in the Republic of Serbia, Report for January - June 2022, p. 9 <https://bit.ly/3ep8wJ1> , 10/10/2022

460 Ibid. p. 15-17.

461 Child Protection Working Group Meeting (CPWG) on 3/06/2022.

462 UNHCR, Serbia update August 2022.

463 Child Protection Working Group Meeting (CPWG) on 2/9/2022.

- It is essential to enhance capacities for combating smuggling of people, and for the protection of migrants subjected to smuggling.
- It is important to strengthen the connection between the system for combating irregular migration and the asylum system.
- It is pivotal to create conditions for full implementation of the decisions on temporary protection and that persons who have left Ukraine can exercise their rights.

5.3. Fight against Organised Crime

The narrative about the success of the fight against organised crime is unjustifiably dominant in Serbia, because the data on said fight are not public. The narrative is promoted mostly by the representatives of the executive branch of power, reminding us that this fight depends largely on political will. Unfortunately, instead of a strategic approach, the individual approach to cases of organised crime still prevails (as in the cases of Belivuk's group, Jovanjica 1 and 2, and the group of Darko Šarić). Nothing has been done to review the role of security intelligence agencies in criminal investigations.

The activities envisaged in Benchmark 4 of the Revised Action Plan for Chapter 24 – redefining the role of intelligence agencies in criminal investigations – were not implemented during the reporting period. The Security and Intelligence Agency (BIA) is still authorised to apply special evidentiary actions in the fight against organised crime. Moreover, the police have to rely on BIA's resources because the technical equipment necessary for covert surveillance of communications is located in its premises. Although this was supposed to be changed in 2016, nothing has been done about it to date. At the meeting of the NCEU Working Group for Chapter 24, held in July 2022,⁴⁶⁴ representatives of the civil society were told that a comparative model for analysis has not yet been selected, despite the fact that it is a prerequisite for all other activities related to this benchmark. Instead of the planned study visit to Germany, which was selected as the most interesting country of the European Union to analyse, there will be a workshop, for which it is first necessary to select experts. In addition, it was pointed out that the fulfilment of this benchmark depends on a political decision. Such a state of affairs was noted in the Report on the implementation of activities for the period January-June 2022.⁴⁶⁵ However, it is not clear how the preparation of the comparative analysis got marked as an activity that is under way, considering that the areas and aspects it should cover were not previously defined.

Minister of the Interior Aleksandar Vulin continued to inform the public about the success of the fight against organised crime. At the beginning of June 2022, he stated that the police managed to successfully dismantle more than 30 organised criminal groups (OCGs) in a year and a half (2021 and the first half of 2022).⁴⁶⁶ Acting Police Director Dragan Vasiljević repeated these data on 12 June 2022, at the celebration of the Day of the Ministry of the Interior. On that occasion, he mentioned that the police arrested members of the Belivuk-Miljković and Darko Šarić gangs.⁴⁶⁷ The arrest of a member of the Belivuk-Miljković OCG was presented in the new Programme of the Government of Serbia as the most important result of the work of the previous Government. In other words, a total of 42 OCGs were prosecuted during the previous Government's mandate.⁴⁶⁸ However, such reporting only simulates an effective fight against organised crime. The number of OCGs is a variable category, as the existing groups tend to consolidate or divide while new ones are formed. At the same time, the records of the results of the work of state bodies are not publicly available, so it is difficult to verify these data.

464 "Meeting with the Mol held on Chapter 24 within the NCEU", BCSP, 25 July 2022, <https://bit.ly/3f3MQ5K>, 14 Oct 2022

465 Ministry of the Interior of the Republic of Serbia, Revised Action Plan for Chapter 24 – The first report on the implementation of activities for the period January-June 2022, pp. 58-60, <https://bit.ly/3S5IEzW>, 14 Oct 2022

466 "Vulin: In a year and a half, the police dismantled 30 organised criminal groups", N1, 2 June 2022, <https://bit.ly/3O6wN2u>, 14 Oct 2022

467 "Vasiljević, Acting Police Director, speaks out", 12 June 2022, <https://bit.ly/3S79MhU>, 14 Oct 2022

468 Programme of the Government of the Republic of Serbia, candidate for the Prime Minister of the Republic of Serbia, National Assembly of the Republic of Serbia, 25 Oct 2022, <https://bit.ly/3zJx7zH>, 27 Oct 2022

Figure 4: Number of active and neutralised organised criminal groups in Serbia, 2015-2020



Sources: Serious and Organised Crime Threat Assessment 2019⁴⁶⁹ and Public Safety Strategic Assessment 2022-2025⁴⁷⁰

Serbia is not using a strategic approach in the fight against organised crime. This was also noted in the European Commission's annual report on Serbia, where it was stated that this fight is carried out on a case-by-case basis.⁴⁷¹ Proof of this is the fact that the public is presented just with reports on certain cases,⁴⁷² such as the case against the OCG that was headed by Veljko Belivuk. The second indictment against this OCG has been confirmed, accusing its members of two additional murders. They are now accused of a total of 7. The indictments did not examine potential political connections of this gang that were discovered by independent journalists, because the investigation covered only the period starting from 2019. Another report by independent journalists showed that the Secretary General of the Government of Serbia was providing this OCG with political protection.⁴⁷³ Although the indictment was based on correspondence made using the Sky application, the confessions of three members of this criminal group will be the main evidence in this case.⁴⁷⁴

It is still not clear how the Special Department of the Higher Court in Belgrade will interpret the evidence obtained through the Sky application, which the French police submitted to the Serbian prosecution. The defendants' defence attorneys emphasise that these were not obtained in accordance with the law. On the other hand, correspondence from the Sky application was an important piece of evidence, supported by the testimony of the second defendant, on the basis of which the former inspector of the Service for the Fight against Organised Crime was convicted in the first instance after. It was found that he had disclosed confidential police information to members of Belivuk's criminal group.⁴⁷⁵ Therefore, a uniform practice of Serbian courts on the legal relevance of correspondence exchanged through the Sky application as evidence in criminal proceedings has not been established.

In the meantime, the trial of this OCG began, and many of its members defended themselves by remaining silent. The others denied that they had committed the crimes for which they were accused, saying that witnesses and other defendants were lying. The detention of four persons was terminated. During the presentation of defence, Veljko Belivuk and his closest associate Miljković testified that they are members of the ruling Serbian Progressive Party. They said that their hooligan/criminal group was founded to serve the state and that they provided security services at protests and rallies for the needs of the ruling political elite. In addition, they said that they had met the President of Serbia in person, as well as Aleksandar Vulin, former Minister of the Interior. They did not offer any evidence for these allegations.⁴⁷⁶ Their defence was thus not related to the indictment, but to events that are not covered by that act. In that sense, said defence does not have great procedural importance, but it is significant because they reminded the public of the findings of independent media reports from previous years.

