

# **Screening report**

## **Serbia**

### **Chapter 23 – Judiciary and fundamental rights**

**Date of screening meetings:**

Explanatory meeting: 25 - 26 September 2013

Bilateral meeting: 9 – 10 December 2013

## I. CHAPTER CONTENT

According to Article 2 of the Treaty on European Union, the Union is founded on the principles of human dignity, freedom, democracy, equality, the rule of law and the respect for human rights. These principles are common to the Member States and need to be complied with by candidate countries. Article 3 (2) of the Treaty on European Union and Article 67 (1) of the Treaty on the Functioning of the European Union establish an area of freedom, security and justice.

EU policies in the area of the judiciary and fundamental rights aim to maintain and further develop the Union as an area of freedom, security and justice. The rule of law principle and the right to a fair trial, as enshrined in Article 6 of the European Convention on Human Rights (ECHR) and Article 47 of the Charter of Fundamental Rights of the European Union, provide that the judiciary must be independent and impartial. This requires a firm commitment to eliminating external influences over the judiciary and to devoting adequate financial resources and training. Legal guarantees for fair trial procedures must be in place. Likewise, Member States must fight corruption effectively as it represents a threat to the stability of democratic institutions and the rule of law.

Article 83 (1) of the Treaty on the Functioning of the European Union establishes the competence of the Union to draw up minimum rules concerning the definition of criminal offences and sanctions in the area of corruption. The 1995 Convention on the Protection of the European Communities Financial Interests and the 1997 Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union imply that "effective, proportionate and dissuasive" criminal law penalties are required to fight corruption. A solid legal framework and reliable institutions are required to underpin a coherent policy of prevention and deterrence of corruption.

According to Article 6 of the Treaty on European Union and the case-law of the Court of Justice of the European Union, the Union respects fundamental rights, as guaranteed by the Charter of Fundamental Rights of the European Union and as they result from the constitutional traditions common to the Member States, as general principles of EU law. Thus, they are binding on the Union institutions in the exercise of their powers and on the Member States when they implement EU law (Article 51 of the Charter of Fundamental Rights of the European Union). The protection of fundamental rights covers traditional civil rights, such as the right to life, the prohibition of torture and degrading treatment, the right to security and liberty imposing strict limits on pre-trial detention, the freedom of religion, the freedom of speech and the freedom of association and assembly. The European Union also protects the fundamental right to private life and guarantees the protection of personal data, in particular through the Directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of Such Data, the Framework Decision 2008/977 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters and the Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications). The *acquis* also contains guarantees to secure equality. There is a general prohibition of discrimination on a variety of grounds; equality between men and women must be ensured; cultural, religious and linguistic diversity is to be respected. Furthermore, the rights of the child need special protection; the contents of these rights may be drawn from the UN Convention on the Rights of the Child ratified by all Member States. According to Article 21 of the Charter of Fundamental Rights of the EU, members of national minorities shall not be discriminated against. Finally, the *acquis* in the field of fundamental rights contains a number of important judicial guarantees.

The EU citizens' rights include the right to vote and stand as a candidate in elections to the European Parliament and in municipal elections; the right to move and reside freely within the European Union; and diplomatic and consular protection.

## **II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY**

This part summarises the information provided by Serbia and the discussion at the screening meeting. Serbia indicated that it accepts the *acquis* regarding judiciary and fundamental rights. Serbia pointed out that certain parts of the *acquis* in this area have already been transposed. At the same time, Serbia acknowledged that further efforts are needed, in particular in building up a solid track record.

### **II.a JUDICIARY**

Serbia adopted in July 2013 a National Judicial Reform Strategy for the period 2013 – 2018 as well as an action plan in August 2013 for the implementation of the strategy. The strategy takes stock of problems encountered in the implementation of the previous strategy adopted in 2006 and is built around the key principles of independence, impartiality and quality of justice, competence, accountability and efficiency of the judiciary. The related action plan details concrete measures to meet the strategy's objectives. A 'strategy implementation commission', composed of representatives of major stakeholders, is responsible for monitoring and measuring progress in the implementation of the strategy and action plan. The World Bank is assisting Serbia in carrying out a Judicial Functional Review, to conduct an analysis of the justice systems' performance in terms of access to justice in Serbia.

In the judiciary are currently employed 3095 judges (241 vacancies) supported by some 11511 administrative and expert assistants, 90 public prosecutors and 650 deputy public prosecutors (91 vacancies).

The Serbian judiciary is organised as a three-instance court system. Following the most recent reform of the Court networks enforced since January 2014, it consists of 66 Basic Courts (and 29 court units), 25 High Courts, 4 Appellate Courts and the Supreme Court of Cassation. Courts of special jurisdiction are the 16 Commercial Courts, and the Commercial Court of Appeal, as well as 45 Misdemeanour Courts and the Misdemeanour Court of Appeals, together with the Administrative Court.

The Basic Courts act as first instance bodies regarding criminal cases where the prescribed punishment is less than 10 years or in labour and civil cases where the value is less than EUR 100.000. They also deal with enforcement proceedings. High Courts act as the first instance in criminal cases where the punishment is 10 years and more and in civil cases with a value above EUR 100.000. High Courts act as a second instance regarding some interim rulings of Basic courts. The Commercial Courts act as courts of first instance on commercial matters. The four Appellate Courts, within their respective geographic territory act as second instance courts for decisions of Basic and higher courts. They also resolve conflicts of jurisdiction between Basic Courts, High Courts and Commercial Courts. The Misdemeanour Court of Appeal and the Commercial Court of Appeal decide on appeals against decisions by respectively Misdemeanour and Commercial Courts. The Administrative Court has jurisdiction to decide on administrative disputes. It also decides in administrative procedures about legality of final administrative and individual acts on rights, obligations or statutory interest, subject to any other court protection stipulated by law.

The Supreme Court of Cassation is the highest court in Serbia. It decides on extraordinary legal remedies instituted against final decisions of Appellate courts and on other issues prescribed by the

law. Equally, it decides on conflicts of jurisdiction between the courts and the transfer of jurisdiction of courts.

The Constitutional Court decides on the conformity of laws with the Constitution and with ratified international agreements. It has jurisdiction over various types of conflicts of jurisdictions between state bodies. It decides Constitutional Appeals for alleged violations of human rights and freedoms. It is competent for electoral disputes in case the court jurisdiction was not established. It also acts as the appeal body against certain decisions of the High Judicial Council and the State Prosecutorial Council.

The Public Prosecution Service broadly follows the structure of the court system. The structure consists of basic, higher and appellate prosecution offices as well as the Republic Public Prosecutor's Office. The specialised prosecution offices are the War Crime Prosecution and Organised Crime and corruption Prosecution.

## **Independence**

Article 4 of the Constitution provides for the separation of powers in Serbia and the independence of the judiciary. Article 149 of the Constitution, as well as Articles 1 to 4 of the Law on Judges, enshrine the principle of independence of judges. Judges cannot be removed from office except by a judicial decision, when they reach the age of retirement or at their own request (Article 146). Judges cannot be transferred against their will, except in the event of a reorganisation of courts (Article 150). They also enjoy functional immunity (Article 151). Article 147 of the Constitution stipulates that first time judges are elected by the National Assembly upon proposal of the High Judicial Council for a period of three years. The High Judicial Council can subsequently appoint them to a permanent function. Judges are relieved of duty by the High Judicial Council (Article 154). Court presidents and the President of the Supreme Court of Cassation are elected (for a non-renewable period of 5 years) and relieved of duty by the National Assembly upon proposal of the High Judicial Council (Articles 144 and 154).

The Constitutional Court counts 15 judges serving a mandate of nine years. Article 172 of the Constitution stipulates that five members are appointed by the National Assembly, another five by the President of the Republic and another five at the general session of the Supreme Court of Cassation. Constitutional Court Judges elect among themselves the president in a secret ballot. He/she serves a mandate of three years.

According to Article 156 of the Constitution, the Prosecution is an independent state body. First time deputy public prosecutors are proposed by the State Prosecutorial Council and elected by the National Assembly. They can be elected by the National Assembly upon advice of the government following a proposal by the State Prosecutorial Council, for a six-year term of office and may be re-elected (Article 159). Article 158 of the Constitution provides for the election of the Republic Public Prosecutor of the Republic of Serbia by the National Assembly for the term of six years, upon advice of the Government following the proposal of the competent committee of the National Assembly. The Republic Public Prosecutor of the Republic of Serbia can be re-elected. According to Article 162 of the Constitution, all prosecutors enjoy functional immunity.

Under the current legal framework the High Judicial Council has eleven members. The President of the Supreme Court of Cassation, the Minister of justice and the President of the Parliamentary Committee for Judicial Affairs are members *ex officio*. The eight other members are elected by the National Assembly for a period of 5 years. Six of them are proposed after a secret ballot among judges and two are prominent lawyers – one representative of the bar and one professor of law proposed by their respective chambers and elected by the National Assembly. The Secretariat of the

High Judicial Council is composed of 34 staff (18 vacancies) and the budget of the Judicial Council for 2014 is EUR 977.359.

The State Prosecutorial Council has also eleven members. The Republic Public Prosecutor, the Minister of Justice, and the President of the Parliamentary Committee for Judicial Affairs are members *ex officio*. The other members are elected by the National Assembly (upon proposal of the State Prosecutorial Council) for a period of five years and consist of six public prosecutors or deputy public prosecutors and two prominent lawyers. In terms of administrative capacity, the Prosecutorial Council has 16 secretarial staff members (4 vacancies). The budget of the Prosecutorial Council for 2014 is EUR 575.583.

According to Article 46 of both the Laws on the High Judicial Council and the State Prosecutorial Council, the final decision on the dismissal of an elected member of the Councils is also taken by the National Assembly. Responsibility for proposing and allocating the budget for the courts and prosecution services are shared between the High Judicial Council and the State Prosecutorial Council, on the one hand, and the Ministry of Justice, on the other. Members of the Prosecutorial Council continue to work as public or deputy public prosecutors, except if they are relieved of their duties by a decision of the State Prosecutorial Council.

As regards guarantees for the internal independence of judges, Article 71 of the Law on the Organisation of Courts prohibits interfering with the autonomy and independence of courts and judges. However, the President of a higher court is entitled to supervise the court administration of a lower instance court, and to issue instructions or request information from the lower court regarding the application of regulations, the course of proceedings as well as all operation-related data. He or she may also order direct inspection of the work of the lower court if related to the length of proceedings. In case of complaints by parties in proceedings, the court president has also to notify the complainant and the president of a directly higher instance court on admissibility and follow up provided.

The Law on seats and territorial jurisdictions of Courts and Prosecutors Offices foresees the adoption by 31 December 2013 of a special legislation with regards to Serbian judicial institutions in and for Kosovo<sup>(\*)</sup>. To date, this legislation has not yet been enacted.

### **Impartiality and accountability**

Article 32 of the Constitution stipulates that everybody has the right to a public hearing before an independent and impartial tribunal. According to their Code of Ethics (adopted in 2010), judges are obliged to conduct proceedings impartially. The requirement of impartiality for prosecutors is defined in Article 46 of the Law on the Public Prosecutor's Office, according to which the public prosecutor's function must be performed in the public interest, to ensure application of the Constitution and law, and respect for together with protection of human rights and fundamental freedoms. A Code of Ethics was adopted in 2013 stipulating that public prosecutors and deputy public prosecutors are obliged to act impartially in conducting proceedings or decision-making.

The Court Rules of Procedure regulate the random allocation of cases in courts. All courts in Serbia are provided with automated case processing software, but only 60 courts are using them. In all other courts, allocation of cases happens manually using alphabetical order and bearing in mind workload, urgency and type of procedure. It also has to be in accordance with an annual schedule established by the court president. The president may derogate from the order of case allocation in justified cases, such as temporary inability to work or absence of a judge, in accordance with the

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<sup>(\*)</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

law. The practical distribution of cases is done by the court registry based on the aforementioned rules and supervised by the president of court, secretary of court and court registry manager.

Legal provisions on conflicts of interest and rules on disqualification are in place. The Constitution (Article 152) prescribes that a judge shall be prohibited from engaging in political activities. The Law on Judges (Articles 30 - 31) contains provisions on the relation between other services, jobs and actions and the judicial function and prescribes a procedure for deciding on the incompatibility. The same law makes conflicts of interest subject to disciplinary proceedings. The Civil and Criminal Procedure Codes stipulate that a judge may be disqualified if there are circumstances which raise doubt on his/her impartiality (disqualification). Both judges and prosecutors are obliged to declare their assets to the Anti-Corruption Agency.

