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

Edited by:
Milan Aleksić

November 2015, Belgrade

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

November 2015, Belgrade

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

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

Authors
Milan Aleksić, Marija Anđelković, Aurelija Đan, Katarina Đokić, Saša Đorđević, Bojan Elek, Vladimir Erceg, Gordana Grujičić, Tanja Ignjatović, Katarina Ivanović, Vanja Macanović, Marko Milošević, Nemanja Nenadić, Predrag Petrović, Vladimir Petronijević, Dunja Tasić

Editors
Milan Aleksić

Translation
Tatjana Ćosović

Design
Marko Marinković

Layout
comma | communications design

Print
Fiducia 011 print

Copies
200

ISBN
978-86-6237-117-1

CIP - Каталогизација у публикацији - Народна библиотека Србије, Београд

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

PREUGOVOR : Report on Progress of Serbia in Chapters 23 and 24 / [authors Milan Aleksić ... et al. ; translation Tatjana Ćosović] ; edited by Milan Aleksić. - Belgrade : Belgrade Centre for Security Policy, 2015 (Belgrade : Fiducia 011 print). - 49 str. ; 30 cm

Tiraž 200. - Napomene i bibliografske reference uz tekst.

ISBN 978-86-6237-117-1
1. Aleksić, Milan, 1982- [аутор] [уредник]
a) Европска унија - Придруживање - Србија b) Право - Хармонизација - Европска унија - Србија c) Људска права - Међународна заштита - Србија
COBISS.SR-ID 219313164

Contents

About prEUgovor 6

Introduction 7

1. POLITICAL CRITERIA 9

1.1. Democracy and the rule of law 9

2. CHAPTER 23 – JUDICIARY AND FUNDAMENTAL RIGHTS 11

2.1. Judiciary 11

2.2. Fight against corruption 17

2.3. Fundamental rights 30

3. CHAPTER 24 – JUSTICE, FREEDOM AND SECURITY 37

3.1. Migrations and the crisis relating to refugees – asylum seekers 37

3.2. Fight against human trafficking 39

3.3. Police cooperation and fight against organised crime 44

3.4. Fight against terrorism 49

About prEUgovor

The prEUgovor is the first coalition of civil society organisations formed to monitor the implementation of policies relating to the accession negotiations between Serbia and the European Union, with an emphasis on Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security). The prEUgovor coalition was created with the task to propose measures to improve the situation in the fields relevant for the negotiation process. In doing so, the coalition issues six-month independent reports on Serbia's progress in these most important chapters. Finally, the prEUgovor aims to use the European integration process to help accomplish substantial progress in further democratisation of Serbian society.

prEUgovor coalition gathers:

• Anti-Trafficking Action (ASTRA)
www.astra.rs

• Autonomous Women's Centre (AZC)
www.womenngo.org.rs

• Belgrade Centre for Security Policy (BCSP)
www.bezbednost.org

• Centre for Applied European Studies (CPES)
www.cpes.org.rs

• Centre for Investigative Reporting (CINS)
www.cins.rs

• Group 484
www.grupa484.org.rs

• Transparency Serbia (TS)
www.transparentnost.org.rs

Introduction

though negotiations on the Republic of Serbia's accession to the European Union (EU) officially started in January 2014, not a single negotiation chapter has been opened so far. The earlier announced Chapters 23 and 24 have been accompanied with Chapter 35 (relations between Belgrade and Priština), which is most likely to be opened the first. If the most optimistic forecasts materialise, the opening of the first negotiation chapter between Serbia and the EU should take place by late 2015.

Although Chapters 23 and 24 have still not been opened, in the course of 2015 the state and other stakeholders (primarily civil society organisations) worked intensively on preparing and amending the Action Plans for these two Chapters. Draft Action Plans were changed and presented several times. The Action Plan for Chapter 23 was adopted after the European Commission (EC) approved its third draft, which is also expected for the Action Plan for Chapter 24. The blueprint for these two documents are EC recommendations from the Screening Report, presented in 2014 for Chapters 23 and 24.

Members of the prEUgovor coalition actively participated in preparing the Action Plans, notably by giving concrete comments on improvement of particular segments falling under their scope of activity. After the final drafts of these documents were presented, prEUgovor members decided to monitor the dynamics and quality of the fulfilment of individual measures and activities relating to those recommendations that are within the sphere of interest of coalition members. In this regard, in addition to assessments of the general situation in individual fields, a focus of this independent report is also placed on concrete individual activities that the state takes or intends to take. As Serbia is only at the start of the negotiation process, while Chapters 23 and 24 will be in the EC's focus until the end of the pre-accession phase, in the coming period the emphasis of the prEUgovor will be even more strongly placed on monitoring the fulfilment of individual obligations arising from the Action Plans. The reports will be prepared on the basis of such monitoring. The end of each subchapter of this report contains recommendations for possible future improvements.

Reform of the judiciary, fight against corruption, and respect and improvement of fundamental human rights (including, of course, relations with Priština!) are the fields and topics that have dominated, for years, relations between Belgrade and Brussels, and which shall certainly be discussed a lot in future as well. However, the main topic in the public discourse and political life in Serbia has been, in the past period, the great refugee crisis that the EU has been facing since spring 2015, including Serbia as one of the key transit countries on the new migration route. The refugee wave, triggered by several crisis hotbeds, notably the years-long civil war in Syria, has still not subsided. Since the crisis erupted, several hundreds of thousands of refugees and migrants have passed through Serbia on the road to "richer" EU countries. Despite the enormous influx of people and tensions that the crisis created in Serbia's relations with the neighbouring countries, notably Croatia, the response of government authorities has been exceptionally human since the start of the crisis, which has been commended several times also by different European officials.

On the internal front, Serbia's government authorities have made several important steps aimed at improving some of the proclaimed policies, to mention only prevention and curbing of human trafficking. The national legal framework in the anti-human trafficking field was developed in accordance with the Republic of Serbia's international obligations. Serbia's government authorities have made efforts to adopt a coordinated approach to identifying victims through the establishment of the Centre for Human Trafficking Victims Protection. However, the Republic of Serbia has still not adopted the National Action Plan and Strategy to Combat Human Trafficking. On the other hand, the legal framework is still insufficiently applied in practice, which is why we still face cases of punishing human trafficking victims for offences that are a direct consequence of their exploitation. In addition, property claims are still not decided upon in criminal proceedings, the penal policy has not been changed for years, and a victim remains insufficiently protected both in the identification process and judicial proceedings.

Problems also relate to the implementation of activities in other fields, including the attitude of the highest authorities towards independent oversight and regulatory bodies etc, which is also analysed in this report. The report is divided into three main parts: *Political criteria, Chapter 23* and *Chapter 24*. As already mentioned, they do not give an assessment of the situation in all sub-areas, i.e. entire chapter, but cover only those aspects that are in the sphere of interest of coalition members. Finally, with some delay, in mid-November the EC published its annual report on Serbia's progress in negotiations with the EU, where it presented detailed assessments also of other chapters and topics, including those followed by the prEUgovor coalition. Due to a short period between the publication of the EC Report and the prEUgovor, coalition members were not able to give an overview in this independent report also of the assessments presented in the EC progress report.

1. Political criteria

1.1. Democracy and the rule of law

Over the past year, the attitude of authorities towards independent government bodies has, unfortunately, deteriorated significantly, whereby their independence and unhindered functioning have been brought into question. The Prime Minister's exposé of April 2014 (unlike the exposé of 2012 and the Anti-Corruption Strategy of 2013) **did not mention the Government's attitude towards decisions and recommendations of independent government bodies**. Over the past twelve months, in addition to the numerous existing issues, a number of new problems have appeared in practice along the line executive power – independent bodies, particularly in relation to acting upon requests and decisions of the Ombudsman and the Commissioner for Information of Public Importance and Personal Data Protection. Unfortunately, the **adoption of parliamentary conclusions** in regard to annual reports of independent bodies[1], **has brought about no changes**. The Government ignored the obligation to report to the National Assembly within six months on the measures taken and the National Assembly has not called upon the government's accountability in this regard.

The regular procedure of controlling the legality and regularity of work of the Ombudsman in relation to the incident which took place during the 2014 Pride Parade was obstructed, without reasonable explanation, by the unlawful refusal of the Ministry of Defence and the Military Security Agency (MSA) to enable the Ombudsman to access official data relating to the incident. The Minister of Interior also reacted against the Ombudsman's activity, as well as the competent committee of the National Assembly. Particularly worrying was the absence of response of the highest authorities (Presidents of the Government, Republic and National Assembly) in relation to this case. This has cast great doubt over the authorities' readiness to ensure democratic and civilian control of security bodies and ensure that bodies act in accordance with law. What soon followed was also a campaign against the Ombudsman, which attempted, through manipulation of old police reports, to bring into question the integrity of the Ombudsman as a person.

After the control procedure ended and irregularities in work were determined, the Minister of Defence and the MSA director refused to act upon the Ombudsman's binding recommendations. The highest authorities failed to respond once again. As an ultimate measure, on 21 September 2015 the Ombudsman submitted to the public, President of the Government and President of the Republic the public recommendation for the removal of duty of the Minister of Defence and the MSA director. In the recommendation, the Ombudsman presented all irregularities in work of these bodies detected during the above incident and the control procedure. As many as nine of 17 deficiencies concerned the control procedure implemented by the Ombudsman. The public recommendation unambiguously underscores that the Ministry of Defence and the MSA breached the Law on Serbian Armed Forces, Law on Military Security Agency and Military

1 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/6550-.

Intelligence Agency, Law on Data Secrecy, Law on the Ombudsman, Law on Criminal Procedure, Law on Public Information and Media, and Constitution of the Republic of Serbia, ignoring the constitutional principle of the rule of law and constitutional guarantee of democratic and civilian control of the Serbian Armed Forces. The President of the Government has still not voiced his opinion on this recommendation. On the other hand, the President of the Republic refused to relieve of duty the MSA director. The President of the Republic explained that he had made such decision based on consultations with the Minister of Defence who "disputed the responsibility of the MSA director" and "concluded that there are no irregularities in his work, as confirmed by reports of the General Inspector of Services and the conclusion of the National Assembly's Security Services Control Committee", and who "suggested that the MSA director be... extraordinarily promoted".

The attempts to establish mechanisms of government pressure over independent government bodies were also confirmed by the adoption of the Law on the Method of Determining the Maximum Number of Public Sector Employees. According to the opinion of independent government bodies and the professional community, the Law contravenes the Constitution of Serbia as it grants powers to the parliamentary committee to determine the maximum number of employees in these institutions based on its own assessment. Furthermore, after the Ombudsman and the Commissioner for Protection of Equality submitted to the Constitutional Court the proposal for assessment of constitutionality of this Law, in its decision adopted in early October 2015 the Constitutional Court ascertained that some provisions of the Law contravene the Constitution and ordered the suspension of their application.

The negative attitude of the highest authorities towards independent government institutions is particularly illustrated by the frequent refusal of the National Assembly to adopt or even discuss amendments to the laws submitted by these institutions. Particularly worrying is the rhetoric employed in the public to create the picture of independent government bodies as "overly protected", "overpaid" and "corrupted" institutions which do not work in the interest of citizens.

Such attitude towards independent government bodies, in cases with clear political implications concerning prominent persons from ruling parties, speaks clearly about the organised effort of the highest authorities to limit the action of independent government bodies only to politically suitable cases. In this way, without formally abolishing these institutions, their function is rendered senseless, external control of authorities is dramatically weakened, and the rule of law jeopardised.

2. Chapter 23 – Judiciary and fundamental rights

2.1. Judiciary

2.1.1. Impartiality and accountability

The Action Plan for Chapter 23 specifies a number of measures and activities aimed at improving the functioning of the entire judicial system. However, the implementation of the envisaged measures does not follow the planned dynamics and does not yield the expected results. For instance, one of the activities envisaged by the Plan is effective implementation of the Rulebook on Disciplinary Proceedings and Disciplinary Liability of Public Prosecutors and Deputy Public Prosecutors.

After receiving information that the First Basic Prosecutor's Office in Belgrade decided not to prosecute a violent father,[2] the mother of the child victim[3] filed a complaint against that decision to the Higher Public Prosecutor's Office in Belgrade in accordance with the Criminal Procedure Code. After a few months of waiting for the decision, the child's mother went to the Higher Prosecutor's Office in person where she was told that the Office had dismissed her complaint. She then filed a motion with the Higher Public Prosecutor's Office in Belgrade asking from them to provide her with a written copy of the decision so that she could file a constitutional claim.[4] Two months later, the mother received an answer from the Higher Prosecutor's Office in Belgrade in which she was instructed that she could have an insight into the decision at the mailing room of the Higher Prosecutor's Office.[5] She did not receive the decision in writing. Then, the mother of the abused child filed a complaint against the work of the Higher Public Prosecutor's Office in Belgrade with the Ministry of Justice, Republic Prosecutor's Office and the State Prosecutorial Council. A member of the State Prosecutorial Council replied that there had been no violation of the procedure by the deputy prosecutor of the Higher Public Prosecutor's Office because she had been informed that she could have an insight into the case documentation and read the decision, as the mother of the child victim.[6] The same Higher Public Prosecutor's Office in Belgrade responded to the complaint addressed to the Republic Prosecutor's Office, confirming that there had been no breaches of the procedure by the deputy higher prosecutor.[7] Only the Ministry of Justice replied that they would investigate the case.[8] After ten months, the mother of the child victim has still not received official notification/decision from the Higher Public Prosecutor's Office in Belgrade.

2 Decision of 24 September 2014 in case Ktr. 8059/13.

3 In the meantime, the First Basic Court in Belgrade issued a protection measure against a violent father in case P2 – 3232/13.