469 Ministry of the Interior of the Republic of Serbia, Serious and Organised Crime Threat Assessment, Belgrade, 2019, <https://bit.ly/3E0XRyf>, 27 Oct 2022

470 Ministry of the Interior of the Republic of Serbia, Strategic Assessment of Public Security 2022-2025, Belgrade, 2021, <https://bit.ly/3D3jkpN>, 14 Oct 2022

471 European Commission, *Serbia 2022 Report*, op. cit, p. 53

472 For additional information about the cases involving the criminal groups of Veljko Belivuk and Darko Šarić, and the cases 'Jovanjica 1' and 'Jovanjica 2', see earlier prEUgovor Alarm reports, available at: <http://bit.ly/AlarmReports>

473 "NIN: Secretary General of the Government Novak Nedić was protecting Belivuk's group", *KRIK*, 29 Sept 2022, <https://bit.ly/3Tpd0yn>, 14 Oct 2022

474 "Why the prosecutor's office settled with a murderer from Belivuk's gang", *Vreme*, 18 Aug 2022, <https://bit.ly/3S8cPq9>, 14 Oct 2022

475 "Inspector Stolić sentenced to two years in prison for disclosing confidential information to criminals", *KRIK*, 15 July 2022, <https://bit.ly/3T7EatR>, 14 Oct 2022

476 "The trial of Veljko Belivuk and Marko Miljković: The first week of the trial is over. What have we learned?", *BBC News in Serbian*, 21 Oct 2022, <https://bbc.in/3SOvkGM>, 27 Oct 2022

The Prosecutor's Office for Organised Crime filed a new indictment against Darko Šarić, a well-known leader from the Serbian criminal underworld, and 14 other persons. According to the results of the investigation, they were planning to kill the person who was granted the status of cooperating witness in other criminal proceedings against the defendant. The indictment also included police officers, because they allegedly influenced the outcome of certain criminal investigations against members of the Šarić gang. In this case, too, the main evidence is correspondence exchanged via the Sky application.⁴⁷⁷ However, the other two proceedings against Darko Šarić – one for money laundering and the other for international smuggling of cocaine – show how the authorities fight against organised crime in Serbia. The conviction of Darko Šarić and his associates for money laundering has been overturned, and the procedure will have to start over, from the beginning.⁴⁷⁸ In another proceeding, for international cocaine smuggling, Darko Šarić was sentenced to 14 years in prison as the leader of the OCG, while his associate was sentenced to 15. This is the 6th verdict that was issued against Darko Šarić in this proceeding.⁴⁷⁹ Both proceedings were initiated in 2010 and neither has been formally concluded.

The preliminary hearing in the case of 'Jovanjica 2', in which members of the police, BIA and the Military Intelligence Agency were accused of producing marijuana as members of an OCG, has not been held for 16 months. As the last attempt to hold the hearing, a motion was submitted to disqualify the deputy prosecutor for organised crime. This delayed the beginning of the trial, which can be interpreted as possible obstruction of the criminal procedure.⁴⁸⁰ The examination of witnesses is currently under way in the case 'Jovanjica 1'. The defence of Predrag Koluvija, the first defendant in both cases, presented new evidence that showed that marijuana really was being produced on the farm in Jovanjica.⁴⁸¹ The intention of the defence is also to dispute the relevance of the correspondence that was exchanged via the application "Razgovor", which Jovanjica employees used for their secret communication.⁴⁸² After the interview of Dijana Hrkaločić, a former State Secretary of the Ministry of the Interior who was accused of trading in influence, the prosecution questioned Slobodan Milenković, the police inspector who discovered the marijuana plantation in Jovanjica. In that interview, in addition to accusing inspector Milenković, Hrkaločić also said that former Minister of the Interior, Nebojša Stefanović and the Deputy Prosecutor for Organised Crime, who is handling the cases 'Jovanjica 1' and 'Jovanjica 2', were in charge of the operation. By saying this, she wanted to let the public know that Jovanjica is not related to the President of Serbia and his family.⁴⁸³ It is necessary to recall that, in October 2021, the President and Prime Minister of Serbia defended Predrag Koluvija.⁴⁸⁴

RECOMMENDATIONS

- Instead of focusing on individual cases, Serbia should adopt and implement a strategic approach to the fight against organised crime;
- Competent authorities should investigate allegations of possible cooperation between members of organised crime and politicians, based on existing media reports;
- Provide legal and practical conditions so that the police can independently implement special evidentiary measures in the fight against organised crime.

477 "New indictment against Darko Šarić in Serbia", *Radio Free Europe*, 7 Oct 2022, <https://bit.ly/3MC5vSI>, 14 Oct 2022

478 "Darko Šarić's conviction for money laundering overturned", *KRIK*, 4 Aug 2022, <https://bit.ly/3VBBINZ>, 14 Oct 2022

479 "Šarić's sentence for drug trafficking was reduced, he received a more lenient sentence than his subordinate", *KRIK*, 12 Oct 2022, <https://bit.ly/3ezKknq>, 14 Oct 2022

480 "Jovanjica 2 is still waiting its turn: Preliminary hearing postponed due to request for exemption of prosecutor Saša Drecun", *BIRN Serbia*, 2 Sept 2022, <https://bit.ly/3TIJPNn>, 13 Oct 2022

481 "The prosecutor has new evidence against Koluvija - Drug trafficking judgments from Hungary", *N1*, 21 Sept 2022, <https://bit.ly/3T2WrlN>, 14 Oct 2022

482 "Jovanjica 1: Witness and defence attorney dispute the authenticity of the prosecution's key piece of evidence", *BIRN Serbia*, 12 Oct 2022, <https://bit.ly/3CpCuom>, 13 Oct 2022

483 "Dijana Hrkaločić's 'truths' and lies about Jovanjica", *BIRN Serbia*, 1 Sept 2022, <https://bit.ly/3rT4DiY>, 13 Oct 2022

484 Jelena Pejić Nikić (ed.), *PreUgovor Alarm: Report on the Progress of Serbia in Cluster 1 – November 2021*, op. cit, p. 111

5.4. Suppressing and Combating Trafficking in Human Beings

In the previous period, in the field of suppressing and combating trafficking in human beings, there have been new negative developments and steps back. The number of unrealised activities from the Action Plan for Chapter 24 has become so great, that more than two thirds of the planned activities have remained in the domain of wishful thinking. The umbrella national public policy document in the field, Strategy for Prevention and Suppression of Trafficking in Human Beings, especially Women and Children, and Protection of Victims in the Republic of Serbia for 2017-2022 is in the final stage of its implementation without the Action Plan being adopted, and thereby without having clear mechanisms of monitoring and reporting. At the point when development and adoption of a strategic document for the next couple of years should be well underway, there is no information concerning this process. In addition to these internal problems, global and regional trends continue to be more and more complex, and the list of challenges for Serbian state concerning the combat against trafficking in human beings continues to grow, with the responses to these becoming ever weaker and more indecisive.