The Law on Judges (Article 99) stipulates the disciplinary accountability of judges. A disciplinary offence is defined as negligent performance of the judicial function or conduct inappropriate for the judicial function. The Law defines the types of disciplinary offences and disciplinary sanctions (i.e. a public warning, salary reduction up to 50% for a period not exceeding one year, and prohibition of promotion in the duration of three years). The disciplinary procedure is conducted by the Disciplinary Commission appointed by the High Judicial Council which can impose a disciplinary sanction or initiate a dismissal procedure. The judge concerned can appeal against this decision with the High Judicial Council. The decision of the High Judicial Council can be challenged before the Administrative Court. Disciplinary proceedings against (deputy) public prosecutors are also conducted by a Disciplinary Commission who informs the State Prosecutorial Council of its final decision. The decision of the Disciplinary Commission can be appealed with the State Prosecutorial Council and the latter's decision can be challenged before the Administrative Court, or before the Constitutional Court in case the decision is dismissal.

According to the Constitution (Article 151) and the Law on Judges (Article 5), judges enjoy functional immunity in a sense that a judge may not be held accountable for an expressed opinion or voting in the process of rendering a court decision, except in cases when he/she committed a criminal offence by violating the law. In addition, a judge may not be deprived of liberty in legal proceedings initiated for a criminal offence committed in performing the judicial function, without prior approval of the High Judicial Council. Similar provisions apply to prosecutors (Article 162 of the Constitution).

The action plan for the implementation of the 2013 Judicial Reform Strategy contains a chapter dealing with strengthening the integrity of judges and prosecutors and for promoting ethical standards, in particular through the adoption and implementation of an integrity plan and specialised training and by developing methods to better measure adherence to integrity standards.

Court rulings are made available through periodical publications and on the web-site of the courts. The decisions of the Supreme Court of Cassation important for the practice of courts and all general legal views are published in special collection, and the decisions are made publicly available on the website of the Supreme Court of Cassation.

The Ministry of Justice performs the tasks of supervision (inspection) of the work of courts in accordance with Article 70 of the Law on the Organization of Courts. This includes controlling the performance of the court administration, collecting data, approving internal staffing plan, supervising proceedings on statutory time limits and on complaints and petitions, proposing budget for court staff and operational expenses as well as for investments, securing working conditions, premises and equipment, IT system for courts, supervision over financial management in courts and in High Judicial Council. The Ministry of Justice is also responsible for court expert witnesses and interpreters and other tasks related to the internal organisation and operation of courts. Article 71 of the Law nevertheless provides safeguards against interference with the

autonomy and independence of courts and judges stipulating nullity of any such act. This shall be determined by the Administrative Court.

### **Professionalism/Competence/Efficiency**

The budget for the judiciary and the prosecution (including the prison system) amounted to EUR 237 million in 2013 and EUR 269 million in 2014, representing a 13% increase. The Judicial Academy is an independent institution with a mandate for initial and continuous training of the judiciary. According to the Law on the Judicial Academy, the initial training for candidates who apply for entry level judicial positions lasts for 24 months. Within that timeframe, candidates are selected, receive training, participate in final examinations and are individually assessed. The High Judicial and State Prosecutorial Councils determine every year the number of initial trainees. These have first to pass the bar exam, fulfil general conditions for employment in state bodies and have to pass the entrance exam for initial training. Continuous training is voluntary, except in cases when it is compulsory under the law or upon decision of the High Judicial and State Prosecutorial Councils.

On 31 December 2013, there were 2.874.782 unresolved cases in all courts in Serbia, compared to 3.158.401 in 2012, which represents a decrease of almost 9 %. The backlog of the Constitutional Court remains significant with 16.268 pending cases at the end of 2013. Under the new action plan to implement the National Judicial Reform Strategy 2013-2018, the design of a backlog-clearance programme is foreseen. The Supreme Court of Cassation adopted the National programme for solving old cases (older than 2 years) whereby all courts are requested to regularly report on the results and problems.

Serbia implemented a few years ago a process leading to the rationalising of the court network. The impact on the effectiveness of the judicial system has so far been limited. A new court network was set in place as of January 2014. The rationalisation of the courts and prosecution offices network constitutes a priority within the National Judicial Reform Strategy 2013-2018. It is based on the premises that (a) there remains a substantial imbalance in the workload among existing courts and prosecution offices throughout the country, frequently leading to excessively long procedures in some instances and (b) there is a need to ensure an optimal allocation of the magistrates to address this problem, balancing their individual wishes and constitutional rights not to be moved from one place to another without their consent with the needs of the entire judiciary in terms of access and proximity.

As regards the introduction of information technology, Serbia established a central case law and regulations database as part of a legal information system. Serbia is rolling out a system of automated case processing across its courts which should result in mid-2014 in all courts in Serbia using an electronic case management system.

### **War crimes**

The legal basis for addressing war crimes are Articles 333 and 370 – 386 of the Criminal Code, the Law on Organisation and Competence of Government Authorities in War Crimes Proceedings, the Law on Protection program for participants in Criminal Proceedings, the Law on Cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and various memoranda and protocols on cooperation concluded directly between the Serbian War Crime Prosecutors Office with counterparts in the region (Croatia, Bosnia and Herzegovina and Montenegro). Similar arrangements do not exist with Kosovo, beyond the ad hoc cooperation on specific cases with the European Union Rule of Law Mission (EULEX)<sup>1</sup>. They aim at direct cooperation and exchange of

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<sup>1</sup> EULEX was established in 2008 to support Kosovo in the rule of law area. EULEX has both executive (for example in cases dealing with war crimes, fight against high level organised crime and corruption) and advising tasks. Through its expertise in the rule of law, EULEX assists Kosovo on its path towards European integration, including in supporting

information regarding war crimes and perpetrators. Trials for war crimes are separated from the regular criminal legislation in Serbia because of special needs for witnesses and injured.

The key institutions in this area are the War crimes investigation unit in the Ministry of Interior (Police Directorate with 51 staff), the War Crimes Prosecutor's Office (1 prosecutor, 7 deputies and 2 advisors - a total of 14 staff), the specialised war crime departments in Belgrade's High Court (7 judges) and Appellate Court (5 judges). Serbia has in place a special witness protection and victim assistance programme related to war crimes, organised and serious crime. So far, Serbia handed over 46 suspects to International Criminal Tribunal for the former Yugoslavia (ICTY). Through domestic trials, 429 persons were prosecuted, 102 persons were subject to a final sentence, of which 32 were acquitted. In February 2014, there were 54 trials against 159 defendants on-going, of which 7 cases currently before the Appellate Court, 37 cases in 2<sup>nd</sup> instance, 10 cases in 1<sup>st</sup> instance (against 34 defendants). 20 investigations are currently on-going against 73 persons. As regards regional cooperation, Serbia reported 242 exchanges of information and evidence related to 121 cases with Croatia, 33 with Bosnia and Herzegovina, 9 with Montenegro and 79 with EULEX and the United Nations Interim Administration Mission in Kosovo (UNMIK).

## **II.b ANTI-CORRUPTION**

### **Institutions and policy**

A new Anti-Corruption Strategy covering the period 2013 – 2018 was adopted in July 2013, together with its accompanying action plan. The strategy adopts a sectorial approach and covers the following areas: political activities, public finance, privatisation and public-private partnership, judiciary, police, spatial planning and construction, healthcare, education and sports, together with media. Aspects of prevention, institution building and training are foreseen across these 9 areas. The action plan also contains indicators for measuring the successful implementation of measures as well as some indications as to the required financial resources.

Serbia has an Anti-Corruption Agency since 2010. According to its legal basis, the Agency is an autonomous public authority, with preventive competences in several fields. These include dealing with conflicts of interest and asset declarations of public officials, controlling the funding of political parties and electoral campaigns, corruption prevention, whistle-blowers protection, monitoring the implementation of the National Anti-Corruption Strategy/action plan and sectorial action plans, monitoring compliance with international obligations, providing guidelines on integrity plans and establishing cooperation with all public and non-governmental organisations in Serbia. The Anti-Corruption Agency reports to the National Assembly. According to Serbia, it currently has 76 permanent staff members and 10 temporary agents out of the 123 permanent positions that are foreseen. Its annual budget is approximately EUR 1,3 million. For funding its activities, the Agency still mostly relies on donor support.

Another important anti-corruption body in Serbia is the Anti-Corruption Council, which was established in 2001 as a governmental advisory body pursuant to the Law on the Government.

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Kosovo to meet the objectives of the visa liberalisation dialogue and to implement the agreements of the EU-facilitated Pristina-Belgrade Dialogue. The current EULEX mandate expires on 14 June 2014, but will be extended for two years until June 2016.



## International and domestic legal frameworks

The Criminal Code foresees the criminal offences of passive bribery (Article 367) and active bribery (Article 368). It also contains, under its economic crime section and under the section on offences against duty, provisions on giving and accepting bribes in connection with voting (Article 156), embezzlement (Article 207), fraud (Article 208), obtaining and using credit and other benefits under false pretences (Article 209), abuse of trust (Article 216), money laundering (Article 231), abuse of position by a responsible person (Article 234), malfeasance in public procurement (Article 234a), abuse of authority in economy (Article 238), forging of documents (Article 355), forging an official document (Article 357), abuse of office (Article 359) and trading in influence (Article 366).

According to the Serbian authorities, the national legal framework is largely aligned with the Civil and Criminal Law Conventions on Corruption of the Council of Europe. Serbia also stated that its legislation is fully in compliance with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Law on the Ratification of the UN Convention against Corruption (UNCAC) came into force in October 2005. According to Serbia, the Criminal Code was amended on several occasions for the purpose of complying with the UNCAC.

The Law on the Liability of Legal Entities for Criminal Offences provides that criminal offences, including corruption, committed by a responsible person, are punishable by sentence or suspended sentence as well as security measures, while the legal person may be sanctioned with fines or the termination of the legal entity.

The penalties prescribed for corruption offences in the private sector (Article 234 of the Criminal Code) range from three months up to ten years of imprisonment, depending on the amount of material gain. For corruption offences in the public sector, penalties range from six months up to twelve years of imprisonment, depending on the amount of material gain.

Provisions for the seizure and confiscation of gains obtained from a criminal offence are in place. Serbia is aware of Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union which was recently adopted and which it will have to transpose. (See also *chapter 24 – Justice, freedom and security*).

The Law on Civil Servants (Article 23) contain some rules on whistle-blowers protection. The same applies to the Law on free access to information of public importance, which in addition to the disclosure of information about corruption, also guarantees protection with respect to the disclosure of information indicating transgression of authority, inefficient management of public funds and illegal acts or actions taken by authorities. This Law also includes a wider range of protected persons, including public officials, persons who perform tasks for authorities on contractual basis, persons to whom the authorities provide services, as well as parties to the proceedings conducted before public authorities. New legislation on whistleblowing is under preparation. Serbia stated that, in 2013, 103 whistle-blowers solicited protection in accordance with the Rulebook of the Anti-Corruption Agency with 73 of them having obtained protection.

The Law on the Anti-Corruption Agency defines "conflict of interest" as a situation in which an official has a private interest that affects, may affect or may be perceived to affect the official's actions in the discharge of office or official duty, in a manner that jeopardises the public interest. The Law on the Anti-Corruption Agency also regulates the issue of movement of officials to the private sector (so-called *pantouflage*), in order to avoid conflict of interest. Officials are prohibited from taking up employment or establishing business cooperation with a legal person, entrepreneur or international organisation engaged in the activity relating to the office they held, during a period

of two years after their office is terminated. Exceptions to this general rule can only be allowed through approval by the Agency.

The same law regulates in detail the asset declaration of public officials. They are obliged, within 30 days from the date of election, appointment or nomination, to submit to the Anti-Corruption Agency a declaration of their assets and income, as well as that of their spouses or common-law partners and minor children if they live in the same family household, on the day of their election, appointment or nomination. Failure to report property or reporting false information is a criminal offence in Serbia. According to Serbia, there are currently 25.587 officials concerned by these rules and in 2013, 9 criminal charges were filed in this respect.

Political party financing is regulated by the Law on Financing of Political Activities, adopted in June 2011. This law regulates the sources and methods of financing, the records and control of financing of political activities of political parties, coalitions and political entities. The control of financing of political activities of political entities is carried out by the Anti-Corruption Agency. The Agency controls annual financial statements of political entities, reports on contributions and assets that political entities submit and the reports on the costs of the election campaign. In the period between the date of scheduling of the elections and the announcement of the final election results, the Agency is also monitoring the election campaigns.

The Law on Public Procurement which was adopted in December 2012 contains a chapter on the prevention of corruption. The law obliges the purchasing authority to take all necessary measures to prevent corruption in the course of public procurement planning, the public procurement procedure or during the execution of a public procurement contract. The law prescribes the duty to report corruption. The law also regulates potential conflicts of interest in the procurement procedure. The Public Procurement Office is putting in place a series of measures on the fight against corruption in public procurement.

The procedure for exercising the right of access to information is described in the Law on Free Access to Information of Public Importance. The Commissioner for Information of Public Importance and Personal Data Protection is an independent state authority whose role is, *inter alia*, to hear appeals in case the public authorities fail to enable the exercise of this right. According to Serbia, filing of appeals to the Commissioner against the National Assembly, President of the Republic of Serbia, the Government, the Constitutional Court, the Supreme Court of Cassation and the Republic Public Prosecutor is not allowed.

The Anti-Corruption Agency developed and is implementing a methodology for corruption risk assessments in draft legislation, processes and vulnerable areas in the public sector.