4 Letter of 21 April 2015.

5 Answer of 8 July 2015 in case Ktpo – 862/15.

6 Answer of the State Prosecutorial Council No 215/15 of 25 September 2015.

7 Answer of the Higher Public Prosecutor's Office of 4 September 2015.

8 Answer of the Ministry of Justice of 8 September 2015.

Based on the case of a child victim whose mother addressed the Autonomous Women's Center (AWC), the complaint to the State Prosecutorial Council on the action of the deputy prosecutor in respect of neglecting the victim's right to be informed in writing about the decision of the Higher Public Prosecutor's Office in Belgrade, cannot be considered effective implementation of the Rulebook on Disciplinary Proceedings and Disciplinary Liability of Public Prosecutors and Deputy Public Prosecutors and presents breach of the impartiality and endangers the trust of the citizens in the public prosecution proclaimed in the art. 8 of the Rules.

2.1.2. Professionalism/competence/efficiency

As one of its activities, the Action Plan envisages adoption of the new Law on Enforcement and Security, planned for the fourth quarter of 2015. However, the public debate process was not transparent enough as neither the Ministry of Justice nor the Office for Cooperation with Civil Society Organisations sent information about the opening of a public debate about this Law on the website of the Ministry of Justice where it was possible to give written proposals and comments. The aim of the adoption of the new Law on Enforcement and Security is to broaden the scope of competences of enforcement officers.

It was only by accident that the AWC found out about the possibility of sending comments on the new proposal of the Law on Enforcement and Security, covering the aspects of problems arising from the huge number of cases in which child support/alimony has not been paid.[9] The mothers of children who do not receive alimony cannot initiate these proceedings as they do not have money to pay for the court tax, and even when they do have, the proceedings are too slow. For this reason, the AWC suggested that in these cases execution judges could decide not to seek the court tax from children in advance and could issue the measure of a temporary ban on use of the driving license or passport, until the alimony is paid. In the latest version of the draft Law on Enforcement and Security of 11 September, AWC's proposals were not accepted. The AWC did not receive any official answer from the Working Group in charge of this Law that its comments and suggestions had been received and, why they were not accepted. The second round of the public debate ended on 1 October, and again, there was no official information distributed to civil society organisations, but a new version of the Law was posted on the website of the Ministry of Justice. It can be concluded that family law cases are not in the focus of the Ministry of Justice, especially with regard to strengthening the enforcement of judgments regarding the payment of child support/alimony.

Further, the Action Plan envisages monitoring the implementation of the new Criminal Procedure Code and taking corrective measures where needed. It is envisaged that the Commission for Monitoring the Implementation of the Criminal Procedure Code reports quarterly and annually to the Commission for Implementation of the National Strategy of Judiciary Reform for 2013–2018, whereby it provides an overview of deficiencies in the implementation of the Criminal Procedure Code and proposes potential measures to remedy identified problems, particularly given the impact of the introduction of prosecutorial investigation on the case backlog.

9 AWC's comments and proposals were sent on 30 June 2015.

The Commission for Monitoring the Implementation of the Criminal Procedure Code was set up on 1 November 2013 by the decision of the Ministry of Justice. It consists of four judges and three prosecutors whose names are not known to the public. On the Ministry of Justice website there is only one published report of the Commission, for the period 4 November 2013 – 31 January 2014.[10]

Also, it is envisaged that the Commission for Implementation of the National Strategy of Judiciary Reform for 2013–2018, on the basis of the report of the Commission for Monitoring the Implementation of the Criminal Procedure Code, recommends that competent institutions undertake measures aimed at eliminating identified problems. However, from the report of the Commission for Implementation of the National Strategy of Judiciary Reform it is not possible to conclude whether this Commission ever received the report of the specially formed Commission for Monitoring the Implementation of the Criminal Procedure Code. From the minutes of meetings of the Commission for Implementation of the National Strategy that were held on 28 March and 14 April 2014, one may see that this Commission reviewed the reports on implementation of the Criminal Procedure Code received from relevant authorities, including the Ministry of Justice. However, it is not possible to determine with certainty if that is the report of the Commission for Monitoring the Implementation of the Criminal Procedure Code that is publicly available on the Ministry's website. According to available data, the last time that the Commission for Implementation of the National Strategy discussed the implementation of the new Criminal Procedure Code was at its 15th meeting held on 30 January 2015. The conclusion of the Commission was to propose to the Ministry of Justice that the Working Group in charge of preparing amendments to the Criminal Procedure Code should continue working.

The Action Plan also points out to the need for competent institutions, to which the Commission for Implementation of the National Strategy of Judiciary Reform for 2013–2018 recommended implementation of corrective measures, to report quarterly to that Commission on implementation of these measures. From the report of the Commission for Implementation of the National Strategy of Judiciary Reform one can see that relevant institutions do submit reports, but one cannot see whether there is a systematic approach in monitoring the implementation of Commission's recommendations.

As a result, civil society organisations interested in the work of the Commission for Monitoring the Implementation of the Criminal Procedure Code do not know whether this Commission still exists or whether it prepared other reports on implementation of the new Criminal Procedural Code. Neither the Ministry of Justice nor the Office for Cooperation with Civil Society Organisations have sent any information on how civil society organisations can submit their comments on the flaws of the new Criminal Procedure Code.

10 Published on 14 April 2014 on the website of the Ministry of Justice, available only in Serbian: http://www.mpravde.gov.rs/obavestenje/5369/izvestaj-komisije-za-pracenje-primene-i-sprovodjenje-novog-zakonika-o-krivicnom-postupku-o-svom-radu-za-period-od-04112013-godine-do-31012014-godine-sa-zakljuccima.php.

What is worrying is that in cases when the Prosecutor's Office makes the decision that a reported act is not considered a criminal offence and that there are no elements for criminal prosecution, the alleged victim receives only written notification about such decision and not the decision itself. In accordance with the new Criminal Procedure Code, the alleged victim has the right to complain with the Higher Public Prosecutor's Office within eight days. The Higher Public Prosecutor's Office is obliged to decide upon the complaint within fifteen days.[11]

The new Criminal Procedure Code does not specify the manner in which the Higher Prosecutor's Office is obliged to answer to the alleged victim regarding their complaint – this legal gap is therefore used by higher prosecutor's offices which do not submit their decisions to the alleged victims. Since alleged victims do not have the right to take private prosecution in such case and can only file a constitutional claim, this so-called "legal remedy" cannot be considered efficient. Also, in this manner the minimal rights of the victims set by the Directive 2012/29/EU are being breached.

2.1.3. Cooperation of judicial institutions with NGOs active in the field of women's human rights

According to the approved Action Plan for Chapter 23, entities in charge of supervision of its implementation have been set up, with the Secretariat for Implementation of the Action Plan for Chapter 23 as the lead institution. The previously established Commission for Implementation of the National Strategy of Judiciary Reform and Commission for Monitoring Implementation of the Criminal Procedural Code are now obliged to send their reports to this Secretariat.

Minutes from meetings of the Commission for Implementation of the National Strategy of Judiciary Reform can be found on the website of the Ministry of Justice, although they are usually posted a few months after the meetings (the latest minutes are from March 2015, even though meetings were also held in April and July 2015).[12]

The Commission for Implementation of the National Strategy of Judiciary Reform has seven Working Groups (for preparing amendments to the constitutional framework, giving opinions on development of the programme of the efficient allocation of judges, public prosecutors and deputy public prosecutors, development of guidelines for the reform and development of the Judicial Academy, preparing the analysis of the position of lay judges, preparing the analysis of necessary changes to the normative framework for the improvement of the position of misdemeanour judges, preparing the analysis of the position of judicial and prosecutorial assistants, preparing the assessment and analysis of the situation for the purpose of solving property-legal and infrastructural issues relating to courts and prosecutor's offices). Minutes from meetings of these Working Groups are also outdated (for instance the minutes of the Working Group in charge of preparing the assessment and analysis of the situation for the purpose of solving

11 Article 51 of the new Criminal Procedure Code.

12 Available only in Serbian at: http://www.mpravde.gov.rs/tekst/5269/dnevni-red-i-zapisnici-.php.

property-legal and infrastructural issues relating to courts and prosecutor's offices, held in October 2014, are the latest ones publicly available).[13]

Since the start of implementation of the National Strategy of Judiciary Reform, CSOs that systematically deal with women's human rights, providing free legal aid to women and representing women so that they exercise their rights through the system, were not consulted in any of the aspects that the Commission and its Working Groups deal with. This is the reason why women CSOs decided to monitor the implementation of the recommendation concerning participation of civil society in defining further steps in the reform process (recommendation 1.1.7. within the Action Plan).

Activities relating to this recommendation also include quarterly publication of the public call to civil society organisations and professional associations for the submission of comments and proposals for defining further reform steps, which should start as of the fourth quarter of 2014. It is stated in the Action Plan that this activity is successfully implemented because the Ministry of Justice and the Office for Cooperation with Civil Society Organisations organised several cycles of public calls during the third and fourth quarters of 2014, during which civil society organisations and professional associations were submitting their proposals relating to defining further reform steps within the Action Plan for Chapter 23. A report has been prepared and published on the website of the Ministry of Justice about the degree of implementation of each of the submitted comments.

According to the AWC, which participated in the process of proposing reform activities and commenting on draft versions of the Action Plan, after the first problems and misunderstandings with the Working Group for preparation of the Action Plan for Chapter 23, the process was productive and the Ministry of Justice was open to accept the most important proposals and comments of the AWC when it comes to victims' rights and harmonisation with the Council of Europe Convention on preventing and combating violence against women and domestic violence. However, the process was not continued when it comes to implementation of concrete activities from the Action Plan.

The next planned activity in the Action Plan is the submission and consideration of quarterly reports on comments and proposals of civil society organisations regarding the definition of further reform steps. This activity was planned to commence from the second quarter of 2015. It is envisaged that the Office for Cooperation with Civil Society Organisations should submit quarterly reports and that the body in charge of monitoring the implementation of Action Plans (Commission for Implementation of the National Strategy of Judiciary Reform for 2013–2018) considers quarterly reports on the received comments and proposals of civil society regarding the definition of further reform steps.

On the website of the Office for Cooperation with Civil Society Organisations it is not possible to find publicly available data on whether and in what manner the Office submitted reports to the Commission for Implementation of the National Strategy of Judiciary Reform.[14] The only thing that can be claimed with certainty is that a representative of the Office for Cooperation with Civil

13 Available only in Serbian at: http://www.mpravde.gov.rs/tekst/6498/radna-grupa-za-izradu-procene-i-analize-stanja-radi-resavanja-imovinsko-pravnih-i-infrastrukturnih-pitanja-vezanih-za-sudove-i-javna-tuzilastva-.php.

14 http://www.civilnodrustvo.gov.rs/%D0%B5%D1%83/%D0%B5%D1%83.284.html.

Society Organisations is a member of this Commission and participates in its work. However, as the last two minutes of the Commission for Implementation of the National Strategy of Judiciary Reform are not publicly available, there is no information about whether these reports were submitted or not.

Further, periodical organisation of roundtables to discuss the scope of achieved cooperation and the possibilities to improve cooperation in creating and implementing reform steps, was also planned to commence from the second quarter of 2015. It is envisaged that the Ministry of Justice and the Negotiating Group for Chapter 23, in cooperation with the Office for Cooperation with Civil Society Organisations periodically organise these roundtables.

The websites of the Ministry of Justice and the Office for Cooperation with Civil Society Organisations do not contain invitations to or reports from planned roundtables. During the year, meetings were held within the National Convent on the European Union, as a consultative body recognised by the Assembly and Negotiating Groups as a mechanism for cooperation, but these meetings cannot be considered roundtables as planned by the Action Plan, notably because not all civil society organisations are members of the National Convent. Given that there is no publicly available information on this activity, it is hard to assess whether it is being implemented in some different way or not.

Moreover, improvement of other types of cooperation with civil society in the process of defining reform steps was planned to commence from the third quarter of 2014, in accordance with the Guidelines for Cooperation between Institutions which Participate in Chapter 23 and Civil Society, prepared with the support of TAIEX experts, as well as the Guidelines for Inclusion of Civil Society in the Legislative Process. This relates to improving cooperation between the state and civil society, on the basis of proposals of the TAIEX team, in order to plan reform policies in a better and more constructive manner. However, after the adoption of the Government's Guidelines for Inclusion of Civil Society in the Legislative Process,[15] the AWC has no knowledge whether special Guidelines for Cooperation between Institutions which Participate in Chapter 23 and Civil Society have been adopted. As for the support of TAIEX experts, the AWC had bad experience during consultations on the Law on Free Legal Aid, organised by the TAIEX office in Belgrade in the period 6–8 May 2015. Although the AWC has been following the process of adoption of this Law for more than ten years and has provided several of its proposals and comments on various draft versions, it was not invited. The reason might be the fact that the AWC is not a member of the National Convent, which should not be an obstacle because it is expected that there should be various mechanisms enabling all civil society organisations to participate in this process. The AWC found out about held consultations only later, when the TAIEX expert report was received.

Finally, laws covered under Chapter 23 are still being amended under the same, insufficiently transparent procedure. Not all civil society organisations are informed about the initiated processes regarding legislative amendments by the Ministry of Justice or the Office for Cooperation with Civil Society Organisations. In addition, not all civil society organisations receive return information from the Working groups of the Ministry of Justice on which of

15 available only in Serbian at http://www.civilnodrustvo.gov.rs/upload/old_site/2012/10/SR-smernice.pdf.

their suggestions had been or not had been accepted and why (see the examples of the amendments of the Law on execution described in 2.1.2. and amendments of the Law on minors described in 2.3.1.).