The forecasts of an increased number of migrants that would arrive to Serbia, have proven to be correct⁴⁸⁵. Tens of thousands of people who come to, or transit through Serbia, represent a lucrative source of income for human traffickers and smugglers. Serbia continues to have an increase in the number of migrants coming to work on construction sites and in other sectors, despite the fact that the state is obviously incapable of providing these people basic conditions, or protecting their human and labour rights. The majority of the Vietnamese workers in the “Linglong” factory in Zrenjanin has long returned to Vietnam, while in the previous period, there have been periodical reports of new breaches of rights and cases of exploitation in the factory, this time with Chinese and Serbian workers as victims. Due to the lack of reaction in this case, for the first time in the last five years, Serbia regressed in the USA State Department’s annual report on trafficking in human beings for 2021⁴⁸⁶. Numerous previous reactions by international institutions and organisations concerning the Zrenjanin case, led to no (visible) reaction by Serbian state authorities.

And while Serbian workers seek better working conditions and larger salaries in Western Europe (also with a great risk of becoming victims of some sort of exploitation there), Serbia simplifies interstate agreements, opening its doors for the influx of fresh labour force from Bangladesh, Vietnam and Guatemala⁴⁸⁷.

With all the challenges and omissions indicated in the previous reports, as well as new ones, it becomes evident that this important and complex field has been lacking guidance, with an enormous risk and grave, long lasting consequences for the victims, either Serbian or originating from other country.

5.4.1. Combating trafficking in human beings in the Action Plan for Chapter 24 – the list of unrealised and unverifiable activities

The reviewed Action Plan for Chapter 24 (AP 24)⁴⁸⁸ from 2020, also involves, in its Temporary Measure 8, combating against trafficking in human beings. The measures and activities contained therein can be classified in two groups: their realisation is either seriously late (not realised at all), or their level of fulfilment cannot be monitored due to more general problems in the functioning of the state apparatus for the prevention of and combating human trafficking in Serbia.

485 “U Srbiju stižu tri veće grupe migranata, ali i izbeglica! U bekstvu od rata i nemaštine stotine stranaca dnevno pristiže i kod nas”, Blic, 6 October 2022. <https://bit.ly/3N0h5Hp>, accessed on 7 October 2022.

486 US Department of State’s Trafficking in Persons Report 2022 – Serbia: TIER 2 watch list, 2022, <https://bit.ly/3CYw3ZD>

487 “Danas: Government of Serbia Preparing to Import Workers from Guatemala, Bangladesh and Vietnam” Danas, 30 June 2022. <https://bit.ly/3Fr2nrd>, accessed on 3 October 2022.

488 In Chapter 6: Police Cooperation and Combating Organised Crime, Section 6.2, Temporary Measure 8, 2020, <https://bit.ly/3Bxzk0f>.

The realisation of the list of activities, modest to begin with, contained in the AP 24, fails at the very first step already, i.e. when it comes to Activity 6.2.8.1, which envisages implementation of the Strategy for Prevention and Suppression of Trafficking in Human Beings, especially Women and Children, and Protection of Victims in the Republic of Serbia for 2017-2022. The previous Alarm Report emphasised irregularities concerning the adoption of the reports on implementation of the Action Plan for realisation of the Strategy for 2019-2020, as well as delays in development of the AP for 2021-22 which was not officially adopted in the end. This opens up the questions of whom and in what manner did monitor realisation of this plan, especially since this is among the rare activities in the AP 24 (6.2.8.2) for which allocation of separate funding was envisaged. Namely, the budget of the Ministry of the Interior envisages allocation of 89,424 euros a year for regular activities of the employees.

The aforementioned flaws have been a direct obstacle to realisation of the two subsequent activities: external evaluation of implementation of the Strategy (2017-2022),⁴⁸⁹ as well as development and adoption of a new national policy document for eradication of human trafficking in the Republic of Serbia for 2023-28, together with a draft proposal of the action plan for its implementation for 2023-25.⁴⁹⁰ Both these activities, according to the AP 24, have significant donors' support, by the *Organisation for International Cooperation of FR Germany – GIZ* and *Initiative for Migrations, Asylum and Refugees – MARRI Regional Project Preventing and Combating Human Trafficking* (total value of the project 5 million euros).

The system of public policies' strategic planning and implementation of the planned measures, has collapsed altogether in this case, leaving two impossible tasks in its wake: performance of an external review without the action plan for the last two years of the Strategy's implementation and without reporting on implemented activities; and, subsequently, based on incomplete findings of the external review, to begin with the development of a new strategic document – this activity already being behind the schedule. Specialised civil society organisations have been intentionally removed from the list of actors that would participate in the development of the new strategic document, since during the development of the Action Plan for 2021-22, they were removed from direct participation in the process, under the excuse that they "are not state authorities, institutions or organisations" and they could provide their input only in writing, through the public consultation process that lasted for two weeks. Even then, the forms being distributed limited the coverage of proposals and suggestions.

There are some more important activities and results envisaged by the plan, which have certainly not been realised, or their rate of realisation has been impossible to assess. For the third quarter of 2021, it was envisaged to develop the analysis with recommendations for Directive 2011/36/EU and Communication from the Commission to the European Parliament and the Council Reporting on the follow-up to the EU Strategy towards the Eradication of trafficking in human beings and identifying further concrete actions COM/2017/0728, analysis with recommendations for Directive 2011/92/EU, as well as analysis with recommendations for Amber Alert system. All these activities⁴⁹¹ involved substantial budgets. Realisation of these results (outputs) should have served as the basis for further activities: harmonisation of the legislative framework based on the analyses made,⁴⁹² as well as realisation of recommendations, in line with the results of the Functional Analysis of the existing cooperation mechanisms.⁴⁹³

One of the rare activities in the AP 24 which can be said to have been fulfilled is the adoption of amendments to the Law on Protector of Citizens in late 2021, which created conditions for the establishment and operation of independent rapporteur on human trafficking in Serbia. However, at the time of writing this report, there have been no information concerning the manner in which the Office of the Protector of Citizens would engage in the activities of the independent rapporteur on trafficking in persons. One of the activities in the AP 24 pertains to establishment of capacities of the Protector of Citizens' Office for independent monitoring of activities in combating trafficking in human beings, with a special emphasis

489 AP 24, Activity 6.2.8.6.

490 AP 24, Activity 6.2.8.7.

491 2,205 euros per member of the Special Work Group in 2020, and 1,890 euros per member of the Special Work Group in 2021, as a part of the regular activities by the employees.

492 AP 24, Activity 6.2.8.5.

493 AP 24, Activity 6.2.8.11

on the rights of human trafficking victims and protection of human rights. However, aside from sporadic actions by the Protector of Citizens' Office concerning the practice of child marriage, and the unacceptable interventions in the case of Vietnamese workers⁴⁹⁴, there has not been enough information pertaining to the manner in which this important function would be realised – whether the Protector of Citizens would undertake the role of the independent rapporteur, or assign it to one of the deputies, whether the sufficient resources exist to implement the activities in this field, what the plan for action is, etc.

