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

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

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About “prEUgovor”

“prEUgovor” (Eng. *prEUnup*) is the first coalition of civil society organizations formed in order to monitor implementation of policies related to the Accession Negotiations between Serbia and EU, with an emphasis on Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security). PrEUgovor is formed on the initiative of Belgrade Centre for Security Policy (BCSP) with the mission to propose measures to improve the condition in the fields relevant for the negotiation process. In doing so, the coalition aims to use the process of EU integration to help accomplish substantial progress in further democratization of Serbian society.

The “prEUgovor” gathers:

- ASTRA - Anti-trafficking Action (ASTRA)
  www.astra.rs
- Autonomous Women’s Centre (AZC)
  www.womenngo.org.rs
- Belgrade Centre for Security Policy (BCSP)
  www.bezbednost.org
- Centre for Applied European Studies (CPES)
  www.cpes.org.rs
- Centre for Investigative Reporting of Serbia (CINS)
  www.cins.rs
- Group 484
  www.grupa484.org.rs
- Transparency Serbia (TS)
  www.transparentnost.org.rs

Executive Summary

Over the past six months, the coalition PrEUgovor has been monitoring the state of play regarding the key policy areas in the process of Serbia's accession to the EU. These areas include the political criteria and policies covered under chapters 23 and 24 of the European acquis in the negotiation process. The monitored period was marked by two key events: the release of Screening Reports for chapters 23 and 24 by the European Commission, and drafting of the Action Plans for these two chapters. Additionally, the Progress Report for Serbia for 2014 was released by the EC in October, so this report is envisaged as a commentary and an update to this document. This report presents concrete case studies, well researched and documented by the coalition's members, in order to illustrate problems in the areas covered. Lastly, it also contains comments on the Action Plan draft for chapter 23.

Generally, the progress in the areas covered by the PrEUgovor report can best be described as uneven and erratic. When it comes to normalization of relations between Serbia and Kosovo no progress was achieved, mostly due to elections and the inability to form the government in Pristina. Although there was change in legislation regarding civilian oversight of the security sector, the opportunity to systematically regulate this area was missed. The area of the fight against corruption witnessed partial progress with the adoption of new regulations, although the opportunity was missed to fulfil anti-corruption goals to a greater extent. In the area of the protection of women from gender-based violence, protection of children and protection of the victims of violence there was no further progress. In the migration and asylum policy areas no substantial progress was achieved. The same goes for the fight against human trafficking where there still exist numerous obstacles on the path towards full harmonization of domestic legal system with the European standards.

Based on the areas monitored, as well as on the experience in participating in the accession negotiations thus far, the PrEUgovor coalition suggests further measures to be adopted in order to include civil society in this process in a more effective manner and implement the necessary reforms more efficiently. These are as follows:

1. **It is necessary to cease with the practice of adopting laws in urgent procedures.** Most of the laws were adopted in urgent procedure during the monitored period, even in those cases where circumstances objectively did not warrant this approach. In this manner, lawmakers exclude civil society, professionals and interested audience from the legislation process, while adopting laws of dubious quality that are presented as 'European.'

2. **CSOs need to be effectively included in the process of drafting the Action Plans for chapters 23 and 24.** The Government's practice is to submit Action Plan drafts to the EC for comments while at the same time having consultations with Serbian CSOs, which raises the questions as to how meaningful this process actually is. In addition, the comments on Action Plans are not submitted directly to the Ministry of Justice, but rather to the Office for Cooperation with the Civil Society which preselects them based on an unclear set of criteria.

3. **It is necessary that state institutions adopt the practice of submitting explanations regarding comments on draft regulations submitted by the CSOs.** CSOs are active when it comes to commenting and suggesting changes, this is usually a one-way process with no clarifications ever received from the public authorities regarding accepting or refusing individual suggestions. This is in line with Guidelines for Including CSOs in the process of adopting regulations, still waiting to be adequately implemented after its adoption by the Government's decision from August 26, 2014.

Introduction

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

The report is structured to present findings relevant to the policy areas covered in the European Commission's Progress Report for Serbia for 2014, as well as to highlight additional important issues. Each CSO covered one or more policy areas. This report contains a separate chapter related to the process of producing Action Plan for the chapter 23. The report also contains a special segment devoted to the problems that emerged after the floods that hit Serbia in May, including inappropriate responses by the state institutions and the corruption risks that appeared in the aftermath of these events.

FINDINGS

1. Normalisation of Relations between Serbia and Kosovo

Since the European Commission's 2013 Progress Report on Serbia, there has been some progress in implementation of the Brussels Agreement signed between Belgrade and Pristina on the 19th of April 2013. The integration of Serbian police officers employed by the Ministry of Interior in North Kosovo has been completed, even though not all deadlines stipulated in the Implementation Plan for the Brussels Agreement dated June 2013 were met[1]. This also remains the only successful segment of the Agreement, given that negotiations on integration of the judiciary and the forming of the Union of Serb Municipalities in the North came to a standstill due to the early elections in Serbia in March, as well as Kosovo elections and their inability to form a government. The normalisation of relations between Serbia and Kosovo is covered by Chapter 35 of the accession talks between Serbia and the EU and is expected to be one of the first chapters opened, most likely at the next intergovernmental conference on the 19th of December this year, provided, however, that the Kosovo government has been formed. Apart from the implementation of Brussels Agreement, there has been progress in integrated border management, freedom of movement and distribution of electricity.

RECOMMENDATIONS:

- Serbian Government needs to take more proactive measures in order to fulfil obligations taken on by signing the Brussels Agreement.
- Transparency in the process of negotiations between Belgrade and Pristina needs to be increased, especially regarding the implementation of Brussels Agreement on which there are no publicly accessible reports made by the Serbian Government.

