



**CIVIL SOCIETY RECOMMENDATIONS
TO THE PARTICIPANTS OF THE OSCE MINISTERIAL COUNCIL
MEETING IN BASEL, 4-5 DECEMBER 2014**

Human Dimension Issues in Serbia, Requiring Special Attention

In June 2014 a 10-member Coalition of Non-Governmental Organizations on Serbia's OSCE Chairmanship in 2015 was created to work with the Serbian Chairmanship and OSCE institutions to address OSCE-wide human dimension issues identified as priorities by the incoming Serbian Chairmanship and to use the occasion of the Serbian Chairmanship to improve the implementation of human dimension commitments in Serbia. The Coalition identified a number of issues that cause significant concern and require considerable progress in the presiding country which should lead other participating States by example. Some of these issues clearly fall within the scope of existing OSCE human dimension commitments while others do not but nevertheless require serious attention.

The Coalition hopes that Serbian NGOs will be allowed to contribute to the important process of self-assessment of Serbia's implementation of its OSCE human dimension commitments which is currently being prepared by the incoming Serbian Chairmanship. We hope that the information and recommendations below will be useful in conducting the self-assessment.

In general, Serbia has established a legal framework for protecting human rights. Implementation, however, is lacking in many areas. We therefore see the Serbian OSCE Chairmanship as a valuable tool for advancing human rights in the country. Legal reforms are underway, although judicial protection, one of the prerequisites for effective protection of human rights, is currently paralyzed by the strike of attorneys at law. EU aspirations of Serbia are fully in line with the goal of advancing human rights but progress should be visible on the ground. Independent institutions in Serbia that have emerged in the last decade, from the Ombudsman to the Commissioner for Equality, the Commissioner for Free Access to Information and Data Protection, the Agency against Corruption and others are gaining strength and their activities are well respected in the society. These institutions provide a good balance to a weak separation of powers and institution building that is still at an early point.

Discrimination

Protection against discrimination in the Republic of Serbia was established in 2009 and has since been upgraded by adopting appropriate legislation and the establishment of independent institutions for the protection of citizens' rights.

However, improvement of institutional arrangements does not necessarily lead to integration of anti-discrimination policies and norms in political and social life. The lack of consistent implementation of adopted "European laws" is a chronic problem. Fundamental human rights are still violated, especially when it comes to Roma and minority communities and other vulnerable groups (women, LGBT, persons with mental disabilities, elderly, children, etc.). Discriminatory statements, intimidation and violence still occur without political reaction or appropriate follow-up by authorities.

The Prosecution of War Crimes and the Rights of the Victims of War Crimes in Serbia

According to the Annual Report on War Crimes by the Humanitarian Law Center³⁰ and its Analysis of the Prosecution of War Crimes in Serbia in 2004-2013³¹, the characteristics of the prosecution of war crimes in Serbia include:

³⁰ Humanitarian Law Center, "Report on War Crimes Trials", July 2014, <http://www.hlc-rdc.org/wp-content/uploads/2014/07/Report-on-war-crimes-trials-in-Serbia-in-2013-ff.pdf>

³¹ Humanitarian Law Center, "Analysis of the Prosecution of War Crimes in Serbia 2004-2013", September 2014, <http://www.hlc-rdc.org/?p=27457&lang=de>

