

PREUGOVOR REPORT ON PROGRESS IN CHAPTERS 23 AND 24

Belgrade, May 2014



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ABOUT “prEugovor”

“prEugovor” (Eng. *prEUup*) is the first coalition of civil society organizations formed in order to monitor implementation of policies related to the Accession Negotiations between Serbia and EU, with an emphasis on Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security). PrEugovor is formed on the initiative of Belgrade Centre for Security Policy (BCSP) with the mission to propose measures to improve the condition 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 democratization of Serbian society.

The “prEugovor” gathers:

ASTRA - 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 platform “prEUgovor” gathering seven expert organizations has been monitoring areas related to obligations contained in political criteria and chapters 23 and 24. Findings in these reports are a result of scrupulous monitoring of the progress made in these areas, both in terms of legislative changes and the implementation of adopted legislation. Political dynamics and reforms in Serbia in this reporting period were marked by elections and formation of new Government. Proclaimed political will to tackle the key issues needs to be followed by a strong impetus to build and strengthen institutions.

The monitoring report which follows covers developments from September 2013 to April 2014 and its main aim is to draw attention to major concerns related to targeted areas. A number of newly introduced laws and strategies (Strategy for Reform of Judiciary, Anti-Corruption Strategy, Public Administration Strategy Reform, etc.) are just at the beginning of being implemented, and need to be followed by numerous laws and bylaws and significant capacity building measures for institutions in charge of implementation and their true effects remain to be seen. Drafting of Action plans for Chapters 23 and 24 of the negotiation with the EU is going to be particularly important. Revision of the already adopted action plans and setting of clear measurable indicators of success as well as benchmarks and substantive financial resources dedicated to implementation will be of a paramount importance for further progress to be made in these areas.

This report covers specific issues in areas falling into the Political criteria, Chapters 23 and 24, as well as related chapters dealing with Public Procurement (5) and Freedom of Movement of Workers (2). Report contains specific findings and recommendations in these areas, while the main cross-cutting recommendations of the PreEUgovor are:

-Government should completely abandon practice of introducing exceptions to the laws which have been adopted and practice of circumventions of the laws. Such practice is still wide spread, particularly in the most sensitive areas such as security sector and public procurement. Such an example is the Law on Public Procurement which is not being implemented in cases of high value procurements, like procurements financed through international agreements or through credits of international financial institutions. Moreover, Government continued with their practice of not publishing agreements and contracts with foreign investors (e.g. in “Air Serbia” case), thus violating the Law on Free Access to Information. The procurement in security and defence has not been made accountable and transparent due to delay in adoption of more precise Regulation of Implementation of Confidential Procurements. Despite the proclaimed goal Government continued practice of appointments and dismissals of high ranked officials in contrary to the Civil Servants Law, without public recruitment procedure and explanatory note, as well as appointment of CEOs of public enterprises without proper competition, thus violating the Law on Public Enterprises. To that end it is also necessary to improve protection of whistle-blowers as well as improve monitoring of

implementation of strategies and action plans, particularly collection of data and statistics in number of areas. These circumventions or direct breaches of the laws negatively reflect on the overall process of institution-building and establishment of the rule of law. This particularly stands for policies related to fight against corruption and misuse of public powers.

- Accountability of the executive branch needs further strengthening. Significantly more effort needs to be put into effective curbing of politicization and misuse of public powers across the sectors, particularly public enterprises. The Parliament, independent bodies such as Ombudsperson, Commissioner for Free Access to information, Anti-Corruption agency, State Audit Institution, Commission for Protection of Bidders Rights are institutional mechanisms for control over Government. The National Assembly did not discuss the realization of their conclusions based on the reports of the independent bodies for year 2012, nor they have requested to consider the findings of internal control mechanisms e.g. Defence Inspectorate, Internal Affairs Sector in the Ministry of Interior. Internal mechanisms of control also need strengthening such as the Internal Affairs Sector of Police which faces with many challenges in order to fully monitor the legality of the work of the law enforcement officers. **National Security Council and the Bureau for Coordination of Intelligence Services are still exempted of oversight by other branches of government which leads to concentration of power in the hands of PM who is also holding the office of the secretary of the Bureau.** These external and internal mechanisms should contribute to **curbing voluntarism in decision making, politicization of public institutions and breaches of human rights and deserve special attention.**

-Protection of human rights should remain high on the Government agenda. It is worrying that little or no progress has been made in either improvement of legal framework or its implementation in the previous period. The most pressing issue is the adoption of the Law on Free Legal Aid, a basic prerequisite for ensuring access to justice. Existing proposal of Law on Free Legal Aid does not provide basic guarantees for protection of vulnerable groups such as victims of domestic violence or trafficking and it fails to provide for financing of these services. In the area of protection of privacy, Serbia still **lacks laws regulating video surveillance and usage of biometric data.** The Law on the Protection of Personal Data from 2008 is still not in line with the EU standards, while strategy on Protection of Personal Data was adopted 3 years ago, and should have been followed by Action plan 3 months later, but this has never occurred. There has also not been significant improvement regarding **protection of women from all forms of gender based violence.** The number of femicides increases every year, there are no emergency protection orders, criminal legislation needs to be harmonized with CoE Convention on Preventing and Combating Violence against Women and Domestic Violence. In the field of anti-trafficking legislative implementation remains problematic. Main areas of concern include insufficient victim assistance and protection, inefficient criminal proceedings, deficiencies in the implementation of non-detention, non-prosecution and non-punishment clauses. Even though Serbia is bounded by international legislation ratified to provide compensation to victims of trafficking, the country made no progress in protecting this right. In addition, new Anti-trafficking Strategy and Action Plan have not been adopted yet even though the previous Action Plan expired in 2011. Regarding asylum, although certain efforts have been made in the

development of the legislation and accommodation of the asylum seekers, no crucial progress has been made. The number of persons who expressed intention to seek asylum is constantly increasing while claims are still temporarily processed by the Border Police Asylum Unit, as the Asylum Office intended to operate as the first-instance body has not yet been formally established. Large number of asylum seekers, sometimes as many as 200, had been living outside, in the woods without basic living conditions such as food and water.

-Strengthening independence, efficiency and accountability of judiciary is of paramount importance for the overall implementation of the laws. Efficiency of judicial network remains serious problem. The reorganization of courts as a part of judicial reform caused serious problems in distribution of files. Majority of court processes had been postponed and in many of the cases the presiding judges had been changed. The evidence for systemic weaknesses is provided based on monitoring of judicial cases of trafficking in human beings and against domestic violence. The backlash occurred also with regard to coming into force the new Criminal Procedure Code. General implementation of the adversarial procedure under the new Criminal Procedure Code is facing difficulties in implementation because of insufficient number of prosecutors, available premises and administrative staff. In many cases previous investigation judges did not conduct investigations in cases that are 2 -3 years old, so, when the implementation started, prosecutors were blocked in their work for 2 months and it was resolved by 90% of the cases ended up dismissed by the prosecutors. The system for objective evaluation of judges' and prosecutors' work and overall accountability in judiciary is still not effective. Currently discussed drafts of changes of laws on HJC and SPC would slightly improve accountability of these bodies' members.

INTRODUCTION

This submission is a joint contribution of 7 Serbian civil society organisations gathered to provide an independent monitoring of implementation of policies relevant for rule of law in Serbia (political criteria, chapters 23 and 24).

The report is structured to present findings regarding recommendations from 2013 EC monitoring report, as well a highlight of important emerging issues. Each CSO covered one or more policy areas.

FINDINGS¹

1.4. Normalisation of Relations between Serbia and Kosovo

Since the last Progress Report, some progress has been made in regards to implementation of the '*First agreement on principles governing the normalisation of relations*' reached on 19 April 2013 between Belgrade and Prishtina. In the following section, we review only security aspect of the Agreement – integration of Serbian police officers into Kosovo Police based on the research performed in February-March 2014.² This research comprised of reviews of all the relevant legal documents and extensive interviews with stakeholders in Kosovo, including newly integrated Serbian police officers, Kosovo Police representatives, members of the Kosovar Parliament and EULEX and OSCE representatives.

The integration of Serbian police officers, the former Ministry of Interior's MOI employees from northern Kosovo, has been completed although not according to the timeframe as stipulated in the Implementation Plan from June 2013, which complemented the Brussels Agreement. After the police stations in the North were disbanded, the Serbian government adopted a Decision³ that has effectively retired all MoI employees in Kosovo, and set the ground for their integration into Kosovo Police. In total, 284 former MoI police officers joined the newly founded Regional Command North by February 2014.⁴ However, around 800 now retired MoI employees who had worked south of river Ibar, who were not involved in the integration process, protested and submitted official complaints to Serbian courts based on the fact that the Government's decision that had retired them was unconstitutional and unlawful.⁵ Apart from this, former MOI police officers from the North Kosovo complained about the hasty manner of the integration process that lasted from December 2013, after the Government's decision was adopted, until mid-February 2014. By having very limited time to prepare and adapt to the new conditions, and with little

¹ Findings are structured based on Serbia 2012 Progress Report, Document COM (2012)600 final.

² Bjelos, M; Elek, B; Raifi, F. 2014. *Police Integration in North Kosovo: Progress and Remaining Challenges in Implementation of the Brussels Agreement*. Belgrade, BCSP. Available at: <http://bezbednost.org/All-publications/5475/Police-Integration-In-North-Kosovo-Progress-And.shtml>

³ Uredba o uslovima za ostvarivanje prava na posebnu penziju zaposlenih u Ministarstvu unutrašnjih poslova na teritoriji AP Kosovo i Metohija (Decision of the Government of Serbia on the conditions for acquiring right to a special pension for MoI employees from the territory of Kosovo and Metohija), "Official Gazette" 115/2013, of December 26th, 2013.

⁴ Interview with Nenad Djuric, acting head of the Regional Command North, on March 7th, 2014, Kosovska Mitrovica.

⁵ The decision violates the right to free movement by conditioning retirees not to move from Kosovo into Serbia proper, and it is not in accordance with the Law on Pension and Disability Insurance. The Government is currently in the process of drafting a *lex specialis*, together with police trade unions, in order to resolve the aforementioned issues. (Interview with Predrag Djordjevic, head of the Independent Police Syndicate, 6th March 2014, Pristina).

knowledge of the process itself, those police officers who joined the KP were extremely dissatisfied with the treatment they received; those south of river Ibar were even more so. In addition to this, although police officers were retired in December, the Government of Serbia has not made any pension-related payments to them as of March 7th, 2014.

Recommendations:

- Kosovo Police, with the support of the international community, should devise and implement additional training programme for former members of the Mol in order to get them better acquainted with the legal framework of Kosovo and the performance of the police (e.g. chain of command),
- It is necessary to perform security checks of the newly integrated Serbian policemen in management positions with access to classified information.
- The Serbian government should propose, and the National Assembly to adopt, a new Law on pensions for former members of Mol in Kosovo that would cancel the currently valid Decision, and which would not discriminate against their rights to free movement and employment.
- The international community should support the development of programmes for the reintegration of 800 Serbian police officers south of the river Ibar who are jobless. The reintegration program can be developed after the model of the reintegration program of the Kosovo Protection Corps or PRISM program in Serbia.
- It is necessary to ensure that members of Civil protection units are integrated within the structure of the newly formed municipalities in northern Kosovo in accordance with the Law on local governments. It is essential that municipalities in northern Kosovo, with help from the international community, develop a special programme for the integration of members of Civil protection units.

2. Political Criteria**2.1. Democracy and the Rule of Law****2.1.1. Constitution**

There were no initiatives to draft changes of Constitution relevant for more effective fight against corruption (e.g. immunity provisions, conflict of interest definition, use of public funds), as well as better institutionalization of democratic civilian control of security sector.

Mandate, composition and democratic oversight of the National Security Council should be regulated by the Constitution. Currently, there is a concentration of power in the hands of the secretary of the National Security Council who is at the same time a deputy PM tasked with fight against corruption. Regulating this matter in the amendments of Constitution should enable not only creation of oversight mechanisms of the National Security Council, but also prevent arbitrary changes to this body through law amendments aimed at satisfying daily political needs. Currently, this matter is regulated by Law on Basic Regulation of Security Services which was changed after the 2012

May elections in order to suit specific aspiration of Aleksandar Vucic who is the leader of the Serbian Progressive Party to establish full control over the intelligence and defence sectors. In this way, Aleksandar Vucic has concentrated strong power (over security information) in his hands, which could be easily used for side-lining political opponents. This fact is more important if we take in consideration that current legislation doesn't prescribe any mechanisms for democratic oversight (esp. parliamentary or public) over this body. Previous Serbian government, led by the Democratic Party, also used this body through the post of the Secretary of National Security Council for exercising dominant control over security sector of Serbia.

Recommendations:

- Mandate, composition and democratic oversight of the National Security Council as the main coordinating body in the national security system of Serbia need to be regulated by the Constitution.
- Through amendment to the Constitution of the Republic of Serbia empowering the National Assembly to adopt the National Security Strategy as the main strategic document of the country.
- Through amendment to the Constitution to regulate status of independent state bodies, to regulate immunity and conflict of interest issues more precisely, to improve accountability of government (mandatory discussion of citizens initiatives, more clear right to access government information, "good governance" right), to limit discretion of government in financial decisions and possibility to limit implementation of systemic laws through other legislation.

