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|  | WRITTEN CONTRIBUTIONS TO THE EUROPEAN COMMISSION 2013 PROGRESS REPORT ON SERBIABelgrade, September 2013 |
| **prEUnap**<https://www.facebook.com/prEUgovor> |

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# ABOUT “prEUnap”

“prEUnap” (ser. *prEUgovor*) 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). “prEUnap” 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 “prEUnap” gathers:**

Anti-trafficking Action (ASTRA)

[www.astra.rs](http://www.astra.rs)

Belgrade Centre for Security Policy (BCSP)

[www.bezbednost.org](http://www.bezbednost.org)

Centre for Applied European Studies (CPES)

[www.cpes.org.rs](http://www.cpes.org.rs)

Centre for Investigative Reporting (CINS)

[www.cins.rs](http://www.cins.org.rs/)

Group 484

[www.grupa484.org.rs](http://www.grupa484.org.rs)

Transparency Serbia (TS)

[www.transparentnost.org.rs](http://www.transparentnost.org.rs)

# Three main messages

1. **It is very important that the process of accession is transparent.** Main demand from the Government of Serbia in this phase is to secure that negotiations are public, by providing following information: (1) who is who in negotiations; (2) who are the members of the structures formed for the purpose of negotiations (within the Government, within the National Assembly); (3) In what way will the independent experts be selected (proven expertise, integrity, who will propose them); (4) When and what is being negotiated (making the agenda public). Moreover, key documents should be available to the public: (1) screening of Serbia’s legislation; (2) opening, mid-term and closing benchmarks; (3) road maps (action plans) for meeting the benchmarks; (4) Proposals of new legislation necessary to meet the benchmarks. Finally, sessions of the Assembly Committee for European Integration (as well as other relevant committees) to remain open for public every time progress is being discussed.
2. **The fight against corruption should be provided with anti-corruption system based on the separation of powers and the rule of law.** Serbia has finally received a comprehensive framework to tackle corruption in the next 5 years after the adoption of the Strategy and Action Plan in June and August 2013. However, the Strategy does not provide responses to some significant corruption-related problems. Despite the fact that the fight against corruption is high among the Government’s priorities, there are still many cases where the authorities do not apply the adopted anti-corruption legislation. Mechanisms of political influence on the police and the prosecution are not yet removed, which hinders criminal prosecution. It is necessary to determine the liability of the greatest scandals, particularly those associated with the police and the judiciary.
3. **It is necessary to ensure human rights protection, especially of the vulnerable groups** because their access to rights are still significantly hindered. Greater attention must be paid to the application of laws and international obligations in this area.

# EXECUTIVE SUMMARY

The platform “prEUnap” (ser. *prEUgovor*) gathering six 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 2013 have been overshadowed by two major developments. The first one is negotiations with Kosovo and the Brussels Agreement. A significant progress that has been made will remain to be implemented in practice which will be important in the future process of European integrations of Serbia. The second one has been the reconstruction of the Government which has been in the focus of both the political parties and of the public. Even though a number of important strategies and laws have been adopted in this period, a number of issues have not been prioritized and remain insufficiently addressed in this period.

Overall, the progress Serbia has made in areas the “prEUnap” report covers is uneven and erratic. In some areas significant steps have been made both in terms of legislative improvements and better implementation, while others have been almost a blind spot of the current government. It seems that progress is more driven by specific agendas of political actors than by regular functioning of the institutional arrangements in place. Main general recommendations which are base on carried out monitoring are as follows:

* **New strategies and policies still need to be developed and adopted** in a number of areas, main priorities being: reform of public administration, migration policy, the asylum system particularly related to effective social inclusion of vulnerable groups and a renewed strategy for fight against human trafficking.
* **Institutional arrangements still need significant strengthening**, particularly of the Parliament, independent bodies and the judiciary. Particular attention should be paid to mechanisms ensuring accountability of the government. Institutions that deserve special attention. National Assembly and its committees Anti-Corruption Agency, Agency for Protection of Competition, Ombudsperson and other independent bodies are crucial for increase accountability of the Executive
* Finally, and most importantly, **implementation of adopted laws and strategies** in these areas still needs to be significantly improved. Particular attention should be paid to constitutional and legal guarantees for human rights (the right to assembly and privacy protection). Fight against corruption depends on respect for both the letter and the spirit of a series of laws regulating key areas – public procurement, conflict of Interest, financing of political activities, to mention only but a few. Also, significantly more effort needs to be put into effective curbing of politicization and misuse of public powers across the sectors, particularly public enterprises.

The monitoring report which follows covers developments from September 2012 to September 2013 and its main aim is to draw attention to major concerns related to targeted areas. These are summary findings of the report:

**Political Criteria**

Long-standing issues such as deficiencies related to The **Constitution**, namely the position of independent bodies, independence of judiciary, status of National Security Council etc. remained unaddressed. Apart from the initiatives coming from the public, none of the political parties have launched an initiative for revision of the Constitution. There have been some improvements in functioning of the **Parliament**, most notably continuous increase in transparency of this institution and adoption of the Resolution on legislative policy, but overall it remains overly dominated by the ruling coalition agenda. Control function of the Parliament, through work of the Committees, use of parliamentary questions and scrutiny of reports by the independent bodies and the Government still need significant improvement, particularly in terms of follow up activities (i.e. reports of independent bodies have been read but no further action has been taken nor proposed by the Parliament). Improvements are needed in the practice of parliamentary oversight over the National Security Council. **Government** has not, apart from the political re-composition and changes in a number of ministries, undergone any structural reforms. Talks of rationalization and review of the number of government bodies has not been addressed nor sufficiently planned. A major development has been the adoption of new National Program for Adopting the *Acqui Communautaire* for the 2013-2016 period which will be the basis for evaluation of progress made in the years to come. **Public administration** reform still remains an area of major concern. While some partial improvements have been made, a comprehensive strategy for reform is still missing (it is still being drafted), while mechanisms for curbing politicization at all levels are weak or non-existent. Our findings demonstrate that the problem of politicization (appointment of state officials exclusively through political party channels) is persistent in a number of areas – transfers to local municipalities, management of public enterprises, etc. New laws which are being adopted (i.e. Law on Public Enterprises, Law on Public-Private Partnership) are only the first step and need to be closely monitored. **Independent bodies,** whose competencies are crucial in a number of areas still need further strengthening in terms of capacities but they themselves need to increase their efficiency. **Civilian Oversight over security Sector** is another area where significant improvements of the legislation are needed. Law on Detectives and Low on Private Security Companies are still in parliamentary procedure. Amendments on the Law on Police were adopted without public consultations which negatively reflect on the status of police reform and have some problematic provisions. Special attention needs to be paid to harmonization of a set of laws so as to provide for better control over implementation of special investigative measures and procedures. The Code of Criminal Procedures should be changed to oblige the Police prior to using special investigative measures request court order for access to retained data of telecommunication and internet providers.

**Anti-corruption policy and public procurement**

Fight against corruption, a “banner” policy of the current Government picked up pace, but it seems to be mainly driven by political will to initiate criminal investigations for selected outstanding cases. It still remains to be seen what the effects of invigorated attention to corruption will be as it does not fully rely on existing institutions but on selective political will. The new Law on Public Procurement is a significant improvement and provided it is implemented it will contribute to curbing the misuse of public funds which is currently still widespread. Specific cases which we presented in the report illustrate mechanisms for misuse of public offices, circumvention and sometimes blatant breaches of the existing legislation. Unfortunately, the new Strategy for curbing corruption adopted in June insufficiently takes into account the lessons learned in the previous period; it does not provide appropriate responses to some significant corruption-related problems and it lacks ambition in terms of set goals, particularly related to prosecution of corruption cases (a goal is set to increase the number of prosecuted cases by 30 % by 2017 compared to 2012). Independent state bodies continued to contribute to the fight against corruption. Anti-Corruption Agency is still working on the report on political party financing from the previous elections. Logistical obstacles for work of independent bodies are not yet completely removed, nor are their recommendations fully respected. Particular attention should also be paid to the public procurement system in the security sector as the corruption risks are high due to deficiencies in internal and external control and oversight of the police, absence of control of implementation of confidential procurements in the Ministry of Interior (which make up 55% of total procurements in this institution). The Whistle-blower Protection Act which could substantially improve the fight against corruption is still in early stages of deliberations.

**Human Rights**

The main structures and legal guarantees of human rights are in place and generally speaking human rights are respected. However, the **right to assembly** is infringed in case of LGBTIQ population, as the pride march has been cancelled once again in 2012. Major concern is indication of increase in **ill treatment in prisons** the main cause being lack of knowledge on principles of use of force and lack of several bylaws. Another concern is deficient legal regulation concerning the use of special investigative measures which in effect result in frequent overthrow of first instance court verdicts and misuse of powers by officials. An action plan hasn’t been adopted yet and there is no indication that it will be passed soon. **Little progress has been made in regard to the protection of personal data.** The specific legal act which regulates the matter of the protection of data being processed, the protection and keeping of biometric data and data collected through video surveillance is still missing. Bylaw that more closely defines highest levels of secrecy – Top Secret and Secret – was passed in May, but other levels of secrecy are still not regulated meaning that old criteria for classification for these two levels of secrecy is being used. Let us remind that Office of the National Security Council and Classified Information Protection had the obligation to adopt bylaws necessary for full implementation of the Law on Data Secrecy by the end of 2011. **Private security sector and video surveillance is still unregulated**. A new Law on the Security Intelligence Agency or amendments to the existing one are also needed in order to regulate and precisely define the competences, tasks and powers of the Security Intelligence Agency members for the use of special investigative measures and procedures.

