

SELF-EVALUATION OF THE LEVEL OF IMPLEMENTATION OF OSCE COMMITMENTS IN SERBIA

Table of contents

Introductory remarks.....	3
---------------------------	---

1. Electoral processes in the Republic of Serbia

1.1. Electoral processes in the Republic of Serbia (<i>Milan M. Marković, Institute of Social Sciences, Belgrade / University of Graz</i>).....	5
---	---

1.2. Comments of the Coalition of Civil Society Organizations on the report by the Institute of Social Sciences on electoral processes in Serbia.....	28
---	----

1.3. Comments by the Office for Human and Minority Rights in relation to comments by the Coalition of Civil Society Organizations.....	37
--	----

1.4. Comments by the Ministry of State Administration and Local Self-government	38
--	----

2. Situation of Roma people

2.1. Rights enjoyed by Roma in Serbia in relation to OSCE standards (<i>Goran Bašić, Institute of Social Sciences, Belgrade</i>).....	42
---	----

2.2.	Comments by the Coalition of Civil Society Organizations on the Institute of Social Sciences' report on the rights of Roma	59
2.3.	Comments by the Office for Human and Minority Rights.....	89

3. Freedom of assembly

3.1.	Harmonization of the right to freedom of public assembly in Serbia with the relevant standards of the OSCE (<i>Dr Zorica Mršević, Institute of Social Sciences, Belgrade</i>).....	91
3.2.	Comments by the Coalition of Civil Society Organizations on the Institute of Social Sciences' report on the right of public assembly.....	123

4. Gender equality

4.1.	Report on gender equality situation in the Republic of Serbia(<i>Commissioner for the Protection of Equality</i>).....	133
4.2.	Comments by the Coalition of Civil Society Organizations on the Commissioner's report on gender equality.....	159
4.3.	Comments by the Coordination Body for Gender Equality of the Government of Serbia.....	189

INTRODUCTORY REMARKS

Promoting the implementation of OSCE commitments within the human dimension, strengthening monitoring instruments in this area, reinforcing the ties with civil society organizations and promoting their active participation in the work of the Organization were among the priority goals of Serbia's OSCE Chairmanship in 2015.

With this in mind, we decided to build upon the self-evaluation project initiated by Switzerland last year. The basic concept behind this project was to have the incumbent Chairmanship lead by example in reviewing the status of implementation of human dimension commitments in an objective manner. From a longer-term perspective, the aim was to improve the level of implementation of these commitments not only in the country chairing the OSCE, but also in the whole OSCE area.

Methodologically speaking, we embraced the approach applied in this process in 2014. Consequently, self-evaluation has been entrusted to independent institutions, as well as to civil society organizations. In this particular case, two institutions - the Institute for Social Sciences in Belgrade and the Commissioner for the Protection of Equality, were engaged. Civil society organizations have created a Coalition to monitor the work of Serbia's OSCE Chairmanship, consisting of the Helsinki Committee for Human Rights in Serbia, the Lawyers' Committee for Human Rights, the Forum for Ethnic Relations, the Public Policy Research Centre, and the Humanitarian Law Centre. These organizations have drawn up their reports based on their own findings and assessments. Reports from both independent institutions and civil society

organizations were then sent to relevant ministries and state institutions for their comments and suggestions as feedback. The topics analyzed have been selected on the basis of existing reports of the OSCE institutions containing relevant recommendations for Serbia. We relied on the recommendations contained in the reports of the Office for Democratic Institutions and Human Rights (ODIHR), OSCE High Commissioner on National Minorities, as well as the Special Representative on Gender Issues. The following topics were selected in this way:

- Elections process;
- Situation of Roma;
- Freedom of assembly;
- Gender equality.

The Institute for Social Sciences analyzed the elections process, freedom of assembly, and rights of the Roma minority, whereas the Commissioner for the Protection of Equality analyzed the gender equality theme.

Civil society organizations elected to additionally analyze three more subject matters:

- Freedom of the media and freedom of expression (Helsinki Committee for Human Rights);
- Protection of human rights defenders (Helsinki Committee for Human Rights);
- Rights of national minorities (Forum for Ethnic Relations).

Briefly summarizing the track record of self-evaluation, one can note that the process turned out to be longer and more complex than initially anticipated. Reports of independent institutions and civil society organizations contain some serious criticism, but also very constructive suggestions and recommendations. Overall, the process appeared to be useful in reflecting upon the progress made by Serbia so far in the implementation of OSCE human rights commitments. One of the conclusions drawn was undoubtedly the need for constantly improving the situation in this field: regardless of one's positive track record, one can always do more and better when it comes to respecting human rights.

The self-evaluation process was first presented during the Human Dimension Implementation Meeting in Warsaw on 30 September 2015, and subsequently at the Human Dimension Committee Meeting on 15 December 2015.

Civil society organizations presented their reports to the OSCE Parallel Civil Society Conference that took place in Belgrade on 1-2 December 2015, prior to the OSCE Ministerial Council. Full texts of their reports are now available at: <http://www.helsinki.org.rs/doc/Self-evaluation%20report.pdf>.

1.1 Electoral processes in the Republic of Serbia (Milan M. Markovic, Institute of Social Sciences, Belgrade / University of Graz)

I. Structure of election observation activities under OSCE mandate

- 1. OSCE and activities related to the electoral process – an overview of relevant standards*
- 2. Framework of the analysis and selected issues*

II. Legal framework for electoral processes

- 1. Introduction and framework overview*
- 2. Noticed disputed issues and conclusions*

III. Financing of political activities in the Republic of Serbia

- 1. Introduction and framework overview*
- 2. Noticed disputed issues and conclusions*

IV. The position and role of the media in the electoral process

- 1. Introduction and framework overview*
- 2. Noticed disputed issues and conclusions*

V. Position of national minorities in electoral processes and political activities

- 1. Noticed disputed issues and conclusions*

VI. Central Voter Register

- 1. Noticed disputed issues and conclusions*

I. Structure of election observation activities under OSCE mandate

1. OSCE and activities related to the electoral process – an overview of relevant standards

Election observation has been established as a key component in the structure and work carried out by the Organization for Security and Co-operation in Europe – OSCE. The Copenhagen Document laid down the required standards and principles for a truly democratic election. These principles can be summed up as follows: universal suffrage, equal rights, fair election, secret ballot, free and transparent election and accountability.¹

In the framework of the human dimension of security, elections organized and carried out in line with these standards and principles are considered to be a crucial aspect of the Organization's engagement. For this reason, the OSCE participating States have identified violation of democratic election standards as a threat to the stability of the whole region. The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) has the mandate to assist its participating States in implementing standards in the scope of the Organization's various areas of activity, free and democratic election standards being of primary importance among them, and also to observe electoral activities in the region. As a party responsible for such activities, ODIHR presents and promotes the methodology for electoral activities in the OSCE region by issuing the Election Observation Handbook.

The principles used by the Organization in the observation and assessment of the democratic quality of electoral activities represent a set of standards derived from several relevant sources:

- OSCE standards to a large degree set out in the Copenhagen Document (1990);
- Standards and commitments set out in universal human rights instruments;
- Standards and commitments set out in regional human rights documents;
- Good electoral practices.

OSCE standards concerning free and democratic elections are guided by the participating States' professed commitment to democracy and political pluralism, and also by the shared need for

¹ Election Observation Handbook, 6th edition, p.7, available at: <http://www.osce.org/odihr/elections/68439>

building democratic societies based on free elections and the rule of law.² The majority of the Organization's internal standards pertaining to electoral processes is embodied in Paragraphs 6 – 8 of the Copenhagen Document, and amended by other standards and strategies with regard to human rights, non-discrimination and the rule of law. A summary of these standards is as follows:

- Hold free elections at reasonable intervals;
- Permit all seats in at least one chamber of the legislature to be popularly elected;
- Guarantee universal and equal suffrage;
- Respect the right of citizens to seek office;
- Respect the right to establish political parties and ensure that parties can compete on the basis of equal treatment before the law and by the authorities;
- Ensure that political campaigning can be conducted in an open and fair atmosphere without administrative action, violence, intimidation or fear of retribution against candidates, parties or voters;
- Ensure unimpeded media access on a non-discriminatory basis;
- Ensure secret balloting and that votes are counted and reported honestly, with the exit results made public; and
- Ensure that candidates who receive the number of votes needed to be elected are duly installed in office and permitted to remain in office until full expiry of their term.³

A standard contributing to the integrity of electoral processes and the participation of national and international observers in national elections extends the above listed requirements further.

Standards and commitments set out in universal human rights instruments are to a large extent derived from the relevant norms and provisions of the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women. If the Organization's participating States are parties to these universal international instruments as well, the standards stemming

² Election Observation Handbook, pp. 17-18

³ Ibid, p.18

from these sources will largely apply to the OSCE activities related to observation of electoral processes.

Standards and commitments set out in regional human rights documents are very important for the OSCE's election observation activities, mainly because the majority of its participating States are also member States of the Council of Europe, thus including both the European Convention on Human Rights and the adopted standards concerning electoral processes and related commitments, in the body of documents relevant in this context.

Good electoral practices are contained in regional and international sources of a non-binding nature, and incorporate, for example, general comments published by UN bodies mandated to monitor the implementation of international treaties, UN General Assembly resolutions concerning electoral activities, recommendations of the Council of Europe's Committee of Ministers, documents of the Venice Commission, the Code of Good Practices in Electoral Matters, etc. These sources mostly provide additional clarifications and instructions to the participating States on how to implement international and regional commitments in the context of electoral activities on the national level.

2. Framework of the analysis and selected issues

This analysis refers to two reports the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) issued on parliamentary elections and the early Presidential election held in 2012, as well as on early parliamentary elections 2014. The Office's analyses and observations on electoral processes, resulted in making numerous recommendations, a total of 21 for 2012 and 25 for 2014, with regard to aspects of electoral processes that had been observed (aspects covering issues of legal framework, election management, election campaigns and their funding, position and treatment of the media in electoral processes, grievances and complaints, central voter registry and registering to vote, funding political activities, participation of minorities, status and presence of observers, the election day itself). Each set of recommendations included a selection of priorities, some of which are the subject of this study.

Of the issues contained in the recommendations made to the Government and to state bodies of the Republic of Serbia, this study will focus on those related to 1) legal framework regulating electoral processes in the Republic of Serbia, 2) funding of political activities in the Republic of Serbia, 3) position of the media in electoral processes, 4) position of minorities in electoral activities, and 5) the central voter registry and voter registers. It appears the noted issues figured prominently in ODIHR reports, but are also frequently the subject of similar reports and analyses of independent bodies and organizations dealing with electoral activities, human rights and democracy in Serbia.

An important analytical framework, but also the framework of this study are the “Parliamentary and Early Presidential Elections, OSCE/ODIHR Limited Election Observation Mission Final Report 2012”⁴, and the “Early Parliamentary Elections, OSCE/ODIHR Limited Election Observation Mission Final Report 2014”.⁵ In addition to these reports, the study relies on sources containing standards and principles on free and democratic elections in the OSCE framework, reports of independent bodies and relevant NGOs on the issues dealt with in this analysis, in the specified observation period.

II. Legal framework for electoral processes

1. Introduction and framework overview

The legal framework relevant for electoral processes in the Republic of Serbia is, in the first place, comprised of the Constitution of the Republic of Serbia, the Law on the Election of Members of Parliament⁶, the Law on the Election of the President⁷, the Law on Local Elections⁸,

⁴ “Parliamentary and Early Presidential Elections, OSCE/ODIHR Limited Election Observation Mission Final Report”, 2012.

⁵ “Early Parliamentary Elections, OSCE/ODIHR Limited Election Observation Mission Final Report”, 2014.

⁶ “Official Gazette of the Republic of Serbia”, Nos. 35/00, 57/03, 72/03, 18/04, 85/05, 101/05, 104/09, 28/11 and 36/11.

⁷ “Official Gazette of the Republic of Serbia”, No. 111/07.

⁸ “Official Gazette of the Republic of Serbia”, Nos. 129/2007, 34/2010, 54/2011

the Law on Financing of Political Activities⁹, the Law on Political Parties¹⁰, the Law on Central Voter Registry¹¹, along with rules and regulations and other permanent legal acts as well as legal acts regulating procedural aspects of electoral processes.

In its reports based on the observation of electoral activities in 2012 and 2014, the OSCE assessed that the existing legal framework, i.e. the sources it encompasses, offer a solid foundation for free and democratic elections in the Republic of Serbia¹². However, both reports pointed to certain loopholes and shortcomings hindering transparency, democratic principles and the conduct of electoral activities in the Republic of Serbia.

2. Noticed disputed issues and conclusions

Standing as an independent candidate. The report on parliamentary and early Presidential elections in 2012, firstly, points to the issue of putting forward one's candidacy as an independent candidate, i.e. the issue of lists with a single candidate. A related issue of closed lists and the distribution of seats has also been noted. Joint opinion on draft laws on elections in Serbia¹³, issued by the OSCE and the Venice Commission of the Council of Europe recommended that individual candidacies of independent candidates should be enabled through norms governing this area in the Republic of Serbia. Electoral laws regulate candidacies of citizens as delegated by political organizations and entities (political parties, associations, coalitions), i.e. pre-signed blank resignations. This is, to a degree, contrary to the constitutional right of citizens to elect and be elected, because the relevant sources of law do not explicitly provide for this possibility. Such a solution is not compliant, either, with the standards stemming from the Copenhagen Document that foresees citizens' right to freely put forward election candidacies independently, or on electoral lists submitted by political entities – political parties and organizations.

⁹ "Official Gazette of the Republic of Serbia", Nos. 43/11, 123/14

¹⁰ "Official Gazette of the Republic of Serbia", Nos. 36/2009, 61/2015

¹¹ "Official Gazette of the Republic of Serbia", Nos. 104/2009, 99/2011

¹² OSCE/ODIHR Report 2012 p.5 and OSCE/ODIHR Report 2014, p. 4

¹³ OSCE/ODIHR and Venice Commission Joint Opinion on Draft Laws on Electoral Legislation of Serbia, at <http://www.osce.org/odihr/elections/serbia/39946>

Distribution of seats and closed electoral lists. Among the issues observed was also the problem with political organizations being able to manage the seats won in elections at own discretion, and not in reference to proposed lists of candidates. This issue was dealt with as part of the 2011 Amendments to the Law on the Election of Members of Parliament, which introduced the system of closed lists, limiting the authority of political parties to manage the seats won at own discretion. This led to putting an end to political parties having the right to assign seats arbitrarily, which had been the practice hitherto. However, a provision from the current Constitution (Article 102) still allowing for blank resignations by candidates figuring on electoral lists has been criticized in the Opinion of the Venice Commission and is considered contrary to the standards set out in the Copenhagen Document.¹⁴

Codification of electoral laws, legal loopholes. Another important segment of the framework for the electoral activities in the Republic of Serbia are the documents adopted and implemented by the Central Election Commission (CEC). These include guidelines for the conduct of elections that the CEC adopts prior to holding each election. One of the priority recommendations of the OSCE/ODIHR reports, which are the framework of this study, was aimed at broader codification, meaning that rules and procedures contained in these ad hoc sources provided by the Commission should be set as norms. It would be desirable, in this manner, to provide a permanent legal basis of longer endurance that would bring a certain stability in terms of the standards applied.¹⁵ In addition, one of the recommendations was related to further shaping the relevant framework as a whole, i.e. the sources regulating issues important for the conduct of democratic elections in the Republic of Serbia, into a singular source, a legal code containing all the key provisions/norms on this subject, interrelated and similar in nature, yet dispersed over a number of sources of varying degree of authority.¹⁶ This recommendation was specified as a matter of priority. Yet another objection raised and turned into a recommendation made in the report of the OSCE/ODIHR is related to promoting the existing relevant legal framework aiming to provide clear and efficient competences and mechanisms that would give the institutions (primarily the Central Election Commission of the Republic of Serbia and the Anti-Corruption Agency) a mandate for broader implementation, control and

¹⁴ OSCE/ODIHR Report 2012, p.5

¹⁵ Ibid

¹⁶ OSCE/ODIHR Report 2012, p.21

participation in electoral processes, in the first place concerning violations occurring in campaign management, funding campaign activities and other political activities, and penalizing violations of proposed standards.¹⁷

A conclusion to be drawn is that there is no response to the most recommendations made with a view to eliminating the noticed shortcomings. Even though the problem area of manipulations with candidates and their listing in electoral lists has been rectified by amending the laws, the problem of access to candidacy and political activities, as highlighted in the reports of the OSCE and the Venice Commission, still persists.

It is apparent that not only are many norms relevant for one aspect of regulating electoral activities contained in several equally important sources, but some of the directly applicable rules are also adopted prior to carrying out electoral activities, as ad hoc rules. Certain recommendations found in OSCE/ODIHR reports point out that it is highly recommended to adapt the existing legal framework, which had been assessed as good for the most part, in a way to provide better clarity of the content of norms, authority, mechanism and procedures. Such codification would also provide for a better layout, in a certain sense, and harmonize processes carried out in parallel – in the context of various electoral activities and related dimensions.

Finally, the loopholes found in the legal framework are generally related to shortcomings in terms of scope and transparency of authority of institutions that were recognized as important for electoral processes, notably the Central Election Commission of the Republic of Serbia and the Anti-Corruption Agency. This primarily relates to these bodies' lack of ability to respond to obvious omissions and violations occurring during electoral activities.¹⁸ Such a situation may be remedied by defining and broadening the authority of provisions governing the operation and role of such bodies in electoral processes, aiming to establish an efficient mechanism for preventing and sanctioning violations and electoral fraudulent practices, activities of financing and corruption, as well as other controversial practices and phenomena. The role and position of the Agency will be discussed in greater detail in the chapter that follows and deals with the funding of political activities and electoral campaigns.

¹⁷ OSCE/ODIHR Report 2012, p.5 and 21

¹⁸ OSCE/ODIHR Report 2012, p.5

III. Financing of political activities in the Republic of Serbia

1. Introduction and framework overview

The basic framework for financing the activities carried out by political entities is provided by the Law on Financing Political Activities. It regulates methods of financing, monitoring and conducting control of political activities financing, maximum amounts for contributions by individuals and legal entities, financing regular as well as electoral activity of political entities, reporting or submitting reports on financing and publishing the data. Adoption of the Law on Financing Political Activities in 2011 was welcomed by the OSCE as a step forward in the context of solid regulation and control of financing political parties and their campaigns.¹⁹ The 2012 elections were a test for both the new legal framework and the work of the Anti-Corruption Agency, which had been assigned the authority to monitor the financing of political activities, including the financial aspects of election campaigns.

2. Noticed disputed issues and conclusions

The OSCE/ODIHR Report on electoral activities in 2012 deals with campaign financing, while the Report on 2014 elections deals with political financing, campaigns included.

Despite establishing a solid framework through adoption of the aforementioned law, a series of vaguely defined areas, loopholes, and inappropriate solutions has been observed, which could to a lesser or greater extent, jeopardize the level of democracy in the election battle, equality of parties and eradication of corruption.

It has been observed there are no solutions that would make a clear enough distinction between regular financing of political activities and financing of electoral campaigns.²⁰ In addition,

¹⁹ OSCE/ODIHR Report 2012, p.11

²⁰ OSCE/ODIHR Report 2012, p.12

provisions on using funds from loans and credits for financing were found to be insufficiently developed. Finally, comments have been made on a number of inconsistencies with regard to violations of the Law and their sanctioning.²¹ At that point, it was assessed that the Law, for the very reasons indicated in the Report, may unjustly be in favour of particular stakeholders.

Furthermore, two solutions related to private and state sources of funding were assessed as unfavourable. One concerns maximum proposed amounts of private contributions being too high (equivalent to 20 average monthly salaries for individuals and equivalent to 200 average monthly salaries for legal entities as donors), which is inconsistent with the recommendation contained in the Joint Guidelines of the Venice Commission and the OSCE on Political Party Regulation, which insists on efficient limitations to private contributions to political parties in order to prevent corruption and buying political influence.²² The second shortcoming is related to too big a share of public funds in the total funds used for financing of political parties in the Republic of Serbia (70% - 90%), resulting in excessive dependence of political parties on state subsidies.²³

The Anti-Corruption Agency for the first time organized special monitoring based on the provisions and authority under the Law on Financing Political Activities. In addition, political parties were obliged to submit reports on financing of political campaigns to the Agency, once the election results were announced. Finally, it was mandatory for political parties to submit annual financial statements.

When the final results of 2012 elections on several levels were made public, the total number of mandatory reports to be filed by various political bodies equalled 1,656. Of this, a total of 65% was submitted (prior to the finalization of the Agency's 2013 report) and the entities to a large degree failed to meet the proposed deadline.²⁴ Despite the lacking information on financing the election campaign with regard to particular political entities that participated in it, the Anti-Corruption Agency did not initiate legal proceedings on account of non-compliance with the

²¹ Ibid.

²² OSCE/ODIHR Report 2012, p.12, footnote 35

²³ OSCE/ODIHR Report 2012, p.12

²⁴ "The first report on oversight of political entities – 2012 election campaign costs", Anti-Corruption Agency, pp.14-15

provisions of the Law on financing.²⁵ Furthermore, the Agency has no obligation to publish conclusions on the submitted reports on election campaign financing, while a suggested period for the reports to be published on the website is also not provided for.

In its report on financing the 2012 election campaign, Transparency Serbia pointed to 56.5% of the funds being drawn from state sources, which is a majority. Although the percentage is similar to the share of state funds in the 2007 campaign, the actual amount of money in 2012 equalled double the amount from 2007.²⁶ The same source reported that approximately 30% of the funds used for election campaign financing in 2012 came from commercial bank loans. This organization assessed this practice as contentious for several reasons. In this context, questions arose regarding taking out loans for this purpose, privileged credit terms (debt maturities, or even debt forgiveness), interest level, as well as the issue of ownership, i.e. the ownership structure of a bank granting loans to be used for election campaign financing. Another observed contentious issue is related to the origins of funds used for repayment of debts. In the reports of the Anti-Corruption Agency, unless these had been direct donations, at the time of the elections the parties were not able to provide information on the sources to be used for repayment of loans.²⁷ Such a solution certainly introduces an unacceptable level of uncertainty regarding the financial dealings of parties and obstructs the transparency of this important source of funding, and opens up possibilities for further inadmissible occurrences – such as, for example, defaulting or privileged terms enabled to political parties by banks whose ownership structure includes the state. In such circumstances, this would be an illicit form of grant, not a loan.

The OSCE report on early parliamentary election in 2014 does not include many new objectionable issues in the context of political and electoral activity financing, but reiterates the previously observed shortcomings.

The report points to the necessity to limit spending in election campaigns, aiming for higher level of equality in election campaigns for various stakeholders. In addition, it also points to the

²⁵ „Financing of Presidential and parliamentary election campaigns in Serbia – May 2012“ 2012, at: <http://www.transparentnost.org.rs/images/stories/materijali/Finansiranje%20kampanje%202012.pdf> p.5; OSCE/ODIHR Report 2012, p.12

²⁶ Transparency Serbia, Report on Campaign Financing in 2012, at: <http://www.transparentnost.org.rs/images/stories/materijali/Finansiranje%20kampanje%202012.pdf> p.42

²⁷ The report of the *Belgrade Centre for Human Rights on human rights in Serbia in 2012*, at: http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/Ljudska_prava_u_Srbiji_2012.pdf p. 247

necessity to proceed towards a clearer distinction between regular political activities and campaign activities, to avoid to a highest degree any possible abuse through granting gifts and services.

Issues related to activities of the Anti-Corruption Agency, the processes of reporting and monitoring, as well as transparency with regard to the effects of this body's operation, were highlighted again as leaving room for improvement.

Although a consensus exists among the relevant observers (OSCE/ODIHR, leaders in the NGO sector, Anti-Corruption Agency) that the adoption of the Law on Financing Political Activities in 2011 promoted the system of financing the operation and electoral activities of political entities in the Republic of Serbia, certain shortcomings observed both in the framework and the practices continue to be a source of concern.

Reports of the OSCE, as well as the reports coming from other aforementioned sources point to the necessity of establishing greater responsibility of political entities in terms of financing and transparency, both on a regular basis and in electoral activities. This can be primarily achieved by strengthening the mechanisms that promote and solidify transparency, including the mechanisms of control and monitoring (by means of reporting and full reports, with no exceptions, regularly being published by both the political entities and the relevant Agency), an efficient system of prevention and sanctioning with regard to consistency in implementing commitments and standards in the context of transparent financing, as well as through solid coordination of authority and activity, both horizontally and vertically. Recommendations of the Council of Europe's Group of States against Corruption (GRECO), contained in the Evaluation Report Serbia and adopted in June 2015 call for strengthening the position of the Anti-Corruption Agency and its mechanisms used to address cases of corruption and conflict of interest, as well as for prevention of corruption.²⁸

When it comes to standards pertaining to the electoral contest itself, the observers' messages clearly point out that there are too many instances leaving scope for inequality of the stakeholders in the electoral process, abuse of private and state funding (through budgetary outlays that are too high, too high a level of parties' dependence on state sources, non-

²⁸Corruption prevention in respect of Members of Parliament, judges and prosecutors – Evaluation Report Serbia“ GRECO, available at: http://www.acas.rs/wp-content/uploads/2015/07/GrecoEval4Rep20148_Serbia_EN.pdf, p. 62

transparent borrowing, etc.). In addition to all of the above, this clearly indicates the necessity to change the existing legal framework, in order to enable full implementation of the standards promoted and represented by the OSCE, as well as of the other sources aimed at full and uncompromised transparency in financing political activities and elections, which is considered to be a particularly pressing issue bearing in mind the earlier and current periods of emerging cases of abuses by representatives of parties in power, officials, lack of compliance with commitments undertaken in the given context and the absence of sanctions and responsibility for committed violations.

IV. The position and role of the media in the electoral process

1. Introduction and framework overview

Both the Report on Parliamentary and Early Presidential Elections in 2012 and the Report on Early Parliamentary Elections in 2014 deal with, to some extent, the position of media outlets in the election campaign and reporting on political activities in the Republic of Serbia. In both electoral processes, the OSCE/ODIHR monitored media coverage of election campaigns and of electoral activities, assessing compliance with statutory provisions that aim to ensure equality of contenders in the contest from the point of view of media attention, the emphasis in news stories about those standing in the elections and the political parties in the campaign, unbiased reporting, as well as fields of violation of these rules and response by the competent authorities to complaints and the sanctions policy existing in this regard.

The Law on Election of Deputies and the Law on Election of the President of the Republic regulate, to a great extent, media conduct concerning their coverage of election campaigns, and the carrying out of the election campaign in the media, the provision on equal terms of paid and free airtime to the participants in electoral activities. The binding instructions of the Republic Broadcasting Agency complement and elaborate on the legal provisions regarding media coverage during the electoral process. The Law on public advertising and the Law on Information of Public Importance also incorporate relevant norms with regard to the content of

media messages in political campaigns, i.e. advertising policies during and outside of election campaigns, the principle of non-discrimination and equality in the media.

2. Noticed disputed issues and conclusions

The position and competence of the relevant authorities. During the monitored electoral processes, the Republic Broadcasting Agency has expanded its established powers as the main regulatory body in the field of licensing and control of the electronic media. Although the Law on Election of Deputies provides for the establishment and competence of the Supervisory Board to oversee media activities during election campaigns and electoral activities related to them, the Agency has assumed certain tasks in the absence of such authority. In the context of these activities, the Agency supervised compliance of the media with the relevant rules and dealt with complaints related to the media coverage of election campaigns. As the 2012 Report notes, the Law does not explicitly task the RBA with functions in deciding and acting on election-related complaints, nor does it give the relevant tools for RBA to exercise such functions effectively during the elections.²⁹ The Agency received numerous complaints related to media monitoring and coverage during the electoral process in that year and took action on several of them, including issuing of an order to take off air the channels that violated the electoral or campaign silence period.

However, a significant, observed failure concerns the transparency and accessibility of the RBA work and action upon received complaints. Although the conclusions on complaints were posted on the website of the Agency, full text of the decisions made is not available. On the whole, it was estimated that the larger part of the process of acting upon election-related complaints was devoid of transparency in relation to the general public.³⁰

In the electoral process in 2014, the Supervisory Body, envisaged by provisions of the Law on Election of Deputies, was not tasked with overseeing the campaign and media coverage during elections. Consequently, the RBA took on the responsibility over some of the activities that are

²⁹ OSCE/ODIHR Report 2012, p. 14

³⁰ Ibid

legally the responsibility of the unformed body. The Agency received a larger number of complaints, and unlike last time, published full text of the decisions. Nevertheless, two points have remained potentially problematic – the former is the lack of clarity and the incomplete nature of the criteria used by the Agency when acting on complaints, while the latter is the failure to release the records of proceedings at which decisions were made on complaints, although such a procedure has been set out in the internal documents of the Agency.³¹ Recommendations on the status, authority and access of regulatory and supervisory bodies responsible in the context of the media coverage of electoral activities continue to be relevant. The formation of the Supervisory Body mandated to monitor media compliance with the standards concerning fair and non-discriminatory media reporting is a requirement under the law. The OSCE/ODIHR in two consecutive election cycles noted the absence of this potentially important authority and warned of this failure as the sidestepping of its own national norms that aim to prevent and punish unfair and non-transparent media coverage of the elections in the Republic of Serbia.

The situation where the Broadcasting Agency assumed, in these two cycles, the competences of this unformed body did not occur without certain irregularities also referred to in the reports. What still remains as a valid request is full transparency of the Agency's action with regard to media coverage-related complaints, and a sufficient level of transparency involves making available to the public all relevant information on who filed a complaint, what was the complaint about, how it was acted upon and the final decision taken. Lastly, the RBA should make its role in solving problems arising in the electoral processes more dynamic and resolute, to ultimately gain greater confidence for transparency and appropriateness of its action in a given context.

The accents in the media coverage of the election campaign. Intensive monitoring of pre-election media coverage between 6 April and 20 May 2012, carried out by the OSCE/ODIHR LEOM, gives a general impression that the monitored electronic media outlets (both state- and privately-owned) paid equal attention to all race contenders in their daily reports and news. The same impression was gained in the analysis of the print media.

³¹ OSCE/ODIHR Report 2014, p. 15

However, the Report indicated that the tone of media coverage was mainly neutral or positive in about 70% of the overall monitoring, while in only 1% the tone was negative. What is of particular concern is the almost complete absence of an analytical approach to observation and reporting on the platforms, programmes and content of a campaign, and the results achieved so far by political actors in the election campaign.³² This finding extends to the reporting and monitoring of all media in relation to almost all the actors, without distinction, and in both rounds of the elections that year.

After a similar framework provided for election observation in pre-election media activities in 2014, the negative finding as to a significant lack of analytical and critical comments on the election campaign was made again. The report testified to the situations where much attention in the “analytical” TV shows devoted to pre-election activities was given to official party political broadcasts, limiting analysts or correspondents to making their judgments and analysis of the campaign issues and platforms of stakeholders in electoral processes.³³ This, to a great extent, undermines the role which the media certainly can and should play in political education and raising the political awareness and knowledge of viewers, i.e. voters in the electoral process, which is achieved through critical and primarily analytical opinion regarding the information coming from the party campaign headquarters. In addition, as a result, the integrity of the media and media reporting is compromised, having a negative impact on the media being apart from the political domain, reflecting, in turn, in the lack of diversity of media contents in the context of elections and political activities in general.³⁴

Against this background, it is necessary to highlight in particular the finding of the Report concerning the abuses of public office and the airtime given to them in the election campaign. Namely, the impression is that the media do not make a clear distinction in an election campaign between coverage of government officials in their institutional roles and coverage that, according to its content and purpose, belongs to the promotion of their own party in the upcoming elections.³⁵ Irregularities or ways of abusing office in the election campaign are described in the

³² OSCE/ODIHR Report 2012, p.15

³³ OSCE/ODIHR Report 2014,p.15

³⁴ Ibid

³⁵ Ibid, p. 16

report of the Transparency Serbia Organization.³⁶ It indicated that some election stakeholders participated in TV entertainment shows, using the media presence against the rules applied to media coverage of the election campaign, with the same source indicating the failure of the RBA to react, draw attention to and prosecute the said abuses. The Report also stated that the officials and candidates appeared at the promotional events of public institutions.³⁷ Another serious objections by monitors concerned the lack of regulation for participation of other entities from the election campaign in the media and regulation of presence of entities that are not political parties – e. g. association of citizens. Due to the fact that the same restrictions on media coverage of the election campaign did not apply to them, there was room for abuse.

Impartiality in reporting and self-censorship. The key disadvantages and problems faced in the context of jeopardizing impartiality in reporting, but also in terms of self-censorship in reporting on the political scene and the electoral process were recognized also by the OSCE/ODIHR in the Reports on electoral activities in 2012 and 2014, and also in the observations made by the independent governmental bodies and the non-governmental sector in the Republic of Serbia.

The 2011 Report of the Anti-Corruption Council on the state of the media is echoed in the OSCE reports. In its report, the Council was vocal in drawing attention to the lack of transparency and the lack of available data regarding the ownership structures in the Serbian media. Adding up to this problem the one related to grants for media outlets from public funds, it is clear to what extent it is invisible to the general public the impact and pressure of the state and private structures on the media and through the media in Serbia.³⁸

OSCE/ODIHR Report of 2014 explicitly cites the finding from the Annual Report of the Ombudsman³⁹ of 2013, which sums up the impression of a big pressure put on journalists and media in Serbia by political parties and private sources, directly jeopardizing the independence and pluralism of the media sector.

³⁶ Transparency Serbia, Report on financing the media campaign, p. 7

³⁷ Transparency Serbia, Report on financing the media campaign, p. 7

³⁸ OSCE/ODIHR Report 2012, p.13

³⁹ Annual Report of the Ombudsman for 2013, at: http://www.ombudsman.rs/attachments/3237_Godisnji%20izvestaj%20Zasttnika%20gradjana%20za%202013%20%20godinu.pdf

Contrary to the Recommendation of the Committee of Ministers of the Council of Europe R(99)1 on media pluralism, there is a lack of regulation and monitoring that would effectively address the issue of state funding for the media. This leaves much scope for hidden funding and exercising influence on the media unknown to the public.⁴⁰

The issue of media reporting and, in general, the role and treatment of the media in the electoral and broader political processes in Serbia remains, with good reason, the source of concern for domestic and foreign observers. It involves an interplay of multiple factors and disadvantages which collectively and individually have the potential to seriously compromise the independence, transparency and freedom of the media, as well as equality and quality in the process of campaign coverage by the media. Rooted problems mainly concern the ownership structure of the media, their lack of transparency and a lack of availability of information and data on them. In addition, there is a problem of invisible state funding of the media, which jointly or separately leads to disallowed, invisible influence through the media and on the media as far as political reporting is concerned. These relations and structures need to be fully transparent and available to the general public.

A lot of shortcomings were observed in the election campaign processes, both systemic and incidental. The former include primarily those related to the legal framework and its effectiveness in terms of the position and responsibilities of specific authorities, such as the Broadcasting Agency, in the process of preventing, detecting and penalizing violations of the rules on reporting in the election race. Competencies should be more clearly defined, but also those that are pre-planned (e.g. those of a supervisory body to monitor reporting in the media), should be promptly and consistently implemented. It has already been noted that the Agency's work in this context must be fully transparent but it also has to be willing to react effectively and without delay to violations and possible violations. The deficiencies in reporting, neutral or positive tones in presenting contenders in the race and in providing information to citizens about political and electoral options, can be seen as issues of media policies and culture, but potentially also as a consequence of the influence of political and other structures in the media. It has already been assessed that it is necessary to induce media responsibility both for the content and

⁴⁰ OSCE/ODIHR Report 2014, p.14

for the quality of media reports on electoral activities, in order to achieve a high level of professionalism and expediency of media coverage.

V. Position of national minorities in electoral processes and political activities

1. Noticed disputed issues and conclusions

The Constitution of the Republic of Serbia provides for the rights and freedoms of national minorities in the territory of the Republic, including the rights related to political association, use of and access to in minority language as well as an active and passive voting right. This constitutional framework was assessed as being consistent with the Copenhagen Document concerning equal rights and freedoms for all citizens.⁴¹ Standards relevant for the OSCE framework in the context of the status and rights of national minorities, endorsed and ratified by Serbia, include the Framework Convention of the Council of Europe on the Protection of National Minorities as well as the European Charter for Regional and Minority Languages. Also, the Republic of Serbia is a State party to bilateral agreements on the protection of minorities with four of its neighbouring countries.

The Law on Political Entities further regulates the issues of registration of parties of national minorities, while the Law on the Election of MPs and the Law on Local Elections govern issues of registration of electoral lists and persons standing in elections.

Both reports by the OSCE/ODIHR observers at 2012 and 2014 elections include, to a lesser extent, participation of national minorities and their parties in electoral activities, pointing to certain flaws and making a number of recommendations.

The reports indicate that ten seats were won by the national minority parties at the general election in 2012, while this number increased to 12 seats in 2014 elections. This was seen as a slight positive step forward.⁴²

⁴¹ OSCE/ODIHR Report 2014, p.18

⁴² Ibid, p. 19

These reports highlight two key problems noticed during the election activities in 2012 and 2014.

The former is related to registration prerequisites, i.e. registration of electoral lists for candidates coming from the political parties of national minorities. The Law imposes less restrictions on the registration and work of the political party of minorities in relation to the parties of a different nature. While 10,000 signatures are required for the registration of political parties, in the case of minority parties this number was reduced to 1,000. However, in terms of the registration of electoral lists of candidates, the Law on the Election of MPs sets out the same criterion that applies in the case of parties of national minorities and other political parties, and it amounts to 10,000 citizens' signatures. This discrepancy or undermining of the initial preference given to the parties of national minorities was also pointed to in the reports of the relevant organizations.⁴³

This kind of solution is rightfully seen as a potentially debilitating for the parties of national minorities as it goes beyond the capacity of support these parties can actually get through signature collection as well as their financial capacity in comparison to larger parties appealing to a wider electorate.⁴⁴ Consequently, the political parties of some minority groups did not take an independent part in the election activities, having no lists of their own, but even where they did it was done through pre-election coalition agreements with the majority parties. On the one hand, this could prevent freedom of association and the exercise of the electoral rights by minority group parties,⁴⁵ but also affect the quality of representation of the minority group that is actually represented by that party, within the pre-election party and political assimilation. The 2012 Report by the Belgrade Centre also drew attention to the minority party abuses in view of the genuine representation of national minorities whose identity they are associated with. It was concluded that favourable criteria for the registration of political parties of national minorities under the Law on Political Entities, are used by the parties that do not have a predominantly large number of persons belonging to a national minority among their members or on their electoral lists, although it was exactly for this reason that they secured their presence in the composition of a certain representative body.⁴⁶ Therefore, it is needed to monitor, in a tangible

⁴³ See the Annual Human Rights Report of the Belgrade Centre for Human Rights 2012.

⁴⁴ OSCE/ODIHR Report 2014, p. 18

⁴⁵ Report by the Belgrade Centre 2012, p. 241.

⁴⁶ Ibid.

manner, the structure and composition of representatives and membership of the party of a national minority, during the registration process but preferably in subsequent activities as well, with a view to securing realistic representation of the minority group, avoiding manipulation with the privileged status to come to power and wield political influence.

Another noted issue or observation has to do with the standards laid down in the Copenhagen Document concerning the use of minority language or the native tongue in receiving, imparting and disseminating information. In the 2012 election observation activities, OSCE/ODIHR monitors observed incidents in some municipalities where sections of the Central Voter Register were not available in minority languages but only in Serbian Cyrillic alphabet, resulting in limited access for minority members to freely and unimpededly cast their ballots.⁴⁷

The main recommendation made in the context of shortcomings in the monitoring reports is certainly related to the requirements for the *registration of electoral lists* by minority parties. This provision of the Law on the Election of MPs should be brought in harmony with the intention of facilitating access to political influence for the political parties of minorities, commensurate with their need to be represented in the Parliament. Lowering the criterion of 10,000 signatures for the registration of the list is needed to secure greater independence in representing minority groups, have freer participation in elections and to stimulate political activities of minority groups. This could be done by intervening in the text of the Law and not through attempts by lower-level supervisory and regulatory bodies at amending the legal provisions in the run-up to the elections themselves. Thus, preferential treatment reserved for the formal political engagement of national minorities on the political stage is ensured through the harmonisation of the provisions governing the registration of parties and those on the registration of electoral lists at the elections themselves.

VI. Central Voter Register

1. Noticed disputed issues and conclusions

⁴⁷ OSCE/ODIHR Report 2012, p. 19

The Central Voter Register was established under the Law on the Central Voter Register⁴⁸ and used for the first time on the eve of electoral activities in 2012. This centralized and unique database on the electorate of the Republic of Serbia enabled access to information for citizens concerning their registration in the voting list as requested by the competent municipal authorities or as existing on the web voter register. Observers and OSCE/ODIHR representatives welcomed, in principle, the establishment of the Central Voter Register but the very implementation was not entirely flawless according to the findings made.

Namely, since the establishment of the Central Voter Register, OSCE and other observers have pointed out that the inability of public insight into the voting register to check its content and the method of registration, pursuant to legal provisions concerning the protection of personal data, jeopardizes the transparency of the database. One of the important recommendations made precisely concern the need to secure the higher level of public inspection of the Central Voter Register in the Republic of Serbia.⁴⁹

In 2012, there were reported incidents of non-registered data from the Central Voter Register and some parts thereof since they were not available in all languages of national minorities but only in Serbian and in Cyrillic script, though the relevant law prescribes data entry concerning the voters belonging to national minorities both in Serbian and the language of the minority in question.⁵⁰ While the voting register was modified and enabled entry of data in both languages before the next elections held in 2014, some minority groups complained about the way their names were spelt in Serbian language, creating problems with finding their names and checking if they existed in the register, especially some voters who belong to minority groups.

Both recommendations made in the reports on elections 2012 and 2014 remain valid.

It is necessary to enable, without exception, entry of names of voters belonging to national minorities both in Serbian and the language of the minority, thus avoiding all ambiguities and situations where the identification of voters and their casting of ballots could be rendered more difficult. The complaints received and the findings of election observers indicate that the

⁴⁸ "Official Gazette of the Republic of Serbia", No. 104/2009 and 99/2011

⁴⁹ OSCE/ODIHR Report 2014, p. 8

⁵⁰ OSCE/ODIHR Report 2014, p. 9

problem exists and that as a departure from the OSCE standards, it should be troubleshoot in full on the level of the voter register, in line with the standards and laws that regulate it.

Also, an important recommendation is the one concerning *greater transparency* of the voter list itself. Bearing in mind the deviations in numbers of the very voter list from the census taken in 2011, concerning the voters in some areas and overseas⁵¹, a higher level of public inspection is preferable as well as of the availability of the Central Voter Register in order to avoid uncertainty, doubts about the veracity and transparency of lists but also with a view to removing any doubts about the proper maintaining of the list that serves as the basis for exercising the voting rights by citizens.

Sources used:

1. „Corruption prevention in respect of members of parliament, judges and prosecutors – Evaluation Report Serbia“ Group of States against Corruption GRECO, 2015, at: http://www.acas.rs/wp-content/uploads/2015/07/GrecoEval4Rep20148_Serbia_EN.pdf
2. “Early Parliamentary Elections, OSCE/ODIHR Limited Election Observation Mission Final Report”, OSCE/ODIHR, 2014
3. „Election Observation Handbook“, OSCE, 6th edition, available at <http://www.osce.org/odihr/elections/68439>
4. „Financing of presidential and parliamentary election campaigns in Serbia – May 2012“, Transparency Serbia, 2012 at: <http://www.transparentnost.org.rs/images/stories/materijali/Finansiranje%20kampanje%202012.pdf>

⁵¹ OSCE/ODIHR Report 2014, p. 8

5. „Annual Report of the Ombudsman for 2013“, Ombudsman, 2014, at:
http://www.ombudsman.rs/attachments/3237_Godisnji%20izvestaj%20Zasttnika%20gradjana%20za%202013%20%20godinu.pdf
6. „Human Rights in Serbia – 2012.“, Belgrade Centre for Human Rights, 2013, at
http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/Ljudska_prava_u_Srbiji_2012.pdf
7. OSCE/ODIHR and Venice Commission Joint Opinion on Draft Laws on Electoral Legislation of Serbia, OSCE, at <http://www.osce.org/odihr/elections/serbia/39946>
8. “Parliamentary and Early Presidential Elections”, OSCE/ODIHR Limited Election Observation Mission Final Report”, OSCE/ODIHR, 2012
9. „The first report on oversight of political entities – 2012 election campaign costs“, Anti-Corruption Agency, 2013, at: http://www.acas.rs/wp-content/uploads/2011/05/The_First_Report_on_Oversight_of_Political_Entities_2012_Election_Campaigns_Costs_with_Anex1-5.pdf
10. The Law on Financing Political Activities, „Official Gazette of the Republic of Serbia“, Nos. 43/11, 123/14
11. The Law on the Election of Members of Parliament, "Official Gazette of the Republic of Serbia ", Nos. 35/00, 57/03, 72/03, 18/04, 85/05, 101/05, 104/09, 28/11 and 36/11
12. The Law on the Election of the President, "Official Gazette of the Republic of Serbia", No. 111/07
13. The Law on Central Voter Registry, “Official Gazette of the Republic of Serbia”, No. 104/2009, 99/2011
14. The Law on Local Elections, „Official Gazette of the Republic of Serbia“, Nos. 129/2007, 34/2010, 54/2011

15. The Law on Political Parties, "Official Gazette of the Republic of Serbia", No. 36/2009, 61/2015

1.2 Comments of the Coalition of Civil Society Organizations on the Institute of Social Sciences' report on electoral processes in the Republic of Serbia

Lawyers' Committee for Human Rights - YUCOM / Forum for Ethnic Relations

1.2.1 General overview of the study "Electoral Processes in the Republic of Serbia"

The Coalition of Civil Society Organizations accepts the report of the Institute of Social Sciences, as well as all identified problems and conclusions in the areas presented. On the other hand, the Coalition deems it appropriate to draw attention to the events in 2014 and 2015, which happened after the national elections were held. It is on the basis of these events that an assessment can be made of the consistency of the Serbian state and political actors in respecting the recommendations issued by the OSCE after the completion of the election monitoring process in Serbia in 2012 and 2014.

1.2.2. The legal framework of the electoral process

The regulations governing the operation of local self-government units allow for the dissolution of the assembly and repeated elections in a local self-government unit. According to the Law on Local Self-Government, the assembly of the local self-government unit can be dissolved if: 1) it fails to convene more than three months; 2) it fails to elect the president of the municipality and the municipal council within one month from the date of the constitution of the local self-government unit assembly or from the date of their dismissal or resignation.¹

These provisions are applied, as a rule, in local self-government units where the election result is not identical to the result at the state level. "Power" at the local level becomes the subject of the "will" of political parties, which is something that does not contribute to the realization of

¹ Law on Local Self-Government, RS Official Gazette, Nos. 129/2007 and 83/2014, Art. 85.

specific needs of citizens within the local self-government and to substantial "separation" of the two different levels of government. This also indirectly affects election results and prevents the exercise of mandates at the local level.

In the period between the extraordinary elections, which were held on March 16, 2014, and September 2015, new elections were called in several local self-government units, as well as in several city municipalities and local communities (Lučani,² Majdanpek, Mionica, Medveđa,³ Žitorađa, Irig, Vrdnik, Brus, etc.). Some of these new local elections were marred by incidents and irregularities⁴. During the local elections in Mionica, on December 28, 2014, the head of the list of the Democratic Party (DS) and activists of the Socialist Party of Serbia (SPS) were beaten up. Interior Minister Nebojša Stefanović confirmed that three activists of SPS, SNS and DS were assaulted during the election day in Mionica.⁵

On the other hand, in the local self-government units where restructuring of power in accordance with the balance of power at the national level did not happen, the hostilities among parties' representatives at the local level increased, becoming further intensified by vibrant messages of representatives of national authorities.⁶ In certain municipalities, such as Indija, incidents have been reported associated with the impossibility of restructuring the power at the local level.⁷ These phenomena jeopardize the free exercise of mandates, substantial decentralization and separation of political parties from the state. Announcements of early local elections by top government officials are an additional argument that impediments to the exercise of mandates exist.⁸

1.2.3. Protection of Electoral Right

² The government dissolved the Lučani municipality assembly by its decree of October 22, 2014.