## **II.c FUNDAMENTAL RIGHTS**

### **General**

The protection of fundamental rights in Serbia is based on the Constitution. Over one third of Serbia's Constitution is dedicated to human rights provisions, herewith ensuring that human rights form an integral part of constitutional law in Serbia<sup>2</sup>. Article 18 of the Constitution provides that human and minority rights are guaranteed and shall be implemented directly. The same article guarantees the direct implementation of human and minority rights guaranteed by the generally

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<sup>2</sup> Venice Commission - Opinion on the constitution of Serbia adopted by the Commission at its 70<sup>th</sup> plenary session (Venice, 17-18 March 2007). Council of Europe. 2007.

accepted rules of international law, ratified international treaties and laws. Serbia has ratified a number of human rights related conventions (full list in annex).

The current institutional framework for monitoring the human rights situation includes the National Assembly, the Office for Human and Minority Rights, the Ombudsman, ombudsman offices at local level, the Provincial Ombudsman, the Commissioner for information of public importance and personal data protection and the Commissioner for the Protection of Equality.

## **Human rights**

- ***Human dignity***

Human dignity is a basic principle in the Serbian legal framework, explicitly protected by Article 23 of the Constitution. It is enshrined in all fundamental rights legislation and aims at recognising the value of every person as well as promoting equal rights. Article 25 of the Constitution also provides that measures for derogation from human and minority rights are not permitted.

- ***Right to life and to the integrity of the person***

According to Article 24 of the Constitution, human life is inviolable. The death penalty as well as cloning of human is prohibited. Article 25 of the Constitution provides that physical and mental integrity is inviolable. The Criminal Code includes a chapter on offences against life and physical integrity (Articles 113–127), incriminating different forms of causes of violent death as well as a chapter on criminal offences against humanity and other rights guaranteed by international law (Articles 370-393a).

- ***Prohibition of torture and inhuman or degrading treatment or punishment***

Article 25 of the Constitution prescribes that nobody may be subjected to torture, inhuman or degrading treatment or punishment. Article 28 of the Constitution particularly prescribes that persons deprived of liberty must be treated humanely and with respect to dignity of their person. According to Article 31, any form of violence, inhuman or degrading treatment against a person deprived of liberty or whose liberty has been limited is prohibited. Torture and ill-treatment are sanctioned with imprisonment by the Criminal Code (Article 137). Any use of torture, inhuman and degrading treatment, force, threats, coercion, deception, medical procedures and other means affecting the free will or extorting a confession or other statement or action by a defendant or other participant in proceedings is prohibited and punishable (Article 9 of the Criminal Procedure Code). The Law on the Protection of Rights of Persons with a Mental Disability, adopted in 2013, introduces basic legal safeguards for persons with mental disabilities involuntarily placed in psychiatric institutions. Serbia ratified the European Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment together with its Protocols 1 and 2, as well as the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- ***Prohibition of slavery, servitude, and forced or compulsory labour***

According to Article 26 of the Constitution, slavery or positions similar to slavery and forced work are prohibited. The Constitution further guarantees the right to work and free choice of employment.

Aspects related to labour law are dealt with in *chapter 19 – Social Policy and Employment*; aspects related to trafficking in human beings are dealt with in *chapter 24 – Justice, freedom and security*.

- ***Respect for private and family life and communications***

Article 66 of the Constitution describes the special protection of the family, mother, single parent and child. Articles 40 and 41 provide, respectively, for the inviolability of the home and the confidentiality of correspondence and all other forms of communication. Privacy of correspondence is protected by the Criminal Code (Articles 142 – 145). The legal framework for respecting the privacy of correspondence of convicted persons is regulated by Article 75 of the Law on Enforcement of Penal Sanctions.

- ***Right to marry and right to found a family***

Under Article 62 of the Constitution, everyone has the right to decide freely on entering or dissolving a marriage. Marriage shall be entered into based on the free consent of man and woman before the state body. Contracting, duration or dissolution of marriage is based on the equality of man and woman. Marriage, marital and family relations are regulated by the law. Extramarital community is considered equal with marriage, subject to applicable laws.

- ***Freedom of thought, conscience and religion***

Freedom of thought, conscience, beliefs and religion is provided for under Article 43 of the Constitution. The freedom of manifesting religion or beliefs may only be restricted by law to protect lives and health of people, morals of democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent inciting of religious, national, and racial hatred. Article 44 of the Constitution provides that religious communities are equal and separate from the state. Churches and religious communities are equal and free to organize independently their internal structure, religious matters, to perform religious rites in public, to establish and manage religious schools, social and charity institutions, in accordance with the law. The Constitutional Court can ban a religious community should its activities infringe the right to life, right to mental and physical health, the rights of child, right to personal and family integrity, public safety and order, or if it incites religious, national or racial intolerance. Article 45 of the Constitution guarantees the right to conscientious objection and stipulates that no person is obliged to perform military or any other service involving the use of weapons if this opposes his religion or beliefs.

Legislative acts intended to further ensure freedom of religion include the Law on Churches and religious communities, the Law on the Legal Status of Religious Communities and the Law on the Celebration of Religious Holidays as well as the Law on Public and Other Holidays in the Republic of Serbia.

Relations between the State and churches and religious communities, fall within the competences of the Office for Cooperation with Churches and Religious Communities, while the Ministry of Justice and Public Administration is in charge of keeping the Register of Churches and Religious Communities. In 2013, 25 churches and religious communities were included in the register of Churches and religious communities.

- ***Freedom of expression including freedom and pluralism of the media***

Article 46 of the Constitution guarantees freedom of expression and specifies that it may be limited if necessary to protect rights and reputation of others, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society and national security of Serbia.

Article 50 recognises freedom of media and provides that censorship is prohibited in Serbia. However, competent courts may prevent the dissemination of information through media when it is deemed necessary to prevent inciting to violation of the territorial integrity of Serbia, war propaganda or incitement to direct violence, or to racial, ethnic or religious hatred, discrimination, hostility or violence.

The internal legal framework consists of the Public Information Law, the Broadcasting Law and the Law on Ratification of the European Convention on Transfrontier Television. The Criminal Code contains provisions relating to criminal offenses against the honour, reputation and security of journalists. Further to amendments to the Criminal Code, in December 2012, prison sentences for libel have been abolished and *defamation* was decriminalised while hate speech was recognised as an aggravating circumstance. Recent amendments to the law on public companies now prevent public authorities from setting up public companies in the media sector.

The Press Council, was established as a self-regulatory body in 2009. It supervises the observance of the Serbian Journalists' Code of Ethics in the press and decides on petitions of individuals and institutions regarding specified contents of the press. The Press Council also has a mediating role in cases of conflicts.

In 2013, a Commission was established to look into unsolved cases of murdered journalists. Working groups within the Commission consist of officials of the Crime Investigation Police Department of the Ministry of Interior, as well as officials of the Security Information Agency and journalists.

Serbia states that a large majority of magistrates have been trained on a regular basis as regards fundamental rights standards developed by the ECtHR, including as regards freedom of expression.

- ***Freedom of assembly and association, including freedom to form political parties and the right to establish trade unions***

Article 54 of the Constitution recognises the freedom of assembly. This freedom may be temporarily restricted if necessary to protect public health, morals, rights of others or the security of Serbia. Gatherings, demonstrations and other forms of assembly held outdoors have to be reported to the competent state body, in accordance with the law.

Article 55 guarantees freedom of association, including freedom to form political parties and trade unions. It states that secret and paramilitary associations are prohibited. The Constitutional Court can ban associations which aim at violent overthrow of the constitutional order, violation of guaranteed human or minority rights, or inciting of racial, national and religious hatred. Judges of Constitutional Court, judges, public prosecutors, Protector of Citizens (Ombudsman), members of police force and military persons cannot be members of political parties.

The internal legal framework consists of the National Assembly Law, the Law on Association, the Law on the procedure for registration at the Serbian Business Registers Agency, the Law on Political Parties, the Law on the financing of political activities and the Labour Law. 98 political parties are registered in Serbia, 56 of which are national minority political parties. Serbia informed that a draft Law on the Freedom of Assembly is under preparation.

Aspects related to social dialogue are dealt with in *chapter 19 – Social Policy and Employment*.

- ***Treatment of socially vulnerable and disabled persons and principle of non-discrimination***

Article 21 of the Constitution prohibits direct and indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability. It also provides that special measures which Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination.

This prohibition is specified by several laws, including the Law for Prevention of Discrimination against Persons with Disabilities and the Law on Prohibition of Discrimination, which bans discrimination on any grounds, including sexual orientation, birth and gender identity. According to Serbia, the Law on Prohibition of Discrimination fully complies with Council Directives 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

The national legislation in the field of prohibition of discrimination also includes the health care law, the higher Education Law, the Law on Fundamentals of Educational System, the Employment and Unemployment Insurance Law, the Labour Code, the Law on Occupational Rehabilitation and Employment of Persons with Disability, the Volunteering Law, the Public Information Law, the Broadcasting Law and the Law on Free Access to Information of Public Importance, the Law on Enforcement of Penal Sanctions, the Family Code, the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, the Law on prohibition of events in organisation of Neo-nazi or Fascist organisations and associations, and the use of symbols and designations of Neo-Nazism and Fascism, the Gender Equality Law, the Social Welfare Law, the Youth Law, the Sports Law, the Law on Prevention of Violence and Misconduct at Sports Events, the Law on the Protection of Rights and Freedoms of National Minorities and the Law on Churches and Religious Communities.

Sanctions for discrimination offences are included in the Criminal Code as well as in the Law on prohibition of discrimination (Articles 50-60). However, Serbia states that its legal framework is only partially aligned with Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

A Strategy for the prevention of and protection against discrimination was adopted in June 2013, aimed at preventing discrimination and improving the position of nine vulnerable groups (women; children; people with disabilities; senior citizens; the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) population; national minorities; refugees, internally displaced persons and other vulnerable migrants; persons whose health condition may be the grounds for discrimination; members of religious communities) who are most often exposed to discrimination. The accompanying action plan is under preparation. The Commissioner for Protection of Equality, the Office for Human and Minority Rights and the Council for National Minorities are associated to the implementation of the strategy. A Council for persons with disabilities tasked with reviewing relevant policies and supporting coordination efforts in this area was established in 2013. For other aspects of anti-discrimination, see also *chapter 19 – Social Policy and Employment*.

- ***Right to education***

Article 71 of the Constitution guarantees the right to education. Primary education is mandatory and free, whereas secondary education is free. The right to education is further regulated in the

Law on the foundations of the education system, the Law on primary education, the Law on secondary education and the Law on higher education.

- ***Right to property***

Article 58 of the Constitution guarantees the right to property and specifies that the right to property may be revoked or restricted only in public interest established by the law and with compensation which cannot be less than market value. The law may restrict the manner of using the property. Seizure or restriction of property to collect taxes and other levies or fines shall be permitted only in accordance with the law. The legal framework related to right to property is further regulated in the Law on Property Restitution and Compensation, the Law on the restitution of property to Churches and religious communities and the Law on registration and recording of confiscated property.

- ***Gender equality and women's rights***

According to Article 15 of the Constitution, the state shall guarantee the equality of women and men and shall develop the policy of equal opportunities. The protection of gender equality is also regulated in the Law on Gender Equality, the Law on the Prohibition of Discrimination, the Law on the Election of Deputies, the Law on Local Elections, the Law on National Councils of National Minorities.

The basic strategic documents in this field are the Strategy for combating violence against woman and the Strategy for prevention and protection of victims of trafficking in human beings as well as the 2010-2015 National Strategy for Improving the Status of Women and Promoting Gender Equality and its accompanying action plan of 2009. They aim at fulfilling six objectives : 1) increasing participation of women in the decision-making processes and achieving gender equality, 2) improving the economic status of women and achieving gender equality, 3) achieving gender equality in education, 4) improving women's health and improving gender equality in health policy, 5) preventing and combating violence against women and improving the protection of victims, and 6) eliminating gender stereotypes in the mass media and the promotion of gender equality. In 2010, Serbia adopted the National Action plan for implementing the UN Security Council Resolution 1325 – “Women, Peace and Security” and in 2011 the National Strategy for Preventing and Combating Violence against Women in Family and in Intimate Partner Relationships. The Gender Equality Directorate in the Ministry of Labour, Employment and Social Policy (MoLESP) regularly carries out public awareness campaigns. A Gender Equality Council aimed at reviewing and proposing measures to improve the implementation of gender equality policies was established in 2013.

Serbia is a party of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its optional Protocol. The second and third periodic reports on Serbia's implementation of CEDAW were issued in March 2011. Employment and social aspects of gender equality are dealt with in *chapter 19 – Social Policy and Employment*.