**Migration, Asylum and Visa Policy**

Serbia is still lacking a comprehensive **migration policy** related to migration management, effective reintegration and asylum system. **Regarding asylum, no progress has been made.** The number of persons who expressed intention to seek asylum is constantly high while the claims are still 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. Policy changes in this area should include (at least): additional reception facilities for asylum seekers; establishment of the Asylum Office; more administrative officers need to be employed to deal with the asylum claim and their capacities should be strengthened; amendments to the Law on Asylum concerning the determination of the safe third country; specific legislative regulations on integration of recognized refugees and beneficiaries of subsidiary protection and development of functional integration mechanisms; opportunities for cultural and social programs to facilitate communication between asylum seekers and local residents. Serbia has no comprehensive policy related to social inclusion of those who seek asylum in EU. The relevant national institutions responsible for social inclusion of vulnerable groups reported no progress in performing their duties related to this issue. Furthermore, only MoI explained their impact regarding reduction in the number of Serbian citizens who seek asylum in the EU. There was no progress in promotion of regular migration flows towards EU. Some progress has been achieved in the implementation of the **reintegration policy for readmitted persons** who had international protection.

**Fight against Human Trafficking**

Serbia has a generally adequate anti-trafficking legislation but its implementation in practice is still problematic. The reform of the national referral mechanism, the former Agency for Coordination of Protection of Trafficking Victims has undergone a major transformation and a new agency has been established named the Centre for the Protection of Victims of Trafficking. Areas of concern remain **victim assistance** (which is not provided following any written procedures), reduction of **accommodation** facilities for victims (only one shelter is available for victims), **criminal proceedings** (prolonged proceedings and lack of proactive investigations which cause victims to testify several times) and **compensation and damages (no trafficked person in Serbia got compensation of damages).** Another concern are deficiencies in the implementation of **non-detention, non-prosecution and non-punishment clauses** as there are still cases of detention, prosecution and punishment of victims of trafficking due to the unsatisfactory identification by state officials and lack of knowledge. As far as the regional police cooperation is concerned no progress has been made and it seems that countries in the region favour bilateral cooperation. Finally, new Anti-trafficking strategy and action plan are not adopted yet even though the previous Action plan expired in 2011.

# INTRODUCTION

This submission is a joint contribution of 6 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 2012 EC monitoring report, as well a highlight of important emerging issues. Each CSO covered one or more policy areas. We have all contributed to findings regarding political criteria.

We remain open for in-depth consultations on presented findings and recommendations as a group and individual CSOs. The contacts of CSOs are presented at the end of report.

