PREUGOVOR – REPORT ON PROGRESS OF SERBIA IN CHAPTERS 23 AND 24

Edited by:
Sonja Stojanović Gajić & Bojan Elek (BCSP)

May 2015, Belgrade

PrEUgovor – Report on Progress of Serbia in Chapters 23 and 24

May 2015, Belgrade

PREUGOVOR –
REPORT ON PROGRESS OF SERBIA IN CHAPTERS 23 AND 24

Publisher
Belgrade Centre for Security Policy
Đure Jakšića 6/5, Belgrade
Tel: 011 3287 226
Email: office@bezbednost.org
Web: www.bezbednost.org

Authors
Maja Bjeloš, Katarina Đokić, Saša Đorđević, Bojan Elek, Vladimir Erceg, Gordana Grujičić, Katarina Ivanović, Vanja Macanović, Marko Milošević, Nemanja Nenadić, Vladimir Petronijević, Gorana Radovanović, Ivana Radović, Isidora Stakić

Editors
Sonja Stojanović Gajić & Bojan Elek

Translation
Tatjana Ćosović

Design
Marko Marinković

Layout
comma | communications design

Print
Fiducia 011 print

Copies
150

ISBN
978-86-6237-058-7

CIP - Каталогизација у публикацији - Народна библиотека Србије, Београд

341.217.02(4-672EU:497.11)
340.137(4-672EU:497.11)
341.231.14(497.11)

PREUGOVOR : Report on Progress of Serbia in Chapters 23 and 24 / [authors Maja Bjeloš ... et al. ; translation Tatjana Ćosović] ; edited by Sonja Stojanović Gajić & Bojan Elek. - Belgrade : Belgrade Centre for Security Policy, 2015 (Belgrade : Fiducia 011 print). - 33 str. ; 30 cm

Tiraž 150. - Napomene i bibliografske reference uz tekst.

ISBN 978-86-6237-058-7
1. Bjeloš, Maja, 1984- [аутор]
a) Европска унија - Придруживање - Србија b) Право - Хармонизација - Европска унија - Србија c) Људска права - Међународна заштита - Србија
COBISS.SR-ID 215498508

Table of contents

About prEUgovor

The prEUgovor (Eng. prEUnup) is the first coalition of civil society organisations established in 2013 in order to monitor the implementation of policies related to the accession negotiations between Serbia and the EU, with an emphasis on Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security). The prEUgovor is established at the initiative of the Belgrade Centre for Security Policy (BCSP) with the mission to propose measures to improve the situation in the fields relevant for the negotiation process. In doing so, the coalition aims to use the process of EU integration to help accomplish substantial progress in further democratisation of Serbian society.

prEUgovor gathers:

- Anti-trafficking Action (ASTRA)
  www.astra.rs
- Autonomous Women's Centre (AZC)
  www.womenngo.org.rs
- Belgrade Centre for Security Policy (BCSP)
  www.bezbednost.org
- Centre for Applied European Studies (CPES)
  www.cpes.org.rs
- Centre for Investigative Reporting (CINS)
  www.cins.rs
- Group 484
  www.grupa484.org.rs
- Transparency Serbia (TS)
  www.transparentnost.org.rs

Executive Summary

The coalition prEUgovor has been monitoring Serbia's progress in regard to the adherence to political criteria for EU membership and policies covered under Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security) of the European acquis in the negotiation process. The monitored period of October 2014–April 2015 was marked by three key events.

First, the Action Plans for Chapters 23 and 24, as the two key strategic documents listing concrete reform measures to be implemented and serving as the opening benchmark for Serbia for negotiations under these two chapters, were drafted and finalised with the participation of civil society organisations. The main conclusion regarding the existing drafts of Action Plans is that they provide a substantial roadmap for reforms needed in these two chapters, but their final versions need to be updated with realistic deadlines, resources for implementation and in regard to the protection of personal data and rights of victims of crime. Second, there was evident backsliding in the area of the rule of law, primarily concerning the Government's pressure on the functioning of independent state institutions. This development is of gravest concern, since these institutions act as a control check for the government's actions, assuring that the citizens' rights are respected and that state institutions operate within their competences in line with positive law. Lastly, the previous period was marked by the process of drafting and several rounds of public consultations regarding the new Law on Police. Taking into account that professional, efficient and accountable police is the key precondition for the safety of citizens and successful reforms under Chapter 24, it is of utmost importance that the new Law on Police should provide a solid basis for police reform in line with EU standards and best practices.

Generally, the progress in the areas covered by the prEUgovor report can best be described as limited and uneven. When it comes to the normalisation of relations between Serbia and Kosovo, some progress was achieved, given that the agreements on the integration of the judiciary and civil protection units in northern Kosovo were reached. Civilian and democratic control of armed forces was hampered as independent state institutions had difficulties in conducting oversight of the security sector. The access to justice was severely restricted due to the four-month strike of the Bar Association of Serbia. In the area of fight against corruption there were positive developments, although far behind the planned dynamics envisaged in the Government's strategic plans and programmes. No progress was achieved in the areas of women's rights, gender equality, children's rights or the procedural rights for victims. The new draft Law on Police introduces some positive changes, primarily related to professional human resources management, yet fails to address the most pressing issue, namely politicisation of the police. In the areas of migration and asylum no substantial progress was achieved. The area of fight against trafficking in human beings saw no progress and for almost three years already Serbia has not adopted a strategy or action plan for this policy area.

Based on the monitored areas, the prEUgovor coalition suggests further general recommendations to be adopted in order to implement the necessary reforms more efficiently. These are as follows:

1. **It is necessary that civil society organisations (CSOs) be included in the process of monitoring the implementation of Action Plans for Chapters 23 and 24.** Taking into account that these Action Plans represent a roadmap for the most comprehensive set of reforms to be undertaken in the two most crucial areas for further democratisation and establishing the rule of law in Serbia, it is necessary that CSOs and other interested parties be included in the process of monitoring their implementation. This is necessary so as to assure that the envisaged reforms are undertaken in line with the suggested timeframes, that citizens' rights are protected in the process, and that introduced reforms are actually producing positive effects on the ground in order to prove the positive track-record for the most important policy areas.

2. I**t is of utmost importance to establish, as soon as possible, effective mechanisms for the protection of rights of victims of criminal acts.** This area of protection seems to be the last one in government plans, putting all the emphasis on rights of the suspects/accused/convicted, and forgetting that in order to adequately prosecute and punish the perpetrators of crime, the state has to protect, in all ways, the victims of these acts (by prescribing emergency protection measures, establishing services for victims, adapting special rooms for audio-visual interviewing of victims, etc.). Moreover, the rights of victims of criminal acts are not adequately addressed in Action Plans for Chapters 23 and 24, leading to the conclusion that the Government of Serbia has no intention to resolve these issues in the foreseeable future.

3. **It is essential that the Government of Serbia should invest significant efforts to assure that the principle of the rule of law be respected.** The reported period witnessed significant backsliding in relation to democratic values, the division of powers between the Government's branches, as well as functioning of independent state institutions. It is absolutely necessary that the Government of Serbia should assure the primacy of law in its conduct, paying special attention to respecting the division of powers and assuring that state institutions and the public administration act within their limits as prescribed by national legislation.

1. Political Criteria

1.1. Civilian and Democratic Control of Armed Forces

Overall, some progress has been made regarding legislative regulation of civilian and democratic control of armed forces (DCAF), but the practice of oversight was hampered by government pressure on independent oversight institutions. Concerns were raised with the initial refusal by the Ministry of Defence and Military Security Agency (MSA) to provide necessary documentation to the Ombudsperson in regard to its seemingly unlawful involvement in investigation of the incident between members of the special police unit and members of the military police who were at the time protecting the Prime Minister's brother during the Pride event in September 2014. The Ombudsperson's interest in the incident was particularly focused on two points: first, the MSA is not authorised to investigate incidents on civilian premises, including public space, and second, members of officials' families are not entitled to having protection by the military police. The MSA refused to cooperate with the Ombudsperson even though it is bound by the Law on Ombudsperson to do so. Although the Ombudsperson was eventually enabled to oversee the MSA in March 2015, it remains unclear if independent state institutions will be able to duly oversee security forces in the future.