- ***Rights of the child***

According to Article 64 of the Constitution, a child shall enjoy human rights suitable to their age and mental maturity. A child is guaranteed special protection from psychological, physical, economic and any other exploitation or abuse. A child born out of wedlock has the same rights as a child born in wedlock. According to Article 65, parents shall have the right and duty to support, provide upbringing and education to their children. Article 66 stipulates that families, mothers, single parents and any child in Serbia enjoy special protection in accordance with the law. It grants special protection for children without parental care and mentally or physically handicapped

children. Children under 15 years of age may not be employed, nor may children under 18 years of age be employed at jobs detrimental to their health or moral.

The legal framework related to the rights of the child include the Criminal Code, the Criminal Procedure Code, the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, the Law on Special Measures for the Prevention of Crimes against Sexual Freedom Involving Minors, the Civil Procedure Code, the law on Extra-Judicial Proceedings, the Law on the Execution of Criminal Sanctions, the Family Law, the Law on Inheritance, the Law on the Police, the Law Against Discrimination, the Law on the Prevention of Discrimination against Persons with Disabilities, the Law on the Foundations of the Education System, the Law on Primary Education, the Law on Secondary Education, the Labour Law, the Law on Financial Support to Families with Children, the Law on Asylum, the Law on the Foreigners, the Law on the Protector of Citizens, the Law on Social Protection, the Law on Health Care, the Law on Health Insurance and the Law on Youth. A draft law on the Rights of the Child is currently under preparation.

As regards juvenile justice, the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles provides that a child may not be held criminally responsible for committing an unlawful act, provided under law as a criminal offence, until it turns fourteen, and neither criminal sanctions nor other measures provided under law may be pronounced or applied to a child. The law thus applies to juvenile perpetrators of criminal offences aged 14 years and less than 18 years, as well as to young adults who at the time of commission of the offence have attained 18 but have not reached 21 years of age at the time of the trial. The law also provides for measures to protect child victims and witnesses during the criminal procedure and foresees a number of alternative sanctions ("diversion orders") to imprisonment for juvenile offenders.

The Criminal Code sanctions, *inter alia*, offences such as neglect and abuse of a minor (Article 193), trafficking in children for adoption (Article 389), holding in slavery and transportation of enslaved persons (Article 390) and showing pornographic material and child pornography (Article 185).

Serbia has ratified the UN and European conventions on the rights of the child. Serbia is implementing a National Strategy for the Prevention and Protection of Children against violence (2009 – 2015). The action plan for implementing the Strategy for Improvement of the Status of Roma contains actions in the fields of education, social protection, health care, issuance of personal documents, employment and housing that concerned improvement of the status of Roma children. A Council on the rights of the child was established in 2004 and tasked to adopt and monitor long-term policies in this area.

Serbia states that there are currently over 7000 children and young people separated from their parents and accommodated under the social care system. Among them, approximately 80% have been housed in foster families, whilst 20% have been housed in the social care institutions. Aspects related to social inclusion and social protection are dealt with in *chapter 19 – Social Policy and Employment*.

## **Procedural safeguards**

- ***Liberty and security***

The Constitution in Article 27 guarantees that everyone has the right to personal freedom and security. Depriving of liberty shall be allowed only on the grounds and in a procedure provided for by the law. Any person deprived of liberty by a state body shall be informed promptly in a language they understand about the grounds for arrest or detention, charges brought against them, and their rights to inform any person of their choice about their arrest or detention without delay. Any person



deprived of liberty shall have the right to initiate proceedings where the court shall review the lawfulness of arrest or detention and order the release if the arrest or detention was against the law. Any sentence which includes deprivation of liberty may be proclaimed solely by the court.

The Criminal Procedure Code in Article 2 provides that the deprivation of liberty refers to an arrest, custody, home confinement, detention, thus implying that every form of deprivation of liberty is subject to Article 5 of the European Convention on Human Rights. For every stage of the deprivation of liberty, the Criminal Procedure Code provides legal grounds, competency for the imposition, time limits and *ex officio* reviewing as well as the possibility for appeal. According to the decision of the preliminary proceedings judge, the defendant may be detained for three months from the date of his deprivation of liberty whereby the judge is obliged to review the conditions for continuing detention, even without parties' motions, every thirty days (Article 215 of the Criminal Procedure Code). Upon the indictment raised, detention shall be reviewed (Article 216 of the Criminal Procedure Code). Detention after the indictment has been filed may last until the defendant is sent to serve the criminal sanction implying the deprivation of liberty and no longer than the period of criminal sanction rendered in the first instance criminal verdict. The rights of the defendants are listed in the Criminal Procedure Code (Article 68). Juvenile offenders cannot be detained for more than 12 months, for a younger juvenile (14-16 years) and 14 months, for an elder juvenile (16-18 years). The Court panel for juveniles reviews once a month whether the grounds for detention still exist and issues a decision to suspend or extend detention accordingly. Unlawful deprivation of liberty is sanctioned with imprisonment by the Criminal Code (Article 132).

- ***Right to a fair trial***

Under Article 32 of the Constitution, everyone has the right to a public hearing before an independent and impartial tribunal established by the law within reasonable time which shall pronounce judgement on their rights and obligations, grounds for suspicion resulting in initiated procedure and accusations brought against them. Furthermore, everyone is guaranteed the right to free assistance of an interpreter if the person does not speak or understand the language officially used in the court and the right to free assistance of an interpreter if the person is blind, deaf, or mentally incapacitated. The press and public may be excluded from all or part of the court procedure only in the interest of protecting national security, public order and morals in a democratic society, interests of juveniles or the protection of private life of the parties, in accordance with the law.

Articles 33 (right to defence), 34 (the principle of legal certainty, determination of penalties, presumption of innocence and the *ne bis in idem* principle), 36 (equal protection of rights and right to legal remedy) and 67 (right to legal aid), further define the rights of the suspect, accused and prosecuted person in line with Articles 6, 7 and 13 of the ECHR. The guarantee of the right to a fair trial provided for in Article 32 of the Constitution also implies the right of access to justice under equal conditions for all.

Regarding the procedural rights for suspected or accused persons in criminal proceedings, Serbia stated that its legal framework was fully aligned with Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and the proposals of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings of November 2009.

As regards the right to legal aid, the Constitution provides that legal assistance is allowed under "the conditions stipulated by the law". Legal assistance shall be provided by legal professionals, as an independent and autonomous service, and legal assistance offices established in the units of local self-government, in accordance with the law. Legal aid is being provided by the attorneys, as

an independent and autonomous service and by legal aid services. A law on free legal aid is under preparation. Legal aid in civil proceedings is provided for in the Civil Procedure Code (Article 85) and for criminal proceedings in the Criminal Procedure Code (Article 73).

Article 36 of the Constitution guarantees the equal protection of rights before courts and other state bodies, entities exercising public powers and bodies of the autonomous province or local self-government shall be guaranteed. Everyone shall have the right to an appeal or other legal remedy against any decision on his rights, obligations or lawful interests. According to the Criminal Procedure Code (Article 85) a defendant has to be informed of and enabled to use his rights when being interrogated for the first time. The defendant also has the right to have a defence counsel attend his/her interrogation (Article 68). If the defendant does not understand the language of the proceedings, he/she is entitled to translation and interpretation. However, it is possible to waive the right to an interpreter only if the person concerned declares he/she does not know the language of the proceedings and that he/she explicitly waives this right after clear warning by the body conducting the proceedings.

### **Respect for and protection of minorities and cultural rights**

Serbia stated that 14,5% of its population belongs to a national minority. The protection of rights of national minorities is constitutionally guaranteed. According to Article 14 of the Constitution, Serbia shall protect the rights of national minorities and shall guarantee special protection to national minorities for the purpose of exercising full equality and preserving their identity. Article 47 stipulates the freedom of expressing national affiliation and Article 48 promotes the respect for diversity. Article 75 guarantees that persons belonging to national minorities shall have special individual or collective rights in addition to the rights guaranteed to all citizens by the Constitution. Rights allocated to national minorities include (1) taking part in decision-making or decide independently on certain issues related to their culture, education, information and official use of languages and script through their collective rights in accordance with the law as well as (2) the election of national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of their language and script, in accordance with the law.

Article 76 prohibits discrimination against national minorities and provides that specific regulations and provisional measures in economic, social, cultural and political life for the purpose of achieving full equality among members of a national minority and citizens who belong to the majority will not be considered discrimination if they are aimed at eliminating extremely unfavourable living conditions which particularly affect them. According to Article 77, members of national minorities have the right to participate in administering public affairs and assume public positions, under the same conditions as other citizens. When taking up employment in state bodies, public services, bodies of autonomous province and local self-government units, the ethnic structure of population and appropriate representation of members of national minorities shall be taken into consideration.

Article 78 prohibits forced assimilation of members of national minorities and protects them from all activities directed towards their forced assimilation; implementation modalities of this provision are to be provided by the law. Undertaking measures, which would cause artificial changes in ethnic structure of population in areas where members of national minorities live traditionally and in large numbers, shall be strictly prohibited. The right to preservation of specificity is foreseen in Article 79. This includes that members of national minorities have a right to: (1) expression, preservation, fostering, developing and public expression of national, ethnic, cultural, religious specificity; (2) use of their symbols in public places; (3) use of their language and script; (4) have proceedings also conducted in their languages before state bodies, organisations with delegated public powers, bodies of autonomous provinces and local self-government units, in areas where they make a significant majority of population; (5) education in

their languages in public institutions and institutions of autonomous provinces; (6) founding private educational institutions; (7) use of their name and family name in their language; (8) traditional local names, names of streets, settlements and topographic names also written in their languages, in areas where they make a significant majority of population; (9) complete, timely and objective information in their language, including the right to expression, receiving, sending and exchange of information and ideas and finally (10) establish their own mass media, in accordance with the law. Additional rights can be defined in the legislation.

Articles 80 and 81 of the Constitution respectively cover the right to association and cooperation with compatriots and the right to develop the spirit of tolerance. Article 100 contains provisions on the representation of minorities in the National Assembly and Article 180 deals with the proportional representation of national minorities in assemblies at local level and in autonomous provinces.

The protection of minorities is also regulated by a wide range of legal acts, including the Law on Protection of Rights and Freedoms of National Minorities, the law on National Councils of National Minorities, the Law on Official Use of Languages and Scripts and the Law on Prohibition of Discrimination. Serbia adopted in June 2013 a Strategy for prevention and protection against discrimination and has a Strategy for improvement of the status of the Roma with an Action plan in place. Serbia has ratified the Framework Convention for the Protection of National Minorities (FCNM), the European Charter for Regional Minority Languages, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

The Office for Human and Minority Rights, the National Council for National Minorities, the Commissioner for Equality Protection and the Council for improving the status of the Roma and implementing the Decade of Roma Inclusion form the core of the institutional framework. In addition, the Serbian Social Inclusion and Poverty Reduction Unit is in charge of carrying out actions and measures with a view to improve the social inclusion of vulnerable groups, including the Roma. In addition to these bodies, there are 19 elected National Minority Councils, one for each recognised ethnic minority in Serbia. Independent state institutions for protecting and promoting human rights are the Ombudsman, provincial Ombudsman, local ombudsman's offices, the Commissioner for Information of Public Importance and Personal Data Protection and the Commissioner for Protection of Equality.

Serbia states that it envisages amending the Law on National Councils of National Minorities to clarify rules related to its composition, term of office, the termination of functions and the election of its members.

### **Measures to combat racism and xenophobia**

Article 49 of the Serbian Constitution prohibits inciting of racial, ethnic, religious or other inequality or hatred. The Law on the Prohibition of Discrimination bans discrimination on any grounds including race, colour, national affiliation, and ethnic origin. The Criminal Code prescribes the criminal offences of instigating or exacerbating ethnic, racial and religious hatred or intolerance among the peoples and communities living in Serbia (Article 317), instigation of ethnic, racial and religious or other hatred or intolerance by means of behaviour or slogans at sporting events or public gatherings (Article 344 a) and the propagation of the idea of racial superiority or racial intolerance or discrimination (Article 387). Sentences up to five, twelve and three years, respectively, can be imposed for these crimes. By means of Article 54a of the Criminal Code racial, religious, national, ethnic and sexual hatred is considered an aggravating circumstance and is in line with the recommendations of the UN Committee on the Elimination of all Forms of Racial Discrimination (CERD) and the Council of Europe's Commissioner for Human Rights and the

ECRI. The above-mentioned Serbian legislation is partially aligned with Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, although it is not clear whether such legislation is interpreted in such a way as to cover the concept of *incitement* to violence or hatred as understood by the Framework Decision (as opposed to insults or actual physical assault). Furthermore, the Commission notes that Serbian legislation currently contains no provisions on incitement to violence or hatred by public condoning, denial or gross trivialisation of certain international crimes, as specified by Article 1 (c) and (d), respectively of the Framework Decision. Serbia is currently implementing a strategy (2013 – 2018) for combatting violence and misbehaviour at sport events as part of its policy against racism and xenophobia.

### **The EU Fundamental Rights Agency**

The EU Fundamental Rights Agency (FRA) is open for participation of candidate countries – including Serbia – as observers, after a decision of the relevant Association Council, which will indicate in particular the nature, extent and manner of this country's participation in the Agency's work, taking into account the specific status of each country. Serbia formally expressed its interest to become an observer to the FRA in September 2013.