³ The government dissolved the Medveđa municipality assembly by its decree of July 8, 2015.

⁴ Thus, in Irig the decision on the appointment of the municipal election commission was annulled, due to its improper composition. (The ruling of the Administrative Court, Už. 3/2015 of February 05, 2015)

⁵ <http://www.rts.rs/page/stories/ci/story/1/%D0%9F%D0%BE%D0%BB%D0%B8%D1%82%D0%B8%D0%BA%D0%B0/1786273/%D0%98%D0%BD%D1%86%D0%B8%D0%B4%D0%B5%D0%BD%D1%82%D0%B8+%D1%83+%D0%9C%D0%B8%D0%BE%D0%BD%D0%B8%D1%86%D0%B8.html>

⁶ <http://www.021.rs/Info/Vojvodina/Raste-netrpeljivost-DS-a-i-SNS-a-oko-opstina-u-Vojvodini.html>.

⁷

B92: Indija: Borba za odbornike ne jenjava (The fight for councilors is not slowing down), May 27, 2015.

http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=05&dd=27&nav_category=11&nav_id=997276

⁸ <http://www.juznevesti.com/Politika/Gasic-Lokalni-izbori-mozda-u-decembru.sr.html>;

<http://www.blic.rs/Vesti/Politika/543846/OTKRIVAMO-Pokrajinski-i-lokalni-izbori-krajem-godine>

The process of protection of electoral right is characterized by legal formalism with short deadlines for filing legal remedies. As a result, certain legal remedies are rejected as inadmissible or untimely,⁹ and apparent illegalities remain uneliminated.

At the local elections in Majdanpek in 2014, a group of citizens filed a complaint regarding an apparent irregularity related to the layout of the ballots.¹⁰ The position taken by the Administrative Court was that the date when the plaintiff obtained knowledge of the layout and content of the ballot did not bear any significance to the timeliness of the complaint, given that the legal deadline of 24 hours is calculated from the day when the decision on the layout of the ballot was taken, and not from the day when the knowledge of the irregularity was obtained.¹¹ This system of protection of right was also criticized by the OSCE/ODIHR monitoring mission.¹²

1.2.4 The media in the electoral processes

The position and role of the media in the electoral process were observed by non-governmental organizations, both during the 2012 elections and during the elections in 2014. Specific problems have been noted in 2014 related to the reporting on the election of national councils.

The study “Media in Elections: *Media Monitoring: Election Campaign 2012*”¹³ carried out by the Bureau for Social Research stated that “a latent censorship of the media, to which a formal ban of media is not central, is taking place in Serbia. It is rather implemented by controlling the financial survival of the media and journalists, who unfortunately, failing to organize themselves, in unions in the first place, contribute to this state of affairs. The findings of our monitoring also speak in favor of the thesis on latent censorship. During the election campaign for parliamentary elections, the monitored media showed a low level of integrity, since an information-promotional

⁹ Administrative court, Department of Kragujevac, Decision UŽ 21/15 of May 11, 2015, Administrative court, Department of Novi Sad, Decision UŽ. 12/15 of March 19, 2015, Administrative court, Department of Novi Sad, Decision UŽ. 18/15 of March 16, 2015.

¹⁰ “Article 30 of the Law on Local Elections has been violated”, the ballot failed to show the names and surnames of the first candidates on the lists as prescribed by the Law. Asked why they have not complained earlier, Igić explained that they first wanted to see for themselves and to be sure that this is indeed the case before reacting. http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=09&dd=07&nav_id=896905

¹¹ RS Administrative Court, Decision UŽ. 47/14 of September 16 2014.

¹² “Early Parliamentary Elections, OSCE/ODIHR Limited Election Observation Mission Final Report”, OSCE/ODIHR, 2014, str. 17, <http://www.osce.org/sr/odihr/elections/serbia/119405?download=true>

¹³ See: Bureau for Social Research, *Mediji u izborima: Monitoring medija: izborna kampanja 2012 (Media in Elections: Media Monitoring: Election campaign 2012)*, pp. 53-54. <http://www.birodi.rs/wp-content/uploads/2013/08/Mediji-u-izborima.pdf>

discourse with elements of propaganda dominated the reporting. Domination of informative genre forms and the use of dialogue genre forms for promotional purposes prevented the analyzed media from reporting on the participants in the electoral process in an analytical and critical manner. Another indicator of the lower integrity of monitored media is a high level of unsigned articles, blurred journalistic sources, reliance on government sources and a very high level of affirmative presentation of political parties, comparable to the findings in countries that are on a lower level of democratic development. Four findings are of special concern: the first on unsigned articles as regular practice, the second on the growing percentage of headlines with positive connotation during the campaign, the third on a significant number of newspaper articles where the source is not clear, which may be an indication that the text was taken over from an agency or that it is a party proclamation in the form of PR-material, and fourth on respecting "party cameras", which are nothing else but the most banal way to control news programs on televisions. An indicator of low integrity of daily newspapers and televisions is their passive attitude toward the nomination of topics, that is, their willingness to embrace topics nominated by the political parties as the main election topics.

The Monitoring Center of the Human Rights and Democracy House¹⁴ analyzed the writing of seven daily newspapers (Danas, Politika, Blic, Alo, Kurir, Informer and Večernje novosti) in the period between February 15 and February 23, 2014. The aim of this analysis was to determine the incidence of texts in which political parties express their standpoints and present themselves to the voters in the election campaign. Thus all articles in which journalists analyze the elections or some electoral aspects, as well as columns, commentaries and similar texts were omitted. Articles in tabloids communicating disputes among representatives of political parties on a personal basis were also not analyzed, as they essentially fail to send any message about the program and objectives of the political parties to the voters.

Based on the analysis, the Centre has concluded that the Serbian Progressive Party had by far the largest share in all monitored media, except for the daily newspaper Danas. This share ranged mainly around 40 percent. There was not a single negative article about the Serbian Progressive Party in this kind of articles. The share of the Democratic Party, then officially still the strongest

¹⁴The Human Rights and Democracy House is composed of: Civic Initiatives, Belgrade Centre for Human Rights, Lawyers' Committee for Human Rights – YUCOM, Helsinki Committee for Human Rights, and the Practical Policy Centre.

parliamentary opposition party, in the articles ranged from 5 to 20 percent. The conclusion of the analysis was that four out of seven daily newspapers - Kurir, Informer, Večernje novosti and Politika - openly favored the SNS. As for the daily newspapers Blic and Alo, it could be said that they showed a slight favoritism of this party, within acceptable limits of balance between objective information and the right to exercise their own editorial policy. The daily Danas was the only one that did not favor any party.

The Center for Election Monitoring of the Human Rights and Democracy House demanded that the police, prosecutor's offices and security services discontinue the targeted placement of information from investigations that are used for the election campaign. Free and fair elections in Serbia are seriously threatened by placement of unverified information from investigations in the media with the aim of discrediting politicians.¹⁵

1.2.5. Financing

The OSCE report on extraordinary parliamentary elections in the Republic of Serbia in 2014 does not circulate too many new objections related to the financing of political and electoral activities, but rather reiterates the shortcomings noticed earlier. The report draws attention to the necessity of limiting resource spending in the election campaign, with the aim of reaching greater equality in the electoral race for the different actors. In addition to that, it points to the necessity of clearer and supplementary delineation between the concepts of regular political activities and those within the framework of the campaign, in order to avoid, to the greatest extent possible, the abuse of gifts and services.

The findings of the organization Transparency Serbia speak to the problem of the existence of the officials' campaign. In the course of monitoring the pre-election campaign in 2014, this organization noted that "the number of promotional activities in relation to the same period a year earlier grew by 848%". As an additional argument that speaks to the existence of the officials' campaign, Transparency Serbia states that "a huge drop in activity was recorded in the

¹⁵ <http://kucaljudskihprava.rs/neproverene-informacije-iz-istraga-ugrozavaju-slobodu-izbora/>

period immediately after the elections - the number of promotional activities was five times smaller, and was reduced to 18 percent of the activities during the campaign period”.¹⁶

After the last elections, modifications of the legal framework governing the financing of political parties and simultaneously the election campaign were carried out.

Transparency Serbia presented to the parliamentary groups in the Parliament of Serbia proposals for amendments to the adopted Draft Law on Amendments and Supplements that would regulate the financing of political activities. Some of the amendments proposed by Transparency were accepted. Thus an amendment was adopted that restricts political parties in using real estate funds from public sources exclusively for the implementation of political activities.

The Law on Amendments and Supplements to the Law on Financing Political Activities, which was passed on November 8, 2014, reduced the percentage of budget allocated to political parties. Amendments to the Law on Financing Political Activities envisage that in the future parties receive about 30 percent less funding from the budget. The percentage for the allocation of funds to political parties is reduced from 0.15 to 0.105 percent, as well as for the financing of pre-election activities from 0.1 percent to 0.07 percent. In this way, there will be a linear reduction of more than 30 percent in comparison to current funds for all political actors.

Although certain changes were assessed as positive, the opportunity to rectify all objections presented by OSCE was missed, especially regarding the separation of financing of the election campaign from the financing of regular political activities. According to the latest amendments to the Law on Financing Political Activities, funds for financing regular operation of political entities are also used for financing the costs of election campaigns.¹⁷ Given that funds from real estate bought with money obtained from public sources will be used for political activities, statements of Serbian analysts are confirmed that the intentions of the already established parties exist to increase their advantage by ever more abundant (self) financing from public sources, and

¹⁶<http://www.transparentnost.org.rs/images/stories/materijali/13062014/Aktivnosti%20javnih%20funkcionera%20otokom%20kampanje%20za%20izbore%202014,%2013.06.2014.pdf>

¹⁷*Law on Financing Political Activities*, RS Official Gazette, Nos. 43/2011 and 123/2014, Art. 19 Para. 2.

thus practically prevent the emergence of new political actors with a realistic chance of electoral success.¹⁸

Transparency Serbia finds that this situation leads to an illogical solution where the budget allocates money for the same purpose twice, which is contrary to the principles of the budget system. Namely, the provisions of the Law prescribe that a certain sum from the budget, in equal amounts, is distributed to all participants in the election campaign before the elections. After the elections, the lists that have won parliamentary seats receive additional funds to cover the costs of the campaign. As the money from the budget for financing regular operation of political entities is also used for financing campaigns, it means that the parliamentary political parties (especially those that have the largest number of MPs, deputies and councilors in an assembly) are extremely privileged in comparison to the remaining participants of the election race. Besides, parliamentary parties enjoy a certain advantage over non-parliamentary rivals by the nature of things, due to more opportunities to present themselves to the citizens beyond the election period as well.

The reduction of budget subsidies and the opening of opportunities for using funds received for the financing of regular operation of parties in the campaign further actualize the need to legally limit the costs of election campaigns.¹⁹

1.2.6. National minorities and elections

The Law on the Election of Members of Parliament restricted the right of participation of minority parties in the elections for MPs, since the confirmation of the election lists for minority parties requires the same number of signatures as for any other party. Shortly before the 2008 elections the Republic Electoral Commission adopted the Guidelines for the Implementation of the Law on the Election of Members of Parliament that relax the legal requirements for submitting electoral lists of national minorities. According to provision of Art. 28 Para. 8 of the Guidelines, submission of the electoral list of a political party of a national minority or coalition of political parties of national minorities requires at least 3,000 court certified statements of

¹⁸ See: Zoran Stojiljković, *Novac i izbori (Money and Elections)* in „Oko izbora 19“ („About elections 19“), Centar za slobodne izbore i demokratiju (Centre for Free Elections and Democracy), 2014, p. 46.

¹⁹ <http://www.blic.rs/Vesti/Politika/508888/Transparentnost-Srbija-dostavila-predloge-amandmana-na-zakon-o-finansiranju-stranaka/print>

voters instead of 10,000 voters' signatures prescribed by the Law. However, the Constitutional Court of Serbia, on the basis of the constitutional provisions which explicitly provide that issues of the election of MPs, along with equality and representation of national minorities, are regulated by law, as well as on the basis of provisions of the Law on the Election of Members of Parliament, which regulates the jurisdiction and authority of the Republic Electoral Commission and conditions for the establishment of election lists, suspended the enforcement of provisions of Art. 28 Para. 8 of the Guidelines.

Our legal system does not provide for measures enabling representatives of national minorities, under conditions which do not constitute an obstacle to the elections, to represent the interests of national minorities in representative bodies. The so-called "natural threshold" measure is not a standard affirmative measure, because it represents a real obstacle to the exercise of the right to political representation. It is, under certain conditions, available only to political parties of numerous and territorially homogeneously settled national minorities. Enabling an "affirmative" measure that would ensure realistic representation of the interests of minorities in representative bodies at all levels of government is a prerequisite for real removal of political parties from minority self-governments.

The Helsinki Committee for Human Rights in Serbia has criticized the legal uncertainty in which minority parties found themselves, "It is the obligation of the Republic Electoral Commission to interpret the electoral legislation in advance, thus enabling minority parties to prepare for the new rules and start collecting the 10,000 signatures that are now necessary on time, which is something many of them will not be able to do within such a short time limit, and will consequently be de facto excluded from the political life of Serbia. The Albanian minority is already announcing that it is not able to gather additional signatures in such a short period. Thus this latest move will be another indication that the Albanians in Serbia are not a welcome minority and that they are still being treated as part of the solution to the Kosovo issue."²⁰

Finally, the Constitutional Court confirmed by its decision IUP-42/2008 of April 14, 2011, the standpoint that the provisions of the Law on the Election of Members of Parliament are in compliance with minority rights guaranteed by the Constitution. In this regard, the majority of non-governmental organizations and experts deem it necessary to change the Law on the

²⁰ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=04&dd=10&nav_category=418&nav_id=293257

Election of Members of Parliament regarding the number of signatures for the establishment of electoral lists of minority parties.

In late October 2014, the second elections for national councils of national minorities were held. National minorities elected members of 17 councils (Albanian, Ashkali, Bosniak, Bulgarian, Bunjevac, Vlach, Greek, Egyptian, Hungarian, German, Roma, Romanian, Ruthenian, Slovak, Slovene, Ukrainian and Czech national council) in direct elections, while members of the Macedonian, Montenegrin and Croatian national councils were elected at an electronic assembly. The elections were held without major irregularities. However, several incidents were recorded in the municipality of Tutin, which is why elections for members of the national council of the Bosniak national minority were repeated at three polling stations. The elections were also repeated at one polling station in the municipality of Bujanovac.

According to the Belgrade Center for Human Rights: "Except for the election day when they were reporting on the progress of the electoral process, elections for national councils, that is, the election campaign, were not a topic that the media with national coverage properly followed. It should be noted that Art. 39 of the Law on National Councils of National Minorities states that there is an obligation of the public media to follow the development of election activities. When it comes to media in minority languages, numerous irregularities were identified, including the participation of journalists and editors in the election campaign."²¹

RECOMMENDATIONS:

- **Improve the legal framework to allow a course of action in compliance with OSCE standards, namely the holding of free elections (in local self-government units) at reasonable intervals, and securing that candidates who receive enough votes enter into their function and remain there until the expiry of their mandates.**
- **Improve the rules for the election of national councils of national minorities, especially in relation to the monitoring of the elections, the composition of the election commissions and insight into the electoral rolls.**
- **Improve the legal framework for protection so that deadlines for filing legal remedies are extended to allow effective protection of electoral rights.**

²¹ <http://www.autonomija.info/nepravilnosti-u-izvestavanju-medija-na-manjinskim-jezicima.html>

- **Conduct efficient investigations into the assaults during the elections in local self-government units.**
- **Amend the Law on the Election of Members of Parliament regarding the number of voters necessary for verifying electoral lists in order to enable the exercise of constitutionally guaranteed rights of national minorities.**

1.3. Comments offered by the Office for Human and Minority Rights of the Republic of Serbia, in relation to comments by the Coalition of Civil Society Organizations

In Section 1.2.6 “National minorities and elections” it is stated that *in late October 2014, elections for members of national minority national council were held for the second time. Directly at the ballot-box, persons belonging to national minorities elected members of 17 councils (Albanian, Ashkali, Bosnian, Bulgarian, Bunjevac, Vlach, Greek, Egyptian, Hungarian, German, Roma, Romanian, Ruthenian, Slovak, Slovenian, Ukrainian and Czech national councils), while members of Macedonian, Montenegrin and Croatian national councils were elected by their respective electors’ conferences.*

Comment: The Law on National Councils of National Minorities provided for the possibility of electing national councils of national minorities directly. At the end of 2014, direct elections for 17 national councils of national minorities were held for the second time. The remaining three national councils were elected by electors’ conference.

1.4. Comments by the Ministry of State Administration and Local Self-Government

We reviewed the **Report of the Institute of Social Sciences related to electoral processes in the Republic of Serbia, and the Comments of the Coalition of Civil Society Organizations on this Report submitted to this Ministry for further comments on 19**

October 2015, as annexed to the letter No: 5/349 of 16 October 2015 and, within the area of responsibility of the Ministry of State Administration and Local Self-Government, we would like to draw your attention to the points below.

It is necessary to include in the Report of the Institute of Social Sciences (Sub-study 1: Electoral Processes in the Republic of Serbia), Part II: Legal Framework for Electoral Processes, in the overview of the legal framework relevant for electoral processes in the Republic of Serbia – the Law on National Councils of National Minorities governing the organization and implementation of elections for national councils of national minorities (“Official Journal of RS”, Nos. 72/09, 20/14-CC and 55/14).

Concerning the text under Chapter V, item 1, in the part on “prerequisites for registration, i.e. registration of electoral lists with candidates of political parties of national minorities”, we refer to Constitutional Court Decision No. UŽ-479/2014 of 29 May 2015 („Official Journal of RS“, No. 61/15 of 10 July 2015) dismissing the request for qualifying as unconstitutional the provisions of Article 9 of the Law on Political Parties concerning the number of founders required for establishing political parties of national minorities (1,000) and noting that the foreseen number of founders does not prevent national minorities of smaller size from organising themselves politically.

As regards the text of the Report emphasizing that it is necessary, during registration and preferably in subsequent activities as well, “to monitor in a more tangible way the structure and the composition of representatives and members of national minorities”, we draw attention to provisions of Articles 21 and 47 of the Constitution of the Republic of Serbia, prohibiting any direct or indirect discrimination based on any grounds, including ethnic background, and indicating that ethnic origin may be expressed freely, and that no person shall be obliged to declare his/her ethnicity. Paragraph 2 on the same page of the Report indicates “incidents where certain parts of the Unified Electoral List were not available in minority languages in some municipalities, but only in Serbian Cyrillic script”, whereas the Chapter entitled VI. Unified Electoral List, Item 1: Identified controversial issues and conclusions, states that “cases were reported in 2012 that data from the unified electoral list and some of its parts were not recorded, i.e. that they were not available in all national minority languages, but solely in the Serbian language and in Cyrillic script”. In this context we wish to point out that Article 7 of the Law on the uniform electoral roll stipulates that the name and surname of voters who are national

minority members should be dually registered, first in the Serbian language, Cyrillic script and Serbian transcription, and then according to the spelling and script of the national minority language, and that Article 19 of the Law provides that excerpts from the voter register for each polling station should include all voter data contained in the voter register.

As regards the text of the Report indicating the “impossibility of public insight into the electoral roll contents to the effect of checking the content and the manner of keeping records, hampering database transparency under legal provisions on the protection of personal data”, and the underlining of “the need for a higher level of public examination and availability of the unified electoral roll in order to avoid uncertainty, suspicion of the roll’s transparency, as well as to remove doubts about proper record keeping”, we draw attention to the fact that Article 14 of the Law on the unified voting list provides for the possibility of displaying part of the list kept for the area of a local self-government unit, and that the manner of using the voting list, excerpts from the list and insight into the list have been more extensively defined in Chapter III of the Implementation Guidelines for the Law on the unified electoral roll, allowing insight into the roll by any citizen to the effect of checking personal data recorded in it. Namely, insight is ensured on the basis of voter request, and can be made directly in the municipality, that is, in the municipal administration where the respective citizen is a resident, whereas once the electoral list has been proclaimed, insight will also be available to the submitter of the list or the person he/she has authorized. Insight can also be made on-line at the official website of the Ministry of State Administration and Local Self-Government by entering one’s personal identification number, or by sending an SMS message with this number to the telephone number published in the mass media or at the Ministry’s official website, but only if the site was occasionally unavailable for technical reasons. Additionally, the expressions “political parties” and “political organizations” used in the Report should be replaced by: “political entities” as appropriate, for the purpose of their harmonization with the Law on Political Entities.

In the Comments offered by the Coalition of Civil Society Organizations on the Report of the Institute of Social Sciences “ELECTORAL PROCESSES IN THE REPUBLIC OF SERBIA”, part 1.2.6. “National minorities and elections”, paragraph 5, after the sentence “The elections were carried out without major flaws”, it is necessary to insert that following the elections for members of national councils of national minorities, held on 26 October 2014, no charges had been filed with the Administrative Court; that all the elected national councils of

national minorities have been constituted successfully, that organs of national councils of national minorities were elected regularly, and that national councils of national minorities have harmonized their statutes and other acts with the Law on National Councils of National Minorities.

As regards the Recommendation to “improve the electoral regulations on the election of national councils of national minorities, particularly in respect of election oversight, composition of polling committees and insight into voting lists”, we underline that election of national councils and issues not regulated under this Law will be regulated by the Law on the Election of MPs, the Law on General Administrative Procedure (Article 43 of the Law on National Councils of National Minorities), whereby the enhancement of the legal framework for electoral processes in the Republic of Serbia will also be reflected in the elections for members of national councils of national minorities. We further draw attention to Article 51 of the Law on National Councils of National Minorities, stipulating extensively and strictly the use of data from the Special Voting List, and that data from the Special Voting List are subject to special protection. Moreover, after the calling of elections for members of national councils of national minorities, the Ministry enabled citizens to check voter registration in the special voting list, in a simple procedure, by providing a link on its website. The data made available to citizens in this way was whether an individual was or was not registered into the special voting list, without having access to other data, whereby protection of personal data was ensured.

In addition, we underscore that, pursuant to the Law on Local Self-Government (“Official Journal of RS”, Nos. 129/07, 83/14-dr. law), this Ministry is responsible for oversight of the legality of work and acts adopted by local self-government units, in accordance with the Constitution and the law. As regards taking measures related to assembly dissolution and establishment of a provisional body – considering the sensitivity of the relations at stake, the Law intended to reduce the reasons for dissolving the local self-government unit assemblies to the required minimum, to restrict its term, thus providing for the setting-up, within a reasonable period of time, of local self-government unit bodies based on the Law, and ensure normal realization of the right of citizens to local self-government.

The given comments did not include additional reasons for dissolving assemblies of local self-government units among the above-mentioned ones, as provided for by the Law, such as the failure to adopt statutes or budgets for local self-government units within the time-frame set by

the law (Article 85, item 3, of the Law). Therefore, it is necessary to underline that assembly dissolution should not be directly related to the results of elections (electoral process), but should be seen as the consequence of problems faced in the work and operation of this municipal body, that could not have been eliminated otherwise. Furthermore, the reasons for local parliament dissolution are precisely defined in such a way that the possibility of adopting decisions at discretion is reduced to being almost negligible.

It is also necessary to differentiate between the legal status of local units of self-government (municipality, town, City of Belgrade), metropolitan municipalities and local communities, because metropolitan municipalities and local communities do not have the status of local self-government units. In addition, local community as a form of local self-government, is not subject to the implementation of the provisions regulating election of delegates to the assemblies of local self-government units, i.e. the provisions of the Law on Local Elections ("Official Journal of RS", Nos.129/07, 34/10-CC and 54/11).

Regarding the segment of the comments including *recommendations* for enhancing the legal framework (subparagraph 1), it is beyond any doubt that the four-year term of office of local parliamentary representatives is defined by the Law on Local Elections and that the reasons for premature termination of their mandate have been strictly provided for, which is a condition for re-election. It is also indisputable, however, that the delegate's four-year mandate "guaranteed by the law" is prone to various changes resulting from social relations and, accordingly, also from impacts of elective office holders, during their mandate.

2.1. Rights enjoyed by Roma in Serbia in relation to OSCE standards (*Goran Bašić, Institute of Social Sciences, Belgrade*)

OSCE and "soft" European Roma policy standards

The Organization for Security and Cooperation in Europe (OSCE), as early as 1990¹, announced it would launch a "policy campaign" aiming to eliminate discrimination against Roma and to improve their situation. Such an orientation resulted from the overall policy of the OSCE following the Copenhagen Conference, as reflected in the concern for Roma status in the context of the participating States' commitment to clearly and unequivocally condemn totalitarianism, racial and ethnic hatred or discrimination, anti-Semitism, xenophobia and discrimination on any grounds as well as persecution based on religion or ideology.² Four years on, the OSCE established the Contact Point for Roma and Sinti Issues with the main task of promoting the human rights of these minorities and their integration in society.³

In the twenty five years that ensued, the OSCE has developed a network of activities, on both political and practical level, to help eliminate prejudice and discrimination and improve the situation of Roma in the participating States. However, the standards put in place by this process have not become part and parcel of the "hard law" developed through the monitoring and institution reporting mechanisms of the Council of Europe (ECRI⁴) and the United Nations (CERD⁵). However, the impact made by the OSCE through the operation of the Contact Point for Roma and Sinti Issues is enormous, and a close look at Roma policies devised in other European institutions reveals a clear connection, pointing to the OSCE as the source of ideas for specific policy action that combined the efforts of international institutions and organizations and the participating States with those of civil society organizations, and especially the Roma and organizations protecting and advocating their rights.⁶

Many reports on the situation of Roma, statements and direct aid provided to individual states, local communities and civil society, written and implemented by the OSCE, contributed to

¹ At the time referred to as the Conference on Security and Co-operation in Europe (CSCE)

² *Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE* (Point 40) <http://www.osce.org/odihr/elections/14304?download=true>

³ *ODIHR and Roma and Sinti Issues*, <http://www.osce.org/odihr/102598?download=true>

⁴ European Commission against Racism and Intolerance, Council of Europe, http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp

⁵ The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the UN Convention on the Elimination of All Forms of Racial Discrimination, <http://www2.ohchr.org/english/bodies/cerd/>

⁶ Goran Bašić, *Politička akcija - romski pokret i promene*, Čigoja, Beograd, 2010. (Political Action – the Roma Movement and Changes)

establishing more strict standards for the protection of Roma rights in EU Member States, and especially in EU candidate countries.

Owing to OSCE activities, and more particularly to its Action Plan on Improving the Situation of Roma and Sinti in the OSCE Area⁷, the European Union's Roma policy has in political terms come a long way from general directives⁸ endeavouring to alleviate the consequences of discrimination to a clear strategic framework for both the Member States and candidates alike, outlining the issues that require their attention in devising Roma integration programmes⁹.

This OSCE document, in addition to the visionary text by Andrzej Mirga and Nicolae Gheorghe "The Roma in the Twenty-First Century"¹⁰, made a substantial contribution in focusing the attention of political action related to the Roma issue on their direct participation in the processes of national integration programme and direct protection of their human, and especially social, economic and civil rights, as well as on the elimination of discrimination against them.

The Action Plan adopted by the Maastricht Conference in 2003 promoted the principle that no problem affecting Roma men and women may be addressed without their direct involvement (For Roma, With Roma) and also that every policy must espouse a comprehensive approach in dealing with the actual problems of Roma, ensuring public policies that protect the human rights of the Roma. It is particularly important that the Action Plan pointed to the specific situations facing Roma from country to country, emphasizing the relevance of integrative measures implemented locally.

Taking as its point of departure the fact that strong prejudice against Roma is the root-cause for their discrimination, the Action Plan recommended to the participating States to adopt and implement effective anti-discrimination legislation, especially with regard to citizenship and

⁷ Decison No. 3/30 Action Plan on Improving the Situation of Roma and Sinti within the OSCE area (Mc. Dec/3/03).

⁸ Council Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC on establishing a general framework for equal treatment in employment and occupation

⁹ An EU Framework for National Roma Integration Strategies up to 2020 - Council Conclusions adopted by EPSCO on 19 May 2011.

¹⁰ http://www.per-usa.org/1997-2007/21st_c.htm

residence, access to housing, education, employment, health and social services (paragraph 8). Such legislation should be based on the prohibition of both direct and indirect racial discrimination, on clearly defined sanctions for discriminatory acts both in private and in public, and also on ensuring equal access to effective remedies and institutions: judicial and other authorities, mediation and conciliation. The states are called upon to establish efficient institutional mechanisms to monitor the exercise of recognized rights, to adopt strategies at national and local levels, as well as APs aimed at improving the situation of Roma people and to encourage, without exception, Roma participation in decision-making processes and at other stages of their integration. Finally, protection of personal data and of particularly vulnerable groups among the Roma population (women, children), and also taking steps to enable the provision of information in the Romany language are some of the recommendations set forth in the Action Plan (9-19).

The Action Plan provides for a number of measures to be implemented on a continuous basis and in coordination with international organizations, the participating States and civil society organizations, focusing in particular on Roma specific measures. Endeavouring to suggest a comprehensive engagement of stakeholders at different levels of political and social activity, the OSCE Action Plan clearly pointed to the discrimination against Roma, its consequences, social, economic and political vulnerability of the group, as well as the lack of a kin state, raising the need for European institutions to take an array of measures and protect and uphold the interests of Roma. That the Action Plan recommendations were directly aimed at resolving problems was important for the progress of “European” and national policies that ensued in the following decade. The said problems primarily referred to discrimination in employment (48-57), education (67-86), housing (43-47), access to healthcare services (58-67), and effective participation by Roma people in public and political life (87-106).

In April 2011, eight years later, the European Commission adopted the EU Framework for National Roma Integration Strategies by 2020¹¹, containing principles, mechanisms and measures on the political agenda identified by the OSCE Action Plan in 2003. The objective of the EU Framework is to support the participating States in bringing about significant change in the lives of Roma persons by altering the approach to the inclusion of the Roma community.

11

This clearly indicated that EU legislation alone is not sufficient for combating discrimination, which is the reason for the Member States to devise and implement an integrated and sustainable method of combined efforts in various areas such as education, employment, healthcare and housing. This document of the European Commission called upon the states to draft new or revise the existing national strategies for the integration of Roma to be able to offer a more efficient response to challenges of Roma inclusion, aiming to improve their situation. “The Framework” provides that national strategies for the integration of Roma (NSIR) need to be in line with EU Roma integration objectives, the Common Basic Principles on Roma Inclusion, and primarily compatible with the European Strategy for Smart, Sustainable, and Inclusive Growth (Europe 2020)¹² and also consistent with the national development and reform programmes.

¹² A European Strategy for Smart, Sustainable, and Inclusive Growth (Europe 2020) is a document that does not directly address the European Commission’s Roma policy, but its relevance lies in the fact that it provides direction for policies and regulations related to Roma inclusion in the Member States and aspiring members. Among the goals set forth by this Strategy are poverty reduction, increasing educational levels of the population and employment rates. The Strategy clearly points to strategic goals being interrelated: “better educational levels help employability and progress in increasing the employment rate that helps to reduce poverty”. In addition to activities and measures of the European Commission, the Strategy for Smart, Sustainable, and Inclusive Growth stresses the necessity of activities to be carried out by the national states in all strategic spheres. When it comes to education, a highly important endeavour for future planning of the integration of Roma and similar vulnerable groups is the effort of the European Commission aimed at raising the number of persons aged 25-34 having completed tertiary education from a third to a half, which would increase an overall educational level and open up a possibility for inclusion of students from social groups previously unable to participate in the education process. It is incumbent upon the EU Member States to ensure, and the aspiring countries to pay attention, to efficient investment in the education system on all levels, and also to improve educational outcomes, addressing each segment, from pre-school to tertiary, aiming to prevent and reduce early school leaving. Changes in education policies are necessarily accompanied by corresponding inclusion employment policies. In addition to support, it provides through macroeconomic measures an increased employment rate, at the same time reducing the risk of poverty for twenty million European citizens, while the European Commission, in turn, expects certain activities to be carried out by the states to which it ensures inclusive growth, i.e., to devise an economic policy characterized by high employment rate, as well as economic, social and territorial cohesion. Inclusive growth means empowering people through high levels of employment, investing in skills, fighting poverty and modernising labour markets, training and social protection systems so as to help people anticipate and manage change, and build a cohesive society. It is also essential that the benefits of economic growth spread to all parts of the Union, including its remotest regions, thus improving territorial cohesion. In practice, this implies modernising, strengthening European employment and education policies and social protection systems by increasing labour participation and reducing structural unemployment, as well as raising corporate social responsibility among the business community. Implementing flexicurity principles and enabling people to acquire new skills to adapt to new conditions and potential career shifts will be a key strategic priority. A major effort needs to be made to combat poverty and social exclusion and reduce health inequalities to ensure that everybody can benefit from the projected growth. By changing education and employment policies and at the same time generating a healthy trade and economic base, conditions are created for implementing the European platform against poverty and social exclusion. This leads to raising awareness and recognizing the fundamental rights of people experiencing poverty and social exclusion, enabling them to live in dignity and take an active part in society. In order to reach these goals, the European Commission will endeavour: a) To transform the open method of coordination on social inclusion and social protection processes into a platform for cooperation, peer-review and exchange of good practices, and into an instrument to foster commitment by public and private sector players to reduce social exclusion, and take concrete action, including through targeted support from the structural funds,

This document concerning drafting, legal regulation and implementation of inclusion strategies underlines the importance of establishing a mechanism for performance monitoring in order to ensure: a) assessment of concrete results based on measurable indicators; b) funds allocated for Roma integration being received by end-users; c) progress being made in meeting EU Roma integration targets; and d) implementation of national strategies for Roma integration.

Building upon the ideas from the OSCE Action Plan, “the Framework” divided the EU goals for Roma integration into four priority areas: access to education, employment, healthcare and housing.

Access to education implies: a) all Roma children having access to quality education and not being subjected to discrimination or segregation; b) ensuring primary school completion, as a minimum; c) widening access to quality early education and rearing; d) cutting the number of early secondary school leavers and encouraging Roma youngsters to continue pursuing secondary and tertiary education as well.

Access to jobs implies that the main goal of overcoming the employment gap between Roma and the rest of the population is achieved through: a) granting them full access in a non-discriminatory way to vocational training, to the job market and to self-employment tools and initiatives; b) promoting access to micro-credit financing; c) giving due attention to recruiting skilled Roma in the public sector; d) attracting Roma to the labour market by providing personalized services and mediation via Public Employment Services.

notably the European Social Fund; b) To design and implement programmes to promote social innovation for the most vulnerable citizens, in particular by providing innovative education, training, and employment opportunities for deprived communities, programmes to combat discrimination (against persons with disabilities, for example), and a programme aiming to develop a new agenda for migrants' integration to enable them to take full advantage of their potential; c) To undertake an assessment of the adequacy and sustainability of social protection and pension systems, and identify ways to ensure better access to the healthcare system.

At national level, the Member States will need: a) To promote shared collective and individual responsibility in combating poverty and social exclusion; b) To define and implement measures addressing the specific circumstances of groups at particular risk, including Roma; c) To fully develop their social security and pension systems to ensure adequate income support and access to healthcare. (EUROPE 2020: A Strategy for Smart, Sustainable, and Inclusive Growth)

Access to healthcare services implies closing the gap between Roma and the remainder of the population regarding health through: a) providing access to quality healthcare, especially for Roma children and women as well as preventive care and social services under the same conditions as those available to other population groups; b) where possible, involving skilled Roma in healthcare programmes targeting their communities.

Access to housing and essential services focuses on closing the gap between the Roma with access to housing and public utilities (water, electricity and gas) and others, and it implies: a) promoting non-discriminatory access to housing, including social housing; b) action on housing needs as part of an integrated approach including education, health, social welfare, employment and security, and desegregation measures.

EU Roma integration goals and the EU Council Recommendation on Effective Roma Integration Measures in the Member States are most important for candidate countries as well, especially considering that the Recommendation is an integral part of the *acquis*. Accordingly, enlargement countries should harmonize their existing strategies with EU Roma integration goals and take targeted measures aimed at closing the gap between Roma and the rest of the population with regard to access to education, employment, healthcare and housing, as well as inter-sector measures related to identification documents, strengthening involvement of local and regional authorities and also the dialogue with civil society organizations.

It is a fact that the activities of international organizations are based on similar values and principles, measures and activities aiming to significantly improve the social and economic position of Roma and eliminate discrimination they suffer in all societies. However, it is also a fact that adverse living conditions of the Roma still persist in most European countries, just as prejudice against Roma – a driver of discrimination – has not been stamped out. The Report on the Implementation of the 2013 OSCE Action Plan on Improving the Situation of Roma and Sinti¹³ highlighted that the measures taken by most Member States to improve their situation have fallen short of the expectations. The very fact that methodologies have not been developed for collecting sensitive information on Roma numbers points to problems with both the elaboration and implementation of measures, and the assessment of their results. In addition,

¹³ Implementation of the Action Plan on Improving the Situation of Roma and Sinti (dedicated to the 10th Anniversary of the adoption of the 2003 OSCE Action Plan), 7 - 8 November 2013 Vienna, Austria, PC.SHDM.GAL/13/13

there is an unresolved issue of finance for measures designed to improve the situation of Roma, as well as of establishing effective cooperation between Central and local authorities.

The Report submitted by Andrzej Mirga, OSCE/ODIHR Senior Adviser on Roma and Sinti Issues, stresses that Roma rights are not observed and that racial discrimination against them has been on the rise since 2008, and also that their situation in the context of access to employment and housing rights has not improved. The initial results of the Action Plan implementation were put in jeopardy by the current economic crisis, migration, and EU accession processes diminishing the motivation for the implementation of a programme aimed at a considerable and visible improvement of the situation of Roma.

Roma rights in Serbia and the relevant OSCE standards

Prior to pointing out certain conditions, largely based on the recommendations of the OSCE Action Plan, created in Serbia with a view to improving the situation of Roma, it is worth mentioning that the OSCE Mission to Serbia has throughout its mandate since early 2000, been actively involved in public policy-making processes that designed and implemented measures for Roma integration/inclusion. In 2003, the OSCE supported the drafting of the Strategy for the Roma Integration and Empowerment.¹⁴ This document was not endorsed by the state, but it represented a solid foundation for drafting the National Strategy for Improvement of the Status of Roma, adopted by the Government of the Republic of Serbia in 2009.¹⁵ The OSCE Mission to Serbia has been very active in supporting the process of implementation of the 2009 Strategy, in certain areas undertaking activities that should have, despite numerous shortcomings, contributed to improving the Roma situation in Serbia.

The key project in Serbia, supported by the OSCE Mission and funded by the European Union, is the European Support for Roma Inclusion. This project provides direct support to the implementation of the Strategy for the Improvement of the Status of Roma in the Republic of Serbia. The project seeks to improve Roma status in the following areas: access to fundamental

¹⁴https://www.google.rs/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CC8QFjAEahUKEwjIg8LAsOnIAhVGFCwKHfUoCzc&url=http%3A%2F%2Fwww.inkluzija.org%2Fbiblioteka%2Fnacrt-strategije-za%2520integraciju-i-davanje-vecih-ovlasčenja-R.doc&usq=AFQjCNFGqbKITITcT2Nx2zXTmX9rcyjbJg&sig2=IPGAapVGWZp_pdHGdCDpzw

¹⁵ “RS Official Gazette” No. 27/09

rights and civic participation, labour market, education, healthcare and social welfare, adequate housing and jobs creation.

The Report closely monitoring the realization of this project clearly indicates that despite the efforts put into improving the status of Roma and the implementation of fundamental political and judicial/legislative reforms, the Roma community remains to be one of the most vulnerable in Serbia. In the context of social and economic discrimination, this vulnerability is manifested in abject poverty and limited access to employment, education, healthcare and social services and adequate housing.¹⁶ To achieve enduring results, the European Support for Roma Inclusion Project addresses the most persistent aspects of Roma social exclusion. The following six components are the main levers or instruments of the Project: 1) Access to rights (personal identification documents, empowering Roma to exercise their rights as citizens); 2) Setting-up of joint mobile teams (promoting cooperation and sharing of information between staff members of local authorities working on social inclusion); 3) Empowerment of civil society organizations for development and implementation of local Action Plans for Roma integration; 4) Introduction of school drop-out prevention programmes (technical assistance and support to the Ministry of Education, Science and Technical Development to establish and implement a secondary school drop-out prevention programme); 5) Improving housing conditions (technical assistance to the Ministry of Construction and Urban Planning to develop an information system to ensure monitoring and improvement of conditions in Roma settlements and to propose affordable housing solutions); 6) Sustainable employment opportunities. The pilot project is being implemented in 20 local self-government units/municipalities: Bela Palanka, Bojnik, Bujanovac, Knjaževac, Koceljeva, Kovin, Kragujevac, Kruševac, Leskovac, Novi Sad, Odžaci, Palilula, Pančevo, Prokuplje, Smederevo, Sombor, Valjevo, Vranje, Žitorađa, Zvezdara, while there is no realistic assessment of its results.

However, the Report of the Serbian Ombudsman on the implementation of the Strategy for Improvement of the Status of Roma¹⁷ clearly pointed out that the measures designed to improve the status of Roma, adopted by the Government of the Republic of Serbia, have only

¹⁶ <http://www.osce.org/sr/serbia/119613?download=true>

¹⁷ The Ombudsman submitted the Report to the National Assembly on 10. December 2013, but neither MPs nor the bodies of the National Assembly have reviewed its content. (<http://www.pravamanjina.rs/attachments/IZVESTAJ%20ZG%20O%20SPROVODJENJU%20STRATEGIJE.pdf>)

partially contributed to the establishment of a normative framework for overcoming the consequences of a long period of an adverse social situation faced by this ethnic minority, but failed to realise the strategic goals: “improving the status of Roma and closing the gap between Roma and the rest of the population”. The results achieved removed no impediments to their social and economic integration and stopped short of a full normative framework for the implementation of long-term measures to reduce poverty and ensure genuine equality from Roma citizens. The affirmative action measures provided for in Article 21 of the Constitution of the Republic of Serbia¹⁸ have not been fully developed and implemented, as a means of overcoming a highly unfavourable social and economic situation of Roma as a root-cause of their essential inequality.

According to the Report of the Ombudsman, the main reasons behind the lack of implementation of the adopted goals are the following failures on the part of the public administration: lack of an administrative body competent and responsible for the implementation, planning, supervision and rectification of adopted measures and activities; weaknesses of Action Plans supporting the Strategy which do not determine specific duties of local self-government authorities in connection with the implementation of specific measures and activities; uncoordinated time-limits for attainment of short- and long-term objectives; underutilisation of the existing capacities in public authorities and institutions providing the public services needed to ensure the exercise of Roma civil rights; public authorities’ lack of preparation and ability to implement the gist of the Strategy and to design and carry out effective measures for improving the situation of Roma. Furthermore, the Report detailed good practices in contrast to a catalogue of failures causing the situation of Roma remaining, in effect, unchanged throughout the Strategy implementation in 2009-2013.

Similar observations were made in the Prefeasibility Study for drafting the Roma Inclusion Strategy 2025, prepared by the Republic of Serbia’s Office for Human and Minority Rights¹⁹, whereas the regular 2014 annual report of the Commissioner for Gender Equality stated that most grievances, as in previous years, on account of discrimination based on ethnic origin came from the Roma ethnic minority. The Commissioner initiated during the course of 2014 two strategic legal proceedings for discrimination against Roma and filed five criminal complaints on

¹⁸“RS Official Gazette” No. 98/2006

¹⁹http://www.romskinacionalnisavet.org.rs/files/POLAZNA_STUDIJA_oktobar_2014.pdf

reasonable suspicion that a criminal offence of incitement to ethnic, racial and religious hatred and intolerance of the Roma ethnic minority has been committed.

The Commissioner has also conducted a study on the attitudes of Serbian representatives of public authority towards discrimination showing that they experienced this phenomenon in a negative context, with 74 percent of them saying they were aware that discrimination existed in Serbia. More than 60 percent of the respondents said that the poor, Roma, persons with disabilities and sexual minorities are those most frequently discriminated against, and in particular in employment. The study also showed that these representatives were only partly familiar with anti-discrimination legislation, and that many of them do not distinguish either between discrimination and prejudice or between mobbing and discrimination. As much as 41 percent of officials of public authorities do not detect indirect discrimination. The respondents believe that officials of public authorities are prejudiced against some population groups, especially against LGBT people, persons belonging to small religious communities, persons with HIV/AIDS, Roma and children with a developmental disability. What is of concern is that almost half the respondents said that the groups discriminated against were themselves responsible for their situation, and that “tolerance of diversity has been turned on its head, so that minorities (ethnic or sexual) have more rights than the majority population”.

Lastly, the Commissioner’s 2014 regular annual report also pointed out an important piece of information of relevance to the assessment of the enjoyment of Roma rights under OSCE recommended standards. Namely, the Report stated that the Committee on Economic, Social and Cultural Rights of the United Nations in its Concluding Observations on Serbia’s Second Periodic Report was concerned by the fact that persons belonging to national and ethnic minorities, persons with disabilities, refugees and internally displaced persons, including Roma and other marginalised groups continued to face discrimination with regard to their access to economic, social and cultural rights. Therefore, the Committee called on Serbia to take steps to overcome discrimination against Roma in the exercise of these rights, including review of the Strategy for Improvement of the Status of Roma, and make sure that the nationally agreed priorities on Roma be communicated to local authorities so that they could be effectively implemented.

Reports submitted by international organisations and independent state institutions such as the Ombudsman and the Commissioner for Gender Equality Protection indicate that there are serious problems with Serbia's approach to the human rights of, and discrimination against, Roma. However, this does not mean that the state has not undertaken measures in compliance of the OSCE Action Plan and other recommendations. To illustrate that recognition of rights and their legal protection are not in themselves sufficient to get out of the poverty cycle of generations of Roma threatening the exercise of their human rights and the efforts to combat discrimination, this report will explain how the measures defined in public policies on improvement of the situation of Roma are being implemented.

Anti-discrimination policy

The Government of the Republic of Serbia has adopted the Strategy for the Prevention and Protection from Discrimination²⁰ reiterating that Roma are the social group facing both direct and indirect discrimination, in private and in public alike, and that they are most discriminated against in employment and education. However, the Strategy against Discrimination, assessed as the major obstacle to Roma social integration, recommends only measures of a general nature that do not suffice and do not help remove the root-causes of discrimination. Similar approach was adopted in the Law on the Prohibition of Discrimination²¹, defining the notion of discrimination and its forms in accordance with international standards and recommendations in this field, and designating an independent body with wide-ranging responsibilities to prevent and sanction discrimination, but the problem of discrimination against Roma was not singled out. In relation to the prohibition of discrimination against persons with disabilities, a different approach has been noticed in Article 26 of the Law on the Prohibition of Discrimination, which stresses in particular prohibition of discrimination against persons with disabilities. Additionally, specialist legislation on the prohibition of discrimination against disabled persons and on affirmative action employment measures has been enacted. The track record of improving the situation and exercise of the rights of persons with disabilities is not very encouraging, but some measurable results are evident, especially in the suppression of prejudice and elimination of discrimination. It seems that similar results would have been achieved as well

²⁰http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678

²¹"RS Official Gazette" No. 22/2009

in preventing discrimination against Roma had anti-discriminatory measures been clearly defined and sanctions imposed and enforced.