RECOMMENDATIONS

- Further efforts should be made to ensure that measures envisaged by the Action Plan for Chapter 23 bring about improvements in the functioning of the entire judicial system, as currently they do not follow the defined dynamics and do not yield the expected results.
- The Ministry of Justice and the Office for Cooperation with Civil Society Organisations should introduce transparency into all processes of the adoption of new or amendments and supplements to the existing laws, for all stakeholders, including civil society and women's organisations. It is also necessary that organisations giving comments and proposals for draft laws receive feedback on whether proposals were examined and why they were not adopted.
- It is necessary to introduce transparency in work, which also includes updated minutes of work, of the Commission for Implementation of the National Judicial Reform Strategy for 2013–2018 (and all working groups), and of the Commission for Monitoring Implementation of the Criminal Procedure Code. It is necessary to ensure the mechanism for monitoring the implementation of recommendations issued by the Commission for Implementation of the National Judicial Reform Strategy for 2013–2018 to competent institutions for the purpose of taking measures aimed at eliminating the detected problems.
- The lack of information on implementation of the recommendation relating to participation of civil society in defining future steps in the reform process of the judiciary (recommendation 1.1.7) disables its monitoring and active participation of interested organisations, which should be improved. The fact that a civil society organisation is not a member of the National Convent should not affect the participation of interested organisations in the envisaged processes.
- It is necesary to urgently ammend the article of the Criminal Procedure Code regarding the right to victim's complaint on the decision of the public prosecution not to prosecute in order for this complaint to be considered as efficient "legal remedy" in accordance with the Directive 2012/29/EU.

2.2. Fight against corruption

In general, some positive steps forward have been made in the field of fight against corruption since September 2014, but they are far behind the plans from strategic acts and programmes of the Serbian Government. On the other hand, some phenomena which may represent a step backward in the fight against corruption have been observed, primarily in terms of the attitude of the Government and the Assembly towards independent government bodies and the non-application of national anti-corruption regulations in case of engagements relating to inter-state agreements.

In April 2014, **fight against corruption** was presented as a **priority** of one more Serbian government. However, judging by the exposé, **it was not clear** in what direction individual important anti-corruption regulations and competences of institutions would be changed, while some necessary measures were not even mentioned.[16] During 2014 and 2015, the Government implemented some measures from the exposé, which were not termed (e.g. the proposal to reform the system of struggle against organised crime and corruption), while some promises remained unfulfilled (e.g. regarding public debates in the preparation of regulations and public administration reform).

In terms of the adoption of regulations, in the past period a **large number of plans**, which were previously specified either in the Prime Minister's exposé or the Action Plan for Implementation of the Anti-Corruption Strategy, **have not been implemented.**[17] Although the deadlines from the Action Plan have expired, the Law on the Anti-Corruption Agency has still not been improved (the work started in March 2015, but progress is slow, due to disagreements over conceptual issues) nor the Law on Financing Political Activities. The latter Law was amended in late 2014, but not as envisaged by the strategic act. In regard to the Law on Lobbying, which was also to be adopted, not even a draft has been published. On the other hand, it is positive that the first **Law on Protection of Whistleblowers** was adopted. The application of the Law began in June 2015 and courts have taken the stance that protection applies also to whistleblowing which took place before that moment. There are still no sufficient cases to be able to talk about the success of new solutions. However, numerous deficiencies underscored during the public debate were not eliminated from the Law.[18] The time until the start of application of the Law was not used to change other related regulations, while the training of judges, which was purportedly necessary, did not involve the testing of knowledge of trainees.[19]

Furthermore, amendments to and application of new **media regulations** have brought about some useful effects, though numerous problems remain unsolved.[20] In practice, progress is the most visible in terms of granting budgetary funds for competitions, but the problem of advertising of government authorities has remained unsolved, which is something that the draft Law on Advertising does not deal with either.[21] Measures concerning the transparency of media ownership have not brought about true progress either. There is still no reliable information on ownership in the leading print media, while the privatisation of the local electronic media has brought about new suspicions about hidden political influences.

As already said, the Action Plan for Chapter 23 has been accepted by the EC. The preparation process was consultative, but a large number of substantiated remarks were not accepted. As

16 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/6546-.

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

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

19 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/7641-nepotpun-pravni-okvir-za-zastitu-uzbunjivaca.

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

21 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7335-urediti-drzavno-i-politicko-oglasavanje.

a result, some important issues were not covered, some measures and activities have not been sufficiently elaborated, and there also problems concerning deadlines and planned funds. However, the greatest potential problem concerns the insufficiently ambitious or developed success indicators. Therefore, there is real danger that the accession process will not be used for the creation of a sustainable anti-corruption system in Serbia, while the assessment of success may serve the function of political conditionality instead of being based on achieving clearly defined objectives.

Unfortunately, in preparing the majority[22] of laws, the following promise from the Prime Minister's exposé has not been fulfilled: "We will allow businesses, civil society and other interested parties to participate in all phases of legal acts, from concept laws, drafts and to preparation of by-laws". Not even the **rules on public debates** have been improved to include concept laws and by-laws. The number of drafts subject to public debates was, still, somewhat larger than in earlier years; however, obligatory debates were not organised in many instances.[23] Not even the holding of a public debate is a guarantee that problems will be noticed. Thus, in case of the Investment Law, the provision which jeopardises the unity of the legal system in the information access field was introduced in the draft, only after the public debate – this provision was not eliminated even after the warnings of the Anti-Corruption Agency, Commissioner for Information etc., until the proposal was submitted to the Assembly.[24]

In April 2014, the Prime Minister announced the establishment of "**task forces** for prosecution of organised crime and corruption", whose legal nature was not explained. The Financial Investigation Strategy was adopted in May 2015, mentioning "task forces" for investigating larger corruption cases.[25] The legal basis for the establishment of these bodies will be the announced amendments to the Law on Organisation and Jurisdiction of Government Authorities in the Suppression of Organised Crime and Corruption of September 2015. Despite deficiencies of the draft Law, its adoption may have positive effects, through financial investigations and greater specialisation of prosecutor's offices and other bodies.[26] In the meantime, during the past year, it was published that the earlier established "task forces" in charge of examining "24 privatisations", i.e. cases that the Government's Anti-Corruption Council was pointing out to before 2012, stopped working. There are still no comprehensive data on what was determined regarding these reports, or information based on which it would be possible to conclude that the Government has begun to systematically examine the Council's reports published after 2012.[27]

22 An exception is the preparation of the Law on Inspection Supervision, http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Izvestaj_o_pracenju_izrade_nacrta_zakona_o_inspekcijskom_nadzoru_februar_2015.doc.

23 http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/javne_rasprave_praksa_februar_2015.doc.

24 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7924-pobeda-ili-razlog-za-dodatan-oprez.

25 http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/komentari_na_nacrt_strategije_finansijskih_istraga_i_akcionog_plana_mart_2015.doc.

26 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7859-prosiriti-nadleznost-tuzilastva.

27 A possible exception may be the recently published case of abuse regarding the overhaul of wagons.

The Prime Minister's exposé of April 2014 also contained plans for rationalisation of the public sector, finalisation of reconstruction of enterprises, a decrease in the budget deficit and suppression of the grey economy, introduction of the e-government and shortening deadlines for permit issuance. In some of these areas there have been **significant improvements** in the past twelve months, which **can indirectly bring benefits** for anti-corruption as well (especially the undertaken measures for faster issuance of building permits and measures to resolve the status of enterprises in restructuring). However, there were no visible changes in regard to the promised "decrease in the number of employees in the public sector… especially of those that are appointed owing to the influence of political parties", and implementation of the preceding functional analyses.

2.2.1. Reform and depolitisation of the public administration

The Action Plan for the Public Administration Reform has been adopted, but it still remains unclear how fast the reform will be implemented and to what extent it will depend on previous analyses and opinions of international financial institutions or other stakeholders. In the meantime, not even the number of public sector employees has been properly determined. Even the number of the newly employed after the adoption of legal limitations was hidden for a long time,[28] but once it was published, it was not clear what was the number of newly employed and those who left the public sector.

On the other hand, after amending the Law on Civil Servants, the status of **civil servants on posts** is likely to be finally precisely defined. The Government appointed acting servants to positions that were not filled and opened some recruitment processes. However, there are still no published data based on which it would be possible to conclude to what extent the deadlines to end the illegal situation which lasted from January 2011 have been complied with. Judging by Government decisions published in the Official Gazette, there are still many posts that have not been filled based on public competition.

The activities whose implementation under Action Plan for Chapter 23 was expected or is expected during 2015 regard the establishment of transparent, competitive, objective and precise criteria for employment in bodies of the public administration, local self-government and province, establishment of mechanisms for monitoring the implementation of the Code of Conduct of Civil Servants, and introduction of programme budgeting. The implementation of these activities should rely primarily on appropriate legal acts. Employment of civil servants is regulated by the Law on Civil Servants,[29] which was amended after coming into force of the Law Amending and Supplementing the Law on Civil Servants[30] by late 2014. The amended Law on Civil Servants stipulates more precise conditions for employment of particular categories of civil servants and

28 The Ministry of Finance did not submit the requested data to journalists of the "Danas" daily even after the decision of the Commissioner for Information.

29 Law on Civil Servants (RS Official Gazette, Nos 79/2005, 81/2005 – corr., 83/2005 – corr., 64/2007, 67/2007 – corr., 116/2008, 104/2009 and 99/2014).

30 Law Amending and Supplementing the Law on Civil Servants (RS Official Gazette, No 99/2014).

more transparent publication of public competitions. However, provisions on filling staff-member posts – primarily on transfer, takeover and internal competition, are arbitrary and do not contain precise criteria for the selection of candidates, while the director of a government body has wide possibilities to choose the manner of filling a vacancy. Particularly non-transparent are provisions on filing posts in government bodies. When a post is filled by the Government, internal competition is obligatory, but the law does not precisely stipulate the conditions that a candidate has to meet in order to take a post. What is problematic is the lack of possibility to assess managers and some other categories of civil servants. Moreover, the law to regulate the position of employees in autonomous provinces and local self-government units has still not been adopted, and these employees are still subject to the part of the Law on Labour Relations in Government Authorities,[31] adopted more than 20 years ago.

On the other hand, exceptionally important for transparent employment of civil servants is also the adoption of the new Law on Police. The draft new Law envisages the establishment of the Human Resources Sector to deal with employment policy, whereas a by-law should prescribe more detailed rules and manner of human resources management. A positive change is the introduction of competitions for employment of all employees at the Ministry of Interior, including police officers. Under the valid Law, a competition is not obligatory for police officers, which opens the possibility of politisation and non-transparent employment. It is worrying that the Minister of Interior has a widely defined authority to appoint and dismiss heads of police districts and managers of organisational units at the General Police Directorate, which opens the possibility for politicisation and the lack of transparency. As the Minister also proposes to the Government the dismissal of the Director General of Police, the following question is asked – how it may be expected that the Director General of Police will perform his duty in a politically neutral way, when his dismissal depends on the Minister's recommendation. It is problematic that the draft Law on Police does not ensure the independence of the Internal Affairs Sector as it envisages the possibility for the Minister to involve other organisational units of the Ministry of Interior into the Sector's work.[32]

Although obligatory by the Law for two years already, the "**professionalisation of managing public enterprises**" has still not been implemented. The legal mechanism for the election of directors and members of supervisory boards of public enterprises has flaws, but not even such mechanism has been implemented. Merely in several republic enterprises competitions for the election of directors have been finalised, in other enterprises nobody has decided on applications for almost two years, while in some other no competitions have been announced at all. On the occasion of arresting several managers of public enterprises, the Minister of Interior announced their political party affiliation (aiming to prove that people affiliated both to the currently ruling coalition and the opposition are being prosecuted alike), and among the arrested was one of the few directors elected in a "non-political" competition several months before.[33]

---

31 Law on Labour Relations in Government Authorities (RS Official Gazette, Nos 48/91, 66/91, 44/98 – other law*, 49/99 – other law**, 34/2001 – other law***, 39/2002, 49/2005 – decision of the Republic of Serbia's Constitutional Court, 79/2005 – other law, 81/2005 – corr.other law, 83/2005 – corr. other law and 23/2013 – Constitutional Court decision).

32 Article 228 of the draft Law on Police.

33 http://www.blic.rs/Vesti/Politika/529835/TS-Zasto-ministar-govori-o-stranackoj-pripadnosti-uhapsenih.

Indicators of progress in this field would imply more transparent employment of civil servants, a smaller number of annulled public competitions compared to the average in previous years, regulated position of employees in autonomous provinces and local self-governments, positive assessments of the Anti-Corruption Agency regarding reports on the implementation of integrity plans of institutions in charge of their adoption.

2.2.2. Prevention of corruption in the public procurement field

Improving the **Public Procurement Law** was expected to be a milestone in preventing corruption in this field. However, the Law was first amended only in the area of preferentials and a working group of the parliamentary committee was set up to prepare amendments to other sections of this document. Still, in July 2015, the Government suddenly submitted its proposal of the Law, which was soon after adopted. The procedure of preparing amendments was completely non-transparent, and many changes were not explained. The new solutions also include the useful ones – in the field of enhancing transparency and reducing bureaucratic requests towards bidders.[34] The results of implementation of the existing anti-corruption provisions of this Law are very limited, due to the weakness of certain provisions, and even more due to limited oversight capacities, primarily of the Public Procurement Office. In addition, the new Strategy for the Promotion of the Public Procurement System does not identify all important problems in this area.[35] President of the Republic Commission for the Protection of Rights handed in his resignation, but has not been relieved of duty even four months thereafter.