# IMPLEMENTATION OF THE EUROPEAN COMMISSION RECOMMENDATIONS FROM 2012 PROGRESS REPORT[[1]](#footnote-1)

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| --- | --- | --- | --- |
| **No.** | **Recommendation or observed deficiency** | **Comment** | **Source (if available)** |
| **1. POLITICAL CRITERIA** |
| **Government** |
|  | The drafting process continues to lack transparency, sufficient structure and time for effective consultation of all interested parties, which would also make the legal environment more predictable. ( p. 7 in EC report)The implementation and monitoring of adopted legislation needs to be improved. (p.7)Ministries do not always follow up and even in some instances openly challenge the opinions and recommendations of independent regulatory bodies, including the State Audit Institution. (p.7) | The situation slightly improved and more public debates are organized about draft legislation. However, some important acts are adopted without public debate (e.g. changes of Budget System Law). Changes of governments Rules of Procedure, that show moderately improve situation, are in force since April 2013.There is no significant improvement in implementation of legislation, or in monitoring mechanisms. The implementation of independent bodies' recommendations and decisions is not yet ensured. The Parliament did not discuss reports for 2011 and conclusions about 2012 reports were adopted in late June 2013. Parliamentary conclusions do have some monitoring mechanisms for recommendations related to the Ombudsman and Supreme Audit Institution, but not for Commissioner for information and Anti-corruption Agency. | Transparency Serbia research on public debates, 2013, <http://www.transparentnost.org.rs/index.php?view=details&id=1395:izvestan-pomak-u-javnosti-zakonodavnog-procesa&option=com_eventlist&Itemid=23&lang=sr>Amended Rules of Procedure of Government.Reports of Ombudsperson, Commissioner, Anti-corruption Agency and Supreme Audit Institution for 2012 and Transparency Serbia monitoring project, published on March 20th, 2013: <http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=274%3Asistemski-pristup-u-borbi-protiv-korupcije-izvetaji-nezavisnih-tela-i-nacionalna-strategija-za-borbu-protiv-korupcije-&catid=14%3Avesti&lang=en>Transparency Serbia overview of draft Parliamentary conclusions, June 2013, <http://www.transparentnost.org.rs/index.php?view=details&id=1412%3Askuptinski-zakljuci-o-izvetajima-nezavisnih-antikorupcijskih-organa--prednosti-i-slabosti&option=com_eventlist&Itemid=23&lang=sr> |
| **Public Administration** |
| 5 | The legislative framework is still incomplete. New legislation on general administrative procedures and on local government employees and salaries is yet to be adopted. The Law on Civil Servants does not apply to local government employees. (8) | There is no improvement in status of other members of public sectors (e.g. weak conflict of interest and recruitment provisions).This issue will be treated through the new Anti-corruption Strategy and Action plan. | Anti-corruption Strategy, <http://www.mpravde.gov.rs/cr/articles/borba-protiv-korupcije/> |
| 6 | A number of appointments to senior civil service positions are still pending. (8)Merit-based recruitment and promotion systems should be developed and implemented. | The government continued with practice to appoint and dismiss high ranked civil servants without open recruitment procedure and explanatory note, in contrary to the Law on Civil Servants’ provisions. For example, 148 out of 161 appointments in July 2012-February 2013 were made in that way. No progress has been achieved in implementation of merit-based recruitment and promotion systems, judging by senior appointments made by the new Government.During the process of “reconstruction” of the Government in summer of 2013, ruling parties’ representatives openly announced that senior civil servants will be dismissed as well, along with ministers, although they shouldn’t be political appointees.  | <http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=270%3Aproblem-sa-postavljanjem-slubenika-na-poloaju-i-depolitizacija-dravne-uprave&catid=14%3Avesti&lang=sr>Transparency Serbia analyses of fight against corruption during the first year of work of the Government: <http://www.transparentnost.org.rs/images/stories/materijali/31072013/srb/borba%20protiv%20korupcije%20u%20prvih%20godinu%20dana%20vlade.doc> |
| 7 | Several independent regulatory bodies continue to face logistical constraints. | Human resources provided to independent regulatory bodies continue to be insufficient and poorly structured. Independent regulatory bodies still lack adequate space and equipment.No measure planned in Government’s Action plan to resolve the problem. In August 2013, Commissioner and Ombudsman stated that new premises are assigned to these two institutions.  | Action plan of Government. Annual Report of Commissioner for Information of Public Importance and Personal Data Protection. |
| 8 | As regards restructuring of public agencies, due consideration has to be given to the need to maintain the capacities and entitlements to implement the *acquis.* In some cases, when prescribed by the *acquis*, the independence of such bodies needs to be preserved. (8) | There is no clear information about plans for restructuring. The issue is occasionally mentioned in the context of public administration reform (draft Strategy of Public Administration Reform) and in political speeches.  | Draft Strategy of Public Administration Reform. Expose of Prime Minister on occasion of reconstruction of Government in 2013.  |
| 9 | Changes to the Law on the Ombudsman, which should enhance the Ombudsman’s independence, still have not been adopted. The Ombudsman’s recommendations were not sufficiently followed up. (9)  | The changes of the Law were withdrawn from procedure and still are considered by Ministry of Justice and Public Administration. Changes of Law on Free Access to Information are planned in Anti-corruption Strategy.  | Anti-corruption Strategy and Action Plan. |
| **Civilian oversight of security forces** |
| (not specified – BCSP finding) |  | In May 2013, the Parliament has discussed the proposal of the plan for Serbia’s contribution to global peace support operations in 2013. In this way, omission observed in 2012 was amended and the risk for Serbia’s contingents abroad to be called home was averted. | From: <http://otvoreniparlament.rs/2013/05/15/475940/> to <http://otvoreniparlament.rs/2013/05/15/476063/>Proposal of the decision (in Serbian): <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/akta_procedura/2013/280-13Lat.pdf> |
| 10 | The legal framework for the security and intelligence services’ monitoring of communications needs to be clarified. Provisions of the Law on Military Security and Military Intelligence Agencies which allowed sensitive data related to citizens’ communications to be monitored without a court order were ruled unconstitutional by the Constitutional Court in April 2012. There are allegations that the unclear legal situation has led to abuses. | Amendments to the Law on the Military Security Agency and the Military Intelligence Agency were passed in February 2013. They changed the Law in way that for access to retained data by Military Security Agency court order is needed. Adopted amendments fully harmonized this Law with Decision of the Constitutional Court No. IUz – 1218/2010 (Official Gazette of RS No 55/2012). Even though this amendment doesn’t legally bind Security Information Agency (BIA), the Agency decided to accept and implement the principle that court order is needed for access to retained data of telecommunication and internet providers. Hence, BIA has introduced the mechanism of “double checks”, according to which two instances – in Agency and court, approve access to retained data. However, the Police declined to implement this principle in their daily work, and continued to access to retained data without court order.  | <http://www.parlament.rs/upload/archive/files/lat/pdf/zakoni/2013/282-13Lat.pdf> |
| 11 | A law on access to state security files remains to be adopted. | Nothing has been done in this respect – Inter-ministerial working group envisaged to draft legislation hasn’t been established yet. The eight separate bylaws for implementation of Law on Confidential Data in 2010 and 2011 must be consulted if the inter-ministerial working group decides that a new Law on Opening Files is necessary (see more in narrative).In order to have successful opening of state security files, it needs to be compounded by planned lustration process accompanied with adequate allocation of resources and political backing.  |  |
| **Civil and political rights, Prevention of torture and ill-treatment** |
| 14 | The internal control system for the police needs significant strengtheningin terms of staff and training and needs to improve its response to allegations ofIll-treatment. (13) | Currently, the competences in the work of controllers in the MoI have not been divided except for the service in charge of the financial management of the MoI. Still, there are no sufficient material, financial and human resources for internal control system of the police. This could be changed if the Action Plan for Implementation of the National Strategy for Fighting Corruption 2013-2018 really starts to implement. Action Plan predicts new legislative and institutional measures that can enhance the fight against police corruption.  | <http://www.bezbednost.org/All-publications/5041/Collection-of-Policy-Papers-on-Police-Reform-in.shtml><http://www.bezbednost.org/All-publications/5164/Corruption-in-the-Security-Sector-in-Serbia.shtml><http://www.bezbednost.org/Sve-publikacije/5191/Ka-obnovi-integriteta-policije-planiranjem.shtml>(Only in Serbian) |
| **Freedom of expression** |
| 21 | The implementation of the Strategy for Development of Public Information System in the Republic of Serbia by 2016 needs to be speeded up. Transparency of media ownership has yet to be ensured. (51)Alignment of the provisions of the national regulations that enable funding for specific media from the state budget with the EU *acquis s*hould be made. (51)Access to advertising in the media remains under the control of a few economic and political actors, entailing a significant risk of influence on the media and of self-censorship. (14)The Action Plan for the Implementation of the Media Strategy, covering the issue of State aid to the media and its alignment with the *acquis* should be initiated. (37)Provisions allowing for the financing of certain media from the State budget remain to be brought into line with the EU *acquis* as it constitutes State aid. (37) | The Draft Law on Media promoted in March 2013 and adopted Anti-corruption Strategy and Action plan do not provide for full transparency of media ownership and does not regulate transparency of other potential influence on media editorial policy (e.g. dominant income source of media), in contrary to the Media Strategy. Draft law brings significant improvements in transparency of state aid to the media. However, after initial public discussion, the draft is removed from procedure. In August 2013, two new drafts were promoted (for electronic media and public services), introducing temporary budget financing of public TV. There are growing concerns over the fate of two remaining public broadcasters – Radio Television of Serbia (RTS) and Radio Television of Vojvodina (RTV), although for somewhat different reasons. While the financing of RTS has been made difficult with the Government decision to stop obliging citizens to pay monthly subscription, in case of RTV – there are concerns that this might bring the end to its programme altogether, as evident from RTV’s 23th August announcement. What is even more concerning is that July revision of the budget only envisaged funds for RTS. As a consequence, employees in RTV have not received salaries for three months straight, and continuation of its programs broadcasted in ten different languages is under threat of “Greek scenario” (meaning – closure and end to all broadcasting). This would have a profound impact on Vojvodina as most diverse part of Serbia. | <http://www.srbija.gov.rs/extfile/sr/195500/zakljucak_akcioni_plan_nacionalne_strategije_za_borbu_protiv_korupcije090_cyr.zip><http://nuns.rs/info/statements/20046/nuns-i-uns-ozbiljni-nedostaci-akcionog-plana-za-spovodjenje-nacionalne-strategije-za-borbu-protiv-korupcije.html><http://www.anem.rs/admin/download/files/_id_1818/III%20MONITORING%20PROCESA%20USVAJANJA%20NOVIH%20ZAKONA.pdf><http://www.rtv.rs/sr_lat/vojvodina/novi-sad/pretplata-prekinuta-vlada-da-resi-problem_416108.html><http://www.dw.de/koliko-je-ugro%C5%BEena-rtv-vojvodine/a-17057543> |
| **Freedom of assembly and association** |
| 22 | The Pride Parade was banned by the Serbian authorities on security grounds, for the second year in a row. The activities of extreme right-wing organizations and of violent groups of so-called sports fans that threaten freedom of assembly and association need to be suppressed. (14) | The Ministry of Interior banned again the Pride and denied the rights of LGBT people to freedom of expression and freedom of assembly. Also, with the most recent amendments to the Law on Police, police officers were granted the right to independently opt to refuse an assignment (Article 138a, paragraph 10), if all conditions necessary to carry it out are not met, or if they feel their life is threatened.  | <http://pescanik.net/2012/10/to-be-or-not-to-be-proud-a-question-for-police-officers/> |
| (not specified – Group 484 finding) | The Roma, refugees and internally displaced persons continue to face a difficult situation. | Some progress has been achieved by adoption of the Law on Permanent and Temporary Residence which allows IDPs who do not have personal documents to apply for the residence at Social Welfare Centre’s. It is still to be implemented in the practice. | <http://www.praxis.org.rs/index.php/sr/praxis-watch/item/493-uputstvo-za-postupanje-prilikom-prijave-prebivali%C5%A1ta-na-adresi-centra-za-socijalni-rad-nove-birokratske-zavrzlame> |
| **Regional issues and international obligations** |
| (not specified – Group 484 finding | Significant progress has been made as regards the Sarajevo Declaration Process, which brings together Bosnia and Herzegovina, Croatia, Montenegro and Serbia and aims at finding sustainable solutions for the refugees who were displaced as a result of the armed conflicts. | 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. |  |
| **3. NEGOTIATIONS CHAPTERS** |
| (not specified – Group 484 finding | 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. | There were no progresses in this area. |  |
|  | There has been some progress in the area of anti-discrimination policies. Serbia’s anti-discrimination legislation is broadly in line with European standards on combating racism and racial discrimination. The Equality Protection Commissioner’s office was active in raising awareness of discrimination and ways of addressing it. Police improved their response to attacks against some groups. However, discrimination based on ethnicity, gender, and sexual orientation remains widespread. Serbian authorities need to develop a proactive approach towards the better inclusion of the LGBT population and a greater understanding across society. | There has been some progress in creating new anti-discrimination policies and establishing new mechanisms for protection against discrimination. In 2012 Serbia made a step towards drafting National Anti-discrimination Strategy which is planned to be adopted in 2013. The Strategy will cover the issue of Roma, women, persons with disabilities, LGBT persons, elder people since these vulnerable groups are the most discriminated in SerbiaGender based discrimination is present in security sector as well, but the cases of discrimination have not been reported due to lack of trust in the existing internal mechanisms.The establishment of specific antidiscrimination mechanisms in security sector was planned within National Action Plan for the Implementation of UNSCR 1325 adopted in late 2010. So far, Security Intelligence Agency and Administration for the Execution of Penal Sanctions introduced new and unique antidiscrimination mechanism – person of trust. The competence of the person of trust is to advise, mediate and take actions in regards to antidiscrimination protection and achieving of gender equality. It is planned that Military of Defense, Ministry of Interior in forthcoming period introduce the same mechanism. The limitation of equal opportunities for women who want to enroll in Military Academy and Police Academy continued and worsened in this year. Both institutions set up maximum quota (15%) for admission of women to the Military and Police Academy. Although these quotas were initially designed to encourage a greater admission of female cadets, in time they proved to be a glass ceiling, considering that they now represent the upper limit, i.e. the maximum number of women that may enroll in education or training. Additionally, Ministry of Defence in call for the admission of civilian candidates to Military Academy set up another discriminatory criterion - a requirement that candidates when applying ought not to be in matrimony or common-law marriage. According to the latest report of the Equality Protection Commissioner the implementation of anti-discriminations policies is still poor resulting in widespread discrimination in Serbian society. During 2012 the Commissioner received 465 complaints. This is the indicator that number of complaints increased over the past year. | Anti-Discrimination Strategy<http://www.ljudskaprava.gov.rs/sites/default/files/u3/pbs/i_draft_ad_strategy-april_2013-eng.pdf>Annual Report of Equality Protection Commissioner for 2012<http://www.ravnopravnost.gov.rs/lat/izvestaji.php?idKat=16>Call for the enrolment of cadets in the Military Academy published<http://www.va.mod.gov.rs/documents/konkurs2013/Integralni_tekst_konkursa_sajt_va.pdf>Call for the enrolment of students in the first year of study at Police Academy,<http://www.kpa.edu.rs/cms/index.php/infookonkursima/osnovnestudije>Always women, never a colleague<http://www.bezbednost.org/upload/document/uvek_zena_nikad_koleginica.pdf>Person of trust – Antidiscrimination mechanism or not<http://www.bezbednost.org/upload/document/2012_trustworthy_person__an_antidiscrimination_mec.pdf> |
| **3.23.2. Anti-corruption policy** |
| 163 | The Government has not yet finalized its National Anti-Corruption Strategy for 2012-2016 or its corresponding Action Plan. | New National Anti-Corruption Strategy and corresponding Action Plan have been adopted in June, i.e. in August 2013. The Strategy envisages significant improvements. Among other things, the Strategy for the 2013- 2018 period would bring improvements in political party financing, public debate and conflict of interest legislation, introduction of Whistle-blower protection and Lobbying law, “illicit enrichment” criminal offence, analyses of corruption risks in new legislation, strengthening of Police internal control, improvements in the area of control of public finances, work of independent institutions and corruption in specific sectors, such are education, health and privatization. It also brings improved monitoring mechanisms. However, the Strategy does not:1. envisage **defining of status and powers** of certain anticorruption institutions (e.g. duties and powers of Government Anticorruption Coordinator that is currently not regulated);
2. contain **estimation of financial assets** necessary for implementation (Action Plan is not quite clear about that issue either);
3. envisage mechanisms for increasing number of reported cases of corruption through **releasing of criminal liability for participant in corruption who reports criminal act** before the case is revealed
4. deal with certain forms of **politically motivated disposing with public assets** (e.g. decisions on distribution of subsidies and other forms of state aid, decision on investing or conceding budget assets to lower authority levels).
5. consider comprehensively problem of political influence to appointments and resolving of **managers in all parts of public sector**, but only particularly (e.g. public enterprises, educational institutions)
6. elaborate solutions for the problem of s**electiveness in controls** performed by inspection services and inadequacy of controls that benefit development of “grey economy”
7. **mention cross checks of income and property** (by Tax authorities)**nor recently announced Law on Investigating of Property Origin**
8. deal directly with lack of transparency and possibility for citizens to influence decisions related to **the commitments affecting public incomes and disposing with public property**;
9. deal with some problems in **public procurement area (**it is focused on implementation of current Public Procurement Law although some of the problems in practice are related to changes or implementation of other regulations)
10. mention problem of **insufficient capacities of budget inspection**, due to which large number of abuses in financial management is discovered late;
11. pay attention to **decisions of state organs on selling shares,** impartially privatized enterprises, decision on division of public enterprises and taking over of debts of previously privatized enterprises:
12. contain measures aimed to **compensate damages to the victims of corruption**
13. contain measures to increase number of persons that **can initiate criminal prosecution of corruption**
14. clearly define **what is proactive approach** in prosecuting corruption;
15. provide measures **for judges accountability**(only reference to Judicial reform strategy)
16. provide measures on **organization of courts and prosecutors’ offices** that will deal with most severe cases of corruption(only reference to Judicial reform strategy);
17. mention at all failure of state authorities to perform their duties as one of the causes for widespread illegal construction, nor problem of **prescribing unreal or imprecise urban plans** to force bribe from investors through individual changes of such plans;
18. mention necessity for **precise defining of patients’ rights;**
19. overlooks problem **of other data transparency, important to estimate possible influencing medias’ work nor other forms of media discrimination by authority organs;**
20. envisage **overall consideration of corruption risks in already effective regulations;**
21. emphasize problem of **discretion when defining conditions and criteria** that will be implemented in post announcement for public sector employment;
22. define comprehensively transparency of work of public bodies, but rather focus on implementation of the Law on Free Access to Information only;
23. specify content of whistle-blower protection;
24. envisage adopting **sector action plans;**
25. clearly define coordination and monitoring of the Strategy in regards to powers and duties of Ministry of Justice and Anticorruption Council;
26. clearly defines consequences – what will happen when Anti-corruption Agency determine that some institution unduly performed prescribed activities, whether the following debate will be about  resolving of its manager or not;
27. define consequences **of ceasing effectiveness of previous Strategy** – unveils the question whether the authority organs will be obligated to report the Agency on their anticorruption activities on the basis of former Action Plan till adoption of new Strategy and Action Plan