2.1.2 Parliament

Since September 2013 Parliament did not adopt relevant laws that are directly related to the fight against corruption. Among the laws passed during this period those that deserve a mention are amendments to the Law on the Budget System (sanctions for users of public funds for employment that is contrary to restrictions), Law on the Reduction in Net Income of a Person in the Public Sector (which was adopted as a measure of savings in the budget, rather than fundamental reconstruction of public sector), amendments to the Law on Civil Servants and Employees, which has reduced the right to receive former officials (three months instead of six months).

Amendments to the Law on Public Prosecution stipulate the duty of the public prosecutor and deputy public prosecutor to reject any operation that represents the impact on the independence of the work of the public prosecutor's office. They also regulate issuing of verbal instructions of the public prosecutor's office and that within three days the same instructions need to be submitted in written form; the duty of reporting to the National Assembly on the work of the prosecution; the right to a professional association; they prescribe new rules for nominating candidates to the prosecutorial function in terms of qualifications; amendments to the Law on Judges, which stipulates the possibility of recourse claim against the responsible judge who intentionally harmed the interest of

Republic with its actions; the right to the professional association; the ability to deviate from the rules of random judges in cases envisaged by the Court Rules of Procedures. Amended is also the Act on the Protection of Competition (the new definition of dominance in the market, the adoption of the Code of Ethics Committee, changes relating to the procedure), passed the Law on Legalization, which allowed to legalize illegal construction, although it was defined as a criminal offense, the Law on Minor Offences (in July), which allows the regulation of longer period of limitation for violations of any anti-corruption legislation (public Procurements and Law on the Anti- corruption Agency), but not for violations of the Law on Free Access to Information of Public Importance and the Law on Financing Political Activities. Amendments to the Law on the Budget System in July 2013 enabled the introduction of a registry of public employees, but no clear solutions regarding the release of data from the registry. The Criminal Code was amended but the amendments did not incorporate changes that would improve the anti-corruption provision.

The National Assembly did not discuss the realization of their conclusions based on the reports of the independent bodies for year 2012. Due to the parliamentary elections scheduled, the reports of those bodies for 2013 have not yet been discussed. While there is a practice of parliamentary questions to the Government and ministers, the Parliament does not have practice yet to call for responsibility ministers that failed to implement laws, strategic acts or parliamentary conclusions. However, Parliament still lacks comprehensive approach to legislative process and law adoption.

2.1.3 Government

Fight against corruption was among top priorities of the Government. There was no change in status of Government's vice-prime minister Vucic (in charge for fight against corruption). However, Government's plan for fight against corruption was not fully developed. National Anti-corruption Strategy and corresponding Action Plan set some elements of policy for 2013 – 2018 period, but do not reflect clearly to the all aspects of government's work (e.g. transparency, discretion in decision making process). Authorities of vice-prime minister and the leader of strongest political party in fight against corruption are not defined, while there are clear authorities the same person has as a coordinator of intelligence services.

Governments' Anti-corruption Council published five reports during 2013 and none in 2014. Annual report of this body does not notify whether Council's reports were further considered by the Government or not. Previous reports of the Council ("24 privatizations") were considered by law enforcement bodies, as a consequence of political will (that was part of coalition agreement). According to the Aleksandar Vucic's statement, for one report, investigation is not finalized (report on media transparency ownership). For the rest 23 cases, only summarized information is presented (number of indictments, value of damage), but no concrete data per each case. Besides that, there is still no mechanism in place to discuss upcoming reports of the Council.

Government did not improve transparency of its work (sessions' minutes are still treated as an "official secret"). Government continued with their practice of not publishing agreements and contracts with foreign investors (e.g. in "Air Serbia" case). According to the statement of the former economy minister Radulovic and his advisors, decisions on government's sessions are adopted without discussions and members of cabinet do not have sufficient time for consideration of session material before voting. New provisions of Government's Rules of Procedure are implemented more often than before. However, the most of legislative debates are not published on e-government portal and in most of the cases participants of debate do not receive elaborated answers to their proposals.

Government continued practice of appointments and dismissals of high ranked officials in contrary to the Law on Civil Servants, without public recruitment procedure and explanatory note. Furthermore, these appointments and dismissals are openly treated as a matter of political considerations. Proposed amendments to the Law on Civil Servants aimed to resolve a part of that problem, by regulating appointment of acting officials that was not discussed in the Parliament. The Government was active in proposing the laws. In January 2014, Government adopted Strategy for reform of public administration.

2.1.4 Public Administration

There were no substantial changes in the work of public administration except for the adoption of new Strategy for Public Administration Reform in January 2014. Basic principles of that strategy are: 1) improvement of organizational and functional subsystems of public administration; 2) establishment of harmonized, merit-based civil servant system and improvement of human resource management; 3) improvement of management of public finances and public procurements; 4) increased legal certainty and improvement of business environment and quality of public service providing; 5) strengthening of transparency, integrity and accountability in the work of public administration. The Action Plan for 2014-2016 period has not been adopted yet.

There were no changes in rationalization of public administration, or actions aimed to establish whether some institutions of public sector are necessary or not (e.g. public agencies).

Strong politicization of public administration is still very present, as well as the lack of proper anti-corruption regulation for employment of various parts of public sector (local government, health, culture and education, public enterprises). The trend of politicization of budgetary transfers to local municipalities⁶ has continued. Regional development policies are undermined by voluntary transfers motivated by the political party affiliations rather than development plans.

⁶CPES research.

No progress has been achieved in implementation of merit-based recruitment and promotion systems. One of the most important features of the 2005 Law on Public Servants was supposed to be “depoliticisation” of highest positions of decision-making in state administration (i.e. assistant ministers, senior advisors and department directors, etc.) Government kept significant influence to the appointments in public enterprises, even after changes of relevant legislation (possibility to choose between three candidates or not to select candidate at all). In practice, even such provisions on recruitment are not implemented yet. There is no progress in oversight of public enterprise work. Highly ranked officials of ruling parties announced several times party based (instead of institutional based) control of top public officials, directors of public enterprises and mayors that “did not work well”. A very illustrative example is the Security-Information Agency, where 50 shifts and replacements were made at all organizational levels since new director had been appointed in August 2012.⁷ The latest example is a Member of Parliament, Mico Rogovic, from the ruling Serbian Progressive Party who left position of MP to start working in Security-Information Agency.

Government promised that high-ranking officials managing public enterprises will in the future be selected after entering a public competition. Although there were some positive examples⁸, it remains a matter of concern whether the most qualified candidates will be chosen in the end, since parties have so far tried to exert total control over public enterprises’ affairs.

Independent Oversight Bodies

Situation regarding capacities of independent regulatory bodies or enforcement of their recommendations and decisions remains largely unaltered.

Recommendations, but also final and mandatory decisions of independent bodies are sometimes ignored by other parts of administration. Furthermore, there are situations where politicians ignore mandatory nature of such decisions, or oppose decisions with no ground. Acting of courts and prosecutors on the basis of criminal charges and misdemeanour requests of independent bodies is slow and often finalizes through statute of limitations. Public prosecutors and public attorneys are not pro-active on the basis of independent bodies’ reports.

Situation regarding capacities of independent regulatory bodies is not improved significantly. Some progress has been made with granting new premises for the Commissioner for Free Access to information and Private Data, thus providing better working conditions for its office. However, the Commissioner could not resolve under-staffing and employ new staff, due to changes to the Law on the

⁷ See: <http://www.blic.rs/Vesti/Politika/375804/Naprednjak-ugostitelj--buduci-operativac-BIA>

⁸ Until 20 July 2013, over 60 applications has been submitted for the position of the director (CEO) of “Electro Power Industry of Serbia” (EPS). Also, Ministry of Defence has posted at its web site – for the first time ever – public competition for the position of the director of the “Yugoimport SDPR” – Serbia’s public enterprise tasked with exporting weapons and ammunition produced by Serbia’s defence industry.

Budgetary System⁹ from December, 2013, which do not allow hiring new employees in public sector for period of two years. Due to salary being comparatively lower than the one provided in private audit companies, the State Audit Institution faces risk in regard to outflow of personnel. The Government did not put back in procedure yet necessary changes of laws regulating their work, nor initiated procedure to remove problems Ombudsman and Commissioner identified.

2.1.5 Civilian Oversight over Security Sector

Recommendations for improvement of parliamentary oversight of security sector:

- Defence and Internal Affairs Committee and Security Services Control Committee should adopt medium-term and annual work plan and establish priority areas of activity (e.g. budgetary control, monitoring and control of the arms trade and the like.)
- Committees should develop mechanisms for regular cooperation with other parliamentary committees (finance, judiciary and administration, foreign affairs), such as joint sessions, regular exchange of information, consultation and the like.
- MPs should seek public hearings more often on matters in priority areas of activity, mentioned above.

Oversight of Military

MoD initiated public debate on draft amendments to Law on Military¹⁰ and Law on Defence¹¹ in March 2014. The main good novelties were in strengthening of Defence Inspectorate and in compatibility of servicemen status as professional soldiers and not conscripts as to better reflect the reality of professional army.

Following recommendations by BCSP should be put into the proposal. BCSP's interventions¹² aimed several issues: **Defence Inspectorate should report to Parliamentary Committee** (and not just to Minister) for larger violations and irregularities within MoD. The first reason for this is to prevent, as some of those acts might have been conducted by Minister himself (e.g. "Flak vests affair", "Satellite affair"¹³).

Article 14a should be abolished as it denies military men participation in any activities by CSOs, and thus hampering democratic and civilian control over

⁹ Zakon o budžetskom sistemu (Law on the Budgetary System), "Official Gazette nr. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013 – amended and 108/2013)"

¹⁰ Law on the Serbian Armed Forces- Official Gazette, No. 116-07

¹¹ Law on Defense-Official Gazette, no. 116-07

¹² M. Milosevic, K. Djokic (2014) *Izmene Zakona o odbrani i vojsci: jedan korak napred, tri koraka nazad* Beograd, BCBP

¹³ Flak vests affair(2005) – planned purchase of 60 000 helmets and 69 000 flak vests for 28 000 men army, costing 176 mil EUR; Satellite affair (2005), rent of Israel satellite for aerial monitoring of Kosovo territory, never used and costing 27 mil EUR (after trial, it costs, with interest, around 78 mil EUR) – both affairs were contracts signed by Minister himself

armed forces –as members of CSOs cannot interfere, survey or question the rationality of most of the aspects conducted by MoD and military.

The logistic support could be provided by private firms (intention was that they could be provided only by military owned companies, and if they were lacking, Government should found them), and that military owned ones could have the priority when prices and quality of offered services were equal.

Private security companies' services should be envisaged in public-private partnership, as to override the lack of military personnel for safeguarding proving grounds, barracks, ammo depots and various other objects.

Military unions should have the right to debate on defence management (but not command) **and equipment** (but not armament) as that is mandate of unions, not hampering security issues.

Law on the Security-Information Agency

The new Law on Security-Information Agency (SIA) hasn't been amended yet despite the fact that its provisions are not in accordance with the Constitution of Serbia and human rights standards. Due to this fact, the Constitutional court had declared its provisions regulating wiretapping as unconstitutional,¹⁴ which in time when early elections were called and when the Parliament was dismissed could have blocked the work of the most important Agency. Therefore, a **new Law on SIA has to be adopted as soon as new parliament** is established, enabling in this way effective work of SIA while human rights are guaranteed at the same time. Also, this law has to regulate more clearly division of labour between SIA and police, so as to avoid a situation where SIA is doing investigations of organised crime and serious corruption instead of police.

Oversight of Police

The Law on Police has to be amended to address following structural weaknesses:

(1) The accelerated retirement for police officers has not been repealed. In most modern police services across the world this practice doesn't exist anymore. (2) According to new amendments a police officer have right to refuse police assignment if there are not adequate working conditions. This provision is contrary to the police profession. (3) The standards for salary increases in the Ministry of Interior are not set out clearly. Firstly, it's undecided whether additional coefficients increase salary for all employees in the Ministry of Interior, or only to authorize officials, i.e. those who apply police powers. Significant inaccuracy is that the amendments to the Law on Police didn't identify special requirements for a salary increase, or "certain categories of employees", as stated in the Law on Police, for which salaries can increase by more than 50%. (4)

¹⁴ Decision of the Constitutional Court of Serbia, number IU3-252/2002. from January 2014.