1 For more information see the publication *Integracija policije na severu Kosova: napredak i preostali izazovi u primeni Briselskog sporazuma* (*Integration of Police in North Kosovo: progress and remaining challenges in implementation of Brussels Agreement),* April 2014, BCBP, available at: http://www.bezbednost.org/upload/document/integracija_policije_na_severu_kosova.pdf

2. Political Criteria

2.1. Civilian Oversight of Security Sector

The BIA /Security Information Agency/ (Amendment) Act was adopted in June in summary proceedings, whereby the provisions of this Act pertaining to the interception of communications were harmonised with the Constitution. However, not only was the extended deadline for harmonisation missed, as a result of which BIA was unable for several days to conduct communications surveillance measures on those suspected of endangering Serbia's state security, but only one loophole in an otherwise inadequate BIA Act was patched over. The BIA Act regulates the affairs and tasks of the Agency in a general manner, thus BIA is in effect is a counter-intelligence, security and intelligence agency, and mostly a police agency as it is participates in police investigations. This state of affairs was criticised on several occasions by the professional public and the Ombudsman, and objections to this practice appear in this year's European Commission Progress Report for Serbia[2], and in the Screening Report for Chapter 24 as well. Even though the amendments to the BIA Act adequately regulate intelligence-gathering through the interception of communications, the Agency's other powers still remain broadly regulated. Finally, intrenal affairs BIA are not regulated by the Act but by secondary legislation passed by the director of the Agency. As a consequence, in effect, internal affairs and budget control at BIA are not exactly independent. What remains an issue is the fact that this and previous governments function under pressure and deadlines only, because if it was not for the ruling of the Constitutional Court and the deadlines set by the Court, this loophole in the law, that everyone knew about, would not have been patched over either.

RECOMMENDATIONS:

- A new and contemporary law governing BIA needs to be adopted. Both the Government and the opposition agree on this matter, which was stated during the parliamentary debate on the day the amendments to the law were adopted.

2 Progress Report for Serbia, 2014, page 10.

2.2. Private Security

Given that secondary legislation that should set the criteria for training and licencing of private security personnel have still not been passed, it is highly improbable that the legal obligation on mandatory training and licencing will be fulfilled by mid-2015. Another problem is the possibility that MUP (Ministry of the Interior) may use their privileged position on the training market using their own capacities to acquire financial gain. Namely, given that this institution sets the criteria, they can appear on the market as a training services vendor.

RECOMMENDATIONS:

- Adopting the necessary secondary legislation and allocating sufficient resources to the MUP's Internal Affairs Sector, which will probably be in charge of supervising private security companies, is the priority when it comes to the application of the Private Security Act.

3. Chapter 23

3.1. Fight against Corrutpion

The National Assembly has adopted certain regulations that may influence the fight against corruption, but the opportunity to fully achieve anti-corruption goals was missed because suggestions voiced in the public debate and parliamentary amendments were ignored. Thus, the new Media and Public Information Act introduces the obligation to allocate funds for co-financing of programmes by way of a public bid, and also the rules on public access to information on state aid and ownership structure. However, this law, unlike the 2011 media strategy, does not include rules that could provide public access to other information on media financing and the bulk of information will be available on request only, not proactively. The amendments to the Civil Servants Act are another example of a new deadline being set to eradicate the long-running and illicit practice (since 1 January 2011) of appointing civil servants to positions (e.g. assistant ministers) without advertising the position publicly, but the deadline for doing so was, for no reason, too long. Hence, depoliticisation has been put on hold once again. The most problematic provisions (the Government's ability to choose any or none of the three candidates) were not changed at all, and the amendments to the State Administration Act now formally make chiefs of administration districts political appointees using the cynical explanation of the "possibility of cooperation" with state authorities. The new Privatisation Act also fails to remove the risk of corruption, because a large amount of discretionary powers have been retained when it comes to making decisions on the choice of procedure. The Ministry of State Administration and Local Self-Government pub-

lished a draft Action Plan for public administration reform which envisages, *inter alia*, an analysis necessary for public administration "optimization". The same Ministry published a draft of the Inspection Supervision Act (open public debate), as well as several drafts pertaining to local self-government. The Justice Ministry published "the second draft" of the Whistleblower Protection Act, which is an improvement on the previous version of the same act, but remains, in many important segments, more substandard than the original working document – the model act which was published a year ago by the Information Commissioner. A very alarming occurrence is the increasing trend of seeking "European legitimation", which comes down to harmonisation with minimal standards, for anti-corruption reforms and passing of regulations, while at the same time public debates, during which the local professional public should voice their opinion are completely circumvented (contrary to the State Administration Act and Government's Rules of Procedure) or treated as being of secondary importance. The lack of public debate and enactment of laws in summary proceedings – laws presented as European but of a questionable quality.

The decision to form the Coordination Body for the implementation of the Action Plan to administer the National Anti-corruption Strategy 2013-2018 is not precise enough with regard to this body's jurisdiction, leaves room for interpretations with the aim of extending the Government's jurisdiction to other branches of government and independent state authorities, which may create confusion with those bound by the Strategy in terms of reporting on the implementation of the Action Plan.

On the one hand, this Decision provides no answer to the question whether the executive power has had any problems so far regarding implementation of the Strategy and Action Plan that could have been handled in no other way than by placing the Prime Minister in charge of coordination. The only thing we were able to read was that "it was requested by the EU." The Decision does not provide the Coordination Body with clear authority in case there are problems with implementation of the Action Plan that need to be solved - e.g. in cases where a Ministry fails to prepare their opinion or draft law within the envisaged timeframe, where a Ministry notices that the Action Plan is incomplete, where several Ministers publicly voice opposing views on handling the same matter (e.g. on implementation of the Public Companies Act) etc.

On the other hand, the Decision leaves room for interpretation that the executive power wishes to coordinate affairs that fall under the jurisdiction of the authorities which are not subordinated to it – judicial authorities, local self-government, independent state authorities (including the Anti-corruption Agency which is tasked by the law to supervise the implementation of the Strategy and Action Plan) and the National Assembly itself, which passed the Strategy (and which is also bound by the Action Plan).