5.4.2. Institutional framework for combating trafficking in human beings – put on hold?

The crucial body in the management, coordination and support to intersectoral response to trafficking in human beings is *Council for Combating Human Trafficking*⁴⁹⁵. As it appears, in January 2023, the Council would mark a sad anniversary – full four years without sessions, instead of meeting at least twice a year since⁴⁹⁶, as the decision of its establishment envisages (while reasons for even more frequent sessions have certainly not been lacking). Such failure to function by the Council continues to block the adoption (and implementation) of key strategic and operative documents which are crucial for functioning of the system of combating trafficking in human beings in Serbia.

National Anti-Trafficking Coordination Office (Office), the operation of which is directly related to that of the Council, has also continued to operate with lowered visibility. While the Office was organising meetings of the coordination body for monitoring of implementation of the Strategy and the Action Plan, and coordinated the process of collecting reports on the realised activities, the exchange of information among key actors was on a much higher level. However, after the coordination body has been dissolved, the level and quality of information among the human trafficking actors, have significantly decreased. In spite of the numerous issues that require discussion, exchange of data, experiences and lessons learned, it seems that the Office has withdrawn from the process.

Almost ten months since the Law on the Protector of Citizens has been amended, there is still no information from the Protector of Citizens' Office pertaining to the manner in which the function of the independent rapporteur on human trafficking would operate.

Even though the adoption of the Law on Amendments to the Law on Social Protection is late by more than a year, we still have no information in what phase the draft to this law is, or when the public hearing and adoption will take place. Specialised civil society organisations, as well as other actors that deal with the prevention of and combating trafficking in human beings, would follow this process with special attention, due to the importance that the Law on Social Protection has for the National Referral Mechanism for human trafficking victims (NRM), especially in defining the role and position of the Centre for Protection of Human Trafficking Victims in the social welfare system.⁴⁹⁷

The potentials of one of the decently designed documents, which describes intersectoral cooperation, competences and procedures in dealing with human trafficking victims, the so-called SOP – *Standard Operating Procedures*, remain unfulfilled, as these are used only as recommendations (in spite of the long announcements of their integration into rulebooks and other bylaws), and the SOP are left without regular annual updating. In that way, the SOP become yet another unused chance within the Serbian system of combating trafficking in human beings.

494 The presumed victims of trafficking in human beings for labour exploitation in the Linglong factory in Zrenjanin.

495 <https://bit.ly/3eW4fgK>

496 "Na današnjoj sednici Saveta za borbu protiv trgovine ljudima sumirani dosadašnji rezultati i usvojene smernice za dalji rad" (On today's session of the Council for Combating Human Trafficking the results achieved thus far summarised and guidelines for further action adopted), Ministry of the Interior, 25 January 2019. <https://bit.ly/3D0LFmj>, accessed on 12 October 2022.

497 Established in 2012 via the Decision by the Government of the Republic of Serbia, *Official Gazette RS*, no. 16/2012.

5.4.3. New slavery for the 21st century – EU reactions and Serbian neglect

The case of the Vietnamese workers employed in the Linglong tyre factory, reported on in the previous Alarm Report, is still to receive proper attention by Serbian authorities. It has thus joined a series of previously ignored mass cases of labour exploitation of Serbian and foreign workers (SerbAz, Indian workers). At the same time, an increase in the number of foreign nationals who reside in Serbia for labour purposes is recorded, with almost 22 thousands of them: most of them are from China (48.1% or 10,016 workers), Turkey (21.2%, 4,413 workers), Russia (4.4%, 912 workers), India (3.2%, 670), Romania (1.7%, 362) and other states (21.4%, 4,455 workers).⁴⁹⁸ In the same period, the National Employment Service issued the total of 23,662 labour permits to foreign nationals, including: 1,635 personal work permits, 11,646 work permits with the purpose of employment, 5,926 permits for posted workers, 2,430 work permits for internal movement within a company, and 18 work permits for independent professionals. Bearing in mind that the overwhelming majority of foreign workers engaged in the cases that ASTRA has already reported on, didn't have work permits, the official data obviously do not represent a true situation concerning the number of foreign workers in Serbia.

A member of the PrEUgovor coalition, ASTRA – Anti-Trafficking Action, made a comprehensive and thorough report on the case of Vietnamese workers.⁴⁹⁹ Even though that soon it would be one year since this case first came in the focus of the domestic and international public, Serbian NRM did not react, nor did it perform any activities within the purview of the institutions that comprise it. In early November 2022, ASTRA visited the construction site and found a significantly smaller number of workers, this time mainly from India and China. According to information gathered from several sources, the housing situation is better than a year ago, however, there are still problems with the attitude of superiors towards workers, unpaid wages, as well as uncertain financing and the dynamics of the continuation of works.

On the other hand, it was the very case of presumed trafficking in human beings for the purpose of labour exploitation in the Linglong factory in Zrenjanin that resulted in the state of Serbia being put on the TIER 2 Watch List in the classification provided in the TIP Report published by the US Department of State. The reason for Serbia's downgrading, as it is noted in the report is that "The government did not fully protect victims or fully investigate credible allegations that approximately 500 Vietnamese workers were subjected to forced labor at a People's Republic of China (PRC)-owned factory".⁵⁰⁰

Considering that Serbian state authorities did not react to dozens of reports and complaints made by ASTRA – Anti-Trafficking Action, as well as other CSOs, and the state also failed to respond to numerous serious remarks and interventions made by international organisations and institutions, ASTRA tried to go a step further and inform two car manufacturers that have tyre purchasing contracts with this company (effective once the factory is built and operating) about the case of Vietnamese workers. This initiative is in line with the announcements and trends in the EU, as well as in some overseas countries believed to be more progressive in the field of the so-called due diligence and responsibility in the production and supply chain. In February 2022, the European Commission published Proposal of new legislative solutions for the EU⁵⁰¹, with the aim to stimulate sustainable and responsible corporate practice along the global value chains. This directive is a part of a wider initiative by the European Commission *on decent work worldwide for a global just transition and a sustainable recovery*⁵⁰², with a special emphasis on abolishing child labour and forced labour. The Commission announced a new legislative instrument for the effective banning of products made by forced labour from the EU market. The ban would include products made in

498 Commissariat for Refugees and Migrations of the Republic of Serbia. *Migration Profile of the Republic of Serbia for 2021*, <https://bit.ly/3goGUV5>

499 *Would you really buy this? The mass case of trafficking in human beings for the purpose of labour exploitation in Serbia: Reinventing Slavery in the 21st century PAST, PRESENT AND THE GRIM FUTURE OF THE MIGRANT WORKFORCE EXPLOITATION (not only) in SERBIA*, ASTRA – Anti-Trafficking Action, 2022, <https://drive.google.com/file/d/1LUZR7VYImVYW5IE7YOvU421oqVyZ9Leu/view>

500 *US Department of State's Trafficking in Persons Report 2022 – Serbia: TIER 2 watch list*, 2022, <https://bit.ly/3sq6TOW>, p. 482.

501 European Commission. Proposal for a on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, 23 February 2022, <https://bit.ly/3slsyrx>.