The parliamentary Security Services Control Committee continued its practice of oversight visits to security services. However, there are significant blind spots in the oversight of security forces. For instance, the implementation of special investigative measures by the police is not subject to parliamentary oversight. The police are entitled to applying special investigative measures (e.g. access to retained data, phone tapping, and use of undercover investigators) by the Law on Police and the Criminal Procedure Code, yet there is no legal provision explicitly enabling parliamentary oversight of such police activities and therefore the oversight has not been established in practice either. These measures infringe upon fundamental rights of citizens and thus it is crucial to establish a comprehensive oversight mechanism for their use. The Defence and Internal Affairs Committee started regularly reviewing reports by the Ministry of Defence (MoD) and the Ministry of Interior (MoI), but it failed to address any of the issues which arose (e.g. the revealed use of the military Special Forces for personal security protection of officials' family members).

Amendments to the Law on Defence and the Law on Serbian Armed Forces introduced some improvement in DCAF. Article 14a of the Law on Serbian Armed Forces was introduced in 2009 and sanctioned any cooperation with civil society organisations for members of the Serbian Armed Forces, thus hampering DCAF. The said Article was amended on 28 January 2015, with the addition that "professional servicemen can cooperate in activities of CSOs with the approval of the Minister of Defence." However, the Law missed the opportunity to grant more power to the Inspector General, as he can report only to the Minister of Defence. Internal control in the MoD remains relatively weak, as the position of the Defence Inspectorate is insufficiently regulated, which affects its independence in relation to the political and military leadership. This is

why the BCSP proposed[1] that Inspector General should report also to the Parliamentary Committee on Defence and Home Affairs in cases of major deviations. However, this comment was not included in the final version of the Law and thus the opportunity to further improve DCAF was missed. Moreover, the Inspector General is severely lacking capacities for scrutinising the management of financial, material and human resources in the MoD. For these reasons, the Inspectorate is incapable of effectively scrutinising the MoD work.

Moreover, the parliamentary oversight of the MoI was enhanced with the introduction of the Law on Private Security. Now Members of the Parliament (MPs) have a set of indicators[2] at their disposal that could be used to measure the progress of MoI's oversight over private security companies operating in Serbia. So far, Serbian MPs have not used these competencies.

1.2. Normalisation of Relations with Kosovo

Serbia made some progress in the process of normalisation of relations with Kosovo. In this report, the BCSP will present findings regarding security aspects of the normalisation dialogue: police cooperation and integration of civil protection (CP) units from North Kosovo in Kosovo institutions.

CP units in four northern Kosovo municipalities still operate outside the legal framework of both Kosovo and Serbia. Under the Agreement on Civil Protection, reached on 26 March 2015 between Belgrade and Priština, civil protection in North Kosovo will be dismantled and its members will be integrated into Kosovo institutions. However, there are currently 751 members of CP units while the Agreement envisages employment only for 483 of them, plus 50 positions on contingency funds, meaning that they will receive salaries, but final workplaces will be determined in the public sector within three years. If the Agreement is fully implemented, 218 of current members of CP units will remain jobless and without income.[3] A number of challenges will need to be addressed in regard to the integration plan, including the inability of Kosovo's institutions to absorb entire CP units, the unwillingness of CP personnel to become part of Kosovo's structures and the need to provide alternative sources of income for those who will remain jobless. In the process of dissolving CP units from North Kosovo and reintegrating their personnel, it is crucial to take into account human security concerns in the four northern Kosovo municipalities and ensure that enough resources – human, financial and material – are allocated to the function of protection and rescue in emergency situations.

No progress was made in regard to establishing effective police cooperation with Kosovo. Although the agreement between the Serbian MoI and EULEX (2009) and the Agreement on Inte-

1 Full proposal available in Serbian at: http://www.bezbednost.org/Sve-publikacije/5437/Izmene-Zakona-o-odbrani-i-Zakona-o-Vojsci-Srbije.shtml.

2 The BCSP developed a set of ten questions for MPs on how to evaluate MoI control over private security companies. Available at: http://www.bezbednost.org/Sve-publikacije/5779/10-poslanickih-pitanja-MUPu-o-nadzoru-nad.shtml.

3 Read the full report on the integration of civil protection units: Bjeloš, M. and Stakić, I. *The Future of Civil Protection in North Kosovo*. Belgrade Centre for Security Policy, April 2015. The report is available at: www.bezbednost.org/All-publications/5789/The-Future-of-Civil-Protection-in-North-Kosovo.shtml.

grated Border Management (IBM) (2011)[4] paved a way towards more direct cooperation between Serbian and Kosovo law enforcement agencies, these are still not fully implemented. Currently, the only direct cooperation that takes place between Kosovo and Serbia, since February 2013 and under the IBM Agreement, is at the level of their respective Border Police Departments. However, police cooperation between Serbia and Kosovo takes place indirectly through the UNMIK-hosted National Central Bureau within INTERPOL, and through the EUROPOL via EULEX-mediated exchange of information, and the International Law Enforcement Coordination Unit (ILECU) – an EU initiated project with the general objective to "create an effective international law enforcement cooperation mechanism among the Western Balkans beneficiary countries."[5]

The Screening Report for Chapter 24 clearly states that Serbia needs to establish direct cooperation with Kosovo as with any other neighbouring country in four policy areas under Chapter 24, police cooperation being one of them. However, the currently available third version of the Draft Action Plan for Chapter 24[6] proposes no concrete measures for establishing an effective police cooperation mechanism between Serbia and Kosovo. The Draft Action Plan only stipulates that its final version will contain a set of measures to address this issue in accordance with the political agreement reached within the context of the Belgrade–Priština dialogue. However, certain improvement was made given that both Heads of Police of Serbia and Kosovo met in Belgrade in March, discussing the flow of migrants from Kosovo to Serbia and further into the EU member states.

RECOMMENDATIONS:

- The process of dissolution of CP units and their integration into Kosovo institutions should be followed by an additional retirement plan and/or re-employment programme.
- It is essential that both the Kosovo and Serbian Governments increase transparency of the process of integration of parallel security structures, by providing accurate and objective information on concrete steps of the implementation process.
- The Serbian Government must stop financing and supporting CP units, pursuant to Article 19 of the Agreement reached on 26 March 2015.
- The Serbian Government should make legal adjustments to allow CP structures to be dismantled and should adopt special government regulations for the retirement of CP staff which are not discriminatory in terms of limiting the freedom of movement, pension inheritance or other criteria for retirement (such as age, years of service etc.).
- The Serbian Government, as well as the North Kosovo municipalities, should cooperate in criminal investigation of those CP personnel who are accused of crimes. The prosecution of criminals is in the interest of both the Serbian and Albanian communities.
- Police cooperation between Serbia and Kosovo needs to be enhanced within the existing framework and taking into account the already reached agreements, regardless of the political dialogue that is taking place in Brussels.

4 Available at: http://www.kryeministri-ks.net/repository/docs/agreement_0210_ibm.pdf.

5 Regional Cooperation Council, "Establishment of international law enforcement coordination units in Western Balkans launched in Vienna today" (2008). Available at: http://www.rcc.int/press/59/establishment-of-international-law-enforcement-coordination-units-in-western-balkans-launched-in-vienna-today.

6 The Third Draft Action Plan for Chapter 24 was published on 30 March 2015, available at: www.mup.gov.rs/cms_cir/oglasi.nsf/Treca_verzija_AP_27_03_2015.pdf.

2. Public Procurement (Chapter 5)

The Law on Public Procurement was amended only in the area of preferential treatment of national products and suppliers, and the working group of the parliamentary committee that should prepare amendments to other sections of this document was established in 2015. The results of implementation of the existing anticorruption provisions of this Law are very limited, due to the weakness of certain provisions, and even more due to limited oversight capacities, primarily of the Public Procurement Office. Besides, not even the new Strategy for the Promotion of the Public Procurement System identifies all important problems in this area.[7] Large loopholes are evident in the implementation of rules on **awarding state aid**,[8] in regard to the scope of existing regulations, control mechanisms, and consistency in the implementation of existing regulations. One of the most prominent examples was the case of the Smederevo Steel Plant, where not only was the state aid awarded in a non-transparent manner, but there was also avoidance of control mechanisms through the use of government guarantees for loans.

In the area of public procurement oversight, the practice of appointing civilian supervisors for public procurements amounting above RSD 1 billion continued. However, there is no civilian supervision for confidential procurement in the security sector, for which significant amounts of funds tend to be spent. This means that a significant part of public spending is not under sufficient civilian scrutiny. Moreover, implementing organisational and legislative anticorruption standards in public procurement in the security institutions is overdue. For instance, institutional plans against corruption as well as organisational units for planning procurement have still not been established.