The cause of this problem originates from the very text of the Strategy (chapter 5.2.) of which the TS gave warnings during the development and made concrete suggestions to overcome

the problem, which were not taken into consideration.[3] The oversight of Strategy and Action Plan implementation is, according to both the Strategy and the Act (on Anti-corruption Agency) the exclusive jurisdiction of Anti-corruption Agency. All those bound by the Action Plan report to this independent state authority on what has been done so far. On the other hand, chapter 5.2. of the Strategy envisages that within the government, coordination is implemented by the Justice Ministry, and that this coordination includes "mutual communication, exchange of experience and information". The same chapter mentions "trimestral meetings with state authorities ", which could refer, having in mind the Ministry's authority to coordinate "within the Government" only to those state authorities that work within the executive branch of the power. However, that this obligation to coordinate includes other state authorities has so far been interpreted groundlessly, too.[4]

The Government's Decision removes this coordination from ministerial level and places it at governmental level. Such solution is indeed contrary to the Strategy, but may make sense in principle – for example, if the Justice Ministry has so far had problems to coordinate anti-corruption activities with which several ministries are tasked (on which there have been no public announcements), it is to be expected that such problems between ministers may be resolved by coordination involving the Prime Minister. However, the essential problem with the Decision is of a different nature – in it there is talk about "directing the affairs of state authorities", not limited to executive power (article 2).

The case of conflict of interest

Center for Investigative Journalism of Serbia has detected, investigated and proved financial transactions between companies connected to persons from the close surrounding of Minister for Emergency Situations in Serbian Government Velimir Ilic (including his daughter) and a company owned by a person with criminal background, which has received tens of contracts with local governments, ministries and other public institutions at the same period of time. Owner of the company at the heart of this circle is a close friend to Minister, often seen with him during electoral campaigns and other public appearances connected to Mr. Ilic's party. He has been involved in gun-fights and police has named him in its documents as "close"to a criminal clan from Belgrade.

Comment: The Conflict of Interest Act from 2004 doesn't reach too deep into possibly corruptive combinations of exchange of financial, business or other services of persons connected to a public official and should be regularly updated and improved as new cases of corruption emerge. At the same time, corruption court cases which such changes may be instigated by are rare, too long and without adequate sentences.

The Coordination Body comprises the Prime Minister, Justice Minister, Finance Minister and a member of the Government's Anti-corruption Council, and it is stated that "other members of Government and directors of relevant state authorities may take part in the work of the coordination body" (article 3). Further on there is talk about participation on behalf of state

3 Remarks made by the TS are available at TS' web page http://goo.gl/Y2KBAp in documents "Strategija za borbu protiv korupcije april 2013.doc" (Anti-corruption Strategy April 2013.doc) and "zbirni i korigovani komentari TS na Strategiju od 11 3 2013.doc" (Collective and Amended Comments by the TS on the Strategy dated 11 3 2013.doc)

4 See: http://www.mpravde.gov.rs/tekst/3284/osobe-zaduzene-za-izvestavanje-i koordinaciju.php

secretaries from the Ministries of Justice and Finance, and about the state secretary from the Justice Ministry being in charge of "coordination of relevant state authorities for the needs of the Coordination Body" (article 4), convening once in six months, which could mean that this state secretary performs coordination between two meetings of the Body, though this is not explicitly stated. Article 5 states that "state authorities are in charge of implementing the Action Plan" and are bound to appoint "one of their officials to communicate with the state secretary from the Justice Ministry and that the state secretary and these contact persons should meet at least once in three months" with the aim of monitoring and fulfilling the obligations envisaged by the Action Plan", and that the state secretary may have bilateral meetings with contact persons (article 6). As can be seen, these provisions do not differentiate between authorities within executive power and other state authorities.

The case of a problematic state contract

Balkan Investigative Reporting Network has, working on a partnership project with CINS, revealed draft versions of five contracts regulating the purchase of the majority of shares of state owned Serbian Airlines by United Arab Emirates company Etihad. Contracts show that Etihad has invested just a fraction of what the state of Serbia did and other ways in which this purchase was beneficial to UAE company at the expense of state of Serbia. At the same time, Serbia obliged itself to pay the debt of the company, estimated to be over 230 million US dollars. This was done through the institution of "state help" but, this is the only time that the office of the First Vice-president of the Government, which is in contradiction with the law. The contracts have been exempt from FOI as all inter-state contracts are. Prime Minister promised to publish these contracts on several occasions over more than a year since the signing, but hasn't until this investigative story was published, and then he revealed new contracts, changed and signed again by both sides only months before the publication.

After the publication of the investigative story, both BIRN and CINS, as partners on the project, came under attack of a tabloid openly supporting the governments. Both organizations were labeled "hypocrites" and "spies".

Comment: The legal circumstance protecting inter-government contracts caused both the lack of transparency in a deal both strategically and financially major importance for Serbia, and showed that public money wasn't managed in the best interest of the state. If FOI is there to keep the public spending transparent, it is quite irrational to keep the largest and most important contracts out of the public eye. At the same time, almost complete lack of analytical and critical reporting on the topic shows that media in Serbia are either afraid to report on issues the Government finds sensitive, or are not professional enough to choose them as topics of importance for the public interest.

Article 7 talks about "reporting on compliance with measures from the Action Plan", where the term "relevant state authorities" is once again used without differentiating between executive power and all those bound by the Action Plan. This reporting is performed "via" Justice Ministry and the Government's Anti-corruption Council, which means that reports are made both to the Ministry and the Council (as a reminder, in accordance with the Strategy and the Act, there is an existing obligation to make reports to the Anti-corruption Agency). As for the authority of the Coordination Body, only this is clearly envisaged - "Coordinating Body may suggest that the Government make decisions with the aim of the implementation of the Action Plan" (article 8). Administrative and technical support is provided to the Coordinating Body by the Justice Ministry and Government's Anti-corruption Council (article 9). There is also talk

about appointing state secretaries, Council member and contact persons from other authorities "within eight days of entering into force of the Decision" (article 10).