Furthermore, the improve the application of the existing rules on free access to information of public importance in the public procurement field, and in the public finance management field in general, the activities regarding legal obligations of proactive publication of information within the framework of relevant laws (primarily the Public Procurement Law[36] and other laws regulating the obligation of publishing business-financial reports regarding funds spent from the Republic of Serbia's budget) should be included among activities that the Government envisaged in the Action Plan for Chapter 23. Some activities, envisaged by the Action Plan and concerning amendments to the Law on Free Access to Information of Public Importance, are not concrete enough, while for others it has not been determined which ministry is in charge of preparing the envisaged analysis.

To ensure the implementation of rules on free access to information of public importance in the public procurement field, it is necessary to strengthen the services used for proactive publication of information on public procurements, in accordance with the latest version of the Public Procurement Law. This relates primarily to the Public Procurement Portal and websites of individual contracting authorities.

---

34 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/7789-nedovoljno-transparentna-procedura-neobrazlozene-promene-i-korisni-predlozi.

35 http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Javne_nabavke_najvazniji_nalazi_mart_2015.doc.

36 Public Procurement Law (RS Official Gazette, Nos 124/2012, 14/2015 and 68/2015).

Portal improvements may be roughly divided into technical improvements and the introduction of new analytical services that would use all procurement information from databases of the Public Procurement Office. We believe it would be very useful to consult in this process representatives of bidders, contracting authorities, civil society organisations and all other stakeholders that use the Portal, in order to define the volume of necessary technical improvements and types of necessary analytical services. This would ensure full functionality of the Portal in line with needs of contracting authorities, bidders and supervisory authorities. This activity could be implemented within a relatively short time and at small budgetary costs.

Improving technical possibilities of the Portal may drastically enhance the availability of information in the public procurement field, particularly in light of recent amendments to the law regulating this field, whereby the transparency of the public procurement procedure has been increased by the obligation of contracting authorities to publish a larger volume of documentation.

2.2.2.1. Public procurements in the field of defence and security

Due to delays in the adoption of regulations on the procurement of weapons and security sensitive equipment, it is still early to assess the success of their implementation. Under the Public Procurement Law, procurements of weapons and military equipment, including all security sensitive equipment, works and services, are defined as public procurements in the field of defence and security, and are to be regulated by a special decree. Although the Law entered into force on 1 April 2013, the Decree on the Public Procurement Procedure in the Field of Defence and Security[37] was adopted only on 31 July 2014 and entered into force on 1 January 2015. Due to the delay in adoption of the Decree, this type of procurement could not be implemented in the given period. After the Decree entered into force, the start of procurements in this field was hindered for several months due to security certification of bidders. The first procurements were launched only in mid-2015.

The Law also envisages circumstances in which such procurements are exempted from its application. It also ensures parliamentary oversight of public procurements in the field of defence and security, including those that the Law does not apply to, but does not ensure its effective implementation. Namely, the Law envisages the following:

1. the Government informs the competent committee on launching of the procurement procedure – this applies to procurements that the Law applies to;
2. the Government submits to the competent committee annual reports on implemented procurements in the field of defence and security, including those exempted from the Law.

However, as the Law does not define the area for which the "competent committee" is in charge of, in practice, according to the National Assembly, that is the Committee on Finance, State Budget and Control of Budget Spending (hereinafter: Finance Committee). This creates a problem as members of this Committee (under the Data Secrecy Law) do not have automatic access

37 Decree on the Public Procurement Procedure in the Field of Defence and Security (RS Official Gazette, Nos 82/2014 and 41/2015).

to confidential data, nor have they so far received security certificates. Therefore, a legal provision should be stipulated in such a way that the Government reports to committees in charge of defence and security on procurements in the defence and security field, or a procedure should be launched so that members of the Finance Committee receive security certificates, while at the same time encouraging them to consult, when considering the reports, colleagues from the committee overseeing the security sector.

2.2.3. Involvement of civil society in fight against corruption

Under the Action Plan for Chapter 23, the state has also committed to ensuring the involvement of civil society in the anti-corruption programme. Since some of the envisaged activities have been implemented, while some are underway and some were not implemented within the deadline, it may be concluded that, for the time being, the implementation of this activity is partly successful. For instance, measures regarding the implementation of competitions for civil society organisations for participation in anti-corruption initiatives at the local and national level are regularly implemented.

One of the envisaged measures implies the implementation of a joint campaign in order to incite citizen participation in the fight against corruption. The lead institution in this field is the Office for Cooperation with Civil Society.[38] The implementation of this activity is limited to the fourth quarter of 2017, which is not the best solution as the campaign of involving civil society in the fight against corruption should be implemented continuously, without time limitations. The Office for Cooperation with Civil Society publishes on its official website information relating to ways of participation of civil society in the fight against corruption, but no sporadic campaigns are implemented to encourage more active participation of civil society and its stronger influence in such struggle.

Partial success is also reflected in the fact that the Anti-Corruption Agency conducted public competitions to grant funds to civil society organisations for projects in the anti-corruption field, primarily alternative reporting on the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for 2013–2018 and the Action Plan for its implementation.

On the other hand, amendments and supplements to the Law on Public Administration are envisaged for the fourth quarter of 2015 – the aim is to harmonise standards of cooperation between the public administration and civil society with standards of the Council of Europe and the UN Convention against Corruption. However, this activity has not been implemented to date.

Finally, progress indicators in this field include frequent and continuous implementation of campaigns of inclusion of civil society in the fight against corruption by the Office for Cooperation with Civil Society, including a larger number of civil society organisations that cooperate with the Anti-Corruption Agency in anti-corruption projects.

38 http://www.civilnodrustvo.gov.rs.

2.2.4. Other activities relating to prevention of corruption

By the Action Plan for Chapter 23, the Government envisages the development and implementation of certain anti-corruption measures in other particularly sensitive areas such as healthcare, education, police etc. Some progress has been achieved in the past period (measures should be implemented by late 2018). For instance, activities have been carried out to draft the new Law on Police (Action Plan for Chapter 23, 2.2.10.27) – the draft was submitted to the EC in October 2015.[39] Based on the draft Law, it is possible to assume the way in which the Ministry of Interior will diminish corruption in the police and strengthen the work of the Internal Affairs Sector, which is the starting point for implementing this recommendation of the EC.

The greatest progress regards the solution from the draft Law enabling the Internal Affairs Sector to fight against corruption within the ranks of the entire Ministry and not only of the General Police Directorate as it has been the case so far. This is a good solution as all employees will be under the control of the Internal Affairs Sector. The draft Law (Article 229) envisages new anti-corruption measures that may positively affect a reduction in corruption at the Ministry of Interior, but have not been prescribed in a satisfactory and precise way.

Application of the integrity test, however, provokes most dilemmas as it is prescribed in the draft Law in a too general way. The integrity test is an investigative method to test the propensity of a police officer to corruption. In a simulated environment, it is tested how police officers enforce laws and regulations in illegal conditions. Based on this, intelligence is collected to determine whether a police officer is prone to corruption or not. The entire matter should be regulated by a special regulation adopted by the Minister within one year following the entry into force of the Law on Police, which is not a good solution for two reasons. The draft Law does not envisage protection mechanisms which should disable abuse in practice. The integrity test should be conducted by a body with an undisputable institutional integrity and independence, which is not the case with the Internal Affairs Sector in Serbia. Besides, there are no technical capacities at the Sector to implement this measure.

The Internal Affairs Sector is now obliged to prepare the corruption risk analysis in cooperation with the Anti-Corruption Agency. The risk analysis implies the identification of the corruption risk, development of the risk registry and plans of preventive measures for their elimination. It is unclear whether the risk analysis concerns the entire Ministry or only the General Police Directorate. The Action Plan for Chapter 23 (2.2.10.24) stipulates the preparation of the corruption risk analysis for each job position in the police. In contrast, the draft Law on Police envisages implementation of the risk analysis at the Ministry. To reduce corruption in the police, it is important that the risk analysis should equally take into account the risks specific to job positions and organisational risks at the General Police Directorate and the Ministry. In addition, the analysis should be comprehensive.

39 See: http://goo.gl/00TuiP.

Under the draft Law on Police, the Internal Affairs Sector will be able to check the property status of Ministry's managers and persons at positions with a high risk of corruption, which shall be established by the prior corruption risk analysis. Managers must report changes in their property status to a competent organisational unit. This anti-corruption measure will also be further regulated by a by-law, which is not a good solution. It is unclear what data the declaration of assets will contain, including the way of using these data which may be the target of different abuses. This is particularly problematic if a by-law prescribes that data will not be fully public or that they will be only partially public (which is also unknown).

Activities that do not contribute to the fight against corruption have been observed in other fields as well. For instance, the past year has seen the continuation of the poor and illogical practice of **contracting with investors** large infrastructural projects **on the basis of inter-state agreements**, with the **exemption from domestic regulations** (e.g. the Public Procurement Law, the Law on Public-Private Partnership and Concessions, the Law on Privatisation) on bidding, analysis of justification and oversight. Some of such agreements and contracts have been published, after a lot of time and irrelevant excuses.[40] In other cases, contracts on disposal of valuable public property have not even been published,[41] not even after the Commissioner for Information issued binding orders and after the procedure over the violation of law was launched by the Ombudsman and administrative inspection. Moreover, there are attempts to legally codify the obstacles that the authorities set before citizens who wish to obtain information on government operation.[42]

Large loopholes are also evident in the implementation of rules on **awarding state aid,**[43] in regard to the scope of existing regulations, control mechanisms and consistency in the implementation of existing regulations.

In this period **there were no final convictions** in high-level corruption cases, or visible final decisions to punish violations of the Law on the Anti-Corruption Agency or the Law on Financing of Political Activities. Some criminal procedures that were previously initiated are still ongoing. The Agency has launched several procedures over the violation of rules on the conflict of interest concerning current ministers. The State Audit Institution has initiated the first audits of political entities (the three most powerful political parties). Generally speaking, trends from previous years in regard to repressive anti-corruption activities continued, with a small increase in the number of discovered and initiated cases. There is no practice of publishing these data regularly, and records of various authorities still remain incomparable and insufficiently informative.

40 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7875-objavljivanje-ugovora-o-bg-na-vodi.

41 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7865-kvazipravni-argumenti-u-odbrani-tajnosti-ugovora.

42 http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7924-pobeda-ili-razlog-za-dodatan-oprez.

43 http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Drzavna_pomoc_izvestaj_februar_2015.doc.

2.2.5. Suppression of corruption

Under the Action Plan for Chapter 23, the government has envisaged the conduct of audit until late 2015 and the assessment of results of the Anti-Corruption Strategy (adopted in 2013) in 2018. In this regard, amendments to the Law on the Anti-Corruption Agency have also been planned. However, the hitherto course of preparing amendments to the Law on the Anti-Corruption Agency is indicative of inappropriate cooperation among anti-corruption institutions. There are two law models – one developed by the Agency, and the other recommended by the Ministry of Justice, shaped upon the law valid in Slovenia. In addition, the assessment of implementation of the Action Plan of the Anti-Corruption Strategy was prepared in 2014. In March 2015, the Anti-Corruption Agency published the report on implementation of the Anti-Corruption Strategy, while civil society organisations worked on alternative reporting as a mechanism to improve oversight.[44]

According to the Action Plan for Chapter 23, the Ministry of Justice should prepare a new assessment by late 2015, which creates additional confusion over what entity should follow the implementation of the Anti-Corruption Strategy and in what way. The Anti-Corruption Agency has the legal obligation to follow its implementation. Another dilemma concerns the deadlines for the implementation of activities from the Action Plan of the Anti-Corruption Strategy, which are not the same as in the Action Plan for Chapter 23, although these are similar or the same activities. All this causes problems in coordinating the fight against corruption.

What also introduces confusion in implementation of anti-corruption policy is the three-fold mechanism of oversight and coordination. This job is performed by the Anti-Corruption Agency, Group for Coordination of Implementation of the Anti-Corruption Strategy and Government's Coordination Body for Implementation of the Action Plan. Their tasks coincide. The Agency and the Group monitor the implementation of the Anti-Corruption Strategy, collect reports from government authorities on implementation of anti-corruption measures, give opinions and recommendations on improving the anti-corruption struggle, participate in preparation of regulations and project proposals aimed at curbing corruption. One year after the adoption of the Anti-Corruption Strategy, the Government set up[45] the new Coordination Body that should direct and coordinate government authorities for the purpose of better implementation of the Strategy. It consists of the Prime Minister, Minister of Justice, Minister of Finance and a member of the Anti-Corruption Council. The composition is at the highest level. It is known that this body has so far held one meeting, although it is obliged to meet once in six months.

In Serbia, cooperation among institutions is indispensable in the creation and implementation of anti-corruption policy that was made comprehensive with the National Strategy of 2013, but whose action plan is not implemented as it should be.[46] The normative basis for cooperation between the police, prosecutor's office and the judiciary does exist in Serbia, but it is not satisfactory in all phases of criminal proceedings.

---

44 See: Report of the Anti-Corruption Agency for 2013–2015.

45 See: Decision on Establishment of the Coordination Body for Application of the Action Plan for Implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013–2018 period.