502 <https://bit.ly/3F9sen7>

and outside of the EU, and it would have a substantial implementation network. Simultaneously, Germany and France are the forerunners when it comes to developing the legislative framework that concerns due diligence in supply chains. Coincidentally, the companies that have contracts on purchasing products from the Linglong factory in Zrenjanin originate from these very two EU member states. Furthermore, the PrEUgovor member ASTRA is preparing proposals for improvement of Serbian legislative framework and public policies in the field, which should present an overview of good practices from Europe and the world, as well as concrete recommendations for amending domestic legislation.

As yet another confirmation for the growing interest and action in the field of prevention of workplace infringements of human and labour rights, we have the recently published Recommendation of the Committee of Ministers of the Council of Europe on preventing and combating trafficking in human beings for the purpose of labour exploitation⁵⁰³. The first two provisions summarise majority of the obligations that a modern and functional state should fulfil in the field: *“adopt (and implement) national laws, policies and strategies for combating trafficking in human beings which address trafficking for the purpose of labour exploitation and take a human rights-based and victim-centred approach. They should be supported by adequate funding to ensure their implementation and co-ordinated, monitored and evaluated by specific mechanisms, without prejudice to cross-cutting means. The purpose of these policies should be to prevent trafficking in human beings for the purpose of labour exploitation, to protect the rights of victims and guarantee their access to effective remedies, including compensation, to punish those responsible for the offences, and to promote international and multi-agency co-operation and co-ordination. They should also ensure that businesses and public organisations act with due diligence and map and tackle the risks of trafficking in human beings in their supply chains and procurement.”* Even though the Recommendation is not binding, it would represent an important instrument in monitoring implementation of national legislation and public policies, as well as of the framework of reporting on challenges.

5.4.4. Protection of and support to victims in practice – statistics and trends

Centre for Protection of Human Trafficking Victims – Old problems, new challenges

Centre for Protection of Human Trafficking Victims continues to function in the conditions that have already been reported on. The whole ten years after its establishment, the institution still works based solely on the Decision by the Minister made in 2012, without its proper place in the systemic legislation, with designated professional positions unfilled. While, truth be told, it does have a new, more adequate space, the activities by the only state-run shelter for the victims of trafficking in women⁵⁰⁴ are communicated with insufficient clarity; the quality of the monthly statistical data on its operation is improved, yet the quality of the annual narrative and financial reports is still questionable, etc. ASTRA wrote some concrete recommendations for the improvement of Centre's operation in the previous Alarm Report, and these recommendations are still valid. As the central institution in identification of human trafficking victims, the Centre was expected to act on its competences in the case of Vietnamese workers in the Linglong factory in Zrenjanin. Even though one may hear in the public announcements by the Centre's representatives that they qualify this case as being “in progress”, and that they used to realise field visits to the construction site in Zrenjanin, these claims cannot be confirmed by any of the Centre's official reports, though these would have to contain references to these activities. On the contrary, a review of the statistical reports of the Centre for November and December 2021, the time when the case was in the public focus, shows that these reports are much less detailed than the corresponding 2022 reports, and that none of the overviews (as of September 2022) has even mentioned potential victims of labour exploitation from Vietnam.⁵⁰⁵

503 “Recommendation CM/Rec(2022)21 of the Committee of Ministers to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation”, Council of Europe, 27 September 2022. <https://bit.ly/3CTQxCI>, accessed on 7 October 2022.

504 The Centre's website contains not a single document concerning the work of the Shelter, even though the website contains the sections of Rulebooks and Quarterly Reports, and the Shelter is mentioned only twice in the News section, in relation to two donor visits: <https://centarzztlj.rs/актуелности/>

505 <https://bit.ly/3SsF6rx>

The European Commission's Annual Progress Report for Serbia⁵⁰⁶ for 2022 contains the following sentence: *"The Centre has said that the procedure of identification of potential victims is ongoing."* Eleven months since the explicit, written reports of presumed trafficking in human beings for the purpose of labour exploitation were submitted to the Centre, and the complete lack of its acting in line with its competences, most of the workers have long returned to their homeland, without receiving any kind of support from official authorities, institutions and bodies of Serbia. Should it turn out that the Centre realised at least one identification interview in line with all international and national standards, and identified at least one victim (out of almost 700 people that were found in a similar situation), this would be a tiny, but positive step forward in this complex case. What would be the results of the activities that the Centre has claimed to be realising, remains to be seen.

From January to September 2022, the Centre identified the total of 52 human trafficking victims, 39 of which were women (17 girls). In addition to that, five boys were also identified as human trafficking victims. When it comes to the girls, the predominant type of exploitation was sexual (10 out of 17 cases), while one of the boys was also exposed to this type of exploitation. The remaining boys were victims of forced beggary (3) and coercion to crime (1). Four cases of labour exploitation were also recorded, involving one girl, one woman and two men (none of these belonging to the large group of Vietnamese workers).

ASTRA's Victim Support Unit – increasingly complex cases, still without state support

From January to September 2022, ASTRA's licensed SOS Hotline for human trafficking victims received 2701 calls directly related to human trafficking, 332 prevention and education calls, and 201 calls from other categories. ASTRA's Victim Support Unit identified 16 human trafficking victims in total, 13 of these being women (among them two girls). Majority of the identified victims were Serbian citizens (13 out of 16). The primary type of exploitation was sexual for 7 victims, followed by labour for 4 victims, forced marriage (2), while three cases involved multiple exploitation: sexual, labour and coercion to crime, combination of sexual and labour exploitation, and finally, labour exploitation combined with forced beggary.

ASTRA's Victim Support Unit has noticed that the cases encountered and worked on by the VSU's professional workers have become more and more complex, requiring a serious support by the state concerning the realisation of victims' rights and access to adequate, high-quality services. On the other hand, all other activities performed by ASTRA indicate the existence of worrisome trends when it comes to handling human trafficking victims, e.g. their position during court proceedings.

The position of victims of human trafficking in court proceedings has not been improved

A member of PrEUgovor, ASTRA, has monitored the position of human trafficking victims in court proceedings since 2011. The analysis of judicial practice for 2021⁵⁰⁷ has confirmed that in practice, an approach based on the respect for vulnerable position of the victims of crimes such as human trafficking and mediation in prostitution is still lacking. In spite of improvements in the legislative, strategic and institutional frameworks, the protection of victims before courts is still not paid the necessary attention, especially when it comes to the protection of privacy, as well as the safety of victims in court proceedings and during hearings. There is a persistent trend of increase in the number of court decisions concluded with plea agreements, as well as increase in the share of the crime of mediation in prostitution from art. 184 CC, accompanied with a decrease in the share of the crime of trafficking in human beings from art. 388 CC. On the other hand, the share of sexual exploitation in human trafficking is on the rise. The average prison sentence for the perpetrators has been decreased in length, i.e. there is an increase in the number of sentences close to the legally stipulated minimum (3-5 years).

⁵⁰⁶ European Commission, Serbia 2022 Report, 12 Oct 2022, *op. cit.*, pp. 54-55.