- A small number of indictments: The number of prosecutions brought by the Office of the War Crimes Prosecutor (OWCP) remains extremely low in relation to the number, scale and intensity of the crimes under international law which were committed by Serbian forces during the armed conflicts of the 1990s.
- Avoidance of politically sensitive cases: Several cases regarding war crimes committed by Serbian forces have been in the pre-trial phase for more than 10 years, including the case of the mass grave in Batajnica.
- Avoiding prosecution of officers and generals: the OWCP has so far prosecuted only low profile perpetrators, while the responsibility of mid- and high- ranking police and army officials is ignored. Individuals responsible under the doctrine of the command responsibility and for crimes against humanity have not yet been brought to justice.
- Mild sentencing policy: In a significant number of cases, the war crimes departments have rendered sentences around, on the border, or even below the statutory minimum. This lenient practice is often the result of the court considering mitigating circumstances relating to the character of the defendant or other issues that, due to the severity of the crime, should not be given much significance (e.g. passage of time after the commission of the crime, being a family person, etc.).
- Protection of victims and witnesses: Institutions involved in war crimes prosecution in Serbia do not seem to sufficiently understand the delicate position of victims and witnesses of war crimes and their importance in the court proceedings. Existing mechanisms for the protection of victims and witnesses from intimidation and assaults on their integrity, along with the support system for victims and witnesses, only partially fulfill this function. The most serious deficiencies have been recorded in the program designed to provide protection to former members of the military and police, as well as the psychological support for victims. The allegations of illegal and unprofessional conduct of the Ministry of the Interior Protection Unit members point to serious problems in the implementation of protection programs.
- Regional Cooperation in the realm of war crimes prosecution amounts to the transfer of cases and exchange of evidence. As of now the OWCP established cooperation with counterparts in Croatia, Montenegro and Bosnia and Herzegovina, as well as with the EULEX in Kosovo. Even though regional cooperation has been on the rise in recent years, problems have emerged in those cases in which the OWCP named citizens of Bosnia and Herzegovina and Croatia who had held important political, military and police functions, as suspects.
- In 2012 and 2013 the Higher Court Department delivered anonymizing rulings in war crimes cases, denying victims and society the right to learn the facts about the war crimes committed.
- Institutional Reform: There are no criteria and conditions which will prevent the employment by the specialized institutions for the prosecution of war crimes of persons who participated in armed conflicts the 1990s.

Victims' Rights

According to the HLCs analysis "Administrative reparations in Serbia - an existing legal framework"³² as well as the findings of the Council of Europe (Point 2.b) and the UN Committee Against Torture (Point 18), Serbia violates victims' rights to compensation and other types of reparation. The existing legal framework is very discriminative, since it doesn't recognize the right to administrative reparations for all victims of war crimes. Only around 10% of victims of war crimes can fulfill their right to reparations according to this law. Among

³² Humanitarian Law Center, "Administrative reparations in Serbia - an existing legal framework", June 2013, http://www.hlc-rdc.org/wp-content/uploads/2014/03/Administrative_reparations_in_Serbia_an_analysis_of_the_existing_legal_framework.pdf

the categories excluded are victims of sexual violence, missing persons, family members, victims of Serbian forces, etc.

Attacks on Human Rights Defenders

Governmental officials rarely condemn or publicly react to threats, physical assaults and cases of incitement to violence and hate speech from extremist groups against non-governmental organizations, human rights defenders, journalists, bloggers or individual citizens. Extremist right-wing organizations are targeting members of minority groups (national, sexual and political minority groups) as well as organizations and individuals dealing with the past and warning about Serbian nationalism. The "Naši" movement spread the list of "30 biggest Serb-haters and traitors among public figures" via social networks, containing the names of many human rights defenders. For months a campaign was waged accompanied by death threats against the Chairwoman of the Helsinki Committee for Human Rights in Serbia Sonja Biserko, following the leaking of information that she had agreed to appear as a witness in Croatia's case against Serbia for genocide before the International Court of Justice.

Members of the non-governmental organization "Women in Black" have been physically assaulted on several occasions. Three years ago their premises in downtown Belgrade were demolished and the police had never identified perpetrators. "Women in Black" activists were again threatened with death in Facebook in March 2014 after Radomir Počuča, the spokesman for the Anti-terrorist Unit, called for hooligans to lynch them after their memorial to mark the 15th anniversary of ethnic cleansing of Albanian civilians in Kosovo. Radomir Počuča and Ivan Ivanović of the "Naši" organization were detained as suspects of the crimes against law and order and racial and other discrimination committed via the Internet. Despite being on trial, Počuča went to fight alongside pro-Russian forces in Ukraine as the judges didn't take his passport.

An editorial of *Vecernje Novosti*, penned by the daily's editor-in-chief Ratko Dmitrović, advocated for a ban on public appearance of Jelena Milić's (director of the Center for Euro-Atlantic Studies) and Sonja Biserko's (chairwoman of the Helsinki Committee), calling them notorious "anti-Serbs" and "traitors" and comparing them with a convicted criminal and drug dealer Kristijan Golubović.