### **Protection of personal data**

Article 42 of the Constitution guarantees the protection of personal data and prohibits the use of personal data for purposes other than those for which they were collected. Everyone shall have the right to be informed about the personal data collected about him/her as well as the right to court protection in case of abuse. Serbia has ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its Additional Protocol regarding supervisory authorities and trans-border data flows.

The Law on Personal Data Protection provides that data processing without consent shall be allowed *inter alia* to achieve or protect vital interests of the data subject or a third party, in particular their life, health and physical integrity. According to Article 14 paragraph 5, data are collected *inter alia* for the purpose of achieving or protecting vital interests of a data subject, in particular his/her life, health and physical integrity. Article 23 provides *inter alia* that the right to notification, access and copy may be restricted if the provision of such information would seriously prejudice privacy or a vital interest of the data subject, in particular his/her life, health and physical integrity.

Amendments to the Law are being prepared so as to harmonise it with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to processing of personal data and free movement of such data and with Directive 2002/58/EC as amended by Directive 2009/136/EC. Serbia also informed that it envisages Constitutional amendments to better define the protection of personal data including to better cover the right to private and family life as defined in Art 8 ECHR.

The Law on Free Access to Information of Public Importance provides the legal basis for the establishment of the Commissioner for Information of Public Importance and Personal Data Protection as an autonomous government body independent in the exercise of its powers. The National Assembly appoints the Commissioner for a seven years term. The Commissioner submits annual reports to the National Assembly as well as to the President of the Republic, the Government and the Ombudsman.

Under Article 146 of the Criminal Code, fines or prison sentences are foreseen for the unauthorised collection, processing or use of personal data.

## **II.d EU CITIZENS RIGHTS**

### **Right to vote and stand as a candidate in elections to the European Parliament**

The Serbian authorities indicated that implementation of this right requires to amend the legislation.

### **Right to vote and stand as a candidate in municipal elections**

The Constitution of the Republic of Serbia establishes the right of citizens to local self-government, which is exercised directly or through their freely elected representatives (Article 176). The Law on Local Elections regulates the election of the representative bodies of municipalities and towns through a proportional election system. To ensure EU citizens' rights to vote and stand as a candidate in municipal elections, Serbia will need to harmonise its national legal framework with the EU *acquis* and especially with Council Directives 94/80/EC and 93/109/EC.

### **Right to move and reside freely within the European Union**

EU citizens are not required to hold a visa when entering Serbia. Family members might need a visa depending on their citizenship. EU citizens and their family members need a temporary residence permit when first residing in Serbia for work, education or family reunification or when they reside for periods longer than 90 days. To ensure EU citizens' rights to move and reside freely within the European Union, Serbia will need to align of its current legislation with the EU *acquis*.

### **Diplomatic and consular protection**

The Law on Foreign Affairs regulates the management of foreign affairs, organisation of diplomatic missions and consular offices, as well as offering of protection to the Serbian citizens abroad. The Serbian authorities stated that Serbia needs to amend this law to meet the requirements of the Decision of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations.

## **III. Assessment of the degree of alignment and implementing capacity**

Serbia has demonstrated a good degree of awareness of the EU's strategic and policy framework in this area and is starting to undertake important reforms to align itself with the *acquis* and meet the European standards. However, further efforts are needed, in particular in fully ensuring judicial independence, impartiality and efficiency, in building up a solid track record of investigations and convictions in corruption cases and in effectively implementing human rights provisions.

### **III.a Judiciary**

#### **Independence**

The independence of the judiciary is, in principle, provided for by the Constitution (Articles 4 and 149). However, existing rules – in particular the role of the National Assembly in the election and dismissal of judges - present substantial shortcomings and create risks for political influence over the judiciary. The National Assembly also elects eight of the eleven members of the High Judicial Council while the other three are members *ex officio*, including the President of the Supreme Court of Cassation (appointed by the National Assembly), the Minister of Justice and the chairman of the competent parliamentary Committee.

Equally, the Republic Public Prosecutor, heads of prosecution offices and all Public Prosecutors and deputy Public Prosecutors are appointed by the National Assembly, which is particularly problematic due to the hierarchical structure of the prosecution service. The nomination of the eleven members of the State Prosecutorial Council mirrors the one of the High Judicial Council.

The 2013 Judicial Reform Strategy and its action plan acknowledge the lack of independence of judges and the undue political influence over prosecutorial careers. It acknowledges the need for changes in the Serbian Constitution and the relevant legislation to better ensure judicial independence. A working group was set up to propose Constitutional amendments. In parallel, reflection is on-going on ways to minimise the risks of political interference. Planned changes to the legal framework include amendments to the Laws on High Judicial and State Prosecutorial Council and aim at improving the transparency and quality of the appointment system. Serbia should ensure that when amending the Constitution and developing new rules, professionalism and integrity become the main drivers in the appointment process, while the nomination procedure should be transparent and merit based.

As regards evaluation and promotion of judges and prosecutors, there is for the time being no regular and systematic evaluation based on clear and transparent criteria which impacts on the career of judges and prosecutors at any level, including for management positions. The 2013 action plan foresees establishing a clear career path for both judges and prosecutors. Serbia should ensure that a new performance evaluation system is based on clear and transparent criteria, excludes any external and particularly political influence, is not perceived as a mechanism of subordination of lower court judges to superior court judges and is overseen by a competent body within the respective Councils. The role of the Ministry of Justice will also need to be clarified when it comes to monitoring the work and performance of courts, including when collecting, analysing and evaluating statistical data. When amending its legal framework, Serbia should avoid that legal or executive authorities have the power to supervise or monitor operations within the judiciary.

The action plan foresees legal measures to enhance the independence and autonomy of the Councils by providing them with their own budget and financial responsibilities. Both Councils should be strengthened, in particular as regards their strategic planning role. The judicial reform process should lead to tasking both Councils with providing leadership and managing the judicial system. Apart from the role of both Councils, also their composition should be re-examined in this respect. In both cases, Serbia should ensure that at least half of the members remain elected from among judges and prosecutors respectively. Further efforts are required to increase transparency in the work of the High Judicial and State Prosecutorial Councils. The functioning of both Councils – in particular with the perspective of receiving new responsibilities - will have to be matched with sufficient administrative and own budgetary resources. The timeframe for finalising these constitutional and legislative steps remains to be clarified.

A thorough analysis is required to ensure that Constitutional (and subsequent legal) amendments address all possible shortcomings as regards independence, impartiality and efficiency. Amendments should *inter alia* address the appointment of judges and prosecutors, the very long probation period of three years for candidate judges, the grounds for the dismissal of judges, the rules on the disciplinary responsibility of judges, the rules for terminating the mandate of Judges of the Constitutional Court, the role of the Ministry of Justice in the administration of justice. The laws detailing Constitutional provisions, such as the Law on Judges, the Law on the Organisation of Courts, the Law on the Prosecutor's Office, the laws on the two Councils and the Law on the Judicial Academy cannot go beyond the scope provided for by the current Constitution and will have to be further amended once the Constitutional changes are adopted.

It is important that all these constitutional and legal changes are widely consulted and debated so as to ensure the largest possible degree of "ownership" within the judicial system. At the same time,

these changes will need to be comprehensive and pave the way for stability within the court system to avoid that constant legal changes create a feeling of insecurity among judges which risks to adversely affect their independence.

The full respect of the independence of the judiciary also implies abstaining from commenting court decisions. Criticising judicial decisions, in particular by politicians, puts independence at risk.

### **Impartiality and accountability**

Impartiality of judges and prosecutors *de lege* is ensured by the Constitution, the Codes of Ethics, the law on Public Prosecutors, the law on Judges as well as by a number of other provisions. There are concerns as to the effective implementation of conflict of interest and disqualification rules. Existing "conflict of interest" rules require judges and prosecutors to provide asset declarations. However, there is no adequate mechanism in place to effectively check assets, which significantly hampers the impact of these rules.

Codes of ethics for judges, prosecutors and lawyers were adopted but so far there is no effective mechanism to monitor compliance with these codes. Reporting and awareness-raising is at an early stage.

Provisions for random allocation of cases do not fully guarantee genuinely random allocation of cases, especially in courts where the system has not been automated yet. However, even where this is the case, there remains scope for circumventing the random character of case allocation. More guarantees are needed for the integrity and transparency of the system of case allocation throughout the judiciary (including in prosecution offices), to ensure that Court Presidents and heads of prosecution offices are fully accountable for all decisions to diverge from the random allocation system. Clearer rules for applying the system are needed and should be applicable to all courts. The rules and conditions in which a case can be withdrawn from judges and prosecutors should be further specified.

Accountability remains an issue of concern. As indicated above (independence), Serbia lacks a comprehensive system of regular individual and periodical evaluation of judges and prosecutors. This weakens their accountability and prevents a fair and transparent system of promotions. The current system of disciplinary responsibility for judges and prosecutors result mostly in mild disciplinary sanctions and therefore fails to produce a deterrent effect. As regards dismissal procedures, the grounds for dismissals are not specified clearly enough. Also procedural rules are not comprehensive and could jeopardise the fair trial principle (e.g. the double competence of the Disciplinary Commissions in investigating and deciding on disciplinary proceedings needs to be reviewed). There are short status of limitation periods for disciplinary offences, which also explains the limited numbers resulting in a final decision. The capacity of disciplinary bodies needs to be further strengthened. So far only 1 judge and 1 public prosecutor were dismissed, while very few others received disciplinary sanctions. Serbia needs to establish a well-functioning, clear and unbiased disciplinary procedure to detect and address irregularities while ensuring a consistent disciplinary practice.

With the above in mind and for reasons of independence and reducing the risk of external influence, it is of key importance that the inspection service of the Ministry of Justice does not interfere in the substantial work of courts. The respective Councils should develop an inspection capacity based on clear rules and bestowed with powers allowing them to act *ex officio* or on signals from citizens, state bodies or other legal entities related to *inter alia* questions of integrity or professional failure.

Judges and prosecutors enjoy functional immunity. Although Serbia informed that this only protects from detention, the scope of application of these provisions and the procedures for removing functional immunity are not fully clear and need to be reviewed to ensure full accountability of

judges and prosecutors under criminal law.

As part of the overall framework to guarantee impartiality but also to ensure a consistent approach to the law and uniformity of jurisprudence, further steps are needed to ensure a timely publication and easy access to court decisions.

### **Professionalism/Competence/Efficiency**

There is a need to reform the concept and ensure the capacity of the Judicial Academy for becoming a proper entry point to judicial profession through applying quality control mechanism. A system to evaluate more systematically training needs as part of the regular assessment of the professional performance of judges and prosecutors has not been established yet. Dedicated training courses for managers (court presidents and heads of prosecution offices) should be provided. The 2013 Judicial Reform Strategy aims at making the Judicial Academy the compulsory entry point into the judicial system. However, the Constitutional Court recently ruled that the provisions of several laws which contain the obligation to propose Academy graduates for judges and deputy prosecutors are unconstitutional.

Further steps in the reform of the court network (as foreseen in the National Strategy) will require a prior comprehensive analysis notably in terms of cost, efficiency and access to justice. A robust system to measure workload and to ensure a more equal distribution of cases among judges and prosecutors is required. At short notice and in order to be able to strengthen overburdened courts or prosecution offices, incentive-based measures that would contribute to the voluntary mobility of judges and prosecutors could be considered.

The largest number of judgments issued by the European Court of Human Rights related to Serbia refers to violation of the right to a fair trial due to the length of the procedure and to the non-enforcement of domestic judgments. Serbia should therefore develop and implement a 'Backlog clearance programme'. Measures to be considered for reducing the case backlog may also include using in all civil and commercial cases alternative dispute resolution methods (*i.e.* mediation) and reducing the backlog of enforcement cases through a number of measures, such as using the services of public notaries and bailiffs. Efforts to step up effective enforcement of court decisions are needed.

The Serbian judiciary would benefit from further automation and modern ICT tools. Serbia plans to develop an e-Justice system based on a dedicated strategy. This should also include the establishment of a reliable system for gathering complete statistical information on courts' performance, the duration of trials and the human and financial resources allocated. An automated system for monitoring the length of trials should be introduced as part of the effort to reduce backlogs. Further efforts are required to modernise the infrastructure of courts and prosecution offices.

Despite the legislative and organisational changes that have been made in recent years, judicial reform in terms of concrete results is at an early stage and severe shortcomings have to be tackled, including at constitutional level. The implementation of the judicial reform strategy and action plan has started. It will be important to further detail the content, the sequencing for implementing the different steps and to calculate the exact costs for all actions so as to match them with a realistic timeframe for implementation. A robust monitoring mechanism, adequate financial resources and improved co-operation between all actors involved are key elements for the success of this reform.