46 Report of the Anti-Corruption Agency for 2013–2015.

It is noteworthy that problems in cooperation between the police, prosecutor's office and the judiciary exist also at the level of signing two memoranda of cooperation. The procedure that should enable better cooperation and coordination between the police and prosecutor's office in the fight against corruption has not been adopted as the memorandum of cooperation was not signed beforehand. In December 2013, the Secretariat at the Ministry of Interior submitted to the criminal police the proposal of the memorandum between the Ministry of Interior, General Police Directorate and Prosecutor's Office for Organised Crime. It is not known whether the memorandum proposal reached the Ministry of Justice and Prosecutor's Office for Organised Crime. In contrast, the Ministry of Justice organised a meeting with representatives of the Ministry of Interior, Republic Public Prosecutor's Office and other institutions involved in implementation of the Action Plan of the Anti-Corruption Strategy, when an agreement was reached on the final text of another memorandum which has still not been adopted as the Ministry of Interior is yet to express its attitude. It is unrealistic to expect the signing of an operational procedure when there is no agreement among institutions regarding the planning of mutual cooperation.

RECOMMENDATIONS

- Enhance the transparency of the decision-making process, particularly at the level of executive power.
- Further strengthen independence of the judiciary and create conditions for free and unselective work of prosecution bodies.
- Full implementation of media laws and creation of conditions for functioning of the media without pressures and influences of political and economic centres of power.
- The Government should ensure the implementation of decisions of the Commission for Information of Public Importance whenever necessary.
- The Law on Lobbying should be adopted in order to reduce inappropriate extra-institutional influences on the work of executive and legislative power.
- The Assembly should improve the practice of monitoring the implementation of parliamentary conclusions on annual reports of independent government bodies. If a report indicates omissions of the Government or other executive authorities, the Assembly should require the implementation of measures to correct omissions, and initiate the accountability procedure for managers who failed to fulfil their obligations.
- Adopt the Law Amending and Supplementing the Law on Civil Servants, which should prescribe stricter criteria for employment of civil servants, more clearly define conditions to be fulfilled by candidates for appointment to posts, and enable performance appraisal of directors of government authorities which is not envisaged by the valid Law on Civil Servants.
- Adopt the Law on Employees in Autonomous Provinces and Local Self-Government Units, which should precisely define the criteria for employment, appraisal and career advancement of employees, and adopt the code of conduct of employees in autonomous provinces and local self-government units.
- Adopt the new Law on Police, which should ensure transparent employment, and primarily clear employment criteria, including diminishing the powers of the Minister of Interior to influence, as a political figure, the selection and dismissal of police managers. It is also necessary to stipulate concrete sanctions for non-compliance with the Code of Police Ethics. It

is necessary to ensure full independence of the Internal Affairs Sector so that it conducts investigations and proposes appropriate measures in case of abuse in an efficient, impartial manner and free of political influence.

- It should be specified that six recommendations submitted to the National Assembly and eleven recommendations submitted to the Government – from the report on implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2014, which relate to that Law, be taken into account in the analysis of rules on free access to information of public importance, in relation to implementation of public procurements.
- The Public Procurement Portal should be improved through technical advancement and introduction of new analytical services. The Portal should be improved in accordance with the research into the practice of using the Portal, which should be conducted beforehand. The research should be implemented among Portal users (contracting authorities, bidders, other stakeholders), and based on it, a document should be prepared with the list of necessary and desirable improvements divided into two areas: a) technical improvements and b) analytical services.
- Postpone the application of the integrity test in the police until all preconditions for effective implementation of this anti-corruption measure have been met: (1) prescribe by law that testing must be conducted in accordance with principles of the protection of human rights and by respecting the professional integrity of the entity undergoing testing; (2) prescribe by law that only the preliminary proceedings judge, based on a well-substantiated proposal of the head of the Internal Affairs Sector, may order the application of the integrity test, whereas it not possible to find data on a corruptive action through any other form of investigation; (3) prohibit by law the incitement of perpetration of a criminal offence while applying the integrity test; (4) prescribe by law the entities that may be subject to testing; (5) all police officers must be familiarised with the integrity test before its application, while at the same time it is necessary to explain the objective and purpose of this anti-corruption measure; (6) it is necessary to technically equip and train employees at the Internal Affairs Sector to apply the integrity test.
- Initiate a public debate during the preparation and adoption of a by-law which regulates the forms and manner of applying the integrity test, implementation of the risk analysis and control of changes in the ownership status, as this diminishes the possibility of abuse in practice.
- The Office for Cooperation with Civil Society should more frequently implement campaigns to encourage the participation of civil society organisations in the fight against corruption, independently and in cooperation with the Anti-Corruption Agency. In general, closer cooperation and communication between these two institutions is necessary on this front. Campaigns should be implemented without time limitations set by the Action Plan, so that citizens get informed and civil society organisations encouraged to participate in anti-corruption projects.
- Amend the Law on Public Administration in a way that would ensure greater openness of the public administration to cooperate with civil society organisations in the fight against corruption and take into account their proposals in the most serious way.

- The Anti-Corruption Agency may help in solving the problem of coordination in the fight against corruption as it is the only body in Serbia with a comprehensive insight in implementation of anti-corruption policy, and is accountable to the National Assembly. This arises from the responsibility of government authorities to submit to the Agency the reports on implementation of the Action Plan of the Strategy. In addition, a quality compared to the Group is also reflected in the fact that the Agency prepares and submits to MPs an all-embracing report on implementation of the anti-corruption plan. Such role enables the Agency to responsibly provide aid and support in coordination of authorities in charge of the fight against corruption. In practice, the Agency does not avail of such position.
- The valid Law on the Anti-Corruption Agency (Article 62) envisages the possibility for the Agency to give opinions on implementation of the anti-corruption strategy. However, there is no obligation of at least discussing this issue – for entities that the opinion relates to. The new draft Law on the Agency (Article 88) introduces the obligation that a debate be held about the Agency's opinion within 60 days. These debates may encourage better coordination of institutions in the fight against corruption, and should be insisted upon.

2.3. Fundamental rights

2.3.1. Principle of non-discrimination and position of socially vulnerable groups

According to the Action Plan for Chapter 23, the government should implement a number of measures aimed at enhancing gender equality and the position of socially vulnerable groups, first and foremost the LGBTI community. In this respect, changes to the Antidiscrimination Strategy and other relevant documents have been envisaged, coupled with strengthening the capacities of competent institutions and enhancing their cooperation. One can say that the first steps towards this goal have been made.

In the past period, Coordination body for gender equality, whose composition remained unchanged even after the letter sent by the Autonomous Women's Center to the President of the Coordination body[47], formed a Working group, whose member's are not known, for the creation of the new Law on Gender Equality. President of the Working group on drafting new Law on Gender Equality, is member of the Coordination body who is at the same time Prime Minister's adviser for the issues of religion. First draft version of this Law had been sent to CSO's for their comments and suggestions. Currently there are no publicly available data about the further steps regarding creation of the new Law, nor which were the outcomes of the public debate (the same as in 2.1.3.).

47 Letter requested that the President of the Coordination body initiates establishment of the parity in the constitution of this body, to name women as heads of the key working groups, to make sure that members of the working groups have appropriate knowledge and experience regarding gender equality issues, to include representatives of specialized women's organisations and to make publicly availble information about the composition of the working groups, because that is the essential and formal condition for the establishing of gender equality.

The Government then adopted the Action Plan for Implementation of the Strategy for Prevention and Protection against Discrimination for the 2014–2018 period. This document contains measures and activities necessary for the achievement of strategic objectives, deadlines for their implementations and progress indicators. In addition, the Council for Monitoring the Implementation of the Action Plan for Implementation of the Strategy for Prevention and Protection against Discrimination for the 2014–2018 period was set up, consisting of eleven members.[48]

As some activities have been implemented, while others have not been implemented within the deadline or are envisaged for 2016 and 2017, for the time being it is not possible to assess to what extent recommendations from the Action Plan for Chapter 23 that the activities relate to, will be achieved. An additional difficulty relating to the assessment of fulfilment is the fact that effect indicators are wrongly set in the Action Plan and represent verification sources.

Along similar lines, as the Council for Monitoring the Strategy for Prevention and Protection against Discrimination was set up in August this year, it is still not possible to determine with certainty the effects and results of its work. Based on recommendations from the Action Plan for Chapter 23, the Ministry of Interior nominated specially selected police liaison officers for LGBT persons and coordinators for domestic violence. There are nine liaison officers for LGBT persons in the following towns: Beograd, Niš, Kragujevac and Novi Sad, while coordinators for domestic violence are present in all police directorates in Serbia. Currently, there are no liaison officers for other vulnerable categories defined by the Law on Prohibition of Discrimination, such as the Roma, women, persons with disabilities and refugees. The Action Plan for Implementation of the Community Policing Strategy covers the basic activities and general topics, but does not contain data based on which it would be possible to foresee detailed activities of the Ministry of Interior in this regard. It remains unclear whether liaison officers for LGBT persons will be nominated also for other towns in Serbia and whether additional officers for other vulnerable categories will be nominated.

In terms of coordinators for domestic violence, in 2013 the Ministry of Interior adopted the internal decision that each police district in Serbia should nominate two police officers to serve the function of coordinators for the prevention and suppression of domestic violence. Coordinators underwent advanced training and it was planned that they should be contact persons with other institutions and women's organisations so as to ensure better protection to victims of partner and domestic violence. Although specialised police officers as contact persons exist in each police directorate, they do not exist in each police station in Serbia.

Also envisaged are continuous meetings between the police and representatives of socially vulnerable groups (the LGBTI community and civil society organisations) for the purpose of sensitivisation of police officers and developing cooperation and prevention in achieving security protection and the protection of human and minority rights. However, starting from 2013, when coordinators for domestic violence were nominated, the AWC was never invited to a meeting by

48 The Council members are representatives of the Ministry of Justice, Ministry of Interior, Ministry of Public Administration and Local Self-Government, Ministry for Labour, Employment, Veteran and Social Issues, Ministry of Education, Science and Technological Development, Ministry of Health, Ministry of Youth and Sports, Ministry of Finance, and members of the Council from the ranks of representatives of Action Plan Vojvodina.

the coordinator of the Police Directorate for the City of Belgrade. As regards coordinators in other police directorates in Serbia, it is possible to say that police coordinators cooperate with women's civil society organisations in Kruševac, Kikinda and Užice. In this regard, it is possible to conclude that cooperation between specialised police officers as contact persons for domestic violence and women's organisations is *ad hoc*, depending on personal attitudes and commitment.

One of the activities envisaged by the Action Plan for Chapter 23 in the field of fundamental rights is also the implementation of a detailed analysis of harmonisation of criminal legislation with the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). In this regard, in 2014 the AWC developed the Basic Study of the Analysis of Harmonisation of the Legislative and Strategic Framework of the Republic of Serbia with standards of the Council of Europe Convention.[49] The aim of the Basic Study is to establish the degree of harmonisation of the relevant normative-legal framework and the public policy framework in Serbia with standards of the Council of Europe Convention, and to determine areas where amendments to laws and regulations are needed. The analysis covers Article 51 of the Convention: from the first three chapters (*Purposes, definitions, equality and non-discrimination, general obligations; Integrated policies and data collection;* and *Prevention*), individual articles were selected for the analysis, while the following four chapters (*Protection and support; Substantive law; Investigation, prosecution, procedural law and protective measures;* and *Migration and asylum*) were analysed in entirety. The Study includes proposals and recommendations for amending valid laws (the Criminal Code and Criminal Procedure Code, Law on Misdemeanours, Law on Enforcement of Penal Sanctions, Law on Police, Law on Weapons and Ammunition, Family Law, proposed Law on Free Legal Aid). Although this analysis of harmonisation, along with the created methodology and indicators for monitoring the implementation of the Council of Europe Convention[50] was submitted to the Ministry of Justice, the Ministry decided to conduct its own analysis. As this activity was planned to end until the fourth quarter of 2015, the AWC does not have information from the Ministry of Justice on whether this activity commenced; if yes, the AWC has not been invited to participate.

Furthermore, during the public debate on the new Law on Police, the AWC submitted to the Ministry of Interior amendments, asking that new emergency barring orders be included into the proposed law, in accordance with the Council of Europe Convention.[51] If this proposal is accepted, the police would have the possibility to order to the perpetrator of domestic violence to leave the apartment where a victim lives, for the period of 14 days, and to forbid the perpetrator to contact the victim, in order to prevent further violence – this is the so-called Austrian model. On 10 June 2015, the Ministry of Interior informed the AWC that this proposal was not accepted.[52] In his explanation, the Minister stated that the action of police officers in the pre-investigative procedure is not independent, i.e. that the public prosecutor leads the

49 Available only in Serbian at: http://www.potpisujem.org/srb/857/analiza-uskladenosti-zakonodavnog-i-strateskog-okvira-sa-standardima-konvencije.

50 Available at: http://www.potpisujem.org/eng/991/for-monitoring-implementation-of-coe-convention-on-vaw.

51 Available at: http://www.potpisujem.org/eng/1109/awc-requires-introduction-of-emergency-barring-orders-and-new-powers-for-the-police.

52 Available only in Serbian at: http://www.womenngo.org.rs/images/vesti-15/Odgovor_MUPa_u_vezi_sa_hitnim_merama_zastite.pdf.

procedure and the police would not be able to independently apply the proposed measures. The AWC responded to the Minister, stating that measures currently existing in laws do not ensure protection for the victim in the way this would be enabled by "emergency barring orders", as defined by Article 52 of the Council of Europe Convention on preventing and combating violence against women and domestic violence.[53] In the meantime, Vice-President of the Government Ms Mihajlović,[54] MP prof. dr Milisavljević[55] and Commissioner for Protection of Equality Ms Janković[56] supported this proposal. On 6 October 2015, the Minister of Interior proposed that amendments to the Criminal Procedure Code be adopted so that "preliminary proceedings judges would be able to impose the measure of vacating a violent family member from a house or apartment immediately after violence is reported, within measures for smooth conduct of criminal proceedings."[57] The AWC had to respond again to the Minister's refusal to assume responsibility for action of police officers, instead of proposing only solutions regarding the procedure of judicial authorities.[58]

Unfortunately, it must be underlined that not even two years following the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence has the Republic of Serbia changed a single law in accordance with the Convention.