Personal identification documents

By amending the Law on extra-judicial proceedings²², the Law on domicile and place of residence²³ and the Law on Identity Card²⁴ relating to the resolution of status issues for “legally invisible” and homeless people, the Republic of Serbia has set an example to the region and to many European countries. Upon request from the Ombudsman, the Law on extra-judicial proceedings has been amended, thus enabling persons who have not been registered in the Civil Registry in the regular procedure to do so within a reasonable period of three months. Considering that the exercise of other rights and setting in motion of procedure for granting citizenship is dependent upon the place of residence, the Ombudsman has at the same time initiated amendments to the Law on the domicile and place of residence of citizens to allow persons who cannot register their residence in the Civil Registry on any legal grounds to do so at the address of their Centre for Social Services. These persons can also be provided with a temporary identity card valid for a period of two years pending completion of the process of getting permanent identification documents allowing them unfettered access to the exercise of rights.

The analysis of the process of subsequent registration in vital records²⁵ made by a Belgrade civil society organization called PRAXIS reveals a positive trend in subsequent entries made in the Civil Registry, but also points to the problems encountered by Roma in exercising their rights before the competent authorities. Besides, it is further pointed out the problem related to Article 71(k) of the Law on extra-judicial proceedings allowing the authority responsible for granting citizenship of the Republic of Serbia to request a legally effective decision on the time and place of birth, reflected in practice in the arbitrary assessment made by the Ministry of Interior in judging and applying the court decision, in contravention of the principles of rule of law and human rights.

²²“SRS Official Gazette”, Nos. 25/82 and 48/88, and “RS Official Gazette”, Nos. 46/95-dr. law, 18/2005-dr. law, 85/2012, 45/2013-dr. law, 55/2014 and 6/2015

²³“RS Official Gazette” No. 87/2011

²⁴“RS Official Gazette”, Nos. 65/2006 and 36/2011

²⁵http://www.praxis.org.rs/images/praxis_downloads/OEBS_-_Finalni_izvestaj.pdf

Effective participation in public life

Apart from the recommendations contained in the 2003 Action Plan, it is worth mentioning that the OSCE is active in the promotion and creation of conditions conducive to the participation of national minorities, especially Roma in public life. The Lund²⁶ Recommendations of 1999 and the Ljubljana Guidelines on Integration in Diverse Societies²⁷ of 2012, as well as the Guidelines on participation of national minorities in the electoral process²⁸ of 2001, the OSCE called for full and effective participation of national minorities in political and other forms of public life.

The Republic of Serbia has passed the Law on the Protection of the Rights and Freedoms of National Minorities²⁹, recognising the status of a national minority to Roma and enabling them under the same conditions applicable to the other national minorities living in Serbia to establish their own minority self-governing authorities (National Council of the Roma National Minority) attending to Roma cultural autonomy which implies protection of their cultural identity, education, official use of their language and script and information in their own language. The Law on National Minority Council³⁰ of 2009 defined the competencies and method of election of minority local governments. However, Roma minority self-governance like the majority of national minority councils in Serbia have been greatly influenced by political parties and, consequently, they do not represent persons belonging to the Roma national minority in their best interest.

As regards their participation in the country's political life, Roma are virtually non-existent, except for a few Roma representatives to the assemblies of the local self-government units in south Serbia, nor are they represented in the current Serbian National Assembly or the Assembly of AP Vojvodina. The reason for this is that affirmative action measures which constitute the basis for national minority privileges at elections to the representative bodies at all levels of government are only accorded to the numerous and politically well-organised and

²⁶<http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/02/Preporuke-iz-Lunda-o-delotvornom-učešću-nacionalnih-manjina-u-javnom-životu-sa-objašnjenjima.pdf>

²⁷<http://www.osce.org/sr/hcnm/110500?download=true>

²⁸<http://www.osce.org/sr/odihr/elections/17569?download=true>

²⁹“FRY Official Gazette” No. 11/2002, “SCG Official Gazette” No. 1/2003-Constitutional Charter and “RS Official Gazette” Nos. 72/2009-dr. law and 97/2013-Constitutional Court decision

³⁰“RS Official Gazette” Nos. 72/2009, 20/2014-CC decision and 55/2014.

spatially homogenous national minorities.³¹ In sum, concerning OSCE “standards” on effective participation of minorities in public life, it should further be pointed out that the Law on Political Entities³² stipulates that the activity of national minority political parties aims solely to present and represent the interests of a national minority and to promote the rights of persons belonging to that national minority in line with the Constitution, laws and international standards.

Education

In the past decade, a large number of policies and measures have been introduced and applied in the education system, aimed at increasing accessibility and availability of education for children, youth and adults of the Roma community, at making education more acceptable to persons belonging to the Roma population and improving adaptability of education to suit the specific educational and cultural needs of these persons, all following the OSCE Action Plan recommendations.

Although these policies and measures helped achieve some progress, the information indicates that the problem of Roma education continues unabated and that its underlying causes are their discrimination and marginalisation to which public policies have not had a proper response. It is argued that the setting of standards is only a beginning in the settlement of Roma problems, as reflected in no improved access of Roma children to preschool institutions despite the fact that the adopted regulations³³ have been aligned with the relevant specialist recommendations and standards. Moreover, notwithstanding the prescribed measures there has been a negative trend, coupled with a lower level of inclusion of Roma children than in the previous period.

Primary education is not dissimilar in that respect, either, because attendance of Roma pupils is several times that of schoolchildren in the general population, while the applicable regulations provide that every child has the right to receive compulsory, free and quality primary education in public schools, to use books, school aids, school bus transport, board and lodging, if necessary. This legal obligation, though indisputable from the point of view of access to education, has not made all Roma children enrol in primary schools; many of them enrol late,

³¹Goran Bašić, Marijana Pajvančić, *Od segregativne ka integrativnoj politici multikulturalnosti* (From segregation to integrative multicultural policy), Centre for Ethnicity Studies, Belgrade, 2015.

³²“RS Official Gazette” Nos. 36/2009 and 61/2015-CC decision.

³³Law on preschool education and child rearing, “RS Official Gazette”, Nos. 72/2009, 52/2011, 55/2013, 35/2015 – authentic interpretation, and 68/2015; Book of Regulations on more specific conditions for prioritisation in preschool admissions, “RS Official Gazette”, No. 44/2011).

and as many as 30 percent of children attending specialist schools are Roma.³⁴ The surveys also show that the progress made in standard-setting has not substantially contributed to changing the perception by teaching staff of Roma schoolchildren who receive lower quality primary education than their peers. This is chiefly the result of discrimination and widespread negative stereotypes, improper and unlawful practices of teachers and schools. Hence, even those Roma children who complete their primary education have considerably lower performance levels limiting them in their choice of continuing secondary education.

Housing

It should be noted first that housing conditions and affordability of housing are among the main premises of the right to adequate housing. However, it is easy to see that there is a large gap existing between the housing conditions of Roma and those of the general population.³⁵ Bad housing conditions and lack of basic infrastructure have an adverse effect on the health of Roma families, children in particular.

Spatial-wise, Roma settlements are segregated, substandard and with no proper infrastructure facilities. A typical feature of a Roma settlement is that it is built without adequate urban planning; the property legal status of buildings and land underneath is unregulated; the housing stock is of poor quality; and the residents of informal settlements are constantly under threat of forced eviction.

³⁴The level of attendance of primary schools by children belonging to the general population is almost full, while it is around 85 percent among the Roma population. Due to under-preparation for starting school, approximately 30 percent of Roma children make late enrolment in first grade, this being more common with Roma boys and children living in rural areas and below the poverty line. As a result of inadequate support, poverty and other related problems, a mere 64 percent of Roma children finish primary education (UNICEF MICS study, Multiple Indicator Cluster Survey, which was carried out in Serbia in 2005, 2010 and 2014 respectively).

³⁵Studies have indicated that some 37 percent of families living in Roma settlements have not had proper access to clean water as compared to 8 percent of the general population. About 67 percent of Roma families lived in houses having no sewerage, as against 37 percent of those in the majority population. A significant gap also existed when it comes to connection to electricity, where 11 percent of Roma households had no electricity, in comparison to 0.1 percent among the general population. The gap was also reflected in spaciousness and comfortableness of housing units. An average number of rooms per Roma family member was 0.63, which was twice less compared to 1.13 of the general population. Also, 79 percent of Roma households as opposed to 61 percent of general population households were forced to heat less their places due to poor earnings. When it comes to using firewood, 88 percent of Roma households and 72 percent of others used it for heating, the situation was much different with the use of firewood for cooking, which was done by 49 percent of Roma households as compared to 12 percent of the other populations. In addition, 39 Roma households lived in bad residences and informal settlements in comparison with 10 percent of general population households.

Social housing programmes are being implemented under the Law on Social Housing³⁶ and on the basis of the criteria adopted by local residential housing agencies or local governments, but it appears that there is no thought-out strategic approach in addressing housing needs of Roma through social housing programmes. The number of Roma who entered into social housing tenures is alarmingly low, as a consequence, among other things, of the criteria imposed for the exercise of this right that proved to be set the bar too high for poor Roma families. In addition, it should be recalled that the UN Committee on Economic, Social and Cultural Rights requested the Republic of Serbia in 2014 to expand its social housing capacity for low-income families and to apply measures enabling access to adequate and affordable housing for Roma.

Relocation of informal Roma settlements is commonly done through forcible eviction. The reports of local and international institutions and organisations highlight inadequate procedures applied in the relocation of informal Roma settlements, without prior notice to residents or with no provision of other accommodation or with an inadequate accommodation for them, like placing them in uninhabitable metal container houses in segregated container settlements having no access to basic services or support needed for their social inclusion. An increasingly difficult problem is the existence of stereotypes and negative public opinion against Roma resettlement and refusal of the majority population to allow Roma to settle in their neighbourhoods.

Local self-governing authorities in charge of resettlement and forcible evictions are generally not knowledgeable of human rights standards. They usually do not know that a resettlement measure may be resorted to only in exceptional circumstances when no other solution is available, and that a solution should be primarily found in upgrading living conditions of existing settlements to the level that international law finds adequate. The United Nations Committee on the Elimination of Racial Discrimination (CERD), inter alia, directed the Republic of Serbia to ensure that all resettlements in the future be no forced evictions.

Employment

The National Employment Strategy 2011-2020 has identified priorities of relevance for the Roma population: incentives for employment in less developed regions and development of

³⁶“RS Official Gazette” No. 72/2009

regional and local employment policies; improving human resources and greater social inclusion; institution capacity building and development of the labour market. Roma have been clearly singled out as a particularly vulnerable population group to benefit from affirmative action measures aimed at improving their overall social situation, education, employment and competitiveness on the labour market.

Eloquent proof of the fact that the implementation of public policy measures geared to improving the situation of persons belonging to the Roma population in employment has not yielded satisfactory results, can be seen in the following information: In 2014, via the National Employment Bureau only 261 Roma individuals received employment; informal economy and collection and reselling of waste continue to be main sources of livelihood for most Roma families; 88.1 percent of those registered with the National Employment Bureau have never been asked for a job interview; active employment policy measures such as motivation active training, employment and occupational fairs, additional and functional vocational training programmes have failed to meet the ultimate goal of their employment or recruitment; affirmative action measures for Roma self-employment were used by only 47 Roma persons in 2014, while a single employer was interested in subsidized employment of Roma; 52 Roma workers were included in public works.

CONCLUSION

There can be no doubt that the Republic of Serbia has significantly improved the normative basis in some areas of relevance to an improved status of Roma and that it has been aligned with OSCE standards and recommendations. This has been the result, among other things, of the strongly motivated and active OSCE Mission to Serbia, which has developed various support programmes for different stakeholders, the state, provincial administration, local governments and Roma organisations with regard to Roma inclusion since the year 2000.

However, a developed normative basis also requires strong institutions and implementation mechanisms for recognized rights. Unfortunately, it is neglected in Serbia that the Roma integration/inclusion process has to be managed in a responsible, planned and transparent way and that effective results cannot be produced without adequate financing.

Besides, there exist the gaps in the coverage by, and level of enjoyment of the recognized rights: while the right to education is in accordance with all international standards, those relating to the right to adequate housing have not been applied in everyday life nor has this notion been defined at all. Furthermore, international standards have not been directly applied in cases of forcible eviction, whereas the adopted employment measures follow all international recommendations but their results have not achieved even the minimum satisfactory levels.

All this indicates that harmonisation of Serbia's regulations with most recommendations of the OSCE or of other international organisations is no guarantee of full exercise of Roma rights and prevention and elimination of their discrimination and poverty as root-causes of their social exclusion. In sum, for all the results achieved in the previous period concerning the resolution of Roma problems, the major obstacles to their social and economic integration have not been removed and no full normative basis has been in place for the implementation of long-term measures to reduce their poverty and realize substantial equality for the men and women citizens of Roma ethnic background.

2.2. Comments of the Coalition of Civil Society Organizations on the Institute of Social Sciences' report on the rights of Roma

*Public Policy Research Centre*²²

2.2.1. Introduction

Although the obligations assumed by OSCE member countries are political and not legal, they have a long history during which they contributed to a significant extent to the raising of numerous questions concerning human rights and democracy, and improvement of their

²² The team of the Public Policy Research Centre, which is responsible for this report, also included the Centre's associate on behalf of the working group of organizations for monitoring Serbia's OSCE chairmanship, under Roma Professional Development Programme within CentralEuropeanUniversity, while the comments were also submitted by the Romani Cikna Association from Kruševac.

achievement. However, the implementation of the assumed obligations was not systematically monitored, so that the practice established by Switzerland during its OSCE chairmanship in 2014 was welcomed for the demonstration of one's commitment to the actual implementation of decisions, recommendations and guidelines in the field of the OSCE human dimension.

The executive authorities selected the problems associated with the situation of Roma in Serbia as one of the four areas where the self-evaluation of the fulfilment of Serbia's obligations had to be made in the year of its chairmanship, taking into account the existence of the relevant reports prepared by the OSCE bodies over the past five years. The Institute of Social Sciences (ISS) of Belgrade, a research institution financed by the Ministry of Education, Science and Technological Development, was assigned as an independent institution to prepare the basic report. The report, which was submitted to civil society organizations on 2 November 2015, gives credit to the OSCE as the source of ideas for a specific political action and for developing a network of activities by which it contributes, both on a political plane and in practice, to the reduction of prejudice, elimination of discrimination and improvement of the situation of Roma in the member countries. However, although it emphasizes the significance of the 2003 Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area and cites some evaluations from the Report on the Implementation of the 2013 OSCE Action Plan, the problem concerning the situation of Roma in Serbia is primarily perceived from the viewpoint of the relevant European Union's policies. The Report does not mention other relevant OSCE documents and findings, as well as important themes which surpass, that is, running across the sectoral policies related to education, housing and employment, the presentation of which is dominant in the SSI report, in addition to the problems concerning the possession of identity documents, participation in political life and discrimination. Therefore, these comments made by civil society organizations are actually a more detailed report, based on a number of findings by the OSCE bodies and domestic institutions and organizations, and supplement other issues of significance for the position of Roma in Serbia, such as security problems, including the relations with the police, problems of asylum seekers and human trafficking, and the position of women and youth, in addition to offering a number of recommendations for the further improvement of the position of Roma in accordance with the obligations within the OSCE and good practices.

2.2.2. Obligations arising from the OSCE Human Dimension Being Significant for the situation of Roma

The significance of the situation of Roma was recognized for the first time in the Document of the Meeting of the Conference on the Human Dimension of the OSCE in Copenhagen (1990) where it was stated that the participating states would clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination, and that in this context they also recognized the problems of Roma.²³ One of the first initiatives was also the meeting of OSCE experts on national minorities which was held in Geneva in 1991. On that occasion, it was emphasized that the participating states were ready to take effective measures with a view to achieving full equality between persons belonging to Roma ethnicity and the rest of the population, and that they would encourage research on the problems faced by Roma. The following year, the institution of the High Commissioner on National Minorities was created as an OSCE ethnic conflict prevention instrument, which recognized the specific problems of the Roma population within the OSCE area.²⁴ In 1994, within the OSCE Office for Democratic Institutions and Human Rights (ODIHR), specific competencies on Roma and Sinti issues were established (through the so-called focal point, which is practically an independent unit) with a view to helping the participating states to effectively implement the CSCE obligations by sharing their expertise with them and assessing the improvement of the position of Roma and Sinti within the region which is regularly visited.²⁵ An important competency is the preparation of the report on the implementation of the Action Plan on Improving the Situation of Roma and Sinti, which is a crucial document for acting upon and following the progress made in the implementation of the assumed obligations. OSCE Human Dimension Meetings and OSCE Supplementary Human Dimension Meetings contribute to the raising of the member countries' awareness about the position of Roma and Sinti in the CSCE region, enable a dialogue between governments and civil society, while at the same time

²³ Excerpts from the Copenhagen Document, p. 2, Internet, <http://www.osce.org/odihr/19394>.

²⁴ Report on the Situation of Roma and Sinti in the OSCE Area, OSCE, High Commissioner on National Minorities, The Hague, 2000, Internet, <http://www.osce.org/hcnm/42063>.

²⁵ ODIHR and Roma and Sinti Issues, January 2015, Internet, <http://www.osce.org/odihr/102598>.

providing an opportunity for Roma organizations and activities to exchange their experiences on national programmes and activities.

The obligations arising from the OSCE human dimension which are significant for the position of Roma can be classified into several groups: the protection of human rights and fundamental freedoms, including equal opportunities and non-discrimination, effective participation in public and political life, access to education, socio-economic issues, racism and discrimination (the fight against racism and stereotypes, protection against hate crimes), crisis and post-crisis situations.²⁶

The Action Plan contains the recommendations concerning the establishment of a normative framework, formation of special bodies to be responsible for the implementation of this framework and inclusion of Roma and Sinti representatives in their work, provision of access to justice for these groups and decisive combat against violence.²⁷ It also offers a significant number of recommendations concerning the improvement of living and housing conditions, combatting unemployment and economic problems (including the development of training programmes to prepare Roma representatives for employment in institutions), health improvement and access to health services, improvement of access to education, enhancement of the participation in public and political life (which especially refers to the possession of identity documents), as well as the prevention of any form of discrimination in crisis and post-crisis situations.²⁸ The recommendations of the Action Plan on Improving the Situation of Roma also refer to the media, including the encouragement of the media to cover positive examples from the Roma community. In this connection, a special role is held by the OSCE Representative on Freedom of the Media.

The participating states were empowered by the Action Plan recommendations incorporated into the Documents of the Meetings of the OSCE Ministerial Council in Helsinki (2008), Athens (2009) and Kiev (2013). The Helsinki Meeting emphasized the commitment to the provision of equal access to education and promotion of early education for Roma children; in Athens emphasis was laid on raising public awareness about an increase in all forms of

²⁶ OSCE Human Dimension Commitments, Vol. 1, Thematic Compilation, Third Edition, OSCE/ODIHR, Warsaw 2011, pp. 164-80.

²⁷ Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, ODIHR, 2003, pp. 4-5.

²⁸ Ibid, pp. 6-15.

violence and intolerance against Roma and Sinti. In Kiev the participating states assumed the obligation to promote the participation of Roma and Sinti, especially women and youth, in political and public life, and the creation of relevant policies.²⁹ In this regard, the OSCE Plan for the Promotion of Gender Equality³⁰ and OSCE Plan to Combat Trafficking in Human Beings³¹ are also significant because they explicitly touch on Roma issues.

Special attention is devoted to the security issues in the context of relations with the police. The OSCE documents concerning the work of the police in a multiethnic context include the Recommendations on Policing in Multi-Ethnic Societies by the High Commissioner on National Minorities (2006) and the Police and Roma and Sinti – Good Practices in Building Trust and Understanding by the Strategic Police Matters Office and the ODIHR Contact Point for Roma and Sinti Issues.³² The policing recommendations include the raising of awareness among police officers, development of training programmes to prevent excessive use of force and promotion of respect for human rights, improvement of relations between the police and Roma and Sinti communities, and the encouragement of Roma and Sinti people to work in the police as a long-term and sustainable means of promoting tolerance and diversity.³³

The Special Representative of the OSCE Parliamentary Assembly on Combatting Racism, Xenophobia and Discrimination is also concerned with the position of Roma. His latest reports point to discriminatory policing within OSCE member countries which is manifested in various ways, such as: police lists of members of a community, especially due to their ethnic identity, raids on communities (e.g. Roma, migrants), racial/ethnic profiling/unlawful treatment, excessive use of force, wrongful imprisonment and/or detention, and even death.³⁴

In the self-evaluation made by the Swiss OSCE Chairmanship there is also mention of the position of Roma, that is, the need for the promotion of Roma culture. The problems faced by

²⁹ Decision of the OSCE Ministerial Council No. 4/2013.

³⁰ OSCE Action Plan for the Promotion of Gender Equality, <http://www.osce.org/mc/23295>.

³¹ OSCE Action Plan to Combat Trafficking in Human Beings, <http://www.osce.org/actionplan>.

³² Police and Roma and Sinti: Good Practices in Building Trust and Understanding, 2010, <http://www.osce.org/odihr/67843>.

³³ Ibid., p. 6.

³⁴ 2015 Annual Session Report by the Special Representative on Anti-Semitism, Racism and Intolerance

<https://www.oscepa.org/publications/various-reports/special-representatives/anti-semitism-racism-and-intolerance/report-27/2954-2015-annual-session-report-by-the-special-representative-on-anti-semitism-racism-and-intolerance-5-july-2015/file>.

Roma people in Switzerland include stereotypes and prejudice reflected in their treatment by courts and public authorities, as well as an inadequate media coverage of Roma issues.³⁵

The civil society recommendations to the participants of the OSCE Ministerial Council meeting in Basel in December 2014 point to the rise of racism, xenophobia and discrimination across the OSCE region, which is manifested by numerous cases of hate speech and hate crimes, targetting the LGBT population, migrants, Roma and Sinti, and religious minorities. The position of Roma also forms part of the Basel Declaration dealing with rising intolerance, discrimination and hate crimes, adopted by the Parallel Civil Society Conference in December 2014. On that occasion, attention was also devoted to the problem concerning the gathering of personal data on Roma.³⁶ According to this report, especially important areas to be monitored during Serbia's OSCE Chairmanship include discrimination against national minorities and their status, while Roma people have been recognized as one of the most vulnerable groups.³⁷

Among the OSCE crucial analyses relevant for the situation of Roma in Serbia mention should be made of the 2013 ODIHR Regional Report, which provides recommendations concerning the anti-discrimination and participation of Roma in local decision making,³⁸ as well as a number of other analyses under the project "Best Practices for Roma Integration in the Western Balkans".³⁹

2.2.3. Evaluation of Measures Taken by Serbia for Solving the Problems of the Roma Population

General Indicators

³⁵Self-evaluation Swiss OSCE Chairmanship, NGO Feedback, Swiss NGO Working Group OSCE, Bern/Switzerland, 2014.

³⁶Civil Society Recommendations to the Participants of the OSCE Ministerial Council, Civic Solidarity, 2014, p.55.

³⁷ Ibid, p. 71.

³⁸ Regional Report on Anti-discrimination and Participation of Roma in Local Decision-Making, Best Practices of Roma Integration, OSCE/ODIHR, Warsaw, 2013.

³⁹Particularly the Regional Report on Housing Legalization, Settlement Upgrading and Social Housing for Roma in the Western Balkans, Best Practices of Roma Integration, OSCE/ODIHR, Warsaw, February 2014. <http://www.osce.org/odihr/115737>, as well as shorter cases studies prepared by young Roma researchers.

According to the 2011 Population Census, there are 147,604 Roma in Serbia (51 per cent male and 49 per cent female), constituting about 2.1 per cent of the total population.⁴⁰ According to some sources, the number of Roma is much higher – from 250,000 to 500,000, or even up to 800,000.⁴¹ These figures point to the problem of inadequate registration, as well as the possibility that a considerable number of Roma do not declare their ethnicity. The largest number of Roma was registered in the region of Southern and Eastern Serbia (39 per cent) and the lowest number in Šumadija and Western Serbia. As for the municipalities, the largest number of Roma was registered in Kostolac – 19.5 per cent.⁴²

Out of the total Roma people registered in Serbia more than one third accounts for migrants, while about 65 per cent live in the place of permanent residence; their spatial mobility is actually confined to interregional movement – from a municipality in one region to a municipality in another. Roma are a relatively young population. Their average age is about 28 years, as contrasted to the average age of the rest of the population in Serbia – 42 years. The infant mortality rate among Roma children is more than twice the national average, while malnutrition among Roma children is also several times more common than in the rest of the population. Only 13 per cent of Roma children were vaccinated on time. About one fourth of Roma women aged 15-19 had already given birth; 95 per cent of children entered in birth registers and living in Roma settlements are under 5 years of age.⁴³

According to the World Bank, social assistance is received by only one-fourth of Roma households in Serbia.⁴⁴ In 2012, 15,447 Roma (including 6,680 women) were covered by active employment measures.⁴⁵ According to the latest data, the poverty indicators are on the increase;

⁴⁰ Svetlana Radovanović, Aleksandar Knežević, *Romi u Srbiji* (Roma in Serbia), Republican Statistical Office, Belgrade, 2014.

⁴¹ Strategija za unapređivanje položaja Roma u Republici Srbiji (Strategy for Improving the Position of Roma in the Republic of Serbia), Ministry for Human and Minority Rights, UNHCR, OSCE Mission to Serbia, UNDP Serbia, Belgrade, 2010, p. 9; *Izveštaj o sprovođenju Strategije za unapređenje položaja Roma sa preporukama* (Report on the Implementation of the Strategy for Improving the Position of Roma with Recommendations), Protector of Citizens, Belgrade, 2014, p. 41.

⁴² S. Radovanović, A. Knežević, *Romi u Srbiji* (Roma in Serbia), op. cit.

⁴³ Istraživanje višestrukih pokazatelja – Srbija 2014 (Multiple Indicator Cluster Survey – Serbia 2014), UNICEF, Republican Statistical Office, Internet, http://www.unicef.org/srbia/Srbija_2014_MICS_Rezime.pdf.

⁴⁴ [Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, 2013](#), p. 39.

⁴⁵ Op.cit, p. 41. According to Serbia's report submitted to the ODIHR; this is the result of the work of the Youth Employment Fund (among its 2,716 beneficiaries 396 were Roma) and the Migration Management Project involving four UN agencies.

although the position of Roma related to poverty risk improved, the number of Roma living in absolute poverty increased. The Roma inclusion index shows that about 40 per cent of Roma experienced discrimination.⁴⁶

According to the Report on the Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area in 2013, Serbia adopted and standardized the policies dealing with these groups, while the EU provided more funding for the Roma and Sinti programmes. Despite apparent progress, the Report also points to the negative trends that deepen the differences between these groups and the rest of the population. This especially refers to housing, employment and access to social services.⁴⁷ The Report was prepared on the basis of the questionnaire submitted by the ODIHR to the participating states,⁴⁸ as well as on the data collected by the ODIHR from other sources, or field missions.

Serbia reported successful projects to legalize and reconstruct Roma housing;⁴⁹ in addition, the existence of health mediators is also important for improving the health status of Roma.⁵⁰ Thanks to affirmative action, 238 Roma enrolled at faculties and 367 in secondary schools in school year 2012-2013.⁵¹ It must also be noted that 25.3 million euros were spent on the implementation of the Strategy for Improving the Situation of Roma in Serbia.⁵²

In the European Commission's 2014 Progress Report on Serbia the significance of the measures taken so far and their results were recognized. On the other hand, it was emphasized that the measures for improving the situation of Roma must be additionally strengthened just in the fields of education, housing and employment.⁵³ The two-year project "European Support for Roma Inclusion" (*The Technical Assistance for Roma Inclusion*, 2013-2015) is currently

⁴⁶ Roma Inclusion Index 2015 http://www.romadecade.org/cms/upload/file/9810_file1_roma-inclusion-index-2015-s.pdf
According to the report by the Commissioner for Equality Protection, Roma are the most discriminated ethnic minority group: 40 per cent of all discrimination complaints account for discrimination against Roma people.

⁴⁷ Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, Status Report 2013, OSCE/ODIHR, 2013, p. 9.

⁴⁸ The questionnaire was responded by 40 out of 57 member countries, including Serbia.

⁴⁹ [Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, 2013](#), p. 31.

⁵⁰ Op. cit, p. 35.

⁵¹ Op.cit, p. 50.

⁵² Op.cit, p. 86.

⁵³ Serbia Progress Report, European Commission, October 2014.

underway. It is implemented by the OSCE Mission to Serbia as support to the implementation of the Strategy for Improving the Situation of Roma.⁵⁴

Due to the end of the 2005-2015 Decade of Roma Inclusion as well as the unfavourable analyses of the success and effectiveness of the strategic measures anticipated by the Strategy for Improving the Situation of Roma in Serbia,⁵⁵ a study was prepared with a view to documenting the problems in the implementation of the assumed obligations, considering the aims set out in the previously adopted national documents, which is presented in detail in the ISS Report.⁵⁶

Discrimination

Although anti-discrimination legislation in Serbia has already been adjusted to the European standards, hate-motivated offences have not always been adequately investigated and sanctions. The OSCE/ODIHR Hate Crime Report for 2013 indicates that in the course of the year various NGOs from Serbia reported a number of different types of incidents involving Roma – desecration of the monument to a Roma musician, organized assaults on Roma settlements, physical assaults, threatening to take away property and even murders.⁵⁷ The European Commission's 2014 Serbia Progress Report points out that the most discriminated groups are

⁵⁴ Internet, <http://www.osce.org/sr/serbia/119613?download=true>. The project has six components: access to basic rights, establishment of mobile teams at the local level, empowerment of civil society organizations, school drop-out prevention programme, improvement of housing conditions and sustainable employment opportunities. The formulation of this project was also based, on the evaluation of the effects of the existing measures in local communities, which was made by the Public Policy Research Centre in 2012: Branka Anđelković, Marko Obradović and Jelena Radoman, [Procena efikasnosti lokalnih mehanizama za socijalno uključivanje Romkinja i Roma u Republici Srbiji](#) (Evaluation of Efficiency of the Local Mechanisms of Social Inclusion of Roma in the Republic of Serbia), Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia and Public Policy Research Centre, Belgrade, January 2013.

⁵⁵ A detailed analysis in the Report of the Protector of Citizens submitted to the National Assembly on 10 December 2013 as well as in the Baseline Study for Preparation of the Strategy for Inclusion of Roma in Serbia Until 2025.

⁵⁶ G. Bašić et al., Polazna studija za izradu strategije za inkluziju Roma u Srbiji usaglašena sa strategijom Evropa 2020 (Baseline Study for Preparation of the Strategy for Inclusion of Roma in Serbia, Adjusted to the Europe 2020 Strategy), pp.18-19.

⁵⁷ In 2013, the police registered 64 hate crime cases. OSCE/ODIHR Hate Crime Reporting, Internet, <http://hatecrime.osce.org/serbia>.

Roma, sexual minorities and persons with HIV/AIDS.⁵⁸ Roma children are especially in a difficult position. Apart from children with disabilities, they represent the most vulnerable group.

The recommendations of the Regional Report on Anti-discrimination include the establishment of local offices of government anti-discrimination bodies, improvement of Roma access to legal remedies for anti-discrimination and, in particular, more resolute response to the multiple types of discrimination faced by Roma women and girls. Also, the report on housing problems in 2014 points out that the common characteristic of forced evictions was the failure to provide those evicted with adequate alternative accommodation and compensation or legal remedies.⁵⁹

In 2014, the greatest number of complaints sent to the Commissioner for Equality Protection referred to discrimination based on ethnicity (18 per cent). On the basis of these complaints it is evident that the representatives of ethnic minorities constantly feel discriminated against when applying for jobs, at work and before institutions.⁶⁰ Of the total number of complaints about discrimination based on ethnicity, the majority of them referred to discriminatory treatment by the bodies of public authority – the ministries, local government bodies, health institutions and police.⁶¹ A drastic example of public institutions' discriminatory treatment of Roma, mentioned in the Report of the Protector of Citizens, was the accommodation of Roma families with children in a fallout shelter during the floods in 2014, because the reception centre did not approve their accommodation.

There is a widespread perception of institutional discrimination within the Roma community. This especially refers to more difficult access to social protection, racist speech by

⁵⁸ Serbia Progress Report, European Commission, October 2014. p. 86.

⁵⁹ Regional Report on Housing Legalization, Settlement Upgrading and Social Housing for Roma in the Western Balkans, Best Practices for Roma Integration, OEEBS-ODIHR, February 2014.

⁶⁰ Report by the Commissioner for Equality Protection, pp. 24-26. The data contained in the SSI Report will not be presented in this text.

⁶¹ According to the written response of the Ministry of Defence to the Public Policy Research Centre, there are no data on any complaints about discrimination based on nationality or ethnicity, which were submitted by the members of the Roma minority employed in the Ministry of Defence (MD) or the Serbian Armed Forces.

public officials and the failure of school staff to act when Roma children are endangered.⁶² The survey conducted among law enforcement officers in five police departments in 2014 shows that this group of public officials in the security sector also perceives Roma as the most discriminated-against group in Serbia. However, they also maintain a significantly greater social distance towards Roma compared to the rest of the population. In addition, they do not sufficiently recognize hate speech against Roma.⁶³

According to the population census, more than 13,000 Roma stated that they had returned from abroad, predominantly Germany and Austria. Most of them had returned to Southern and Eastern Serbia, while 6 per cent of the total number had returned under the Readmission Agreement.⁶⁴ Due to poverty and systemic and institutional discrimination resulting in high levels of unemployment, as well as due to their forced evictions from informal settlements without any offer of alternative accommodation, many members of the Roma community hold that they have no other option but to leave the country. In the period from the liberalization of the EU's visa regime in 2010 until the end of 2014, asylum in Germany was sought by 71,740 Serbian citizens most of whom (85 per cent) were Roma.⁶⁵ However, the number of asylum seekers from the Republic Serbia whose asylum applications were rejected by EU member countries is increasing. Until October 2015, only three out of about 24,500 applications for asylum in Germany were accepted.⁶⁶ In August, Germany announced plans to return about 90,000 Serbian citizens with irregular status in the context of solving the migration crisis, that is, the inflow of refugees from Syria and other countries affected by armed conflict. On 7 September 2015, Prime Minister Aleksandar Vučić said that Serbia would pass a law under which “those who seek asylum and

⁶² Jelena Radoman, Marina Tadić, *Romkinje i Romi i reforma sektora bezbednosti u Republici Srbiji* (Roma Women and Men and Security Sector Reform in the Republic of Serbia), Public Policy Research Centre, 2014.

<http://www.publicpolicy.rs/documents/0328335c7c758e5c80c3d25057b4269baf18d2a1.pdf>.

⁶³ Radomir Zekavica, *Sprovođenje antidiskriminacionih politika i Ministarstvo unutrašnjih poslova Republike Srbije*, 2014 (Implementation of Anti-Discrimination Policies and the Ministry of Internal Affairs of the Republic of Serbia, 2014). For example, one half of the respondents did not think that the statement “Gipsies stink” was hate speech. Only 16 per cent of respondents held that discrimination posed a significant problem that should be regarded as a priority one. A high percentage of police staff did not know who should be contacted in the case of discrimination.

⁶⁴ S. Radovanović, A. Knežević, *Romi u Srbiji* (Roma in Serbia), op. cit., pp. 51-56.

⁶⁵ Amnesty International: Vučić's promise drives Roma deeper into poverty,

http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=09&dd=11&nav_category=12&nav_id=1038040.

⁶⁶ Statement by the German Ambassador to Serbia, Axel Dittmann, 6 November 2015, B92.

are rejected – or, in other words, fake asylum seekers – will be stripped of social assistance in Serbia". Such a measure would be considered discriminatory in accordance with Article 21 of the Serbian Constitution. Amnesty International holds that in the absence of any effective support or reintegration package for people deported from EU member states to Serbia many returnees – especially Roma – will find themselves homeless, without access to basic services and – if the proposed measures are introduced – without any financial support.⁶⁷

The Protector of Citizens has warned that, in the absence of special attention to media programmes in minority languages, the implementation of new media laws may aggravate the status of minority rights to information. In addition, particularly vulnerable groups, including Roma, are mostly covered by the majority of media in a sensational way instead of being a regular topic or getting a newspaper column.⁶⁸ The findings of the Public Policy Research Centre show that the print media in Serbia are increasingly and more correctly reporting on the problems faced by Roma. However, reporting is confined to a factographic information transmission without considering the context of events. Hence the number of media and media texts devoted to Roma issues depends primarily on the already created events that are regularly reported in the media within their coverage of government agencies, international organizations and the like. They do not engage in independent reporting nor do they enter any additional data into their texts, thus putting an event in the Roma context.⁶⁹

RECOMMENDATIONS:

- **Continue to improve the position of the Roma ethnic minority through the consistent and full implementation of the current legal and regulatory framework.**
- **Prevent discriminatory practices and combat hate speech by a clear response from the relevant judicial, security and political structures.**

⁶⁷ Amnesty International: Vučić's promise drives Roma deeper into poverty, 11 September 2015.

⁶⁸ One example of such media practice is reporting on the death of seven children in a fire in unhygienic settlements in New Belgrade, Gornji Milanovac and Mali Rit.

⁶⁹ Tanja Jakobi, Izveštavanje medija o Romkinjama i Romima: faktografija bez konteksta (Media Coverage of Roman Women and Men: Factography Without Context), Public Policy Research Centre, 2014; <http://www.publicpolicy.rs/publikacije/ff8ab7e8985ec3463ea00ff36f52730791f4d512.pdf>.

- **In accordance with the OSCE recommendations, provide further impetus to the establishment of new local offices of anti-discrimination institutions.**
- **Ensure information delivery in the Roma language.**
- **Combat sensational and discriminatory media reporting on Roma.**

Relations with the Police and Security Issues

In the latest report of the OSCE PA's Special Representative on Anti-Semitism, Racism and Intolerance it is stated that the discriminatory approach of the police in OSCE member countries is manifested in various ways, such as: police lists of members of a community, especially due to their ethnic identity, raids on communities, racial/ethnic profiling/unlawful treatment, excessive use of force, wrongful imprisonment and/or detention, and even death.⁷⁰

In the context of upgrading the security of the Roma population in Serbia several surveys were conducted, involving the perception of the Roma population itself and among law-enforcement personnel. The first survey on the feeling of security among Roma in Serbia shows that in some communities the Roma minority is exposed to racist attacks and direct threats to its physical integrity. This especially refers to internally displaced Roma or newcomers, who moved to a community for some other reason.⁷¹ Bearing in mind the cases of raids on Roma settlements, intimidation and arrogant behaviour of some security structures, the conclusion that imposes itself is that police officers, who are engaged in implementing the "community policing" approach, deal mostly with "soft" security threats to the Roma community, such as the lack of identity documents, even if the community in question is faced with direct physical threats and

⁷⁰ 2015 Annual Session Report by the OSCE PA's Special Representative on Anti-Semitism, Racism and Intolerance; <https://www.oscepa.org/publications/various-reports/special-representatives/anti-semitism-racism-and-intolerance/report-27/2954-2015-annual-session-report-by-the-special-representative-on-anti-semitism-racism-and-intolerance-5-july-2015/file>.

⁷¹ Slučaj korišćenja programa socijalnog stanovanja u Zemun Polju, Beograd. (The Case of Using the Social Housing Programme in Zemun Polje, Belgrade), J. Radoman, M. Tadić, Romkinje i Romi i reforma sektora bezbednosti (Roma Women and Men and Security Sector Reform), 2014.

attacks by half-organized groups.⁷² In perceiving their security, gender differences also hold a significant place. Namely, Roma women are primarily concerned over the security of their children and peer violence, that is, over the denial that Roma children are exposed to intimidation and insults, and even physical violence.⁷³

The possession of identity documents is a requirement not only for exercising the right to self-protection, but also for personal security.⁷⁴ The legal provisions concerning the registration of “legally invisible persons” are implemented at a very slow pace, but still produce encouraging results.⁷⁵ However, it is necessary to further strengthen cooperation and work coordination between local governments and all relevant ministries in order to systemically solve the problem of legally invisible persons and ensure the implementation of the regulations facilitating residence registration in social welfare centres.

The survey on understanding anti-discrimination policies in the Ministry of Internal Affairs (MIF), among law enforcement personnel, points to a rather widespread belief that the police is not responsible for incidents of discrimination and that it is not the institution that can influence its reduction.⁷⁶ In addition, the respondents do not widely support the measures to employ a certain percentage of discriminated groups in public services.⁷⁷

The obligation that the structure of employed in the government administration must reflect the population structure is often interpreted as being contrary to the obligation that one should not be asked about nationality in the employment process. This precludes more systematic measures or, in other words, measures are taken on an ad hoc basis. A good example represents the attempt of the Ministry of Internal Affairs to provide additional information and preparations

⁷² J. Radoman and M. Tadić, *Romkinje i Romi i reforma sektora bezbednosti u Republici Srbiji* (Roma Women and Men and Security Sector Reform in the Republic of Serbia), Public Policy Research Centre, 2014, <http://www.publicpolicy.rs/documents/0328335c7c758e5c80c3d25057b4269baf18d2a1.pdf>.

⁷³ Ibid. p. 29.

⁷⁴ Ibid.

⁷⁵ Marina Simeunović, *Posedovanje ličnih dokumenata kao uslov socijalne integracije mladih Roma u naselju „Veliki Rit“ u Novom Sadu* (Possession of Identity Documents as a Requirement of Social Integration of Young Roma in the Settlement of Veliki Rit in Novi Sad), ODIHR BPRI, 2013.

⁷⁶ Radomir Zekavica, *Sprovođenje antidiskriminacionih politika i Ministarstvo unutrašnjih poslova Republike Srbije* (Implementation of Anti-discrimination Policies and the Ministry of Internal Affairs of the Republic of Serbia), 2014.

⁷⁷ Ibid. Such support was smaller compared to support among the general population: 34 per cent.

for Roma's passing the entrance exam for basic police training, at the initiative of the Fraternal Association of European Roma Law Enforcement Officers and the Public Policy Research Centres, with the support of the Office for Human and Minority Rights. Such initiatives enable the increased presence of Roma police officers and contribute to an increase in the level of employment of young Roma, while at the same time strengthening the confidence of this population in the work of the Ministry of Internal Affairs and its security.⁷⁸

Serbia is increasingly becoming the country of origin of human trafficking victims, whereby the structure of human trafficking victims is changing: the share of victims of sexual exploitation has declined from 89 per cent (2004) to 41 per cent (2013), while the share of victims of labour exploitation, begging and forced marriages has increased. The members of the Roma population are exposed to a greater risk of becoming victims of human trafficking than the rest of the population. Women aged 20-30, poorly educated and jobless, and girls aged 14-18 are significantly more likely exposed to the risk factors characteristic of human trafficking. Potential victims of human trafficking are recruited in the communities in which they live and most frequently by persons they know. This raises the question of how local communities and institutions at the local level can address this problem. The response of the system – including social welfare centres, police, schools, National Employment Service, prosecutor's offices, courts, local governments – depends on its understanding of human trafficking and the development level of the victim identification system. The relevant studies show that the response of the system in the local community relative to the discovery of human trafficking victims is primarily reactive and that the local community lacks enough knowledge to perceive the problem and take preventive action. Victims of human trafficking face prejudice by both professionals and citizens: nearly one third of professionals (31.7 per cent) and one half of the surveyed citizens (50.5 per cent) hold that the victims themselves are partially responsible for what has happened to them.⁷⁹ Social distance, or open resistance to having a human trafficking

⁷⁸ The Project "Inkluzija Roma u sektor bezbednosti: Ka većoj prolaznosti na osnovnu policijsku obuku" (Inclusion of Roma in the Security Sector: Towards Greater Enrolment in Basic Police Training) was implemented by the Fraternal Association of European Roma Law Enforcement Officers and the Public Policy Research Centre, with the support of the Office for Human and Minority Rights;

http://www.publicpolicy.rs/projekti/12_Inkluzija-Romkinja-i-Roma-u-sektor-bezbednosti#.VfaxopdLF5Q.

⁷⁹ Unapređenje prevencije, zaštite i integracije žrtava trgovine ljudima kroz razvoj lokalnih socijalnih politika (Improving Prevention, Protection and Integration of Victims of Human Trafficking Through the Development of Local Social Policies),

victim, after leaving the human trafficking chain, as a neighbour was expressed by one fifth of citizens (20.3 per cent).

RECOMMENDATIONS:

- **Eliminate the possibility of the impunity and unlawful behaviour of law enforcement and other officers.**
- **Develop the appropriate programmes to increase the level of information supply for law enforcement officers and other public officers concerning the issues such as the essence of discrimination and the areas in which it is most frequently present.**
- **Continue to implement the measures taken with a view to increasing the number of Roma in the MIF education and training system, thus increasing the level of employment of Roma in the police and contributing to discrimination reduction and greater security.**
- **Strengthen the administrative capacity of the Commission for Monitoring the Visa-Free Travel Regime with a view to addressing the factors that influence the travel of the citizens of the Republic of Serbia to European countries in order to seek asylum.**
- **Intensify the work on the prevention and identification of victims of human trafficking.**
- **Establish mechanisms for the protection and integration of human trafficking victims and returnees upon readmission at the local level.**
- **Improve the capacity of the Readmission Office in order to provide counselling and psychological support to returnees to the Republic of Serbia under the Readmission Agreement.**

Participation at the Local Level and the Position of Women and Youth

According to the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, national policies and strategies for its implementation should address the real problems, needs and priorities of Roma and Sinti, be comprehensive and based on a sustainable approach combining the protection of human rights and social policy, and enable the full participation of Roma and Sinti in the creation of the policies concerning them and their "ownership of this process".

According to the report on the implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, the local authorities in Serbia have also been engaged in the preparation of local APs and their implementation. It is necessary, however, to increase the participation of Roma in the decision-making process at the local level. In the light of the adoption of a new strategy, it is necessary to ensure transparency and responsibility in the conduct of the strategy and adjust the activities and measures spelled out in the action plan to their implementation at the local level.

A positive example of the efforts to act at the local level represents the establishment of the Network for Roma Issues within the Permanent Conference of Cities and Municipalities, as well as an initiative for strengthening the role of local coordinators for Roma issues.⁸⁰

According to the European Commission's 2014 Progress Report on Serbia, a significant number of measures and activities spelled out in the action plans for the implementation of the strategies for improving the position of women and Roma in Serbia have not been carried out. The Report also states that Roma girls are still faced with numerous reproductive health risks as well as early marriages. Roma women and children are frequently exposed to domestic violence, which usually goes unreported.⁸¹ The creation of the Strategy for Improving the Situation of Roma involves a significant number of Roma associations, whereby at least 40 per cent of them account for women's organizations and Roma women activists.⁸² In the preparation of their

⁸⁰ <http://www.ljudskaprava.gov.rs/index.php/vesti/1421-skgo-mreza-za-romska-pitanja>.

⁸¹ Serbia Progress Report, European Commission, October 2014. p. 86.

⁸² *Monitoring javnih politika: efekti Dekade Roma* (Monitoring of Public Policies: The Effects of the Roma Decade), BIBIJA Roma Women Centre, Belgrade, 2014, p. 14.

strategic documents, however, local governments do not consult Roma women sufficiently.⁸³ The Report of the Bibia Roma Women Centre emphasizes the significance of introducing gender budgeting at the local and national levels in such a way as to contain clear measures for improving the status of Roma women.

Local civil society organizations acknowledge the problem of arranged and forced marriages, which takes on even greater proportions with the deepening of poverty. Apart from the problem of legally invisible persons due to the difficulties in obtaining necessary documents, young girls are deprived of the right to choose and even the right to live the life worthy of man. Due to marriage, they leave school at the age of 13 or 14, while the risk of their experiencing violence or being trafficked by the families into which they have been married is great.⁸⁴

Research on the perception of security shows that Roma women are concerned over their own physical security and the security of their families, which are directly threatened by hooligan and racist groups.⁸⁵ The problem of domestic violence among Roma has not been sufficiently explored, but the empowerment of Roma women has been supported by the Roma Women's Network of Serbia.