### **War crimes**

Serbia has an adequate procedural legal framework to investigate, prosecute and adjudicate war crime cases. There is good and effective cooperation of the Serbian War Crimes Prosecution Office



with prosecution authorities in all jurisdictions in the region and with the International Criminal Tribunal for the Former Yugoslavia. However, the performance as regards war crimes' trials requires particular attention. This includes avoiding a perception of impunity by ensuring that all allegations are properly investigated and subsequently prosecuted and tried, ensuring proportionality of sentences and ensuring equal treatment of suspects, including in cases of high level officers allegedly involved in war crimes; stepping up security of witnesses and informants; improving witness and informant support services; better ensuring the confidentiality of the investigation including witness and informant testimonies. This also implies adequate judicial and prosecutorial resources.

## **Recommendations**

Serbia is implementing a new Justice Reform Strategy through an action plan covering the timespan 2013 - 2018. The actions foreseen should be implemented according to the deadlines set. An effective and functioning monitoring mechanism should allow regular and careful monitoring of the implementation results. A mid-term review should be conducted at the end of 2015. Swift corrective measures should be taken where needed. Based on the priorities outlined in this strategy and the actions already foreseen, Serbia should revise and amend its action plan paying particular attention to the following issues:

### Independence:

- With the support of external experts, Serbia should make a thorough analysis of the existing solutions/possible amendments to the Constitution bearing in mind the Venice Commission recommendations and European standards, ensuring independence and accountability of the judiciary. Changes should include, *inter alia*, the following points:
  - The system for the recruitment, selection, appointment, transfer and dismissal of judges, presidents of Courts, and prosecutors should be independent of political influence and remain of the responsibility of the High Judicial and State Prosecutorial Councils. Entry in the judiciary shall be based on merit-based objective criteria, fair in selection procedures, open to all suitably qualified candidates and transparent in terms of public scrutiny. The High Judicial Council and the Prosecutorial Council should be empowered with leadership and the power to manage the judicial system, including when it comes to immunities. They should have a pluralistic composition, without involvement of the National Assembly (unless solely declaratory), with at least 50% of members stemming from the judiciary, representing different levels of jurisdiction. Their elected members should be selected by their peers;
  - Legal or executive authorities should not have the power to supervise or monitor operations of the judiciary;
  - Reconsider the probation period of three years for candidate judges and deputy prosecutors;
  - Clarify the grounds for the dismissal of judges;
  - Clarify the rules for terminating the mandate of Judges of the Constitutional Court;
- Ensure permanent appointment of remaining Court presidents (in particular of Basic and High Courts);
- A fair and transparent system of promotion of judges and prosecutors needs to be established,

together with a periodical professional assessment of judges and prosecutors' performance. A system to monitor and evaluate the application of those standards in practice should be established. The Councils should bear the responsibility for taking decisions on promotion, demotion or dismissal;

- Sufficient administrative capacities and financial authority over their own budget needs to be ensured to allow the High Judicial and the State Prosecutorial Councils to effectively perform their tasks. Their work should be governed by transparency and institutional accountability;
- Establish a clear procedure for both Councils to react publicly in cases of political interference in the judiciary and prosecution;
- Ensure the full respect of court decisions including by raising the awareness that criticising decisions, in particular by politicians puts the independence at risk;
- Ensure the involvement of civil society and professional organisations in defining further steps in the reform process and in monitoring the implementation of the action plans;
- Ensure the enactment of a special legislation with regards to Serbian judicial institutions with jurisdiction in Kosovo, consistent with Serbian obligations under the First Agreement of 19th April 2013.

#### Impartiality and accountability

- Clarify and implement the rules for random allocation of cases, including through finding technical solutions to avoid circumventing the system. Ensure that the system is not open to manipulation and make it subject to regular inspection by the inspectorate;
- Strengthen the accountability of judges and prosecutors through a strict application of all legal and disciplinary means, including through :
  - Ensuring the effective implementation of "conflict of interest" rules and amending them if need be;
  - Ensuring the effective verification of asset declarations and cross-checking with other relevant information;
  - Effective monitoring of compliance with the code of ethics and carrying out further evaluation activities and training of judges and prosecutors in ethical behaviour;
  - Review where necessary and effectively implement rules on disciplinary and dismissal procedures;
  - Re-assessing the system of functional immunity ensuring full accountability of judges and prosecutors under criminal law.

#### Professionalism/Competence/Efficiency:

- Develop the Judicial Academy as a centre for continuous and initial training of judges and prosecutors in line with the rulings of the Constitutional Court on the provisions of the laws on the public prosecution and the Judicial Academy, including through:
  - introducing a yearly curriculum covering all areas of law, including EU law;

- allocating sufficient resources and introduce a quality control system for initial and specialised training;
- Develop a system that allows assessing training needs as part of the overall evaluation of performance of judges and prosecutors;
- Conduct a comprehensive analysis prior to taking further steps in the reform of the court network, including in terms of cost, efficiency and access to justice;
- Establish and implement a medium-term human resource strategy for the judiciary, based on an analysis of needs and workload, and bearing in mind possible further changes in the structure of courts, recruitment and training;
- Ensure herewith a sustainable solution for workload imbalances;
- Implement the backlog reduction programme, including introducing alternative dispute resolution tools;
- Strengthen the enforcement of judgements, in particular in civil cases;
- Gradually develop an e-Justice system as a means to improve the efficiency, transparency and consistency of the judicial process, building on the existing automated case management system. Ensure the visibility of reliable and consistent judicial statistics and introduce a system to monitor the length of trials;
- Improve consistency of jurisprudence through judicial means (consider simplification of the court system by abolishing courts of mixed jurisdiction and possibility to file an appeal before the Supreme Court of Cassation based on legal grounds against any final decision) and by ensuring complete electronic access to court decisions and motivations and their publication within a reasonable amount of time;
- Monitor the implementation of the new Criminal Procedure Code and take corrective measures where needed.
- Conduct a mid-term review at the end of 2015 as well as an impact assessment in 2018 of the results generated by the 2013 Strategy and its revised action plan. Define on that basis and where needed measures to cover the remaining period up until accession.

### War crimes

- Ensure that all allegations are properly investigated and subsequently prosecuted and tried;
- Ensure proportionality of sentences;
- Ensure equal treatment of suspects, including in cases of high level officers allegedly involved in war crimes;
- Step up security of witnesses and informants and improve witness and informant support services;
- Ensure confidentiality of the investigation including witness and informant testimony.

### **III.b Anti-corruption**

Overall, corruption in Serbia is prevalent in many areas of public life and continues to be a serious cause of concern. Corruption acts as a facilitator for organised crime and corruption in the private sector and particularly in privatisation deals affects economic development and welfare. Corruption is perceived to be the most problematic factor for doing business in Serbia<sup>3</sup>.

Deficiencies in the legal and normative framework are conducive to corruption. Efforts are needed in all areas to improve the quality of law drafting, to simplify procedures and to clarify implementing rules. Despite fight against corruption being high on the political agenda and improvements in the legal and institutional anti-corruption framework, implementation has not yet produced sustainable progress on the ground.

The general framework for the fight against corruption is broadly in place (including the Criminal Code and the Criminal Procedure Code), although shortcomings persist in the legislative field, which requires comprehensive review. Serbia has signed and ratified all major international instruments against corruption, but needs to work on ensuring that all relevant legislation is fully aligned with their provisions and consistently implemented. Serbia has made good progress in complying with the Group of States against Corruption (GRECO) recommendations from recent evaluation rounds (incriminations and political party financing).

The institutional setup should be substantially strengthened, both in terms of staff and in terms of respecting the full independence of law enforcement and judicial bodies dealing with investigations into especially high level corruption. The Anticorruption Council has played the role of critical watchdog of the Serbian anti-corruption policy and should continue to do so while being the advisor to the government on anti-corruption policy. Serbia also established an Anti-Corruption Agency (ACA) with a broad mandate, including on dealing with asset declarations, the prevention of conflicts of interests, the controlling of political party financing, supervising integrity plans and monitoring the anticorruption strategy. Serbia is preparing an amendment to the legal basis of the ACA in order to improve its efficiency. If Serbia maintains the current scope of ACA activities, Serbia should provide ACA with sufficient staff and budget given its substantial number of tasks. In any case, it remains important that ACA is provided with strong operational tools and enjoys the necessary political support for its work. For example, the ACA's monitoring reports to the National Assembly should be subject to effective follow up, including corrective measures where needed.

Serbia has a system of wealth and interest disclosure for public officials, which is defined in the Law on the Anti-Corruption Agency. Through its annual plan, the ACA focuses every year on different category of officials on top of random controls. It remains unclear how and by whom cases of potential illicit enrichment discovered by the ACA should be investigated. Serbia should find an adequate legal and institutional solution to promptly address cases of illicit enrichment. ACA should be better connected to various databases to allow a swifter detection of cases of illicit wealth.

Serbia has no dedicated legislation on conflicts of interest. While the Law on the Anti-Corruption Agency does contain provisions on the prohibition of dual public offices and the prevention of conflicts of interest, the results in this area are so far limited. Serbia should develop more robust legal provisions and ensure the application of deterrent sanctions in the case of proven infringements. Serbia should continue to conduct awareness raising campaigns at all levels about preventing conflicts of interest as a pivotal element of the fight against corruption.

The Law on financing of political activities regulating the financing of political parties and election

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<sup>3</sup> See the latest figures provided by the World Economic Forum <http://reports.weforum.org/the-global-competitiveness-report-2013-2014/> p 334

campaigns is in line with GRECO recommendations. After the 2012 elections, 1,056 reports on election campaign costs were submitted to the ACA. 580 political entities did not submit the report. The ACA can file charges for non-submission of reports on electoral campaigns as well as misdemeanour charges in cases of financial irregularities and so it did. The law foresees that in such cases public funding should be frozen but so far this did not happen. There is also limited evidence that courts effectively followed up on complaints filed by ACA under the misdemeanour procedure. In practice, the sanctioning tools for irregularities in the financing of political parties and electoral campaigns remain under-used. Serbia should also ensure that the ACA has the necessary tools to do in-depth checks of financial flows and that cases it reports receive adequate judicial follow up.

Legislation on access to information is widely used by the media and citizens. While in most cases a positive reply is received, authorities are far more reluctant to disclose information when it concerns sensitive areas such as privatisation deals, public procurement, public expenditures or donations from abroad to political parties. There is no effective enforcement mechanism in such cases. Serbia should further improve the mechanism to access information and ensure that decisions of the Commissioner for Information of Public Importance and Personal Data Protection are effectively implemented and that non-compliance is sanctioned.

Serbia is also affected by private sector corruption.<sup>4</sup> Mechanisms should be put in place to address this so as to restore confidence of foreign investors. Also privatisation is a high risk area for corruption, money laundering and tax evasion. It is important that all allegations in this area are taken seriously and receive an adequate follow up by the judicial authorities. The transparency and accountability in state owned and state controlled enterprises needs to be improved.

Despite recent efforts to re-qualify cases handled under Article 359 (abuse of office) of the Criminal Code, there remains a tendency to overuse the charge of abuse of office in the context of business disputes, also in cases where there is no objective criminal conduct. A comprehensive review of the economic section of the criminal code, scheduled under the action plan implementing the Judicial strategy, should be conducted in the short run with a view to providing for credible alternative charges.

The Public Procurement Office is preparing a series of measures to prevent and fight against corruption in public procurement. The effect of these measures should be closely monitored.

Serbia has established a specialised prosecution office for organised crime, which has also jurisdiction over high level corruption cases. Around 40 prosecutors work on corruption cases throughout Serbia. There is no similar degree of specialisation at the level of the police or the courts. Threat assessment and risk analysis are rarely used to guide investigations. The track record of investigations, prosecutions and final convictions in corruption cases at all levels is developing but remains weak in particular as regards high level corruption. Law enforcement bodies and the judiciary should be strengthened in their independence to pro-actively look into all allegations of corruption and related economic crime. Leaks to the media regarding planned or ongoing investigations hamper the normal course of justice.

Inter-agency cooperation has improved to a certain extent, but needs to be further developed. In particular, data bases should be better inter-connected and a safe platform to exchange intelligence should be established.

Financial investigations are used more than in the recent past, especially for confiscation of assets. They are nevertheless rarely used to investigate the money trail of crime and to pro-actively uncover criminal activities beyond the initial case. Serbia should implement the Financial Action

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<sup>4</sup> "Business, corruption and crime in the Western Balkans: The impact of bribery and other crime on private enterprise". UNODC, 2013 (Study funded with the help of the European Commission)

Task Force (FATF) recommendations with a special focus on developing its capacity to run complex financial investigations in parallel to criminal investigations through establishing specialised units within the police (at central and local level), recruiting and training experts and the introduction of modern investigation techniques. There is not yet a practice of systematically confiscating criminal assets in corruption cases. The legislation on asset confiscation and management should be reviewed and the institutional set up strengthened. Shortcomings in the collection of detailed statistics persist (*see also Chapter 24 – Fight against organised crime*).

The Law on Civil Servants as well as the Code of Conduct for Civil Servants contain measures to step up integrity in the public sector. As part of an in-depth public administration reform, steps are needed to better ensure transparency and accountability in the public service. Most urgent is the need to speed up de-politicisation of the public administration so as to ensure its integrity, safeguard institutional memory and apply neutrality in the public service. Internal control and audit bodies have to be strengthened. Infringements of ethical rules should be effectively punished. Comprehensive legislation on whistle-blowers protection remains to be adopted and effectively implemented.