RECOMMENDATIONS:

- The practice of adopting laws under urgent procedure unnecessarily and unjustifiably needs to be stopped, given that this hinders public debate and has a negative impact on the quality of laws passed.
- The Government's Decision on forming the Coordination Body for the implementation of the Action Plan to administer the National Anti-corruption Strategy for the 2013-2018 period should be made more precise as soon as possible, so that it clearly refers to coordination within the executive power, which is undoubtedly necessary.

3.2. Corruption in Police

Poor progress has been made in fight against corruption in police. Transparency of police work has been improved, Integrity Plan and Development Strategy have been adopted. However, the integrity of the police is mostly influenced by inadequate human resources management, poor internal control and politicization. [5] Primarily, there is no obligation to post public notice of police service recruitment. The criteria for advancement in service are secret. Even to police personnel. The list of available job posts at the MUP does not exists. Job descriptions are vague. Next, the Internal Control Sector does not work independently. The Minister of the Interior can prevent the Sector's investigation, whereat there is no direct obligation to report to the National Assembly or the Committee in charge of Internal Affairs. The Sector has no adequate human, material and financial resources. Finally, police work in Serbia is still much dependent on political parties' interests, due to which it loses its operative independence and responsibility. In June 2014, five department chiefs were removed from their posts at the Ministry. Reasons for this removal were not clear, or better said, incomplete. For this reason it is impossible to say whether they were justifiable.

RECOMMENDATIONS:

- Take systematic measures to remove the following three main issues with the aim of promoting police work efficiency: inadequate human resources management, inefficient internal control and excessive politicization of the police.

5 For further information see publication *Procena integriteta u sektoru bezbednosti Srbije,* 2014, BCBP, (Assessment of Integrity in Serbian Security Sector, 2014, BCBP) available at: http://bezbednost.org/Sve-publikacije/5596/Procena-integriteta-u-sektoru-bezbednosti-Srbije.shtml

3.3. Women's Rights and Gender Equality

There has been no progress regarding protection of women from all forms of gender based violence. The negative trend of homicide against women in families and partnerships continues, and what is particularly alarming is the case of a murder on prison premises of a woman, who was visiting her ex-husband. Attacks on female defenders of human rights continue without adequate response from judicial authorities to the suspects. Nothing has been done about harmonizing domestic legislation with Council of Europe Convention on preventing and combating violence against women and domestic violence.

After the Council of Europe Convention ratification (October 2013) and its entering into force in August 2014[6], and final recommendations of the United Nations Committee for the elimination of all forms of discrimination against women (CEDAW)[7] dated July 2013, the state of Serbia did nothing to change positive legislation in accordance with the Convention and the final recommendations, neither has it appointed a Coordination Body to monitor the implementation of the Convention. The negative trend of homicide against women in families and partnerships continues (18 women have been murdered by their current or former partners or family members during the period from the 1st of January to the 1st of September 2014), and what is particularly alarming is the case of a murder on the premises of a prison in Niš of a woman who came to visit her ex-husband imprisoned there, in order to obtain permission to take their child abroad.

The attacks on Women in Black continue without adequate response from the judicial authorities to the suspects[8], and without the state's commitment to change public awareness regarding the female defenders of human rights in Serbia. The Directorate for Gender Equality, the only executive body in charge of the issues of gender equality, has been abolished. After the new Government was formed, the new Government Council for Gender Equality was not appointed.

3.4. Rights of LBGT persons

The security of LGBT persons is still at high risk. Like in the previous years, the Pride Parade depends on security risk assessment, which is unknown until the last moment. An attendee of Belgrade Conference on LGBT Persons' Rights, a German citizen, suffered hard injuries after being physically attacked in Belgrade's city centre.

6 http://www.womenngo.org.rs/vesti/362-konvencija-protiv-nasilja-nad-zenama-stupa-na-snagu

7 http://www.gendernet.rs/files/dokumenta/Izvestaji_Uprave/Cedaw_zakljucna_zapazanja_2013._srp..pdf

8 http://www.womenngo.org.rs/vesti/361-hitan-odgovor-na-nasilje-prema-braniteljkama-ljudskih-prava

3.5. Children's rights

There has been no improvement regarding protection of children. Autonomous Women's Centre filed a Constitutional appeal [9] in the case of a criminal offence of illicit sexual activity with minor children by abuse of position because the suspect was exonerated by the final decision of the Court of Appeals in Belgrade, after 7 years of judicial proceedings. The practice of moving children into foster care without previously providing them with judicial protection continues. There is still no adequate audio-visual equipment in courts/prosecutor's offices, and the situation regarding child support payments is becoming increasingly alarming.

In March 2013, in accordance with the judgment of the European Court of Human Rights, [10] Serbia was given a year to resolve all cases of missing babies. Even though the deadline for the enforcement of the judgment expired in September 2014, the Republic of Serbia has taken a few concrete steps towards this end. Working group for the enforcement of the judgment was formed and this body met on several occasions, but measures such as the adoption of a lex specialis (as recommended in the judgment) were not taken yet. For this reason, hundreds of parents are still waiting for an answer to the question of what happened to their babies.

3.6. Procedural Gurantees

The Justice Ministry is planning, after more than 10 years of work on creating the Free Legal Aid Act, to send a draft to the National Assembly, which if adopted, will not be practically applicable. The amendment to the Civil Procedure Act, adopted without public debate and under urgent procedure, which limits the right to choose attorney and which was at one time declared unconstitutional by the Constitutional Court, presents an additional aggravating circumstance for citizens to exercise their right to court access, legal aid and fair trial.