The state also committed to amending the Law on Juvenile Offenders. However, a public debate on amendments has not been held. The only information available in April 2015 during the public debate about the Action Plan for Chapter 23 was that the Working Group completed work on amending the Law on Juvenile Offenders. There is no such information on the website of the Ministry of Justice. It can be concluded that the manner in which amendments to the Law were prepared was entirely non-transparent in the Ministry of Justice. Organisations active in the field of protecting women and their children from violence were not invited to give their comments and proposals from the viewpoints of minors as victims.

Activities concerning the definition of practical guidelines for the hearing of children, based on EU examples of good practice, which are also specified by the Action, are implemented within the UNICEF IPA project. Within this project, the research on the position of minors as injured parties in judicial proceedings was carried out.[59] Data from the research show that procedures in which minors are injured parties are not urgent, that sometimes an ex officio proxy is not engaged for minors, or is engaged in various phases of criminal proceedings, that the public is not

53 Available at: http://www.potpisujem.org/eng/1361/why-we-need-emergency-barring-orders.

54 Available at: http://www.potpisujem.org/eng/1356/deputy-prime-minister-zorana-mihajlovic-supported-the-introduction-of-emergency-orders.

55 Available at: http://www.potpisujem.org/eng/1353/mp-milisavljevic-organized-a-press-conference-and-supported-introduction-of-emergency-orders.

56 Available at: http://www.potpisujem.org/eng/1371/commissioner-supports-adoption-of-emergency-barring-orders

57 Available only in Serbian at: http://www.blic.rs/Vesti/Hronika/595806/Sastanak-Nebojse-Stefanovica-i-Vesne-Stanojevic-Policija-sada-reaguje-bolje-na-nasilje-u-porodici.

58 Available only in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=10&dd=07&nav_category=12&nav_id=1048404 and http://www.potpisujem.org/srb/1474/mup-ignorise-zahtev-azc-a-za-uvodenje-hitnih-mera-zastite-u-predlog-novog-zakona-o-policiji.

59 The research titled "How to have a judiciary at the measure of the child – protection of child victims in criminal proceedings and situation in practice in the Republic of Serbia" was carried out in 2013/2014 by the Child Rights Centre within the project "Improving child rights by strengthening the system of the judiciary and social protection in Serbia", funded by the EU and implemented in partnership with the Ministry of Justice, Ministry for Labour, Employment, Veteran and Social Issues and the UNICEF, available only in Serbian at: http://www.cpd.org.rs/Data/Files/ka_pravosudju_po_meri_deteta_krivicno.pdf

excluded from the trial, that no one deals with the issue of protection and security of the child and family, that a minor as an injured party is not informed at all or is insufficiently informed about his/her rights and is interviewed in the courtroom, in front of the accused.

The proceedings in which minors are victims and whether the judicial system truly protects children who are victims of violence may be illustrated by the following examples:

- Page 32 of the above research reads that in one case, the proxy of an injured minor stated that he "wishes to stay neutral in this procedure and leave it to the court to assess whether the actions of the accused contain elements of a criminal offence or not, because he was not able to enter into conversation with injured minors".
- The Second Basic Public Prosecutor's Office in Belgrade decided, after 22 months of investigation, that there were no grounds for criminal prosecution of a father who sexually abused his child[60] in the situation when the social welfare centre filed a crime report to the prosecutor's office after receiving the report of the Institute for Mental Health that clear signs were determined that the child had been subjected to sexual abuse by the father. When the mother of the injured minor complained against the decision of the Basic Prosecutor's Office, the Higher Prosecutor's Office in Belgrade refused the complaint and confirmed the first-instance decision.[61] The AWC helped the mother to file a constitutional claim.[62]
- During the trial, the First Basic Prosecutor's Office in Belgrade decided to drop charges against a violent husband and father of a minor, despite medical documentation on physical injuries of the child.[63] The AWC provided for free-of-charge representation of the female client who, as an injured party, initiated criminal prosecution, but the perpetrator was, after all, acquitted. In his final word, the ex officio proxy of the minor proposed to the court to acquit the accused. The mother filed disciplinary charges with the Belgrade Bar Chamber. The mother complained against the acquitting verdict, but the Higher Court confirmed the acquitting verdict of the first-instance court.[64] In this case as well, in litigation proceedings for the pronouncement of measures for the protection against domestic violence, the same court pronounced against the violent father all requested measures of protection against domestic violence, concerning both the child and the mother.

Unfortunately, the manner of protecting child victims in Serbia remains deficient in numerous ways. There is no efficient monitoring of cases in which children are direct victims of violence, while judges and prosecutors do not implement the Convention on the Rights of the Child, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual

60 Case No Kt. – 9655/2013 of August 2015.

61 Case No Ktpo. – 558/15 of 9 September 2015.

62 Constitutional claim filed on 22 October 2015.

63 Case No K – 4973/13, verdict of 15 May 2015.

64 Decision of the Higher Court of 13 August 2015.

Abuse (Lansarote Convention),[65], and the General and Special Protocols on Protection of Children from Abuse and Neglect. These procedures are not considered urgent. Furthermore, provisions of the valid Law on Juvenile Offenders, regulating the protection of child victims, are not applied.

2.3.2. Procedural safeguards

Under the Action Plan for Chapter 23, the new Law on Free Legal Aid is to be adopted during the third quarter of 2015. This has not happened. In the meantime, the TAIEX expert mission visited Belgrade in the period 6–8 May 2015, during which they had meetings with civil society organisations. However, women civil society organisations, such as the AWC that was very much involved in providing comments and proposals for different draft versions of this Law, were not invited. The opinion on the draft Law by the TAIEX expert was emailed by YUKOM on 4 June 2015, the organisation that presides the National Convent Working group on Chapter 23. The recommendations of the TAIEX expert were the same that the AWC had, namely "to clarify the terms used in the Law, especially in the context of primary/secondary free legal aid in Articles 3, 6 and 7 of the draft Law". There is still no information whether the draft Law was amended in accordance with the expert opinion. It appears, in fact, that the process of adoption of the Law is being postponed on purpose, thus effectively depriving the citizens of Serbia of their right to free legal aid.

Moreover, taking into account that there is no information that some other activities commenced, aiming at effectively transposing minimum standards pertaining to the protection of victims of criminal acts/injured parties and their rights guaranteed by the Directive 2012/29/EU, and the Istanbul Convention, one might surmise that victims' rights are not in a focus of the work of the Ministry of Justice.

Unfortunately, these are not the only indicators leading to such conclusion. For instance, the **European Convention on the Compensation of Victims of Violent Crimes**[66], signed by Serbia on 12 October 2010, is yet to be **ratified**. Its ratification would provide a legal framework for the adoption of the Law on Compensation Fund and for improving the rights of victims of violent criminal offences, including human trafficking victims.[67]

The ASTRA has proposed the adoption of the **Law on the Fund for Compensation of Victims of Criminal Offences with Elements of Violence**, which will regulate the work of the Commission established within the Fund (as a control mechanism), including the complaint procedure. Improving the approach to compensation should be explicitly stated as an activity in the Action Plan because, over more than ten years in which human trafficking is considered a criminal offence in Serbia, only one victim received compensation – in an exceptionally long and tiring judicial proceedings (after criminal proceedings, the victim initiated a years-long lawsuit for damage compensation). The ASTRA has prepared proposals implying smaller changes to laws

65 RS Official Gazette – International Treaties, No 1/2010.

66 European Convention on the Compensation of Victims of Violent Crimes CETS No.: 116

67 The Republic of Serbia made a reservation regarding Article 30, paragraph 2 (relating to the compensation principle) of the Council of Europe Convention on preventing and combating violence against women and domestic violence.

and changes to the practice of courts and prosecutor's offices in the current legal framework, which could significantly improve the situation, with any major costs for the Republic of Serbia. Underway is development of the study on financial feasibility of the state compensation mechanism, which will also be submitted to government authorities. In relation to compensation, it is necessary to ensure the functioning of the legal and institutional framework for the seizure of proceeds of crime, and efficient management of such proceeds.

RECOMMENDATIONS

- Establish security needs of local communities and, based on this, appoint a liaison officer for LGBT persons in other towns in Serbia, and for different vulnerable categories of society: the Roma, refugees, persons with disabilities, women.
- Revise the Action Plan for Implementation of the Strategy on Community Policing so that it contains concrete measures and activities to establish an efficient community policing model, with the aim to develop security prevention, with a special focus on vulnerable categories of society.
- Cooperation between specialised police officers as contact persons for domestic violence and women's organisations should become systematic and regular so as to improve prevention and protection of women and children, victims of partner and domestic violence.
- Include representatives of women's organisations in the analysis of harmonisation of the criminal legislation with the Council of Europe Convention on preventing and combating violence against women and domestic violence, and in future activities of amending and supplementing the law. In this regard, the Ministry of Justice and Office for Cooperation with Civil Society should systematically ensure transparent processes of preparing or amending all laws, as well as participation of interested civil society organisations, including women's organisations.
- The Ministry of Interior should assume responsibility for acting of police officers in the implementation of "emergency barring orders" in case of violence, instead of current proposing of solutions for action of judicial authorities.
- Enhance procedures where minors are the injured party, including full implementation of the valid law, and implementation of the Convention on the Rights of the Child, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and the General and Special Protocols on Protection of Children from Abuse and Neglect.
- Amend the Law on Free Legal Aid, in accordance with expert opinion and complete the process of adoption of this Law so as not to further deprive Serbian citizens of the right to free legal aid.
- Adopt amendments to the law in order to ensure a more efficient compensation mechanism for victims of criminal offences with elements of violence, including human trafficking victims, and ensure sustainable funds for compensation.
- Ratify the European Convention on the Compensation of Victims of Violent Crimes.

3. CHAPTER 24 – Justice, freedom and security

3.1. Migrations and the crisis relating to refugees – asylum seekers

Due to the refugee crisis that hit Serbia in June this year, there has been **no significant progress in migration management and asylum system in Serbia** in the past period.

However, some improvements have been made in the reporting period – the Plan for Responding in Case of an Increased Number of Migrants[68] was adopted, envisaging the adoption of special sectoral plans by line ministries: the Plan of Response of the Border Police Directorate, Plan of Healthcare and Public Health Protection, Plan of Ensuring Accommodation Capacities for Unaccompanied Minors, Plan of Maintaining Public Peace and Order in Facilities and Sites, and Plan of Fire-Protection. Moreover, the implementation of the twinning project began in September 2015, which is an important step towards launching the reform process in the asylum field. The project will be implemented over the next two years. It aims to improve the overall asylum system, including, *inter alia*, amendments and supplements to the Law on Asylum, development of mechanisms for the integration of persons who have been granted international protection, improving the interviewing technique, and the protection of documents issued to asylum seekers.[69]

Since mid-2015, Serbia has been facing a massive influx of migrants and refugees, who enter the country mostly from Macedonia. According to UNHCR data, from June to 28 September 2015, total 127661 persons[70] who expressed the intention to seek asylum were registered. The UNHCR estimates that over 6000 refugees are present in Serbia's territory at any moment.[71] The majority of them are Syrians, Iraqis and Afghans, and to a lesser extent Pakistanis and Somalis. From July to September, between seven and ten thousand minors were registered per month, with 10% of them unaccompanied, on average.[72]

Although the number of persons who expressed the intention to seek asylum is exceptionally high when compared to last year (16490 persons in 2014), the number of registered asylum seekers from the start of 2015 until 31 August (only 596[73]) shows that the majority of them decided to transit Serbia.

68 http://www.minrzs.gov.rs/files/doc/migranti/Plan%20Vlade0001.pdf.

69 http://www.kirs.gov.rs/articles/navigate.php?type1=3&lang=SER&id=2324&date=0.

70 UNHCR Serbia http://www.unhcr.rs/dokumenti/statisktike/azil.html and UNHCR http://data.unhcr.org/mediterranean/regional.php.

71 UNHCR, Serbia, Inter-agency operational update 22-28 September 2015 http://data.unhcr.org/mediterranean/regional.php.

72 UNHCR Serbia: http://www.unhcr.rs/en/resources/statistics/asylum.html.

73 UNHCR Serbia, Belgrade Center for Human Rights http://www.azil.rs/doc/Kvartalni_izve_taj_jun_avgust_5.pdf.

The official response of the state to the increased inflow of migrants and refugees brought about the establishment of some kind of parallel systems: there are five asylum centres in Serbia, with the total capacity of around 810 places, but they are generally empty, apart from the centre near Belgrade – in Krnjača. New facilities for the support to migrants and refugees were set up in zones of entry into the Serbian territory: Miratovac (refugee aid point) and Preševo (one stop centre). These two facilities are located near the border with Macedonia. In exit zones, close to the border with Hungary, formal and informal centres have been set up. The first is in Kanjiža (refugee aid point) and the other in Subotica. After the Hungarian government fully closed the borders and adopted a new law treating illegal entry into the country as a criminal offence, the migration wave shifted to the Croatian border. Therefore, the Commissariat for Refugees and Migrations of the Republic of Serbia opened a new centre in Šid (refugee aid point Principovac) – a town close to the Croatian border.

The established official procedure, as of June 2015, in the situation of the massive inflow of migrants entering into / transiting the Republic of Serbia, includes: registration and issuance of the certificate on the expressed intention to seek asylum in the one stop centre and/or the closest police station, which legalises the stay over the next 72 hours. Migrants enter the Republic of Serbia mostly from Macedonia and are registered in the one stop centre in Preševo (according to UNHCR statistics, from 26 June to 20 September, 74446 persons were registered), as well as at the border with Bulgaria (from August to 20 September – 3563 persons). It is commendable that the official response since the start of the refugee crisis was highly human and that priority is given to urgent accommodation, i.e. basic medical care is provided and basic needs of migrants and refugees are satisfied.