Roma women face many obstacles in accessing education, employment and health care, not to mention their absence from the decision-making process, while symbolic and direct physical violence is also experienced. Thus, for example, the structure of illiterate persons is dominated by women (69 per cent), so that there are more than two illiterate women for every man. The programmes of the National Employment Service mostly require a certain degree of professional skills which Roma women do not have because they often give up education. Thus, they do not meet the basic requirements for inclusion in these programmes.⁸⁶ Detailed recommendations for improving the situation of Roma women are given in the section on gender

⁸³ Ibid., p. 15.

⁸⁴ Commentary of the Romani Cikna Association.

⁸⁵ J. Radoman, M. Tadić, *Romkinje i Romi i reforma sektora bezbednosti u Republici Srbiji* (Roma Women and Men and Security Sector Reform), 2014.

⁸⁶ The National Employment Service has started to keep the data classified according to ethnicity since 2009. This is necessary for the implementation of affirmative action measures to increase the employment of Roma. *Monitoring javnih politika: efekti Dekade* (Monitoring of Public Policies: The Effects of the Roma Decade), op.cit., pp. 19-21.

equality, prepared by women's civil society organizations within the arrangement on the self-evaluation of the implementation of the obligations arising from the OSCE human dimension.

As for children and youth, the important problem is associated with the absence of alternative programmes to strengthen the family potential to monitor the development of its children, as well as the absence of the enhanced efforts of the community to increase the coverage level of Roma children in kindergarten in order to make up for deficiencies in their families and implement inclusion in their early age. Emphasis is laid on the problem of monitoring and recognizing the significance of the early development of children due to the fact that Roma children do not have those stimuli within their families which influence their motivation to be included in the educational programme, that is, the preparatory pre-school programme to be followed by enrolment in primary school.⁸⁷ The possession of identity documents is a prerequisite for the integration of young Roma, so that the efforts to register “legally invisible persons” are very significant for them.⁸⁸ The relevant measures are implemented at a slow pace, but they still produce promising results.

In December 2014, within Serbia's OSCE Chairmanship, Belgrade was the venue of the OSCE/ODIHR Youth Conference, which was attended by more than 40 young activists from the OSCE region. The participants discussed the solutions for the strengthening and social inclusion of the Roma/Sinti community through the enhanced activism of young people and the participation of the Roma/Sinti community in the political and democratic process, as well as youth security issues.⁸⁹

RECOMMENDATIONS:

⁸⁷ Commentary of the Romani Cikna Association, Kruševac.

⁸⁸ Marina Simeunović, Posedovanje ličnih dokumenata kao uslov socijalne integracije mladih Roma u naselju “Veliki Rit” u Novom Sadu (Possession of Identity Documents as a Requirement of Social Integration of Young Roma in the Settlement of Veliki Rit in Novi Sad), ODIHR BPRI, 2013.

⁸⁹ Roma and Sinti youth can overcome the barriers to their inclusion through grassroot movements, say, the participants of the OSCE Conference in Belgrade <http://www.osce.org/odihr/130531>.

- **Formulate local action plans for Roma issues, including also Roma themselves in the process of their preparation and provision of stable sources of funds for their implementation.**
- **The activities for improving the situation of the Roma population in all areas should be based on a local context, in accordance with the need for “passing down to the local level”; local governments should be encouraged to consider the needs of minority groups, especially Roma, in formulating local action plans for different areas.**
- **Local governments should be encouraged to make a comprehensive analysis of the existing resources in their local communities – the current support programmes, active Roma and other civil society organizations which already implement effective programmes and projects. The planning of further activities and distribution of resources must be based on results.**
- **In order to enhance participation it is necessary to ensure the regular inclusion of Roma in the initiatives related directly to them (such as, for example, the employment of Roma in local governments as contact persons on Roma issues) and, in particular, the active inclusion of Roma women in the decision-making process at the local level.⁹⁰**
- **Include Roma women in local mechanisms for achieving gender equality.**
- **Activate young members of the Roma community in the public policy creation and decision-making process at the national and local levels, e.g. in local youth offices.**
- **It is desirable to establish the network of Roma non-governmental organizations dealing with young people.**
- **Encourage volunteerism among people, as well as the acquisition of additional skills and education for work in their local community.⁹¹**

⁹⁰ Regional Report on Anti-discrimination and Participation of Roma in Local Decision-Making, 2013, pp. 85-86.

⁹¹ Drugi nacionalni izveštaj o socijalnom uključivanju i smanjenju siromaštva u Republici Srbiji (The Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia), op.cit.

Education

The educational level of the Roma population is significantly more unfavourable compared to the rest of the population. So, 87 per cent of Roma have primary or lower education, while less than 1 per cent of them have a college or university degree. Although the share of illiterate persons in the total Roman population declined from about 19 per cent to 15 per cent, it is still much higher than the share of illiterate persons in the total population, which is 2 per cent. The data collected within the population census also point out that not all children aged 7-14 are covered by education and that only 502 persons attend first and second-level studies, while 10 attend doctoral studies. The level of computer literacy is also low: about 77 per cent of Roma aged 14 or older are computer illiterate;⁹² 69 per cent of school-age children from Roma settlements attend the first grade in primary school, while only 22 per cent of secondary-age children attend secondary school.⁹³ In school year 2013/2015, thanks to affirmative action measures, 347 Roma candidates enrolled at faculties and 402 in secondary schools. On the other hand, the problem of Roma girls dropping out of school is especially pronounced, but has not been sufficiently explored.⁹⁴

According to the Report of the Protector of Citizens, the implementation of affirmative action measures in the education of Roma students has never been systematically dealt with. On one side, Roma students had to prove their ethnicity on the basis of a special voters' register of the Roma ethnic minority. On the other side, however, there are cases that students belonging to some other ethnicity declare themselves as Roma.⁹⁵ Such a situation has led to the misunderstanding of affirmative action measures in education for the Roma population and, thus, to negative reactions of both teachers and students, so that in some communities the security of

⁹²S. Radovanović, A. Knežević, *Roma u Srbiji* (Roma in Serbia), op. cit., pp. 69-75.

⁹³Report by the Commissioner for Gender Equality, p. 26.

⁹⁴*Monitoring javnih politika: efekti Dekade Romanapoložaj Romkinjau Republici Srbiji* (Monitoring of Public Policies: The Effects of the Roma Decade on the Position of Roma Women in the Republic of Serbia), BIBIJA, Belgrade, 2014, p. 18.

⁹⁵Report of the Protector of Human Rights, p. 58.

Roma students has been called into question.⁹⁶ On the other hand, misuses of these measures and insufficient information available to the general population in some communities result in the conviction that such solutions endanger the future and, thus, the security of youth belonging to the majority population.⁹⁷

Also, some faculties still reject to discharge the obligation to set a 2 per cent quota for the enrolment of Roma students out of the percentage of budget-financed students. For the enrolment competition in school year 2015/16, prior to enrolling at a faculty in Serbia, the potential beneficiaries of affirmative action measures were requested to sign the statement that they belong to Roma ethnicity and obtain the recommendation from the National Council of the Roma National Minority.⁹⁸ In military education institutions there are no incentive measures for the enrolment of Roma in the Military High School and at the University of Defence.⁹⁹

Research on the effects of introducing teaching assistants into 22 primary schools in Serbia points to a positive impact on educational achievements of Roma children, regularity of school attendance, increased number of students engaging in extracurricular activities and improved school-parent cooperation. However, the drop-out rate among Roma children is still high. According to the official data, 178 teaching assistants, who are paid from the state budget, have been registered in pre-school and primary school institutions. Drop-out prevention programmes are carried out under the TARI Project. There are also the scholarship programme covering 1,000 Roma secondary-school students for the duration of two school years, mentorship programme for 1,000 scholarship holders and training programme for teaching assistants.

According to an analysis of the achievements under the previous Strategy the progress made in the field of education is not sufficient; there are no clear criteria for the implementation

⁹⁶ Radoman and Tadic, op.cit.

⁹⁷ Comments by secondary-school students within the research project "Lokalna bezbednost mladih i demokratska kontrola sektora bezbednosti" (Youth's Local Security Issues and Democratic Control of the Security Sector), Public Policy Research Centre, 2015; http://www.publicpolicy.rs/projekti/15_Mladi-i-demokratska-kontrola-sektora-bezbednosti#.VkrF-berTVU.

⁹⁸ The recommendation of the National Council of the Roma National Minority is compulsory for students if they wish to be enrolled at a Serbian university under the affirmative action plan, Romaworld, 22 June 2015, Internet, <http://romaworld.rs/blog/preporuka-nsrnm-o-nacionalnoj-pripadnosti-obavezna-za-koriscenje-afirmativnih-mera-na-univerzitetima-u-srbiji/>.

⁹⁹ Svetlana Djurjdevic-Lukic, Jelena Radoma, Marina Tadic, Mapiranje (ne)diskriminacije u sistemu vojnog obrazovanja RS (Mapping /Non/discrimination in the Military Education System of the Republic of Serbia), Public Policy Research Centre, 2013.

of affirmative action measures for the enrolment of Roma in secondary schools and at faculties; the teaching of Roma language with elements of Roma culture could not be organized in the way it was done for representatives of other ethnic minorities due to the lack of staff and developed programme; the segregation of Roma children in education is still present.¹⁰⁰ The latest indicators within the Roma Inclusion Index show that the situation of Roma has slightly improved in primary and secondary education, but the gap still remains significant. The percentage of Roma completing tertiary education is almost zero. Roma representation in special education is still high. Positive developments can be noted in preschool education and literacy.¹⁰¹ Directing Roma children towards special schools, where textbooks and food are free, contributes to the narrowing of the opportunities for their further education and employment.

RECOMMENDATIONS:

- **Increase the educational level of the Roma population and ensure full integration of Roma children into the educational system.**
- **Work continuously on the the establishment of new support mechanisms and improvement of existing ones (teaching assistants), as well as on the establishment of an efficient system of coordination among different sectors at the local and national levels.¹⁰²**
- **Support the development of educational campaigns in schools in order to reduce social distance among children and make a clear and argued explanation of the essence of affirmative action measures for the Roma population.**
- **Continue with the process of reducing the number of special schools and the inclusion of the remaining parts of the education system, such as the military education system, into affirmative action measures.**

¹⁰⁰The Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia, op.cit.

¹⁰¹Roma Inclusion Index 2015, op.cit.

¹⁰²The Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia,

Employment

The general evaluation of the employment situation is that gaps for all employment indicators decreased, except for no-employment experience. Rates of Roma without employment experience and young Roma that are not in education, employment or training are very high, especially for Roma women.¹⁰³

Only about 29 per cent of the working-age Roma population participate in the labour market, while those employed earn 48 per cent of the average wage; more than 60 per cent of Roma have no income.¹⁰⁴ About 28 per cent of Roma households, registered within the population census, live on social assistance.¹⁰⁵ Although the number of dependent persons at the national level decreased during the inter-census period, the number of dependent Roma increased by even 69 per cent, while the number of Roma with personal income was halved. The predominant Roma occupations are cleaners, auxiliary workers and collectors of secondary raw materials – 60 per cent, while drivers, craftsmen and farmers account for 10-11 percent. In addition, in the structure of gainfully occupied Roma men account for about 77 per cent and women for only 22 per cent, which also points to the aggravated situation of Roma women.¹⁰⁶

In the register of the National Employment Service (NES), at the end of 2013, there were 22,102 persons of Roma ethnicity, including 10,150 women, or 46 per cent, which means that in the total number of unemployed in the NES register Roma accounted for 2.9 per cent. According to their age, most Roma in the NES register are 15-30 years old (34 per cent of the total number of registered Roma), which means that one third of unemployed Roma belongs to the youth

¹⁰³ Roma Inclusion Index 2015, op. cit.

¹⁰⁴ Branka Anđelković, Marko Obradović, Jelena Radoman, *Procena efikasnosti lokalnih mehanizama socijalnog uključivanja Romkinja i Roma* (Evaluation of Efficiency of the Local Mechanisms of Social Inclusion of Roma Women and Men), Social Inclusion and Poverty Reduction Unit and Public Policy Research Centre, 2013; Internet, <http://publicpolicy.rs/publikacije/daf725e70691bf26e5ef8d2b73d074cf98d4b9a6.pdf>.

¹⁰⁵ S. Radovanović, A. Knežević, *Romiu Srbiji* (Roma in Serbia), op. cit., p. 94.

¹⁰⁶ Ibid., pp. 78-80.

category. The poor educational structure of Roma poses a great challenge: 89.8 per cent of the total number of Roma registered at the NES are unskilled, 9.8 per cent have secondary vocational education and only 85 Roma men and women registered at the NES have college or university education (0.4 per cent). Despite some improvements, the Roma population, especially women, remains the most discriminated against in the labour market.

The NES also announces special public calls for granting subsidies to Roma for self-employment and to employers hiring them. Roma are also included in other programmes and measures of active employment policy pursued by the NES. In 2013, they constituted 33 per cent of all participants in the functional adult education programme.

One component of the TARI project, funded by the EU and implemented by the OSCE, aims to support enterprises with the potential for sustainable Roma employment with equipment, mentoring and training for new employees.¹⁰⁷

The examples of good practice are donor funded programmes within internship for educated young Roma in state institutions¹⁰⁸ and civil society organizations,¹⁰⁹ as well as the mentioned work on increasing the number of Roma in the police in accordance with the recommendations of the Protector of Citizens and at the civil society initiative.¹¹⁰ Namely, although Roma people are interested in employment in the MIF system, one of the major obstacles to their greater enrolment in basic police training is insufficient information on the enrolment requirements and passing the entrance exam with a high score. Information sessions have so far been held in six cities in order to acquaint interested young Roma with the possibility of enrolling in the training programme and all entrance exam details. Additional testing

¹⁰⁷ The Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia, op.cit.

¹⁰⁸ The Office for Human and Minority Rights – with the support of the British and Dutch Embassies, Swedish Agency for International Development(SIDA) and OSCE Mission to Serbia – implemented the project involving paid six-month internship in state institutions in the Republic of Serbia for young members of the Albanian, Bosniak and Roma ethnic minorities.

¹⁰⁹ The Public Policy Research Centre and Centre for Ethics, Law and Applied Philosophy are the organizations hosting and supporting the programme of employing educated young Roma in civil society organizations in the Republic of Serbia, at the initiative of the Central European University (CEU) and National Endowment for Democracy.

¹¹⁰ Project "Inkluzija Roma u sektor bezbednosti: Ka većoj prolaznosti na osnovnu policijsku obuku" (Inclusion of Roma in the Security Sector: Towards Greater Enrolment in Basic Police Training), op. cit.

preparations were also made as a prerequisite for increasing the level of enrolment in basic police training.¹¹¹

So far, decision makers within the military education system have not considered the implementation of affirmative action measures in order to increase the number of Roma in the system. At present, the number of members of the Roma minority in military education institutions is extremely low: in 2014, there was only one Roma student at the Military Academy.¹¹² This implies decreased employment opportunities in the parts of the defence system.

RECOMMENDATIONS:

- **Ensure the consistent implementation of anti-discrimination policy instruments in the field of employment in the preparation of labour legislation.**
- **Support the programmes empowering young Roma for employment in state institutions.**
- **Take measures for reducing gender inequality in the labour market which will pay attention to the position of Roma women and their inclusion in the programmes of active measures in the labour market: additional education and training, public works, support to self-employment.**
- **Give priority to financing the programmes for general access to education for young people aged up to 30 years through the expansion of programmes such as the “Second Chance” programme, thus improving the educational structure.**
- **Continue the public works programme, coupled with the application of the principles of affirmative action and programme sustainability.¹¹³**

¹¹¹ <http://www.ljudskaprava.gov.rs/index.php/vesti/1435-inkluzija-roma-i-romkinja-u-sektor-bezbednosti>.

¹¹² J. Radoman, M. Tadić, Romkinje i Romi i reforma sektora bezbednosti u Republici Srbiji (Roma Women and Men and Security Sector Reform in the Republic of Serbia), 2014, op. cit.

¹¹³ The Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia, op.cit.

Housing

Housing represents one area that is especially problematic for the Roma population. According to the census data, homeless Roma account for about one third of the total number of homeless persons in Serbia.¹¹⁴ In 70 per cent of the municipalities in Serbia there exist substandard Roma settlements. In almost 40 per cent of these settlements houses are not connected to the water supply network, while only 10 per cent of these settlements have the majority of houses connected to the sewerage network.¹¹⁵ Roma living in informal settlements throughout the country are highly discriminated against in access to social protection, health care, employment and adequate housing, including basic hygienic conditions, water and electricity.

The latest housing indicators mostly point to the improvement of the situation of Roma and reduction of the gap in comparison to the general population. However, the rates of Roma without property documents, living in segregated neighbourhoods, and overcrowding are very high.¹¹⁶ The comparative data show that the average number of rooms for Roma in Serbia is 0.63 and for the total population – 1.13, and that the average number of square meters of living space is twice as unfavourable: 14.09 vs 27.41.¹¹⁷

At the end of 2013, activities were undertaken towards mapping and developing the geographic information system (GIS) of Roma settlements, involving the development of adequate housing models and the preparation of urban planning and technical documents for the improvement of infrastructure and housing conditions in Roma settlements with a view to preparing projects for competition for IPA 2013 funds. The implementation partner to this IPA 2012 funded project is the OSCE, while its implementation is coordinated by the Office for Human and Minority

¹¹⁴ S. Radovanović, A. Knežević, *Romi u Srbiji* (Roma in Serbia), op. cit., pp. 86-87.

¹¹⁵ So far, 583 substandard Roma settlements have been identified in Serbia. More detail about their characteristics see in: Dr Ljiljana Živković, Dr Aleksandar Đorđević, *Osnovne karakteristike podstandardnih romskih naselja u Srbiji i predlog budućih razvojnih inicijativa za unapređenje uslova života romske zajednice* (General Characteristics of Substandard Roma Settlements in Serbia and a Proposal for Further Development Initiatives for the Improvement of the Living Conditions of the Roma Community), OSCE Mission to Serbia, Belgrade, 2015.

¹¹⁶ Roma Inclusion Index 2015, op. cit.

¹¹⁷ Regional Report on Housing Legalization, Settlement Upgrading and Social Housing for Roma in the Western Balkans, Best Practices of Roma Integration, OSCE-ODIHR, February 2014, p. 27 <http://www.osce.org/odihr/115737>.

Rights. Another project, the provision of durable housing for 200 Roma families resettled from informal settlements to new container settlements by the City of Belgrade authorities during the period 2009-2012, is implemented by the UNOPS. Both projects are financed by the European Union.¹¹⁸

RECOMMENDATIONS:

- **Carry out research on Roma housing needs in local government units, make relevant records and prepare action plans, including measures for improving housing conditions in Roma settlements.**
- **Provide funds and encourage local governments to improve the housing conditions of the Roma population living in substandard settlements.**
- **Provide adequate housing solutions for returnees under the Readmission Agreement.**
- **Adjust the practice of resettling Roma settlements to the international standards and ensure the full use of the possibility that persons without residence are registered at a local social welfare centre.¹¹⁹**

Health Care

Although Roma have health insurance, their infant mortality is twice as high and their life expectancy 12 years shorter compared to the general population. Roma cannot achieve full primary health care in health centres, while the availability of secondary and tertiary health care does not correspond to the health condition of Roma who are exposed to the risk of chronic and other diseases.¹²⁰

¹¹⁸ The Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia, op.cit.

¹¹⁹ Ibid.

¹²⁰ Roma Inclusion Index 2015, op.cit.

However, significant results have been achieved thanks to the employment of Roma health mediators under the programme of Roma health improvement and health care. The establishment of this mechanism has significantly contributed to the improvement of the health situation: Roma child mortality dropped by 50 per cent.¹²¹ The role of health mediators consists in increasing access to health care for the Roma population by making field visits with a view to expanding the immunization coverage of children and ensuring more frequent contact with health services, health education activities and exercising the right to health insurance.¹²² Until 2012, thanks to the employment of 75 health mediators in 59 local government units, the data on 120,708 individuals were recorded, 136,106 households were visited and 13,647 individuals without health insurance were found. Health mediators secured health insurance for 7,389 individuals, 19,528 persons were registered with the doctor of their choice and the problem of 3,545 individuals without personal identification was solved.¹²³

Apart from legal protection mechanisms for solving the problem of the stigmatization and discrimination of members of the Roma ethnic minority, partnership with the non-governmental sector is especially significant, since it can supplement the capacity of the government sector in facing such challenges. Better information on the right to health, pooling of forces to achieve rights and assistance of non-governmental organizations in the protection of rights can place the user “at the centre” of the health system.

RECOMMENDATIONS:

- **Intensify measures to provide better information on the right to health;**
- **Take all necessary measures to ensure respect for legal rights to compulsory health insurance for Roma even if they have no residence, thus facilitating their access to health care;**
- **Increase the number of health mediators and employ them in those local government units where there are none.**

¹²¹ Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, 2013, p. 36.

¹²² The Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia, op.cit.

¹²³ Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, 2013, p. 36.

2.2.4. Conclusion

The OSCE organs and bodies have a well-developed system of recommendations and examples of good practice when the situation of Roma is in question, which is a framework that should be regularly used when formulating relevant policies in Serbia.

The normative framework in the Republic of Serbia has largely been adjusted to the recommendations of the OSCE and other international organizations, but a key obstacle is posed by its insufficient implementation. This is the result of a number of interconnected causes, including the insufficient sensibility of representatives of government bodies responsible for vulnerable groups, especially Roma, unsustainable planning and allocation of resources and, to a degree, insufficient preciseness and concreteness of some anti-discriminatory norms. In the further development of a normative framework it will be necessary to make anti-discriminatory norms precise, concrete, sustainable and, in particular, adjusted to implementation at a local level. It is also necessary to work further on the education and sensibilization of the employed in government bodies and local governments for specific problems of the Roma population.

The Roma population is still exposed to discrimination and often faced with hate speech and threats. Therefore, it is necessary to support the development of media campaigns with a view to reducing social distance providing an argument-based explanation of the essence of affirmative action vis-à-vis Roma.

All further planned measures and activities, both at the national and local levels, must especially take into account the need for empowering and improving the position of Roma women and girls as a multiply vulnerable social group. It is necessary to encourage the involvement of Roma in formulating related policies through a comprehensive participative process and activities, including fora, panels, focus groups, public hearings. This will ensure the participation of as many Roma as possible, especially young ones, in social life, and avoid the “monopolization” of public space.

It is necessary to further develop and mechanisms for the social inclusion of Roma, modelled after the mechanism of health mediators, which proved to be especially useful and effective, and to ensure continuity of the work of such mechanisms.

Special attention should be devoted to the problem concerning the security of the Roma population and migratory trends or, in other words, potential problems with the admission of a greater number of persons under the Readmission Agreement, which can be expected.

2.3. Comments by the Office for Human and Minority Rights of Serbia on the Institute of Social Sciences' report on Roma

Anti-discrimination policy

In the Report it is stated that the Strategy against Discrimination, assessed as the major obstacle to Roma social integration, recommends only measures of a general nature that do not suffice and do not help remove the root-causes of discrimination.

Comment: Such assertion is not acceptable taking into account that the 2014-2018 Strategy for the Prevention of and Protection from Discrimination is the first strategic document of the state comprehensively addressing the issue of discrimination, especially discrimination against the nine vulnerable social groups. In addition to the Strategy segment related to improving the status of national minorities in the Republic of Serbia, an entire section of this strategic document is dedicated to measures to be taken by the state in various public policy spheres, aiming to protect and promote the status of persons belonging to the Roma minority. The Action Plan for the Implementation of the Strategy for the Prevention of and Protection from Discrimination puts forward in greater detail the activities for the realization of set measures; it defines deadlines, parties responsible for the implementation of measures, relevant indicators and the allocated financial resources. This document has been harmonised with EU accession Action Plans for Chapters 23 and 24. Furthermore, on 13 August 2015, the Council overseeing the implementation of the Action Plan for the Strategy was established with a task to monitor progress in the implementation of measures, carrying out of activities, meeting of deadlines, and to issue timely warnings of the challenges arising in the execution of the Action Plan. At the

Council's first meeting of 13 November 2014, the Report on the monitoring of the AP implementation in the last quarter of 2014 and the first quarter of 2015 was adopted.

In the Report it is stated that similar approach was adopted in the Law on the Prohibition of Discrimination, defining the notion of discrimination and its forms in accordance with international standards and recommendations in this field, and designating an independent body with wide-ranging responsibilities to prevent and sanction discrimination, but the problem of discrimination against Roma was not singled out.

Comment: Such assertion is not acceptable taking into account that the Law on the Prohibition of Discrimination has for the first time established an integral system of protection from discrimination in the Republic of Serbia. The Law provides for strict prohibition of discrimination in the Republic of Serbia on general level and of all forms and instances of discrimination; it established procedures for protection from discrimination, as well as the institution of Commissioner for the Protection of Equality as an independent state authority, able to act independently in performing tasks in line with its authority defined by the Law. In addition, judicial protection from discrimination has been established, with each party discriminated against having the right to file a lawsuit to the court. Such procedures require immediate action to be decided upon by the court.

3.1. Harmonization of the right to freedom of public assembly in Serbia with the relevant standards of the OSCE (Dr Zorica Mršević, Institute of Social Sciences, Belgrade)

Executive Summary of the Report

The present Report on Freedom of Public Assembly in Serbia has resulted from the process of self-evaluation concerning the respect of the OSCE documents and values by a country holding the OSCE Chairmanship, as launched by Switzerland, the former Chair, and accepted by Serbia, the current Chair. The period under review covers the time since 2006, when Montenegro left the State Union of Serbia and Montenegro and became an independent state, including some observations from previous years to ensure continuity.

Problems

Major problems observed in the exercise of freedom of assembly include:

1. inefficiency of available legal remedies,
2. introduction of blanket bans without specifying the individually stated reasons for the ban,
3. prohibition of public rallies by the governmental bodies having no legal authorization to impose bans
4. misunderstanding of the fact that the organizers have the right to use public spaces at their discretion, and to decide on the venues of their gatherings,
5. imposition of numerous administrative obligations and huge expenses upon the organizers of the rallies, which requires that the documents be collected for months

(including the discriminatory application of these requirements that are imposed selectively),

6. determination of expenses for public gatherings to be covered by the organizers,
7. prohibition of peaceful protests due to the violence that aggressive counter-protesters threaten to engage in,
8. multiple bans on non-violent public rallies and on counter-demonstrations, scheduled at the same time,
9. non-existent legal regulations concerning counter-meetings, spontaneous meetings, rallies of persons who are not Serbian nationals,
10. it is a common belief that minority views should not be publicly expressed at gatherings, and that the organizers use the gatherings for “sheer provocation” of the citizens who do not agree with them,
11. the standard of “visibility and audibility” of gatherings is almost unfamiliar to the public, and, in practice, the intended recipients are still unable to either see or hear the messages,
12. existence of the legal prohibition of strikes in the form of a gathering in a public space outside the production plants or business areas, a prohibition which is massively and regularly violated,
13. prohibition of public gatherings in the vicinity of the National Assembly building,
14. occasionally compromised safety of media representatives reporting on the gathering, and
15. essential misunderstanding by institutions, professionals, media and the general public of the OSCE/ODIHR Guidelines for public gatherings and other relevant international standards and documents concerning public gatherings.

Recommendations

Having in mind that the Constitutional Court has declared the currently applicable Public Assembly Act unconstitutional, that according to the consulted sources problems in this area have compounded, and that considering many discrepancies between the practice followed so far and the OSCE/ODIHR and other international standards, all resulting in the right to freedom of public assembly being less exercised in Serbia, there is a need to:

1. Pass a new Public Assembly Law as early as in the course of 2015, to meet the standards set out by the OSCE/ODIHR and other international standards. Apart from the Government actors, representatives of the Ministry of Interior and the Ministry of Foreign Affairs, NGOs in the human rights field, professionals and representatives of the OSCE/ODIHR are required to take part in this process.
2. Develop a Government's Strategy concerning public gatherings in the Republic of Serbia
3. The Ministry of Foreign Affairs, the Ministry of Interior, Commissioner for Protection of Equality, Ombudsman, Office for Human and Minority Rights, Serbian European Integration Office, NGOs dealing with defence of human rights, Belgrade Human Rights Centre, YUCOM (Lawyers' Committee for Human Rights, NGOs responsible for the protection of LGBT rights, Labris and Gay Straight Alliance and the OSCE Mission to Serbia need to be familiarized with this Report.
4. Organize scientific meetings on the modalities of enhancing practical application of freedom of public assembly in Serbia, prior to and after the new Public Assembly Law is adopted.
5. Familiarize the law enforcement and local self-government authorities, as well as other actors, with the application and practice concerning the OSCE/ODIHR and other international standards concerning freedom of public assembly, before and after the adoption of the new Public Assembly Law.

Introduction

Respect of the values underlying the Helsinki Final Act and other OSCE commitments by the participating State holding the OSCE Chairmanship is one of the sources of the OSCE's credibility, as the Chair is able to lead the way by giving its own example. In order to enhance the implementation of these commitments, and to promote a steady follow-up to the implementation of the relevant findings and recommendations issued by the OSCE structures, Switzerland has voluntarily agreed to carry out self-assessment of its own track record. Switzerland is determined to assess itself and find out whether and to what extent it applies the relevant OSCE commitments in the human dimension field. This initiative put forward by Switzerland is a response to the long-standing calls made by civil society and parliamentary

representatives. Implementation of these commitments used to be monitored within the OSCE, but the existing monitoring tools undoubtedly still need to be reinforced. The new concept of self-assessment can be developed without the need to reach a consensus on the technical level, for such a means of monitoring can help pave the way for an even better implementation. These were the reasons that prompted Switzerland to embark upon a pilot project of analysing its own performance in the implementation of OSCE commitments.

In strategic terms, it would be more justified if a participating State could complete the existing self-assessment process before assuming the OSCE Chairmanship. However, this was not possible in either Swiss or Serbian case.

In the closing observations of its Report, Switzerland emphasized that it firmly believed that the initiative to apply this new practice, tough technical and constructive in nature and implemented without a consensus, would improve the application of OSCE commitments in Switzerland and beyond. Developed and initiated as part of joint planning between Serbia and Switzerland, this initiative offers a clear example of continuity. Switzerland has welcomed Serbia's decision to proceed to self-assessment and it hopes that future OSCE Chairmanships will also engaged in the same process. Both in the course of its Chairmanship and at present, Switzerland has been committed to a coherent and consistent approach aimed at the enhancement of the human dimension of the OSCE work and beyond, the commitment shared by Serbia.

As for the level of familiarity of the interested stakeholders with the OSCE standards and values, one can note, on the basis of the research carried out, that the chief actors in Serbia (and in Switzerland) – governmental bodies and non-governmental sector are - according to general assessment, insufficiently knowledgeable about OSCE commitments and procedures. It will take time to understand the framework established by the OSCE commitments, and to receive constructive positive feedback on its implementation. An obstacle to this process is also the fact that the OSCE monitoring mechanism to apply these commitments in practice is yet to be clearly defined.

Documents, announcements, decisions and reports of the following independent institutions were used to compile this Report: the Constitutional Court, Commissioner for Protection of Equality and Ombudsman; reports of NGOs helping the cause of human rights: Belgrade Human

Rights Centre, Lawyers' Committee for Human Rights (YUCOM), Helsinki Committee for Human Rights and the organizations for the protection of LGBT rights such as Labris and Gay Straight Alliance; media reports on public assembly; and the published treatises authored by scholars.

The observed time-frame commences with 2006, when Montenegro left the State Union of Serbia and Montenegro, but some observations from the years prior to 2006 are stated as well, for the sake of continuity.

Based on these sources, this Report is structured as follows:

1. General characteristics of freedom of public assembly in Serbia and the protests organized by trade unions, as a quintessential form of mass public gatherings.
2. Legal regulations concerning the right to freedom of public assembly in Serbia, the Constitution, laws, by-laws and initiatives, projects and attempts to amend the Public Assembly Act.
3. Independent bodies on freedom of public assembly: Commissioner for Equality Protection, Ombudsman, Constitutional Court, think-tanks.
4. Non-governmental organizations on freedom of public assembly: Belgrade Human Rights Centre, YUCOM, Labris, Gay Straight Alliance.
5. OSCE/ODIHR standards governing public assembly. Case study: prohibition of all public gatherings on 11 July 2015, in light of the OSCE/ODIHR standards.

Serbia is a country without a long-standing tradition of public gatherings organized by private actors, particularly not by those sending messages unpopular with the broad public. This differs Serbia from other European countries where this freedom is deeply rooted in the democratic tradition of these societies. This could help clarify, up to a certain point, why Serbia is still facing gaps in understanding and failures to understand the essence of this human right, why in practice the legally prescribed application system turns into the permission system, particularly when speaking about the gatherings of so-called unpopular minorities, often accompanied by the lack of knowledge and/or misunderstanding of international standards regulating this freedom. Due to outdated and inadequate legal solutions in this area, the

widespread impossibility to “differentiate”¹²⁴ sports, religious or commercial gatherings and the like from those that are in line with freedom of expression or that send certain messages and are only protected by the high standards applicable to freedom of public assembly, is still in evidence. Incidentally, the Constitutional Court of Serbia declared the Public Assembly Act that is currently in effect unconstitutional, at its sitting of 9 April 2015, and postponed the publication of the rationale of the decision by six months. Even though it is clear that neither the Constitution nor the Public Assembly Act are not in line with the OSCE/ODIHR and other international standards, even despite the efforts invested by several governments, and the existence of several drafts, the new Public Assembly Law has not yet been adopted, for which reason one must note the lack of the enough political will to finally align this area with international standards.

Broadly speaking, the conduct of law enforcement agencies cannot be assessed as being repressive, and there are no reports on the excessive use of force. Conduct of the Serbian police when it comes to public gatherings is seldom repressive indeed, and the police received many compliments¹²⁵ in terms of restraint in the use of force when police stepped in to stop the violence, to break up street blockades, and lengthy public protests, and in terms of their readiness to protect the participants of public gatherings from violence. Furthermore, one of the major compliments made to the police was their readiness to establish, in line with the OSCE/ODIHR guidelines, a close and frequent communication with the organizers prior to big gatherings or gatherings tackling controversial topics, aimed at maximum reduction of risks and ensuring security at these events, through joint efforts. The police has so far been fair in securing unregistered, spontaneous gatherings, including such event when protesters on strike left the production plants and took to the streets and squares of their cities, even the capital, prohibited by the Law on Strike Action.

Political parties’ election campaigns and trade unions’ protests are the most numerous public assemblies in Serbia. Trade union protests also bring continuity and introduce important social

¹²⁴ Ž. Nikač. „Sloboda javnog okupljanja i aktivnosti policije MUP RS na zaštiti prava na život i drugih vrednosti“ (Freedom of public assembly and police activities of the Serbian Ministry of Interior), *Pravni život*, 2014/9, p. 232.

¹²⁵ Ombudsman, Statement- *Saopštenje povodom napada na učesnike Kvir Beograd festivala (Statement on the attack against the participants of the Belgrade Queer Festival)*, Belgrade, 2008. “The police’s conduct was of vital importance and is worthy of every praise”. Ombudsman, Special Report: LGBT populacija u Srbiji- Stanje ljudskih prava i društveni položaj (LGBT Population in Serbia- State of the Human Rights and Social Position), Belgrade, September 2011.

problems into the political discourse of the country. Nevertheless, both the successful and abortive attempts at organizing Pride Parades in Belgrade, where all controversies, problems and dilemmas concerning the respect of freedom of public assembly in Serbia seem to overlap, grabbed the attention of both the domestic and international public. Public manifestations of LGBT activism, and particularly the multiple bans (2009, 2011, 2012 and 2013) on the Pride Parade (held in 2010 and 2014), including the mass trade union protests, especially those that included blockades of intersections relevant for the domestic and international transport, are a litmus-test of its kind for the respect and practical application of domestic and international standards.

Trade union protests

Trade union protests are the largest public assemblies, in addition to party electoral campaigning. But unlike sporadic party assemblies in the run-up to elections, trade union protests have been going on without interruption for decades, both in the times of repression in the 1990s, and in the subsequent democratic period. They are also important because they bring to the public domain those, probably most painful, existential problems faced by the citizens of Serbia in their recent history. At the same time, they are part and parcel of developing a new democratic tradition for public assembly in Serbia or a democracy resulting from the fact that law enforcement and other authorities refrained from the use of force in most instances, though the intrusion of strikers upon public spaces is, in fact, unlawful under the provisions of the Law on Strike Action, which nonetheless did not prevent protesting marches from occasionally blocking or interfering with traffic flows.

Strike actions and protest marches in 2012 were held in the following sectors: administration, the media (electronic and print media), public utilities, energy, institutes, pre-school education, arms manufacture, agriculture, food processing, pharmaceutical industry, industrial machinery and components, textiles, health care, chemical industry, iron and steel products, railway carriage production, etc. The most common requests by strikers in 2012 focused around: 1) payment of salaries (which in some cases was delayed for months, or even years), hot meals, transportation,

certification of medical cards, payment of contributions (towards pension, health and unemployment insurance schemes), connecting of length of service, anniversary awards, holiday entitlements, daily subsistence; 2) restarting of production, termination of privatization agreement, honouring of signed sales contracts; respect of documents signed with employers; 3) signing of special collective bargaining agreements, development and respect of social security programmes; 4) payment of salaries according to enforceable judicial decisions; 5) the worsening economic situation.

Between January and December 2013, employees expressed their discontentment at 10 protests and 55 strike actions involving more than 45,000 workers, including road blockades and hunger strikes. It is significant that most worker requests are centred around their fundamental rights and that the problems are inter-related: non-payment of wages, lack of production, poor management, poor quality production programme, non-compliance with collective agreement and privatization agreement, trade union rights, etc. Strikes and protests were held in the metals industry, construction industry, agriculture, chemical industry, science, road industry, education, culture, textiles and the public utility sector.⁴

Trade union protests and strikes can, but not necessarily, take the form of a public assembly, as many of them begin and end on the official premises, and they will not be discussed herein. Those outside the official premises, taking the form of public assembly, can be sub-divided into three groups:

1. strikes and worker protests starting at the company's official premises, then moving in front of the gates, and eventually turning into organized public assemblies in front of local, municipal or metropolitan institutions;
2. strikes and protests in the form of public protest marches ("protest camps") or those escalating into a gathering in Belgrade outside the Government building, Privatization Agency, European institutions offices, usually preceded by gatherings at Nikola Pasic Square or Slavija Square, the starting points of such protest marches;
3. strikes including public assemblies which block streets, railway tracks, roads and other traffic routes.

⁴ The cities where strikes and protest were carried out included: Sombor, Sabac, Novi Sad, Belgrade, Kragujevac, Vranje, Nis, Cacak, Bajina Basta, Valjevo, Ljig, Mali Zvornik, Krusevac, Arandjelovac, Vladicin Han, Uzice, Smederevska Palanka, Novi Pazar, Vrnjacka Banja, Vlasotince, Subotica, Ada and Veliko Gradiste.

Legal provisions on the right to freedom of assembly in Serbia and initiatives, projects and attempts to amend the Law on Public Assembly of citizens.

Constitution.⁵ Freedom of assembly is not an absolute right, and has some limitations as set out in Article 54 of the Constitution which stipulates that citizens may assemble freely (paragraph 1); assembly held indoors shall not be subject to permission or notification (paragraph 2); rallies, demonstrations and other forms of assembly held outdoors shall be reported to the state body, in accordance with the law (paragraph 3); freedom of assembly may be restricted by the law only if this is necessary to protect public health, morals, rights of others or the national security of the Republic of Serbia (paragraph 4).

Public Assembly Act.⁶ Freedom of assembly in the Republic of Serbia is regulated by the Public Assembly Act of 1992. This Law, which is still in force, does not contain a precise definition of assembly, but only states that public assembly, for the purpose of the present Act, means convening and holding a rally or any other assembly in a location adequate for that purpose. Article 11 of the same Act provides that Police can ban a public assembly if it is deemed as a potential threat to public health, public morals or security of people and their property or to disruption of public traffic (Art. 11, para. 1). The last above-stated reason is contrary both to international standards and the Constitution, and should have not been incorporated in this legal act.

The Law on Civic Assembly provides Police with broad discretion in assessing whether a rally should be banned or not. The Pride Parade 2011 ended with the adoption of the Decision to prohibit the rally, with the explanation that “the reasons exist” to impose the ban without specifying the basis founded in either fact or law.

The issue of counter-protests or counter-demonstration has not been regulated at all. Given the practical need to regulate the issues raised in connection with a counter-demonstration, for

⁵ Constitution of the Republic of Serbia, 2006.

⁶ Public Assembly Act (“The Official Gazette of RS”, No. 51/92, 53/93, 67/93, 17/99, 33/99 and 48/94, “The Official Journal of FRY”, No 21/01 and “The Official Gazette of RS”, No. 29/01 and 101/05)

instance, how to deal with the situation when two conveners want to hold a rally in the same place at the same time, which was the case in attempting to organize the Pride Parade in previous years, it would be necessary that a law gives some guidelines for the regulation of the issue. The Venice Commission assessed in its Opinion on the Law on Public Assembly of the Republic of Serbia that to limit the guarantee of freedom of assembly only to nationals is problematic.

Law on Strike Action⁷ (1996, last amended in 2012)

A strike may be staged on the premises of a company or any other legal entity (Article 2). If a strike is to be manifested through employees' assembly, the assembly point of strikers cannot be outside business/work premises, i.e. outside the ground of the business premises of employees who go on strike (Article 5 para. 3). Hence, employees who go on strike are prevented from public demonstration. The Federal Court in the mid-nineties of the last century refused to examine the constitutionality of these provisions, arguing that they were not related to the ways in which the human rights recognized in the Constitution of the FRY are exercised.⁸

Law on Policing⁹

Unions, professional associations and other law enforcement activities are set out in Article 134, paragraph 3. Police officers shall not attend party meetings or other political rallies in uniform, unless on duty.

Constitutional Court on the Public Assembly Act. The current Public Assembly Act was declared unconstitutional by the Serbian Constitutional Court sitting on 9 April 2015 and the rationale of the decision was postponed for six months. The constitutionality issue was raised by the Constitutional Court nearly two years ago, due to weaknesses of the Act regarding: 1.

⁷ Act on Strikes ("Official Gazette of FRY", No. 29/96 and "Official Gazette of RS", No. 101/2005 – other law and 103/2012 – U.S. Decision)

⁸ According to the Court: Legally binding rallying points for strikers being the business premises of employees does not mean placing a restriction on individual and political freedoms that are manifested in freedoms of movement, thought, speech and assembly by all citizens (IU Decision no. 132/96 of 9 October 1996, Decisions and determinations SUS, 1996, pp. 33-34).

⁹ Law on Policing, ("Official Gazette of RS", Nos. 101/2005, 63/2009 – Decision US, 92/2011 and 64/2015).

envisaged remedies, 2. provisions concerning the “appropriateness” of space for public assembly, and 3. list of consents and approvals that organizers must submit so that their assembly is approved. The six-month period available should be used to draft a new legal act and experts and representatives of civil society should be included in the endeavour. This would produce, in a participatory process, a quality draft text of a new law and allow members of the public to take part in the drafting process before the law comes before the deputies of the National Assembly of Serbia.¹⁰

Criminal and misdemeanour charges

Freedom of peaceful Assembly expressed in the form of permitted demonstration is of such importance that it cannot in any way be denied to an individual as long as he/she does not commit an offence punishable under the law. The Criminal Code¹¹ in its Chapter 31 stipulates offences against public peace and order, causing panic and disorder (Art. 343), violent misbehaviour (Art. 344), violent misbehaviour at public rallies or sporting events (Art. 344a), involvement in a group committing an offence (Art. 349), involvement in a group preventing an officer from performing his duties (Art. 324), Chapter 14 offences against freedom of individual and citizen, Ch. 16 offences against labour rights, Ch. 28 offences against the constitutional system and security, and Ch. 29 offences against government authorities.

Public Order and Peace Law¹² of 2005, provides for offences which may occur during public rallies in Art. 6: endangering the safety of another person by threatening to attack the life or body of that person or someone close to him/her and jeopardizing the tranquillity of citizens or disturbing public order and the peace by insulting or abusing another, committing violence against another, provoking a fight or by participating in it. The criminal offence stipulated in Art. 23 of the Law is interference with an authorized official in the performance of his/her security or maintenance of public order and public peace duties.

¹⁰ Civic initiatives and YUCOM request the initiation of a drafting process of a new law on public assembly, 21 April 2015.

¹¹ Criminal Code (*“Official Gazette of RS”*, Nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014)

¹² Public Order and Peace Act, (*“The Official Gazette of RS”*, No. 51/92, 53/93, 67/93, 48/94, 101/2005 – other act and 85/2005 – other act)

By-laws

1. **Decision on determining the assembly area for citizens in Belgrade** (“Official Gazette of Belgrade”, number 13/97), inter alia, states that this decision, in accordance with the law, determines appropriate assembly areas for citizens in Belgrade and the way of paying the deposit money (I); that Friendship Park, with an area of 130,000 m² and the possibility of gathering up to 400,000 citizens and plateau near the new Faculty of Philosophy, having an area of 2,600 m², with the possibility of gathering up to 10,000 citizens (II para. 2) and 5)) are designated, among other venues, as appropriate assembly areas for citizens in Belgrade, where the assembly of citizens does not lead to the obstruction of traffic, a threat to health or safety of persons and their property; that a marching public rally can take place at a venue not interfering with public transport and in the area of public traffic where it is possible to change temporarily the flow of traffic as well as to ensure the health protection and security of people and property, from the beginning to the end of an assembly (IV para.1)).

2. **Decision on internal order in the National Assembly** of 2015,¹³ regulates the internal order in the National Assembly as well as the order in the area around the National Assembly. The area around the building of the National Assembly shall include: entrance porch, access to the courtyard and the courtyard of the National Assembly building, approaching ramp and parking area around the National Assembly as provided for in the legal act regulating the use of a parking lot around the National Assembly building.¹⁴ The area around the National Assembly cannot be used for public rallies.¹⁵

Public policies

¹³ Decision on internal order in the National Assembly. June 2015. <http://www.paragraf.rs/dnevne-vesti/190615/190615-vest15.html>

¹⁴ Decision on internal order in the National Assembly, Administrative -budgetary and mandate-immunity issues at the 51st session held on 4 June 2015

I. Preamble provisions, 1

¹⁵ Decision, IV Order in the area around the National Assembly building, 33 at p. 2.

Important public policy documents in the context of public assembly are the Strategy for the Prevention of and Protection from Discrimination adopted in 2012¹⁶ and the Action Plan for the Implementation of the Strategy 2014-2018¹⁷. As one of the particular goals of the Strategy is freedom of peaceful assembly, freedom of expression and political and social participation of LGBT members¹⁸, which also includes the Measures¹⁹ of which nos. 2 and 10 are related to the field of freedom of public assembly.

Initiatives and attempts at amending the Public Assembly Act

Initiative of the Ministry of Human and Minority Rights 2010. A Working Group has been established in Serbia, at the Initiative by the Ministry of Human and Minority Rights, supported by the OSCE Mission to Serbia, to analyse the legal framework regulating the right to freedom of assembly in the Republic of Serbia and to draft the recommendations for its promotion.²⁰ In parallel with the activities of the Working Group, the Ministry requested, in July, the opinion of the Panel of OSCE/ODIHR experts and the European Commission for Democracy through Law (Venice Commission) on the Public Assembly Act²¹. Joint opinion, rendered in October 2010, pointed to a number of non-compliances and inconsistencies of the Public Assembly Act with the accepted international standards and the European Convention for the Protection of Human Rights and Fundamental Freedoms. At the same time, one of the first conclusions of the Working Group was that the Act was not in conformity with the Constitution and that it was necessary to pass a new Law on Freedom of Public Assembly.