The EU Directive 2014/24 prescribes the best value criterion as a sole criterion in public procurement of private security services, as it guarantees more quality and better control. The EU countries have a deadline of 18–24 months to adapt their legislation in line with this Directive. The Public Procurement Law (*Official Gazette of the Republic of Serbia*, no. 124/2012, 14/2015) defined that all public procurements could be conducted selecting one of the two criteria: the best value or the lowest price. In Serbia, the criterion of lowest price became the dominant model in the procurement of private security services, affecting the quality of such services and even stimulating the black and grey economy. Private security companies have 50% of their contracts with the state, and 80% of all physical security is ensured with the state, which increases the risk of corruption.

RECOMMENDATIONS:

- Serbia should amend the Public Procurement Law in line with the EU Directive 2014/24 and prescribe the best value as the only criterion for public procurement of private security services.

7 www.transparentnost.org.rs/images/dokumenti_uz_vesti/Javne_nabavke_najvazniji_nalazi_mart_2015.doc.

8 www.transparentnost.org.rs/images/dokumenti_uz_vesti/Drzavna_pomoc_izvestaj_februar_2015.doc.

3. Judiciary and Fundamental Rights (Chapter 23)

3.1. Judiciary

By demonstrating power, the Minister of Justice was responsible for the four-month strike of the Bar Association in Serbia, causing complete stop of all prosecution and court cases and endangering even further the accessibility of justice in Serbia.

Accountability. In late 2014, the High Judicial Council, in disciplinary proceedings, dismissed three judges because of the major breaches of duty – non-efficiency in presiding in a number of court cases.

Efficiency of the judiciary remains a serious problem. Because of the four-month strike of the Bar Association of Serbia, the majority of hearings in prosecution and court cases were postponed, causing further problems with efficiency of the judiciary. Additionally, judges of the Belgrade Second Basic Court, which presides in family, inheritance, labour and some other cases, have been moved twice in the last six months from one building to another and then back to the previous building. The Second Basic Court in Belgrade is the court with the most significant backlog in family law cases, and such moving is causing additional delay in court processes.

There are still major problems in implementing the Criminal Procedure Code. Judges and prosecutors faced significant salary reductions, which at the end negatively influences the prosecutors' commitment to working extra hours if they reach a decision to detain a person. New deputy prosecutors have been appointed just recently, some prosecution offices still lack the envisaged number of deputy prosecutors, there are still no sufficient rooms for conducting interviews during investigation, and there is a lack of administrative staff and office supplies.

3.2. Fight against Corruption

Overall, certain improvements have been made in the fight against corruption since September 2014, but they are far from what was planned by relevant strategies and programmes of the Government of Serbia. On the other hand, developments that can represent a step back in the anticorruption area are also recognised, primarily related to the status of independent state institutions and the non-implementation of national anticorruption regulations with engagements related to inter-state agreements. The current Government of Serbia introduced the **fight against corruption among its priorities** within the exposé of the Prime Minister.[9]

9 www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/6546-.

In regard to legislative work, in the past 12 months a **great deal of plans**, previously stated either in the Prime Minister's exposé, or in the Action Plan for Implementation of the Anticorruption Strategy, **have remained unfulfilled**.[10] A positive development is the adoption of the new Law on Whistle-Blower Protection that is to be implemented as of June 2015, although it contains loopholes, identified during public debate.[11] Some positive effects can be expected from the implementation of new **media regulations**, although many problems have remained unresolved, such as the transparency of major media income sources, or the selection of priorities for public financing of media projects.[12]

The key deadlines for the adoption of new anti-corruption legislation from the Action Plan expired. There is still no improvement of the Law on the Anticorruption Agency (drafting has begun but is slow) nor of the Law on the Financing of Political Activities (that was amended, but in regard to the provisions not mentioned in the National Anti-Corruption Strategy), and no progress has been made in regard to the Law on Lobbying.

The Action Plan for the implementation of the Anti-Corruption Strategy from August 2013 for the areas of (a) justice, (b) police and (c) monitoring is poorly implemented.[13] During the first 17 months of implementation of the Action Plan, only four activities (14%) from a total of twenty-nine in the field of justice were carried out in accordance with the Action Plan. The main reason for the low level of implementation of the Action Plan in the area of justice is the lack of definition of responsible authorities for its implementation, as well as the lack of earmarked funds for implementing the planned activities. In the area of the police, only one activity – the needs assessment for anti-corruption training for police officers, was carried out from a total of twenty-three in line with the Action Plan. There are two main reasons why most activities from the Action Plan related to the police have not been implemented, or were delayed. First, there are deficiencies in the Action Plan document. Financial costs and responsible organisational units within the MoI to be responsible for implementation were not identified for all activities, and there are terminological confusions. Second, the process of the adoption of the new Law on Police greatly slowed down the implementation of the Action Plan of the Anti-Corruption Strategy.

The situation is somewhat better in the part of the Action Plan governing the oversight of implementation of the Strategy. Five activities (50%) were completed, from a total of ten planned activities. However, problems exist concerning overlapping competences of anticorruption actions of the Serbian Government and the Anticorruption Agency. In addition, recommendations from the Anti-Corruption Strategy are not operationalised through concrete measures in the Action Plan. Based on the shadow report produced by the BCSP and Public Prosecutors Association, it can be concluded that the implementation took place only in those areas where donor support exists.

---

10 www.transparentnost.org.rs/images/stories/materijali/29012015/Izvestaj%20o%20sprovodjenju%20Nacionalne%20strategije%20za%20borbu%20protiv%20korupcije%202013%202018%20i%20Akcionog%20plana,%20oblasti%20politicke%20aktivnosti,%20javne%20finansije%20i%20mediji,%20Transparentnost%20Srbija,%20januar%202015.pdf

11 www.transparentnost.org.rs/images/stories/inicijativeianalize/amandmani%20TS%20na%20predlog%20zakona%20o%20zastiti%20uzbunjivaca%20novembar%202014.docx .

12 http://www.transparentnost.org.rs/images/stories/inicijativeianalize/BIRN_Transparentnost%20Srbija_Analiza%20i%20preporuke_Zakon%20o%20medijima%20zip%20%20Septembar%202014.pdf.

13 Full text of the alternative report on implementation of the Anti-Corruption Strategy in the abovementioned three areas is available in Serbian at: www.bezbednost.org/Sve-publikacije/5684/Alternativni-izvestaj-o-sprovodjenju.shtml.

Moreover, there were also difficulties in implementation of the Action Plan for the Anti-Corruption Strategy for the areas of d) political activity, e) public finances and f) the media.[14] In the first 15 months of its implementation, for only 26% of envisaged measures was it possible to find evidence that they were implemented. One of the possible reasons is the fact that the Strategy envisages three institutions for its implementation, which creates an overlap in competences and confusion about the institutions in charge of implementation.

Lastly, the activities related to the areas of g) privatisation and public-private partnerships, h) spatial planning and construction, i) health, j) education and sports, and k) prevention of corruption, as a rule, were not implemented in line with the proposed timeframe.[15] One of the greatest challenges in this respect is the lack of control mechanisms for assuring that the activities are implemented in time, as well as the lack of clear identification of the authorities responsible for their implementation.

The Action Plan for Chapter 23 is still in the public debate process. Its latest version (although much better than the previous two) does not c**apture all important matters properly nor does it elaborate in sufficient detail the method of implementing activities and measures, nor indicators of success.**

Unfortunately, in preparation of most[16] draft laws, the Prime Minister's promise stated in his exposé was not accomplished: "We will allow businesses, civil society and other interested parties to participate in all phases of legal acts, from concept laws, drafts and to preparation of by-laws". The rules on **public debates were not improved**, in such a manner so as to envisage mandatory discussion on concept laws and by-laws. The number of drafts subject to public debates is, however, larger than in previous years, but the obligatory debates were not organised in many instances.[17]

One year ago, the Prime Minister announced establishing of "task forces for prosecution of organised crime and corruption", whose legal nature was not explained. One year later, the Draft Strategy of Financial Investigations, mentioning "task forces" for investigating larger corruption cases, was presented, but still without stipulating a legal basis for the establishment of these bodies.[18] In the meantime, it was published that "task forces" established for investigating "24 privatisation" cases that the Governmental Anticorruption Council pointed out to between 2002 and 2012, were cancelled. There are still no comprehensive data on findings of these working groups in relation to Council's reports. Similarly, there is no information based on which one may conclude that the Government began to systemically discuss Council's reports published after 2012.[19]

---

14 Full text of the alternative report on implementation of the Anti-Corruption Strategy in the abovementioned three areas is available in Serbian at: www.acas.rs/wp-content/uploads/2015/02/Alternativni_izvestaj_Transparentnost_Srbija.pdf?pismo=lat.