Decision available at:

<http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/%D0%9E%D0%B4%D0%BB%D1%83%D0%BA%D0%B0%20%D0%A3%D0%B7-252-2002.pdf>

Key recommendation for tackling legal gaps regarding democratic accountability of security institutions:

- Removal of the provision of Article 5 of the Law on Police by which the police provides the citizens with the information within its jurisdiction only if there exists a legitimate interest for this, and thus harmonize this law with Article 4 of the Law on Free Access to Information of Public Importance by which access to such information is granted regardless of whether the authorities believe the request is justified or not.
- Amendment to Article 24 of the Law on Police by which the Minister appoints and dismisses regional police chiefs and authorization of the Director General of Police to perform this task.
- Removal of the provision of Article 14a of the Law on the Army of Serbia which forbids the professional members of Serbian Armed Forces to participate in the activities of associations concerned with the topic of defence. This provision is contradictory to Article 141 of the Constitution which states that the Army of Serbia is subjected to democratic civil control. Moreover, this provision is in contradiction to Article 29 of the Law on the Army of Serbia which talks about democratic civil control of the Army and states that citizens, therefore their associations as well, are also subjected to such control.
- Amendment to the provision of Article 9 of the Law on MSA and MIA by allowing the members of MSA to gain insight into the registers, databases, electronic databases and other official documents of state bodies, organizations and agencies, bodies of autonomous provinces, local governments, organizations exercising public powers, the Army of Serbia and legal entities solely on the basis of a court decision. Current legal solution allows violation of the right to protection of personal data, as well as of the data that can be classified as secret.
- Harmonization of the provisions of the Law on Police, the Law on Security Information Agency, the Law on Military Security and Military Intelligence Agencies, the Criminal Procedure Code, the Law on Tax Procedure and Tax Administration and the Customs Law regarding the application of special investigative measures and procedures by determining uniform conditions for implementation of named measures and procedures, as well as uniform method of control over their implementation.
- Through Protocol on Cooperation between Ministry of Interior and Ministry of Defence determining more transparent division of responsibilities of each of the special units of these two Ministries. In this way conflict of jurisdiction would be eliminated and scope of activity of each of these units would be known in advance.
- Adoption of the Law on Private Security Companies and the Law on Detective Activity.

Oversight over Private Security Sector

In November 2013, the Parliament finally adopted the Law on Private Security and Law on Detectives, thus regulating this area after 20 years (since 1993 when the corresponding laws were abolished). Implementation of these laws is

impossible without accompanying secondary legislative, so **a dozen of bylaws have to be drafted and adopted.**

The adoption of bylaws is important for its implementation and prevention of frequent incidents that PSCs are still taking place. CINS has investigated registered cases of violence committed by private security agents (PSA) in Serbia, as well as some cases it learned about by crowd sourced its readers using new media. CINS is currently verifying over 80 such cases in last 5 years and has found that private security at night clubs, bars and bar-rafts, but also when hired by owners of companies in strike, was using violence beyond necessary and often, causing great physical and mental trauma to its victims and sometimes death. CINS investigation shows that such cases change lives of both victims and attackers (PSA's are often victims themselves) who are changed and impaired forever, and that damage to society is high financially, economically and in terms of social relations. The new law is attempting to regulate and define when and how force can be used, but it remains to be seen if it would bring significant change for the better.

The priority for its implementation is to adopt necessary bylaws and allocate sufficient resources to the Internal Affairs Sector of Ministry of Interior that will be in charge of oversight of private security companies. This is critical as MoI has to (at least) educate existing staff, or hire and educate additional members in order to provide efficient oversight and control of approximately 40 000 personnel in private security sector.

There is also a need to **change provisions in both the Law on Private Security Companies and Law on Police** to prevent possibilities for illegal cooperation between police officers and PSCs. The law has also failed **to regulate the vetting of owners of private security companies.** CINS has in 2010 published its investigative project on private security agencies and has found that criminals or members of their families and proxies owned some. Employees of such companies secure sensitive institutions like banks, state institutions, night clubs and other, and are allowed to carry weapons. According to new law, security check by Ministry of Interior is mandatory for security agents and managers of such companies, but not for owners. Also, **bylaw that regulates additional work of police officers that contradicts the ethics of their work is still missing and policemen often “moonlight” in private security sector** as, so far, they don't violate any regulation. So far Sector of Internal Affairs of MoI was unable to prevent illegal work of policemen in private security, which in turn leads us to believe that oversight with existing capacities will be ineffective.

2.1.6 Anti-corruption policy

In the fight against corruption, the main focus is on repressive action of the state – arrests, and in some instances indictments for abuse official power and other criminal offences against alleged violators, including former high rank state officials. That repressive action is reasonably considered as a consequence of “political will”, which, according to the law, should not be anyhow relevant for

the actions of police and public prosecutors. However, it is obvious that investigation of several cases of abuses of power would not have been initiated if there had not been such political priority (e.g. investigation of cases on the bases of previous Anti-corruption Council reports). There were also instances where investigations included either members or persons close to the ruling parties.

The “chain of command” in law enforcement bodies is legally unchanged (with prosecutor for organized crime being in charge for investigations). However, some corruption cases are investigated by special “task forces”, whose relation with the Bureau for Coordination of Intelligence Services remains unclear. Furthermore, investigations are openly announced in press considered to be close to the ruling parties. Even though investigation of cases where abuse and corruption was suspected in previous years is necessary, **its sustainability is a matter of concern, because of being based in “political will” and not on institutional arrangements**. Another concern is possible abuse of anti-corruption work for gaining political gains and side-lining political competition in government.

Anti-corruption Strategy and corresponding Action Plan, adopted in June, i.e. in August 2013, are partly implemented. These documents envisage important legislative improvements, support for anti-corruption bodies and oversight mechanisms. However, **Strategy does not provide appropriate responds to some significant corruption related problems**. Government in power since July 2012, in its Action plan, envisages quite non-ambitious goals for period till 2018 - 30% of increased number of final sentences for corruption compared to 2012, despite proclaimed “zero tolerance” policy, awareness that vast majority of corruption is not reported at all and evaluations that previous governments “lacked political will” to fight corruption.

There was no adoption of new laws that would directly contribute to fight against corruption. However, some legislation might have positive (e.g. Law on Misdemeanours) or negative effects (e.g. Law on Legalization of buildings). The new Strategy for public administration reform is adopted. Ministries started work on amendments to the Law on financing of political activities, Law on Lobbying and Law on whistle-blower protection.

In practice, even the current legislative provisions are violated (e.g. Law on Civil Servants, Law on Public Enterprises).

In the judiciary reform implementation, there is new reorganization in place that caused problems in the distribution of files. Constitutional Court annulled provisions of the law that guaranteed advantages for the Judicial academy’s students in elections for judges and prosecutors. Changes of laws on judges and prosecutors slightly improved their status. The system of accountability of judges and prosecutors is still not effective. **Efficiency of judicial network remains serious problem**.

Independent state bodies continued to contribute fight against corruption, through the concrete initiatives, resolving of cases they are in charge of and qualified reports indicating systemic problems to be resolved. However, there are still numerous cases where their mandatory decisions are not fully implemented, while their recommendations are not respected, even when being nominally supported by the Parliament. Agency for fight against corruption in December 2013 published information on control of campaign finance reports for 2012 national, provincial and local elections. Agency initiated several hundreds of misdemeanour procedures against parties that failed to submit financial reports or committed some other violation, but there is no final verdict yet. "Vote-buying", "abuse of office" and buying of media influence for political promotion are not investigated properly by relevant authorities yet. Since most important decisions for the country are still being formulated and/or agreed in direct negotiations of ruling parties' leaders and in ruling parties' forums, rather than on Government and Parliament sessions, **full implementation of party financing rules, control of conflict of interest and transparency of lobbying remain key pre-conditions for prevention of corruption and abuse of power in decision making process.**

2.2. Human Rights and the Protection of Minorities

2.2.1 Respect for and protection of minorities, cultural rights

According to the UNHCR, there are around 66.000 refugees and 210.000 internally displaced persons in Serbia. The number of collective centres fell to 19. The programme for supporting municipalities which prepare local action plans for the improvement of the status of refugees and IDPs has continued and some improvement has been recorded concerning the displaced persons housing situation. However, **the living conditions of many refugees and internally displaced persons are still difficult.** Many are unemployed and live in poverty. Internally displaced persons who do not have personal documents are in a particularly difficult position as they are not able to exercise their basic rights. Some progress has been achieved with the adoption of the Law on Permanent and Temporary Residence and Rules of the Change of the Rules of Procedure of Registration and De-Registration of Permanent and Temporary Residence of citizens, registration of temporary stay abroad and return from abroad, passivation of permanent and temporary residence, form and manner of records keeping which regulates registration of the residence at Social Welfare Centres address, which is especially important for IDPs. These still remain to be implemented in practice. Assistance related to access to rights in the territories of origin is still very much needed for both refugees and IDPs. Free legal aid services are provided almost exclusively by relevant NGOs and projects funded by international donors.

2.3. Regional issues and international obligations

Some progress has been achieved through the adoption of the relevant laws related to regulation of the status and residence of IDPs and in the operationalization of the regional housing programme for refugees.

Regional Housing Programme implementation is at an early stage of implementation. Regional campaign which aims to reach as many as possible interested beneficiaries has begun. Regional programme has a clear focus on housing of refugees and displaced persons. Additional efforts are needed to secure sustainable integration or return through employment opportunities. CSOs should be more included in the process of monitoring of the Programme results.

4.2. Chapter 2: Freedom of movements for Workers

There has been no progress in the area of access to the labour market. The Law on Employment of Foreigners remains to be adopted by the Parliament. The state is rather discretionary in its procedures for naturalization, long-term residence, and family reunion. Furthermore, most immigrants receive hardly any extra support to get further training, help their children in school, or participate in political life.

4.5. Chapter 5: Public Procurement

Legal Gaps in Public Procurement Law and related legal norms

The start of implementation of Public Procurement Law (PPL), in effect since April 2013, has showed some progress. Public Procurement Office adopted series of by-law acts for the implementation of the PP. One of the most important adopted bylaws is Rulebook on Content of Document that Closely Regulate Public Procurement Procedure within Contracting Authorities from December 2013, on the basis of which every contracting authority should regulate planning and control process of public procurements. **There is a need to adopt additional bylaws and plans that are necessary for effective prevention of corruption risks in public procurement.** Anticorruption Plan in Public Procurements was prepared by Public Procurement Office and Anticorruption Agency, but the Government hasn't adopted it yet. This Plan ought to regulate work of special departments for public procurement control in contracting authorities. **Government still hasn't adopted Regulation for more Precise Regulation of Implementation of Confidential Procurements.** New Misdemeanour Law confirmed longer statute of limitation in Public Procurement Law, which was previously huge problem in practice, as well as role of Republic Commission as first instance misdemeanour authority.

However, the PPL has an omission in a sense that it is not applied in cases of high value procurements, like procurements financed through international agreements or through credits of international financial institutions. The second challenge for implementation is lack of capacity of control bodies, like Public Procurement Office, Commission for Protection of Rights and Budget Inspection. **Severe supervision over public – private partnerships (PPP), area that is just recently being regulated, but rarely implemented, must be**

conducted for potential risk of corruption. In practice, large infrastructural projects (e.g. „Belgrade on Water“, construction of canal „Danube-Aegean Sea“) are announced without clear indication on which procedure will be used. Similar situation is in PPP of joint state and foreign partners' investments (e.g. ownership transformation of former „JAT Airways“). There is a worrying trend of implementing largest infrastructural projects in compliance with other rules instead of respecting Public Procurement Law. This is done through implementation of special procedures agreed upon with international financial institutions of foreign countries or with pre-arranged contractors on the basis of intergovernmental agreements. Merely part of these problems will be resolved through implementation of Anticorruption Strategy.

The additional changes are necessary of the Budget System Law (especially in the sense of public procurement planning), and of Criminal Code (new criminal act related to public procurements, which is not properly formulated). Public Administration Reform Strategy is in direct contradiction with Public Procurement Law, because it questions supervisory authority of Public Procurement Office and provides opportunity for conflict of jurisdiction between this specialised authority and the Ministry of Finance. Updating of Public Procurement System Reform Strategy and associated Action Plan is currently in progress.

Implementation of new PPL

There has been modest progress in implementation of PPL. Implementation of new Public Procurement Law began with numerous requests from various sectors and institutions that asked for exemption from general public procurement regime (e.g. procurement of pharmaceutical products and procurements of institutions of culture). Public Procurement Office so far interpreted restrictively right to exemption from law implementation in individual opinions provided, and the **Government needs to create a list of contracting authorities and procurements that will not be obligated to implement this Law.** New Public Procurement Portal is in function, and it provides information that have not been previously published (e.g. small value procurements, tender documentation etc.). However, contracting authorities rarely publish information that are not obligated by the new Law (e.g. estimated procurement value, public procurement plans).

Although it is still early to predict effects of implementation of new legal solutions, it is obvious even now that share of non-competitive negotiating procedures had rapidly decreased. Most requests for implementation of that type of procedure came from the areas of energy and health, but were rejected by PPO as ungrounded. According to published data, there had been savings compared to previous year (2012), which are results not only of the implementation of PPL, but also by restrictions in budget spending. Number of contracting authorities that submitted their reports to PPO is increased, and after a long time average number of bidders per procurement is increased, but still remains unsatisfactory. Republic Commission for Protection of Rights of Bidders significantly increased efficiency in resolving of requests for protection of bidders' rights. The Commission should significantly improve its work on cancelling illegal contracts and initiating

misdemeanour procedures. There are still no records on implementation of new rules related to contract cancelling, rules violation, or punishing of forbidden arrangements between bidders.