¹⁶ Strategy for the Prevention of and Protection from Discrimination, 2012, p. 44

¹⁷ Action Plan for the Implementation of the Strategy of Prevention and Protection from Discrimination for the period from 2014 to 2018.

¹⁸ Specific goal 4.4.5.1.

¹⁹ In the framework of the Special goal of freedom of peaceful assembly, freedom of expression and political and social participation is also the Measure 4.4.4

²⁰ The Ministry of the Interior, being in charge of this area, drafted new text of the Law in 2012 which was not publically debated. The draft contained some improvements in relation to the relevant law but some of the seriously criticized solutions from the relevant law have not been amended and plus there are new solutions that fully merit criticism. The Belgrade Human Rights Centre, *Human Rights in Serbia 2014, Law, Practice and International Human Rights Standards*, Belgrade, 2015, pp. 195-207

²¹ This Initiative as well as the request for the opinion of the OSCE/ODIHR and the Venice Commission on the existing Law was welcomed by the Belgrade Human Rights Centre. The Working Group completed its work and adopted the recommendations in 2010, which took into consideration both the opinion of the OSCE/ODIHR and the Venice Commission. Belgrade Centre, cit. p. 196

The draft Law on Peaceful Assembly of 2014. The Ministry of the Interior drafted a new proposal on the Law on Peaceful Assembly. Public debate was not held even in relation to the new draft Law²², and for this reason and because of a number of other incompliances with international standards, non-governmental organizations made public a number of complaints.²³

*Project of the group of non-governmental organizations, OSCE Mission to Serbia and ODIHR titled “Monitoring public assembly with recommendations for the adoption of the new Law”, 2012.*²⁴ Activities of the Project were aimed at monitoring public assembly with a view to observing specific incompliances of domestic regulations and practice with OSCE/ODIHR standards. In order to promote freedom of assembly, reports will complement an amendment to the 2011 Government Initiative to enact a new Law on Freedom of Assembly to bring the legislation and practice in harmony with the Constitution and internationally accepted standards.

“Public Assembly Monitoring” Project resulted in pinpointing the following incompliances with OSCE/ODIHR and other international standards: definition of public assembly, location definition, the fact that only citizens can be organizers, reporting deadlines, strict financial conditions for organizers, punishing of organizers who fail to report an assembly which is in every respect peaceful, lack of proportionate response by police based upon the law but only upon a banning order, possible banning of assembly on the grounds of traffic obstruction, ban on temporary assembly on the grounds of the presumed unconstitutional purpose, spread of hate speech prior assembly, blanket ban on assembly, the need for more efficient remedies, extremely strict penalties, including a prison sentence for assembly organizers who do not obey the rules, lack of a legal obligation to protect participants from other participants acting violent against the assembly, lack of regulations concerning parallel assembly and counter-riots.²⁵

²² It should be recalled that such commitments cannot be imposed on hosts of events. Maintenance of law and order is the responsibility of the police. Even in case individuals commit acts of violence, the whole event cannot be deemed violent. In any event, where there are elements of violence the police is the one to curb violence and the responsibility cannot be passed on to stewards. If removal of individuals from the rally cannot stop the violence, then the police should disperse the rally.

²³ Belgrade Human Rights Centre, *Human Rights in Serbia 2014. Law, Practice and International Human Rights Standards*, Belgrade, 2015, p. 195.

²⁴ Final Project Study was not published.

²⁵ The problem of substantial examination in additional procedures required, deadlines, make the police reach a decision altering the location instead of a ban due to which remedies are no longer available to complaint lodgers, tight deadlines for a recourse to court, etc. Report on Freedom of Peaceful Assembly in Serbia in the period April-November 2012. The OSCE Mission to Serbia, in partnership with the ODIHR’s Human Rights Department and two

On the basis of the perceived problems the following recommendations have been formulated: 1) It is necessary to use a uniform application which will not be obligatory for all organizers but they could use the form as a proposed model, the list of indispensable data and instructions for the application procedure, thus avoiding omission of some obligatory elements for assembly announcement;²⁶

2) The number of requirements to be met by organizers during the application procedure should be reduced (for example, to omit an estimated number of participants, specification of measures for maintaining law and order, etc.);

3) to allow exceptions in case of spontaneous assembly or assembly of a small number of participants; 4) Defining the places in the territories of local self-governments for the assembly without prior announcement; 5) enabling electronic reporting of the assembly; 6) introducing of a standard practice due to the huge number of existing conditions for organizers of events which were informally declared as posing a security risk (such as the Pride); 7) to make a clear distinction between the responsibility of the organizer and that of those wishing to hinder the assembly; 8) to discontinue the practice of local self-governments making decisions on assembly holding instead of interpreting the obligation of submitting a copy of the assembly announcement to local self-government as a clear informative report to the authorities and not as their possibility to make decisions on whether the assembly will be held or not; 9) to discontinue the practice of public utility services imposing administrative and financial requirements on organizers of the assemblies (such as obtaining a registration decision from the Business Registries Agency); 10) providing an equal legal protection in cases of permanent or temporary ban on assembly, for example, applying the same remedies in both cases; 11) Opening the debate on the ban on public assembly during the session of the Parliament in the vicinity of the Parliament building. To explain as to what is being protected in that way and if the ban in question is justified; 12) Decisions on banning the assembly by the police normally do not contain an explanation or the explanation consists only of the citation of the legal provisions banning assembly, which makes those decisions unlawful. Namely, the police must provide a

local non-governmental organisations, the Network of the Committees for Human Rights in Serbia (CHRIS Network) and the Lawyers' Committee for Human Rights (YUCOM), in the period March-November 2012 implemented the project entitled *Monitoring Freedom of Assembly*.

²⁶ This form could be put on the website of non-governmental organizations dealing with freedom of assembly and it could also be offered to the Ministry of the Interior and local self-governments for their own websites.

detailed description of facts and circumstances related to the ban on assembly with a view to making their decision legal and enabling the exercise of the rights to efficient remedy; 13) It is necessary to specify precise legal grounds for restrictions to which the police decision is related (safety of people, property, public health, morals, etc.) and to devote due attention to defining elements that can put public morals in jeopardy; 14) holding of two or more assemblies scheduled at the same time and in the same place and not to use prior announcement of the other assembly as a pretext for the ban and to undertake all necessary measures for holding two or more peaceful assemblies; 15) to make the information on the reported assemblies public; 16) to align assembly reporting deadlines with the court proceedings deadlines in order to make remedies efficient in case of the ban; 17) to make the activities of the competent authorities in full harmony with the Constitutional Court decision.

Independent bodies²⁷

Commissioner for the Protection of Equality for the period from 2010 to 2014

The Commissioner expresses serious concern over the fact that there were frequent threats, hate speech and violence against the LGBT population concerning the Pride Parade. At the same time, this is the only group in Serbia that is being denied its right to freedom of assembly. Outright threats and violence create an environment of fear and incite intolerance, hatred and animosity to the LGBT population, which is a kind of attempt at making an alibi for not holding the Pride Parade. It has been stated that everyone in Serbia should be concerned by the quantity of hatred, bigotry and violence against this minority group. State authorities have been called upon to undertake all necessary measures to secure safety of the participants and create all necessary conditions for their peaceful assembly. The authorities must demonstrate the ability and readiness to protect the constitutionally guaranteed fundamental human rights including the right of peaceful assembly and freedom of speech.²⁸

The state is under the obligation to protect basic human rights and freedom of each and every individual and to secure their full safety. The Commissioner also warned that it was unacceptable to deny anyone his/her right to peaceful assembly and said that threats, violence and hate speech

²⁷ Commissioner for Protection of Equality, Ombudsman, Constitutional Court, science reports, recommendations, opinions and statements by independent bodies

²⁸ Op.cit. p. 84

targeting both female and male representatives of “Women in Black”, were scandalous. Hate and bigotry will not disappear by themselves. All competent authorities just like every individual should contribute to building of peace and tolerance-oriented society based on the respect of human rights and equality, the Commissioner concluded.

Ombudsman: Regular annual reports, statements, recommendations, activities, special report “LGBT Population Status in Serbia” 2011. From 2007 to 2014

The Ombudsman has regular communication with LGBT representatives as it is one of the population groups whose rights have been violated the most. Apart from discussing the current issues, the issue of the right to free assembly has also been dealt with as one of the unresolved issues on the exercise of human rights of the same sex-oriented persons. The existing LGBT activism in Serbia is encouraging and is manifested through the activities of Gayten, the Gay Straight Alliance, Queeria, Labris, NLO as well as other groups and individuals.²⁹ Through his activities, the Ombudsman made the LGBT position more visible as well as the need for their rights to be exercised to a greater extent and better protected.³⁰

Committee for human and minority rights and gender equality, Committee for European Integration of the National Assembly, the Ombudsman and the Commissioner for the Protection of Equality called on competent authorities to undertake more active measures aimed at greater exercise and better protection of the rights of LGBT persons, more efficient remedial action by courts in cases of violence against LGBT persons, their discrimination and hate speech, ensuring rights to free and secure assembly, education of children in schools and of the employed in state and other bodies, raising of public awareness of the position of this group of citizens.³¹ In view of the Pride Parade ban, the Ombudsman said that this ban reflects exactly the position related to human rights of those who created it: “We will protect them but only if we like them and if this poses no problem to us in the electorate”, Jankovic said.³² Among the recommendations for the improvement of the position of citizens in relation to the state authorities, in several consecutive annual reports, is the proposal by Ombudsman that the Government should ensure full exercise

²⁹ Op. cit. p.35

³⁰ Ombudsman, *Regular annual report 2014*, Belgrade, 2015, p. 68

³¹ Op.cit. p.77

³² Portal of civil Vojvodina “Autonomy”, 2013, Ombudsman, unjustified ban on Pride Parade, 13 September <http://www.Autonomija.Info/ombudsman-zabrana-parade-ponosa-nije-opravdana.html>

and protection of the LGBT persons rights and particularly the protection of the physical and mental integrity and the right to free assembly, especially through the Pride Parade.³³

Constitutional Court

The Constitutional Court of the Republic of Serbia declared the Public Assembly Act unconstitutional at the sitting on 9 April 2015 and postponed the announcement of the rationale of the decision by six months. The Constitutional Court also adopted two decisions on bans of public assemblies, one with regard to Pride Parade rally ban in 2009, and the other on the ban of public assembly on the occasion of 8 March (International Women's Day), a decision adopted in 2012.

Constitutional Court Decision regarding the ban of Pride Parade in 2009

The Decision³⁴ of the Constitutional Court of the Republic of Serbia accepted a constitutional appeal lodged by the 2009 Pride Parade organizing committee, and it was determined that the decision of the Police Department of 19 September 2009 violated rights of the appellants to freedom of assembly and their right to legal redress as guaranteed by the Constitution of the Republic of Serbia. That year, the Pride Parade was not held because, immediately prior to it, police representatives requested the change of venue, on the grounds of not being able to guarantee safety to the participants at the notified location.³⁵

The following year, in 2013, the Constitutional Court declined the same appeal³⁶ finding that the individuals who lodged the appeal and who were representatives of the “Belgrade Pride Parade” Association, that would have participated in the event had it been held, had not been actively identified in the proceedings, and that this had only been the case with the “Belgrade Pride Parade” Association as a legal entity that filed the official request for permission to hold the assembly. Belgrade Human Rights Centre has also criticized such interpretation by the

³³ Op.cit., p.180

³⁴ Decision available at <http://www.ustavni.sud.rs/page/jurisprudence/35/>

³⁵ Commissioner for Protection of Equality assessed this Decision as very important for the improvement of the LGBT population's position. Commissioner for Protection of Equality, *Regular Annual report of the Commissioner for Protection of Equality 2011*, Belgrade, 2012, p. 40

³⁶ Decision No. UŽ 8463/2012 of 9 July

Constitutional Court³⁷ referring to the practice of the European Court of Human Rights under Article 11 of the European Convention according to which active identification, i.e., the status of a victim whose freedom of assembly has been violated is also granted to individuals who participated or would have participated in the assembly had it been held.³⁸ ODIHR Guidelines on Freedom of Peaceful Assembly envisage that in addition to organizers of public assemblies, those whose rights and freedoms will be directly affected by an assembly should also have the opportunity to make oral and written representations directly to the regulatory authority.³⁹

*Constitutional Court Decision on the ban of International Women's Day event on 8 March 2008*⁴⁰

In this case the subject of the appeal filed by the NGO "Women in Black" is the ban on the public assembly this organization intended to host in 2008, to mark the International Women's Day. The Court found that the disputed decision was not elaborated in an acceptable manner (first-instance authority only “estimated there are grounds in support of the assembly’s ban, under Article 11, Paragraph 1, of the Public Assembly Act, and also that the assembly could obstruct traffic, jeopardize health and safety of persons and property”), failing to provide any concrete facts which could have lead the relevant authority to conclude that the aforementioned values would have been violated by holding the notified assembly.

NGOs on freedom of public assembly

Belgrade Human Rights Centre: Criticism of freedom of public assembly in Serbia

Belgrade Human Rights Centre has been continuously monitoring freedom of public assembly in Serbia. Its annual reports on the human rights situation, *inter alia*, give not only a detailed descriptive analysis of public assembly in each reporting year, but also make comments

³⁷ Belgrade Human Rights Centre, *Human Rights in Serbia 2013. Law, Practices and International Human Rights Standards*, Belgrade, 2014, p. 202

³⁸ Op. cit. p. 202

³⁹ Under Good Governance 2.6

⁴⁰ Decision available at <http://www.ustavni.sud.rs/page/jurisprudence/35/>

criticizing (non)alignment of these practices with national regulations and international standards, including periodic recommendations and guidance on their alignment. Hence, several annual reports have stressed that “disruption of traffic” is an overly restrictive basis for limiting freedom of assembly, in contravention of international standards. The basis for such limitation is not provided for either in the Constitution or in international standards, and it is unacceptable for a law to embody such a provision.

Definition of public assembly

The Law does not specify that assembly should refer solely to gatherings held aiming to promote common beliefs and objectives, such as the assemblies protected under International Human Rights Law.⁴¹ Including such “forms of assembly” in the law regulating freedom of assembly is not justified because assembly in the sense of an internationally guaranteed right to freedom of assembly may sometimes require greater tolerance than some of the other manifestations where a large number of people congregate, since the freedom of assembly protects fundamental democratic values, while, for example, a sports event does not bear such societal significance. For this reason, for example, the police may have more freedom to assess whether to allow presence of supporters at a sports event, than to allow an event sending a political message.⁴²

Unauthorized bodies banning public assemblies

The Constitution and international instruments allow restriction on freedom of assembly only if so provided by the law. The provision enabling local authorities to set locations appropriate for assembly of citizens at their discretion, introduces by the back door a possibility to restrict freedom of assembly by means of administrative legal acts of local self-governments. The law

⁴¹This leads to a confusion whether or not, for example, sports or commercial events fall in the framework of legislation on freedom of peaceful assembly. Draft text of the new law contains an article on the definition of an assembly, and states that for the purpose of the present law an assembly shall mean “any organized gathering of more than 10 persons, held for the purpose of public expression, realization and promotion of political, social and national beliefs and aims, as well as other forms of assembly”. Other forms of assembly imply public events, or “assemblies aiming to realize national, religious, cultural, humanitarian, sports, entertainment and other interests”.

⁴² Ambiguous legal definition of freedom of assembly even leads police to qualify sports events and fairs as public assemblies which is not justified, because an assembly in the context of internationally recognized right to freedom of assembly may at times require higher tolerance than some of the other manifestations gathering a large number of people, because freedom of assembly safeguards fundamental democratic values. Police station in Mladenovac also treats sports events as public assemblies.

does not require the organizers to obtain various permission from public utility services, however, this is the case in practice, on the basis of local governments' regulations, leading to the decision on holding an assembly being made by local bodies in charge of utility services. Thus, in 2011, the Kragujevac municipal administration in charge of utilities and oversight decided to prevent Gay Straight Alliance from holding an assembly. The very decision on the ban was adopted by the Department for Utility Services, which has no such authorization under the Public Assembly Act at all. It is not clear upon which legal grounds the National Security Council based its security risk assessment of 2012 Pride Parade⁴³ in Belgrade in order to ban it, as did the Security Services Coordination Bureau in 2013.⁴⁴

Public assembly locations

There is no reason whatsoever to only designate particular spots as suitable for assembly. Organizers should be left themselves to choose a location to hold an assembly and the authorities are to assess if any grounds for restrictions are applicable in a particular case, and if any restrictions are required.

Administrative obligations of organizers

A particularly difficult problem is the observed practice of imposing administrative obligations, which is criticized both from the point of view of their scope and the discriminatory practice of imposing them only on organizers of pride parade rallies.

Expenses

Authorities are obliged to cover all the expenses of securing an assembly, including traffic regulation, because imposing expenses on the organizers may consequentially discourage them from putting together the assembly and have negative impact on the exercise of the right to freedom of assembly.⁴⁵

⁴³Belgrade Human Rights Centre, *Human Rights in Serbia 2011. Law, Practices and International Human Rights Standards*, Belgrade, 2012, p. 34

⁴⁴RTS Television, 2013, Reactions, Pride Parade ban is deplorable, 28 September <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1404202/Reagovanja,+zabrana+Parade+za+%C5%BEaljenje.html>

⁴⁵Belgrade Human Rights Centre, *Human Rights in Serbia 2010. Law, Practices and International Human Rights Standards*, Belgrade, 2011, pp. 160-163

Unreported assemblies

If an assembly is being held without prior notification, the police, according to the Law, should prevent such an assembly from taking place (Article 14). Holding an assembly without prior application is an offence implying penalties in the form of monetary fine of 10,000 dinars or term of imprisonment for the maximum of 60 days (Article 15). This is inconsistent with international standards, which, even though they accept application system in principle, also require exceptions for cases of assemblies for which, due to their nature, an application cannot be submitted in a timely manner. The practice is, however, somewhat more flexible than the Law.

Attacks on journalists

Attacks on journalists reporting on public assemblies were also subject to criticism, especially in the context of the assemblies held in 2008 when the protesters expressed high level of animosity towards cameramen, photographers and reporters, physically attacking and threatening them.⁴⁶

Critical analysis of the state's response regarding holding of pride parade rallies

The analysis primarily notes that the state, according to international standards, is not only under the obligation to refrain from unjustified restrictions on freedom of peaceful assembly, but also has positive obligations consisting of protecting peaceful protestors from threats of violence issued by third parties. The 2012 decision to ban all the assemblies in Serbia, including the Parade and all the other non-violent assemblies whose participants may not have agreed on holding the Parade, makes the state's interference with freedom of assembly of citizens all the more disproportionate, and may in no way be an excuse for banning the Pride Parade itself. The state could and should have banned gatherings of those threatening violence, but not the Pride Parade itself.

⁴⁶Police response came only after two hours of rioting across the city. Riot police stood still throughout the protest rally watching on the rampaging protesters, and it was only towards the very end of the protest that they fired tear gas to fight off the protesters. Foreign diplomats objected that the police, with purported tacit approval of the Government of Vojislav Kostunica, did not take energetic measures to prevent and curb the incidents. Following the attack on foreign representations, the National Security Council reacted, most vehemently condemning such behaviour of the rioters, as well as the Serbian Government for not taking necessary measures to prevent these incidents.

Standard of "visibility and audibility"

Strict police checks prevented citizens who were not part of the Pride Parade from being on the streets of Belgrade, making practically the messages of organizers not visible enough, except in electronic and print media. In December 2014, a group of foreign citizens, activists of Falun Gong organization submitted a total of 9 applications for holding public assemblies. These were supposed to be held immediately prior to and during the Summit of Heads of Government of China and Central and Eastern European Countries in Belgrade, aiming to point to the poor record of human rights and persecution of Falun Gong activists in China. The decision to ban the event was adopted on 11 December 2014 under rationale that conditions for doing so were met in line with Article 11 of the Public Assembly Act, not indicating any specific circumstances regarding the case.⁴⁷

Recommendations aimed at promoting the enjoyment of freedom of peaceful assembly

The recommendations aimed at promoting the enjoyment of freedom of peaceful assembly were made by the Belgrade Human Rights Centre in its 2012 and 2013 Reports, noting that, apart from observed omissions and problems, a source of concern was that the practices of relevant state bodies had not changed.⁴⁸ Recommendations 2012: 1. To introduce a practice requiring the police deciding to ban an assembly to provide the reasoning behind each individual decision, along with reference to legal grounds upon which a ban is based. 2. To provide an efficient legal instrument allowing organizers to challenge a decision on the ban. 3. To initiate a public hearing on the Draft Law on Civic Assembly and align the draft law with international human rights standards. 4. To take necessary positive measures to enable LGBT human rights defenders to enjoy freedom of assembly.

Recommendations 2013: 1. To provide an efficient legal instrument against restrictions on freedom of peaceful assembly. 2. To ensure that decisions to ban a public assembly include a detailed elaboration of related facts, in addition to legal grounds for the ban. 3. To initiate a public hearing on Draft Law on Civic Assembly. 4. To adopt a new Law on Civic Assembly, ensuring its compliance with the Constitution of the Republic of Serbia and international human

⁴⁷ Op. cit. p. 194

⁴⁸ Belgrade Human Rights Centre, *Human Rights in Serbia 2013. Law, Practices and International Human Rights Standards*, Belgrade, 2014, pp. 48-49 and 187-203

rights standards. 5. To ensure that the Pride Parade is held in 2014. 6. To take precautions to prevent violence against future organizers and participants of the Pride Parade.⁴⁹

YUCOM - Lawyers' Committee for Human Rights

The key activity was to follow concrete realization of freedom of public assembly on the basis of specific examples of public assemblies.⁵⁰

YUCOM's request for amendments to the current Public Assembly Act

In its Statement of 21 April 2015, YUCOM requested that a drafting process of a new Public Assembly Act be started, as well as that the civil society be included in the drafting procedure.⁵¹ Namely, Civic Initiatives – an association of citizens for democracy and civil education and YUCOM - Lawyers' Committee for Human Rights called on the authorities to immediately launch the process of drafting a new Public Assembly Act. Initiating the process of drafting a new law and including the participation of civil society from the very beginning will enable drafting of a quality law and prevent further application of the law that has been declared unconstitutional. This initiative followed after the Constitutional Court of the Republic of Serbia declared the current Public Assembly Act unconstitutional, at the sitting of 9 April 2015, and postponed the rationale of the decision by 6 months.

YUCOM's legal team also acted in several court proceedings against participants and organizers of public assemblies. *The proceeding against the assembly in support of the Russian rock band Pussy Riot held in front of the Russian Embassy in Belgrade. The proceeding against the activists of "Women in Black" on grounds of traffic obstruction.*

Labris and Gay Straight Alliance on the respect of freedom of public assembly in 2014

⁴⁹Belgrade Human Rights Centre, *Human Rights in Serbia 2012. Law, Practices and International Human Rights Standards*, Belgrade, 2013, p. 217

⁵⁰The Network of Committees for Human Rights – CHRIS, Lawyers' Committee for Human Rights - YUCOM and the Belgrade Human Rights Centre, *Monitoring Exercise of the Right to Freedom of Assembly*, 23 February 2013

⁵¹YUCOM, *Start the process of drafting a new Law on Freedom of Assembly*, 21 April 2015

All the annual reports feature substantial analyses of situations pertaining to the four years the Pride Parade rally was banned, in 2009, 2011, 2012 and 2013. Cooperation with police in the build up to the parades has been assessed as favourable and the same applies to the quality of security measures provided during the parades. The reports point to persons opposed to holding the parades who, not being able to physically attack the participants of the Parades, instead carried out attacks on offices of particular media outlets, offices of independent institutions and headquarters of particular political parties, severely damaging the vehicles of the City Transportation Company, private cars, street facilities, shops, etc.

The fact that the Pride Parade was held is certainly a significant success for both the state and the organizers. This is particularly important in the light of the realization of the right to freedom of peaceful assembly. Holding the Parade conveyed a clear message that this right may be enjoyed by all the citizens without exception, and that it may not be impeded by hostile groups. In addition, in the previous years, the period around the Parade would always record a rise in the level of violence and animosity against, as well as in the number of physical assaults on LGBT persons, however, this was not the case this year which is a positive trend that should be maintained in the future.

In 2014, a few more LGBT-related events were held in downtown Belgrade in the form of a rally, including the “Hate-Free Zone”, marking 27 June – International Pride Day of LGBT People, and also the protest on the occasion of the assault on a German national, who participated in a two-day international conference on human rights of LGBT persons held in Belgrade, on 13 September.

A rally of LGBT persons carrying rainbow flags and displaying other gay movement symbols was also held on the occasion of Valentine’s Day on 14 February in downtown Novi Sad. All of the aforementioned assemblies were protected by a strong police presence, and the police continued to protect the places where LGBT persons meet, and also various events hosted by organizations promoting and protecting human rights of the LGBT population.

OSCE/ODIHR standards concerning public assembly

Familiarity with the sources containing the standards of public assembly are of essential importance, as they are not available in a single document, but can be drawn from a specific *acquis* comprising a manifold documentation base. In the case of Serbia, there are four relevant documents (and a number of related opinions referred to in the text) focusing specifically on the situation in this country.

Standards regulating freedom of peaceful public assembly are included in four OSCE/ODIHR documents:

1. The ODIHR and Council of Europe's Venice Commission Guidelines on Freedom of Peaceful Assembly, 2008, as amended in 2010.⁵²
2. Joint Opinion on the Public Assembly Act of the Republic of Serbia by the Venice Commission and OSCE/ODIHR, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010).⁵³
3. OSCE Office for Democratic Institutions and Human Rights Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2011 – June 2012).⁵⁴
4. Compilation of Venice Commission Opinions concerning Freedom of Assembly (revised in July 2014), European Commission for Democracy through Law (Venice Commission).⁵⁵

The major document constituting the backbone of these standards are the Guidelines on Freedom of Peaceful Assembly, immediately followed by the Venice Commission Opinion on the Public Assembly Act, which comes next as regards its importance in so far as Serbia is concerned. Also important are two additional ODIHR documents, one on monitoring public assemblies, which was also publicised in Serbia, and the other being a Compilation of Venice Commission Opinions concerning Freedom of Assembly.

⁵²The ODIHR and Council of Europe's Venice Commission Guidelines on Freedom of Peaceful Assembly

⁵³Opinion No. 597/2010 ODIHR Opinion-No.: FOA – SERB/165/2010 CDL-AD (2010)031 Or. English European Commission for Democracy through Law (Venice Commission) Joint Opinion on the Public Assembly Act of the Republic of Serbia by the Venice Commission and OSCE/ODIHR Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010), Strasbourg, Warsaw, 18 October 2010.

⁵⁴OSCE Office for Democratic Institutions and Human Rights Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2011 – June 2012). Warsaw 9 November 2012

⁵⁵European Commission for Democracy through Law (Venice Commission). Compilation of Venice Commission Opinions concerning Freedom of Assembly (revised July 2014)

Case study: ban on all public assemblies of 11 July 2015, in the light of OSCE/ODIHR standards

The completion of this report coincided with yet another ban on all public assemblies, the practice established by four consecutive bans on Pride Parade in Belgrade, and on a number of public assemblies in small villages against which counter-assemblies had been scheduled.

The latest ban on all public assemblies and announced counter-assemblies pertains to any assembly scheduled in Belgrade for 11 July, which provides a good opportunity to comment on the situation in light of the Guidelines on Freedom of Public Assembly. In brief, right-wing organizations opposed the commemoration of the Srebrenica massacre, in Belgrade. The Interior Ministry reached a decision, on 10 July 2015, banning for security reasons any assembly in Belgrade, announced to commemorate the 20th anniversary of genocide in Srebrenica. Five assemblies had been announced⁵⁶, all of which were scheduled to be held in front of the Serbian National Assembly, on 11 July, and they were all banned. Assessments were made of the possibility of keeping police cordons at a distance from assembly participants in order to prevent incidents, particularly bearing in mind that some of the Serbian Radical Party fans would not have a problem with being arrested and prosecuted.⁵⁷ Interior Minister N. Stefanovic stated at a press conference that the Ministry of Interior had decided, following security and operative investigations, to ban all assemblies scheduled for 11 July, in front of the Parliament. The Interior Ministry attaches importance to the security of all citizens and will, therefore, not allow chaos in the streets of any town in Serbia, Belgrade included, Stefanovic said.⁵⁸

⁵⁶ Blic, 2015, Stojanović: Država ponovo ne shvata šta je sloboda okupljanja (The state again does not fathom freedom of assembly), 10 July.

⁵⁷ Blic, 2015, Opsada zbog Srebrenice - Tri rizična skupa u centru Beograda u isto vreme (A Siege because of Srebrenica – Three simultaneous risk assemblies in the centre of Belgrade), 10 July.

⁵⁸ Blic, 2015, Godišnjica Srebrenice - Policija zabranila sve sutrašnje skupove u Beogradu (Srebrenica Anniversary – Police banned all assemblies in Belgrade for tomorrow), 10 July.

The action organized by the Youth Initiative for Human Rights and supported by other NGOs⁵⁹, expected 7,000 people to lie down on the plateau in front of the Parliament, symbolically reminding of the number of casualties in Srebrenica. Additional assemblies were announced also for 11 July by organizations “Zavetnici“, Dveri, whereas the Serbian Radical Party stated that they would also respond and join the "Seven Thousand" action, but that they would come with Chetnik flags and banners ”In God we trust, freedom or death“.⁶⁰

Organizers who protested against banning public assembly included: Civic Initiative Director Maja Stojanovic, who stated that by banning the assembly in Belgrade to commemorate the anniversary of the Srebrenica genocide, the state demonstrated for the umpteenth time that it did not fathom freedom of assembly and how to ensure the security and safety of all citizens of a country. Stojanovic said that their assembly could not have jeopardized the security of citizens whatsoever.⁶¹ Coordinator of Women in Black NGO Stasa Zajovic assessed that the decision of the Interior Ministry to ban all assemblies in Belgrade was an insult to responsible citizens and a proof of the discrepancy between what was happening in Serbia and what the authorities were telling their foreign partners.⁶² Milan Antonijevic of YUCOM stated on his twitter account: ”Banning of 7,000, freedom of assembly – grade zero for Serbia; give us the decision so we can file an appeal“. Democratic Party MP Dragan Sutanovac also commented on twitter: ”banning a peaceful assembly because of hooligans and bullies is tantamount to capitulation“.⁶³

President of Dveri Movement, an organization that announced a counter-assembly in response, Bosko Obradovic, welcomed the Interior Ministry decision to ban, as he said, the anti-Serbian “Seven Thousand“ action in front of the Serbian Parliament, adding that it was not clear why the next day's assemblies to commemorate the Serbian victims were also banned. ”It is simply intolerable that foreign nationals and agents of foreign interests organize protests in front of state institutions; therefore this was the only logical decision that the Interior Ministry could adopt. To

⁵⁹ Civil society organizations which supported action “Seven Thousand”, wishing to observe, on 11 July, the 20th anniversary of Srebrenica are: Youth Initiative for Human Rights, Humanitarian Law Centre, Women in Black, Hartefakt Fund, Belgrade Human Rights Centre, YUKOM, Helsinki Human Rights Watch, House of Human Rights, Civil Rights Defenders and Civil Initiatives.

⁶⁰ Blic, 2015, NGOs call on the relevant authorities to secure "Seven Thousand" assembly, 10 July.

⁶¹ Blic, 2015, Stojanović: the state demonstrated again that it does not fathom freedom of assembly, 10 July.

⁶² Blic, 2015, Zajović: Banning of tomorrow's assembly is an insult to responsible citizens of Serbia, 10 July.

⁶³ Blic, 2015, Turbulent NGO reactions against "Seven Thousand" assembly ban, 10 July.

allow that our people be accused of genocide in the middle of Belgrade is absolutely inadmissible and amounts to an act of suicide“, said Obradovic in his statement.⁶⁴

This particular situation can be commented in the light of Guidelines on Freedom of Public Assembly, regulating assemblies focusing on unpopular and challenging topics, counter-assemblies, manner of informing the organizer about the ban, as well as the obligation of a state to enable peaceful assembly without fear of violence.

Namely, according to the Guidelines, assemblies can also serve for voicing different, unpopular or minority positions.⁶⁵ Assemblies should be considered as peaceful if their organizers express peaceful intentions and ensure non-violence. The notion „peaceful“ should be interpreted so as to include conduct which may be distracting or insulting, even conduct which temporarily disrupts, slows down or prevents action of third persons.⁶⁶ The right to counter-protests is not related to counter-assemblies aimed at disabling/banning the rights of others to protest.⁶⁷ In fact, protesters should also respect the rights of others to protest. The state should make available appropriate resources to facilitate unfolding of simultaneous assemblies of the kind, to the possible extent. Any restrictions on protest rights should be promptly reported to the assembly organizer, in writing, with the explanation of underlying reasons for each restriction.⁶⁸ The authorities should always protect and facilitate any spontaneous assembly as long as it is of a peaceful nature. (4.2.) State in particular has a positive obligation to undertake reasonable and appropriate measures to enable peaceful assembly without fear of physical violence against its participants. Officers in charge must protect the participants of peaceful assemblies from any person or group (including undercover agents and counter-protesters) attempting to disrupt or prevent the assembly.⁶⁹

⁶⁴Blic, 2015, Dveri: We commend the banning of “Seven Thousand“ assembly, and do not understand the reason for banning our own assembly, 10 July.

⁶⁵ 1.1 Freedom of peaceful assembly. The ODIHR and Council of Europe’s Venice Commission Guidelines on Freedom of Peaceful Assembly

⁶⁶ Guidelines: 1.3. Only peaceful assemblies are protected.

⁶⁷ Guidelines: 4.4. Counter-demonstrations. Counter-demonstrations are a particular form of simultaneous assembly in which the participants wish to express their disagreement with the views expressed at another assembly.

⁶⁸ Guidelines: 2.6. Good governance. Such decisions should be taken as early as possible so that any appeal to an independent court can be completed before the date provided in the notification of the assembly.

⁶⁹ A human rights approach to policing assemblies

The fact that three assemblies related to Srebrenica were organized without any incidents immediately before the banned "Sedam hiljada" assembly is testimony of the peaceful nature both of the assemblies and their organizers, also being an example of appropriate conduct of the police, in line with the Guidelines.

1. Women in Black NGO had a performance on 9 July, in Belgrade, in front of the Presidency building, at Andricev Venac, devoted to the day of remembering the crime in Srebrenica. The participants in black carried, in silence, 20 mirrors wishing to convey the message that „Serbia sees Srebrenica in the mirror. Therefore, there were 20 mirrors for 20 years”. They demanded that 11 July be proclaimed the day of remembering „the genocide of Srebrenica”.⁷⁰

2. A day before the banned "Seven Thousand" assembly, Women in Black had a performance „We remember – 20 years of genocide in Srebrenica“, at Republic Square, on 10 July, recalling, *inter alia*, the names of victims.⁷¹

3. In the shadow of the police ban on "Seven Thousand" assembly, a third assembly "We are sorry" was held on Friday, in remembrance of the twenty years of the Srebrenica genocide. Several hundred people lit candles symbolically at 11.07 P.M., leaving numbers that had been handed out in front of Pionirski Park, on the route from the Belgrade City Hall to the Presidency of Serbia building. The assembly unfolded incident-free, in the presence of strong police forces ensuring security, because fans of the Serbian Radical Party and other right-wing movements were rallied in the vicinity of Pionirski Park.⁷²

This is also an opportunity to recall that, since 2011, the Belgrade Human Rights Centre has warned several times in its annual reporting that the practice established by four simultaneous bans on the Pride Parade and counter-assemblies (2009, 2011, 2012 and 2013)⁷³ is in contravention of international standards regulating freedom of public assembly.

⁷⁰ Blic, 2015, Assembly of Women in Black commemorating the anniversary of the Srebrenica massacre, 10 July.

⁷¹ Mondo, 2015, No incidents at the performances of Women in Black, 10 July.

⁷² Slobodna Evropa (Free Europe), 2015, Belgrade: Candles for the victims of genocide in Srebrenica, 11 July.

⁷³ Following the example of the capital, some local authorities, e.g. in Zajecar, banned pre-election assemblies, because supporters of the two parties announced simultaneous assemblies. When the Gay Straight Alliance announced an assembly "Demonstration of cardboard LGBT dolls" in Kragujevac, June 2012, its opponents

The fact that peaceful assembly could be misused by third persons as a pretext for violence does not give the state the right to ban peaceful assembly.⁷⁴ Non-violent participants can never be banned from peaceful assembly, because of a threat of violence being posed by others.⁷⁵ Banning peaceful *assembly* of non-violent participants as a result of threats by third persons has no justification in either international standards or the Constitution.⁷⁶ Undoubtable presence in the society of extremist, violent groups that are against the holding of this event cannot justify the state's failure to provide conditions for the assembly whose participants cannot be expected to be violent on any grounds.⁷⁷ There can be no justification, either under international standards or the Constitution, for banning peaceful assembly whose participants are absolutely non-violent on the basis of threats of violence by third persons. The state could and should have banned assembly of those who had threatened with violence.⁷⁸ Even if the state were allowed, in principle, (though it is not) to ban a non-violent assembly solely because third persons have issued violent threats against its participants, the state cannot resort to such a measure if it can be held responsible for not having promptly undertaken appropriate measures to prevent possible offenders in their intention, that is, to punish them.⁷⁹

Banning any assembly in Serbia at weekends⁸⁰ only makes state interference with freedom of civic assembly even more difficult to understand, and cannot in any way justify the ban on the Parade as a non-violent assembly.⁸¹ According to the practice of the European Court of Human

announced a counter-assembly. The Public Utility Office issued a decision refusing the request for holding assemblies, on the basis of which the Security Council of the city of Kragujevac banned all public assemblies.

⁷⁴ Belgrade Centre Human Rights Centre, *Ljudska prava u Srbiji 2012. Pravo, praksa i međunarodni standardi ljudskih prava (Human Rights in Serbia 2012. Law, Practice and International Standards of Human Rights)*, Belgrade, 2013, p. 214.

⁷⁵ Belgrade Human Rights Centre, *Ljudska prava u Srbiji 2011. Pravo, praksa i međunarodni standardi ljudskih prava (Human Rights in Serbia 2011. Law, Practice and International Standards of Human Rights)*, Belgrade, 2012, p. 34.

⁷⁶ Pride Parade exemplifies twofold violation of freedom of assembly by the state.

⁷⁷ Belgrade Human Rights Centre, *Ljudska prava u Srbiji 2012. Pravo, praksa i međunarodni standardi ljudskih prava (Human Rights in Serbia 2012. Law, Practice and International Standards of Human Rights)*, Belgrade, 2013, p. 214.

⁷⁸ Belgrade Human Rights Centre, *Ljudska prava u Srbiji 2011. Pravo, praksa i međunarodni standardi ljudskih prava (Human Rights in Serbia 2011. Law, Practice and International Standards of Human Rights)*, Belgrade, 2012, p. 213.

⁷⁹ Belgrade Human Rights Centre, *Ljudska prava u Srbiji 2011. Pravo, praksa i međunarodni standardi ljudskih prava (Human Rights in Serbia 2011. Law, Practice and International Standards of Human Rights)*, Belgrade, 2012, p. 218.

⁸⁰ Including the Parade and all other non-violent assemblies whose participants may not agree to the holding of the Parade.

⁸¹ Belgrade Human Rights Centre, *Ljudska prava u Srbiji 2011. Pravo, praksa i međunarodni standardi ljudskih prava (Human Rights in Serbia 2011. Law, Practice and International Standards of Human Rights)*, Belgrade, 2012, p. 214.

Rights, "it would be incompatible with the values protected by the Convention, if the exercise of rights under the Convention by a minority group could be conditioned upon majority permission".⁸²

In the judgment of the European Court of Human Rights in the case concerning *Christians against Racism and Fascism vs the United Kingdom*, " under Article 11 (1) of the Convention, the right to freedom of peaceful assembly is granted to whoever intends to hold a peaceful demonstration... This right cannot be denied because of possible violent counter-demonstrations or because of having violent extremists, who are not part of the organization of the event, join the demonstrators. Even if there is a real danger that the public assembly on the move may turn into rioting for reasons beyond the organizer's control, such an assembly will not cease to fall under Article 11 (1) of the Convention and any limitation imposed on the assembly must be in line with the provisions of paragraph 2 of this Article"⁸³

3.2. Comments made by the Coalition of Civil Society Organizations on the Institute of Social Sciences' Report on the right of public assembly

Lawyers' Committee for Human Rights (YUCOM)

⁸² Belgrade Human Rights Centre, *Ljudska prava u Srbiji 2010. Pravo, praksa i međunarodni standardi ljudskih prava (Human Rights in Serbia 2010. Law, Practice and International Standards of Human Rights)*, Belgrade, 2011. p. 167. Reference to the decision of the European Court for Human Rights in the case of *Barankevich vs Russia*, ECHR, App. No. 10519/03 (2007).

⁸³ *Plattform „Ärzte für das Leben“ v. Austria*, ECHR, App. No. 10126/82 (1988).

3.2.1. General comments on the draft state Report

The Republic of Serbia has commissioned the Institute of Social Sciences to compile a Report on the exercise of the right of public assembly in Serbia. The decision of the Republic of Serbia to engage an independent institution for the purpose of self-assessment is an initial sign of its commitment to this task. The Institute of Social Sciences has written a lengthy draft Report¹²⁶, which was submitted to non-governmental organizations for consideration and possible comments in July 2015.

The salient feature of this state Report is that it contains information available to the public from several sources.

“Documents and reports of the following independent institutions were used to compile this Report: the Constitutional Court, Commissioner for Protection of Equality and the Ombudsman; NGO reports helping the cause of human rights: Belgrade Human Rights Centre, Lawyers’ Committee for Human Rights (YUCOM), and organizations for the protection of LGBT rights such as Labris and Gay-Straight Alliance; media reports on public assembly; and the published theoretical works authored by scholars.”

It is noticeable that the (state) Report does not incorporate the information available to governmental bodies, to which the Institute of Social Sciences had direct access in the reporting period, and in particular, it contains no information provided by the Ministry of Interior and the units of local self-government. This information is essential to ensure an insight necessary to be able to identify all the regulations and relevant provisions applicable to freedom of public assembly. Moreover, an insight into the information provided by the authorities of a unit of local self-government, makes it possible to pinpoint precisely the authorities that can either curb

¹²⁶ The Draft Document has 92 pages. The Final Report was submitted on 26 August 2015, with negligible changes.

freedom of assembly, or place restrictions on it, by their practical actions¹²⁷. The list of problems and recommendations, compiled by the Institute of Social Sciences on the basis of the reports and the information obtained from the entities overseeing and monitoring in various ways the work performed by the direct regulators of freedom of assembly, is therefore incomplete. It is clear that **there is no transparency in the work of the Ministry of Interior and the work of local governments within the jurisdictions that affect the realization of freedom of assembly**. In the absence of an effective legal remedy in the event of a ban on public assembly, the relevant government bodies and authorities of units of local self-government should inform the public of all regulations applied when the exercise of freedom of assembly is concerned.

The Coalition has no comment to make on the presented facts, and commends the effort to put them together in a comprehensive manner. Nevertheless, certain facts that have not been included are added here, since we consider these to be very important for a fuller analysis of the implementation of OSCE/ODIHR guidelines.

3.2.2. Comments on the presented legal regulations concerning the right to freedom of public assembly in Serbia and the initiatives, projects and attempts aimed at amending the Public Assembly Act

Apart from the general and legally confirmed comments on the unconstitutionality of the Public Assembly Act, and all its deficiencies, it is necessary to identify and analyse other regulations placing restrictions on OSCE/ODIHR guidelines. **Units of local self-government, within the scope of their jurisdictions delegated to them under the Public Assembly Act, may endanger the implementation of the guidelines through their regulations.**

¹²⁷ Media reports on the jurisdictions of the Communal Police and the practical actions concerning the activists may be illustrative of the deficiencies of the Report in light of identifying all the authorities that might potentially curb and virtually limit freedom of assembly. See <http://rs.n1info.com/a44522/Vesti/Komunalna-policija-i-aktivisti.html>.

An example illustrating how the standard of “**visibility and audibility**” can be jeopardized is the Decision adopted by the City of Zajecar concerning determination of venue of public assemblies (Official Gazette of the City of Zajecar No. 10/2015), preventing public assemblies from being held at the city’s square.

On the occasion, the legal team of the Zajecar City Committee of the Democratic Party submitted an initiative to the Constitutional Court of the Republic of Serbia, requesting the assessment of constitutionality of the decision. As the initiative states, “the venues envisaged under this enactment passed by the Zajecar Municipality are neither accessible, nor are they fit for the gathering of a large number of citizens, as provided for in the Public Assembly Act. When it comes to the Fairground and the Hippodrome, these areas are several kilometres away from the city’s centre, and are located outside its urban quarters¹²⁸”.

Units of local self-government have the authority to make decisions whereby they establish community law and order. **Regulation of community law and order sometimes affects the system of assembly registration.** To give an example, regardless of the Decision on the determination of spaces for public assembly of citizens (“Official Gazette of the City of Kraljevo”, No. 10/09), the City of Kraljevo has, in a special Decision on the measures for noise protection, envisaged that the “organizer of public assemblies and activities has the duty, in line with this Decision and the Public Assembly Act, to submit a request to the relevant Department for environmental protection, at least 10 days before the scheduled date of the event¹²⁹.”

Bodies of local self-government may, by way of misinterpretation of their jurisdictions, impede freedom of assembly in practice. In evidence are examples where the dissemination of written messages as flyers or leaflets at public gatherings was construed as advertising. In this regard, the relevant inspection authorities of units of local self-government and the communal police deem themselves to be authorized to prevent such actions in public assemblies, without going into the gist of the message, i.e. without deciding whether it is an advertisement, or expression of a position on a certain issue of public importance. Thus, five

¹²⁸ <http://www.ds.org.rs/medija-centar/aktivnosti-demokrata/19117-ds-zajecar-odluka-o-izmestanju-javnih-skupova-neustvna-i-nezakonita>.

¹²⁹ Decision on the measures for noise protection (“Official Gazette of the City of Kraljevo”, No. 20/2010), Article 7, paragraph 3)

citizens belonging to the civic initiative “Let’s not drown Belgrade”, distributed in a public space, in front of the Belgrade City Administration, on 19 March 2015, without the permission of the relevant authority, a newsletter titled “Let us not drown Belgrade”. The Communal Police patrolling the area established the identity of the persons committing the misdemeanour, through the production of their identification documents, and the city inspectors made five reports on illegal advertising¹³⁰. Such action can jeopardize the guideline envisaging that *restrictions on the visual or auditory content of any message must be assessed according to strict criteria, and are implemented solely in the event of imminent danger of violence*.

The Coalition has detected certain decisions of units of local self-government that determine, in excruciating detail, and in line with the guidelines, the spaces fit for the holding of public assemblies¹³¹.

The harmonization of regulations and legal certainty in this area are highly significant, having in mind that misdemeanour proceedings might be maliciously instituted.

It is not uncommon in practice that the Public Order and Peace Act or the Road Traffic Safety Act¹³² is treated as primary legislation, while the application of the Public Assembly Act is fully neglected. Illustration of this is the example of misdemeanour proceedings instituted against trade union representatives for chanting at a registered event. The municipal authority for minor offences in Novi Sad made a decision, Up. 05-6-600/09 of 12 November 2009, whereby it declared three persons responsible for the misdemeanour under Article 6, paragraph 1, of the Public Order and Peace Act, and fined them RSD 10 000 and RSD 15 000 for violating on 6 November, around 11:20 hours, public order and peace and tranquillity and for disturbing the regular work of the AP Vojvodina Executive Council employees (main entrance), by chanting, exclaiming the name and calling out one of the officials of the AP Vojvodina Executive Council, at a protest rally that already lasted for three months or so, on workdays. It was a registered meeting. The authority responsible for misdemeanour offences maintained that whistling, use of whistles and the like might be the feature of a misdemeanour offence involving disturbance of

¹³⁰ City Press Service statement broadcast on N1 TV Channel: <http://rs.n1info.com/a44522/Vesti/Komunalna-policija-i-aktivisti.html>.