RECOMMENDATIONS

- Continue to provide and ensure humanitarian support; in particular adapt/provide facilities for urgent accommodation of all migrants and refugees.
- In cooperation with governments in the region of the Western Balkans and the EU and relevant international actors, the Serbian Government should define medium-term solutions to the current refugee crisis – it should define the status, volume and content of rights of these persons (who is a refugee/beneficiary of temporary protection and who is a migrant). This should be a single regional approach.
- The Republic of Serbia should define its position towards the enormous number of people who expressed the intention to seek asylum in Serbia in the regular asylum procedure (a gap between the expressed intention and interview/first-instance decision).
- In cooperation with the EU and regional governments, Serbia should assume responsibility for a certain number of refugees – quotas (in accordance with economic and social conditions). In this context, Serbia must develop the policy of integration in cooperation with civil society organisations and international actors.
- Establish necessary infrastructure close to the border in order to differentiate persons in movement and integrate them into appropriate procedures (asylum, readmission, human trafficking victims, procedure for vulnerable groups).

- The Government of the Republic of Serbia should create a comprehensive asylum policy to ensure an efficient and just asylum procedure. Changes in the policy should contain (at least): amendments and supplements to the Asylum Law which may improve the system of determining what countries may considered safe third countries, procedural protection measures, conditions of receipt and protection; improving training for all participants in the asylum procedure, particularly the Asylum Office; specific legal solutions for the integration of refugees and persons enjoying a different form of protection, and the development of the mechanism for functional integration; and cultural and social programmes that enable communication between asylum seekers and the local population.
- Further develop and apply procedures for irregular migration, based on human rights standards, in all phases – from identification to forced or voluntary return.

3.2. Fight against human trafficking

In the EU accession process, human trafficking is covered primarily by Chapter 24 – the segment relating to organised crime. We believe that the human trafficking issue, particularly the protection of rights of victims that survived a form of exploitation, should be covered also under Chapter 23, in the part about fundamental human rights, and that it should be treated as the most blatant violation of fundamental human rights.

3.2.1. Improving mechanisms for faster and more efficient search for missing children

The National Assembly's decision to adopt the amendment to Article 72 of the Law on Police (which entered into force in mid-2015; amendments were adopted on 16 July 2015) is positive. However, we should hope that these changes will be applied in practice so as to ensure that search for missing children is carried out in a more efficient and faster way. It is undisputable that the decision to amend the Law was made also under a great pressure of the public and media on the government, and of the initiator of the amendment – Igor Jurić, father of the tragically deceased Tijana Jurić, who continuously appealed with government actors to adopt amendments.

Upon the initiative of the NGO ASTRA and with the aim to establish the mechanism to regulate the system of alerting the public in cases of missing children (working name "Tijana Alert"), only one meeting was held with representatives of the Ministry of Interior, Ministry of Justice and Ministry of Labour, Employment, Veteran and Social Issues, when proposals were put forward to introduce the system that would improve the mechanisms of finding missing children,[74] as it

74 "Tijana Alert" implies that broader information and the poster with the child's picture should be published via all communication channels in specific cases of a missing child (media programmes are stopped, the poster is published in all print media, online portals, social networks, ATMs, billboards). The aim of this system is to inform the greatest possible number of citizens who will be able to report information regarding a missing child, which should ensure faster and safer finding of the child.

has already been done in twelve EU countries. After this meeting, held on 1 April 2015, talks and cooperation stopped in this field, although ASTRA was frequently addressing representatives of the Ministry of Interior. To ensure smooth functioning of the system, it is necessary to establish a simple and efficient mechanism of coordination and division of duties among entities to be involved. Based on European experience, ASTRA submitted to the Ministry of Interior case studies and examples of countries where this system is functional.[75] No feedback has yet been received about the future steps. Relying on the model of European countries where Alert functions in the best way, greater engagement of the prosecutor's office is expected in this regard.

3.2.2. Missing babies

Until 9 September 2014, Serbia was obliged to find solutions for examining cases of parents who suspect that their children went missing from maternity wards from the Second World War to date. As it failed to do so within the envisaged deadline, the state got one more year to solve this problem. The Ministry of Health and Ministry of Justice prepared the draft Law on the Procedure to Determine Facts About the Position of New-Born Children Suspected of Have Gone Missing in Maternity Wards in the Republic of Serbia. However, it seems that the Law which is being prepared does not protect the rights of all parents. It was presented that the Working Group prepared the working version of the Law. Unfortunately, the Working Group did not participate at all in writing of the working version of the Law. In addition, the Law does not prescribe special rules of the procedure for determination of all circumstances important for finding the truth about missing babies, and it is not clear what powers would be granted to the special unit of the Ministry of Interior that should deal with this issue and examine the reported cases. In addition, prescribing the date by which parents could address institutions, which has expired, inflicts damage to a large number of citizens who did not know who to address after the hospital staff refused to cooperate. These are only some of the obstacles that parents will face in exercising their rights. ASTRA submitted detailed comments on the working version of the draft Law to the Ministry of Justice. ASTRA received no answers to comments nor were they taken into account in the last version of the Law. In cooperation with YUCOM, ASTRA published an open letter to Prime Minister Aleksandar Vučić. The answer was given by the Minister of Health, without concrete explanations.

3.2.3. Adoption of the Strategy for Suppression and Fight against Human Trafficking

The adoption of the new Strategy, i.e. the new National Action Plan (NPA), whose text was finalised three years ago, is yet to take place (the NPA states that the Strategy would be adopted in March 2015, while the amended Action Plan for Chapter 24 postponed the deadline for

75 The system currently functions in twelve European countries: Belgium, the Czech Republic, France, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, Romania, Spain and Great Britain.

December 2015), although the previous NPA expired far back in 2011. All this means that the human trafficking field in the Republic of Serbia has been strategically and to a large extent institutionally uncovered for four years already (e.g. the last meeting of the Republic team for suppression of human trafficking took place in October 2013). There is an evident methodological discrepancy in the Action Plan for Chapter 24, where it is stated that the Plan is harmonised with the strategic document which still does not exist. This deficiency should be taken into account because – since the Strategy has not been adopted for four years already, it is not excluded that the proposed text of the Strategy should be changed so that it reflects new trends in the human trafficking field.

3.2.4. Establishment of the office of the national rapporteur for human trafficking

The decision to establish the office of the national rapporteur for human trafficking in the Republic of Serbia is positive. However, it has not been defined how and where this body will be established as the essential purpose of establishing such institution is to monitor and evaluate the work of all actors in the fight against human trafficking, and to implement researches, analytics and propose various measures to improve the work of all actors involved in the national referral mechanism. Furthermore, if there is both the office of a national rapporteur and of the national coordinator, the office of the national rapporteur should not be placed within a ministry, but should be an independent body.

3.2.5. Harmonisation of the legal framework with proposed activities

It has already been mentioned that Action Plans for Chapters 23 and 24 should be better harmonised in the human trafficking field. This relates primarily to the protection of victims in judicial proceedings and the compensation for victims of violent acts, as one of the fundamental rights of victims, which has already been elaborated.

Since the adoption of the Law on the Programme of Protection of Participants in Criminal Proceedings (2005), not a single victim of human trafficking who had the status of an injured party/witness, has been involved in the witness protection system, although a large number of them testified in proceedings against representatives of organised crime and were directly exposed to threats, intimidation etc. In the part of the Action Plan for Chapter 24 which deals with witness protection, a focus is placed on witness protection units and adequate equipping of courts for the purpose of better protection of witnesses, but an entire circle of witnesses/victims who may not need the status of protected witnesses, but need protection, has been left out.

Victims receive most threats directly before and during judicial proceedings, so as to make sure that they give up on giving statements or at least change them to the benefit of the perpetrator. The analysis of court judgments for the criminal offence of human trafficking under Article 388 of the Criminal Code shows that still insufficient attention is devoted to the safety, security and protection of victims in judicial proceedings. This aspect of proceedings is exceptionally important not only for the sake of protecting victims' rights and avoiding secondary victimisation, but also for the sake of obtaining a statement that is of high quality in terms of content and essence – in the interest of proper conduct of proceedings and determining criminal responsibility. In practice, even when the accused is detained (60% according to judgments brought in 2014), the victim/injured party is not safe from threats as he/she receives them through relatives and friends. The threats most often involve jeopardy to one's own and family's lives. Unless all available measures are taken to secure a victim, there is an increasing probability that the victim will, under pressures, threats or fear, change his/her statement or give a false statement without blaming the accused, or will use the right not to testify when such legal possibility is in place. By the analysis of judgments brought in 2014, it is not possible to determine that provisions of the Criminal Procedure Code stipulating the court's obligation to protect the injured party from an offence, threat and any other attack, have been applied in any case. These provisions, along with those on particularly sensitive witnesses, may ensure a higher degree of safety and protection of human trafficking victims. Along these lines, there are also other measures (apart from detention) which may contribute to the protection of victims, such as measures to ensure the presence of the accused and smooth conduct of criminal proceedings under Article 188 of the Criminal Procedure Code – prohibition of approaching, meeting or communicating with a certain person and visiting certain places.

Furthermore, **changes to Article 388 of the Criminal Code**, in terms of explicit introduction of the prohibition of detention, prosecution and punishment of human trafficking victims who committed a criminal offence under coercion during exploitation should be aligned with Chapter 24. Attention should be paid to introduction of the **non-punishment clause for human trafficking victims**, in accordance with the Council of Europe Convention on Action against Trafficking in Human Beings. As it ratified this Convention, the Republic of Serbia must, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties to human trafficking victims for their involvement in unlawful activities, to the extent that they have been compelled to do so (Article 26 of the Convention). In practice, there are still cases when human trafficking victims get punished.

In practice, there are still cases when the non-punishment principle for human trafficking victims is not applied, for offences that are a direct consequence of exploitation. In September 2015, ASTRA initiated the petition requesting amnesty for a human trafficking victim sentenced to 18 years of imprisonment. In 2012, client M.S. was granted the status of a human trafficking victim and ASTRA has been involved since then in providing assistance and support to M.S. to overcome consequences of the traumatic experience of human trafficking which began in 1995 and lasted for over ten years. Although the criminal offence of human traf-

ficking was introduced into Serbian legislation only in 2003, the state failed to examine the circumstances of human trafficking underscored by M.S., and thus failed to provide necessary protection to the human trafficking victim. At the same time, M.S. never gained the status of a victim of this criminal offence before the court. The murder that she was sentenced for took place during her exploitation, while the entire context of the investigation and later trial did not provide her with full protection that she is entitled to as a human trafficking victim. With the client's consent, in cooperation with the Centre for Human Trafficking Victims Protection, ASTRA launched a petition requesting her amnesty. The petition may be accessed at: http://www.peticije24.com/peticija_za_pomilovanje_rtve_trgovine_ljudima. The petition was signed by citizens and representatives of organisations and government institutions from the country and abroad. They wish to support M.S. in efforts to remedy injustice, but also to improve the treatment of all human trafficking victims who appear in judicial and other proceedings.

In terms of the Action Plan for Chapter 24, it is positive that the state has recognised the role of NGOs so far, but not so much cooperation with civil society organisations in future. After ASTRA submitted its comments on the first version of the Action Plan for Chapter 24, recommendations were taken into account in the introductory part on human trafficking and the role of civil society organisations in the process of identifying human trafficking victims was emphasised. The identification system is being built for almost fifteen years, with active participation and initiative of not only NGOs but also international organisations, i.e. the OSCE Mission which initiated in Belgrade, more than ten years ago, the establishment of the first service for coordination of protection of human trafficking victims in Serbia. Furthermore, based on the Rulebook on Minimum Standards of the Protection of Human Trafficking Victims, the Centre for the Protection of Human Trafficking Victims (established in 2012) conducts the final identification of victims as it represents the central point of the national referral mechanism, while this is not done by the police (unfortunately, this Rulebook has not been adopted even after almost three years). The police, as other possible actors, participate in preliminary identification. Of course, due to the nature of work, preliminary identification is conducted most often by the police. Still, for the sake of accuracy in specifying procedures and describing the mechanism, some parts of the Rulebook should be rephrased.

RECOMMENDATIONS

- Adopt the Strategy to Combat Human Trafficking and the National Action Plan.
- Amend the Criminal Code of Serbia and introduce the *non-detention, non-prosecution and non-punishment clause.*
- Develop and introduce standards and procedures for the protection of human trafficking victims, from identification to reintegration at all levels of national mechanisms, and introduce the protocol of cooperation with NGOs.
- Establish the office of the national rapporteur for human trafficking as an independent body.
- Take necessary steps to intensify efforts on introduction of the alert system in cases of missing children – "Tijana Alert".

- Revise the draft Law on the Procedure to Determine Facts About the Position of New-Born Children Suspected of Have Gone Missing in Maternity Wards in the Republic of Serbia.
- Adopt amendments to the Criminal Code in terms of the non-punishment of human trafficking victims.