Immunity rules in Serbia will have to be clarified to ensure that criminal investigations into allegations of corruption and crime are not hampered.

The newly adopted anti-corruption strategy and action plan provide an adequate framework for addressing a number of these problems. However, to ensure the credibility of the 2013 Strategy and action plan, deadlines and budgets allocated will have to be reassessed. Equally, the institutional ownership of the strategy as well as the monitoring arrangements need further clarification. Cooperation between the government and civil society in monitoring its implementation needs to be actively pursued.

## **Recommendations**

The fight against corruption should remain a priority for Serbia. Serbia is implementing a new anti-corruption strategy through an action plan covering the timespan 2013 - 2018. The actions foreseen should be implemented according to the deadlines set. An effective and functioning monitoring mechanism should allow regular and careful monitoring of the implementation results. A mid-term review should be conducted at the end of 2015. Swift corrective measures should be taken where needed. Based on the priorities outlined in this strategy and the actions already foreseen, Serbia should revise and amend its action plan paying particular attention to the following issues :

- Broaden the political and institutional ownership, including high level coordination, of the fight against corruption and identify clear high level institutional leadership in the implementation of the anti-corruption strategy in particular;
- Ensure systematic consideration of the recommendations of the Anti-Corruption Council;
- Ensure legal alignment with the EU *acquis* - including as regards the definitions of active and passive corruption – and with the UN Convention against Corruption (UNCAC);
- Clarify the co-ordination and co-operation between the different actors in charge of implementing and monitoring the action plan.

### Preventive action against corruption:

- Clarify the mandate of ACA ensuring that its staffing level matches the tasks it is asked to perform. Further improve its efficiency through an amended legal basis and strengthen its administrative capacity, allowing it to better perform its co-ordinating role *inter alia* by ensuring that it is better connected, including through databases, to various agencies and that its

reports, complaints and recommendations receive an adequate follow up; ensure effective and operational monitoring mechanisms;

- Ensure an effective implementation of the legislation on the control of political party financing and the financing of electoral campaigns, in particular by issuing effective sanctions in cases of failures to report and proven irregularities;
- Improve the legal and administrative framework to prevent and deal with conflicts of interest. Ensure the concept is well understood at all levels;
- Look into an adequate legal and institutional solution to effectively address cases of illicit enrichment;
- Improve the free access to information rules and their practical implementation, *inter alia*, with regard to information on privatisation deals, public procurement, public expenditures or donations from abroad to political parties, including as regards information considered 'sensitive';
- Take steps to depoliticise the public administration, to strengthen its transparency and integrity, including through strengthening internal control and audit bodies;
- Adopt and implement the new law on whistle-blowing and take the necessary steps to make the system of whistle-blower protection more effective in practice;
- Implement measures to strengthen the control system for public procurement and monitor their effects;
- Adopt specific measures to prevent and sanction corruption in privatisation deals and more broadly to address private sector corruption and improve the transparency and accountability of state-owned and state controlled companies;
- Further develop, implement and assess the impact of specific measures to tackle corruption in other particularly vulnerable areas, such as health, taxation, education, police, customs and the local administration;
- Ensure that civil society is involved in the anticorruption agenda.

#### Repressive action against corruption:

- Review the economic crime section of the criminal code with a view to provide alternatives to the offence of abuse of office;
- Ensure independent, effective specialised investigation/prosecution bodies, in particular through:
  - Proposing and implementing measures to strengthen the independence of all investigative and judicial bodies dealing with investigations into corruption so as to effectively protect from undue political pressure;
  - Providing adequate resources (including budget, staffing and specialised training) to all investigation and judicial authorities involved in the fight against corruption;
  - Improving the cooperation and information exchange between authorities involved in the fight against corruption, including also tax and other only indirectly linked authorities, through a better inter-connection of databases and by establishing a secure platform of communication;

- Fully implementing the new FATF recommendations and stepping up the capacity to run complex financial investigations in parallel with criminal investigations, including through strengthening the special unit in the Ministry of Interior and ensuring adequate training;
- Effectively investigate all allegations of corruption in privatisation cases and ensure full transparency and accountability to avoid such cases in the future;
- Improve the collection of unified statistics on corruption, distinguishing clearly between different types of criminal activities and allowing for a detailed assessment of length of the cases, outcome etc.;
- Ensure that the legislative and institutional framework enables effective seizure, confiscation and management of the proceeds of crime resulting in an increased number of seizures and confiscations;
- Propose measures for law enforcement and the judiciary to prevent leaks to the media of confidential information regarding the investigations;
- Review the system of immunities, by ensuring that effective procedures for lifting of immunities are in place so that they do not hamper criminal investigations into allegations of corruption and crime;
- Conduct a mid-term review at the end of 2015 as well as an impact assessment in 2018 of the results generated by the 2013 Strategy and its revised action plan against the overall corruption situation in Serbia. Define on that basis and where needed measures to cover the remaining period up until accession.

### **III.c Fundamental rights**

#### **General**

The Serbian Constitution protects fundamental rights and the general legal and institutional framework is in place. The overall administrative capacity on human rights remains to be strengthened. Shortcomings persist in the practical implementation of the protection of human rights, including by judicial and law enforcement authorities. Administrative capacity and financial means to implement fundamental rights remain limited.

#### **Human rights**

- *Human dignity and right to life and to the integrity of the person*

Human dignity is protected by the Constitution. No significant problems in the enforcement of these rights have been reported.

- *Prohibition of torture and inhuman or degrading treatment or punishment*

Torture and inhuman or degrading treatment are prohibited by the Constitution and constitute criminal offences under the Criminal Code. The relevant international instruments have been ratified. Since 2011, monitoring is provided by the State Ombudsman as the national prevention mechanism. However, its administrative capacities need to be further strengthened.

Poor living conditions in police detention facilities require special attention. Training and awareness



raising on prevention of ill treatment by the police of persons in police custody remains necessary.

Regarding prison conditions, there have been some recent measures to improve living conditions in prisons (e.g. through the amnesty law and the increased use of home imprisonment monitored by electronic tagging) but these are still not fully aligned with the European standards, in particular as regards prison overcrowding and health care services for prisoners. A new strategy for further development of the correctional system 2013-2020 was adopted in December 2013 while a new Law on Enforcement of Criminal Sanctions and a new Law on Probation are under preparation and should help in further improving the situation.

The legal framework on the prohibition of torture is largely in place but its practical and consistent implementation as well as the institutional set up need to be further aligned with international standards, including the case law of the European Court for Human Rights. This includes, *inter alia*, the full implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Education and training of judiciary and law enforcement staff regarding prevention of torture and ill-treatment need to be enhanced.

- ***Prohibition of slavery, servitude, and forced or compulsory labour***

Slavery, servitude and compulsory labour are prohibited by the Constitution. No problems in the enforcement of these rights have been reported.

- ***Respect for private and family life and communications***

The respect for private and family life and communications is ensured by the Constitution, in accordance with Article 8 of the ECHR. However, it will have to be further assessed whether limitations of these rights in Serbia are exercised in accordance with Art. 8(2) of the ECHR, in particular whether the use of special investigative means is sufficiently well regulated and supervised to effectively prevent abuses.

- ***Right to marry and right to found a family***

The right to marry, for a man and a woman, is ensured by the Constitution and by the Family Law. No major problems in relation to the right to marry and right to found a family have been reported in practice.

- ***Freedom of thought, conscience and religion***

The freedom of thought, conscience and religion is provided for by the Constitution. 18 religious organisations have been registered so far. However, the lack of transparency and consistency in the registration process is preventing some smaller religious groups from exercising their rights. Equal access to church services in some minority languages is not consistently guaranteed in practice. The rulebook on the register of churches and religious communities includes disputable provisions and may lead to contravention of the principle of state neutrality towards the internal affairs of religious communities. The administrative capacity of both the Ministry of Justice (Normative Department and the Department for Keeping Registers as well as the Office for Cooperation with Churches and religious Communities) need to be improved.

- ***Freedom of expression including freedom and pluralism of the media***

Freedom of expression is ensured by the constitutional and through legislation. More commitment is needed to implement the 2011 Media Strategy which provides for state withdrawal from media ownership. There is still a large proportion of various forms of state ownership and state involvement, including at the local level and through national minority councils. In addition, state

funds for media are used in a non-transparent manner via public advertising.

Threats and violence against journalists remain an issue of concern and contribute to self-censorship. Several journalists need police protection which has had a tendency to be considered as a normal practice. The establishment of the Commission tasked to look into unresolved cases of murdered journalists resulted in January 2014 in new arrests and a breakthrough in one of the cases. The Commission should continue its work to ensure that all relevant cases are thoroughly re-examined.

Media campaigns based on anonymous or leaked sources related to ongoing investigations or announcing arrests before they happen are frequent. Such practices are hampering criminal investigations, violating personal data laws and challenge the presumption of innocence.

- ***Freedom of assembly and association, including freedom to form political parties and the right to establish trade unions***

The legal framework is mostly in place, including constitutional guarantees in relation to the freedom of assembly and association, as well as freedom to form political parties and the right to establish trade unions. However, further efforts are required to align the Public Assembly Law with Article 11 of the European Convention of Human Rights and fundamental freedoms and Article 12 of the charter of Fundamental Rights of the European Union, in particular as regards the right to freedom of peaceful assembly, locations for holding a public assembly, responsibilities of the organiser of a public assembly and reasons for banning and suspension of a public assembly. Amendments to the Freedom of Assembly Law are under preparation and should also align to Constitutional provisions. More attention is needed to ensure full and effective exercise of the freedom of assembly by all segments of society, including by minority groups and LGBTI population, whose pride parade has been banned for three consecutive years on security grounds.

- ***Treatment of socially vulnerable and disabled persons and principle of non-discrimination***

The national legal framework is broadly in place and the relevant international conventions have been ratified. An Anti-discrimination Law prohibiting any kind of discrimination is in place since March 2009. A comprehensive anti-discrimination strategy (2013 – 2018) was adopted but the adoption of the implementing action plan is pending. Efforts are required to bring the anti-discrimination legislation fully in line with EU *acquis* as regards the scope of exceptions from the principle of equal treatment, the definition of indirect discrimination and the obligation to ensure reasonable accommodation for disabled employees.

The Commissioner for the Protection of Equality continuously raises awareness on discrimination and on existing mechanisms for protection against discrimination. This results in an increased number of complaints from citizens. The authorities need to enhance the administrative capacity to handle the increasing flow of complaints.

The Law on the Protection of Persons with Mental Disabilities and the Law on Patients' rights provide for a strengthened legal framework but the oversight of living conditions in social care institutions and psychiatric hospitals remains to be strengthened. More attention is needed for the social integration of persons with disabilities.

Efforts were made to show greater openness towards protecting lesbian, gay, bisexual, transgender and intersex (LGBTI) people and increase the dialogue with the civil society active in this field. There is a more active approach towards processing discrimination cases against the LGBTI population, as a result of police training, the development of court practices and improved cooperation with LGBTI persons as witnesses. Nevertheless, LGBTI persons, as well as civil

society activists engaged in promoting and protecting LGBTI rights, are still subject to discrimination, both by public authorities and in society.

The authorities need to enhance efforts to effectively protect the groups most discriminated, and in particular Roma, against hate speech and threats. (For other aspects of anti-discrimination, see also *chapter 19 – Social Policy and Employment*).

- ***Right to education***

The right to education is protected by the Constitution and further regulated by the national legal framework. Education in minority languages needs to be more consistently implemented throughout Serbia particularly where there is such a demand from minorities while at the same time ensuring that this is without prejudice to the learning of the official language or the teaching in this language enabling the social inclusion of minorities in the society.

Despite a further increase in the enrolment rate for Roma children in the education system, they continue to face difficulties and significant school dropout rates.

- ***Right to property***

The right to property is generally ensured, although the process is slow and a considerable backlog exists. The Agency for Restitution receives around 1 000 claims per month and has so far adopted about 6 100 decisions

- ***Gender equality and women's rights***

Gender equality is constitutionally and legally guaranteed. The administrative capacity of the Gender Equality Directorate in the Ministry of Labour, Employment and Social Policy (MoLESP) needs to be further strengthened. Promotion of gender equality and women's rights has continuously improved over the past years. However, effective enforcement of is needed, in particular regarding women on maternity leave, sexual harassment and inequality in promotion and salaries. Women's rights need to be better protected, in particular on improving equality in the workplace and addressing domestic violence which remains an issue of concern. (For other aspects related to women's rights and labour legislation, see *chapter 19 – Social Policy and Employment*);

- ***Rights of the child***

While a good legislative framework is broadly in place, further efforts are needed to ensure its full implementation. Gaps remain between legislation and practice, such as in the case of children with disabilities, the persisting high volume of incidents of violence, the lack of resources to guarantee the free choice of social welfare services, the very low awareness among children and young people of all these laws and of their rights. It is essential to ensure that coordination and oversight of rights of the child implementation are properly addressed and that the Council for protection of the rights of the child is adequately resourced and empowered to fulfil its mandate and effectively monitor and track implementation of the many action plans and strategies in the area of rights of the child.. The increasing problem of peer violence in schools remains an issue of concern. Additional efforts need to be done to prevent and tackle violence against children.