¹³¹ Decision on the determination of spaces fit for the holding of public assemblies in the area of the City of Pancevo (“Official Gazette of the City of Pancevo”, No. 24/2011).

¹³² Road Traffic Safety Act, Official Gazette of the Republic of Serbia Nos. 41/2009, 53/2010, 101/2011, 32/2013- decision of the Constitutional Court and 55/2014, Articles 123-130.

public peace and order, or of indecent behaviour. The High Magistrates' Court of Belgrade, Novi Sad Department¹³³, confirmed the first-instance Magistrates' Court decision in late 2010. The Constitutional Court of the Republic of Serbia subsequently found, upon constitutional appeal, that the interference of the state in the form of fining in misdemeanour proceedings those who lodged the constitutional appeal in this case, the participants of the trade union protest in question, basically led to the violation of freedom of public assembly¹³⁴.

One part of the Report stresses the conflict between the Road Traffic Safety Act and the Public Assembly Act, but not in the context of the impact made upon the registration system. This Act introduces a system of consent by laying down consent as a requirement for holding sporting or other events on the road, which lends itself to many interpretations¹³⁵. According to this Act, "the request for permission granting should be submitted not later than 15 days prior to holding a sporting or other event on the road. The request for permission should contain: business name of the event organizer, full name of the person responsible for safety in the course of the event, the road (route and venue) where the event will be held, the time of the event, the timetable of all the characteristic features of the event and the measures to be taken by the organizer to ensure the safety of the participants and onlookers, the programme of a sporting or other event, the calendar and the rules of the competition (elaboration). Apart from the request, a consent to the holding of the event issued by the road management authority is to be enclosed, a specimen of identification markings to be worn by the persons securing the event (stewards) and the markings on the vehicle following the event participants. The Ministry of Interior must issue a decision seven days from the day of request submission. The permission granted for holding a sports or any other event on the road will determine the time and venue, measures to be taken for the sake of safely holding the event and the expenses related to the event. The organizer must organize and implement the sports or any other event on the road safely, in the manner specified in the permission. The expenses incurred on governmental bodies, authorities of local self-

¹³³ Decision of the High Magistrates' Court of Belgrade, Novi Sad Department, Prz. 5061/2010, 7 September 2010.

¹³⁴ Decision of the Constitutional Court, Uz. No. 5436/2010 of 11 December 2013, published in the "Official Gazette of the Republic of Serbia, No. 1/2014, 6 January 2014.

¹³⁵ Misdemeanour charges filed by the officials of the Ministry of Interior against the Women in Black activists also point to the extent of possible interpretations. See: The Report of the Institute of Social Sciences "The Right of Public Assembly in Serbia in Light of the OSCE Standards concerning the Right of Public Assembly", p. 45.

government, or on the road manager as a result of holding the sports or other event shall be defrayed by the legal entity, i.e. the organizer¹³⁶.

The state Report pays not enough attention to the conflict of the laws to be applied in the exercise of freedom of public assembly. When a new law governing freedom of assembly is passed, it is necessary to determine the status of such a law and its relationship to other laws having an indirect effect on whether freedom of assembly is exercised or not, so as to avoid a situation brought about by subsequent amendments to other laws derogating from the systemic law. By its nature, this Law is a systemic law, and other regulations that encroach upon freedom of assembly must be in harmony with it. In this regard, it is necessary to **identify all the regulations that may interfere, either at the registration stage or in the stage of subsequent action, with the exercise of this freedom**, in order to fully harmonize and implement the new law.

Even though the state Report provides an insight into legal status and conveys the assessments of the relevant institutions concerning the non-constitutionality of the Public Assembly Act, the rather lengthy state report lacks more detailed information on this year's efforts by the state aimed at establishing the legal framework in line with the guidelines, considering that this legal status has been in existence since 2006. It is not clear whether the task force responsible for the drafting of the new law was put together or no, and what efforts have been made in this regard by the state, after the Public Assembly Act was declared unconstitutional.

3.2.3. Punishments for hindrance of freedom of assembly

Freedom of assembly in Serbia is primarily threatened by the actions of violent groups. Therefore, the work done by the state on the prevention and punishment of actions taken by such groups is indispensable. First and foremost, top state representatives must not use hate speech,

¹³⁶ Road Traffic Safety Act, Official Gazette of the Republic of Serbia, Nos. 41/2009, 53/2010, 101/2011, 32/2013, decision of the Constitutional Court and 55/2014, Article 123-130.

and the relevant state bodies must censure it. Moreover, through their conduct, representatives of the state should support freedom of public assembly.

The policy of impunity was prevalent in Serbia for a long time. Such a state of affairs was also noted in the rationale of one court ruling concerning hate speech. The wording of a ruling in the first-instance that was later overturned, handed down by the First Basic Court in Belgrade¹³⁷, was as follows: “At the time when hate speech and unveiled calls to various forms of discrimination are frequent occurrences in the political life and media landscape of the Republic of Serbia, the Court is satisfied that the aforesaid statement does not comply with the conditions that need to be met to declare it discriminatory conduct, in the context of the Anti-Discrimination Law”.

Of late, slight headway has been made in the penal policy, and we will present some examples to show it. The slow judiciary apparently hinders timely punishment and the necessary changes in this area.

The absolute ruling of the Appellate Court in Belgrade¹³⁸, handed down in June 2014, established that Dragan Markovic Palma, President of *Jedinstvena Srbija* (JS) practised an aggravated form of discrimination on the basis of sexual orientation or preference, when, on 15 August 2011, on the eve of the Pride Parade, he made known to media representatives his positions on the LGBT population: “The position of *Jedinstvena Srbija* and my own is that we oppose any meeting that involves the march of homosexuals along the streets of Belgrade, aspiring to display sickness in the guise of normality”.

In February 2015, Ivica Dacic apologized to the LGBT people, and followed the Recommendation of the Commissioner for the Protection of Equality, which established the presence of discriminatory behaviour in statements made on the occasion of the Pride Parade¹³⁹.

Representatives of the Women in Black (WiB) were insulted and physically attacked during their gathering in Valjevo, when they voiced their support to the victims of Srebrenica massacre (8 July 2014). Despite the timely reaction of police officers, and filing of criminal

¹³⁷ Rationale of the ruling handed down by the First Basic Court in Belgrade, P.15378/2012, 17 September 2013, p.7.

¹³⁸ Belgrade Appellate Court ruling, Gz. 2426/14, 11 June 2014.

¹³⁹ <http://www.rts.rs/page/stories/sr/story/9/Politika/1837073/Da%C4%8Di%C4%87+se+izvinio+predstavnicima+LGBT+populacije++.html>

charges to the Basic Prosecutorial Office in Valjevo, this Office has not instituted criminal proceedings for the attack perpetrated against the WiB representatives.

On the other hand, criminal proceedings for the offence of attacking a person in official capacity while on duty, were initiated. Following the event, the police submitted a request for instituting misdemeanour proceedings on 16 July 2014, to the Magistrates' Court in Valjevo, against several persons, for disturbance of public peace and order, rude and reckless behaviour, noise, verbal abuse and ill-treatment of others. No information is available as to whether or not these proceedings have been completed.

Following YUCOM's criminal charges, criminal proceedings were instituted against the then spokesman of the MoI Anti-Terrorist Unit Radomir Pocuca, on 28 March, due to his public call to hooligans and supporters not to clash among each other, but to direct their "anger and fists" to those who deserve it, alluding to the Women in Black. Besides, he issued an overt and direct call to the members of all fans' groups to prevent, with the use of violence, the commemorative event on the occasion of the 15th anniversary of the crime committed against the Albanian civilians in Kosovo, organized by the Women in Black. Following the initial call issued by Pocuca, many rightist activists, as well as the broader public, joined the initiative via the social networks.

Following the delay of the first main hearing, Pocuca reiterated in his statement to the media all the allegations, saying that he was not sorry for his action, but that he was only sorry for the expressions he had used. Particularly worrying is his treatment of the Court, for Pocuca appeared in the media, clarifying that he was on the frontline in Ukraine, despite the fact that his hearing before the High Court in Belgrade was scheduled for the following day.

3.2.4. Additional problems and recommendations

The Civil Society Organizations' Coalition supports the list of the identified problems and recommendations and adds the following, based on the previously presented analysis and facts:

PROBLEMS:

- Discrepancy of the legal framework with international standards, the Constitution of the Republic of Serbia and with the OSCE/ODIHR guidelines.
- Conflict of various laws with the applicable Public Assembly Act.
- Nine-year failure on the part of the relevant bodies (Ministry of Interior) to act, in contravention of the Constitutional Law on the Implementation of the Constitution of the Republic of Serbia, when it comes to harmonizing the Public Assembly Act with constitutional provisions by way of drafting a law, adopting a proposal, and passing a new law.
- Existence of a continued practice to ban assemblies without rationale, despite the voiced general positions of the Constitutional Court of the Republic of Serbia that such actions are unconstitutional (February 2012).
- The practice of ignoring the initiative of the Constitutional Court to initiate proceedings to declare the Law unconstitutional (2013) and the decision of the Constitutional Court on the discrepancy between the Public Assembly Act and the Constitution (April 2015).
- Insufficiently clear competences of local governments when it comes to regulating the exercise of freedom of assembly.

Recommendations:

- **Identify all the regulations which possibly interfere with the exercise of this freedom, either in the registration stage or later throughout the process, with the aim of harmonizing and enabling full application of a new law.**

- **Clearly specify the status of the new law and its relationship to other laws that encroach upon this area.**
- **Increase transparency of the work of the Ministry of Interior and the work of local governments in terms of their mandate to ensure the exercise of freedom of assembly.**

4.1. Report on gender equality situation in the Republic of Serbia (*Commissioner for the Protection of Equality*)

In recent years, significant progress has been made in Serbia regarding gender equality and improvement of the status of women. A valid normative and institutional gender equality framework has been established in accordance with the relevant international standards, whereas the National Strategy for the enhancement of the status of women and promotion of gender

equality (“Official Journal of RS” No. 15/2009) has defined a uniform and harmonized state policy aimed at eliminating discrimination against women and incorporating the principles of gender equality in all areas of the system’s institutional activity.

The Constitution of the Republic of Serbia (“Official Gazette of RS” No. 98/2006) provides for the equality of men and women and promotes the policy of equal opportunities (Article 15). Article 21 of the Constitution guarantees the principle of equality and prohibits any discrimination, direct or indirect, based on any grounds, particularly on race, sex, ethnic origin, social background, birth, religion, political or other opinion, property, culture, language, age and mental or physical handicap.

The Law on Anti-Discrimination (“Official Gazette of RS”, No. 22/2009) also provides for the principle of equality by specifically stating that all persons are equal and enjoy equal status and legal protection, irrespective of their personal characteristics, and that everyone is obliged to respect the prohibition of discrimination (Article 4). Discrimination based on sex has been defined as a special kind of discrimination, characterized by behaviour contrary to the principle of equality of the sexes, that is, the principle of respect of equal rights and freedoms of women and men in political, economic, cultural and other aspects of public, professional, private and family life. The Law explicitly prohibits deprivation of rights or overt or covert recognition of advantages resulting from sex or change of sex. It also prohibits physical and other violence, exploitation, expression of hatred, underestimation, vilification and disturbance based on sex, including public advocacy, support and action in accordance with prejudices, customs and other social patterns of behaviour based on the idea of subjugation or superiority of one sex over the other, that is, on stereotyped sex roles (Article 20).

The Law on the Equality of Sexes (“Official Gazette of RS”, No. 104/2009) regulates by a special law, for the first time in the legal system of Serbia, the equality of sexes as one of the fundamental human rights and basic values in a democratic society, explicitly prohibiting discrimination based on sex and gender. The Law provides that equality of sexes implies participation of women and men on an equal footing in all activities of public and private sectors that should be respected by all (Article 2). Furthermore, arrangements have been made to ensure conditions to pursue the policy of equal opportunities for the exercise of rights by women and

men, adoption of regulations and undertaking special measures aimed at preventing and eliminating discrimination based on sex, marital or family status, pregnancy or parenthood, whereas special measures have been envisaged to ensure the equality of sexes in certain areas of social life, and judicial protection against discrimination based on sex and gender has been provided.

Despite significant positive steps that have been made, women of Serbia continue to be in a disadvantageous situation compared to men, in all areas of social life. The key causes underlying discrimination against women are traditional models of gender relations, based on patriarchal attitudes and widespread and deep-rooted gender stereotypes, affecting the creation of male and female gender roles within the family and broader community. Women belonging to so-called double or multiple discrimination groups are in a specific situation, and include Roma women, women with disabilities, single mothers, refugee or displaced women, poverty-stricken women, village women, women of different sexual orientation, etc.

The report presents *de iure* and *de facto* the situation in the realm of political participation of women, elimination of gender-based violence, including trafficking in women, economic empowerment of women, implementation of gender equality in the security sector, elimination of discrimination against Roma women, media role in the exercise of gender equality, and goes on to describe the situation with regard to the impact of institutional mechanisms on ensuring gender equality.

Political participation of women

Women account for 51.4% of the population, constituting more than 50% of the electorate. However, their political participation has not yet reached a satisfactory level, although significant progress has been achieved in this area over the past years. The number of women holding decision-making positions still falls short of the desirable level, particularly in positions where there is a possibility to make a real impact on formulating and implementing public policies relevant to the community as a whole. The essential problems concerning women

participation in political and public life are their underrepresentation in political life, executive bodies at all levels and almost complete invisibility of women from minority and marginalized groups.

All international standards have been met on the norm-setting level. Serbia has ratified the foremost international documents governing political participation of women: the International Covenant on Civil and Political Rights¹⁴⁰, Convention on the Elimination of All Forms of Discrimination against Women¹⁴¹ and the Convention on the Political Rights of Women.¹⁴² As a member State of the United Nations and the Council of Europe, Serbia is endeavouring to abide by international standards in this area, established by the Beijing Declaration and the Action Platform¹⁴³, the European Charter on Gender Equality at the Local Level¹⁴⁴ and the Recommendation of the CE Committee of Ministers REC(2013)3 on the Balanced Participation of Women and Men in political and public decision-making.

In order to enhance political participation of women and transpose international standards into its legislation and practice, the Republic of Serbia stipulated in its Constitution¹⁴⁵ that the state guarantees equality of women and men and would develop the policy of equal opportunities,¹⁴⁶ and that suffrage is universal and accessible to all, as a result of which every citizen of the Republic of Serbia who is of age and has business capacity, has the right to elect and be elected.¹⁴⁷ The Constitution further provides that citizens are entitled to participate in the running of public affairs and join public services and hold public offices under equal conditions.¹⁴⁸

Article 36 of the Law on Gender Equality stipulates that the voting right is provided without discrimination based on sex, in accordance with the Constitution and laws, and that gender equality is guaranteed for persons standing as President of the Republic, MPs and municipal councillors, in the manner and in accordance with the regulations governing the

¹⁴⁰ „Official Gazette of SFRY – International Treaties“, No. 7/71.

¹⁴¹ „Official Gazette of SFRY – International Treaties“, No. 11/81.

¹⁴² „Official Gazette of FPRY – International Treaties and other Agreements“, No. 7/54.

¹⁴³ Adopted at the 4th World Conference on Women in Beijing, 15 September 1995.

¹⁴⁴ European Charter of the Council of European Municipalities and Regions on Gender Equality on the Local Level, adopted in 2006.

¹⁴⁵ „Official Journal of RS“, No. 98/06.

¹⁴⁶ Article 15 of the Constitution of RS

¹⁴⁷ Article 52 of the Constitution of RS

¹⁴⁸ Article 53 of the Constitution of RS

elections. It also envisages that gender equality is guaranteed when standing in the elections for any public office and appointment to public authorities, financial and other institutions and – during the electoral process – through the membership and work of bodies tasked with carrying out the elections.¹⁴⁹ It further provides that there would be no discrimination based on gender in respect of political party membership, active participation in the work of a party and membership in political party organs, in line with the enactments of a particular political party; political parties adopt every four years an Action Plan envisaging specific measures aimed at encouraging and promoting equal representation of women and men in party organs and in nominating candidates for MP and municipal council election.¹¹

A significant step forward has been made regarding the participation of women, by the adoption of the Law Amending the 2004 Law on the Election of National Deputies introducing a rule that every four candidates on the list in the given order (first four seats, second four seats and so on to the end of the list) should include a candidate of the gender that is in minority on the list, whereas the electoral list must include at least 30% candidates of the gender less represented on the list.

A new positive step has been made in 2011 by the adoption of amendments to the Law on Election of National Deputies, providing that every three candidates on the list, in the given order (first three seats, second three seats and so on to the end of the list) must include at least one candidate of the gender less represented on the list. If an electoral list does not meet these requirements and the deficiencies are not addressed by the proponent, the Republican (Central) Electoral Commission would have to refuse to announce that electoral list.¹² Particularly important is the rule providing that the seats would be allocated to candidates based on the electoral list, starting from the first candidate on that list.¹³

¹⁴⁹ Article 37 of the Law on Gender Equality

¹¹ Article 35 of the Law on Gender Equality

¹² Article 40a of the Law on the Election of MPs („Official Journal of RS“, Nos. 35/2000, 57/2003 - Decision of the Constitutional Court of the Republic of Serbia, 72/2003, and other law, 75/2003 - corr. other law.18/2004, 101/2005 – other law, 85/2005 – other law, 28/2011 – decision of the Constitutional Court and 36/2011 and 104/2009 – other law)

¹³ Article 85 of the Law

Introduction of quotas into the electoral system was effective and the participation of women increased. In the post-2000 elections period, the number of women deputies in the National Assembly of the Republic of Serbia was 12.4%, whereas their numbers rose to 21.2%, following the introduction of quotas. Modifications to the 2011 electoral legislation increased the number of women deputies to 34%¹⁴. One of them is currently presiding over the National Assembly.

The situation with regard to women participation in the work of parliamentary bodies has significantly improved on the previous period, although it is not yet quite satisfactory. The present National Assembly comprises 20 committees – permanent working bodies. Men chair 12 and women 8 committees. The analyses of committee structures reflect women majority in five committees which have typically been dealing predominantly with women's issues: Committee on Human and Minority Rights and Gender Equality¹⁵, Committee on the Rights of the Child¹⁶, Committee on Culture and Information¹⁷, Committee on European Integration¹⁸ and the Committee on Foreign Affairs¹⁹. On the other hand, women are in vast minority or are not represented at all in the following committees: Committee on Security Services Oversight, where there are no women at all, Committee on finance, Republic's budget and control of public enterprise expenditures²⁰, Committee for Kosovo and Metohija²¹, Committee for Diaspora and Serbs in the Region²² and the Committee on Agriculture, Forestry and Water Governance.²³ Nevertheless, for the first time, a woman is chairing the Committee on Defence and Internal Affairs, which is a positive step towards avoiding stereotypes and ensuring equal gender representation in parliamentary committees.

¹⁴ Following the elections of May 2012 and April 2014, there were 84 and 85 women deputies, respectively

¹⁵ 13 women and 4 men

¹⁶ 14 women and 6 men

¹⁷ 9 women and 8 men

¹⁸ 9 women and 8 men

¹⁹ 10 women and 7 men

²⁰ 2 women and 15 men

²¹ 2 women and 15 men

²² 3 women and 14 men

²³ 3 women and 14 men

Research results²⁴ indicate that women MPs are discriminated against by their colleagues and that even 22% of women MPs said that they had been subjected to sexist comments and mockery, whereas 5.4% said they experienced unequal treatment in the National Assembly. Research has shown that it is more difficult for women than for men to earn parliamentary seats, because it is normally preceded by their more difficult rise in the party structures.

In early 2013, a *Women's Parliamentary Network* was created in the National Assembly, bringing together all women MPs irrespective of their party membership and enabling them – through an exchange of experience, mutual support and solidarity - to raise issues relevant for the enhancement of gender equality. The creation and operation of this network has been met with manifold positive assessments, and as an example of the positive contribution of *Women's Parliamentary Network*, MPs of both sexes indicated amendment proposals submitted by women MPs who have joined this network, some of whom received votes in excess of the total number of women MPs in the National Assembly. Joint activity of women MPs showed that their solidarity can significantly augment their power and that, with regard to gender equality issues they can rise above their party interests.²⁵

A significant increase in the representation of women was recorded in the units of local self-government (cities and municipalities). Namely, following the 2000 elections, women were represented by 7%, whereas following the introduction of the compulsory quota of 30% for the less represented gender, the representation of women after the 2004 local elections increased to 21.3%.²⁶ The new 2007 Law on Local Elections²⁷ stipulated that the electoral list should include a minimum of 30% candidates of the under-represented gender, but the Law's 2011 amendments²⁸ introduced a rule that after every three candidates on the list in the given order (first three, second three and so on until the end of the list) there should be at least one candidate representing the under-represented gender on the list. An additional rule was introduced

²⁴ Research „Women in Parliament – only quotas or real impact“, Open Parliament, March 2014, available at: <http://www.mc.rs/zene-u-parlamentu--samo-kvota-ili-stvarni-uticaj.4.html?eventId=9312>

²⁵ Ibid

²⁶ National Strategy for the enhancement of the position of women and promotion of gender equality (“Official Journal of RS”, No. 15/2009)

²⁷ Law on Local Elections, “Official Journal of RS”, No. 54/11

²⁸ Article 5, Law on Local Elections

providing that seats be allocated to candidate according to the hierarchy on the electoral list, starting with the first candidate on the list.²⁹

Women are least represented in the executive government, particularly in the Government of the Republic of Serbia, which is the direct result of the lack of quotas.

The number of women Ministers in the Government of R. Serbia formed in 2001 was very low, ranging from two to three women Ministers. The Government installed in July 2012 had five women out of a total of 19 members, whereas the Government formed in August 2013 included 2 women, among the total of 22 members. The incumbent Government, which took office in April 2014, consists of 18 Ministers, including only four women.

Representation of women in the executive branch of government on the local level is also inequitable. According to the available data, only 16.5% women are members of municipal and city councils, while among Presidents of municipalities and Mayors, only 5% are women.³⁰ There is a distinct trend of having women take up executive and operative positions but not managerial ones³¹. Thus, for instance, 72.5 per cent of women hold positions of head of office of the Leader of Municipal Council.³²

There is no doubt that political parties are the key mechanisms for achieving political representation of women and their participation in the public domain. Although it is evident that the principle of gender equality is an integral part of the programmes of almost all major political parties, and that women forums or other forms of women's organizations are formally established within almost all parties, there is still a small proportion of women among members of the political parties or in the executive structures. This is evidenced by the fact that only one political party is led by a woman and party management structures are dominated by men. Cultural patterns, an adverse economic situation, lack of political will and passivity and lack of empowerment of women politicians and women decision-makers have been recognized as major obstacles to increasing the participation of women in politics.

²⁹ Article 43, Law on Local Elections

³⁰ Statistical Office of Serbia, Women and Men in Serbia, 2014

³¹ Research carried out for the purpose of the Gender Equality Department in the context of the implementation of the National Action Plan for the Promotion of Gender Equality and Improved Status of Women (2010-2015).

³² Report by the Belgrade Human Rights Centre "Human rights in Serbia 2014" available at <http://bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/budska-prava-u-Srbiji-2014.pdf>

As to judicial authorities, it can be said that there are a lot more women performing judicial functions, or that this profession is increasingly becoming a female job. In the Republic of Serbia there are 2701 judges, of this number 70% (1892) are women.³³ The highest representation of women is in Magistrates' Court and Administrative Court (75%). It is noticeable that there are more women in lower courts of law, namely, that the percentage of women decreases at higher judicial instances and that there are fewer women among the Presidents of law courts. Thus, for example, there are 71% women in the appellate courts, and only one woman among the Presidents of these courts.

Lastly, it should be pointed out that women from minority groups are underrepresented in political and public life, namely, they almost do not exist. This applies to women with disabilities, women belonging to ethnic minorities and in particular Roma women, women from rural areas, women of different sexual orientation and/or gender identity, elderly women, etc. In this regard, all necessary measures should be taken so that political and public life in Serbia reflected the structure of the population and included equally men and women, from all social and minority groups.

Gender-based violence and trafficking in women

In recent years a relatively good strategic and legal framework was developed for preventing and combating domestic violence and other forms of gender-based violence, as well as trafficking in human beings.

A system of protection from domestic violence was established by providing for protection measures³⁴ through the Family Law³⁵, and domestic violence was made a separate criminal offence³⁶ in the Criminal Code.³⁷ The Criminal Code criminalized many acts of sexual violence, including marital rape and human trafficking. The National Strategy for improving the

³³ <http://www.vss.sud.rs/>

³⁴ Official Gazette RS, nos. 18/2005, 72/2011 – other law and 6/2015

³⁵ Issuing an order for eviction from a family flat or a house, regardless of the right of ownership or lease of real estate; issuing an order to move into a family flat or a house, regardless of the right of ownership or lease of real estate; injunction concerning a ban on approaching a family member at a certain distance; injunction concerning access to the area around residence or place of work of a family member, as well as a ban on further harassment of the family member (Art. 198 of the Family Law)

³⁶ Article 194 of the Criminal Code. Imprisonment ranging from three months to fifteen years is imposed on offenders, depending on the severity of the act and the resulting consequences.

³⁷ Official Gazette, nos. 85/2005, 88/2005 – corr. 107/2005 – corr. 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014

position of women and promoting gender equality of 2010 and the National Strategy for preventing and combating violence against women in family and partner relations of 2011³⁸ established a number of measures and activities aimed at preventing and combating all forms of violence against women and the provision of a comprehensive system protecting women victims of violence, including building the capacity of the system to protect women from violence, raising awareness of the violence against women, etc. AP Vojvodina has adopted a strategic document designed to combat violence against women, and plans of action at the level of many local governments. Actions taken by state authorities in the event of domestic and intimate partner violence against women are regulated by a number of protocols.³⁹

In 2013, the Republic of Serbia ratified the Convention of the Council of Europe on preventing and combating domestic violence against women,⁴⁰ committing itself to coordinate its legislation and practice with the provisions of the Convention.

Despite the numerous activities undertaken in recent years, there are still problems in Serbia in providing effective protection from domestic violence and other gender-based acts of violence against women, and preventive measures have not had any greater positive impact.⁴¹

Although there is no reliable evidence about the prevalence of violence against women, the practice shows that domestic violence is still widespread. Among the adult victims of domestic violence registered in the social protection system, women account for 79.6% of the victims.⁴² Women make up 75% of all aggrieved parties in the completed criminal proceedings instituted for the criminal act of domestic violence.⁴³ Women are victims of other gender-based violence, such as sexual harassment, rape, stalking, sex trafficking.

³⁸ Official Gazette RS, no. 27/11

³⁹ The General Protocol of the Government of the Republic of Serbia of 2011 (2011) for action and cooperation of institutions, bodies and organizations in cases of domestic and intimate partner violence against women, the Special Protocol of the Ministry of Labour, Employment and Social Policy of the Government of the Republic of Serbia for action of the Centre for Social Services – custody authority in cases of domestic and intimate partner violence against women (2013), the Special Protocol of the Ministry of Internal Affairs of the Government of the Republic of Serbia for action of police officers in cases of domestic and intimate partner violence against women (2013), the Special Protocol of the Ministry of Health of the Government of the Republic of Serbia for action in cases of domestic and intimate partner violence against women (2010).

⁴⁰ Official Gazette RS – International Treaties, no. 12/2013

⁴¹ This is best evidenced by the number of women murdered-victims of partner violence, in 2014 alone, there were 27 women killed in incidents of domestic or intimate partner violence.

⁴² Republic Institute for Social Policy, *Report on the work of welfare centres in Serbia in 2011*

⁴³ Republic Institute of Statistics, *Women and Men in the Republic of Serbia, 2014*.

Key issues related to the problem of violence against women in Serbia are lack of understanding of the phenomenon of violence against women, by professionals, insufficient use of the powers of authorities to act *ex officio*⁴⁴ and the lack of unified records on domestic violence and other forms of gender-based violence. Also, the support system is not adapted to meet the specific needs of women victims suffering from multiple discrimination in a situation of domestic violence. In addition, a significant problem is disregarding the principles of urgency of court proceedings in cases of domestic violence and insufficiently severe punishment of the perpetrators of this crime.

Sexual violence against women is still a taboo topic. The grim record is high, and there is no representative study of sexual violence by government institutions. The only available data are from a study of women's NGOs. This criminal act is qualified as rape only if committed by force or threat of force, implying that a woman should resist physically her abuser (although a number of women will not offer physical resistance for fear of being seriously injured or killed).

The system of assistance and support for the victims of gender-based violence is not effective yet. Professionals working in the centres for social services do not look at all the risks involved or the specific features of the problem and life situations of victims when identifying measures to be taken, focusing on immediate safety of victims, and with no regard for any planning to implement measures that would address the problems of a victim in the long term and comprehensively, creating conditions for the victim to go on living without being abused.

The relevant institutions operating at the local level do not act in a coordinated and synchronized manner, resulting in an inadequate and untimely response to incidents of gender-based violence. Victims of domestic and intimate partner violence are not provided with effective access to safe facilities and programmes of economic, social and psychological independence and empowerment for living independently. High-quality professional legal assistance, *pro bono* or at lower rates, is not available to women victims of violence.

The support system does not even distinguish between the specific needs of women discriminated against in multiple ways (women with disabilities, homosexual women, women

⁴⁴The procedures for protection against domestic violence have been initiated by social services centres only in 3.4% of cases, and by the public prosecutor's office in only 1% of the cases. The report, "The shadow over Serbia," Autonomous Women's Centre, ASTRA, Women in Black, Labris, Voice of Difference Autonomous Women's Center, ASTRA, Women in Black, Labris, Voice of Difference, Belgrade, 2013.

from rural areas, etc.), and therefore it is necessary to provide, for people with disabilities, physical accessibility of institutions responsible for the protection of victims of violence. In addition, information on the mechanisms of protection from violence is not available to a sufficient extent, including services and contact points in key institutions and specialized women's organizations, especially when it comes to women from marginalized groups.

Guardianship authorities and public prosecutors under-use their powers to take legal action to institute protective measures, and some difficulties are experienced in the forced execution of protective measures imposed by the court. Only 25% of all criminal charges filed to prosecution offices for the crime of domestic violence, reaches indictment and main hearing stage while the court proceedings are ineffective and time-consuming, penal policy lenient, and therefore suspended sentences relatively common.

Rehabilitation services for women victims of gender-based violence have not been established according to plan, nor are they developing, and the resources of local communities are not used enough. Victims of domestic violence are mostly offered to relocate from their homes, for a short period, along with few programmes of economic, social and psychological independence for women and their empowerment for own living. Psycho-social treatment of the abuser is rarely resorted to, most often it is at the discretion of the prosecutor when deciding to delay prosecution and exceptionally this is done by a court order or upon instruction of the ward authority.

Practice has shown professionals being ill-equipped to recognize and understand the situation of women who suffer domestic and intimate partner violence, power imbalance between the victim and the person committing an act of violence against the victim, cyclical nature of violence and its effects on the victim, nor are they provided with enough information about how to proceed in incidents involving violence.⁴⁵

⁴⁵ A special report by the Ombudsman on the implementation of general and specific protocols to protect women from violence, No. 22-21/14 of 11.18.2014.

One of the problems facing Serbia is trafficking in human beings. For more than a decade Serbia has been a country of origin and transit but also a destination for women trafficked primarily for the purpose of sexual exploitation but also for mendicancy forced upon them, labour exploitation, forced marriages and so on.⁴⁶ Women of Serbian nationality become victims of trafficking mainly due to poverty, marginalization and social deprivation, lack of education and access to social services.

The Serbian authorities have demonstrated their clear commitment to implement international standards in combating human trafficking, especially trafficking in women and female children. All relevant international instruments in this field have been ratified. The Serbian Constitution explicitly proscribes any form of trafficking in persons as well as forced labour, and sexual or financial exploitation of a disadvantaged person shall be deemed forced labour.⁴⁷ Trafficking of women is incriminated by the Criminal Code as a separate criminal offence,⁴⁸ in accordance with international standards. The rights of victims of trafficking have been ensured, and the Centre for the protection of victims has been established, as well as appropriate mechanisms to coordinate the activities of all relevant stakeholders. Measures have been taken to raise the awareness of human trafficking and to provide the training of professionals.

The Strategy for combating THB in the Republic of Serbia has been developed⁴⁹ and the Strategy for Improvement of the Status of the Roma Population in Serbia⁵⁰ associates the problem of trafficking in women with multiple discrimination against Roma women and the unfavourable position of women in the Roma community itself.

Despite the positive developments, an adequate level of effectiveness in the prevention of trafficking in women and girls and provision of adequate assistance and support to victims has not yet been reached. Legal proceedings are still very long, accounts given by victims still serve as crucial evidence, and little has been done to prevent secondary victimization and protect the

⁴⁶The report, "The shadow over Serbia", Autonomous Women's Centre, ASTRA, Women in Black, Labris, Voice of Difference, Belgrade, 2013.

⁴⁷Art.46 of the Constitution of RS.

⁴⁸ Article 388 of the Criminal Code

⁴⁹ Official Gazette RS no. 111/2006

⁵⁰ Official Gazette RS no. 27/2009

security of victims during and after the trial. Penalties for offenders are around the required minimum and only few are jailed.⁵¹ In some cases, sanctions are imposed on victims for acts committed by them while they were victims of trafficking.

Since Serbia has not established a system of pro bono legal aid, victims of human trafficking are not entitled to such aid. None of the victims has received any compensation, nor has any proceeds of the crime been confiscated from the traffickers. Criminal courts are reluctant to decide on compensation claims and refer victims to initiate litigation, which is costly and time-consuming and involves additional re-traumatization, with an uncertain outcome.

We still lack standards for the operation of safe facilities for victims of trafficking, and the services provided by such facilities are not tailored to meet the individual needs of the beneficiaries. Disadvantages of collective accommodation are reflected in isolation and limited movement, lack of access to adequate medical care and psychological assistance, particularly for those suffering from addictions and many other problems. For these reasons, the existing centres and safe facilities are inadequate for the successful reintegration of women and girls - victims of human trafficking.

Particularly worrying is the fact that judicial professionals still lack understanding of the phenomenon of human trafficking, are not sensitive enough to the vulnerability of the victims and do not pay much attention to secondary victimization. Also, some public prosecutors are not active enough in a proceeding before the court, but there are more and more good examples in practice in this regard, too. Court proceedings are still not sufficiently effective, penalties are often minimal, and not enough is being done to prevent secondary victimization of victims.

⁵¹However, there are court decisions which imposed appropriate penalties for perpetrators. Thus, the special panel of the Appellate Court in Belgrade gave a verdict to four members of an organized criminal group, deciding on the appeal. The ringleader of the group was sentenced to an imprisonment of 14 years, while the others were sentenced to 12 and 10 years in prison. In addition, the four convicted persons are required to jointly pay the sum of 55,000 euros towards the budget of the Republic of Serbia for the pecuniary interest obtained by committing the offence. In 2011, members of this group repeatedly procured girls from Serbia and transferred them to Italy, where they were held against their will and sexually exploited. In less than a year six girls were wronged in this way, of whom two were minors. The work on this case exemplifies successful collaboration between the Prosecutor's Office for Organized Crime, the Department for Combating Organized Crime, the Higher Prosecutor's Office in Belgrade and ASTRA, whose lawyer represented the victim in court proceedings. See: The position of trafficking victims in court proceedings - Analysis of judicial practice in 2013, ASTRA.

Gender and security

The gender mainstreaming in the security sector has been intensified in the last few years, establishing a proper legal and institutional framework for further improvement in this area.

The *National Security Strategy 2009* laid down gender equality as both universal and national value. The Strategy stipulates that the Republic of Serbia is committed to advancing the role and position of women in the decision-making process and to strengthening the state mechanism for ensuring gender equality.

The National Action Plan for the implementation of UNSC Resolution 1325 - Women, peace and security in the Republic of Serbia (NAP), adopted in 2010⁵², promotes gender equality and exercise of greater scope of women's rights, increased representation of women in the security sector and their impact on the issues related to the position of women, peace and security as well as to the creation of system-related preconditions for gender equality and development of the system of protecting women victims of violence as well as the system of preventing violence against women in general.

All institutional mechanisms envisaged under the NAP have been put in place: the Political Council, Multi-Sector Coordination Body for the NAP implementation as well as the *Surveillance Body for NAP Implementation*. Gender equality advisers, analytical groups and "trusted persons", tasked with mediation, counselling and taking measures to deal with specific contentious issues in the field of gender equality and discrimination, have been appointed in all security sector institutions.

In spite of huge positive shifts the number of women working in the security sector is still low compared to the overall staff, though it increased slightly over the last five years. The Ministry of Defence and the Serbian Armed Forces number 19.36% of women staff, the Military Security Agency 16.79% and the Ministry of the Interior has 40% of women employees of whom only 9% are uniformed. There is a very small number of women holding senior decision-making

⁵²Conclusion on the adoption of the National Action Plan for the implementation of UNSC Resolution 1325- Women, peace and security in the Republic of Serbia (2010-2015) ("Official Gazette of the Republic of Serbia", No. 102/2010)

positions. Although women, too, have had access to advanced military training and education for a number of years now, there is still no Serbian woman officer with the rank of a general.

Notwithstanding an increase in the number of women, there is a prevalent stereotyped traditional view of this sector as a male preserve. Survey results show the relationship between family commitments and professional status of women working in the security sector. It is more difficult for them to perform a balancing act between their professional and private lives, plus they are discriminated against, which they seldom report and ask for protection.

Economic condition of women

The period of transition followed by an economic crisis worsened the economic situation of both women and men, thus deepening even more the gender differences. In recent years, legal and other measures aimed at economic empowerment of women have been taken.

The Law on Gender Equality equalized women and men with regard to their employment conditions, choice of occupation, working conditions, employment rights, education, training, advanced training promotion at work, conditions for termination of employment contract, etc.

The Labour Law⁵³ bans any discrimination based on gender and other personal features when employing an individual or at the place of work, and recognizes special rights to employed women during their pregnancy leave including their right to a leave for the purpose of childcare in the case of a mother or a father, if both employed.⁵⁴ Amendments to the Law on Labour of 2013 provide for the obligation of the employer to provide for a female employee who comes back to work before the expiry of one year from childbirth, one or more daily breaks or reduction of working hours by 90 minutes in total for breastfeeding in case that her working hours are 6 hours or more. It also stipulates that a person with a fixed contract of employment be renewed for the period for which she signed the contract until the expiry of her right to a leave during pregnancy, maternity leave and leave of absence from work for childcare.

⁵³Labour Law (“Official Gazette of the Republic of Serbia”, Nos. 24/2005, 61/2005, 54/2009, 32/2013 and 75/2014)

⁵⁴Article 12 of the Labour Law

Economic empowerment of women is one of the priorities identified in many strategic documents (Strategy for Poverty Reduction in Serbia, the Millennium Development Goals in the Republic of Serbia, and the National Employment Strategy 2005-2010) that support gender equality on the labour market and envisage affirmative action measures in favour of women.

However, despite many activities, women are still worse off as regards labour and employment as well as in doing business, resulting in an overall huge gender gap in all these areas.

Women account for more than half of the working population but they are in the minority among the employed and constitute the largest vulnerable group on the labour market of the Republic of Serbia⁵⁵. The traditionally-based stereotype of the gender role of a woman devoting most of her time to an unpaid housework and child rearing deepens gender segregation in the education system and on the labour market. Women make up 80% of those who quit their jobs on a voluntary basis for family reasons and they also make up 98% of those whose only job is housework⁵⁶. Women who do not work or who have left their jobs in order to raise children or the older members of their household are being prevented from taking up an employment due to the above-described obligations and thus also being prevented from having a secure income in old age. Furthermore, there is a significant difference as to gender according to the reduced working hours when the normal childcare services are not available. Women make up 63% of all persons having to cut down on their hours of work due to the lack of childcare services.⁵⁷

Women of reproductive age experience problems of employment and those associated with their workplace. The practice of the Commissioner for the Protection of Equality shows that when interviewed for a job women are often asked questions related to their marital status and family planning, and it is common that the employer transfers a woman employee to a lower position, reduces her salary or declares her redundant following her maternity leave or leave of absence from work for childcare. Fathers seldom use their legal right to a childcare leave after the mother's three-month maternity leave, which is also a reflection of gender stereotypes.

⁵⁵National Employment Strategy ("Official Gazette of the Republic of Serbia", No. 37/2011)

⁵⁶National Strategy for the Improvement of the Position of Women and Promotion of Gender Equality

⁵⁷"Gender Equality in Serbia in 2014", Ministry of Labour, Employment, Veteran and Social Affairs

Women are less frequently promoted and have fewer opportunities to improve and expand their knowledge. Knowledge and skills of women are often underestimated and sometimes they are considered not competent enough to hold positions of seniority. Women account for 30.5% of all leadership positions in society and in the economy, of which 20.8% are executive positions and a mere 14.3%⁵⁸ chairs Governing Boards. This indicates there is the so-called “glass ceiling effect” in Serbia.

In addition to poor prospects of accessibility of managerial and high-paying jobs, the problem is also the traditional perception of occupations as “male” and “female”: the latter often being less paid and less prestigious, with a large proportion of women working in the “grey” (shadow) economy and a high concentration of female workforce in low-paying jobs, leading to almost total feminine nature of certain professions and the absence of women in other relevant areas of work. For all these reasons women are paid less for work of equal value and there is a 16-percent difference in salaries between men and women⁵⁹. It is necessary to bear in mind that the unemployment rate for women aged 15 and over is higher than for men (24% as opposed to 21%). Women far less own agricultural holdings, only 17.3%⁶⁰. All these issues become further complicate in the case of women from multiple discriminated groups.

Gender inequalities appear in the business sector as well. Women take only a quarter (25.8%) of highest decision-making positions in companies (those of general manager and Governing Board Chair) and they make less than a third of entrepreneurs (31.7%).

Key barriers to self-employment are no pool of equity capital, volatility of the economic environment, lack of creditworthiness, no real estate owned, lack of knowledge and skills required for entrepreneurship as well as the lack of self-confidence and support⁶¹. Most women entrepreneurs ended up in this business out of necessity (66%), mostly without a family tradition in it, operating mainly in the local market within the services sector as micro-entrepreneurs.⁶²

⁵⁸National Strategy for the Improvement of the Position of Women and Promotion of Gender Equality

⁵⁹National Strategy for the Improvement of the Position of Women and Promotion of Gender Equality

⁶⁰Men and Women in the Republic of Serbia, 2014

⁶¹Ibid.

⁶²“Position of Women in Serbia in 2014: Facts denying the views”, Ministry of Labour, Employment, Veteran and Social Affairs

Roma women, tolerance and non-discrimination

The Roma ethnic minority is in the worst situation in Serbia as far as national minorities are concerned and they are most discriminated against, being the victims of open and widespread hate speech and facing discrimination particularly in education, employment, health care and housing. Although certain progress has been made in improving the position of the Roma national minority, it will take a whole range of measures to bring about substantial changes and improve their position.

The Republic of Serbia has ratified key international documents which, among other things, regulate the protection of national minorities. National regulations govern the position of national minorities in compliance with the relevant international standards. The Law on the Protection of the Rights and Freedoms of National Minorities⁶³ and the Law on the National Councils of National Minorities⁶⁴ recognize the whole body of individual and collective minority rights.

However, although the legal framework for the protection of national minorities in Serbia is satisfying, there is still huge ethnic distance in relation to some minorities (Albanians, Croats, Bosniaks and Roma)⁶⁵. Like the majority population, women of minority communities are worse off than men minority members. Roma women are in a particularly bad situation, being discriminated against twice, both as women and as Roma community members in all spheres of public and private life, whether in a wider social environment or in their own community. Their participation in public and political life is inadequate; a high percentage of them are unemployed; they have short life expectancy; they are forced into early marriages and early motherhood; they are victims of domestic violence, etc.

Measures concerning primary education, in particular the hiring of Roma teaching assistants, have contributed to greater school attendance by Roma girls and resulted in the reduced number of drop-outs. However, Roma children are still discriminated against in schools

⁶³Official Gazette of FRY, No. 11/2002, Official Gazette of Serbia and Montenegro, No. 1/2003-Constitutional Charter and Official Gazette, Nos. 72/2009-law and 97/2013-decision made by the Constitutional Court

⁶⁴Official Gazette of the Republic of Serbia”, Nos. 72/2009, 20/2014-decision of CC and 55/2014

⁶⁵Attitudes of citizens towards discrimination in Serbia. Equality Protection Commissioner, Belgrade 2013

and in previous years there were instances of segregation of Roma children in education. As to the issue of secondary school and university education, special measures for secondary school and university enrolments have been introduced for the Roma national minority. Due to the implementation of these measures the number of secondary school and university enrolments by Roma female students increased.

The position of Roma women on the labour market is very bad⁶⁶. The number of jobless Roma women is constantly on the rise: in 2009 there was 6,571 and in 2013 the number amounted to 10,150 unemployed female Roma. The National Employment Office introduced a special measure for allocating funds to start up small businesses and encourage self-employment by giving additional points for Roma women and Roma persons with disabilities. However, this measure proved not to be suited to many Roma women who had no previous knowledge and skills in business running or proper qualifications and who were unable to meet some of the bank requirements.

Female Roma are in the most disadvantaged position compared to all other vulnerable groups concerning the issue of mother's healthcare as their maternity mortality is 10% higher than in the rest of the population. A certain progress has been achieved in the area of healthcare, particularly following the introduction of health facilitators who act as intermediaries between the Roma community and the institutions. The Ministry of Health engaged 60 health facilitators with the main task of enabling easier access and better quality of healthcare for the Roma population. Although the criteria for engaging such facilitators were that they were of female sex and mothers with a minimum primary school education, this was, at the same time, one of the very few opportunities for them to find employment.

In conclusion, although female Roma were not present enough in public life, it should be emphasized that direct elections for national councils of national minorities were held in 2014 and that they are a positive example of the promotion of the participation of women from

⁶⁶This position is also evidenced in the practice of the Equality Protection Commissioner, For example, in the proceedings instituted after carrying out a situational discrimination test in a job interview it was found that the owner of a bakery denied a job opportunity to a tester for the sole reason that she belonged to the Roma national minority.

minority groups because the new National Council of the Roma National Minority comprises 35 members of whom 13 are women.

The media

The image of a woman in Serbian media is still full of stereotypes and discriminatory in nature while their reporting is often sexist and under-appreciative of women. Key issues relating to the portrayal of women in the media are the spreading of sexist images and stereotypes about women⁶⁷, discriminatory media reports about female politicians, sensationalist reporting on domestic violence incidents, and the lack of use of gender sensitive language when speaking and writing about female professions, academic degrees and occupations.

It can be said that the legal framework is relatively good in this area as well. The laws governing public information⁶⁸ prohibit discrimination and hate speech. The Code of Journalists of Serbia – Instructions and Guidelines⁶⁹ prohibits use of inappropriate, disturbing, pornographic and any other content that may have harmful effect on children and recommends respect of privacy, dignity and integrity of persons written about. In addition, journalists are obliged to avoid phrases having possible chauvinist, sexist or any other discriminatory connotations. The Anti-Discrimination Law forbids public advocacy, support and practising of a conduct in keeping with prejudices, customs and other social patterns of behaviour based on the notion of gender inferiority or superiority, i.e. stereotypical gender roles⁷⁰, while a similar provision is included in the Law on Gender Equality. Moreover, it is suggested that the content of media clips should raise awareness of gender equality, but also take appropriate measures aiming to change social and cultural patterns, customs, and any other practices bringing about stereotypes, prejudice and discrimination based on the notion of inferiority or superiority of a particular gender⁷¹.