Oversight of implementation of PPL

State Audit Institution began „performance audit” on a chosen sample (official travels), but findings are yet to be published and audit of SAI for 2012 revealed numerous cases of violation of basic public procurement rules (e.g. unreasonable excluding of competition, procurements implemented without fulfilling conditions). **Public Procurement Office and Budget Inspection are still missing personnel to entirely perform supervisory and control function over public procurement processes**, while situation is much better when it comes to Republic Commission for Protection of Rights and SAI. For example, Public Procurement Office, that received significant new supervisory authorities over implementation of the Law with no less than 5000 contracting authorities, is staffed with merely seven servants, and this only six months after the implementation of the new Law had begun.

Newly established **institution of Civil Overseer of Public Procurement** is being used in several procurements whose value was over one billion of RSD, but authorized Parliamentary Committees still have not discussed their reports. **There is a need for further improvement of regulation that introduced it.** Namely, suppliers do not fully implement their obligations towards the COPP – they ignore or do not inform persons acting as citizen's overseer about all aspects of procurement process on time. Therefore, it is important that Public Procurement Office pass regulation which would in greater detail regulate this process especially defining terms and responsibilities for not acting in accordance with this regulation. Also, **there is a necessity of improving capacities of civil society organizations to be able to monitor concrete cases of public procurements.** So far CSOs have mostly monitored general aspects of public procurement without going into detail of specific procurement process, and in the cases when did scrutinize procurements it was done after the completion of procurement. By enabling full development of this mechanism, transparency and regularity of public procurement process would increase significantly. Finally, there is a need that bylaw that would **further regulate public procurement in defence and security sectors allow for Citizens Overseer mechanism to be implemented in these sectors.**

4.5.1 Public Procurements in Security Sector

One of premium corruption risks in Serbia's security sector – confidential procurement, has been largely left unattended by past legislation. In 2012, a number of scandals appeared in the press, having one thing in common:

confidential procurement was used to hide unjustifiable government spending¹⁵. New Public Procurement Law, envisages a new type (or procedure) of procurement, entitled „public procurement in security and defence“, in order to make procurement practices in security institutions more transparent and more accountable. However, a number of important bylaws, especially **the Regulation for more Precise Regulation of Implementation of Confidential Procurements** is still missing, and their timely adoption must remain a priority for the Government of Serbia in order to curb corruption in defence and security spending.

4.23. Chapter 23: Judiciary and fundamental rights

4.23.1 Judicial System

Overall reform of justice system in Serbia additionally slowed down prosecution and court cases endangering accessibility of justice.

Accountability: Constitutional Court annulled provisions of the law that guaranteed advantages for Judicial Academy students in elections of judges and prosecutors. Changes of laws on judges and prosecutors slightly improved their status. The system of accountability of judges and prosecutors is still not effective.

The newly introduced Criminal Procedure Code has been in force since October 1, 2013. The new legislation introduced the new institute of prosecutorial investigation for which pursuing prosecutors should be ASAP adequately and timely trained and equipped. **General implementation of the adversarial procedure under the new Criminal Procedure Code is facing difficulties in implementation because of insufficient number of prosecutors, available premises and administrative staff.**

Efficiency of judicial network remains serious problem. The reorganization of courts as a part of judicial reform caused serious problems in distribution of files. Majority of court processes had been postponed because in many of the cases the presiding judges have been changed. The evidence for systemic weaknesses is provided based on monitoring of judicial cases of trafficking in human beings and against domestic violence.

Quality. Returned previously non-reappointed of judges which now preside in family disputes had insufficient official obligatory training (1 day instead of previous 5 days of training) and that lead to violation of women and children's HR in respect to protection from GBV. Similarly, a certain number of trafficking cases are still prosecuted as facilitation of prostitution, even when alleged prostitutes are minors. According to the research done by ASTRA, more than

¹⁵As evident in the BCSP Corruption Risk Map, different items, ranging from tactical communications equipment and VIP transport vehicles to medicines and simple office furniture were purchased in this way <http://korupcija.bezbednost.org/Korupcija/110/Slucajevi.shtml>

10% of judgments for facilitation of prostitution in 2011 and 2012 have elements which make us believe that they were actually trafficking cases.

The **impartiality** of judges provided by the theory of "natural judge" has its disadvantages, because it is interpreted very narrowly so it does not allow for the specialization of judges and prosecutors for cases of domestic or gender based violence. In some courts new Family law judges had been appointed, that have never presided in these cases and have no experience in cases for the issuance of protection measures.

As regards the **efficiency** of the judiciary, the backlash occurred with regard to coming into force the new Criminal Procedure Code. General implementation of the adversarial procedure under this law is facing difficulties in implementation because of insufficient number of prosecutors, available premises and administrative staff. In many cases previous investigation judges didn't conduct investigations in cases that are 2 -3 years old, so, when the implementation started, prosecutors were blocked in their work for 2 months and it was resolved by 90% of the cases ended up dismissed by the prosecutors.

The efficiency in prosecuting human trafficking cases in 2013 has not improved. Court proceedings are still very long and victims' testimonies are still the main piece of evidence. In 2013 the highest sentence for a trafficking case in Serbia was confirmed by the court of second instance (four perpetrators were sentenced to from 10 to 14 years in prison).¹⁶ This is the case tried before the Special Court for Organized Crime in 2012 as the first case of human trafficking treated as organized crime in Serbia after almost two years. After this one there has not been any other organized crime trafficking case. The first judgment by which the victim of trafficking was awarded compensation (civil proceedings) was rendered and, more importantly, executed in 2013.¹⁷ The entire process – first criminal and then civil proceedings – lasted for more than seven years.

Access to Free Legal Aid is not promoted in the proposed legislation

Proposal of the new Free Legal Aid Law, which is supposed to establish a fair and functioning system of free legal aid funded from the budget, is flawed. First, it does not clearly identify eligibility criteria for receiving free legal aid, except a general note that the only eligible beneficiaries of free legal aid are social welfare beneficiaries. Second, it envisages that social welfare centres are the competent authority that should decide whether someone's rights have been violated or not. Victims of domestic violence and of human trafficking are not specified as eligible category in spite of obligations which arise out of international instruments. In addition, free legal aid is not considered to be legal aid funded by the state, but legal aid provided free of charge by various CSOs on the basis of foreign

¹⁶ ASTRA. More info at: <http://www.astra.org.rs/doneta-prvostepena-presuda-organizovanoj-kriminalnoj-grupi-za-krivicno-delovo-trgovine-ljudima/>

¹⁷ ASTRA. More info at www.astra.org.rs/prva-nadoknada-stete-zrtvi-trgovine-ljudima-u-srbiji-dosudena-i-izvrsena/

donations. If this solution is adopted, the implementation will be unsustainable, as the system of free legal aid in Serbia will for the most part will depend on CSOs' project activities and interest of foreign donors.

Additionally, on November 21, 2013, Serbia ratified the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). However, Republic of Serbia put reservation on Article 30, Paragraph 2, which binds the state to award compensation to victims who have sustained serious bodily injury or impairment of health, which will not bring positive changes to the protection of victims having in mind that the system of compensation of damages through criminal or civil proceedings is not functional and that many victims do not have access to it.

4.23.2 Anti-Corruption Policy

It is necessary to improve the protection of whistle-blowers (12, 50). So far the Commissioner for Information of Public Importance and Protection of Personal Data made a draft Law on the protection of whistle-blowers (Working document – Model law as of May 2013.). On the other hand, the Ministry of Justice and Public Administration made their version of a draft Law on the protection of whistle-blowers, but none of those draft laws have yet been adopted.

Capacities of law enforcement agencies to investigate and prosecute corruption

Police and prosecution capacities for conducting criminal investigations of corruption and organised crime remained limited. During 2013, the prosecution conducted investigations into 191 persons, and the Prosecutor's Office brought charges against 250. But, there are only 17 of prosecutors in charge for coordination of these investigations. This number of prosecutors is not sufficient for effective application and can bring up to 10 cases per year in front of court.

Police mainly rely on the capacities of the Security Information Services, especially when it comes to the application of special investigative measures. Additional problems include financial investigations of organized crime and corruption, where the police do not have enough trained staff or adequate cooperation with the finance ministry and tax agency. Finally, another problematic issue is the leaking of information about police investigations to the public. In this context, media were violating the presumption of innocence by publishing investigation leaks from sensitive corruption cases.

Corruption in the security sector

Serbia has made limited progress on fighting police corruption. There are two significant problems affecting police corruption. Firstly, the biggest problem is the politicization of the police. This practice is mainly visible in the human resources management of the Ministry of Interior, where party-affiliated staff are promoted and employed, and in finance management with regard to public procurement. Secondly, the intelligible system of internal control and oversight of the police is ineffective.

The legislation has not adequately distinguished competences in the operations and coordination of the three controllers in the Ministry of Interior, namely: Internal Affairs Sector of the Police; Department for Control of Legitimacy of Work of Regional Police Departments; and Division for Control of Legitimacy of Work within the Gendarmerie. The human, material and financial capacities of the internal controllers in the Ministry of Interior are not satisfactory with regard to significantly affecting the reduction of police corruption.

The Internal Affairs Sectors of Police are faced with many challenges preventing full monitoring of the legality of the work of law enforcement officers. The Sector does not control all the employees of the Ministry of Interior. Because of this legal discrepancy, more than 18.000 employees are without control (all MoI employees who do not belong to the police force are exempt). This situation presents a serious risk of corruption. The Sector is not independent in its work because the Minister of Interior can decide to exclude the Sector from a particular case and hand it over to another organizational unit (provision of Law on Police). The Sector is not obliged to report to the Parliament - which is one of the international standards on police oversight. This standard envisages the independence of internal control in a way that it should not be a part of the executive power, while the reports on its work should be submitted directly to the parliament. Cooperation between the Sector and regional police directorates is not at a satisfactory level. As a result, there is a lack of control over some regional police directorates, and a lack of exchange of information between the directorates and the Sector. Regional police directorates generally only inform the Police Directorate and the Ministry of Interior of illegal activity of the police, while the Sector is entirely bypassed.

Some progress has been made in the implementation of The Action Plan for Implementation of the Development Strategy of the Ministry of Interior in the domain of strengthening internal control. The only activity which has been fully implemented within the given time frame of the Action plan for the implementation of the Strategy is the production of the annual analysis of the risk of police corruption. **The adoption of key missing aspects of the bylaws should be a matter of priority: instruction on the forms and methods of exercising internal control; instruction on the duties of the Internal Affairs Sector.** The Internal Affairs Sector of the Police has yet to create a plan for preventive activities, although it is obliged to do so, according to the Action Plan. Although this plan is intended to act as a guideline for carrying out preventive controls, the Sector made separate plans based on their own findings and complaints on the work of police officers within the Police Directorate. The Action plan for implementation of the Strategy includes a measure which prompts the Sector to perform an analysis of the current systematization of working positions, and to prioritize when developing new internal organizations of the Sector and drafting proposals for changes and additions to the systematisation of working positions. So far, none of the above was completed.

The Serbian Anti-Corruption Agency put in place a Likert-type Scale for measuring the Republic of Serbia's Ministry of Interior's corruption risks. However, its questions do not provide the probability of the occurrence of risk,

nor the potential consequences for the organization.¹⁸ Instead, the questions simply determine whether employees, or the working group for instance, believe the legislation includes the provisions for curbing discretionary powers or similar; yet it is unclear, within the integrity plan, whether there is a likelihood for an instance of corruption occurring as a result of having or not having legislation which includes provisions for curbing discretionary powers. The Serbian Anti-Corruption Agency and MoI do not include such a calculation, and thus it is not clear how to appropriately prevent a potential instance of corruption from occurring.^{19 20}

Republic of Serbia's MoI achieved its obligation, to a degree, when it comes to developing integrity plans, which was outlined as a problem within **the EU progress report 2013**. The progress report pointed out that half of the public authorities obliged to draft Integrity Plans did not fulfil their obligations without any statutory sanctions being provided. MoI did draft an integrity plan but it is not as effective as it does not include sufficient corruption risk information.

The Republic of Serbia's MoI achieved its obligation, to an extent, in terms of developing integrity plans, which was outlined as a problem within **the EU progress report 2013**. The progress report pointed out that half of the public authorities obliged to draft Integrity Plans did not fulfil their obligations without any statutory sanctions being provided. MoI did produce an integrity plan, but it is not clear how the Anti-Corruption Agency, or any other monitoring body, will be using it for evaluating its anti-corruption measures' effectiveness.

MoD somewhat achieved its obligation when it comes to developing integrity plans, which was outlined as a problem within **the EU progress report 2013**. The progress report pointed out that half of the public authorities obliged to draft Integrity Plans did not fulfil their obligations without any statutory sanctions being provided. MoD prepared an integrity plan, but it is not clear what this integrity plan entails. Besides tackling the risks, the Anti-Corruption Agency Manual for the Integrity Plan Development and the NATO experts team report²¹ does not require for the Serbian Ministry of Defence to establish a mechanism for sharing best practices within its integrity plan. By putting in place a mechanism for sharing best practices, MoDs and EU/NATO can pool resources more efficiently, save money and raise standards for everyone in the region in the area of integrity building. (NATO Integrity Build Up Conference notes). By establishing a mechanism for sharing best practices within its integrity plan, the Serbian MoD in particular could be seen as an exporter of stability and as a credible EU/NATO partner in the region.