15 Full text of the alternative report on implementation of the Anti-Corruption Strategy in the abovementioned five areas is available in Serbian at: www.acas.rs/wp-content/uploads/2015/02/Alternativni-izvestaj-BCHR.pdf?pismo=lat.

16 An exemption relates to the process of preparation of the Law on Inspection Supervision. www.transparentnost.org.rs/images/dokumenti_uz_vesti/Izvestaj_o_pracenju_izrade_nacrta_zakona_o_inspekcijskom_nadzoru_februar_2015.doc.

17 www.transparentnost.org.rs/images/dokumenti_uz_vesti/javne_rasprave_praksa_februar_2015.doc.

18 www.transparentnost.org.rs/images/dokumenti_uz_vesti/komentari_na_nacrt_strategije_finansijskih_istraga_i_akcionog_plana_mart_2015.doc.

19 A possible exemption was the recently published case of abuse related to the repair of wagons.

In the past twelve months, new problems have been opened in the relation of the executive power with independent state organs. The adoption of parliamentary conclusions on annual reports of independent organs has not brought about any improvement of practice.[20] The Government ignored the obligation to report to the National Assembly within six months after the adoption of the report of independent state institutions on undertaken measures, and the National Assembly has not initiated the Government's accountability for it.

The Prime Minister's exposé contained plans for rationalisation of the public sector, finalisation of reconstruction of enterprises, a decrease in the budget deficit and suppression of the grey economy, introduction of the e-government and shortening deadlines for issuing of permits. In some of these areas there have been significant improvements in the past 12 months, which can bring indirect benefits for anticorruption (especially the undertaken measures for faster issuance of building permits and measures for resolving the status of "enterprises in reconstruction"). However, there were no visible changes in regard to the "decreased number of employees in the public sector... especially of those that are appointed with the help and influence of political parties", and implementation of the preceding functional analysis. The Action Plan for the Public Administration Reform has been adopted, but it still remains unclear how fast it will be implemented and to what extent it will depend on previous analyses and opinions of international financial institutions. In the meantime, not even the number of public sector employees has been properly determined, and even the number of the newly employed after the adoption of legal limitations has been hidden.[21]

The status of **civil servants on posts** is expected to be, after amending the Law on Civil Servants, finally aligned with law (violations started in January 2011). The Government appointed "acting servants" to positions that were not filled on the basis of competitive recruitment and opened some recruitment processes. However, there is no published comprehensive information that would prove that legal status of "civil servants on post" is fully in compliance with law.

Although obligatory by law for two years already, the "**professionalisation of managing public enterprises**" has still not been implemented. The legal mechanism for the election of directors and members of supervisory committees of public enterprises has flaws. But even such mechanism is not being implemented. Merely in several republic enterprises competitions for the election of directors have been finalised, in other enterprises nobody has decided on applications for almost two years, while in some other no competitions have been announced at all. On the occasion of arresting several managers of public enterprises,[22] the Minister of Interior announced their political party affiliation (wanting to prove that people affiliated both to the currently ruling coalition and the opposition are being prosecuted alike), and among the arrested was one of the few directors elected in a "non-political" competition several months before.

Finally, during the previous year the poor and illogical practice of **contracting with investors** larger infrastructural projects **on the basis of inter-state agreements**, with the **exemption**

20 www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/6550-.

21 The Ministry of Finance failed to submit information to the journalists of the daily "Danas" who requested it, even after the Commissioner for Information of Public Importance and Personal Data Protection ordered them to do so.

22 www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7373-v-d-stanje.

from domestic regulations (e.g. the Public Procurement Law, Law on Public-Private Partnership) on bidding, analysis of justification and oversight, continued. The situation regarding the transparency of such contracts is, however, better than before.

In this period **there were no final convictions** in high level corruption cases, or visible final decisions to punish violations of the Anti-Corruption Agency Law or the Law on Financing of Political Activities. Some criminal procedures that were previously initiated are still ongoing. Generally speaking, trends from previous years in regard to repressive anticorruption activities continued, with a small increase in the number of discovered and initiated cases. There is no practice of publishing these data regularly, and databases of various law enforcement and judicial authorities still remain incomparable and insufficiently informative.

3.3. Fundamental Rights

Women's rights and gender equality

The new candidate for the Commissioner for the Protection of Equality does not meet the nomination standards based on the Law on Prevention of Discrimination, having no grassroot or academic expertise in this field. The Coordination Body for Gender Equality changed its members, and from 50/50 members of both sexes, it now consists of only 20% of women.

At the 105th Sitting of the Committee on Constitutional and Legislative Issues held on 28 April 2015 at 4 pm, the Committee decided to submit to the National Assembly the Proposal of the new candidate for the Commissioner for the Protection of Equality. Although the Committee concluded that the candidate met the nomination standards based on the Law on Prevention of Discrimination, this cannot be confirmed because the candidate's CV was not posted on the Parliament's website.[23] The process of nomination was neither public nor transparent, and there were no consultations with CSOs. The candidate, a member of a political party, who during the previous Government served as the State Secretary in the Ministry for Social Policy, has no grassroot or academic expertise in the field of discrimination.

The Coordination Body for Gender Equality of the Government of Serbia, which was set up on 30 October 2014 and consisted of two women ministers and two men (the Minister and Secretary General of the Government), changed its members in April 2015. Now it consists of five members, of whom only one is a woman minister. Thus, from the body that had 50/50 members of both sexes, Serbia's Coordination Body for Gender Equality now has only 20% of women. The newly appointed member, advisor in the MoI, was appointed to run the Working Group on amendments to the existing Law on Equality of Sexes, which is inconsistent with the Third Draft of Action Plan for Chapter 23 where this authority is given to the Ministry of Social

23 www.parlament.gov.rs/105th_Sitting_of_the_Committee_on_Constitutional_and_Legislative_Issues.25265.537.html.

Policy (activity 3.6.1.10.). On 10 December 2014, the Ombudsperson presented in the National Assembly its Model Law on Gender Equality,[24] asking for the adoption of the completely new law as the current law needs to be changed in more than 50% of articles.[25] The National Strategy for Prevention and Combating Violence against Women expires in 2015 without the Action Plan for its implementation ever adopted. As the National Strategy for Improving the Position of Women has never been implemented either, it is very unusual that the Third Draft of Action Plan for Chapter 23 envisages work on new versions of these two strategies (activity 3.6.1.12.).

There has not been any improvement regarding the protection of women from all forms of gender-based violence. Femicide still remains the most worrying issue, especially after a woman was beaten to death due to the television show "DNA"; there is still absence of emergency protection orders, and after a year and a half from ratification the current legislative was not harmonised with the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence.

Two years after the Concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW),[26] the situation in Serbia regarding the protection of women from violence remained the same. No progress was made in the view of the Committee's concerns and recommendations:

An increasing number of women murdered by their husbands, ex-husbands or partners and women victims of other forms of violence...[27]. According to data of the Network "Women against Violence", 163 women in Serbia were killed by their partners or ex-partners or members of their family in the last five years (in 2010 – 26, in 2011 – 29, in 2012 – 32, in 2013 – 43 and in 2014 – 33). The trend continued in the first four months of 2015 when 15 women were killed, of whom 11 women were killed by their family members or their (ex)-partners. Two cases that show complete deterioration of Serbia's society are as follows:

a) the murder of a woman beaten to death by her partner, after they both participated in a TV show called "DNA", in which the reporter instigated violence admitted by the perpetrator, while filming the abused woman and their children – the Network "Women against Violence" asked from the relevant state authorities to stop broadcasting this show, but in vain;[28]
b) the murder of the previously stalked woman at her working place in downtown Belgrade, who had protection measures issued against the stalker, but with no response of the police when she reported breaches of the protection measures – the Network "Women against Violence" repeated its request directed to the Ministry of Justice to prescribe stalking as a criminal act.[29]

24 Available only in Serbian at: www.Ombudsperson.rs/index.php/lang-sr?start=90.

25 Available only in Serbian at: www.Ombudsperson.rs/index.php/lang-sr/component/content/article/3621.

26 www.gendernet.rs/files/dokumenta/Engleski/Reports/CEDEW_concluding_observations_2013_engl.pdf, received on 25 July 2013.