9 File number Už. 4048/2014.

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

3.7. The Right to a Fair Trial

There is still no progress regarding the passing of Free Legal Aid Act, because Justice Ministry ignores suggestions and comments made by non-governmental organizations which provide free legal aid that the draft law should be changed so that it is applicable[11]. The National Assembly, convening during the state of emergency, adopted amendments and supplements to the Civil Procedure Act[12], without previous public debate and under urgent procedure, limiting in article 85 the right of citizens to choose attorney in civil proceedings. A similar regulation was declared unconstitutional in 2013 by a decision of the Constitutional Court[13], in which way not only is the right of citizens to court access, legal aid and fair trial jeopardized, but the right to legal security as well. A new Constitutional Challenge[14] was made to this article of law.

3.8. The Rights of Victims

Autonomous Women's Centre filed a Constitutional Appeal in the case of a criminal offence of marital rape[15] because the suspect was exonerated by the final decision of the Court of Appeals in Belgrade. The Appeal pointed out the discriminatory attitude of a Court of First Instance Judge to a female victim of domestic violence, as well as the discriminatory practice of the Court of Appeals in Belgrade which did not notify the injured party of the day when the public hearing before the appeals chamber would be held in the situation when the injured party required so. This case demonstrates how far criminal legislation is from the standards envisaged by the *Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime*. There is still neither any form of civil service help for victims of crime, nor indemnification. Serbia still fails to meet the requirements envisaged by Council of Europe Convention, as nothing is done to set up a national SOS telephone number for women victims of violence, and Crisis Centres for those who suffered sexual violence. There are still no support services for victims, neither are the victims given the status of particularly vulnerable witnesses for reasons of protection. Prosecutor offices, by applying the institute of delayed criminal prosecution more often in cases of the criminal offence of domestic violence, and by making the suspects pay a sum of money to charity, return fines for this criminal offence, whereby the victim is put in greater danger of repeated violence by the fact that the victim suffers the consequences of paying this sum of money. The status of particularly vulnerable witness is not given to victims of human trafficking either, forced to take part as wit-

11 http://www.womenngo.org.rs/vesti/346-za-besplatnu-pravnu-pomoc-dostupnu-svim-gradanima

12 http://www.parlament.gov.rs/upload/archive/files/cir/doc/zakoni/2014/1357-14.doc

13 http://www.praxis.org.rs/index.php/sr/praxis-in-action/access-to-justice/item/600-constitutional-court-established-that-the-provisions-of-the-article-85-paragraph-1-stating-%E2%80%9Cwho-must-be-the-lawyer%E2%80%9D-article-85-paragraph-2-and-articles-494-through-505-of-the-civil-procedure-law-are-not-in-accordance-with-the-constitution

14 http://www.praxis.org.rs/index.php/sr/praxis-in-action/access-to-justice/item/794-praxis-submitted-the-initiative-for-the-assessment-of-the-article-85-paragraph-2-of-the-law-on-civil-procedure

15 File number Už. 5510/2014.

nesses in years long criminal proceedings against human traffickers under the threat of being brought in by force unless they answer to court summons to give evidence.

The case of lack of respect for workers' rights

In an investigative story on the troubled privatisations of one of the largest producers of alcoholic beverages in Serbia, now owned by a person police connected with a criminal clan from Belgrade, CINS has also discovered a case of gross abuse of workers legal and labor rights. After they were tricked out of their shares of the company "Rubin" from Serbian town of Krusevac, workers have won their case in court, but the company refused to act upon the court's decision, with no consequences at all. At the same time, workers who engaged in union actions to protect their rights were also: put to work under such bad conditions that most of them quit their jobs. Not only that the state excepted contracts based on ownership disputed by Serbian court, but the President of Serbia came to visit such company and promoted it in that way as exemplary.

Comment: The state of Serbian shouldn't undermine its own courts by ignoring their decisions, especially at the expense of its less powerful citizens, like workers in cases against their employers.

3.9. The Right to Aid

Amendments and supplements to the Criminal Procedure Act[16], which were also adopted without previous public debate and under urgent procedure, during the state of emergency, stipulate that the money obtained by applying the institute of delayed criminal proceedings by the prosecution is no longer paid directly to charity, but into the bank account of the Justice Ministry. In this manner, special and rare funds for victims of domestic violence suffered losses, as that was the way they obtained means to help this category of population. The Justice Ministry has still not passed secondary legislation regarding the Ministry's account into which the money is be paid by applying the institute of delayed criminal proceedings, neither has the Commission been formed to approve its spending.

16 http://www.parlament.gov.rs/upload/archive/files/cir/doc/zakoni/2014/1353-14.doc

4. Chapter 24

4.1. Migrations and Asylum

Even though certain efforts were made, there is still no essential progress in the field of migrations and asylum. Serbia is still in the early phase of implementation of asylum policy and lacks an all-inclusive strategic set of measures to connect activities in the field of asylum system construction with the wider field of Serbian migration policy (primarily, there is no systematic approach to solving the problem of irregular migration and implementation of readmission agreements with neighbouring countries is inefficient, i.e. the readmission agreement is not applied to a large number of irregular migrants, who were punished by Magistrates Courts in the Republic of Serbia.) Additionally, the current national strategic documents in the field of migrations have recently expired (Strategy to Combat Irregular Migration) or they are due to expire soon (Strategy of Migration Management), so Serbia is looking at a comprehensive and inclusive revision of migration policies and strategies.

Appraisals mention the number of irregular migrants in 2013 as twice as higher than the number of persons who expressed intention to seek asylum (5 056). The growing trend of increase in the number of persons continues, and by the end of May, asylum was sought by 3476 people, so there is ground to assume that by the end of the year the number of persons seeking asylum in RS will be twice as higher than in 2013.