⁵⁰⁷ *Položaj i prava žrtava u krivičnom postupku 2021. godina* (Position and Rights of Victims in Criminal Proceedings in 2021), ASTRA – Anti-Trafficking Action, 2022, <https://bit.ly/3Tw3dH0>

Table 7: Judicial practice in the criminal proceedings related to trafficking in human beings 2018-2021

	2018	2019	2020	2021
Number of relevant court decisions	21	29	28	35
Percent of the decisions involving plea agreements	40%	50%	59%	59%
Percent of the defendants accused of the crime from art. 184 CC	13%	59%	64%	70%
Percent of the defendants accused of the crime from art. 388 CC	80%	29%	27%	30%
The share of human trafficking cases involving sexual exploitation	60%	82%	100%	92%
Percent of the sentences close to the legally stipulated minimum (3-5 years) in relation to the total number of sentences during the year	50%	75%	66%	89%

In 2021, all the injured parties in the proceedings were female, 50% of which were victims of the crime of mediation in prostitution and 50% of the crime of human trafficking. Underage persons comprised 27% of the injured parties in all these cases, i.e. 38% of the injured parties in the human trafficking proceedings.

In spite of the years of awareness raising activities, numerous trainings for judges and public prosecutors, as well as indicating the necessity of introducing a victims' compensation fund, in 2021, only one victim of trafficking in human beings received compensation for damages, and this through a decision by the Supreme Court, instead of the number of such decisions increasing in the regular criminal and civil proceedings.

In addition to the licensed SOS Hotline for Human Trafficking Victims⁵⁰⁸, in June 2022, ASTRA renewed the accreditation for European Missing Children Hotline⁵⁰⁹, after ten year of working with this phone line. The SOS Hotline for Human Trafficking Victims, as well as the European Missing Children Hotline keep their operation without support by the state, relying on international support and donations only.

RECOMMENDATIONS

- Consider the possibility of changing the operative framework for combating trafficking in human beings in Serbia, when it comes to changing the function and role of the Council for Combating Human Trafficking, as a body consisting of high officials, which is (due to elections and political reasons) susceptible to frequent changes in composition and, in addition to not being operative, is blocking the operation of the entire system with its inactivity.
- Continue with following of the relevant EU strategic and operative frameworks, by taking the widely defined approaches and the solutions implementable in Serbia, as well as by maximising the opportunities of including and connecting with non-EU member states.
- Engage all the relevant institutions (ministries) and, with respecting the existing procedures, start the process of amending the relevant legislation, so that it would be harmonised with the EU Acquis in the field of the prevention of and combating against trafficking in human beings.

508 ASTRA – SOS Hotline for human trafficking victims: +381117850000

509 <https://bit.ly/3gBtrcx>

- Follow the trends in the EU initiatives and directives, while also developing and adopting the documents to enable legislative and strategic framework for combating human trafficking in Serbia to be in line with the EU frameworks and good practices.
- Prepare and adopt the bylaws that would secure the minimum of activity and standards that institutions need to demonstrate when addressing the issues in relation with human trafficking, especially when it comes to support to victims in the state of emergency, limited access to institutions and organisations due to the pandemic-related risks, etc.
- Invest efforts and resources in the capacity building and strengthening of the Centre for Protection of Human Trafficking Victims, starting from the staffing issues, and further develop and define the roles of the Centre within the system of social care in general (cooperation, coordination).
- Improve reporting on the scope, type, level, length and effectiveness of the support services provided to human trafficking victims and steadily update the list of the missing services, so that they could be planned and the resources necessary for their realisation secured.
- Plan the resources for further development and improvement of services for human trafficking victims, which would equally involve civil society organisations with experience in the field, and fully utilise all the available capacities in order to create an optimal range and better quality of the services.
- Strengthen the capacities of and connections between different actors in addressing the issue of child exploitation on the internet and strengthen interagency cooperation in the online and offline protection of the children in high risk of abuse and exploitation.
- Work on the effectiveness and efficiency of market and labour inspections, strengthen their monitoring of risk factors, as well as combat unethical and exploitative practices.
- Further improve referral of human trafficking victims, using all available capacities and resources, including the CSO capacities.
- Undertake a proactive, independent investigation in the complex case of the Vietnamese workers in the Linglong factory in Zrenjanin, as well as in the "Jagodina" case⁵¹⁰, and secure that all relevant state actors are fulfilling their duties and responsibilities in line with their competences. It is necessary to secure and provide full support and protection to all potential victims.

510 Jelena Pejić Nikić (ed.), *PrEUgovor Alarm: Report on the Progress of Serbia in Cluster 1 – November 2021*, op. cit, pp. 117-118

5.5. Fight Against Terrorism and Violent Extremism

The trend of increasing activity of the extreme right in Serbia which was observed in previous reports is still present, while the response of state institutions is inadequate and weak. Support for Russia's invasion of Ukraine, visible ties to the Russian (militant) extreme right, threats of violence if Serbia imposes sanctions on Russia and hate speech directed against the LGBTQ+ minority have dominated the activities of the extreme right in Serbia during the reporting period.

Better ties with the Russian extreme right

Support for Russia's invasion of Ukraine continues to occupy an important place in the activities of the extreme right in Serbia, and they now offer such support primarily through their channels on social networks (e.g. Telegram) instead of organising public gatherings, as they did at the beginning of the invasion. What is new is that some members of extreme right organisations are trying to establish better connections with the Russian extreme right and to communicate this clearly to the public. Members of the "People's Patrol" and their leader Damnjan Knežević spent some time in Moscow at the end of April and the beginning of May as guests of some of the largest Russian media, e.g. "Russia Today". During this visit, Knežević told the Russian public that Aleksandar Vučić is not a friend of Russia but a mercenary of the West, but that, despite this, the Serbian people will stand with their Slavic brothers, the Russians. One of the hosts of the visit was Aleksandar Lisov, leader of the "Russian-Serbian Centre – The Eagles". Knežević's activities in Russia were reported in detail via the internet portal "srbin.info" and various extreme right-wing channels on the "Telegram" social network.⁵¹¹

"Serbian Action" also visited Russia. Their delegation met with representatives of the "Imperial Legion", the paramilitary wing of the "Russian Imperial Movement" (RIM). On that occasion, "Serbian Action" recorded video clips about the "Legion" and "RIM", which are now available on their YouTube channel. The "Legion" is known for having trained members of extreme right-wing groups throughout Europe for urban combat, which is why certain members of this movement were convicted of terrorism and the American administration placed this movement on the list of global threats.⁵¹² The "People's Patrol" also maintains connections with the "Legion" and "RIM".