¹⁸ Guide – Risk Management Developing and Implementing Risk Management Framework, VMIA, December 2013 <http://www.vmia.vic.gov.au/riskmanagementguidelines>, p.81

¹⁹ Manual for Integrity Plan Development, Anti-Corruption Agency, January 30, 2012 http://www.acas.rs/images/stories/Manual_for_Integrity_plan_developmnet.pdf, p.16

²⁰ Plan integriteta zavrsna verzija radne grupe 10.04.2013 godine

²¹ Ibid.

MoD somewhat achieved its obligation when it comes to developing integrity plans, which was outlined as a problem within **the EU progress report 2013**. The progress report pointed out that half of the public authorities obliged to draft Integrity Plans did not fulfil their obligations without any statutory sanctions being provided. MoD did produce an integrity plan, but it is not clear what this integrity plan entails. Anti-Corruption Agency does not include within its Manual for the Integrity Plan Development which specific risk management standards it employed for developing the Republic of Serbia's Ministries' integrity plan drafts, and it does not refer to the effectiveness indicator mentioned in its Guideline. In Slovenia, "To prepare the plans, the Commission drew upon the current Australian/New Zealand standard: AS/NZS ISO 31 000: 2009 entitled Risk management – Principles and guidelines."²² The Serbian Anti-Corruption Agency, on the other hand, describes the process of the development of the integrity plan draft, but it does not explain, within its guideline or its manual, what this process entails in terms of precise risk management standards.

Serbian MoI somewhat achieved its obligation when it comes to developing integrity plans, which was outlined as a problem within **the EU progress report 2013**. The progress report pointed that half of the public authorities obliged to draft Integrity Plans did not fulfil their obligations without any statutory sanctions being provided. MoI did produce an integrity plan, but it is not clear what exact risk management standard it employed for developing its integrity plan.

Recommendations for the Republic of Serbia's Government:

To prepare a comprehensive risk management guide which is derived from the exact risk management standard, and which should include an analysis of the likelihood of risk occurrences/consequence. To prepare a draft integrity plan based on this guideline and make its use obligatory for all Ministries when developing and implementing their own integrity plans. Within their integrity plans, important information, such as the likelihood of risk occurring, should be available for the Anti-Corruption Agency to review. The Slovenian integrity plan sample includes the likelihood of a risk occurrence.²³

Case study: Gendarmerie

2013 saw a record number of police scandals since the initiations of democratic changes on October 5th, 2000. The subjects of those scandals were primarily senior officials within the police and the Ministry of Interior. For example, incidents included compromising the safety of the President of the Republic, wiretapping of the two leading members of the Serbian Progressive Party, the election of the General Police Director, meeting of the Minister of Interior with a member of the organized

²² "OECD Public Governance Reviews - OECD Integrity Review of Italy: Reinforcing Public Sector Integrity, Restoring Trust for Sustainable Growth" p. 110 on books google http://books.google.rs/books?id=ybPxAAAAQBAJ&pg=PA37&hl=sr&source=gbs_toc_r&cad=4#v=onepage&q=Slovenia%20integrity%20plan&f=false

²³ Integrity plan sample - <https://www.kpk-rs.si/en/prevention>

crime group of Darko Šarić, information leaking from the Ministry of Interior, and finally, a number of incidents by employees of the Gendarmerie. All these affairs have in common that they were first published in the tabloids, which points to a form of political corruption: disclosure of police information.

Trust in police accountability is seriously hampered by the lack of effective control of the special police unit “Gendarmerie”. 58 disciplinary procedures were initiated against members of the Gendarmerie since the beginning of 2013, of which 36 are for criminal or misdemeanour offences committed outside working hours. The majority of reports include violations of public order and traffic offences, but also, affairs which have diminished public confidence in Gendarmerie which have not yet been resolved. The degree of the problem of the lack of control in the Ministry of Interior became significantly apparent, with the situation in the Gendarmerie worsening since April 2011, as discrepancies are constantly occurring. The public remains unaware as to whether the former commander of the Gendarmerie, Bratislav Dikic, spied on his colleagues, due to the fact that the Commission which was formed to investigate this case failed to inform the public of the results. Further, in March 2012 the media reported that the Internal Affairs Sector of the Police had initiated an investigation against the brother of the former commander of the Gendarmerie, Dragan Dikić, for criminal activities. Supposedly, the Sector produced a report on the illegal activities of members of the Gendarmerie which was submitted to the Nis prosecution, but the public is also unaware of the further developments related to this report. Moreover, **the adoption of a bylaw which would define the activities which are incompatible with the work of the police**, and the requirements for performing work outside of regular hours, has been delayed for two years. The media announced that the members of the Gendarmerie are those which are connected with the security of nightclubs, in addition to racketeering of the same, and that such activities are incompatible with the policing duties they perform outside working hours. The Ministry of Interior has not yet publicly declared their position on the subject.

Risks of corruption in the security sector

Serbia has made little progress towards fighting police corruption. There are indicators that the integrity of the police in Serbia has decreased. According to the Global Corruption Barometer (Transparency International, GCB for 2013), the police service in Serbia is in first place in the Balkans, based on the citizens' perception of police corruption. Even 69% of Serbian citizens believe the police are corrupt. With such a result, police in Serbia share this position with police services in Philippines, Tunisia and Yemen. Moreover, in 2012 the Internal Affairs Sector of the police initiated 146 criminal charges against police officers (7.2% more than in 2011, and 16.5% more than in 2010). Every ninth criminal charge in 2012 was launched against police managers, including one against the Chief of the Regional Police Directorate in Zajecar. Also, there are various occurrences of scandals within the MoI. There are three main challenges. **Firstly, the intelligible system of internal and external control and oversight of the police is not functioning.** The competences in the work of controllers in the MoI have not been divided, with the exception of the service in charge of the financial management of the MoI. The Minister of the Interior has a discretionary right to

exempt cases within the competence of the Internal Affairs Sector, and to allocate it to another organizational unit. This is an illogical solution, as the Minister of the Interior, being a Member of the Government, takes decisions during the appointment of the Head of the Internal Affairs Sector. **Secondly, until now there was no oversight or control over the implementation of confidential procurements in the MoI, which comprise 55.51% of all procurements in the MoI.** Oversight and control over the initiation of the restricted public procurement procedure is rather difficult, since the authorized head of the organisational unit in which procurement is to be conducted is responsible for the initiation of the stated procedure. It was found that the adopted procedures, directives and instructions of the MoI have not fully established a system of financial management and control. **Thirdly, there is a problem in human resources management** given that the system of external and internal advertising of vacancies in the MoI is underdeveloped, and this provides opportunities for corrupt practices, such as receiving and negotiating bribes, with regard to services involving training, secondment and promotion. This situation could be changed if the Action Plan for implementation of the National Anti-corruption Strategy 2013-2018 is initiated. The Action Plan predicts new legislative and institutional measures which can enhance the fight against police corruption.

Main recommendations:

- Internal controllers in the MoI must be provided with sufficient material, such as financial and human resources and their work should be transparent to external control and oversight institutions.
- It is necessary to enhance knowledge within the Internal Affairs Sector on the control over the MoI budget spending and practice of confidential procurements.

Military or Security Intelligence Agency as institutions highly exposed to corruption risks. However, much evidence contradicts this stance. The military spends an immense portion of the state budget (approx. 7%), and the Agency realizes 95% of procurements through confidential procedure. In addition, these two security actors are significant employers, and there are many reports that the employment and career advancement processes within are under decisive influence of political parties.²⁴ The strategy recognizes the Police as a security institution exposed to corruption risks and an important actor for fighting against this phenomenon.

4.23.2 Fundamental Rights

No significant progress was made with regard to human rights protection in Serbia.

An Action plan implementing the Strategy on the Protection of Personal Data still needs to be adopted. The strategy was adopted 3 years ago, and should have been followed by an Action plan 3 months later; but this never occurred.

²⁴ See: <http://korupcija.bezbednost.org/Korupcija/1/Naslovna.shtml>

Therefore, the Strategy is just a “wish list”. Also, the **bylaw regulating the protection of Particularly Sensitive Personal Data also needs to be drafted and adopted**. In the area of the protection of privacy, Serbia still lacks laws to regulate **video surveillance and the use of biometric data**. The Law on the Protection of Personal Data²⁵ from 2008 is still not in line with the **Directive 95/46/EC**,²⁶ which is considered standard for the regulation of automatic collection and processing of personal data. Based on Article 16, point 5 of the Law on the Protection of Personal Data, the Government should have adopted appropriate measures and regulated the archiving of personal data within 6 months of adopting the law. Although the law was adopted in 2008, this area remains unregulated to this day. Lastly, regulations regarding the obligation of those collecting data to inform the subjects of data collection of the collector’s identity and the purpose of data collection, as well as regulations granting rights to subjects of data collection to deny further use and manipulation of their personal data, if there are legitimate grounds for doing so, are not in place, and thus contrary to the Directive.

The Office of the National Security Council and Classified Information Protection finally adopted necessary bylaws for full implementation of the Law on Data Secrecy, followed by main security sector actors: the Office adopted bylaws regarding the two highest levels of classification of secret documents (“Top secret” and “State Secret”); MoD and MoI, along with SIA, adopted bylaws regulating the two lower levels of secrecy (“Confidential” and “Internal”). **The remainder of public administration should draft and adopt their secondary legislation which regulates lower level classified data.**

There has been no progress regarding the deficient legal regulation for the use of special investigative measures in Serbia. This is a result of the existence of different legal systems which suggest that it is possible that the right to privacy is being infringed upon. As a consequence, legal certainty is weak, criminal charges and first instance court verdicts are regularly revoked, and special investigative measures are used for illegitimate purposes by rogue elements of the security sector which go as far as targeting high-ranking state officials.

Recommendations:

1. Amending the Law on the Protection of Personal Data,
2. Adopting the Action Plan to complement the adopted Strategy on the Protection of Personal Data
3. Establishing mandatory and frequent consultations with the Commissioner during law drafting processes, as well as mandating the necessity to take opinions and recommendations into consideration when drafting laws which, directly or indirectly, interfere with personal data protection.

²⁵ "Official Gazette RS", no. 97/2008

²⁶ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Women's rights and gender equality.

There has not been significant improvement regarding the protection of women from all forms of gender-based violence. With the instances of femicide increasing every year, and the absence of emergency protection orders, criminal legislative needs to be harmonized with the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence.

The Action Plan for the Implementation of National Strategy for Prevention and Combating Violence against Women still hasn't been adopted. Serbia ratified the CoE Convention²⁷, but unfortunately with reservations on 2 articles (compensation of victims and jurisdiction). The ratification is not followed by actions taken to ensure the implementation of the same. CEDAW Committee Concluding Observations to Serbia²⁸ included recommendations for the improvement of the situation in the field of protection of women from violence and obligation that within 2 years' time the state of Serbia submit a written report on the progress made in that field. The Committee remains concerned about:

- *The increasing number of women murdered by their husbands, ex-husbands or partners and women victims of other forms of violence...²⁹.*

The number of women who were killed by their partners drastically increased in 2013 (in 2010 - 26, in 2011 - 29, in 2012 – 32 and in 2013 - 43 women had been killed by family members of their partners)³⁰. Serbia still has no official data on femicide. The Republic Ombudsman is the only institution which conducts enquiries and issues recommendations in cases of femicide.

- *The significant disparity between the number of police interventions, the number of criminal charges filed and the number of persons convicted...³¹:*

Twenty-six police directorates³² had 19.819 reports/incidents of domestic violence in 2011, which resulted in filing 5.460 *misdemeanour charges* (27,5%), 3.014 *criminal charges*³³ (15,2%)³⁴.

²⁷ Official gazette of RS – International documents, no. 12/2013

²⁸http://www.gender.net.rs/files/dokumenta/Engleski/Reports/CEDEW_concluding_observato ns_2013_engl.pdf, received on July 25th, 2013

²⁹ par. 22 (a) of the CEDAW Concluding Observations

³⁰ available only in Serbian at

http://www.zeneprotivnasilja.net/images/pdf/FEMICID_Saopstenje_za_2013_godinu.pdf

³¹ par. 22 (b) of the CEDAW Concluding Observations

³² Data weren't delivered by PD of Sombor, so the cited number of reports can not be considered to be the total number of reports of family violence in Serbia in 2011.

³³ Ignjatovic, T. in Annual Report of the Independent Observatory on VAW (pg. 29-45), available on

http://www.zeneprotivnasilja.net/images/stories/opservatorija/Annual_Report_of_the_Observa tory_2012.pdf

- *the lack of emergency protection orders³⁵:*

Only in 20% of cases the judgments for protection measures are reached within one month after filling civil suit, and a significant number of judgments for protection measures in civil proceedings are issued after 3 or even 6 months³⁶.