27 Par. 22 (a) of the CEDAW Concluding Observations.

28 Available only in Serbian at: www.zeneprotivnasilja.net/vesti/474-peticija-kaznimo-promotere-nasilja.

29 Available only in Serbian at: www.zeneprotivnasilja.net/vesti/483-saopstenje-za-javnost-21-04-2015.

There is significant disparity between the number of police interventions, the number of criminal charges filed and the number of persons convicted.[30] According to data from 14 municipalities and cities (gathered in 2014 by the Ombudsperson during the monitoring of implementation of the General and Special Protocols on Violence against Women), the epilogue of the largest number of reports on violence (71%) was a verbal warning by the police to the perpetrator of violence. Of total 3713 reports on violence against women in police directorates and stations in 14 municipalities and cities, police warnings to perpetrators were issued and represented the only police action in 2629 cases. The police pressed 395 criminal (10.6%) and 205 misdemeanour charges (5.5%).[31]

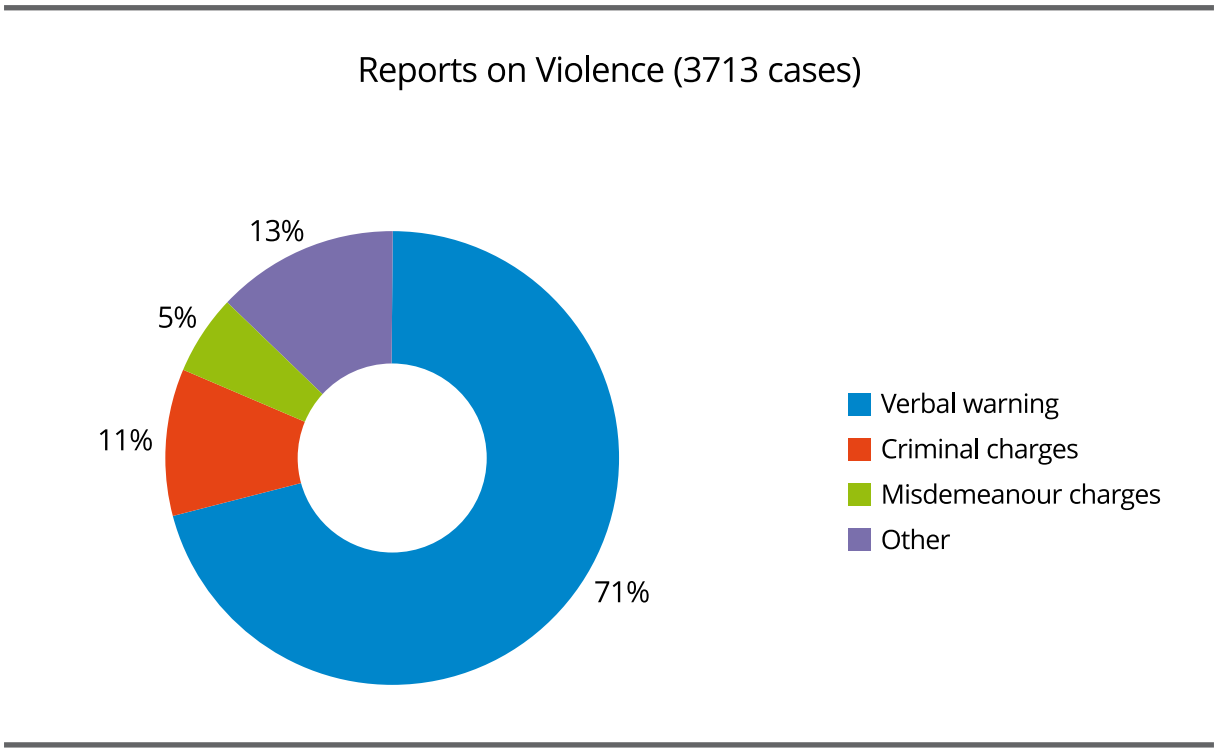

Figure 1: Overview of reports on violence and police actions

The lack of emergency protection orders[32]. As the working group of the MoI drafted the Law on Police without implementing the obligations accepted by ratification of the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence, the Autonomous Women's Centre sent its amendments in order for the police to receive a power to evict perpetrators from home for 14 days.[33] The public discussion on this draft Law is still ongoing.

30 Par. 22 (b) of the CEDAW Concluding Observations.

31 Data from the Special Report of the Ombudsperson on Implementation of General and Special Protocols on VAW, pg. 26, presented also in Table 4 with an additional explanation, Annex 1 of the Report, available at: www.Ombudsperson.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=139%3Aspecial-report-of-the-protector-of-citizens-on-the-implementation-of-the-general-and-special-protocols-on-protection-of-women-against-violence&catid=17%3A2012-12-13-09-53-59&Itemid=30&lang=sr.

32 Par. 22 (d) of the CEDAW Concluding Observations.

33 Available only in Serbian at: www.potpisujem.org/srb/1099/autonomni-zenski-centar-zahteva-uvodenje-hitnih-mera-zastite-i-nova-ovlascenja-za-policiju.

The lack of disaggregated data on all forms of violence against women[34]. The Special Report of the Ombudsperson states that "the systems of justice, internal affairs, social welfare and health care maintain independent and mutually incomparable records on violence against women. The records kept by the judicial system do not cover the relationship between the perpetrator and victim, nor do they contain specific information on personal characteristics of perpetrators and victims (disability, ethnicity, economic status, a member of the police or armed forces, etc.). The records of the health system also have no information about the relationship between the victim and the person who perpetrated the violence. The records of the social welfare system and the MoI contain certain (but not all) data on personal characteristics of perpetrators and victims and details of their relations. Records of the justice sector and the MoI are maintained according to the 'nomenclature' of criminal offenses and misdemeanours; as violent behaviour can be an important element of various criminal offenses or misdemeanours,[35] it is not possible to determine on the basis of these records the number of cases in which these bodies have prosecuted acts with characteristics of violence against women."[36]

Review and revision of the Criminal Code, the Family Code and other relevant laws with a view to effectively preventing all forms of violence against women and protecting victims[37]. There have been no changes of laws which should guarantee effective prevention of all forms of violence against women and protection of victims. In the Third Draft of Action Plan for Chapter 23, the Ministry of Justice scheduled amendments to the Criminal Code for 2016 (activity 3.6.1.7.), although the Autonomous Women's Centre commented that this deadline is not in accordance with the deadline defined by the CEDAW Committee to report on these urgent recommendations by July 2015. As for the Family Law, there are two parallel processes regarding its changes, which are currently ongoing without any communication between the relevant ministries. The Ministry of Justice is working on the Civil Code whose Book Four is called Family Relations, and the Ministry of Social Policy is working on amendments to the existing Family Law. None of this is mentioned in the draft Action Plans, either for Chapter 23 or Chapter 24.

34 Par. 22 (e) of the CEDAW Concluding Observations.

35 Violence against women may be qualified not only as domestic violence but also as a criminal offence against life and limb, threatening a person's safety, etc.; the misdemeanour of breach of public order and peace includes a wide range of types of unpermitted behaviour, including several forms of violence.

36 Quote from pg. 28 of the Special Report of the Ombudsperson on Implementation of General and Special Protocols on VAW, available at: www.ombudsman.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=139%3Aspecial-report-of-the-protector-of-citizens-on-the-implementation-of-the-general-and-special-protocols-on-protection-of-women-against-violence&catid=17%3A2012-12-13-09-53-59&Itemid=30&lang=sr.

37 Par. 23 (a) of the CEDAW Concluding Observations.

Children's rights

Protection of children from violence is steadily declining. The emphasis is primarily on the protection of children as offenders. There are no state statistics on the number of incidents/reports/criminal charges filed against perpetrators of violence against children, which could show the attrition in child abuse cases.

The Third Draft of Action Plan for Chapter 23 is focused rather on the rights of children as offenders than on children as victims of violence. It is of great value to educate professionals on how to conduct interviews with children, but the draft Action Plan does not define the premises and audio-visual equipment for such interviews. Also, there are no state statistics on the number of incidents/reports/criminal charges filed against perpetrators of violence against children, which could show the attrition in child abuse cases. Protection of children from any form of violence does not have priority in prosecution and in court cases. Medical experts prepare their expert reports a few years after the reported abuse and as a lot of time has passed, they cannot confirm with certainty whether the abuse took place or not, leading to prosecutors dropping charges (especially in child sexual abuse cases).

The cases, in which the Autonomous Women's Centre provides free legal aid, show the following patterns/attrition in child abuse cases:

- The Deputy Prosecutor at the Belgrade Prosecution Office intended to make settlement for a suspended sentence with a father who severely beat up his son, even though the Criminal Code stipulates that penalty cannot be reduced to a suspended sentence;
- The Higher Prosecution Office in Belgrade did not notify the mother of a molested child that her appeal against the decision of the basic deputy prosecutor not to prosecute[38] was rejected four months ago;
- The case for the issuance of protection measures with regard to a child victim lasted 18 months before the first instance court.[39] Since the claim was partially accepted, the mother filed an appeal;
- After filing petition for the urgency of proceedings, the Deputy Prosecutor in Belgrade, after almost a year and a half after receiving criminal charges from the welfare service about sexual abuse of a child,[40] determined by court experts in family law proceedings, conducted an interview with the child's mother. The Deputy Prosecutor commented that the case was weak.