The number of complaints to the Press Council on breaches of the Code of Journalists is rising. One of the most dramatic examples is the campaign against actor Goran Jevtic, who had the main role in a theatre play perceived as sending a message of harsh criticism of the government. Although journalists are obliged to respect the presumption of innocence, the daily *Blic* published an article entitled "Actor Goran Jevtic ravished my son" and continued with accusations the next day breaking the Code of Journalists of Serbia by publishing a news item based on a criminal charge and not on a conviction.

Perpetrators of hate crimes are often not arrested and trials last for a very long time, eventually ending in very mild court sentences. For example, Mladen Obradovic, leader of extremist right-wing organization "Srbski obraz", was sentenced to 12 months of prison in 2012 for inciting hatred before the announced Pride Parade in 2009, but after several appeals and re-trials in 2014 his sentence was reduced to 4 months of house arrest.

National minorities

When it comes to the concept of guaranteed individual and collective rights, and in particular the right to self-governance and the possibility of electing national councils, Serbia is among the top countries in Europe when it comes to the status of national minorities. However, it does not reflect a thoughtful strategy for

improving the status of minorities, but rather ad hoc responses to pressure from the international community.

Discrepancies between the minority policy and practice are manifested in procedural non-compliance, unclear division of responsibilities between institutions, strong tendencies towards ghettoization of national minority communities, and growing internal conflicts. Minorities seek for solutions on the basis of external arbitration, which sometimes comes from central authorities and very often from outside the country, either from so-called kin states or international organizations.

The constant politicization of the society, including national minorities, shows up in over-representation of minority political parties in national councils and the adoption of provisions turning them into the para-state bodies. This leads to a weakening of ties inside communities, including communication and cooperation between various national minorities.

During recent ethnically motivated attacks in Vojvodina (October 2014) after a football match between Albania and Serbia, two Albanian and Gorani-owned shops in the towns of Stara Pazova and Sombor were set on fire while another in Novi Sad was stoned. A bakery in Novi Sad was burned and five more shops in Novi Sad and Vrsac were damaged. The owner of the Novi Sad bakery that was torched said that the police turned down his request for protection, which he had made after the attacks started a day earlier. The police responded that they did not have enough patrol vehicles or the capacity to respond to his request. The police questioned 62 persons and 11 were detained.

Since December 2013, eleven children died in fires in Roma settlements. The poor living conditions of the Roma, most of whom live in wooden shacks throughout Serbia, caused these tragedies, which are also the responsibility of the Serbian state, which treats Roma as second-class citizens, marginalized and separated from other social groups.

Media freedoms / Freedom of expression

The legal framework related to media ownership and transparency has been improved, with the most recent changes in 2014. Nevertheless, it is not implemented consistently: media privatization has been postponed for years; data on media owners and sources of money invested in the media through commercials and other means are not publicly available. State ownership of the media is the most blatant mechanism of the government influence especially when it comes to financing and personnel policy. Media owned by municipalities serve as advertising service for local governments. The Government of the Republic of Serbia has shares in the two most important daily newspapers – Politika (50 percent) and Vecernje Novosti (one third), and decides on the appointments of their editors in chief. An outstanding war propagandist of the 90s, Ratko Dmitrovic was appointed editor in chief of Vecernje Novosti. Several texts in this media outlet in 2013 and 2014 could be characterized as hate speech against human rights defenders.

Even though censorship is illegal in Serbia, different mechanisms allow for “soft censorship” and self-censorship. This is primarily done through advertising agencies whose owners are close associates of the ruling party. These agencies are intermediaries between large advertisers and the media, giving them a strong potential to bring pressure to bear.

Critical opinions about the government are almost completely repressed in the media. The most powerful party in the government criticized the public broadcasting service several times, including severe accusations for waging a dirty campaign against the Prime Minister Aleksandar Vucic immediately after the formation of the current cabinet. One of the most popular political talk shows in the past 20 years, “Utišak

nedelje,” was removed from the program of national TV broadcaster B92. The author of the TV show, Olja Beckovic, claims that she received several phone calls from representatives of the government, including the Prime Minister Vucic, who criticized her work.