In the field of asylum, the most evident issues are those in the field of providing adequate accommodation, so there were periods of several months when a large number of asylum seekers resided outside the centres, and without institutional support. It is positive that the situation has improved considerably since December last year and in Serbia today there are five centres that can put up over six hundred asylum seekers. Accommodation capacities have been expanded and improved, but almost all centres still have the status of temporary centres, so the system of accommodation for asylum seekers is still not rounded and stable. Accommodation for asylum seekers is not an aim per se, and institutions in charge of asylum process still are not strong enough to provide sufficiently efficient and just procedure. Asylum requests are still processed by the Asylum Department of the Border Police Directorate of the MUP RS, given that the Asylum Office, which was supposed to be the relevant first instance authority, has still not been formally formed.[17] There is an obvious lack of knowledge on implementation of international standards on processing of asylum requests. Even though a considerable number of asylum seekers leave the asylum procedure of their own accord, before final decision is made, there is considerable deficiency with regard to quality and efficiency of the implementation of asylum procedure. In practice, up to 6 months can pass between coming to an asylum centre and submitting the request,[18] which contributes to the

17 Screening-report-chapter-24-Serbia, III B. Asylum, p. 18

18 Right to Asylum in the Republic of Serbia 2013, Belgrade Centre for Human Rights, Belgrade, 2014., p.17

long duration of the procedure and can be a motivating factor for further irregular migration of persons. In 2013, out of a total of 5 056 persons who expressed their intention, 742 persons were registered, 153 asylum requests were made, 19 persons had a hearing, and 193 decisions were made (4 requests granted, 5 requests declined, 8 set aside and 176 procedures suspended). Apart from institutional and infrastructural deficiencies, the analysis of existing practice in asylum procedure,[19] shows there is need to amend the current Asylum Act, which is also a conclusion of the Screening report for Chapter 24.[20] The criteria to assess the security in the country of origin and the list of secure third countries are still not harmonised with European Union's legal traditions. Procedural guarantees are not harmonised either, neither are access to procedure, conditions of entrance, guaranteed rights for asylum seekers, nor rights available to persons who were given some form of international protection.

RECOMMENDATIONS:

- It is necessary to start revising the Asylum Act, accompanying regulations and relevant strategies in the field of migrations in the shortest possible term, in such manner that the process of their creation and adopting is completely transparent and that it includes extra-institutional actors taking part in the asylum process, i.e. in the protection of other migrants' rights.
- It is imperative that the change of policies and regulations be followed by the securing of the necessary financial means, and infrastructural, material-technical and personnel conditions for their unencumbered implementation.

4.2. Fight against Trafficking in Human Beings

Numerous issues remain to be tackled in order to harmonize Serbian legislation, anti-trafficking mechanism and victims' protection practice with standards and values of European Union. This section of the report addresses the three above mentioned areas and assesses progress made by the Republic of Serbia in implementing anti-trafficking and human rights policies relevant for Chapters 23 and 24.

Even though human trafficking is penalized in national Criminal Code, Serbian legislation and its implementation remain flawed when it comes to protection of victims of THB and their rights. Serbian judiciary has not improved with regard to its efficiency in prosecuting trafficking cases. Court proceedings are still very long, victims' testimonies remain the main piece of evidence, and little is done to prevent secondary victimization and protect victims' safety during and after trials. **Non detention, non-prosecution and non-punishment clauses pro-**

19 Izazovi prisilnih migracija u Srbiji:drugi pogled na pitanja azila i migracija, Grupa 484, Beograd, 2013. (Challenges of Forced Migrations in Serbia: a different view of issues of asylum and migrations, Group 484, Belgrade, 2013.)

20 Screening-report-chapter-24-Serbia, III B. Asylum, p. 20

tected by the international and European law21 were not fully implemented in practice. A certain number of trafficking cases are still prosecuted as facilitation of prostitution, even when alleged prostitutes are minors; also, there are cases of victims being convicted of crimes which are direct consequence of their being trafficked. Case study presented bellow illustrates grave consequences and further suffering such a system inflicts on trafficking survivors.

For seven years, human trafficking victim was brutally violated and exploited by a man who had committed a murder in front of her and forced her to confess the crime. Consequently, she was sentenced, by the Pančevo Higher Court (judgment 1K no. 95/11 issued in 2012) and by the Novi Sad Court of Appeal (judgment Kž 1 no. 3234/2013 issued in 2014) to 18 years imprisonment for first degree murder committed by her trafficker. This case of trafficking was never prosecuted because her exploitation started in 1995, years before THB was criminalized in Serbian legislation. Although she was officially identified as a THB victim in Serbia, both courts explicitly refused to establish the fact that the accused is THB victim, because of which it was not possible to apply the non-punishment provision (Article 26) of the CoE Convention on Action against Trafficking in Human Beings which Republic of Serbia signed and ratified in 2009.

ASTRA database, ID number 2849

Insufficient efforts were put in meeting the EU standards in relation to **protection of rights of victims of human trafficking.** Major issues remain the lack of specific indicators for identification of victims and the lack of minimum standards for assistance provision, which makes monitoring and quality control of these processes impossible. Although international legislation guarantees rights of crime victims, including those of THB (the new Directive 2012/29/EU guaranteeing the right to timely information, translation and understanding; the rights related to participation in court proceedings which include the right to a hearing, compensation, protection, etc.), the national legislation only recognizes the right of victims to compensation that is not being exercised in practice. Although Serbia signed the European Convention on the Compensation of Victims of Violent Crimes CETS No. 116 in 2010, it is still not ratified. Compensation Fund does not exist and eleven years after trafficking in human beings was criminalized in national legislation only one victim was compensated for the damages suffered after a lengthily and costly litigation. For this reason, Serbian anti-trafficking NGO ASTRA initiated a policy changing initiative aimed at introducing changes to the Criminal Code that would oblige criminal courts to decide on victim's compensation claim within criminal proceedings and thus prevent secondary victimization, waiting and unnecessary costs of civil proceedings (for gaps in current procedures please see the case study below). This initiative was supported by over 100 CSOs, justice sector professionals, relevant state institutions representatives and other stakeholders, as well as by the head of EU Delegation in Serbia. It was followed by drafting of Criminal Code amendments that are going to presented to the Ministry of Justice this autumn. State's response to this initiative remains to be seen.