The TV show "DNA", created to establish paternity for children who do not know who their father is, continues to violate children's rights by exposing children's names and faces, and creating even bigger stigma for them. The most recent case in which a mother of children was beaten to death after the show was broadcast, demonstrated that the children were present while the abuse before the cameras was happening. Although CSOs filled an initiative to close this TV show to relevant authorities and to punish the responsible ones, the show is still broadcast once a week.

38 Case no. Ktr. – 8059/13, Ktpo. – 862/14.

39 Case no. P2 – 3232/13.

40 Case no. Kt. 9655/13.

Procedural safeguards

The newest version of the draft Law on Free Legal Aid, posted on the Ministry of Justice website, is confusing in its articles, because one cannot tell the difference between the procedure/register/sanctions for primary and secondary free legal aid.

The newest version of the draft Law on Free Legal Aid was posted on the Ministry of Justice website, without the possibility for other interested parties to comment on this draft. Also, there are neither minutes from meetings of the Working Group nor an explanation of the proposed legislative solutions. The draft Law is confusing in its articles, because one cannot tell the difference between the procedure/register/sanctions for primary and secondary free legal aid.

No progress has been made with regard to procedural rights for victims.

In the Third Draft of Action Plan for Chapter 23, activities regarding aligning Serbia's laws with the Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime are scheduled for the end of 2015 and 2016 (activities 3.7.1.17. and 3.7.1.18.). However, the establishment of victims' support services only in higher courts and prosecution offices is planned for 2018 (activities 3.7.1.20. and 3.7.1.21.), omitting to assess that the majority of victims in need of these services are in basic courts and prosecution offices. Even though the Autonomous Women's Centre commented this activity in the First Draft of Action Plan for Chapter 23, the arguments were not accepted by the Ministry of Justice.

The positive action on behalf of the Ministry of Justice is the realisation that the Special Protocol in Cases of Violence against Women is not being implemented, nor do professionals in the judiciary know about its existence, and thus the activity of printing and distributing this Protocol was set in the Third Draft of Action Plan for Chapter 23 (activity 3.7.1.25.).

The cases in which the Autonomous Women's Centre provides free legal aid show the following patterns/attrition in violence against women (VAW) cases:

- The Higher Prosecution Office in Valjevo, only two months after receiving a criminal complaint for spousal rape and domestic violence that lasted for more than 16 years,[41] decided not to prosecute, without interviewing the victim or gathering the proposed evidence;
- The Prosecution Office in Belgrade initiated a criminal investigation against a victim of spousal rape, who filed a constitutional claim because the perpetrator had been acquitted, for the criminal act of false accusation,[42] even though in that same prosecution office there are at least three criminal cases of domestic violence against the same perpetrator that are still in the investigation phase;

41 Case no. Kt. – 6/15.

42 Case no. Kt. – 2749/14.

- Civil cases for the issuance of protection measures in Belgrade courts last for more than a year in the first instance, although in some of these cases the protection measure in the form of a preliminary measure is issued during proceedings. The situation is completely different when it comes to the Court in Novi Sad (proceedings are faster and protection measures in the form of preliminary measures are rarely issued), but the Ministry of Justice or High Judicial Council are not monitoring this difference in the protection of victims;
- Appeal courts in Serbia have different judicial opinions when it comes to civil suits for protection measures filed by welfare services for the protection of victims. Two appeal courts (in Niš and Kragujevac) request that the first instance judges in these cases seek opinion from the social service in a different town or this judgement will be annulled. This practice causes additional secondary victimisation of victims that have to undergo the same procedure before another social service once again and incur additional travel expenses, which prolongs the issuance of protection measures. Cases like this do not come before the Supreme Court because of fund restrictions for social services and the lack of knowledge to appeal.

RECOMMENDATIONS:

- Conduct the new, public and transparent procedure of nomination of candidates for the new Commissioner for the Protection of Equality.
- Change the members of the Coordination Body for Gender Equality so that it has at least 30% of women members.
- Speed up the harmonisation of laws with the CoE Convention on Preventing and Combating Violence against Women (VAW) and Domestic Violence, by adopting emergency orders, amending criminal and civil legislation, establishing services and special rooms for victims in prosecution offices and courts, creating a relevant administrative database of all cases of VAW.
- Monitor attrition in child abuse and VAW cases, in order to prevent cases of infanticides and femicides.
- Revise the latest draft of the Law on Free Legal Aid in order to avoid future problems in implementation, by clearly distinguishing the procedure for achieving primary from secondary free legal aid, and the obligations for users and providers in both types of legal aid.

Personal data protection

No progress was achieved in the area of personal data protection. The Law on Personal Data protection is said to be hardly implementable and the new draft Law was submitted by the Commissioner for Information of Public Importance and Personal Data Protection to the Ministry of Justice, with no feedback on this issue during the last several months. Several provisions of the current Law are practically impossible to enforce, such as the one that requires written consent by individuals in order for the processing of personal data to be legal. This is virtually

impossible to enforce, since the broad definition of personal data also includes the video footage of individuals, including that obtained through video surveillance. Another problem is that the Guidebook on Access to Retained Data[43] has not been adopted yet. This situation creates an inauspicious environment for protecting personal data pertaining to electronic communication of citizens.

In addition, the new Draft Law on Records and Data Processing in the Area of Internal Affairs,[44] particularly Articles 28 and 29 pertaining to the records of importance for community policing, raise additional concerns. These articles stipulate that the MoI has the right to keep extensive databases of sensitive personal data, with the aim of preventing criminal activities and conducting security vetting, over a wide group of natural persons, including responsible persons from civil society organisations.

Moreover, the issue of protection of personal data still remains largely unaddressed in both Draft Action Plans for Chapters 23 and 24. The measures proposed in the Draft Action Plans should reflect the new legislative momentum at the European level, aiming at replacing the Personal Data Protection Directive (95/46/EC) with the newly launched initiative by the European Commission in 2012 to reform personal data protection at the EU level. Under EU law, personal data can only be gathered legally under strict conditions, for a legitimate purpose whereas those collecting and managing personal information must protect it from misuse and must respect certain rights of data owners which are guaranteed by EU law. This is especially true in regard to the protection of personal data within the framework of exchange of information between law enforcement agencies, where the Directive does not apply and where the exchange is regulated through a number of Council's Decisions.

RECOMMENDATIONS:

- There is urgent need for the Government of Serbia to adopt the following legislation: the Draft Law on Personal Data Protection, as drafted by the Commissioner and submitted to the Ministry of Justice, the Draft Law on Video Surveillance, and the Law on Security Vetting.
- Make the necessary legal adjustments in line with the EU acquis, particularly in relation to the new initiative of the European Commission aiming to replace the outdated Data Protection Directive.
- Invest further effort in the protection of personal data within the framework of exchange of information between law enforcement agencies at the EU level.

43 Full name of this document reads the *Guidebook on technical requirements for regulation and programmatic support to lawful interception of electronic communications and access to retained data.*

44 Full text is available in Serbian at: http://www.mup.gov.rs/cms/resursi.nsf/nacrt-ZOE-cir.pdf.

Violence in sport events

Sports events in Serbia still pose a serious threat to public order and may lead to the escalation of violence. In October 2014 there was a high tension football match between Albania and Serbia that resulted in a clash between players and fans, after a flag with a political message was flown into the stadium by a drone. The effects of the implementation of the Strategy against Violence and Misbehaviour at Sport Events (2013–2018) are limited. More needs to be done in order to efficiently prosecute offenders and hooligans. Special departments within the courts and prosecutor's offices for quick prosecution of offenders, announced in 2013, were not established.

RECOMMENDATIONS:

- Initiate establishment of the additional Task Force within the Southeast European Law Enforcement Centre (SELEC) organisational structure, which will be responsible for prevention of violent acts at sport events in South-Eastern Europe.

4. Justice, Freedom and Security (Chapter 24)

4.1. Police Reform

As stipulated in the introduction of the Screening Report for Chapter 24, "establishing a professional, reliable and efficient police organisation is of paramount importance," and this requires "a strong and well-integrated administrative capacity within the law enforcement agencies and other relevant bodies, which must attain the necessary standards." This is why police reform is the key precondition for Serbia in regard to the implementation of reforms in the area of Justice, Freedom and Security (Chapter 24), and the proposed legislative changes to the police should be put under extensive scrutiny.