- *The lack of disaggregated data on all forms of violence against women³⁷:*

The Republic Statistical Office doesn't collect data on the type of relationship between the victim and the perpetrator. The judiciary statistics regarding the proceedings for protection measures is lacking data³⁸. Police does not register murder of a woman in a situation when a killer commits suicide.

- *Review and revise the Criminal Code, the Family Code and other relevant laws with a view of effectively preventing all forms of violence against women and protecting victims.³⁹*

Criminal Code still doesn't incriminate stalking, sexual harassment, female genital mutilation, forced marriages, and forced sterilization as criminal acts⁴⁰ and needs to be harmonized with CoE Convention with regard to the definition of domestic violence victims and the criminal act of rape (definition, prosecution of marital rape). All four *Special protocols on action of relevant institutions in cases of violence against women in family and partner relationship* are adopted, but without regular implementation monitoring system. *There is no General or Specialized Protocols for actions of the institutions in neither rape cases, nor Rape Crisis Centres, or specialized, free support services for victims in which medical, psychological and legal help and support could be found in one place⁴¹*, which is the state's obligation in accordance with art. 25 of the ratified CoE Convention⁴².

³⁴ According to Republic Statistical Office, 3.550 criminal charges were filed against adult persons for the act of domestic violence in 2011 and 1.616 adults were convicted, but the numbers can not be fully compared. Data available at:

<http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=146>

³⁵ par. 22 (d) of the CEDAW Concluding Observations

³⁶ available only in Serbian at http://www.womenngo.org.rs/images/publikacije-dp/Porodicopravna_zastita_od_nasilja_u_porodici_u_pravosudnoj_praksi_Srbije.pdf

³⁷ par. 22 (e) of the CEDAW Concluding Observations

³⁸ Macanovic, V. in Annual Report of the Independent Observatory on VAW (pg. 74-89), available on

http://www.zeneprotivnasilja.net/images/stories/opservatorija/Annual_Report_of_the_Observatory_2012.pdf

³⁹ par. 23 (a) of the CEDAW Concluding Observations

⁴⁰ Forms of violence against women that are proscribed by the CoE Convention

⁴¹ all data available on the web site of the Network Women Against Violence that run the 16 days of activism campaign dedicated to the issue of rape, <http://www.zeneprotivnasilja.net/en/16-days-of-activism/campaign-2013>

⁴² CoE Convention on Preventing and Combating Violence against Women and Domestic Violence

Children's rights

There hasn't been significant improvement regarding the protection of children. Social services put children in foster care without prior ex officio initiation of proceedings for the protection, lack of audio-visual possibilities in courts/prosecution offices, inefficient system of execution of judgement for child allowance.

Measures for the protection of children as victims in criminal cases are not implemented, or are wrongly implemented (free legal representation of children victims in criminal proceedings is of very poor quality, there is no difference between attorneys which represent minors as victims and offenders, no screen rooms or other adapted premises for the audio-video testimony of a child in court/prosecution offices, judiciary rarely accepts to take a statement from a child in a child-friendly environment). Children are often forced to give testimonies in courtrooms in front of their abusers, and if their mothers (often) refuse to allow that, mothers are punished for contempt of court⁴³. The enforcement of judgment for child alimony is inefficient. It is estimated that 85% of children do not fully enjoy this right⁴⁴.

Because of the inability of a parent (mother) to protect the child/children from the violence of the other parent (father), 350 children had been removed from their families and placed into foster care⁴⁵. In all of these cases the social services didn't file plaints for protection measures⁴⁶.

Procedural safeguards

Vulnerable groups in Serbia are still unable to properly and satisfactorily claim their rights due to the lack of an efficient and adequate Free Legal Aid law. The criminal legislative is still not in accordance with the Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime. There isn't any form of state victims' support in Serbia. Protection orders in criminal proceedings are still scarcely used, leaving Serbia far from even considering the Directive 2011/99/EU on the European protection order (in criminal matters). Except for the insufficient number of Safe houses for the victims of domestic violence and trafficking, help for victims is not systematically regulated by the law. Serbia fails to meet the Council of Europe

⁴³ Mother complained on the work of the judge to the High Judicial Council because she was punished by app. 500 euros for the in contempt of court for protecting her child to testify in front of the abusive father in criminal case of the First basic court K - 7800/2010. In the same case the father was punished by app. 100 euros. Mother never received an answer from High Judicial Council, only from President of the court that confirmed that judge was acting in accordance with the law.

⁴⁴ Information from <http://www.pravniportal.rs/index.php?id=3451&cat=159>

⁴⁵ report from the Republic Institute for Social Protection on the work of Social services in 2012

⁴⁶ answers from social services on the request for public available data

Convention on Preventing and Combating Violence against Women and Domestic Violence because there is no national women's helpline available or Rape Crises Centres for survivors of sexual violence.

Right to a fair trial. Although the CEDAW Committee recommended that Serbia *should take necessary measures to enact as soon as possible the draft law on free legal aid in order to enable women to properly and satisfactorily claim their rights*⁴⁷ the Law still hasn't been adopted. The civil organizations which provide free legal aid in Serbia sent General Comments to the Ministry of Justice on a proposed third Draft of the Law on Free Legal Aid⁴⁸. The draft Law doesn't take into account the standards set up in Council Directive 2002/08 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

Right to victim support. There are no court/prosecution victim support services in regular courts/prosecution offices. The Person of trust is still not recognized in the criminal legislative. There is no systematic organized support for victims during, and after the end, of criminal proceedings, in accordance with art. 56 of the CoE Convention.

Right to protection. The new Criminal Procedure Code which prescribes that victims can be granted the status of a special vulnerable victim. If granted, the special rules on the protection of a victim during testimony are applied, and the victim has the right to free legal representation. This is rarely granted due to a lack of funds. Also, courts/prosecution offices don't have audio-visual possibilities to interview the victims. During criminal proceedings victims can be protected by a protection order of restraining and communication (art. 197-198). The Criminal Code prescribes only one security measure – the restraining and communication order (art. 89a) which represents the protection of victims of criminal acts after the end of the criminal proceedings, which can last at least 6 months and up to a maximum 3 years. Both measures don't have exception in cases when the offender and the victim live in the same household. There is also a suspended sentence with supervised protection (art. 71-76 of the Criminal Code), and all measures are rarely implemented in practice.

The civil court has no legal obligation to submit imposed protection measures to the police (police filed only 14 criminal charges for the breaches of protection measures in 2011⁴⁹). Social services initiate only 3,4% and Prosecution offices

⁴⁷ par. 11 (c) of the CEDAW Concluding Observations

⁴⁸More information available at: http://womenngo.org.rs/images/pdf/vesti-14/General_comments_to_proposed_Draft_Law_on_Free_Legal_Aid_Letter_30122014.pdf

⁴⁹ Data received from Ministry of Interior on the request of publicly available data

only 1% of civil proceedings for the issuance of protection measures⁵⁰ (only 7 basic Prosecution offices out 33)⁵¹.

Right to help. There is no national women's helpline. On the territory of Vojvodina a free of charge women's helpline was established⁵². The Ministry of Interior has a free of charge number for the victims of domestic violence⁵³. According to the database of the Republic Institute for Social Protection⁵⁴, there are 17 SOS hotlines for the victims of DV, 14 which are run by state social services and 3 by women NGOs. This data was checked and discovered to be false⁵⁵. According to the information given by the network *Women Against Violence*, women's NGOs have 22 SOS hotlines for female victims of violence, very experienced, which have worked for years⁵⁶ which don't receive (or only occasional and insufficient) financial support from local governments, causing 4 SOS hotlines to close down in 2011. 26 women's NGOs, members of the network Women against Violence, provide gender-specific counselling for women survivors of male violence, among which 24 provide free legal counselling for female survivors of violence⁵⁷.

In 2014, there are only 13 women's shelters (safe houses and shelters) in Serbia – 11 run by the state social service⁵⁸ and 2 run by NGOs. Based on the CoE Convention, approximately 719 shelter places are needed in Serbia and the data of only 5 Safe houses data is available⁵⁹ - they can accept 162 women and

⁵⁰ Available only in Serbian at http://www.womenngo.org.rs/images/publikacije-dp/Porodicnopravna_zastita_od_nasilja_u_porodici_u_pravosudnoj_praksi_Srbije.pdf

⁵¹ Macanovic, V. in Annual Report of the Independent Observatory on VAW (pg. 74-89), available on http://www.zeneprotivnasilja.net/images/stories/opservatorija/Annual_Report_of_the_Observatory_2012.pdf

⁵² On November 16th, 2012 and it is run by women's NGOs gathered around the Network of Women's Hotlines in Vojvodina.

⁵³ Opened 24/7 but it only provides assistance to victims of DV in cases when duty police officer on the general police phone doesn't react on victims call for help

⁵⁴ Available in only in Serbian at

http://www.zavodsz.gov.rs/index.php?option=com_content&task=view&id=240&Itemid=240

⁵⁵ Conducted by Network *Women against Violence* in February 2012, information available only in Serbian at <http://www.zeneprotivnasilja.net/vesti/170-mreza-zene-protiv-nasilja-zavodu-socijalnu-zastitu-povodom-rada-sos-telefona-pri-centrima-za-socijalni-rad>

⁵⁶ Two SOS hotlines for victims of trafficking, 4 specialized for women with disabilities, and 3 available for women speaking languages of national minorities

⁵⁷ List of women NGOs available in English at <http://www.zeneprotivnasilja.net/en/about-us/list-of-ngos>

⁵⁸ According to the data base of services of social protection on the web site of the Republic Institute for Social Protection, in Serbia exist 3 Safe houses (Zrenjanin, Zajecar and Sabac) and 2 Shelters for women and children victims of DV (Kragujevac and Leskovac) that are run by the state social service.

⁵⁹ Available only in Serbian at:

http://www.sigurnakuca.net/fond_b92_protiv_nasilja/izgradnja_sigurnih_kuca/sigurne_kuce_ka_o_mehanizam_zastite.202.html

children⁶⁰. The Safe house in Zrenjanin is also for the victims of trafficking. Not all safe houses/shelters are free of charge for women and children⁶¹. The Law on social housing does not recognize victims of domestic violence as beneficiaries of social housing, nor does it give domestic violence victims the priority of applying for social housing or emergency procedure. When it comes to monetary aid, only the City of Belgrade gives domestic violence victims monetary aid for one year from the first time that violence was reported⁶². Social service in Zrenjanin formed a special sub-account for domestic violence victims which receives funds from prosecutorial opportunism⁶³. The right to medical help (psychologist, psychiatrists, therapists) is regulated by the Law on medical protection and there are no specialized experts for providing help to adult victims of rape and other sexual acts and domestic violence.

No progress was made regarding the **protection of rights of human trafficking victims**. Although international legislation guarantees the rights of crime victims⁶⁴ the national legislation only recognizes the right of victims to compensation which is not being exercised in practice, despite the binding international legislation and recommendations provided in the evaluation report of the CoE Group of Experts on Action against Trafficking in Human Beings (GRETA)⁶⁵ which calls for the effective protection of the right to compensation for trafficking survivors.

European Court of Human Rights

In March 2013, in accordance with the judgement of the European Court of Human Rights⁶⁶, Serbia was given a year to resolve all **cases of missing babies**. However, although the decision has become final in September 2013, the Republic of Serbia has not taken concrete steps towards its implementation, keeping hundreds of parents waiting for an answer to the question of what

⁶⁰ Belgrade-75, Novi Sad-20, Zrenjanin-20, Sombor-22, Pancevo-25 places

⁶¹ Available only in Serbian at http://www.womenngo.org.rs/images/publikacije-dp/2013/Inicijativa_za_pracenje_socijalne_politike.pdf

⁶² Art. 68 par. 4 of the Decision on the rights and services of social protection ("Official gazette of the City of Belgrade", no. 55/2011, 8/2012 – corrigendum, 8/2012, 42/2012, 65/2012 i 31/2013)

⁶³ Available only in Serbian at <http://www.womenngo.org.rs/publikacije/razvoj-dobrih-praksi/245-novi-pristupi-resavanju-problema-nasilja-u-porodici-u-pravosudnoj-praksi-sudova-za-prekrsaje-2012>

⁶⁴ Directive 2012/29/EU guarantees to all victims of crime in the member states, and unrelated of their citizenship, the right to timely information, translation and understanding - Articles 3-7, then the rights related to participation in court proceedings which include the right to a hearing, compensation, protection, refund and compensation rights relating to the protection of victims and their family members from secondary and repeat victimization, intimidation and retaliation, special protection of children and other categories of victims, as well as mandatory training of police and judicial personnel on the rights and needs of crime victims.

⁶⁵ GRETA (2013) 19, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia, p.8. Available at

http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_19_FGR_SRБ_public_en.pdf

⁶⁶ Application no. 21794/2008, the Jovanovic against Serbia case

happened to their babies. The first report on the steps taken by Serbia is expected to be submitted 9 December, which is not yet completed.