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21 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, (Palermo, 2000); Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197 (Warsaw, 2005); EU Directive on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU).

The beginning of litigation before the Higher Court in Belgrade was postponed for a year because one of five defendants, having served his sentence to which he was convicted in criminal proceedings, was released from prison and became unavailable to court. To initiate the process without his presence, the court appointed this defendant temporary legal representation, who was to be paid by the plaintiff according to the Civil Procedure Act. As a result, the victim (i.e. ASTRA as his legal aid provider) had to pay for the legal representation of one of the persons who exploited him in order to obtain compensation from him. Since this defendant did not have possessions to be confiscated in order to compensate the victim, and the costs of his legal representation were very high, the only solution was to drop the compensation claim against him.

ASTRA database, ID number 1737

State's readiness to cooperate and use capacities of CSOs in order to secure better functioning of national anti-trafficking mechanism has not improved. Serbian authorities did not ensure **civil society involvement** in the implementation of national policy for victim assistance, and victims were seldom referred to NGO assistance providers. As the State provides limited resources for assistance (only 8.42% of funds available to Center in 2013 were allocated for victims' assistance, and the rest was used to pay state officials employed in the Center and cover operational costs of this body), this raises the question of whether and how were other victims supported after identification.

More than a year after the beginning of public hearing, the **Anti-Trafficking Strategy and the National Action Plan** have not yet come on the agenda for adoption, although these two documents were initially drafted to cover the period starting from 2013 (the last NAP expired in 2011).

RECOMMENDATIONS:

- Adopt Strategy to Combat Human Trafficking and National Action Plan
- Accept the initiative to change Criminal Code by which criminal courts would be bound to make decisions on indemnification claims for compensation of damages in criminal proceedings.

5. Comments on the Action Plan draft for the Chapter 23[22]

Based on the Screening Report for Chapter 23 for Serbia – the Judiciary and Fundamental Rights[23] , which was published by the EC at the end of July, Serbia started creating the Action Plan for this chapter, which includes measures, means, indicators and continuous deadlines for adopting recommendations and implementation of reforms in this field. CSOs in Serbia were invited to take part in this process, first by providing input to the Justice Ministry for the Action Plan, and then by making comments on draft Action Plan.[24] The four members of PrEUgovor coalition (ASTRA, Autonomous Women's Centre, Centre for Applied European Studies and Transparency Serbia) submitted their comments on draft Action Plan for this chapter and main objections and comments on this document will be presented in this part of the report.

5.1. The Fight against Corruption

Weaknesses of the AP are visible at the elementary level – there was obviously no linguistic checking of the document prior to publication and opening of public debate, so it contains numerous spelling and stylistic errors, implementers of activities were specified in a wrong or at least incomplete manner (e.g. that the ministries make amendments to law, even though this can be done by the National Assembly only). In a document put up for public debate, no activities whatsoever were planned for 12 recommendations from the EC's Screening Report (e.g. whistle blowers' protection, control of public procurement, "information leaks" on investigations, unique corruption statistics, immunity system revision).

This Action Plan contains some identical measures as the Action Plan for Implementation of Anti-corruption Strategy, but with deadlines and implementers defined differently, which will create serious problems with monitoring. Moreover, the "new" Action Plan presents worse solutions for many situations than the current one (e.g. unduly extended deadlines), which should be accepted under no circumstances. The description of current state is incomplete, and there is no mention of serious issues regarding competition and transparency evasion by means of applying of interstate agreements, lack of regulations and transparency in lobbying, non-compliance with certain norms of Public Companies Act, too broad discretionary powers, a large number of unreported corruption cases, vague relationships (in practice) between the

22 At the time when this report was being made the draft Action Plan for Chapter 24 was not publicly available even though, according to information obtained by PrEUgovor member organizations, the draft was made and forwarded to European Commission for commenting.

23 Available at European Integrations Office's web page: http://seio.gov.rs/upload/documents/eu_dokumenta/Skrining/Screening%20Report%2023_SR.pdf

24 Draft Action Plan for chapter 23 available at Justice Ministry's web page: http://www.mpravde.gov.rs/tekst/7079/akcioni-plan-za-poglavlje-23.php

authorities that investigate corruption and the executive power when it comes to defining priority cases to be investigated.

Among numerous deficiencies stand out the misconceived concept of the political leadership coordinating between all state authorities in the fight against corruption, the underdeveloped activities for adequate response to reports and requests made by the Agency and for the setting up of efficient oversight mechanisms. Draft Action Plan shows big lack of understanding for the problem of insufficient transparency, because the need to change regulations other than the Free Access to Information of Public Importance Act (deadline for those amendments is unreasonably long) is not recognized, nor are the measures that can be taken without amendments to any law (to begin with, that the Government itself acts upon received requests, that all authorities create and update their complete Information Booklets, that databases on public spending, contracts and agreements made by the Government, ministries and public companies get published and searched through.) The measures to depoliticize public administration are obviously insufficient to accomplish that aim.[25]

5.2. Judiciary and Fundamental Rights

In the part pertaining to the judiciary, there is no recognition of some of the activities that can be undertaken before amending the Constitution in order to promote transparency of appointing judges and prosecutors, indicators of the success of reforms are not developed enough, it is necessary to come up with more concrete activities so as to make public the political pressure under which judges and prosecutors find themselves and to increase the transparency of judicial institutions, and deadlines for undertaking certain activities are set too far. In the part on fundamental rights, deadlines for increasing the Ombudsman's capacities are set too far, and not linked with necessary amendments to the law. The issue of "information leaks to the media" about criminal investigations is currently treated formally – by arranging and refining internal procedures.[26]