During March and April 2015 the MoI organised extensive consultations with relevant stakeholders on the new Draft Law on Police. Round tables on the new Draft Law on Police were organised in Belgrade and in several other cities at the local level, whereas a special consultative session was organised for civil society representatives.

The draft Law on Police will not resolve the key problems of police oversight and control. First, the biggest problem is the still present overt politicisation of the police. The biggest problem is the possibility of a Minister's impact on policing at the operational level. Namely, in accordance with Article 16, the Minister gives guidelines and instructions to the police, taking into account the operational independence which is not specified by the draft Law on Police, until the public prosecutor is notified of a criminal offence and assumes direction of police action in pre-trial proceedings. This influence is also visible in the human resources management of the MoI. The draft Law on Police allows the Minister of Interior to appoint and dismiss: (1) the manager and his deputy of an internal organisational unit of the General Police Directorate, (2) the manager of the organisational unit which coordinates the work of police districts and police stations and (3) the head of a police district. Based on mentioned discretionary powers by the Minister of Interior, the de-politicisation of the police is disabled. Second, the draft Law on Police does not regulate appropriately the system of internal control and oversight of the police. It does not stipulate that the Internal Affairs Sector is an independent organisational unit within the MoI, which is a requirement for effective anticorruption policy in the police. Still, the Minister of Interior can prevent an investigation conducted by the Sector and assign another organisational unit of the police to lead the investigation (Article 226). The draft Law on Police does not in an adequate manner distinguish competences in the operations and coordination of the three controllers in the MoI, namely: the Internal Affairs Sector, Department for Control of Legitimacy of Work of Police Districts, and the Division for Control of Legitimacy of Work within the Gendarmerie. These provisions are unsatisfactory not only because the Minister has too

much discretionary power, but also because the police internal control is fragmented, which all together affects the fight against police corruption and protection of human rights. Finally, new police anticorruption measures, such as integrity testing or control of declaration of assets, are not regulated precisely in the draft Law.[45]

RECOMMENDATIONS:

- More efforts need to be invested, particularly in relation to the new Draft Law on Police, in order to assure that the police have operational independence, effective internal control and, most importantly, to reduce the levels of politicisation of the police.

Community policing

Limited progress has been made regarding the implementation of community policing in Serbia. The action plan to implement the Community Policing Strategy, adopted in early 2013, is two years late already. Currently, Local Safety and Security Councils in Serbia do not exist in all municipalities. The number of municipal safety councils has dropped by 7% relative to 2007.[46] It is estimated that advisory bodies in charge of improving safety and/or crime prevention operate in 76 municipalities and towns across Serbia. The problem relates to the way of organising the work of municipal safety councils and ensuring the participation of all local stakeholders, i.e. creating partnerships. Decisions of the Council are not binding and its work depends on the willingness of the police and political representatives to take part in it. Moreover, the duties relating to the work in Local Safety Councils pose an additional burden to the police officers who are in charge of community policing at the municipal level.

RECOMMENDATIONS:

- Local police units should, on a daily, weekly and monthly basis, inform local municipalities of the state of play regarding local safety and, in cooperation with the local government, agree upon measures that are necessary to be implemented in order to increase the safety of citizens.
- Annual reports should be presented to members of municipal councils, who should in turn monitor the police work at the local level and suggest guidelines for improving the police work.

45 Full commentary on the new Draft Law on Police, submitted to the Ministry of Interior by the BCSP, is available in Serbian: www.bezbednost.org/Sve-publikacije/5785/Nacrt-Zakona-o-policiji-dobro-lose-i-sta-moze.shtml .

46 Full study available at: http://bezbednost.org/All-publications/5657/Partnership-for-Safe-Communities-in-Serbia.shtml.

Special investigative measures

No progress was made in regard to the dependence of the police on the Security Information Agency (BIA) to implement certain special investigative measures in criminal investigations.

Police dependence on the BIA to carry out certain special investigative measures in criminal investigations is not in line with EU best practices. The police still rely on BIA's capacities for telecommunications surveillance, which is not in accordance with best European practices. Whereas there has been an initiative in the National Assembly to amend legislation so that all telecommunications surveillance is carried out through an independent unified monitoring centre (such as the one in Croatia), this has not resulted in any concrete proposal yet.

RECOMMENDATIONS:

- The Government of Serbia needs to make sure that policing and intelligence competences are strictly separated and to assure that the police have sufficient technical capacities to implement special investigative measures, in the course of criminal investigation, independently from the BIA.

4.2. Migration

In the area of migration no progress has been made. Serbia still lacks a unified and coherent strategic framework when it comes to migration.

In 2014, the number of registered irregular migrants increased. Since September 2014 there have been over 25 000 irregular migrants reported only on the Serbian-Hungarian border.[47] The Strategy for Combating Illegal Migration in the Republic of Serbia expired in 2014. It is necessary to evaluate the results and revise the Migration Management Strategy of the Republic of Serbia adopted in 2009. Also, it is necessary to improve the knowledge of all actors that come into contact with migrants about mixed migration flows and different mechanisms of action. The existing accommodation and staff capacities for urgent reception of migrants are insufficient to follow the current migratory pressure, especially when it comes to meeting the needs of vulnerable groups.

The Republic of Serbia has not yet concluded any readmission agreement with the countries of origin of most migrants residing in or transiting Serbia, which can be considered safe according to international and regional standards. There is no effective implementation of readmission agreements with the neighbouring countries, in cases where Serbia sends requests for the return of third-country nationals.[48]

47 Data from the Frontex publication: frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q4_2014.pdf.

48 "Challenges of the asylum system", Group 484, Belgrade Centre for Human Rights, BCSP, Belgrade 2014, pg. 46.

4.3. Asylum

In the previous period there has been no significant progress in the area of asylum. The number of people who expressed the intention to seek asylum in 2014 increased dramatically (from 5,066 in 2013 to 16,490 in 2014). From the total number of 16,490 expressed intentions, only 388 asylum applications were submitted, of which only five people were granted subsidiary protection and one person a refugee status. The increase in the number of expressed intentions to seek asylum continued in the first three months of 2015 (there are 8,723 recorded intentions vs. 2,055 in the same period of 2014).

The issue of accommodation capacities for asylum applicants is still not solved systematically, although it is commendable that in 2014 there were no cases of asylum seekers staying in the open. Currently there are five asylum centres, in Banja Koviljača, Bogovađa, Sjenica, Tutin and Krnjača, of which only the first two are of permanent nature. The asylum centre in Krnjača was established in August 2014 by the Government Decision[49] as a new ad hoc accommodation centre, after the asylum centre in Obrenovac stopped working due to the flood damage of May 2014.

It should be also noted that some progress has been made in the area of asylum. On 14 January 2015 according to the Rulebook on Internal Organisation and Job Classification of the MoI,[50] the Asylum Office was formally established and now has the status of a separate unit directly responsible to the Head of the Border Police Directorate. It consists of 29 officers, including four interpreters.[51] Bearing in mind that only three months have passed since the establishment of the Asylum Office, there has not been enough time for the comprehensive assessment of the efficiency of its work. Another positive shift is the establishment of the operational system which functions between the Commissariat for Refugees and Migration and the MoI and enables the Department for Foreigners (the organisational unit within the local Police Departments) and regional centres (the organisational units within the Border Police) that issue the confirmation that the intention to seek asylum has been expressed, to refer the person to the asylum centre that has noted to have enough capacity for their care.

There are shortcomings in the asylum procedures: the asylum application examination in some cases still lasts up to several weeks and even months, the quality of the procedure still does not correspond fully to international and regional standards. In addition, the national regulation is not aligned with the EU aquis. The List of the safe third countries established in 2009[52] has not yet been revised, nor have the adequate mechanisms for its periodic evaluation been established. When applying the concept of the safe third country, decision makers do not take into account whether the safe country will examine the applicant's asylum request.

---

49 Conclusion No. 019 -8512/2014.

50 Conf. 01 no: 9681/14-8.

51 Draft action plan for Chapter 24 is available at: www.mup.gov.rs/cms_cir/oglasi.nsf/Treca_verzija_AP_27_03_2015.pdf.

52 Decision of the Government of the Republic of Serbia on Establishing the List of Safe Countries of Origin and Safe Third Countries ("Official Gazette of the Republic of Serbia", No. 67/2009).