Serbian and Russian extreme right-wingers have also become well connected on the "Telegram" social network, where they quickly transmit and spread propaganda messages and disinformation.⁵¹³ For example, during the heightened tensions in Kosovo at the end of July and beginning of August, the network of these channels transmitted coordinated disinformation that an armed conflict had occurred between Serbs and Albanians, that one Serb was wounded, and that the Serbian Army was ready to intervene on the border between Serbia and Kosovo. This misinformation attracted the attention of the mainstream media as well, which - in a situation of heightened tensions - could have led to an escalation of the conflict.⁵¹⁴

511 For additional information, see: "Damnjan speaks for the Russian media: Vučić is not a friend of Russia, he is receiving money from the West", *Srbin.info*, 1 May 2022, <http://bit.ly/3EfSY3p> and "Damnjan in the studio of RT television: Serbs and Russians are both brothers and strategic partners", *Srbin.info*, 3 May 2022, <http://bit.ly/3V2bJxX>, 6 Oct 2021.

512 "Danger for the EU, 'nyet' for Belgrade: Ties between extreme right wingers of Serbia and Russia", *RSE*, 22 July 2022, <https://www.slobodnaevropa.org/a/veze-ultradesnicara-iz-srbije-i-rusije/31953798.html>, 6 Oct 2021.

513 "'Telegrams' with fake news on Western Balkans", *RSE*, 20 Apr 2022, <https://www.slobodnaevropa.org/a/rusija-telegram-kanali/31808637.html>, 6 Oct 2021.

514 "How pro-Russian and Russian Telegram channels spread misinformation about Kosovo", *RSE*, 1 Aug 2022, <http://bit.ly/3TD8bRD>, 6 Oct 2021.

✖ **ALARM: Threats of rebellion, threats against traitors and opponents of Russia's aggression against Ukraine**

Damnjan Knežević, the leader of the "People's Patrol" and the organiser of large gatherings in support of Russia's invasion of Ukraine, publicly warned "Aleksandar Vučić's regime of traitors" against imposing sanctions on Russia because, if that should happen, the people of Serbia would be ready to resort to aggressive moves and protests. All the "servants of the West" in the opposition were also warned not to advocate for the introduction of sanctions.⁵¹⁵ Through a "Telegram" channel ("Z-Orlovi"), the extreme right-wing group "Russian-Serbian Centre – The Eagles" regularly sent threats to activists who oppose the Russian invasion of Ukraine.⁵¹⁶

The extreme right and a part of the Serbian Orthodox Church against "EuroPride"

Together with a part of the Serbian Orthodox Church and some of its priests, extreme right-wing groups including the above mentioned "People's Patrol" and "Serbian Action" organised several protest marches under the name "Religious walk for the salvation of Serbia" as a direct response to the announcement that EuroPride would be held in Belgrade. The main goal of these walks was the preservation of Christian, traditional and family values and public morality, and the main request was thus the cancellation of the EuroPride walk. Before and during their events, the supporters of these 'religious walks' exposed the LGBTQ+ population to threats and hate speech, the most famous of which was the speech of Bishop Nikanor, who put a curse on both the organisers and the participants of EuroPride, saying that he would gladly use weapons against them if he had any.⁵¹⁷ Nikanor also had hateful words for Prime Minister Ana Brnabić.⁵¹⁸ A series of graffiti with threatening messages appeared in Belgrade.⁵¹⁹

The increase in tensions was also influenced by parliamentary (extreme) right-wing parties ("Dveri", "Zavetnici", "NADA") who advocated for the banning of EuroPride. The Patriarch of the Serbian Orthodox Church, Porfirije, said that he understood the concern of some of the people over the gross attack on the identity that had been built through policies and ideologies over centuries, and he called the organisers and participants of EuroPride 'evil': "... One cannot cure or defeat evil by violence; that way, it only multiplies".⁵²⁰ Anti-Western messages, as well as messages of support for Russian President Vladimir Putin, could be heard and seen during the 'religious walks'.⁵²¹

The extreme right is altering biology textbooks

The parliamentary political party "Dveri", as well as the "SPC" patriarch Porfirije, criticized certain lessons in biology textbooks arguing that they propagate gender ideology as well as homosexuality, and requested that all teaching materials with this content be withdrawn from use. At the request of the Ministry of Education, the Office for the Advancement of Education formed a working group, which found deficiencies in lessons referring to the "biological meaning of adolescence" that should be corrected in seven out of eight approved biology textbooks for the 8th grade of elementary school.⁵²²

515 "Damnjan warns Vučić and all other traitors: Do not dare impose sanctions against Russia, we are ready...", *Srbinfo*, 20 Apr 2022, <http://bit.ly/3TJk34F>, 6 Oct 2021.

516 "Anti-war activists in Serbia exposed to threats and pressures on social networks", *Danas*, 3 Aug 2022, <http://bit.ly/3UZALh5>, 6 Oct 2021.

517 "Dangerous words of Bishop Nikanor", *Euronews*, 12 Aug 2022, <http://bit.ly/3gb28WQ>, 6 Oct 2021.

518 "Bishop Nikanor publicly called out Prime Minister Brnabić because of Europride", *Danas*, 12 Aug 2022, <http://bit.ly/3gbpkEu>

519 For example: "If need be, blood will flow through Belgrade, but there will be no gay parade", "Tensions are rising in Belgrade as EuroPride approaches", *Euronews*, 16 July 2022, <http://bit.ly/3hLBBzM>, 6 Oct 2021.

520 "Patriarch Porfirije: EuroPride should be cancelled", *Vreme*, 6 Sept 2022, <http://bit.ly/3X7XFER>, 6 Oct 2021.

521 "The religious walk for the salvation of Serbia: 'Our Father in Heaven' and 'Putin is the emperor of the planet'", *O21*, 28 Aug 2022, <http://bit.ly/3O8myMN>, 6 Oct 2021.

522 "Od naredne školske godine izmenjeni udžbenici za biologiju", *Danas*, 4.10.2022, <https://www.danas.rs/vesti/drustvo/od-naredne-skolske-godine-izmenjeni-udžbenici-za-biologiju/>, 6.10.2021.

Weak response of state institutions to the threats and hate speech of the extreme right

Although extreme right-wingers have intensified their activities in Serbia, and the attitudes and values they advocate are becoming acceptable to an increasing number of citizens,⁵²³ the response of state institutions is still weak and inadequate. The prosecutor's office thus remained silent regarding the threats and hate speech expressed by extreme right-wingers before and during the 'religious walks'. Like they did in the case of the rallies in support of the Russian invasion of Ukraine, activists of the citizens' association "Let it be known!"⁵²⁴ filed a criminal report against Bishop Nikanor for the criminal offence of 'racial and other discrimination'. As for the threats against anti-war activists, the prosecution did open a case file based on the report of an injured party, but there is no information that the case has progressed any further.⁵²⁵ Instead of discovering the perpetrators of the threats of violence that were addressed to the organisers and participants of EuroPride, the Ministry of Interior initially banned the walk that was to take place as part of this manifestation, with the explanation that it could provoke violence.⁵²⁶

Back in 2019, on the sidelines of the Western Balkans Interior Ministers' meeting in Skopje, the Serbian authorities pledged to review the National Strategy for the Prevention and Fight against Terrorism which, among other things, should contain a section with an analysis of all forms of radicalisation and violent extremism, including right-wing extremism.⁵²⁷ A new strategy, however, has not yet been drawn up, despite the fact that the previous one expired last year.⁵²⁸ Representatives of the MoI reported at the NCEU meeting for Chapter 24 that the National Coordinating Body for Preventing and Combating Terrorism has prepared the first draft of the text, including an analysis of all forms of extremism, and that it has submitted it for opinion to all the members of this body. To improve the quality of the analysis, the text will also be submitted to the academic community. In addition, members of NCEU were informed that the Draft Report on the implementation of the Action Plan for the National Strategy was prepared and submitted for consideration to all charged with the activities. The NCEU meeting was held on 15 July, and there have been no additional information about the analysis and the report. It is now November.