Action plan did not resolve the problems mentioned above, through more detailed elaboration of missing elements. It also has its own weaknesses. Most prominently, Action plan sets “indicators of success” that are far from what Serbia needs in order to curb corruption effectively. For example, AP envisages increase of final sentences in corruption cases **of only 30% in 2017**, compared to 2012. Having in mind that **less than 1% of corruption** is reported at all, even full implementation of such plan **could not be anyhow considered as appropriate answer to the problem of corruption in Serbia.** While the wide scope of stakeholders was involved in the working group and discussions about Strategy and Action Plan, the final process of drafting was extremely non-transparent. Inputs for public debate were not published, institutions and people that proposed changes of drafts received no answer or explanation for rejection and working group members neither received nor discussed inputs of public debate.  | <http://www.mpravde.gov.rs/lt/articles/borba-protiv-korupcije/nacionalna-strategija-za-borbu-protiv-korupcije/><http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=308:nedostaci-antikorupcijske-strategije&catid=14:vesti&Itemid=1&lang=en>More detailed in: Transparency Serbia comments to the draft Strategy, draft Action plan and analyses of adopted Strategy.  |
| 164 | It is necessary to improve protection ofwhistle-blowers (12, 50) | Current legislation (Rulebook on Protection of Whistle-blowers adopted by Anti-corruption Agency) and other relevant legislation (labor law, criminal law, free access to information law etc.) provide insufficient protection; individuals are thus discouraged to report corruption. Commissioner for Free Access to Information formed special working group, tasked with drafting the model Law on the Protection of Whistle-Blowers. The model law was promoted in April 2013 and delivered to the Ministry of Justice and Public Administration, as a competent authority to put the law in legislative procedure, after public debate. That Ministry announced establishing of its own working group for autumn of 2013, but it is not clear whether model law will be the basis of its work or not.  | <http://www.poverenik.rs/en/javna-rasprava.html> |
| 165 | There has been no further follow-up to the reports of the Anti-Corruption Council on high profile cases. | There are no new rules in place for follow-up of Anti-Corruption Council reports. There is no practice of Government to officially react to the published Council’s reports. However, law enforcement bodies initiated investigations in several cases based on previous Council's reports (so called “24 privatizations”). Government politicians, in contrary to the separation of powers principal are announcing deadlines for these investigations. In some instances, Government failed to conduct or plan systemic measures related to the previous Council’s report. This is most obvious in the case of Council’s findings on improper influence on media and failure of Government to envisage appropriate measures in Anti-corruption Strategy and draft media legislation. |  |
| 166 | The law enforcement bodies need to become more proactive and develop their ability to conduct financial investigations. (50) | There is no record of increased pro-activity of law enforcement bodies, nor consistent pro-active investigations policy. Possible exception are investigations conducted on the bases of AC Council reports („24 privatizations“), although in some of these cases, there were criminal charges in place as well. The new Anti-corruption Strategy and Action plan deal with pro-active investigations. It is expected that proactive investigations will be better tracked, facilitated and encouraged. However, there is no clearly stated legal duty of public prosecutors to conduct such investigation and consequently, no liability of public prosecutor who failed to conduct pro-active investigation.  |  |
| **3.23.3. Fundamental rights** |
| 168 | An action plan implementing the Strategy on Protection of Personal Data still needs to be adopted | Since last year’s report, an action plan implementing the Strategy on Protection of Personal Data still needs to be adopted. Action plan hasn’t been adopted yet and there is no indication that it will be passed soon.Law on Classified Information isn’t fully implementable yet. Bylaw that more closely defines highest levels of secrecy – Top Secret and Secret – was passed in May, but other levels of secrecy are still not regulated meaning that old criteria for classification for these two levels of secrecy is being used. | <http://www.nsa.gov.rs/><http://www.bezbednost.org/Sve-publikacije/4919/Sta-je-Drzavna-tajna-u-Srbiji.shtml> |
| (not specified – BCSP finding) |  | Video surveillance is still unregulated, but draft law has been written by Commissionaire and submitted to Ministry of Justice. However, whole process isn’t transparent. Over 200 000 CCTV cameras are collecting data every day in Belgrade only, with little or no legal backing whatsoever. Law on Protection of Private Data only remotely address video surveillance issue.  | <http://www.politickiforum.org/index.php?vrsta=tribina&kategorija=&tekst=61&naredba=prikaz&br_stranice=#1376> |
|  | Limited progress has been made regarding respect for and protection of minorities and cultural rights. The legal framework is in place and generally respected. Some positive steps were taken to improve the situation of minorities, including the Roma. However, additional efforts are needed to ensure effective implementation of the legislation throughout the territory of Serbia and to address shortcomings. Roma, refugees and internally displaced persons continue to face a difficult situation. Additional efforts are required to comply with international standards on forced evictions. | Representatives of national minorities are underrepresented in the public administration. Unlike the most of the state administration and public services, according to the Ombudsman's annual report only Ministry of Interior and Customs Administration is planning to apply measures to increase the number of employed persons belonging to national minorities. Other state bodies in security sector, such as Ministry of Defence and Security Intelligence Agency, did not implement these affirmative measures. | Anti-Discrimination Strategy<http://www.ljudskaprava.gov.rs/sites/default/files/u3/pbs/i_draft_ad_strategy-april_2013-eng.pdf> |
| **Migration and asylum** |
|  | There has been no progress regarding migration management. | Migration Management Law has been adopted, but there are no significant results in implementation of the overall migration policy in the country. |  |
|  | Regarding asylum, no progress has been made. | Serbia continues to be in the early stages of implementing the asylum policy. | <http://migracije.org/files/Challenges%20of%20Forced%20Migration%20in%20Serbia%20%2808-02-2013-Web%29.pdf><http://www.grupa484.org.rs/Challenges%20of%20Forced%20Migration__eng.pdf> |
|  | Serbia is moderately advanced in addressing the unfounded asylum applications by Serbian citizens under the visa free regime | Serbia has no comprehensive policy related to social inclusion of those who seek asylum in EU. |  |
| **Fight against human trafficking** |
| 191 | Adopt the updated Strategy to combat human trafficking and associated action plan. (54) | Serbia still didn’t adopt the National Strategy for Combating Trafficking and NAP~~.~~  |  |
| 192 | A uniform database for criminal reports and proceedings and a specific monitoring mechanism in this area have not been established. (54) | Each institution has its own statistics, but they are not comparing results. |  |

# FINDINGS[[2]](#footnote-2)

## 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. By regulating this matter  with Constitution not only that mechanisms for oversight of the National Security Council would be established, but future easy changes to this body through law amendments aimed at satisfying daily political needs would be prevented. Currently, this matter is regulated by Law on Basic Regulation of Security Services which was changed after the latest 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 defense sectors. In this way, Aleksandar Vucic has concentrated strong power (over security information) in his hands, which could be easily used for sidelining 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.

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| **Recommendations:*** Mandate, composition and democratic oversight of the National Security Council as the main coordinating body in the national security system of Serbia should 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.
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#### **2.1.2 Parliament**

Parliament adopted several important laws for fight against corruption, one of them on the basis of (SNS) MP group proposal (Law on Public Procurements). Parliament adopted since July 2012 important laws such are Law on Public Enterprises, changes of Budget System Law, changes of Criminal Code, changes of important taxation laws, new Law on Misdemeanors etc.

Parliament continued with a good practice of public hearings, organized to discuss actual legislative topics.

Relevant parliamentary committees discussed with huge delay, partly caused by elections, reports of independent bodies for year 2011, but the conclusions of Committees were not discussed in plenary. Parliament did not ensure implementation of previous year’s conclusions and did not use independent bodies’ reports to make government more accountable. There was only one MP question related to these problems and government failed to provide answer. Annual reports of independent bodies for year 2012 were considered by the Committees, and by the plenary in June 2013. In some instances (for Ombudsman and Supreme Audit Institution, unlike for Commissioner for Information and Anti-corruption Agency), conclusions of the Parliament do have some monitoring mechanisms.

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. Individual responsibility of ministers was not discussed in process of government reconstruction, as they resigned from the post.

Parliament established inquiry committee for using of budget funds of Serbia on Kosovo and Metohija between 2000 and 2012 that had 10 sessions until now.