During the election campaign in January-March 2014 both print and electronic media favored the ruling Serbian Progressive Party not only through their reporting, but also by attacking its political opponents.

Freedom of expression on the internet was breached numerous times over the past two years. Several websites were hacked after having criticized the government. Web portal Pescanik (Hourglass) was hacked after having published a text questioning the diploma of the Minister of Interior Nebojsa Stefanovic and providing the evidence that it was plagiarized. Office for the fight against high-tech crime never publishes the results of investigation of persons responsible for hacking this web portal.

The Commissioner for Information of Public Importance and Personal Data Protection stated several times that state authorities are denying journalists the right to information of public importance.

Politicians influence the media through fabrications, “exclusive information” and campaigns against their opponents. Independent media associations repeatedly pointed to the fact that information is being leaked by power centers not to inform the citizens but to serve their own purpose in political clashes. The media announce police investigations and accusing individuals while citing the information from investigations and presenting them as proven facts, a practice which was noted by the Ombudsman and the Commissioner for Information of Public Importance and Personal Data Protection.

The murders of journalists Milan Pantic in 2001 and Dada Vujasinovic in 1994 have still not been solved. Investigation into the 1999 murder of journalist Slavko Curuvija and the related trial are full of controversies. The intensity of physical and verbal attacks on journalists has increased. The editor of a private news agency Fonet, Davor Pasalic, was brutally beaten in July 2014, and police has still failed to identify the culprits. Four journalists are under constant police protection, including Brankica Stankovic, journalist and editor of the investigative TV show “Insider”, who has had police protection for five years.

Attacks against LGBT activists

LGBT activists continue to be subject to threats and hate speech. The main trends are impunity and inefficiency of the judiciary in cases of violence, both contributing to the deepening of prejudice and the rise of violence directed at the LGBT community. Even though the Pride Parade was organized in Serbia in 2014, it had previously been banned each year since 2010, a systemic breach of the LGBT community’s human rights. The Pride Week was organized from 22–28 September 2014, but it was not clear until the very last moment whether the authorities would allow the Pride Parade. Several hundred participants, including public officials, human rights defenders, representatives of the international community and LGBT activists from across the region took part in the Parade, while thousands of police officers, special forces and armored vehicles secured the venue, vastly outnumbering the marchers.

It is clear that political will is crucial in providing the security and respect for LGBT rights. A “family walk” organized by the Serbian extreme right-wing group Dveri took place in Belgrade only hours after the Pride Parade, whereby anti-gay groups led a counter-march meant to “cleanse” the city of the LGBT event.

A German LGBT activist was attacked at the main bus terminal; he suffered serious injuries to his head and body. Three suspects were arrested but there is still no information about progress in the prosecution of the

attackers. An additional problem is the lack of official state statistics about cases of violence based on sexual orientation and gender identity.

LGBT persons faced a dangerous level of homophobia and discrimination in the education system due to discrimination and intolerance in textbooks and inadequate knowledge by professors of issues regarding gender identity and sexual orientation. 80 percent of high school students support discrimination against LGBT persons, while 38 percent of young men aged 14 to 19 believe violence against LGBT persons is justified and only 16 percent think that LGBT persons should have the same rights as everyone else.

Inhuman Conditions in Closed Institutions

Inhuman conditions do not refer only to the living conditions (quality of accommodation, rooms, beds, facilities, food, bathrooms), but also to healthcare, mechanisms for filing complaints and providing assistance to detained persons, including the process of re-socialization and rehabilitation. The number of detained persons in Serbia exceeds the capacity of prisons by 20%. Most complaints refer to healthcare provision (over 50%), and more than 50% of total number of detained persons are recidivists; only a small number of prisoners is engaged in prison work (10-20%) or provided with occupational therapy.

Individual cases of inhuman treatment, punishment and torture are most frequent in the facilities closed to independent monitoring by civil society organizations. It is only possible to enter these facilities in Serbia through the National Preventive Mechanism (NPM).