3.3. Police cooperation and fight against organised crime

3.3.1. Police cooperation

The Action Plan for Chapter 24 underlines the need to assess further reforms and streamline the structure of the Ministry of Interior, in order to improve its efficiency. However, the Action Plan for Chapter 24 does not list activities in the tabular part for implementation of this EC's recommendation from the Screening Report for Serbia, but in the introductory, methodological part. This represents a deficiency as indicators are not known based on which to measure the success of reform measures in regard to the streamlining of police structures. Besides, the Ministry of Interior considers a priority the streamlining of the Ministry in the organisational-functional terms, i.e. the abolishment of superfluous managing positions, strengthening of operational capacities and maximum rationalisation of the use of resources.[76]

Amendments and supplements to the Law on Police[77] have created the legal basis for establishment of the Human Resources Sector and the Sector for Strategic Planning, International Cooperation and European Integration. These organisational changes at the Ministry may encourage further rationalisation of police work, and the fulfilment of other EC's recommendations. The latest amendments to the Law on Police reflect the fact that the Ministry has recognised the main problem of police reform – human resources management. As a result, over the last three years projects have been implemented which may positively affect the quality of meeting the EC's recommendation regarding police reform.[78] The analysis of human resources management in the police was carried out, based on which a strategic plan was prepared.

The core of the plan implied the establishment of a special organisational whole at the Ministry – the Human Resources Sector. It is envisaged that the Sector should not be only an administrative body such as the existing Human Resources Administration, but that it should truly lead the process of recruitment, employment, career advancement and dismissals. The draft Law on Police (Article 128), to be adopted during autumn, stipulates fourteen activities of the Sector. They also include those "problematic" jobs due to which the current human resources management is poor: development of job descriptions, implementation of internal and public competitions, career advancement, and health and psychological prevention.

76 See: http://goo.gl/8W1JNx.

77 It is noteworthy that the subject of public debates in March and April 2015 was not the new Law on Police, but amendments and supplements to the valid Law of 2005.

78 Projects "Presenting the Modern Concept of Human Resources Management at the Ministry of Interior" and "Modern Concept of Human Resources Management at the Ministry of Interior".

In the current circumstances it is not possible to assess the work of the Human Resources Sector and its impact on functioning of the General Police Directorate, but the idea to set up a special organisational unit in charge of personnel issues is good. Practice will show whether the latest changes at the Ministry are only of "cosmetic" nature or whether they would change police work in qualitative terms. Finally, the Sector for Strategic Planning, International Cooperation and European Integration should enable in practice better coordination of work of the Ministry in the European integration process.

3.3.2. Fight against organised crime

Within the Action Plan for Chapter 24, the state envisaged the development of the "strategic picture" of organised crime, and manners of response, in accordance with the Europol methodology. In this regard, the Republic of Serbia established the Working Group for preparation of the first national Serious and Organised Crime Threat Assessment (SOCTA). It includes representatives of the Crime Police Directorate, Sector for Analytics, Telecommunications and Information Technologies, and Analytics Directorate within the Sector, as well as the Border Police Directorate. The Europol methodology[79] is used and the envisaged deadline for completion of the SOCTA report is December 2015. So far, the SOCTA Working Group has adopted the methodological framework, defined the crime areas to be covered by the report, held consultative meetings and contacted representatives of government institutions, academic community and civil society organisations.[80] The first SOCTA report draft should be finalised in the course of October 2015, whereafter the process of consultations would ensue.[81] The SOCTA report for Serbia is developed within the project led by the OSCE and financially supported by the Swiss Government.

The aim of preparation and implementation of the SOCTA report is to enhance effectiveness and efficiency of fight against organised crime. Effect indicators in this field mainly include better results of police work in the fight against organised crime (effectiveness) and more prudent use of human and technical resources available to the Ministry of Interior (efficiency). In this phase, it is not possible to assess to what extent this effect will be achieved as not even the first draft of this document is available. Moreover, there is little to no data on the situation in the field for some crime areas covered by the report, which is why it would be difficult to assess the effect, i.e. the change after the start of implementation of SOCTA. The SOCTA report should be different from white books of organised crime as it is prepared based on systematically collected and analysed data and evidence, relevant sources, and in accordance with a clearly defined methodology. Depending on the quality of the final report, this could significantly enhance the efficiency of police work. Furthermore, the usability of SOCTA large-

79 Methodology available at: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/p24_soctamethodology_/p24_soctamethodology_en.pdf (last accessed on 2 October 2015).

80 Representatives of civil society organisations participated in the joint workshop with members of the Ministry of Interior on 3 July 2015, when they could give their comments on the methodology, process of document preparation, and agree on future dynamics. More about the workshop at: http://www.bezbednost.org/Vesti-iz-BCBP/5856/Odrzana-prva-radionica-o-izradi-SOCTA-izvestaja.shtml (last accessed on 2 October 2015).

81 Representative of the Ministry of Interior, member of the SOCTA Working Group, 3 July 2015.

ly depends on the success of introduction of the intelligence-led policing model. In future, SOCTA will be prepared and applied within that model, whose implementation is underway through two pilot projects that the Ministry of Interior is currently implementing in Kraljevo and Novi Sad. Therefore, the impact of the SOCTA report on operational work of the police and, consequently, on the success of struggle against organised crime, is inextricably linked to the establishment of the intelligence-led policing. The entire system and interlinkages have not still been fully defined in this phase, but it is clear that crime-intelligence work will be one of the elements in the cycle of planning the SOCTA report and its application.

Furthermore, the Action Plan for Chapter 24 envisages the analysis of the role and practice of security services and the police in applying special investigative measures in criminal acts. The deadline for development of the analysis is December 2015 and the lead institution is the Office of the National Security Council. Information on progress in preparing the analysis is not publicly available and it is not known whether the deadline will be met. So far, several government authorities, civil society organisations and experts pleaded that security services should not participate in investigations aimed at processing before courts of persons and groups suspected of having prepared or committed criminal offences of (organised) crime, but that this should be exclusive responsibility of the crime police. In addition, to diminish police dependence on security services in implementation of special measures, it was proposed that technical and human capacities of individual government authorities for application of these measures be excluded and granted to a special agency that would be the "service" to all government authorities that lawfully apply measures.

Special investigative measures are used in criminal investigations and for security-intelligence purposes. They may be applied by the Security Information Agency (BIA), MSA and the police. Investigative measures recognised by law as particularly invasive and including interception of communications and access to retained data, require prior court approval. Unless when used for criminal investigations, special investigative measures are not subject to judicial review during and after implementation. The use of special investigative measures by security services (BIA, MSA) is subject to parliamentary oversight, which, however, does not apply in cases when implemented by the police. There is a provision in the new draft Law on Police stipulating such type of oversight, but it is yet to be seen how this Law will be implemented. Finally, the Ombudsman and Commissioner for Information of Public Importance and Personal Data Protection are authorised to control the application of special investigative measures. The Ombudsman has performed several supervisory visits to security services and has given several recommendations regarding the implementation of special investigative measures. The Commissioner controlled the work of telecommunications operators. Moreover, since 2015 the Commissioner has been receiving annual reports from the BIA, MSA, the police and telecommunications companies on the number of requests for access to retained data. On the other hand, it is bad that training for judges has not been organised, with a focus on granting approvals for the use of special investigative techniques. In practice, this may lead to violation of fundamental human rights, such as the right to privacy and personal data protection.

The Law on Electronic Communications, Law on Military Information Agency, Law on Military Security Agency and Law on Military Intelligence Agency oblige telecommunications operators

to provide competent authorities with unlimited access to their equipment. This means that the SIA, MSA and the police may initiate on their own the procedure of interception without the operator's knowledge. However, there is no possibility to objectively verify whether particular interception of communication was allowed by the court. Moreover, authorities may access retained data even without formal submission of request to operators, which is the most frequent case in practice. In this regard, annual reports on the number of requests to access retained data which are sent to the Commissioner do not ensure efficient oversight.

In addition to other tasks that is has set by the Action Plan for Chapter 24, the state also plans to establish special-purpose teams of experts to improve cooperation with the EU and the neighbouring countries, in order to ensure better flow of information relating to arms trafficking. As already mentioned, the Republic of Serbia has formed the Working Group for development of the first national SOCTA, which also includes arms trafficking as one of the areas within serious crime.

Arms trafficking is one of the main manifestations of organised crime, as defined by the UN Convention against Transnational Organized Crime. During the wars of the 1990s, a large quantity of weapons ended up in the black market and in illegal possession of citizens. This problem is even more pronounced at the border with Schengen countries as such weapons are used in criminal activities and may reach terrorist organisations. The aim of the proposed measure is to regulate cooperation with EU and Western Balkan countries in order to more efficiently counter arms trafficking. To this end, there are plans to establish the national expert team that would exchange intelligence and information with partners in the region and the EU.

So far, judging by data from the Action Plan for Chapter 24, the national expert team has been established, consisting of 60 persons recruited from police districts. In addition, a specialised investigative unit has been formed, consisting of five persons – one head and four investigators. The establishment of these teams is a necessary precondition for further application of this measure. For the time being, it is not known whether any other activity has been implemented as the deadlines are still running. In addition, some activities under the Action Plan for Chapter 24 have measurable performance indicators, while others do not have. It is thus specified in one of the proposed measures (measure 6.2.10.1.2) that the number of trained police officers will be 30 by December 2015 and additional 30 by February 2016. On the other hand, it is envisaged that for instance EUR 250 000 be allocated for the implementation of some measures (measure 6.2.10.1.6) – the indicator refers to "trained police officers", but their number is not clearly defined. Finally, the signing of the agreement with the Europol – *Firearms focal point*, envisaged for June 2016, should contribute to the improvement of international cooperation (and later data exchange).

RECOMMENDATIONS

- Ensure commitment and transparency of further police reform in human resources management and European integration through further public defining of policies, procedures and by-laws for their implementation in practice.
- Determine the current situation in the field before developing the SOCTA (baseline situation) so as to ensure the recording and monitoring of possible progress. For instance, there are no precise data on the extent of high technology crime in Serbia, what are the most vulnerable groups or what are the consequences.
- Consider the need to develop the Internet Organised Crime Threat Assessment (IOCTA)[82] under the Europol methodology. The situation is particularly sensitive in this field because the notions and acts have not been properly defined in legal terms. For instance, it is hard to differentiate technology from high technology crime or communication crime as the valid legislation does not precisely define these concepts.
- For the purpose of efficient use of the SOCTA report in operational police work from the moment of its adoption in late 2015, and given that its implementation depends on introduction of intelligence-led policing, the Ministry of Interior must, as soon as possible, shift from the phase of two pilot projects to the introduction of the intelligence-led policing concept in operation of the entire police.
- Redefine competences and authorities of security services so that they do not participate in criminal investigations aimed at processing crimes before courts.
- Set up a special agency to include human and technical capacities of all government authorities for lawful application of special measures.
- Regulate by law, in a comprehensive way, the implementation of special investigative measures.
- Organise adequate training for judges in the field of granting approval for application of special investigative actions.
- More precisely define “other competent institutions” in relation to improving police cooperation with the EU and the neighbouring countries, and explicitly involve prosecutor’s offices and the border police in training.
- Cover by training of the national expert team also information on the Law on Foreign Trade in Weapons, where there is the possibility of ostensibly legal exports of weapons by falsifying certificates on “countries final beneficiaries”.
- Train the expert team, relevant prosecutors, and border police staff about weapons and ammunition suitable for conversion (gas guns, ammunition for training police dogs).

82 See the example of Europol IOCTA at: https://www.europol.europa.eu/content/internet-organised-crime-threat-assesment-iocta (last accessed on 2 October 2015).

3.4. Fight against terrorism

In the field of fight against terrorism, among other things, the state has planned to develop the National Counter-Terrorism Strategy and the accompanying Action Plan, which would rely on four elements: prevention, protection, prosecution and response. The deadline for preparation of these documents is June 2016. So far, only initial steps have been made. On 23 July 2015, the Government made the Decision on Creation of the Working Group for Preparation of the Proposal of the National Counter-Terrorism Strategy and the Action Plan for its implementation. The Working Group held its first meeting on 5 September 2015, with the presence and support of the OSCE Mission to Serbia.

The vast majority of members of the Working Group are representatives of government authorities dealing primarily with repression, i.e. prosecution of those responsible for preparation and execution of criminal offences related to terrorism, and the protection of possible targets of terrorist attacks. What is missing are government and non-government authorities and bodies responsible for terrorism prevention, including the response, i.e. diminishing of consequences of possible terrorist attacks. The Working Group thus does not include a representative of civil society organisations that deal with extremism and terrorism issues, although such organisations in the EU represent significant partners for government authorities in the prevention of terrorism. It would be desirable to have members of local authorities and local security councils from those towns from which citizens have already been going to battlefields and joining terrorist organisations. Institutions in charge of social welfare, education, culture and information also play an important role in terrorism prevention, but their representatives are not included in the Working Group either.

It is unclear why the Working Group has such a large number of representatives of the Ministry of Interior and the Academy of Criminalistic and Police Studies, and why its members are commanders of two special police units: the Gendarmerie and Special Anti-Terrorist Unit. It is also unclear why the Working Group has representatives of only one higher-educational institution – the Academy of Criminalistic and Police Studies, while there are no other higher-educational institutions. It may be thus concluded that the focus of the Strategy will be placed on repression and that preventive mechanisms will be poorly developed.

It would be desirable that the Government, i.e. the Ministry of Interior as the government authority in charge of Chapter 24 consulted civil society organisations that monitor policies under Chapter 24, before adopting the above decision.

RECOMMENDATIONS

- Re-examine the composition of the Working Group and involve in it the representatives of government and non-government authorities and institutions that are important in terrorism prevention.
- Regularly inform and consult civil society organisations in relation to future activities.

NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS

This publication was produced in the framework of the institutional support to the prEUgovor coalition by the Government of the Kingdom of Norway. The printing of this publication was supported by the OSCE Mission to Serbia. The views and analysis contained in this publication are those of the authors and do not necessarily represent the views of the Norwegian government, OSCE Mission to Serbia or any of their affiliated organizations.