As regards juvenile justice, special programmes adapted to the needs of children and young people remain to be consistently established and efforts made to improve detention facilities that are not yet in line with international standards. The policy of deinstitutionalisation for children with disabilities remains to be further improved.

## **Procedural safeguards**

The right to have personal freedom and security as well as the right to a fair trial is protected by the Constitution. The effective implementation of the latter is affected by shortcomings as regards the judicial system (see above) and in particular the excessive length of proceedings as well as discrepancies in the areas of competencies of different types of courts.

As regards access to justice, in July 2013 a reform of minor offences courts was conducted with a view to improving access to justice. However, improvement of the situation is hampered by uneven workload within the judiciary, the length of proceedings, the backlog of cases. The lack of a free legal aid system, combined with the recent adoption of an adversarial model in criminal proceedings, based on equality of the parties, raise additional concerns.

Access to a lawyer has to be strengthened to be in line with Directive 2013/48/EU – in particular, suspect or accused persons have to have access to a lawyer without undue delay and prior to any interrogation by law enforcement authorities. Access to a lawyer is also depends on a legal aid system.

The provision in Serbian law that allows waiving the right to interpretation (if the person declares to know the language of the proceedings) is not in line with Directive 2010/64/EU on the right to interpretation and translation.

The right to information has to be strengthened to be in line with Directive 2012/13/EU.

Minimum standards on the rights, support and protection of victims of crime need to be implemented in line with Directive 2012/29/EU.

## **Respect for and protection of minorities and cultural rights**

Serbia has an extensive Constitutional and legal framework providing for the protection of minorities and is party to relevant international instruments such as the Council of Europe Framework Convention on National Minorities (FCNM) and the European Charter for Regional or Minority Languages. The government's Office for Human and Minority Rights coordinates, implements and monitors minority related policies but its administrative capacity as well as its overall horizontal effective coordination of Governmental policies related to human rights and minority protection needs to be further enhanced. A National Council for Minorities was re-established in 2013 with a view to enhance coordination and exchanges over minority policies. There are 20 elected National Councils of National Minorities, one for each of the 19 recognised national minorities as well as one for the Jewish community. Efforts are needed to ensure their smooth functioning.

The legal framework, including the Law on National Minority Councils, remains to be amended in order to take into account the recommendations from the independent bodies regarding the electoral framework, the 2014 3<sup>rd</sup> Opinion on Serbia of the Advisory Committee of the FCNM as well as the February 2014 Serbian Constitutional Court ruling. Attention is needed to effectively and consistently implement the legislation providing for minority protection throughout Serbia including in areas of education, use of language, and access to media and religious services in minority languages. National minorities' representation in public administration bodies, particularly at the local level, remains overall to be improved.

A strategy for the improvement of the status of Roma (2009) as well as its current action plan are being implemented covering the period 2012–2014. Further sustained efforts, including financial efforts, are needed to ensure full implementation of Serbia's Roma strategy and action plan and to address the difficult situation of the Roma population. Serbia should start preparations for a new multi-annual strategy and action plan to improve living conditions of Roma. The joint conclusions

Serbia-European Commission adopted in the framework of the 2011 seminar on Roma inclusion have been actively followed up and a new set of operational conclusions addressing the remaining gaps was jointly agreed in 2013. A new procedure for civil registration of Roma led to initial encouraging results. Serbian authorities should continue their efforts to facilitating access to personal documents and registration of undocumented people, including children. Efforts are being displayed to improve housing conditions, to enrol Roma children already at pre-school level and to improve their health situation. Nevertheless, the Roma still face widespread discrimination and difficult living conditions, especially those living in informal settlements where access to basic services such as water and electricity is not ensured. Forced evictions, mostly not in line with relevant international standards, continue to occur. Comprehensive socio-economic measures such as on education, health, employment and housing in order to improve the situation of the Roma and tackle exclusion will also be taken into account in the framework of the chapter 19 on "Social Policy and Employment", particularly regarding social inclusion aspects.

The situation of the displaced persons living in Serbia is slowly improving but remains overall difficult. According to the UNHCR, there are still around 57 000 refugees and 209 000 internally displaced persons (IDPs) in Serbia. Discrimination against these groups is prevalent in access to employment and to social and health care. Their living conditions, including housing situation, are still difficult and many live under the poverty threshold as well as in collective centres.

### **Measures against racism and xenophobia**

The Constitution and secondary legislation provide for measures to combat racism and xenophobia, including by means of criminal law. However, effective implementation of measures preventing and sanctioning racism and xenophobia remains weak. Although criminal charges are increasingly filed under Article 317 of the Criminal Code, final convictions remain rare. Measures encouraging tolerance should be promoted. Particular attention is needed to implement and monitor the effects of the strategy (2013 – 2018) for combatting violence and misbehaviour at sport events.

### **The EU Fundamental Rights Agency**

Serbian authorities declared that Serbia will participate in the Agency's work upon accession, and have already expressed their willingness to join the works of the Agency with the status of observer to the management board.

### **Protection of personal data**

Alignment with the Data Protection Directive needs to be completed. The planned amendments to the Personal Data Protection Law which are under preparation should *inter alia* ensure harmonisation with Directive 95/46/EC on the protection of individuals with regard to processing of personal data and free movement of such data and with Directive 2002/58/EC as amended by Directive 2009/136/EC. A careful scrutiny of other legislation concerned by data protection rules is required. Moreover, Serbia needs to consider future legislative amendments and implementation measures in light of the major reform of the EU legal framework on the protection of personal data proposed by the Commission in 2012. Data protection provisions will need to be carefully balanced with fundamental rights.

Constitutional provisions on data protection shall be carefully reviewed to better define the protection of personal data including to better cover the right to private and family life as defined in Art. 8 ECHR, in line with the Venice Commission recommendations.

The capacities of the Commissioner for Information of Public Importance and Personal Data Protection are still limited in terms of human resources, investigation and inspection mechanisms and should be further strengthened. The Agency has not yet established a prior checking system, as

foreseen in the EU data protection rules.

## **Recommendations**

In view of the above, Serbia should adopt one or more action plan(s), addressing in particular the issues listed below. Legislative amendments aiming at further alignment of the anti-discrimination law, the law on the Ombudsman and the law on the prohibition of discrimination of persons with disabilities also need to take into account the requirements under chapter 19 (*social policy and employment*).

- Fully implement the recommendations provided by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);
- Strengthen the capacity of the Ombudsman (in particular in view of his role as national prevention mechanism ), the provincial and local Ombudsmen services;
- Further improve prison conditions and take measures to reduce the prison population, in particular alternative sanctions could be further explored. Take measures to effectively reduce ill treatment in police custody;
- Ensure state neutrality towards the internal affairs of religious communities and further ensure that the right of persons belonging to a national minority to equal access to religious institutions, organisations and associations is consistently guaranteed in both legislation and its implementation in line with independent bodies recommendations;
- Ensure protection of journalists against threats and violence, in particular through effective investigations and deterrent sanctioning of past attacks;
- Review and amend the legislative and institutional framework for the protection of media freedom by implementing the Media strategy with a view to appropriately regulating state funding and putting an end to control of media by the State. Take urgent measures to stop threats and violence against journalists as well as media leaks related to ongoing or planned criminal investigations;
- Complement the anti-discrimination strategy with a credible action plan, including actions to foster gender equality and a mechanism to monitor its implementation. Strengthen the institutional capacity of the bodies active in this area, improve their cooperation and ensure more effective follow up from the law enforcement bodies to possible violations, enhance awareness and support measures, especially on employment and public representation of women. Particular focus should be put on ending discrimination of the LGBTI community and respecting their rights and freedoms; Adopt the Law aiming at protecting persons with mental disabilities in institutions of social welfare;
- Improve the protection and enforcement of rights of the children and of persons with disabilities, including by strengthening the relevant institutions, ensuring better cooperation between the judiciary and the social sector and by fully implementing legislation on juvenile justice in line with EU standards;
- Strengthen procedural safeguards in line with EU standards;
- Adopt through an inclusive process a dedicated action plan focused on the effective implementation of existing provisions regarding the protection of minorities and taking into account the recommendations issued in the third Opinion of the Advisory Committee on Serbia

in the context of the Framework Convention for the Protection of National Minorities (FCPNM);

- Serbia should start preparations for adopting at the end of 2014 a new multi-annual strategy and action plan to improve living conditions of Roma, including actions to ensure their registration, comprehensive measures on non-discrimination, ensure compliance with international standards on forced evictions and access to guaranteed socio-economic rights and dedicate additional financial assistance to implement the current and future Roma strategy in particular regarding education and health measures;
- Improve the situation of refugees and IDPs by ensuring their full access to rights, including civil documentation and housing solutions for the most vulnerable ones;
- Ensure adequate prosecution of hate crime. Monitor the effects of the implementation of the strategy (2013 – 2018) for combatting violence and misbehaviour at sport events and take corrective measures where needed;
- Ensure legislative and constitutional alignment with the *acquis* in the area of protection of personal data and allow for assessment through the preparation of the relevant transposition tables; ensure sufficient financial and human resources to the Commissioner for Information of Public Importance and Personal Data Protection.

#### **III.d EU citizens rights**

Upon accession Serbia needs to have adopted legislation that would allow EU citizens to vote and stand as candidates in elections to the European Parliament and in municipal elections. The same applies to the right of free movement and residence, which so far is only granted under the conditions set out in the Law on foreigners. Serbia will also have to ensure diplomatic and consular protection for EU citizens. The Serbian authorities indicated that they see no difficulties in adopting and implementing these parts of the *acquis*.

## **Annex – Human rights related conventions ratified by Serbia (as stated by Serbia)**

### **I COUNCIL OF EUROPE CONVENTIONS**

- Convention for the Protection of Human Rights and Fundamental Freedoms;
- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms;
- European Convention on Extradition;
- European Convention on Mutual Assistance in Criminal Matters;
- Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory
- Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention;
- Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto;
- European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders;
- Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention;
- European Convention on the International Validity of Criminal;
- European Convention on the Transfer of Proceedings in Criminal Matters;
- European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes;
- Additional Protocol to the European Convention on Extradition;
- European Convention on the Suppression of Terrorism;
- European Agreement on the Transmission of Applications for Legal Aid;
- Additional Protocol to the European Convention on Information on Foreign;
- Second Additional Protocol to the European Convention on Extradition;
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children;
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data;
- Convention on the Transfer of Sentenced Persons;
- Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty;
- Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms;
- Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms;
- European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches;
- European Charter of Local Self-Government;
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- European Convention on Transfrontier Television;
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
- European Charter for Regional or Minority Languages;
- Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;



- Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby Framework Convention for the Protection of National Minorities;
- European Social Charter (revised);
- Additional Protocol to the Convention on the Transfer of Sentenced;
- Criminal Law Convention on Corruption;
- Civil Law Convention on Corruption;
- Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms;
- Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows;
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters;
- Convention on Cybercrime;
- Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty;
- Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems;
- Additional Protocol to the Criminal Law Convention on Corruption;
- Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention;
- Council of Europe Convention on the Prevention of Terrorism;
- Council of Europe Convention on Action against Trafficking in Human;
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism;
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;
- Third Additional Protocol to the European Convention on Extradition
- Council of Europe Convention on preventing and combating violence against women and domestic violence;
- Fourth Additional Protocol to the European Convention on Extradition;

## **II UNITED NATIONS CONVENTIONS**

- International Convention for the Suppression of the Traffic in Women and Children;
- International Agreement for the Suppression of the White Slave Traffic;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
- Final Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
- Slavery Convention, and Protocol amending the Slavery Convention;
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;
- Convention on the Rights of the Child, and amendment to the article 43 (2) of the Convention on the Rights of the Child;
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- International Covenant on Civil and Political Rights and its first and second optional Protocols;
- International Covenant on Economic, Social and Cultural Rights;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women and its optional Protocol;
- Convention on the Rights of Persons with Disabilities and its optional Protocol;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its optional Protocol;
- Convention on the Prevention and Punishment of the Crime of Genocide;
- Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity;
- International Convention on the Suppression and Punishment of the Crime of Apartheid;
- International Convention against Apartheid in Sports;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (only signed);

### **III INTERNATIONAL LABOUR ORGANISATION CONVENTIONS**

- The Forced Labour Convention (N°29)
- The Freedom of Association and Protection of the Right to Organise Convention (N° 87)
- The Right to Organise and Collective Bargaining Convention (N° 98).
- The equal remuneration Convention (N° 100).
- The Abolition of Forced Labour Convention (N°105).
- The Discrimination (employment and occupation) Convention (N° 111).
- The minimum Age Convention (n°138)
- The Worst Forms of Child Labour Convention (No. 182)