Parliament fulfilled mostly in timely manner or with a short delays its electoral function – reappointment of Ombudsman, election of members of Anti-corruption Agency Board, election of members of Commission for Protection of Bidders’ Rights.

However, Parliament still lacks comprehensive approach to legislative process and law adoption.

#### **2.1.3 Government**

Government set fight against corruption as one of their top-priorities and nominated vice-prime minister Vucic in charge for that activity. However, Government’s plan for fight against corruption is not fully developed and many parts of ruling coalition agreement are unclear. 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 is producing reports. Previous reports of the Council are used now, seemingly as a consequence of political will, for investigation of law enforcement bodies. However, there is no mechanism in place to discuss upcoming reports of that body.

Government did not improve transparency of its work (sessions’ minutes still treated as an “official secret”), but there is slight improvement in number of organized public debates in legislative process, by relevant ministries. Some important acts were however proposed without such debate (e.g. Budget System Law) and poor practice of public debates continued even after the change of Rules of procedure.

Government continued and even widespread practice of appointments and dismissals of high ranked officials in contrary to the Civil Servants Law (148 out of 161 till February 2013), without public recruitment procedure and explanatory note. Furthermore, these appointments and dismissals are openly treated as a matter of political considerations.

Government proposed several important laws, initiated changes of its Rules of Procedure that would improve situation with public debates. Ministry of Justice and Public Administration is working on Strategy of Public Administration Reform and Judicial Reform Strategy.

#### **2.1.4 Public Administration**

There were no substantial changes in the work of public administration and the new Strategy for Public Administration Reform is being drafted.

There is no clear policy in regards to various types of public sector bodies (e.g. public agencies), although some of them were incorporated in relevant ministries.

There is still lack of proper anti-corruption regulation for employment of various parts of public sector (local government, health, culture and education, public enterprises).

Government continued and even widespread practice of appointments and dismissals of high ranked officials in contrary to the Civil Servants Law (148 out of 161 till February 2013), without public recruitment procedure and explanatory note.

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).

Recommendations and final decisions of independent bodies are sometimes ignored by other parts of administration. Also, situations in which Prosecution dismisses all criminal charges which were submitted by the Anti-corruption Agency are indicative of the general situation with the real power of independent bodies to deal with their jurisdictions. Resolution of the problem of premises of Commissioner for Information and Ombudsman is announced, while the Government did not put back in procedure yet necessary changes of laws regulating their work.

**Strong politicization of public administration is still very present.** This long-lasting problem of politicization has been compounded by strong concentration of power in the hands of two the most important government officials – Aleksandar Vucic and Ivica Dacic who are holding several important posts and are leaders of their parties at the same time. Ivica Dacic is performing duties of Prime Minister, Minister of Interior and head of Socialist Party. Aleksandar Vucic is Deputy Prime Minister, used to be Minister of Defence until September 2013, Chief Coordinator of Security Services and Head of Serbian Progressive Party. Struggle for power between these two individuals negatively affects ministries and agencies under their control which are often misused in a power game. As a consequence, public administration isn’t at the service of citizens but serves to political parties.

Also, there is trend of politicization of budgetary transfers to local municipalities[[3]](#footnote-3). Regional development policies are undermined by voluntary transfers motivated by the political party affiliations rather than development plans.

**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 “depoliticization” of highest positions of decision-making in state administration (i.e. assistant ministers, senior advisors and department directors, etc.). To this end, any future application of the article 179, allowing individuals to be appointed without public competition was to be terminated on December 31, 2010. However, the new Government of Serbia decided to ignore this and to continue appointing individuals in accordance with the mentioned article. According to the “Transparency Serbia” report, out of 161 Government appointments, an overwhelming majority – 148 – were conducted in accordance with the old legislation, effectively prohibiting merit-based recruitment in the Government[[4]](#footnote-4).

Very illustrative example is Security-Information Agency, where according to 50 shifts and replacements were made at all organizational levels since new director had been appointed in August 2012.[[5]](#footnote-5) 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 promise that high-ranking officials managing public enterprises will – from now on – be selected after entering a public competition. Although there were some positive examples[[6]](#footnote-6), 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.

Government’s poor record in this regard goes back to 2010 Action Plan, when “logistical constraints” were first labeled a priority. **Human resources provided to independent regulatory bodies continue to be insufficient and poorly structured**[[7]](#footnote-7); now also due to budgetary constraints. **Independent regulatory bodies still lack adequate space and equipment**. One positive development is that the Ombudsman’s office has recently been relocated all to one address, instead of several. The Anti-Corruption Agency, on the other hand, was situated in premises bought by the Government’s Department for General Affairs, previously owned by a controversial individual with ties to organized crime. For a period of time this acquisition undermined Agency’s credibility in public. 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. Finally, Institution has its premises dispersed across four locations in Belgrade, complicating and increasing the cost of everyday work.

#### **2.1.5 Civilian Oversight over Security Sector**

Draft Law on Private Security and Draft Law on Detectives are in Parliamentary procedure, but still not adopted[[8]](#footnote-8). Oversight role was delegated to Ministry of Interior. In explanatory notes in draft laws is stated that “no additional financial assets are needed for implementation of those laws”. This is dubious since MoI has to (at least) educate existing staff, or hire and educate additional members in order to provide efficient oversight and control on approximately 40 000 personnel in private security sector. So far Interior control of Police 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.

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| **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.
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Key change in the previous period is adoption of **amendments to the Law on Police** with the following explanation: “due to the current security situation and inadequate working conditions for police officers in Serbia”. The amendments are adopted without public discussion which negatively reflects on the current status of police reform in Serbia. Main reason for changing the Law on Police is the pressure of police unions for the implementation of collective agreement. Looking into content of the changes, there are four positive and four negative elements.

The key positive developments are: (1) Legal framework for international police cooperation and multinational operations is now in line with the current trends in international policing. (2) Lawmakers have limited the activities of police officers outside working hours which is of great importance in fighting against corruption and conflict of interest. However, this measure must be operationalized through adoption of bylaws. (3) An important novelty introduced within the Law on Police is to increase the provision of one-off financial assistance to the family of the deceased police officer after the result of injury, occupational disease or dangerous occurrence in the amount of 36 average salaries in the police. (4) Act of the police officers which violates the principles of Code of Police Ethics from 2006 is serious breach of duty which produces certain sanctions.

The key shortfalls of Law on police are: (1) The accelerated retirement for police officers has not been repealed. In mostly modern police services across 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 clear. Firstly, it’s undecided whether additional coefficients increases 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 of more than 50%. (4) It is not clear what is the content of “other assistance” to the police officer against who criminal proceedings in addition to legal assistance.

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| **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 unites 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.
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**Access to state security files** is regulated by the Section 4 of the Law on Data Confidentiality. Several bylaws further regulating matters related to the issue of access have been adopted since: on certificates for access to confidential data, its contents and form (2010); on keeping records of access to confidential data (2010); on procedures for marking one data’s degree of confidentiality (2011); as well as four bylaws regulating various measures of confidential data protection. These eight bylaws must become part of the new Law.

In 2012, both the Parliament and the (old) Committee for Defence and Security have failed to **discuss Serbia’s participation in peace support operations, risking withdrawal of the contingent already present in UN and EU missions**. Only after the Ministry of Defence intervened, decision was made by the Government, extending their mandate. This omission was, however, not repeated in 2013; the Parliament debated the 2013 decision to participate in multinational operations on February 20, 2013.[[9]](#footnote-9)

#### **2.1.6 Anti-corruption policy**

The most apparent area is the anti-corruption where key efforts are led by Aleksandar Vucic, vice – prime minister who is “in charge for coordinating anti-corruption efforts on behalf of Government”, although without special powers set by regulation in that field. Some high-profile corruption cases (esp. regarding previous privatization or alleged abuses) have been initiated seemingly only by strong personal engagement of Mr Vucic. The “chain of command” in law enforcement bodies is legally unchanged (with prosecutor for organized crime being in charge for investigations). However, vice – prime minister and other politicians in rule several times announced investigations to be opened and deadlines to be finalized. Corruption cases are investigated by special “task forces”, whose relation with the Bureau for coordination of intelligence services remains unclear. Furthermore, investigations are 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 abuses of anti-corruption work for gaining political gains and side-lining political competition in government.

New Anti-corruption Strategy and corresponding Action Plan were adopted in June, i.e. in August 2013, envisaging 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 unambitious 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. Several laws were adopted or changed in last 12 months, with new Public Procurement Law being most prominent step forward. Improvements were made in new Law on Public Enterprises, Rules of Procedure of Government (public debates) and Criminal Code but effects are still doubtful. However, legislative reforms in most of other area are still pending. Reforms in judiciary and public administration are announced, but strategies are not yet implemented (Judiciary) or fully developed (public administration). In practice, even the current legislative provisions are violated (e.g. Law on Civil Servants). While decisions of Constitutional Court removed some of the consequences of previous election process of judges and prosecutors, accountability of their work and **efficiency of judicial network remains serious problem**.

**Independent state bodies continued to contribute fight against corruption but the logistical obstacles for their work are not yet removed, nor their recommendations fully respected.** The control of campaign finance reports for 2012 national, province and local elections is still on-going. Anti-corruption Agency initiated misdemeanour procedures against parties that failed to submit financial reports and identified cases of other violations as well. “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 Minority

#### **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 refuges 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 by adoption of the Law on Permanent and Temporary Residence which allows IDPs to apply for the residence at Social Welfare Centres. It is still to be implemented in the 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

**The new law, in force since April 2013, improved legislative framework significantly**. Public procurement office prepared a set of by-laws for its implementation. PPO should prepare till October 2013 two important acts – Plan for fight against corruption in public procurements (in cooperation with Anti-corruption Agency) and by-law on the basis of which procurement entities will internally regulate planning of public procurements, division of responsibility and control over contract execution.