RECOMMENDATIONS:

- The Law on Asylum should be revised and adopted as soon as possible.
- The Government of the Republic of Serbia should create a comprehensive asylum policy that will ensure an efficient and fair asylum procedure. Policy changes should (at least) contain: additional facilities for the reception of asylum seekers in accordance with the requirements of the asylum procedure; better training for all participants in the process of asylum, especially for the newly formed Asylum Office; amendments to the Law on Asylum which could improve the system for determining the safety of third countries, procedural safeguards, protection and reception conditions; specific legal solutions for the integration of refugees, the recipient of protective measures and the development of a mechanism for functional integration; opportunity for cultural and social programmes that enable communication between asylum seekers and local residents.
- Further development and implementation of procedures for irregular migration, based on human rights standards, at all stages, from identification to forced or voluntary return.
- Effective implementation of readmission agreements with the neighbouring countries in cases where Serbia sends requests for the return of third-country nationals and signing of readmission agreements with the countries of origin of most migrants residing in or transiting Serbia, which can be considered safe according to international and regional standards.

4.4. Trafficking in Human Beings

The year 2014 was specific with regard to the structure of identified victims of human trafficking in Serbia. Namely, 125 trafficked persons were identified, an increase of 30% from the previous year, but unlike before, the majority of them (around 80%) were men exposed to **trafficking for the purpose of labour exploitation** in the Russian Federation. As a result, international/cross-border trafficking was a dominant issue in 2014. Such identification structure has two implications. First, the cases of labour exploitation are **still under investigation but none of them has resulted in an indictment.** Only one case of trafficking for the purpose of labour exploitation (identified a few years ago) has ever been prosecuted in Serbia. There is an urgent need to amend Serbian criminal legislation so that cases of labour exploitation which do not contain all elements of human trafficking as defined in Article 388 of the Criminal Code of Serbia could be prosecuted and perpetrators brought to justice. At the moment it is possible to say that there is some sort of impunity for persons who organised exploitation of construction workers. Second, **other types of exploitation were neglected both in terms of investigation and identification**. There are only around 15 victims of other forms of exploitation identified in 2014, which is a significant decrease compared to previous years. It is believed that official identification figures do not reflect the actual situation in the field, especially with regard to sexual exploitation and trafficking in women.

In addition to problems presented in the previous reports, the following remain the burning issues in the anti-trafficking system in Serbia:

Non-prosecution and non-punishment. There are still cases of prosecution and punishment of trafficked persons, resulting in non-satisfactory identification of victims and the lack of an effective system of their protection. Serbian law still does not recognise a non-punishment and non-prosecution clause.

> *In 2013 ASTRA got involved in a very complex case of a young woman who was exploited for seven years by a man who had committed a murder in front of her and forced her to confess the crime. She was sentenced to 18 years of imprisonment for first degree murder she did not commit. This case of trafficking was never prosecuted because her exploitation started before trafficking in human beings was criminalised in Serbian legislation. Although she was officially identified as a victim in Serbia, courts refused to establish that the accused is a victim of human trafficking and did not apply the non-punishment provision from the Council of Europe's Convention on Action against Trafficking in Human Beings (Article 26). In September last year, the victim started serving her sentence. Currently, ASTRA is preparing a petition and a request for amnesty for this case.*

Compensation. Compensation remains the weakest link regarding access to justice for trafficked persons. Last year ASTRA reported on the first final and enforceable judgment awarding the compensation of damages to a trafficked person through civil proceedings in Serbia.[53] However, this judgment was not a result of systemic improvement of access to compensation, but above all of the persistence of a girl who survived human trafficking to go through four years of criminal proceedings and three years of civil proceedings. Serbia does not have a state compensation scheme and consequently, if the compensation cannot be collected from the perpetrator, the victim is left without the damages and litigation costs regardless of the award. Similarly, if the perpetrator does not have property on their name, the victim is not advised to start the proceedings at all.

Missing babies. Another case currently in focus and not directly connected with human trafficking relates to missing babies. As a reminder, these are the cases of babies who had gone missing from maternity wards throughout Serbia since the 1950s and onwards. The Republic of Serbia was supposed to enforce the judgment of the European Court of Human Rights by September 2014.[54] This has not happened yet. The Court gave another year to the Republic of Serbia to find credible answers regarding the fate of each child and to provide adequate compensation. The civil society helped preparing the draft Law on Missing Babies that contains concrete proposals on how to solve this problem in accordance with the ECHR judgment.

53 More information available at: http://www.astra.org.rs/first-judgment-awarding-compensation-for-victim-of-trafficking-in-serbia-issued-executed/?lang=en.

54 The case of Zorica Jovanović v. Serbia (*Application no. 21794/08*). The ECHR's final decision available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-118276#{"itemid":["001-118276"]}.

ASTRA also addressed the Committee of Ministers of the Council of Europe to consider all those facts and to take all steps to assure that the judgment is fully implemented. At the meeting in December 2014, the Minister of Health and Minister of Justice informed the representatives of parents' associations, non-governmental organisations and media that a lex specialis would be adopted by May 2015; at the beginning of May this does not seem very likely.

RECOMMENDATIONS:

- Allocate sufficient resources to reintegration programmes for victims of trafficking in accordance with the EU Directives 2012/29/EU and 2011/36/EU.
- Adopt legislation changes that will help introduce an effective and sustainable compensation mechanism for victims of violent acts, including victims of trafficking in human beings.
- Amend the Criminal Code of the Republic of Serbia and make sure that non-detention, non-prosecution, and non-punishment clauses are explicitly stated in the new law.
- Develop and implement standards and procedures in all stages of victim protection from identification to reintegration/voluntary return, as well as protocols of cooperation with NGOs.
- Adopt a new strategy and action plan against trafficking in human beings without further delay.

4.5. Fight against Terrorism

There was some progress in the area of fight against terrorism. In October 2014 the Criminal Code of the Republic of Serbia was amended, criminalising the participation of Serbian citizens in wars or armed conflicts in foreign countries, as well as the activities of organising and encouraging the participation of Serbian citizens in wars and armed conflicts in foreign countries. However, it is still necessary to clarify the competencies of the Standing Cooperation Group in charge of coordinating activities related to implementation of the National Strategy against Money Laundering and Terrorism Financing and the Permanent Joint Task Force, established on 9 January 2015.[55] Moreover, the Third Draft Action Plan for Chapter 24 in the policy area of fighting terrorism proposes measures that do not provide a balance between prevention and deradicalisation measures with the repressive measures against potential terrorist suspects.

Moreover, the deadline for producing the Counter-Terrorism Strategy, as stipulated in the Action Plan for Chapter 24, is said to be December 2015, whereas the deadline set for the Law on Critical Infrastructure is 2017/18. As far as the Law is concerned, the BCSP commends the fact that extensive research and analysis is planned before the adoption of this legislative act. However, this is not the case with the Strategy, whose adoption is envisaged for December 2015 and there seems to be little or no debate regarding the process of its drafting so far. It may be possible that there are better capacities within the MoI and other state services to address the

55 More information in Serbian available at: www.blic.rs/Vesti/Politika/525359/Osnovana-Stalna-radna-grupa-za-borbu-protiv-terorizma.

issue of counter-terrorism, and there are more data and analyses on this topic, but it is unclear why there are no reports, papers or analyses published on this topic if this was the case. The EUROPOL has the practice of publishing relevant reports[56] and this can serve as a good practice that the MoI can employ as well.

Taking into account that the EU's Counter-Terrorism Strategy is based on four pillars – Prevent-Protect-Pursue-Respond, it is suggested that, regardless of member states' efforts, acts of terrorism might happen and it is important for the states to have rapid response capabilities and to be able to alleviate the consequences of such actions. The EU's Counter-Terrorism Strategy envisages using the existing civilian structures, the same ones that are used for emergency situation responses in the case of natural disasters. As evidenced by the experience of managing the floods that struck Serbia in May 2014, Serbia lacks a proper response mechanism for rapid reaction in these cases. Therefore, this should be a priority area addressed in this subchapter.

RECOMMENDATIONS:

- Serbia needs to step up its efforts in increasing its capacities for rapid response in cases of acts of terrorism, by enhancing its capabilities for emergency situation management.
- Extensive consultations and analyses need to be undertaken in the process of drafting the Counter-Terrorism Strategy so as to ensure a balanced approach between prevention, deradicalisation, investigation and response to terrorism.

56 For example, see: https://www.europol.europa.eu/latest_publications/37.

The printing of this publication was supported by the OSCE Mission to Serbia. The views herein expressed are solely those of the author and contributors and do not necessarily reflect the official position of the OSCE Mission to Serbia.