⁶⁷Women are shown on just 1/5 of the total number of photos in daily newspapers. Analysis of the social role of women on photos reflected a tendency of stereotyping the female roles and discrimination against women. The photos are those of entertainers (models, TV personalities and singers), while the other group are those related to the private life (mothers, housewives and spouses). Magazine for communication management, Centre for Communication Routing and the Faculty of Political Science, available at <http://www.fpn.bg.ac.rs/wp-content/uploads/CM19-Web.pdf>

⁶⁸The Law on Public Information and Media, and the Law on Electronic Media

⁶⁹Code of Journalists of Serbia – instructions and guidelines (adopted in November 2008);

⁷⁰Article 20, paragraph 2, of the Anti-Discrimination Law

⁷¹Article 41 of the LGE

The data points to a notable progress made in terms of gender equality, especially in news coverage and clips outside daily news and entertainment programmes⁷², but such progress is insufficient because the media still supports traditional gender roles and features, and presents women in a stereotypical manner. Tabloid newspapers often contain features which include abusive presentation of female body and physical appearance and threaten the human dignity of women.

With regard to reporting on domestic violence, sensationalism in media features on violence against women is frequent, causing harm to victims and exposing them to further victimization, while portraying the phenomenon of violence against women itself in a stereotypical manner. Certain media outlets use gender-sensitive language, whereas the majority does not accept its usage.

Institutional mechanisms for gender equality

In the past years, great strides have been made in establishing an institutional framework for the implementation of equal opportunities policy. However, the structure of institutional mechanisms, the establishment of which started in Vojvodina in 2002⁷³, has changed continuously as a consequence of the lack of a long-term plan and a clear vision of their development, but also due to lack of understanding of their importance and the role they play in establishing and protecting equal rights.

At the national level in Serbia, the Committee on Gender Equality in the National Assembly of the Republic of Serbia (2003) and the Committee on Gender Equality in the Government of the Republic of Serbia (2004) have been established, as well as the Government's expert advisory board. Since 2012, the Committee on Human and Minority Rights and Gender Equality has been active in the Serbian National Assembly, a permanent working

⁷²Gender equality in and through the media" research; ŽINDOK (Women's Information-Documentation Training Centre), 2008

⁷³From the Executive Council of Vojvodina Member without a Portfolio to the Provincial *Secretariat* for Economy, *Employment* and Gender Equality (2002), from the Gender Equality Council (2002) to the Secretariat for Gender Equality (2004), Gender Equality Mechanisms and Their Role, Zorana Sijacki

body of the National Assembly of the Republic of Serbia.⁷⁴ The Committee, *inter alia*, considers draft laws and other general provisions in the context of promoting and ensuring equality of the sexes (gender equality), takes account of the implementation of policies, enforcement of laws and general legal provisions by the Government and other bodies and officials accountable to the National Assembly, in the context of gender equality. Five separate working groups have been active within the Committee, one of them being the Working Group on Gender Equality. The Committee is, among other things, authorized⁷⁵ to consider draft laws and other general enactments in the context of promoting and ensuring equality of the sexes (gender equality), takes account of the implementation of policies, enforcement of laws and general legal provisions by the Government and other bodies and officials accountable to the National Assembly, in the context of gender equality.

The Committee on Gender Equality is the Government's expert advisory body⁷⁶, and the members of the Committee are representatives of Ministries and other state bodies, members of civil society organizations, and also experts specializing in human rights and gender equality. The Committee's tasks include considering and proposing measures to enhance the policy aimed at achieving gender equality in terms of inter-Ministerial cooperation in that area, initiating short-term measures which contribute to gender equality, initiating adoption of programmes for collection, analysis and publishing of statistics in economic, political, social and other spheres ensuring equal treatment of genders, considering and initiating programmes and measures designed to encourage and empower women to participate in public and political life; proposing actions aimed at enhancing the policy for achieving gender equality and preventing violence against women and domestic violence, and also considering other issues in the interest of achieving gender equality. Expert support and also administrative and technical support are provided to the Committee by the Ministry of Labour, Employment, Veteran and Social Affairs. The Committee is obliged to report on its work to the relevant board every 60 days, and to the Government every 90 days. Reports on the work of the Committee are not available to the public

⁷⁴Article 46, Rules of Procedure of the National Assembly (*Official Gazette of the Republic of Serbia*, No. 20/2012 – the revised text)

⁷⁵Article 52, paragraph 3, Rules of Procedure of the National Assembly

⁷⁶The Decision on the establishment of the Committee on Gender Equality (*Official Gazette of the Republic of Serbia*, No. 35/2013)

on the websites of the Serbian Government and the Ministry of Labour, Employment, Veteran and Social Affairs, and there is no information available to the public, either, on whether the Board in charge or the Government have reviewed the Committee's reports. For this reason it is not possible to assess the manner or level of success of the Committee in fulfilling its tasks and in performing the role assigned to it in the domain of gender equality promotion.

Between 2007 and 2014, under the authority of the Ministry of Labour and Social Affairs, the Gender Equality Sector was active at first and was later transformed into the Gender Equality Directorate, as proposed by the 2008 Law on Ministries⁷⁷. The responsibilities of the Gender Equality Directorate were as follows: reviewing the situation and proposing measures in the area of gender equality promotion, drafting and implementation of the *National Strategy for Improving the Position of Women and Promoting Gender Equality*, drafting laws and other provisions in this area, coordinating the work of and providing expert, administrative and technical assistance and support to the Committee on Gender Equality, enhancing the position of women and promoting gender equality and equal opportunities policy; incorporating gender equality principles in the activities of state institutions; monitoring implementation of the recommendations of the UN Committee on the Elimination of Discrimination against Women, and also other activities envisaged by the Law. The Gender Equality Directorate was dismantled in 2014 following the coming into force of the new 2014 Law on Ministries.⁷⁸

Following the termination of the Gender Equality Directorate, the Coordination Body for Gender Equality⁷⁹ was established in October 2014, tasked with reviewing all the issues and coordinating public administrative bodies' work related to gender equality. For the purpose of performing daily expert tasks related to gender equality, the Expert Group of the Coordination Body was set up, reporting back on its work to the Government of the Republic of Serbia every 90 days. The operation of the Coordination Body is defined in more detail in the Rules of Procedure⁸⁰ setting out that expert, administrative and technical support to the Coordinating

⁷⁷Official Gazette of the Republic of Serbia, Nos. 65/08, 36/09 and 73/10

⁷⁸Official Gazette of the Republic of Serbia, No. 44/2014, dated 26/04/2014

⁷⁹Decision on the establishment of the Coordination Body for Gender Equality (Official Gazette of the Republic of Serbia, Nos. 121/2014, 147/2014 and 32/2015)

⁸⁰Rules of Procedure of the Coordination Body for Gender Equality, 30 December 2014

Body should be provided by the Office of the Deputy Prime Minister and Minister of Construction, Transport and Infrastructure, the Office of Minister without Portfolio responsible for European integration, and also the Serbian European Integration Office.

The establishment of such a high-level state body for gender equality is a positive step forward, because this is how institutional preconditions are created for gender mainstreaming, i.e., integrating the gender perspective into public policies, aiming to ensure removal of systemic and structural causes of gender inequality and establish conditions to embrace gender equality, as a European standard, in a coherent and systematic manner. As to the gender structure of the Coordinating Body, it initially comprised two women and two men, but in 2015 the gender structure of this body was altered, and today it includes one woman Chairperson of the body, and four men. It is obvious that the gender structure of this body is inconsistent with the international standard relating to women's representation implying at least 30% of women at all levels of policy-making processes, and requiring changes, especially taking into account the mandate and authority of this body.

At the State level, all institutional mechanisms have been in place concerning the implementation and monitoring of the National Action Plan for the Implementation of UNSC Resolution 1325 – Women, Peace and Security in the Republic of Serbia, the establishment of which is proposed by this document.

Among the institutional mechanisms for achieving gender equality an important role is played by the Protector of Citizens (Ombudsman), an autonomous and independent state body, established under the Law on the Protector of Citizens.⁸¹ One of the Ombudsman's deputies is specifically tasked with issues of gender equality. The key instrument of the Ombudsman's work in the area of gender equality are the recommendations being given to public administrative bodies aimed at enhancing their activity. Although the number of complaints on account of violations of gender equality rights has been on the constant increase, it is still relatively small in comparison to the total number of complaints. One of the Ombudsman's activities was the work on drafting the Law on Gender Equality. Also dealing with the elimination of and protection from

⁸¹*Official Gazette of the Republic of Serbia*, Nos. 79/05 and 54/07

discrimination is the Commissioner for Protection of Equality, an autonomous, independent and specialized state body, established under the Anti-Discrimination Law, having a wide range of legal powers making it the central national institution for eradicating all types and forms of discrimination. The Commissioner is conceived as an independent state body modelled on the functions of an Ombudsman, with exclusive authority over the protection of the right of non-discrimination. The Commissioner, as well as the Ombudsman, is a body of the Parliament, providing it with assistance in parliamentary monitoring of equality protection, but it is also a kind of a “public body “or that of civil society where it actually belongs. The Commissioner exercises its legal functions by acting upon complaints of discrimination, initiating litigation, recommending measures, through legal initiatives, etc.

In the Autonomous Province of Vojvodina, the Committee on Gender Equality has been active since 2003, one of the 20 permanent working bodies of the AP Vojvodina’s Assembly.⁸² The Committee reviews proposed programmes, decisions and general legal acts in the area of equality of men and women, considers legal acts in the context of promoting equality of men and women, considers the manner in which the Government of the Province pursues policies, enforces decisions and general acts in the context of gender equality.¹⁵⁰⁸³ In the realm of executive branch, gender equality is under the authority of the Provincial Secretariat for Economy, Employment and Gender Equality.⁸⁴ In addition, an important role in AP Vojvodina is that of the Provincial Institute of Gender Equality, an expert body of the Provincial Government established in 2004, aiming for higher efficiency in monitoring gender equality and making recommendations for the integration of the gender perspective into all policies, measures, actions and programmes adopted and implemented by the Provincial Government, as well as the Provincial Ombudsman, who has played an important role in promoting gender equality and in combating discrimination since 2004.

⁸²Article 55, Rules of Procedure of the Assembly of the Autonomous Province of Vojvodina (“Official Gazette of *AP Vojvodina*”, number 37/2014)

⁸³Article 74, Rules of Procedure of the Assembly of the Autonomous Province of Vojvodina

⁸⁴Decision of the Provincial Assembly on Provincial Governance (“Official Gazette of *AP Vojvodina*”, Nos. 37/2014 and 54/2014 - second decision

Establishment of local institutional mechanisms for gender equality started in 2002. Great support in establishing and developing these mechanisms has been provided by the OSCE Mission. When it comes to the territory of Vojvodina, the support was also given by provincial institutions which have been implementing a number of activities for establishing and empowering municipal institutions dealing with gender equality, leading to a better situation in Vojvodina, to some extent, compared to other parts of Serbia.⁸⁵ Support to empowering local gender equality bodies is also provided by the Standing Conference of Cities and Municipalities, which has started promoting the European Charter for Equality of Women and Men in Local Life of the Council of European Municipalities and Regions. So far, this Charter has been signed by 20 local governments.

There is no aggregate data on which municipalities and towns currently include local mechanisms for gender equality, on their form, scope, or effects of their activities. According to information available in 2012, out of 167 municipalities in Serbia, 110 included some form of local mechanism (commission, council, board, an official tasked with gender equality, etc.),⁸⁶ while according to the information furnished by the Standing Conference of Cities and Municipalities, 116 municipalities/towns include a mechanism (working body or person) in charge of gender equality issues.

The previous period has been marked by the lack of a follow-up in the operation of local institutional mechanisms. In many local communities these mechanisms have been shut down and re-established with the same or changed organizational structure. Many of these mechanisms lack capacity, clearly defined indicators of success, budgetary support for their work, which leads to their impact on gender equality at the local level still being relatively small.

⁸⁵Strengthening institutional mechanisms for gender equality:
http://www.podrska.rs/pubs/rezultati_projekta_jacanje_institucionalnih_mehanizama_za_rodnu_ravnopravnost.pdf.

⁸⁶Database on local mechanisms for achieving gender equality is available on the website of the Gender Equality Directorate: www.gendernet.rs

4.2. Comments by the Coalition of Civil Society Organizations on the Commissioner's Report on gender equality

Autonomous Women's Centre, in consultation with organizations: Action against Trafficking in Human Beings, Women's Space, Dea Dia Association

4.2.1 Political framework, legislative and institutional mechanisms for gender equality

The 2010-2015 period saw significant changes in Serbia's political scene. After regular parliamentary elections (May 2012) and an early general election (2014), the government led by the Serbian Progressive Party - whose representatives were chief promoters and participants of the wars in the 1990s – was consolidated, whereas opposition parties were marginalized. The year 2014 was lost in terms of reform processes for a number of reasons (a caretaker government was in charge due to the calling of snap elections, the flooding in May, a four-month strike of attorneys at law...) The renewal of judicial reform (January 2014) following the failed one (2010); control over and shutting down of independent media outlets, attacks on independent institutions (Protector of Citizens), harsh economic austerity measures (lowering of pensions and salaries in the public sector, imposition of excise taxes on electricity), growing poverty and stratification of the population, huge unemployment, strengthening of the role of the Serbian Orthodox Church, attacks on human rights defenders that did not receive public censure, are all proof of a heightened sense of general insecurity among the population, particularly women who are the main victims of transition.¹⁵¹

This review of the situation has been drawn up in accordance with the OSCE commitments and the recommendations made to the participating States concerning the political framework on the human rights of women.¹⁵² Since the Report on the situation pertaining to gender equality,

¹⁵¹ <http://www.blic.rs/Vesti/Tema-Dana/195543/Zene-naivece-zrtve-tranzicije>.

¹⁵² OSCE Action Plan for the Promotion of Gender Equality (MC.DEC/14/04); Preventing and Combating Violence against Women (MC.DEC/15/05); Women in Conflict Prevention, Crisis Management and Post-Conflict Rehabilitation (MC.DEC/14/05); Report of June Zeitlin, the Special Representative of the OSCE Chairperson-in-Office on Gender Issues, recommendations, 2012, Elements of the Conflict Cycle, Related to Enhancing the OSCE's Capabilities in Early Warning, Early Action, Dialogue Facilitation and Mediation Support, and Post-Conflict Rehabilitation (MC.DEC/3/11).

submitted by the Commissioner for Gender Equality Protection extensively describes the situation *de iure*, these comments focus on the situation *de facto*.

Legislative framework

Serbia has established a legislative and strategic framework related to prohibition of discrimination; gender equality and protection against gender-based violence. Nevertheless, an insufficient amount of attention has been given to the implementation of laws and measures, as well as to reporting on the achieved results. The situation of multiple marginalized groups of women (Roma women, women with disabilities, rural women, elderly women, lesbians, single mothers, etc.) is particularly sensitive, whereas anti-discrimination laws do not recognize the concept of multiple discrimination against women, as indicated by the UN Committee on the Elimination of Discrimination against Women (CEDAW) in its concluding comments (paragraph 10, sub-paragraphs (a), (b)).¹⁵³ Five years after its enactment, the Law on Gender Equality (LGE)¹⁵⁴ does not have a bearing on the actual equality of men and women, because there are no envisaged sanctions for most of the norms set out in the Law. Only the 2013 Report submitted by the Gender Equality Department (GED) on Monitoring the Implementation of the Law, is available to the public.¹⁵⁵ Only two legally effective judgments on violations of this Law were recorded in 2013, while in the previous year there were none. Inspection oversight of the Law's implementation resulted in the reaching of 83 decisions on the elimination of deficiencies (out of 4,564 oversights made), though there is no information on how many of these decisions have taken effect. The Protector of Citizens submitted a new draft law on gender equality (December 2014), while the newly created Gender Equality Coordination Body has initiated the setting up of a working group for amendments to the Law, irrespective of the existing model.

Strategic framework

Although the Republic of Serbia (RS) has adopted all major roof and sector strategies, these documents are neither gender sensitive, properly coordinated, nor have budgetary funds been allocated for the implementation of most of them, we are nevertheless seeing their hyper-

¹⁵³ Concluding observations on the Second and the Third Reports submitted by the Republic of Serbia, CEDAW/C/SRB/CO/2-3, 25 July 2013. Available at: http://www.gendernet.rs/files/dokumenta/Izvestaji_Uprave/Cedaw_zakljucna_zapazanja_2013_srp.pdf.

¹⁵⁴ "Official Journal of RS", No. 104/2009.

¹⁵⁵ Report on Monitoring the Implementation of the Law on Gender Equality for 2013 (2014), Department of Gender Equality, Available at http://www.gendernet.rs/files/dokumenta/Izvestaji_Uprave/Izvestaj_o_nadzoru_nad_sprovodjenjem_Zakona.pdf accessed on 8.6.2015.

production and the lack of a coherent framework for their implementation and reporting on results of the measures¹⁵⁶ planned, as proved by CEDAW recommendations (paragraph 17, subparagraphs (a), (b), (c) and (d)). Both strategies: the *National Strategy for Improving the Status of Women and Promoting Gender Equality* (2009), as well as the *National Strategy for Prevention and Elimination of Domestic Violence against Women and by Intimate Partners* (2011), expire in 2015.

International commitments

Serbia is a party to the relevant human rights conventions or instruments. The reports submitted to Treaty Bodies are focused on the adoption of laws and by-laws, and do not reflect the situation and the impact of implemented measures that civil society organization reports insist on. The main problem with the CEDAW Convention is that it is not directly implemented by the Serbian judiciary, as indicated by CEDAW (paragraph 8). The involvement of women civil society organizations in drawing up the state report for CEDAW has significantly increased since 2007. The Report on the first periodic review of CEDAW recommendations implementation, released in April 2014¹⁵⁷, is not systematic; it lists activities without indicating the progress achieved in relation to the recommendations, which reflects low awareness on the part of state institutions of the reporting obligation based on international mechanisms recommendations. As of July 2015, R. Serbia has an obligation to inform CEDAW on the steps taken to implement recommendations under paragraphs 17 (national strategy harmonization, implementation and monitoring) and 23 (violence against women). In late 2014, the Council for monitoring the implementation of UN Human Rights mechanisms recommendations was set up and its rules of procedure were adopted, while civil society organizations were urged to make their contribution.

Serbia's European Union accession process is an important political framework for enhancing the respect for human rights. Although the issue of gender equality and human rights of women is set out as an imperative in Chapter 23 (legislation and fundamental rights) and

¹⁵⁶ *A Shadow Cast over Serbia –A report from the shadow of Non-Governmental Organizations for the 55th Session of the CEDAW Committee*, (2013), Autonomous Women's Centre, ASTRA, Women in Black, Labris and the Voice of Difference, Belgrade 2013. Available at:

http://www.womenngo.org.rs/images/CEDAW/2013/Senka_nad_Srbijom.pdf.

¹⁵⁷ Report for the period from 25 July 2013 to 25 March 2014; available at:

http://www.gendernet.rs/files/dokumenta/Izvestaji_Uprave/CEDAW_-_Prvi_ciklus.pdf accessed on 8.6.2015

Chapter 24 (justice, freedom and security),¹⁵⁸ it has been absolutely disregarded in Chapter 24 (except in regard to the trafficking in human beings), due to which the Autonomous Women's Centre (AWC) addressed an appeal to the European Commission,¹⁵⁹ and the reply is pending.

Institutional mechanisms for gender equality

The Committee on Human and Minority Rights and Gender Equality in the National Assembly of the Republic of Serbia maintains continued cooperation with women's organizations. The Department of Gender Equality was closed in 2014. The Government's Gender Equality Coordination Body¹⁶⁰ was established in October 2014 and currently comprises six members, including only one woman (16.7%), the Body's Chairperson. The Coordination Body adopted an Action Plan for 2015 and initiated cooperation with women's organizations. It is also to analyse the effects of its activity soon. Since there are no reports on the work of the Gender Equality Council of the Government of R. Serbia, it is not possible to evaluate its ongoing activities and the achieved results. In the Autonomous Province of Vojvodina (APV) gender equality bodies have been in place within the framework of executive and legislative authorities, continuously from 2003.¹⁶¹ Though existing in most municipalities, local gender equality mechanisms did not have continued activity, clear programmes of work, allocated funds or publically available progress reports that would indicate their performance results.

The five-year term of office of the Commissioner for Equality Protection expired in May 2015. The new Commissioner, appointed with undue attention to procedure by the National Assembly, was deemed by civil society organizations as lacking relevant competences for the office. One of the deputies to the Protector of Citizens, as well as to the Provincial Ombudsman, was tasked with dealing with gender equality matters. These autonomous and independent state organs have drawn up separate reports on issues related to discrimination against women.

RECOMMENDATIONS OF WOMEN ORGANIZATIONS:

¹⁵⁸ EU Strategic Framework on Human Rights and Democracy, Council of the European Union, 11855/12

¹⁵⁹ Letter to the European Commission (29 May 2015), available at [http://www.womenngo.org.rs/images/vesti-15/Letter to the EU Commission.pdf](http://www.womenngo.org.rs/images/vesti-15/Letter%20to%20the%20EU%20Commission.pdf).

¹⁶⁰ Decision on the establishment of a coordination body for gender equality, *Official Journal RS*, Nos. 121/2014, 147/2014, 32/2015 and 37/2015

¹⁶¹ Committee on Gender Equality, Provincial Secretariat for Economy, Employment and Gender Equality, Provincial Institute of Gender Equality (Provincial Government's expert body);

- **Enhance information campaigns of the public at large about prohibition of discrimination based on gender and information of women on their rights. Ensure that international documents guaranteeing women's rights be directly implemented by judicial authorities.**
- **Agree measures and activities envisaged by different national strategies, allocate a budget for their implementation, establish a system of monitoring and assessing impacts and ensure that reports on their implementation be available to the public.**
- **Increase the responsibility of gender equality mechanisms at all levels for the implementation of anti-discriminatory laws and policies, including international treaties ratified by R. Serbia. Build capacities of autonomous and independent state organs and ensure their unimpeded and independent work.**
- **Introduce the multiple discrimination concept in relevant laws and by-laws and ensure independent monitoring of policies by autonomous women's organizations.**

4.2.2. Political participation of women

Political participation of women has been illustrated by using the recommendations contained in the OSCE documents.¹⁶²

Measures aimed at ensuring gender equality in political and public areas are included in election laws (a 30% quota for the less represented gender and improvement of the 2011 law), as a result of which the number of women in decision-making bodies increased from 1.6% in 1990 to 21.6% after the 2008 elections; 33% in 2012, and 34% in 2014. However, the situation reflected in percentages is still not conducive to gender equality, because the real influence of women continues to be relatively low and focused on traditional “women's topics”, as indicated by the Gender Equality Commissioner¹⁶³. Women's parliamentary network should be formally provided with conditions for operation. There are only four women holding Ministerial positions in the incumbent Government (22.2%). Locally, women are still underrepresented in decision-

¹⁶² OSCE Ministerial Council Decision *Women's Participation in Political and Public Life* (MC.DEC/7/09); Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (MC.DEC/3/03 Annex); OSCE Ministerial Council Decision 4/13, Enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, with a Particular Focus on Roma and Sinti Women, Youth and Children available at <http://www.osce.org/mc/109340?download=true>.

¹⁶³ Report on the situation in the gender equality area;

making positions: only 29% women are deputies and only 5% are presidents of municipalities/mayors.¹⁶⁴ Not many young women are present in the political and public arenas, and those who are bear the burden of prejudice against both their age and gender.¹⁶⁵

The situation is not much dissimilar in political parties as the principal mechanisms ensuring participation of women in political life, although gender equality has been incorporated in the manifestoes of almost all major political parties. Nevertheless, these parties have not publicised their plans on measures promoting equitable representation of women in party bodies and those related to putting forward candidates (which they are obliged to do under the Law on Gender Equality); the obligation to improve the situation is also referred to in CEDAW (paragraph 27, sub-paragraphs (a) and (c)). The same obligation applies to trade unions as well, but such plans do not figure on the internet sites of major trade unions.

With regard to the judiciary, men dominated the Constitutional Court (67%), while women are prevalent in all general and special jurisdictional courts (60-75%). Among public prosecutors, men are predominant in all kinds of prosecutor's offices (58-84%), although the Public Prosecutor of the Republic is a woman.¹⁶⁶

RECOMMENDATIONS OF WOMEN'S ORGANIZATIONS:

- **Ensure full and equal participation of women in political and public life, including in executive authorities at all levels. Envisage sanctions for political parties not complying with the Law on Gender Equality.**

4.2.3. Gender-based violence

A large number of OSCE recommendations are related to measures to be taken by the participating States to eliminate all forms of gender-based violence.¹⁶⁷

¹⁶⁴ *Women and Men in the Republic of Serbia*, Serbian Institute of Statistics, 2014 available at: http://webzrzs.stat.gov.rs/WebSite/userFiles/file/Stanovnistvo/ZeneiMus/ZiM_srpski_web.pdf

¹⁶⁵ *Young women – Agents of positive change, Research: Gender equality in youth action plans*, CURE Foundation, 2013

¹⁶⁶ *Women and Men in the Republic of Serbia*, RZS, 2014.

¹⁶⁷ OSCE Action Plan for the Promotion of Gender Equality (MC.DEC/14/04); OSCE Gender Equality Review Conference, commitments on Combating Violence against Women, July 2014; Preventing and Combating Violence against Women (MC.DEC/15/05); Country Visit to Serbia, Report of June Zeitlin, the Special Representative of the OSCE Chairperson-in-Office on Gender Issues, recommendations on Violence Against Women, 2012; Enhancing OSCE Efforts to Implement the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, With A Particular Focus on Roma and Sinti Women, Youth and Children, (MC.DEC/04/13)

State's policy on violence against women

Although the Republic of Serbia has formally demonstrated an interest in addressing the problem of violence against women, the operational implementation of the measures adopted to that end is full of weaknesses (slowed implementation dependent upon international donations and poor coordination). An Implementation Action Plan on the *National Strategy for Prevention and Elimination of Domestic Violence against Women and by Intimate Partners* (2011) has never been developed nor are there any reports on the Strategy's implementation. The AP of Vojvodina is an exception in that respect, as it implemented and evaluated the *Strategy for Protection against Domestic Violence and Other Forms of Gender-Based Violence in APV (2008-2012)*, and subsequently adopted a new strategic document *Programme for the Protection of Women from Domestic Violence and Violence by Their Intimate Partners in APV (2014 - 2020)*. The *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* was ratified in October 2013¹⁶⁸ (with a reservation made in respect of two articles),¹⁶⁹ but thus far, no effort has been made to bring the national legislation in conformity with this Convention or to enable its implementation. AWC has drawn up a comprehensive analysis of the alignment of Serbia's legislative and strategic frameworks with the standards laid down in the Convention¹⁷⁰ and designed indicators for monitoring its implementation¹⁷¹, though the Ministry of Justice planned to carry out such activity by the end of 2015, and introduce legal amendments in 2016, notwithstanding CEDAW recommendation (paragraph 23, sub-paragraph (a)) that these activities be commenced as early as 2013. The Ministry of Interior has proved reluctant to agree to the AWC's proposal to impose "urgent protection measures"¹⁷², in line with Article 52 of the Convention, and CEDAW recommendations (paragraph 23, sub-paragraph (d)).

Redress available under family law

Percentage-wise, the competent state bodies, centres for social services (CSS) and prosecution offices have initiated only very few procedures for protection against domestic

¹⁶⁸ Law on the Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, "Official Journal RS – International Treaties", No. 12/13;

¹⁶⁹ <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=210&CM=2&DF=&CL=ENG&VL=1>

¹⁷⁰ <http://www.womenngo.org.rs/images/vesti-14/Studija.pdf>.

¹⁷¹ <http://www.potpisujem.org/doc/62c0bd2c2f16f9f2586f711f45d3255b.pdf>.

¹⁷² Minister's communication and AWC's reply (June 2015) available at: <http://www.womenngo.org.rs/vesti/402-odgovor-ministru-zasto-su-nam-potrebne-hitne-mere-zastite-od-nasilja>.

violence,¹⁷³ as confirmed in the reports of the Republic's Welfare Institute¹⁷⁴, reports received from basic public prosecutor's offices¹⁷⁵, as well as in the Special Report compiled by the Protector of Citizens on the implementation of the General and Special Protocols on the Protection of Women from Violence (2014).¹⁷⁶ The imposed measures predominantly include an order not to harass the victim any more, whereas the number of measures requiring the eviction of the domestic abuser from the family's residence is quite inconsiderable. Although these procedures are urgent, the hearings¹⁷⁷ are frequently delayed. Proposed amendments are not in accordance with the standards provided under Article 53 of the Council of Europe Convention.

Redress available under the Criminal Code

The definition of a family member under the Criminal Code (CC) contravenes the Family Law, the standards of the Council of Europe Convention (Article 3) and the CEDAW recommendation (sub-paragraph 23 (a)), while the AWC initiative for modifying the definition, submitted on several occasions, was rejected. The Criminal Code does not provide for the criminal offences of stalking or tracking (by a family member or current/former partner), in accordance with Article 34 of the Council of Europe Convention, despite the fact that the phenomenon is rather widespread¹⁷⁸ and that it sometimes even leads to fatalities. AWC proposals (23 amendments) supported by the Protector of Citizens, were not adopted, although punishments for domestic violence became more severe and fines were abolished in 2009. There is an apparently high disparity between the total number of police interventions, reported crimes and sentenced persons,¹⁷⁹ as indicated by CEDAW (sub-paragraph 22 (b)), which calls for improvements (sub-paragraph 23 (c)). The situation did not change by 2014, as witnessed by the 2014 report of the Protector of Citizens.¹⁸⁰ Increasingly frequent announcements that domestic violence would be qualified as a misdemeanour offence has aroused serious concern of women's

¹⁷³Petrušić, N., S. Konstatinović Vilić, (2010). *Legal Protection of the Family against Domestic Violence in the Legislative Practice of Serbia*, Autonomous Women's Centre, Belgrade, Women's Education and Communication Research Centre, Niš.

¹⁷⁴*Progress Report of Centres for Social Services in Serbia for 2011; Synthesized Progress Report of centres for social services in Serbia for 2012*, Republic Institute of Social Welfare, Belgrade.

¹⁷⁵Macanović, V., (2013) *The right to equal family legal protection of all victims of domestic violence in Serbia – Analysis of the procedures of passing measures on protection against domestic violence*, Women's Network against Violence and European Women's Lobby Network; ¹⁷⁶http://www.ombudsman.rs/index.php/lang-sr_YU/izvestaji/posebnii-izvestaji/3710-2015-02-24-13-35-38.

¹⁷⁷Petrušić, N., S. Konstatinović Vilić, (2010).

¹⁷⁸*Research on the characteristics and prevalence of domestic violence in Vojvodina*, (2009). Victimological Society of Serbia, Beograd.

¹⁷⁹Konstatinović-Vilić, S., i N. Petrušić, N. (2007). *Crime of family violence – current juridical practice in Belgrade and Niš*, Autonomous Women's Centre, Belgrade, Women's Research Centre for Education and Communication, Niš; Ignjatović, T., (2013) *Analysis of data and protocols on police conduct and the Centre for social services in domestic violence cases*, Women's Network against Violence and European Women's Lobby Network;

¹⁸⁰*Special report by the Protector of Citizens on the implementation of the General and special protocols for the protection of women against violence* (2014), Belgrade, <http://www.ombudsman.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/3710-2015-02-24-13-35-38>.

organizations, which was the reason for addressing an open letter to ministers of justice, interior and social protection.¹⁸¹

Records and statistics on violence against women

There is no uniform system of recording and documenting cases of domestic violence and other forms of violence against women, thus preventing data analysis and comparison. State statistics does not disaggregate information on the type of relationship between the victim and the abuser. The Provincial Secretariat of Economy, Employment and Gender Equality, in cooperation with AWC, developed in 2010, a model of uniform recording of domestic violence, but there is still no readiness for its acceptance.¹⁸²

Coordination of services in the community and a multidisciplinary approach

In the 2011-2014 period, *the General protocol on cooperation between institutions in the violence against women area* and special protocols for four services (health, social services, police and legislation) have been adopted. In many communities, local services have signed agreements on cooperation, but this did not enhance their cooperation nor did it have a positive impact on the protection of victims from violence. Their implementation is not monitored, as also stated in the Special Report of the Protector of Citizens (2014).

Access to justice

A comprehensive, functional and effective system of free legal assistance has not been put in place, although the existing one does not meet the current needs. The new law on free legal assistance has not yet been enacted¹⁸³, despite the fact that CEDAW called for its soonest possible adoption (paragraph 11, sub-paragraph (c)). After persistent intervention by AWC and by a coalition of organizations, the draft law has recognized victims of domestic violence as recipients of free legal assistance.¹⁸⁴

Support services for women victims of violence

¹⁸¹ <http://www.womenngo.org.rs/vesti/397-otvoreno-pismo-ministrima-selakovicu-stefanovicu-i-vulinu>.

¹⁸² <http://www.potpisujem.org/srb/954/za-razmatranje-modela-jedinstvene-evidencije-podataka-o-nasilju-u-porodici-i-nasilju-prema-zenama>

¹⁸³ *Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia – Review of public exclusion and poverty status for the period 2011 – 2014, with priorities for the coming period*, (2014), Government of RS.

¹⁸⁴ More on advocacy, available at: <http://www.potpisujem.org/srb/677/predlog-resenja-za-sporna-pitanja-nacrta-zakona>.

Since Serbia does not have a uniform system of recording social services, it is not possible to propose general and specialized services to be provided to women victims of violence. Furthermore, there is no system of specialized offices and services, nor is there a single victim support service. Women's organizations providing these services are neither recognized nor systematically supported by the state. Public sector providers of these services have neither the specialized skills required nor have they received training in this particular field.¹⁸⁵ A single SOS helpline has been established for the territory of AP Vojvodina, but it is absolutely uncertain when it will be operational (24/7) for the territory of the whole country, as required by the SE Convention (Article 24). Although the Law on Social Services (2011) foresees plurality of service providers, the public sector is favoured in practice, although centres for social services (CSS) may have a conflict of interests, as a result. The current process of standardizing services and licences for service providers disregarded the comments of women's organizations. Most centres sheltering women (and children) victims are run by the state: some of them are not specialized; none are available to women with disabilities; information on the capacity of these centres, their services, staff and budget is not available to the members of the public. There are no programmes for women after they have come out of the violence trauma, while removing children from the family after one parent (mother) failed to protect the child from the abuse of the other parent, without adequate CSS intervention, causes concern.¹⁸⁶ Programmes for abusers are being promoted and developed (by UNDP programmes), but for all the great optimism of their implementers (all persons involved in other matters in the public sector), no information on their scope and effects (delayed results) are publicly available.

Femicide

There is no official information on the phenomenon of a femicide, because statistics compiled by the state do not classify information according to the type of victim – abuser relationship. “Women against Violence” Network, which has followed up on the phenomenon since 2010, noted a continuing escalation of the number of women killed, which received no adequate social response¹⁸⁷, as also indicated by the Protector of Citizens in his Special Report

¹⁸⁵ Information provided by the *Women against Violence* Network (Report available at the Network's website).

¹⁸⁶ Report on the Work of Centres for Social Services in Serbia (2011 and 2012).

¹⁸⁷ <http://www.zeneprotivnasilja.net/femicid-u-srbiji>.

(2014)¹⁸⁸. Proposals made by AWC advocating introduction of specialization for law enforcers and risk assessment and risk management standardization were tuned down on several occasions.

Training of professionals

There are accredited training programmes on domestic violence and violence against women, sexual violence and trafficking in persons tailored for professionals from relevant services. AP Vojvodina has organised systematic employee education in the territory of all 45 municipalities. However, the growing number of trained professionals is no guarantee that the acquired knowledge will be applied in practice; it is therefore important to monitor systematically the work of these services and the results of the undertaken measures.

Sexual violence against women and girls Continues to be a taboo topic in Serbia. In 2014, only 60 persons (all men) were convicted of rape and a total of 167 persons (including 9 women) were sentenced for all other acts violating gender freedom.¹⁸⁹ A criminal act is qualified as rape only if committed with the use or threat of use of force, which is not in line with Article 36 of the Council of Europe Convention. It is inappropriate that fines should serve as punishment for impermissible sexual acts (CC, Article 182, paragraph 1), including cases where the victims were children. The Criminal Code provides for prosecution of marital rape only if the victim joins in the prosecution, rather than doing so *ex officio*, even if there is corroborating evidence the act was committed. This represents discrimination against wives *vis-à-vis* partners and other women (AWC amendment in this regard was also dismissed). There are neither general nor specialized protocols concerning treatment of victims of violence, nor are there any specialized, free services to be provided to victims of rape and other sex crimes (AWC proposals addressed to the Ministry of Health since 2013, have not been successful).¹⁹⁰

Prevention

There are no continued state-run awareness raising campaigns to stop the violence against women. The Provincial Secretariat for Labour, Employment and Gender Equality is conducting a campaign of raising public awareness “I want you to know!” Over the past few years, government institutions at all levels have joined the international campaign “16 Days of

¹⁸⁸Special Report of the Protector of Citizens (2014).

¹⁸⁹*Women and Men*, (2014), Republic Institute of Statistics.

¹⁹⁰<http://www.potpisujem.org/srb/962/za-uspostavljanje-centara-za-zrtve-seksualnog-nasilja-i-za-izradu-protokola-o-postupanju-u-slucajevima-seksualnih-delikata> .

Activism against Gender-Based Violence”. There is no systematic youth education in this area, while school and university syllabi and curricula do not cover gender-based violence.

RECOMMENDATIONS OF WOMEN’S ORGANIZATIONS:

- **Accelerate alignment of the law with the Council of Europe Convention on Preventing Violence against Women and Domestic Violence, and ensure direct implementation of the standards under this treaty in the legislation of R. Serbia. Provide for effective investigations and judicial proceedings, fully protecting the victims, sanctions commensurate with the severity of the crime committed, effective implementation of measures of protection against domestic violence.**
- **Impose urgent measures aimed at protecting victims from imminent danger, and compulsory risk assessment and management to prevent cases of serious injury and femicide.**
- **Amend the Draft Law on Free Legal Assistance to avoid problems with its implementation. Improve information of the victims of violence on all procedures, measures and services.**
- **Develop anti-discrimination policies and ensure (readily) available services for women belonging to groups subjected to multiple discrimination. Ensure long-term/sustainable funding from the budget (on national and local levels) for the work of women’s organizations providing specialist services to women (and children) victims of violence. Establish a free national SOS line (24/7) for providing information and anonymous support in a confidential manner.**
- **Enhance inter-sectoral cooperation on local and national levels, establish a model of uniform administrative recording of domestic violence and all other forms of violence against women, drawing upon the experiences of AP Vojvodina.**

4.2.4. Women trafficking

Major recommendations concerning women trafficking are contained in the OSCE documents.¹⁹¹

Comprehensive approach

Although the Strategy on Combating Trafficking in Human Beings was one of the first strategies to be adopted,¹⁹² the latest version expired back in 2011, whereas a new strategic document has not been adopted (despite the fact that a Draft National Strategy for 2013-2018, and an Action Plan have been developed).¹⁹³

The Action Plan for Chapter 24 envisages adoption of these two documents by September 2015. In addition to the existing Council for Combating Trafficking in Human Beings and coordinators (2008), the Government also created a Centre for Protecting the Victims of Human Trafficking (2012), as an institution within the welfare system whose major activity is focused on comprehensive victims' protection¹⁹⁴.

Funding

One of the fundamental problems in combating human trafficking in Serbia is the lack of sustainable and predictable budgetary funding.¹⁹⁵ Direct victim assistance continues to depend primarily upon the support of foreign donors, whereas state assistance is sporadic and unsystematic. Victim assistance provided within the framework of the existing system of social protection¹⁹⁶ and the state health system¹⁹⁷ is insufficient, inappropriate and not always available to all victims. New Strategy Drafts and Action Plans have been designed without ensuring a reliable flow of budgetary funding for their implementation. Some non-governmental organizations (mostly those not having a critical attitude towards the Government) receive *ad hoc* financial assistance.

Scope

¹⁹¹ OSCE Action Plan to Combat Trafficking in Human Beings (PC.DEC/557), OSCE Action Plan to Combat Trafficking in Human Beings (MC.DEC/2/03 Annex), Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach (MC.DEC/14/06), Combating Trafficking in Human Beings (MC.DEC/3/06).

¹⁹² Strategy of Combating Trafficking in Human Beings in the Republic of Serbia, "Official Journal of RS", No. 111/2006,

¹⁹³ Available at: http://www.mup.gov.rs/cms_cir/sadrzaj.nsf/nacrt-strategije-prevencije-suzbijanja-trgovine-ljudima.h

¹⁹⁴ Government of Serbia, Regulation concerning the network of social welfare institutions, "Official Journal of RS", No. 16/12.

Centre for the Protection of Victims of Trafficking in Human Beings, established as a welfare institution, makes assessments of the situation, needs, strengths and risks of the victims of human trafficking, identifies and provides adequate assistance and support to victims of human trafficking, for the purpose of their recovery and reintegration. More information on the work of the Centre available at: <http://www.centarzztlj.rs/>

¹⁹⁵ *A Shadow over Serbia* – Report from the shadow of non-governmental organizations for the 55th Session of the 2013 CEDAW Committee

¹⁹⁶ Law on Social Protection, "Official Journal of RS", No. 24/2011.

¹⁹⁷ Law on Health Care in the Republic of Serbia, "Official Journal of RS", No. 57/2011.

Different services have differently registered and reported on the numbers of victims of human trafficking. In 2014, there were 125 identified victims of trafficking in human beings, out of which number 19 victims were underage and 106 were of age, indicating an increase of 26% as compared to the previous year.¹⁹⁸ A new development compared to the previous years is that the male population accounts for 80% of the identified victims, most of whom were subjected to labour exploitation (78%). According to ASTRA¹⁹⁹ reporting, “the cases of labour exploitation are still at the stage of investigation and indictments have not been brought in any of the cases“, while only one previously identified case of trafficking for the purpose of labour exploitation has been proceeded against in Serbia. It is necessary to modify criminal legislation without delay in order to be able to hear the cases of labour exploitation not containing all elements of human trafficking under Article 388 of the Criminal Code and to bring the perpetrators to justice. Currently, there are some instances where impunity has been granted to persons organizing exploitation of construction workers. Additionally, other forms of exploitation have been neglected in terms of investigation and identification. In 2014, only some fifteen victims of other forms of exploitation were identified, accounting for a serious drop compared to the previous year. It is considered that official figures do not reflect the actual situation on the ground, particularly regarding sexual exploitation and women trafficking“.

Legal regulations

Legal regulations in the human trafficking area constitute solid grounds for protection²⁰⁰, but their implementation is weak in practice. There are many obstacles standing in the way of exercising victims' rights.²⁰¹ *Victim's privacy protection* (excludes publicity and institutions such as witness protection and protection of wronged parties) has not been much visible in practice, mostly because of lack of understanding for the sensitive position of the victims of human trafficking by judges and prosecutors. In terms of *legal assistance*, victims of human trafficking are dependent on NGOs. In 2012, the Ministry of Justice adopted a Special Protocol concerning

¹⁹⁸ Centre for Protection against Trafficking in Human Beings, 2014 Progress Report, (2015), Belgrade, <http://www.centarzztlj.rs/images/download/IZVESTAJ%20O%20RADU%202014.pdf>

¹⁹⁹ PREUGOVOR, Report on Serbia's Progress on Chapters 23 and 24 (May 2015)

²⁰⁰ Articles 388, 389 and 390 of the Criminal Code of the Republic of Serbia, “Official JournalRS“, No. 72/09; and Criminal Proceedings Code, “Official JournalRS“, No. 72/2009, 76/2010 and 121/2012.

²⁰¹ *Status of victims of human trafficking in court proceedings – Analysis of juridical practice for 2014*, (2015) ASTRA, available at: <http://www.astra.org.rs/wp-content/uploads/2015/06/ASTRA-pravna-analiza-2014.pdf>.

action taken by judicial bodies in the protection of persons who are victims of human trafficking in R. Serbia, which underlines the role of judicial authorities, particularly the prosecutor's office, in the observance and exercise of the victims' rights in criminal proceedings. According to the prevalent practice, victims of human trafficking are *heard* at hearings in the presence of the defendant, although this can be avoided. Proceedings in courts are *time-consuming*, whereas victims are summoned to give evidence after a considerable lapse of time, which acts as a serious obstacle to their rehabilitation efforts. *Sentences* passed on traffickers are within the scope of the legally prescribed minimum and only a small number of traffickers is sentenced to imprisonment. On the other hand, there are cases when the victims were prosecuted and convicted for acts perpetrated by them while they were victims of human trafficking,²⁰² resulting in unsatisfactory identification of victims and lack of an effective system to protect them. The present laws still do not incorporate provisions against prosecution and penalization of victims of human trafficking.²⁰³ There is no *free legal assistance*, either, for victims of human trafficking. *Compensation for damages* continues to be the weakest link in the access to justice by victims of human trafficking, because there is no state fund or a similar compensation mechanism to reimburse the victim and compensate him/her for court expenses, if funds to that end cannot be collected from the perpetrator. Since criminal courts are not keen on reaching compensation decisions, they advise victims to have a recourse to litigation, which is expensive and long-lasting, in addition to causing further and repeated traumas, as well as having an unpredictable outcome.

Specialist assistance to women is offered by civil society organizations. CSS lack specialized programmes, skills and sensitivity for working with victims of human trafficking. In the last 14 years, the only SOS phone line specializing in assistance to victims of human trafficking is operated by ASTRA with the support of foreign donors. Sometimes there is only a one-way exchange of information (NGOs give inputs to the police without getting any feedback). Although a large number of victims identified in Serbia are children, Serbian nationals, programmes of specialist assistance to, and reintegration of children are still lacking. There are no procedures for monitoring the provided services and their quality control. Shelters for victims

²⁰² <http://www.astra.org.rs/wp-content/uploads/2011/11/LegalAnalysisASTRA.pdf>.

²⁰³ Preliminary Draft Agreement (May 2015).

of human trafficking in Serbia has been a problem for years. The only accommodation facility currently operating is the one run by CSOs, whose capacity (of accommodating 5-6 persons) is insufficient for providing adequate assistance to victims.

Education of professionals

Despite numerous trainings, professionals in the legislation area have not yet grasped the phenomenon of human trafficking. Judges are frequently insensitive to victims' vulnerability and pay no attention to secondary victimization. In several cases, victims were put on trial for acts committed during their exploitation or in connection with it.

Prevention

All preventive activities are carried out by civil society organisations, with the support of foreign donors and cooperation of state institutions. Primary and secondary schools syllabi and curricula do not include topics related to trafficking in human beings. Cooperation has been established between the Police Academy and ASTRA organization, at an informal level.