**However, the law does not cover some important issues, such are procurements financed through interstate agreements or through international financial institutions' loans.** Another matter of concern is lack of capacities of control bodies, such are Public Procurement Office, Commission for Protection of Rights and Budget inspection. **Public private partnerships, regulated recently but rarely implemented in practice, have to be closely monitored because of potential corruption risks.** Only a part of these problems will be resolved through implementation of Anti-corruption Strategy. Updating of Strategy for Reform of Public Procurement System is also envisaged. However, changes are still necessary, in particular in Budget System Law (in particular in regards to public procurement planning), Criminal Code (new criminal offence related to the public procurements that should be redrafted).

The implementation of the new law started with several requests by various sectors and institutions to be excused from general regime of public procurements (e.g. procurement of pharmaceutical products and procurements of culture institutions). The new Public procurement portal is functioning, providing also information that were not published regularly before (e.g. small value procurements, tender documentation). Citizen Supervisors were nominated for several bigger procurements, but their reports were not discussed yet by – the parliamentary committees. However, it is still early to predict effects of the law. At the same time, government continued with practice to conduct huge infrastructure projects without public procurement procedures, i.e. to implement special procedure agreed with international finance institutions or foreign countries. Supreme Audit Institution started “purposefulness audit” in a selected sample. **Public Procurement Office, Commission for Protection of Rights and Budget inspection are still significantly lacking cadre to perform all their functions in oversight of public procurement processes.** There is no record of implementation of new rules related to the annulling of contracts neither in cases of violation of the rules nor in punishing forbidden collusion of bidders.

***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 spending[[10]](#footnote-10).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 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.

***4.5.2 Implementation of Law on Public Procurements - Investigative stories***

Ten public procurements had been investigated[[11]](#footnote-11) chosen according to negative findings from the State Audit Institution’s report and the information about irregularities in public procurements from other sources. Detailed insight revealed numerous cases of ***public companies and institutions breaching the Public Procurement Act in many aspects per one procurement*** (as investigative story “Problematicne nabavke i krediti ugrozili krusevacku toplanu”[[12]](#footnote-12)), ***inadequate legal frame for state reaction to complaints and negative reports*** (as in “Elektromreza Srbije: mimo zakona dodelili posao od dva miliona evra”[[13]](#footnote-13)), ***specific consequences of some laws limiting the effectiveness of Public Procurement Act***, ***very limited mechanism for monitoring public procurements***, ***huge losses of public funds and almost complete impunity for violations of anti-corruption legislation***.

Two most specific and most blatant gaps in Serbian public procurement system:

* The Serbian Support for Construction Industry Act legalized the gross breaches of Public Procurement Act, creating a field for political abuse of public funds. This circumstance was, and still is heavily used by local administrations and others for assigning public construction contracts arbitrarily and through differently motivated favouring of incompetent bidders, leaving better bidders to struggle for survival[[14]](#footnote-14). This has been most obvious in the case of reconstruction of football stadium at Serbian town of Novi Pazar[[15]](#footnote-15).
* The Public Procurements Act failed to define “second degree bidding”, making it possible for politicians and their companies to profit from public works indirectly. Cases of politicians owning companies who act as suppliers for winners of state contracts are hard to prove (off-shore companies are usually used), but CINS has proved one such case and is working on several other[[16]](#footnote-16).

This project revealed a worrying ignorance of public officials, companies and institutions. The predominant attitude of public company management, local politicians and other practitioners towards public procurement legislation would best be described as one of easy-going resistance to an “unnecessary nuisance”, an obstacle for doing business and politics. This circumstance underlines the need for much stronger public awareness and public pressure on political parties to push for education and better selection of their appointees in all the organizations handling the public funds.

The investigative process, story by story, has discovered the following irregularities:

“Problematicne nabavke i krediti ugrozili krusevacku toplanu” [Problematic procurement and loans endangered heating company of Krusevac][[17]](#footnote-17):

The politically appointed management of city heat plant in Krusevac, assigned seven public procurements for coal to the same company, which achieved a 30.000.000€ revenue from these contracts. CINS investigated all seven procurements and came to a conclusion that all were flawed. Five of these seven procurements were cancelled after losing bidders complained, but by the time of decisions, the coal was purchased and burned. The heating plant lacked funds for the coal, so winning company facilitated contact with banks which issued credit lines to heating plant. Heating plant now owes 4.000.000€ to banks. Heating plant owes 3.000.000 € to the company it assigned seven procurements to. This winter, heat for 60% of town of Krusevac, coming from the heating plant, was provided only through special intervention of the Ministry for Energy, Development and Environment, which allowed plant to purchase coal without public procurement, directly from coal mine. If this hasn’t been done, citizens of Krusevac would have turned to electricity for heat and thus compromised the entire, fragile electricity system of Serbia. After all this, the new politically appointed management of the plant opened bids for latest procurement despite the fact that not all the members of procurement committee were present and thus breached the law in the presence of CINS journalist and Transparency Serbia expert. It was obvious that this was done out of pure lack of knowledge about the legal framework for the procedure.

“Elektromreza Srbije: mimo zakona dodelili posao od dva miliona evra”[[18]](#footnote-18):

Public company “Elektromreza Srbije has allocated a 2.000.000€ job to its dependant company, thus avoiding public procurement procedure. Just couple of days later, the dependent company contracted a private company as a subcontractor for the same job, withholding 5% of funds to its self. Management of Dependent Company claims that “Elektromreza” knew about insufficient capacities for the works required and that sub-contractor would be contracted. Management of “Elektromreza” claims that the job was urgent and that there was no other way of doing it in time. The job in question has been planned for over 30 years, four different locations were changed before this one and the decision to finally do it has been made official at 2009. Public prosecution is investigating this case.

“Diskriminatorska javna nabavka djubriva Draginovog ministarstva”[[19]](#footnote-19):

Ministry of Agriculture conducted a public procurement of supplier of subsidized fertilizers for farmers worth €, 10.000.000. The day after the selection of supplier was made, the Ministry changed the supplier. The disqualified supplier was changed because legal procedures were in motion against it, though the law clearly says that the disqualifying condition is the final verdict against the bidder. The new supplier did not meet the requirements of the Ministries procurement, neither. Though the condition was for fertilizers to be delivered within 30 days, the Ministry soon signed the annex to the contract with the new supplier prolonging this deadline to 60 days. The Minister at the time, Mr Sasa Dragin, was arrested for, among else, other manipulations with fertilizers, but not this one. Prosecution couldn’t say if this one would be considered for prosecuting.

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| **Recommendations:*** To amend the Public Procurement Law in order to prevent obtainers of political functions from receiving profit as subcontractors or other indirect benefit from publicly financed projects.
* To improve Public Prosecutors office’s capacity and sensibility for reacting to media reporting and to decrease the government influence on Public Prosecutors office decisions and work.
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## 4.23. Chapter 23: Judiciary and fundamental rights

### 4.23.1 Anti-Corruption Policy

**Serbia made limited progress in fight against corruption.** Political commitment of new government seemingly highly influenced law enforcement bodies to conduct investigations on long-standing cases where corruption is suspected, mostly those covered by Anti-corruption Council previous reports, but including also other abuses (e.g. in work of state owned banks). The authorities of government’s leading figure in fight against corruption (vice- prime minister) are not clearly regulated. Corruption cases are investigated by special “task forces”, whose relation with the Bureau for coordination of intelligence services remains unclear. There were no changes in organization of law enforcement bodies or judiciary. The importance given to the fight against corruption in speeches of government representatives and arresting or investigation of several prominent figures (such are ex-ministers and tycoons) significantly raised expectations of public and probably influenced some potential corruption actors to avoid entering such arrangements. However, constant announcements of potential arrests in mainstream media threaten one of the most basic principles in criminal law – the presumption of innocence. If it does not yield results in the courtroom, fight against corruption will remain protracted. Therefore it is essential to follow-up on arrests and indictments.

After Constitutional Court decisions, judges and prosecutors non-elected in 2009 reform are back in office. However, **judiciary still has to ensure meaningful accountability of its own members and greater efficiency in dealing with corruption and other cases.**The fight against corruption might be positively affected by beginning of full implementation of Criminal Procedure Code (i.e. not just by special prosecutors for organized crime and war crimes), but such effects are doubtful, due to logistical and other constraints.

**In the legislative area**, the new law on Public Procurements improved legal framework, and some improvements were made through amendments to the Budget System Law and new Law on Public Enterprises, while changes of Criminal Code resolved only part of the problems in that area. Political party financing remains the matter of serious concern, due to lack of transparency of decision making process and high influence of political parties on appointments and dismissals in whole public sector, which sometimes occur in contrary to the Law on Civil Servants and Law on Public Enterprises provisions. Anti-corruption Agency is still controlling financial reports from May 2012th elections, while hundreds of misdemeanour procedures are initiated against parties that failed to submit local campaign finance reports. Some other violations are also identified by the Anti – corruption Agency. “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.

New Anti-Corruption Strategy and corresponding Action Plan were adopted in June, i.e. in August 2013, envisaging 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 unambitious 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.

Model Law of Whistle-blower Protection is promoted by Commissioner for Information of Public Importance in early April 2013, but there was no follow – up yet by relevant ministry. Changes of Government’s Rules of Procedure, aimed to ensure public debates in legislative process were adopted in April 2013, bringing no results yet. Work on Lobbying Act begun, but no further information is available about that process. Reports of independent bodies, identifying serious systematic problems were discussed by parliamentary committees, but no action conducted to ensure these problems to be resolved, except announcement that Commissioner and Ombudsman would get additional premises for their work.

Reforms of public administration are announced and Strategy drafted. The work of public administration, public services, public enterprises and local administration remains improperly influenced by politics. Transparency of decision making process is still insufficient, in particular when it comes to the economic decisions of the government.