Labour rights

In 2013 mass and, by rule, irregular migration of Serbian construction workers to Russia and other post-Soviet states was very common. Via ASTRA SOS hotline, 21 reports were filed, pertaining to approximately 600 Serbian citizens who were exploited on Olympic complex construction sites in Sochi. These men did not have work permits, regulated stay, appropriate working, safety and living conditions. What is more, they were threatened by police and immigration services, had their passports seized, etc. Even though the state of Serbia did get involved in helping groups of these workers return home, it is necessary to involve a **greater number of actors in monitoring the work of employment agencies, creating bilateral employment contracts with destination countries for Serbian workers, raising awareness of labour exploitation, and, most importantly, efficient identification and prosecution of acts of crime**.

CSOs and reforms of social policy

Provisions of the new Regulation on the licensing of professionals in the social welfare system could be reflected to all NGOs providing services in social protection. This act provides that only non-governmental organizations which have at least one licensed employee can provide different psycho-social support. To get the license, a person needs to have a degree from a compatible faculty (psychological, pedagogical orientation or social work), to have completed an accredited training program (which costs), and have at least one year of experience in working in the social welfare system. If the candidate does not have one-year experience in the social well-fare system, he or she must pass an exam for the license. This provision clearly illustrates how NGOs are put at a disadvantage, and their great experience pertaining to problems of domestic violence, human trafficking and other areas which are the cradle for NGOs in Serbia, is being neglected. A number of issues are linked to such regulation: how can the state condition NGOs with licenses and alike, when it does not financially support their work; how can organizations which don't have an employee of the fitting profile acquire a license, even if they want to; if NGOs without licensed professionals are to be excluded from the provision of assistance in cooperation with institutions, it is rather unclear who will provide support to a large number of clients, bearing in mind that the State budget for victims assistance is very limited.

Rights of employees in the security sector

Status assessments of the protection of human rights of security sector employees are made only rarely. The police unions in Serbia announced participation in the general strike again in 2012. It is expected to start new negotiations between the police and the police union because the collective agreement between them will end in 2014. Moreover, **insufficient attention has**

been paid to the mental health of police officers in Serbia. This topic is usually discussed after incidents in which police officers commit suicide or a crime; bringing into focus all issues related to the lack of psychological support for police officers. There is even less discussion about the role of police managers in stress management and prevention. Police managers rarely notice psychological changes in their employees, while the police officers who have problems do not wish to seek psychological support and professional help. Moreover, some managers are not familiar with the existing system of psychological support in the MoI. Consequently, the effectiveness of the whole system of psychological support for police officers is questionable. The **return of police officers to work, even though they are exempt from criminal liability, is not a practice.⁶⁷**

Regarding the **prevention of torture and ill-treatment** there is evidence that since 2006, there has been an increasing trend in the use of force by police officers and security staff in institutions for the execution of penal sanctions. One of the reasons behind this trend suggests that there is not enough knowledge about the principles of the use of force, or that employees are not sufficiently trained. Moreover, several bylaws are still missing. One of them should regulate the conditions under which force could be used by members of the Military Security Agency, the Security Intelligence Agency, and the Customs Administration.

Limited progress has been made regarding respect for and the protection of minorities and cultural rights. Reports by international organisations and defenders of human rights stressed that Roma, the LGBT population, women, ethnic minorities, and persons with disability were either openly, or latently, discriminated against in Serbia, with the police failing to investigate suitably, and the courts failing to process, incidents in which the victims were members of minority or other vulnerable groups.

Limited progress has been made regarding the implementation of community policing in Serbia. Currently, local safety and security councils in Serbia do not exist in all municipalities. Half of the existing councils are not functioning. Decisions of the Council are not binding and its operation depends on the willingness of the police and political interest to take part in it - which is not good. For police officers who are in charge in police stations for community policing, it is not the only task but rather, additional. Also, it is unknown whether the Action Plan for the implementation of the Community Policing Strategy was adopted.

CASE: Freedom of expression

The web site of the Centre for Investigative Journalism of Serbia has been exposed to a hacking attack which targeted the page featuring a story about the possible case of abuse of state property and funds for benefit of the daughter of Mrs. Jorgovanka Tabakovic, Governess of the National Bank of Serbia. Other

⁶⁷ Djan, A; Djordjevic, S. 2014. „Psiholoska podrska policajcima: uloga rukovodioca. In: *Zbirka predloga prakticnih politika za reformu policije u Srbiji*. Issue: no. 9. Belgrade, BCBP. Available at: <http://bezbednost.org/Sve-publikacije/5440/Zbirka-predloga-prakticne-politike-za-reformu.shtml>

web sites and portals have been exposed to such attacks or (successful) pressure on owners and editors to remove the story.

Comment: The Prosecutor's office and adequate specialized divisions of Serbian police should react to infringements on the freedom of expression, and new and more up to date laws should be introduced to protect the freedom of expression on the internet and other new media.

4.24. Chapter 24: Justice, Freedom and Security

Judicial cooperation in civil and commercial matters

The draft of the new improved Private International Law still hasn't been adopted, while the service of documents remains a major problem in civil disputes.

The service of documents is still a major problem in civil disputes which lead to the prolongation of those disputes, especially in family law matters (protection measures, child maintenance), and the execution of judgements. There is still no possibility to serve documents and court summons in an alternative manner (e-mail, internet social networks).

Ministry of Justice is working on a draft of the new Private International Law, which preserved the regulation of the existing law with regard to judicial recognition of foreign judgements, which will not be in accordance with the *Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations* nor with *Regulation 2013/606/EU of the European Parliament and of the Council of 12 June 2013 on mutual recognition protection measures in civil matters*. The new version of the draft prescribes recognition and enforcement of protection measures in easier procedure than previously, having in mind that Serbia cannot currently accept certificate prescribed in art. 7 of the above mentioned Regulation. Serbia still doesn't have a law which will regulate the procedure in respect of *The Hague Convention on the Civil Aspects of International Child Abduction*, nor has ratified *Convention on private international law on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children*.

Family Law

If Family Law becomes Code Civile Book III, the efficiency of the implementation of family law provisions will be lost, primarily with regard to prevention of domestic violence.

Ministry of Justice is working on a new Code Civile which will derogate the existing Family law which is one of the most implemented laws in Serbia. If that happens, the Family law will be called Book III – Family relations, and it will be very complicated to use in everyday practice because the Code Civile will contain

more than 1100 pages. The draft introduces disputable legislative solutions with regard to surrogacy and protection measures⁶⁸, which will not be in accordance with par. 23(a) of the CEDAW Concluding Observations.

Sexual exploitation of children

The Criminal code is not in accordance with the Directive on the sexual abuse and sexual exploitation of children and child pornography, having in mind that for a criminal act of prohibited sexual acts against children a monetary fine is prescribed.

The Republic of Serbia's Criminal Code states that the criminal act of rape is an act which has *been committed with the use of force or the threat of the use of force*, which implies that victims must try to physically resist the rapist. Also, judicial practice and legal theory hold the opinion that only acts where there has been penetration by the male sex organ can constitute rape – even in cases in which children are victims. All other forms of penetration – by hand or other object – as well as coercion to perform oral sex, are not considered to be a crime of rape or coerced sexual act, but are prosecuted as prohibited sexual acts. Punishment for the basic form of the criminal offence of prohibited sexual acts (paragraph 1, Article 182 of the Criminal Code) is *a fine or up to 3 years in prison*, even in cases where children are victims. The official statistics segregate data on child victims based on age (till 14 years, and 14-18 years) and not by sex⁶⁹.

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse has been ratified in 2010. There is no data on the implementation of the Law on special measures for the prevention of committing

⁶⁸ Article 242 *Protection measures* (equivalent to current art. 198 of the Family Law) proscribes (new) protection measure „obligatory treatment from alcohol, drugs and other addiction diseases“. Perpetrator of violence voluntary acceptance to treatment is connected to suspension of all other protection measures, which is unacceptable from the view of the rights of the victims to protection from repeated violence. At the same time, only the measure of treatment of perpetrator doesn't guarantee that the perpetrator will change his violent behaviour (because the alcoholism is not the cause of violence, but stimulus to perpetrate violence), especially if other measures are not put in place in case that perpetrator quits the treatment.

⁶⁹ Penalty and victim statistics regarding criminal act of prohibited sexual acts - Source: Statistical Office of the Republic of Serbia:

in 2009 – 86 convicted persons (26 suspended and 13 monetary sentences) and 71 victims out of which 43 children (23 below the age of 14, and 20 were between the ages of 14 and 18), 64 victims were female and 7 were male

in 2010 – 47 convicted persons (14 suspended and 3 monetary sentences) and 47 victims out of which 21 children (9 below the age of 14, and 12 were between the ages of 14 and 18), 43 victims were female and 4 were male

in 2011 – 58 convicted persons (18 suspended and 18 monetary sentences) and 77 victims out of which 52 children (36 below the age of 14, and 16 were between the ages of 14 and 18), 68 victims were female and 9 were male

acts against sexual freedoms of minors. Sublegal documents which will regulate surveillance and police measures for people convicted of similar offences, extending beyond, still haven't been adopted. The only official state institution that provides aid for sexually abused children is the Institute for Mental Health located in Belgrade.

Mediation

Law on mediation doesn't prescribe an exception from mediation in cases of violence against women and children and domestic violence.

The Ministry of Justice created the Second draft of the Law on mediation, which is not in accordance with article 48 par. 1 of the CoE Convention, and doesn't forbid mediation and alternative dispute resolution in cases of violence against women and children and domestic violence.

4.24.1 Migration

Serbia is still lacking a comprehensive migration policy related to migration management, effective reintegration, asylum system and the implementation of readmission agreements related to third country nationals.

The number of irregular migrants passing through Serbia and whose final destination is the EU has increased: the number of 15.000-18.000 irregular migrants passing Serbia has been estimated by MoI (2012), as compared to 2013, when the estimation was around 20.000. There is no comprehensive approach to irregular migration. Furthermore, the implementation of the readmission agreement signed with neighbour countries is inefficient, especially when Serbia is sending the request for submission of third country nationals. **Some progress has been achieved in the implementation of the reintegration policy for readmitted persons.** IPA projects include readmitted persons as final beneficiaries which enables appropriate housing solutions for this group of people.

4.24.2 Asylum

Regarding asylum, no progress has been made. The number of persons who expressed intention to seek asylum is constantly high (in 2011-3.132, in 2012- 2.723 and **in 2013 5.056**). Claims are still temporarily processed by the Border Police Asylum Unit, as the Asylum Office intention to operate as a first-instance body has not yet been formally established. A large number of asylum seekers, sometimes as many as 200, had been living outside, in the woods without basic living conditions such as food and water. Three temporary centres were opened in December on ad hoc basis, without strategic consideration of appropriate locations in relation to the asylum procedure demands. At a location which was determined by government decision, the third asylum centre has still not been opened due to the resistance of the local population in Mladenovac, which has been supported by some local and national politicians. The capacities and practices of all actors directly or indirectly involved in the asylum procedure or

the reception of asylum seekers, need to be improved. There is a lack of knowledge related to the application of international standards related to asylum cases. Although many asylum-seekers simply abandon their claims at an early stage in the procedure in order to move on, there are also a number of shortcomings in the quality and efficiency of the asylum process. Most of the denials are made on the basis that the applicant comes from a designated safe third country, with no evaluation of the merits of the claim. Furthermore, criteria for verifying safe countries of origin and the list of safe third countries still remain to be fully aligned with the *acquis*, as well as procedure guarantees, reception conditions, rights guaranteed to asylum seekers and the content of international protection (uniform status for refugees and persons granted with subsidiary protection). Overall, Serbia continues to be in the early stages of implementing the asylum policy.

4.24.3 Visa Policy

Serbia has no comprehensive policy related to the social inclusion of those who seek asylum in the EU. The relevant national institutions responsible for the social inclusion of vulnerable groups reported no progress in performing their duties related to this issue. There was no progress in promotion of regular migration flows towards the EU. Certain efforts have been made on defining measures for reduction of asylum seekers from Serbia through bilateral contacts with member states, but the effects are not visible yet.

The main suggestions regarding visa policy, migration and asylum would be:

- The Asylum Law should be revised and adopted in the shortest possible time frame.
- It is necessary to strengthen dialogue between the Government of Serbia and the EU Commission/EU member states on the issue of Serbian asylum seekers in the EU after visa liberalization, in order to find a sustainable solution which should be based on human rights standards and will satisfy the economic and social needs of this group.
- Government should be fully committed to the resolution of all unresolved issues relating to the access to rights of the 1991-1995 refugees and displaced persons. The Regional Multi-Year Programme should have clear milestones and indicators. The process of implementation should be transparent and open to monitoring, whereas relevant CSOs in the four countries have to be involved in consultations and monitoring. An unbiased mechanism for monitoring and evaluation of the regional programme achievements should be in place and programme implementation should be managed in accordance with the monitoring and evaluation results. Furthermore, it is vital to obtain integral support to (re)integration of refugees and displaced persons. Along with the housing projects supported through the Trust Fund Mechanism, it is essential to provide appropriate employment support, legal assistance and social services.
- The Serbian Government needs to create a comprehensive asylum policy

which will assure an efficient and fair asylum process. Policy changes should include (at least): additional permanent reception facilities for asylum seekers in line with asylum procedure demands; establishment of the Asylum Office; more administrative officers employed to deal with the asylum claims; more trainings for everybody involved in the asylum process; amendments to the Law on Asylum concerning the determination of the safe third country, procedures guarantees, content of protection and reception conditions; specific legislative regulations on integration of recognised refugees and beneficiaries of subsidiary protection and development of functional integration mechanisms; opportunities for cultural and social programmes to facilitate communication between asylum seekers and local residents.