RECOMMENDATIONS OF WOMEN'S ORGANIZATIONS

- **Adopt, without delay, a new Strategy and Action Plan on combating trafficking in human beings. Establish a mechanism of the National Rapporteur on human trafficking. Improve the identification process. Amend the Criminal Code of R. Serbia and clearly stipulate by the provisions of the new legislation that victims of human trafficking shall not be detained, prosecuted or punished.**
- **Enhance protection mechanisms for victims of trafficking in court proceedings to the effect of exercising the guaranteed rights and avoiding secondary victimization. Promptly ratify *the Council of Europe Convention on the Compensation of Victims of Violent Crimes* and adopt amendments to the law in order to encourage introduction of an effective and sustainable mechanism of compensating victims of trafficking and other criminal acts containing elements of violence.**

- **Develop and implement standards for procedures in all phases of victim protection – from identification to reintegration/voluntary return, as well as agreements on cooperation with civil society organisations.**
- **Develop and implement programmes of long-term reintegration of victims of trafficking, in accordance with Directives 2012/29/EU and 2011/36/EU, to be carried out by the state and which would be adjusted to the existing reintegration programmes and made available to all mixed/combined cases.**

4.2.5. Gender and security

A large number of OSCE commitments provides for a framework integrating the gender perspective or gender mainstreaming in the security architecture.⁵⁴

The National Action Plan for the implementation of UNSC Resolution 1325 – Women, peace and security in the Republic of Serbia (2010-2015) (NAP 1325) was adopted in 2010.⁵⁵ This document focused on establishing institutional mechanisms for the implementation and surveillance of the implementation of NAP 1325, and increased participation of women in military missions. Although, in the security sector, there has been an increase in women's participation and leadership positions, as confirmed also in the report of the Commissioner for the Protection of Gender Equality, more attention will be devoted to the state's attitude towards CSO participation in the processes of creation and implementation of women's organizations, in particular. They underlined as one of system-related obstacles to the implementation of the human rights of women, the militarisation of NAP 1325.⁵⁶

The entire process of drawing up NAP 1325 has been entrusted to the Defence Ministry and the major goals and priorities are focused on the security sector - primarily national security, whereas the human security concept was side-tracked. The Reports on the implementation of NAP 1325 were designated as confidential and were not available to the public, due to which

⁵⁴ OSCE Action Plan for the Promotion of Gender Equality (MC.DEC/14/04), Women in Conflict Prevention, Crisis Management and Post-Conflict Rehabilitation (MC.DEC/14/05), Country Visit to Serbia, Report of June Zeitlin, the Special Representative of the OSCE Chairperson-in-Office on Gender Issues, 2012, OSCE Gender Equality Review Conference Commitments, July 2014.

⁵⁵ http://www.carina.rs/cyr/Informacije/Documents/akcioniplanovi/Nacionalni_akcioni_plan_za_primenu_Rezolucije_1325_SB.pdf.

⁵⁶ *A Shadow over Serbia* – Report from the shadow of nongovernmental organizations for the 55th Session of the CEDAW Committee 2013.

Women in Black filed a complaint to the Commissioner, requesting free access to information of public importance, whereupon the Ministry declassified these documents. Currently, all reports are available on the Defence Ministry's website.⁵⁷ Women's CSOs neither influenced the process of NAP 1325 elaboration or its implementation, nor was their years-long experience taken into consideration, as a result of which it was assessed as an undemocratic, non-inclusive and non-transparent process and document.⁵⁸ The establishment of institutional mechanisms for NAP 1325 implementation had a delayed start and was accompanied by many obstacles (they were neither fully developed nor did they become fully operational before May 2013). The Commission for monitoring NAP 1325 implementation was set up only in February 2013, despite many limitations in the monitoring process (the report's uncoordinated indicators, structure and form). Modified composition of the document implementation body reduced the effect of investment into human resources in the gender equality area).

Independent follow-up to the NAP 1325 implementation was carried out by civil society organizations (2011-2013). The Women in Black report⁵⁹ focused on the protection of women who were victims of gender-based violence; inclusion of women in peace negotiations, post-conflict reintegration processes; rehabilitation and disarmament; impact of women on decision-making in defence and security areas, as well as the inclusion of civil society organizations in discussions on security topics. The monitoring report released by the Belgrade Centre for Security Policy⁶⁰ centred on the position and protection of women from discrimination in the security sector, employee gender-equality education, media reporting on women in the security sector and the role of CSOs in the implementation of documents and the monitoring thereof. Both organizations concluded that effective independent monitoring and reporting was hampered by an inadequate amount of transparency in NAP 1325 implementation. Women in Black reported that post-conflict problems, such as those related to the implementation of transitional justice mechanisms aimed at preventing impunity for crimes committed by Serbian nationals against women and girls during the wars in the former SFRY, and NAP implementation on the

⁵⁷ http://www.mod.gov.rs/sadrzaj.php?id_sadrzaja=4352

⁵⁸ *Resolution Women, Peace, Security – 10 years on*, Women in Black, Belgrade

⁵⁹ http://zeneucnom.org/pdf/nezavisni_monitoring_primene_rezolucije1325_u_srbiji.pdf and http://zeneucnom.org/pdf/nezavisni_monitoring_primene_rezolucije1325_u_srbiji2013.pdf.

⁶⁰ http://www.bezbednost.org/upload/document/nezavisni_izvestaj_o_sprovođenju_nap_1325_u_srbiji.pdf and http://www.bezbednost.org/upload/document/2013_nezavisni_izvetaj_sprovoenje_nap_1325_u_srbiji.pdf.

local level, have not been addressed by the institutions throughout the process of implementing this document.⁶¹ Not only that women other than those in the security sector were not recognized as actors in the peace and security decision-making process, but women's organizations were also not included even in the negotiations between Serbia and Kosovo, despite the fact that women's organizations from Serbia and from Kosovo created "Women's Peace Coalition" back in 2006. Lack of cooperation between the negotiation team and women's organizations in the dialogue between Belgrade and Pristina (2011/12) was indicated in CEDAW's concluding remarks (paragraph 29, subparagraph (b)). Ever since 2010, Women in Black have been urging the state to sign the *Convention on Cluster Bomb Ban*, referred to in NAP 1325. Disarmament is a precondition for the security of women, including security against family violence (most murders were committed with the use of firearms).⁶²

The remaining Hague Tribunal (ICTY) fugitive war criminals were arrested in 2011, whereby Serbia fulfilled its obligations in this respect, but it is not widely known that it was owing to women's activism in the former SFRY territory that rape in war-time was recognized as a war crime under international criminal law. Out of a total of 161 trials held before the ICTY, 78 included charges for acts of sexual violence (committed also against men, in some cases). Serbia has not taken any action to provide victims of sexual crimes with any compensation for the harm they had suffered, or legal or any other assistance.⁶³ The last five years have seen a number of assaults against human rights defenders, while the state has not taken adequate measures to protect them, thus creating an environment where assaults can go unpunished and where it is possible to disseminate hate speech or to make "lists" of *not grata* women and men human rights defenders. Even courts of law have been tolerant of the activities of nationalist groups by passing decisions not banning the activity of these organizations.⁶⁴

The Political Council of the Government of R. Serbia organized a conference in May 2005, inviting the public at large to participate in the dialogue aimed at assessing the NAP 1325 results achieved so far, and at defining the priorities for the next five years.

⁶¹ *A Shadow over Serbia – Report of Nongovernmental Organizations for the 55th Session of CEDAW Committee 2013.*

⁶² Lacmanović, V., (2013), *Femicide - Killing Women in Serbia* – Report for 2012, Women against Violence Network, Belgrade.

⁶³ Independent Monitoring of the Implementation of Resolution 1325 in Serbia (2011), Women in Black, Belgrade, available at: http://zeneucrnomo.org/pdf/nezavisni_monitoring_primene_rezolucije1325_u_srbiji.pdf.

⁶⁴ Ibid.

RECOMMENDATIONS OF WOMEN'S ORGANIZATIONS:

- **Create a mechanism for substantive (not only formal) inclusion of women's organizations and groups in the NAP 1325 review, policymaking and work on its implementation. Include in the new NAP issues of human security and substantive women's participation in post-conflict situations resolution (issues of transition justice, negotiations concerning Kosovo, demilitarization).**
- **Ratify without further delay the Convention on Cluster Bomb Ban. Develop reparation mechanisms for all victims of sexual and gender-based violence, and other crimes against humanity, committed by the citizens of R. Serbia, during the wars in the former SFRY.**
- **Ensure state responsibility for full protection of women and men human rights defenders.**
- **„Localize” NAP 1325 and make it commensurate with the real needs of women and the local community in the security area, focusing on human, and not on national security.**
- **Provide follow up to the work of bodies (and persons) in charge of NAP 1325 implementation and monitoring during the document's validity period. Define impact indicators and provide reports on activities and effects, available to the public.**

4.2.6. Employment

Although the Republic of Serbia recorded growth in employment in 2013, the employment rate for adult population accounted for 37.7%, which is 47.5% of the population of working age, whereas the difference between women and men was 14.8% in favour of employed men. The unemployment rate for women (24.6%) is higher than that for men (21.7%), and continues to rise. The long-term unemployment rate was 17.5% in 2013, i.e. it exceeded fourfold the EU average, and was 2.5% higher for women than for men. The share of long-term joblessness in the overall number of jobless is very high, accounting for a sharp rise to 76% in 2013, witnessing the fact that the status of a large number of persons who had lost their jobs at the outbreak of the crisis, remained unchanged. Women also account for a higher percentage of

inactive population (46.8%) as compared to men (29.9%), as a result of their family duties (most often related to childcare or care for adult persons with disabilities) and their lower-paying jobs potential when joining the labour market.⁶⁵ There is an enormous difference between men and women in the exercise of leave of absence entitlements for family reasons.⁶⁶ There is a higher unemployment rate for women coming from marginalized social groups compared to those of the general population. Families where breadwinners are women, particularly those with less skills as to their educational background, run a higher risk of poverty. Elderly, unemployed women and single mothers, whose education does not go beyond primary education, those from economically underdeveloped areas, Roma women, women with disabilities, rural women are the biggest losers of transition, since they are least likely to get a job⁶⁷.

Informal employment is relatively high in Serbia, whereas work „in the grey-area zone“ goes hand-in-hand with low pay and low level of protection at the place of work, poor working conditions, absence of health and social security benefits, with a higher risk of lay-offs, accounting for 19.3% of the population.⁶⁸ The number of self-employed men is twice as high as the number of self-employed women (29% men and 14% women in the age group of 15-64). The situation of rural women is particularly hard. Women appear to head agricultural holdings (only 17.3%) less frequently than men, whereas this number increases only in the age group of over 65 (47%). There is a significant majority of women among family members actively working in agricultural holdings (62.9%), though they are a distinct minority among those working full-time on those holdings (only 14.8%), which has a negative impact on their self-sustenance, as well as on their social security, health and retirement benefits. An additional burden for rural women is an inefficient services system (healthcare, childcare and care of the elderly). A small number of women participates in programmes of farm support and subsidies, the reasons for this should be found not only in the lack of information, but also inadequate subsidy application requirements as compared to their potentials and needs.

⁶⁵ *Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia* (2014), Government of RS.

⁶⁶ On average, approx. 33,000 women annually exercised their right to maternity leave of absence, and only 10-15 men have taken their paternity leave (data obtained from the Ministry of Labour and Social Policy, 9. 2. 2012).

⁶⁷ *Gender in Transition*, UNDP, 2007.

⁶⁸ *Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia* (2014), Government of RS.

Gender-based segregation persists on the labour market according to qualifications and branches of economy, though less so when highly-skilled labour is concerned. Gender-based differences in choosing an occupation, lack of technical preparedness and inability of women to accept jobs requiring frequent travel and longer absence from home make it more difficult for women to opt for quality and well-paid jobs. Women mostly take up low-paid jobs, leaving them enough free time for the family.

Gender-based average employee earnings can be indicated only for persons employed by legal entities, and not for those employed by individuals, whereas the gender pay gap of 12% is the balance between gross average earnings per hour of work received by women and that received by men (this does not include earnings of persons employed by individuals nor does it reflect an average hourly pay).⁶⁹ Aside from earnings issue, the working environment is a frequent source of frustration and discrimination for women, including their possible abuse and harassment at the work post or their layoffs because of maternity leave; however, there is no information on reactions to such occurrences. Many employers are reluctant to employ women at positions traditionally held by men; they look for attractive appearance, require fulfilment of tasks not included in job description, request information on family and maternity planning, because of which the Women against Violence Network filed charges, on several occasions, with the Commissioner for the Protection of Equality. There are no systematic records of the prevalence of sexual harassment of women at work. Measures related to the principle of flexy security (particularly flexible working hours and work from home) and their popularization for women may have long-term effects (on earning levels, career development, promotion prospects and the amount of pension benefit). Almost half the number of old age pension recipients are women, while the recipients of almost two thirds of disability pensions are men. The pensions received by women in both categories are much lower, i.e. their age pensions are 20%, and disability pensions 16% lower.⁷⁰

CEDAW expressed concern over discrimination against women at workplaces and recommended measures of improvement to the state (paragraphs 30 and 31).

⁶⁹ *Women and Men*, (2014), Republican Institute of Statistics.

⁷⁰ *Ibid.*

RECOMMENDATIONS OF WOMEN'S ORGANIZATIONS:

- **Provide for legal amendments to ensure better employee protection, as well as measures aimed at consistent compliance with laws. Adopt measures designed to apply the principle of equal pay for work of equal quality. Develop indicators and ensure regular monitoring of measures aimed at reducing gender segregation on the labour market, the gap between the wages of men and women, vertical mobility of women.**
- **Increase access of women to employment and entrepreneurial jobs, particularly of women belonging to groups that are subjected to multiple discrimination. (Roma women, women with disabilities, elderly women, single mothers, rural women, women with lower skills, etc.). Adjust the programmes of the National Employment Office to cater to the needs of specific groups of women. Impose higher quality assessment measures aimed at active employment policy. Closely monitor the effects of principle of „flexy security“ to prevent long-term negative effects.**
- **Facilitate blending of professional and private life for both women and men, including the improvement of social and integrated services, and encourage men to participate on equal terms with women on the labour market.**
- **Raise awareness of discrimination against women in the context of employment, sexual harassment and abuse in the place of work, enhance measures to prevent such phenomena (including the role and the powers of inspection) and establish an effective mechanism to protect women reporting on it.**

4.2.7. Roma women, tolerance and non-discrimination

A large number of OSCE recommendations is related to the status of Roma women in all areas of social life.⁷¹

⁷¹ Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (MC.DEC/3/03 Annex); OSCE Ministerial Council Decision 4/13, Enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, with a Particular Focus on Roma and Sinti Women, Youth and Children, OSCE Action Plan to Combat Trafficking in Human Beings (MC.DEC/2/03Annex), OSCE Strategic Framework for

It is an overall assessment that the Roma population in Serbia is one of the most vulnerable categories and most severely affected by discrimination and hate speech, whereas the status of Roma women is particularly unfavourable, as reflected in the progress reports by the European Commission, independent regulatory bodies and by researchers. The Commissioner for the Protection of Gender Equality stated: “The status of the Roma national minority in Serbia is a source of greatest concern, as it is the target of overt, omnipresent and widespread hate speech, including frequent assaults.”⁷² Both CEDAW and the UN Committee on Economic, Social and Cultural Rights urge the state to undertake measures aimed at eliminating discrimination against Roma and enabling them to exercise their rights.⁷³ The Decade of Roma Inclusion has expired and the period starting January 2015 is referred to as the new “Second Decade”⁷⁴ process.

Strategic documents

Issues related to Roma men and women have been dealt with in a number of individual strategies,⁷⁵ whereas the *Strategy for Improving the Status of the Roma and NAP* (2009-2011) incorporated a chapter on the status of Roma women. Implementation of these measures is fraught with numerous problems including lack of coordination between the competent authorities, lack of monitoring and reporting mechanisms, lack of harmonization with local documents, non-inclusion of Roma women in the process of local strategy adoption, lack of budgetary funding for NAP implementation, lack of a consistent policy on affirmative action measures (except for specific measures in education and employment areas),⁷⁶ while measures, envisaged by these documents for inclusion of Roma women and other groups of women

Police-Related Activities (PC.DEC/1049 Annex), 2004 OSCE Action Plan for the Promotion of Gender Equality (MC.DEC/14/04)

⁷² Regular Annual Report of the Commissioner for Gender Equality Protection for 2011 (2012), Belgrade.

⁷³ *Concluding observations on the Second Periodic Report of Serbia* (May 2014), UN Committee on Economic, Social and Cultural Rights <http://www.ljudskaprava.gov.rs/index.php/ljudska-prava/konvencije/54-pakt-o-ekonomskim-socijalnim-kulturnim-pravima>.

⁷⁴ Source: http://www.ligaroma.org.rs/images/stories/saopstenja/SKRUG_Second_Decade.pdf

⁷⁵ Strategy of Enhancing the Status of Roma in the Republic of Serbia, “Official Journal RS, 27/09”, Strategy of Poverty Reduction, National Strategy for Refugees and Displaced Persons, Strategy on Migration Management, National Strategy for Improving the Status of Women and Enhancing Gender Equality, Strategy on Reintegration of Returnees under the Readmission Agreement, Strategy on Combatting Trafficking in Human Beings of the Republic of Serbia, etc.

⁷⁶ *Roma Women Negotiate – Shadow Report addressed to the Committee on Elimination of Discrimination against Women, for consideration at the 55th Session*, (2013) Roma Women's Network of Serbia, BIBIJA, Roma Women's Centre.

subjected to multiple discrimination in the decision-making processes were hardly implemented at all.⁷⁷

Participation of Roma women in the decision-making process

Roma women have been almost entirely cut out of the decision-making process and the political life of Serbia. Nevertheless, being involved in activism at the ‘grassroots’ level and empowered as part of the “women’s movement” – they established the Roma Women’s Network of Serbia, in December 2004.⁷⁸

Since most of the state institutions’ reports indicate that employee records are not held according to ethnic origin, it is difficult to draw conclusions on the representation of Roma men and women in the public sector. The Interior Ministry (MUP) did follow the recommendations of the Protector of Citizens on undertaking measures to enable persons belonging to national minorities, as well as persons of other ethnic backgrounds in addition to having the nationality of the Republic of Serbia, to apply for police training programmes and be employed by this Ministry.⁷⁹ Positive activities of the Office for Human and Minority Rights and MUP have been observed in recent time.⁸⁰ In the Ministry of Defence and the Serbian Armed Forces there are 0.19% employed Roma men, and no Roma women.⁸¹

Education

The Roma Women’s Network underlined that many Roma women, and girls in particular, are not exercising their rights to pre-school and elementary education. Roma children continue to be discriminated against in the education area, while cases of segregation have also been observed in previous years. A mere 6% of children from Roma settlements, who are 3-4 years

⁷⁷ *Monitoring Public Policies: Effects of the Roma Decade on the Status of Roma Women in the Republic of Serbia*, (2014), BIBIJA Roma Women’s Centre, Beograd.

⁷⁸ Ibid.

⁷⁹ *Regular Annual Progress Report of the Protector of Citizens for 2014* (2015), Belgrade.

⁸⁰ Project supported by the Office for Human and Minority Rights, implemented by Police Association “European Policemen of Roma Nationality and Public Policies Research Centre.

⁸¹ This percentage is related to employees both of the Defence Ministry and the Armed Forces and exceeds the percentage of professional military personnel who declared themselves as Albanians, Bosniaks, Vlachs, Bunjevci, Slovenians, Romanians, Italians, Germans.

old, attend pre-school programmes; only 69% children of school beginning age attend the first grade of elementary school, while only 22% children aged 14-18 attend secondary school.⁸² A particular problem is posed by “the dropping out of the education process” by Roma girls (usually of age 11-12), their early marriages and childbirth (half of them give birth before the age of 18). Competent institutions have not developed an adequate strategy for addressing this problem: punishing parents whose children do not attend school regularly has proved to be ineffective and counterproductive, although active participation of Roma families in the education of girls should be one of the basic measures to be taken, including provision of adequate funding.⁸³ Roma women have expressed concern about care and raising of children, and the related threats (security of children at schools and peer violence/bullying at school), as well as the attitude of the school faculty and staff who either reacts inappropriately or discriminates against Roma children.⁸⁴

Employment opportunities

At the end of 2013, the National Employment Office (NSZ) registered a total of 22,102 Roma children, 46% of whom were women (2.9% of the total number of employed persons). Out of the total number of registered persons, 89.8% are unskilled; 9.8% have secondary school education, while only 85 persons (0.4%) have a college or university degree.⁸⁵ The unfavourable status of the Roma population on the labour market (offered low-paid and temporary jobs) is the result not only of the low level of their education and vocational training, but also of their discrimination by potential employers. Most NSZ programmes require a specific level of training and professional skills, so even when they are given priority, Roma women fail to fulfil the conditions necessary for joining these programmes. An increase in grey-economy jobs has stepped up exploitation of, and discrimination against, women including Roma women.

Health care

⁸² *Multiple Indicator Cluster Surveys (MICS) – Serbia 2014*, UNICEF and Republican Institute of Statistics: http://www.unicef.org/serbia/Srbija_2014_MICS_Rezime.pdf.

⁸³ *Monitoring Public Policies*, (2014), BIBIJA Roma Women Centre.

⁸⁴ *Roma Women and Men and the Security Sector Reform in the Republic of Serbia: How Roma women and men perceive their own security and the work of security sector institutions*, (2014), Centre for Public Policy Research, Belgrade

⁸⁵ *Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia*, (2014), Government of RS.

The level of Roma women's access to health care continues to be inappropriate,⁸⁶ including professional assistance in child delivery and prenatal healthcare, due to which infant mortality in Roma settlements by far exceeds that of the population in general, especially in the case of uneducated mothers. The use of contraceptives is on a low level.⁸⁷ From 2008 onwards, the Ministry of Health has recruited (within a donor-funded project activity) 75 women health facilitators in 59 municipalities in Serbia, tasked with acting as intermediaries between the Roma community and health institutions, which brought about significant improvements in the health status of the Roma population (health records, home visits, health insurance, choice of physician, gynaecologist, child and adult immunisation), while families were provided assistance from welfare funds, child allowance, one-time aid or from other sources.⁸⁸ Roma women's organizations are concerned about the unpredictability of the status of Roma women health facilitators (their contracts are fixed term and their jobs are project funded), the fact that the number of these facilitators falls far short of the needs (some municipalities with a large Roma population do not even have such facilitators), as well as about the need for them to undergo additional training on gender-related issues.

Housing

Living conditions are most inappropriate in many Roma settlements in Serbia, lacking even basic infrastructure (heating and insulation, sewerage, tap water). From the legal point of view, housing for a large number of Roma is not of a permanent nature, while their communities are frequently remote from public services, education facilities and employment opportunities. Women who spend more time at home are affected by poor living conditions more than men, as a result of which their health is more at risks.⁸⁹ Between April 2009 and May 2012, there were 17 Roma (including girls, the elderly, pregnant and ill women) who were evicted from informal settlements in Belgrade to segregated and isolated locations.⁹⁰

⁸⁶ Regular Annual Progress Report of the Protector of Citizens for 2014 (2015), Belgrade.

⁸⁷ *Roma Women Negotiate – Shadow Report addressed to the Committee on the Elimination of Discrimination against Women for consideration at the 55th Session*, (2013).

⁸⁸ Fourth Symposium of Women as Health Mediators – Challenges and achievements in the work of women as health mediators (2014), Ministry of Health RS.

⁸⁹ Written comments by the European Roma Rights Centre, Bibije, Eureka and Women's Space for consideration at the 38th CEDAW Committee Session, 2007, available at <http://www.errc.org/cms/upload/media/03/7D/m0000037D.pdf>.

Violence against Roma women

Roma women are not only victims of domestic violence, but also of other “custom-related practices” such as early and prearranged marriages, bride sales. There has been no extensive research on the prevalence of violence against Roma women, whereas the information provided by CSOs indicates that 75% Roma women stated that they had been victims of domestic violence at some point in their life,⁹¹ which is seldom reported to institutions that hardly offer any support, as they do not believe the accounts given by women victims, attributing violence to “Roma tradition and way of life”. Roma women do not trust institutions (particularly centres for social services) and are ill-informed about the services and types of assistance provided.⁹² Roma women’s organizations provide a specialized SOS phone line in the Roma language, but it is questionable for how long it will be operated, because of the lack of permanent funding either by the state or local government, but also due to complex licensing procedures. Information on underage and prearranged marriages, and the bride sale practices is worrying: 43% women between 15 and 19 years old are married, while these numbers are even higher for women coming from the poorest families and those with poor education (52%).⁹³ Despite the fact that the National Strategy has envisaged provision of an effective mechanism for identifying, preventing and addressing this problem, no progress has been achieved, while this practice (often) continues to be institutionally accepted as „Roma tradition“ which cannot and should not be prevented.⁹⁴

RECOMMENDATIONS OF WOMEN’S ORGANIZATIONS:

- **Increase the participation of Roma women in public and political life, at all levels.**
- **There is a need for ensuring coordination of measures and the work of competent authorities and institutions on national and local levels, as well as implementation in practice of regulations and strategic documents, in order to achieve better results in their implementation. It is also necessary to provide budgetary funds for the**

⁹¹ Monitoring public policies (2014), BIBIJA Roma Women’s Centre.

⁹² Ibid.

⁹³ *Multiple Indicator Cluster Surveys (MICS) – Serbia 2014*, UNICEF and Republican Institute of Statistics.

⁹⁴ *Roma Women Negotiate – Shadow report addressed to the Committee on the Elimination of Discrimination against Women, for consideration at the 55th Session, 2013.*

implementation of measures and activities aimed at improving the status of Roma women.

- **Develop measures to increase access to education by Roma children and adults, including expansion of programmes and training for „pedagogical assistants“ concerning the topics of gender equality and specific problems of Roma women and girls. Develop strategies aimed at preventing discrimination against and segregation of Roma children in the education system. Organize systematic monitoring of beneficiaries of affirmative action in education. Provide by way of external, independent evaluation the analysis of all measures and their effects.**
- **Adjust the programmes of active employment measures to better meet the needs of Roma women and establish an effective system of monitoring and evaluation of the impact of these measures.**
- **Ensure continued engagement and increase the number of Roma health facilitators. Organize additional training for facilitators related to the gender equality issue. Organize awareness raising programmes for Roma women and girls on the rights of reproduction and family planning.**
- **Improve information and establish services available in the Roma language, including the raising of awareness of all service providers in the public sector concerning the specific problems facing Roma women who were victims of violence.**
- **Ensure the establishment of mechanisms by competent national and local institutions for monitoring and preventing instances of forced and prearranged marriages, betrothal of minors, „bride sales“ and the practice of other harmful customs, in accordance with the standards embodied in the Council of Europe Convention on the Prevention and Combating of Violence against Women and Domestic Violence.**

4.2.8. Media

Media are dominated by a highly stereotyped role of women, reflecting not only the perception of women by the society, but the manner of establishing cultural values and social relations, as well. The deeply rooted traditional, patriarchal stereotypes of the role and duties of a

woman and man in the family and the community are revitalized by the return of retrograde political powers.⁹⁵ When portraying women, the media resort to stereotypes ranging from “symbolic exclusion” to “ghettoization” of women’s experiences and interests.⁹⁶ Print media are still strictly divided into serious (men’s) press (important political and social themes) and entertainment magazines (light social themes and family). Women’s major public engagement is to entertain. Women must justify their appearance and success beyond the expected women’s themes (a way of balancing between “career and family”).⁹⁷

Reporting on cases of violence against women is characterized by non-recognition of “hegemonic masculinity as the main cause of gender-based violence”.⁹⁸ There have been attempts at relativizing responsibility/guilt and reducing the scale of crimes committed by men, as well as seeing the victim’s “contribution”. The sources of information used for media reporting are more frequently family and neighbours than competent institutions, and even when the latter are involved, their responsibility is overlooked. Thus, media are missing their opportunity to participate in continued monitoring of the work of public services, as well as to put public pressure in order to promote state responsibility.⁹⁹ There was a recent case (2015) where after the showing of a reality DNA programme (on Television Pink with national frequency) when paternity of a person’s minor children was being established at the initiative of programme participants, that person beat his wife to death – the two of them were guests in the programme. Many CSOs filed a petition requesting that the programme be taken off air, while the Women against Violence Network registered a complaint with the Serbian Broadcasting Agency (RRA), demanding that the programme be suspended and that the national frequency licence of the broadcaster be revoked. The Agency failed to reply even after three months passed. The media informally released information that the complaint had been dismissed.¹⁰⁰

⁹⁵ Višnjić, J., (2012), “Killing me softly”: Print media reporting on women victims of violence, *Genero – magazine for feminist theory and cultural studies*, 16/2012, Centre for Women Studies and Faculty of Political Sciences, Belgrade.

⁹⁶ Milivojević, S., *Women and Media: Exclusion Strategies*, available at: http://web.fmk.edu.rs/files/blogs/2010-11/MI/Med_kul_razl/Snjezana_Milivojevic.pdf.

⁹⁷ Ibid.

⁹⁸ Mršević, Z., (2014). *Media reporting on violence against women in 2013. Annual Report of the Observatory for Monitoring Violence against Women 2013*, Women against Violence Network and European Women’s Lobby Network, Belgrade.

⁹⁹ Višnjić, J., (2012).

¹⁰⁰ Women against Violence Network, <http://www.zeneprotivnasilja.net>.

There are widespread negative stereotypes against women in positions of power, as well as against women from marginalized social groups, such as Roma women, women with disabilities, those living with HIV/AIDS, gay women, single women and childless ones. Accordingly, CEDAW recommended Serbia to improve the situation with respect to stereotypes against women, as a prerequisite for enabling them to exercise their rights (paragraphs 20 and 21).

RECOMMENDATIONS OF WOMEN'S ORGANIZATIONS:

- **Ensure effective implementation of the existing legislation and Code of Journalistic Reporting, in order to prevent discrimination against and exclusion of women, particularly those from groups marginalized on multiple basis.**
- **Encourage media - through active cooperation between media editors, journalists, gender-equality mechanisms and civil society organizations - to promote nonstereotyped roles of women and men, and to use gender-sensitive language.**
- **Ensure, in reports on violence against women, full protection of the privacy of the victim and witnesses of criminal acts, and promote understanding of the phenomenon in order to avoid prejudices and justification of violence and secondary victimization of the victim.**

4.3. Comments offered by the Coordination Body for Gender Equality of the Government of Serbia

REVIEW OF THE STATE OF GENDER EQUALITY IN THE REPUBLIC OF SERBIA (Excerpts from the working text of a strategic gender equality document, 2016-2020)

ENTREPRENEURSHIP

Over the past few years, the Ministry of Economy, along with the network of its institutions for supporting entrepreneurship, implemented a number of different projects aimed

at stimulating women's entrepreneurship through allocation of grants earmarked for providing business subsidies, increasing competition, innovations, encouraging exports and rapidly growing companies; non-financial support of women-led companies was enhanced, media promotion of women's entrepreneurship was launched, giving examples of successful entrepreneurs. Many donor programmes were implemented, whereas the state cooperated both with the Network of EU ambassador entrepreneurs (2010-2012), as well as with mentor programmes for women's entrepreneurship (2012-2013) and a number of non-governmental associations. In 2012-2013, a series of meetings and roundtables were organized at the national, regional and local levels, with the participation of representatives of the Government, private and public sectors, with a distinct aim of informing and advising on the elaboration and implementation of measures aimed at promoting women's entrepreneurship.

Since 2012 the Ministry of Economy and the National Regional Development Agency have been implementing the Programme of providing a standardized set of services for micro, small- and medium-sized companies and entrepreneurs, carried out through accredited regional development agencies (ARRA). In 2013, out of the total number of trainees 49.5% were women, while their number dropped to 48.54% in 2014. The Fund for the Development of the Republic of Serbia (DF) made available, for the first time in 2012, a credit line on favourable terms designed to support women's entrepreneurship.

In the framework of the new Strategy for supporting the development of small- and medium-sized companies, entrepreneurship and competition in the period from 2015-2020, which the Government adopted together with the Action Plan, on 26 March 2015, a special pillar was devoted to women's entrepreneurship. Women entrepreneurs participated in the elaboration of this document through their associations. A significant support to women's entrepreneurship was provided in the previous period by women's self-help programmes, i.e. through the activities of women-entrepreneur associations which organized many trainings, workshops and promoted examples of good practices by presenting awards. There is a wide range of public and civil organizations supporting women's entrepreneurship, in cooperation with the Ministry of Economy. This cooperation will be continued through the Government's provisional working body – Council for small- and medium-sized companies, entrepreneurship and competition (MSPP Council), whose foremost objective is to oversee and coordinate the implementation of the Strategy for the MSPP development (MSPP Council was established on 14 May 2015).

The Ministry of Economy and the United Nations Agency for Gender Equality and Empowerment of Women (UN Women) participated, in 2012, in the implementation of the Project “Enhancing the support of women’s entrepreneurship in the Republic of Serbia” including the elaboration of the “Initial study on women’s entrepreneurship in Serbia”¹, giving insight into the scope and characteristics of women’s entrepreneurship in Serbia. The initial study

was supplemented by the report “Gender analysis of the existing state measures aimed at supporting entrepreneurship in Serbia”², which analysed for the first time from the gender aspect, selected state programmes supporting entrepreneurship in Serbia, making recommendations for its promotion.

These and other studies³ confirm the persistence of the gender gap in the business sector, indicating that the gender aspect has not yet been appropriately integrated in the institutional and normative framework. Women account for only a quarter (25.80%) of the highest decision-making positions in companies (positions of general managers and presidents of management boards) and make up somewhat less than a third of entrepreneurs (31.70%). The number of women entrepreneurs heading companies is particularly low (only 19.60%). Research findings have also identified a trend according to which women have more difficulties in making their way to top positions when they are not the sole owners of companies, i.e. when there are more owners and when there is, consequently, greater competition among colleagues for top managerial positions. Data has shown that companies headed by women have greater difficulties in maintaining viability, and are characterized by a higher closure rate. The gender gap is evident also in the sector structure of women and men entrepreneurships. Women are more frequently involved with trade – as many as 40% women entrepreneurs are heading companies in this sector. The perception of gender specific problems indicates that 20.6% of active women entrepreneurs have experienced different treatment as compared to their men colleagues, whereas 76% of women believes that women are not accepted or taken seriously in business. The

¹Babovic, M. (2012), *Полазна студија о предузетништву жена у Србији* (“Initial Study of Women’s Entrepreneurship in Serbia”), Belgrade: United Nations Development Programme

²Avlijas, S. (2012), *Родна анализа одабраних државних мера за подршку предузетништву у Србији*, (Gender Analysis of Selected Stated Measures of Supporting Entrepreneurship in Serbia”), Belgrade, United Nations Development Programme

³Babovic, M. (2014), *Положај жена у бизнис сектору у Србији – студија* (Position of Women in the Business Sector in Serbia – a Study), Belgrade: Ministry of Labour, Employment, Veterans’ and Social Issues

less favourable position of women in the business sector results from their greater responsibilities for their families and households, as well as from different forms of discrimination and gender based prejudices. Women also less frequently hold titles to real estate registered to their names, because of which it is harder for them to take out loans, as they lack the required collateral.

AGRICULTURE AND RURAL AREAS

Rural women constitute one of the most vulnerable groups in respect of equal opportunities in the exercise of human rights in all areas of public and private life, ranging from the possibilities of equal participation in state positions of power and decision-making, the community and family, to equal access to health, educational institutions and social and other services, financial and other resources⁴. Housework, care for children and the elderly is almost entirely left to them. In addition to intensive work in agriculture, this workload poses a heavy burden to them. The lifestyle of rural women is predominantly traditional and patriarchal, due to which they are subjected to double marginalization – both as members of rural agricultural holdings, and because their access to earnings and decision-making is limited by their economic and family household organization. In most cases, they do not decide on agricultural production. Gender inequality is highly evident in terms of property. In 88% of the cases, the houses they live in are owned by men, and 84% of them do not own land and almost none of them own machinery and tools for agricultural production. Women account for 55% of the unemployed rural population, and 74% of unpaid assisting members of agricultural holdings. Their retirement and health insurance coverage is only a fraction of that of male household members. Such status increases their risk of poverty.

The low quality of life of rural women is further aggravated by their hampered access to health care services. There is poor accessibility of health services, consisting solely of addressing basic health problems, while 9% of women do not have any health insurance. As a result of unsatisfactory presence of health institutions in rural areas, most women have to go to towns for specialist examinations and to buy medication, which is very expensive for them

⁴Bogdanov, N., Tomanovic, S. Cvejic, S. Babovic, M. and Vukovic, O. (2011), *Пристап жена и деце услугама у руралним областима Србије и предлог мера за унапређење стања (Access of Women and Children to Services in Rural Areas in Serbia and Proposed Measures for Improvement)*, Belgrade: SeCons

financially and time consuming. For these reasons a large number of rural women have an impaired health. There is also a shortage of other available services, including in education, social protection, services enhancing the economic potential of the population, and those relevant for social and cultural participation. Consequently, women's economic and creative potentials are insufficiently used, and they are the subject of a high level of economic, physical and social insecurity. They are often discriminated against on many grounds. Members of additionally marginalized groups, such as Roma women, elderly women, women with disabilities and illiterate women are in a particularly difficult situation. The underlying reasons can be found in deeply-rooted, patriarchal gender roles and stereotypes, and the inadequate care of the state for this population group.

In recent years, certain progress has been made in taking measures aimed at improving the economic and social position of the rural population, especially women. In 2009, the Ministry of Agriculture granted subsidies through public competitions to the effect of reducing unemployment of rural population, women in particular, which would increase earnings of agricultural holdings. To that end, a Regulation on the allocation of funds for supporting the development of rural activities other than farming for 2010 was adopted in 2010 ("Official Journal of RS" No. 17/10). The Regulation provided that associations could apply for subsidy support for projects earmarked, at the same time, for the procurement of raw material and employment of rural women in handicrafts if, among other conditions, they fulfilled the requirement of engaging a minimum of five women members of associations for a period of not less than 6 months, to the effect of reaching the goals for which the association had been established. Women's associations were particularly encouraged to apply in order to benefit from these subsidies. Subsidized production was also envisaged for rural women through the Regulation on the conditions and manner of using subsidies for rural development support through investments in agricultural holdings for the production of vegetables, cereals, industrial crops, as well as for the procurement of the basic herd/flock in animal husbandry for 2010 ("Official Journal of RS", No. 15/10, as well as the Regulation on the conditions for and manner of using subsidies for rural development by investing in agricultural holdings for milk and meat production in 2010 ("Official Journal of RS", Nos. 15/2010, 33/2010 and 59/2010). Out of 340 agricultural producers funded on the basis of the competition for supporting fruit production, carried out in 2012 and 2013, 53 were women (15.0%). In 2013, the Regulation on subsidies

aimed at enhancing economic activities in rural areas by supporting non-agricultural activities (“Official Journal of RS”, No. 81/2013). Under the said Regulation, competitions were announced in 2013, 2014 and 2015, for which women received additional 10 points for better placement.

In the period under review, the biggest growth in the participation of non-commercial agricultural holdings out of the total number of agricultural holdings (PG), compared to other indicators, was marked by those headed by women, amounting to even 102.3 % in 2015 as compared to 2013. Furthermore, the total number of holdings in this category, headed by women, increased in 2014 by 34% as compared to 2013, rising from 16,889 in 2013 to 22,634 agricultural holdings in 2014.

The share of PG that are entitled to subsidy support (active + commercial), headed by women, in the total number of PG in this category indicates a rather modest growth tendency in 2015 as compared to 2014, of only 1.8%, indicating in terms of numbers that the number of holdings increased from 72,754 in 2014 to 78,977 in 2015, or was up by 9 %.

Regarding the possibility of agricultural holdings headed by women benefiting from the right to subsidy support in agricultural and rural development, it is particularly important to note that out of the total number of registered holdings headed by women, more than a half of these holdings (active + passive) are classified in this category (approx. 60%). The total number of these PGs entitled to subsidies is on the rise, both in absolute and relative terms. Namely, the total number of holdings headed by women, belonging to this category, increased from 72,754 in 2014 to 78,977 PGs in 2015, that is, from 55.9% in 2014 to 60.3% in 2015.

The strategy of agricultural and rural development in the Republic of Serbia from 2014-2024 reflects the situation of gender equality in rural areas, in terms of their economic share in the rural population. There is a smaller number of active women, employed women and those working outside the area of agriculture, than men. As regards regional differences, it can be noted that in the AP of Vojvodina, the share of unemployed women is somewhat smaller than that of men, which does not mean that their economic status is better, since less women than men are employed in the non-agricultural sector, they are less involved in agriculture and a considerably larger number of them is inactive. The position of women is far more unfavourable in Southern and Eastern Serbia where the gender gap is much more evident in all segments of the labour market. One of the basic policy objectives is to create favourable conditions for life and

work of youth in order to keep them in rural areas and to provide more attractive jobs and equal opportunities for their families. The process of creating measures of supporting rural development in the framework of *IPARD II (Instrument for Pre-Accession Assistance for Rural Development)* within the programme for 2014-2010, includes gender equality principles. Selection criteria give priority to entrepreneurs, while the programme will provide for the inclusion of rural women organizations in the process of designing local rural development strategies through partnerships with Local Action Groups (LAG), and the implementation of gender equality principles in LAG management boards. Special attention will be devoted to the extent to which women managing agricultural holdings and companies have benefited from measures of support under this programme, and how much it has affected gender equality. The activities concerning information and promotion will also be aimed at equal participation of women and men.

The measures and selection criteria provided under the Draft National Rural Development Programme of the Republic of Serbia for 2015-2020, have given priority to entrepreneurs or women heading agricultural holdings, since data has indicated gender inequality resulting from imbalance in the performance of managerial and executive jobs in the holdings (the share of women heads of holdings, where the holdings are registered to their names, is only 17%, whereas their share as managers or decision-makers for organizing agricultural production in holdings is even smaller, i.e. 16%, and the workforce permanently employed at the holding is 14.8%; women also account for the biggest share of labour informally engaged for agricultural work, 63%).

INTRODUCING THE GENDER PERSPECTIVE IN ALL POLITICAL PROGRAMMES

By adopting the National Strategy for improving the status of women and promoting gender equality (2010-2015), the Republic of Serbia has committed itself to pursuing a harmonized policy aimed at integrating gender equality in all areas of institutional activity within the system. For this reason activities related to gender responsible budgeting were undertaken. A significant number of pilot projects were implemented in this area, since 2008. The projects were implemented at all levels – national, provincial and local, by different actors

ranging from public administration to women's non-governmental organizations, mostly supported by *UN Women*. *The support of this Fund has enabled running of training seminars on gender responsible budgeting for local authority representatives (of both sexes) in a number of towns.*

The most systematic work on gender equality integration in public policy was carried out within the framework of the provincial government, coordinated by the Provincial Secretariat for Economy, Employment and Gender Equality in cooperation with the Provincial Secretariat for Finance. Based on the results achieved within this gender budgeting initiative, the work of the Provincial Secretariat has been recognized by the United Nations as an example of good practice, and thus included in the global set of good practices in the implementation of the Millennium Development Goals, as the sole example from the entire region.

Recently, the Ministry of Finance has actively joined the gender budgeting initiative. The pilot project implementation has enabled the achievement of significant results varying in both scope and level:

- There is a growing interest in integrating the gender equality issue in public policy and budgets in particular.
- Capacity building for different actors (administration employees, NGO members),
- Conducting gender analysis of selected programmes, thus raising awareness of the gender impact on public policy; recommendations have been prepared for their improvement in terms of gender equality,
- Guidelines have been developed for introducing gender budgeting into the practical methodology of carrying out gender budgeting analysis,
- Steps have been made to introduce the gender perspective into the budget document (Guidelines of the Provincial Secretariat for Finance of 2009, Instruction of the Ministry of Finance of 2014),
- In the framework of transition to the programme-based budgeting model, the Budget of AP Vojvodina for 2015 provided a review of gender indicators for programmes and programme activities carried out by provincial authorities.

The introduction of a programme budget offers significant possibilities for integrating gender budgeting in the regular budgetary process. However, introduction of the gender aspect

into the budgetary process has not yet become a standard practice for all budget beneficiaries and continues to be in the phase of a pilot project. There is no comprehensive normative framework for gender budgeting. Frequently, gender sensitive data is not collected with respect to the public policy impact on the status of women and men, nor is gender analysis conducted. Policy-making is not sufficiently based on gender sensitive statistics. Staff in institutions lack adequate knowledge and capacities for dealing with gender budgeting.

The Serbian Institute of Statistics is working on the development of a sustainable institutional framework for gender statistics. All research conducted and all data collected on personal level include the gender designation, which pertains also to more recent research aligned with the EU statistics (European Union Labour Force Survey, EU Survey of Income and Living Conditions, Time Use Study, etc.). Since 2005, selected gender-based data has been published every three years (“Women and Men in Serbia” publication). Elaboration of a Gender Equality Index, in cooperation with the European Gender Equality Institute, is underway, which should be a tool for determining the status of women and men, and gender equality in the Republic of Serbia. A gender equality index will be modelled on the European Gender Equality Index and will contain domains related to work, money, knowledge, time, power, health, inequality and violence. Regular and comprehensive monitoring and presenting gender sensitive data will reflect the situation in the society in respect of gender based discrimination, and enable policy making, planning and implementation aimed at eliminating inequality and improving the situation of groups and individuals who are discriminated against.

Since many institutions and organizations do not have gender disaggregated statistics, it is difficult to provide information on the gender structure of management and governing boards (i.e. in cultural institutions, sports federations and associations, media). The enhancement of gender sensitive statistics and registration of gender disaggregated information in all spheres of public and political life will contribute to a better overview of gender equality and the assessment of the effectiveness of policies and measures in this area.

INSTITUTIONAL GENDER EQUALITY MECHANISMS

The Republic of Serbia has established gender equality mechanisms at all government levels: legislative, executive, as well as independent oversight mechanisms at national, provincial and local levels. Despite the lack of coordination among them, they have contributed to the establishment of a normative and political framework for gender equality, including in the field of violence against women. On the national level, a Council for Human and Minority Rights, and Gender Equality has been created as a permanent working body of the National Assembly (in place since 2003), Gender Equality Council (since 2004), Section for the promotion of gender equality under the authority of the Ministry of Labour, Employment, Veterans' and Social Issues (since 2014). A Gender Equality Coordination Body was appointed by the Government of the Republic of Serbia, on 30 October 2014, tasked to consider all issues and coordinate the work of all state administration organs related to gender equality. The Protector of Citizens⁵ and the Commissioner for Gender Equality Protection (established under the Anti-Discrimination Law) deal with gender equality issues, within the limits of their responsibilities. The Gender Equality Department consistently monitored and supported local mechanisms in their initiatives and implementation of local Action Plans.

At the level of AP Vojvodina, the following were established: Gender Equality Committee of the Assembly of AP Vojvodina, Provincial Secretariat for Economy, Employment and Gender Equality, Gender Equality Council and the Gender Equality Institute. The Deputy Ombudsperson for Gender Equality operates within the institution of Provincial Ombudsman.

The greatest achievement is the raising of the awareness of the legal requirement for local units of self-government to deal with gender equality issues. Greater understanding and awareness of this area is reflected in the establishment of local mechanisms, tasking persons for dealing with gender equality, and to a lesser extent, in the adoption of the European Charter of Gender Equality at the local level, and the Action Plan for Gender Equality. Research entitled "Support of local self-government in Serbia in the European integration process" carried out by the Social Research Institute in late 2014, for the purposes of the Standing Conference of Towns and Municipalities, demonstrated progress made in the number of established gender equality mechanisms, that is, as compared to 2010, which is an increase from 53.2% to 90%

⁵ Law on Protector of Citizens ("Official Journal of RS", Nos. 79/05 and 54/07)

municipalities, and in the number of persons responsible for gender equality, also in 2010, a rise from 32% to 71.2%. A minimum progress has been in understanding gender equality not only as a women's theme, but as a developmental issue as well. The Standing Conference of Towns and Municipalities endeavoured to coordinate its activities with the institutions on the central level (Gender Equality Department, Commissioner for Equality Protection, Protector of Citizens, Office for Human and Minority Rights), international organizations (*OSCE*, *NDI*, *UN Women*) and civil society organizations and women's organizations in order to produce a synergy effect and achieve best maximum results.

Although the number of gender equality mechanisms at the local level has risen significantly, there are still numerous challenges: the role of these bodies is not clear, not all of them are active or have an impact. Individuals are tasked to engage in this area on a voluntary basis, they do not have a clear job description, and rarely hold managerial or influential positions within the structure.

Great many new laws and the downsizing of the public sector, in the first place, will have a bearing on the setting of priorities by local governments. This can be an upside, since gender equality can be placed high on this list, or a downside, if this area is left without funding. Limited funds and insufficient support of political leaders constituted the greatest obstacle to the work of these mechanisms at all levels.