Although the Progress report states that there are still lot's of work to be done in order to harmonize Serbia's legislature with the EU acquis and ratified international documents with regard to gender equality and protection of women from violence (the catalogue of criminal offences has yet to be harmonised with the CoE Convention, emergency protection orders are not issued promptly, no national women's helpline is in place; the number of shelters is insufficient and there are no centres for victims of sexual violence, the mechanisms for coordinating the collection and sharing of data between all relevant actors in the system need to be improved) no benchmarks or concrete actions could be found in the Draft Action plan for the Chapter 23 regarding these issues. Set up benchmarks do not show in what way the gender

25 Integral version of the comments made by Transparency Serbia on draft Action Plan for chapter 23 in the field of fight against corruption is available at the TS web page: http://goo.gl/7gpqNO

26 Integral version of the comments made by Transparency Serbia on draft Action Plan for chapter 23 in the field of judiciary and fundamental rights is available at the TS web page: http://goo.gl/Nd2U6A

equality will be achieved, except by creating new strategies in a situation when Serbia doesn't have reports on the achievements of the previous strategies.

Human trafficking issues are not considered in the Action Plan for Chapter 23: *Judiciary and fundamental rights*. ASTRA's opinion is that problems connected with human trafficking, i.e. protection of victim's rights, need to be included in the Chapter 23: Judiciary and fundamental rights as a part of Fundamental rights, not just to be considered as a part of organized crime and migrations in the Chapter 24: *Justice, freedom and security*.

With regard to Serbian legislation it is necessary to adopt new Strategy on preventing and combating trafficking in human beings and protecting its victims, and Action plan for implementation,. Further measures are required to foster a human rights based approach and to step up measures to identify and protect victim. Trafficked persons need to have effective access to compensation of material and non- material damages through compensation fund regardless of the outcome of criminal proceeding and whether the identity of the perpetrator has been established. Non-punishment of victims for their involvement in unlawful activities while they were exploited should be explicitly envisaged in Article 388 of Criminal Code of Republic of Serbia.

Also, Republic of Serbia must implement the judgment of the European Court of Human Rights in the case Jovanović vs. Serbia about missing babies (which date back to the seventies to this date), according to which it is required not only to provide answers and grant compensation to the applicant, but also to establish mechanism that would examine all similar cases and compensate other parents. The deadline for the enforcement of the judgment was September 2014.

RECOMMENDATIONS:

- Having in mind the enormous importance of this document for achieving two key priorities of the current Serbian Government, namely EU accession and fight against corruption, the draft Action Plan must be thoroughly revised.
- The Justice Ministry needs to publish the received comments on the Action Plan, as well as the information on their considerations of those comments i.e. explanations on adopting or rejecting of individual comments and suggestions.

6. Emergency Situation Caused by May Floods

Large-scale floods in May 2014 revealed the extent to which the protection and rescue system in Serbia is functional. The Emergency Situations Act, passed in 2010 with accompanying regulations, set a quality frame for prevention and actions taken in emergency situations, but after 4 years it practically remains a dead letter. Year after year, even though it is insufficient, the budget of the Sector for Emergency Situations is considerably diminished because of "higher priority expenditures". That this is to be the case with this year too, is an unsettling information. There are mostly incompetent people employed in relevant and responsible authorities for combating floods and managing of emergency situations, who are often not familiar with their legal obligations. Civil protection has not been part of education programme in Serbian schools for 4 years. State authorities are seriously running behind the passing of the most important operational documents for risk assessment and plans of protection and rescuing. Without these documents, the reactions of relevant authorities in emergency situations are chaotic and handed over to political authority. Failure to assign jurisdiction for action in emergency situations between towns and town municipalities is evident, especially where Belgrade is concerned, in which a significant part of flood damages can be attributed to this issue.

Reporting on floods

Center for Investigative Journalism of Serbia has reacted to flooding immediately, according to its mission to supply citizens of Serbia with important facts so they could make their decisions. One week since the flooding, a third of our investigative team was engaged on investigating three topics:

- Cause, state reaction and effects of the flooding
- The defense and damage to key strategic facilities for the country
- Freedom of expression on the Internet during state of alert

A month into the investigation, a project was devised in partnership with Share Defense NGO, specializing in freedom of expression on Internet and Belgrade Center for Security Policies. CINS has dedicated all available resources to this investigative process and will continue to investigate this issue, since its complexity and the impact on Serbian economy and reforms have shown to be of huge importance. CINS is expectand to publish at least six investigative stories until November and, as a result of the publication of its findings on failing to protect its citizens, becomes a target of tabloids and other media close to the Government.

Floods that affected Serbia and other countries of the region in May 2014, influenced certain matters in the fight against corruption. During the floods and afterwards, a question was raised about the quality of flood risk management, but there was no thorough debate about it. After help started to arrive from home and abroad to affected citizens, a question was raised about the transparency regarding the collecting and spending of money. However, even though there were numerous requests made by the public, based on numerous bad

experiences from the past, as well as multiple announcements by the Government, public access to information was not provided. The Government formed a special Office for Reconstruction and Flood Relief, and soon afterwards suggested a special law to regulate the work of this Office and distribution of aid (Eliminating Consequences of Floods Act in the Republic of Serbia). The most problematic provisions of this law, due to their violating of the unity of the legal system, are those that pertain to public procurement, stipulating the exclusion of certain provisions of the Public Procurement Act (public procurement plan, prior opinion of the UJN on applying the negotiated procedure, suspensive effect of the decisions of the Commission for Protection of Rights), even though certain alternative mechanisms are stipulated, the effects of which still remain to be tested in practice (e.g. mandatory consent from the Negotiation Process Office). Government representatives made claims about cases of attempted fraud at submitting aid requests, and citizens from certain municipalities complained of unclear or wrong criteria for aid distribution.

RECOMMENDATIONS:

- In times of ever more unpredictable climate events and ever more frequent adverse weather conditions, the state should change its policy regarding the issue of functionality of the system of protection and solve the stated problems, from purely economic reasons if none other.

Technical Assistance for
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