The danger of the growing extreme right in the Western Balkans and the need for states to provide a more decisive response to this threat (including a prohibition of extremist groups) was also pointed out in the document entitled "Right-Wing Extremism in the Western Balkans", prepared by the Czech Presidency of the EU for the needs of the Working Group in charge of the fight against terrorism in the EU.⁵²⁹

Anti-immigrant themes are still present

Neither the war in Ukraine nor EuroPride managed to suppress anti-immigrant themes and activities among those of the extreme right orientation, although they were not as present as they used to be. A stronger focus of the extreme right on this topic can be expected in the upcoming period, in light of the official news that a significant increase in the number of migrants has been observed on the "Balkan route".⁵³⁰ In an extraordinary address, the leader of the "People's Patrol" has already warned that 100,000 migrants are on their way to Serbia from Turkey.⁵³¹

523 Jelena Pejić Nikić (ed.) *Preugovor Alarm: Report on the Progress of Serbia in Cluster 1 – May 2022*, op. cit, p. 126

524 "Organisation 'Let it Be Known' files a criminal report against Bishop Nikanor", *Danas*, 13 Aug 2022, <https://bit.ly/3TPFWQA>, 6 Oct 2021.

525 "Serbian prosecution opens a case file on threats by Russian right-wingers", *RSE*, 5 Aug 2022, <https://www.slobodnaevropa.org/a/pretnje-rusija-desnicari-srbija-tuzilastvo/31975367.html>, 6 Oct 2021.

526 Due to the great pressure of the international community, the walk that was a part of EuroPride was eventually held. For additional information about EuroPride, see the section of this Report on civil society.

527 The Commission and the authorities of Serbia approved the arrangement on cooperation in the fight against terrorism, the European Commission, the Office for Migration and Internal Affairs, Brussels, 19 Nov 2019, <http://bit.ly/3V4cpmj>, 6 Oct 2021.

528 "National Strategy for the Prevention and Fight against Terrorism 2017–2021", Official Gazette of the Republic of Serbia, no. 94/17, <http://bit.ly/3UYRbXd>, 6 Oct 2021.

529 "EU body proposes a discussion on the prohibition of right-wing activists from the Western Balkans", *RSE*, 14 July 2022, <https://www.slobodnaevropa.org/a/zapadni-balkan-eu-desnica-ekstremisti/31943443.html>, 6 Oct 2022.

530 "Why has the Balkan migrant route become more active again?", *Infomigrants*, 6 Oct 2022, <http://bit.ly/3UDegPk>, 6 Oct 2022.

531 "Special programme – Damjan Knežević: 100,000 migrants are heading towards Serbia", *Srbinfo*, 27 Sept 2022, <http://bit.ly/3ECu7lo>, 6 Oct 2022.

Financial Intelligence Did Not Eliminate the Damage It Had Caused by its Illegal Investigation of CSOs, Media and Individuals

In the past year, it became clear that the *Administration for the Prevention of Money Laundering* (the Serbian Financial Intelligence Unit) misused its mandate and competencies to silence voices of the CSOs and media that were critical of the current Government when it asked banks to provide it with all the financial data pertaining to 37 CSOs/media outlets and 20 individuals (the List Case).⁵³² This was evident not only from the conclusions of the key (expert) bodies in this field,⁵³³ but also from the fact that *Serbian Telegraph*, a tabloid close to the ruling party, published (otherwise publicly unavailable) bank transactions of several CSOs in order to publicly label them as traitors. Consequently, the targeted CSOs have filed criminal charges against the Administration and the tabloid's editor-in-chief.⁵³⁴

Despite these facts, the Financial Intelligence Unit refuses to publish a detailed report of the financial investigation of 37 CSOs/media outlets and 20 individuals and eliminate the damage that was caused to targeted organisations and individuals, by publicly acknowledging that they are in fact operating in accordance with the Law, and by notifying commercial banks in Serbia of these findings.

RECOMMENDATIONS

- The authorities in Serbia should not only condemn the attacks, threats, and rhetoric of the far-right but also take appropriate legal action against the perpetrators;
- The authorities in Serbia should thoroughly investigate the links between the extreme right and the hooligan groups and prohibit groups that spread chauvinism and use hate speech;
- The national strategy for preventing and suppressing terrorism and extremism expired in 2021. Therefore, the process of drafting a new national strategy should begin. The strategy should include an analysis of all forms of (violent) extremism, with a particular focus on the extreme right. The development of a new National Strategy should be preceded by an evaluation of the existing Strategy and its accompanying Action Plan;
- The Administration for the Prevention of Money Laundering should publish a complete report on the conducted investigation. It should also eliminate the damage caused to targeted organizations and individuals by publicly acknowledging that they are operating in accordance with the Law. The Administration should also notify commercial banks in Serbia of these findings;
- In addition, competent authorities must initiate a procedure to establish responsibility in the Administration for the Prevention of Money Laundering for exceeding the powers set out in the Law on the Prevention of Money Laundering and Terrorist Financing of Terrorism, as established in the FATF report;
- In its future activities, the Administration for the Prevention of Money Laundering should fully adhere to FATF standards and recommendations, as well as best practices in this area. The Directorate must not use its powers and resources to intimidate civil society organizations under the pretext of preventing money laundering and terrorism financing.

532 For additional information about the "List" case, see: Pejić Nikić, Jelena (ed), prEUgovor Alarm Report on the Progress of Serbia in Chapters 23 and 24, prEUgovor, Belgrade, May 2021, <https://bit.ly/prEUgovorAlarmMay2021EN>, pp. 27-6 and 101-103.

533 Special Rapporteurs of the United Nations Human Rights Council, International Working Group on Financial Measures in the Fight against Money Laundering and Terrorism Financing (FATF) and Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval).

534 "Civil society organisations file criminal charges against the Directorate for the Prevention of Money Laundering and the editor-in-chief of Serbian Telegraph", *Južne vesti*, 25 September 2021, <https://bit.ly/3sOh1AZ>, 18 October 2021.

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Coalition prEUgovor is a network of civil society organisations formed in order to monitor the implementation of policies relating to the accession negotiations between Serbia and the EU, with an emphasis on Chapters 23 and 24 of the Acquis. 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.

Members of the coalition are:

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www.astra.rs

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

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www.bezbednost.org

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