Prisoners awaiting or standing trial are kept in detention for several years on average without adequate treatment programs since the law differentiates them from prisoners under sentence.

Cases of excessive use of force against prisoners and use of instruments of restraint by institutional personnel have also been observed. In some prison institutions, high-security measures are being implemented for a long time (up to several years), while in others the very number of disciplinary measures taken against inmates testify of unjust punishments even for minor offenses.

Recommendations:

1. On prosecution of war crimes:

- Provide continuous political and public support for the comprehensive prosecution of war crimes in Serbia;
- Adopt a strategy for the period 2015-2025 for the prosecution of war crimes with clear objectives, directions, necessary resources and an action plan for implementation of the strategy;
- Apply the principles of command responsibility and crimes against humanity when indicting persons for crimes committed in the 1990s;
- Improve the system of support and protection of victims and witnesses, including engagement of psychologists to help and support witnesses and affected individuals;
- When deciding on sentences and the application of mitigating and aggravating circumstances, give greater attention to the specific nature and severity of war crimes;
- Strengthen regional cooperation of war crimes prosecutors (transfer proceedings against foreign nationals to their countries, inform prosecutors in the region of the cases that involve

citizens of other countries, transfer evidence on those cases; initiate the signing of a formal agreement between the OWCP and the Kosovo Public Prosecutor's Office);

- Improve the existing legal framework for the protection of civilian victims of war in Serbia by taking into consideration international standards in this field as well as the observations and recommendations of international bodies that monitor the implementation of international conventions for the protection of human rights;
 - Introduce specific criteria for employment in specialized institutions for the prosecution of war crimes that ensure that these institutions do not employ persons who participated in armed conflicts in any capacity.
2. Improve existing minority policy by adopt new instruments for promoting diversity, non-discrimination, acceptance of differences and multilingualism. Place greater focus on values, procedures and institutions for integration. Actively cooperate with OSCE High Commissioner on National Minorities.
 3. Effectively investigate allegations of hate crimes and prosecute hate crimes. Bias motives should be taken into consideration throughout criminal proceedings; educational campaigns about discrimination, hate crime and hate speech should be carried by special agencies. The government should develop educational policies aimed at promoting the values of tolerance, reconciliation, cultural diversity, inclusion and non-discrimination through educational institutions and media. Special focus should be placed on recent conflicts in the region and the importance of accountability. Actively cooperate with ODIHR Tolerance and Non-Discrimination Unit in addressing the problem of hate crimes.
 4. Adequately react to all types of incidents by extreme right wing groups and publicly denounce their activities. The government should make an effort to create a social atmosphere for the inclusion of all minorities (ethnic, religious, sexual etc.)
 5. Harmonize the practice of the Constitutional Court with the practice of European Court for Human Rights regarding violations of the rights of LGBT persons; recognize same-sex couples in order to enable them to enjoy basic rights stemming from a long life together.
 6. Speed up the reform of closed institutions (prisons, psychiatric institutions). Decrease the number of detained persons through the promotion and encouragement of alternative sanctions. Improve healthcare through more conscientious and comprehensive programs, including preventive medicine. Improve the treatment of prisoners under sentence primarily through educational and occupational training programs; place a special focus on social rehabilitation and pre-release programs to prepare inmates for better integration into outside community upon release.
 7. Speed up media privatization and strengthen the mechanism guaranteeing the independence of public broadcasting services. The police and the judiciary must promptly react to all assaults at journalists. Actively cooperate with OSCE Representative on Freedom of the Media in the issues of freedom of expression, including security of journalists.
 8. The authorities should focus on the security of human rights defenders, with all elements provided by the well-developed legal framework put to use. Pending court cases that are moving towards the statute of limitation should be sped up and concrete results should be visible. Public officials should strongly condemn incidents against human rights defenders, as well campaigns in media against human rights defenders. Special attention should be paid to campaigns in the state owned/controlled media against human rights defenders. Implementation of the recently adopted ODIHR Guidelines on Security of Human Rights Defenders should also be a focus of the incoming OSCE Chairmanship and the government of Serbia.