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| **Three general recommendations for improvement of situation (almost the same as in 2010, 2011 and 2012):** * To focus on implementation of adopted anti-corruption laws and removal of obstacles for effective work of independent anti-corruption bodies.
* To initiate pro-active investigations on the basis of identified patterns of corruption, to use special investigative techniques in order to uncover top-level corruption and to encourage whistle blowing
* To perform measures aimed to curb political corruption, including full de-politization of public enterprises and public services management, comparing of public officials’ assets with their legitimate incomes, adopting of lobbying legislation and strict oversight of political parties and electoral campaign funding.
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***Risks of corruption in security sector***

**Serbia has made little progress on fighting police corruption.** There are indicators that the integrity of the police in Serbia deteriorated. According to the Global Corruption Barometer (Transparency International, GCB for 2013), the police service in Serbia is at the first place in the Balkan by the citizens’ perception on 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 in the police initiated 146 criminal charges against police officers (7.2% more than in the 2011 year and 16.5% more than in the 2010 year). Every ninth criminal charge in 2012 was launched against police managers, including one against Chief of Regional Police Directorate in Zajecar. Also, there are various scandals occasion of 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 except for the service in charge of the financial management of the MoI. The Minister of the Interior has a discretionary right to exempt the case within the competence of the Internal Affairs Sector and allocate it to another organizational unit. It is an illogical solution, since the Minister of the Interior, being the 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 make 55.51% of total 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 the procurement is to be conducted is in charge for the initiation of the stated procedure. It was found that the adopted procedures, directives and instructions of the MoI have not fully established the system of financial management and control. **Thirdly, there is a problem in human resources management** since the system of external and internal advertising of vacancies in the MoI is underdeveloped and this opens up opportunities for corrupt practices involving receiving and negotiating bribe or 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 really starts to implement. Action Plan predicts new legislative and institutional measures that can enhance the fight against police corruption.

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| **Main recommendations:*** Internal controllers in the MoI must be provided with sufficient material, financial and human resources and their work should be transparent to external control and oversight institution.
* It is necessary to enhance the knowledge in the Internal Affairs Sector on the control over the MoI budget spending and carrying out of confidential procurements.
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**Military or Security Intelligence Agency as an institution highly exposed to corruption risks.** However, many evidences contradict to this stance. Military spends huge portion of the state budget (approx. 7%) and the Agency realizes 95% of procurements in confidential procedure. In addition, these two security actors are huge employers and there are many reports that employment and career advancement processes in them are under decisive influence of political parties.[[20]](#footnote-20) Strategy only recognizes the Police as a security institution exposed to corruption risks and important actor for fighting against this phenomenon.

### 4.23.2 Fundamental Rights

**No significant progress was made in regards to human rights protection in Serbia.**

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 still are missing. One of them should regulate the conditions under which force could be used by the members of the Military Security Agency, the Security Intelligence Agency, and the Customs Administration.

Limited progress has been made regarding **respect for and 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 minorities or other vulnerable groups. Roma continue to suffer discrimination and attacks which has been proven by the EU Delegation statement opposition to the resettlement of forcibly evicted Roma into racially segregated settlements. The Ministry of Interior banned again the Pride march and denied the rights of LGBT people to freedom of expression and freedom of assembly.

**Status assessments of the protection of human rights of security sector employees are made only rarely.** It is expected to start new negotiations between the police and the police union because the collective agreement between them will end in February 2014.

One of the biggest problems in Serbia is deficient legal regulation for **the use of special investigative measures and procedures** as a result of the existence of different legal systems, suggest that it is possible that the right to privacy is being infringed. 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 security sector going as far as targeting high ranking state officials.

**Constitution of Serbia prescribes that telecommunications could be intercepted only upon Court’s decision**. Law on Military Security Agency and Military intelligence Agency has been changed to meet these legal obligations.[[21]](#footnote-21) Also, Security Information Agency changed its practice by introducing the mechanism of “double checks” meaning that two instances – in Agency and Court, are needed for approval of interception of communication. According to Sasa Jankovic, Ombudsperson, Police doesn’t respect these Constitutional provisions and not only that intercept communication without court’s order but also is using these measures to frequently, often when principles of proportionality and necessity is met. On the other hand, interception of telecommunication by the Agency has been halved[[22]](#footnote-22).

Since last year’s report, an action plan implementing the Strategy on Protection of Personal Data still needs to be adopted. Action plan hasn’t been adopted yet and there is no indication that it will be passed soon. **Little progress has been made in regard to the protection of personal data.** The specific legal act which regulates the matter of the protection of data being processed, the protection and keeping of biometric data and data collected through video surveillance is still missing. Bylaw that more closely defines highest levels of secrecy – Top Secret and Secret – was passed in May, but other levels of secrecy are still not regulated meaning that old criteria for classification for these two levels of secrecy is being used. Let us remind that Office of the National Security Council and Classified Information Protection had the obligation to adopt bylaws necessary for full implementation of the Law on Data Secrecy by the end of 2011.

**Law on Classified Information isn’t fully implementable yet.** Bylaw that more closely defines highest levels of secrecy – Top Secret and Secret – was passed in May, but other levels of secrecy are still not regulated meaning that old criteria for classification for these two levels of secrecy is being used.

**Private security sector and video surveillance is still unregulated**, but draft law has been written by Commissionaire for Information and submitted to Ministry of Justice[[23]](#footnote-23). However, whole process isn’t transparent. Over 200 000 CCTV cameras are collecting data every day in Belgrade only, with little or no legal backing whatsoever. Law on Protection of Private Data only remotely address video surveillance issue.

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| **Main recommendations:** * It is necessary to pass a new Law on the Security Intelligence Agency, or amend the existing one in order to regulate and precisely define the competences, tasks and powers of Security Intelligence Agency members for the use of special investigative measures and procedures, which will be in compliance with the requirements of Art. 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Recommendation of the Council of Europe [Rec(2005)10] on ‘special investigation techniques’ in relation to serious crimes.
* It is necessary to precisely define the systems for using, processing, controlling and protecting biometric data, with a view to respecting the constitutional right to personal data protection, given that the Law on Identification Cards and the Law on Travel Documents made it possible to use biometric data in new documents.
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## 4.24. Chapter 24: Justice, Freedom and Security

### 4.24.1 Migration

**Serbia is still lacking comprehensive migration policy related to migration management, effective reintegration and asylum system.**

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 2011, when approximately 9,500 were recorded. **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 2011-3134, in 2012- 2723 and in the period from 1 January 2013 to 30 June 2013 1863 people sought asylum in Serbia). 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. Additional reception facilities for asylum seekers are needed. The third asylum centre has still not been opened due to resistance of the local population in Mladenovac who has been supported by some local and national politicians. Capacities and practices, including staff training, need to be improved. 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*. A national database for checking personal data and fingerprints of asylum-seekers has been established. 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 social inclusion of those who seek asylum in EU**. In 2012, only MoI explained their results regarding implementation of the Regulation closer determining the manner of exercising border police officers’ powers and performing duties of persons crossing the border. The relevant national institutions responsible for 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 EU.

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| **The main suggestions regarding visa policy, migration and asylum would be:*** It is necessary to established more efficient and fair asylum procedure in Serbia. The safe third country principle should be applied according to the relevant standards which should be incorporated into Asylum Law.
* It is necessary to intensify dialogue between the Government of Serbia and EU Commission/EU member states on the issue of Serbian asylum seekers in EU after visa liberalization, in order to find sustainable solution which should be based on human rights standards and will satisfy 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. Regional Multi-Year Programme should have clear milestones and indicators. 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. Unbiased mechanism of 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.
* Serbian Government needs to create a comprehensive asylum policy that will assure efficient and fair asylum process. Policy changes should include (at least): additional reception facilities for asylum seekers; 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; 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.
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### 4.24.4 Police Cooperation and Fight against Organized Crime

**The progress in the area of regional police cooperation has been stopped.** 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.

**Serbia has generally adequate anti-trafficking legislation but its implementation in practice is to a great extent problematic.** Legal definition of the crime is in accordance with the UN Trafficking Protocol and CoE Convention on Action against Trafficking in Human Beings. However, the position of victims is rather weak, as well as the respect for their rights in practice – although it is widely recognized that Serbia has made significant progress in the last ten years, from the point of view of victims not that much really changed.

Within the **reform of the national referral mechanism,** the former Agency for Coordination of Protection of Trafficking Victim has undergone major transformation in 2012. Namely, a whole new agency has been established named the **Centre for the Protection of Victim of Trafficking** which operates its activities through two organizational units: the Agency and the Emergency Shelter. The former became operational in July 2012, while latter (the house confiscated by a court decision as a criminal asset) still is not open due to the procedural failures, legal and technical reasons. Moreover, the address of the future shelter is published in the Official Gazette of Serbia.

The Centre for the Protection of Victims of Trafficking was formed with an idea to settle the deficiencies of the previous national referral mechanism and of the Agency as its central point which had been set out too ambitiously, but without adequately ambitious support.

No common criteria have ever been defined in Serbian internal law for granting the legal status of victim of THB. As a successor of the Agency as a central NRM point, the Centre also does not have any official document specifying criteria for identification, but it is an arbitrary decision of Centre’s employees. However the Centre is a new body (one year) and it should yet develop its procedures, protocols and standards of work. The new management of the Centre has made visible progress regarding the capacity building of employees and willingness to create procedures and communication with NGOs.

NGOs have great expectations of the Centre as this looks like a serious attempt to properly organize the national referral mechanism. The Centre has the central role with regard to identification of victims and coordination of victim assistance. A great portion of its work is yet to be formalized. On the other hand, there is a danger that once they have their own resources that could be used for victim assistance, the Centre could start acting as direct victim assistance provider and marginalize NGOs that have long-lasting expertise in this field.

### Fight against Human Trafficking

**Victim assistance** in Serbia is not provided following any written procedures, not to mention monitoring and quality control. The reintegration, risk assessment and data protection are still the burning issues. Trafficking victims are mostly offered foreign language courses, computer courses and the like, but systematic and long-term programs and serious initiatives are still lacking. **Accommodation** for trafficking victims in Serbia is currently reduced to only one shelter – specifically reintegration shelter run by an NGO where all the victims in need of sheltering are placed regardless of whether they are just identified or are in the process of reintegration. There is no emergency shelter although the Government officially established one by its decision in May 2012. On several occasions NGOs without any prior experience in trafficking victim assistance started shelters for trafficked persons as a project activity when they found the donor willing to provide finance, but such shelters would be shut down after the expiry of the project. If we put aside the question of the quality of such victim assistance services, it is important to stress that this approach is certainly not sustainable and does not provide stability and predictability either to victims or to other anti-trafficking actors in the field.