- Further develop and implement procedures for irregular migrants in all stages from identification, punishment to force /voluntary return, based on human rights standards.

4.24.4 Police Cooperation and the Fight against Organized Crime

Limited progress was registered in the area of regional police cooperation. There is a lack of coordination of activities of various regional police initiatives which leads to activities overlap. The countries in Southeast Europe (e.g. Balkans) still insist on bilateral police cooperation. One of the reasons is that regional police initiatives capacities are not fully utilized. Moreover, police cooperation mechanisms are not fully operated, such as the construction of common information systems, sending and receiving liaison officers, the realization of hot pursuit, or the formation of joint investigation teams. The police cooperation with the Pristina law enforcement authorities and Albania should be further enhanced.

CASE:

The surrender of drug-lord Darko Saric (officially published by the Serbian government on 18th of March this year) has been widely reported on, but has also brought Serbian prosecution and law-enforcement before a huge test. Recorded amounts of money Saric has laundered, loaned to business entities or invested in Serbia are substantially smaller than even the most modest assessments of his and his group's profit from cocaine trafficking. At the same time, a previous government official, (Miroslav Rakic, ex Chief of Cabinet of President of Republic) claims there are 130 compact discs of intercepted phone conversations between members of criminal groups and different government and state officials and businesspersons. So far, only ex Chief of Cabinet of, at the time, Minister of Interior Ivica Dacic has been interviewed and charged in this case. Special Prosecutor for Organized Crime's office issued no information about interviewing any other state official or employee, or business persons. The owner of the ships used for cocaine smuggling, businessman Rodoljub Radulovic is on the run and so far remains outside the reach of Serbian state.

Comment: Civil sector, international community and political parties should show constant and specific interest in further investigation of Saric's unknown financial operations, all leads contained on alleged 130 CD's in the hands of the Special Prosecutor and Rodoljub Radulovic's whereabouts, until all facts of this case were investigated and all persons responsible prosecuted.

4.24.5 Fight against Human Trafficking

Even though the draft of the **Anti-Trafficking Strategy and the National Action Plan** for 2013-2015 pertains to anti-trafficking (AT) actions covering the year 2013 and the first trimester of 2014, **their adoption is still pending** (the last NAP expired in 2011). More than a year after the beginning of the public hearing, the documents have not yet come on the agenda for adoption. Regardless of broad public hearing that took place, activities that were never discussed during the work on the Strategy and NAP suddenly appeared in versions which followed (e.g. cooperation with churches and religious communities). This shows that **the State's commitment to inter-sectorial cooperation and participatory work in AT remains weak.**

When it comes to **victim assistance in Serbia**, no significant progress was made in this field. Standards set by the EU⁷⁰ are not met. Major issues include the lack of specific indicators for **identification** of VoTs and the lack of minimum standards for assistance provision, which makes monitoring and quality control of these processes impossible. For example, a number of trafficking cases are still prosecuted as facilitation of prostitution, even when alleged prostitutes are minors. According to the research done by ASTRA, more than 10% of judgements for facilitation of prostitution in 2011 and 2012 have elements which make us believe that they were actually trafficking cases.⁷¹ Inefficient identification mechanisms further cause the failure of authorities to provide victims with the necessary assistance and to protect their rights. In the most extreme cases, this leads to victims being prosecuted for illicit acts committed as a direct result of them being trafficked.

The issue of **risk assessment and data protection** of the victims has not been tackled yet. The reflection period for the first stabilization of the victim after she/he has survived a traumatic experience is not persistently applied. In addition, state-run programs of long-term and systematic reintegration are not yet developed.

Accommodation capacities remain very low. There is a single shelter for VoTs, run by an NGO, where both victims in need of emergency assistance, and those seeking long term support in the process of recovery. As only seven VoTs can be placed here, others are placed in shelters for victims of domestic violence, which cannot offer appropriate conditions and assistance to VoTs. Even though the

⁷⁰ EU Directive 2011/36/EU

⁷¹ Law Above Everything - A Survey into Legislation and Court Practice with Regard to Sex Work and Trafficking in Human Beings in Serbia, JAZAS and ASTRA, 2013.

establishment of the Emergency Shelter within the Centre for the protection of victims of trafficking (hereinafter Centre) was officially announced by the Government in 2012, this unit is still not operational. Namely, premises for the shelter were confiscated from a criminal in court proceedings, but administrative omissions prevent it from being put to allocated use.

With no specialized shelter for children VoTs, addicts, and male victims of the crime, situation in this area remains problematic and unchanged. The problem is even graver as the **number of children falling victims to THB is increasing** (showed by data from the Centre, ASTRA and MoI). In 2012 the number of children among identified victims increased for 36% and in 2013 for an additional 17%. The mechanism to respond to their needs is yet to be developed. This mechanism needs to be based on new laws in accordance with EU Directives 2012/29/EU and 2011/36/EU, sensitized for children's rights, and on specialized programs for their recovery and reintegration. Similarly to the situation regarding children VoTs, due to an increase in labour exploitation of Serbian citizens, male victims constituting 1/3 of the identified victims⁷² in 2013, face a lack of specialized recovery programs and shelters.

Serbian authorities did not ensure **civil society involvement in the implementation of national policy for victims' assistance**, and victims were seldom referred to NGO assistance providers. Of 92 victims identified by the Centre in 2013, only three persons were referred to ASTRA for assistance. As the State has limited resources for assistance (see below), this raises the question of whether and how were other VoTs supported after identification.

Another area with no progress is the **state financing of AT actions and victim assistance**, as Serbia still does not have a separate budget line for such actions. It was only two years ago that a certain amount of money was allocated from the republican budget for victim assistance services as part of the budget of the newly-founded Centre for the protection of victims of trafficking (21,865,835 RSD in 2013 - around 190,198€, a moderate increase of 10% compared to the year before). However, the major portion of this amount is intended for salaries and the costs of running the Centre (only 913,860 RSD i.e. 16,640 € was allocated for victims assistance - only 8.42% of total budget).

When it comes to **criminal proceedings** pertaining to trafficking cases, the situation has not improved significantly, even though there were some best practice examples (one trafficking conviction with strict sentencing from 10 to 14 years imprisonment, and the first judgement on compensation awarded and executed in the country). Victims are required to testify and provide the main piece of evidence in trials which last for years. During this time they are exposed to systematic violation of their rights, as there is no guarantee of their safety before, during and after the trial, court practitioners show lack of understanding for their position and they are forced to testify over and over again and face their abusers in court as possibility of witness protection, taped testimony and other

⁷² Data of the Centre for protection of victims of human trafficking

measures of victims protection are rarely used in practice. What is more, there were instances of trafficked persons prosecuted and convicted for actions that were direct consequences of their being trafficked in recent years. Due to the lack of proactive investigation, the testimony of the victim/witness is still the main evidence in trafficking cases. Penal policy is rather weak in trafficking cases as well as in general⁷³.

Non detention, non-prosecution and non-punishment clauses were not fully implemented in practice. There are still cases of detention, prosecution and punishment of victims of trafficking due to the incorrect identification by state officials and lack of knowledge on trafficking.

Although in most countries human trafficking is observed as a problem of organized crime, this is not the case in Serbia. It is considered by law enforcement officials that serious organized criminal groups do not operate in Serbia and that trafficking occurs as a crime of an individual.

Although Serbia signed the European Convention on the **Compensation of Victims** of Violent Crimes CETS No. 116 on 12th October 2010, it is still not ratified. The Fund for Compensation does not exist and no victim of trafficking was awarded compensation during the criminal proceedings and was able to collect it. In February 2014 the very first trafficked person in Serbia was awarded compensation of damages and so far got the first instalment.⁷⁴ However, this case shows serious gaps in the system: criminal judges still fail to make a decision on victims' compensation claims in criminal proceedings, and refer them to litigation; which is lengthy, expensive and requires victim's presence, in spite of the statements made in criminal proceedings; victim's safety is being compromised, secondary trauma is inflicted upon the victim and this creates a setback in victims' recovery and reintegration process.

Even though Serbia is bounded by international legislation ratified to provide **compensation to victims of trafficking**, the country made no progress in protecting this right. Instead, Serbia has ratified the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), but placed a reservation on Article 30 (Compensation). For this reason, the NGO sector initiated the drafting of legislation changes and an advocacy campaign seeking to establish an effective and sustainable compensation mechanism for victims of violent crimes.

⁷³ <http://www.astra.org.rs/eng/wp-content/uploads/2008/07/Legal-analysis-2012.pdf>

⁷⁴ ASTRA. See more at: <http://www.astra.org.rs/prva-nadoknada-stete-zrtvi-trgovine-ljudima-u-srbiji-dosudena-i-izvrsena/>

Recommendations:

1. Adopt an Anti-trafficking Strategy and National Action Plan
2. Adopt legislation changes which will help introduce effective and sustainable compensation mechanism for victims of violent acts, including THB victims by amending Criminal Procedure Code, Civil Procedure Code, Law on Court Fees, Law on the Seizure and Confiscation of the Proceeds of Crime and the Law on Enforcement and Security.
3. Pass a Law on the Establishment of a Compensation Fund for Victims of Violent Acts
4. Ratify the European Convention on the Compensation of Victims of Violent Crimes CETS No.116
5. Lift the reservation Serbia has placed on Art. 30 (Compensation) of the Council of Europe Convention on preventing and combating violence against women and domestic violence
6. Amend the Criminal Code of the Republic of Serbia and make sure non-detention, non-prosecution, and non-punishment clause are explicitly stated in the new law. The legislation change should be formulated in such a way that ensures protection of all victims of trafficking coerced to commit a crime act/criminal offense, particularly those exploited through coercion to petty crime.
7. Fully implement data protection in practice.
8. Start using other possibilities provided for by the law to protect identity, privacy and safety of victims/witnesses and start implementing proactive investigation in order to collect other evidence than victims' testimony in order to avoid secondary victimization; investigate organized crime cases in relation to trafficking in human beings.
9. Develop and implement procedures in all stages; from identification to reintegration/voluntary return as well as protocols for cooperation with NGOs.
10. Develop specialized recovery programs for child victims of trafficking and protect their rights in accordance with EU Directives 2012/29/EU and 2011/36/EU.
11. Start implementing Risk assessment as an obligatory phase after victims' identification.
12. Fully implement non detention, non-prosecution and non-punishment clauses.
13. Allocate funds for the fight against trafficking.
14. Involve a greater number of actors in the identification of victims, including specialized NGOs and increase efficiency of the national referral mechanism in order to ensure assistance is available to all trafficking survivors.
15. Ensure civil society involvement in anti-trafficking policy making and implementation.

Contact information:

ASTRA – Anti Trafficking Action is Belgrade-based local grass-root anti-trafficking organization established in 2000 as the first actor to raise the issue of human trafficking in Serbia. As a leader in the counter-trafficking effort in Serbia, since it was founded, ASTRA has applied holistic approach to the human trafficking problem, i.e. it has been dealing with all forms of human trafficking and all categories of survivors – women, children and men, focusing its activities concurrently on prevention, education, public awareness raising, direct victim assistance and reintegration, research and networking.

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Autonomous Women's Centre (AZC) is a woman, non-governmental organization founded in 1993 and its work is based on the feminist principles and theory AZC believes that a life without violence is a basic human right and accordingly they provide specialist support to women and individual and institutional response to male violence against women, contributing to strengthening of the civil society.

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Belgrade Centre for Security Policy (BCSP) is an independent research centre dedicated to advancing security of the citizens and society they live in on the basis of democratic principles and respect for human rights. In the midst of the Centre's interest are all policies aimed at the improvement of human, national, regional, European, and global security.

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Centre for Applied European Studies (CPES) is an independent not for profit research think-tank based in Belgrade. CPES is committed to policy research in areas related to processes of democratization, institution building, Europeanization and development. It gathers a group of policy researchers of

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Centre for Investigative Reporting (CINS) is a local NGO dedicated to investigative journalism by latest means and up to internationally recognized professional standards. Our goal is to keep giving the people of Serbia otherwise hidden or unavailable information they need to act and make decisions.

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Group 484 is a non-governmental organisation with expertise in the field of migration and 17 years long experience in assisting forced migrants. Organisation supported over 100,000 beneficiaries, working in more than 70 towns in Serbia. Since 2002, Group 484 has been building its capacities for advocacy and policy work; hence, in 2010, Centre for Migration emerged as in-house think-tank unit specialised for the migration issues.

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Transparency Serbia (TS) is non-partisan, non-governmental and non-for profit voluntary organization established with the aim of curbing corruption in Serbia. TI will promote transparency and accountability of the public officials as well as curbing corruption defined as abusing of power for the private interest. Transparency Serbia is national chapter and representative of Transparency International in Republic of Serbia.

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