**Specialized sheltering and assistance programs for children** do not exist in spite of large percentage of children among victims that has been registered for years. In the absence of specialized shelter, trafficked children are often accommodated at the City Shelter for Abused Children (within the Institute for Children and Youth in Belgrade), homes for children without parental care, shelters for adults and in foster families. These facilities do not provide specialized assistance for children victims of trafficking and do not have programs intended specifically for their recovery and reintegration.

Shelters, recovery and reintegration programs for victims who are addicts also do not exist. This also applies on specialized programs for adult male victims. Victims’ assistance is still mostly financed by foreign donors, although the Government of Serbia made its first serious budgetary allocation for the work of the Center for Protection of Trafficking Victims.

The **draft of the Anti-Trafficking Strategy and the National Action Plan for 2013-2015** is **still not adopted** (the last NAP expired in 2011). Although these two documents were made in a broad participatory process, there was a serious attempt to marginalize NGOs which had played the major role in building Serbian anti-trafficking system in the last ten years. Namely, around 25 representatives from 10 ministries and two state agencies participated in the process, as well as only 2 NGOs. NGOs are also marginalized with regard to the implementation of the Strategy and NAP. Namely, the Strategy Implementation Team – to be formed by the Government Anti Trafficking Council – shall include the representatives of various ministries, the Office for Human and Minority Rights and Serbian Intelligence Agency. NGOs will not be included as members, but will be allowed to be present at the meetings of the Implementations Team. Such marginalization may seem surprising having in mind the major and decisive role which NGOs have played in building Serbian anti-trafficking mechanism and their role as a sole specialized victim assistance provider for years. Also, activities that were never discussed during the work on the Strategy and NAP suddenly appeared in the final versions (e.g. cooperation with churches and religious communities). All this makes state’s commitment to intersectoral cooperation and participatory work questionable.

Serbia still does not have **a separate budget line for financing anti-trafficking actions and victim assistance**. This means that country’s potentials to provide adequate response to the problem of human trafficking come down to ad hoc allocations and donations from foreign governments and international donors. For the first time this year, 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 (around EUR 172,320). However, the major portion of this amount is intended for salaries and costs of Centre’s staff and for the costs of running the Centre (only 3,560,000 RSD i.e. EUR 31,800 of this allocation is intended for victim assistance).

In spite of some sporadic actions, such as the signing of the Memorandum of Understanding between ASTRA and the Republic Prosecutor’s Office, there is noticeable **reluctance on the part of state bodies to formalize cooperation with NGOs** and thus contribute to more effective battle against human trafficking. Still there is no one MoU with Ministry of interior. Further the lack of cooperativeness was encountered when ASTRA invited the Ministry of Foreign Affairs to formalize cooperation and help us secure adequate help and treatment of THB victims by creating and enforcing procedural rules regarding the cases of trafficking of Serbian citizens in all Serbian diplomatic and consular representations.

**Criminal proceedings** in which victims are required to testify and provide the main piece of evidence sometimes last for years without any guarantees of their safety before, during and after the trial. Due to the lack of proactive investigation, the testimony of the victim/witness is still the main evidence in trafficking cases. The length of court procedure in trafficking cases is still long which cause secondary traumatization of victim and disable her in full recovery of trauma. Penal policy is rather week in trafficking cases as well as in general[[24]](#footnote-24).

Again, victims are often forced to give and repeat statements before the reflection period is over. In spite of numerous trainings, judges still do not understand human trafficking as a phenomenon nor are they able to recognize the victim and treat him/her in accordance with Serbia’s international obligations. In recent years, trafficked persons were actually prosecuted and convicted in several cases.

**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 bad 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. For 25 months the Special Prosecutor’s Office for Organized Crime refused to prosecute trafficking cases. The case they accepted after 25 months ended with the first instance judgment with most severe sentences for traffickers ever rendered in Serbia – ranging from 10 to 15 years. After ruling this case in February 2013, again there are no cases of trafficking before this court.

As far as **compensation** is concerned, since the criminalization of human trafficking until today,**no trafficked person in Serbia got compensation of damages**. Although it is permitted by the law, criminal judges are reluctant to make a decision on victims’ compensation claims in criminal proceedings, but they are referred to litigation. However, litigation is, as a rule, lengthy, expensive and requires victim’s presence, in spite of the statements made in criminal proceedings, this compromising her/his safety, adding to secondary trauma and creating a setback in victims’ recovery and reintegration. Moreover, even in rare cases when the compensation was awarded, none of the victims have ever been able to collect it[[25]](#footnote-25).

Although a Working Group of Experts formed by OSCE Mission to Serbia in 2010 to work out the best compensation model for Serbia has suggested setting up a compensation fund for the victims of violent crimes, including trafficking victims, this proposal has not been considered by decision- and policy-makers yet.

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| **Recommendations:*** To **Adopt Anti trafficking Strategy and NPA**
* **Ratification** of the European Convention on the Compensation of Victims of Violent Crimes CETS No.:116, **create compensatory fund and start practicing compensation** for victims of trafficking
* **Fully implement data protection in practice.**
* Start using other possibilities provided for by the law to protect identity, privacy and safety of victims/witness and start **implementing proactive investigation** in order to collect other evidence then victims’ testimony in order to avoid secondary victimization; **investigate organized crime** cases in relation to trafficking in human beings
* **Develop and implement procedures** in all stages from identification to reintegration/voluntary return as well as protocols of **cooperation with NGOs.**
* Develop specialized recovery programs **for children** victims of trafficking
* **Start implementing Risk assessment** as obligatory phase after victims’ identification
* **Fully implement non detention, non-prosecution and non punishment clauses**
* **Allocate funds** for fight against trafficking
 |

## 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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**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 various backgrounds (economists, political scientists, sociologists, lawyers, etc.). Apart from the core staff in manages a network of researchers who are engaged on various programs and projects.

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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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1. Table is constructed based on the Government Action Plan for Fulfilment of the European Commission Recommendations under the Serbia 2012 Progress Report in the European Integration Process, <http://www.seio.gov.rs/upload/documents/nacionalna_dokumenta/action_plan_12.pdf>. [↑](#footnote-ref-1)
2. Findings are structured based on Serbia 2012 Progress Report, Document COM(2012)600 final. [↑](#footnote-ref-2)
3. CPES research [↑](#footnote-ref-3)
4. <http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=270%3Aproblem-sa-postavljanjem-slubenika-na-poloaju-i-depolitizacija-dravne-uprave&catid=14%3Avesti&lang=sr> [↑](#footnote-ref-4)
5. See: <http://www.blic.rs/Vesti/Politika/375804/Naprednjak-ugostitelj--buduci-operativac-BIA> [↑](#footnote-ref-5)
6. 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. [↑](#footnote-ref-6)
7. Marko Milošević, „Nezavisni državni organi i borba protiv korupcije“ [Independent Oversight Bodies in a Fight Against Corruption], BCBP predlog praktične politike, <http://www.bezbednost.org/upload/document/milosevic_2012_nadzor_ndi_nad_korupcijom.pdf> (accessed April 8, 2013): no translation to English available, p. 5-6 [↑](#footnote-ref-7)
8. <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/1866-13Lat.pdf>

<http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/1865-13Lat.pdf>

<http://www.bezbednost.org/upload/document/posle_20_godina_privatno_obezbeenje_ponovo_u_okril.pdf> [↑](#footnote-ref-8)
9. See <http://www.parlament.rs/upload/archive/files/cir/pdf/ostala_akta/2013/RS6-13.pdf> (accessed on April 8, 2013); available in Serbian language only [↑](#footnote-ref-9)
10. As 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> [↑](#footnote-ref-10)
11. As a part of a „Investigating Public Procurements“ project, Center for Investigative Journalism of Serbia (CINS) [↑](#footnote-ref-11)
12. <http://www.cins.org.rs/?p=12654> [↑](#footnote-ref-12)
13. <http://www.cins.org.rs/?p=12234> [↑](#footnote-ref-13)
14. “DiskriminatorskajavnanabavkadjubrivaDraginovogministarstva”, <http://www.cins.org.rs/?p=11824> [↑](#footnote-ref-14)
15. “Grad Novi Pazar mimozakonauložiomilionipoevra u izgradnjustadiona”<http://www.cins.org.rs/?p=12891> [↑](#footnote-ref-15)
16. The story about a prominent Serbian politician who used this loophole is investigated and proven. [↑](#footnote-ref-16)
17. <http://www.cins.org.rs/?p=12654> [↑](#footnote-ref-17)
18. <http://www.cins.org.rs/?p=12234> [↑](#footnote-ref-18)
19. <http://www.cins.org.rs/?p=11824> [↑](#footnote-ref-19)
20. See: <http://korupcija.bezbednost.org/Korupcija/1/Naslovna.shtml> [↑](#footnote-ref-20)
21. <http://www.parlament.rs/upload/archive/files/lat/pdf/zakoni/2013/282-13Lat.pdf> [↑](#footnote-ref-21)
22. <http://www.blic.rs/Vesti/Drustvo/363106/BIA-prepolovila-prisluskivanjepolicija-i-dalje-prisluskuje> [↑](#footnote-ref-22)
23. <http://www.politickiforum.org/index.php?vrsta=tribina&kategorija=&tekst=61&naredba=prikaz&br_stranice=#1376> [↑](#footnote-ref-23)
24. <http://www.astra.org.rs/eng/wp-content/uploads/2008/07/Legal-analysis-2012.pdf> [↑](#footnote-ref-24)
25. 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. Still there is no compensatory fund and no victim of trafficking received compensation in regular judiciary procedure. [↑](#footnote-ref-25)